

RESORT MUNICIPALITY OF WHISTLER

BYLAW NO. 107

A Bylaw to amend the Resort Municipality of Whistler Zoning Bylaw No. 9, 1975 by the Approval of a Land Use Contract.

WHEREAS Section 702A of the Municipal Act provides that the Resort Municipality of Whistler may enter into a Land Use Contract for the development of any area previously declared by Bylaw to be a development area;

AND WHEREAS this proposed development is within the development area established by Bylaw No. 43 and Bylaw No. 99;

AND WHEREAS the Official Community Plan for the Resort Municipality of Whistler designates this land aforementioned as Town Centre.

NOW THEREFORE the Council of the Resort Municipality of Whistler in open meeting assembled enacts as follows:

1. This Bylaw may be cited for all purposes as "Resort Municipality of Whistler Zoning Bylaw No. 9, 1975 Land Use Contract Approval Bylaw (Fortress Mountain Resorts Ltd.) Bylaw No. 107, 1978."
2. The Land Use Contract between the Resort Municipality of Whistler and Whistler Village Land Co. Ltd. and Fortress Mountain Resorts Ltd. respecting the real property described as D.L. 3066 and D.L. 3903, Group 1, N.W.E. is hereby approved.
3. The Mayor and the Clerk/Treasurer are hereby authorized to sign the aforementioned Land Use Contract and to affix the Corporate Seal thereto.

READ A FIRST time this 30th day of October, 1978

READ A SECOND time this 11th day of December, 1978

Pursuant to 703 of the Municipal Act, a Public Hearing was held on the 13th day of November, 1978.

READ A THIRD time this 11th day of December, 1978.

RECEIVED THE APPROVAL of the Inspector of Municipalities this 5th day of January, 1979.

RECONSIDERED and finally ADOPTED this 8th day of January, 1979.

Signed Original on File

Wm (Pat) Carleton, Mayor

Signed Original on File

G.F. Pearce, Clerk/Treasurer

This is to certify that this is a true copy of Bylaw No. 107, 1978 cited as the "Resort Municipality of Whistler Zoning Bylaw No. 9, 1975 Land Use Contract Approval Bylaw (Fortress Mountain Resorts Ltd.) No. 107, 1978."

APPROVED PURSUANT TO SECTION 5 OF THE RESORT MUNICIPALITY OF WHISTLER ACT THIS 5th DAY OF JANUARY 1979

[Signature]

G.F. Pearce, Clerk/Treasurer

DEPUTY INSPECTOR OF MUNICIPALITIES

Approved under the Controlled Access Highways Act		
this	12	day of DEC. 1978
<i>[Signature]</i>		
Approving Officer, Ministry of Highways & Public Works		

LAND USE CONTRACT

THIS AGREEMENT made the _____ day of _____, 1978,

BETWEEN:

RESORT MUNICIPALITY OF WHISTLER, a Municipality incorporated under the laws of the Province of British Columbia with its principal office at Whistler, in the Province of British Columbia,

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

WHISTLER VILLAGE LAND CO. LTD., a body corporate incorporated under the laws of the Province of British Columbia, having an office at the Resort Municipality of Whistler, in the Province of British Columbia,

(hereinafter called "Whistler Land Co.")

OF THE SECOND PART

AND:

FORTRESS MOUNTAIN RESORTS LTD., a body corporate having an office and place of business at 2600 - 700 West Georgia Street, in the City of Vancouver, Province of British Columbia,

(hereinafter called "Fortress").

OF THE THIRD PART

(both Whistler Land Co. and Fortress are hereinafter sometimes collectively referred to as the "Developers" and are singularly sometimes referred to as the "Developer")

WHEREAS:

A. Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of the Environment (herein called "Her Majesty") invited proposals for the development of Blackcomb Mountain in the Resort Municipality of Whistler;

B. Fortress has presented a proposal to Her Majesty which provides for the development of ski facilities on Blackcomb Mountain and for the use and development of the Lands referred to in Recital "E" hereof;

C. The Municipality, pursuant to Section 702A of the "Municipal Act", may, notwithstanding any By-Law of the Municipality or Sections 712 or 713 of the "Municipal Act", upon the application of an owner of land within a development area designated as such by By-Law of the Municipality, enter into a Land Use Contract containing such terms and conditions for the use and development of the land as may be mutually agreed upon and thereafter the use and development of that land shall be in accordance with such Land Use Contract;

D. The "Municipal Act" requires that the Municipal Council in exercising the powers given by Section 702A shall have due regard to the considerations set out in Section 702(2) and Section 702A(1) in arriving at the use and development permitted by any Land Use Contract and the terms, conditions and considerations thereof;

E. Whistler Land Co. is the registered owner of those lands and premises situate, lying and being in the Resort Municipality of Whistler, in the Province of British Columbia being more particularly described in Schedule "A" hereto (herein called the "Lands"). The Lands are shown outlined in red on Schedule "B" hereto.

F. Fortress is or shall become the registered holder of an option to purchase (herein called the "Option") the Lands. The Option provides, inter alia, that Fortress shall only be permitted to purchase portions of the Lands when Fortress has constructed or is in the process of constructing certain ski lift facilities (herein called the "Ski Facilities") on Blackcomb Mountain in accordance and compliance with the terms of the Option and of lease and right of way arrangements as may be amended, added to or replaced from time to time (herein called the "Lease") which will be entered into between Fortress and Her Majesty;

G. Fortress is a party to this Land Use Contract to ensure that upon Fortress exercising any of its rights under the Option and obtaining title to any portion or portions of the Lands that those portions so acquired by Fortress shall only be used or be permitted to be used in accordance with the restrictions contained in this Land Use Contract;

H. The Developers have presented to the Municipality a scheme for the use and development of the Lands and have made application to the Municipality to enter into this Agreement upon the terms and conditions hereinafter set forth;

I. The Municipality is desirous of having the Ski Facilities on Blackcomb Mountain properly developed and the Council of the Municipality is of the opinion that the approval of this Land Use Contract is in the public interest;

J. The Council of the Municipality, having given due regard to the considerations set forth in Sections 702(2) and 702A(1) of the "Municipal Act" has agreed to the terms, conditions and considerations herein contained;

K. The Developers acknowledge that they are aware of the provisions of Section 702A of the "Municipal Act" and that the Council of the Municipality cannot enter into this Land Use Contract until it has held a Public Hearing on a By-Law authorizing this Land Use Contract, has duly considered the representations made at such Hearing, and unless at least a majority of all the Members of the Council present at the meeting at which the vote is taken and entitled to vote on the By-Law vote in favour of the same;

L. The Ministry of Highways have approved the said By-Law pursuant to the "Controlled Access Highways Act";

M. The Inspector of Municipalities has approved the said By-Law pursuant to the "Resort Municipality of Whistler Act";

NOW THEREFORE THIS CONTRACT WITNESSETH that in consideration of the premises and the conditions and covenants hereinafter set forth, the Municipality and each of the Developers severally covenant and agree as follows:

1. DEFINITIONS:

In this Contract, in addition to the other definitions herein contained, unless the context otherwise requires:

"BU" shall be a method of computing the permitted development on the Lands in that:

- (a) a Single Residential Dwelling shall require 6 BU's per Dwelling Unit;
- (b) a Multiple Residential Dwelling shall require 4 BU's per Dwelling Unit;
- (c) a Hotel or Lodge shall require 2 BU's per Dwelling Unit;
- (d) a Hostel shall require 1 BU for each individual for whom lodging is provided or is permitted to be provided.

"Covenant" shall mean the covenant granted by the Developers to the Municipality as provided in clause 7 hereof.

"Dwelling Unit" shall mean one or more rooms used or intended to be used for domestic purposes and shall include each bedroom or sleeping room in a Hotel or Lodge.

"Lodge" shall mean a building intended for transient occupancy which contains sleeping units and may contain restaurant and bar facilities primarily used by the occupants.

A Lodge may not contain any other commercial space and does not include a hotel, hostel or motel.

"Single Residential Dwelling" shall mean a building consisting of one Dwelling Unit (other than a mobile home) which is occupied or intended to be occupied seasonally or permanently by one family or six or fewer unrelated persons.

"Multiple Residential Dwelling" shall mean a building entirely comprised of three or more self contained Dwelling Units each of which is occupied or intended to be occupied seasonally or permanently by one family or by six or fewer unrelated persons.

"Hostel" shall mean a building intended for the use or used as a temporary place of lodging for individuals and containing a communal cooking facility or provision for cooking in an individual room or apartment, but does not include a motel, inn, or hotel.

"Hotel" shall mean a building intended for transient occupancy which contains sleeping units and may contain restaurant, entertainment and personal service facilities for the public, but does not include hostel or motel.

"Municipal Engineer" shall mean and include the Municipal Engineer for the Municipality and his duly authorized assistants or replacements and such other consultants or engineers as may be appointed to act for the Municipality.

"Approving Officer" shall mean and include the Approving Officer for the Municipality appointed pursuant to the provisions of the Land Registry Act and his duly authorized assistants or replacements and such other consultants as may be appointed by him.

"Building Inspector" shall mean and include the Building Inspector for the Municipality and his duly authorized assistants or replacements and such other consultants as may be appointed to act for the Municipality.

"Developer" means any one or more of Whistler Land Co., or Fortress, their successors or assigns.

"Complete" or "Completion" or any variation of these words when used with respect to the work or works referred to herein shall mean completion to the satisfaction of the Municipal Engineer of the Municipality reasonably determined when so certified by him in writing.

"Town Centre" shall mean those lands in Resort Municipality of Whistler being

Block B,
District Lot 3020, and
District Lot 1902,
All of Group 1,
New Westminster District.

"Zone" or "Zones" shall mean one or more of "Zone 1", "Zone 2" or "Zone 3" as shown on Schedule "D" hereto, the permitted uses and restrictions for each of which are described in Schedule "C" hereto.

2. CONSENTS:

The Developers have obtained the consent of all persons holding any registered interest in the Lands as set out in the Consents which are attached hereto.

3. PERMITTED USES OF THE LANDS:

The Lands and the various portions thereof shall be used for the uses and purposes specified in Schedule "C" hereto and for no other uses or purposes.

4. AREA DENSITY PLAN FOR THE LANDS:

The Developers acknowledge and agree that without restricting in any way the effect and restriction of the other restrictions contained in this Land Use Contract, no portion of the Lands shall be used and no development or subdivision plan shall be approved nor building permit issued which has the effect of creating or allowing a density for that development or subdivision in excess of the maximum number of BU's per Zone as permitted by Schedule "C".

5. DEVELOPMENT ZONES:

The Developers agree that the use and development of the Lands is further restricted by the requirements as set out in Schedules "C" and "D" hereto and that only certain types of development may be constructed in certain of the Zones as shown on Schedule "D" hereto. Accordingly the Developers are and shall be limited to the permitted uses and purposes in Schedule "C" as they relate to the Zones in Schedule "D". These restrictions shall be in addition to all other restrictions herein contained. No building, structure or improvement shall be constructed, developed or used upon the Lands, except in compliance with Schedules "C" and "D" hereto.

6. ENTITLEMENT TO BU'S

The Developers shall only be permitted to obtain approval of a subdivision plan or the issuance of building permits for any Dwelling Units or other buildings, structures, or improvements when and to the extent that the Developers and in particular Fortress have earned and not previously used BU's in accordance with Schedule "E" hereto. The Developers obtain BU's as a result of constructing certain of the Ski Facilities pursuant to the Lease. The formula to be used to calculate the number of BU's to be acquired by the Developers is more particularly described in Schedule "E" hereto (which formula is herein sometimes called the

"SAOT Formula"). The Developers shall only be permitted to obtain approval of a subdivision plan or the issuance of building permits for improvements having aggregate BU's equal to or less than the BU's to which the Developers are entitled pursuant to the SAOT Formula and which have not been previously allocated (by) the Developers, provided that:

- (a) as part of any development the Developers shall, provided such facilities are not inconsistent with the Covenant, be permitted to construct in addition to the improvements to which BU's have been allocated recreational facilities, including without limitation, open and enclosed tennis courts, other court games, recreational pavilions, swimming pools and open and covered ice rinks but excluding other buildings which shall only be permitted in accordance with the terms hereof and which shall require the allocation of BU's as herein provided; and
- (b) in Zone 1 only, certain commercial facilities as described in Schedule "C-1" may be constructed, repaired or reconstructed as part of a development without the allocation of BU's therefor.

If the Developers shall have constructed buildings, structures or improvements on the Lands and shall have allocated BU's therefor all in accordance with the terms of this Land Use Contract, and if any of these buildings, structures or improvements shall be damaged, destroyed, demolished or torn down, then the Developers shall be entitled to obtain building permits to permit the repair or replacement of any such building, structure or improvement without the allocation of additional BU's therefor subject always to the following conditions:

- (i) the Developers must otherwise be entitled to the issuance of the building permit;
- (ii) the repaired or replaced building, structure or improvement shall be of a type which would not

represent more BU's than the number of BU's allocated to the original building, structure or improvement;

(iii) the proposed repair or replacement must comply in all aspects with the provisions of this Land Use Contract and of the Covenant.

Any commercial facilities other than those permitted under (b) above shall require the allocation of BU's on the basis set out in Schedule "C-1".

7. DEVELOPMENT PLAN AND COVENANT AS TO USE

At the time of application by the Developer for any approval of a subdivision plan under the Strata Titles Act or the Land Registry Act for any parts of the Lands, or prior thereto as hereinafter provided, the Developers shall submit to the Municipality for approval a plan (herein called the "Development Plan") showing the proposed development of the portion to be subdivided including the size, number, siting, location and type of all structures, the numbers and types of Dwelling Units, the area and type of commercial space, the number of BU's, the open spaces, the trails, and walkways, recreational facilities, parking, proposed and potential future subdivision of this portion to be subdivided under the Strata Titles Act or the Land Registry Act, the landscape concept, and all roads and services. The Municipality agrees to approve any Development Plan which is in compliance with the provisions of this Land Use Contract and which is reasonably responsive to the guidelines as set out in Schedule "G" hereto. The Municipality shall advise the Developers within 60 days of receipt of a complete Development Plan or such longer time as herein provided whether or not the Development Plan is acceptable, provided always that the Municipality shall before this 60 day period shall expire have been afforded an opportunity to consider the proposed area and nature of the development on that portion of the Lands for a period of not less than 30 days while the ground

is snow free. The Developers agree to enter into a covenant (herein called the "Covenant") in the form as may be agreed between the Municipality and the Developers, restricting the use and development of that portion of the Lands to the use and development as set out in the Development Plan as approved by the Municipality. The Covenant shall be executed and registered in the Vancouver Land Registry Office, concurrently with the subdivision plan.

The Municipality agrees that the Developers shall be entitled to apply for approval of a Development Plan for any portion or portions of the Lands prior to the application for subdivision of all or any parts of those portions and the Municipality agrees to process any such application within the time limits herein provided. All future development must be in accordance with any approved Development Plan provided however that any Development Plan with respect to any part of the lands therein described for which a Covenant has not been registered may be amended by mutual agreement.

8. SIGNS:

No sign shall be erected upon the Lands or on any building or structure thereon except in accordance with the particulars contained in the Sign By-Law of the Municipality.

9. PARKING:

Off-street parking and loading spaces shall be provided, located and constructed in accordance with the requirements set out in Schedule "C" hereto. The Municipality shall have the right, but not the obligation, that in the event changing circumstances make it appropriate for less parking to be allocated to buildings or ski lifts to consent to a lessening of the parking requirements under this Land Use Contract.

10. OPEN AREAS

The Developers covenant and agree that in addition

to the other restrictions contained in this Land Use Contract at least twenty per cent (20%) of the area covered by each Development Plan shall be left as open areas and in particular the Developers agree that no buildings and no other structures other than recreational facility structures permitted under clause 6(a) hereof may be erected thereon and no parking of automobiles will be permitted thereon.

11. WALKWAY AND SKI TRAIL

The Developers agree with the Municipality to provide in the manner chosen by Fortress either by deed, dedication or by way of right-of-way to or in favour of Her Majesty or the Municipality, a finished pedestrian walkway system throughout the Lands as may be required by Municipal By-Laws of general application or if there are no such By-Laws then to the design and construction standard reasonably required by the Municipality. The location of the walkway shall be shown on the Development Plan. This pedestrian walkway shall be completed through each subdivided portion of the Lands no later than twelve months after the date upon which the first occupancy permit is issued for that portion of the Lands.

The Developers and the Municipality agree that the portion of the existing cross country ski trail running through the Lands from the Town Centre to Lost Lake shall be preserved either by deed, dedication or securing the same by right-of-way in the manner chosen by Fortress to or in favour of Her Majesty or the Municipality. The Developers shall be entitled to change the location of this ski trail provided:

- (a) the new ski trail is of a similar or higher standard as the existing trail;
 - (b) the ski trail is kept open on a continuous basis subject to the right of the Developer to close the ski trail for repair, maintenance or construction;
- and

(c) the new ski trail shall be deeded, dedicated or secured by right-of-way as aforesaid whereupon the prior deed, dedication or right-of-way shall be released, discharged, reconveyed or cancelled.

12. TREE CUTTING:

The Developers covenant and agree that they shall be bound by any tree cutting By-Law having general application in the Municipality, provided that the application of this By-Law shall not have the effect of prohibiting or unreasonably restricting the ability of the Developers to develop the Lands in accordance with this Land Use Contract.

13. ROADS:

The Developers agree to dedicate and construct certain roads on the Lands in the manner required by the By-Laws of the Municipality and in a way which will tie into the road system of the Town Centre. The Municipality and the Developers agree that actual siting of the roads cannot be made until such time as the final engineering and survey studies for these respective roads have been completed.

The Developers agree that prior to dedicating any areas as road, that Developer must either complete the road and related services to the stage of completion required by this Land Use Contract and the By-Laws of the Municipality or must, if required by the Municipality supply the Municipality with security by way of Letter of Credit or other security acceptable to the Municipality in accordance with standard Municipality practices and requirements at that time.

The Municipality agrees with Fortress that the Municipality shall by the 31st day of October, 1980 at its sole expense build, cause to be dedicated and thereafter maintain a paved highway, having a paved width of not less than 24 feet, running from Highway 99 to the Day Skier

Service Area as shown on the plan attached hereto as Schedule "F"; provided however that if further studies indicate that the said highway should follow another alignment, it shall be constructed along such alignment as Fortress and the Municipality shall agree and failing agreement as shall be decided by arbitration as herein provided. The Municipality agrees that the said highway shall include a bridge over Fitzsimmons Creek which shall accommodate vehicular and separated pedestrian traffic, be provided with adequate lighting facilities, and shall be designed with architectural character as an integral part of the Town Centre. The Municipality further agrees that it will at its sole expense construct a cross country skiing bridge to connect the Town Centre and the Lands, the cross country skiing bridge and pedestrian bridge may at the option of the Municipality be combined as one bridge. Provided always and it is hereby agreed by Fortress that if for any reason the Municipality does not construct the said highway bridges or other services or facilities required to be constructed by the Municipality under this paragraph 13 or under paragraph 14 either within the stated times or at all then the sole remedy of Fortress shall be to take the actions permitted to be taken by Fortress under the Option.

14. ON SITE SERVICES:

The Developers shall carry out at their own cost all on site services required on the Lands as required by all Municipal By-Laws. These on site services shall include roads, water, drainage, sanitary sewer, telephone and electricity and shall connect into the works and services provided by the Municipality and others. The Developers agree to provide the works and services to the standard and in the time limits required by any Municipal By-Laws.

Each Developer shall at its cost maintain all roads and on-site works and services constructed over that Developer's Lands for a period of one year from the date of

completion of the roads, works or services as certified by the Municipality. The Developers agree that prior to the Municipality being required to grant formal approval to any development or prior to any approval of any subdivision plan the Developers shall:

(a) complete all roads and on and off site works and services to the satisfaction of the Approving Officer and the Municipality or alternatively shall lodge security with the Municipality by way of Irrevocable Letter of Credit or other security approved by the Municipality in the manner and form as may be required by the By-Laws of the Municipality; and

(b) shall lodge with the Municipality security by way of Irrevocable Letter of Credit or other security approved by the Municipality, in an amount equal to 10% of the cost of roads and on-site works and services, which security shall be held for a period of one year from the date of completion of the said works, services and roads.

Should the Developers fail to complete the roads works or services required within the time specified or fail to maintain the same as above provided the roads, works and services may be constructed or maintained by the Municipality at the sole cost of the Developers and the Municipality may call down or cash the deposited security and use such funds to complete, construct or maintain such roads works and services.

If there is insufficient money or security on deposit with the Municipality to remedy such defects, then the Developers shall pay the amount of any deficiency to the Municipality immediately upon receipt of the Municipality's invoice therefor.

The security, if any remains, shall be returned to the Developers upon the completion of such roads, works and services as to the security lodged under clause (a) above and upon completion of such maintenance period as to the security lodged under clause (b) above.

The Municipality agrees that it shall construct at its cost from the Town Centre to the Day Skier Service Area as shown on the plan attached hereto as Schedule "F" a twelve inch (12") sanitary sewer and a twelve inch (12") watermain or such other diameter sanitary sewer or watermain as may be agreed between the parties hereto. The watermain shall be installed by June 1, 1980 and the sewer by October 31, 1980. Notwithstanding that the Municipality has agreed that it shall pay for the construction of the sewer and watermain the Developers agree that the Municipality may charge full sewer and water impost fees for all portions of the Lands and for all development thereon. These per unit impost fees shall not exceed those charged for similar development in the Town Centre. The sewer and watermain shall be designed by a professional engineer, shall follow the most direct route to the said Day Skier Service Area but where necessary or where economically feasible shall avoid future development locations and ski trails. The alignment of the sewer and watermain shall be agreed to by the parties and failing agreement shall be determined by arbitration. The Municipality further agrees that it shall maintain said sewer and watermain and that they shall be connected to the Municipality's main sewer and water systems. The Municipality agrees that at the time the said watermain is connected to the Municipal water system, that water system shall provide water pressure of not less than 40 pounds per square inch at an elevation of 2400 feet above sea level. The Developers agree that the obligation of the Municipality under this Land Use Contract is to provide the watermain having water pressure as aforesaid. Once the watermain has been originally installed the Municipality shall have no further obligations under this Land Use Contract with respect to the watermain. The Municipality shall however have the same obligations with respect to the maintenance and operation of this watermain and the delivery and supply of water as it has with respect to other public watermains throughout the Municipality. The

Developers agree, to the extent of their ownership in the Lands, to dedicate to the Municipality the areas required for the said road and to grant a right-of-way to the Municipality in the Municipality's standard form for the sewer and watermain facilities.

Fortress agrees that the Municipal obligation to supply water to any portion of the Lands is limited to water service to a level determined by the Municipal Engineer in respect to the present Municipal maximum supply elevation of 2450 feet above sea level. Fortress at its sole cost will supply any lines and storage tanks required by demand above 2400 feet above sea level.

15. EASEMENTS AND RIGHTS-OF-WAY:

Each Developer agrees to the extent of their ownership in the Lands to grant to the Municipality such easements and rights-of-way as may reasonably be required in connection with the development and servicing of the Lands. Each Developer shall be permitted flexibility in the location of any required easement or right-of-way so long as the easement or right-of-way as provided is sufficient to serve the needs of the Municipality. Each Developer acknowledges and agrees to cooperate with the Municipality to make areas available for easements and rights-of-way as may be required in connection with the overall development of the Lands. Nothing in this clause 15 shall in any way restrict the Municipality's rights of expropriation.

16. APPROVAL OF BUILDING PERMITS:

The Developers agree that notwithstanding the development permitted under this Land Use Contract or the BU's which can be earned by the Developers pursuant to the SAOT Formula as contained in Schedule "E" hereto or any other provisions of this Land Use Contract, the Developers shall not be entitled to obtain building permits for Dwelling

Units having BUs in the aggregate in excess of 7500 BUs for the whole of the Lands.

17. TIMING OF BUILDING PERMITS:

The Developers agree that the Municipality shall not be required to approve any applications for subdivisions or building permits in respect of the Lands prior to first January 1982, unless, prior to that date, the Municipality approves similar applications at any other locations within the Municipality other than in the Town Centre, and other than those which have been approved by zoning on or before the 16th day of January, 1979 or by land use contract on or before 16th January 1979, in which event the Developers shall thereupon be entitled to approval of applications for subdivisions or building permits for a like number of BU's provided that the Developers are otherwise entitled thereto and provided always that this provision shall affect the timing of subdivision approval and issuance of building permits only and shall not in any way increase the total number of BU's for the Lands or any Zone. Provided always that if by first November 1981 there shall not have been constructed or substantially constructed in the Town Centre buildings comprising sleeping accommodation of not less than 2000 beds and not less than 38,000 square feet of commercial space then the Municipality may at its sole option extend the first January 1982 approval date to first January 1983. Notwithstanding the foregoing restriction in this clause 17, the Developers, provided they have acquired property under the Option, and have complied with the terms hereof, shall be entitled to subdivision approvals and building permits to authorize the subdivision and construction of the Day Skier Service Area and the Maintenance Facility described in Schedule "C-1".

The Developers shall have the right at any time to submit Development Plans for the Day Skier Service Area and the Maintenance Area to the Municipality and after November 1, 1981, to submit other Development Plans to the Municipality for approval.

18. LANDSCAPING:

The Developers shall submit a conceptual landscaping plan with each Development Plan or at the time of application for a building permit as the Municipality may determine.

19. LANDSCAPING BY-LAW:

The Developers covenant and agree that they shall be bound by any Landscaping By-Law having general application in the Municipality provided this By-Law shall not have the effect of prohibiting or unreasonably restricting the ability of the Developers to develop the Lands in accordance with this Land Use Contract.

20. SUBDIVISIONS:

No portion of the Lands shall be subdivided except in compliance with and according to the particulars set out in this Land Use Contract and:

- (a) until December 31, 1981, in accordance with the By-Laws of the Municipality then in force which regulate or affect the subdivision of land;
- (b) between January 1, 1982 and December 31, 1991, in accordance with the By-Laws of the Municipality in force on December 31, 1981 which regulate or affect the subdivision of land;
- (c) after December 31, 1991, in accordance with the By-Laws of the Municipality then in force which regulate or affect the subdivision of land.

Provided however that in no event shall the application of aforesaid By-Laws have the effect of prohibiting or unreasonably restricting the ability of the Developer to develop the Lands in accordance with this Land Use Contract.

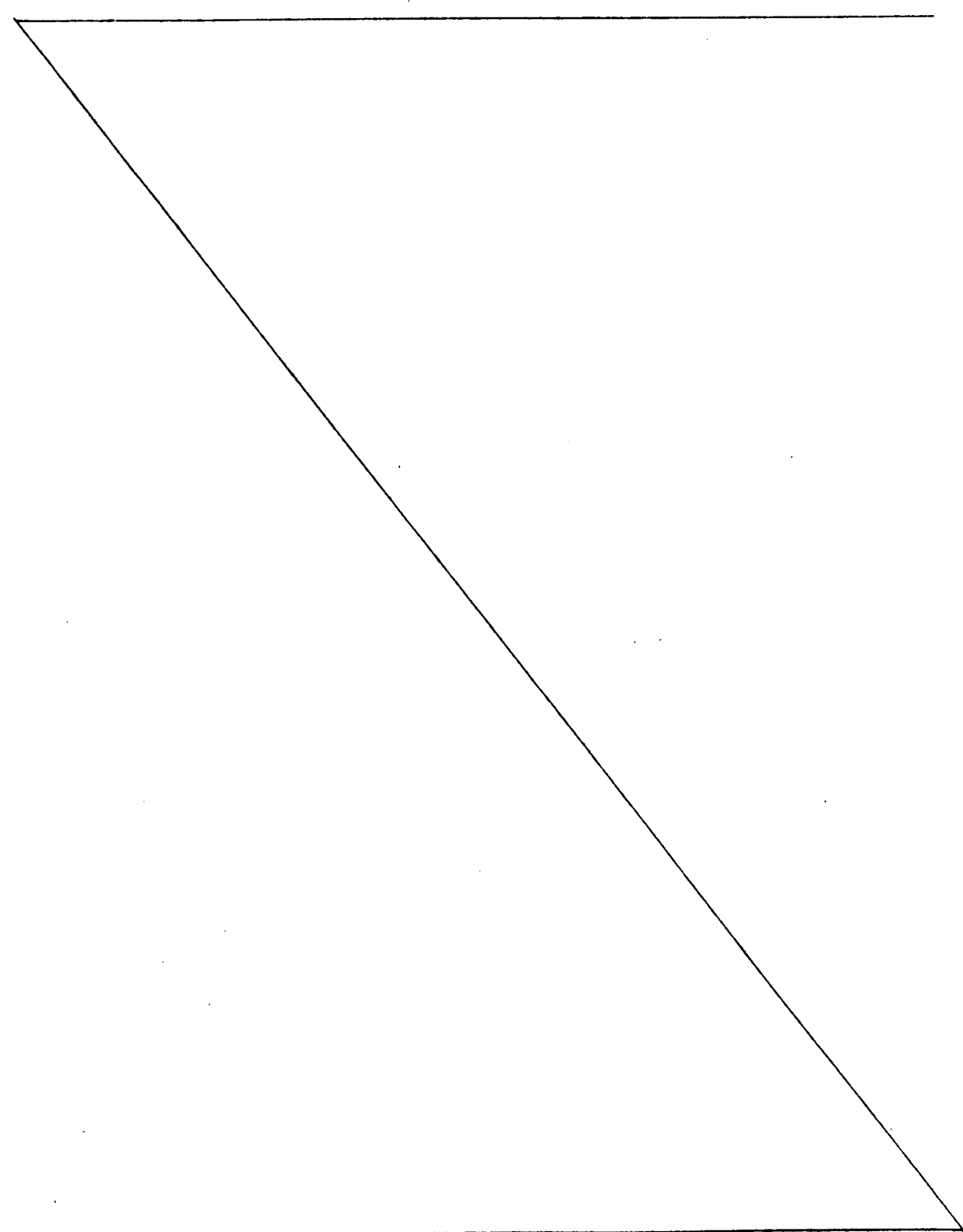
21. PROFESSIONAL ENGINEER TO DESIGN ALL SITE SERVICES:

The Developers covenant and agree that all works and services required herein, to facilitate the use and development of the Lands or any portion thereof, except landscaping, shall be designed by a Professional Engineer,

who shall be registered with the Association of Professional Engineers of British Columbia and retained by the Developers. Plans and specifications for the said site services shall be prepared and sealed by the said Professional Engineer and delivered to the Municipality for review and approval as required herein.

22. DEVELOPERS TO PAY TAXES AND COSTS:

(a) The Developers agree to pay all arrears of taxes outstanding against the Lands before the formal approval of any portion of the development upon the Lands, provided however that Fortress shall only be responsible for taxes on



any portion of the Lands for which Fortress has registered title.

(b) In addition to the security referred to herein the Developers covenant and agree to pay to the Municipality all inspection fees, administration fees, engineering fees and legal costs reasonably incurred by the Municipality in settling, and registering this Land Use Contract throughout the whole of the term of this Land Use Contract, provided that the fees and costs payable under this clause 22(b) shall not exceed an aggregate of \$10,000. These provisions shall not limit the requirement that the Developers pay the fees and charges referred to in clause 32 hereof. These amounts shall be paid by the Developers forthwith upon receipt of an invoice for the same from the Municipality and the Developers agree that the Municipality may withhold any approvals for the Lands or the development thereof while any such amounts are outstanding. The Developers shall pay the cost of connecting all utilities to service the Lands. Fortress shall, upon completion of the sale of any portions or parts of the Lands be released from future obligations under this clause with respect to those portions sold.

23. INDEMNITY BY DEVELOPERS:

The Developers, and all subsequent purchasers of the Lands or parts thereof except to the extent the same is caused by the negligence of the Municipality or its servants or agents, covenant to save harmless and effectually indemnify the Municipality against:

- (a) all actions and proceedings, costs, damages, expenses, claims and demands whatsoever and by whomsoever brought by reason of any construction and installation of any works or improvements herein described or permitted;
- (b) all expenses and costs which may be incurred by reason of the execution of the said works or

improvements resulting in damage to any property owned in whole or in part by the Municipality or which the Municipality by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;

- (c) all expenses and costs which may be incurred by reason of liens for non-payment of labour or materials, workmen's compensation assessments, unemployment insurance, Federal or Provincial Tax, check-off and for encroachments owing to mistakes in survey;
- (d) any and all actions and proceedings, costs, damages, claims and demands whatsoever caused by or resulting directly or indirectly from any breach or non-performance by the Developers of any of the provisions or restrictions of this Land Use Contract.

Provided always and notwithstanding anything herein to the contrary that in no event shall a Developer or a subsequent purchaser of the Lands or part thereof be liable to indemnify and save harmless the Municipality as herein provided unless its obligation to do so arises from matters or things occurring during the time it held title to any part of the Lands or was in occupation or possession thereof and is restricted to matters or things done or performed or to be done or performed or not to be done by such person and which are relative to said part of the Lands or the occupancy or possession thereof by such person.

24. RIGHTS OF MUNICIPALITY:

Notwithstanding any provisions of this Land Use Contract and notwithstanding the provisions of the Municipal "Building By-Law" and amendments thereto and of the "Municipal Act", R.S.B.C. 1960 Chapter 255 and amendments thereto, the Developers covenant and agree that the Municipality may withhold the granting of an occupancy permit for the occupancy and/or use of any building or part thereof constructed upon

a portion of the Lands until all requirements of this Land Use Contract required to be performed at that time by any person owning or holding a right to purchase (excluding the Option) in that portion of the Lands have been completed to the reasonable satisfaction of the Municipality and all moneys owing to the Municipality by any person owning or holding a right to purchase (excluding the Option) in that portion of the Lands have been paid in full. Accordingly Fortress acknowledges, covenants and agrees that the Municipality shall not be required to approve any subdivision plan or issue any building permit or, notwithstanding the provisions of the Municipal "Building By-Law" and amendments thereto or of the "Municipal Act" RSBC 1960 Ch. 255 and amendments thereto, to grant any occupancy permit unless and until each of the following have occurred:

- (a) the proposed development is in accordance with all terms of this Land Use Contract; and
- (b) the proposed development is in accordance with all terms of any existing Covenant for that portion of the Lands;
- (c) all statutory requirements have been complied with.

25. NO REPRESENTATIONS

It is understood and agreed that neither the Municipality nor the Developers have made any representations, covenants, warranties, guarantees, promises or agreements whether verbal or otherwise with respect to the Land Use Contract other than those contained in this Land Use Contract however Fortress and the Municipality acknowledge that in order to carry out the development of Blackcomb Mountain and the Lands Fortress and Whistler Land Co. shall enter into the Option and Fortress and Her Majesty shall enter into the Lease.

26. DESTINATION RESORT ASSOCIATION

The Municipality, Whistler Land Co. and Fortress agree to work together to create and operate an association or similar body to promote the year-round destination resort

concept comprised of the Lands, the Town Centre, and Whistler and Blackcomb Mountains, in conjunction with other skiing commercial, recreational, hotel and rental managed condominium facilities in and around the Municipality.

27. ALL DEVELOPMENT TO COMPLY WITH BY-LAWS:

Except as specifically otherwise provided in this Land Use Contract, all subdivisions and development on the Lands shall comply in all respects with all of the By-Laws of the Municipality and all Federal and Provincial regulations and restrictions including environmental and floodplain regulations and restrictions.

27A. MAINTENANCE:

Where, by the terms of this Land Use Contract the Municipality is required to provide, construct, install, operate or maintain any roads, works or services such requirement shall not be deemed to or require the Municipality to operate, maintain or repair such roads, works or services in any manner or to any extent different from the Municipality's obligations in relation to similar roads, works or services constructed by the Municipality out of its general municipal funds provided through the annual budget of the Municipality.

28. MINOR AMENDMENTS:

The Municipality and the Developers acknowledge and agree that both prior to and subsequent to the holding of a Public Hearing to consider this Land Use Contract and the execution and registration of this Land Use Contract, that by written agreement, minor amendments may be made to the Schedules forming part of this Land Use Contract and to the Land Use Contract itself in order to more properly reflect the requirements and wishes of the parties in connection with this project. No such amendment shall affect the overall intent or alter the substance of this Land Use Contract.

29. SCHEDULES PART OF CONTRACT:

Schedules "A" to "G" herein referred to are hereby incorporated into and made part of this Land Use Contract.

30. EXERCISE OF OPTION PRECONDITION OF GRANTING OF ANY APPROVALS

The Developers and in particular Fortress acknowledge and agree that it is a precondition to the rights of Fortress to develop any portion of the Lands that Fortress shall have exercised its Option to purchase a portion of the Lands in accordance with the terms of the Option and shall have acquired title to that portion of the Lands, and shall have granted the Covenant. Thereafter Fortress, its successors and assigns shall only be permitted to develop that portion of the Lands as may be permitted under the terms of this Land Use Contract and in accordance with the Covenant.

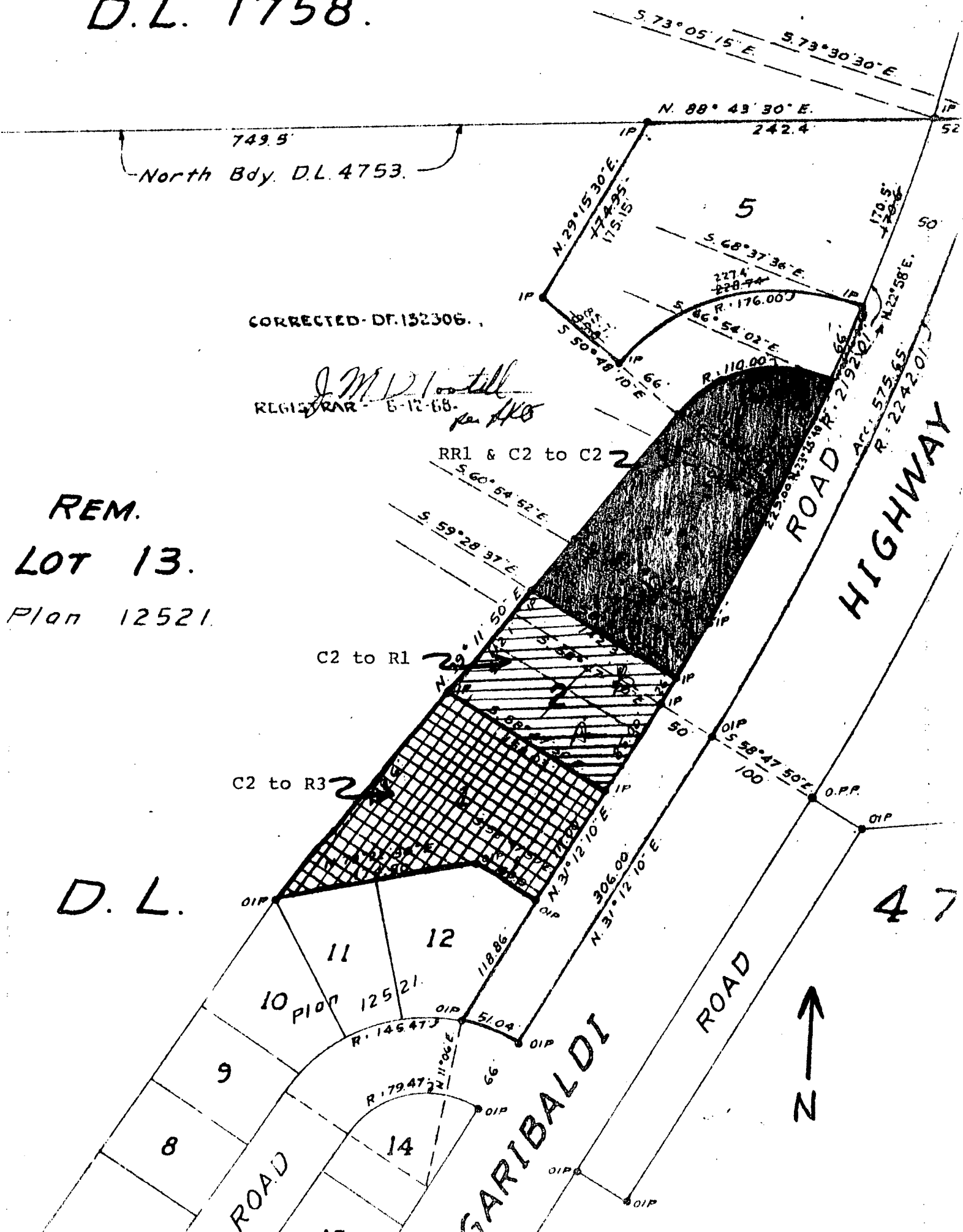
31. ALL OBLIGATIONS ARE FORTRESS OBLIGATIONS:

Fortress acknowledges and agrees that all covenants contained in this Land Use Contract by the Developers with respect to those portions of the Lands acquired by Fortress under the Option shall from the time of acquisition of said portions by Fortress be covenants of Fortress, its successors and assigns alone, and Fortress acknowledges and agrees that Whistler Land Co. shall not be liable for any of such covenants or agreements, that the Municipality need not take any action against Whistler Land Co. in respect of same but may proceed solely against Fortress in respect of same and that Fortress shall have no right to claim any indemnity or contribution or to have Whistler Land Co. joined as a defendant or third party or to claim from Whistler Land Co. in any manner whatsoever in respect of any claim against Fortress, its successors and assigns under such covenants or agreements; provided however that upon the sale by deed, transfer or by agreement for sale of any of the aforesaid portions of the Lands by Fortress, all covenants of Fortress contained in this Land

N. OF SUBDIVISION OF A PORTION OF
13, DISTRICT LOT 4753, GROUP 1,
WESTMINSTER DISTRICT, PLAN 12521.

SCALE: 1 INCH = 100 FEET.

D.L. 1758.



CORRECTED - DF. 132306.

J.M. D. Till
REGISTRAR - 6-12-68.
for A/S

RR1 & C2 to C2 2

REM.

LOT 13.

Plan 12521.

D.L.

47



Use Contract with respect to such portions and pertaining to matters arising following the date of said sale shall become the covenants of the new owners from time to time of such portions and Fortress shall no longer be bound thereby.

32. DEVELOPERS TO PAY ALL MUNICIPAL IMPOST FEES, DEVELOPMENT COST, CHARGES, ETC.:

The Developers acknowledge and agree that notwithstanding any provisions of this Land Use Contract the Developers shall be required to pay to the Municipality prior to obtaining any subdivision approvals or building permits, all sewer and water impost fees as herein provided, development cost charges, building permit fees, subdivision approval fees, and all other similar fees or charges required to be paid to the Municipality for similar developments or subdivisions throughout the Municipality. The Municipality hereby acknowledges and agrees that this Land Use Contract makes adequate provision for public open space.

33. REGISTRATION AND EFFECT:

This Agreement shall be construed as running with the Lands and shall be registered in the Vancouver Land Registry Office against the Lands by the Municipality pursuant to the provisions of Section 702(4) of the Municipal Act and shall not be amended except by agreement between the Municipality and each Developer affected. Provided always that if any portion of the Lands shall be zoned to permit a use and regulations acceptable to all affected parties, the Municipality may at its sole option, upon the written request of the Developers, execute and register a release and discharge of this Land Use Contract as it relates to the portion of the Lands so zoned. The Municipality shall be under no obligation to execute or deliver a release and discharge and it shall be in its sole discretion to do so.

34. GENDER:

Wherever the singular or masculine is used herein the same shall be construed as meaning the plural, feminine, or body corporate, or body politic where the contract or parties so require.

35. BINDING EFFECT:

This Land Use Contract shall enure to the benefit of, and be binding upon the parties hereto and their respective successors and assigns. Notwithstanding anything contained herein to the contrary, no person shall be liable hereunder with respect to any matter arising after that person ceases to be an owner of the portion of the Lands to which that matter relates.

36. ARBITRATION:

In the event of any disagreement between the Municipality and any one or more of the Developers concerning the application, interpretation or implementation of any of the provisions of this Land Use Contract, such disagreement shall be resolved by arbitration pursuant to the Arbitration Act of the Province of British Columbia, any reference thereunder being to three Arbitrators one appointed by the Municipality, one by the Developers and the third by the first two. All costs of the arbitration shall be borne by the Municipality as to one-half and by the Developer or Developers involved as to one-half.

37. SEVERABILITY:

Should any clause or portion thereof set forth herein be declared or held invalid for any reason, such invalidity shall not affect the validity of the remainder of that clause or of this Land Use Contract which shall continue in force and effect and be construed as if this Land Use Contract had been executed without the invalid portion.

38. A public Hearing on this Land Use Contract was held on the 13th day of November, 1978.

IN WITNESS WHEREOF the parties hereto have executed this Agreement this 8 day of JANUARY, 1978

The Corporate Seal of
RESORT MUNICIPALITY OF
WHISTLER was hereunto affixed
in the presence of:

(C/S)

[Signature]
MAYOR
[Signature]
CLERK ADMINISTRATOR

The Corporate Seal of WHISTLER)
VILLAGE LAND CO. LTD.
was hereunto affixed in the
presence of:

(C/S)

[Signature]
DIRECTOR
[Signature]
DIRECTOR

The Corporate Seal of FORTRESS)
MOUNTAIN RESORTS LTD. was
hereunto affixed in the
presence of:

(C/S)

[Signature]
GENERAL MANAGER

Approved under the Controlled Access Highways Act
this 12 day of DEC. 1978
[Signature]
Approving Officer, Ministry of Highways & Public Works

SCHEDULE "A"

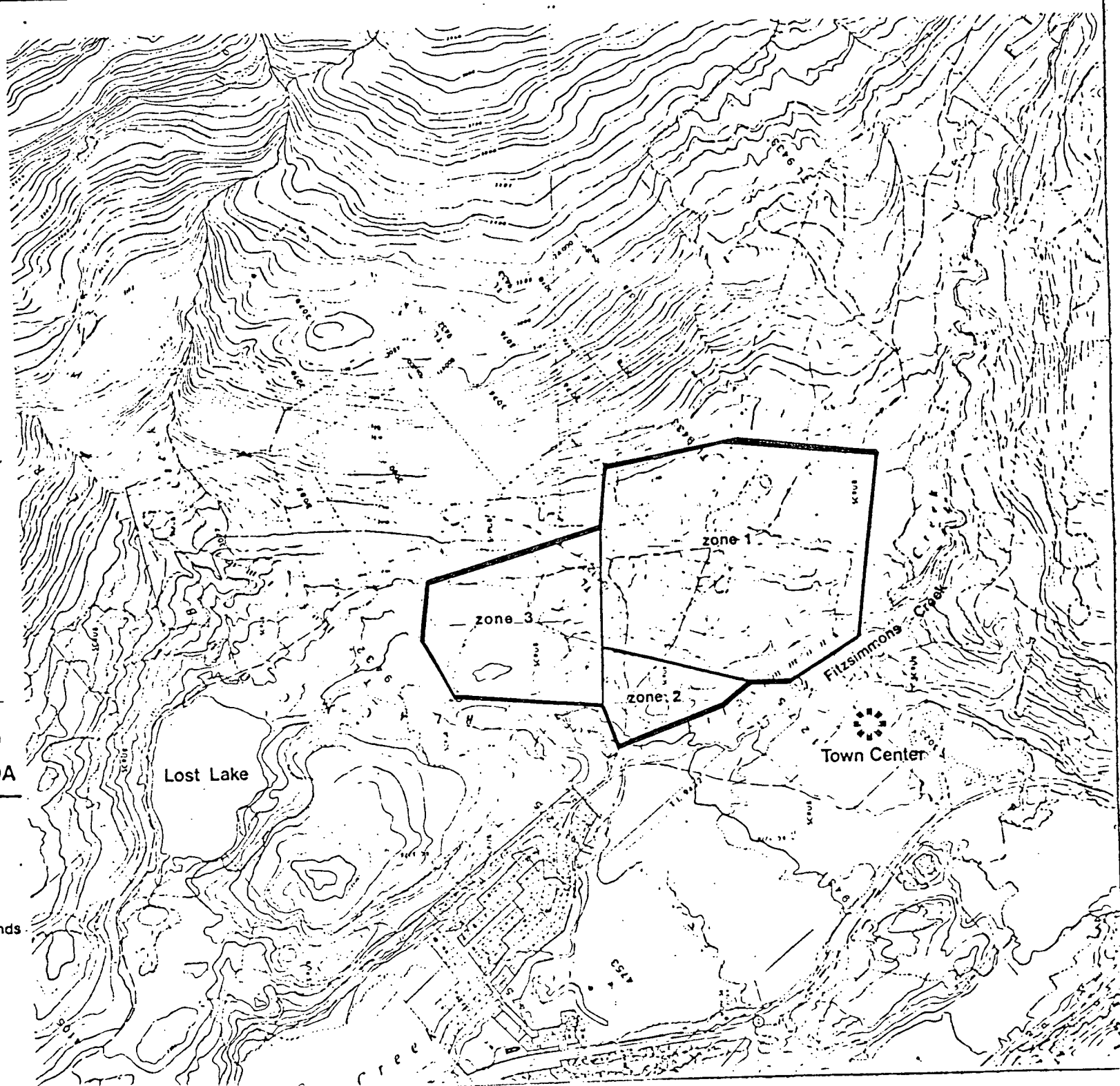
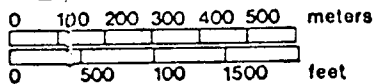
Those lands and premises situate, lying and being in the Resort Municipality of Whistler and being more particularly described as:

District Lots 3866 and 3903,
Group 1,
New Westminster District.

SCHEDULE B
BLACKCOMB
BRITISH COLUMBIA, CANADA

Developer:
Fortress Mountain
Resorts Ltd.
P.O. Box 7220
Station E
Calgary, Alberta
T3C 3M1

Mapping:
British Columbia
Department of Lands



SCHEDULE "C"

(For the purposes of this Schedule "C" the definitions set forth in the Resort Municipality of Whistler Zoning By-Law No.9 as at October 1, 1978 (in this Schedule "C" called the Zoning By-Law") shall apply.)

1. ZONE 1

The aggregate total development in Zone 1 shall not exceed 6500 BU's.

Permitted Uses of Land, Buildings and Structures

In Zone 1 the use of land, buildings and structures is restricted to:

- (a) indoor and outdoor recreational uses;
- (b) the following commercial uses: the sale, rental and repair of recreational equipment; office space; restaurants; convenience food and beverage stores; licensed premises; boutiques and gift shops;
- (c) lodges, hotels, hostels and multiple residential dwellings;
- (d) accessory off-street parking use;
- (e) accessory off-street loading use;
- (f) accessory residential use;
- (g) buildings and structures accessory to the uses permitted in clauses (a) and (b);
- (h) public utility installations excluding any uses which are primarily of a maintenance and storage nature;
- (i) skiing facilities including without limitation: administrative and maintenance facilities, ski runs, ski school offices, lift facilities, skier parking, and the Day Skier Service Area defined in Schedule "C-1".

Provided that no Hotels or commercial space, other than the Day Skier Service Area or Maintenance Area as Defined in Schedule "C-1" and no Lodges shall be permitted in Zone 1 until such time as lift #9 as described in the Lease has been constructed or committed to be constructed and approved under the Lease.

Lot Coverage

Parking areas, buildings, and structures (excluding the facilities set forth in clause 6(a) of this Land Use Contract) together shall not cover an area greater than eighty percent (80%) of the site area.

Height

Buildings will not exceed a height of sixty-five (65') feet and shall not exceed six stories.

Fire Fighting Platform

The provisions of the Zoning By-Law shall apply unless stand pipes, hydrants, on site hose storage, or other fire fighting devices are provided for in the proposed development to the satisfaction of the Fire Marshall and the Municipality.

Slope

No buildings shall be erected on any portion of any site which has a natural slope in excess of 30 percent (30%).

Parking

Off-street parking shall be provided in accordance with the provisions of Part III of the Zoning By-Law except that off-street parking spaces may be provided on a separate parcel, in a central parking area within a distance of 500 feet from the building to which the parking relates or 1500 feet from a ski trail to the ski lift to which the parking relates, or in a central parking area served by public or private transit, in every such event in a manner and location approved by the Municipality and the following off-street parking ratio will apply:

<u>Building Class</u>	<u>Required Number of Off-Street Parking Spaces</u>
Multiple Residential Dwelling	1 space per Dwelling Unit
Hotel and Lodge	.75 spaces per Dwelling Unit
Commercial	1 space per two employees
Ski Lifts	As required by Municipal By-Laws provided that lesser parking shall be approved from time to time by the Municipality if the Developers are able to reasonably show a lesser number is required for day skier parking.

If off-site parking is provided, the use of the land upon which the parking is provided shall be restricted by the Covenant or by a covenant in favour of the Municipality and registered in the Vancouver Land Registry Office. The Developers and the Municipality may from time to time, by mutual agreement, amend a Development Plan, the Covenant and a covenant in favour of the Municipality and registered in the Land Registry Office to provide for alternative parking locations and for alternative uses of areas originally to be used for parking, provided always that the alternative parking locations and alternative uses are otherwise in accordance with the provisions of this Land Use Contract.

The aggregate total development in Zone 2 shall not exceed 2500 BU's.

Permitted Uses of Land, Buildings and Structures

In Zone 2 the use of land, buildings and structures is restricted to:

- (a) multiple residential dwellings;
- (b) duplex residential dwellings;
- (c) single residential dwellings;
- (d) buildings and structures accessory to the uses permitted in clauses (a), (b) and (c);
- (e) accessory off-street parking use;
- (f) lodges;
- (g) parks and recreational uses;
- (h) skiing facilities including without limitation: administrative and maintenance facilities, ski runs, lift facilities and skier parking.

Site Area

A. The minimum site area per Dwelling Unit is as follows:

	<u>MINIMUM SITE AREA PER DWELLING UNIT</u>		
	<u>Level of Service Provided</u>		
	Community Water Supply & Community Sewer System	Community Water Supply But No Community Sewer System	Neither Community Water Supply Nor Community Sewer System
	Sq.Ft.	Sq.Ft.	Sq.Ft.
Single Residential Dwelling	7,500 or such smaller area as approved under clause B below	Not Permitted	Not Permitted
Duplex Residential Dwelling	4,500 or such smaller area as approved under clause B below	Not Permitted	Not Permitted
Multiple Residential Dwelling			
a) For each of the first two Dwelling Units	3,750	Not Permitted	Not Permitted
b) Each additional Dwelling Unit	1,500	Not Permitted	Not Permitted

B. The Approving Officer, in his sole discretion may approve a subdivision plan or strata plan which provides for certain lots of smaller area than set out above provided that:

- (i) the Municipality has requested such approval;
- (ii) the average lot area (including the common areas but excluding roads) is not less than the minimum site area otherwise required; and
- (iii) the subdivision plan or strata plan is otherwise in compliance with the terms hereof.

Lot Coverage

The maximum lot coverage of all buildings and structures (excluding the facilities set forth in clause 6(a) of this Land Use Contract) together shall not exceed fifty percent (50%) of the lot area.

Slope

No buildings shall be erected on any portion of any site which has a natural slope in excess of 30 percent (30%).

Setback and Height

- (1) No building shall be sited within twenty-five (25') feet of a front lot line adjoining a public road unless approved by the Municipality.
- (2) No building or structure should in any event exceed forty-five (45') feet in height for multiple residential dwellings or twenty-five (25') feet for duplex and single residential dwellings.
- (3) No building, other than an accessory building, shall be located within ten (10') feet of a rear or side lot line unless approved by the Municipality.

Fire Fighting Platform

The provisions of the Zoning By-Law shall apply unless stand pipes, hydrants, on site hose storage, or other fire fighting devices are provided for in the proposed development to the satisfaction of the Fire Marshall and the Municipality.

Floor Area

The minimum floor area requirement for a multiple residential dwelling is three hundred and fifty (350 sq. ft.) square feet.

Parking

Off-street parking shall be provided in accordance with the provisions of Part III of the Zoning By-Law except that off-street parking spaces may be provided on a separate parcel, in a central parking area within a distance of 500 feet from the building to which the parking relates or 1500 feet from a ski trail to the ski lift to which the parking relates, or in a central parking area served by public or private transit, in every such event in a manner and location approved by the Municipality and the following off-street parking ratio will apply:

<u>Building Class</u>	<u>Parking Number of Off-Street Parking Spaces</u>
Detached single residential dwelling and duplex residential dwelling	2 spaces per Dwelling Unit
Lodge	.75 spaces per Dwelling Unit
Multiple Residential Dwelling	1 space per Dwelling Unit
Ski Lifts	As required by Municipal By-Laws provided that lesser parking shall be approved from time to time by the Municipality if the Developers are able to reasonably show a lesser number is required for day skier parking.

If off-site parking is provided, the use of the land upon which the parking is provided shall be restricted by the Covenant or by a covenant in favour of the Municipality and registered in the Vancouver Land Registry Office. The Developers and the Municipality may from time to time, by mutual agreement, amend a Development Plan, the Covenant and a covenant in favour of the Municipality and registered in the Vancouver Land Registry Office to provide for alternative parking locations and for alternative uses of areas originally to be used for parking, provided always that the alternative parking locations and alternative uses are otherwise in accordance with the provisions of this Land Use Contract.

5 Acre Parcel

In this Zone 2 one parcel, to be transferred to the Municipality or Whistler Land Co. not to exceed 5 acres as may be approved by the Municipality may be used for the following uses:

- school, educational facilities, fine arts facility, associated residential facilities and such other uses as may be approved by the Municipality and all necessary uses incidental thereto.

The Municipality agrees that no structures or buildings on this parcel shall require the allocation of BU's.

All buildings on this parcel shall otherwise comply with the Zone 2 restrictions.

3. ZONE 3

The aggregate total development in Zone 3 shall not exceed 4000 BU's.

Permitted Uses of Land, Buildings and Structures

In a Zone 3, the use of land, buildings and structures is restricted to:

- (a) multiple residential dwellings;
- (b) duplex residential dwellings;
- (c) single residential dwellings;
- (d) buildings and structures accessory to the uses permitted in clauses (a), (b) and (c);

- (e) accessory off-street parking use;
- (f) parks and recreational uses;
- (g) skiing facilities including without limitation: administrative and maintenance facilities, ski runs, lift facilities and skier parking.

Site Area

A. The minimum site area per Dwelling Unit is as follows:

	MINIMUM SITE AREA PER DWELLING UNIT		
	Level of Service Provided		
	Community Water Supply & Community Sewer System	Community Water Supply But No Community Sewer System	Neither Community Water Supply Nor Community Sewer System
	Sq.Ft.	Sq.Ft.	Sq.Ft.
Single Residential Dwelling	7,500 or such smaller area as approved under clause B below	Not Permitted	Not Permitted
Duplex Residential Dwelling	4,500 or such smaller area as approved under clause B below	Not Permitted	Not Permitted
Multiple Residential Dwelling			
a) For each of the first two Dwelling Units	3,750	Not Permitted	Not Permitted
b) Each additional Dwelling Unit	2,000	Not Permitted	Not Permitted

B. The Approving Officer, in his sole discretion may approve a subdivision plan or strata plan which provides for certain lots of smaller area than set out above provided that:

- (i) the Municipality has requested such approval;
- (ii) the average lot area (including the common areas but excluding roads) is not less than the minimum site area otherwise required; and
- (iii) the subdivision plan or strata plan is otherwise in compliance with the terms hereof.

Lot Coverage

The maximum lot coverage of all buildings and structures (excluding the facilities set forth in clause 6(a) of this Land Use Contract) together shall not exceed fifty percent (50%) of the lot area.

Slope

No buildings shall be erected on any portion of any site which has a natural slope in excess of 30 percent (30%).

Setback and Height

- (1) No building shall be sited within twenty-five (25') feet of a front lot line adjoining a public road unless approved by the Municipality.
- (2) No building or structure should in any event exceed thirty-five (35') feet in height for multiple residential dwellings or twenty-five (25') feet for duplex and single residential dwellings.
- (3) No building, other than an accessory building, shall be located within ten (10') feet of a rear or side lot line unless approved by the Municipality.

Fire Fighting Platform

The provisions of the Zoning By-Law shall apply unless stand pipes, hydrants, on site hose storage, or other fire fighting devices are provided for in the proposed development to the satisfaction of the Fire Marshall and the Municipality.

Floor Area

The minimum floor area requirement for a multiple residential dwelling is three hundred and fifty (350 sq. ft.) square feet.

Parking

Off-street parking shall be provided in accordance with the provisions of Part III of the Zoning By-Law except that off-street parking spaces may be provided on a separate parcel, in a central parking area within a distance of 500 feet from the building to which the parking relates or 1500 feet from a ski trail to the ski lift to which the parking relates, or in a central parking area served by public or private transit, in every such event in a manner and location approved by the Municipality and the following off-street parking ratio will apply:

<u>Building Class</u>	<u>Parking Number of Off-Street Parking Spaces</u>
Detached single residential dwelling and duplex residential dwelling	2 spaces per Dwelling Unit
Multiple Residential Dwelling	1 space per Dwelling Unit
Ski Lifts	As required by Municipal By-Laws provided that lesser parking shall be approved from time to time by the Municipality if the Developers are able to reasonably show a lesser number is required for day skier parking.

If off-site parking is provided, the use of the land upon which the parking is provided shall be restricted by the Covenant or by a covenant in favour of the Municipality and registered in the Vancouver Land Registry Office. The Developers and the Municipality may from time to time, by mutual agreement, amend a Development Plan, the Covenant and a covenant in favour of the Municipality and registered in the Vancouver Land Registry Office to provide for alternative parking locations and for alternative uses of areas originally to be used for parking, provided always that the alternative parking locations and alternative uses are otherwise in accordance with the provisions of this Land Use Contract.

SCHEDULE C-1

I. COMMERCIAL SPACE PERMITTED IN ZONE 1 WITHOUT ALLOCATION OF BU'S THEREFOR

The Developers shall be entitled as part of the development of Zone 1 to construct, provided that such development is otherwise approved under this Land Use Contract, and without allocating BU's therefor, the following:

- (a) one or more buildings in Zone 1 (herein called the "Day Skier Service Area") which shall be a day skier facility and may include the following:
 - (i) ticket office,
 - (ii) ski school office,
 - (iii) ski sales, rentals and repairs,
 - (iv) administration and accounting office,
 - (v) first aid,
 - (vi) cafeteria,
 - (vii) ski patrol room,
 - (viii) licensed premises,
 - (ix) restaurant, and
 - (x) parking structures or parking lots.

The maximum floor area of the Day Skier Service Area excluding parking structures or parking lots shall not exceed 25,000 square feet and the Day Skier Service Area shall otherwise be in compliance with the requirements of this Land Use Contract.

- (b) One or more maintenance buildings and yards (herein called the "Maintenance Area") in Zone 1 to serve for overall maintenance, vehicle, construction and general storage and related uses.
- (c) For each Dwelling Unit in a hotel in Zone 1, the Developers shall be entitled provided such space complies in all other respects with the requirements of this Land Use Contract, to construct 40 square feet of commercial space in that hotel without the allocation of BU's therefor.

(d) Conference and meeting rooms, convention facilities, common areas, maintenance and utility areas and administrative areas in Lodges and Hotels in Zone 1 shall not for the purposes of this Land Use Contract be considered in determining the permitted amount of commercial space and shall be permitted without the allocation of BU's therefor.

II. COMMERCIAL SPACE FOR WHICH BU'S MUST BE ALLOCATED

Any commercial space other than that listed in Section I, if otherwise permitted under this Land Use Contract, shall require the allocation of 1 BU for each 400 square feet of the commercial space subject always to the overall restriction on commercial space as contained in Section III.

III. OVERALL RESTRICTION ON COMMERCIAL SPACE

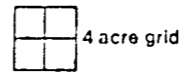
Provided always that in no event shall the total commercial square footage allowed on the Lands including all commercial space in all Hotels and Lodges (but excluding any Dwelling Units in Hotels and Lodges and excluding the Day Skier Service Area and the Maintenance Area) exceed in the aggregate 50,000 square feet.

SCHEDULE D
BLACKCOMB
BRITISH COLUMBIA, CANADA

Developer:

Fortress Mountain
Resorts Ltd.
P.O. Box 7220
Station E
Calgary, Alberta
T3C 3M1

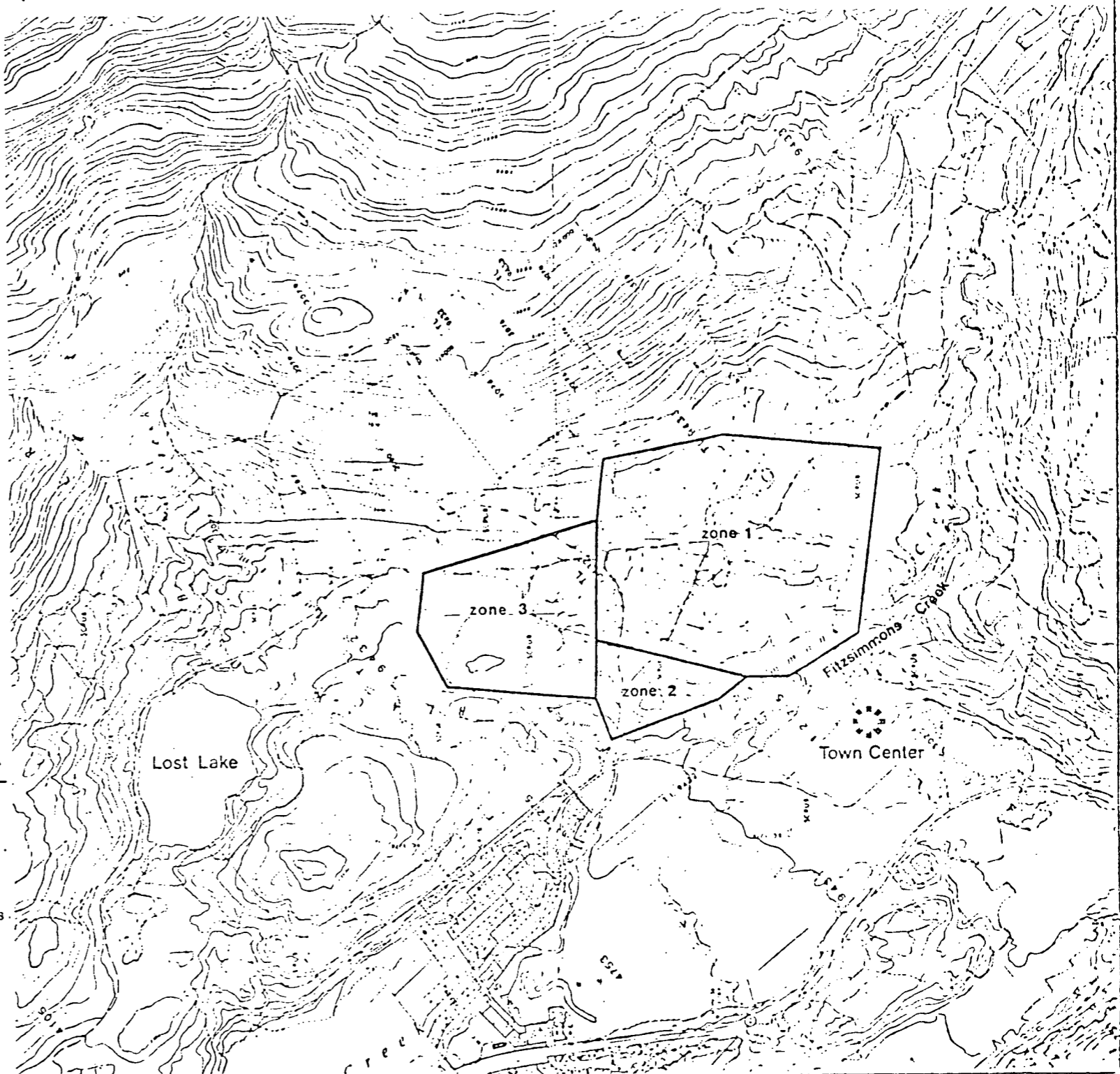
Mapping:
British Columbia
Department of Lands



0 100 200 300 400 500 meters

0 500 1000 1500 feet

8/22/78



SCHEDULE "E"
"SAOT FORMULA"

The "SAOT FORMULA" (Skier At One Time Formula) to be used to calculate the BU's of Fortress under this Land Use Contract shall operate as follows:

1. One BU is equal to 2 "SKIERS" as that term is defined under the following formula based on the ski lifts constructed or to be constructed by Fortress under the Lease.
2. In order to qualify as a ski lift for the calculation of the number of SKIERS the ski lift must either:
 - (a) be constructed and operational; or
 - (b) each of the following must have occurred:
 - (i) the ski lift must be a ski lift provided for under the terms of the Lease other than those lifts referred to in the Lease as Lifts #1 - #4 inclusive or the fourteenth lift built by Fortress;
 - (ii) Fortress must hold a right-of-way or a right of occupation for the ski lift pursuant to the provisions of the Lease;
 - (iii) Fortress must have entered into a bona fide firm agreement to lease or to purchase the ski lift, and paid a deposit therefor;
 - (iv) the lift must be scheduled for completion within a period of one year from the date of delivery of a Certificate;
 - (v) all lifts for which BU's have previously been earned or allocated under this sub-clause (b) prior to the date of delivery of the Certificate for the ski lift:
 - (A) shall have been completed within a period of eighteen months from the respective dates of delivery of the Certificates for such lifts subject to any force majeure as provided in clause 9 of this Schedule E; or
 - (B) if not completed, not more than twelve months shall have expired from the date of delivery of the Certificate to the Municipality;
3. When Fortress wishes to obtain BU's for a ski lift it shall deliver to the Municipality a certificate (herein this Schedule E called the "Certificate") containing:

provided always that Fortress shall not at any given time be entitled to earn BU's under this sub-clause (b) for more than three lifts.

- (a) a statement that the requirements of clause 2 of this Schedule E have been complied with and the number of BU's for which the ski lift qualifies;
- (b) a statement certified by a professional engineer under his seal appointed or employed by the manufacturer of the ski lift specifying the length, vertical height, hourly capacity, operating speed and design capacity of the ski lift,

and if the ski lift is not then constructed and operational the Certificate shall as well contain:

- (c) a true copy of the ski lift purchase or lease agreement showing the specifications of the ski lift and the deposit paid; and
- (d) a statement that the ski lift when completed and operational will be in substantial compliance with the provisions of the Lease.

The Certificate shall be accompanied by a Statutory Declaration of an officer of Fortress declaring that to the best of his information, knowledge and belief all of the statements and information contained in the Certificate are true and correct.

4. If within forty-five days from its receipt of a Certificate with respect to a ski lift which is constructed and operational the Municipality:

- (a) does not deliver to Fortress a letter from The Minister of Lands or his duly authorized representative stating that there is an existing material default by Fortress under the Lease and giving particulars thereof, Fortress shall have earned the number of BU's specified in the Certificate;
- (b) delivers a letter to Fortress from The Minister of Lands or his duly authorized representative stating that there is an existing material default by Fortress under the Lease and giving particulars thereof, Fortress shall only earn the BU's specified in the Certificate after Fortress has delivered to the Municipality a letter from the Minister of Lands or his duly authorized representative confirming that the said default has been cured and that there is no existing material default by Fortress under the Lease, or has obtained at its option either a declaration from a Court of competent jurisdiction or a determination by arbitration in accordance with this Land Use Contract that there was no existing material default under the Lease as set forth in aforesaid letter.

5. If within forty-five days from its receipt of a Certificate with respect to a ski lift which is not constructed and operational the Municipality:

- (a) does not deliver:

- (i) a letter from The Minister of Lands or his duly authorized representative stating that there is an existing material default by Fortress under the Lease and giving particulars thereof; and/or
- (ii) a notice in writing stating that in its opinion the information or one or more of the statements contained in the Certificate is untrue and giving particulars thereof,

Fortress shall have earned the number of BU's specified in the Certificate;

- (b) delivers either a letter or notice or both a letter and notice as provided for in sub-clause (a)(i) and (a)(ii) hereof, then Fortress shall only earn the BU's specified in the Certificate after Fortress has obtained at its option either a declaration from a Court of competent jurisdiction or a determination by arbitration in accordance with this Land Use Contract that there was no existing material default under the Lease as set forth in aforesaid letter and that the statements and information set forth in the Certificate were true at the date of delivery of the Certificate; provided always that if the Municipality delivers to Fortress a letter as provided for in sub-clause (a)(i) hereof but does not deliver to Fortress a notice as provided for in sub-clause (a)(ii) hereof then Fortress shall upon delivery to the Municipality of a letter from the Minister of Lands or his duly authorized representative confirming that the default set forth in the said letter has been cured and that there is no existing material default by Fortress under the Lease, earn the BU's specified in the Certificate without the necessity of obtaining either a declaration or determination as aforesaid.

6. The Municipality acknowledges and agrees that it is important for Fortress to have any dispute under this Schedule E resolved as soon as possible and agrees to use all reasonable efforts to have any Court proceedings heard or arbitration concluded in as short a period of time as possible.

7. Fortress shall be entitled to re-apply for:

- (a) BU's with respect to any ski lift for which BU's have not been earned; and
- (b) additional BU's earned as a result of any modification made to existing ski lifts,

and the provisions of this Schedule E shall apply.

8. Fortress shall receive credit for ski lifts which qualify under the provisions hereof, on the following basis:

- (a) for all ski lifts which have their loading area at an elevation of greater than 3000 feet above sea level and for lifts referred to in the Lease as lifts #6 and #14, then

$$\begin{array}{rcl} \text{Number of SKIERS} & = & \text{Vertical height in feet} \quad \times \\ & & \text{of the ski lift} \\ \\ \text{Hourly capacity} & \times & \text{7 hours (being the agreed} \quad \times .9 \\ \text{of the ski lift} & & \text{number of hours of operation} \\ & & \text{per day for the ski lift)} \end{array}$$

10,000 feet

- (b) for all ski lifts other than lifts #6 and #14 which have their loading area at an elevation of 3000 feet above sea level or less then the formula in (a) is multiplied by .5;
- (c) the Town Centre lift referred to in the Lease as Lift #1 and originating in the Town Centre shall not qualify for any BU's under this formula or under this Land Use Contract.

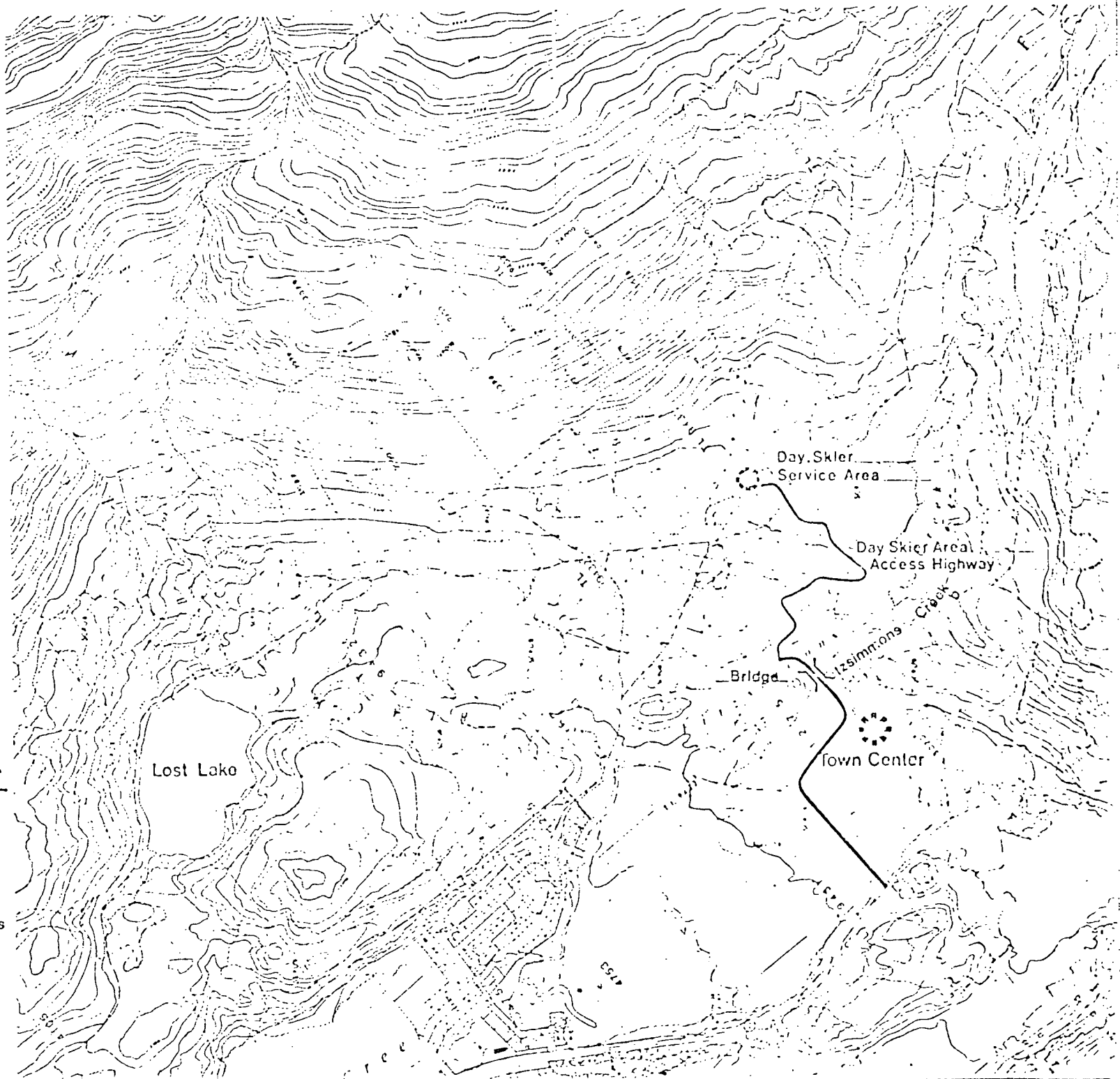
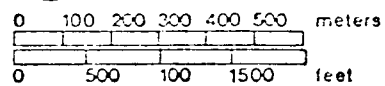
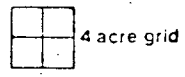
9. If, by reason of strike, lockout, war or acts of military authority, rebellion or civil commotion, material or labour shortage, or labour strikes not within the control of Fortress, fire or explosion, flood, wind, water, earthquake, act of God or other casualty, or any event or matter not wholly or mainly within the control of Fortress and not caused by its default or act of commission or omission and not avoidable by the exercise of reasonable effort or foresight by Fortress (including any act or omission of the Municipality), Fortress is, in good faith and without default or neglect on its part, prevented or delayed in the construction or completion of a ski lift which under the terms of this Land Use Contract it is required to do by a specified date, or within a specific period of time, the date or the period of time within which the ski lift was to have been completed may be extended by a period of time equal to that of such delay or prevention, and Fortress shall not be deemed to be in default if it performs and completes the ski lift in the manner required by the terms of this Land Use Contract within such extended period of time, or within such further extended period of time as may be agreed upon from time to time between the Municipality and Fortress.

SCHEDULE F
BLACKCOMB
BRITISH COLUMBIA, CANADA

Developer:

Fortress Mountain
Resorts Ltd.
P.O. Box 7220
Station E
Calgary, Alberta
T3C 3M1

Mapping:
British Columbia
Department of Lands



SCHEDULE "G"


Any Development Plan shall, in relation to the whole of the Lands, be reasonably responsive to:

- (a) environmental issues including soils, geology, fish and wildlife, vegetation, and surface and ground water runoff to the extent that consideration of these environmental elements may be of general application within the Municipality;
- (b) the year-round destination resort concept for the Municipality;
- (c) the provision of trails and walkways consistent with the Town Centre and the Municipality's trail and walkway system;
- (d) the provision of such recreation facilities as the Developers may decide and as are suitable for a year-round destination resort and specifically shall provide one heated swimming pool or hot pool for every 600 BUs allocated and one tennis court for every 600 BUs allocated.

Acknowledgment of Officer of a Corporation

I HEREBY CERTIFY that, on the 29th day of December, 1978,
at the City of Vancouver, in the Province of British Columbia,
~~(whose identity has been proved by the evidence on~~
oath of MALCOLM G. KING, who is) personally known to me,
appeared before me and acknowledged to me that he is the SECRETARY of
GARIBALDI LIFTS LTD., and that he is the person
who subscribed his name to the annexed instrument as SECRETARY of the said
GARIBALDI LIFTS LTD. and affixed the seal of the
said Company
to the said Instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to
the said Instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of
British Columbia.

IN TESTIMONY whereof I have hereunto set my Hand and Seal of Office,
at the City of Vancouver, in the Province of
British Columbia, this 29th day of December
one thousand nine hundred and seventy-eight,


A Notary Public in and for the Province of British Columbia.
A Commissioner for taking affidavits within British Columbia.

THIS AGREEMENT made this 28th day of December, 1978.

F 93575

BETWEEN:

GARIBALDI LIFTS LTD., a body corporate
duly incorporated under the laws of the
Province of British Columbia, and having
an office at 602-325 Howe Street,
in the City of Vancouver, in the Province
of British Columbia
(Incorporation No. 49108)

DEC 29 2 44 P 78
LAND REGISTRY OFFICE
VANCOUVER

(hereinafter called "the Grantor")

AND:

THE RESORT MUNICIPALITY OF WHISTLER,
a duly incorporated municipality
having its municipal offices at
Whistler, British Columbia

(hereinafter called "the Grantee")

WHEREAS the Grantor is the registered owner of all
and singular that certain parcel or tract of land and premises
situate, lying and being in the Resort Municipality of Whistler,
in the Province of British Columbia and more particularly known
and described as:

Lot "A"
District Lot 4751
Plan 17369

(hereinafter referred to as the "Land");

AND WHEREAS the Grantor has agreed to grant this
covenant.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in
consideration of the premises and in consideration of the
sum of One (\$1.00) Dollar now paid by the Grantee to the
Grantor, the receipt whereof is hereby acknowledged, and
other good and valuable consideration, the Grantor does
hereby covenant and agree with the Grantee, pursuant to
Section 24A of the Land Registry Act, R.S.B.C. 1960, Ch. 208,
as amended, that:

1. The Land shall be used only in the following
particular manner, namely, a public golf
course, including the development and
maintenance of the same;

Substitute for form C

Date December 29, 1978

Nature of Interest Section 24A Agreement

Declared value \$ 1.00

Disposition of LRD

Phase merge —

Applicant [Signature]

Telephone number 688-3411

as Solicitor/Agent
Russell & DuMoulin,
1075 West Georgia Street,
Vancouver, B. C.

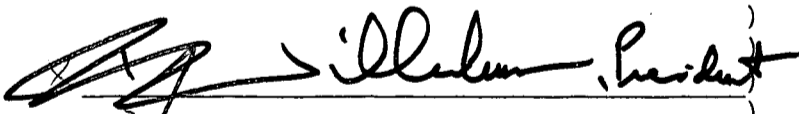
- 2. No building, structures or improvements shall be erected on the Land other than for the use hereinbefore specified;
- 3. No Land or any part thereof or any buildings, structures or improvements thereon shall at any time be used for any purpose other than the activities associated with a golf course, including the sale of golf equipment and supplies and instruction in the game of golf.

This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and assigns and shall run with the Land.

Wherever the singular or masculine are used in this Agreement, they shall be construed as being the plural or feminine or body corporate where the context or the parties hereto so require.

IN WITNESS WHEREOF the Grantor has hereunto caused its corporate seal to be affixed, attested by the hands of its proper officers duly authorized in that behalf, as of the day and year first above written.

The Corporate Seal of)
 GARIBALDI LIFTS LTD. was)
 hereunto affixed in the)
 presence of:)

)
 _____)
Secretary)
 _____)
 _____)

DATED December 28, 1978

BETWEEN:

GARIBALDI LIFTS LTD.

AND:

THE RESORT MUNICIPALITY OF
WHISTLER

SECTION 24A AGREEMENT

BWFF:da

Subscribers for form _____

Date	15	Nature of Interest
Declared value \$		Disposition of C/P
Please merge		Applicant
Telephone number		as Solicitor/Agent
		Russell & DuMoulin,
		1075 West Georgia Street,
		Vancouver, B. C.

RUSSELL & DUMOULIN
 BARRISTERS & SOLICITORS
 17TH FLOOR, MACMILLAN BLOEDEL BUILDING
 1075 WEST GEORGIA STREET
 VANCOUVER, B.C. V6E 3G2

THIS AGREEMENT made the 27th day of October, 1978.

BETWEEN:

RESORT MUNICIPALITY OF WHISTLER, a municipal Corporation created by Special Act of the Legislature of the Province of British Columbia, having its municipal office at Whistler, B.C.

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

GARIBALDI LIFTS LTD., a body corporate, incorporated under the laws of the province of British Columbia, having its head office at 602 - 325 Howe Street, Vancouver, B.C.

(hereinafter called "Garibaldi")

OF THE SECOND PART

WHEREAS The Municipality, pursuant to Section 702A of the "Municipal Act", may, notwithstanding any By-law of the Municipality or Section 712 or 713 of the "Municipal Act", upon the application of an owner of land within the development area designated as such by By-law of the Municipality, enter into a Land Use Contract containing such terms and conditions for the use and development of the land as may be mutually agreed upon and thereafter the use and development of that land shall be in accordance with such Land Use Contract;

AND WHEREAS the "Municipal Act" requires the Municipal Council in exercising the powers given by Section 702A shall have due regard to the considerations set out in Section 702(2), and section 702A, in arriving at the use and development permitted by any Land Use Contract and the terms and conditions thereof;

AND WHEREAS Council of the Municipality, having given due regard to the considerations set forth in Section 702 (2) and 702A(1) of the Municipal Act has agreed to the terms and conditions herein contained:

AND WHEREAS The Ministry of Highways have approved the said By-law pursuant to the "Controlled Access Highways Act;"

AND WHEREAS The Inspector of Municipalities has approved the said By-law pursuant to the "Resort Municipality of Whistler Act;"

AND WHEREAS in order to provide direct access from the Whistler Town Centre to skiing areas on Whistler Mountain Garibaldi intends to construct on lands to be leased to it by the Province of British Columbia the three additional chair lifts on the northern slopes of and near Whistler Mountain all in general accordance with the Conceptual Illustration attached hereto as Schedule "A".

AND WHEREAS Garibaldi is the registered owner of those lands and premises situate in the Resort Municipality of Whistler in the Province of British Columbia more particularly described as District Lot 4751, (Except Parcel "A" thereof), Group 1, N.W.D. a portion of which is designated "Potential Residential" under the Official Community Plan of the Municipality.

AND WHEREAS it is the intention of the Parties that Garibaldi shall be entitled from time to time after the construction of the chair lift designated on Schedule "A" as Lift 4:14 to develop the said portion of D.L. 4751 for residential purposes in accordance with this Land Use Contract as Garibaldi has constructed or is in the process of constructing additional chair lift facilities on Whistler Mountain designated on Schedule "A" as Lifts 4:13, 4:14 and 4:15.

AND WHEREAS the Municipality is desirous of having the skiing facilities on Whistler Mountain properly developed and the Council is of the opinion that the approval of this Land Use Contract is in the public interest.

AND WHEREAS Garibaldi acknowledge that it is aware of the provisions of Section 702A of the Municipal Act and that the Council of the Municipality cannot enter into this Land Use Contract until the Council has held a Public Hearing on a By-law approving the Contract has duly considered the representations made at such Public Hearing, and unless a majority of the members of Council as required by the Municipal Act vote in favour of the By-law.

NOW THEREFORE this contract witnesseth that in consideration of the premises and the covenants and agreements herein contained, the parties covenant and agree as follows:

1. SCOPE AND PURPOSE OF CONTRACT

This contract contemplates the development of the said portion of D.L. 4751, which has been designated as Potential Residential in the Official Community Plan of the Municipality and as shown outlined in red on the Plan attached as Schedule "E" hereto and which portion is hereafter referred to as the "Lands". This Land Use Contract only authorizes subject to the provisions hereof, the servicing of the lands, preparation for development of the same for single residential dwellings, duplex residential dwellings, or multiple residential dwellings, as defined by Zoning By-law No. 9, by conventional subdivision and by Strata Plan. This contract does not authorize the construction of such dwellings on the remainder of D.L. 4751 which is not designated as potential residential in the Official Community Plan of the Municipality.

2. DEFINITIONS

In this contract, in addition to the other definitions herein contained, unless the context otherwise requires; "BU" means a bed unit and shall be a method of computing permitted development on the lands:

- (a) a "single residential dwelling" shall have six BU's per dwelling unit.
- (b) a "multiple residential dwelling" shall have four BU's per dwelling unit.
- (c) a "duplex residential dwelling" shall consist of two dwelling units and have six BU's per dwelling unit.
- (d) "BU Development Right" shall mean the right to build or place one BU on the lands.

"Dwelling Unit" shall mean one or more rooms used or intended to be used for domestic purposes.

"Single Residential Dwelling", "Duplex Residential Dwelling" and "Multiple Residential Dwelling" shall have the same meaning as in the Zoning By-Law hereinafter defined.

"Complete" or "Completion" or any variation of these words when used with respect to the works or work referred to herein shall mean completion to the satisfaction of the Municipal Engineer of the Municipality reasonably determined when so certified by him in writing.

"Municipal Engineer" means an engineer employed by the municipality by salary or retainer in his capacity as a professional engineer.

"Services" means all utilities such as roads, sidewalks, streetlighting, sewerage, water, drainage, electrical, gas, or telephone connections inclusive on any pipe, wire or structure used in connection with the provisions for such utility as may be required by this Land Use Contract.

"Subdivison Control By-law" means By-law No. 11 of the Municipality and (a) until 31st December 1987 shall include any amendments thereto ^(now) then in force; (b) between first ⁸⁶ January 1982 and 31st December 1999 shall include any amendments thereto then in force on 31st December 1987, and, (c) after 31st December ⁹⁹ 1991 shall include any amendments thereto then in force.

"Zoning By-law" means Resort Municipality of Whistler Zoning By-law No. 9 of September 24th, 1976 as amended from time to time.

"Approving Officer" shall be construed to mean and include the official appointed and so designated by the Municipal Council from time to time.

"Density" shall mean the number of BU's per acre.

3. CONSENTS

Garibaldi has obtained the consent of all other persons holding any registered interest in the Lands, if any, as set out in the consents to the use and development proposed herein, which consents are listed and attached hereto as Schedule "B".

4. ZONING BY-LAW APPLICABILITY

All the provisions of the Zoning By-law shall apply to the use and development of the lands pursuant to this contract and, subject to Clause 8 hereof, the lands shall be used for the following, but no other, purposes in particular as follows:

- (a) Single Residential Use
- (b) Duplex Residential Dwelling Use
- (c) Multiple Residential Dwelling Use

- (d) Home Occupation Use
- (e) Parks and Playlots
- (f) Outdoor Recreational Use
- (g) Building and Structures Accessory to the uses permitted in clauses (a) through (f)
- (h) Accessory Off Street Parking Use
- (i) Public Utility Use excluding Public Storage or Works Yards

It is agreed and understood between both parties that Duplex Residential Dwellings will not constitute more than a maximum of 50% of the BU's and that Multiple Residential Dwellings will not constitute more than a maximum of 50% of the BU's permitted by this Land Use Contract and that the Density of the BU's shall not be less than that provided by the Zoning By-Law as at the date hereof.

5. ROADS

The Municipality and Garibaldi agree that the actual siting of the roads cannot be made until such time as the final engineering and survey studies therefor have been completed. For the purposes of this Land Use Contract, the cost of dedication and construction of all roads within the Lands shall be borne by Garibaldi. Garibaldi agrees that, prior to dedicating any areas as road, it must complete the road and related services as required by the Subdivision Control By-law. PROVIDED HOWEVER, that in no event shall the application thereof have the effect of unreasonably restricting the ability of Garibaldi to develop the Lands in accordance with this Land Use Contract.

6. ON SITE SERVICES

Garibaldi shall install at its cost all on site services required on the Lands by Municipal By-laws, and shall, where required, connect such services to those provided by the Municipality and others. Garibaldi agree to provide the services to the standard and within the time

limits required by any Municipal By-laws having application to the Lands. The Municipality shall assume all the costs of operation and maintenance of the said services with the exception of these incurred as a result of defects in their construction and appearing within one year from completion thereof. Prior to the Municipality being required to grant formal approval of an application for a development or subdivision Plan affecting the Lands, it may require Garibaldi to lodge with the Municipality security by way of letter of credit or other approved security in an amount equal to 10% of the estimated cost of roads and onsite services contemplated by the said application and such security shall be held for a period of one year from the date of completion of the said services and roads to defray the cost of remedying any defects in construction appearing during that time. Upon the expiration of the said period, the security, or the balance thereof remaining, shall be returned to Garibaldi. If there is insufficient money on deposit with the Municipality to remedy such defects, Garibaldi shall pay the amount of any deficiency to the Municipality upon receipt of its invoice therefor.

7. EASEMENTS AND RIGHTS OF WAY

(a) Garibaldi agrees to grant to the Municipality such easements and rights of way as may reasonably be required in connection with development and servicing of the Lands. Garibaldi shall be permitted flexibility in the location of any required easements or rights-of-way so long as the same are sufficient to serve the needs of the Municipality. Nothing in this clause shall in any way restrict the Municipality rights of expropriation.

(b) The Municipality shall use its best efforts to secure and dedicate to Garibaldi an easement for the passage of foot traffic only from the Lands across Parcel "A" of D.L. 4571, Plan 17369, to the Squamish-Pemberton Highway in the general location shown on the sketch annexed hereto

as Schedule "C".

(c) The Municipality shall use its best efforts to secure road access to the Lands through those lands lying to the north of D.L. 4751.

8. ENTITLEMENT TO BU'S

Notwithstanding any other restrictions or limitations herein contained, Garibaldi shall only be permitted to obtain approval of subdivision plans and/or the issuance of building permits for dwelling units or other improvements on the lands when and to the extent that Garibaldi has earned and not previously used BU's. Garibaldi shall be entitled to BU's as a result of constructing the additional lift facilities hereinbefore referred to. The formula to be used to calculate the number of BU's to be acquired by Garibaldi is set out in Schedule "D" hereto. Garibaldi shall only be entitled and permitted to obtain approval of subdivision plans and/or the issuance of building permits for improvements having aggregate BU's equal to or less than the BU's to which Garibaldi is entitled pursuant to the said formula and which have not been previously allocated by Garibaldi to other improvements on the Lands; PROVIDED THAT Garibaldi shall be permitted to construct, in addition to the improvements to which BU's have been allocated, outdoor recreational facilities, including without limitation, tennis courts, swimming pools and open ice rinks, but excluding buildings requiring the allocation of BU's as herein provided.

9. Garibaldi agrees that the Municipality shall not be required to approve any applications for subdivisions or building permits in respect of the Lands prior to first January 1982 unless, prior to that date, the Municipality approves similar applications at any other locations within the Municipality other than in the Whistler Town Centre and other than those which have been approved by zoning or land use contracts on or before 16th January 1979, in which event

Garibaldi shall, provided it is otherwise entitled thereto, be entitled to approval of applications for subdivisions or building permits for a like number of BU's in the same calendar year; PROVIDED THAT this provision shall effect only the timing of subdivision approval and issuing of building permits and shall not in any way increase the total number of BU's for the Lands PROVIDED ALWAYS THAT if by first November, 1981, there shall not have been constructed or substantially constructed in the Whistler Town Centre buildings comprising sleeping accommodation of not less than 2,000 beds and not less than 38,000 sq. ft. of commercial space, then the Municipality may, at its sole option, extend the first January, 1982, approval date to first January, 1983. Garibaldi shall have the right at any time after first November, 1981, to submit Development Plans to the Municipality for preliminary approval.

10. PROFESSIONAL ENGINEER TO DESIGN ALL SERVICES

Garibaldi covenant and agree that all site services required herein to facilitate the use and development of the lands or any portion thereof, except landscaping, shall be designed by a Professional Engineer who shall be registered with the Association of Professional Engineers of British Columbia and retained by Garibaldi. Plans and specifications for the said work shall be prepared and sealed by the said Professional Engineer and delivered to the Municipality for approval as required herein.

11. GARIBALDI TO PAY COSTS

Garibaldi agrees to pay all arrears of taxes outstanding against the lands prior to final approval of this contract by the Municipality. Garibaldi further undertakes to pay all current taxes levied or to be levied on the lands on the basis and in accordance with the assessment and collector's roll entries. In addition to the security referred to herein, Garibaldi agrees to pay to the Municipality from time to time upon the sale of any portion of the Lands

all inspection fees, administration fees, engineering fees and legal costs incurred by the Municipality in settling, and registering this Land Use Contract throughout the whole of the term of this Land Use Contract up to a maximum amount of \$5,000.00. These amounts shall be paid by Garibaldi forthwith upon receipt of an invoice for the same from the Municipality. Garibaldi shall pay the cost of connecting all utilities to service the Lands. Garibaldi shall, upon completion of the sale of any portions of the Lands, be released from future obligations under this clause with respect to the portions of the Lands sold.

12. INDEMNITY BY GARIBALDI

Garibaldi, except to the extent that the same is caused by the negligence of the Municipality or its servants or agents, covenants to save harmless and effectually indemnify the Municipality against:

- (a) all the actions and proceedings, costs, damages, expenses, claims and demands whatsoever and by whomsoever brought by reason of the construction and installation of any works or improvements herein described or permitted.
- (b) All expenses and costs which may be incurred by reason of the execution of the said works or improvements resulting in damage to any property owned in whole or in part by the Municipality or which the Municipality by duty or custom is obliged directly or indirectly, in any way or to any degree to construct, repair or maintain.
- (c) All expenses and costs which may be incurred by reason of liens for non-payment of labour or materials, Workers Compensation, assessments, unemployment insurance, federal or provincial tax,

check off, and for encroachments owing to mistakes in survey.

- (d) Any and all actions and proceedings, costs, damages, claims demands and whatsoever caused by or resulting directly or indirectly from any breach or non-performance by Garibaldi of any of the provisions or restrictions of this Land Use Contract.

PROVIDED ALWAYS THAT in no event shall Garibaldi or a subsequent purchaser of the Lands or a part thereof be liable to indemnify and save harmless the Municipality as herein provided unless such obligation to do so arises from matters occurring during the time Garibaldi or such purchaser held title to any part of the Lands and is restricted to matters relative thereto.

13. RIGHTS OF MUNICIPALITY

Notwithstanding any provision of this Land Use Contract, the provisions of the Municipal building By-law and amendments thereto and of Section 714(k) of the "Municipal Act" and amendments thereto, Garibaldi covenants and agrees that the Municipality may withhold the granting of an occupancy permit for the occupancy and/or use of any building or part thereof constructed upon the Lands until all requirements of this Land Use Contract required to be performed at that time have been completed to the reasonable satisfaction of the Municipality and all moneys owing to the Municipality have been paid in full. Provided however, that in no event shall the Municipality unreasonably withhold its consent to the granting of an occupancy permit.

14. ALL DEVELOPMENT TO COMPLY WITH BY-LAWS

Except as specifically otherwise provided in this Land Use Contract, all subdivisions and development on the Lands shall comply in all respects with all of the By-laws

of the Resort Municipality of Whistler and all Federal and Provincial regulations pertaining thereto.

15. MINOR AMENDMENTS

Both prior and subsequent to the holding of a Public Hearing to consider this Land Use Contract and the execution and registration hereof the parties hereto may by written agreement make minor amendments hereto in order to properly carry out and effect the provisions and requirements hereof. No such amendments shall affect the overall intent or alter the substance of this Land Use Contract.

16. APPROVAL OF DEVELOPMENT

In proposing the development which will involve the approval of a subdivision plan under the Strata Titles Act or the Land Registry Act or a building permit for any portion of the Lands, Garibaldi shall submit to the Municipality for approval a plan (to be called the "Development Plan") showing the proposed development of the portion therein subdivided including the numbers and types of dwelling units, the number of BU's, the open spaces and all roads and services and a general statement and plan of its intent at that time for the development of the balance of the Lands.

Within 60 days of receipt of the Development Plan or within such longer period as hereinafter provided, the Municipality shall advise Garibaldi whether or not the Development Plan is acceptable to the Municipality. Provided that if the portion of the Lands affected by the Development Plan are not free of snow so as to permit an examination of the ground for a period of at least 30 days during such 60 day period, the period within which the Municipality may accept or reject the Development Plan shall be extended so as to allow the Municipality at least 30 uninterrupted days to examine the said Lands while the ground is snow free.

Garibaldi agrees that once the proposed development plan is approved by the Municipality then, prior to the issuance of the subdivision approval or building permit, Garibaldi shall enter into a restrictive covenant which shall limit the use and development on the portion of the Lands being subdivided and covered by the proposal to the use and development as approved by the Municipality under the provisions of this clause. The restrictive covenant shall be executed by Garibaldi and registered in the Vancouver Land Registry Office concurrently with the subdivision plan.

17. SCHEDULES - PART OF THE CONTRACT

Schedule "A" through "E" herein referred to are herein incorporated into and made part of this Land Use Contract.

18. IMPOST FEES, DEVELOPMENT COST CHARGES ETC.

Notwithstanding any provisions of this Land Use Contract, Garibaldi shall pay to the Municipality prior to obtaining any approval of a subdivision plan or building permit, all impost fees, development cost charges or other similar fees or charges (with the exception of recreational impost fees) required to be paid to the Municipality for similar developments or subdivisions in accordance with current fees at the time of development.

19. REGISTRATION AND EFFECT

This agreement shall be construed as having the force and effect of a restrictive covenant running with the land and shall be registered in the Vancouver Land Registry Office against the lands by the Municipality pursuant to the provisions of Section 702 (4) of the Municipal Act.

Provided always that if any portion of the Lands shall be zoned to permit a use thereon acceptable to all affected parties, the Municipality may at its sole option

upon the written request of the Garibaldi execute and register a release and discharge of this Land Use Contract insofar as it relates to that portion of the Lands so zoned.

20. TERMINATION BY GARIBALDI

(a) Garibaldi shall have the right at any any time hereafter by notice in writing to the Municipality to terminate this Land Use Contract and upon receipt by the Municipality of such notice, this Land Use Contract shall be null and void and of no further force or effect as it relates to those portions of the lands for which no subdivision plans have been approved and thereafter the said portions of the Lands shall be used for those uses or potential uses now permitted or anticipated under the Zoning By-Law.

(b) Notwithstanding anything herein contained, Garibaldi shall be released from the covenants contained in this Land Use Contract insofar as such covenants relate to any portion or portions of the Land with respect to which it shall have ceased to be the registered owner.

21. GENDER

Where the singular or masculine is used the same shall be construed as meaning the plural, feminine or body corporate or body politic where the contract or party so require.

22. BINDING EFFECT

This Land Use Contract shall enure to the benefit of, and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

23. ARBITRATION

In the event of any disagreement between the Municipality and Garibaldi concerning the application or interpretation of any provisions of this Land Use Contract,

such disagreement shall be resolved by arbitration pursuant to the Arbitration Act of the Province of British Columbia, any reference thereunder being to three arbitrators: one appointed by the Municipality, one by Garibaldi and the third by the first two. All costs of arbitration shall be borne equally between the Municipality and Garibaldi.

24. RESORT ASSOCIATION

The Municipality and Garibaldi agree to work together to create and operate an association or similar body to promote the "year round" resort concept comprised of the Lands, the Whistler Town Centre and Whistler and Blackcomb Mountains in conjunction with other commercial, recreational, hotel and rental managed condominium facilities in and around the Municipality.

25. AMENDMENTS AND MODIFICATIONS

If at any time during the continuance of this Land Use Contract the parties shall deem it necessary or expedient to make any alteration or addition hereto, they may do so by means of a written agreement between them which shall be supplemental hereto and form part hereof.

26. SEVERABILITY

Should any clause or portion thereof set forth herein be declared or held invalid for any reason, such invalidation shall not affect the validity of the remainder of that clause or of this Land Use Contract which shall continue to be in force and in effect and be construed as if this Land Use Contract had been executed without the invalid portion.

27. PUBLIC HEARING on this Land Use Contract was held on the 13th day of November, 1978.

IN WITNESS WHEREOF the parties have executed this agreement this 8 day of JANUARY, 1979. *SP*

The Corporate Seal of the GARIBALDI LIFTS LTD. was hereunto affixed in the presence of:

[Signature]

[Signature]

The Corporate Seal of the RESORT MUNICIPALITY OF WHISTLER was hereunto affixed in the presence of:

[Signature]

MAYOR.
[Signature]

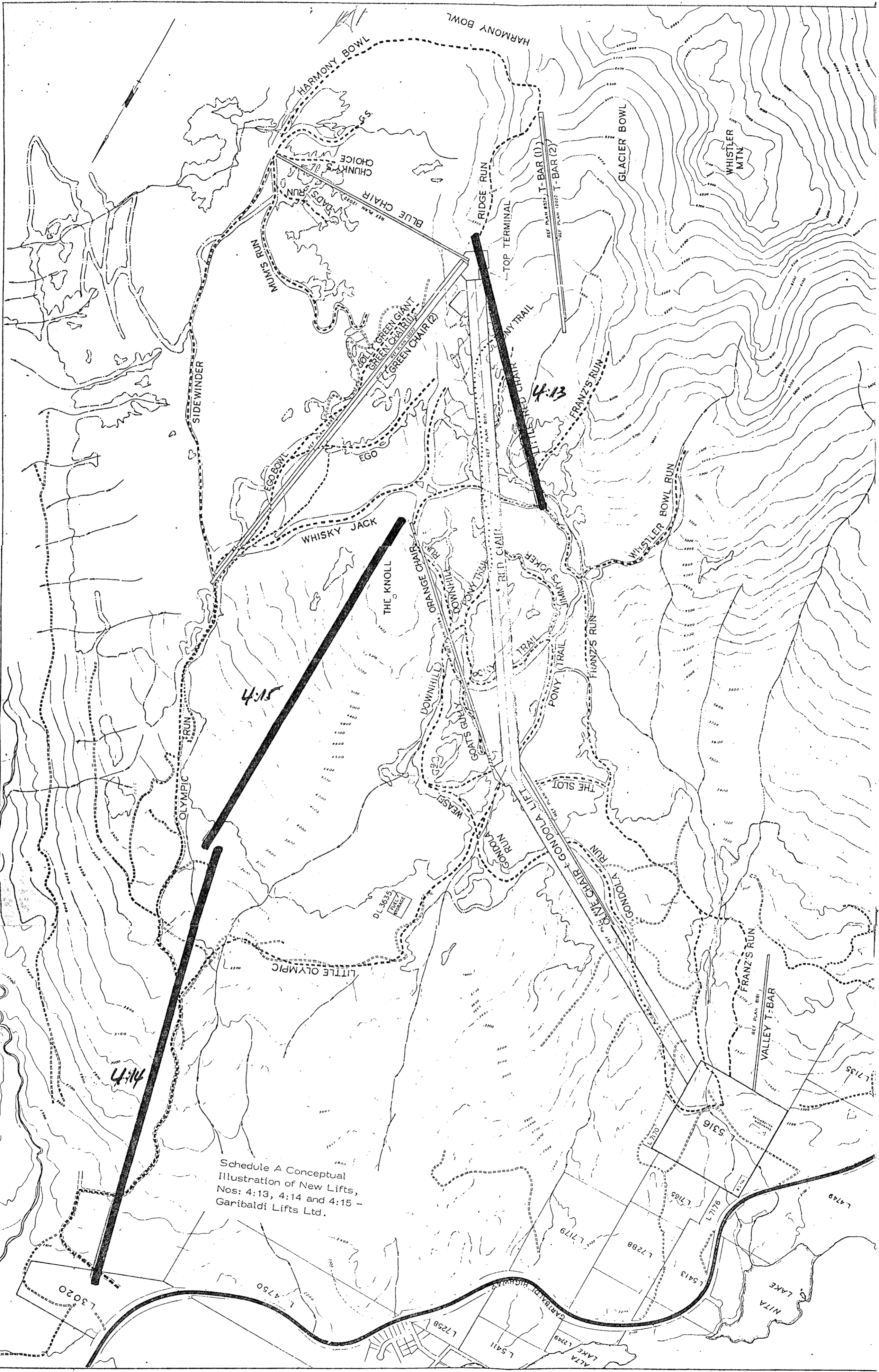
CITY ADMINISTRATOR.

Approved under the Controlled Access Highways Act
this 18 day of DEC. 1978
[Signature]
Approving Officer, Ministry of Highways & Public Works

LIST OF SCHEDULES

- A. Conceptual Illustration of New Lifts.
- B. Consents
- C. Golf Course Easement
- D. Skier At One Time Formula
- E. Development Constraints Map

A handwritten signature in cursive script, located in the lower right quadrant of the page. The signature appears to be initials or a name, possibly "AP" or similar, written in dark ink.



Schedule A Conceptual
Illustration of New Lifts,
Nos: 4:13, 4:14 and 4:15 -
Garibaldi Lifts Ltd.

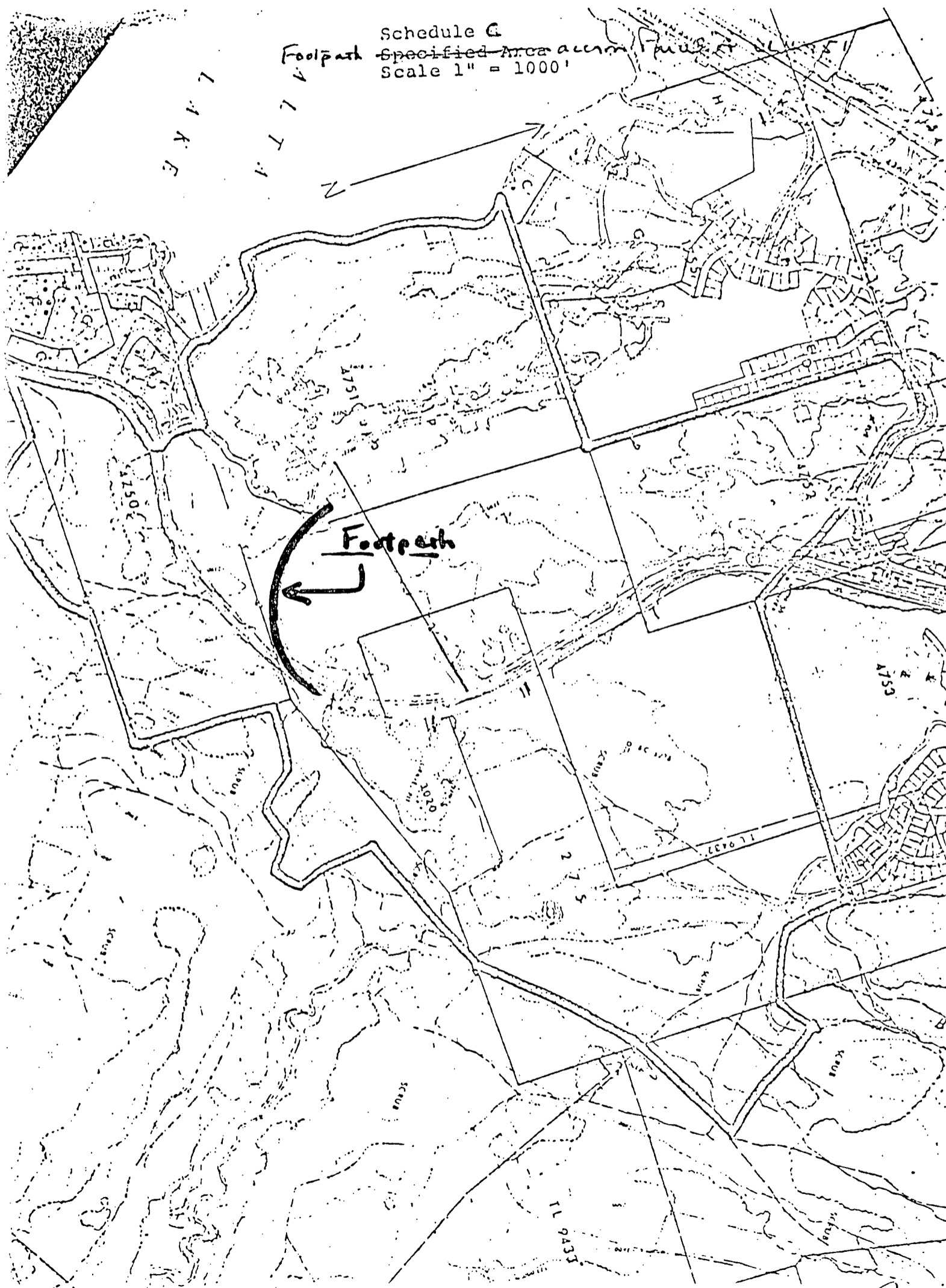
SCHEDULE "B"

CONSENTS

NO ENCUMBRANCES AGAINST THE SAID LANDS AS OF THE DATE HEREOF.

SCHEDULE "C"

Schedule C
Footpath ~~Specified Area~~ ~~across~~ ~~Footpath~~
Scale 1" = 1000'



Handwritten signature or initials.

SCHEDULE "D"

"SAOT FORMULA"

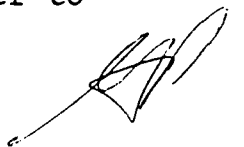
The "SAOT FORMULA" (Skier At One Time Formula) to be used to calculate the BU Development Rights of Garibaldi under this Land Use Contract shall operate as follows:

1. One BU Development Right is equal to 2 "SKIERS" as that term is defined under the following formula based on the ski lifts constructed or to be constructed by Garibaldi under its leases and/or right of way arrangements (herein called the "Lease") which will from time to time be entered into between Garibaldi and Her Majesty the Queen in Right of the Province of British Columbia (herein called "Her Majesty").

2. In order to qualify as a ski lift for the calculation of the number of SKIERS, the ski lift must be either
 - (a) constructed and operational, or

 - (b) in the course of construction which for the purpose of this clause shall mean that Garibaldi has entered into a contract with a lift manufacturer for the supply of a ski lift on land included in the lease, that Garibaldi shall have paid a deposit to the manufacturer on the purchase price of the lift and that completion thereof is scheduled within a period of one year from the date of Garibaldi's application for BU's referred to in Paragraph 3 hereof.

3. When Garibaldi wishes to obtain BU's for a completed and operational ski lift, it shall deliver to



the Municipality an application in writing stating the number of BU's for which the lift qualifies and a certificate of a professional engineer who shall be acceptable to the Chief Inspector under the Railway Act as being qualified in matters pertaining to the design of arial tramways certifying as to the length, vertical height, hourly capacity, operating speed and design capacity of the lift. When Garibaldi wishes to obtain BU's for a ski lift in the course of construction, it shall deliver to the Municipality, in addition to the said application and certificate, a statutory declaration of an officer of Garibaldi certifying that the requirements of Paragraph 2(b) hereof have been complied with.

4. Garibaldi shall be entitled to apply in accordance with the provisions of this Schedule "D" for BU's earned as a result of any modifications made to any lifts designated on Schedule "A" as Lifts 4:13, 4:14 and 4:15.

5. Garibaldi shall receive credit for ski lifts which qualify under the provisions hereof, on the following basis:

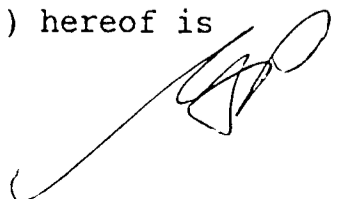
(a) for all ski lifts which have their loading area at an elevation of greater than 3,000 feet above sea level then

Number of SKIERS = Vertical height in feet x
of the ski lift

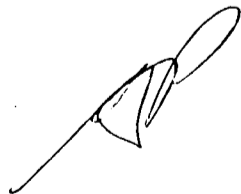
Hourly capacity of the ski lift x Hours of operation per day for the ski lift x .9

10,000 feet

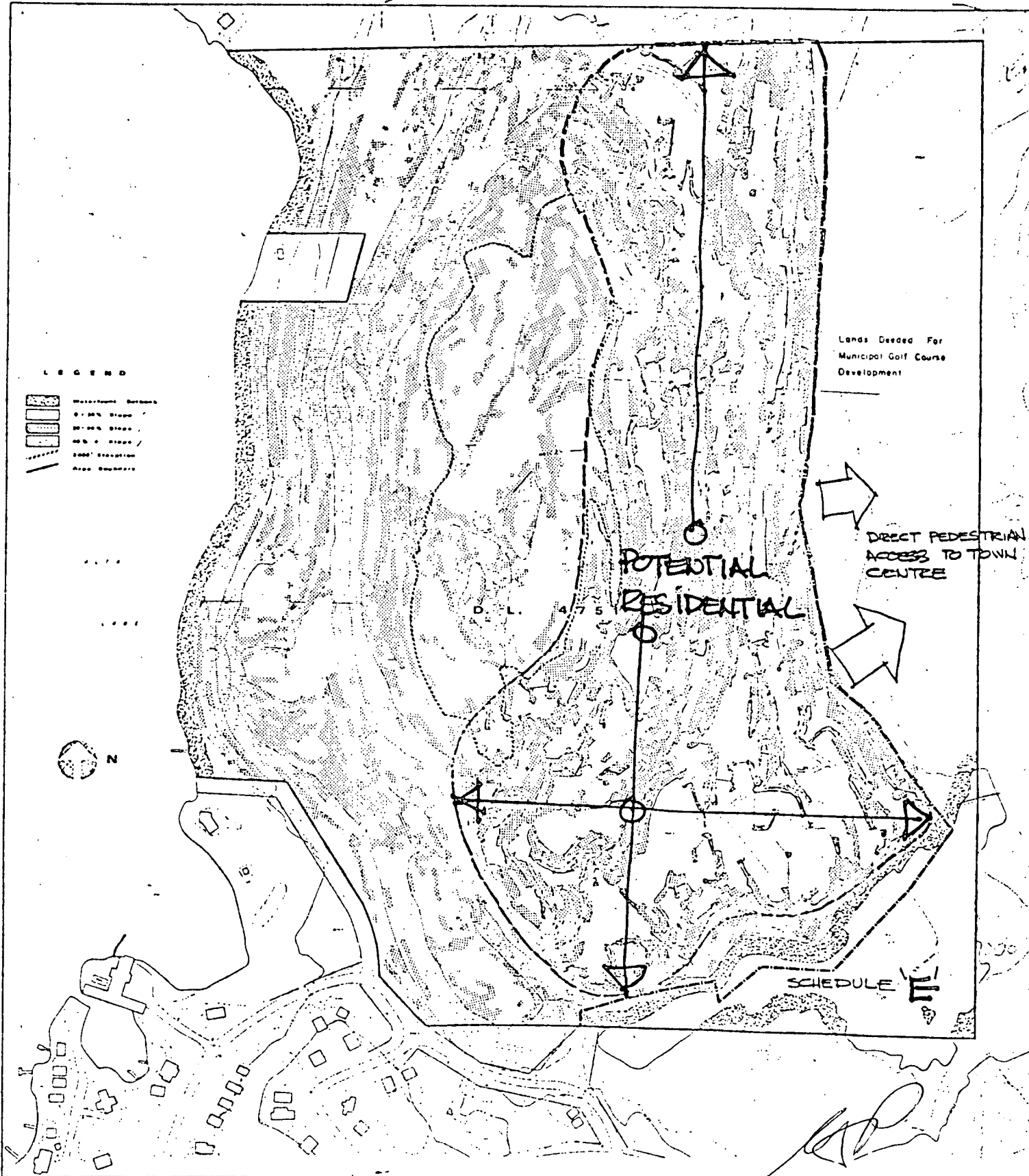
(b) for all ski lifts which have their loading area at an elevation of 3,000 feet above sea level or less then the formula in Subparagraph (a) hereof is



multiplied by .5; PROVIDED THAT, if Lift 4:14 as shown on Schedule "A" is constructed to include a loading platform between the upper and lower terminals thereof for the use of skiers as snow conditions permit, then the formula in Subparagraph (a) is multiplied by .75 for that Lift.

A handwritten signature or mark, possibly a stylized 'S' or 'L', located in the lower right quadrant of the page.

SCHEDULE "Z"



BOAK ALEXANDER ARCHITECTY
 601 West Cordova Street
 Vancouver, B.C.

BOAK ALEXANDER ARCHITECTY
 601 West Cordova Street
 Vancouver, B.C.

acosign
 WOODSIDE PARTICIPATION COMPANY
 P.O. Box 68
 Vancouver, B.C. V6M 1G9
 604-622-2076

Date: May, 1978
 Project: **GARIBALDI LIFT & LTD.**

Scale: 1" = 100'
 File Number: P17P
 Title: **Development Constraints Map**

DATED: 27 OCTOBER 1978

RESORT MUNICIPALITY
OF WHISTLER

-- "Municipality"
OF THE FIRST PART:

AND

GARIBALDI LIFTS LTD.

-- "Garibaldi"
OF THE SECOND PART

A G R E E M E N T

DOUGLAS, SYMES & BRISSENDEN
Barristers & Solicitors
16th FLOOR, 409 GRANVILLE ST.
VANCOUVER 2, B.C.
V6C 1V1



Province of
British Columbia

Ministry of
Municipal Affairs
~~and Housing~~
MUNICIPAL AFFAIRS

Parliament Buildings
Victoria
British Columbia
V8W 3E1

YOUR FILE.....

OUR FILE.....R01-36.....

January 5, 1979.

Mr. G. F. Pearce,
Clerk,
Resort Municipality of Whistler,
Box 35,
Whistler, B.C.
VON 1B0

Dear Mr. Pearce:

Returned herewith is one copy of By-law No. 107, cited as "Resort Municipality of Whistler Zoning By-law No. 9, 1975 Land Use Contract Approval By-law (Fortress Mountain Resorts Ltd.) By-law No. 107, 1978", duly approved by the Deputy Inspector of Municipalities pursuant to the provisions of section 5 of the Resort Municipality of Whistler Act.

Yours very truly,

Christopher L. Woodward,
Deputy Inspector of
Municipalities.

DS/mbr
Encl.