

Film

2520

G 2520

JAN 11 2 46 PM '79



CANADA

Certificate of Authenticity

Canada Business Corporations Act

Certificat d'authenticite

sur les corporations commerciales canadiennes

G 2520

FORTRESS MOUNTAIN RESORTS LTD.

77751-0

Name of Corporation Nom. de la corporation

Number-Numero

I hereby certify the within to be a true copy of the certificate of

Je certifie que la presente est une copie exacte du certificat d'(de)

Incorporation

incorporation

Continuance

continuation

Amendment

modification

Amalgamation

fusion

issued to the above corporation

accordé à la corporation mentionnee ci-dessus

[Signature]
Date: _____

January 4, 1979

RECEIVED
AUG 09 2011
RESORT MUNICIPALITY
OF WHISTLER

2520

**Certificate of Continuance****Canada Business
Corporations Act****Certificat de continuation****Loi sur les corporations
commerciales canadiennes****FORTRESS MOUNTAIN RESORTS LTD.**

Name of Corporation - Nom de la corporation

77751-0

Number - Numéro

I hereby certify that the above-mentioned Corporation was continued under Section 181 of the Canada Business Corporations Act as set out in the attached articles of Continuance.

Je certifie par les présentes que la corporation mentionnée ci-haut a été continuée en vertu de l'article 181 de la Loi sur les corporations commerciales canadiennes, tel qu'indiqué dans les statuts de continuation ci-joints.


Deputy Director - Directeur

November 21, 1978

Date of Continuance - Date de la continuation

CANADA BUSINESS
CORPORATIONS ACTLOI SUR LES CORPORATIONS
COMMERCIALES CANADIENNES

FORM 11

FORMULE 11

ARTICLES OF CONTINUANCE
(SECTION 181)STATUTS DE CONTINUATION
(ARTICLE 181)

1 - Name of Corporation	Nom de la corporation
FORTRESS MOUNTAIN RESORTS LTD.	
2 - The place in Canada where the registered office is to be situated	Lieu au Canada où doit être situé le siège social
300, 330 5th AVENUE S.W., CALGARY, ALBERTA, CANADA	
3 - The classes and any maximum number of shares that the corporation is authorized to issue	Catégories et tout nombre maximal d'actions que la corporation est autorisée à émettre
THE ANNEXED SCHEDULE 1 IS INCORPORATED IN THIS FORM	
4 - Restrictions if any on share transfers	Restrictions sur le transfert des actions s'il y a lieu
THE ANNEXED SCHEDULE 2 IS INCORPORATED IN THIS FORM	
5 - Number (or minimum and maximum number) of directors	Nombre (ou nombre minimum et maximum) d'administrateurs
THE MINIMUM NUMBER OF DIRECTORS IS FOUR & THE MAXIMUM NUMBER OF DIRECTORS IS NINE	
6 - Restrictions if any on businesses the corporation may carry on	Restrictions imposées quant aux entreprises que la corporation peut exploiter, s'il y a lieu
7 - Other provisions if any	Autres dispositions s'il y a lieu

Pre-emptive Right

It is hereby provided that no shares shall be issued unless the shares have first been offered to the Class A shareholders of the Corporation and those Class A shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of shares, at such price and on such terms as those shares are to be offered to others.

Lien on Shares

The Corporation has a lien on a share registered in the name of a shareholder or his legal representative for a debt of that shareholder to the Corporation, and such lien may be enforced in the manner from time to time provided for in the Corporation's By-Laws.

Date
October 27, 1978

Signature
[Handwritten Signature]

Description of Office - Description du poste
President

3011 PARTIAL... 1978

ATTESTE LE REGISTREUR

SCHEDULE 1

1. The Corporation is authorized to issue an unlimited number of Class A and Class B shares.

2. The Class A shares shall be entitled to vote at all meetings of the Shareholders except meetings at which only holders of a specified class of shares are entitled to vote. The Class A shares shall rank junior to the Class B shares and shall be subject in all respects to the rights, restrictions, conditions and limitations attaching to the Class B shares. Upon liquidation or dissolution the holders of the Class A shares shall share equally the remaining property of the Corporation.

3. The Directors may authorize the issue of one or more series of shares within the Class B class of shares and may fix the number of shares in each series, and determine the designation, dividend rights, privileges, restrictions and conditions attaching to the shares of each series. Upon the liquidation or winding-up of the Corporation, the holders of the Class B shares shall be entitled to repayment of the amount paid for such shares (plus any declared and unpaid dividends) in priority to the Class A shares, but they shall not be entitled to any further participation in profits or assets. The Class B shares shall be non-voting unless and until the Corporation, from time to time, shall fail to pay in the aggregate two yearly dividends on the Class B shares on the dates on which the same should be paid, whether or not consecutive and whether or not such dividends have been declared and whether or not there are any monies of the Corporation properly applicable to the payment of dividends. Thereafter each holder of a Class B share shall be entitled to receive notice of and to attend all meetings of the Corporation and shall be entitled at any and all such meetings to one vote for each class Class B share held and shall continue to be entitled to a notice, to attend and so to vote until such time as all arrears of dividends on all outstanding Class B shares shall have been paid whereupon the rights of the holders of Class B shares to receiving notice of meetings, to attend and to vote in respect of Class B shares shall cease unless and until two yearly dividends on the Class B shares shall again be in arrears and unpaid whereupon the holders of the Class B shares shall again have the right to receive notice and to vote as above provided and so on from time to time. The said Class B shares or any part thereof shall be redeemable at the option of the Corporation without the consent of the holders thereof at a price equal to the amount paid for such shares plus any declared and unpaid dividends.

4. All of the Class B shares shall, as a class, carry and be subject to the preferences, priorities, rights, limitations, conditions and restrictions hereinafter set forth in sub-paragraphs (a) to (j) of this paragraph:

- (a) Reference in these Articles to any class or series of shares ranking on a parity with another class or series of shares shall mean ranking on a parity with respect to payment of dividends and distribution of assets in the event of liquidation, dissolution or winding-up of the Corporation, whether voluntarily or involuntarily, to the extent of their respective rights in that connection.

2520

- (b) The shares of each series of Class B shares shall rank on a parity with the shares of every other series; provided, however, that when any fixed cumulative dividends or amounts payable on a return of capital are not paid in full in accordance with the respective terms of each series, the shares of all series shall rank on a parity and shall participate rateable in respect of such dividends, including all unpaid cumulative dividends (which for such purpose shall be calculated as if the same were accruing from day to day for the period from the expiration of the last period for which dividends shall have been paid up to and including the date of distribution) in accordance with the sums which would be payable on said shares if all such dividends were declared and paid in full in accordance with their respective terms and on any return of capital in accordance with the sums which would be payable on such return of capital if all such sums so payable were paid in full in accordance with their respective terms; and provided further that in the event there shall be insufficient assets to satisfy in full all such claims as aforesaid then the claims of the holders of said shares with respect to return of capital shall be paid and satisfied and any assets remaining thereafter shall be applied towards the payment and satisfaction of claims in respect of dividends as aforesaid.
- (c) The Class B shares shall be entitled to preference over the Class A shares of the Corporation and any other class of shares of the Corporation ranking junior to the said shares with respect to payment of dividends and distribution of assets in the event of liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, to the extent fixed in the case of each respective class and may also be given such other preference over the Class A shares of the Corporation and any other class of shares of the Corporation ranking junior to the said shares as may be fixed in the case of each such class.
- (d) Subject to the provisions relating to any particular series of the Class B shares theretofore issued and to the other provisions of this paragraph 4, shares of any series may be made subject to redemption and, or in the alternative, to purchase by the Corporation at such times and at such prices, not being in excess of 109% of the amount paid for such shares plus an amount equal to all unpaid accumulated dividends thereon (which for such purpose shall be calculated as if such dividends were accruing from day to day for the period from the expiration of the last period for which dividends shall have been paid up to and including the date of such redemption or purchase) plus in the case of purchase an amount equal to cost of purchase, the whole upon and subject to such other terms and conditions as may be specified in the rights, restrictions, conditions and limitations attaching to the shares of such series as set forth in any resolution relating to such series. Shares redeemed or purchased by the Corporation shall be cancelled and shall not be reissued.

2520

Shares of any series of the Class B shares shall not be redeemed nor shall any funds of the Corporation be applied in the purchase of shares in any series, whether through the operation of a share purchase fund or otherwise, unless at the time of such redemption or purchase all accumulated preferential dividends, if any, on all the shares outstanding ranking on a parity with, or in priority to, such series of shares so redeemed or purchased, shall have been declared and paid, or funds in respect thereof set apart for that purpose.

(f) The holders of the Class B shares shall not, as such, be entitled as of right to subscribe for or purchase or receive any part of any issue of shares or of bonds, debentures or other securities of the Corporation now or hereafter authorized.

(g) No class of shares may be created ranking as to capital or dividends prior to or on a parity with the Class B shares without the approval of the holders of the Class B shares given as specified in sub-paragraph (h) of this paragraph 4.

(h) If and so often as the holders of Class B shares shall become entitled to voting rights, they shall, notwithstanding any other provisions in that behalf in these Articles, so long as such voting rights subsist, at each annual general meeting of shareholders of the Corporation, have the exclusive right, voting separately and as a class to elect two of the members of the board of directors of the Corporation from among the holders of Class B shares, and the holders of other classes of shares of the Corporation shall have no voice in said particular election, provided always that the holders of Class B shares shall have no voice or vote in the election of the other directors of the Corporation. Nothing in this sub-paragraph (h) contained shall be deemed to limit the right of the Corporation from time to time to increase or decrease the number of its directors.

(i) The approval of the holders of the Class B shares, as a class, as to any matter requiring approval of the holder of the shares of such class, may be given by a special resolution of the holders of the Class B shares.

(j) Subject to the provisions of the Canada Business Corporations Act, the provisions of sub-paragraphs (a) to (i) hereof inclusive, and the provisions of this

(k) *[mirrored text]*

[mirrored text]

deemed to limit the right of the Corporation from time to time to increase or decrease the number of its

5 The Corporation hereby designates two million of its Class B shares as its 8% non-cumulative redeemable preferred shares Series B (sometimes herein referred to as "Class B Shares First Series") and that such shares shall carry and be subject to the preferences, rights, restrictions, conditions and limitations hereinafter set forth:

- (a) The holders of the Class B Shares First Series shall be entitled to receive in priority to the holders of Class A shares of the Corporation and any other shares ranking junior to the Class B shares, and the Corporation shall pay thereon, as and when declared by the Directors of the Corporation, out of any or all profits or surplus available for that purpose, fixed, non-cumulative, preferential cash dividends at the rate of eight (8%) per cent per annum on the amounts paid for such shares, payable yearly on the 30th day of June of each year. Such dividends shall accrue from such date or dates as may be determined by the directors in case no date be so determined, then from the date of allotment. The holders of the Class B Shares First Series shall not be entitled to any dividend other than or in excess of the non-cumulative dividend at the rate hereinbefore provided. Cheques of the Corporation payable at par at any branch of the Corporation's bankers for the time being in Canada shall be issued in respect of such dividends. The holders of the class B Shares First Series shall not be entitled to any dividends other than, or in excess of, the cash dividends hereinbefore provided for.
- (b) In the event of the liquidation, dissolution or winding-up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs the holders of the Class B Shares First Series shall be entitled to receive the amount paid up on such shares together with all accrued and unpaid preferential dividends thereon (which for such purpose shall be calculated as if such dividends were accruing for the period from the expiration of the last payment date for dividends up to the date of such distribution) before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any Class A shares or shares of any other class ranking junior to the Class B Shares. After payment to the holders of the Class B Shares First Series of the amount so payable to them, they shall not be entitled to share in any further distribution of the property or assets of the Corporation.
- (c) The holders of the Class B Shares First Series shall not be entitled as such (except as hereinafter specifically provided) to receive notice of or attend any meeting of the shareholders of the Corporation and shall not be entitled to any vote at any such meeting unless and until the Corporation from time to time

2520

shall fail to pay in the aggregate two (2) yearly dividends on the Class B Shares First Series on the dates on which the same should be paid whether or not consecutive and whether or not such dividends have been declared and whether or not there are any monies of the Corporation properly applicable to the payment of dividends. Thereafter each holder of Class B Shares First Series shall be entitled to receive notice of and to attend all meetings of shareholders and shall be entitled at any and all such meetings to as many votes as he holds Class B Shares First Series and shall continue to be entitled to notice, to attend and so to vote until such time as all arrears of dividends on all outstanding Class B Shares First Series shall have been paid whereupon the rights of holders of the Class B Shares First Series to receive notice of meetings, to attend and to vote in respect of such Class B Shares First Series shall cease unless and until two (2) yearly dividends on the Class B Shares First Series shall again be in arrears and unpaid whereupon the holders of the Class B Shares First Series shall again have the right to receive notice and to vote as above provided and so on from time to time.

(d) Subject to the provisions of the Canada Business Corporations Act, the Corporation may upon giving notice as hereinafter provided, redeem at any time the whole or from time to time any part of the then outstanding Class B Shares First Series pursuant to tenders received by the Corporation upon request for tenders addressed to all holders of Class B Shares First Series, upon payment for each Class B Share First Series to be redeemed an amount equal to the amount paid therefore, together with all accrued and unpaid dividends thereon (which for such purpose shall be calculated as if such dividends were accruing for the period from the last dividend payment date up to the date of such redemption). If, in response to an invitation for tenders, two (2) or more shareholders submit tenders at the same price and if such tenders are accepted by the Corporation in whole or in part, then, unless the Corporation accepts all such tenders in whole, the Corporation shall accept such tenders in proportion as nearly as may be to the number of shares offered in each such tender.

(e) In any case of redemption of Class B Shares First Series under the provisions of sub-paragraph (d) hereof, the Corporation shall at least sixty (60) days before the date specified for redemption, mail to each person who at the date of mailing is a registered holder of Class B Shares First Series to be redeemed, a notice in writing of the intention of the Corporation to redeem such class B Shares First Series; such notice shall be mailed in a prepaid registered letter addressed to each such shareholder at his address as it appears on the books of the

Corporation or in the event of the address of any such shareholder not so appearing then to the last address known to the Corporation of such shareholders; provided, however, that accidental failure or omission to give any such notice to one (1) or more of such holders shall not affect the validity of such redemption; such notice shall set out the redemption price, if offered, the date on which redemption is to take place and, if part only of the Class B Shares First Series held by the person to whom such notice is addressed is to be redeemed, the number thereof so to be redeemed; on and after the date so specified for redemption the Corporation shall pay or cause to be paid to or to the order of the registered holder of the Class B Shares First Series to be redeemed the redemption price on presentation and surrender at the head office of the Corporation or any other place designated in such notice the certificates representing the Class B Shares First Series so called for redemption; such payment shall be made by cheque payable at par at any branch of the Corporation's bankers for the time being in Canada; if part only of the Class B Shares First Series represented by any certificate shall be redeemed, a new certificate for the balance shall be issued at the expense of the Corporation; from and after the date specified for redemption in any such notice, the Class B Shares First Series called for redemption shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the redemption price shall not be made upon presentation and surrender of certificates in accordance with the foregoing provisions, in which case the rights of the holders shall remain unaffected the Corporation shall have the right at any time after the mailing of notice of its intention to redeem any Class B Shares First Series as aforesaid to deposit the redemption price of the Class B Shares First Series so called for redemption or of such of the said shares represented by certificates as have not at the date of such deposit been surrendered by the holders thereof in connection with such redemption to a special account in any chartered bank or any trust company in Canada named in such notice to be paid without interest to or to the order of the respective holders of such Class B Shares First Series called for redemption upon presentation and surrender to such bank or trust company of the certificates representing the same and upon such deposit being made or upon the date specified for redemption in such notice, whichever is the later, the Class B Shares First Series in respect whereof such deposit shall have been made shall be redeemed and the rights of the holders thereof after such deposit or such redemption date, as the case may be, shall be

limited to receiving without interest their proportionate part of the total redemption price so deposited against presentation and surrender of the said certificates held by them respectively; any interest allowed on any such deposit shall belong to the Corporation. Class B Shares First Series redeemed or deemed to be redeemed in accordance with any of the provisions hereof shall be and be deemed to be cancelled and shall not be re-issued.

2520

- (f) The Corporation shall not without but may from time to time with the approval of the holders of the Class B Shares First Series given as specified in sub-paragraph (j) hereof increase the authorized amount of Class B Shares First Series or create or issue any class of shares ranking in priority to the Class B Shares First Series.
- (g) The Corporation shall not without but may from time to time with the approval of the holders of the Class B Shares First Series given as specified in sub-paragraph (j) hereof:
- (i) declare or pay any dividends (other than stock dividends in shares of the Corporation ranking junior to the Class B Shares First Series) on any of its shares at any time outstanding and ranking junior to the Class B Shares First Series; or
 - (ii) redeem, purchase, reduce or otherwise pay off any of its shares at any time outstanding and ranking junior to the Class B Shares First Series (except out of the proceeds of an issue of shares ranking junior to the Class B Shares First Series).
- (h) The Corporation shall not declare, pay or set apart any dividend on the Class A shares or any other shares of the Corporation ranking junior to the Class B Shares First Series unless all dividends, up to and including the dividend payable on the last preceding dividend payment date, on all the Class B Shares First Series then issued and outstanding shall have been declared and provided for.
- (i) The provisions of sub-paragraphs (a) to (k) hereof inclusive may be repealed, altered, modified, amended or amplified by special resolution of the holders of the Class A shares but only with the approval of the holders of Class B Shares First Series given as hereinafter specified, in addition to any other approval required by the Canada Business Corporations Act.

2520

The approval of the holders of the Class B Shares First Series as to any and all matters referred to herein may be given by a special resolution of the holders of the Class B Shares First Series.

- (k) The Class A shares shall rank junior to the Class B Shares First Series and shall be subject in all respects to the rights, restrictions, conditions and limitations attaching to the Class B Shares First Series.

2520

SCHEDULE 2

RESTRICTIONS IF ANY ON SHARE TRANSFERS

- (a) The Corporation shall not make a distribution to the public of any of its securities; and
- (b) The number of shareholders is limited to twenty (20), not including persons who are in the employment of the Corporation and persons who, having been formerly in the employment of the Corporation, were, while in that employment, and have continued after the termination of that employment, to be shareholders of the Corporation, two or more persons holding one or more shares jointly being counted as a single shareholder; and
- (c) No shares of the capital of the Corporation shall be transferred without the sanction of a majority of the directors of the Corporation; and
- (d) The approval of all the Class A shareholders of all of the Corporation as evidenced by the unanimous resolution of such shareholders; or
- (e) The written consent of all the Class A shareholders of the Corporation as evidenced by an instrument in writing signed by all such shareholders.

3/3

SUBSTITUTE FOR FORM "C"

2520 JAN 11 1979 LAND USE CONTRACT

RESORT MUNICIPALITY OF WHISTLER

BYLAW NO. 107 G 2520

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.V.L. 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.

"Wm. (Pat) Carleton"
Wm (Pat) Carleton, Mayor

"G. F. Pearce"
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."

G.F. Pearce, Clerk/Treasurer

JAN 11 2 16 PM '79

8168 \$005.50

VANCOUVER

JAN 11 1979

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")

FORM G. LAND REGISTRY ACT
(SECTION 50)
MEMORANDUM OF REGISTRATION
REGISTERED

JAN 12 1979

On application received at the time
written or stamped on the application:
D. M. STURCH, REGISTRAR
VANCOUVER LAND REGISTRATION DISTRICT

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;

2520

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";

2520

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.

2520

"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.

2520

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

2520

- 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

2520

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

2520

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

2520

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

2520

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.

2520

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,

2520

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

2520

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

2520

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.

2520

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:

[Signature]
MAYOR
[Signature]
CLERK ADMINISTRATOR

(C/S)

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

[Signature]
DIRECTOR
[Signature]
DIRECTOR

(C/S)

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

[Signature]
GENERAL MANAGER

(C/S)

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

SCHEDULE "A"

Those lands and premises situate, lying and being²⁵²⁰
in the Resort Municipality of Whistler and being more particu-
larly described as:

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

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 ²⁵²⁰ PLAN REFERRED TO HEREIN PRESERVED AND HELD UNDER DOCUMENT NUMBER 62520

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.

2520

2. ZONE 2

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:

	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	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:

2520

<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);

2520

- (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.

2520

SCHEDULE C-1I. 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 I 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.

2520

SCHEDULE D
BLACKCOMB
 BRITISH COLUMBIA, CANADA

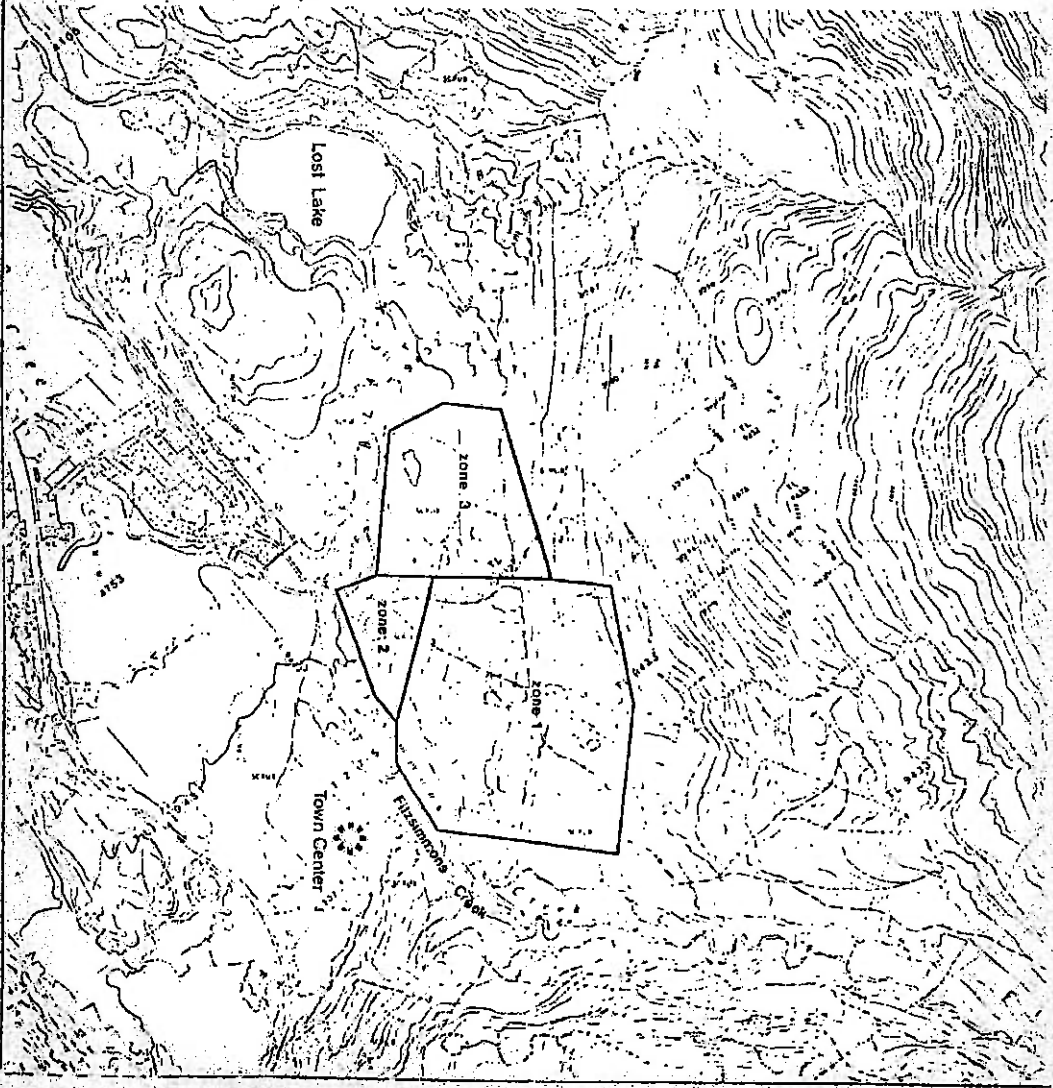
Developer:
 Fortress Mountain
 Resort Ltd.
 P.O. Box 7220
 Station E
 Calgary, Alberta
 T2C 3M1

Mapping:
 British Columbia
 Department of Lands

1/4 acre grid

0 100 200 300 400 500 meters
 0 100 200 300 feet

P122/08



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;

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.

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:

- 2 -

2520

- (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:

- 3 -

- (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

Number of SKIERS	=	Vertical height in feet	x	
		of the ski lift		
Hourly capacity of the ski lift	x	7 hours (being the agreed number of hours of operation per day for the ski lift)	x .9	
				10,000 feet

- 4 -

2520

- (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 "G"

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

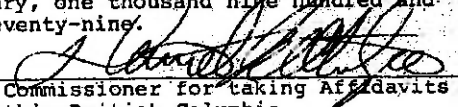
- (a) environmental issues including soils, geology, fish and wildlife, vegetation, and surface and ground water runoff to the extent that consideration of these environmental elements may be of general application within the Municipality;
- (b) the year-round destination resort concept for the Municipality;
- (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.

2520

ACKNOWLEDGMENT OF OFFICER OF CORPORATION

I HEREBY CERTIFY that, on the ~~10~~ day of January, 1979, at the City of Vancouver, in the Province of British Columbia, J. GARRY WATSON, who is personally known to me, appeared before me and acknowledged to me that he is a Director of WHISTLER VILLAGE LAND CO. LTD. and that he is the person who subscribed his name to the annexed instrument as Director of the said WHISTLER VILLAGE LAND CO. LTD. and affixed the seal of the said WHISTLER VILLAGE LAND CO. LTD. 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 ~~10~~ day of January, one thousand nine hundred and seventy-nine.

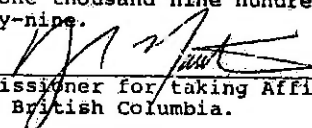

A Commissioner for taking Affidavits
within British Columbia.

2520

ACKNOWLEDGMENT OF OFFICER OF CORPORATION

I HEREBY CERTIFY that, on the ^{December} 12th day of ~~January~~, 1978, at the City of Vancouver, in the Province of British Columbia, Hugh Smythe, who is personally known to me, appeared before me and acknowledged to me that he is ^{the General} ~~Director~~ ^{Manager} of FORTRESS MOUNTAIN RESORTS LTD. and that he is the person who subscribed his name to the annexed instrument as ^{General Manager} ~~Director~~ of the said FORTRESS MOUNTAIN RESORTS LTD. and affixed the seal of the said FORTRESS MOUNTAIN RESORTS LTD. 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 11th day of January, one thousand nine hundred and seventy-nine.


A Commissioner for taking Affidavits
within British Columbia.