

- (i) the nature of the default reasonably requires more than 60 days to be remedied; and
 - (ii) the Developer commences remedying the default within the 60 day period; and
 - (iii) after that period pursues the remedying of the default to completion with diligence and continuity;
- (c) if an order is made, a resolution passed or a petition filed (unless the petition is defended in good faith by the Developer) for the liquidation or winding up of the Developer;
- (d) if the Developer is adjudicated insolvent or makes an assignment for the general benefit of its creditors, a person takes an action pursuant to the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against the Developer (unless the action or petition is defended in good faith by the Developer) or the Developer consents to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging the Developer bankrupt under any law relating to bankruptcy or insolvency;
- (e) if any execution, sequestration, extent or other process of any court becomes enforceable against the Developer (except in favour of an Approved Lender) or if a distress or analogous process is levied on its Interest or property (except in favour of an Approved Lender) and the Developer fails to defend such process in good faith;
- (f) if the Developer ceases to carry on business or to operate the Improvements in accordance with this Agreement;
- (g) if a Receiver is appointed to administer or carry on the business operations of the Developer other than the Receiver of an Approved Lender and such appointment continues for a period in excess of 30 days;
- (h) if the Developer does any act or thing or omits to do any act or thing that constitutes a default (and fails to remedy such default within any grace or cure period provided for) under any indenture, mortgage, deed of trust, bill of sale or other security instrument to which the Developer is a party or is bound in respect of financing provided to the Developer for its operations under or pursuant to this Agreement such that the holder of such security exercises its default remedies under such security and such exercise affects the Interest, except in respect of any security held by an Approved Lender;
- (i) if, without the prior consent of the Province:

- (i) a change in the control (as used in section 2(3) of the *Business Corporations Act*) of the Developer or a Shareholder occurs; or
 - (ii) any of the special conditions set out in Schedule "B" cease to be true and correct;
- (j) if the Developer fails to provide within a reasonable time, after receipt from the Province of a written request (which requests will not exceed one in each calendar year), a list containing the names of each Shareholder and setting out opposite the name of each Shareholder:
- (i) the number, class and shares held by the Shareholder in the Developer, and
 - (ii) the name, number and class of shares held by those persons holding issued shares in the authorized capital of that Shareholder;
- (k) if a representation of the Developer under this Agreement is or is proven to be untrue in any material way; or
- (l) if, without the consent of the Province, the Developer is amalgamated with another person other than a Related Party in accordance with section 16.01 or is reorganized other than with a Related Party in accordance with section 16.01;

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

- (a) pursue any remedy available to it at law or in equity, it being acknowledged by the Developer that specific performance, injunctive relief (mandatory or otherwise), or other equitable relief may be the only adequate remedy to cure an Event of Default;
- (b) take any action in its own name or in the name of the Developer that may be required to cure the Event of Default, in which case all payments, costs and expenses incurred by the Province will be payable by the Developer to the Province on demand as provided in section 14.03;
- (c) suspend on a permanent or interim basis, the rights of the Developer under this Agreement to acquire any further Tenures or any Crown Land;
- (d) terminate this Agreement and all Tenures held subject to this Agreement;
- (e) appoint a Receiver under section 15.03, subject only to the prior right of an Approved Lender to appoint a Receiver as set out in section 15.04; or

- (f) waive the Event of Default provided, however, that any waiver of an Event of Default will not operate as a waiver of any subsequent or continuing Event of Default.

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

- (a) the Receiver may enter upon any premises of the Developer and take possession of the Interest with power to exclude the Developer from the premises, to preserve, protect and maintain the Interest and make such replacements as the Receiver deems necessary, and to carry on the business and operations of the Developer, or any part of its business and operations, and in so doing may do any act or take any proceeding in the name of the Developer or otherwise as the Receiver may deem reasonably necessary;
- (b) the Receiver may, with the prior written consent of the Province, borrow money for the purpose of carrying on the business and operations of the Developer or for the maintenance of the Improvements and Access Routes or any of them or for any other purpose approved by the Province and any amount so borrowed, together with interest on it, will form a charge upon the Interest and the revenue derived from the business and operations of the Interest;
- (c) the Province may from time to time fix reasonable remuneration for the Receiver;
- (d) the Receiver will be deemed to be the agent of the Developer and the Province will in no way be held responsible for any misconduct or negligence of the Receiver and the Developer will indemnify and hold harmless the Province from and against any losses, damages, costs or liabilities arising from the acts or omissions of the Receiver as provided in section 14.03;
- (e) in exercising his powers under this section, the Receiver will not be held liable for any loss except to the extent that it is caused or contributed to by his own negligence or willful default;
- (f) amounts received by the Receiver will be applied as the Province in its sole discretion directs including:
 - (i) the remuneration of the Receiver;

- (ii) other costs and expenses including fees of solicitors and other advisors incurred by the Province in connection with the appointment of the Receiver or the Event of Default, or
- (iii) other sums due to the Province pursuant to this Agreement or the Tenures.

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

15.05 The Province will not refuse to provide its consent to a transaction which, if concluded without such consent, would be an Event of Default under section 15.01(i) if in the opinion of the Province the Developer will upon completion of that transaction have the financial capacity and proven management ability and business experience to develop, operate and maintain the Improvements and the Access Routes in accordance with accepted ski, golf or four season industry standards for similar developments in British Columbia, this Agreement and the Resort Master Plan.

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

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

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

ARTICLE XVI- TRANSFERS AND ENCUMBRANCES

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

- (a) the licencing or other grant to any person of any right to use or enjoy any Improvement or the Controlled Recreation Area or any portion thereof in the ordinary course of business of the Developer;
- (b) a contract with an Independent Operator pursuant to Article X; and
- (c) an amalgamation or other reorganization of the Developer with a Related Party without the prior written consent of the Province provided that prior written notice (together with copies of such documents as may be required by the Province) is given to the Province, and if the entity resulting from the reorganization would not otherwise be responsible in law for the obligations of the Developer, the resulting entity enters into an agreement or agreements satisfactory to the Province under which it assumes the obligations of the Developer under this Agreement and the Tenures;

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

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

- (a) if the proposed purchaser, assignee, transferee or holder of the Interest in the opinion of the Province does not have the financial capacity and proven management ability and business experience to develop, operate and maintain the Improvements, the Access Routes and the Controlled Recreation Area in accordance with the following:
 - (i) accepted industry standards for similar developments in British Columbia;
 - (ii) this Agreement and the Tenures; and
 - (iii) the Resort Master Plan,

- (b) if the proposed purchaser, assignee, transferee or holder of the Interest does not enter into an assumption agreement with the Province in accordance with section 16.03; or
- (c) if in the sole discretion of the Province where only a part of the Interest is to be sold, assigned, transferred or disposed of, the future viability of the Controlled Recreation Area will be prejudiced.

16.03 Following the consent by the Province under section 16.01 and the purchaser, assignee, transferee or holder of the Interest, as the case may be, executing an assumption agreement in a form satisfactory to the Province by which it agrees to be bound by all the terms, covenants, obligations and agreements contained in this Agreement and the Tenures, the Developer will be released by the Province from the same and any Security Deposit or Performance Deposit will be returned and any policy of insurance may be cancelled when the purchaser, assignee, transferee or holder of the Interest has provided the Province evidence of its compliance with the Security Deposit, Performance Deposit and insurance requirements of this Agreement.

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

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

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

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

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

ARTICLE XVII - SECURITY DEPOSIT AND PERFORMANCE DEPOSIT

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

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

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

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

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

of the construction to be undertaken has been completed. The balance of the Performance Deposit will be released 60 days after receipt by the Province of a

certificate stating that the Improvement or Access Route is in a state of Substantial Completion. The certificate shall be from the Professional Consultant under his or her professional seal or if the Professional Consultant is a planner, a certificate signed by the planner without a professional seal.

- 17.04 Unless the Province accepts some other form of security, the form of the Security Deposit or Performance Deposit must be an unconditional, irrevocable Letter of Credit issued by a financial institution approved by the Province and the form prescribed by the Province.
- 17.05 The Province may use the proceeds of a Security Deposit or a Performance Deposit for the payment of any costs and expenses incurred by the Province to cure or compel the Developer to cure any Event of Default that relates to the construction of Improvements or Access Routes in a Mountain Phase or to remedy any damage to the environment caused by such construction or by the activities of the Developer, its servants, agents, contractors or subcontractors, and for no other purpose. Any balance remaining after the payment of such costs and expenses will be paid to the Developer after all the Improvements in the Mountain Phase are in a state of Substantial Completion.
- 17.06 When all the Improvements and Access Routes in a Mountain Phase are in a state of Substantial Completion, the Province will (unless the parties otherwise agree) promptly return the Security Deposit and any Performance Deposit to the Developer less all sums drawn down by the Province to pay or provide for the payment of costs and expenses under section 17.05.

ARTICLE XVIII - REPLACEMENT

- 18.01 The Developer may, on or after the 30th Anniversary but not later than the 58th Anniversary, apply to the Province for a replacement of this Agreement and the Tenures for a replacement term of up to 60 years.
- 18.02 If there is no Event of Default outstanding, the Province will, not later than 180 days after an application is made under section 18.01, make a Replacement Offer to the Developer, in writing, setting out the terms and conditions of the offer, which offer will be consistent with the Policies then in effect.
- 18.03 The Developer will have a period of up to 1 year from the receipt of the Replacement Offer to accept such offer on the terms and conditions contained in it, provided that the Developer may discuss and negotiate the terms of any Replacement Offer with the Province during such period. The Developer may not accept any Replacement Offer after the 60th Anniversary.
- 18.04 If the Developer does not accept a Replacement Offer within the period of time specified in section 18.03, this Agreement and the Tenures will not be replaced

