DEVELOPMENT AGREEMENT

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH COLUMBIA

AND

TOD MOUNTAIN DEVELOPMENT LTD.

APRIL 13, 1993

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resort industry in British Columbia);

(k) "Beneficial Owners" means the beneficial owners of shares in the capital of Tod listed in Schedule "B";

(l) "Capital Budget", in reference to a Mountain Phase, means the capital budget for the construction of Recreation Improvements in that Mountain Phase;

(m) "Comptroller" means the comptroller of water rights as defined in the *Water Act;*

(n) "Construction and Completion Schedule" means a construction and completion schedule for the Recreation Improvements to be constructed in each Mountain Phase;

(o) "Controlled Recreation Area" means the area shown outlined in red on Schedule "A" except any land owned in fee simple by any person other than the Province;

(p) "Corresponding Base Area Phase", in reference to a Mountain Phase, means the Base Area Phase described in the Phasing Schedule that is included in the same Phase in the Phasing Schedule;

(q) "Corresponding Mountain Phase", in reference to a Base Area Phase, means the Mountain Phase described in the Phasing Schedule that is included in the same Phase in the Phasing Schedule;

(r) "Crown Land" means land in the Base Area that is owned by the Province;

(s) "Day Skier Facility" means any building that is, or will be, constructed on Crown Land that is designed to provide day use facilities for skiers and includes cafeteria/restaurant facilities, brown bag facilities, changing areas, sanitation facilities and holding facilities for injured skiers;

(t) "Engineer" means the engineer, planner or landscape architect appointed by Tod to supervise the construction of the Recreation Improvements and the development of the Base Area;

(u) "Event of Default" means an event referred to in section 11.01;

(v) "Fees" means the money payable to the Province under section 7.01;

(w) "Financial Information" means the audited financial statements for Tod for its financial period ending October 31, 1992;

THIS AGREEMENT dated for reference the 13th day of April, 1993,

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Environment, Lands and Parks, Parliament Buildings, Victoria, British Columbia V8V 1X4

(the "Province")

OF THE FIRST PART

AND

TOD MOUNTAIN DEVELOPMENT LTD., a company incorporated under the laws of Alberta and continued in British Columbia under the *Company Act* (Continuation No. C425875) having a business address in British Columbia at P.O. Box 869, Kamloops, British Columbia V2C 5M8

("Tod")

OF THE SECOND PART

WHEREAS

A. Tod operates a recreational ski development on land that is owned by the Province and has submitted a detailed master plan to the Province outlining its proposals for the future expansion of the development;

B. The Province has agreed to permit Tod to continue to carry on its operations and to carry out the expansion of its development on the terms and conditions contained in this Agreement.

ARTICLE I - DEFINITIONS

1.01 In this Agreement, unless the context otherwise requires

(a) "Access Routes" means the access required to be provided under section 4.03

and includes any other access required by Government Agencies in the Resort Area;

(b) "Affiliate" means a corporation that is affiliated with another corporation with the meaning of subsection 1.(2) of the *Company Act*;

(c) "Appraiser" means a person designated as an appraiser by the British Columbia Association Appraisal Institute of Canada;

(d) "Appraised Land Value" means, in reference to any parcel of land in the Base Area, the fair market value of such land as of the first day of the applicable period described in paragraph 13.02 (a) (ii), (iii) or (iv) when valued in accordance with its intended use regardless of any zoning then existing for such land, which value shall be determined by an Appraiser under Article XIII or by arbitration under Article XVII;

(e) "Appraised Recreation Improvement Value", in reference to a Recreation Improvement, means the fair market value of it as determined by an Appraiser under section 12.05 or by arbitration under Article XVII;

(f) "Arms Length Party" means any party, person, corporation, partnership, trust, fund, association or any other organized group of persons or the personal or other legal representative of any of them that is

(i) not a corporation that is an Affiliate of Tod,

(ii) not a person, corporation, partnership, trust, party, fund, association or any other organized group of persons or the personal or other legal representative of any of them to whom the context can apply according to law that an Associate ofTod or any of the Beneficial Owners or

(iii) designated in writing by the Province as an Arms Length Party;

(g) "Associate" has the meaning specified in subsection 1.(1) of the *Company Act*;

(h) "Base Area" means the area shown outlined in green in Schedule "A" except any part of that area that is Tod Titled Land;

(i) "Base Area Phase" means a phase of development of the Base Area in a Phase, as described in the Phasing Schedule;

(j) "Bed Unit" means public or private overnight accommodation for one person in the Base Area (which is also commonly referred to as a "pillow" in the ski

(x) "Financial Year" means the financial year of Tod commencing on May 1 of each year during the term of this Agreement and ending on April 30 in each subsequent year during the term of this Agreement provided that the first Financial Year shall commence on the reference date of this Agreement and end on April 30, 1993;

(y) "Government Agencies" means all ministries and agencies of the Province having jurisdiction over the development contemplated by this Agreement or charged by a statute of the Province with the regulation, control or supervision of the construction of improvements which ministries and agencies include the Comptroller, the Environmental Appeal Board established under the Environment Management Act, the approving officer appointed under the Land Title Act and the ministries of the Province having responsibility for lands, parks, highways, forests and the environment;

(z) "Gross Lift Revenue" means all the receipts or receivables of Tod or any other party for the right to use the Recreation Improvements or the Controlled Recreation Area and includes

(i) amounts paid by a user or other wholesale or retail purchaser for an hourly or day ticket, pass for a fixed period or season or other pass,

(ii) where the right to use the Recreation Improvements is included in a package, then if that package is

(A) sold to an Arms Length Party, that portion of the package price that represents the right to use the Recreation Improvements or the Controlled Recreation Area that is the receipt or the receivable of Tod; or

(B) not sold to an Arms Length Party, that portion of the package price that represents the right to use the Recreation Improvements or the Controlled Recreation Area based on customary charges for hourly or single day use, and

(iii) subsequent recoveries of receivables previously written off (which are to be included in the Financial Year in which they are recovered);

but does not include:

(i) any receipts or receivables of Tod or any other party for the right to use any Independent Recreation Facility in the Controlled Recreation Area,

(ii) uncollectable receivables written off by Tod in accordance with generally accepted accounting principles,

(iii) any receipts or receivables of Tod from ski lessons, ski repairs, ski rentals, food and beverage sales, retail sales, day care fees, hot tub fees, golf or golf related activities or enterprises, except to the extent that such receipts or receivables include the right to use a Lift or a Ski Trail, and

(iv) any provincial sales tax, goods and services tax under the *Excise Tax Act* (Canada) or any other tax paid to Tod by any person for the right to use the Recreation Improvements or the Controlled Recreation Area;

(aa) "Independent Recreation Facility" means any recreation facility open to the public that is not part of a hotel or condominium complex and includes swimming pools, gymnasiums, skating rinks, tennis and racquet courts, riding stables, golf courses, bicycle riding areas, playing fields, conference facilities, paved pathways, movie theatres, water parks, toboggan and sled runs and other similar and related recreation facilities;

(ab) "Independent Recreation Facility Base Lands" means the lands comprising part of the Base Area to be used for Independent Recreation Facilities, as specified in the Tod Master Plan;

(ac) "Interest" means the rights of Tod under this Agreement, the Tenures and the Interim Tenures and the business and operations of Tod in connection with this Agreement and the Tenures but does not include

(i) land held in fee simple by Tod,

(ii) any interest held by Tod in land outside of the Controlled Recreation Area and the Base Area, and

(iii) the business or operations of Tod carried on outside of the Controlled Recreation Area and the Base Area which is not part of the business and operations of Tod in connection with this Agreement, the Tenures and Interim Tenures;

(ad) "Interim Parking Facility" means any vehicular parking lot in the Resort Area that is intended by Tod to provide interim or temporary parking space for users of the Recreation Improvements until permanent Parking Facilities are built as contemplated in the Tod Master Plan;

(ae) "Interim Tenure" means a license issued under section 5.08;

(af) "Land Title Office" means the Kamloops Land Title Office;

(ag) "Lift" means a ski lift that has been or is to be constructed in accordance with the terms of this Agreement and includes

(i) all pylons, cables, gondolas, chairs and equipment used in connection with the ski lift,

(ii) the structure at either end of the ski lift that loads and unloads skiers and all machines and equipment used to drive the ski lift; and

(iii) any building that is used to house the mechanical or structural end of the ski lift;

(ah) "Maintenance Facility" means any facility constructed in the Resort Area on land other than Tod Titled Land for the purpose of housing, storing or maintaining equipment;

(ai) "Member" means a registered owner of shares in the capital of Tod or a Beneficial Owner;

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

(ak) "Mountain Phase" means a phase of development of the Recreation Improvements in a Phase as described in the Phasing Schedule;

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

(am) "Operating Agreement" means the agreement dated for reference the 26th day of September, 1985 between Tod and the Province;

(an) "Operating Season" means any time the Recreation Improvements and the Independent Recreation Facilities are operating and open to the public;

(ao) "Parking Facility" means any vehicular parking lot specified in the Tod Master Plan except any Interim Parking Facility in the Resort Area that is intended to provide parking space for the users of the Recreation Improvements;

(ap) "Percentage Fee" means the fee referred to in subsection 7.01 (c);

(aq) "Performance Bond" means the bond referred to in section 8.05;

(ar) "Phase" means a phase of development of the Base Area and the Recreation Improvements, and each Phase includes a Base Area Phase and a Mountain Phase, described in the Phasing Schedule;

(as) "Phasing Schedule" means the summary of phased development for the Resort Area set out in Schedule "D" and includes all maps, plans, summaries, interpretation notes and other documents referred to or contained in that schedule;

(at) "Preceding Mountain Phase" in reference to any Mountain Phase means the Mountain Phase shown in the Phasing Schedule contained in the Phase that immediately precedes such Mountain Phase;

(au) "Provincial Commercial Alpine Ski Policy" means the policy of the Province in effect, from time to time, relating to the development of commercial alpine ski areas;

(av) "Recreation Improvement" includes a Lift, Day Skier Facility, Maintenance Facility, Parking Facility, Ski Trail, Snowmaking Equipment and any other similar facility installed, constructed or erected in the Controlled Recreation Area and Independent Recreation Facilities located on a Tenure or Interim Tenure;

(aw) "Recreation Improvement Lease" means a lease, or any other arrangement with a third party, whereby a Recreation Improvement is constructed, erected or placed on the Controlled Recreation Area and, following such construction, erection or placement, Tod does not have title to or property in the Recreation Improvement;

(ax) "Regional Director" means the employee of the Province who, from time to time, holds the position of Regional Director, Thompson Okanagan Region, Ministry of Crown Lands or any other person designated by the Minister;

(ay) "Related Party" means any corporation whose issued shares are all owned by Tod or the Beneficial Owners;

(az) "Replacement Offer" means any replacement offer referred to in Article XV;

(ba) "Residential/Commercial Base Lands" means the land comprising part of the Base Area to be used for residential or commercial development, as specified in the Tod Master Plan;

(bb "Resort Area" means the land that comprises the Base Area and the Controlled Recreation Area;

(bc) "Security Bond" means the bond referred to in section 8.01;

(bd) "Ski Season" means the period commencing on November 1 in any one year and continuing for the next 195 days;

(be) "Ski Trail" means a cross-country ski trail, downhill ski run or hiking trail shown in or contemplated by the Tod Master Plan;

(bf) "Skier At One Time" means, in reference to a Lift or a Mountain Phase, the skier at one time capacity of that Lift or Mountain Phase, as applicable, based on the skier at one time formula described in Schedule "E";

(bg) "Snowmaking Equipment" means a system for the making of artificial snow and includes all equipment, pipes, fittings, fixed or tower mount guns, pumps and attachments necessarily incidental to that system but does not include any portable guns or flexible hoses that are not permanently affixed to the land;

(bh) "Subdivision Scheme" means a scheme of subdivision referred to in paragraph 13.04 (c) (i);

(bi) "Substantial Completion" means,

(i) in reference to a Recreation Improvement, the condition arrived at, as certified by the Engineer under his professional seal (except if the Engineer is a planner, then as certified in a certificate signed by the planner without a seal), when the construction of it has been completed in accordance with the design, plans and specifications for the Recreation Improvement and it is in a condition of presentable appearance and is ready for its intended use, with the exception of minor deficiencies that do not affect its appearance or impair its use,

(ii) in reference to a Mountain Phase, the condition arrived at when all of the Recreation Improvements in that Mountain Phase are in a state of Substantial Completion as specified in paragraph (i), and

(iii) in reference to the improvements contemplated in a Base Area Phase, the condition arrived at, as certified by the Engineer (except if the Engineer is a planner, then as certified in a certificate signed by the planner without a seal) under his professional seal, when the construction of the improvements has been completed and they are ready for their intended use, with the exception of minor deficiencies that do not impair their use;

(bj) "Tenure" means,

(i) for a Recreation Improvement other than a Lift, Snowmaking Equipment or Ski Trail, a lease substantially in the form set out in Schedule "F",

(ii) for a Lift or Snowmaking Equipment, a right of way substantially in the form set out in Schedule "G", and

(iii) for a Ski Trail or Access Route, a licence substantially in the form set out in Schedule "H";

(bk) "Tod Master Plan" means the document entitled "Tod Mountain Resort Master Plan" dated March 1, 1993 prepared by Ecosign Mountain Resort Planners Ltd. and includes any amendments made to it made under Article IX;

(bl) "Unimproved Controlled Recreation Area" means that part of the Controlled Recreation Area that is not included within a Tenure.

1.02 For the purpose of section 1.01, where Tod has not retained an Engineer to supervise the construction of a Recreation Improvement, the Substantial Completion of that Recreation Improvement that is required to be verified under this Agreement may be evidenced by,

(a) a certificate of the secretary of Tod verifying the matters otherwise required to be verified by the Engineer; and

(b) at the option of the Province, other evidence of Substantial Completion that it reasonably requires to verify that fact.

1.03 Wherever this Agreement provides that:

(a) the form or content of a document being tendered, an action being taken, or a review of something is to be satisfactory or acceptable to a party; or

(b) a decision or determination being made by a party is to be satisfactory or acceptable to a party;

then such party will act reasonably in deciding or determining whether the document, action or thing is satisfactory or acceptable, and such party will act reasonably in making such decision or determination; but where this Agreement states that the party has sole discretion to make a decision or determination, there will be no requirement to show reasonableness or that the party will act reasonably in making a decision or determination.

ARTICLE II - STATEMENT OF OBJECTIVES

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

2.02 In accordance with its policy, the Province has agreed to permit Tod to develop the Resort Area in phases, on the terms and conditions contained in this Agreement, by

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

(b) developing the Base Area to provide a balanced mix of commercial and residential accommodation that complements the utilization of the Recreation Improvements.

2.03 Subject to the provisions of this Agreement, it is contemplated that

(a) the Recreation Improvements will be constructed in Phases in accordance with the Tod Master Plan and the Phasing Schedule; and

(b) Tod will be entitled to purchase Crown Land from the Province, in Base Area Phases that correspond to particular Mountain Phases, to be developed in accordance with the land uses and densities specified in the Tod Master Plan.

ARTICLE III - REPRESENTATIONS OF TOD

3.01 Tod warrants and represents to the Province that as at the reference date of this Agreement:

(a) it is a corporation duly organized under the laws of Alberta and continued in the Province of British Columbia, it is a non-reporting company and it is in good standing with respect to the filing of returns in the office of the registrar of companies of British Columbia;

(b) it has all the corporate power, capacity and authority to enter into this Agreement and to carry out its obligations contemplated in this Agreement, all of which have been duly and validly authorized by all necessary corporate proceedings;

(c) it is a wholly owned subsidiary of Nippon Cable Co., Ltd., a corporation duly organized and existing under the laws of Japan ;

(d) the authorized capital of Tod is 1,000,000 Class A Common Shares with no par value, 10,000,000 Class B Common Shares with no par value, and 1,000,000 Preferred Shares with a par value of $1,000 each, of which 50,000 Class A Common Shares and 1,772 Preferred Shares are issued and outstanding, and there are no outstanding options or rights to subscribe for any of the unissued shares in the capital of Tod;

(e) the Beneficial Owners own shares in the capital of Tod in the amounts set opposite their respective names, free and clear of all liens, charges, options and encumbrances;

(f) its directors and officers are as follows:

Directors	Address
Masayoshi Ohkubo	3-1-4 Akanehama Narashino 275, Japan
Paul Mathews	5610 Westside Road Whistler, B. C. V0N 1B0
Donald Murray	Meadows Road Pemberton, B. C. V0N 2L0

Officers	Address
Masayoshi Ohkubo (President)	3-1-4 Akanehama Narashino 275, Japan
Paul Mathews (Secretary)	5610 Westside Road Whistler, B. C. V0N 1B0
Darcy Alexander (General Manager)	#5 - 2725 KLO Road Kelowna, B. C. V0H 1G0

(g) to the best of Tod's knowledge, the Financial Information was prepared in accordance with generally accepted accounting principles applied on a basis consistent with prior years, was true and correct in every particular on October 31, 1992 and reflects the results of its operations to that date;

(h) to the best of Tod's knowledge, since October 31, 1992, there has been no material adverse change to its financial condition or position and it has no liabilities, contingent or otherwise, that are not disclosed or reflected in the Financial Information, except those incurred in the ordinary course of business since October 31, 1992;

(i) it has good title to and possession of all of its assets, free and clear of all liens, charges or encumbrances, except those described in the Financial Information;

(j) it is not a party to or threatened with litigation that would materially affect its undertaking or financial condition and it has no knowledge of any such claim against it, except as specified in Schedule "C";

(k) since October 31, 1992

(i) it has not declared or paid any dividends of any kind,

(ii) it has not made any capital expenditure or commitment for that purpose, other than those shown in the Financial Information, and

(iii) it has not repaid any loans from any of its shareholders, either in whole or in part, or paid any interest thereon other than those shown in the Financial Information;

(l) to the best of its knowledge, it is not in breach of any statute, regulation or by-law applicable to it or its operations;

(m) to the best of its knowledge, it holds all permits, licences, consents and authorities issued by any federal, provincial, regional or municipal government or an agency of any of them, that are necessary in connection with its operations;

(n) the making of this Agreement, the completion of the transactions contemplated by this Agreement and the performance of and compliance with the terms of this Agreement does not conflict with or result in a breach of, or the acceleration of, any indebtedness under any term, provision or condition of, or constitute a default under, its memorandum or articles or any indenture, mortgage, deed of trust, agreement, lease, franchise, certificate, consent, permit, licence, authority or other instrument to which it is a party or is bound or any judgment, decree, order, rule or regulation of any court or administrative body by which it is bound or, to its knowledge, any statute or regulation applicable to it;

(o) to the best of its knowledge all of the information set out in the Tod Master Plan

(i) was compiled by qualified professional consultants and employees of Tod who have conducted all studies, investigations, testings and analyses and other reviews necessary for its preparation, and

(ii) is accurate and realistically demonstrates the feasibility of the development described in it;

(p) it has filed its income tax return for the fiscal year ending on April 30, 1992; and

(q) for the fiscal year ending April 30, 1992, it has filed all tax, corporate information and returns required to be filed by the laws of British Columbia and during the period starting May 1, 1992 has complied with all workers compensation legislation and other similar legislation to which it may be subject and has paid all taxes, fees and assessments calculated to be due by it under those laws from May 1, 1992 to the reference date of of this Agreement.

3.02 Tod acknowledges that

(a) it has inspected the Controlled Recreation Area and the Base Area;

(b) it is satisfied that the Controlled Recreation Area and the Base Area are suitable for its business purposes;

(c) it has made its own investigation of the economic feasibility of the development of the Controlled Recreation Area and the Base Area as set out in the Tod Master Plan;

(d) the Province has made no representation or warranty respecting the economic feasibility of the Tod Master Plan or any development contemplated by the Tod Master Plan; and

(e) there are no representations or warranties of the Province except as expressed in this Agreement.

3.03 The Province acknowledges that there are no representations or warranties of Tod except as expressed in this Agreement.

ARTICLE IV - MOUNTAIN PHASES AND CONSTRUCTION OF RECREATION IMPROVEMENTS

4.01 Tod will not construct any Recreation Improvements in a Mountain Phase

(a) until it has delivered to the Province

(i) a financial plan for the financing of the Capital Budget of that Mountain Phase,

(ii) applications under the *Land Act* for rights-of-way for all Lifts and Snowmaking Equipment to be constructed in that Mountain Phase together with a preliminary site plan for each of them,

(iii) applications under the *Land Act* for ground leases for each Recreation Improvement to be constructed in that Mountain Phase, other than a Lift, Snowmaking Equipment or Ski Trail, together with preliminary boundary plans for each of those Recreation Improvements,

(iv) applications under the *Land Act* for a license of occupation for all Ski Trails and Access Routes to be constructed in that Mountain Phase together with preliminary site plans and cutting and clearing plans, where cutting and clearing is required, for each of them,

(v) a Performance Bond, if it is required under section 8.05,

(vi) a Security Bond, and

(vii) a Construction and Completion Schedule for that Mountain Phase;

(b) unless

(i) the Recreation Improvements are shown or provided for in the Tod Master Plan and the relevant Phasing Schedule for that Mountain Phase,

(ii) following the construction, erection or placement of the Recreation Improvements, Tod will have exclusive title to and property in the Recreation Improvements,

(iii) all Recreation Improvements in a preceding Mountain Phase are in a state of Substantial Completion,

(iv) the Province has consented, such consent will not be unreasonably withheld or delayed, to the construction of each of the Recreation Improvements,

(v) Tod has applied for the appropriate Tenure for each of the Recreation Improvements, and

(c) that consist of a building, until it has delivered to the Province a copy of the conceptual plans for the building and the Province has approved them, such approval will not be unreasonably withheld or delayed so long as the conceptual plans are substantially in accordance with the Tod Master Plan and the proposed location of the building does not impede Access Routes to and from any Parking Facility or Lift.

4.02 Tod will, at its expense, construct the Recreation Improvements, or cause them to be constructed, in each Mountain Phase set out in the Phasing Schedule

(a) in compliance with the Tod Master Plan and this Agreement;

(b) in a good and workmanlike manner consistent with accepted industry standards for new and similar developments in British Columbia; and

(c) within the time frame for the completion of each of the Recreation Improvements in the relevant Mountain Phase as specified in the Construction and Completion Schedule (as amended from time to time with the agreement of Tod and the Province);

and Tod will provide all labour, materials and supplies required for the construction of each of the Recreation Improvements.

4.03 In each Mountain Phase, Tod will provide, or cause to be provided, Access Routes by way of

(a) a dedicated or gazetted road to each Parking Facility; and

(b) an easement or right-of-way for pedestrian foot paths from each Parking Facility to the terminus of a Lift, which must be at least 5 metres in width;

but if such Access Route is one which is shown in bold black on Schedule "L", Tod will not be required to pay for any Crown land required for such Access Route.

4.04 Tod must cause all Access Routes to be located in areas that are approved by the Province and where an Access Route, or any part of it, is located on land that is not owned by the Province, Tod will, at the request of the Province and at the expense of Tod, cause that land to be dedicated or conveyed to the Province free and clear of any liens, charges and encumbrances, except existing utility easements and rights-of-way.

4.05 Prior to the construction of any Parking Facility, Lift, Maintenance Facility, Snowmaking Equipment or Day Skier Facility on land that is not owned by the Province, Tod will, at its expense, cause that land to be conveyed to the Province free and clear of any liens, charges and encumbrances, except existing utility easements and rights-of-way.

4.06 Where Tod conveys land or causes land to be conveyed to the Province under section 4.04 or 4.05 and it applies for a Tenure of that land in accordance with Article V, the conveyance will be conditional upon the grant by the Province to Tod of the Tenure.

4.07 Tod will not construct any Ski Trails without the prior consent of the Province, which consent will not be unreasonably withheld or delayed so long as the design and location of the Ski Trails conform to the Tod Master Plan.

4.08 Land conveyed to the Province under this Article will be added to and form part of the Controlled Recreation Area.

ARTICLE V - FORMS OF TENURE - RECREATION IMPROVEMENTS AND ACCESS ROUTES

5.01 Not later than 12 months after the date of Substantial Completion of each Lift or Snowmaking Equipment that is constructed after the date of execution of this Agreement, Tod will apply to the Province for the appropriate Tenure for it and it will prepare a surveyed right-of-way plan that encompasses all of the land that is reasonably required for the operation and maintenance of the Lift or Snowmaking Equipment, provided that the right-of-way plan will not, without the prior consent of the Province, encompass a strip of land more than 15 metres in width lying between lines parallel to and situated not more than 7.5 metres from each side of the centre line of the Lift or Snowmaking Equipment for which the right-of-way plan is prepared.

5.02 Not later than 12 months after the date of Substantial Completion of each Recreation Improvement, other than a Lift, Snowmaking Equipment or Ski Trail that is constructed after the date of execution of this Agreement, Tod will apply to the Province for the appropriate Tenure for it and it will prepare a surveyed boundary plan that encompasses the land occupied by the Recreation Improvement for which the boundary plan is prepared and any land reasonably required for the intended use of that Recreation Improvement.

5.03 Tod will prepare the plans referred to in sections 5.01 and 5.02 in compliance with the standards of the Surveyor General and the instructions issued by him from time to time and will deliver two copies of each plan to the Regional Director for his acceptance.

5.04 Prior to commencing the construction of a Ski Trail or Access Route Tod will apply to the Province for the appropriate Tenure, which application will include a sketch plan showing the proposed location or general area of the Ski Trail or Access Route.

5.05 The term of each Tenure issued to Tod will commence on the date it is issued and will terminate on the expiration or earlier termination of this Agreement.

5.06 Subject to the *Land Act* and this Agreement, the Province will grant a Tenure to Tod under this Article upon the expiration of the later of:

(a) 30 days after the conditions precedent, if any, in the letter from the Province to Tod offering the Tenure to Tod have been met, which conditions precedent will not be inconsistent with the terms of this Agreement; or

(b) 120 days after the date upon which the earlier of the following occurs:

(i) Tod applied for the Tenure, or

(ii) the Regional Director accepted the survey plan under section 5.03.

5.07 The Tenures issued under this Article will, on the dates they are issued, supercede and replace all other rights, titles and interests in land previously granted by the Province to Tod and on and after those dates those rights, titles and interests and the instruments creating them will be void.

5.08 Prior to commencing construction of any Recreation Improvement or Access Route, Tod shall apply to the Province for a license substantially in the form set out in Schedule "H" to permit Tod to construct and use such Recreation Improvement or Access Route until a Tenure is issued for such Recreation Improvement or Access Route under section 5.06. If Tod is not in breach of its obligations under this Agreement, the Province will, subject to the *Land Act* and this Agreement, grant to Tod such a license without unreasonable delay.

5.09 Once an Interim Tenure is granted to Tod, the Province will provide Tod with its authorization to, in respect of that part of the Controlled Recreation Area on which the Recreation Improvement or Access Route is to be located:

(a) survey such part of the Controlled Recreation Area;

(b) apply to the Thompson-Nicola Regional District (or any successor body having jurisdiction) to zone or rezone such part of the Controlled Recreation Area;

(c) assist the Thompson-Nicola Regional District (or any successor body having jurisdiction) with the creation of an official community plan for such part or all of the Controlled Recreation Area; and

(d) apply to the Thompson-Nicola Regional District (or any successor body having jurisdiction) to amend an existing official community plan for such part or all of the Controlled Recration Area;

provided that Tod shall only exercise the rights set out in subsections (b), (c) and (d) if to do so would be consistent with the Tod Master Plan.

ARTICLE VI - COVENANTS OF TOD

6.01 Tod will

(a) observe, abide by and comply with all laws, by-laws, ordinances, regulations and enforceable orders and directions of any competent governmental authority, including a Government Agency, in any way affecting the Recreation Improvements, the use and occupation of the land on which they are situate and the operation of its business and it will indemnify and save the Province harmless from all loss, damage, cost or expense suffered by the Province by reason of the failure of Tod to do so;

(b) use all reasonable efforts to minimize the adverse environmental impact of the development contemplated by this Agreement and comply in all material respects with the environmental requirements set out in Schedule "I";

(c) operate the Recreation Improvements and Access Routes in accordance with generally accepted industry standards for similar developments in British Columbia and, without limiting the generality of the foregoing, comply with all of its operating covenants set out in Schedule "J";

(d) provide all management and technical expertise necessary for it to carry out its obligations under this Agreement;

(e) take out or cause to be taken out and keep or cause to be kept in force at all times, the following policies of insurance:

   (i) fire insurance and extended coverage supplemental risks contract on all Recreation Improvements in an amount not less than 100% of their full replacement cost,

   (ii) comprehensive public liability insurance in respect of claims for personal injury, death or property damage arising out of any one occurrence in the Controlled Recreation Area to an amount not less than $5,000,000 which amount must be adjusted from time to time in keeping with the amounts customarily carried by prudent operators of similar ski areas in Canada, and which policy may permit a reasonable deductable amount having due regard to the net worth from time to time of Tod, and

   (iii) such other insurance as would be maintained by a prudent operator of a ski area in Canada including policies of insurance to cover the risk, if any, associated with the operation of a motor vehicle or aircraft, including helicopters;

(f) cause each policy of insurance required to be maintained by it

(i) to name the Province as a named insured under the policy,

(ii) to prohibit the insurer from exercising any rights of subrogation against the Province, and

(iii) to afford protection to the Province in respect of cross-liability between the Province and Tod and to provide that the coverage under the policy will not be cancelled, or any provisions of it changed or deleted, unless 30 days prior written notice is given to the Province by the insurer;

(g) apply all proceeds of the insurance referred to in paragraph 6.01 (e) (i) to the repair or rebuilding of Recreation Improvements damaged or destroyed by the hazard insured against and cause that policy of insurance to provide that the proceeds will be paid to Tod, or its creditors holding security over the Recreation Improvements, as their interests appear, and when received by Tod or its creditors holding security over the Recreation Improvements, to be held in trust for Tod and the Province, together with any interest that may accrue thereon, to be dealt with in accordance with this covenant;

(h) provide to the Province, from time to time upon request, proof that all premiums under the policies required to be maintained by Tod have been paid and that they are in full force and effect and contain the terms required by this Article;

(i) pay when due all taxes, rates, assessments, levies or other dues now or hereafter charged or levied against the land comprised in the Tenures and all Recreation Improvements constructed or installed on that land and all other taxes, rates and assessments payable by Tod under any federal or provincial statute including the *Income Tax Act* (Canada) and the *Workers Compensation Act*;

(j) pay interest to the Province on Fees in arrears at the rate of interest prescribed from time to time under the *Land Act* in respect of money payable to the Province under that Act;

(k) indemnify and save the Province harmless against all loss, damage, costs and liabilities, including fees of solicitors and other professional advisors, arising out of

(i) any breach, violation or non-performance of any covenant, term or condition contained in this Agreement or in a Tenure,

(ii) any personal injury, death or property damage occurring in the Controlled Recreation Area, or

(iii) the activities carried out by Tod in the Controlled Recreation Area including any matter or thing permitted or omitted by Tod, its servants, agents, contractors or subcontractors, whether negligent or otherwise,

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

(l) pay all accounts and expenses as they become due for labour performed on or materials supplied for the Recreation Improvements, save and except for money that Tod is required to hold back under the *Builders' Lien Act*, and if any claim of lien is made under that Act, Tod will take all necessary steps to have the lien discharged unless the claim of lien is being contested in good faith by Tod and Tod has taken steps to ensure that the claim will not subject any of the Tenures or the Recreation Improvements to sale or forfeiture;

(m) unless otherwise agreed to by the Province, procure from each of its creditors holding security over the Recreation Improvements an agreement with the Province that the insurance proceeds under the policies referred to in paragraph 6.01 (e) (i) will be dealt with in accordance with subsection 6.01 (g) notwithstanding any default under that creditor's mortgage;

(n) not construct, erect, build or place any improvements in the Controlled Recreation Area or expand any Recreation Improvement without the prior written consent of the Province and then only in a manner that complies with the terms and conditions set out in the written consent; and

(o) not commit or suffer any willful or voluntary waste, spoil or destruction on the land comprising the Controlled Recreation Area without the prior written consent of the Province or do or suffer to be done anything that may be or become a nuisance or annoyance to the owners or occupiers of adjoining land.

ARTICLE VII - FEES

7.01 In consideration of the development rights granted under this Agreement and as rental for the Tenures, Tod will pay to the Province

(a) an initial fee of $100 for each Tenure, payable in advance on the date of issuance of the Tenure;

(b) a fee in an amount of $12,000.00 payable in advance on January 1, 1994 and thereafter during each subsequent Financial Year a fee equal to 1% of the Gross Lift Revenue of Tod during its last completed Financial Year payable on each subsequent January 1 during the term of this Agreement; and

(c) a Percentage Fee of 2.0%, or such other percentage determined in accordance with section 7.02, of the Gross Lift Revenue of Tod calculated in respect of each Financial Year less the fee referred to in subsection (b).

7.02 The percentage of the Percentage Fee will be reviewed by the Province on December 1, 1993 and on each 5th anniversary of that date and the Province may, at each review, increase or decrease the percentage by an amount that does not exceed 1/2% of Gross Lift Revenue provided, however, that the increase in the percentage may not cause the Percentage Fee to be an amount greater than the amount charged by the Province under the Provincial Commercial Alpine Ski Policy.

7.03 Not later than 120 days after the end of each Financial Year, Tod will deliver to the Province a detailed statement of Gross Lift Revenue for that Financial Year in accordance with the operating covenants set out in Schedule "J", together with payment of the Percentage Fee as required by section 7.01.

7.04 Tod will give notice in writing to the Province of its Financial Year end and any changes to that date and no fiscal year of Tod will exceed 12 months.

7.05 Upon reasonable notice and at reasonable times, the Province may inspect and take copies of and cause an audit to be taken by an independent auditor of the books and records of Tod as they pertain to Gross Lift Revenue.

7.06 In the event that an audit taken under section 7.05 in accordance with generally accepted auditing standards reveals that Tod has materially understated its Gross Lift Revenue for a Financial Year, Tod will immediately pay to the Province the cost of that audit together with all outstanding Fees.

7.07 The Fees are in addition to the fees provided in the *Land Act* or regulations under that Act in effect from time to time in respect of processing applications for the Tenures and issuing them.

7.08 If the percentage of the Percentage Fee is changed as a result of the review conducted by the Province on December 1, 1993, such change will be retroactive to November 1, 1993.

7.09 Notwithstanding any other provision of this Agreement, if the Tod Master Plan is amended to provide for the construction or operation of any commercial facility (including a hotel, restaurant, bar, cafeteria, cafe or any other form of accommodation or food or beverage facility) on land located outside the Base Area but in the Controlled Recreation Area that is not specified in the Tod Master Plan on the reference date of this Agreement; then the disposition, transfer or other alienation of such land from the Province to Tod will be subject to the terms of the Provincial Commercial Alpine Ski Policy in effect at the time of such disposition, transfer or other alienation.

ARTICLE VIII - SECURITY BOND AND PERFORMANCE BOND

8.01 The security required to be delivered to the Province under paragraph 4.01 (a) (vi) will be

(a) in the amount of $50,000; and

(b) in the form of an unconditional letter of credit issued by a Canadian chartered bank, or in any other form acceptable to the Province, that will remain in effect until the Mountain Phase, in respect of which it is given, is in a state of Substantial Completion.

8.02 The Province may use the Security Bond given by Tod with respect to any Mountain Phase for the payment of all costs and expenses incurred by the Province to cure or compel Tod to cure any Event of Default that relates to the construction of Recreation Improvements for that Mountain Phase or to remedy any damage to the environment caused by the construction or by the activities of Tod, its servants, agents, contractors or subcontractors.

8.03 When the Recreation Improvements in a Mountain Phase are in a state of Substantial Completion, the Province will return the Security Bond to Tod less all sums drawn down by the Province to pay or provide for the payment of costs and expenses under section 8.02.

8.04 Where the Province draws down money under the Security Bond under section 8.02, Tod will, within 30 days of that event, deliver another Security Bond to the Province in an amount equal to the amount drawn down by the Province under section 8.02.

8.05 Subject to section 8.08, Tod will, at the request of the Province, post a Performance Bond in the form of an unconditional irrevocable letter of credit issued by a Canadian chartered bank or a Japanese Prime Bank with an office in British Columbia, or in any other form acceptable to the Province, that will remain in effect until the relevant Recreation Improvement in a Mountain Phase, in respect of which it is given, is in a state of Substantial Completion and the Performance Bond will be in an amount equal to 100% of the cost specified in the relevant Capital Budget to bring such Recreation Improvement to a state of Substantial Completion and it may be called and drawn down if Tod fails to construct the Recreation Improvement for which the security is given to a state of Substantial Completion.

8.06 A Performance Bond may provide partial releases as follows:

(a) by an amount equal to 25% on receipt by the Province of a certificate from the Engineer under his or her professional seal, or if the Engineer is a planner or landscape architect, a certificate signed by him or her without a professional seal, stating that 25% of the work to be undertaken by the contract has been completed or is in place;

(b) by an amount equal to 25% on receipt by the Province of a certificate from the Engineer under his or her professional seal, or if the Engineer is a planner or landscape architect, a certificate signed by him or her without a professional seal, stating that 50% of the work to be undertaken by the contract has been completed or is in place;

(c) by an amount equal to 25% on receipt by the Province of a certificate from the Engineer under his or her professional seal, or if the Engineer is a planner or landscape architect, a certificate signed by him or her without a professional seal, stating that 75% of the work to be undertaken by the contract has been completed or is in place; and

(d) the balance in 60 days after receipt by the Province of a certificate of the Engineer under his professional seal, or if the Engineer is a planner or landscape architect, a certificate signed by him or her without a professional seal, stating that the work to be undertaken by the contract is in a state of Substantial Completion.

8.07 An unconditional irrevocable letter of credit posted as a Performance Bond must include the following provision:

> This Letter of Credit shall be deemed to be automatically extended on an annual basis without any formal amendment unless thirty days prior to the present expiry or any future expiry date as automatically extended the financial institution has notified the Province in writing that the financial institution elects not to extend the Letter of Credit for any further period and at the same time forwards to the Province together with such written notice of election a bank draft payable to the Minister of Finance and Corporate Relations in the amount presently outstanding under the Letter of Credit less any amount previously paid under the Letter of Credit.

8.08 Notwithstanding section 8.05, the Province may only request Tod to post a Performance Bond in respect of Recreation Improvements in a Mountain Phase if the Recreation Improvements specified in the Tod Master Plan for such Mountain Phase are not in a state of Substantial Completion at the time when the Province conveys fee simple ownership of any parcel of land in the Base Area to Tod in the Corresponding Base Area Phase.

ARTICLE IX - MODIFICATIONS TO TOD MASTER PLAN

9.01 Tod will, in consultation with the Province, when required, but in any event at least every 5 years, review and re-evaluate the Tod Master Plan and the Phasing Schedule and in conducting that review and re-evaluation it will take into account any changes in technology in the industry or in the requirements of the public.

9.02 Where, on the basis of a review under section 9.01, Tod considers that the Tod Master Plan, the Phasing Schedule, or any part of either of them, should be altered, it will submit the proposed alteration to the Province for its approval.

9.03 A proposal under section 9.02 must be in writing and must be accompanied by maps, schedules and other documents that show conceptually and in detail the alterations being recommended and the impact of them on the existing Tod Master Plan and the Phasing Schedule.

9.04 A change or alteration to the Tod Master Plan or the Phasing Schedule that does not

(a) require the Province to discharge a restrictive covenant or condition referred to in subsection 13.05 (b) or section 13.08;

(b) reduce the Skier At One Time of any Lift or Ski Trail;

(c) increase the number of Bed Units to be constructed in a Base Area; and

(d) alter the Phasing Schedule other than to advance or delay the date on which a Mountain Phase or a Base Area Phase is to be constructed provided that when any Base Area Phase is to be constructed, the Corresponding Mountain Phase must be in a state of Substantial Completion or the construction of the Recreation Improvements in the Corresponding Mountain Phase has commenced and a Performance Bond has been posted for those Recreation Improvements then under construction,

will not constitute a change to the Tod Master Plan or the Phasing Schedule that requires the consent of the Province but Tod must give written notice of those changes to the Province.

9.05 The Province will not unreasonably refuse to approve an alteration under this Article, but the Province may, in its discretion, refuse to approve an alteration under this Article if it would

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

(b) conflict with the Provincial Commercial Alpine Ski Policy.

ARTICLE X - EXISTING RECREATION IMPROVEMENTS AND ACCESS ROUTES

10.01 Not later than 6 months after the date of execution of this Agreement, Tod must deliver the following to the Province:

(a) an application for a Tenure for each Lift or Snowmaking Equipment that exists on the date of execution of this Agreement, together with a surveyed right-of-way plan of each of them prepared in accordance with Article V;

(b) an application for a Tenure for each Recreation Improvement, other than a Lift, Snowmaking Equipment or Ski Trail that exists on the date of execution of this Agreement, together with a surveyed boundary plan of each of them prepared in accordance with Article V;

(c) an application for a Tenure for each Ski Trail or Access Route that exists on the date of execution of this Agreement, together with a sketch plan showing their location or the general area in which they are located; and

(d) all other information or documentation that the Province may reasonably require under its land administration policy and procedure, as that policy exists from time to time, to grant the Tenures applied for under this Article.

10.02 Not later than 120 days after the receipt of the material referred to in section 10.01 the Province will grant to Tod the Tenures for which it has applied.

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

ARTICLE XI - EVENTS OF DEFAULT

11.01 The Province may exercise its remedies under section 11.02 on the happening of any one or more of the following events:

(a) if Tod fails to pay Fees when due and the default continues for a period of 30 days after written notice has been given by the Province to Tod specifying the default and requiring the same to be remedied;

(b) if Tod fails to observe or perform or keep any of its covenants or obligations under this Agreement, other than its covenants to pay Fees, or any Tenure or Interim Tenure granted under this Agreement and the default continues for a period of 60 days after written notice has been given by the Province to Tod specifying the default and requiring the same to be remedied, or if the nature of the default reasonably requires more than 60 days to be remedied and Tod commences remedying the default within the 60 day period but fails to complete with diligence and continuity the remedying of the default;

(c) if an order is made, a resolution passed or a petition is filed for the liquidation or winding up of Tod;

(d) if Tod becomes insolvent or makes an assignment for the general benefit of its creditors, commits an act which would entitle a person to take action pursuant to the *Bankruptcy Act* (Canada) or if a bankruptcy petition is filed or presented against Tod or Tod consents to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging Tod bankrupt under any law relating to bankruptcy or insolvency;

(e) if any execution, sequestration, extent or other process of any court becomes enforceable against Tod or if a distress or analogous process is levied on its Interest or property or Tod fails to defend such process in good faith while having posted adequate security to pay the full amount claimed in the event the claim is valid and such act would, in the reasonable opinion of the Province, materially affect the covenants of Tod and the interest of the Province under this Agreement;

(f) if Tod ceases to carry on its business or to operate the Recreation Improvements in accordance with this Agreement;

(g) if a receiver or receiver-manager is appointed to administer or carry on Tod's business operations;

(h) if Tod does any act or thing or omits to do any act or thing that constitutes a material default (and fails to remedy such default within any grace period provided for)under any indenture, mortgage, deed of trust, bill of sale or other security instrument to which it is a party or is bound;

(i) if, without the consent of the Province, Tod sells or offers for sale any unissued shares in its capital or any rights to purchase unissued shares in its capital;

(j) if Tod fails to provide yearly, after receipt from the Province of a written request in each instance, a list containing the names of each and every Member of Tod and setting out opposite the name of each member the number and class of the shares held by that member and, if the member is a corporation or partnership, the list must include the name of each member of the corporation or partner of the partnership, as the case may be;

(k) if a representation of Tod under section 3.0l is or is proven to be materially untrue;

(l) if, without the consent of the Province, Tod is amalgamated with another company other than with a Related Party or is reorganized other than with a Related Party;

(m) if, without the consent of the Province, Tod directly or indirectly enters into a partnership or co-ownership agreement other than with a Related Party whereby the other party to that agreement acquires an interest in a Recreation Improvement or if Tod sells an interest in a Recreation Improvement to any person, firm or corporation other than to a Related Party;

(n) if, without the consent of the Province, Tod enters into any Recreation Improvement Lease; or

(o) if, without the consent of the Province, a Member sells, pledges, assigns, mortgages or otherwise disposes of his shares in the capital of Tod other than to a Related Party or enters into an agreement so to do other than with a Related Party.

11.02 On the happening of an Event of Default or at any time thereafter, the Province may do any one or more of the following:

(a) pursue any remedy available to it at law or in equity, it being acknowledged by Tod 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 Tod that may reasonably be required to cure the Event of Default in which case all payments, costs and expenses incurred by the Province will be payable by Tod to the Province on demand;

(c) suspend the rights of Tod under this Agreement to acquire any further Tenures, Interim Tenures or any Crown Land;

(d) terminate this Agreement and all Tenures and Interim Tenures granted under this Agreement;

(e) appoint a receiver or receiver-manager under section 11.03; 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.

11.03 On the happening of an Event of Default or at any time thereafter, the Province may by instrument in writing appoint a receiver or receiver-manager of the Interest, or any part of it, and may remove the receiver or receiver-manager so appointed and appoint another in his stead and the following provisions will take effect:

(a) the receiver or receiver-manager may take possession of the Interest of Tod and carry on its business and operations, or any part of its business and operations, and in so doing he may do any act or take any proceeding in the name of Tod or otherwise as he may deem necessary;

(b) the receiver or receiver-manager may, with the prior written consent of the Province, borrow money for the purpose of carrying on the business and operations of Tod or for the maintenance of the Recreation 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 or receiver-manager and direct the payment of that remuneration out of the revenue derived from the business and operations of the Interest;

(d) so far as the responsibility for the acts of the receiver or receiver-manager is concerned, he will be deemed to be the agent of Tod and the Province will in no way be held responsible for any misconduct or negligence of the receiver or receiver-manager and Tod will indemnify and hold harmless the Province from any liability for the acts or omissions of the receiver or receiver-manager; and

(e) in exercising his powers under this section, the receiver or receiver-manager will not be held liable for any loss unless it is caused by his own negligence or wilful default.

11.04 If a mortgagee approved pursuant to Article XIV appoints a receiver or receiver-manager of any part of the Interest, then so long as that receiver or receiver-manager continues to be appointed, the Province will remove any receiver or receiver-manager appointed by it under section 11.03 and it will not appoint any receiver or receiver-manager except the one appointed by the mortgagee.

ARTICLE XII - DISPOSITION OF RECREATION IMPROVEMENTS

12.01 All Recreation Improvements constructed on Tenures and Interim Tenures, except for Moveable Recreation Improvements, are and will remain vested absolutely in the Province.

12.02 Tod will not, without the prior written consent of the Province, which consent will not be unreasonably withheld, remove any Moveable Recreation Improvement during the term of this Agreement except for the purpose of repair or replacement of it in accordance with Tod's normal maintenance program or the Tod Master Plan.

12.03 On the expiration or earlier termination of this Agreement, all Recreation Improvements will vest in and become the property of the Province absolutely as fixtures, except those of which the Province elects not to retain ownership which election must be made by written notice from the Province to Tod and if that election is made Tod may, within two years of the date of the expiration or earlier termination of this Agreement, remove the Recreation Improvement described in the notice.

12.04 Where Tod removes a Recreation Improvement described in a notice given under section 12.03, it will leave the surface of the land in a safe, clean and tidy condition satisfactory to the Regional Director.

12.05 If this Agreement is terminated by the Province under section 11.02, the fair market value of the Recreation Improvement will be determined by an independent Appraiser acceptable to the parties who will determine the amount that a purchaser in an arms length transaction would pay for them and the right to operate them on a going concern basis in their then existing condition and location on the basis that they would be situate on Tenures having a maximum term of years permitted under the Provincial Commercial Alpine Ski Policy at the rents and fees specified in that policy for those Tenures and the cost of the appraisal will be borne equally by the parties.

12.06 Not later than 30 days after the Appraised Recreation Improvement Value of the Recreation Improvements has been determined under section 12.05, the Province will, by way of public tender, solicit offers for the right to purchase and operate the Recreation Improvements in their then existing condition for the maximum term of years permitted under the Provincial Commercial Alpine Ski Policy and on the terms and conditions consistent with that policy.

12.07 If the Province wishes to accept an offer solicited under this Article and the bid price specified in it for the Recreation Improvements and the right to operate them is, in the aggregate, less than the Appraised Recreation Improvement Value of them, the Province will, on the closing of the purchase and sale contemplated by the offer, pay to Tod an amount equal to the difference between the Appraised Recreation Improvement Value of them and the bid price for the Recreation Improvements that was specified in the offer and, if the bid price is to be paid to the Province over time, the value of the bid price will be the net present value of the bid price calculated by using a discount rate equal to the yield, expressed as a percentage, on ninety-one day treasury bills fixed and announced by the Bank of Canada at the weekly tendering immediately preceding the date on which the offer is accepted calculated yearly from the time any monies are to be received.

12.08 Section 12.07 does not apply where Tod consents in writing to the acceptance of an offer by the Province for the right to operate the Recreation Improvements at an amount less than their Appraised Recreation Improvement Value.

12.09 If the Province elects not to accept any offer made as a result of the solicitation under section 12.06, the Province will, within 12 months after the closing of tenders, make a second solicitation for offers for the right to operate the Recreation Improvements in their then existing condition over the maximum term of years permitted under the Provincial Commercial Alpine Ski Policy and on the terms and conditions consistent with that policy.

12.10 Sections 12.07 and 12.08 apply in respect of offers made in response to a solicitation made under section 12.09.

12.11 If the Province elects not to accept an offer made in response to a solicitation under section 12.09, Tod will remove all Lifts and buildings from the Tenures, except for the concrete footings of the Lift towers, and it will leave the surface of the Tenures in a safe, clean and tidy condition satisfactory to the Regional Director.

12.12 Where the Province accepts an offer made in response to a solicitation under this Article, it will pay to Tod an amount equal to the amount bid for the Recreation Improvements on the same terms and conditions and at the times that the Province is to be paid for them.

12.13 If the Province fails to comply with sections 12.06 to 12.12 inclusive, Tod will be entitled to solicit offers for the purchase of the Recreation Improvements and the right to operate them in their then existing condition over the maximum term of years permitted under the Provincial Commercial Alpine Ski Policy and the Province will accept and agree to an offer presented by Tod under this section.

12.14 Notwithstanding any other provision of this Article, the Province will not be entitled to reject any offer to purchase and operate the Recreation Improvements if the price specified in the offer is equal to or greater than the Appraised Recreation Improvement Value.

ARTICLE XIII - BASE AREA DEVELOPMENT

13.01 So long as Tod is not in default under this Agreement, a Tenure or an Interim Tenure, Tod or a Related party, as the case may be, will be entitled to purchase Crown Land from the Province, in phases, for development in accordance with the land uses, densities and design criteria contemplated in the Tod Master Plan on the terms and conditions contained in this Article.

13.02 The purchase price for a parcel of Crown Land

(a) to be used as Residential/Commercial Base Lands will be

(i) for the period beginning on the reference date of this Agreement and ending on April 13, 2003, an amount equal to $12,355.00 per hectare ($5,000.00 per acre),

(ii) for period beginning on April 14, 2003 and ending on April 13, 2008, 5% of the Appraised Land Value, (Serviced to lot line)

(iii) for the period beginning on April 14, 2008 and ending on April 13, 2013, 10% of the Appraised Land Value,

(iv) for the period beginning on April 14, 2013 and ending on April 13, 2018, 15% of the Appraised Land Value, and

(v) for the period beginning April 14, 2018 to the end of the term of this Agreement, an amount to be fixed by the Province in accordance with the Provincial Commercial Alpine Ski Policy then in effect;

(b) to be used as Independent Recreation Facility Base Lands will be $6,177.50 per hectare ($2,500.00 acre) during the term of this Agreement;

and for the purpose of this section, the purchase price for a parcel of Crown Land will be calculated by the Province on a date that is not more than 180 days after an application to purchase that parcel of Crown Land is submitted by Tod or a Related Party, as the case may be, provided that at the time the application is received, Tod or a Related Party, as the case may be, has satisfied the requirements of section 13.03 and subsections 13.04 (a), 13.04 (b) and 13.04 (c) and provided further that, notwithstanding the size of any parcel of Crown Land, in no circumstance will the purchase price for any parcel of Crown Land be less than $10,000.00 and provided finally that Tod will not be required to pay for any Crown Land which is shown in bold black on Schedule "L" (as it may be amended from time to time by Tod and the Province).

13.03 Tod or a Related Party may, from time to time, apply under the *Land Act* for a fee simple grant of Crown Land in the consecutive phases shown in the Phasing Schedule and its application for the Crown Land in a Base Area Phase will

(a) identify only those parcels that are necessary for the development of that Base Area Phase but Tod may designate parcels of land in the Base Area for residential, commercial and recreational buildings and facilities contemplated in the Tod Master Plan and purchase such parcels of land individually or collectively during that Base Area Phase from time to time provided Tod shall purchase not less than all of each such parcel of land and the minimum purchase price for a parcel of land will not be less than $10,000.00 and provided in respect of Residential/Commercial Base Lands Tod has earned Bed Units under the Phasing Schedule equal to or greater than the number of Bed Units in any residential or commercial building contemplated for a parcel of land;

(b) identify those parcels of land on which an Independent Recreation Facility is to be constructed and describe the nature of it;

(c) be accompanied by evidence, in the form of a certificate of the Engineer satisfactory to the Province, that

(i) that the Recreation Improvements in the Preceding Mountain Phase, if any, are in a state of Substantial Completion, and

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

and if the Corresponding Mountain Phase is not in a state of Substantial Completion, the Province may require a Performance Bond under Article VIII for each Recreation Improvement then under construction in that Corresponding Mountain Phase.

13.04 In addition to the conditions set out in section 16.09, the obligation of the Province to sell Crown Land in any Base Area Phase to Tod or a Related Party is subject to the following conditions:

(a) the Crown Land in any previous Base Area Phase purchased by Tod from the Province is serviced to within 10 metres of a point on the lot line of each parcel of land for development in accordance with the Tod Master Plan;

(b) Tod or a Related Party, as the case may be, has delivered to the Province the certificate, and, if applicable, the Performance Bond, both as contemplated by paragraph 13.03;

(c) Tod or a Related party, as the case may be, has delivered to the Province

(i) a proposed scheme of subdivision for the land in the Base Area Phase, by way of a proposed subdivision plan under the *Land Title Act* or a proposed strata plan under the *Condominium Act*, that complies with the uses and densities contemplated for that land in the Tod Master Plan and that shows the number of Bed Units to be allocated to each parcel of land within that Base Area Phase (provided that the number of Bed Units allocated to the parcel of land for which application has been made does not exceed the number of Bed Units earned by Tod at the time of the application),

(ii) a description of and preliminary site plan for all services and utilities required to be developed in the Base Area Phase,

(iii) all other information reasonably required by the Province, including all information required by the Province in order to determine whether the development proposed by Tod or a Related Party, as the case may be, is contemplated by and is in accordance with the Tod Master Plan,

(iv) written confirmation from the Thompson Nicola Regional District stating that it has approved the uses and densities contemplated in the Subdivision Scheme, and

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

(d) the purchase price for the parcel of the Crown Land has been determined; and

(e) Tod or a Related Party, as the case may be, has paid the purchase price for the parcel of the Crown Land in full, together with all fees charged by the Province under the *Land Act* for processing and issuing a Crown grant of that Crown Land;

and the Province will reasonably co-operate with Tod or a Related Party, as the case may be, in its efforts to meet the above conditions; and if the above conditions have been met, then the Province will:

(f) execute all documents and do all things necessary to transfer as soon as possible (but in any event not more than 90 days after fulfillment of the requirements in paragraphs (a), (b), (c) and (d) above) title to the relevant Crown Land to Tod or a Related Party, as the case may be, so Tod or a Related Party, as the case may be, becomes the registered owner thereof; and

(g) provide Tod or a Related Party, as the case may be, with its authorization to

(i) undertake surveys of the Crown Land included in the application under section 13.03,

(ii) apply to the appropriate Government Agency for preliminary subdivision approvals of the Crown Land included in the application under section 13.03,

(iii) assist the Thompson-Nicola Regional District (or any successor body having jurisdiction) with the creation of an official community plan for the Crown Land included in the application under section 13.03, and

(iv) apply to the Thompson-Nicola Regional District (or any successor body having jurisdiction) to amend an existing official community plan for the Crown Land included in the application under section 13.03.

13.05 The instrument conveying Crown Land to Tod or a Related Party, as the case may be, under this Article will

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

(b) where the Crown Land is Residential/Commercial Base Land, contain restrictive covenants in forms satisfactory to the Province prohibiting

(i) the land described in it from being subdivided except by way of a subdivision plan or strata plan that has been approved in writing by the Province, and

(ii) the construction of any buildings on the land described in it except buildings for which the conceptual plans have been approved in writing by the Province;

(c) where the Crown Land is Independent Recreation Facility Base Land, contain conditions that the fee simple estate is conveyed on the conditions that the land described in it is:

(i) used for the purpose of constructing, maintaining and operating the

Independent Recreation Facility, and

(ii) not to be subdivided; and

(d) be subject to

(i) any conditional or final water licence or substituted water licence issued or given under the *Water Act* or under any prior or subsequent enactment of the Province of British Columbia of like effect, and to the rights of the holder of it to enter on the land and to maintain, repair and operate any works permitted on the land under that licence,

(ii) the rights of holders or owners of subsisting claims, two post claims or other interests in or that affect the land acquired or held under the *Mineral Tenure Act* or under any prior or subsequent enactment of the Province of British Columbia of like effect,

(iii) the rights of holders or owners under subsisting licences or permits issued under the *Petroleum and Natural Gas Act*, *Mineral Tenure Act* or under any prior or subsequent enactment of the Province of British Columbia of like effect, to enter on, use and occupy the Crown Land for any purpose authorized by those Acts or the licence, permit or other authority issued under them or any prior or subsequent enactment of the Province of British Columbia of like effect, and

(iv) any statutory right-of-way that burdens the Crown Land.

13.06 The restrictive covenants referred to in subsection 13.05 (b) and the rights of re-entry in 13.05 (c) will be registered as charges in the Land Title Office and Tod or a Related Party, as the case may be, consents to those registrations.

13.07 The Province will, within 180 days after delivery, approve:

(a) a subdivision plan or strata plan under section 13.04 so long as that plan conforms to the Subdivision Scheme for that Base Area Phase and it has been approved by the appropriate Government Agency for deposit in the Land Title Office; or

(b) conceptual plans under paragraph 13.05 (b) (ii) so long as they meet the use, density and design criteria referred to in the Tod Master Plan and the proposed location of the building does not impair an Access Route.

13.08 Tod or a Related Party, as the case may be, will execute and deliver to the Province all instruments and assurances that may be necessary to implement the provisions of subsections 13.05 (b) and 13.05 (c) and the Province may require the execution of a separate document in reasonable form to create the restrictive covenants referred to in subsection 13.05 (b).

13.09 The Province will commission an Appraiser to determine the Appraised Land Value within 90 days of receipt of an application under section 13.03 from Tod or a Related Party, as the case may be, during any of the periods described in paragraphs 13.02 (a) (ii), (iii) and (iv) and the Province will set the terms of reference for such appraisal in accordance with guidelines of the Appraisal Institute of Canada, after providing Tod with a reasonable opportunity to review and comment on such terms of reference.

13.10 If the parties do not agree as to the Appraised Land Value after receipt and review of an appraisal commissioned by the Province under section 13.09, either party may refer the determination of the Appraised Land Value to arbitration under Article XVII.

ARTICLE XIV - TRANSFERS AND ENCUMBRANCES

14.01 Tod will not sell, assign, transfer or otherwise dispose of its Interest, in whole or in part, without the prior written consent of the Province.

14.02 The Province will not unreasonably refuse to consent to a sale, assignment, transfer or disposition under section 14.01 so long as the purchaser, assignee, transferee or holder of Tod's Interest in the opinion of the Province reasonably arrived at, has the financial capacity and proven management ability and business experience to develop, operate and maintain the Recreation Improvements in accordance with accepted industry standards for similar developments in British Columbia, this Agreement and the Tod Development Plan and the purchaser, assignee or transferee enters into an assumption agreement with the Province in accordance with section 14.03.

14.03 Following the consent by the Province to a sale, assignment, transfer or disposition under section 14.01 and the purchaser, assignee, transferee or holder of Tod's Interest, as the case may be, executing an assumption agreement, in a form satisfactory to the Province, by which they agree to be bound by all the terms, covenants, obligations and agreements contained in this Agreement Tod will be released by the Province from same and any Security Bond or Performance Bond will be returned and any policy of insurance may be cancelled on replacement Security Bonds, Performance Bonds and policies of insurance being provided by the purchaser, assignee, transferee or holder of Tod's Interest.

14.04 Tod will not mortgage, pledge, charge or otherwise encumber its Interest without the written consent of the Province, which consent the Province will not unreasonably refuse to give so long as the party to whom the Interest or any part of it is mortgaged, pledged, charged or otherwise encumbered, will be bound by the terms and conditions of this Agreement and the Tenures and, in exercising its remedies, will have no greater rights than Tod.

ARTICLE XV - REPLACEMENT

15.01 Tod may, between the 20th and 21st, the 29th and 30th, the 39th and 40th, and the 49th and 50th anniversaries of the reference date of this Agreement apply to the Province for a replacement of this Agreement, the Tenures and the Interim Tenures for a replacement term of not less than 30 years.

15.02 So long as Tod is not in default under this Agreement, the Tenures and the Interim Tenures, the Province will, not later than 180 days after an application under section 15.01, make a Replacement Offer to Tod, in writing, setting out the terms and conditions of the offer, which offer will be consistent with the then in effect Provincial Commercial Alpine Ski Policy.

15.03 Tod will have a period of 3 years from the receipt of the Replacement Offer to accept such offer on the terms and conditions contained in it, provided that Tod may discuss and negotiate the terms of any Replacement Offer with the Province during such period but Tod may not accept any Replacement Offer after the 50th anniversary of the reference date of this Agreement.

15.04 If Tod does not accept a Replacement Offer within the 3 year period specified in section 15.03, this Agreement, the Tenures and the Interim Tenures will not be replaced and will continue in full force and effect pursuant to the terms and conditions herein and therein unless Tod makes another application under section 15.01 to the Province to replace this Agreement, the Tenures and the Interim Tenures, and Tod accepts a Replacement Offer made pursuant to that application.

15.05 If this Agreement, the Tenures and the Interim Tenures have not been replaced prior to the 50th anniversary of the reference date of this Agreement, the Province will be at liberty to enter into an arrangement with any other person for the right to operate the Recreation Improvements and develop the Base Area but in so doing the Province will not, for a period of five years after the date of the expiration of this Agreement, enter into an agreement with, or grant Tenures to, any person on terms and conditions more favourable than those specified in the Replacement Offer without first offering a replacement of this Agreement, the Tenures and the Interim Tenures to Tod on those terms and conditions.

15.06 An agreement entered into by the Province with another person under section 15.05 will not, so far as it relates to the use and development of Recreation Improvements and the purchase and development of the Base Area, come into force until the expiration or earlier termination of this Agreement.

ARTICLE XVI - MISCELLANEOUS

16.01 Tod and the Province will perform such further acts and execute all documents that may be required from time to time to give effect to the intent of this Agreement.

16.02 If any term, covenant or condition of this Agreement or the application of it to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement or the application of that term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable, will not be affected and each term, covenant or condition of this Agreement will be valid and enforced to the fullest extent permitted by law.

16.03 Nothing in this Agreement constitutes Tod the agent, joint venturer or partner of the Province or gives Tod any authority or power to bind the Province in any way.

16.04 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, laws, ordinances, rules, regulations or orders of governmental authorities, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond the reasonable control of Tod, other than natural reasons, Tod is delayed in performing any of its obligations under this Agreement, then the time for completion or performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as

(a) Tod gives written notice to the Province within 30 days after the commencement of the delay setting forth the nature of it and an estimated time frame for the performance of the obligation and, if necessary, a revised Construction and Completion Schedule; and

(b) Tod diligently attempts to remove the delay.

16.05 For the purpose of section 16.04, the inability of Tod to obtain financing or the funds necessary for the construction of a Recreation Improvement is not a cause beyond the reasonable control of Tod.

16.06 Nothing in this Agreement constitutes an obligation, express or implied, of the Province to use public funds for the construction or maintenance of any part of the development contemplated by this Agreement.

16.07 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to the Province

Ministry of Environment, Lands and Parks
Thompson-Okanagan Regional Office
478 St. Paul Street
Kamloops, British Columbia
V2C 2J6;

to Tod

Tod Mountain Development Ltd.
P. O. Box 869
Kamloops, British Columbia
V2C 5M8

or at such other address as the other may from time to time direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing except in the case of mail interruption in which case actual receipt is required.

16.08 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where such equipment and information is available and known to the party to facilitate the transmittal, be provided but nothing within this section and specifically the lack of delivery of a fascimile copy of any notice will abbrogate from the deemed delivery as provided in section 16.07.

16.09 The obligation of the Province to sell Crown Land to Tod where the Crown Land is located within a provincial forest is subject to the Crown Land being removed from the provincial forest under the *Forest Act* and the Ministry of Environment, Lands and Parks (or any successor ministry) will assist Tod in making the necessary applications for removal of the Crown Land from the provincial forest.

16.10 To the extent necessary, the terms, covenants and obligations contained in this Agreement will survive the expiration or earlier termination of this Agreement.

16.11 The rights and interests of Tod in the Controlled Recreation Area which are granted by this Agreement are subject to the rights and interests listed in Schedule "K".

16.12 The Province reserves the right to grant other dispositions of the land comprising the Controlled Recreation Area, or any part of it, with the prior consent of Tod, which consent will not be unreasonably withheld, by way of easement, right of way or statutory right of way to a Crown corporation or agency, a municipality or regional district or a public utility company and, upon such consent being given, Tod will forthwith execute and deliver to the Province such instrument as may be required to subordinate Tod's rights and interests in the Controlled Recreation Area granted by this Agreement.

16.13 For the purposes of section 16.12, Tod will be deemed to have reasonably withheld its consent if a grant to be made under that section would:

(a) materially affect Tod's exercise of any of its rights under this Agreement;

(b) be incompatible or in competition with Tod's use of or business in and on the Controlled Recreation Area; or

(c) reasonably have adverse financial implications on Tod's operations under this Agreement.

16.14 Tod acknowledges and agrees that it will make no claim for compensation, in any form, in respect of a grant made under section 16.12 where Tod has consented, or unreasonably withheld its consent, to such grant.

ARTICLE XVII - ARBITRATION

17.01 In the event a dispute arises between the parties concerning

(a) whether or not a Replacement Offer made by the Province to Tod under Article XV is consistent with the Provincial Commercial Alpine Ski Policy; or

(b) the amount of the Appraised Recreation Improvement Value of a Recreation Improvement under Article XII; or

(c) the amount of the Appraised Land Value of a parcel of Crown Land;

all such disputes shall be referred to and be finally resolved by arbitration under the Rule of the British Columbia International Arbitration Centre (the "BCIAC"). The arbitration shall be conducted before one arbitrator appointed in accordance with the BCIAC Rules, and shall be administered in accordance with the Procedures for Cases Under the BCIAC Rules. The costs of the arbitration shall be paid as determined by the arbitrator. The arbitration shall be conducted at the offices of the Ministry of Environment, Lands and Parks (or any successor ministry) in Kamloops, British Columbia, and if there is no office of the Ministry of Environment, Lands and Parks (or any successor ministry) in Kamloops, British Columbia, then the offices of the Ministry of Environment, Lands and Parks (or any successor ministry) that is closest to Kamloops. The arbitration shall be governed by the laws of the Province of British Columbia.

ARTICLE XVIII - INTERPRETATION

18.01 In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.

18.02 The headings of Articles are inserted for convenience of reference only and are not to be construed as forming part of this Agreement.

18.03 This Agreement will be interpreted according to the laws of the Province of British Columbia.

18.04 Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect, and, unless the context otherwise requires, all statutes referred to in this Agreement are enactments of the Province of British Columbia.

18.05 If any section of this Agreement or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and they will be enforceable to the fullest extent permitted by law.

18.06 This Agreement constitutes the entire agreement between the Province and Tod and may not be modified except as provided in this Agreement or by subsequent agreement in writing.

18.07 The terms and conditions of this Agreement will extend to, be binding upon and enure to the benefit of the parties, their successors and permitted assigns.

ARTICLE XIX - CONTROLLED RECREATION AREA

19.01 Subject to this Agreement, the *Forest Act*, and the *Land Act*, the Province, in order to ensure the safe and orderly use of the Controlled Recreation Area by all persons, grants to Tod, during each Ski Season, the exclusive right to control the Controlled Recreation Area for the sole purpose of ensuring its safe and orderly use by all persons, without charge by Tod, including the right, privilege and authority to

(a) establish and delineate a ski area boundary within the Controlled Recreation Area and to designate that boundary by notices, posted signs, fences or otherwise;

(b) control, regulate, prohibit and direct the movement and activities of skiers and all other persons within the Controlled Recreation Area, except the servants and agents of the Province, upon such terms and conditions as Tod may reasonably determine in its discretion;

(c) regulate and prohibit the access and entry of all persons to the Controlled Recreation Area upon such terms and conditions as Tod may reasonably determine in its discretion;

(d) evict persons from the Controlled Recreation Area;

(e) regulate and prohibit the use and movement of vehicles of any nature whatsoever within the Controlled Recreation Area and at all times and upon such terms and conditions as Tod may reasonably determine in its discretion; and

(f) regulate the landing of aircraft within the Controlled Recreation Area upon such terms and conditions as Tod may determine in its discretion.

19.02 Tod will use reasonable efforts during each Ski Season to ensure that skiers and other persons permitted to use the Controlled Recreation Area do not

(a) enter into areas within the Controlled Recreation Area that are, in Tod's opinion, unsafe due to existing or potential hazards; or

(b) carry on activities within the Controlled Recreation Area that are prohibited under the *Forest Act* or the *Land Act*;

provided, however, that this section will not impose upon Tod any obligation to make safe any area or areas within the Controlled Recreation Area or to remove any existing hazards within that area or areas, except to the extent that it is required to do so under its operating covenants set out in Schedule "J" or as an occupier under the *Occupiers' Liability Act*.

19.03 Tod's duty of care to persons entering the Controlled Recreation Area and its liability arising from its use, occupation and control of the Controlled Recreation Area will not exceed that of an occupier under the *Occupiers' Liability Act*.

19.04 Subject to section 19.01, Tod will not unreasonably impede any person from passing freely and without charge over or through the Unimproved Controlled Recreation Area provided, however, that Tod may place reasonable restrictions on the activities of any person and his vehicle, if any, that are consistent with the use and management of a four season resort area.

19.05 The boundaries of the Controlled Recreation Area may from time to time be amended by the Province provided such boundary changes are consistent with the Tod Master Plan and any changes or alterations to the Tod Master Plan under Article IX, it being understood by Tod and the Province that the boundaries of the Controlled Recreation Area shall encompass only that area identified in the Tod Master Plan and proposed by Tod for development. Any amendments to the boundaries of the Controlled Recreation Area will be subject to review by Tod, Government Agencies and the public.

ARTICLE XX - DISCLOSURE

20.01 The Province will not disclose the Financial Information to any person without the prior written consent of Tod.

ARTICLE XXI - TERM

21.01 This Agreement will terminate on April 13, 2044 unless earlier terminated under Article XI or under Article XV.

ARTICLE XXII - TERMINATION OF OPERATING AGREEMENT

22.01 The Operating Agreement, subject to the provisions of this Article, terminates on the reference date of this Agreement.

22.02 The obligations of Tod under Article V of the Operating Agreement continue in respect of all Gross Revenue (as defined in the Operating Agreement) of Tod to and including the day prior to the reference date of this Agreement.

22.03 The Tenures (as defined in the Operating Agreement) continue in full force and effect until replaced under Article X of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

SIGNED on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA by a duly authorized representative of the Minister of Environment, Lands and Parks inthe presence of:

(Signature)

S. BLAIR PATERSON
BARRISTER AND SOLICITOR
MINISTRY OF ATTORNEY GENERAL
609 BROUGHTON STREET
VICTORIA, B.C. V8W 1C8

(Address)

(Occupation)

The Common Seal of TOD MOUNTAIN DEVELOPMENT LTD. was hereunto affixed in the presence of:

Authorized Signatory

c/s

Authorized Signatory

SCHEDULE "B"

1. BENEFICIAL OWNERS OF TOD

NAME	NUMBER AND CLASS OF SHARES
Nippon Cable Co., Ltd.	50,000 Class "A" Common Shares 1,772 Preferred Shares

SCHEDULE "C"

LITIGATION INVOLVING TOD

	Parties	Amount Claimed
1.	Douglas Cannaday v. Tod Mountain Development Ltd.; an action in Supreme Court for wrongful dismissal and for breach of contract; the law firm of Alexander, Holburn, Beaudin & Land is handling this action, and the likelihood of loss (if any) is not determinable at this time.	Approximately $740,000
2.	Charlotte Gillespie v. Tod Mountain Development Ltd.; a personal injury action in Supreme Court; the likelihood of loss (if any) is not determinable at this time.	Unliquidated damages
3.	Snyder, et al., v. Tod Mountain Development, et al.; an Alberta action by the former shareholders of the Company; this action is expected to be settled without liability to the Company.	Approximately $325,000
4.	Bruce Dieldal v. Tod Mountain Development Ltd.; an action for wrongful dismissal; the law firm of Mair Jensen Blair is handling this action, and the likelihood of loss (if any) is not determinable at this time.	Approximately $75,000

SCHEDULE "D"

PHASING SCHEDULE
Interpretation Notes

1. Pursuant to this Agreement, Tod has the right to purchase Crown Land in the Base Area: for residential and commercial development on the Residential/Commercial Base Area Lands; and for development of Independent Recreation Facilities on the Independent Recreation Facility Base Lands.

2. Pursuant to Article XIII of this Agreement, Tod may designate parcels of Crown Land in the Base Area and purchase the parcels of Crown Land from the Province for such development pursuant to this Agreement and the Tod Mountain Master Plan.

3. The rate of development of the facilities with Bed Units on the Residential/Commercial Base Area Lands in each Base Area Phase is governed by the development of relevant Recreation Improvements in each Corresponding Mountain Phase. The relevant Recreation Improvements to be developed in each Phase are specified in the "Mountain Phase" section of the Phasing Schedule. The amount of Bed Units available for development in each Phase is specified in the "Base Area Phase" section of the Phasing Schedule. The Independent Recreation Facilities to be developed in each Phase are specified in the "Independent Recreation Facilities" section of the Phasing Schedule.

4. Under Article XIII of this Agreement, Tod is entitled to purchase Commercial/Residential Base Area Lands for the development of (among other things) Bed Units. The section "April 13, 1993" of the Phasing Schedule shows how many Bed Units Tod is entitled to for development on the reference date of the Agreement.

5. In each Base Area Phase Tod earns development rights for additional Bed Units when it reaches Substantial Completion of each relevant Recreation Improvement in the Corresponding Mountain Phase by installing or replacing each relevant Recreation Improvement.

6. The number of additional Bed Units Tod is entitled to for development in each Phase is adjusted from time to time when Tod reaches Substantial Completion of each relevant Recreation Improvement in that Phase. Bed Units may be accumulated from Phase to Phase. Bed Units not used in the Phase in which they are earned may be used in a subsequent Phase. The number of additional Bed Units available for development in each Phase is determined by the "Bed Unit/SAOT %" calculated at Substantial Completion of each relevant Recreation Improvement in each Phase. In each relevant Phase when all the Recreation

Improvements have reached a state of Substantial Completion (and all other conditions are satisfied), Tod may proceed to the Mountain Phase in the next Phase and further increase the number of Bed Units available for development; however, if all Independent Recreation Facilities from any preceding Phase have not reached a state of Substantial Completion, Tod may move to the next Mountain Phase but the Bed Unit/SAOT % will remain that applicable to the preceding Phase and not increase to that specified for the next Mountain Phase until the Independent Recreation Facilities from any preceding Mountain Phase have reached a state of Substantial Completion.

7. The parties estimate that each of the 4 Phases will take approximately 10 years to complete; however, that esitmate is non-binding, and the parties acknowledge that it may take more or less time to complete each Phase. The length of time taken to complete each Phase will not diminish any rights of Tod under this Agreement.

SCH
PHASIN

MOUNTAIN PHASE (Master Plan Table V.1)	APRIL 13, 1993	PHASE 1
LIFTS	Lift 1 - Burfield - 2C - 364 pph Lift 2 - Shuswap - 2C - 700 pph Lift 3 - Crystal - 3C - 1,800 pph Lift 4 - Little Platter - P - 454 pph Lift 5 - West Bowl - T-Bar - 880 pph	Replace: Lift 2 - Shuswap - 2C - 700 ppt Lift 2R - D4C/B - 2,500 pph Install: Lift 6 - East Ridge - 4C - 1,540 Lift 4R - Little Platter - P -750 p
SKI TRAILS (Hectares)	373.8	39.7
SAOT*	3,003	6,193
PAOT*	N/A	6,874

BASE AREA PHASE (Master Plan Table VI.1)	APRIL 13, 1993	PHASE 1
BED UNIT/SAOT %*	45%	72%
BED UNITS/PHASE	1,351	3,108
CUM. BED UNITS	1,351	4,459
EST. GROSS HA./PHASE**	N/A	53
CUM. GROSS HA.	N/A	53
EST. NET HA./PHASE**	N/A	33
CUM. NET HA.	N/A	33
OPTION SITES	N/A	a,b,c, 1-10

INDEPENDENT RECREATION FACILITIES	APRIL 13, 1993	PHASE 1
GOLF HOLES	N/A	9
TENNIS COURTS	N/A	2
PAVED TRAILS (km)**	N/A	2.74
OTHER	N/A	
	N/A	
	N/A	
	N/A	
IRF COST EST. ($1993)	N/A	$1,910,720
EST. HA./PHASE**	N/A	35
CUM. EST.	N/A	35

** Note: Guidelines & Background Information for the Interpretation of the Ski Area Policy*

*** Estimated Phase 4 totals - subject to detailed study and report to be prepared by Tod*

***The parties estimate that each of the 4 Phases will take approximately 10 years to complete; however, that estimate is non-binding, and the parties acknowledge that it may take more or less time to complete each Phase. The length of time taken to complete each Phase will not take away any of Tod's rights specified in this Agreement.

DULE D

SCHEDULE

	PHASE 2	PHASE 3	PHASE 4	TOTAL
:h	**Upgrade:** Lift 1 - Burfield - 2C - 364 pph with Lift 1R/a - 1,200 pph & Lift 1R/b - 1,200 pph **Install:** Lift 5R - D4C - 2,800 pph Lift 6R - D4C - 2,800 pph Lift 7 - T-Bar - 1,200 pph Lift 8 - 4C - 1,800 pph	**Replace:** Lift 3 - Crystal - 3C - 1,800 pph with Lift 3R - Crystal - D4C - 2,800 pph **Install:** Lift 9 - D4C - 2,000 pph Lift 10 - 2C - 1,200 pph Lift 11 - 2C - 1,200 - pph Lift 12 - T-Bar - 1,200 pph	**Upgrade:** Lifts 1R/a & 1R/b to D2C - 1,440 pph **Install:** Lift 13 - 2C - 1,200 pph Lift 14 - D4C - 2,400 pph Lift 15 - 3C - 1,800 pph Lift 16 - D4C - 2,800 pph	
	108.7	47.9	150.6	720.7
	12,534	16,085	22,230	22,230
	14,790	20,106	29,566	29,566

PHASE 2	PHASE 3	PHASE 4	TOTAL
75%	105%	105%	
4,942	7,489	6,452	23,342
9,401	16,889	23,342	
63	72	100	288
116	188	288	
42	44	60	179
75	119	179	
d, 11 - 19	e,f, 20 - 29	UNDESIGNATED	

PHASE 2	PHASE 3	PHASE 4	TOTAL
9		9	27
3	3	6	14
5.05	0.32	5.00	13.11
AQUATIC CENTRE	CONFERENCE CENTRE	DRIVING RANGE	
	MOVIE THEATER	UNDESIGNATED**	
	BASEBALL DIAMOND		
	CHILDREN'S WATER PARK		
$3,736,400	$1,930,960	$2,620,000	$10,198,080
33	33	36	137
68	101	137	

~~D-1~~ D-3

SCHEDULE "E"

SAOT FORMULA

$$CP = \frac{CL \times VR \times LE \times HO}{VSD}$$

Where

CP = effective lift pod capacity

CL = hourly lift capacity (skiers/hour)

VR = vertical rise of specific lift

LE = lift loading efficiency (.9)

HO = hours of operation (7)

VSD = vertical skied per day (10,000' except for beginners)

SCHEDULE "F"

FORM OF LEASE
(Recreation Improvement other than a Lift, Snowmaking Equipment or Ski Trail)

THIS LEASE dated for reference the ____ day of ___________, 19__.

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Environment, Lands and Parks, Parliament Buildings, Victoria, British Columbia V8V 1X4

(the "Lessor")

OF THE FIRST PART

AND

TOD MOUNTAIN DEVELOPMENT LTD., a company incorporated under the laws of Alberta and continued in British Columbia under the *Company Act* (Continuation No. C425875), having a business address in British Columbia at P.O. Box 869, Kamloops, British Columbia V2C 5M8

("the Lessee")

OF THE SECOND PART

WHEREAS

A. The Lessor and the Lessee are parties to an agreement (the "Development Agreement") dated ________________ for the operation and development of the Resort Area;

B. In accordance with the Development Agreement, the Lessor has agreed to lease various parcels of land in the Resort Area to the Lessee on the terms and conditions contained in this Lease.

NOW THEREFORE in consideration of the rents reserved and the covenants and agreements set forth in this Lease, the parties agree as follows.

ARTICLE I - GRANT OF LEASE

1.01 The Lessor demises and leases to the Lessee that parcel of land described as follows:

____

____.

____

which is shown outlined in red on Schedule "A" (the "Land").

1.02 This Lease, and the estate granted by it, are subject to the terms and conditions of the Development Agreement and

(a) if there is any inconsistency between a provision of this Lease and a provision of the Development Agreement, the provision of the Development Agreement will prevail; and

(b) defined terms in this Lease have the meaning accorded to them in the Development Agreement.

ARTICLE II - TERM

2.01 To have and to hold the Land unto the Lessee for the term of years beginning on the reference date of this Lease and ending on the expiration or earlier termination of the Development Agreement.

ARTICLE III - RENT

3.01 Yielding and paying therefor the rent provided in Article VII of the Development Agreement.

ARTICLE IV - LESSEE'S COVENANTS

4.01 In addition to the Lessee's covenants contained in the Development Agreement, the Lessee covenants with the Lessor

(a) to pay rent and Fees at the times and in the manner specified in the Development Agreement;

(b) to observe, comply with and perform all of the terms and conditions of the Development Agreement;

(c) to use the Land solely for the purpose of constructing, operating and maintaining the Recreation Improvement described or shown in Schedule "A";

(d) to pay and discharge when due all charges for electricity, gas and other utilities supplied to the Land;

(e) to keep the Land and the Recreation Improvement situate on it in a safe, clean and sanitary condition and in repair and to repair according to notice;

(f) on the expiration or earlier termination of the term of this Lease, to peaceably quit, surrender, yield up and deliver the Land and the Recreation Improvement situate on it to the Lessor in a safe, clean and sanitary condition and in repair (reasonable wear and tear excepted) and all right, interest and estate of the Lessee in the Land and the Recreation Improvement situate on it will cease and vest in the Lessor;

(g) to permit the Lessor, its servants and agents at all times to enter on and inspect the Land and the Recreation Improvement situate on it; and

(h) not to cut, destroy or remove timber or trees standing on the Land except in compliance with the *Forest Act* and then only to the extent necessary to develop the Land in compliance with the Development Agreement.

ARTICLE V - ASSIGNMENT

5.01 The Lessee may not assign, sublet or transfer this Lease without the prior written consent of the Lessor in accordance with Article XIV of the Development Agreement.

5.02 Any assignment of this Lease by operation of any law of bankruptcy or insolvency or any assignment of this Lease for the benefit of the Lessee's creditors will, of itself, be a forfeiture of this Lease and the estate herein granted, but no forfeiture will be deemed to affect any rights or damages that may have accrued to the Lessor against the Lessee by reason of any breach of the Lessee's covenants or obligations contained in this Lease.

ARTICLE VI - MISCELLANEOUS

6.01 The Lessor is under no obligation to provide access to the Land or to maintain or improve any existing or future access roads.

6.02 Any interference with the rights of the Lessee under this Lease by virtue of the operation of the *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Coal Act*, *Forest Act*, or *Water Act* or any certificate, lease, permit or licence issued under any of those Acts will not constitute a breach of the Lessor's implied covenant of quiet enjoyment.

6.03 This Lease and the estate herein granted is subject to

(a) all subsisting grants to, or rights of, any person made or acquired under the *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Coal Act*, *Forest Act* or *Water Act* whether or not the Lessee has actual notice of them; and

(b) the exceptions and reservations of rights, interests, privileges and titles referred to in section 47 of the *Land Act*.

6.04 The Lessor reserves the right to grant other dispositions over the Land, or any part of it, with the prior consent of the Lessee, which consent will not be unreasonably withheld, by way of easement, right of way or statutory right of way to a Crown corporation or agency, a municipality or regional district or a public utility company and, upon such consent being given, the Lessee will forthwith execute and deliver to the Lessor such instrument as may be required to subordinate the Lessee's rights and interests in the Land granted by this Lease.

6.05 For the purposes of section 6.04, the Lessee will be deemed to have reasonably withheld its consent if a grant to be made under that section would:

(a) materially affect the Lessee's exercise of any of its rights under this Lease;

(b) be incompatible or in competition with the Lessee's use of or business in and on the Land; or

(c) reasonably have adverse financial implications on the Lessee's operations under this Lease.

6.06 The Lessee acknowledges and agrees that it will make no claim for compensation, in any form, in respect of a grant made under section 6.04 where the Lessee has consented, or unreasonably withheld its consent, to such grant.

6.07 The terms and provisions of this Lease will extend to, be binding upon and enure to the benefit of the parties, their successors and permitted assigns.

ARTICLE VII - INTERPRETATION

7.01 In this Lease, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.

7.02 The headings of Articles are for convenience of reference only and are not to be construed as defining or in any way limiting the scope or intent of the provisions of this Lease.

7.03 This Lease will be interpreted according to the laws of the Province of British Columbia.

7.04 Where there is a reference to an enactment of the Province of British Columbia in this Lease, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect and, unless the context otherwise requires, all statutes referred to in this Lease are enactments of the Province of British Columbia.

7.05 If any section of this Lease or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and they will be enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF the parties have executed this Lease as of the day and year first above written.

SIGNED by the Minister of Environment, Lands and Parks or his duly authorized representative on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA in the presence of:)

____

____

____

The Common Seal of TOD MOUNTAIN DEVELOPMENT LTD. was hereunto affixed in the presence of:)

____
Authorized Signatory

c/s

____
Authorized Signatory

SCHEDULE "G"

FORM OF RIGHT-OF-WAY
(Lift or Snowmaking Equipment)

THIS AGREEMENT dated for reference the ____ day of ____________, 19__.

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Environment, Lands and Parks, Parliament Buildings, Victoria, British Columbia V8V 1X4

(the "Grantor")

OF THE FIRST PART

AND

TOD MOUNTAIN DEVELOPMENT LTD., a company incorporated under the laws of Alberta and continued in British Columbia under the *Company Act* (Continuation No. C425875), having a business address in British Columbia at P.O. Box 869, Kamloops, British Columbia V2C 5M8

("the Grantee")

OF THE SECOND PART

WHEREAS

A. The Grantor and the Grantee are parties to an agreement (the "Development Agreement"), dated ________________ for the operation and development of the Resort Area;

B. In accordance with the Development Agreement, the Grantor has agreed to grant to the Grantee a right-of-way over that parcel of land described as follows:

____

____

which is outlined in red on Schedule "A" (the "Land") on the terms and conditions set forth in this Agreement.

NOW THEREFORE in consideration of the premises and of the Fees to be paid by the Grantee to the Grantor, the parties agree as follows.

ARTICLE I - GRANT OF RIGHT-OF-WAY

1.01 The Grantor grants to the Grantee the full, free and uninterrupted right and privilege, for itself, its servants, agents, contractors, licensees and invitees to enter, pass and repass over the Land for the purpose of constructing, operating, maintaining and using the Lift or Snowmaking Equipment described or shown in Schedule "A".

1.02 The right-of-way granted is subject to the terms and conditions of the Development Agreement and

(a) if there is any inconsistency between a provision of this Agreement and a provision of the Development Agreement, the Development Agreement will prevail; and

(b) defined terms in this Agreement have the meaning accorded to them in the Development Agreement.

ARTICLE II - DURATION

2.01 The duration of the right-of-way granted will be for the term of years beginning on the reference date of this Agreement and ending on the date of the expiration or earlier termination of the Development Agreement.

ARTICLE III - FEES

3.01 The Grantee will pay the Fees to the Grantor at the times and in the manner specified in Article VII of the Development Agreement.

ARTICLE IV - GRANTEE'S COVENANTS

4.01 In addition to the Grantee's covenants contained in the Development Agreement, the Grantee covenants with the Grantor

(a) to observe, comply with and perform all of the terms and conditions of the Development Agreement;

(b) to use the Land solely for the purpose for which this right-of-way is granted;

(c) to pay and discharge when due all charges for electricity, gas and other utilities supplied to the Land;

(d) to keep the Land and the Recreation Improvement situate on it in a safe, clean and sanitary condition and in repair and to repair according to notice;

(e) on the expiration or earlier termination of the term of this Agreement, to peaceably quit, surrender, yield up and deliver the Land and the Recreation Improvement situate on it to the Grantor in a safe, clean and sanitary condition and in repair (reasonable wear and tear excepted) and all right, interest and estate of the Grantee in the Land and the Recreation Improvement situate on it will cease and vest in the Grantor;

(f) to permit the Grantor, its servants and agents at all times to enter on and inspect the Land and the Recreation Improvement situate on it; and

(g) not to cut, destroy or remove timber or trees standing on the Land except in compliance with the *Forest Act* and then only to the extent necessary to develop the Land in compliance with the Development Agreement.

ARTICLE V - ASSIGNMENT

5.01 The Grantee may not assign this Agreement or the rights granted by it without the prior written consent of the Grantor in accordance with Article XIV of the Development Agreement.

5.02 Any assignment of this Agreement or the rights granted by it by operation of any law of bankruptcy or insolvency or any assignment of this Agreement for the benefit of the Grantee's creditors will, of itself, be a forfeiture of the rights granted by this Agreement, but no forfeiture will be deemed to affect any rights or damages that may have accrued to the Grantor against the Grantee by reason of any breach of the Grantee's covenants or obligations contained in this Agreement.

ARTICLE VI - MISCELLANEOUS

6.01 This Agreement does not confer any right in the Grantee to interfere with the rights of any person under or by virtue of the operation of the *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Coal Act*, *Forest Act* or *Water Act* or any certificate, lease, permit or licence issued under any of those Acts.

(e) in exercising his powers under this section, the receiver or receiver-manager will not be held liable for any loss unless it is caused by his own negligence or wilful default.

11.04 If a mortgagee approved pursuant to Article XIV appoints a receiver or receiver-manager of any part of the Interest, then so long as that receiver or receiver-manager continues to be appointed, the Province will remove any receiver or receiver-manager appointed by it under section 11.03 and it will not appoint any receiver or receiver-manager except the one appointed by the mortgagee.

ARTICLE XII - DISPOSITION OF RECREATION IMPROVEMENTS

12.01 All Recreation Improvements constructed on Tenures and Interim Tenures, except for Moveable Recreation Improvements, are and will remain vested absolutely in the Province.

12.02 Tod will not, without the prior written consent of the Province, which consent will not be unreasonably withheld, remove any Moveable Recreation Improvement during the term of this Agreement except for the purpose of repair or replacement of it in accordance with Tod's normal maintenance program or the Tod Master Plan.

12.03 On the expiration or earlier termination of this Agreement, all Recreation Improvements will vest in and become the property of the Province absolutely as fixtures, except those of which the Province elects not to retain ownership which election must be made by written notice from the Province to Tod and if that election is made Tod may, within two years of the date of the expiration or earlier termination of this Agreement, remove the Recreation Improvement described in the notice.

12.04 Where Tod removes a Recreation Improvement described in a notice given under section 12.03, it will leave the surface of the land in a safe, clean and tidy condition satisfactory to the Regional Director.

12.05 If this Agreement is terminated by the Province under section 11.02, the fair market value of the Recreation Improvement will be determined by an independent Appraiser acceptable to the parties who will determine the amount that a purchaser in an arms length transaction would pay for them and the right to operate them on a going concern basis in their then existing condition and location on the basis that they would be situate on Tenures having a maximum term of years permitted under the Provincial Commercial Alpine Ski Policy at the rents and fees specified in that policy for those Tenures and the cost of the appraisal will be borne equally by the parties.

12.06 Not later than 30 days after the Appraised Recreation Improvement Value of the Recreation Improvements has been determined under section 12.05, the Province will, by way of public tender, solicit offers for the right to purchase and operate the Recreation Improvements in their then existing condition for the maximum term of years permitted under the Provincial Commercial Alpine Ski Policy and on the terms and conditions consistent with that policy.

12.07 If the Province wishes to accept an offer solicited under this Article and the bid price specified in it for the Recreation Improvements and the right to operate them is, in the aggregate, less than the Appraised Recreation Improvement Value of them, the Province will, on the closing of the purchase and sale contemplated by the offer, pay to Tod an amount equal to the difference between the Appraised Recreation Improvement Value of them and the bid price for the Recreation Improvements that was specified in the offer and, if the bid price is to be paid to the Province over time, the value of the bid price will be the net present value of the bid price calculated by using a discount rate equal to the yield, expressed as a percentage, on ninety-one day treasury bills fixed and announced by the Bank of Canada at the weekly tendering immediately preceding the date on which the offer is accepted calculated yearly from the time any monies are to be received.

12.08 Section 12.07 does not apply where Tod consents in writing to the acceptance of an offer by the Province for the right to operate the Recreation Improvements at an amount less than their Appraised Recreation Improvement Value.

12.09 If the Province elects not to accept any offer made as a result of the solicitation under section 12.06, the Province will, within 12 months after the closing of tenders, make a second solicitation for offers for the right to operate the Recreation Improvements in their then existing condition over the maximum term of years permitted under the Provincial Commercial Alpine Ski Policy and on the terms and conditions consistent with that policy.

12.10 Sections 12.07 and 12.08 apply in respect of offers made in response to a solicitation made under section 12.09.

12.11 If the Province elects not to accept an offer made in response to a solicitation under section 12.09, Tod will remove all Lifts and buildings from the Tenures, except for the concrete footings of the Lift towers, and it will leave the surface of the Tenures in a safe, clean and tidy condition satisfactory to the Regional Director.

12.12 Where the Province accepts an offer made in response to a solicitation under this Article, it will pay to Tod an amount equal to the amount bid for the Recreation Improvements on the same terms and conditions and at the times that the Province is to be paid for them.

12.13 If the Province fails to comply with sections 12.06 to 12.12 inclusive, Tod will be entitled to solicit offers for the purchase of the Recreation Improvements and the right to operate them in their then existing condition over the maximum term of years permitted under the Provincial Commercial Alpine Ski Policy and the Province will accept and agree to an offer presented by Tod under this section.

12.14 Notwithstanding any other provision of this Article, the Province will not be entitled to reject any offer to purchase and operate the Recreation Improvements if the price specified in the offer is equal to or greater than the Appraised Recreation Improvement Value.

ARTICLE XIII - BASE AREA DEVELOPMENT

13.01 So long as Tod is not in default under this Agreement, a Tenure or an Interim Tenure, Tod or a Related party, as the case may be, will be entitled to purchase Crown Land from the Province, in phases, for development in accordance with the land uses, densities and design criteria contemplated in the Tod Master Plan on the terms and conditions contained in this Article.

13.02 The purchase price for a parcel of Crown Land

(a) to be used as Residential/Commercial Base Lands will be

(i) for the period beginning on the reference date of this Agreement and ending on April 13, 2003, an amount equal to $12,355.00 per hectare ($5,000.00 per acre),

(ii) for period beginning on April 14, 2003 and ending on April 13, 2008, 5% of the Appraised Land Value, (Serviced to lot line)

(iii) for the period beginning on April 14, 2008 and ending on April 13, 2013, 10% of the Appraised Land Value,

(iv) for the period beginning on April 14, 2013 and ending on April 13, 2018, 15% of the Appraised Land Value, and

(v) for the period beginning April 14, 2018 to the end of the term of this Agreement, an amount to be fixed by the Province in accordance with the Provincial Commercial Alpine Ski Policy then in effect;

(b) to be used as Independent Recreation Facility Base Lands will be $6,177.50 per hectare ($2,500.00 acre) during the term of this Agreement;

and for the purpose of this section, the purchase price for a parcel of Crown Land will be calculated by the Province on a date that is not more than 180 days after an application to purchase that parcel of Crown Land is submitted by Tod or a Related Party, as the case may be, provided that at the time the application is received, Tod or a Related Party, as the case may be, has satisfied the requirements of section 13.03 and subsections 13.04 (a), 13.04 (b) and 13.04 (c) and provided further that, notwithstanding the size of any parcel of Crown Land, in no circumstance will the purchase price for any parcel of Crown Land be less than $10,000.00 and provided finally that Tod will not be required to pay for any Crown Land which is shown in bold black on Schedule "L" (as it may be amended from time to time by Tod and the Province).

13.03 Tod or a Related Party may, from time to time, apply under the *Land Act* for a fee simple grant of Crown Land in the consecutive phases shown in the Phasing Schedule and its application for the Crown Land in a Base Area Phase will

(a) identify only those parcels that are necessary for the development of that Base Area Phase but Tod may designate parcels of land in the Base Area for residential, commercial and recreational buildings and facilities contemplated in the Tod Master Plan and purchase such parcels of land individually or collectively during that Base Area Phase from time to time provided Tod shall purchase not less than all of each such parcel of land and the minimum purchase price for a parcel of land will not be less than $10,000.00 and provided in respect of Residential/Commercial Base Lands Tod has earned Bed Units under the Phasing Schedule equal to or greater than the number of Bed Units in any residential or commercial building contemplated for a parcel of land;

(b) identify those parcels of land on which an Independent Recreation Facility is to be constructed and describe the nature of it;

(c) be accompanied by evidence, in the form of a certificate of the Engineer satisfactory to the Province, that

(i) that the Recreation Improvements in the Preceding Mountain Phase, if any, are in a state of Substantial Completion, and

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

and if the Corresponding Mountain Phase is not in a state of Substantial Completion, the Province may require a Performance Bond under Article VIII for each Recreation Improvement then under construction in that Corresponding Mountain Phase.

13.04 In addition to the conditions set out in section 16.09, the obligation of the Province to sell Crown Land in any Base Area Phase to Tod or a Related Party is subject to the following conditions:

(a) the Crown Land in any previous Base Area Phase purchased by Tod from the Province is serviced to within 10 metres of a point on the lot line of each parcel of land for development in accordance with the Tod Master Plan;

(b) Tod or a Related Party, as the case may be, has delivered to the Province the certificate, and, if applicable, the Performance Bond, both as contemplated by paragraph 13.03;

(c) Tod or a Related party, as the case may be, has delivered to the Province

(i) a proposed scheme of subdivision for the land in the Base Area Phase, by way of a proposed subdivision plan under the *Land Title Act* or a proposed strata plan under the *Condominium Act*, that complies with the uses and densities contemplated for that land in the Tod Master Plan and that shows the number of Bed Units to be allocated to each parcel of land within that Base Area Phase (provided that the number of Bed Units allocated to the parcel of land for which application has been made does not exceed the number of Bed Units earned by Tod at the time of the application),

(ii) a description of and preliminary site plan for all services and utilities required to be developed in the Base Area Phase,

(iii) all other information reasonably required by the Province, including all information required by the Province in order to determine whether the development proposed by Tod or a Related Party, as the case may be, is contemplated by and is in accordance with the Tod Master Plan,

(iv) written confirmation from the Thompson Nicola Regional District stating that it has approved the uses and densities contemplated in the Subdivision Scheme, and

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

(d) the purchase price for the parcel of the Crown Land has been determined; and

(e) Tod or a Related Party, as the case may be, has paid the purchase price for the parcel of the Crown Land in full, together with all fees charged by the Province under the *Land Act* for processing and issuing a Crown grant of that Crown Land;

and the Province will reasonably co-operate with Tod or a Related Party, as the case may be, in its efforts to meet the above conditions; and if the above conditions have been met, then the Province will:

(f) execute all documents and do all things necessary to transfer as soon as possible (but in any event not more than 90 days after fulfillment of the requirements in paragraphs (a), (b), (c) and (d) above) title to the relevant Crown Land to Tod or a Related Party, as the case may be, so Tod or a Related Party, as the case may be, becomes the registered owner thereof; and

(g) provide Tod or a Related Party, as the case may be, with its authorization to

(i) undertake surveys of the Crown Land included in the application under section 13.03,

(ii) apply to the appropriate Government Agency for preliminary subdivision approvals of the Crown Land included in the application under section 13.03,

(iii) assist the Thompson-Nicola Regional District (or any successor body having jurisdiction) with the creation of an official community plan for the Crown Land included in the application under section 13.03, and

(iv) apply to the Thompson-Nicola Regional District (or any successor body having jurisdiction) to amend an existing official community plan for the Crown Land included in the application under section 13.03.

13.05 The instrument conveying Crown Land to Tod or a Related Party, as the case may be, under this Article will

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

(b) where the Crown Land is Residential/Commercial Base Land, contain restrictive covenants in forms satisfactory to the Province prohibiting

(i) the land described in it from being subdivided except by way of a subdivision plan or strata plan that has been approved in writing by the Province, and

(ii) the construction of any buildings on the land described in it except buildings for which the conceptual plans have been approved in writing by the Province;

(c) where the Crown Land is Independent Recreation Facility Base Land, contain conditions that the fee simple estate is conveyed on the conditions that the land described in it is:

(i) used for the purpose of constructing, maintaining and operating the

Independent Recreation Facility, and

(ii) not to be subdivided; and

(d) be subject to

(i) any conditional or final water licence or substituted water licence issued or given under the *Water Act* or under any prior or subsequent enactment of the Province of British Columbia of like effect, and to the rights of the holder of it to enter on the land and to maintain, repair and operate any works permitted on the land under that licence,

(ii) the rights of holders or owners of subsisting claims, two post claims or other interests in or that affect the land acquired or held under the *Mineral Tenure Act* or under any prior or subsequent enactment of the Province of British Columbia of like effect,

(iii) the rights of holders or owners under subsisting licences or permits issued under the *Petroleum and Natural Gas Act*, *Mineral Tenure Act* or under any prior or subsequent enactment of the Province of British Columbia of like effect, to enter on, use and occupy the Crown Land for any purpose authorized by those Acts or the licence, permit or other authority issued under them or any prior or subsequent enactment of the Province of British Columbia of like effect, and

(iv) any statutory right-of-way that burdens the Crown Land.

13.06 The restrictive covenants referred to in subsection 13.05 (b) and the rights of re-entry in 13.05 (c) will be registered as charges in the Land Title Office and Tod or a Related Party, as the case may be, consents to those registrations.

13.07 The Province will, within 180 days after delivery, approve:

(a) a subdivision plan or strata plan under section 13.04 so long as that plan conforms to the Subdivision Scheme for that Base Area Phase and it has been approved by the appropriate Government Agency for deposit in the Land Title Office; or

(b) conceptual plans under paragraph 13.05 (b) (ii) so long as they meet the use, density and design criteria referred to in the Tod Master Plan and the proposed location of the building does not impair an Access Route.

13.08 Tod or a Related Party, as the case may be, will execute and deliver to the Province all instruments and assurances that may be necessary to implement the provisions of subsections 13.05 (b) and 13.05 (c) and the Province may require the execution of a separate document in reasonable form to create the restrictive covenants referred to in subsection 13.05 (b).

13.09 The Province will commission an Appraiser to determine the Appraised Land Value within 90 days of receipt of an application under section 13.03 from Tod or a Related Party, as the case may be, during any of the periods described in paragraphs 13.02 (a) (ii), (iii) and (iv) and the Province will set the terms of reference for such appraisal in accordance with guidelines of the Appraisal Institute of Canada, after providing Tod with a reasonable opportunity to review and comment on such terms of reference.

13.10 If the parties do not agree as to the Appraised Land Value after receipt and review of an appraisal commissioned by the Province under section 13.09, either party may refer the determination of the Appraised Land Value to arbitration under Article XVII.

ARTICLE XIV - TRANSFERS AND ENCUMBRANCES

14.01 Tod will not sell, assign, transfer or otherwise dispose of its Interest, in whole or in part, without the prior written consent of the Province.

14.02 The Province will not unreasonably refuse to consent to a sale, assignment, transfer or disposition under section 14.01 so long as the purchaser, assignee, transferee or holder of Tod's Interest in the opinion of the Province reasonably arrived at, has the financial capacity and proven management ability and business experience to develop, operate and maintain the Recreation Improvements in accordance with accepted industry standards for similar developments in British Columbia, this Agreement and the Tod Development Plan and the purchaser, assignee or transferee enters into an assumption agreement with the Province in accordance with section 14.03.

14.03 Following the consent by the Province to a sale, assignment, transfer or disposition under section 14.01 and the purchaser, assignee, transferee or holder of Tod's Interest, as the case may be, executing an assumption agreement, in a form satisfactory to the Province, by which they agree to be bound by all the terms, covenants, obligations and agreements contained in this Agreement Tod will be released by the Province from same and any Security Bond or Performance Bond will be returned and any policy of insurance may be cancelled on replacement Security Bonds, Performance Bonds and policies of insurance being provided by the purchaser, assignee, transferee or holder of Tod's Interest.

14.04 Tod will not mortgage, pledge, charge or otherwise encumber its Interest without the written consent of the Province, which consent the Province will not unreasonably refuse to give so long as the party to whom the Interest or any part of it is mortgaged, pledged, charged or otherwise encumbered, will be bound by the terms and conditions of this Agreement and the Tenures and, in exercising its remedies, will have no greater rights than Tod.

ARTICLE XV - REPLACEMENT

15.01 Tod may, between the 20th and 21st, the 29th and 30th, the 39th and 40th, and the 49th and 50th anniversaries of the reference date of this Agreement apply to the Province for a replacement of this Agreement, the Tenures and the Interim Tenures for a replacement term of not less than 30 years.

15.02 So long as Tod is not in default under this Agreement, the Tenures and the Interim Tenures, the Province will, not later than 180 days after an application under section 15.01, make a Replacement Offer to Tod, in writing, setting out the terms and conditions of the offer, which offer will be consistent with the then in effect Provincial Commercial Alpine Ski Policy.

15.03 Tod will have a period of 3 years from the receipt of the Replacement Offer to accept such offer on the terms and conditions contained in it, provided that Tod may discuss and negotiate the terms of any Replacement Offer with the Province during such period but Tod may not accept any Replacement Offer after the 50th anniversary of the reference date of this Agreement.

15.04 If Tod does not accept a Replacement Offer within the 3 year period specified in section 15.03, this Agreement, the Tenures and the Interim Tenures will not be replaced and will continue in full force and effect pursuant to the terms and conditions herein and therein unless Tod makes another application under section 15.01 to the Province to replace this Agreement, the Tenures and the Interim Tenures, and Tod accepts a Replacement Offer made pursuant to that application.

15.05 If this Agreement, the Tenures and the Interim Tenures have not been replaced prior to the 50th anniversary of the reference date of this Agreement, the Province will be at liberty to enter into an arrangement with any other person for the right to operate the Recreation Improvements and develop the Base Area but in so doing the Province will not, for a period of five years after the date of the expiration of this Agreement, enter into an agreement with, or grant Tenures to, any person on terms and conditions more favourable than those specified in the Replacement Offer without first offering a replacement of this Agreement, the Tenures and the Interim Tenures to Tod on those terms and conditions.

15.06 An agreement entered into by the Province with another person under section 15.05 will not, so far as it relates to the use and development of Recreation Improvements and the purchase and development of the Base Area, come into force until the expiration or earlier termination of this Agreement.

ARTICLE XVI - MISCELLANEOUS

16.01 Tod and the Province will perform such further acts and execute all documents that may be required from time to time to give effect to the intent of this Agreement.

16.02 If any term, covenant or condition of this Agreement or the application of it to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement or the application of that term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable, will not be affected and each term, covenant or condition of this Agreement will be valid and enforced to the fullest extent permitted by law.

16.03 Nothing in this Agreement constitutes Tod the agent, joint venturer or partner of the Province or gives Tod any authority or power to bind the Province in any way.

16.04 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, laws, ordinances, rules, regulations or orders of governmental authorities, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond the reasonable control of Tod, other than natural reasons, Tod is delayed in performing any of its obligations under this Agreement, then the time for completion or performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as

(a) Tod gives written notice to the Province within 30 days after the commencement of the delay setting forth the nature of it and an estimated time frame for the performance of the obligation and, if necessary, a revised Construction and Completion Schedule; and

(b) Tod diligently attempts to remove the delay.

16.05 For the purpose of section 16.04, the inability of Tod to obtain financing or the funds necessary for the construction of a Recreation Improvement is not a cause beyond the reasonable control of Tod.

16.06 Nothing in this Agreement constitutes an obligation, express or implied, of the Province to use public funds for the construction or maintenance of any part of the development contemplated by this Agreement.

16.07 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to the Province

Ministry of Environment, Lands and Parks
Thompson-Okanagan Regional Office
478 St. Paul Street
Kamloops, British Columbia
V2C 2J6;

to Tod

Tod Mountain Development Ltd.
P. O. Box 869
Kamloops, British Columbia
V2C 5M8

or at such other address as the other may from time to time direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing except in the case of mail interruption in which case actual receipt is required.

16.08 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where such equipment and information is available and known to the party to facilitate the transmittal, be provided but nothing within this section and specifically the lack of delivery of a fascimile copy of any notice will abbrogate from the deemed delivery as provided in section 16.07.

16.09 The obligation of the Province to sell Crown Land to Tod where the Crown Land is located within a provincial forest is subject to the Crown Land being removed from the provincial forest under the *Forest Act* and the Ministry of Environment, Lands and Parks (or any successor ministry) will assist Tod in making the necessary applications for removal of the Crown Land from the provincial forest.

16.10 To the extent necessary, the terms, covenants and obligations contained in this Agreement will survive the expiration or earlier termination of this Agreement.

16.11 The rights and interests of Tod in the Controlled Recreation Area which are granted by this Agreement are subject to the rights and interests listed in Schedule "K".

16.12 The Province reserves the right to grant other dispositions of the land comprising the Controlled Recreation Area, or any part of it, with the prior consent of Tod, which consent will not be unreasonably withheld, by way of easement, right of way or statutory right of way to a Crown corporation or agency, a municipality or regional district or a public utility company and, upon such consent being given, Tod will forthwith execute and deliver to the Province such instrument as may be required to subordinate Tod's rights and interests in the Controlled Recreation Area granted by this Agreement.

16.13 For the purposes of section 16.12, Tod will be deemed to have reasonably withheld its consent if a grant to be made under that section would:

(a) materially affect Tod's exercise of any of its rights under this Agreement;

(b) be incompatible or in competition with Tod's use of or business in and on the Controlled Recreation Area; or

(c) reasonably have adverse financial implications on Tod's operations under this Agreement.

16.14 Tod acknowledges and agrees that it will make no claim for compensation, in any form, in respect of a grant made under section 16.12 where Tod has consented, or unreasonably withheld its consent, to such grant.

ARTICLE XVII - ARBITRATION

17.01 In the event a dispute arises between the parties concerning

(a) whether or not a Replacement Offer made by the Province to Tod under Article XV is consistent with the Provincial Commercial Alpine Ski Policy; or

(b) the amount of the Appraised Recreation Improvement Value of a Recreation Improvement under Article XII; or

(c) the amount of the Appraised Land Value of a parcel of Crown Land;

all such disputes shall be referred to and be finally resolved by arbitration under the Rule of the British Columbia International Arbitration Centre (the "BCIAC"). The arbitration shall be conducted before one arbitrator appointed in accordance with the BCIAC Rules, and shall be administered in accordance with the Procedures for Cases Under the BCIAC Rules. The costs of the arbitration shall be paid as determined by the arbitrator. The arbitration shall be conducted at the offices of the Ministry of Environment, Lands and Parks (or any successor ministry) in Kamloops, British Columbia, and if there is no office of the Ministry of Environment, Lands and Parks (or any successor ministry) in Kamloops, British Columbia, then the offices of the Ministry of Environment, Lands and Parks (or any successor ministry) that is closest to Kamloops. The arbitration shall be governed by the laws of the Province of British Columbia.

ARTICLE XVIII - INTERPRETATION

18.01 In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.

18.02 The headings of Articles are inserted for convenience of reference only and are not to be construed as forming part of this Agreement.

18.03 This Agreement will be interpreted according to the laws of the Province of British Columbia.

18.04 Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect, and, unless the context otherwise requires, all statutes referred to in this Agreement are enactments of the Province of British Columbia.

18.05 If any section of this Agreement or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and they will be enforceable to the fullest extent permitted by law.

18.06 This Agreement constitutes the entire agreement between the Province and Tod and may not be modified except as provided in this Agreement or by subsequent agreement in writing.

18.07 The terms and conditions of this Agreement will extend to, be binding upon and enure to the benefit of the parties, their successors and permitted assigns.

ARTICLE XIX - CONTROLLED RECREATION AREA

19.01 Subject to this Agreement, the *Forest Act*, and the *Land Act*, the Province, in order to ensure the safe and orderly use of the Controlled Recreation Area by all persons, grants to Tod, during each Ski Season, the exclusive right to control the Controlled Recreation Area for the sole purpose of ensuring its safe and orderly use by all persons, without charge by Tod, including the right, privilege and authority to

(a) establish and delineate a ski area boundary within the Controlled Recreation Area and to designate that boundary by notices, posted signs, fences or otherwise;

(b) control, regulate, prohibit and direct the movement and activities of skiers and all other persons within the Controlled Recreation Area, except the servants and agents of the Province, upon such terms and conditions as Tod may reasonably determine in its discretion;

(c) regulate and prohibit the access and entry of all persons to the Controlled Recreation Area upon such terms and conditions as Tod may reasonably determine in its discretion;

(d) evict persons from the Controlled Recreation Area;

(e) regulate and prohibit the use and movement of vehicles of any nature whatsoever within the Controlled Recreation Area and at all times and upon such terms and conditions as Tod may reasonably determine in its discretion; and

(f) regulate the landing of aircraft within the Controlled Recreation Area upon such terms and conditions as Tod may determine in its discretion.

19.02 Tod will use reasonable efforts during each Ski Season to ensure that skiers and other persons permitted to use the Controlled Recreation Area do not

(a) enter into areas within the Controlled Recreation Area that are, in Tod's opinion, unsafe due to existing or potential hazards; or

(b) carry on activities within the Controlled Recreation Area that are prohibited under the *Forest Act* or the *Land Act*;

provided, however, that this section will not impose upon Tod any obligation to make safe any area or areas within the Controlled Recreation Area or to remove any existing hazards within that area or areas, except to the extent that it is required to do so under its operating covenants set out in Schedule "J" or as an occupier under the *Occupiers' Liability Act*.

19.03 Tod's duty of care to persons entering the Controlled Recreation Area and its liability arising from its use, occupation and control of the Controlled Recreation Area will not exceed that of an occupier under the *Occupiers' Liability Act*.

19.04 Subject to section 19.01, Tod will not unreasonably impede any person from passing freely and without charge over or through the Unimproved Controlled Recreation Area provided, however, that Tod may place reasonable restrictions on the activities of any person and his vehicle, if any, that are consistent with the use and management of a four season resort area.

19.05 The boundaries of the Controlled Recreation Area may from time to time be amended by the Province provided such boundary changes are consistent with the Tod Master Plan and any changes or alterations to the Tod Master Plan under Article IX, it being understood by Tod and the Province that the boundaries of the Controlled Recreation Area shall encompass only that area identified in the Tod Master Plan and proposed by Tod for development. Any amendments to the boundaries of the Controlled Recreation Area will be subject to review by Tod, Government Agencies and the public.

ARTICLE XX - DISCLOSURE

20.01 The Province will not disclose the Financial Information to any person without the prior written consent of Tod.

ARTICLE XXI - TERM

21.01 This Agreement will terminate on April 13, 2044 unless earlier terminated under Article XI or under Article XV.

ARTICLE XXII - TERMINATION OF OPERATING AGREEMENT

22.01 The Operating Agreement, subject to the provisions of this Article, terminates on the reference date of this Agreement.

22.02 The obligations of Tod under Article V of the Operating Agreement continue in respect of all Gross Revenue (as defined in the Operating Agreement) of Tod to and including the day prior to the reference date of this Agreement.

22.03 The Tenures (as defined in the Operating Agreement) continue in full force and effect until replaced under Article X of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

SIGNED on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA by a duly authorized representative of the Minister of Environment, Lands and Parks inthe presence of:

(Signature)

S. BLAIR PATERSON
BARRISTER AND SOLICITOR
MINISTRY OF ATTORNEY GENERAL
609 BROUGHTON STREET
VICTORIA, B.C. V8W 1C8

(Address)

(Occupation)

The Common Seal of TOD MOUNTAIN DEVELOPMENT LTD. was hereunto affixed in the presence of:

Authorized Signatory

c/s

Authorized Signatory

SCHEDULE "B"

1. BENEFICIAL OWNERS OF TOD

NAME	NUMBER AND CLASS OF SHARES
Nippon Cable Co., Ltd.	50,000 Class "A" Common Shares 1,772 Preferred Shares

SCHEDULE "C"

LITIGATION INVOLVING TOD

	Parties	Amount Claimed
1.	Douglas Cannaday v. Tod Mountain Development Ltd.; an action in Supreme Court for wrongful dismissal and for breach of contract; the law firm of Alexander, Holburn, Beaudin & Land is handling this action, and the likelihood of loss (if any) is not determinable at this time.	Approximately $740,000
2.	Charlotte Gillespie v. Tod Mountain Development Ltd.; a personal injury action in Supreme Court; the likelihood of loss (if any) is not determinable at this time.	Unliquidated damages
3.	Snyder, et al., v. Tod Mountain Development, et al.; an Alberta action by the former shareholders of the Company; this action is expected to be settled without liability to the Company.	Approximately $325,000
4.	Bruce Dieldal v. Tod Mountain Development Ltd.; an action for wrongful dismissal; the law firm of Mair Jensen Blair is handling this action, and the likelihood of loss (if any) is not determinable at this time.	Approximately $75,000

SCHEDULE "D"

PHASING SCHEDULE
Interpretation Notes

1. Pursuant to this Agreement, Tod has the right to purchase Crown Land in the Base Area: for residential and commercial development on the Residential/Commercial Base Area Lands; and for development of Independent Recreation Facilities on the Independent Recreation Facility Base Lands.

2. Pursuant to Article XIII of this Agreement, Tod may designate parcels of Crown Land in the Base Area and purchase the parcels of Crown Land from the Province for such development pursuant to this Agreement and the Tod Mountain Master Plan.

3. The rate of development of the facilities with Bed Units on the Residential/Commercial Base Area Lands in each Base Area Phase is governed by the development of relevant Recreation Improvements in each Corresponding Mountain Phase. The relevant Recreation Improvements to be developed in each Phase are specified in the "Mountain Phase" section of the Phasing Schedule. The amount of Bed Units available for development in each Phase is specified in the "Base Area Phase" section of the Phasing Schedule. The Independent Recreation Facilities to be developed in each Phase are specified in the "Independent Recreation Facilities" section of the Phasing Schedule.

4. Under Article XIII of this Agreement, Tod is entitled to purchase Commercial/Residential Base Area Lands for the development of (among other things) Bed Units. The section "April 13, 1993" of the Phasing Schedule shows how many Bed Units Tod is entitled to for development on the reference date of the Agreement.

5. In each Base Area Phase Tod earns development rights for additional Bed Units when it reaches Substantial Completion of each relevant Recreation Improvement in the Corresponding Mountain Phase by installing or replacing each relevant Recreation Improvement.

6. The number of additional Bed Units Tod is entitled to for development in each Phase is adjusted from time to time when Tod reaches Substantial Completion of each relevant Recreation Improvement in that Phase. Bed Units may be accumulated from Phase to Phase. Bed Units not used in the Phase in which they are earned may be used in a subsequent Phase. The number of additional Bed Units available for development in each Phase is determined by the "Bed Unit/SAOT %" calculated at Substantial Completion of each relevant Recreation Improvement in each Phase. In each relevant Phase when all the Recreation

Improvements have reached a state of Substantial Completion (and all other conditions are satisfied), Tod may proceed to the Mountain Phase in the next Phase and further increase the number of Bed Units available for development; however, if all Independent Recreation Facilities from any preceding Phase have not reached a state of Substantial Completion, Tod may move to the next Mountain Phase but the Bed Unit/SAOT % will remain that applicable to the preceding Phase and not increase to that specified for the next Mountain Phase until the Independent Recreation Facilities from any preceding Mountain Phase have reached a state of Substantial Completion.

7. The parties estimate that each of the 4 Phases will take approximately 10 years to complete; however, that esitmate is non-binding, and the parties acknowledge that it may take more or less time to complete each Phase. The length of time taken to complete each Phase will not diminish any rights of Tod under this Agreement.

SCH
PHASIN

MOUNTAIN PHASE (Master Plan Table V.1)	APRIL 13, 1993	PHASE 1
LIFTS	Lift 1 - Burfield - 2C - 364 pph Lift 2 - Shuswap - 2C - 700 pph Lift 3 - Crystal - 3C - 1,800 pph Lift 4 - Little Platter - P - 454 pph Lift 5 - West Bowl - T-Bar - 880 pph	Replace: Lift 2 - Shuswap - 2C - 700 ppl Lift 2R - D4C/B - 2,500 pph Install: Lift 6 - East Ridge - 4C - 1,540 Lift 4R - Little Platter - P -750 p
SKI TRAILS (Hectares)	373.8	39.7
SAOT*	3,003	6,193
PAOT*	N/A	6,874

BASE AREA PHASE (Master Plan Table VI.1)	APRIL 13, 1993	PHASE 1
BED UNIT/SAOT %*	45%	72%
BED UNITS/PHASE	1,351	3,108
CUM. BED UNITS	1,351	4,459
EST. GROSS HA./PHASE**	N/A	53
CUM. GROSS HA.	N/A	53
EST. NET HA./PHASE**	N/A	33
CUM. NET HA.	N/A	33
OPTION SITES	N/A	a,b,c, 1-10

INDEPENDENT RECREATION FACILITIES	APRIL 13, 1993	PHASE 1
GOLF HOLES	N/A	9
TENNIS COURTS	N/A	2
PAVED TRAILS (km)**	N/A	2.74
OTHER	N/A	
	N/A	
	N/A	
	N/A	
IRF COST EST. ($1993)	N/A	$1,910,720
EST. HA./PHASE**	N/A	35
CUM. EST.	N/A	35

** Note: Guidelines & Background Information for the Interpretation of the Ski Area Policy*

*** Estimated Phase 4 totals - subject to detailed study and report to be prepared by Tod*

***The parties estimate that each of the 4 Phases will take approximately 10 years to complete; however, that estimate is non-binding, and the parties acknowledge that it may take more or less time to complete each Phase. The length of time taken to complete each Phase will not take away any of Tod's rights specified in this Agreement.

DULE D
SCHEDULE

	PHASE 2	PHASE 3	PHASE 4	TOTAL
:h	Upgrade: Lift 1 - Burfield - 2C - 364 pph with Lift 1R/a - 1,200 pph & Lift 1R/b - 1,200 pph Install: Lift 5R - D4C - 2,800 pph Lift 6R - D4C - 2,800 pph Lift 7 - T-Bar - 1,200 pph Lift 8 - 4C - 1,800 pph	Replace: Lift 3 - Crystal - 3C - 1,800 pph with Lift 3R - Crystal - D4C - 2,800 pph Install: Lift 9 - D4C - 2,000 pph Lift 10 - 2C - 1,200 pph Lift 11 - 2C - 1,200 - pph Lift 12 - T-Bar - 1,200 pph	Upgrade: Lifts 1R/a & 1R/b to D2C - 1,440 pph Install: Lift 13 - 2C - 1,200 pph Lift 14 - D4C - 2,400 pph Lift 15 - 3C - 1,800 pph Lift 16 - D4C - 2,800 pph	
	108.7	47.9	150.6	720.7
	12,534	16,085	22,230	22,230
	14,790	20,106	29,566	29,566

PHASE 2	PHASE 3	PHASE 4	TOTAL
75%	105%	105%	
4,942	7,489	6,452	23,342
9,401	16,889	23,342	
63	72	100	288
116	188	288	
42	44	60	179
75	119	179	
d, 11 - 19	e,f, 20 - 29	UNDESIGNATED	

PHASE 2	PHASE 3	PHASE 4	TOTAL
9		9	27
3	3	6	14
5.05	0.32	5.00	13.11
AQUATIC CENTRE	CONFERENCE CENTRE MOVIE THEATER BASEBALL DIAMOND CHILDREN'S WATER PARK	DRIVING RANGE UNDESIGNATED**	
$3,736,400	$1,930,960	$2,620,000	$10,198,080
33	33	36	137
68	101	137	

~~D-1~~ D-3

SCHEDULE "E"

SAOT FORMULA

$$CP = \frac{CL \times VR \times LE \times HO}{VSD}$$

Where

CP = effective lift pod capacity

CL = hourly lift capacity (skiers/hour)

VR = vertical rise of specific lift

LE = lift loading efficiency (.9)

HO = hours of operation (7)

VSD = vertical skied per day (10,000' except for beginners)

SCHEDULE "F"

FORM OF LEASE
(Recreation Improvement other than a Lift, Snowmaking
Equipment or Ski Trail)

THIS LEASE dated for reference the ____ day of ____________, 19__.

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Environment, Lands and Parks, Parliament Buildings, Victoria, British Columbia V8V 1X4

(the "Lessor")

OF THE FIRST PART

AND

TOD MOUNTAIN DEVELOPMENT LTD., a company incorporated under the laws of Alberta and continued in British Columbia under the *Company Act* (Continuation No. C425875), having a business address in British Columbia at P.O. Box 869, Kamloops, British Columbia V2C 5M8

("the Lessee")

OF THE SECOND PART

WHEREAS

A. The Lessor and the Lessee are parties to an agreement (the "Development Agreement") dated __________________ for the operation and development of the Resort Area;

B. In accordance with the Development Agreement, the Lessor has agreed to lease various parcels of land in the Resort Area to the Lessee on the terms and conditions contained in this Lease.

NOW THEREFORE in consideration of the rents reserved and the covenants and agreements set forth in this Lease, the parties agree as follows.

ARTICLE I - GRANT OF LEASE

1.01 The Lessor demises and leases to the Lessee that parcel of land described as follows:

____

____.

____

which is shown outlined in red on Schedule "A" (the "Land").

1.02 This Lease, and the estate granted by it, are subject to the terms and conditions of the Development Agreement and

(a) if there is any inconsistency between a provision of this Lease and a provision of the Development Agreement, the provision of the Development Agreement will prevail; and

(b) defined terms in this Lease have the meaning accorded to them in the Development Agreement.

ARTICLE II - TERM

2.01 To have and to hold the Land unto the Lessee for the term of years beginning on the reference date of this Lease and ending on the expiration or earlier termination of the Development Agreement.

ARTICLE III - RENT

3.01 Yielding and paying therefor the rent provided in Article VII of the Development Agreement.

ARTICLE IV - LESSEE'S COVENANTS

4.01 In addition to the Lessee's covenants contained in the Development Agreement, the Lessee covenants with the Lessor

(a) to pay rent and Fees at the times and in the manner specified in the Development Agreement;

(b) to observe, comply with and perform all of the terms and conditions of the Development Agreement;

(c) to use the Land solely for the purpose of constructing, operating and maintaining the Recreation Improvement described or shown in Schedule "A";

(d) to pay and discharge when due all charges for electricity, gas and other utilities supplied to the Land;

(e) to keep the Land and the Recreation Improvement situate on it in a safe, clean and sanitary condition and in repair and to repair according to notice;

(f) on the expiration or earlier termination of the term of this Lease, to peaceably quit, surrender, yield up and deliver the Land and the Recreation Improvement situate on it to the Lessor in a safe, clean and sanitary condition and in repair (reasonable wear and tear excepted) and all right, interest and estate of the Lessee in the Land and the Recreation Improvement situate on it will cease and vest in the Lessor;

(g) to permit the Lessor, its servants and agents at all times to enter on and inspect the Land and the Recreation Improvement situate on it; and

(h) not to cut, destroy or remove timber or trees standing on the Land except in compliance with the *Forest Act* and then only to the extent necessary to develop the Land in compliance with the Development Agreement.

ARTICLE V - ASSIGNMENT

5.01 The Lessee may not assign, sublet or transfer this Lease without the prior written consent of the Lessor in accordance with Article XIV of the Development Agreement.

5.02 Any assignment of this Lease by operation of any law of bankruptcy or insolvency or any assignment of this Lease for the benefit of the Lessee's creditors will, of itself, be a forfeiture of this Lease and the estate herein granted, but no forfeiture will be deemed to affect any rights or damages that may have accrued to the Lessor against the Lessee by reason of any breach of the Lessee's covenants or obligations contained in this Lease.

ARTICLE VI - MISCELLANEOUS

6.01 The Lessor is under no obligation to provide access to the Land or to maintain or improve any existing or future access roads.

6.02 Any interference with the rights of the Lessee under this Lease by virtue of the operation of the *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Coal Act*, *Forest Act*, or *Water Act* or any certificate, lease, permit or licence issued under any of those Acts will not constitute a breach of the Lessor's implied covenant of quiet enjoyment.

6.03 This Lease and the estate herein granted is subject to

(a) all subsisting grants to, or rights of, any person made or acquired under the *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Coal Act*, *Forest Act* or *Water Act* whether or not the Lessee has actual notice of them; and

(b) the exceptions and reservations of rights, interests, privileges and titles referred to in section 47 of the *Land Act*.

6.04 The Lessor reserves the right to grant other dispositions over the Land, or any part of it, with the prior consent of the Lessee, which consent will not be unreasonably withheld, by way of easement, right of way or statutory right of way to a Crown corporation or agency, a municipality or regional district or a public utility company and, upon such consent being given, the Lessee will forthwith execute and deliver to the Lessor such instrument as may be required to subordinate the Lessee's rights and interests in the Land granted by this Lease.

6.05 For the purposes of section 6.04, the Lessee will be deemed to have reasonably withheld its consent if a grant to be made under that section would:

(a) materially affect the Lessee's exercise of any of its rights under this Lease;

(b) be incompatible or in competition with the Lessee's use of or business in and on the Land; or

(c) reasonably have adverse financial implications on the Lessee's operations under this Lease.

6.06 The Lessee acknowledges and agrees that it will make no claim for compensation, in any form, in respect of a grant made under section 6.04 where the Lessee has consented, or unreasonably withheld its consent, to such grant.

6.07 The terms and provisions of this Lease will extend to, be binding upon and enure to the benefit of the parties, their successors and permitted assigns.

ARTICLE VII - INTERPRETATION

7.01 In this Lease, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.

7.02 The headings of Articles are for convenience of reference only and are not to be construed as defining or in any way limiting the scope or intent of the provisions of this Lease.

7.03 This Lease will be interpreted according to the laws of the Province of British Columbia.

7.04 Where there is a reference to an enactment of the Province of British Columbia in this Lease, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect and, unless the context otherwise requires, all statutes referred to in this Lease are enactments of the Province of British Columbia.

7.05 If any section of this Lease or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and they will be enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF the parties have executed this Lease as of the day and year first above written.

SIGNED by the Minister of Environment, Lands and Parks or his duly authorized representative on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA in the presence of:)

____

____

____

The Common Seal of TOD MOUNTAIN DEVELOPMENT LTD. was hereunto affixed in the presence of:)

______________________________ c/s

Authorized Signatory

____

Authorized Signatory

SCHEDULE "G"

FORM OF RIGHT-OF-WAY
(Lift or Snowmaking Equipment)

THIS AGREEMENT dated for reference the ____ day of ___________, 19__.

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Environment, Lands and Parks, Parliament Buildings, Victoria, British Columbia V8V 1X4

(the "Grantor")

OF THE FIRST PART

AND

TOD MOUNTAIN DEVELOPMENT LTD., a company incorporated under the laws of Alberta and continued in British Columbia under the *Company Act* (Continuation No. C425875), having a business address in British Columbia at P.O. Box 869, Kamloops, British Columbia V2C 5M8

("the Grantee")

OF THE SECOND PART

WHEREAS

A. The Grantor and the Grantee are parties to an agreement (the "Development Agreement"), dated ________________ for the operation and development of the Resort Area;

B. In accordance with the Development Agreement, the Grantor has agreed to grant to the Grantee a right-of-way over that parcel of land described as follows:

____

____

which is outlined in red on Schedule "A" (the "Land") on the terms and conditions set forth in this Agreement.

NOW THEREFORE in consideration of the premises and of the Fees to be paid by the Grantee to the Grantor, the parties agree as follows.

ARTICLE I - GRANT OF RIGHT-OF-WAY

1.01 The Grantor grants to the Grantee the full, free and uninterrupted right and privilege, for itself, its servants, agents, contractors, licensees and invitees to enter, pass and repass over the Land for the purpose of constructing, operating, maintaining and using the Lift or Snowmaking Equipment described or shown in Schedule "A".

1.02 The right-of-way granted is subject to the terms and conditions of the Development Agreement and

(a) if there is any inconsistency between a provision of this Agreement and a provision of the Development Agreement, the Development Agreement will prevail; and

(b) defined terms in this Agreement have the meaning accorded to them in the Development Agreement.

ARTICLE II - DURATION

2.01 The duration of the right-of-way granted will be for the term of years beginning on the reference date of this Agreement and ending on the date of the expiration or earlier termination of the Development Agreement.

ARTICLE III - FEES

3.01 The Grantee will pay the Fees to the Grantor at the times and in the manner specified in Article VII of the Development Agreement.

ARTICLE IV - GRANTEE'S COVENANTS

4.01 In addition to the Grantee's covenants contained in the Development Agreement, the Grantee covenants with the Grantor

(a) to observe, comply with and perform all of the terms and conditions of the Development Agreement;

6.02 This Agreement and the rights granted by it are subject to

(a) all subsisting grants to, or rights of, any person made or acquired under the *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Coal Act*, *Forest Act* or *Water Act* whether or not the Grantee has actual notice of them; and

(b) the exceptions and reservations of rights, interests, privileges, and titles referred to in section 47 of the *Land Act*.

6.03 The Grantor reserves the right to grant other dispositions over the Land, or any part of it, with the prior consent of the Grantee, which consent will not be unreasonably withheld, by way of easement, right of way or statutory right of way to a Crown corporation or agency, a municipality or regional district or a public utility company and, upon such consent being given, the Grantee will forthwith execute and deliver to the Grantor such instrument as may be required to subordinate the Grantee's rights and interests in the Land granted by this Agreement.

6.04 For the purposes of section 6.03, the Grantee will be deemed to have reasonably withheld its consent if a grant to be made under that section would:

(a) materially affect the Grantee's exercise of any of its rights under this Lease;

(b) be incompatible or in competition with the Grantee's use of or business in and on the Land; or

(c) reasonably have adverse financial implications on the Grantee's operations under this Agreement.

6.05 The Grantee acknowledges and agrees that it will make no claim for compensation, in any form, in respect of a grant made under section 6.03 where the Grantee has consented, or unreasonably withheld its consent, to such grant.

6.06 The terms and provisions of this Agreement will extend to, be binding upon and enure to the benefit of the parties, their successors and permitted assigns.

6.07 The Grantor is under no obligation to provide access to the Land or to maintain or improve any existing or future access roads.

ARTICLE VII - INTERPRETATION

7.01 In this Agreement, unless the context otherwise requires the singular includes the plural and the masculine includes the feminine gender and a corporation.

7.02 The captions of Articles are for convenience of reference only and are not to be construed as defining or in any way limiting the scope or intent of the provisions of this Agreement.

7.03 This Agreement will be interpreted according to the laws of the Province of British Columbia.

7.04 Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect, and, unless the context otherwise requires, all statutes referred to in this Agreement are enactments of the Province of British Columbia.

7.05 If any section of this Agreement or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and they will be enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF the parties have set their hands and seals as of the day and year first above written.

SIGNED by the Minister of Environment, Lands and Parks or his duly authorized representative on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA in the presence of:	)
____________________	)
____________________	)
____________________	)

The Common Seal of TOD MOUNTAIN DEVELOPMENT LTD. was hereunto affixed in the presence of:	)	
____________________ Authorized Signatory	)	c/s
____________________ Authorized Signatory	)	

SCHEDULE "H"

FORM OF LICENSE
(Ski Trail, Access Route or Interim Tenure)

THIS AGREEMENT dated for reference the ____ day of ___________, 19__

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Environment, Lands and Parks, Parliament Buildings, Victoria, British Columbia, V8V 1X4

(the "Owner")

OF THE FIRST PART

AND

TOD MOUNTAIN DEVELOPMENT LTD., a company incorporated under the laws of Alberta and continued in British Columbia under the *Company Act* (Continuation No. C425875), having a business address in British Columbia at P.O. Box 869, Kamloops, British Columbia V2C 5M8

("the Licensee")

OF THE SECOND PART

WHEREAS

A. The Owner and the Licensee are parties to an agreement (the "Development Agreement") dated __________________ for the operation and development of the Resort Area;

B. In accordance with the Development Agreement the Owner has agreed to grant to the Licensee a license over that parcel of land described as follows:

____

____

____

which is shown outlined in red on Schedule "A" (the "Land") on the terms and conditions set forth in this License.

NOW THEREFORE, in consideration of the premises and the Fees to be paid by the Licensee to the Owner, the parties agree as follows.

ARTICLE I - GRANT OF LICENSE

1.01 The Owner grants to the Licensee a license to enter on the Land for the purpose of constructing, operating and maintaining the Ski Trails or Access Routes described or shown in Schedule "A".

1.02 This License, and the rights granted by it are subject to the terms and conditions of the Development Agreement and

(a) if there is any inconsistency between a provision of this License and a provision of the Development Agreement, the Development Agreement will prevail; and

(b) defined terms in this License have the meaning accorded to them in the Development Agreement.

ARTICLE II - DURATION

2.01 The duration of this License and the rights granted by it will be for the term of years beginning on the reference date of this License and ending on the date of the expiration or earlier termination of the Development Agreement.

ARTICLE III - LICENSE FEES

3.01 The Licensee will pay the Fees to the Owner at the times and in the manner specified in Article VII of the Development Agreement.

ARTICLE IV - LICENSEE'S COVENANTS

4.01 In addition to the Licensee's covenants contained in the Development Agreement, the Licensee covenants with the Owner

(a) to observe, comply with and perform all of the terms and conditions of the Development Agreement;

6.02 This Agreement and the rights granted by it are subject to

(a) all subsisting grants to, or rights of, any person made or acquired under the *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Coal Act*, *Forest Act* or *Water Act* whether or not the Grantee has actual notice of them; and

(b) the exceptions and reservations of rights, interests, privileges, and titles referred to in section 47 of the *Land Act*.

6.03 The Grantor reserves the right to grant other dispositions over the Land, or any part of it, with the prior consent of the Grantee, which consent will not be unreasonably withheld, by way of easement, right of way or statutory right of way to a Crown corporation or agency, a municipality or regional district or a public utility company and, upon such consent being given, the Grantee will forthwith execute and deliver to the Grantor such instrument as may be required to subordinate the Grantee's rights and interests in the Land granted by this Agreement.

6.04 For the purposes of section 6.03, the Grantee will be deemed to have reasonably withheld its consent if a grant to be made under that section would:

(a) materially affect the Grantee's exercise of any of its rights under this Lease;

(b) be incompatible or in competition with the Grantee's use of or business in and on the Land; or

(c) reasonably have adverse financial implications on the Grantee's operations under this Agreement.

6.05 The Grantee acknowledges and agrees that it will make no claim for compensation, in any form, in respect of a grant made under section 6.03 where the Grantee has consented, or unreasonably withheld its consent, to such grant.

6.06 The terms and provisions of this Agreement will extend to, be binding upon and enure to the benefit of the parties, their successors and permitted assigns.

6.07 The Grantor is under no obligation to provide access to the Land or to maintain or improve any existing or future access roads.

ARTICLE VII - INTERPRETATION

7.01 In this Agreement, unless the context otherwise requires the singular includes the plural and the masculine includes the feminine gender and a corporation.

7.02 The captions of Articles are for convenience of reference only and are not to be construed as defining or in any way limiting the scope or intent of the provisions of this Agreement.

7.03 This Agreement will be interpreted according to the laws of the Province of British Columbia.

7.04 Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect, and, unless the context otherwise requires, all statutes referred to in this Agreement are enactments of the Province of British Columbia.

7.05 If any section of this Agreement or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and they will be enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF the parties have set their hands and seals as of the day and year first above written.

SIGNED by the Minister of Environment, Lands and Parks or his duly authorized representative on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA in the presence of:	)
______________________________	)
______________________________	)
______________________________	)

The Common Seal of TOD MOUNTAIN DEVELOPMENT LTD. was hereunto affixed in the presence of:	)	
______________________________ Authorized Signatory	)	c/s
______________________________ Authorized Signatory	)	

SCHEDULE "H"

FORM OF LICENSE
(Ski Trail, Access Route or Interim Tenure)

THIS AGREEMENT dated for reference the ____ day of ___________, 19__

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Environment, Lands and Parks, Parliament Buildings, Victoria, British Columbia, V8V 1X4

(the "Owner")

OF THE FIRST PART

AND

TOD MOUNTAIN DEVELOPMENT LTD., a company incorporated under the laws of Alberta and continued in British Columbia under the *Company Act* (Continuation No. C425875), having a business address in British Columbia at P.O. Box 869, Kamloops, British Columbia V2C 5M8

("the Licensee")

OF THE SECOND PART

WHEREAS

A. The Owner and the Licensee are parties to an agreement (the "Development Agreement") dated __________________ for the operation and development of the Resort Area;

B. In accordance with the Development Agreement the Owner has agreed to grant to the Licensee a license over that parcel of land described as follows:

____
____
____

which is shown outlined in red on Schedule "A" (the "Land") on the terms and conditions set forth in this License.

NOW THEREFORE, in consideration of the premises and the Fees to be paid by the Licensee to the Owner, the parties agree as follows.

ARTICLE I - GRANT OF LICENSE

1.01 The Owner grants to the Licensee a license to enter on the Land for the purpose of constructing, operating and maintaining the Ski Trails or Access Routes described or shown in Schedule "A".

1.02 This License, and the rights granted by it are subject to the terms and conditions of the Development Agreement and

(a) if there is any inconsistency between a provision of this License and a provision of the Development Agreement, the Development Agreement will prevail; and

(b) defined terms in this License have the meaning accorded to them in the Development Agreement.

ARTICLE II - DURATION

2.01 The duration of this License and the rights granted by it will be for the term of years beginning on the reference date of this License and ending on the date of the expiration or earlier termination of the Development Agreement.

ARTICLE III - LICENSE FEES

3.01 The Licensee will pay the Fees to the Owner at the times and in the manner specified in Article VII of the Development Agreement.

ARTICLE IV - LICENSEE'S COVENANTS

4.01 In addition to the Licensee's covenants contained in the Development Agreement, the Licensee covenants with the Owner

(a) to observe, comply with and perform all of the terms and conditions of the Development Agreement;

(b) to use the Land solely for the purpose for which this License is granted;

(c) to pay and discharge when due all charges for electricity, gas and other utilities supplied to the Land;

(d) to keep the Land and the Recreation Improvement situate on it in a safe, clean and sanitary condition and in repair and to repair according to notice;

(e) on the expiration or earlier termination of this License, to peaceably quit, surrender, yield up and deliver the Land and the Recreation Improvement situate on it to the Owner in a safe, clean and sanitary condition and in repair (reasonable wear and tear excepted) and all right, interest and estate of the Licensee in the Land and the Recreation Improvement situate on it will cease and vest in the Owner;

(f) to permit the Owner, its servants and agents at all times to enter on and inspect the Land and the Recreation Improvement situate on it;

(g) not to cut, destroy or remove timber or trees standing on the Land except in compliance with the *Forest Act* and then only to the extent necessary to develop the Land in compliance with the Development Agreement; and

(h) not to charge or require any person to pay a fee for the right to pass and repass over Ski Trails that are designed primarily for cross-country skiing, without the prior written consent of the Owner.

ARTICLE V - ASSIGNMENT

5.01 The Licensee may not assign this License or, except to the extent necessary to permit its customers to use the Recreation Improvement situate on the Land, sublicense this License without the prior written consent of the Owner in accordance with Article XIV of the Development Agreement.

5.02 Any assignment of this Licence or the license granted by it by operation of any law of bankruptcy or insolvency or any assignment of the Licensee for the benefit of the Licensee's creditors will, of itself, be a forfeiture of the rights granted by this License, but no forfeiture will be deemed to affect any rights or damages that may have accrued to the Owner against the Licensee by reason of any breach of the covenants or obligations contained in this License.

ARTICLE VI - MISCELLANEOUS

6.01 This License does not confer any right in the Licensee to interfere with the rights of any person under or by virtue of the operation of the *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Coal Act*, *Forest Act* or *Water Act* or any certificate, lease, permit or licence issued under any of those Acts.

6.02 This License and the rights granted by it are subject to

(a) all subsisting grants to, or rights of, any person made or acquired under the *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Coal Act*, *Forest Act* or *Water Act* whether or not the Licensee has actual notice of them; and

(b) the exceptions and reservations of rights, interests, privileges and titles referred to in section 47 of the *Land Act*.

6.03 The Owner reserves the right to grant other dispositions over the Land, or any part of it, with the prior consent of the Licensee, which consent will not be unreasonably withheld, by way of easement, right of way or statutory right of way to a Crown corporation or agency, a municipality or regional district or a public utility company and, upon such consent being given, the Licensee will forthwith execute and deliver to the Owner such instrument as may be required to subordinate the Licensee's rights over the Land granted by this License.

6.04 For the purposes of section 6.03, the Licensee will be deemed to have reasonably withheld its consent if a grant to be made under that section would:

(a) materially affect the Licensee's exercise of any of its rights under this License;

(b) be incompatible or in competition with the Licensee's use of or business in and on the Land; or

(c) reasonably have adverse financial implications on the Licensee's operations under this License.

6.05 The Licensee acknowledges and agrees that it will make no claim for compensation, in any form, in respect of a grant made under section 6.03 where the Licensee has consented, or unreasonably withheld its consent, to such grant.

6.06 The terms and provisions of this License will extend to, be binding upon and enure to the benefit of the parties, their successors and permitted assigns.

6.07 The Owner is under no obligation to provide access to the Land or to maintain or improve any existing or future access roads.

ARTICLE VII - INTERPRETATION

7.01 In this License, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.

7.02 The captions of Articles are for convenience of reference only and are not to be construed as defining or in any way limiting the scope or intent of the provisions of this License.

7.03 This License will be interpreted according to the laws of the Province of British Columbia.

7.04 Where there is a reference to an enactment of the Province of British Columbia in this License, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect, and, unless the context otherwise requires, all statutes referred to in this License are enactments of the Province of British Columbia.

7.05 If any section of this License or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and they will be enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF the parties have executed this License as of the day and year first above written.

SIGNED by the Minister of Environment, Lands, and Parks or his duly authorized representative on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA in the presence of:)

______________________________)

______________________________)

______________________________)

The Common Seal of TOD MOUNTAIN DEVELOPMENT LTD. was hereunto affixed in the presence of:)

______________________________) c/s

Authorized Signatory)

______________________________)

Authorized Signatory)

SCHEDULE "I"

ENVIRONMENTAL REQUIREMENTS

1. Wheeled vehicle traffic must not violate drainage patterns except along predetermined access routes that provide structures adequate for channel protection at points of crossing.

2. All streambanks must be protected from soil breakdown by wheeled or tracked vehicle traffic other than for timber removal and initial road construction. During timber removal and all phases of road construction, soil disturbance of streambeds must be kept to a minimum.

3. Construction activity close to drainages on higher elevation areas must be held to a minimum until the dry season (July, August, September) results in reduced streamflows.

4. Construction in drainages may require the diversion of the clear water around the work site in some form of piping or culvert.

5. Where culverts and drainage are required, all culverts must be sized for maximum stream flow conditions.

6. Wherever possible, buffer strips of trees and natural rough vegetation must be left between work areas and drainages.

7. Wet areas on trails must be drained subsurface, where practicable, using proper drainage methods, perforated pipe and rock fill. Drainage must be deep enough to prevent freeze-up. Manmade drainages, both surface and subsurface, must discharge into natural drainages or rough, rocky terrain.

8. Manmade drainages must not overload natural drainages and threaten their possibly fragile channel stability.

9. Care should be taken to ensure that surface flows from the side do not encroach on top of buried culverts.

10. Culverts must be placed so as to accept water flows straight on or have rock headers.

11. Existing work roads on the mountain must be used in order to minimize the need for new access roads.

12. Temporary access routes must be filled and revegetated at the earliest opportunity.

13. Throughout the construction process there must be continual use of erosion control procedures, including hay bailing of minor drainages, water-barring of the work area, containment of water flows within trail contouring and configuration and settling ponds where sediment is being carried in the water, if required, prior to points of entry into a water course.

14. Waterbars must have a maximum 10 per cent cross slope fall.

15. Waterbars and drainage control procedures must be checked as circumstances require.

16. Trees must be closecut by power saw rather than bulldozed over, except where grooming standards may otherwise require.

17. Final grading must follow as closely behind the rough grading as is physically possible.

18. Chip mulching is acceptable, but even distribution is often hard to achieve. Hay mulch is preferable and must be laid in to cover disturbed ground as soon as practical.

19. Soil tests must be undertaken in order to develop the appropriate seed and fertilizer mixtures and ratios. The Ministry of Environment may be consulted to determine which mixtures have been used successfully at higher altitudes.

20. On slopes below 15 per cent gradient, machine clearing should not be a problem. However, attention should be paid to sensitive areas and existing work roads must be utilized as much as possible. Mulch cover of disturbed areas must be implemented as soon as possible and must be consistent with reasonable construction procedures.

21. On slopes from 15-40 per cent gradient, the use of machines is allowable with the same constraints as noted above. The use of waterbars must be increased according to any increases in slope and mulch must be laid down quickly.

22. On slopes in excess of 40 per cent gradient, the use of machines must be undertaken only after consideration is given to the specific problems presented in each circumstance.

23. Completion of erosion control procedures must be an integral part of steep work. On steeper faces, mulch cover may be held down with light, biodegradable nylon mesh. Jute matting may be required to enhance soil stability.

24. All areas requiring significant cut and fill must be mapped out in advance, with special consideration given to identifying the placement and configuration of

erosion controls.

25. In all cases, management of the visual aspects of trail development must be considered. This will include the scalloping of trails, feathering tree cover and the use of islands and bays.

26. An integral part of trail work will be the removal of diseased, damaged or hazardous trees adjacent to trails and any indication of infestation in those trees must be reported to the Province.

27. On slopes in excess of 40 per cent gradient and in areas where environmental sensitivity requires, the construction of ski trails by using bulldozers must be limited. Felled trees must be stacked and burned if removal of those trees is not possible. The trail surface may have to be finished and smoothed by hand in order to enhance the use of the trail surface for skiing.

28. Conventional caterpillar tractors and similar machines are not to be used in the alpine and subalpine meadows in the Controlled Recreation Area. Lower impact machines must be used. Any disturbed areas must have natural drainage restored and be recontoured as soon as possible after disturbance and be reseeded with native species of vegetation, including grasses and shrubs.

SCHEDULE "J"

OPERATING COVENANTS

Tod covenants and agrees with the Province

(a) during the Operating Season, to maintain, at or near the Controlled Recreation Area, a management office with a full-time, on-site manager and a sufficient staff of management, supervisors and operating and maintenance personnel to adequately perform the management, supervision, maintenance and operation of the Controlled Recreation Area;

(b) during the Operating Season, to maintain and repair all Recreation Improvements including, without limiting the generality of the foregoing, the Lifts and all ancillary facilities, in keeping with accepted British Columbia industry standards of ski area development;

(c) during the Operating Season, to maintain a first aid office with adequate trained personnel in the Controlled Recreation Area and to station an adequate number of first aid toboggans, complete with necessary equipment, for each major Lift and to provide an adequate number of first aid caches to serve the Controlled Recreation;

(d) during the Operating Season, to maintain, or cause to be maintained, and to provide snow removal services on all Access Routes, service roads and Parking Facilities;

(e) during the Ski Season, to maintain avalanche forecasting, patrol and control for all parts of the Controlled Recreation Area serviced by Lifts and within patrolled ski area boundaries that are determined by Tod, from time to time, and are clearly marked by Tod;

(f) to dispose of solid waste in accordance with all applicable laws;

(g) to keep the Controlled Recreation Area, Parking Facilities and Day Skier Facility reasonably free of litter and to provide sufficient litter barrels for that purpose;

(h) in connection with slope, trail and other clearing, to pay stumpage, royalties and all other charges payable under the *Forest Act* and to dispose of any timber and slash by piling and burning, lopping and scattering or chipping, in accordance with a cutting permit issued under the *Forest Act* and any direction of the Chief Forester;

(i) at the request of the Province, to erect information signs indicating that the Controlled Recreation Area is under the management and control of Tod;

(j) to establish and maintain a preventative maintenance programme on all Lifts, to ensure that trained maintenance personnel are available in the event of an emergency shut-down of a Lift and to operate the Lifts in accordance with the requirements of Government Agencies;

(k) during the Ski Season, to maintain the Ski Trails in accordance with accepted British Columbia ski industry standards, including the use of snowcats and grooming equipment to pack and groom the Ski Trails;

(l) during the Ski Season, to maintain a qualified staff of trained ski patrol to serve the skiing public during winter hours of operation;

(m) during the Ski Season, to maintain a dispatch office on the mountain through which all snow safety programmes and the dispatching of patrollers will be handled;

(n) during the Operating Season, to maintain in the Day Skier Facility a holding area for injured people;

(o) subject to snow and weather conditions and force majeure, to operate the Lifts and ancillary services and facilities daily during the period from December 1st to April 1st of each Ski Season;

(p) to provide Ski Trail international identification signs in the Controlled Recreation Area and to provide and post appropriate notices with respect to the degree of skier ability required for each Ski Trail and the daily snow condition of each of them;

(q) to maintain appropriate traffic and direction signs, adequately supervise the flow of traffic in the Parking Facilities and otherwise supervise and control the Parking Facilities in accordance with accepted British Columbia ski industry standards;

(r) not to impose any charge for the use of Parking Facilities without the prior written consent of the Province provided, however, that the Province will not unreasonably withhold its consent to a charge for the use of Parking Facilities if that is the common practice in comparable ski area developments in British Columbia and if the Province consents to Tod imposing a charge it will be included in Gross Revenue;

(s) to operate or cause to be operated a high quality ski school adequate for the Controlled Recreation Area and substantially all the instructors must be certified by the Canadian Ski Instructors Alliance or the Professional Ski Instructors of America or the international equivalent;

(t) not to charge the public for the use of brown bag rooms or sanitation facilities; and

(u) to deliver to the Province a detailed statement of Gross Revenue for that Financial Year in accordance with section 7.03 of the Agreement, signed by two directors of Tod which must include a breakdown of the number of users of each of the Recreation Improvements and the Controlled Recreation Area together with a statement of the amounts paid by those users to Tod.

SCHEDULE "K"

PRIOR RIGHTS AND INTERESTS

1. Communication Site License of Occupation dated August 27, 1984 on file 3402833 issued in the nameof B. & R. Electronics Development Industries Ltd. for a period of 10 years over 10 m x 10 m site (0.01 ha).

2. Ministry of Forests Project 4337.07 Road on Forest Service file 0224463 McGillivray - Resort Creek Road and Ministry of Forests Projects 8445.01 and 4337.01 - Tod Mountain Forest Service Road and McGillivray Creek Forest Service Road to be protected to a width of 30 metres (not legally surveyed).

3. Ministry of Forests Recreation Site Project 900-1-1527.

4. Mount Tod Road, Right-of-Way to be protected to a width of 60 m as shown on Ministry of Transportation and Highways gazette plan no. 213396-03 attached to file 3401984 to west boundary of District Lot 5957, Kamloops Division Yale District.

5. Public road shown outlined on Subdivision Plan 21856 of District Lot 5957, Kamloops Division Yale District.

6. The following grazing rights under the *Range Act* exist within the Controlled Recreation Area:

   Range Act permits issued by the Ministry of Forests in Upper Louis Creek Stock Range of the Kamloops Range District for a term of ten years on file 885-9 to:

   (a) Francis John Brady, R.R. #1, Heffley Creek, B.C., V0E 1Z0, as of January 1, 1993 for 978 Animal Unit Months (A.U.M.s);
   Tod Mtn. Unit: 16 cattle for 24 AUMs
   McGillivray Lake and South Cahilty Meadows Unit: 20 cattle for 36 AUMS;

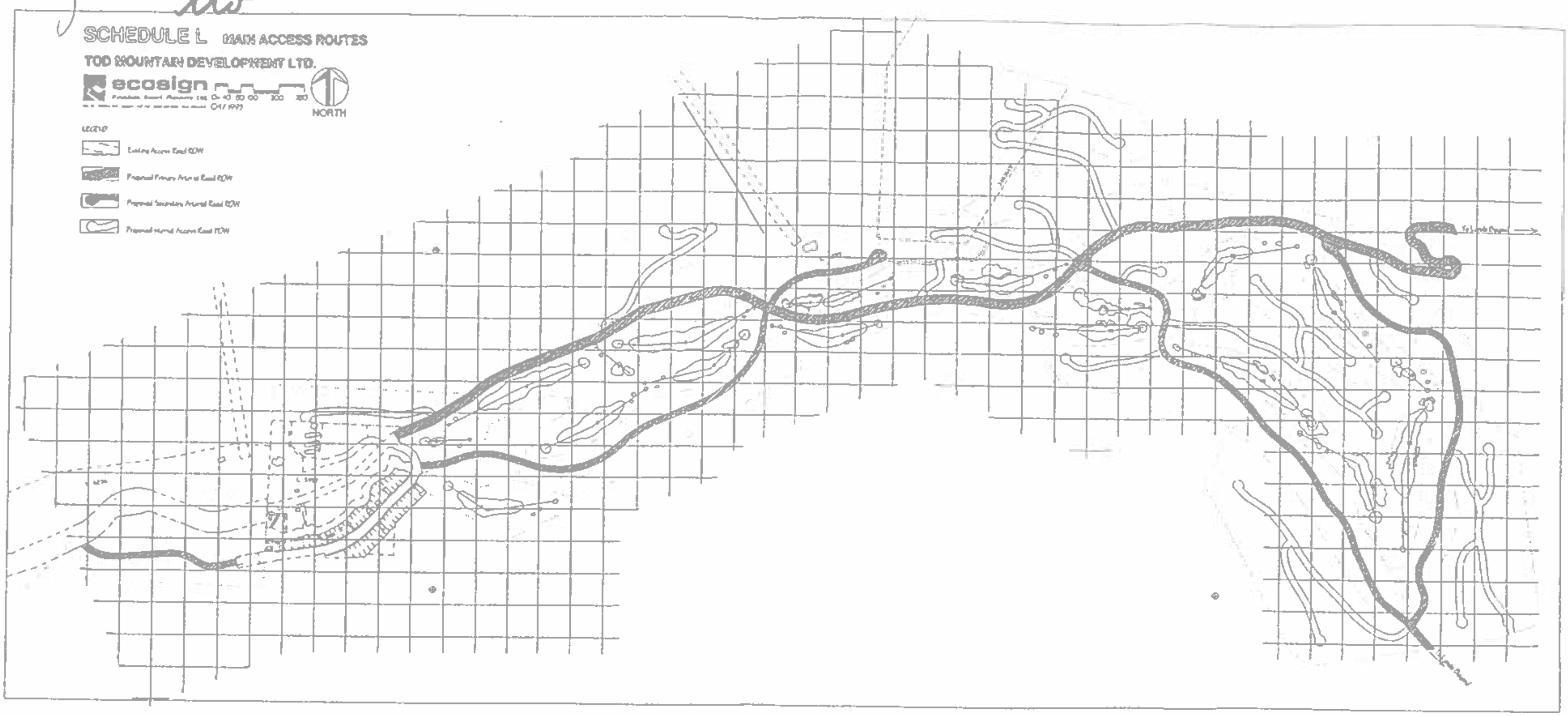
   (b) Kenneth G. Henderson, Heffley Creek, B.C., V0E 1Z0, as of January 1, 1993 for 978 A.U.M.s;
   Tod Mtn. Unit: 53 cattle for 79 AUMs
   McGillivray Lake and South Cahilty Meadows Unit: 240 cattle 641 AUMs;

   (c) Ulrich J. Steiner, R.R. #1, Heffley Creek, B.C., V0E 1Z0, as of January 1, 1993 for 124 A.U.M.s;
   Tod Mtn. Unit: 15 cattle for 22 AUMs
   McGillivray Lake Unit and South Cahilty Meadows Unit: 32 cattle for 74 AUMs;

(d) Kelly and Holly Jette, R.R. #1, Heffley Creek, B.C., V0E 1Z0, as of January 1, 1993 for 123 A.U.M.s;
Tod Mtn. Unit: 13 cattle for 20 AUMs
McGillivray Lake Unit and South Cahilty Meadows Unit: 41 cattle for 103 AUMs;

(e) Lorne D. Seymour, R.R. #1, Heffley Creek, B.C., V0E 1Z0, as of January 1, 1993 for 472 A.U.M.s;
Tod Mtn. Unit: 33 cattle for 50 AUMS
McGillivray Lake Unit and South Cahilty Meadows Unit: Nil Use;

(f) Wayne and Muriel Stordahl, R.R. #1, Heffley Creek, B.C., V0E 1Z0, as of January 1, 1993 for 624 A.U.M.s;
Tod Mtn. Unit: 60 cattle for 90 AUMs
McGillivray Lake Unit and South Cahilty Meadows Unit: Nil Use.


SCHEDULE L MAIN ACCESS ROUTES
TOD MOUNTAIN DEVELOPMENT LTD.
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Existing Access Road ROW
Proposed Primary Arterial Road ROW
Proposed Secondary Arterial Road ROW
Proposed Internal Access Road ROW