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

# FORM 10-K

**x ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended July 31, 2005

or

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

For the transition period from to

Commission File Number: 1-9614

## Vail Resorts, Inc.

(Exact name of registrant as specified in its charter)

| Delaware | 51-0291762 |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |
| Post Office Box 7, Vail, Colorado | 81658 |
| (Address of principal executive offices) | (Zip Code) |

Registrant's telephone number, including area code: (970) 845-2500

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class: | Name of each exchange on which registered: |
|---|---|
| Common Stock, $0.01 par value | New York Stock Exchange |

Securities registered pursuant to Section 12(g) of the Act:

None.

(Title of class)

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendments to this Form 10-K**.** x

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act).
**x Yes** ☐ No

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the per share closing price on the New York Stock Exchange Composite Tape as of January 31, 2005 (the last business day of the registrant's most recently completed second fiscal quarter) was approximately $799.8 million.

As of September 26, 2005, 36,736,325 shares of Common Stock were issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

The Proxy Statement for the Annual Meeting of Shareholders is incorporated by reference herein into Part III, Items 10 through 14.

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**PART I**

## FORWARD-LOOKING STATEMENTS

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

These forward-looking statements are identified by their use of terms and phrases such as "anticipate," "believe," "could," "estimate," "expect," "intend," "may," "plan," "predict," "project," "will" and similar terms and phrases, including references to assumptions.

Although we believe that our plans, intentions and expectations reflected in or suggested by such forward-looking statements are reasonable, we cannot assure you that such plans, intentions or expectations will be achieved. Important factors that could cause actual results to differ materially from our forward-looking statements include, among others, economic downturns; terrorist acts upon the United States; threat of or actual war; our ability to obtain financing on terms acceptable to us to finance our capital expenditure and growth strategy; our ability to develop our resort and real estate operations; competition in our Mountain and Lodging businesses; failure to commence or complete the planned real estate development projects; failure to achieve the anticipated short and long-term financial benefits from the planned real estate development projects; implications arising from new Financial Accounting Standards Board ("FASB")/governmental legislation, rulings or interpretations; termination of existing hotel management contracts; our reliance on government permits or approval for our use of federal land or to make additional improvements; our ability to integrate and successfully operate future acquisitions; expenses or adverse consequences of current or future legal claims; shortages or rising costs in construction materials; adverse changes in the real estate market and unfavorable weather conditions.. All forward-looking statements attributable to us or any persons acting on our behalf are expressly qualified in their entirety by these cautionary statements.

If one or more of these risks or uncertainties materialize, or if underlying assumptions prove incorrect, our actual results may vary materially from those expected, estimated or projected. Given these uncertainties, users of the information included in this Annual Report on Form 10-K, including investors and prospective investors, are cautioned not to place undue reliance on such forward-looking statements. We might not update these forward-looking statements, even if new information, future events or other circumstances have made them incorrect or misleading.

**PART I**

**ITEM 1. BUSINESS.**

**General**

Vail Resorts, Inc. was organized as a public holding company in 1997 and operates through various subsidiaries (collectively, the "Company"). The Company's operations are grouped into three segments: Mountain, Lodging, and Real Estate, which represented approximately 67%, 24%, and 9%, respectively, of the Company's revenues for the 2005 fiscal year. The Company's Mountain segment owns and operates five premier ski resort properties which provide a comprehensive resort experience throughout the year to a diverse clientele with an attractive demographic profile. The Company's Lodging segment owns and/or manages a collection of luxury hotels, a destination resort at Grand Teton National Park, and a series of strategic lodging properties located in proximity to the

Company's ski resorts. Collectively, the Mountain and Lodging segments are considered the Resort segment. The Company's Real Estate segment holds, develops, buys and sells real estate in and around the Company's resort communities. Financial information by segment is presented in Note 14, Segment Information, of the Notes to Consolidated Financial Statements included in Part II, Item 8 of this report.

**Mountain Segment**

The Company's portfolio of ski resorts currently includes:

- Vail Mountain ("Vail")--the largest single ski mountain complex in North America, the most visited ski resort in the United States for the 2004/05 ski season and currently ranked as the number two ski resort in North America by *SKI* magazine;

- Beaver Creek Resort ("Beaver Creek")--one of the world's premier luxury mountain resorts, the tenth most visited ski resort in the United States for the 2004/05 ski season and currently ranked as the number six ski resort in North America by *SKI* magazine;

- Breckenridge Mountain ("Breckenridge")--an attractive destination resort with numerous après-ski activities and an extensive bed base, the second most visited resort in the United States for the 2004/05 ski season and currently ranked as the number seven ski resort in North America by *SKI* magazine;

- Keystone Resort ("Keystone")--a year-round family-oriented vacation destination, the sixth most visited resort in the United States for the 2004/05 ski season and currently ranked as the number eighteen ski resort in North America by *SKI* magazine; and

- Heavenly Mountain Resort ("Heavenly")--the third largest ski resort in North America, the fourth most visited resort in the United States for the 2004/05 ski season and currently ranked as the number twelve ski resort in North America by *SKI* magazine.

Vail, Beaver Creek, Breckenridge and Keystone, all located in the Colorado Rocky Mountains, and Heavenly, located in the Lake Tahoe area of California/Nevada, are year-round mountain resorts. Each offers a full complement of recreational activities, including skiing, snowboarding, snowshoeing, mountain biking, sight-seeing and other recreational activities.

The Company's Mountain segment derives revenue primarily through the sale of lift tickets and a comprehensive offering of amenities available to guests, including ski and snowboard lessons, retail and equipment rental, a variety of dining venues, private club operations and other recreational activities. In addition to providing extensive guest amenities, the Company also engages in real estate brokerage services, technology services and the leasing of restaurant, retail and other commercial space.

The following paragraphs discuss certain ski industry related statistics. Colorado ski statistics are derived from data published by Colorado Ski Country USA. Canadian ski statistics are from data published by the Canadian Ski Council. U.S. and California ski statistics are derived from the Kottke National End of Season Survey 2004/05.

There are approximately 750 ski areas in North America and approximately 490 in the United States, ranging from small ski area operations which service day skiers to large resorts which attract both day skiers and destination resort guests looking for a comprehensive vacation experience. One of the primary ski industry statistics for measuring performance is "skier visit", which represents a person utilizing a ticket or pass to access a mountain resort for any part of one day, and includes both paid and complimentary access. During the 2004/05 ski season, combined skier visits for all North American ski areas were approximately 75.1 million and U.S. skier visits approximated 56.9 million. The Company's ski resorts had 5.9 million skier visits during the 2004/05 ski season, or approximately 10.4% of U.S. skier visits, and an approximate 7.9% share of the North American market's skier visits.

The Company's Colorado ski resorts appeal to both day skiers and destination guests due to the resorts' proximity to Colorado's Front Range (Denver/Colorado Springs metropolitan areas), accessibility from several airports, including Denver International Airport and Eagle County Regional Airport, and the wide range of amenities available at each resort. Colorado has approximately 25 ski areas, six of which are classified as "Front Range Destination Resorts", including all of the Company's Colorado resorts, catering to both the Front Range and destination-skier markets. All Colorado ski resorts combined recorded approximately 11.8 million skier visits for the 2004/05 ski season, up 5.0% from the 2003/04 ski season. Skier visits at the Company's Colorado ski resorts totaled approximately 4.9 million, and accounted for 71% of Colorado's total Front Range Destination Resort skier visits and 42% of all Colorado skier visits for the 2004/05 ski season.

Lake Tahoe, which straddles the border of California and Nevada, is a major skiing destination less than 100 miles from Sacramento and Reno and approximately 200 miles from San Francisco, making it a convenient destination for both driving and destination guests. South Lake Tahoe, where Heavenly is located, is also a popular year-round vacation destination, featuring extensive summer attractions and casinos in addition to its winter sports offerings. Heavenly is proximate to both the Reno/Tahoe International Airport and the Sacramento International Airport. California and Nevada have approximately 22 ski resorts. Heavenly had approximately 1.1 million skier visits for the 2004/05 ski season, capturing approximately 13.3% of California's and Nevada's 8.3 million total skier visits for the ski season.

There are significant barriers to entry for new ski areas, due to the limited private lands on which ski areas could be built, the difficulty in getting the appropriate governmental approvals to build on public lands and the significant capital needed to construct the necessary infrastructure. While most North American ski areas are individually owned and operated, recent years have seen the emergence of several major corporations, including the Company, which own the leading ski areas. These other major corporations include the operators of Whistler Blackcomb, Copper Mountain, Mammoth Mountain, Winter Park, Killington, Steamboat and Northstar-at-Tahoe.

The ski industry is highly competitive. While the ski industry has performed well in recent years, with the four best seasons in history, in terms of visitation, occurring in the past five years, a particular ski area's growth is also largely dependent on either attracting skiers away from other resorts or generating more revenue per skier visit. This has spawned a trend of increased spending on resort improvements to ensure the newest and best technology and to create new attractions and has also resulted in intense competition in pricing. Larger ski resort owners, including the Company, generally have a competitive advantage over the individual operator, as the larger owners typically have better access to the capital markets and are also able to create synergies within their operations which enhance profitability. Attracting and retaining new participants to the sport will be the key to long-term sustainable growth for the industry. To this end, the Company has focused efforts in recent years on developing programs geared to entry-level participants as well as expanding attractions for non-skiers. The Company's primary competitors include the ski areas noted above, other ski areas in Colorado and Lake Tahoe, and other destination ski areas worldwide, as well as non-ski related vacation destinations.

There are a variety of factors which contribute to a skier's choice of ski resort, including terrain, challenge, grooming, service, lifts, accessibility, value, weather, snowfall and on- and off-mountain amenities. The Company's resorts consistently rank in the top 20 ski resorts in North America according to industry surveys,

which the Company attributes to its resorts' ability to provide a high-quality experience in each of the above mentioned categories.

The Company's ski resorts compete effectively in all categories with respect to attracting day skiers and destination guests for the following reasons:

- The Company has some of the most expansive and varied terrain in North America--Vail alone offers approximately 5,300 skiable acres and Heavenly offers approximately 4,800 skiable acres. The Company's five ski resorts offer over 16,792 skiable acres in aggregate, with substantial offerings for beginner, intermediate and advanced skiers. Additionally, the Company expects to receive approval for 400 additional skiable acres of snowcat skiing at Keystone prior to the 2005/06 ski season.
- With the growing popularity of freeskiing and riding, each of the Company's resorts is committed to providing exceptional terrain parks and pipes. Each resort has multiple parks and pipes that include terrain that will challenge expert and professional riders as well as areas for learning and children. Keystone Resort's A51 Terrain Park is one of the largest parks offering night riding in the country.
- The Company is involved in initiatives that support the National Ski Area Association's programs to grow participation in snowsports. Each of the Company's resorts runs specific programs designed to attract and retain newcomers to snowsports.
- The Company's locations in the Colorado Rocky Mountains receive average yearly snowfall of between 20 and 30 feet and the Sierra Nevada Mountains receive average yearly snowfall of between 25 and 35 feet, which is significantly higher than the average for all U.S. ski resorts.
- The Company's Colorado resorts are proximate to both Denver International Airport and Eagle County Regional Airport, and Heavenly is proximate to both Reno/Tahoe International Airport and Sacramento International Airport. This provides ease of access to the Company's resorts for destination visitors.
- The Colorado Front Range market, with a population of approximately 3.6 million, is within a two-hour drive from each of the Company's Colorado resorts, with access via a major interstate highway.
- Heavenly is proximate to two large California population centers, the Sacramento/Central Valley and the San Francisco Bay area.

- The Company continues to invest in the latest technology in ticketing and snowmaking systems, and the Company has an extensive fleet of grooming equipment.
- The Company systematically replaces lifts, and in the past three fiscal years, the Company has installed six high-speed chairlifts across its resorts: one six-passenger chairlift and one four-passenger chairlift at Breckenridge, three four-passenger chairlifts at Beaver Creek and one six-passenger chairlift and one four-passenger chairlift at Heavenly. The Company is installing one additional high-speed four-passenger lift at Beaver Creek and one high-speed four-passenger chairlift at Breckenridge for the 2005/06 ski season, which will be the highest chairlift in North America, reaching an elevation of 12,840 feet. At a minimum, the Company plans to install an additional four-passenger high-speed chairlift at Heavenly for the 2006/07 ski season.
- The Company provides a wide variety of quality dining venues both on- and off-mountain, ranging from top-rated fine dining establishments to trailside express food service outlets.
- The Company, through SSI Venture, LLC ("SSV"), has over 100 retail/rental outlets specializing in sporting goods including ski, golf and bicycle equipment. In addition to providing a major retail/rental presence at each of the Company's ski resorts, the Company also has retail/rental locations throughout the Front Range as well as at other Colorado ski resorts.
- The Company's eleven owned and managed hotels and inventory of approximately 2,000 managed condominiums (included in the operations of the Lodging segment) located in proximity to the Company's Colorado ski resorts provide accommodation options for all guests, with a variety of prices ranging from high upscale to more affordable, which appeal to the varied needs of guests and families.
- The Company is an industry leader in providing on- and off-mountain amenities, including substantial full-service retail and equipment rental facilities, mountain-top activities centers, and resort-wide charging, which enables guests to use their lift ticket or pass to make purchases at many Company facilities. The Company's innovative frequent guest programs and extensive array of lift ticket products at varied price points provide value to guests.
- The Company is strongly committed to providing quality guest service, including world class ski and snowboarding schools, teams of on-mountain hosts and new technology centers, where guests can try the latest technical innovations in snowsports equipment. The Company solicits guest feedback through extensive use of surveys, which the Company utilizes to ensure high levels of customer satisfaction.
- The Company continually upgrades and expands available services and amenities through capital improvements and real estate development activities. Current projects include the major revitalization of the primary portals to Vail Mountain at Vail Village and LionsHead, collectively known as "Vail's New Dawn", developing new villages at the base of Breckenridge's Peaks 7 and 8, upgrading dining at Heavenly, new high speed chairlifts at Heavenly and Beaver Creek and additional planning and development projects in and around each of the Company's resorts. The Company must obtain a variety of necessary approvals for certain of these projects before the Company can proceed with its overall plans.

The Company promotes its resorts through an extensive marketing and sales program, which includes print media advertising in lifestyle and ski industry publications, direct marketing to a targeted audience, promotional programs, loyalty programs which reward frequent guests and sales and marketing directed at attracting groups, corporate meetings and convention business. Additionally, the Company markets directly to many of its guests through its websites and internet presence, which provide visitors with information regarding each of the Company's resorts, including services and amenities, reservations information and virtual tours (nothing contained on the websites shall be deemed incorporated herein). The Company also enters into strategic partnerships with selected "name brand" companies to increase its market exposure and create opportunities for cross-marketing.

Ski resort operations are highly seasonal in nature, with a typical ski season beginning in mid-November and running through mid-April. In an effort to counterbalance the concentration of revenues in the winter months, the Company offers non-ski season attractions, such as golf (included in the operations of the Lodging segment), hiking, sight-seeing and mountain biking. These activities also help attract destination convention business to the Company's resorts.

**Lodging Segment**

The Company's Lodging segment includes the following operations:

- RockResorts International, LLC ("RockResorts")--a luxury hotel management company with a portfolio of four Company-owned and six managed, third-party owned resort hotels with locations across the U.S.;
- Grand Teton Lodge Company ("GTLC")--a summer destination resort with three resort properties in Grand Teton National Park and the Jackson Hole Golf & Tennis Club near Jackson, WY;

- Six independently flagged Company-owned hotels (besides GTLC), management of the Vail Marriott Mountain Resort & Spa ("Vail Marriott") and condominium management operations in and around the Company's Colorado ski resorts; and
- Six owned resort golf courses.

The Lodging segment includes approximately 4,700 owned and managed hotel and condominium rooms in seven states. All of the Company's resort hotels are mid-size and offer a wide range of services to guests.

The Company's portfolio of luxury and resort hotels currently includes:

| Name | Location | Own/Manage | Rooms |
|---|---|---|---|
| *RockResorts:* | | | |
| The Lodge at Rancho Mirage | Rancho Mirage, CA | Manage | 240 |
| Cheeca Lodge & Spa | Islamorada, FL | Manage | 199 |
| The Equinox | Manchester Village, VT | Manage | 183 |
| The Lodge at Vail | Vail, CO | Own | 166 |
| La Posada de Santa Fe | Santa Fe, NM | Manage | 157 |
| The Keystone Lodge | Keystone, CO | Own | 152 |
| Snake River Lodge & Spa | Teton Village, WY | Own | 138 |
| Rosario Resort & Spa | San Juan Islands, WA | Manage | 116 |
| The Pines Lodge | Beaver Creek, CO | Own | 66 |
| The Lodge & Spa at Cordillera | Edwards, CO | Manage | 66 |
| *Other Hotels:* | | | |
| Jackson Lake Lodge | Grand Teton Nat'l Pk., WY | Concessionaire Contract | 385 |
| Colter Bay Village | Grand Teton Nat'l Pk., WY | Concessionaire Contract | 166 |
| Jenny Lake Lodge | Grand Teton Nat'l Pk., WY | Concessionaire Contract | 37 |
| Vail Marriott Mountain Resort & Spa | Vail, CO | Manage | 346 |
| The Great Divide Lodge | Breckenridge, CO | Own | 208 |
| Inn at Keystone | Keystone, CO | Own | 103 |
| Breckenridge Mountain Lodge | Breckenridge, CO | Own | 71 |
| Village Hotel | Breckenridge, CO | Own | 60 |
| Inn at Beaver Creek | Beaver Creek, CO | Own | 46 |
| Ski Tip Lodge | Keystone, CO | Own | 10 |

The Company's Lodging strategy seeks to complement and enhance its ski resort operations through the ownership or management of lodging properties in proximity to its ski resorts. The Company initiated a strategy in fiscal 2005 to sell or optimize its owned hotel properties, obtaining management contracts where desirable. In addition, the Company will continue to seek additional hotel management opportunities through its RockResorts brand.

Hotels are categorized by Smith Travel Research, a leading lodging industry research firm, as luxury, upscale, mid-price and economy. The service quality and level of accommodations of the Company's resort hotels place them in the luxury segment of the hotel market, which represents hotels achieving the highest average daily rates ("ADR") in the industry, and includes such brands as the Ritz-Carlton, Four Seasons and Starwood's Luxury Collection hotels. The luxury segment consists of approximately 575,000 rooms at over 1,500 properties worldwide as of July 2005 During fiscal 2005, the Company's owned hotels had an

overall average ADR of $166.34 and paid occupancy rate of 62.3%, while the luxury industry segment's average was an ADR of $147.72 and paid occupancy rate of 71.7%. The highly seasonal nature of the Company's hotel properties results in lower average occupancy as compared to general industry experience.

Competition in the hotel industry is generally based on quality and consistency of rooms, restaurant and meeting facilities and services, attractiveness of locations, availability of a global distribution system, price and other factors. The Company's properties compete within their geographic markets with hotels and resorts that include locally owned independent hotels as well as facilities owned or managed by national and international chains, including such brands as Ritz-Carlton, Four Seasons, Westin, Hyatt, Hilton, Marriott and Starwood's Luxury Collection. The Company's lodging strategy, through RockResorts, is focused on the resort hotel niche within the luxury market. The Company's properties also compete for convention and conference business across the national market. The Company believes it is highly competitive in this niche for the following reasons:

- All of the Company's hotels are located in highly desirable resort destinations.
- The Company's hotel portfolio has achieved some of the most prestigious hotel designations in the world, including three hotels designated as Leading Hotels of the World, five designated as Preferred Hotels & Resorts, two designated as Historic Hotels of America and one designated as a Small Luxury Hotel. The Company has seven properties and five hotel restaurants in its portfolio that are currently rated as AAA 4-Diamond.
- The RockResorts brand is an historic brand name with a rich tradition associated with high quality luxury resort hotels.
- Many of the Company's hotels (both owned and managed) are designed to provide a look that feels indigenous to their surroundings, enhancing the guest's vacation experience.
- Each of the hotels in the Company's portfolio provides a wide array of amenities available to the guest such as access to world-class ski and golf resorts, spa facilities, water sports and a number of other outdoor activities as well as highly acclaimed dining options.
- Conference space with the latest technology is available at most of the Company's hotels. In addition, guests at Keystone Resort can use the Company-owned Keystone Conference Center, the largest conference facility in the Colorado Rocky Mountain region with more than 100,000 square feet of meeting, exhibit and function space.
- The Company has a central reservations system in Colorado which leverages off of its ski resort reservations system and has a web-based central reservation system that provides guests with the ability to plan their vacation online. Non-Colorado properties are served by a central reservations system and global distribution system provided by a third party.
- The Company actively upgrades the quality of the accommodations and amenities available at its hotels through capital improvements. Capital funding for third-party properties is provided by the owners of the properties. Recent projects included the initial phase of the renovation of Cheeca Lodge & Spa, the renovation of a number of guestrooms and the lobby of The Lodge at Rancho Mirage and the renovation of the Avanyu Spa at La Posada de Santa Fe. Planned projects include continued renovation of the guestrooms at The Lodge at Rancho Mirage, the continued complete rebuild of the clubhouse and a number of course improvements at Jackson Hole Golf & Tennis Club, continued renovation of guestrooms and common areas of Cheeca Lodge & Spa, continued room renovation at Keystone Lodge, renovation of the guest bathrooms at La Posada de Santa Fe, and construction of a new spa and lounge at the Lodge at Vail in connection with the "New Dawn" project in Vail.

The Company promotes its luxury and resort hotels and seeks to maximize lodging revenues by using its marketing network initially established at the Company's ski resorts. The Company's marketing network includes local, national and international travel relationships which provide the Company's central reservation systems with a significant volume of transient customers. The hotels and the Company have active sales forces to generate conference and group business.

The Company also owns and operates GTLC, which was the Company's first resort with a predominantly summer operating season. GTLC is based in the Jackson Hole area in Wyoming and operates within Grand Teton National Park (the "Park") under a concessionaire contract with the National Park Service, which is currently up for bid as part of the required renewal process. For more information regarding the renewal process of the concessionaire contract, refer to the Regulation and Legislation section below. GTLC also owns the Jackson Hole Golf & Tennis Club ("JHG&TC"), which is located outside of the Park near Jackson, Wyoming. GTLC's operations within the Park and JHG&TC have operating seasons that generally run from mid-May to mid-October.

There are over 385 areas within the National Park System covering more than 84 million acres across the United States and its territories. Of the over 385 areas, approximately 57 are classified as National Parks. There are more than 500 National Park Service concessionaires, ranging from small privately-held businesses to large corporate conglomerates. The National Park Service uses "recreation visits" to measure visitation within the National Park System. In calendar 2004, areas designated as National Parks received approximately 88.8 million recreation visits. The Park, which spans approximately 310,000 acres, had 2.4 million recreation visits during calendar 2004, or approximately 3% of total National Park recreation visits. Four concessionaires provide accommodations within the Park, including GTLC. GTLC offers three lodging options within the Park: Jackson Lake Lodge, a full-service, 385-room resort with conference facilities which can accommodate up to 700 people; the Jenny Lake Lodge, a small, rustically elegant retreat with 37 cabins; and Colter Bay Village, a facility with 166 log cabins, 66 tent cabins, 350 campsites and a 112-space RV park. GTLC offers dining options as extensive as its lodging options, with cafeterias, casual eateries, and fine-dining establishments. GTLC's resorts provide a wide range of activities for guests to enjoy, including cruises on Jackson Lake, boat rentals, horseback riding, guided fishing, float trips, golf and guided park tours. Because of the extensive amenities offered as well as the tremendous popularity of the National Park System, GTLC's accommodations within the Park operate near full capacity during their operating season.

The Company's lodging business is highly seasonal in nature, with peak seasons primarily in the winter months (with the exception of GTLC, certain managed properties and golf operations). In recent years, the Company has grown its business to help offset the seasonality by offering more off-season activities for the Company's lodging business, including golf and group business. The Company owns and operates six golf courses: The Beaver Creek Golf Club, The Keystone Ranch Golf Course, The River Course at Keystone, The Jackson Hole Golf & Tennis Club, and the Tom Fazio and Greg Norman Courses at Red Sky Ranch. The Jackson Hole Golf & Tennis Club was ranked the second best course in Wyoming for 2005 by *Golf Digest*, the Tom Fazio course was ranked the fourth best course in Colorado and 90th in the U.S. in the 2004 "Top 100 You Can Play" by *Golf Magazine*, and the Greg Norman Course was ranked the top course in Colorado and 25th in the U.S. in the 2004 "Top 100 You Can Play" by *Golf Magazine*.

**Real Estate Segment**

The Company has extensive holdings of real property at its resorts throughout Summit and Eagle Counties in Colorado and in Teton County, Wyoming. The Company's real estate operations, through Vail Resorts Development Company ("VRDC"), a wholly owned subsidiary of the Company, include the planning, oversight, marketing, infrastructure improvement and development of the Company's real property holdings. In addition to the substantial cash flow generated from real estate sales, these development activities benefit the Company's Mountain and Lodging operations through (1) the creation of additional resort lodging which is available to guests, (2) the ability to control the architectural themes of the Company's resorts, (3) the creation of unique facilities

and venues (primarily restaurant, retail and private club operations) which provide the Company with the opportunity to create new sources of recurring revenue and (4) the expansion of the Company's property management and commercial leasing operations, which are the preferred providers of these services for all developments on the Company's land.

In order to facilitate the sale of real estate development projects, the projects often include the construction of amenities for the benefit of the development, such as chairlifts, ski trails or golf courses. While these mountain improvements enhance the value of the real estate held for sale (for example, by providing ski-in/ski-out accessibility), they also benefit mountain and lodging operations. VRDC often seeks to minimize the Company's exposure to development risks and maximize the long-term value of the Company's real property holdings by selling developed and entitled land to third party developers for cash payments prior to the commencement of construction, while retaining approval of the development plans as well as an interest in the developer's profit. The Company also typically retains the option to purchase, at cost, any retail/commercial space created in a development. The Company is able to secure these benefits from third party developers because of the high property values and strong demand associated with property in close proximity to the Company's mountain resort facilities. In instances where the Company determines the business model warrants, in a growing trend, the Company will undertake the risk of vertical development itself, as it is doing or proposes to do for certain of the projects in the Vail's New Dawn, JHG&TC and Breckenridge developments.

VRDC's principal activities include (1) the development of certain residential and mixed-use condominium projects which are integral to the Company's Mountain and Lodging operations (such as properties located at a main base facility), (2) the sale of single-family homesites to individual purchasers, (3) the sale of certain land parcels to third-party developers for condominium, townhome, cluster home, single family home, lodge and mixed use developments, (4) the zoning, planning and marketing of new resort communities (such as Red Sky Ranch, JHG&TC and Breckenridge Peaks 7 and 8), (5) arranging for the construction of the necessary roads, utilities and mountain infrastructure for new resort communities and (6) the purchase of selected strategic land parcels for future development.

VRDC's current development activities are focused on (1) the redevelopment of the LionsHead base area, including the development of the Arrabelle at Vail Square and the Gore Creek Place residences, (2) the planning and development of the Vail Front Door project in the Town of Vail, (3) the Jackson Hole area residential and golf development, (4) expansion of infrastructure at Red Sky Ranch to facilitate additional lot sales at the Red Sky residential development, (5) planning for the development and/or sale of land parcels at base areas of Breckenridge Peaks 7 and 8, (6) continued development of the Mountain Thunder project in Breckenridge and (7) additional planning and development projects in and around each of the Company's resorts.

**Employees**

The Company, through certain operating subsidiaries, currently employs approximately 3,700 year-round and 9,900 seasonal employees. In addition, the Company employs approximately 1,300 year-round and 200 seasonal employees on behalf of the managed hotel properties. As of the end of fiscal 2005, none of the Company's employees were unionized. The Company considers employee relations to be good.

**Regulation and Legislation**

*Special Use Permits*

The Company has been granted the right to use federal land as the site for ski lifts and trails and related activities, under the terms of Special Use Permits granted by the United States Forest Service (the "Forest Service"). The Forest Service has the right to review and approve the location, design and construction of improvements in the permit area and many operational matters. While virtually all of the skiable terrain on Vail, Breckenridge, Heavenly and Keystone is located on Forest Service land, a significant portion of the skiable terrain on Beaver Creek Mountain, primarily in the lower main mountain, Western Hillside, Bachelor Gulch and Arrowhead Mountain areas, is located on Company-owned land.

The permits originally granted by the Forest Service were (1) Term Special Use Permits granted for 30-year terms, but which may be terminated upon 30 days written notice by the Forest Service if it determines that the public interest requires such termination and (2) Special Use Permits that are terminable at will by the Forest Service. In November 1986, a new law was enacted providing that Term Special Use Permits and Special Use Permits may be combined into a unified single Term Special Use Permit that can be issued for up to 40 years. These unified Special Use Permits were amended in 2003 to reflect the permit boundary maps and acreage amounts set forth in the new White River National Forest Plan. Changes to the permit boundaries are not material to the Company's plans. Vail operates under a unified Term Special Use permit for the use of 12,226 acres that expires October 31, 2031. Breckenridge operates under a unified Term Special Use Permit for the use of 5,553 acres that expires on December 31, 2029. Keystone operates under a unified Term Special Use Permit for the use of 8,376 acres that expires on December 31, 2032. Beaver Creek operates under a unified Term Special Use Permit for the use of 3,801 acres that expires on December 31, 2038. Heavenly operates under a Term Special Use Permit for the use of 7,050 acres, is administered by the Lake Tahoe Basin Management Unit, and expires May 1, 2042. In addition, Heavenly operates four separate base areas, all of which are located on Company-owned lands.

For use of the Special Use Permits, the Company pays a fee to the Forest Service ranging from 1.5% to 4.0% of sales occurring on Forest Service land. Included in the calculation are sales from, among other things, lift tickets, ski school lessons, food and beverages, rental equipment and retail merchandise sales.

The Forest Service can terminate most of the Company's permits if it determines that termination is required in the public interest. However, to the Company's knowledge, no recreational Special Use Permit or Term Special Use Permit for any major ski resort

then in operation has ever been terminated by the Forest Service over the opposition of the permitee.

*Federal Regulations, Company Proposals and Related Approvals*

Certain of the Company's resort and lodging operations require permits and approvals from certain federal, state, and local authorities, in addition to the Forest Service and U.S. Army Corps of Engineers approvals, discussed herein. In particular, the Company's operations are subject to environmental laws and regulations, and compliance with such laws and regulations may require expenditures or modifications of the Company's development plans and operations in a manner that could have a detrimental effect on it. There can be no assurance that new applications of existing laws, regulations and policies, or changes in such laws, regulations and policies, will not occur in a manner that could have a detrimental effect to the Company, or that material permits, licenses, or approvals will not be terminated, not be renewed or be renewed on terms or interpreted in ways that are materially less favorable to the Company. Although the Company believes that it will be successful in implementing its development plans and operations in ways satisfactory to it, no assurance can be given that any particular permits and approvals will be obtained or upheld on judicial review.

*Breckenridge Regulatory Matters*

In August 1998, the Company received the approval of the Forest Service to develop a chairlift, other skier facilities and associated skiing terrain on Peak 7 and a teaching chairlift, two new ski trails and additional snowmaking on Peak 9, all located at Breckenridge. Part of the trail and mountain improvements on Peak 7 have been completed and the new trails were open for skiing for the 2001/02 ski season and direct lift service for the trails was provided in the 2002/03 ski season. The Company has also received approval from the Forest Service to change the proposed location of a restaurant initially proposed for the top of Peak 7 to its midway point. To date, the Company has completed a small portion of the snowmaking improvements.

As part of the Peak 7 approval and development process, certain federal agencies expressed concern about the analysis of potential future development on private land that the Company owns at the base of Peak 7. In response to an administrative appeal of the Forest Service approval decision by certain individuals and groups, the Regional Forester upheld the approval of the Peak 7 and 9 projects in November 1998. The Forest Service subsequently reviewed the Company's proposed changes to develop gondola access to the Peak 7 base area and to move the lower terminal of the lift servicing the terrain and base area from public lands to private land owned by the Company. Based on an interdisciplinary review of the proposed changes, the Forest Service determined in September 2000 that the new information and changes to the proposal did not require an update or revision of the 1998 Environmental Assessment or decision notice.

The U.S. Army Corps of Engineers considered the development of the base facilities on private land and the ski area improvements on public land as combined actions and issued one permit for the combined projects. The permit contains strict conditions related to the permissible impact to wetlands connected with the real estate project. In May 2002, the Company signed a Preliminary Agreement with the Town of Breckenridge, which allows the Company to proceed with the review of the Master Plan with specified density. In September 2002, the town approved a Development Agreement which allowed the Planning Commission to review the Company's Master Plan amendment with certain components that would otherwise have varied from the town's Development Code. The amended Master Plan was approved by the Town of Breckenridge in June 2003. In the summer of 2005, the Company submitted a proposal to the Town of Breckenridge to further amend its Master Plan to transfer up to 60 units of density which were not constructed at Mountain Thunder up to the Peak 7 development. The Company expects to receive a response on this proposed amendment in the spring of 2006. While the Company cannot predict or guarantee the prospects for obtaining approval of this amendment, the Company is optimistic for a satisfactory outcome.

In August 2005, the Company received approval from the Forest Service for construction of a chairlift to the summit of Peak 8 of the Breckenridge Ski Area (the "Imperial Lift"). The Company expects the Imperial Lift to be completed in time for the start of the 2005/06 ski season. Finally, the Company will begin the process of preparing a programmatic update to the Breckenridge Ski Area Master Development Plan this fall. No environmental documentation will be required for this update, with project specific analysis occurring prior to project implementation.

*Keystone Regulatory Matters*

In March 2000, the Company announced that Keystone and the Forest Service would conduct a joint water quality study of possible impacts on four streams from snowmaking operations at Keystone. This study was completed in 2001 and concluded that the levels of tested metals were within applicable Colorado state water quality standards. Because this study only examined one calendar year of measurement, Keystone agreed to conduct ongoing water quality monitoring combined with a use attainability analysis for the Colorado Water Quality Control Commission (the "Commission") to further assess water quality conditions at Keystone. In March 2004, the Commission adopted a regulation which rejected a proposal to add four streams at Keystone to the list of Colorado streams which do not achieve water quality standards. Importantly, in June 2005, the U.S. Environmental Protection Agency then upheld the Commission's decision. Ongoing monitoring of water quality at Keystone indicates compliance with all applicable water quality standards.

In 2003, the Company submitted a proposal to conduct snowcat skiing on 861 additional skiable acres within the Keystone permit boundary on Little Bowl and Erickson Bowl. This proposal was approved and Keystone conducted snowcat skiing operations during the 2004/05 ski season and will continue to do so. In May 2005, Keystone submitted a proposal for additional snowcat skiing in an area north of Keystone but also within its permit boundaries. The Company expects to receive approval for 400 additional skiable acres of snowcat skiing at Keystone prior to the 2005/06 ski season. The Company is currently revising the Keystone Master Ski Area Development Plan and expects that process to be concluded in late 2005. Finally, the Company is

preparing an environmental assessment for a proposed four mile pipeline to transport water from Keystone's Montezuma Shaft diversion point to the Keystone River snowmaking pumping station. When completed, this project will significantly increase the efficiency and quality of snowmaking at Keystone.

*Vail and Beaver Creek Regulatory Matters*

In the spring of 2000, the Company submitted a proposal to the Forest Service concerning additional snowmaking on Vail and a race facility expansion at Vail's Golden Peak. The Company withdrew this proposal and intends to submit a new proposal to combine these projects with a new master plan update for Vail. Also, the Company is in the process of a land exchange with the Forest Service involving land at the Vail Village base area in connection with the Company's Vail's Front Door development project. In 2003, the Company submitted a proposal to the Forest Service to install a new chair lift in Vail's Sundown Bowl and to upgrade the existing Chair 5 to a high-speed, detachable quad chair lift. This proposal has been put on hold temporarily. Finally, in 2004 the Company submitted a proposal to the Forest Service to replace Vail Chairs 10 and 14. This proposal was approved and Vail expects to complete this project in the next several years.

In 2001, the Company submitted a proposal to the Forest Service concerning the construction of a gondola connecting the Town of Avon with Beaver Creek (the "Gondola Proposal"), a portion of which would cross public lands on Beaver Creek within the Company's existing permit boundaries. The Gondola Proposal was approved by the Forest Service but was modified in 2003, whereby the gondola conveyance was replaced with the installation of two individual chairlifts prior to the 2004/05 ski season. These new chairlifts carry guests from the bottom of Bachelor Gulch to Beaver Creek. Contingent on the Company's sale of certain land located in the Town of Avon, and subject to various governmental and regulatory approvals, a gondola connection from lower Bachelor Gulch to the Town of Avon may still be constructed. In the event all contingencies are satisfied and approvals obtained, this gondola would likely be operated by the Company but owned by a quasi-governmental agency. However, no assurance can be given that any required approvals will be obtained.

*Revision of Forest Plan*

The Record of Decision (the "ROD") approving the new White River National Forest Land Resource Management Plan (the "Forest Plan") was issued by the Forest Service in April of 2002. The Forest Plan sets certain broad regulatory and planning requirements, as well as land use planning, that pertain to recreational, operational and development activities at the Company's four Colorado ski resorts. The ROD was appealed to the Chief of the Forest Service by the Company and several other interested parties, including environmental groups holding positions opposite to those of the Company. The Chief's decision on the appeals was issued on September 22, 2004, and was further modified by a Discretionary Review of the Deputy Undersecretary of Agriculture on December 2, 2004. The Company prevailed on several important issues in both the Chief's decision and the Discretionary Review.

To date, no appellant has filed an action for judicial review of the final decision in Federal Court. It is impossible at this time to predict whether an action for judicial review will be filed, and if so, whether the resolution of it would have a material adverse impact on the Company.

*Heavenly Regulatory Matters*

Prior to the Company's acquisition of Heavenly, the State of California Regional Water Quality Control Board, Lahontan Region, and the El Dorado County Department of Environmental Management required Heavenly's prior owner to conduct an environmental compliance cleanup at a vehicle maintenance facility at Heavenly. This requirement was imposed in response to an accidental release of waste oil at a vehicle maintenance shop in 1998. All cleanup work has been completed in accordance with the approved work plan and a new underground vault, piping and overflow protection system was installed to prevent any further releases. A final report was submitted on March 31, 2003 to the above two agencies. In late 2004, Heavenly was notified by the State of California that additional monitoring and reporting would be required following snowmelt in 2005 using the three existing monitoring wells. No new well was required to be installed. In 2005, the sampling and reporting was completed as prescribed by the State. The final report has been submitted as required. No response from the State has been provided.

In March 2005, Heavenly received a one year extension for the submittal of the final site development plan for the 120-unit Planned Development at Stagecoach Lodge in Douglas County, Nevada, which was originally approved in 2000. The extension was granted by the Douglas County Board of County Commissioners and is valid until February 2006.

Also in March 2003, Heavenly received an allocation of 55 water units (each water unit equals approximately 500 gallons/day) for the same Stagecoach Lodge Planned Development project from the Kingsbury General Improvement District ("KGID"). KGID is the water and sewer district that services the Stagecoach Lodge. Water allocation units for this service area are limited by the State of Nevada. However, based on KGID's gallons/day consumptive use formula, the 55 water allocation units are sufficient to serve the 120 units approved by Douglas County.

In July 2003, Heavenly received updated waste discharge requirements ("WDRs") for all lands and facilities within the resort which are located within the State of California. This includes National Forest lands as well as fee-owned lands. The approval was given by the State of California Water Resources Control Board, Lahontan Region. The approved WDRs will permit Heavenly to continue winter and summer operations and to continue with implementation of the approved Heavenly Ski Area Master Plan ("Master Plan"). WDRs are normally valid for ten years.

In 1996, the Master Plan was approved by the Forest Service, the Tahoe Regional Planning Agency and the underlying units of local government with jurisdiction. Heavenly updated the Master Plan which requests revisions to permit new and upgraded trails, lifts, snowmaking, lodges and other facilities ("Master Plan Update"). In 2005, Heavenly submitted this Master Plan Update to the agencies that approved the original Master Plan in 1996. The review and approval process has commenced and is scheduled to conclude in 2006. The Company expects to complete the first phase of the capital projects contained in the amended Master Plan in 2006, with the remainder proceeding in accordance with the implementation schedule contained therein.

In the spring of 2005, Heavenly requested approval from the Forest Service for construction of one high-speed four-passenger lift. While this lift was scheduled for completion prior to the start of the 2005/06 ski season, Heavenly has not yet received the required approval. Heavenly does expect to receive this approval in sufficient time to ensure construction during the summer of 2006 and completion prior to the start of the 2006/07 ski season.

*GTLC Concession Contract Process*

GTLC operates three lodging properties and a variety of food and beverage, retail, camping and other services within the Park under a concession contract with the National Park Service that expired on December 31, 2002. GTLC has been granted three (3) one-year extensions of this contract, with the current extension term scheduled to end December 31, 2005. On June 1, 2005, the National Park Service issued a prospectus soliciting offers to operate the Park concession (the "Prospectus") from interested parties with an original deadline of September 28, 2005, now extended to October 20, 2005. In the Prospectus, the National Park Service announced that a new contract will be awarded, negotiated and entered into on or before January 1, 2006. The award of a new contract is subject to a competitive bidding process and formal, independent evaluation of all submissions under the rules promulgated to implement the concession provisions of the National Park Omnibus Management Act of 1998. Both before and after issuance of the Prospectus, the Company has been diligently working on its comprehensive responses to the principal and secondary selection criteria set out in the Prospectus and will be timely submitting its formal offer on or before the October 20, 2005 deadline. After all interested parties have submitted their formal offers, the contract will be sent to Congress for a sixty (60) day review period. Previous congressional reviews show that Congress has generally confirmed the National Park Service's concessionaire selection. Nevertheless, in the event the National Park Service is unable to meet its January 1, 2006 deadline for award of a new contract, the Company has requested a fourth extension of its contract at least through the 2006 summer operating season and possibly until December 31, 2006. The Company cannot predict or guarantee the prospects for success in award of a new contract, although the Company believes GTLC is well positioned to obtain a new concession contract on satisfactory terms. In the event GTLC is not the successful bidder for the new concession contract, under the existing contract GTLC is required to sell to the new concessionaire its "possessory interest" in improvements and its other property used in connection with the concession operations. GTLC would then be entitled to receive compensation from the successful bidder for the value of its "possessory interest" in the assets as well as compensation for any personal property and inventories purchased by the new owner. Under an amendment to the contract, in the summer of 2003, GTLC and the National Park Service agreed upon the possessory interest value which is contained in the Prospectus soliciting bids for the contract.

**Available Information**

The Company's SEC information, including the annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Act") are available free of charge on the Company's corporate website (www.vailresorts.com) as soon as reasonably practicable after the information is electronically filed with or furnished to the SEC. In addition, the Company's Code of Ethics is available on its website. No content of the Company's corporate website is incorporated by reference herein. Copies of any materials the Company files with the SEC can be obtained at www.sec.gov or at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Information on the operation of the public reference room is available by calling the SEC at 1-800-SEC-0330.

**ITEM 2. PROPERTIES.**

The following table sets forth the principal properties owned or leased by the Company for use in its operations:

| Location | Ownership | Use |
|---|---|---|
| Arrowhead Mountain, CO | Owned | Ski trails and ski resort operations, including ski lifts, buildings and other improvements, commercial space |
| Avon, CO | Owned | Real estate held for sale or development |
| BC Housing Riveredge, CO | 26% Owned | Employee housing facilities |
| Bachelor Gulch Village, CO | Owned | Ski resort operations, including ski lifts, ski trails, buildings and other improvements, commercial space |
| Beaver Creek Mountain, CO | Owned | Ski resort operations, including ski lifts, buildings and other improvements, commercial space, real estate held for sale or development |
| Beaver Creek Mountain, CO (3,801 acres) | Special Use Permit | Ski trails |
| Beaver Creek Resort, CO | Owned | Golf course, commercial space and residential spaces |
| Breckenridge Mountain, CO | Owned | Ski resort operations, including ski lifts, buildings and other improvements, commercial space, real estate held for sale or development |
| Breckenridge Mountain, CO (5,553 acres) | Special Use Permit | Ski trails |
| Breckenridge Terrace, CO | 50% Owned | Employee housing facilities |
| Colter Bay Village, WY | Concessionaire contract | Lodging, dining |
| Great Divide Lodge, CO | Owned | Lodging, dining and conference facilities |
| Heavenly Mountain Resort, CA | Owned | Ski resort operations, including ski lifts, buildings and other improvements, commercial space |

| | | |
|---|---|---|
| Heavenly Mountain, CA (7,050 acres) | Special Use Permit | Ski trails |
| Inn at Beaver Creek, CO | Owned | Lodging, dining and conference facilities |
| Inn at Keystone, CO | Owned | Lodging, dining and conference facilities |
| Jackson Hole Golf and Tennis Club, WY | Owned | Golf course, tennis facilities, dining, real estate held for sale or development |
| Jackson Lake Lodge, WY | Concessionaire contract | Lodging, dining, conference facilities |
| Jenny Lake Lodge, WY | Concessionaire contract | Lodging, dining |
| Keystone Conference Center, CO | Owned | Conference facility |
| Keystone Lodge, CO | Owned | Lodging, dining and conference facilities |
| Keystone Mountain, CO | Owned | Ski resort operations, including ski lifts, buildings and other improvements, commercial space |
| Keystone Mountain, CO (8,376 acres) | Special Use Permit | Ski trails |
| Keystone Ranch, CO | Owned | Golf course and restaurant facilities |
| Keystone Resort, CO | Owned | Resort operations, dining, commercial space, conference facilities, real estate held for sale or development |
| Red Sky Ranch, CO | Owned | Golf course and real estate held for sale and development |
| River Course at Keystone, CO | Owned | Golf course |
| RockResorts, CO | Leased | RockResorts offices |
| Seasons at Avon, CO | Leased/50% owned | Corporate offices |
| Ski Tip Lodge, CO | Owned | Lodging and dining facilities |
| Snake River Lodge & Spa, WY | Owned | Lodging, dining, conference and spa facilities |
| The Lodge at Vail, CO | Owned | Lodging, dining and conference facilities, real estate held for sale or development |
| The Tarnes at Beaver Creek, CO | 31% Owned | Employee housing facilities |
| Tenderfoot Housing, CO | 50% Owned | Employee housing facilities |
| The Pines Lodge at Beaver Creek, CO | Owned | Lodging, dining, conference facilities |
| Vail Mountain, CO | Owned | Ski resort operations, including ski lifts, buildings and other improvements, commercial space |
| Vail Mountain, CO (12,226 acres) | Special Use Permit | Ski resort operations, including ski lifts, trails, buildings and other improvements |
| Village at Breckenridge, CO | Owned | Lodging, dining, conference facilities and commercial space |
| SSV Properties | 61.7%-owned | Over 100 retail stores for recreational products |

The Forest Service permits of the Company's operating subsidiaries are encumbered under certain debt instruments of the Company. Many of the Company's properties are used across all segments in complementary and interdependent ways.

**ITEM 3. LEGAL PROCEEDINGS.**

The Company is a party to various lawsuits arising in the ordinary course of business, including Resort related cases and contractual and commercial litigation that arises from time to time in connection with the Company's real estate and other business operations. Management believes the Company has adequate insurance coverage and accrued loss contingencies for all known matters and that, although the ultimate outcome of such claims cannot be ascertained, current pending and threatened claims are not expected to have a material adverse impact on the financial position, results of operations and cash flows of the Company.

*SEC Investigation Terminated*

In February 2003, the SEC issued a formal order of investigation with respect to the Company. On September 19, 2005, the Central Regional Office of the SEC informed the Company that its investigation has been terminated, and that no enforcement action has been recommended regarding the Company. The Company has also been informed that no enforcement action has been recommended with respect to any present or former directors, officers or employees of the Company in regard to the matters that had been under investigation.

*Gilman Litigation Appeal*

The Company appealed an adverse decision by the Eagle County District Court of Colorado, rendered on September 24, 2003, relating to the Company's interest in real property in Eagle County, Colorado commonly known as the "Gilman" property. The litigation commenced in November 1999 involving a dispute between a Company subsidiary, as the holder of an option to acquire a 50% interest in the entity that owned the property, and Turkey Creek LLC ("Turkey Creek"), the owner of the property. The property consists of approximately 6,000 acres of rugged, high altitude land in close proximity to Vail Mountain. Turkey Creek assembled the property over many years from various parcels, old mining claims and other property.

Vail Associates originally acquired the option in 1992 under an option agreement between Vail Associates and Turkey Creek. The option agreement was amended and extended several times over the years between 1992 and 1999. During those years, Vail Associates funded all of the acquisition costs to buy the parcels comprising the property and holding costs related to the property, such as real estate taxes and litigation costs to perfect title to the property. Between 1992 and 1999, Vail Associates invested approximately $4.8 million of such funds to maintain and preserve its 50% option interest.

In November 1999, a Company subsidiary (the successor to Vail Associates under the option) exercised the option to acquire the 50% interest in the entity that owned the property. Turkey Creek, however, refused the exercise, claiming that the Company's proposal to pursue a strategy to find a buyer who would put most of the property into conservation or open space uses was a breach of the option agreement, which contemplated "prompt and diligent development" of the property upon exercise of the option.

The Court found that the Company's subsidiary repudiated the option agreement in advance of the exercise of the option by not committing to prompt and diligent development and that "development" did not include selling the land to a buyer for conservation. The Court further found that Turkey Creek was entitled to terminate the contract and refuse the exercise and that the Company's subsidiary was not entitled to any interest in the property.

As a result of the Court's decision, the Company recorded a non-cash asset impairment charge of $4.8 million in fiscal 2003, the amount previously carried on the Company's consolidated balance sheet reflecting its investment. The Company appealed the adverse decision, primarily on the basis that the Court applied the wrong legal standard in deciding the issue. In August 2005, a three judge panel vacated the trial court's judgment and remanded the case back to the trial court to apply the correct legal standard and identify facts that meet the correct legal standard. The appellee's motion for reconsideration of the Court of Appeals decision was denied.

During the pendency of the appeal, Turkey Creek sold the property for approximately $33 million to an unrelated third party developer. Accordingly, the outcome of the case will relate only to an economic resolution between the parties and will not affect the real property now owned by the third party. The Company cannot predict the ultimate outcome of the matter.

*Breckenridge Terrace Employee Housing Construction Defect/Water Intrusion Claims*

During fiscal 2004, the Company became aware of water intrusion and condensation problems causing mold damage in the 17 building, employee housing facility owned by Breckenridge Terrace, LLC ("Breckenridge Terrace"), an employee housing entity in which the Company is a member and manager. As a result, the facility was not available for occupancy during the 2003/04 ski season. All buildings at the facility required mold remediation and reconstruction and this work began in fiscal 2004. Breckenridge Terrace recorded a $7.0 million liability in fiscal 2004 for the estimated cost of remediation and reconstruction efforts. These costs were funded by a loan to Breckenridge Terrace from the Company member of the LLC. As of July 31, 2005, Breckenridge Terrace had a remaining liability of $871,000 for future remaining remediation and reconstruction costs. With the exception of one building which has been kept in its original design and construction for evidentiary purposes (see discussion below), the remaining 16 buildings became available for occupancy in the second quarter of fiscal 2005. The Company anticipates it will incur the remaining amount of remediation and reconstruction costs during fiscal 2006.

Forensic construction experts retained by Breckenridge Terrace have determined that the water intrusion and condensation problems are the result of construction and design defects. In accordance with Colorado law, Breckenridge Terrace served separate notices of claims on the general contractor, architect and developer and initiated arbitration proceedings. In September 2005, Breckenridge Terrace agreed to settle its claims against the general contractor and the architect for an aggregate amount of $800,000 and will recognize the settlement amount as reduction of the remediation expense upon receipt. Claims against the developer were not settled and Breckenridge Terrace is reviewing its legal options in that regard.

## ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

None.

PART II

### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PUCHASES OF EQUITY SECURITIES.

The Company's Common Stock is traded on the New York Stock Exchange under the symbol "MTN". As of September 26, 2005, 36,736,325 shares of common stock were issued and outstanding, held by approximately 475 holders of record.

Other than a rights distribution in October 1996 which gave each stockholder of record the right to receive $2.44 per share of Common Stock held, the Company has never paid nor declared a cash dividend on its Common Stock or Class A Common Stock. The declaration of cash dividends in the future will depend on the Company's earnings, financial condition, capital needs, restrictions under debt instruments and on other factors deemed relevant by the Board of Directors at that time. It is the current policy of the Company's Board of Directors to retain earnings to finance the operations and expansion of the Company's business.

The following table sets forth, for the fiscal years ended July 31, 2005 and 2004, and quarters indicated (ended October 31, January 31, April 30, and July 31) the range of high and low per share sales prices of Vail Resorts, Inc. Common Stock as reported on the New York Stock Exchange Composite Tape.

| | Vail Resorts Common Stock | |
|---|---|---|
| | High | Low |
| Year Ended July 31, 2005 | | |
| 1st Quarter | $ 20.21 | $ 17.50 |
| 2nd Quarter | 23.97 | 19.00 |
| 3rd Quarter | 26.25 | 23.06 |
| 4th Quarter | 29.44 | 25.33 |

| Year Ended July 31, 2004 | | |
|---|---|---|
| 1st Quarter | $ 16.10 | $ 12.35 |
| 2nd Quarter | 18.30 | 12.97 |
| 3rd Quarter | 18.24 | 15.50 |
| 4th Quarter | 19.65 | 13.73 |

***Securities authorized for issuance under equity compensation plans***

The following table summarizes the Company's equity compensation plans as of July 31, 2005:

| Plan category | (a) Number of securities to be issued upon exercise of outstanding options, warrants and rights (in thousands) | (b) Weighted average exercise price of outstanding options, warrants and rights | (c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (in thousands) |
|---|---|---|---|
| Equity compensation plans approved by security holders [1] | 3,880 | $18.64 | 1,351 |
| Equity compensation plans not approved by security holders | -- | -- | -- |
| Total | 3,880 | $18.64 | 1,351 |

*(1) Columns (a) and (b) do not include 30,500 shares of restricted stock which are subject to vesting over the next two years.*

The Company's stock-based compensation plans are described in Note 18, Stock Compensation Plans, of the Notes to Consolidated Financial Statements included in Part II, Item 8 of this report.

**ITEM 6. SELECTED FINANCIAL DATA.**

The following table presents selected historical consolidated financial data of the Company derived from the Company's consolidated financial statements for the periods indicated. The financial data for the fiscal years ended July 31, 2005, 2004 and 2003 should be read in conjunction with the Consolidated Financial Statements, related notes thereto and "Management's Discussion and Analysis of Financial Condition and Results of Operations" contained elsewhere in this Annual Report on Form 10-K (the "Form 10-K"). The table presented below is unaudited. The data presented below are in thousands, except per share, effective ticket price ("ETP") and resort revenue per skier visit amounts.

| | Fiscal Year Ended July 31, | | | | |
|---|---|---|---|---|---|
| | 2005 (1) | 2004 (1) | 2003 (1) | 2002 (1) | 2001 (1) |
| **Statement of Operations Data:** | | | | | |
| Revenue: | | | | | |
| Mountain | $ 540,855 | $ 500,995 | $ 460,568 | $ 396,572 | $ 391,373 |
| Lodging | 196,351 | 180,525 | 172,003 | 154,834 | 124,207 |
| Real estate | 72,781 | 45,123 | 80,401 | 63,854 | 28,200 |
| Total net revenue | 809,987 | 726,643 | 712,972 | 615,260 | 543,780 |
| Segment operating expense: | | | | | |
| Mountain | 391,889 | 368,875 | 362,131 | 305,299 | 299,414 |
| Lodging | 177,469 | 165,983 | 161,846 | 140,856 | 109,664 |
| Real estate | 58,254 | 16,791 | 66,642 | 51,326 | 23,110 |
| Total segment operating expense | 627,612 | 551,649 | 590,619 | 497,481 | 432,188 |
| Gain on transfer of property, net | -- | 2,147 | -- | -- | -- |
| Mountain equity investment income, net | 2,303 | 1,376 | 1,009 | 1,748 | 1,084 |
| Lodging equity investment loss, net | (2,679) | (3,432) | (5,995) | (57) | (1,352) |
| Real estate equity investment (loss) income, net | (102) | 460 | 3,962 | 2,744 | 7,043 |
| Interest expense | (40,298) | (47,479) | (50,001) | (38,788) | (31,735) |
| Depreciation and amortization | (89,968) | (86,377) | (82,242) | (68,480) | (65,580) |
| Loss on extinguishment of debt | (612) | (37,084) | -- | -- | -- |

| | | | | | |
|---|---|---|---|---|---|
| Mold remediation charge | -- | (5,500) | -- | -- | -- |
| Loss from sale of businesses, net | (7,353) | -- | -- | -- | -- |
| Income (loss) before cumulative effect of change in accounting principle[2] | 23,138 | (5,959) | (8,527) | 8,758 | 11,452 |
| Net income (loss) | $ 23,138 | $ (5,959) | $ (8,527) | $ 7,050 | $ 11,452 |
| Diluted per share income (loss) before cumulative effect of change in accounting principle[2] | $ 0.64 | $ (0.17) | $ (0.24) | $ 0.25 | $ 0.33 |
| Diluted per share net income (loss) | $ 0.64 | $ (0.17) | $ (0.24) | $ 0.20 | $ 0.33 |
| **Other Data:** | | | | | |
| **Mountain** | | | | | |
| Skier visits[3] | 5,940 | 5,636 | 5,730 | 4,732 | 4,975 |
| ETP [4] | $ 39.30 | $ 37.67 | $ 34.13 | $ 34.22 | $ 31.98 |
| **Resort** | | | | | |
| Resort revenue per skier visit[5] | $ 112.09 | $ 109.72 | $ 99.18 | $ 106.53 | $ 97.67 |
| **Real Estate** | | | | | |
| Real estate held for sale and investment[6] | $ 154,874 | $ 134,548 | $ 123,223 | $ 161,778 | $ 159,177 |
| **Other Balance Sheet Data** | | | | | |
| Total assets | $1,525,921 | $1,533,957 | $1,455,442 | $1,449,026 | $1,188,546 |
| Long-term debt (including current maturities) | 521,710 | 625,803 | 584,151 | 602,786 | 388,380 |
| Stockholders' equity | $ 540,529 | $ 491,163 | $ 496,246 | $ 504,004 | $ 494,000 |

*(footnotes to selected financial data appear on following page)*

*Footnotes to Selected Financial Data:*

(1) *The Company has made several acquisitions and dispositions which impact comparability between years during the past five years: Heavenly Ski Resort (acquired in May 2002), Vail Marriott (acquired in December 2001 and subsequently sold in June 2005), The Lodge at Rancho Mirage (acquired in November 2001 and subsequently sold in July 2005), RockResorts (acquired in November 2001), Resort Technology Partners, LLC (acquired in March 2001), investment in Ritz-Carlton, Bachelor Gulch (opened November 2002 and subsequently sold in December 2004) and SRL&S (acquired in December 2000). In addition, the Company consolidated several entities in fiscal 2004 as a result of the adoption of FASB Interpretation No. 46, "Consolidation of Variable Interest Entities-an Interpretation of ARB No. 51, Revised" ("FIN 46R"). See Note 7, Variable Interest Entities, of the Notes to Consolidated Financial Statements included in Item 8 of this report on Form 10-K for information regarding the entities consolidated under FIN 46R. A discussion of the impacts of consolidation of these entities is included in "Management's Discussion and Analysis" included in Item 7 of this report on Form 10-K.*

(2) *In fiscal 2002, the Company recorded a goodwill impairment charge in connection with the implementation of Statement of Financial Accounting Standards No. 142, "Goodwill and Intangible Assets" associated with the Village at Breckenridge of $1.7 million, net of income taxes, which was recorded as "cumulative effect of a change in accounting principle" in the consolidated statements of operations.*

(3) *A skier visit represents a person utilizing a ticket or pass to access a mountain resort for any part of one day, and includes both paid and complimentary access.*

(4) *ETP is defined as lift ticket revenue divided by total skier visits.*

(5) *Resort revenue per skier visit is defined as the sum of the Mountain and Lodging revenue (excluding revenue generated by GTLC, SRL&S, The Lodge at Rancho Mirage and RockResorts) divided by skier visits.*

(6) *Real estate held for sale and investment includes all land, development costs and other improvements associated with real estate held for sale and investment, as well as investments in real estate joint ventures.*

**ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.**

The following is an analysis of the Company's results of operations, liquidity and capital resources and should be read in conjunction with the Consolidated Financial Statements and notes related thereto included in this Form 10-K. To the extent that the following Management's Discussion and Analysis contains statements which are not of a historical nature, such statements are forward-looking statements which involve risks and uncertainties. These risks include, but are not limited to, changes in the competitive environment of the mountain and lodging industries, general business and economic conditions, the weather and other factors discussed elsewhere herein and in the Company's other filings with the SEC. The following discussion and analysis should be read in conjunction with the Cautionary Statement included at the end of this section.

The following Management's Discussion and Analysis includes discussion of financial performance within each of the Company's segments. The Company has chosen to specifically address a non-GAAP measure, Reported EBITDA (defined as segment net revenues less segment specific operating expenses plus gain on transfer of property, as applicable, plus segment equity income), in

the following discussion because management considers this measurement to be a significant indication of the Company's financial performance. The Company evaluates performance and allocates resources to its segments based on Reported EBITDA. In addition, because of the significant long-lived assets to the operations of the Company and the level of the Company's indebtedness, the Company believes that Reported EBITDA is useful in measuring the Company's ability to fund expenditures and service debt. The Company uses Reported EBITDA targets in determining management bonuses. Refer to the end of the Results of Operations section for a reconciliation of Reported EBITDA to net income (loss).

Reported EBITDA is not a measure of financial performance under accounting principles generally accepted in the United States of America. Items excluded from Reported EBITDA are significant components in understanding and assessing financial performance. Reported EBITDA should not be considered in isolation or as an alternative to, or substitute for, net income, cash flows generated by operations, investing or financing activities or other financial statement data presented in the consolidated financial statements as indicators of financial performance or liquidity. Because Reported EBITDA is not a measurement determined in accordance with accounting principles generally accepted in the United States and is thus susceptible to varying calculations, Reported EBITDA as presented may not be comparable to other similarly titled measures of other companies.

**Overview**

The Company's operations are grouped into three integrated and interdependent segments: Mountain, Lodging and Real Estate, which represented 67%, 24% and 9%, respectively, of the Company's revenues for fiscal 2005. The Mountain segment is comprised of the operation of five ski resort properties and related amenities, primarily including ski school, dining, and retail/rental operations. Operations within the Lodging segment include 1) ownership/management of a group of ten luxury hotels through the RockResorts brand, including three proximate to the Company's ski resorts, 2) the operations of GTLC, 3) the ownership/management of non-RockResorts branded hotels and condominiums proximate to the Company's ski resorts and 4) golf course operations. The Real Estate segment is involved with the development of property in and around the Company's resort properties.

The Company's single largest source of revenue is the sale of lift tickets (including season passes), which represented approximately 29% of total fiscal 2005 net revenue. Lift ticket revenues are driven by volume (skier visits) and average pricing. Pricing is impacted by both absolute pricing as well as the demographic mix of guests, which impacts the price points at which various products are purchased. The demographic mix of guests is divided into two primary categories: 1) out-of-state and international guests ("Destination") and 2) in-state and local visitors ("In-State"). Destination guests comprise approximately 60% of the Company's skier visits, while the In-State market comprises approximately 40% of the Company's skier visits. Nearly 50% of total visitors and 79% of Destinations visitors fly to the Company's resorts. Destination guests generally purchase the Company's higher-priced lift ticket products and utilize more ancillary services like ski school and lodging. Destination guests are less likely to be impacted by changes in the weather, due to the advance planning required for their trip, but can be impacted by the economy (including the strength of the U.S. dollar) and the global geopolitical climate. In-State guests tend to be more weather-sensitive and value-oriented; to mitigate against this, approximately 20-25% of total lift revenue is generated from the sale of season passes, which are marketed primarily to In-State guests. The cost structure of ski resort operations is largely fixed; as such, incremental revenue generally has high associated profit margin.

Revenues of the Lodging properties at or around the Company's ski resorts are closely aligned with the performance of the Mountain segment, particularly with respect to visitation from Destination guests. Revenues from hotel management operations under the RockResorts brand not located around the Company's ski resorts are generated through management fees based upon the revenue of the individual hotel properties within the RockResorts portfolio, and are therefore subject to trends within the overall travel industry. GTLC, which is a National Park Service ("NPS") concession within Grand Teton National Park, benefits from the enormous popularity of the National Park system. GTLC's pricing is regulated by the NPS.

The Company's Real Estate segment engages in both 1) the sale of land to developers, which generally includes the retention of some control in the oversight and design of the projects and a contingent revenue structure based on the sale of the developed units and, 2) in a growing trend, vertical development of projects. The Company mitigates the risk of vertical development by utilizing fixed price contracts, pre-selling the project, requiring significant non-refundable deposits and the obtaining of non-recourse financing for certain projects. The Company's real estate projects generally are geared to provide additional benefit to the Mountain and Lodging segments.

**Trends, Risks and Uncertainties**

The Company's management has identified the following important factors (as well as risks and uncertainties associated with such factors) that could impact the Company's future financial performance:

- The timing and amount of snowfall has a direct impact on skier visits, particularly with respect to In-State skiers. To mitigate this impact, the Company focuses efforts on sales of season passes. The Company raised prices for the 2005/06 season and early signs indicate favorable trends in volume and dollars. However, there can be no certainty that such favorable trends will continue in the future.
- The Company plans to raise prices on most lift ticket products for fiscal 2006 and continues to charge some of the highest prices in the industry. While pricing increases historically have not reduced demand, there can be no assurances that demand will remain price inelastic.
- The Company operates its ski areas under various Forest Service permits, and many of the Company's operations require permits and approval from governmental authorities. Changes or impacts of the regulatory environment applicable to the Company may have detrimental effects on the Company.

- The timing of major holidays can impact vacation patterns and therefore visitation at the Company's ski resorts. In fiscal 2006, Christmas falls on a Sunday, which could result in softer visitation for this holiday period as compared to years in which the holiday does not fall on a weekend. Additionally, Easter falls in mid-April in 2006, which management anticipates will be unfavorable compared to the impact of the March Easter holiday in 2005.
- In fiscal 2005, the Company successfully executed its strategy to reduce hotel ownership in favor of increasing its managed property portfolio with the sales of the assets constituting the Vail Marriott Mountain Resort & Spa ("Vail Marriott") and The Lodge at Rancho Mirage ("Rancho Mirage") and the sale of the Company's investment in the Ritz-Carlton, Bachelor Gulch ("BG Resort"). The Company retained management contracts for both the Vail Marriott and Rancho Mirage. In addition, the Company is actively marketing the assets constituting SRL&S for sale, with planned retention of the management contract. The Company expects a sale to be consummated in fiscal 2006. Other than the sale of the assets constituting SRL&S, the Company does not have further specific agreements to dispose of more hotels. However, the Company continues to evaluate potential sales and other strategic initiatives which could involve the conversion of hotel rooms to real estate projects with respect to some of its Lodging properties. The sale of owned hotel properties will result in Lodging segment Reported EBITDA no longer reflecting the operating results of the hotels, but will include management fee revenue, in cases where the management contract is retained. See "Results of Operations" for information regarding the financial impacts of these transactions.

- Potential ownership changes of hotels currently under RockResorts management could result in the termination of existing RockResorts management contracts, which could negatively impact the results of operations of the Lodging segment. In May 2005, RockResorts' management agreement for Casa Madrona Hotel and Spa ("Casa Madrona") in Sausalito, California was terminated as the result of an ownership change of the hotel, which resulted in the Company receiving a $417,000 termination fee, but loss of future management fees. The Company recorded management fees of approximately $100,000 for Casa Madrona for the fiscal year ended July 31, 2005. The Company continues to pursue additional management contracts, and obtained the Lodge & Spa at Cordillera management contract in May 2005.

- GTLC operates three lodging properties and a variety of food and beverage, retail, camping and other services within Grand Teton National Park under a concession contract with the National Park Service that expired on December 31, 2002. This contract was extended twice for a total of three years through December 31, 2005 and is currently the subject of a competitive bid process. The National Park Service has indicated it expects a new concession contract to be signed by January 1, 2006, after which time the contract will be sent to Congress for a sixty-day review period. The Company cannot predict or guarantee the prospects for success in award of a new contract. If the Company is not awarded the new contract, the Company's Lodging Reported EBITDA for the periods subsequent to the date of the potential loss of the concession contract will be significantly impacted due to the historically positive Reported EBITDA generated by GTLC, although the Company would receive proceeds for the value of its possessory interest plus any personal property and inventory sold to the new concessionaire (see "Regulation and Legislation" under the Business section of Part I, Item 1 of this report).
- The Company has received approval from the Vail Town Council for numerous LionsHead development projects and is proceeding with the projects as planned. The Company generally pre-sells residential units to help ensure the economic viability of its vertical development projects. Pre-sales require buyers to provide earnest money deposits to the Company, which would be refundable to the buyer should the Company fail to complete the related development. Pre-sale targets are set by management. Generally, the Company strives to meet its pre-sale targets in the period between the commencement of the marketing of a development and the planned commencement of construction. The Company has executed purchase and sale agreements for all of the Gore Creek Place townhome units and Arrabelle condominium units. The Company expects to incur between $205 million and $225 million of construction costs subsequent to July 31, 2005 on the Gore Creek Place and Arrabelle projects (including the construction of related depreciable assets). Primary construction activities for these projects commenced in May 2005, and closing on the residential units is expected to commence in the fourth quarter of fiscal 2006 for Gore Creek Place townhomes and in late fiscal 2007 or early fiscal 2008 for Arrabelle. Real estate deposits recorded as liabilities by the Company were $52.9 million and $23.2 million as of July 31, 2005 and 2004, respectively. The Company obtained non-recourse financing to fund the Gore Creek Place development in July 2005, and plans to enter into a similar non-recourse financing agreement for Arrabelle. In June 2005, the Company entered into an agreement with The Ritz Carlton Hotel Company, LLC, whereby the Company will develop The Ritz-Carlton Residences, Vail on land adjacent to the Vail Marriott. The project is planned to include up to 108 luxury condominiums and a proposed new base village high-speed chairlift. In conjunction with this project, the Company will need certain approvals, including certain regulatory approvals for the chairlift. The development will be subject to pre-sell requirements as yet to be established by the Company.
- Real Estate Reported EBITDA is highly dependent on, among other things, the timing of closings on real estate under contract. Changes to the anticipated timing of closing on one or more real estate units could materially impact Real Estate Reported EBITDA for a particular quarter or fiscal year. Additionally, the magnitude of real estate projects currently under development or contemplated could result in a significant increase in Real Estate Reported EBITDA as these projects close, expected in fiscal 2007 to 2009. However, future Real Estate Reported EBITDA could be adversely affected by a slow-down in market demand to the extent that it has not pre-sold its real estate held for sale.
- Impacts from the 2005 hurricane season could include increases to, among other things, fuel, commodities and construction costs and could impact travel patterns. The Company is currently unable to determine what impact, if any, the effects of the hurricanes will have on the Company.
- The Company uses estimates to record certain reserves (including, but not limited to, self-insured medical and workers' compensation reserves, legal liability reserves and income tax reserves) and to measure assets for impairment. If actual results vary significantly from such estimates, or if future trends are not indicative of historical experience, the Company's results from operations could be materially impacted (see Critical Accounting Policies for more information regarding these reserve estimates).

- Remediation of the mold problem at Breckenridge Terrace has been substantially completed and a vast majority of the facility was re-opened in November 2004. The Company's estimated remaining costs are based on currently available data and do not reflect any potential reimbursement from other parties. In September 2005, Breckenridge Terrace agreed to settle its claims against certain responsible parties for $800,000. (See Item 3, Legal Proceedings and Note 13, Commitments and Contingencies, of the Notes to Consolidated Financial Statements, for more information regarding this issue)
- The Company expects that both internal and external costs associated with compliance efforts under the Sarbanes Oxley Act of 2002 will decrease significantly in future fiscal years from the $5.3 million of expense incurred in fiscal 2005. This decrease in expense would have a favorable impact on Reported EBITDA for each of the Company's segments.
- The Company is required to adopt Statement of Financial Accounting Standards ("SFAS") No. 123 (revised 2004) ("SFAS 123R"), "Share-Based Payment", in its first quarter of fiscal 2006. The full impact of adoption of SFAS 123R cannot be reasonably estimated at this time because it will depend on levels and type of share-based compensation arrangements in the future, along with the valuation model used and related assumptions.

The data provided in this section should be read in conjunction with the risk factors identified elsewhere in this document.

**Results of Operations**

***Summary***

The 2004/05 ski season was a record year in terms of both total revenue and skier visits for the Mountain segment, supported by overall increases in destination visitation and ETP. The record skier revenue and skier visitation also drove improvement in the Lodging segment for properties proximate to the Company's ski resorts. In addition, management believes that the cost cutting initiatives implemented in fiscal 2004 were sustained in fiscal 2005. The Company's net income of $23.1 million for fiscal 2005 improved significantly over fiscal 2004's net loss of $6.0 million driven primarily by an increase in Resort Reported EBITDA of $22.9 million, a $7.2 million decrease in interest expense, as well as a $36.5 million decrease in loss on extinguishment of debt and a $5.5 million decrease in mold remediation charges, partially offset by a $16.5 million decrease in Reported Real Estate EBITDA and the fiscal 2005 net loss from the sale of businesses of $7.4 million (all as discussed further below). In addition, Corporate selling, general and administrative expenses ("Corporate SG&A"), which are allocated between each of the three segments, increased significantly in fiscal 2005 versus fiscal 2004 due primarily to first year SOX 404 compliance costs which increased by $3.2 million and increased legal costs of $4.5 million.

***Mountain Segment***

Mountain segment operating results for the fiscal years ended July 31, 2005, 2004 and 2003 are presented by category as follows (in thousands, except ETP):

| | Fiscal Year Ended July 31, | | | Percentage Change Increase/(Decrease) | |
|---|---|---|---|---|---|
| | 2005 | 2004 | 2003 | 2005/2004 | 2004/2003 |
| | ----------(unaudited)---------- | | | | |
| Lift tickets | $ 233,458 | $ 212,329 | $ 195,571 | 10.0% | 8.6% |
| Ski school | 63,915 | 58,526 | 55,392 | 9.2% | 5.7% |
| Dining | 53,688 | 51,511 | 48,333 | 4.2% | 6.6% |
| Retail/rental | 120,149 | 115,044 | 107,714 | 4.4% | 6.8% |
| Other | 69,645 | 63,585 | 53,558 | 9.5% | 18.7% |
| Total Mountain net revenue | 540,855 | 500,995 | 460,568 | 8.0% | 8.8% |
| Total Mountain operating expense | 391,889 | 368,875 | 362,131 | 6.2% | 1.9% |
| Mountain equity investment income, net | 2,303 | 1,376 | 1,009 | 67.4% | 36.4% |
| Total Mountain Reported EBITDA | $ 151,269 | $ 133,496 | $ 99,446 | 13.3% | 34.2% |
| Total skier visits | 5,940 | 5,636 | 5,730 | 5.4% | (1.6)% |
| ETP | $ 39.30 | $ 37.67 | $ 34.13 | 4.3% | 10.4% |

Mountain segment revenues and Reported EBITDA have increased significantly since fiscal 2003. This increase is due primarily to increased lift revenues as a result of higher ETP and, for fiscal 2005, increased skier visits. The increases in ETP, which is lift revenue divided by skier visits, is a function of 1) increased absolute pricing for both lift tickets and season passes and 2) increased Destination guest visitation driving the purchase of higher-priced lift ticket products. The absolute price increases were supported by substantial new capital improvements, including expanded grooming and snowmaking efforts and new high-speed lifts. During fiscal 2004 and continuing in fiscal 2005, the U.S. travel industry began to recover from the effects of the terrorist attacks of September 11, 2001 and the Iraq War in fiscal 2003. As a result, the skier visit mix changed in fiscal 2004 and continued to change in fiscal 2005 compared to fiscal 2003 as the Company experienced a higher mix of Destination, including international visitors, favorably impacting skier visits and ETP. Ancillary business revenues including ski school, mountain dining and retail/rental increased consistent with the increase in lift ticket revenues for fiscal 2005 and 2004. Ski school also benefited from an increase in absolute pricing and increased market penetration. In addition to the impact from increased skier visits, retail/rental also experienced favorable results in fiscal 2005 due to additional retail locations and an increase in ecommerce. Other factors impacting revenue were: 1) the timing of Easter, which fell in March

in the current fiscal year and April in fiscal 2004 and 2003, enabling the company to maximize pricing for Easter visitors in its peak month of March and 2) an unseasonably warm month of March in fiscal 2004, contributing to the decline in fiscal 2004 skier visits, partially offset by 3) the loss of an extra day of peak season operations due to the 2004 Leap Year, and the timing of the Christmas and New Year's holidays, which both fell on Saturday in fiscal 2005.

The increase in other revenue for fiscal 2005 versus fiscal 2004 is due primarily to: 1) increased private clubs revenue from dues increases, a full year of operations of the spa at The Ritz-Carlton, Bachelor Gulch and higher amortization of deferred club initiation fees due to increased memberships ($1.6 million), 2) increased allocated employee housing revenue due to the re-opening of a facility that closed in fiscal 2004 ($698,000), 3) increased commercial leasing revenue as a result of a full twelve months of increased available space and increased percentage rents ($894,000), 4) increased municipal services revenue due to expanded services in Beaver Creek and Bachelor Gulch villages ($583,000) and 5) a full year of consolidation of the Company's four employee housing entities, which were consolidated in the second quarter of fiscal 2004 ($381,000). The increases in other revenues in fiscal 2004 as compared to fiscal 2003 is primarily due to 1) consolidation of employee housing entities ($1.8 million), 2) increased revenues related to technology services ($1.7 million), 3) operations of the spa at the Ritz-Carlton, Bachelor Gulch, which opened in November 2002 ($1.5 million) and 4) increased summer visitation.

Mountain operating expense is generally not expected to increase commensurate with an increase in revenue due to the primarily fixed-cost nature of the business. However, new initiatives to expand grooming and snowmaking caused an increase in operating costs including labor, utilities and fuel for fiscal 2005. The Company also incurred incremental costs associated with the installation of additional chairlifts in fiscal 2005. In addition, fiscal 2005 allocated Corporate SG&A increased due to higher legal, first year SOX 404 compliance costs, operating costs associated with the re-opening of Breckenridge Terrace ($390,000), which was closed for the entire ski season last year and a full year of consolidation of the four employee housing entities of $513,000.

In fiscal 2004, the Company changed its cost structure by decreasing the amount of fixed costs in the Mountain segment through staffing changes, reduced marketing costs, changes in summer trail maintenance and more closely monitoring the hours of certain dining establishments. The Mountain segment also benefited from cost reductions realized in allocated Corporate SG&A expenses. These changes to the cost structure helped offset increased expenses due to the consolidation of four employee housing entities ($2.0 million), normal cost increases associated with inflation, payroll increases and energy prices as well as increased incentive compensation.

Mountain equity investment income primarily includes the Company's share of income or loss from the operations of a real estate brokerage; the increase in equity investment income is due primarily to increased commissions earned by the brokerage associated with increased real estate activity in Eagle County, including the Company's development activities in LionsHead.

***Lodging Segment***

Lodging segment operating results for the fiscal years ended July 31, 2005, 2004 and 2003 are presented by category as follows (dollars in thousands):

| | Fiscal Year Ended July 31, | | | Percentage Change Increase/(Decrease) | |
|---|---|---|---|---|---|
| | 2005 | 2004 | 2003 | 2005/2004 | 2004/2003 |
| | ----------(unaudited)---------- | | | | |
| Total Lodging net revenue | $ 196,351 | $ 180,525 | $ 172,003 | 8.8% | 5.0% |
| Total Lodging operating expense | 177,469 | 165,983 | 161,846 | 6.9% | 2.6% |
| Lodging equity investment loss, net | (2,679) | (3,432) | (5,995) | (21.9)% | (42.8)% |
| Total Lodging Reported EBITDA | $ 16,203 | $ 11,110 | $ 4,162 | 45.8% | 166.9% |
| Average Daily Rate ("ADR") | $ 196.26 | $ 187.90 | $ 184.25 | 4.4% | 2.0% |

Lodging segment revenues and Reported EBITDA have increased significantly since fiscal 2003 as a result of improved ADR while controlling related variable expenses. Additionally, paid occupancy increased 7.2% from fiscal 2004 to fiscal 2005 and 2.4% from fiscal 2003 to fiscal 2004. The Lodging segment's non-RockResorts branded properties, which are all proximate to the Company's ski resorts, and the Company's RockResorts properties located in close proximity to the Company's ski resorts have also benefited from the increase in skier visits and increased destination guests, and have experienced an increase in group business (primarily within the Vail, Beaver Creek and Keystone properties). Management believes the increase in group business is the result of an increased focus on this segment coupled with improvements in the overall lodging industry related to economic rebound and decreased travel-related concerns. The Company's RockResorts properties not located in close proximity to its ski resorts also performed favorably in fiscal 2005 along with the overall lodging industry related to economic rebound and decreased travel-related concerns. Particularly, SRL&S's contribution to Reported EBITDA has improved significantly compared to last year ($1.2 million), primarily as a result of increased room rates and expanded property management operations. In addition, RockResorts' revenues for fiscal 2005 include a $417,000 fee related to the termination of the Casa Madrona management agreement as well as $218,000 in marketing fee revenue reimbursements from the former owners of Cheeca Lodge & Spa. GTLC, which is only open from May to October, operating performance improved by approximately $370,000 as a result of reporting incremental days of operations.

In fiscal 2004, the Company implemented new measures to reduce the Lodging segment cost structure, such as closing seasonal properties during their off-seasons and furloughing employees during slower times. These cost reductions measurably improved operating margins from fiscal 2003 to fiscal 2004, and were maintained in fiscal 2005 despite the increase in allocated Corporate SG&A expenses.

In fiscal 2005, the Company sold its minority equity interest in BG Resort and the assets constituting the Vail Marriott and Rancho Mirage. Fiscal 2005 Lodging Reported EBITDA includes revenue of $40.2 million, operating expense of $34.9 million and equity investment loss of $2.7 million related to these entities, prior to their sale. Fiscal 2004 and 2003 Lodging Reported EBITDA includes, respectively, revenue of $40.2 million and $34.9 million, expense of $35.7 million and $33.5 million and equity investment loss of $3.3 million and $5.8 million related to these entities. Commencing with the sale of the Vail Marriott and Rancho Mirage, the Company is earning management fees of approximately 3% of the hotels' revenue. The impact to Lodging Reported EBITDA from these increased management fees was not significant in fiscal 2005 due to the timing of the sale of these businesses. See Note 8, Sale of Businesses, of the Notes to Consolidated Financial Statements, for more information regarding the Company's dispositions.

The consolidation of the Employee Housing Entities as of November 1, 2003 caused a $415,000 and a $473,000 increase in Lodging revenue and Lodging operating expense, respectively, in fiscal 2004.

Lodging equity loss consists primarily of the Company's share of losses from BG Resort. As the Company sold its investment in BG Resort in December 2004, the fiscal 2005 equity loss only reflects five months of operations. Fiscal 2003 was the first year of operations of the hotel, and therefore included significant start-up costs that did not recur in fiscal 2004 or 2005.

***Real Estate Segment***

Real Estate segment operating results for the fiscal years ended July 31, 2005, 2004 and 2003 are presented by major categories as follows (dollars in thousands):

| | Fiscal Year Ended July 31, | | | Percentage Change Increase/(Decrease) | |
|---|---|---|---|---|---|
| | 2005 | 2004 | 2003 | 2005/2004 | 2004/2003 |
| | ----------(unaudited)---------- | | | | |
| Single family land sales | $ 26,922 | $ 12,602 | $ 27,496 | 113.6% | (54.2)% |
| Land sales to developers | 12,751 | 20,617 | 4,987 | (38.2)% | 313.4% |
| Residential and commercial condominiums | 16,835 | 5,844 | 39,647 | 188.1% | (85.3)% |
| Parking unit sales | 11,684 | -- | -- | 100.0% | --% |
| Other | 4,589 | 6,060 | 8,271 | (24.3)% | (26.7)% |
| Total Real Estate net revenue | 72,781 | 45,123 | 80,401 | 61.3% | (43.9)% |
| Gain on transfer of property | -- | 2,147 | -- | (100.0)% | 100.0% |
| Real Estate operating expense | 58,254 | 16,791 | 66,642 | 246.9% | (74.8)% |
| Real Estate equity investment (loss) income, net | (102) | 460 | 3,962 | (122.2)% | (88.4)% |
| Total Real Estate Reported EBITDA | $ 14,425 | $ 30,939 | $ 17,721 | (53.4)% | 74.6% |

Fluctuations in Real Estate Reported EBITDA from year to year generally are the result of changes in the product mix and number of units available for sale; land sales generally have much higher margins than condominiums. In fiscal 2004 however, a $15.1 million liability associated with capital improvement fees for Smith Creek Metropolitan District ("SCMD") was relieved (with a corresponding decrease to Real Estate operating expense) as a result of Bachelor Gulch Metropolitan District's bond issuance in fiscal 2004, the proceeds of which were used to completely pay off all of SCMD's outstanding bonds, resulting in the elimination of the capital improvement fee liability. Fiscal 2005 Real Estate revenue included revenue recognition associated with sales of single-family lots at JHG&TC, Vail, Bachelor Gulch and Red Sky Ranch, developer land sales in the Beaver Creek area, the sale of parking spaces in Vail's Founders' Garage and the sale of a warehouse facility in Avon as well as recognition of a previously deferred $2.5 million land gain associated with the sale of BG Resort in December 2004 and recognition of $2.3 million of contingent gains (included in Other) associated with a development parcel sold in fiscal 2004. Fiscal 2004 Real Estate revenue included revenue recognition associated with the sale of development parcels in Bachelor Gulch and Arrowhead, single-family lot sales at Breckenridge's Timber Trail and sales of Mountain Thunder Lodge condominiums. In addition, in fiscal 2004, the Company recorded a $2.1 million gain on the transfer of property related to executive non-cash deferred compensation (see Note 17, Non-Cash Deferred Compensation, of the Notes to Consolidated Financial Statements for more information). In fiscal 2003, Real Estate Reported EBITDA was primarily driven by the large volume of condominiums sold, primarily consisting of sales at the Mountain Thunder Lodge development and luxury condominiums at the Vail Marriott.

Real estate equity income/(loss) primarily includes the Company's share of income or loss from the operations of KRED as well as the Company's share of profit associated with the sale of condominiums at The Ritz-Carlton, Bachelor Gulch through the Company's investment in BG Resort. Of the 23 condominiums developed at The Ritz-Carlton, Bachelor Gulch, 22 were sold in fiscal 2003 and the final condominium was sold in fiscal 2004. In December 2003, KRED distributed substantially all of its assets to its members, resulting in a significant decrease in KRED's activities subsequent to the distribution.

Real Estate operating expense consists primarily of the cost of sales and related selling expenses associated with sales of real estate, and also include general and administrative expenses associated with real estate operations and an allocation of Corporate SG&A expenses. In addition to the relief of the $15.1 million SCMD liability in fiscal 2004, the Company has recorded changes in estimates that increased (decreased) reported real estate cost of sales by approximately $435,000, ($1.8 million) and $475,000 for the fiscal years ended July 31, 2005, 2004 and 2003, respectively. The changes in estimates were a result of 1) changes is the estimated percentage-of-completion on certain projects and 2) changes in the estimated costs to complete projects relating to the sale of individual parcels within a development project, including the reversal of $1.2 million of expense in fiscal 2004 relating to the remaining obligation for the construction of amenities that the Company deemed were not necessary to construct.

***Other Items***

In addition to segment operating results, the following material items contribute to the Company's overall financial position.

*Depreciation and amortization*. Depreciation and amortization expense has increased over the last two years primarily as a result of 1) the acceleration of depreciation of approximately $7.3 million for certain assets which are being retired in advance of their previously estimated useful lives as a result of fiscal 2005 decisions related to redevelopment and capital improvements, 2) an increased fixed asset base due to normal capital expenditures and 3) incremental depreciation expense of $533,000 in fiscal 2005 and $1.6 million in fiscal 2004 for the first full year associated with the consolidation of the Employee Housing Entities as of November 1, 2003, partially offset by 4) fixed asset retirements as well as assets which are still used in the Company's operations becoming fully depreciated. The average depreciation rate was 8.1%, 7.7% and 8.1% for fiscal years 2005, 2004 and 2003, respectively.

*Asset impairment charges*. The Company recorded a $1.6 million asset impairment charge in fiscal 2005 associated with an intangible asset related to the RockResorts call option (see Note 9, Put and Call Options, of the Notes to Consolidated Financial Statements), a $536,000 asset impairment charge associated with the termination of the Casa Madrona management agreement in May 2005 and a $440,000 asset impairment charge related to projects that were abandoned

prior to completion. In fiscal 2004, the Company recorded a $1.1 million impairment charge after abandoning development of certain projects and the write-down of a warehouse facility. The Company recorded a $4.8 million impairment charge in fiscal 2003 related to an option held on certain development land near Vail due to an unexpected adverse court decision in connection with litigation involving the option. (See Note 10, Asset Impairment Charges, of the Notes to Consolidated Financial Statements.)

*Mold remediation charge.* In fiscal 2004, the Company expensed $5.5 million related to the estimated cost of remediation of water intrusion and condensation problems at its Breckenridge Terrace employee housing facility. See Note 13, Commitments and Contingencies, of the Notes to Consolidated Financial Statements, for more information regarding this charge.

*Interest expense.* The Company's primary sources of interest expense are the Credit Facility, the Industrial Development Bonds and the 6.75% Notes. The $7.2 million decrease in interest expense for fiscal 2005 compared to fiscal 2004 is due to 1) the replacement of the 8.75% Notes with the 6.75% Notes in January 2004, which resulted in a full year benefit versus six months in fiscal 2004, 2) extinguishment of the Credit Facility Term Loan in January 2005, 3) improved pricing and lower commitment fees relating to the Credit Facility refinancing in January 2005 as well as 4) an improved Funded Debt to Adjusted EBITDA ratio (as defined in the Credit Agreement) and lower average borrowings under the Credit Facility. These reductions are partially offset by the consolidation of the Employee Housing Entities under FIN 46R. Overall, interest expense decreased from fiscal 2003 to 2004 due to 1) the replacement of the 8.75% Notes with the 6.75% Notes in January 2004, 2) reduced pricing of the term loan portion of the Credit Facility and 3) lower average borrowings on the Credit Facility, partially offset by increased principal outstanding under the 6.75% Notes as compared to the 8.75% Notes and the consolidation of the Employee Housing Entities under FIN 46R. Average borrowings under the Credit Facility Revolver were $6.6 million, $22.9 million and $45.2 million in fiscal 2005, 2004 and 2003, respectively.

*Loss on extinguishment of debt.* The Company recorded a $612,000 debt extinguishment charge in January 2005 in connection with the refinancing of the Company's Credit Facility. The debt extinguishment charge is related to the write-off of unamortized issuance costs associated with the Credit Facility Term Loan, which was completely paid off.

The Company recorded a $37.1 million debt extinguishment charge in fiscal 2004 in connection with the tender for the 8.75% Notes. The charge included a tender premium of $65.06 per $1,000 principal amount of 8.75% Notes, which accounts for $23.8 million of the total charge. Other costs in the charge include transaction fees, the write-off of unamortized issuance costs and unamortized original issue discount on the 8.75% Notes, and other costs such as legal and printing fees. In connection with the tender for the 8.75% Notes, in January 2004 the Company issued the 6.75% Notes. The proceeds from the 6.75% Notes were used to repurchase the 8.75% Notes, and to pay associated premiums, fees and expenses. (See Note 4, Long-Term Debt, of the Notes to Consolidated Financial Statements.)

*Loss on sale of businesses, net.* The net $7.4 million loss consists of 1) a $10.9 million loss in the fourth quarter of fiscal 2005 associated with the sale of the assets constituting Rancho Mirage and 2) a $2.1 million loss in the fourth quarter of fiscal 2005 associated with the sale of the assets constituting the Vail Marriott offset by 3) a $5.7 million gain associated with the sale of the Company's interest in BG Resort (see Note 8, Sale of Businesses, of the Notes to Consolidated Financial Statements).

*Gain/loss on put options.* The value of put options fluctuates based on the estimated fair market value of the put options as of the end of each period. The net gain in fiscal 2005 was related to the decrease in the estimated fair value of the liabilities associated with the SSV and RTP put options. The net loss in fiscal 2004 was related to the increase in the estimated fair market value of the SSV and RTP put options. The net gain in fiscal 2003 was related to the decrease in the estimated fair market value of the put option that Olympus had to the Company with respect to RockResorts. See Note 9, Put and Call Options, of the Notes to Consolidated Financial Statements, for more information regarding the Company's put options.

*Minority interest in income of consolidated subsidiaries.* Minority interest in income of consolidated subsidiaries is a function of the performance of the Company's consolidated subsidiaries. Fiscal 2005 improvements in SSV's and SRL&S's net income is primarily responsible for the increase in minority interest in fiscal 2005. Improvement in SSV's fiscal 2004 net income is primarily responsible for the increase in minority interest in fiscal 2004.

*Income taxes.* The changes in the Company's effective tax rate are driven primarily by the amount of pre-tax income (loss), non-deductible executive compensation, and other non-deductible items and taxable income generated by state jurisdictions that varies from the consolidated pre-tax income (loss). The effective tax rate was 38.5%, (30.0)% and (39.1)% in fiscal 2005, 2004 and 2003, respectively. During fiscal year 2003, the Company entered into a closing agreement with the Internal Revenue Service, which successfully closed the audit of the 1995 - 1998 tax years. However, the Internal Revenue Service is currently examining the 2001 – 2003 tax years, the outcome of which is presently unknown.

The following table reconciles from segment Reported EBITDA to net income (loss):

| | Fiscal Year Ended July 31, | | |
|---|---|---|---|
| | **2005** | **2004** | **2003** |
| Mountain Reported EBITDA | $ 151,269 | $ 133,496 | $ 99,446 |
| Lodging Reported EBITDA | 16,203 | 11,110 | 4,162 |
| Resort Reported EBITDA | 167,472 | 144,606 | 103,608 |
| Real Estate Reported EBITDA | 14,425 | 30,939 | 17,721 |
| Total Reported EBITDA | 181,897 | 175,545 | 121,329 |
| Depreciation and amortization | (89,968) | (86,377) | (82,242) |
| Asset impairment charges | (2,550) | (1,108) | (4,830) |
| Mold remediation charge | -- | (5,500) | -- |
| Loss on disposal of fixed assets, net | (1,528) | (2,345) | (794) |
| Investment income, net | 2,066 | 1,886 | 2,011 |
| Interest expense | (40,298) | (47,479) | (50,001) |
| Loss on extinguishment of debt | (612) | (37,084) | -- |
| Loss from sale of businesses, net | (7,353) | -- | -- |

| | | | |
|---|---|---|---|
| Gain (loss) on put options, net | 1,158 | (1,875) | 1,569 |
| Other income (expense), net | 50 | (179) | 17 |
| Minority interest in income of consolidated subsidiaries, net | (5,239) | (4,000) | (1,064) |
| Income (loss) before (provision) benefit for income taxes | 37,623 | (8,516) | (14,005) |
| (Provision) benefit for income taxes | (14,485) | 2,557 | 5,478 |
| Net income (loss) | $ 23,138 | $ (5,959) | $ (8,527) |

**SEC Investigation Terminated**

In February 2003, the SEC issued a formal order of investigation with respect to the Company. On September 19, 2005, the Central Regional Office of the SEC informed the Company that its investigation has been terminated, and that no enforcement action has been recommended regarding the Company. The Company has also been informed that no enforcement action has been recommended with respect to any present or former directors, officers or employees of the Company in regard to the matters that had been under investigation.

**Liquidity and Capital Resources**

***Significant Sources of Cash***

The Company's liquidity profile improved substantially in fiscal 2005. The Company had no borrowings under its Credit Facility and had $136.6 million of non-restricted cash, including $82.5 million which was invested in overnight securities and short term commercial paper. The Company's Funded Debt to Adjusted EBITDA ratio (as defined under the Credit Facility), which the Company considers to be a key credit statistic, improved more than half a turn over fiscal 2004, and its leverage ratio (total debt to Reported EBITDA) and net leverage ratio (total debt less cash to Reported EBITDA) also each improved by more than half a turn. In addition, the Company reduced its total long-term debt outstanding by $104.1 million from July 31, 2004 to July 31, 2005 including the complete payoff of the Credit Facility Term Loan. Several factors contributed to the improvement: 1) improved free cash flow (Resort Reported EBITDA less resort capital expenditures and applicable interest expense) generated by the Resort segment, aided by improved Resort Reported EBITDA of $22.9 million in fiscal 2005 compared to fiscal 2004; 2) reduction of interest expense of $7.2 million, 3) the Company sold two hotel properties and its investment in BG Resort for total cash proceeds of $108.4 million; 4) the Company received $21.9 million cash from stock option exercises during fiscal 2005 and 5) the pre-sales process for the Arrabelle and Gore Creek Place developments generated $43.4 million in cash received for deposits on units, which the Company will use to offset related construction costs.

In the past two fiscal years, the Company has favorably restructured its key debt instruments. In fiscal 2004, the Company completed a tender offer for the outstanding 8.75% Notes and issued the 6.75% Notes, resulting in $5.2 million annual cash interest expense savings and extending the maturity of the 6.75% Notes to fiscal 2014. The Company paid a tender premium of $23.8 million associated with the 8.75% Notes in fiscal 2004. In January 2005, the Company refinanced its Credit Facility, and in the process completely paid off the $100 million Credit Facility Term Loan. Key modifications to the Credit Facility included, among other things, the expansion of the Credit Facility revolving credit commitments to $400 million from $325 million, extension of the maturity on the Credit Facility Revolver to January 2010 from June 2007, improved pricing for interest rate margins and commitment fees, and improved flexibility in the Company's ability to make investments and distributions. There were no borrowings outstanding under the Credit Facility as of July 31, 2005.

In addition, in July 2005, Gore Creek Place, LLC ("Gore Creek"), a wholly-owned subsidiary of the Company, obtained project-specific non-recourse financing (the "Gore Creek Facility") for the construction of the Gore Creek Place development. The Gore Creek Facility is non-revolving and provides for financing up to $30 million. The Gore Creek Facility matures on July 19, 2007, and principal payments are due at the earlier of closing of sales for the Gore Creek residences or maturity. Gore Creek is an Unrestricted Subsidiary (as defined in the Credit Agreement and the indenture governing the 6.75% Notes (the "Indenture")) of the Company and is therefore not included in the covenants of the Company's Credit Facility or 6.75% Notes. In connection with the Gore Creek Facility, The Vail Corporation, a wholly-owned subsidiary of the Company, entered into a Completion Guaranty Agreement, pursuant to which The Vail Corporation guarantees the completion of the construction of the project (but not the repayment of amounts borrowed under the Gore Creek Facility), provided the lender continues to fund the construction. The Gore Creek Facility contains non-recourse provisions to the Company with respect to repayment, and upon an event of default, the lender has recourse only against Gore Creek's assets and enforcement of the Completion Guaranty Agreement. The lender does not have recourse against the assets of The Vail Corporation or any other Company subsidiary. All assets of Gore Creek are provided as collateral under the Gore Creek Facility agreement, which includes the underlying land and the advance deposits. Borrowings under the Gore Creek Facility are expected to be repaid from funds received at closing on the units sold.

In addition to continued utilization of operating cash flows (including sales of real estate) and borrowings, if necessary, under the Credit Facility, the Company expects that its near-term (less than five years) liquidity needs will also be met through borrowings under the Gore Creek Facility, obtaining additional project-specific non-recourse financing for other real estate development projects, and the expected sale of the assets constituting SRL&S. The Company cannot predict whether cash generated from stock option exercises will continue at the level generated in fiscal 2005; however, as of July 31, 2005, there were 2.4 million exercisable options outstanding with a weighted-average exercise price of $19.58 per share.

The Company also anticipates that, for the near-term, it will continue to have excess cash. Management is currently evaluating how best to utilize its excess cash reserve, which is currently invested in overnight securities and short term commercial paper. The Credit Agreement and the Indenture contain restrictions that limit the Company's ability to make investments or distributions (including the payment of dividends). In addition, the Indenture restricts how the funds from sales of businesses can be used, generally requiring the net proceeds from such transactions to be invested in capital improvements or used to tender a portion of the 6.75% Notes outstanding. The Company will not be obligated to tender a portion of the 6.75% Notes outstanding with the proceeds on asset sales to date as a result of the reinvestment of such proceeds for capital expenditures.

***Significant Uses of Cash***

The Company's cash needs typically include providing for operating expenditures, debt service requirements and capital expenditures for both assets to be used in operations and real estate development projects. In addition, the Company expects that beginning with the 2006 fiscal year, it will incur significant cash income tax expense (generally expected to equal its statutory income tax rate). The consolidated statement of cash flows included in the accompanying financial statements provides information with respect to the Company's historical sources and uses of cash.

As indicated in the table of contractual obligations below, the Company has significant cash commitments in the near term. These commitments are primarily related to the completion of certain real estate development projects, most notably the construction of the Gore Creek Place townhomes for an estimated $26.0

million, the Arrabelle project for an estimated $42.4 million, the JHG&TC cabins and clubhouse for an estimated $6.5 million, and $4.3 million in other commitments related to the Company's development activities in LionsHead, all of which represent obligations in the next 12 months. In addition to these projects, the Company expects to spend approximately $45 million to $55 million in the remainder of calendar 2005 on capital expenditures related to real estate development projects. The real estate capital expenditures include approximately $25 million to $30 million of costs for assets which will ultimately be capitalized as fixed assets. The Company expects real estate capital expenditures will be higher than historical levels for the near term as the Company continues development associated with Vail's New Dawn. As noted above, the Company obtained non-recourse financing to fund construction of the Gore Creek Place project; the Company expects to utilize similar financing arrangements for certain other development projects, including Arrabelle. In addition to utilizing project-specific financing, the Company also pre-sells units requiring deposits in a proposed development prior to committing to the completion of the development, thereby helping to ensure sufficient funds are available to complete the project.

The Company has historically invested significant cash in capital expenditures for its Resort operations, and expects to continue to invest significant cash in the future. The Company believes that annual capital expenditures of approximately $30 million to $40 million are necessary to sustain the appearance and level of service appropriate to the Company's Resort operations. The Company evaluates additional capital improvements based on expected strategic impacts and/or expected return on investment. An estimated $45 million to $55 million is expected to be spent during the remainder of calendar 2005 under the Company's capital plan. Primary projects are expected to include two new high-speed chairlifts (one at Beaver Creek and one at Breckenridge), and dining facility upgrades at Heavenly and Vail. The Company has not finalized its capital plan for calendar 2006. The Company plans to utilize cash flow from operations, cash on hand and, as necessary, borrowings under long-term debt to provide the cash necessary to execute its capital plan.

Principal payments on the vast majority of the Company's long-term debt ($491.3 million of the total $521.7 million debt outstanding as of July 31, 2005) are not due until fiscal 2011 and beyond. Fiscal 2006 maturities, which total $2.0 million, include $1.1 million under the SSV Facility, which was refinanced in September 2005 (See Note 4, Long-Term Debt, of the Notes to Consolidated Financial Statements included in Part II, Item 8 of this report, for more information). Interest payments under the Company's fixed-rate debt will be approximately $31.2 million in fiscal 2006, assuming the debt remains at its current level.

The Company's debt service requirements can be impacted by changing interest rates as the Company had $62.0 million of variable-rate debt outstanding as of July 31, 2005. A 100-basis point change in LIBOR would cause the Company's annual interest expense to change by approximately $620,000. The fluctuation in the Company's debt service requirements, in addition to interest rate changes, may be impacted by future borrowings under its Credit Facility or other alternative financing arrangements it may enter into. The Company's long term liquidity needs are dependent upon operating results which impact the borrowing capacity under the Credit Facility, which can be mitigated by adjustments to capital expenditures, flexibility of investment activities and the ability to obtain favorable future financing. The Company manages changes in the business and economic environment by managing its capital expenditures and real estate development activities.

***Covenants and Limitations***

The Company must abide by certain restrictive financial covenants in relation to its bank credit facilities and the Indenture. The most restrictive of those covenants include the Funded Debt to Adjusted EBITDA ratio, Senior Debt to Adjusted EBITDA ratio, Minimum Fixed Charge Coverage ratio, Minimum Net Worth and the Interest Coverage ratio (each as defined in the underlying credit agreements). In addition, the Company's financing arrangements limit its ability to incur certain indebtedness, make certain restricted payments, make certain investments, make certain affiliate transfers and may limit its ability to enter into certain mergers, consolidations or sales of assets. The Company's borrowing availability under the Credit Facility is primarily determined by the Funded Debt to Adjusted EBITDA ratio, which is based on the Company's segment operating performance, as defined in the Credit Agreement.

The Company was in compliance with all relevant covenants in its debt instruments as of July 31, 2005. The Company expects it will meet all applicable quarterly financial tests in its debt instruments, including the Funded Debt to Adjusted EBITDA ratio, in fiscal 2006. However, there can be no assurance that the Company will meet its financial covenants. If such covenants are not met, the Company would be required to seek a waiver or amendment from the banks participating in the Credit Facility. While the Company anticipates that it would obtain such waiver or amendment, if any were necessary, there can be no assurance that such waiver or amendment would be granted, which could have a material adverse impact on the liquidity of the Company.

***Capital Structure***

In September 2004, the Company and Ski Partners, L.P. ("Apollo") entered into a Conversion and Registration Rights Agreement (the "Agreement"), pursuant to which Apollo converted all of its Class A common stock into the Company's common shares. Apollo distributed the shares to its partners in proportion to each partner's interest in the partnership. Apollo did not dissolve after this distribution and continues to exist as a partnership. The Company, pursuant to the Agreement, filed a shelf registration statement in November 2004 covering certain of the shares to be owned by the limited partners of Apollo. As a result of this agreement, the Company now has only one class of directors. Previously, the Class A common stock elected the Class 1 directors and the common stock elected the Class 2 directors.

**Contractual Obligations**

As part of its ongoing operations, the Company enters into arrangements that obligate the Company to make future payments under contracts such as lease agreements and debt agreements. Debt obligations, which total $521.7 million, are currently recognized as liabilities in the Company's consolidated balance sheet. Operating lease obligations, which total $33.5 million as of July 31, 2005, are not recognized as liabilities in the Company's consolidated balance sheet, which is in accordance with accounting principles generally accepted in the United States of America. A summary of the Company's contractual obligations at the end of fiscal 2005 is as follows:

| | Payments Due by Period (in thousands) | | | | |
|---|---|---|---|---|---|
| **Contractual Obligations** | **Total** | **2006 Fiscal Year** | **2-3 years** | **4 - 5 years** | **More than 5 years** |
| **Long-Term Debt** [1] | $ 521,710 | $ 2,004 | $ 12,980 | $ 15,408 | $ 491,318 |
| **Fixed Rate Interest** [1] | 289,181 | 31,159 | 61,830 | 59,868 | 136,324 |
| **Operating Leases and Service Contracts** | 33,491 | 10,354 | 14,393 | 6,356 | 2,388 |
| **Purchase Obligations** [2] | 324,604 | 318,005 | 6,599 | -- | -- |
| **Other Long-Term Obligations** [3] | 1,742 | 532 | 1,210 | -- | -- |
| **Total Contractual Cash Obligations** | $1,170,728 | $ 362,054 | $ 97,012 | $ 81,632 | $ 630,030 |

(1) *The fixed-rate interest payments included in the table above assume that all fixed-rate debt outstanding as of July 31, 2005 will be held to maturity. Interest payments associated with variable-rate debt have not been included in the table. Assuming that the amounts outstanding under variable-rate long-term debt as of July 31, 2005 are held to maturity, and utilizing interest rates in effect at July 31, 2005, the Company anticipates that its annual interest payments (including commitment fees and letter of credit fees) on variable rate long-tem debt as of July 31, 2005 will be in the range of $2.0 million to $4.0 million for at least the next five years. The future annual interest obligations noted herein are estimated only in relation to debt outstanding as of July 31, 2005, and do not reflect interest obligations on potential future debt, such as non-recourse financing associated with real estate development.*

(2) *Purchase obligations include amounts which are classified as trade payables, accrued payroll and benefits, accrued fees and assessments, accrued taxes, accrued interest, and liabilities (including advances) to complete real estate projects on the Company's consolidated balance sheet as of July 31, 2005 and other obligations for goods and services not yet recorded.*

(3) *Other long-term obligations include amounts which become due based on deficits in underlying cash flows of the metropolitan district as described in Note 13, Commitments and Contingencies, of the Notes to Consolidated Financial Statements.*

**Off Balance Sheet Arrangements**

The Company does not have off balance sheet transactions that are expected to have a material effect on the Company's financial condition, revenues, expenses, results of operations, liquidity, capital expenditures or capital resources.

**Critical Accounting Policies**

The preparation of Consolidated Financial Statements in conformity with accounting principles generally accepted in the United States of America requires the Company to select appropriate accounting policies and to make judgments and estimates affecting the application of those accounting policies. In applying the Company's accounting policies, different business conditions or the use of different assumptions may result in materially different amounts reported in the Consolidated Financial Statements.

The Company has identified the most critical accounting policies upon which its financial status depends. The critical principles were determined by considering accounting policies that involve the most complex or subjective decisions or assessments. The Company also has other policies considered key accounting policies; however, these policies do not meet the definition of critical accounting policies because they do not generally require us to make estimates or judgments that are complex or subjective.

***Real Estate Held for Sale***.

*Description*

The Company utilizes the relative sales value method to determine cost of sales for individual parcels of real estate or condominium units sold within a project. The determination of cost of sales under the relative sales value method utilizes significant estimates for both the ultimate total revenues to be generated and total costs to be incurred on a real estate development project. Real estate development projects generally span several years.

Additionally, the "percentage of completion" method is used for revenue recognition on real estate sales for which the Company has not completed its obligations to the buyer at the time of closing. This requires estimation of the total cost to complete the obligations to determine the amount of revenue and cost of sales to recognize on a periodic basis.

*Judgments and Uncertainties*

Changes to cost of sales percentages for a project based upon changes in the estimates are accounted for on a "cumulative catch-up" basis for past sales; other changes are accounted for on a prospective basis. As a result, changes in the estimates underlying the cost of sales calculation can cause significant variances in cost of sales as a percentage of revenue applied year-to-year throughout the life of a project

*Effect if Actual Results Differ From Assumptions*

A 10% change in the estimates for future revenues or costs yet to be incurred as of July 31, 2005 would have changed the profit margin recognized by approximately $325,000 for the fiscal year ended July 31, 2005. A 10% change in the cost to complete the projects accounted for under the percentage of completion method and recorded through fiscal 2005 would have changed cost of sales by approximately $350,000 for the fiscal year ended July 31, 2005.

***Workers' Compensation*.**

*Description*

The Company is self-insured for workers' compensation for its operations in the states of Colorado and California. Workers' compensation claims are reserved based on actuarial estimates for the ultimate development of existing claims and claims incurred but not yet reported.

*Judgments and Uncertainties*

Variances in actual claims experience versus the actuarial reserve can affect the timing of workers' compensation expense between fiscal years.

*Effect if Actual Results Differ From Assumptions*

A 10% change in the estimated development factors for fiscal 2005 claims would have changed fiscal 2005 workers' compensation expense recognized by approximately $430,000.

***Deferred Club Initiation Fees.***

*Description*

*Revenues from club initiation fees are initially deferred and recognized over the expected life of the club facilities.*

*Judgments and Uncertainties*

The life of the club facilities is an estimate determined by management based on consideration of standard building life estimates. Changes in the estimates of the club facilities' lives do not impact the aggregate amount of club related revenues recognized; however, the changes would impact the timing of the revenue recognition. If an estimate is changed, the remaining club revenues would be recognized in a straight-line pattern over the new estimated remaining life of the club facilities.

*Effect if Actual Results Differ From Assumptions*

If the estimated remaining lives of all of the Company's private club facilities were shortened by five years as of August 1, 2004, fiscal 2005 revenue would have increased approximately $103,000. Similarly, if the estimated lives had been extended by five years as of August 1, 2004, fiscal 2005 revenue would have decreased approximately $97,000.

***Intangible Assets.***

*Description*

The Company frequently obtains intangible assets, including goodwill, primarily through business combinations. The assignment of value to individual intangible assets generally requires the assistance of a specialist, such as an appraiser. The assumptions used in the appraisal process are forward-looking, and thus are subject to significant interpretation. Because individual intangible assets (i) may be expensed immediately upon acquisition; (ii) amortized over their estimated useful life; or (iii) not amortized, the assigned values and lives, when applicable, could have a material effect on current and future period results of operations. Further, intangibles are subject to certain judgments when evaluating impairment pursuant to Statement of Financial Accounting Standards No. 142, "Goodwill and Intangible Assets", discussed further in Note 2, Summary of Significant Accounting Policies, of the Notes to Consolidated Financial Statements. The Company tests goodwill and indefinite lived intangible assets annually for impairment under SFAS No. 142 as of May 1, or whenever events may indicate a possible impairment exists. Future operating results could dictate significant future non-cash impairment charges.

*Judgments and Uncertainties*

The Company determines fair value using current market values and widely accepted valuation techniques, including discounted cash flows and a royalty rate model. These types of analyses require the Company to make certain assumptions and estimates regarding economic factors and the future operating results of certain business operations.

*Effect if Actual Results Differ From Assumptions*

The Company completed the annual impairment testing of intangible assets in the fourth quarter of fiscal 2005, which resulted in no impairment being recorded, using the methodology described herein. A 10% decrease in the estimated fair value of the goodwill and intangible assets tested would not have had a significant impact on the test results.

***Income Taxes.***

*Description*

The Company is required to estimate its income taxes in each jurisdiction in which it operates. This process requires the Company to estimate the actual current tax exposure together with assessing temporary differences resulting from differing treatment of items for tax and financial reporting purposes. These temporary differences result in deferred tax assets and liabilities on the Company's consolidated balance sheets. The Company must then assess the likelihood that the deferred tax assets will be recovered from future taxable income and, to the extent recovery is not likely, must establish a valuation allowance. This assessment is complicated by the fact that the Company files its tax return on a calendar year basis which is different from its fiscal year end. As of July 31, 2005, the Company had total deferred tax assets of $60.3 million (before valuation allowances) and total deferred tax liabilities of $118.5 million. The net deferred tax asset contains a valuation allowance representing the portion that management does not believe will be recovered from future taxable income. Management believes that sufficient taxable income will be generated in the future, primarily through the reversal of the deferred tax liabilities, to realize the benefit of the Company's deferred tax assets for which valuation allowances have not been recorded against.

*Judgments and Uncertainties*

The Company has approximately $15.5 million (tax-effected) of net operating loss and other carryforwards and credits as of July 31, 2005 for which it has not recorded a valuation allowance against. The Company is primarily relying on the reversal of deferred tax liabilities to utilize these carryforwards and credits.

*Effect if Actual Results Differ From Assumptions*

If the Company were to incur substantial tax losses for a number of years, the carryforwards and credits for which it has not recorded a valuation allowance against could expire without being utilized resulting in an increased tax expense in the period that the Company believes that it more likely than not the carryforwards or credits will not be realized.

***Tax Contingencies.***

*Description*

The Company is subject to periodic review by domestic tax authorities for audit of the Company's income tax returns. These audits generally include questions regarding the Company's tax filing positions, including the amount and timing of deductions and the allocation of income among various tax jurisdictions. In evaluating the exposures associated with the Company's various tax filing positions, including state and local taxes, the Company recorded reserves for probable exposure. A significant amount of time may pass before a particular matter, for which the Company may have established a reserve, is audited and fully resolved. As of the end of fiscal 2005, three open years (2001 – 2003) were undergoing examination by the Internal Revenue Service.

*Judgments and Uncertainties*

The estimates of the Company's tax contingencies reserve contains uncertainty because management must use judgment to estimate the potential exposure associated with the Company's various filing positions.

*Effect if Actual Results Differ From Assumptions*

Although management believes that the estimates and judgments discussed herein are reasonable and it has adequate reserves for its tax contingencies, actual results could differ, and the Company may be exposed to increases or decreases in those reserves that could be material.

To the extent the Company prevails in matters for which reserves have been established, or is required to pay amounts in excess of the Company's reserve, the Company's effective tax rate in a given financial statement period could be materially affected. An unfavorable tax settlement would require the use of cash and could possibly result in an increased tax expense and effective tax rate in the year of resolution. A favorable tax settlement could possibly result in a reduction in the Company's tax expense and effective tax rate in the year of resolution.

**New Accounting Pronouncements**

In December 2004, the Financial Accounting Standards Board ("FASB") issued SFAS 123R, which replaces SFAS No. 123 ("SFAS 123"), "Accounting for Stock-Based Compensation" and supersedes APB Opinion No. 25 ("APB 25"), "Accounting for Stock Issued to Employees". SFAS 123R requires the measurement of all employee share-based compensation arrangements to employees, including grants of employee stock options, using a fair-value-based method and the recording of such expense in the consolidated statements of operations. The accounting provisions of SFAS 123R are effective for fiscal years beginning after June 15, 2005, with early adoption permitted. The pro forma disclosures previously permitted under SFAS 123 no longer will be an alternative to financial statement recognition.

SFAS 123R permits public companies to adopt its requirements using one of two methods. Under the "modified prospective" method, compensation cost is recognized beginning with the effective date (a) based on the requirements of SFAS 123R for all share-based compensation arrangements granted after the effective date and (b) based on the requirements of SFAS 123 for all awards granted to employees prior to the effective date of SFAS 123R that remain unvested on the effective date. The "modified retrospective" method includes the requirements of the modified prospective method described above, but also permits entities to restate based on the amounts previously recognized under SFAS 123 for purposes of pro forma disclosures for either (a) all prior periods presented or (b) prior interim periods of the year of adoption. The Company plans to adopt SFAS 123R using the modified prospective method.

As permitted by SFAS 123, the Company currently accounts for share-based compensation arrangements to employees using APB 25's intrinsic value method and, as such, generally recognizes no compensation cost for employee stock options. Accordingly, the adoption of SFAS 123R's fair value method will impact the Company's results of operations, although it will have no impact on the Company's overall financial position. The adoption of SFAS 123R will increase the Company's operating expenses by approximately $3.5 million, $2.2 million and $270,000 for the years ended July 31, 2006, 2007 and 2008, respectively, for options that remain unvested as of July 31, 2005. The full impact of adoption of SFAS 123R cannot be reasonably estimated at this time because it will depend on levels and type of share-based compensation arrangements in the future, along with the valuation model used and related assumptions. However, had the Company adopted SFAS 123R in prior periods, the impact of that standard would have approximated the impact of SFAS 123 as described in the disclosure of pro forma net income (loss) per share in Note 2, Summary of Significant Accounting Policies, of the Notes to Consolidated Financial Statements. In September 2005, the Company granted approximately 163,850 shares of restricted stock and options to purchase approximately 442,500 shares of common stock at an exercise price of $28.08 per share. The vesting period for the restricted stock ranges from one to three years, and the vesting period for the stock options is three years. The Company is currently evaluating the effect these share-based compensation arrangements will have on its future results of operations.

**Inflation**

Although the Company cannot accurately determine the precise effect of inflation on its operations, management does not believe inflation has had a material effect on the results of operations in the last three fiscal years. When the costs of operating resorts increase, the Company generally has been able to pass the increase on to its customers. However, there can be no assurance that increases in labor and other operating costs due to inflation will not have an impact on the Company's future profitability.

**Seasonality and Quarterly Results**

The Company's Mountain and Lodging operations are seasonal in nature. In particular, revenues and profits for the Company's Mountain and most of its Lodging operations are substantially lower and historically result in losses from late spring to late fall. Conversely, peak operating seasons for GTLC, certain managed hotel properties and the Company's owned golf courses occur during the summer months while the winter season generally results in operating losses. However, revenues and profits generated by GTLC's summer operations, management fees from those managed properties and golf operations are not sufficient to fully offset the Company's off-season losses from its Mountain and other Lodging operations. During the 2005 fiscal year, 77.3% of total combined Mountain and Lodging revenues were earned during the second and third fiscal quarters. Quarterly results may also be materially affected by the timing of snowfall and other unforeseen external factors. Therefore, the operating results for any three-month period are not necessarily indicative of the results that may be achieved for any subsequent fiscal quarter or for a full fiscal year. (See Note 15, Selected Quarterly Financial Data, of the Notes to Consolidated Financial Statements).

**Economic Downturn**

Skiing, travel and tourism are discretionary recreational activities that can be adversely affected by a significant economic slowdown, which, in turn, could reduce the Company's operating results. There can be no assurance that a continued or future decrease in the amount of discretionary spending by the public would not have an adverse effect on the Company.

**Unfavorable Weather Conditions**

The ability to attract visitors to ski resorts is influenced by weather conditions and by the amount and timing of snowfall during the ski season. Unfavorable weather conditions can adversely affect skier visits and the Company's revenues and profits. In the past 20 years, the Company's Colorado ski resorts have averaged between 20 and 30 feet of annual snowfall and Heavenly receives average yearly snowfall of between 25 and 35 feet, significantly in excess of the average for United States ski resorts. However, there is no assurance that the Company's resorts will receive seasonal snowfalls near the historical average in the future. Also, the early season snow conditions and skier perceptions of early season snow conditions influence the momentum and success of the overall season. In addition, a severe and prolonged drought could affect our otherwise adequate snowmaking water supplies. Unfavorable weather conditions such as drought, hurricanes, tropical storms and tornadoes can adversely affect the Company's other resorts and lodging properties as vacationers tend to delay or postpone vacations if weather conditions differ from those that typically prevail at such resorts for a given season. There is no way for the Company to predict future

weather patterns or the impact that weather patterns may have on results of operations or visitation. To some extent, the Company mitigates against impacts from weather through the sales of season passes.

**Labor Market**

The Company's Mountain and Lodging operations are largely dependent on a seasonal workforce. The Company recruits worldwide to fill staffing needs each season and utilizes visas to enable the use of foreign workers. In addition, the Company manages seasonal wages and the timing of the hiring process to ensure the appropriate workforce is in place. While the Company does not currently foresee the need to increase seasonal wages to attract employees, the Company cannot guarantee that such an increase will not be necessary in the future. In addition, the Company cannot guarantee that it will be able to obtain the visas necessary to hire foreign workers who are an important source for the seasonal workforce. Increased seasonal wages or an inadequate workforce could have an adverse impact on the Company's results of operations; however, the Company is unable to predict with any certainty whether such situations will arise or the potential impact on results of operations.

**Terrorist Acts upon the United States and Acts of War**

The terrorist acts carried out against the United States on September 11, 2001 and the war with Iraq and its aftermath have had an adverse effect on the global travel and leisure industry. Additional terrorist acts against the United States and the threat of or actual war by or upon the United States could result in further degradation of discretionary travel, upon which the Company's operations are highly dependent. Such degradation could have a material adverse impact on the Company's results of operations.

**Cautionary Statement**

*Statements in this Form 10-K, other than statements of historical information, are forward-looking statements that are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. You can identify these statements by forward-looking words such as "may", "will", "expect", "plan", "intend", "anticipate", "believe", "estimate", and "continue" or similar words. Such forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from those projected. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. Such risks and uncertainties include, but are not limited to:*

- *economic downturns;*
- *terrorist acts upon the United States;*
- *threat of or actual war;*
- *our ability to obtain financing on terms acceptable to us to finance our capital expenditure and growth strategy;*
- *our ability to develop our resort and real estate operations;*
- *competition in our Mountain and Lodging businesses;*
- *failure to commence or complete the planned real estate development projects;*
- *failure to achieve the anticipated short and long-term financial benefits from the planned real estate development projects;*
- *implications arising from new FASB/governmental legislation, rulings or interpretations;*
- *termination of existing hotel management contracts;*
- *our reliance on government permits or approvals for our use of federal land or to make operational improvements;*
- *our ability to integrate and successfully operate future acquisitions;*
- *expenses or adverse consequences of current or future legal claims;*
- *shortages or rising costs in construction materials;*
- *adverse changes in the real estate market; and*
- *unfavorable weather conditions.*

*Readers are also referred to the uncertainties and risks identified elsewhere in this Form 10-K.*

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

*Interest Rate Risk.* The Company's exposure to market risk is limited primarily to the fluctuating interest rates associated with variable rate indebtedness. At July 31, 2005, the Company had $62.0 million of variable rate indebtedness, representing 11.9% of the Company's total debt outstanding, at an average interest rate during fiscal 2005 of 9.3%. The Company's average interest rate includes letter of credit fees, unused fees and deferred financing charges (see Note 4, Long-Term Debt, of the Notes to Consolidated Financial Statements). Based on floating-rate borrowings outstanding as of July 31, 2005, a 100-basis point change in LIBOR would have caused the Company's annual interest expense to change by $620,000, respectively. The Company's market risk exposure fluctuates based on changes in underlying interest rates.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

### Vail Resorts, Inc.

*Consolidated Financial Statements for the Years Ended July 31, 2005, 2004 and 2003*

***Management's Report on Internal Control over Financial Reporting***

Management of Vail Resorts Inc. ("the Company") is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) of the Securities Exchange Act of 1934. The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles of the United States of America.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of the effectiveness of internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management, including the Company's Chief Executive Officer and Chief Financial Officer, assessed the effectiveness of the Company's internal control over financial reporting as of July 31, 2005. In making this assessment, management used the criteria established in *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this assessment, management concluded that, as of July 31, 2005, the Company's internal control over financial reporting was effective.

The Company's independent registered public accounting firm, PricewaterhouseCoopers LLP, has audited management's assessment of the effectiveness of the Company's internal control over financial reporting as of July 31, 2005, as stated in their report which appears herein.

## Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors

of Vail Resorts, Inc.:

We have completed an integrated audit of Vail Resorts, Inc.'s 2005 consolidated financial statements and of its internal control over financial reporting as of July 31, 2005 and audits of its 2004 and 2003 consolidated financial statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Our opinions, based on our audits, are presented below.

Consolidated financial statements and financial statement schedule

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Vail Resorts, Inc. and its subsidiaries at July 31, 2005 and 2004, and the results of their operations and their cash flows for each of the three years in the period ended July 31, 2005 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the accompanying index presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 7 to the accompanying consolidated financial statements, the Company adopted FASB Interpretation No. 46 "Consolidation of Variable Interest Entities - an Interpretation of ARB No. 51, Revised" during the year ended July 31, 2004.

Internal control over financial reporting

Also, in our opinion, management's assessment, included in the accompanying Management's Report on Internal Control Over Financial Reporting that the Company maintained effective internal control over financial reporting as of July 31, 2005 based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), is fairly stated, in all material respects, based on those criteria. Furthermore, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of July 31, 2005, based on criteria established in *Internal Control - Integrated Framework* issued by the COSO. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express opinions on management's assessment and on the effectiveness of the Company's internal control over financial reporting based on our audit. We conducted our audit of internal control over financial reporting in accordance with the standards of the Public Company Accounting Oversight Board (United

States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. An audit of internal control over financial reporting includes obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we consider necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers, LLP

Denver, Colorado

October 4, 2005

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

| | July 31, 2005 | 2004 |
|---|---|---|
| **Assets** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 136,580 | $ 46,328 |
| Restricted cash | 18,253 | 16,031 |
| Trade receivables, net of allowances of $1,335 and $1,265, respectively | 33,136 | 31,915 |
| Income taxes receivable | -- | 5,042 |
| Inventories, net of reserves of $719 and $738, respectively | 36,078 | 31,151 |
| Deferred income taxes (Note 11) | 11,405 | 12,077 |
| Other current assets | 20,697 | 13,193 |
| Assets held for sale (Note 2) | 26,735 | -- |
| Total current assets | 282,884 | 155,737 |
| Property, plant and equipment, net (Note 5) | 843,047 | 968,772 |
| Real estate held for sale and investment | 154,874 | 134,548 |
| Deferred charges and other assets | 23,172 | 31,311 |
| Notes receivable | 9,463 | 13,296 |
| Goodwill, net (Note 5) | 135,507 | 145,090 |
| Intangible assets, net (Note 5) | 76,974 | 85,203 |
| Total assets | $1,525,921 | $1,533,957 |
| **Liabilities and Stockholders' Equity** | | |
| Current liabilities: | | |
| Accounts payable and accrued expenses (Note 5) | $ 209,369 | $ 198,868 |
| Income taxes payable | 12,979 | -- |
| Long-term debt due within one year (Note 4) | 2,004 | 3,159 |
| Total current liabilities | 224,352 | 202,027 |
| Long-term debt (Note 4) | 519,706 | 622,644 |
| Other long-term liabilities (Note 5) | 140,421 | 97,616 |
| Deferred income taxes (Note 11) | 71,209 | 79,745 |
| Commitments and contingencies (Note 13) | -- | -- |
| Put option liabilities (Note 9) | 34 | 3,657 |

| | | |
|---|---|---|
| Minority interest in net assets of consolidated subsidiaries | 29,670 | 37,105 |
| Stockholders' equity: | | |
| Preferred stock, $0.01 par value, 25,000,000 shares authorized, no shares issued and outstanding | -- | -- |
| Common stock: | | |
| Class A common stock, convertible to common stock, $0.01 par value, zero shares authorized and outstanding as of July 31, 2005, and 20,000,000 shares authorized and 6,114,834 shares issued and outstanding as of July 31, 2004 (Note 16) | -- | 61 |
| Common stock, $0.01 par value, 100,000,000 and 80,000,000 shares authorized, respectively, and 36,596,193 and 29,222,828 shares issued and outstanding, respectively | 366 | 292 |
| Additional paid-in capital | 442,527 | 416,660 |
| Deferred compensation | (329) | (677) |
| Retained earnings | 97,965 | 74,827 |
| Total stockholders' equity | 540,529 | 491,163 |
| Total liabilities and stockholders' equity | $1,525,921 | $1,533,957 |

The accompanying Notes to Consolidated Financial Statements are an integral part of these financial statements.

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

| | Year Ended July 31, | | |
|---|---|---|---|
| | 2005 | 2004 | 2003 |
| Net revenue: | | | |
| Mountain | $ 540,855 | $ 500,995 | $ 460,568 |
| Lodging | 196,351 | 180,525 | 172,003 |
| Real estate | 72,781 | 45,123 | 80,401 |
| Total net revenue | 809,987 | 726,643 | 712,972 |
| Operating expense: | | | |
| Mountain | 391,889 | 368,875 | 362,131 |
| Lodging | 177,469 | 165,983 | 161,846 |
| Real estate | 58,254 | 16,791 | 66,642 |
| Total segment operating expense | 627,612 | 551,649 | 590,619 |
| Other operating income (expense): | | | |
| Gain on transfer of property, net | -- | 2,147 | -- |
| Depreciation and amortization | (89,968) | (86,377) | (82,242) |
| Asset impairment charges (Note 10) | (2,550) | (1,108) | (4,830) |
| Mold remediation charge (Note 13) | -- | (5,500) | -- |
| Loss on disposal of fixed assets, net | (1,528) | (2,345) | (794) |
| Income from operations | 88,329 | 81,811 | 34,487 |
| Mountain equity investment income, net | 2,303 | 1,376 | 1,009 |
| Lodging equity investment loss, net | (2,679) | (3,432) | (5,995) |
| Real estate equity investment (loss) income, net | (102) | 460 | 3,962 |
| Investment income, net | 2,066 | 1,886 | 2,011 |
| Interest expense | (40,298) | (47,479) | (50,001) |
| Loss on extinguishment of debt | (612) | (37,084) | -- |
| Loss from sale of businesses, net (Note 8) | (7,353) | -- | -- |
| Gain (loss) on put options, net (Note 9) | 1,158 | (1,875) | 1,569 |
| Other income (expense), net | 50 | (179) | 17 |
| Minority interest in income of consolidated subsidiaries, net | (5,239) | (4,000) | (1,064) |
| Income (loss) before (provision) benefit for income taxes | 37,623 | (8,516) | (14,005) |
| (Provision) benefit for income taxes (Note 11) | (14,485) | 2,557 | 5,478 |
| Net income (loss) | $ 23,138 | $ (5,959) | $ (8,527) |
| | | | |
| Per share amounts (Note 3): | | | |
| Basic net income (loss) per share | $ 0.65 | $ (0.17) | $ (0.24) |
| Diluted net income (loss) per share | $ 0.64 | $ (0.17) | $ (0.24) |

The accompanying Notes to Consolidated Financial Statements are an integral part of these financial statements.

**Vail Resorts, Inc.**
**Consolidated Statements of Stockholders' Equity**
**(In thousands, except share amounts)**

| | Common Stock Shares | | | | Additional Paid-in Capital | Deferred Compensation | Retained Earnings | Total Stockholders' Equity |
|---|---|---|---|---|---|---|---|---|
| | Class A | Common | Total | Amount | | | | |
| Balance, July 31, 2002 | 7,439,834 | 27,714,220 | 35,154,054 | $ 351 | $ 415,688 | $ (1,348) | $ 89,313 | $ 504,004 |
| Net loss | -- | -- | -- | -- | -- | -- | (8,527) | (8,527) |
| Amortization of deferred compensation | -- | -- | -- | -- | -- | 1,346 | -- | 1,346 |
| Issuance of shares pursuant to options exercised (Note 18) | -- | 30,727 | 30,727 | -- | 498 | -- | -- | 498 |
| Purchase of stock pursuant to issuance of restricted shares, net | -- | 90,095 | 90,095 | 1 | (1,163) | -- | -- | (1,162) |
| Tax effect of stock option exercises | -- | -- | -- | -- | 87 | -- | -- | 87 |
| Forfeiture of unvested restricted stock granted | -- | -- | -- | -- | (58) | 58 | -- | -- |
| Restricted stock granted | -- | -- | -- | -- | 254 | (254) | -- | -- |
| Balance, July 31, 2003 | 7,439,834 | 27,835,042 | 35,274,876 | 352 | 415,306 | (198) | 80,786 | 496,246 |
| Net loss | -- | -- | -- | -- | -- | -- | (5,959) | (5,959) |
| Conversion of Class A shares to common shares | (1,325,000) | 1,325,000 | -- | -- | -- | -- | -- | -- |
| Amortization of deferred compensation | -- | -- | -- | -- | -- | 250 | -- | 250 |
| Issuance of shares pursuant to options exercised (Note 18) | -- | 62,786 | 62,786 | 1 | 561 | -- | -- | 562 |
| Tax effect of stock option exercises | -- | -- | -- | -- | 64 | -- | -- | 64 |
| Restricted stock granted | -- | -- | -- | -- | 729 | (729) | -- | -- |
| Balance, July 31, 2004 | 6,114,834 | 29,222,828 | 35,337,662 | 353 | 416,660 | (677) | 74,827 | 491,163 |
| Net income | -- | -- | -- | -- | -- | -- | 23,138 | 23,138 |
| Conversion of Class A shares to common shares (Note 16) | (6,114,834) | 6,114,834 | -- | -- | -- | -- | -- | -- |
| Amortization of deferred compensation | -- | -- | -- | -- | -- | 348 | -- | 348 |
| Issuance of shares pursuant to options exercised and issuance of restricted shares (Note 18) | -- | 1,258,531 | 1,258,531 | 13 | 21,928 | -- | -- | 21,941 |
| Tax effect of stock option exercises | -- | -- | -- | -- | 3,939 | -- | -- | 3,939 |
| Balance, July 31, 2005 | -- | 36,596,193 | 36,596,193 | $ 366 | $ 442,527 | $ (329) | $ 97,965 | $ 540,529 |

The accompanying Notes to Consolidated Financial Statements are an integral part of these financial statements.

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

| | Year Ended July 31, | | |
|---|---|---|---|
| | 2005 | 2004 | 2003 |
| Cash flows from operating activities: | | | |
| Net income (loss) | $ 23,138 | $ (5,959) | $ (8,527) |
| Adjustments to reconcile net income (loss) to net cash provided by operating activities: | | | |
| Depreciation and amortization | 89,968 | 86,377 | 82,242 |
| Non-cash cost of real estate sales | 38,425 | (1,654) | 45,473 |
| Non-cash gain on transfer of property | -- | (2,147) | -- |
| Asset impairment charges | 2,550 | 1,108 | 4,830 |
| Mold remediation charge | -- | 5,500 | -- |
| Loss on sale of businesses, net | 7,353 | -- | -- |
| Cash received from private club membership sales | 8,324 | 8,358 | 19,652 |
| Loss on extinguishment of debt | 612 | 37,084 | -- |
| Deferred income taxes, net | (7,514) | (1,018) | 4,275 |
| Minority interest in net income of consolidated subsidiaries | 5,239 | 4,000 | 1,064 |

| | | | |
|---|---|---|---|
| Other non-cash (income) expense, net | (2,996) | 5,956 | 7,545 |
| Changes in assets and liabilities: | | | |
| Restricted cash | (2,222) | (4,965) | 1,789 |
| Accounts receivable | (3,665) | 7,254 | (83) |
| Notes receivable | 4,052 | 1,685 | 3,928 |
| Inventories | (5,074) | 605 | 570 |
| Accounts payable and accrued expenses | 26,443 | 20,512 | 5,974 |
| Income taxes receivable/payable | 21,960 | 6,940 | (17,201) |
| Real estate deposits | 29,755 | 11,453 | 7,128 |
| Other assets and liabilities, net | (16,007) | (152) | (4,089) |
| Net cash provided by operating activities | 220,341 | 180,937 | 154,570 |
| Cash flows from investing activities: | | | |
| Capital expenditures | (79,975) | (62,960) | (106,338) |
| Investments in real estate | (72,164) | (27,802) | (22,572) |
| Distributions from joint ventures | 6,588 | 4,849 | 3,120 |
| Cash received from disposal of fixed assets | 2,019 | 2,658 | 635 |
| Cash received from sale of businesses | 108,399 | -- | -- |
| Purchase of minority interests | (9,748) | -- | -- |
| Other investing | -- | (110) | (5,568) |
| Net cash used in investing activities | (44,881) | (83,365) | (130,723) |
| Cash flows from financing activities: | | | |
| Proceeds from borrowings under 6.75% Notes | -- | 390,000 | -- |
| Payment of tender and call of 8.75% Notes | -- | (360,000) | -- |
| Payment of tender premium | -- | (23,825) | -- |
| Payment of financing costs | (1,774) | (6,828) | (3,854) |
| Payment of Credit Facility Term Loan | (98,750) | (1,000) | (250) |
| Proceeds from borrowings under other long-term debt | 176,423 | 173,253 | 458,446 |
| Payments of other long-term debt | (181,239) | (234,234) | (482,997) |
| Distributions from joint ventures to minority shareholders | (1,807) | (1,474) | (926) |
| Proceeds from the exercise of stock options | 21,939 | 562 | 498 |
| Net cash used in financing activities | (85,208) | (63,546) | (29,083) |
| Net increase (decrease) in cash and cash equivalents | 90,252 | 34,026 | (5,236) |
| Net increase in cash due to adoption of FIN 46R | -- | 4,428 | -- |
| Cash and cash equivalents: | | | |
| Beginning of period | 46,328 | 7,874 | 13,110 |
| End of period | $ 136,580 | $ 46,328 | $ 7,874 |
| | | | |
| Cash paid for interest, net of amounts capitalized | $ 38,158 | $ 38,578 | $ 46,244 |
| Taxes paid, net of refunds received | -- | (8,827) | 7,703 |

The accompanying Notes to Consolidated Financial Statements are an integral part of these financial statements.

**Vail Resorts, Inc.**
**Supplemental Schedule of Non-Cash Transactions**

**(In thousands)**

| | Year Ended July 31, | | |
|---|---|---|---|
| | **2005** | **2004** | **2003** |
| Distributions (net of liabilities assumed) from KRED | $ -- | $ 25,600 | $ -- |
| Capital leases entered into for operating fixed assets | -- | 1,312 | -- |
| Increase in assets due to adoption of FIN 46R | -- | 49,860 | -- |
| Increase in liabilities due to adoption of FIN 46R | -- | 48,972 | -- |

**The accompanying Notes to Consolidated Financial Statements are an integral part of these financial statements.**

## Notes to Consolidated Financial Statements

1. Organization and Business

Vail Resorts, Inc. ("Vail Resorts") is organized as a holding company and operates through various subsidiaries. Vail Resorts and its subsidiaries (collectively, the "Company") currently operate in three business segments: Mountain, Lodging and Real Estate. In the Mountain segment, the Company owns and operates five world-class ski resorts and related amenities at Vail, Breckenridge, Keystone and Beaver Creek mountains in Colorado and the Heavenly Ski Resort ("Heavenly") in the Lake Tahoe area of California and Nevada. The Company also holds a 61.7% interest in SSI Venture LLC ("SSV"), a retail/rental company. In the Lodging segment, the Company owns and operates various hotels, RockResorts International LLC ("RockResorts"), a luxury hotel management company, and Grand Teton Lodge Company ("GTLC"), which operates three resorts within Grand Teton National Park (under a National Park Service concessionaire contract) and the Jackson Hole Golf & Tennis Club in Wyoming. Vail Resorts Development Company ("VRDC"), a wholly-owned subsidiary of the Company, conducts the operations of the Company's Real Estate segment. The Company's Mountain and Lodging businesses are seasonal in nature with peak operating seasons from mid-November through mid-April. The Company's operations at GTLC generally run from mid-May through mid-October. The Company also has non-majority owned investments in various other entities, some of which are consolidated (see Note 6, Investments in Affiliates and Note 7, Variable Interest Entities).

**2. Summary of Significant Accounting Policies**

*Principles of Consolidation*-- The accompanying Consolidated Financial Statements include the accounts of the Company, its majority-owned subsidiaries and all variable interest entities for which the Company is the primary beneficiary. Investments in which the Company does not have a controlling interest or is not the primary beneficiary are accounted for under the equity method. All significant intercompany transactions have been eliminated in consolidation.

*Cash and Cash Equivalents*-- The Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents.

*Restricted Cash*-- Restricted cash represents amounts held as state-regulated reserves for self-insured workers' compensation claims, owner and guest advance deposits held in escrow for lodging reservations and certain deposits received from real estate transactions. The workers' compensation reserve, which was $11.9 million at July 31, 2005, is invested in money market accounts, highly liquid U.S. Treasury and similar-grade obligations, in accordance with reserve restrictions.

*Trade and Notes Receivable*-- The Company records trade accounts receivable in the normal course of business related to the sale of products or services. The Company charges interest on past due accounts at a rate of 18% per annum. The allowance for doubtful accounts is based on a specific reserve analysis and on a percentage of accounts receivable, and takes into consideration such factors as historical write-offs, the economic climate and other factors that could affect collectibility. Write-offs are evaluated on a case by case basis. Delinquency status on accounts receivable is based on contractual terms.

*Inventories*-- The Company's inventories consist primarily of purchased retail goods, food and beverage items, and spare parts. Inventories are stated at the lower of cost or fair value, determined using primarily an average weighted cost method. The Company records a reserve for estimated shrinkage and obsolete or unusable inventory.

*Property, Plant and Equipment*-- Property, plant and equipment is carried at cost net of accumulated depreciation. Routine repairs and maintenance are expensed as incurred. Expenditures that improve the functionality of the related equipment or extend the useful life are capitalized. When property, plant and equipment is retired or otherwise disposed of, the related gain or loss is included in operating income. Depreciation is calculated on the straight-line method generally based on the following useful lives:

| | Estimated Life in Years |
|---|---|
| Land improvements | 20 |
| Buildings and building improvements | 15-30 |
| Machinery and equipment | 3-30 |
| Furniture and fixtures | 3-10 |
| Vehicles | 3 |

In November 2002, after a review of the useful lives of the Company's assets, management changed the depreciable lives of buildings to 30 years from 40 years. The Company believes 30 years to be a more appropriate estimate. The change increased depreciation expense by approximately $450,000 per quarter.

The Company capitalizes interest on non-real estate construction projects expected to take longer than one year to complete and cost more than $1 million. The Company records capitalized interest once construction activities commence. The Company did not capitalize interest on projects during fiscal years 2005 and 2004. Interest capitalized on non-real estate projects during fiscal year 2003 totaled $405,000.

The Company has certain assets being used in resort operations that were constructed as amenities in conjunction with real estate development and included in project costs and expensed as the real estate was sold. Accordingly, there is no carrying value and no related depreciation expense related to these assets in the Company's Consolidated Financial Statements. These assets were primarily placed in service from 1995 to 1997 with an original cost of approximately $33 million and an average estimated useful life of 15 years.

*Real Estate Held for Sale*-- The Company capitalizes as land held for sale the original acquisition cost, direct construction and development costs, property taxes, interest incurred on costs related to land under development and other related costs (engineering, surveying, landscaping, etc.) until the property reaches its intended use. The cost of sales for individual parcels of real estate or condominium units within a project is determined using the relative sales value method. Sales and marketing expenses are charged against income in the period incurred. Sales commission expenses are charged against income in the period that the related revenues are recorded. The Company capitalizes interest on real estate projects expected to take longer than one year to complete and cost more than $1 million. The Company records capitalized interest once construction activities commence and real estate deposits have been used. Interest capitalized on real estate development projects during fiscal years 2005 and 2003 totaled approximately $14,000 and $849,000, respectively. No interest was capitalized on real estate development projects in fiscal 2004.

The Company is a member in KRED, which is a joint venture with Intrawest Resorts, Inc. formed to develop land at the base of Keystone Mountain. The Company contributed 500 acres of development land as well as certain other funds to the joint venture. The Company's investment in KRED, including the Company's equity earnings from the inception of KRED, is reported as "real estate held for sale and investment" in the accompanying consolidated balance sheets as of July 31, 2005 and 2004. In December 2003, KRED distributed a majority of its assets to its members. The Company received a non-cash distribution of $25.6 million (net of assumed liabilities of $14.0 million) under the distribution. The Company primarily received various parcels of developable land and approximately 91,000 square feet of commercial space in the distribution. There was no gain or loss recorded upon distribution. The Company recorded equity (loss)/income of ($102,000), $99,000 and $1.0 million for the fiscal years ended July 31, 2005, 2004 and 2003, respectively, related to KRED.

*Assets Held for Sale*-- During the fourth quarter of fiscal 2005, the Company entered into a process to market the assets constituting SRL&S for sale in accordance with the Company's strategy to reduce certain hotel ownership in favor of increasing its managed property portfolio. The Company expects to sell the assets constituting SRL&S during fiscal 2006. As a result, the Company has classified $26.7 million of long-term assets, including $26.5 million of net property, plant and equipment and $185,000 of goodwill, as "assets held for sale" in the accompanying consolidated balance sheet as of July 31, 2005.

*Deferred Financing Costs*-- Costs incurred with the issuance of debt securities are included in deferred charges and other assets, net of accumulated amortization. Amortization is charged to interest expense over the respective lives of the applicable debt issues.

*Interest Rate Agreements*-- In October 2000, the Company canceled certain interest-rate swap agreements in exchange for a cash payment of $1.1 million. The $1.1 million gain was deferred and recognized over the remaining life of the related debt, in accordance with Financial Accounting Standards Board ("FASB") Emerging Issues Task Force Issue No. 84-7, "Termination of Interest Rate Swaps". The Company had recognized the full $1.1 million gain related to the cancellation of the Swap Agreements as of July 31, 2003.

*Goodwill and Intangible Assets*-- The Company has classified as goodwill the cost in excess of fair value of the net assets of companies acquired in purchase transactions. The Company's major intangible asset classes are trademarks, water rights, customer lists, property management contracts, intellectual property, United States Forest Service permits, franchise agreements and excess reorganization value. As proscribed in Statement of Financial Accounting Standards No. 142, "Goodwill and Intangible Assets" goodwill and certain indefinite lived intangible assets, including excess reorganization value and certain trademarks, are no longer amortized, but are subject to annual impairment testing. The Company tests annually for impairment under SFAS No. 142 as of May 1; the Company determined that there was no impairment to goodwill and intangible assets during fiscal years 2005, 2004 and 2003.

*Long-lived Assets*-- The Company evaluates potential impairment of long-lived assets and long-lived assets to be disposed of in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets". SFAS No. 144 establishes procedures for the review of recoverability and measurement of impairment, if necessary, of long-lived assets held and used by an entity. SFAS No. 144 requires that those assets be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be fully recoverable. SFAS No. 144 requires that long-lived assets to be disposed of be reported at the lower of carrying amount or fair value less estimated selling costs. See Note 10, Asset Impairment Charges, for more information related to impaired long-lived assets.

*Revenue Recognition*-- Mountain and Lodging revenues are derived from a wide variety of sources, including, among other things, sales of lift tickets, ski school tuition, food and beverage operations, retail sales, equipment rental, hotel operations, property management services, private club dues, technology services, and golf course greens fees, and are recognized as products are delivered or services are performed. Revenues from private club initiation fees are recognized over the estimated life of the club facilities. Revenues from arrangements with multiple deliverables are bifurcated into units of accounting based on relative fair values and revenue is separately recognized for each unit of accounting. If a fair market value cannot be established for an arrangement, revenue is deferred until all deliverables have been performed.

Revenues from real estate primarily involve the sale of single-family homesites, condominiums/townhomes, and undeveloped land parcels. Revenue is not recognized until a sale is fully consummated as evidenced by 1) a binding contract, 2) receipt of consideration (generally the Company receives full cash payment upon closing) and 3) transfer to the buyer the usual risks and rewards of ownership. Contingent future profits, if any, are recognized only when received. The Company generally applies the "full accrual" method of revenue recognition thereby recognizing revenue and the related profit upon transfer of title to the buyer. However, if the Company has an obligation to complete improvements of lots sold or to construct amenities or other facilities as contractually required by sales that have been consummated, the Company utilizes the "percentage-of-completion" method of revenue recognition. The Company recorded revenue under the percentage-of-completion method of approximately $11.2 million, $16.1 million and $8.1 million for the fiscal years ended July 31, 2005, 2004 and 2003, respectively. Additionally, the Company uses the "deposit" method for sales that have not been completed for which payments have been received from buyers, and as such no profit is recognized until the sale is consummated.

*Real Estate Cost of Sales*-- Costs of real estate transactions include direct project costs, common cost allocations (primarily determined on relative sales value) and may include accrued commitment liabilities for costs to be incurred subsequent to sales transaction. Estimates of project costs and cost allocations are reviewed at the end of each financial reporting period until a project is substantially completed and available for sale. Costs are revised and reallocated as necessary for material changes on the basis of current estimates and are reported as a change in estimate in the current period. The Company recorded changes in estimates that increased (decreased) reported real estate cost of sales by approximately $435,000, ($16.9 million) and $475,000 for the fiscal years ended July 31, 2005, 2004 and 2003, respectively (see Note 13, Commitments and Contingencies, for more information).

*Deferred Revenue*-- In addition to deferring certain revenues related to private club initiation fees and the real estate sales as noted above, the Company records deferred revenue related to the sale of season ski passes and certain daily lift ticket products. The number of season pass holder visits is estimated based on historical data, and the deferred revenue is recognized throughout the season based on this estimate. During the ski season the estimated visits are compared to the actual visits and adjustments are made if necessary.

*Reserve Estimates*-- The Company uses estimates to record reserves for certain liabilities, including medical claims, workers' compensation, third-party loss contingencies, liabilities for the completion of real estate sold by the Company, allowance for doubtful accounts, metropolitan district interest subsidies and mold

remediation costs among other items. The Company estimates the potential costs related to these liabilities that will be incurred and records that amount as a liability in its financial statements. These estimates are reviewed and appropriately adjusted as the facts and circumstances related to the liabilities change.

*Advertising Costs-- Advertising costs are expensed at the time such advertising commences. Advertising expense for the fiscal years ended July 31, 2005, 2004 and 2003 was $15.1 million, $14.6 million and $16.0 million, respectively. At July 31, 2005 and 2004, prepaid advertising costs of $885,000 and $451,000, respectively, are reported as "other current assets" in the Company's consolidated balance sheets.*

*Income Taxes*-- The Company uses the liability method of accounting for income taxes as proscribed by SFAS No. 109, "Accounting for Income Taxes". Under SFAS No. 109, deferred tax assets and liabilities are recorded for the estimated future tax effects of temporary differences between the tax bases of assets and liabilities and amounts reported in the accompanying consolidated balance sheets and for operating loss and tax credit carryforwards. The change in deferred tax assets and liabilities for the period measures the deferred tax provision or benefit for the period. Effects of changes in enacted tax laws on deferred tax assets and liabilities are reflected as adjustments to the tax provision or benefit in the period of enactment. The Company's deferred tax assets have been reduced by a valuation allowance to the extent it is deemed to be more likely than not that some or all of the deferred tax assets will not be realized. (See Note 11, Income Taxes, for more information related to deferred tax assets and liabilities).

*Net Income (Loss) Per Share*-- In accordance with SFAS No. 128, "Earnings Per Share", the Company computes net income per share on both the basic and diluted basis (See Note 3, Net Income (Loss) Per Common Share).

*Fair Value of Financial Instruments*-- The recorded amounts for cash and cash equivalents, receivables, other current assets, and accounts payable and accrued expenses approximate fair value due to the short-term nature of these financial instruments. The fair value of amounts outstanding under the Company's credit facilities and Employee Housing Bonds approximate book value due to the variable nature of the interest rate associated with that debt. The fair values of the Company's Industrial Development Bonds and other long-term debt have been estimated using discounted cash flow analyses based on current borrowing rates for debt with similar remaining maturities and ratings. The fair value of the 6.75% Notes is based on quoted market price. The estimated fair values of the 6.75% Notes, Industrial Development Bonds and other long-term debt at July 31, 2005 and 2004 are presented below (in thousands):

| | July 31, 2005 | | July 31, 2004 | |
|---|---|---|---|---|
| | Carrying Value | Fair Value | Carrying Value | Fair Value |
| 6.75% Notes | $390,000 | $397,800 | $390,000 | $384,150 |
| Industrial Development Bonds | 61,700 | 71,266 | 61,700 | 67,061 |
| Other long-term debt | 8,006 | 9,074 | 9,354 | 11,044 |

*Stock Compensation*-- At July 31, 2005, the Company had four stock-based compensation plans. The Company applies Accounting Principles Board ("APB") Opinion No. 25 and related interpretations in accounting for stock-based compensation to employees. Accordingly, no compensation cost has been recognized for its fixed stock option plans. Had compensation cost for the Company's four stock-based compensation plans been determined consistent with SFAS No. 123, "Accounting for Stock Based Compensation", the Company's net income (loss) and earnings (loss) per share would have been the pro forma amounts indicated below (in thousands, except per share amounts):

| | Fiscal Year Ended July 31, | | |
|---|---|---|---|
| | 2005 | 2004 | 2003 |
| Net income (loss) | | | |
| As reported | $ 23,138 | $ (5,959) | $ (8,527) |
| Add: stock-based employee compensation expense included in reported net income (loss), net of related tax effects | 273 | 155 | 871 |
| Deduct: total stock-based employee compensation expense determined under fair value-based method for all awards, net of related tax effects | (2,987) | (2,546) | (3,177) |
| Pro forma | $ 20,424 | (8,350) | $ (10,833) |
| Basic net income (loss) per common share | | | |
| As reported | $ 0.65 | $ (0.17) | $ (0.24) |
| Pro forma | $ 0.57 | $ (0.24) | $ (0.31) |
| Diluted net income (loss) per common share | | | |
| As reported | $ 0.64 | $ (0.17) | $ (0.24) |
| Pro forma | $ 0.56 | $ (0.24) | $ (0.31) |

As a result of changes to the calculation of forfeitures and the period over which pro forma expense would be taken if the fair value method was applied, the presentations of pro forma net loss and basic and diluted net loss per common share for fiscal years 2004 and 2003 have been changed, resulting in an increase in the pro forma net loss per common share of $0.06 and $0.02 for the fiscal years ended July 31, 2004 and 2003, respectively, as compared to the presentation in the Company's previously filed Annual Reports on Form 10-K for those periods.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions used for grants in 2005, 2004 and 2003, respectively: dividend yield of 0% for each year, expected volatility of 35.3%, 38.7% and 32.2%; risk-free interest rates of 3.28%, 2.92% and 2.19%; and an expected life of five years for each year. The weighted-average grant-date fair value per share of stock options granted in the fiscal years ended July 31, 2005, 2004 and 2003 was $6.83, $5.63 and $5.17, respectively.

*Concentration of Credit Risk*-- The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of cash and cash equivalents. The Company places its cash and temporary cash investments in high quality credit institutions. At times, such investments may be in excess of FDIC insurance limits. Concentration of credit risk with respect to trade receivables is limited due to the wide variety of customers and markets in which the Company transacts business, as well as their dispersion across many geographical areas. As a result, as of July 31, 2005, the Company did not consider itself to have any significant concentrations of credit risk. The Company performs ongoing credit evaluations of its customers and generally does not require collateral. The Company maintains allowances for potential credit losses, but does require advance deposits on certain transactions, and historical losses have been within management's expectations. The Company does not enter into financial instruments for trading or speculative purposes.

*Use of Estimates*-- The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the balance sheet date and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

*Reclassifications*-- Certain reclassifications have been made to the accompanying Consolidated Financial Statements as of and for the years ended July 31, 2004 and 2003 to conform to the current period presentation.

*New Accounting Pronouncements*-- In December 2004, the FASB issued SFAS 123R which replaces SFAS 123 and supersedes APB 25. SFAS 123R requires the measurement of all employee share-based compensation arrangements to employees, including grants of employee stock options, using a fair-value-based method and the recording of such expense in the consolidated statements of operations. The accounting provisions of SFAS 123R are effective for fiscal years beginning after June 15, 2005, with early adoption permitted. The pro forma disclosures previously permitted under SFAS 123 no longer will be an alternative to financial statement recognition.

SFAS 123R permits public companies to adopt its requirements using one of two methods. Under the "modified prospective" method, compensation cost is recognized beginning with the effective date (a) based on the requirements of SFAS 123R for all share-based compensation arrangements granted after the effective date and (b) based on the requirements of SFAS 123 for all awards granted to employees prior to the effective date of SFAS 123R that remain unvested on the effective date. The "modified retrospective" method includes the requirements of the modified prospective method described above, but also permits entities to restate based on the amounts previously recognized under SFAS 123 for purposes of pro forma disclosures for either (a) all prior periods presented or (b) prior interim periods of the year of adoption. The Company plans to adopt SFAS 123R using the modified prospective method.

As permitted by SFAS 123, the Company currently accounts for share-based compensation arrangements to employees using APB 25's intrinsic value method and, as such, generally recognizes no compensation cost for employee stock options. Accordingly, the adoption of SFAS 123R's fair value method will impact the Company's results of operations, although it will have no impact on the Company's overall financial position. The adoption of SFAS 123R will increase the Company's operating expenses by approximately $3.5 million, $2.2 million and $270,000 for the years ended July 31, 2006, 2007 and 2008, respectively, for options that remain unvested as of July 31, 2005. The full impact of adoption of SFAS 123R cannot be reasonably estimated at this time because it will depend on levels and type of share-based compensation arrangements in the future, along with the valuation model used and related assumptions. However, had the Company adopted SFAS 123R in prior periods, the impact of that standard would have approximated the impact of SFAS 123 as described in the disclosure of pro forma net income (loss) per share, as discussed above. In September 2005, the Company granted approximately 163,850 shares of restricted stock and options to purchase approximately 442,500 shares of common stock at an exercise price of $28.08 per share. The vesting period for the restricted stock ranges from one to three years, and the vesting period for the stock options is three years. The Company is currently evaluating the effect these share-based compensation arrangements will have on its future results of operations.

## 3. Net Income (Loss) Per Common Share

SFAS No. 128, "Earnings per Share" ("EPS"), establishes standards for computing and presenting EPS. SFAS No. 128 requires the dual presentation of basic and diluted EPS on the face of the income statement and requires a reconciliation of numerators (net income/loss) and denominators (weighted-average shares outstanding) for both basic and diluted EPS in the footnotes. Basic EPS excludes dilution and is computed by dividing net income/loss available to common shareholders by the weighted-average shares outstanding. Diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised, resulting in the issuance of common shares that would then share in the earnings of the Company.

| | Fiscal Year Ended July 31, | | | | | |
|---|---|---|---|---|---|---|
| | 2005 | | 2004 | | 2003 | |
| | (In thousands, except per share amounts) | | | | | |
| | Basic | Diluted | Basic | Diluted | Basic | Diluted |
| **Net income (loss) per common share:** | | | | | | |
| Net income (loss) | $ 23,138 | $ 23,138 | $ (5,959) | $ (5,959) | $ (8,527) | $ (8,527) |
| Weighted-average shares outstanding | 35,712 | 35,712 | 35,294 | 35,294 | 35,170 | 35,170 |
| Effect of dilutive securities | -- | 648 | -- | -- | -- | -- |

| | | | | | | |
|---|---|---|---|---|---|---|
| Total shares | 35,712 | 36,360 | 35,294 | 35,294 | 35,170 | 35,170 |
| Net income (loss) per common share | $ 0.65 | $ 0.64 | $ (0.17) | $ (0.17) | $ (0.24) | $ (0.24) |

The number of shares issuable on the exercise of common stock options that were excluded from the calculation of diluted net income (loss) per share because the effect of their inclusion would have been anti-dilutive totaled 631,000, 4.5 million and 3.9 million, in fiscal 2005, 2004 and 2003, respectively. In fiscal 2005, the shares were anti-dilutive because the exercise price exceeded the average share price for the year. In fiscal 2004 and 2003, the shares were anti-dilutive due to the Company's net loss position.

**4. Long-Term Debt**

Long-term debt as of July 31, 2005 and July 31, 2004 is summarized as follows (in thousands):

| | Fiscal year Maturity (i) | July 31, 2005 | July 31, 2004 |
|---|---|---|---|
| Credit Facility Revolver (a) | 2010 | $ -- | $ -- |
| Credit Facility Term Loan (a) | 2011 | -- | 98,750 |
| SSV Facility (b) | 2006 | 9,429 | 13,424 |
| Industrial Development Bonds (c) | 2007-2020 | 61,700 | 61,700 |
| Employee Housing Bonds (d) | 2027-2039 | 52,575 | 52,575 |
| Gore Creek Facility (e) | 2007 | -- | -- |
| 6.75% Notes(f) | 2014 | 390,000 | 390,000 |
| Other (g) | 2006-2029 | 8,006 | 9,354 |
| | | 521,710 | 625,803 |
| Less: current maturities (h) | | 2,004 | 3,159 |
| | | $ 519,706 | $ 622,644 |

(a) The Company amended its senior credit facility ("Credit Facility") in January 2005. Key modifications to the Credit Facility included, among other things, payoff of the $100 million term loan ("Credit Facility Term Loan"), the expansion of the revolving credit facility ("Credit Facility Revolver") to $400 million from $325 million, extension of the maturity on the Credit Facility Revolver to January 2010 from June 2007, reduced pricing for interest rate margins and commitment fees, and improved flexibility in the Company's ability to make investments and distributions. The Company recorded a $612,000 loss on extinguishment of debt in the year ended July 31, 2005 for the remaining unamortized deferred financing costs associated with the pay off of the Credit Facility Term Loan.

The amended credit agreement, the Fourth Amended and Restated Credit Agreement ("Credit Agreement"), is between The Vail Corporation (a wholly owned subsidiary of the Company), Bank of America, N.A., as administrative agent and the Lenders party thereto, and consists of a $400 million revolving credit facility. The Vail Corporation's obligations under the Credit Agreement are guaranteed by the Company and certain of its subsidiaries and are collateralized by a pledge of all of the capital stock of The Vail Corporation, substantially all of its subsidiaries and the Company's interest in SSV. The proceeds of loans made under the Credit Agreement may be used to fund the Company's working capital needs, capital expenditures, acquisitions and other general corporate purposes, including the issuance of letters of credit. The Credit Agreement matures January 2010. Borrowings under the Credit Agreement bear interest annually at the Company's option at the rate of (i) LIBOR plus a margin (4.73% at July 31, 2005) or (ii) the Agent's prime lending rate plus, in certain circumstances, a margin (6.25% at July 31, 2005). Interest rate margins fluctuate based upon the ratio of the Company's Funded Debt to Adjusted EBITDA (as defined in the Credit Agreement) on a trailing twelve-month basis. The Credit Agreement also includes a quarterly unused commitment fee, which is equal to a percentage determined by the Funded Debt to EBITDA ratio, as defined in the Credit Agreement, times the daily amount by which the Credit Agreement commitment exceeds the total of outstanding loans and outstanding letters of credit. The unused amounts are accessible to the extent that the Funded Debt to Adjusted EBITDA ratio does not exceed the maximum ratio allowed at quarter-ends. The unused amount available for borrowing under the Credit Facility was $321.4 million as of July 31, 2005, net of letters of credit of $78.6 million outstanding under the Credit Facility. The Credit Agreement provides for affirmative and negative covenants that restrict, among other things, the Company's ability to incur indebtedness, dispose of assets, make capital expenditures, make distributions and make investments. In addition, the Credit Agreement includes the following restrictive financial covenants: Maximum Funded Debt to Adjusted EBITDA ratio, Maximum Senior Debt to Adjusted EBITDA ratio, Minimum Fixed Charge Coverage ratio, Minimum Net Worth and the Minimum Interest Coverage ratio (each as defined in the Credit Agreement).

(b) SSV has a credit facility ("SSV Facility") consisting of (i) a $20.0 million revolving credit facility, (ii) an $8.0 million term loan A and (iii) a $4.0 million term loan B. Keybank N.A. is agent with certain other financial institutions as lenders. SSV's obligations under the SSV Facility are collateralized by substantially all of SSV's assets and a $4.2 million letter of credit issued against the Credit Facility. The proceeds of the loans made under the SSV Facility may be used to fund SSV's working capital needs, capital expenditures, acquisitions

and other general corporate purposes, including the issuance of letters of credit. Borrowings bear interest annually at SSV's option at the rate of (i) LIBOR plus a margin or (ii) the agent's prime lending rate minus a margin. Interest rates on the borrowings fluctuate based upon the Consolidated Leverage ratio (as defined in the underlying agreement). The SSV Facility originally matured in May 2006; SSV refinanced the facility subsequent to year-end (see below). The revolving credit facility also includes a quarterly unused commitment fee. SSV must make quarterly principal payments on the term loan A in the amount of $285,715. SSV has the option to prepay the term loan A at any time; however, such repayments cannot subsequently be re-borrowed under the term loan A facility. No principal payments are due under the term loan B until maturity. SSV has the option to prepay the term loan B at any time; however, such repayments cannot subsequently be re-borrowed under the term loan B facility. The principal amount outstanding on the SSV Facility was $9.4 million as of July 31, 2005. The average interest rate for the fiscal years ending July 31, 2005 and 2004 were 4.9% and 3.0%, respectively. The SSV Facility provides for negative covenants that restrict, among other things, SSV's ability to incur indebtedness, dispose of assets, make capital expenditures and make investments. In addition, the SSV Facility includes certain restrictive financial covenants, including the Consolidated Leverage ratio, Minimum Fixed Charge Coverage ratio and Minimum Net Worth (as defined in the SSV Facility).

In September 2005, SSV entered into a new credit facility, with US Bank National Association ("U.S. Bank") as lender, to refinance the SSV Facility and to provide additional financing for future acquisitions. The new facility provides for financing up to an aggregate $33 million (collectively, the "New Facility"), consisting of (i) an $18 million working capital revolver, (ii) a $10 million reducing revolver and (iii) a $5 million acquisition revolver. Obligations under the New Facility are collateralized by a first priority security interest in all the assets of SSV. Availability under the New Facility is based on the book values of accounts receivable, inventories and rental equipment. Borrowings bear interest annually at SSV's option of (i) LIBOR plus a margin or (ii) U.S. Bank's prime rate minus a margin. The New Facility matures five years from the date of closing. Proceeds under the working capital revolver are for SSV's seasonal working capital needs. No principal payments are due until maturity, and principal may be drawn and repaid at any time. Proceeds under the reducing revolver are to be used to pay off SSV's existing credit facility. Principal under the reducing revolver may be drawn and repaid at any time. The reducing revolver commitments decrease by $312,500 on January 31, April 30, July 31 and October 31 of each year beginning January 31, 2006. Any outstanding balance in excess of the reduced commitment amount will be due on the day of each commitment reduction. The acquisition revolver is to be utilized to make acquisitions subject to U.S. Bank's approval. Principal under the acquisition revolver may be drawn and repaid at any time. The acquisition revolver commitments decrease by $156,250 on January 31, April 30, July 31 and October 31 of each year beginning January 31, 2007. Any outstanding balance in excess of the reduced commitment amount will be due on the day of each commitment reduction. The New Facility contains certain restrictive financial covenants, including the Consolidated Leverage Ratio and Minimum Fixed Charge Coverage Ratio (each as defined in the New Facility). As a result of the refinancing, debt outstanding under the SSV Facility is classified as long-term in the accompanying consolidated balance sheet at July 31, 2005, to the extent that principal payments under the New facility are not due in the next twelve months.

(c) The Company has outstanding $61.7 million of industrial development bonds (collectively, the "Industrial Development Bonds"). $41.2 million of the Industrial Development Bonds were issued by Eagle County, Colorado (the "Eagle County Bonds") and mature, subject to prior redemption, on August 1, 2019. These bonds accrue interest at 6.95% per annum, with interest being payable semi-annually on February 1 and August 1. The Promissory Note with respect to the Eagle County Bonds between Eagle County and the Company is collateralized by the U.S. Forest Service Permits for Vail Mountain and Beaver Creek Mountain. In addition, the Company has outstanding two series of refunding bonds (collectively, the "Summit County Bonds"). The Series 1990 Sports Facilities Refunding Revenue Bonds, issued by Summit County, Colorado, have an aggregate outstanding principal amount of $19.0 million, maturing in installments in 2006 and 2008. These bonds bear interest at a rate of 7.75% for bonds maturing in fiscal 2007 and 7.875% for bonds maturing in fiscal 2009. The Series 1991 Sports Facilities Refunding Revenue Bonds, issued by Summit County, Colorado, have an aggregate outstanding principal amount of $1.5 million maturing in fiscal 2011 and bear interest at 7.375%. The Promissory Note with respect to the Summit County Bonds between Summit County and the Company is pledged and endorsed to The Bank of New York as Trustee under the Indenture of Trust. The Promissory Note is also collateralized in accordance with a Guaranty from Ralston Purina Company (subsequently assumed by The Vail Corporation) to the Trustee for the benefit of the registered owners of the bonds.

(d) As of November 1, 2003, the Company began consolidating four employee housing entities (collectively, the "Employee Housing Entities"), Breckenridge Terrace, Tarnes, BC Housing and Tenderfoot. The Employee Housing Entities had previously been accounted for under the equity method (see Note 7, Variable Interest Entities). Accordingly, the outstanding indebtedness of the entities (collectively, the "Employee Housing Bonds") is included in the Company's consolidated balance sheets as of July 31, 2005 and 2004. The proceeds of the Employee Housing Bonds were used to develop apartment complexes designated primarily for use by the Company's employees. The Employee Housing Bonds are variable rate, interest-only instruments with interest rates tied to LIBOR plus a margin (3.49% to 3.54% at July 31, 2005). Interest on the Employee Housing Bonds is paid monthly in arrears, and the interest rate is adjusted weekly. No principal payments are due on the Employee Housing Bonds until maturity. Each entity's bonds were issued in two series. The Series A bonds for each employee housing entity and the Series B bonds for Breckenridge Terrace, BC Housing and Tenderfoot are backed by letters of credit issued under the Credit Facility. The Series B bonds for Tarnes are backed by a letter of credit issued by a bank, for which the assets of Tarnes serve as collateral ($8.1 million at July 31, 2005). The chart below presents the principal amounts outstanding for the Employee Housing Bonds as of July 31, 2005 and 2004 (in thousands):

| Maturity | Tranche A | Tranche B | Total |
|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| Breckenridge Terrace | 2039 | $ 14,980 | $ 5,000 | $ 19,980 |
| Tarnes | 2039 | 8,000 | 2,410 | 10,410 |
| BC Housing | 2027 | 9,100 | 1,500 | 10,600 |
| Tenderfoot | 2035 | 5,700 | 5,885 | 11,585 |
| Total | | $ 37,780 | $ 14,795 | $ 52,575 |

(e) On July 19, 2005, Gore Creek Place, LLC ("Gore Creek"), a wholly-owned subsidiary of the Company, entered into a Construction Loan Agreement (the "Gore Creek Facility") in the amount of up to $30 million with U.S. Bank National Association ("U.S. Bank"), as administrative agent and lender. Borrowings under the Gore Creek Facility are non-revolving and must be used for the payment of certain costs associated with the construction and development of Gore Creek Place, a residential development consisting of 16 luxury duplex residences. The Gore Creek Facility matures on July 19, 2007, and principal payments are due at the earlier of closing of sales for the Gore Creek residences or maturity. Gore Creek has the option to extend maturity for six months, subject to certain requirements. Borrowings under the Gore Creek Facility bear interest annually at Gore Creek's option at the rate of (i) LIBOR plus a margin (5.02% at July 31, 2005) or (ii) the administrative agent's prime commercial lending rate (6.25% at July 31, 2005). Interest is payable monthly in arrears. The Gore Creek Facility provides for affirmative and negative covenants that restrict, among other things, Gore Creek's ability to dispose of assets, transfer or pledge its equity interest, incur indebtedness and make investments or distributions. The Gore Creek Facility contains non-recourse provisions to the Company with respect to repayment, whereby under event of default, U.S. Bank has recourse only against Gore Creek's assets ($9.8 million at July 31, 2005) and the Completion Guaranty Agreement ("Guaranty Agreement") described below. U.S. Bank does not have recourse against assets held by the Company or The Vail Corporation. All assets of Gore Creek are provided as collateral under the Gore Creek Facility.

In connection with the Gore Creek Facility, The Vail Corporation, a wholly-owned subsidiary of the Company, entered into the Guaranty Agreement, pursuant to which The Vail Corporation guarantees the completion of the construction of the project (but not the repayment of borrowings under the Gore Creek Facility). However, The Vail Corporation could be responsible to pay damages to U.S. Bank under very limited circumstances. If the Guaranty Agreement is enforced, U.S. Bank will continue to provide borrowings to The Vail Corporation for the construction and development of Gore Creek Place.

(f) The Company has outstanding $390 million of Senior Subordinated Notes (the "6.75% Notes") issued in January 2004, the proceeds of which were used to purchase the previously outstanding $360 million principal amount of Senior Subordinated Notes due 2009 (the "8.75% Notes") and pay related premiums, fees and expenses. The 6.75% Notes have a fixed annual interest rate of 6.75% with interest due semi-annually on February 15 and August 15, beginning August 15, 2004. The 6.75% Notes will mature February 2014 and no principal payments are due to be paid until maturity. The Company has certain early redemption options under the terms of the 6.75% Notes. The premium for early redemption of the 6.75% Notes ranges from 3.375% to 0%, depending on the date of redemption. The 6.75% Notes are subordinated to certain of the Company's debts, including the Credit Facility, and will be subordinated to certain of the Company's future debts. The Company's payment obligations under the 6.75% Notes are jointly and severally guaranteed by substantially all of the Company's current and future domestic subsidiaries (See Note 21, Guarantor Subsidiaries and Non-Guarantor Subsidiaries). The indenture governing the 6.75% Notes contains restrictive covenants which, among other things, limit the ability of Vail Resorts, Inc. and its Restricted Subsidiaries (as defined in the Indenture) to a) borrow money or sell preferred stock, b) create liens, c) pay dividends on or redeem or repurchase stock, d) make certain types of investments, e) sell stock in the Restricted Subsidiaries, f) create restrictions on the ability of the Restricted Subsidiaries to pay dividends or make other payments to the Company, g) enter into transactions with affiliates, h) issue guarantees of debt and i) sell assets or merge with other companies.

(g) Other obligations primarily consist of a $6.8 million note outstanding to the Colorado Water Conservation Board, which matures in fiscal 2029, and capital leases totaling $779,000. Other obligations, including the Colorado Water Conservation Board note and the capital leases, bear interest at rates ranging from 3.5% to 6.0% and have maturities ranging from fiscal 2006 to 2029.

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

(i) Maturities are based on the Company's July 31 fiscal year end.

Aggregate maturities for debt outstanding as of July 31, 2005 are as follows (in thousands):

| | |
|---|---|
| 2006 | $ 2,004 |
| 2007 | 12,662 |
| 2008 | 318 |
| 2009 | 15,203 |
| 2010 | 205 |
| Thereafter | 491,318 |
| Total debt | $ 521,710 |

The Company incurred gross interest expense of $40.3 million, $47.5 million and $51.5 million for the fiscal years ended July 31, 2005, 2004 and 2003, respectively. The Company was in compliance with all of its financial and operating covenants required to be maintained under its debt instruments for all periods presented.

**5. Supplementary Balance Sheet Information (in thousands)**

The composition of property, plant and equipment follows:

| | July 31, 2005 | July 31, 2004 |
|---|---|---|
| Land and land improvements | $ 236,424 | $ 245,540 |
| Buildings and building improvements | 504,662 | 606,727 |
| Machinery and equipment | 398,342 | 381,628 |
| Vehicles | 24,449 | 22,738 |
| Furniture and fixtures | 97,780 | 117,216 |
| Construction in progress | 47,973 | 29,283 |
| | 1,309,630 | 1,403,132 |
| Accumulated depreciation | (466,583) | (434,360) |
| Property, plant and equipment, net | $ 843,047 | $ 968,772 |

Depreciation expense for the fiscal years ended July 31, 2005, 2004 and 2003 totaled $87.6 million, $83.2 million and $78.4 million, respectively.

The composition of intangible assets follows:

| | July 31, 2005 | July 31, 2004 |
|---|---|---|
| *Indefinite lived intangible assets* | | |
| Trademarks | $ 58,142 | $ 58,291 |
| Water rights | 11,180 | 11,180 |
| Other intangible assets | 6,143 | 8,007 |
| Excess reorganization value | 14,145 | 14,145 |
| | 89,610 | 91,623 |
| Accumulated amortization | (24,752) | (24,752) |
| Indefinite lived intangible assets, net | 64,858 | 66,871 |
| | | |
| *Goodwill* | | |
| Goodwill | 152,861 | 162,444 |
| Accumulated amortization | (17,354) | (17,354) |
| Goodwill, net | 135,507 | 145,090 |
| | | |
| *Amortizable intangible assets* | | |
| Trademarks | 176 | 293 |
| Customer lists | 17,814 | 17,814 |
| Property management contracts | 10,869 | 12,042 |
| Intellectual property | 4,754 | 4,754 |
| United States Forest Service permits | 5,010 | 5,010 |
| Franchise agreement | -- | 3,380 |
| Other intangible assets | 15,278 | 15,313 |
| | 53,901 | 58,606 |
| Accumulated amortization | (41,785) | (40,274) |
| Amortizable intangible assets, net | 12,116 | 18,332 |
| | | |
| Total intangible assets | 296,372 | 312,673 |
| Total accumulated amortization | (83,891) | (82,380) |
| | $ 212,481 | $ 230,293 |

Amortization expense for intangible assets subject to amortization for the fiscal years ended July 31, 2005, 2004 and 2003 totaled $2.3 million, $3.2 million and $3.8 million, respectively, and is estimated to be approximately $1.2 million annually, on average, for the next five fiscal years.

The weighted-average amortization period for intangible assets subject to amortization is as follows:

| | July 31, 2005 | 2004 |
|---|---|---|
| Trademarks | 10 | 10 |
| Customer lists | 8 | 8 |
| Property management contracts | 14 | 9 |
| Intellectual property | 6 | 6 |
| United States Forest Service permits | 37 | 37 |
| Franchise agreement | 20 | 20 |
| Other intangible assets | 8 | 8 |

The changes in the net carrying amount of goodwill for the years ended July 31, 2005, 2004 and 2003 are as follows (in thousands):

| | |
|---|---|
| **Balance at July 31, 2002** | $ 139,600 |
| Purchase accounting adjustments | 5,449 |
| **Balance at July 31, 2003** | $ 145,049 |
| Put exercise adjustment | 41 |
| **Balance at July 31, 2004** | $ 145,090 |
| Sale of Rancho Mirage | (6,396) |
| Assets held for sale adjustment | (185) |
| Purchase of minority interest | (1,775) |
| Put exercise adjustment | (1,227) |
| **Balance at July 31, 2005** | $ 135,507 |

The purchase accounting adjustments to goodwill in fiscal 2003 primarily consist of adjustments to Heavenly in the amount of $5.3 million and to The Lodge at Rancho Mirage ("Rancho Mirage") in the amount of $0.2 million. In July 2005, the Company sold the assets constituting Rancho Mirage, resulting in a $6.4 million decrease of associated goodwill. The assets held for sale adjustment in fiscal 2005 relates to the goodwill associated with SRL&S which has been classified as held for sale (see Note 2, Summary of Significant Accounting Polices.) The purchase of minority interest in fiscal 2005 consists of an adjustment to reduce goodwill for the purchase of the remaining SRL&S minority interest at less than carrying value. The put exercise adjustment in fiscal 2005 consists of an adjustment to reduce goodwill for the purchase of the remaining RockResorts minority interest.

The composition of accounts payable and accrued expenses follows:

| | July 31, 2005 | 2004 |
|---|---|---|
| Trade payables | $ 67,368 | $ 55,858 |
| Deferred revenue | 32,474 | 25,180 |
| Deposits | 21,609 | 30,727 |
| Accrued salaries, wages and deferred compensation | 26,571 | 23,591 |
| Accrued benefits | 19,379 | 20,541 |
| Accrued interest | 14,274 | 14,022 |
| Liability to complete real estate projects, short term | 5,188 | 9,063 |
| Other accruals | 22,506 | 19,886 |
| Total accounts payable and accrued expenses | $ 209,369 | $ 198,868 |

The composition of other long-term liabilities follows:

| | July 31, 2005 | 2004 |
|---|---|---|
| Private club deferred initiation fee revenue | $ 92,395 | $ 82,921 |
| Real estate deposits | 37,829 | -- |
| Other long-term liabilities | 10,197 | 14,695 |
| Total other long-term liabilities | $ 140,421 | $ 97,616 |

**6. Investments in Affiliates**

The Company held the following investments in equity method affiliates as of July 31, 2005:

| Equity Method Investees | Ownership Interest |
|---|---|
| KRED | 50% |
| Slifer, Smith, and Frampton/Vail Associates Real Estate, LLC ("SSF/VARE") | 50% |
| Clinton Ditch and Reservoir Company | 43% |
| Eclipse Television & Sports Marketing, LLC | 20% |
| BG Resort | * |

* The Company had a 49% ownership interest in BG Resort which it sold on December 8, 2004.

The Company's ownership interests in the Employee Housing Entities, Avon Partners II, LLC ("APII") and FFT Investment Partners ("FFT") were formerly accounted for under the equity method. In connection with the Company's implementation of FIN 46R in fiscal 2004, the Company determined it is the primary beneficiary of these six entities, which are VIEs, and therefore has consolidated them in its Consolidated Financial Statements as of July 31, 2005 and 2004 (see Note 7, Variable Interest Entities).

The Company had total net investments in equity method affiliates of $6.2 million and $16.5 million as of July 31, 2005 and 2004, respectively. Of this balance, as of July 31, 2005 and 2004, respectively, $844,000 and $4.3 million is classified as "real estate held for sale and investment" and $5.4 million and $12.2 million is classified as "deferred charges and other assets" in the accompanying consolidated balance sheets. The amount of retained earnings that represent undistributed earnings of 50-percent-or-less-owned entities accounted for by the equity method was $1.8 million and $9.0 million as of July 31, 2005 and 2004, respectively.

The Company's carrying amount of the equity method investment in KRED differs from the value of the underlying equity in net assets due to the difference in the book value and fair market value of the land contributed by the Company to the entities. The land basis difference for KRED was $58,000 as of July 31, 2005. The Company will recognize this difference in basis as revenue when the land is sold. In addition, the Company recorded an impairment charge of $850,000 on the KRED investment in fiscal 2003. In addition, the Company historically carried a basis difference related to its investment in BG Resort associated with the land beneath BG Resort's hotel facility. The Company recognized a $2.5 million gain in real estate revenue in fiscal 2005 as a result of the sale of the Company's investment in BG Resort.

Condensed financial data for SSF/VARE, BG Resort and all other affiliates is summarized below (in thousands). Fiscal 2005 results of operations for BG Resort are included for the period from August 1, 2004 through December 8, 2004, as BG Resort was sold on December 8, 2004.

| | SSF/VARE | BG Resort | All Other Affiliates |
|---|---|---|---|
| *Financial data for 2005:* | | | |
| Current assets | $ 6,177 | $ -- | $ 1,655 |
| Other assets | 3,458 | -- | 13,514 |
| Total assets | $ 9,635 | $ -- | $ 15,169 |
| Current liabilities | $ 4,686 | $ -- | $ 237 |
| Other liabilities | -- | -- | 502 |
| Shareholders' equity | 4,949 | -- | 14,430 |
| Total liabilities and shareholders' equity | $ 9,635 | $ -- | $ 15,169 |
| Net revenue | $ 52,381 | $ 8,006 | $ 17,522 |
| Operating income (loss) | 4,462 | (2,355) | (42) |
| Net income (loss) | 4,496 | (5,730) | (88) |
| *Financial data for 2004:* | | | |
| Current assets | $ 5,969 | $ 4,504 | $ 4,938 |
| Other assets | 3,922 | 81,291 | 14,162 |
| Total assets | $ 9,891 | $ 85,795 | $ 19,100 |
| Current liabilities | $ 4,075 | $ 9,465 | $ 486 |
| Other liabilities | 576 | 57,804 | 4,758 |
| Shareholders' equity | 5,240 | 18,526 | 13,856 |
| Total liabilities and shareholders' equity | $ 9,891 | $ 85,795 | $ 19,100 |
| Net revenue | $ 38,276 | $ 30,573 | $ 26,912 |
| Operating income (loss) | 3,293 | (2,482) | 961 |
| Net income (loss) | 3,224 | (5,895) | 646 |
| *Financial data for 2003:* | | | |
| Net revenue | $ 22,960 | $ 20,382 | $ 34,463 |

| | | | |
|---|---|---|---|
| Operating income (loss) | 2,383 | (587) | 1,911 |
| Net income (loss) | 2,371 | (1,968) | (1,778) |

## 7. Variable Interest Entities

The Company has determined that it is the primary beneficiary of the Employee Housing Entities, which are VIEs, and has consolidated them in its Consolidated Financial Statements as of November 1, 2003. In accordance with the guidance in FIN 46R, prior periods were not restated. As a group, as of July 31, 2005, the Employee Housing Entities had total assets of $45.3 million (primarily recorded in property, plant and equipment) and total liabilities of $64.2 million (primarily recorded in long-term debt). All of the assets of Tarnes serve as collateral for Tarnes' Tranche B obligations ($2.4 million as of July 31, 2005). The Company has issued under its credit facility $38.3 million letters of credit related to the Tranche A Employee Housing Bonds and $12.6 million letters of credit related to the Tranche B Employee Housing Bonds. The letters of credit would be triggered in the event that one of the entities defaults on required payments. The letters of credit have no default provisions.

The Company has determined that it is the primary beneficiary of APII, which is a VIE. APII owns commercial space and the Company currently leases substantially all of that space for its corporate headquarters. APII had total assets of $4.0 million (primarily recorded in property, and equipment) and no debt as of July 31, 2005. APII has been consolidated by the Company since February 1, 2004.

The Company has determined that it is the primary beneficiary of FFT, which is a VIE. FFT owns a private residence in Eagle County, Colorado. The entity had total assets of $5.6 million (primarily recorded in real estate held for sale) and no debt as of July 31, 2005. FFT has been consolidated by the Company since February 1, 2004.

The Company, through various lodging subsidiaries, manages the operations of several entities that own hotels in which the Company has no ownership interest. The Company also has extended a $1.5 million note receivable to one of these entities. These entities were formed to acquire, own, operate and realize the value in resort hotel properties. The Company has managed the day-to-day operations of four of the hotel properties since November 2001 and began managing three of the properties during the fourth quarter of fiscal 2005. The Company has determined that the entities that own the hotel properties are VIEs, and the management contracts are significant variable interests in these VIEs. The Company has also determined that it is not the primary beneficiary of these entities and, accordingly, is not required to consolidate any of these entities. These VIEs had total assets of approximately $183.9 million and total liabilities of approximately $103.0 million as of July 31, 2005. The Company's maximum exposure to loss as a result of its involvement with these VIEs is limited to the note receivable and accrued interest of approximately $1.5 million and the net book value of the intangible asset associated with the management agreements in the amount of $5.6 million at July 31, 2005.

## 8. Sale of Businesses

On December 8, 2004, the Company sold its 49% minority equity interest in BG Resort, the entity that owns The Ritz-Carlton, Bachelor Gulch, for $13.0 million, with net cash proceeds to the Company of $12.7 million. This transaction resulted in a $5.7 million gain on disposal of the investment, which is included in "loss from sale of businesses, net" in the accompanying statement of operations for fiscal 2005. In addition, the Company recognized $2.5 million of deferred Real Estate revenue associated with the recognition of the basis difference in land originally contributed to the entity and $369,000 of deferred interest income related to advances previously made to the entity. In conjunction with the sale, the Company has guaranteed payment, if any, of certain contingencies of BG Resort which have reduced the amount of the gain recognized. The Company's interest was acquired by GHR, LLC, a new joint venture between Gencom BG, LLC and Lehman BG, LLC.

On June 24, 2005, VAMHC, Inc., a subsidiary of the Company, sold the assets constituting the Vail Marriott Mountain Resort & Spa (the "Vail Marriott") to DiamondRock Hospitality Limited Partnership ("DiamondRock") for $62.0 million, the proceeds of which were adjusted for normal working capital prorations. An agreement to sell the hotel was reached in May 2005, after DiamondRock expressed its interest in acquiring the property. The carrying value of the assets sold (net of liabilities assumed) was $60.1 million. Additionally, the Company is required to complete certain capital projects that were part of the Company's 2005 capital plan as well as fund, in certain circumstances, certain other future improvements, the total of which is not expected to exceed $3.1 million. The Company recorded a $2.1 million loss in fiscal 2005 after consideration of all costs involved, which is included in "loss from sale of businesses, net" in the accompanying statement of operations for fiscal 2005. The Company will continue to manage the Vail Marriott pursuant to a 15-year management agreement with DiamondRock.

On July 28, 2005, VA Rancho Mirage Resort, L.P., a limited partnership owned by wholly-owned subsidiaries of the Company, sold the assets constituting Rancho Mirage to GENLB-Rancho LLC ("Gen LB"), a partnership led by the Gencom Group ("Gencom"), for $33.0 million, the proceeds of which were adjusted for normal working capital prorations. Gencom is an affiliate of GHR, LLC, the company which acquired the Company's interest in BG Resort earlier in fiscal 2005. An agreement to sell the hotel was reached in early July 2005, after Gencom expressed its interest in acquiring the property. The carrying value of the assets sold (net of liabilities assumed) was $43.3 million. Additionally, the Company is required to complete certain capital projects that were part of the Company's 2005 capital plan, the total of which is not expected to exceed $299,000. The Company recorded a $10.9 million loss in fiscal 2005 after consideration of all costs involved, which is included in "loss from sale of businesses, net" in the accompanying statement of operations for fiscal 2005. The Company will continue to manage Rancho Mirage pursuant to a multi-year management agreement with GenLB.

**9. Put and Call Options**

In November 2004, GSSI LLC ("GSSI"), the minority shareholder in SSV, notified the Company of its intent to exercise its put (the "2004 Put") for 20% of its ownership interest in SSV; in January 2005, the 2004 Put was exercised and settled for a price of $5.8 million. As a result, the Company now holds an approximate 61.7% ownership interest in SSV. The Company had determined that the price to settle the 2004 Put should be marked to fair value through earnings. During the year ended July 31, 2005, the Company recorded a gain of $612,000 related to the decrease in the estimated fair value of the liability associated with the 2004 Put. The Company recorded a loss of $1.8 million for the year ended July 31, 2004, representing the increase in the estimated fair value of the 2004 Put.

The Company and GSSI have remaining put and call rights with respect to SSV: a) beginning August 1, 2007 and each year thereafter, each of the Company and GSSI shall have the right to call or put 100% of GSSI's ownership interest in SSV during certain periods each year; b) GSSI has the right to put to the Company 100% of its ownership interest in SSV at any time after GSSI has been removed as manager of SSV or an involuntary transfer of the Company's ownership interest in SSV has occurred. The put and call pricing is generally based on the trailing twelve month EBITDA (as defined in the operating agreement) of SSV for the fiscal period ended prior to the commencement of the put period.

In November 2001, the Company entered into a written put option in conjunction with its purchase of an interest in RockResorts. The minority shareholder in RockResorts ("Olympus") had the option to put to the Company its equity interest in RockResorts at a price based on management fees generated by certain properties under RockResorts management on a trailing twelve month basis. The put option was exercisable between October 1, 2004 and September 30, 2005. If the put option was not exercised, then the Company had a call option on Olympus' equity interest which was valued at $1.6 million and recorded as an intangible asset at the time that the written option was entered into. The Company marked the put option to fair value through earnings each period. There was no impact on earnings related to changes in the fair market value of the put liability for the years ended July 31, 2005 and 2004 as the estimated fair market value of the put option did not exceed the book value of the minority shareholder's interest during those periods. The Company recorded a gain of $1.6 million representing a decrease in the estimated fair value of the put liability during the year ended July 31, 2003. Olympus notified the Company of its intent to exercise the put option for 100% of its interest in RockResorts in October 2004; however, due to a dispute over the settlement price of the put, the parties did not agree on a settlement price until April 2005. In May 2005, the put was settled for a price of $1.3 million. As a result, the Company now holds a 100% ownership interest in RockResorts. When the put price was settled, the call option no longer had value, and the Company recorded a $1.6 million charge in the year ended July 31, 2005 to write the value of the call option to zero.

In March 2001, in connection with the Company's acquisition of a 51% ownership interest in RTP, LLC ("RTP"), the Company and RTP's minority shareholder entered into a put agreement whereby the minority shareholder can put up to 33% of its interest in RTP to the Company during the period August 1 through October 31 annually. The put price is determined primarily by the trailing twelve month EBITDA (as defined in the underlying agreement) for the period ending prior to the beginning of each put period. The Company has determined that this put option should be marked to fair value through earnings. For the year ended July 31, 2005, the Company recorded a gain of $546,000 representing a decrease in the estimated fair value of the put option liability during the period. For the year ended July 31, 2004, the Company recorded a loss of $118,000 representing the increase in the estimated fair value of the put option liability during the period. There was no gain or loss related to changes in the estimated fair market value of the put liability for fiscal 2003 as the estimated fair value of the put option did not exceed the book value of the minority interest. As of July 31, 2004, the Company had a 52.1% ownership interest in RTP. In October 2004, the minority shareholder in RTP exercised a portion of its put option for approximately 5.1% of the minority shareholder's remaining ownership interest for a put price of approximately $324,000. As a result, the Company now holds an approximate 54.5% ownership interest in RTP.

**10. Asset Impairment Charges**

In fiscal 2005, the Company recorded $2.6 million of impairment losses on long-lived assets consisting of 1) $1.6 million to write off the value of the RockResorts call option intangible upon settlement of the Olympus put in May 2005 (see Note 9, Put and Call Options), 2) $536,000 to write off the intangible asset associated with the Casa Madrona property management contract which was terminated in May 2005, 3) $273,000 to write off construction in progress costs related to a water rights expansion project resulting from the termination of a cooperation agreement in June 2005 after failing to obtain a necessary permit and 4) $167,000 to write off construction in progress costs associated with a Keystone water reservoir project which management decided to abandon due to difficulty in obtaining necessary permits and the high cost of continuing the project.

In fiscal 2004, the Company recorded a $933,000 impairment charge related to costs previously capitalized for the proposed Beaver Creek gondola project which was replaced by a plan to install two high-speed chairlifts and the abandonment of a project to relocate Beaver Creek's maintenance facilities. The previously proposed gondola project and the new maintenance facilities were classified as construction in progress. Additionally, in fiscal 2004, the Company recorded a write-down on a warehouse facility in the amount of $175,000. The Company determined that the warehouse met the held for sale criteria of SFAS No. 144, "Accounting for the Impairment or Disposal of Long-lived Assets". Accordingly, the carrying value of the warehouse was written down to its estimated fair value less costs to sell ($7.7 million), which was determined based on quoted market prices of similar assets. The warehouse was sold in fiscal 2005 for $7.7 million.

In fiscal 2003, the Company recorded an asset impairment charge of $4.8 million related to an option to acquire a 50% interest in real property in Eagle County, Colorado commonly known as the "Gilman" property. The property consists of approximately 6,000 acres of rugged, high altitude land in close proximity to Vail Mountain. The Eagle County District Court of Colorado found that the Company had repudiated the terms of the option agreement. The Court further found that the owner of the property was entitled to terminate the contract and refuse the exercise and that the Company was not entitled to any interest in the property. The Company is appealing the decision, primarily on the basis that the Court applied the wrong legal standard in deciding the issue (see Note 13, Commitments and Contingencies).

**11. Income Taxes**

At July 31, 2005, the Company has total federal net operating loss ("NOL") carryovers of approximately $138.8 million for income tax purposes, all of which expire in fiscal 2008 and are limited in deductibility each year under Section 382 of the Internal Revenue Code. The Company will only be able to use these NOLs to the extent of approximately $8.0 million per year through December 31, 2007 (the "Section 382 Amount"). However, during fiscal 2005 the Company amended previously filed tax returns (for tax years 1997-2002) in an effort to remove the restrictions under Section 382 of the Internal Revenue Code on approximately $73.8 million of the above NOLs to reduce future taxable income. These NOLs relate to fresh start accounting from the Company's reorganization in 1992. To the extent that the Company reduces future taxable income from the utilization of these NOLs, it will result in a corresponding reduction in intangible assets existing at the date of fresh start. The Internal Revenue Service is currently examining the Company's filing position in these amended returns. Consequently, the accompanying financial statements and table of deferred items have only recognized benefits related to the NOLs to the extent of the Section 382 Amount reported in its tax returns prior to its amendments. Additionally, the Company has state NOLs (primarily California) totaling $25.1 million. The state NOLs primarily expire by fiscal 2015.

At July 31, 2005, the Company has approximately $3.1 million in unused general business credit carryovers that expire in the years 2010 through 2025 and approximately $5.1 million in unused minimum tax credit carryovers that do not expire. Additionally, at July 31, 2005, the Company has $1.5 million of charitable contribution carryforwards that may be carried forward to future years' tax returns for the next five years.

The Internal Revenue Service is currently examining the Company's tax returns for tax years 2001 through 2003. Management believes that the ultimate resolution of this examination will not result in a material adverse effect to the Company's financial position or results of operations, however, no guarantee can be as to the ultimate outcome.

In fiscal 2005, the valuation allowance increased by approximately $919,000 due to the increase in the California NOLs generated in the current year. Management has determined that it is more likely than not that a portion of its deferred tax assets, those primarily generated from California NOL carryovers, will not be realized.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and income tax purposes. Significant components of the Company's deferred tax liabilities and assets as of July 31, 2005 and July 31, 2004 are as follows (in thousands):

| | July 31, 2005 | July 31, 2004 |
|---|---|---|
| Deferred income tax liabilities: | | |
| Fixed assets and investments | $ 97,307 | $ 109,313 |
| Intangible assets | 19,309 | 21,280 |
| Other, net | 1,893 | 1,366 |
| Total | 118,509 | 131,959 |
| Deferred income tax assets: | | |
| Accrued expenses | 11,675 | 14,021 |
| Net operating loss carryforwards and minimum and other tax credits | 17,106 | 21,122 |
| Deferred membership revenue | 29,284 | 26,215 |
| Other, net | 2,245 | 3,619 |
| Total | 60,310 | 64,977 |
| Valuation allowance for deferred income taxes | (1,605) | (686) |
| Deferred income tax assets, net of valuation allowance | 58,705 | 64,291 |
| Net deferred income tax liability | $ 59,804 | $ 67,668 |

The net current and non-current components of deferred income taxes recognized in the consolidated balance sheets are as follows (in thousands):

| | July 31, 2005 | July 31, 2004 |
|---|---|---|
| Net current deferred income tax asset | $ 11,405 | $ 12,077 |
| Net non-current deferred income tax liability | 71,209 | 79,745 |
| Net deferred income tax liability | $ 59,804 | $ 67,668 |

Significant components of the provision (benefit) for income taxes are as follows (in thousands):

| | Fiscal Year Ended July 31, 2005 | 2004 | 2003 |
|---|---|---|---|
| Current: | | | |
| Federal | $ 15,317 | $ (1,822) | $ (9,775) |
| State | 2,604 | 219 | (65) |
| Total current | 17,921 | (1,603) | (9,840) |
| Deferred: | | | |
| Federal | (6,731) | (843) | 4,361 |
| State | (644) | (175) | (86) |
| Total deferred | (7,375) | (1,018) | 4,275 |
| Tax benefit related to exercise of stock | 3,939 | 64 | 87 |

| | | | |
|---|---|---|---|
| options and issuance of restricted stock | | | |
| Provision (benefit) for income taxes | $ 14,485 | $ (2,557) | $ (5,478) |

A reconciliation of the income tax provision (benefit) from continuing operations and the amount computed by applying the U.S. federal statutory income tax rate to income (loss) before income taxes is as follows:

| | Fiscal Year Ended July 31, | | |
|---|---|---|---|
| | 2005 | 2004 | 2003 |
| At U.S. federal income tax rate | 35.0% | (35.0)% | (35.0)% |
| State income tax, net of federal benefit | 3.3% | --% | (2.6)% |
| Benefit of state tax reduction | --% | --% | (4.1)% |
| Nondeductible compensation | 0.7% | 6.0% | 8.0% |
| Nondeductible meals or entertainment | 0.6% | 2.5% | 2.2% |
| General business credits | (1.2)% | (4.5)% | (3.9)% |
| Other | 0.1% | 1.0% | (3.7)% |
| | 38.5% | (30.0)% | (39.1)% |

**12. Related Party Transactions**

Historically, the Company has paid a fee to Apollo Advisors for management services and expenses related thereto. In fiscal 2004, this fee was $500,000. In connection with the conversion by Apollo Ski Partners, L.P. ("Apollo") of its Class A Common Stock into shares of Common Stock, this arrangement was terminated effective October 1, 2004. The Company recorded $83,000 of expense related to this fee in the year ended July 31, 2005 (see Note 16, Class A Common Stock Conversion, for more information regarding this matter).

The Company has the right to appoint 4 of 9 directors of the Beaver Creek Resort Company of Colorado ("BCRC"), a non-profit entity formed for the benefit of property owners and certain others in Beaver Creek. The Company has a management agreement with the BCRC, renewable for one-year periods, to provide management services on a fixed fee basis. Management fees and reimbursement of operating expenses paid to the Company under its agreement with the BCRC during the years ended July 31, 2005, 2004 and 2003 totaled $6.3 million, $6.9 million and $6.2 million, respectively. The Company had a receivable with respect to this arrangement of $50,000 and $230,000 as of July 31, 2005 and 2004, respectively.

The Company previously had a 49% ownership interest in BG Resort, which it sold in December 2004. In August 2004, BG Resort repaid the $4.9 million principal balance note receivable which was outstanding to the Company as of July 31, 2004 from funds obtained by BG Resort in a debt refinancing.

In August 2003, the Company became the bookkeeper for BG Resort. The Company's responsibilities include maintaining the books and records of BG Resort and overseeing the annual financial statement audit. The Company recorded revenues of $85,000 and $108,000 in fiscal 2005 and 2004, respectively, related to this agreement.

In November 2002, the Company purchased an approximately 20,000 square foot spa and skier services area and 30 parking spaces from BG Resort for $13.3 million. The Company recorded revenues of $2.5 million, $2.3 million and $1.1 million during fiscal years 2005, 2004 and 2003, respectively, related to use of the spa by guests of the Ritz-Carlton, Bachelor Gulch (the "Ritz").

On December 7, 2000, the Company and BG Resort entered into a Golf Course Access Agreement (the "Golf Agreement") which gave Ritz guests preferential tee times at Red Sky Ranch Golf Course (the "Course"). For this privilege, BG Resort paid a one-time access fee of $3.0 million to the Company. The term of the Golf Agreement commenced with the opening date of the Course and will expire on the later of (1) 50 years after the opening date of the Course or (2) the date on which the Operating Agreement expires or is terminated. The Company recognized approximately $60,000, $60,000 and $30,000 in revenues related to the Golf Agreement in fiscal 2005, 2004 and 2003, respectively.

As of July 31, 2005, the Company has outstanding a $500,000 long-term note receivable from KRED, an entity in which the Company has a 50% interest. This note is related to the fair market value of the land originally contributed to the partnership, and is repaid as the underlying land is sold to third parties. KRED made principal payments totaling $2.0 million in fiscal 2005 related to this note. In addition, the Company previously had a receivable from KRED in the amount of $355,000 related to advances used for development project funding. In the fourth quarter of fiscal 2005, this receivable, including accrued interest, was converted to equity in KRED in lieu of payment of the receivable by KRED. The Company received interest payment from KRED of $49,000, $59,000 and $229,000 during fiscal years 2005, 2004 and 2003, respectively.

SSF/VARE is a real estate brokerage with multiple locations in Eagle and Summit counties, Colorado in which the Company has a 50% interest. SSF/VARE is the broker for several of the Company's developments. The Company paid real estate commissions of

approximately $695,000, $1.0 million and $2.4 million to SSF/VARE in fiscal 2005, 2004 and 2003, respectively. SSF leases several spaces for real estate offices from the Company. The Company recognized approximately $370,000, $330,000 and $464,000 in revenues related to these leases in fiscal 2005, 2004 and 2003, respectively.

The Company, through various lodging subsidiaries, serves as the management company for seven hotels not owned by the Company. Receivables from management fees and other items from these seven properties were $345,000 and $380,000 at July 31, 2005 and 2004, respectively, which is included in "trade receivables" in the accompanying consolidated balance sheets. The Company recorded management fee revenue of $2.7 million, $2.3 million and $2.3 million in fiscal 2005, 2004 and 2003, respectively, with regards to these agreements. The Company received reimbursements of $1.5 million, $1.5 million and $3.7 million in fiscal 2005, 2004 and 2003, respectively, for out-of-pocket expenses from the managed hotels. Although the employees of the managed hotels are employees of the Company, their payroll is paid by the hotel owners. Payroll costs for these employees of $18.8 million, $18.8 million and $23.7 million were paid by the hotel owners in fiscal 2005, 2004 and 2003, respectively.

In September 2004, James P. Thompson, former President of VRDC, repaid the $350,000 principal balance note receivable and associated accrued interest which was outstanding to the Company as of July 31, 2004 under a note originally extended to Mr. Thompson and his wife in 1995. Mr. Thompson ceased to be an employee on May 31, 2005.

In October 2003, Andrew P. Daly, the Company's former President, repaid the $300,000 principal balance note receivable and associated accrued interest under a note extended to Mr. Daly in 1991. Effective October 31, 2002, Mr. Daly ceased to be an employee of the Company. The Company recorded $1.3 million of compensation expense in its first fiscal quarter of 2003 in relation to Mr. Daly's severance agreement.

In 1999, the Company entered into an agreement with William A. Jensen, Senior Vice President and Chief Operating Officer for Vail Mountain, whereby the Company invested in the purchase of a primary residence for Mr. and Mrs. Jensen in Vail, Colorado. The Company contributed $1.0 million towards the purchase price of the residence and thereby obtained an approximate 49% undivided ownership interest in such residence. The Company shall be entitled to receive its proportionate share of the fair value of the residence, less certain deductions, upon the earlier of the resale of the residence or within approximately 18 months after Mr. Jensen's termination of employment from the Company.

In February 2001, the Company invested in the purchase of a primary residence in the Vail Valley for Martin White, former Senior Vice President of marketing for the Company. The Company contributed $600,000 towards the purchase price of the residence and thereby obtained an approximate 37.5% undivided ownership interest in such residence. In July 2003, Mr. White ceased to be an employee of the Company. In June 2004, Mr. White's former residence was sold for $1.8 million. The net proceeds to the Company for its 37.5% ownership interest were approximately $644,000, $44,000 in excess of the Company's investment.

In February 2001, the Company invested in the purchase of a primary residence in Breckenridge, Colorado for Roger McCarthy, Senior Vice President and Chief Operating Officer for Breckenridge. The Company contributed $400,000 towards the purchase price of the residence and thereby obtained an approximate 40% undivided ownership interest in such residence. The Company shall be entitled to receive its proportionate share of the fair value of the residence, less certain deductions, upon the earlier of the resale of the residence or within approximately 18 months after Mr. McCarthy's termination of employment from the Company.

In July 2002, RockResorts entered into an agreement with Edward E. Mace, President of RockResorts and of Vail Resorts Lodging Company, whereby RockResorts invested in the purchase of a residence for Mr. Mace and his family in Eagle County, Colorado. RockResorts contributed $900,000 towards the purchase price of the residence and thereby obtained an approximate 47% undivided ownership in such residence. RockResorts shall be entitled to receive its proportionate share of the fair value of the residence, less certain deductions, upon the earlier of the resale of the residence or within approximately 18 months after Mr. Mace's termination of employment from RockResorts.

In July 2002, the Company purchased from Richard Lesman, former Vice President of Sales for the Company, and his spouse, Mary Lesman, his former residence located in Carmel, Indiana, for a price of $511,250, which approximated the appraised value at the time. The purchase was made to facilitate Mr. Lesman's move in connection with his employment by the Company. In June 2003, the Company sold the home for $476,000. In July 2003, Mr. Lesman ceased to be an employee of the Company.

In November 2002, Heavenly Valley Limited Partnership ("Heavenly LP"), a wholly owned subsidiary of the Company, invested in the purchase of a residence in the greater Lake Tahoe area for Blaise Carrig, Chief Operating Officer for Heavenly. Heavenly LP contributed $449,500 toward the purchase price of the residence and thereby obtained a 50% undivided ownership interest in such residence. Heavenly LP shall be entitled to receive its proportionate share of the fair value of the residence, less certain deductions, upon the earlier of the resale of the residence or within approximately 18 months after Mr. Carrig's termination of employment from Heavenly LP.

In September 2003, the Company invested in the purchase of a residence in Eagle County, Colorado for Jeffrey W. Jones, the Company's Senior Vice President and Chief Financial Officer, and his family. The Company contributed $650,000 toward the purchase price of the residence and thereby obtained a 46.1% undivided ownership interest in such residence. The Company shall be entitled to receive its proportionate share of the fair value of the residence, less certain deductions, upon the earlier of the resale of the residence or within approximately 18 months after Mr. Jones' termination of employment from the Company.

In February 2003, Marc J. Rowan, a director of the Company and a founding principal of Apollo Advisors, and Michael Gross (also a founding principal of Apollo Advisors) each purchased a homesite at Bachelor Gulch Village. The purchases occurred pursuant to the September 1999 contracts between the Company and the purchasers, as previously disclosed in the Company's annual proxy

statements since 1999. The purchase price for each site was $378,000, which the Company believed at the time to be the approximate fair market value of the sites at the time of the original contracts, less a credit of $132,300 for certain infrastructure costs, such as architectural plans, necessary to develop the sites. The Company determined the sales price at the time of discussions with Mr. Rowan about a possible purchase more than a year prior to the September 1999 execution of the contracts based on a formula used by VRDC for establishing the base land price of a development parcel for multiple homesites under contract at the time to a third party developer, and the assumed square footage of the residence expected to be built on the sites as indicated by Messrs. Rowan and Gross. Also, as previously stated in the Company's proxy statements, the contracts were amended to extend the original closing dates on each property from January 2001 to January 2003. As previously disclosed in the Company's Form 10-Q for the third quarter of 2003, the Company believes that, at the time of the closing of the purchases by Messrs. Rowan and Gross in February 2003, the fair market value of each site was approximately $1.6-$1.7 million, based generally on the Company's familiarity with appreciated values of Bachelor Gulch real estate. Additionally, the Company has been advised by Mr. Rowan and Mr. Gross that each has sold the properties for approximately that amount. Upon further review of the transactions, the Company has determined that, due to differences between the expected sizes of the residences to be built on the properties contracted to be sold to Mr. Rowan and Mr. Gross, as compared to properties under contract with the third party developer, and in light of the actual sales prices of homesites in excess of the base land prices as sold by the third party developer, the market value of the two sites at the time of execution of the contracts with Mr. Rowan and Mr. Gross should have been approximately $601,000 each. The infrastructure credit corresponded to an estimate by VRDC of the amount the Company would have had to spend on infrastructure had the properties been sold to the third party developer. Mr. Rowan and Mr. Gross have each made a supplemental payment of $223,000 (reflecting the difference between $601,000 and the stated purchase price), plus an additional payment equal to the amount of the infrastructure credit and any additional amounts that the Company paid for infrastructure in connection with the lots, plus interest on these amounts from the date of closing of the properties to receipt of the payments.

In December 2004, Adam Aron, Chairman of the Board of Directors and Chief Executive Officer of the Company, and Ronald Baron, a significant shareholder in the Company, reserved the purchase of condominium units at the planned "Arrabelle" project located in the core of LionsHead. In April 2005, Mr. Aron executed a purchase and sale agreement for the purchase of a condominium unit for a total purchase price of $4.6 million. Mr. Aron provided earnest money deposits totaling $690,000. In May 2005, Mr. Baron and his wife executed a purchase and sale agreement for the purchase of a condominium unit for a total purchase price of $14.0 million. Mr. and Mrs. Baron provided earnest money deposits totaling $2.1 million. The earnest money deposits will be used to fund the construction of the Arrabelle project, which began in May 2005. The earnest money deposits are only refundable at the Company's discretion or if the Company fails to complete the project. Closing on the condominiums is expected in late fiscal 2007. The sale of the condominiums has been approved by the Board of Directors of the Company, in accordance with the Company's related party transactions policy.

**13. Commitments and Contingencies**

Metropolitan Districts

The Company credit-enhances $8.5 million of bonds issued by Holland Creek Metropolitan District ("HCMD") through an $8.6 million letter of credit issued against the Company's bank credit facility. HCMD's bonds were issued and used to build infrastructure associated with the Company's Red Sky Ranch residential development. The Company has agreed to pay capital improvement fees to Red Sky Ranch Metropolitan District ("RSRMD") until RSRMD's revenue streams from property taxes are sufficient to meet debt service requirements under HCMD's bonds, and the Company has recorded a liability of $1.7 million and $1.9 million, primarily within "other long-term liabilities" in the accompanying consolidated balance sheets, at July 31, 2005 and 2004, respectively, with respect to the estimated present value of future RSRMD capital improvement fees. The Company estimates that it will make capital improvement fee payments under this arrangement through fiscal 2008.

The Company previously had a $15.1 million liability for capital improvements fees payable to Bachelor Gulch Metropolitan District ("BGMD") in connection with bonds issued by Smith Creek Metropolitan District ("SCMD"), the proceeds of which were used to build infrastructure associated with development of Bachelor Gulch Village. In March 2004, BGMD issued bonds and the proceeds were used to retire the SCMD bonds. As a result, the Company no longer has an obligation to pay capital improvement fees to BGMD, and in fiscal 2004 the associated liability was relieved with the offset a reduction to Real Estate segment operating expense.

Guarantees

As of July 31, 2005, the Company had various other letters of credit outstanding in the amount of $71.1 million, a portion of which are not issued against the Credit Facility, consisting primarily of $51.0 million in support of the Employee Housing Bonds, $6.1 million related to workers' compensation for Heavenly and Rancho Mirage, a $4.2 million letter of credit issued in support of the SSV Facility, $6.9 million of construction performance guarantees and $2.3 million for workers' compensation and general liability deductibles related to the construction of Gore Creek Place and Arrabelle at Vail Square.

In addition to the guarantees noted above, the Company has entered into contracts in the normal course of business which include certain indemnifications within the scope of FIN No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others" under which it could be required to make payments to third parties upon the occurrence or non-occurrence of certain future events. These indemnities include indemnities to licensees in connection with the licensees' use of the Company's trademarks and logos, indemnities for liabilities associated with the infringement of other parties' technology based upon the Company's software products, indemnities related to liabilities associated with the use of easements, indemnities related to employment of contract workers, the Company's use of trustees, indemnities related to the

Company's use of public lands and environmental indemnifications. The duration of these indemnities generally is indefinite and generally do not limit the future payments the Company could be obligated to make.

As permitted under applicable law, the Company and certain of its subsidiaries indemnifies its directors and officers over their lifetimes for certain events or occurrences while the officer or director is, or was, serving the Company in such a capacity. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the Company has a director and officer insurance policy that limits exposure and should enable the Company to recover a portion of any future amounts paid. The Company has not recorded a liability associated with this indemnification as of July 31, 2005 because the Company has assessed the fair market value associated with potential payment obligations under the indemnification to be immaterial or because the indemnifications were entered into prior to January 1, 2004.

The Company guarantees the revenue streams associated with selected routes flown by certain airlines into Eagle County Regional Airport; these guarantees are generally capped at certain levels. As of July 31, 2005, the Company has recorded a liability related to the airline guarantees of $700,000, which also represents the maximum amount the Company would be required to pay. Payments, if any, under these guarantees are expected to be made in fiscal 2006.

In conjunction with the Company's sale of its ownership interest in BG Resort (See Note 8, Sale of Businesses), the Company has guaranteed payment, if any, of certain contingencies of BG Resort upon settlement. As of July 31, 2005, the Company has recorded a liability related to these contingencies in the amount of $130,000. The maximum amount that the Company would be required to pay under this agreement is approximately $424,000.

Unless otherwise noted, the Company has not recorded a liability for the letters of credit, indemnities and other guarantees noted above in the accompanying Consolidated Financial Statements, either because the Company has recorded on its consolidated balance sheet the underlying liability associated with the guarantee, the guarantee or indemnification existed prior to January 1, 2003 and is therefore not subject to the measurement requirements of FIN 45, or because the Company has calculated the fair value of the indemnification or guarantee to be de minimus based upon the current facts and circumstances that would trigger a payment under the indemnification clause. In addition, with respect to certain indemnifications it is not possible to determine the maximum potential amount of liability under these guarantees due to the unique set of facts and circumstances that are likely to be involved in each particular claim and indemnification provision. Historically, payments made by the Company under these obligations have not been material.

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

Commitments

In the ordinary course of obtaining necessary zoning and other approvals for the Company's potential real estate development projects, the Company may contingently commit to the completion of certain infrastructure, improvements and other costs related to the projects. Fulfillment of such commitments is required only if the Company moves forward with the development project. The determination of whether the Company ultimately completes a development project is entirely at the Company's discretion, and is generally contingent upon, among other considerations, receipt of satisfactory zoning and other approvals and the current status of the Company's analysis of the economic viability of the project, including the costs associated with the contingent commitments. The Company currently has obligations, recorded as liabilities in the accompanying consolidated balance sheets, to complete or fund certain improvements with respect to real estate developments; the Company has estimated such costs to be approximately $8.0 million as of July 31, 2005, and anticipates completion of the majority of these commitments within the next two years.

In connection with the Arrowhead real estate development, the Company recorded certain obligations for the construction of amenities benefiting the real estate development. In fiscal 2004, in connection with the consummation of the sale of the last parcel at Arrowhead, the Company recorded a $1.2 million reduction to real estate cost of sales, representing the remaining obligations for the construction of amenities that the Company deemed were not necessary to construct with the closing of the last parcel sale.

The Company agreed to install two new chairlifts and related infrastructure at Beaver Creek for the 2004/05 ski season and one chairlift and related infrastructure by the 2005/06 ski season pursuant to agreements with Bachelor Gulch Village Association ("BGVA"), BCRC and Beaver Creek Property Owner Association. In connection with these agreements, BGVA had deposited $5 million, BCRC had deposited $4 million and the Company had deposited $1 million into an escrow account to be used by the Company to fund the construction of the chairlifts. As of July 31, 2005, all of the escrowed funds have been remitted to the Company as reimbursement for construction costs of the chairlifts and related infrastructure. The funds received from BGVA and BCRC reduced the book value of the chairlifts and related infrastructure. The Company completed the chairlifts and related infrastructure as required for the 2004/05 ski season. The estimated net cost to the Company to complete the remaining lift and related infrastructure as of July 31, 2005 is $4.1 million.

The Company has executed as lessee operating leases for the rental of office and commercial space, employee residential units and office equipment through fiscal 2011. Certain of these leases have renewal terms at the Company's option and/or escalation clauses (primarily based on the Consumer Price Index). For the fiscal years ended July 31, 2005, 2004 and 2003, the Company recorded lease expense related to these agreements of $13.7 million, $16.3 million and $22.5 million, respectively, which is included in the accompanying consolidated statements of operations.

Future minimum lease payments under these leases as of July 31, 2005 are as follows (in thousands):

| | |
|---|---|
| 2006 | $ 10,354 |
| 2007 | 7,896 |
| 2008 | 6,497 |
| 2009 | 3,657 |
| 2010 | 2,699 |
| Thereafter | 2,388 |
| Total | $ 33,491 |

Self Insurance

The Company is self-insured for medical and workers' compensation under a stop loss arrangement. The self-insurance liability related to workers' compensation is determined actuarially based on claims filed. The self-insurance liability related to medical claims is determined based on internal and external analysis of actual claims. The amounts related to these claims are included as a component of accrued benefits in accounts payable and accrued expenses (see Note 5, Supplementary Balance Sheet Information).

Legal

The Company is a party to various lawsuits arising in the ordinary course of business, including Resort related cases and contractual and commercial litigation that arises from time to time in connection with the Company's real estate and other business operations. Management believes the Company has adequate insurance coverage or has accrued for loss contingencies for all known matters that are deemed to be probable losses and estimable.

*Gilman Litigation Appeal*

The Company appealed an adverse decision by the Eagle County District Court of Colorado, rendered on September 24, 2003, relating to the Company's interest in real property in Eagle County, Colorado commonly known as the "Gilman" property. The litigation commenced in November 1999 involving a dispute between a Company subsidiary, as the holder of an option to acquire a 50% interest in the entity that owned the property, and Turkey Creek LLC ("Turkey Creek"), the owner of the property. The property consists of approximately 6,000 acres of rugged, high altitude land in close proximity to Vail Mountain. Turkey Creek assembled the property over many years from various parcels, old mining claims and other property.

Vail Associates originally acquired the option in 1992 under an option agreement between Vail Associates and Turkey Creek. The option agreement was amended and extended several times over the years between 1992 and 1999. During those years, Vail Associates funded all of the acquisition costs to buy the parcels comprising the property and holding costs related to the property, such as real estate taxes and litigation costs to perfect title to the property. Between 1992 and 1999, Vail Associates invested approximately $4.8 million of such funds to maintain and preserve its 50% option interest.

In November 1999, a Company subsidiary (the successor to Vail Associates under the option) exercised the option to acquire the 50% interest in the entity that owned the property. Turkey Creek, however, refused the exercise, claiming that the Company's proposal to pursue a strategy to find a buyer who would put most of the property into conservation or open space uses was a breach of the option agreement, which contemplated "prompt and diligent development" of the property upon exercise of the option.

The Court found that the Company's subsidiary repudiated the option agreement in advance of the exercise of the option by not committing to prompt and diligent development and that "development" did not include selling the land to a buyer for conservation. The Court further found that Turkey Creek was entitled to terminate the contract and refuse the exercise and that the Company's subsidiary was not entitled to any interest in the property.

As a result of the Court's decision, the Company recorded a non-cash asset impairment charge of $4.8 million in fiscal 2003, the amount previously carried on the Company's consolidated balance sheet reflecting its investment. The Company appealed the adverse decision, primarily on the basis that the Court applied the wrong legal standard in deciding the issue. In August 2005, a three judge panel vacated the trial court's judgment and remanded the case back to the trial court to apply the correct legal standard and identify facts that meet the correct legal standard. The appellee's motion for reconsideration of the Court of Appeals decision was denied.

During the pendency of the appeal, Turkey Creek sold the property for approximately $33 million to an unrelated third party developer. Accordingly, the outcome of the case will relate only to an economic resolution between the parties and will not affect the real property now owned by the third party. The Company cannot predict the ultimate outcome of the matter.

*Breckenridge Terrace Employee Housing Construction Defect/Water Intrusion Claims*

During fiscal 2004, the Company became aware of water intrusion and condensation problems causing mold damage in the 17 building, employee housing facility owned by Breckenridge Terrace, LLC ("Breckenridge Terrace"), an employee housing entity in which the Company is a member and manager. As a result, the facility was not available for occupancy during the 2003/04 ski season. All buildings at the facility required mold remediation and reconstruction (the "reconstruction") and this work began in fiscal 2004. Breckenridge Terrace recorded a $7.0 million liability in fiscal 2004 for the estimated cost of remediation and reconstruction efforts. These costs were funded by a loan to Breckenridge Terrace from the Company member of the LLC. As of July 31, 2005, Breckenridge Terrace had a remaining liability of $871,000 for future remaining remediation and reconstruction costs. With the exception of one building which has been kept in its original design and construction for evidentiary purposes (see discussion below), the remaining 16 buildings became available for occupancy in the second quarter of fiscal 2005. The Company anticipates it will incur the remaining amount of remediation and reconstruction costs before the end of fiscal 2006.

Forensic construction experts retained by Breckenridge Terrace have determined that the water intrusion and condensation problems are the result of construction and design defects. In accordance with Colorado law, Breckenridge Terrace served separate notices of claims on the general contractor, architect and developer and initiated arbitration proceedings. In September 2005, Breckenridge Terrace agreed to settle its claims against the general contractor and the architect for an aggregate amount of $800,000 and will recognize the settlement amount as reduction of the remediation expense upon receipt. Claims against the developer were not settled and Breckenridge Terrace is reviewing its legal options in that regard.

*SEC Investigation Terminated*

In February 2003, the SEC issued a formal order of investigation with respect to the Company. On September 19, 2005, the Central Regional Office of the SEC informed the Company that its investigation has been terminated, and that no enforcement action has been recommended regarding the Company. The Company has also been informed that no enforcement action has been recommended with respect to any present or former directors, officers or employees of the Company in regard to the matters that had been under investigation.

**14. Segment Information**

The Company has three reportable segments: Mountain, Lodging and Real Estate operations. The Mountain segment includes the operations of the Company's ski resorts and related ancillary activities. The Lodging segment includes the operations of all of the Company's owned hotels, RockResorts, GTLC, condominium management and golf operations. The Resort segment is the combination of the Mountain and Lodging segments. The Real Estate segment develops, buys and sells real estate in and around the Company's mountain resort communities. The Company's reportable segments, although integral to the success of the others, offer distinctly different products and services and require different types of management focus. As such, these segments are managed separately.

The Company reports its segment results using Reported EBITDA which is a non-GAAP financial measure, defined as segment net revenues less segment specific operating expenses plus segment specific gains on transfer of property plus segment equity income. SFAS No. 131 "Disclosures about Segments of an Enterprise and Related Information" requires the Company to report segment results in a manner consistent with management's internal reporting of operating results to the chief operating decision maker (as defined in SFAS No. 131) for purposes of evaluating segment performance. Therefore, since the Company uses Reported EBITDA to measure performance of segments for internal reporting purposes, the Company will continue to use Reported EBITDA to report segment results.

Reported EBITDA is not a measure of financial performance under accounting principles generally accepted in the United States of America. Items excluded from Reported EBITDA are significant components in understanding and assessing financial performance. Reported EBITDA should not be considered in isolation or as an alternative to, or substitute for, net income, cash flows generated by operations, investing or financing activities or other financial statement data presented in the consolidated financial statements as indicators of financial performance or liquidity. Because Reported EBITDA is not a measurement determined in accordance with accounting principles generally accepted in the United States of America and is thus susceptible to varying calculations, Reported EBITDA as presented may not be comparable to other similarly titled measures of other companies.

The Company evaluates performance and allocates resources to its segments based on Reported EBITDA, as previously defined. Mountain Reported EBITDA consists of net mountain revenue plus mountain equity investment income less mountain operating expense. Lodging Reported EBITDA consists of net lodging revenue plus lodging equity investment income less lodging operating expense. Real Estate Reported EBITDA consists of net real estate revenue plus real estate equity investment income (loss) plus gains on transfers of property less real estate operating expense. All segment expenses include an allocation of corporate administrative expense. Assets are not allocated between segments, or used to evaluate performance, except as shown in the table below. The accounting policies specific to each segment are the same as those described in Note 2, Summary of Significant Accounting Policies.

Following is key financial information by reportable segment which is used by management in evaluating performance and allocating resources (in thousands):

| | Fiscal Year Ended July 31, | | |
|---|---|---|---|
| | **2005** | **2004** | **2003** |
| Net revenue: | | | |
| Mountain | $ 540,855 | $ 500,995 | $ 460,568 |
| Lodging | 196,351 | 180,525 | 172,003 |
| Resort | 737,206 | 681,520 | 632,571 |
| Real estate | 72,781 | 45,123 | 80,401 |
| | $ 809,987 | $ 726,643 | $ 712,972 |
| Equity investment income (loss): | | | |
| Mountain | $ 2,303 | $ 1,376 | $ 1,009 |
| Lodging | (2,679) | (3,432) | (5,995) |
| Resort | (376) | (2,056) | (4,986) |
| Real estate | (102) | 460 | 3,962 |
| | $ (478) | $ (1,596) | $ (1,024) |
| Reported EBITDA: | | | |
| Mountain | $ 151, 269 | $ 133,496 | $ 99,446 |
| Lodging | 16,203 | 11,110 | 4,162 |
| Resort | 167,472 | 144,606 | 103,608 |
| Real estate | 14,425 | 30,939 | 17,721 |
| | $ 181,897 | $ 175,545 | $ 121,329 |
| Investments in real estate | $ 72,164 | $ 27,802 | $ 22,572 |
| Real estate held for sale and investment | $ 154,874 | $ 134,548 | $ 123,223 |
| Long-term real estate deposits | $ 37,829 | $ -- | $ -- |
| Reconciliation to consolidated income (loss) before provision for income taxes: | | | |
| Mountain Reported EBITDA | $ 151,269 | $ 133,496 | $ 99,446 |
| Lodging Reported EBITDA | 16,203 | 11,110 | 4,162 |

| | | | |
|---|---|---|---|
| Resort Reported EBITDA | 167,472 | 144,606 | 103,608 |
| Real Estate Reported EBITDA | 14,425 | 30,939 | 17,721 |
| Total Reported EBITDA | 181,897 | 175,545 | 121,329 |
| Depreciation and amortization | (89,968) | (86,377) | (82,242) |
| Asset impairment charges | (2,550) | (1,108) | (4,830) |
| Mold remediation charge | -- | (5,500) | -- |
| Loss on disposal of fixed assets, net | (1,528) | (2,345) | (794) |
| Investment income, net | 2,066 | 1,886 | 2,011 |
| Interest expense | (40,298) | (47,479) | (50,001) |
| Loss on extinguishment of debt | (612) | (37,084) | -- |
| Loss from sale of businesses, net | (7,353) | -- | -- |
| Gain (loss) on put options, net | 1,158 | (1,875) | 1,569 |
| Other income (expense), net | 50 | (179) | 17 |
| Minority interest in income of consolidated subsidiaries, net | (5,239) | (4,000) | (1,064) |
| Income (loss) before (provision) benefit for income taxes | $ 37,623 | $ (8,516) | $ (14,005) |

In fiscal 2005, the Company changed the way certain club dues revenues were assigned between segments. Conforming reclassification were made to fiscal years 2004 and 2003.

**15. Selected Quarterly Financial Data (Unaudited--in thousands, except per share amounts)**

| | Fiscal 2005 | | | | |
|---|---|---|---|---|---|
| | Year Ended July 31, 2005 | Quarter Ended July 31, 2005 | Quarter Ended April 30, 2005 | Quarter Ended January 31, 2005 | Quarter Ended October 31, 2004 |
| Mountain revenue | $ 540,855 | $ 35,371 | $ 256,825 | $ 214,166 | $ 34,493 |
| Lodging revenue | 196,351 | 51,202 | 56,285 | 42,589 | 46,275 |
| Real estate revenue | 72,781 | 33,452 | 14,341 | 7,873 | 17,115 |
| Total net revenue | 809,987 | 120,025 | 327,451 | 264,628 | 97,883 |
| Income (loss) from operations | 88,329 | (39,722) | 109,073 | 60,599 | (41,621) |
| (Loss) gain from sale of businesses, net | (7,353) | (13,043) | (3) | 5,693 | -- |
| Net income (loss) | 23,138 | (36,435) | 58,788 | 32,241 | (31,456) |
| Basic net income (loss) per common share | 0.65 | (1.00) | 1.64 | 0.91 | (0.89) |
| Diluted net income (loss) per common share | $ 0.64 | $ (1.00) | $ 1.61 | $ 0.89 | $ (0.89) |

| | Fiscal 2004 | | | | |
|---|---|---|---|---|---|
| | Year Ended July 31, 2004 | Quarter Ended July 31, 2004 | Quarter Ended April 30, 2004 | Quarter Ended January 31, 2004 | Quarter Ended October 31, 2003 |
| Mountain revenue | $ 500,995 | $ 33,980 | $ 233,400 | $ 200,149 | $ 33,466 |
| Lodging revenue | 180,525 | 46,582 | 50,910 | 39,243 | 43,790 |
| Real estate revenue | 45,123 | 6,570 | 4,165 | 7,496 | 26,892 |
| Total net revenue | 726,643 | 87,132 | 288,475 | 246,888 | 104,148 |
| Income (loss) from operations | 81,811 | (43,590) | 109,166 | 46,631 | (30,396) |
| Net income (loss) | (5,959) | (36,304) | 62,485 | (6,737) | (25,403) |
| Basic net income (loss) per common share | (0.17) | (1.03) | 1.77 | (0.19) | (0.72) |
| Diluted net income (loss) per common share | $ (0.17) | $ (1.03) | $ 1.77 | $ (0.19) | $ (0.72) |

**16. Class A Common Stock Conversion**

In September 2004, the Company and Apollo entered into a Conversion and Registration Rights Agreement (the "Agreement"). Pursuant to the Agreement, Apollo converted all of its Class A common stock into shares of the Company's Common Stock. Apollo distributed the shares to its partners in proportion to each partner's interest in the partnership. Apollo did not dissolve after this distribution and continues to exist as a partnership. The Company, pursuant to the Agreement, filed a shelf registration statement in November 2004, covering certain of the shares owned by the limited partners of Apollo. Before the conversion, Apollo owned 6.1 million Class A Common shares or 99.9% of the Company's Class A Common Stock.

As a result of the above Agreement, the Company no longer has any Class A Common Stock outstanding and therefore has only one class of directors. Previously, the Class A Common Stock elected the Class 1 directors and the Common Stock elected the Class 2 directors. Additionally, as a result of the above Agreement, as of the date of the agreement, the Company's consolidated balance sheet no longer presents any Class A Common Stock and the full balance of the Company's common shares outstanding is presented under "common stock".

**17. Non-Cash Deferred Compensation**

Pursuant to the employment agreement of Adam Aron, Chairman of the Board of Directors and Chief Executive Officer of the Company, entered into May 2001 and the amendment thereto entered into July 2003, Mr. Aron became fully vested in the following components of non-cash compensation as of August 3, 2003:

- a one-time bonus of $600,000 which Mr. Aron used to purchase a Red Sky Ranch homesite and related Red Sky Golf Club membership from the Company for a purchase price of $600,000,
- a one-time bonus of $1.5 million which Mr. Aron used to purchase the Beaver Creek property in which Mr. Aron currently resides and related Beaver Creek Club membership from the Company for a purchase price of $1.5 million, and
- a one-time bonus of $659,750 which Mr. Aron used to purchase a Bachelor Gulch homesite and related Bachelor Gulch Club and Red Sky Golf Club memberships.

The Bachelor Gulch homesite transaction was originally structured as the forgiveness of a loan in the amount of $645,750. The July 2003 amendment to Mr. Aron's employment agreement changed the structure of the agreement from loan forgiveness to a one-time bonus to comply with the provisions of the Sarbanes-Oxley Act of 2002. In addition, Mr. Aron's purchase contract and purchase price for the Bachelor Gulch homesite were not contingent upon any future service or performance; therefore, Mr. Aron was fully vested in this benefit in May 2001.

In fiscal years 2003 the Company recorded $1.8 million in compensation expense related to the previously non-vested portion of the non-cash compensation. The amount of compensation expense recorded was based on the estimated fair market values of the underlying real property and related memberships and was marked to market as necessary. In July 2003, the Company obtained various third-party valuations upon which to base the fair market value of the Red Sky Ranch and Beaver Creek transactions. The Company based the value of the Bachelor Gulch transaction on the assessed property tax value and comparable sales at the vesting date.

In addition, pursuant to the terms of the employment agreement, Mr. Aron vested in 165,000 shares of restricted stock in July 2003, which had a grant-date fair market value of $13.80 per share. The Company recorded compensation expense of $1.2 million in the fiscal 2003 related to this grant. Separately, Mr. Aron also vested in 7,500 shares of restricted stock in July 2003 pursuant to a grant made in September 2000. These shares had a grant-date fair value of $19.13 per share. The Company recorded compensation expense of $143,000 in fiscal 2003 related to these shares.

In March 2001, the Compensation Committee of the Company's Board of Directors granted James P. Thompson, former President of VRDC, a one-time bonus in the amount of $600,000 which Mr. Thompson was required to use to purchase a Red Sky Ranch homesite and related Red Sky Golf Club membership from the Company for a purchase price of $600,000; Mr. Thompson vested in this bonus as of July 1, 2003 and took title of the property and related membership in fiscal 2004. The Company recorded compensation expense of $388,000 during fiscal 2003 related to this transaction. The amount of compensation expense recorded was based on the appraised fair market value of the underlying real property and membership.

In fiscal 2004, Messrs. Aron and Thompson took title to the real property and related club memberships. The Company recognized a net gain of $2.1 million related to the transfer of the properties as "gain on transfer of property, net" in the accompanying consolidated statement of operations for fiscal 2004.

**18. Stock Compensation Plans**

The Company has four fixed option plans: the 1993 Stock Option Plan ("1993 Plan"), the 1996 Long Term Incentive and Share Award Plan ("1996 Plan"), the 1999 Long Term Incentive and Share Award Plan ("1999 Plan") and the 2002 Long Term Incentive and Share Award Plan ("2002 Plan"). Under the 1993 Plan, incentive stock options (as defined under Section 422 of the Internal Revenue Code of 1986) or non-incentive stock options covering an aggregate of 2,045,510 shares of Common Stock may be issued to key employees, directors, consultants, and advisors of the Company or its subsidiaries. Exercise prices and vesting dates for options granted under the 1993 Plan are set by the Compensation Committee of the Company's Board of Directors ("Compensation Committee"), except that the vesting period must be at least six months and exercise prices for incentive stock options may not be less than the stock's market price on the date of grant. The terms of the options granted under the 1993 Plan are determined by the Compensation Committee, provided that all incentive stock options granted have a maximum life of ten years. 1,500,000, 2,500,000, and 2,500,000 shares of Common Stock may be issued in the form of options, stock appreciation rights ("SARs"),

restricted shares, restricted share units, performance shares, performance share units, dividend equivalents or other share-based awards under the 1996 Plan, the 1999 Plan and the 2002 Plan, respectively. Under the 1996 Plan, the 1999 Plan and the 2002 Plan, awards may be granted to employees, directors or consultants of the Company or its subsidiaries or affiliates. The terms of awards granted under the 1996 Plan, the 1999 Plan and the 2002 Plan, including exercise price, vesting period and life, are set by the Compensation Committee. To date, no options have been granted to non-employees (except those granted to non-employee members of the board of directors of the Company and of a consolidated subsidiary) under any of the three plans. At July 31, 2005, approximately 98,000, 255,000, 549,000 and 449,000 options were available under the 1993 Plan, 1996 Plan, 1999 Plan and 2002 Plan, respectively.

A summary of the status of the Company's four fixed option plans as of July 31, 2005, 2004 and 2003 and changes during the years ended July 31, 2005, 2004 and 2003 is presented below (in thousands, except per share amounts):

| Fixed Options | Shares Subject to Option | Weighted Average Exercise Price Per Share |
|---|---|---|
| Balance at July 31, 2002 | 3,810 | $ 19.67 |
| Granted | 878 | 16.80 |
| Exercised | (33) | 7.73 |
| Forfeited | (715) | 19.18 |
| Balance at July 31, 2003 | 3,940 | $ 19.07 |
| Granted | 864 | 13.93 |
| Exercised | (54) | 12.96 |
| Forfeited | (297) | 18.75 |
| Balance at July 31, 2004 | 4,453 | $ 18.32 |
| Granted | 790 | 18.76 |
| Exercised | (1,244) | 17.70 |
| Forfeited | (119) | 17.21 |
| Balance at July 31, 2005 | 3,880 | $ 18.64 |

The following table summarizes information about fixed options outstanding at July 31, 2005, 2004 and 2003 (in thousands, except per share and life amounts):

| | Options Outstanding | | | Options Exercisable | |
|---|---|---|---|---|---|
| Exercise Price Range Per Share | Shares Outstanding | Weighted-Average Remaining Contractual Life Per Share | Weighted-Average Exercise Price Per Share | Shares Exercisable | Weighted-Average Exercise Price Per Share |
| **July 31, 2005:** | | | | | |
| $ 11-15 | 959 | 7.7 | $ 14.33 | 471 | $ 14.08 |
| >15-20 | 2,192 | 6.4 | 18.53 | 1,208 | 18.67 |
| >20-25 | 619 | 2.7 | 24.16 | 619 | 24.16 |
| >25-29 | 110 | 2.8 | 27.23 | 110 | 27.23 |
| $ 12-29 | 3,880 | 6.1 | $ 18.64 | 2,408 | $ 19.58 |
| **July 31, 2004:** | | | | | |
| $ 9-13 | 76 | 6.2 | $ 11.43 | 38 | $ 11.09 |
| >13-19 | 2,305 | 8.2 | 15.59 | 813 | 15.90 |
| >19-25 | 1,955 | 4.3 | 21.28 | 1,955 | 21.28 |
| >25-29 | 117 | 3.8 | 27.31 | 117 | 27.31 |
| $ 9-29 | 4,453 | 6.3 | $ 18.32 | 2,923 | $ 19.89 |
| **July 31, 2003:** | | | | | |
| $ 9-13 | 117 | 6.7 | $ 11.53 | 47 | $ 10.75 |
| >13-19 | 1,585 | 8.6 | 16.03 | 371 | 15.67 |
| >19-25 | 2,122 | 5.3 | 21.31 | 1,960 | 21.49 |
| >25-29 | 117 | 4.8 | 27.31 | 117 | 27.31 |
| $ 9-29 | 3,941 | 6.7 | $ 19.07 | 2,495 | $ 20.70 |

During fiscal 2004 and 2003, the Company granted restricted stock awards to certain executives under the 1993 Plan, the 1999 Plan and the 2002 Plan. The Company granted 49,500 shares of restricted stock awards with a weighted-average grant-date fair value of $14.73 per share in fiscal 2004 and 15,000 shares of restricted stock awards with a weighted-average grant-date fair value of $16.95 per share in fiscal 2003. The Company did not grant restricted stock awards in

fiscal 2005. The awards vest and are issued in equal increments over periods ranging from 32 months to three years. Compensation expense related to these restricted stock awards is charged ratably over the respective vesting periods and was $348,000, $250,000 and $1.3 million for the years ended July 31, 2005, 2004 and 2003, respectively. During fiscal 2005, 2004 and 2003, the Company issued 14,813, 8,619 and 90,095 shares of common stock under vested restricted stock awards, respectively. Stock options are issued at the stock closing price on the day prior to the date of grant.

**19. Retirement and Profit Sharing Plans**

The Company maintains a defined contribution retirement plan (the "plan"), qualified under Section 401(k) of the Internal Revenue Code, for its employees. Under this plan, employees are eligible to make before-tax contributions on the first day of the calendar month following the later of: (1) their employment commencement date or (2) the date they turn 21. Participants may contribute up to 100% of their qualifying annual compensation up to the annual maximum specified by the Internal Revenue Code. The Company matches an amount equal to 50% of each participant's contribution up to 6% of a participant's bi-weekly qualifying compensation upon obtaining the later of: (1) 12 consecutive months of employment and 1,000 service hours or (2) 1,500 service hours since the employment commencement date. The Company's matching contribution is entirely discretionary and may be reduced or eliminated at any time.

Total retirement plan expense recognized by the Company for the fiscal years ended July 31, 2005, 2004 and 2003 was $2.6 million, $2.7 million and $2.0 million, respectively.

**20. Workforce Reduction**

In October 2002, the Company's president, Andy Daly, ceased to be an employee of the Company. The Company recorded $1.3 million of compensation expense in fiscal 2003 in relation to Mr. Daly's severance agreement, which was recorded as operating expense in the consolidated statement of operations. The final cash portion of Mr. Daly's severance benefits was paid in fiscal 2004.

In July 2003, the Company announced the restructuring of its sales and marketing focus and organization. The workforce reduction included the termination of three employees effective July 31, 2003 resulting in severance expense of approximately $505,000 including an incremental amount of associated benefits. The Company paid the full amount of the severance during fiscal 2004.

## 21. Guarantor Subsidiaries and Non-Guarantor Subsidiaries

The Company's payment obligations under the 6.75% Notes (see Note 4, Long-Term Debt) are fully and unconditionally guaranteed on a joint and several, senior subordinated basis by substantially all of the Company's consolidated subsidiaries (collectively, and excluding Non-Guarantor Subsidiaries (as defined below), the "Guarantor Subsidiaries") except for Boulder/Beaver LLC, Colter Bay Corporation, Eagle Park Reservoir Company, Forest Ridge Holdings, Inc., Gros Ventre Utility Company, Jackson Lake Lodge Corporation, Jenny Lake Lodge, Inc., Mountain Thunder, Inc., RT Partners, Inc and RTP LLC ("RTP"), SSV, Larkspur Restaurant & Bar, LLC, Vail Associates Investments, Inc., Arrabelle at Vail Square, LLC, Gore Creek, Timber Trail, Inc. and VR Holdings, Inc. (together, the "Non-Guarantor Subsidiaries"). APII, FFT and the Employee Housing Entities are included with the Non-Guarantor Subsidiaries for purposes of the consolidated financial information, but are not considered subsidiaries under the indentures governing the 6.75% Notes.

Presented below is the consolidated financial information of Vail Resorts, Inc. (the "Parent Company"), the Guarantor Subsidiaries and the Non-Guarantor Subsidiaries. Financial information for Larkspur Restaurant & Bar, LLC ("Larkspur") is presented separately as the Company owns less than 100% of this Guarantor Subsidiary. Financial information for RockResorts and JHL&S, LLC is no longer presented separately as the Company acquired the remaining minority interest in these Guarantor Subsidiaries during fiscal 2005, and reclassifications have been made to the financial information as of and for the years ended July 31, 2004 and 2003 to conform to the current period presentation. Financial information for the Non-Guarantor subsidiaries is presented in the column titled "Other Subsidiaries". Balance sheet data is presented as of July 31, 2005 and 2004. Statement of operations and statement of cash flows data are presented for the years ended July 31, 2005, 2004 and 2003.

Investments in subsidiaries are accounted for by the Parent Company and Guarantor Subsidiaries using the equity method of accounting. Net income of Guarantor and Non-Guarantor Subsidiaries is, therefore, reflected in the Parent Company's and Guarantor Subsidiaries' investments in and advances to (from) subsidiaries. Net income of the Guarantor and Non-Guarantor Subsidiaries is reflected in Guarantor Subsidiaries and Parent Company as equity in consolidated subsidiaries. The elimination entries eliminate investments in Other Subsidiaries and intercompany balances and transactions for consolidated reporting purposes.

**Supplemental Condensed Consolidating Balance Sheet**
**As of July 31, 2005**
**(in thousands)**

| | Parent Company | 100% Owned Guarantor Subsidiaries | Larkspur | Other Subsidiaries | Eliminating Entries | Consolidated |
|---|---|---|---|---|---|---|
| Current assets: | | | | | | |
| Cash and cash equivalents | $ -- | $ 92,879 | $ 105 | $ 43,596 | $ -- | $ 136,580 |
| Restricted cash | -- | 7,390 | -- | 10,863 | -- | 18,253 |
| Trade receivables, net | -- | 27,867 | 103 | 5,166 | -- | 33,136 |
| Income taxes receivable | -- | -- | -- | -- | -- | -- |
| Inventories, net | -- | 8,491 | 157 | 27,430 | -- | 36,078 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Other current assets | 11,418 | 15,109 | 40 | 5,535 | -- | 32,102 |
| Assets held for sale | -- | 26,735 | -- | -- | -- | 26,735 |
| Total current assets | 11,418 | 178,471 | 405 | 92,590 | -- | 282,884 |
| Property, plant and equipment, net | -- | 776,425 | 530 | 66,092 | -- | 843,047 |
| Real estate held for sale and investment | -- | 106,777 | -- | 48,097 | -- | 154,874 |
| Deferred charges and other assets | 6,067 | 16,320 | -- | 10,248 | -- | 32,635 |
| Goodwill, net | -- | 118,475 | -- | 17,032 | -- | 135,507 |
| Other intangibles, net | -- | 60,482 | -- | 16,492 | -- | 76,974 |
| Investments in subsidiaries and advances to (from) parent | 942,888 | (424,752) | (202) | (58,036) | (459,898) | -- |
| Total assets | $ 960,373 | $ 832,198 | $ 733 | $ 192,515 | $ (459,898) | $ 1,525,921 |
| Current liabilities: | | | | | | |
| Accounts payable and accrued expenses | $ 16,600 | $ 161,452 | $ 273 | $ 31,044 | $ -- | $ 209,369 |
| Income taxes payable | 12,979 | -- | -- | -- | -- | 12,979 |
| Long-term debt due within one year | -- | 467 | -- | 1,537 | -- | 2,004 |
| Total current liabilities | 29,579 | 161,919 | 273 | 32,581 | -- | 224,352 |
| Long-term debt | 390,000 | 61,789 | -- | 67,917 | -- | 519,706 |
| Other long-term liabilities | 267 | 102,226 | -- | 37,928 | -- | 140,421 |
| Deferred income taxes | -- | 70,819 | -- | 390 | -- | 71,209 |
| Put option liabilities | -- | 34 | -- | -- | -- | 34 |
| Minority interest in net assets of consolidated subsidiaries | -- | -- | 100 | 29,570 | -- | 29,670 |
| Total stockholders' equity | 540,527 | 435,411 | 360 | 24,129 | (459,898) | 540,529 |
| Total liabilities and stockholders' equity | $ 960,373 | $ 832,198 | $ 733 | $ 192,515 | $ (459,898) | $ 1,525,921 |

**Supplemental Condensed Consolidating Balance Sheet**
**As of July 31, 2004**
**(in thousands)**

| | Parent Company | 100% Owned Guarantor Subsidiaries | Larkspur | Other Subsidiaries | Eliminating Entries | Consolidated |
|---|---|---|---|---|---|---|
| Current assets: | | | | | | |
| Cash and cash equivalents | $ -- | $ 41,075 | $ 171 | $ 5,082 | $ -- | $ 46,328 |
| Restricted cash | | 16,031 | | | -- | 16,031 |
| Receivables, net | -- | 25,486 | 167 | 6,262 | -- | 31,915 |
| Income taxes receivable | 5,042 | -- | -- | -- | -- | 5,042 |
| Inventories, net | -- | 8,494 | 155 | 22,502 | -- | 31,151 |
| Other current assets | 12,082 | 11,765 | 35 | 1,388 | -- | 25,270 |
| Total current assets | 17,124 | 102,851 | 528 | 35,234 | -- | 155,737 |
| Property, plant and equipment, net | -- | 901,822 | 583 | 66,367 | -- | 968,772 |
| Real estate held for sale and investment | -- | 129,030 | -- | 5,518 | -- | 134,548 |
| Deferred charges and other assets | 6,773 | 27,194 | -- | 10,640 | -- | 44,607 |
| Goodwill, net | -- | 128,342 | -- | 16,748 | -- | 145,090 |
| Other intangibles, net | -- | 67,671 | -- | 17,532 | -- | 85,203 |
| Investments in subsidiaries and advances to (from) parent | 875,877 | (414,455) | (359) | (1,165) | (459,898) | -- |
| Total assets | $ 899,774 | $ 942,455 | $ 752 | $ 150,874 | $ (459,898) | $ 1,533,957 |
| Current liabilities: | | | | | | |
| Accounts payable and accrued expenses | $ 18,298 | $ 154,083 | $ 322 | $ 26,165 | $ -- | $ 198,868 |
| Long-term debt due within one year | -- | 1,548 | -- | 1,611 | -- | 3,159 |
| Total current liabilities | 18,298 | 155,631 | 322 | 27,776 | -- | 202,027 |
| Long-term debt | 390,000 | 160,180 | -- | 72,464 | -- | 622,644 |
| Other long-term liabilities | 313 | 96,982 | -- | 321 | -- | 97,616 |
| Deferred income taxes | -- | 79,156 | -- | 589 | -- | 79,745 |
| Put option liabilities | -- | 3,657 | -- | -- | -- | 3,657 |
| Minority interest in net assets of consolidated subsidiaries | -- | 7,882 | 100 | 29,123 | -- | 37,105 |
| Total stockholders' equity | 491,163 | 438,967 | 330 | 20,601 | (459,898) | 491,163 |
| Total liabilities and stockholders' equity | $ 899,774 | $ 942,455 | $ 752 | $ 150,874 | $ (459,898) | $ 1,533,957 |

**Supplemental Condensed Consolidating Statement of Operations**

**For the year ended July 31, 2005**
**(in thousands)**

| | Parent Company | 100% Owned Guarantor Subsidiaries | Larkspur | Other Subsidiaries | Eliminating Entries | Consolidated |
|---|---|---|---|---|---|---|
| Total revenue | $ 48 | $ 675,176 | $ 3,291 | $ 140,288 | $ (8,816) | $ 809,987 |
| Total operating expense | 15,515 | 581,632 | 3,415 | 129,912 | (8,816) | 721,658 |
| (Loss) income from operations | (15,467) | 93,544 | (124) | 10,376 | -- | 88,329 |
| Other income (expense) | (27,706) | (15,274) | (21) | (3,146) | -- | (46,147) |
| Equity investment income (loss), net | -- | (478) | -- | -- | -- | (478) |
| Gain on put options, net | -- | 1,158 | -- | -- | -- | 1,158 |
| Minority interest in income of consolidated subsidiaries, net | -- | 476 | -- | (5,715) | -- | (5,239) |
| Income (loss) before income taxes | (43,173) | 79,426 | (145) | 1,515 | -- | 37,623 |
| Benefit (provision) for income taxes | 16,622 | (31,291) | -- | 184 | -- | (14,485) |
| Net income (loss) before equity in income of consolidated subsidiaries | (26,551) | 48,135 | (145) | 1,699 | -- | 23,138 |
| Equity in income (loss) of consolidated subsidiaries | 49,689 | -- | -- | -- | (49,689) | -- |
| Net income (loss) | $ 23,138 | $ 48,135 | $ (145) | $ 1,699 | $ (49,689) | $ 23,138 |

**Supplemental Condensed Consolidating Statement of Operations**
**For the year ended July 31, 2004**
**(in thousands)**

| | Parent Company | 100% Owned Guarantor Subsidiaries | Larkspur | Other Subsidiaries | Eliminating Entries | Consolidated |
|---|---|---|---|---|---|---|
| Total net revenue | $ 50 | $ 551,759 | $ 2,859 | $ 159,935 | $ 12,040 | $ 726,643 |
| Total operating expense | 11,158 | 484,784 | 3,107 | 133,743 | 12,040 | 644,832 |
| (Loss) income from operations | (11,108) | 66,975 | (248) | 26,192 | -- | 81,811 |
| Other income (expense) | (67,759) | (12,780) | (19) | (2,298) | -- | (82,856) |
| Equity investment income (loss), net | -- | (1,596) | -- | -- | -- | (1,596) |
| Loss on put options, net | -- | (1,875) | -- | -- | -- | (1,875) |
| Minority interest in income of consolidated subsidiaries, net | -- | 939 | -- | (4,939) | -- | (4,000) |
| Income (loss) before income taxes | (78,867) | 51,663 | (267) | 18,955 | -- | (8,516) |
| Benefit (provision) for income taxes | 23,660 | (15,937) | -- | (5,166) | -- | 2,557 |
| Net income (loss) before equity in income of consolidated subsidiaries | (55,207) | 35,726 | (267) | 13,789 | -- | (5,959) |
| Equity in income (loss) of consolidated subsidiaries | 49,248 | 10,085 | -- | -- | (59,333) | -- |
| Net income (loss) | $ (5,959) | $ 45,811 | $ (267) | $ 13,789 | $ (59,333) | $ (5,959) |

**Supplemental Condensed Consolidating Statement of Operations**
**For the year ended July 31, 2003**
**(in thousands)**

| | Parent | 100% Owned Guarantor | Other | Eliminating |
|---|---|---|---|---|

| | Company | Subsidiaries | Larkspur | Subsidiaries | Entries | Consolidated |
|---|---|---|---|---|---|---|
| Total net revenue | $ -- | $ 510,967 | $ 2,576 | $ 173,984 | $ 25,445 | $ 712,972 |
| Total operating expense | 17,178 | 479,433 | 3,049 | 153,380 | 25,445 | 678,485 |
| Income (loss) from operations | (17,178) | 31,534 | (473) | 20,604 | -- | 34,487 |
| Other income (expense) | (33,795) | (13,446) | (26) | (706) | -- | (47,973) |
| Equity investment income (loss), net | -- | (1,024) | -- | -- | -- | (1,024) |
| Gain on put options, net | -- | 1,569 | -- | -- | -- | 1,569 |
| Minority interest in income of consolidated subsidiaries, net | -- | 1,660 | -- | (2,724) | -- | (1,064) |
| Income (loss) before income taxes | (50,973) | 20,293 | (499) | 17,174 | -- | (14,005) |
| Benefit (provision) for income taxes | 19,370 | (9,200) | -- | (4,692) | -- | 5,478 |
| Net income (loss) before equity in income of consolidated subsidiaries | (31,603) | 11,093 | (499) | 12,482 | -- | (8,527) |
| Equity in income of consolidated subsidiaries | 23,076 | 8,706 | -- | -- | (31,782) | -- |
| Net (loss) income | $ (8,527) | $ 19,799 | $ (499) | $ 12,482 | $ (31,782) | $ (8,527) |

**Supplemental Condensed Consolidating Statement of Cash Flows**
**For the year ended July 31, 2005**
**(in thousands of dollars)**

| | Parent Company | 100% Owned Guarantor Subsidiaries | Larkspur | Other Subsidiaries | Consolidated |
|---|---|---|---|---|---|
| Cash flows from operating activities | $ (4,690) | $ 177,513 | $ (53) | $ 47,571 | $ 220,341 |
| Cash flows from investing activities | | | | | |
| Capital expenditures | -- | (71,532) | (30) | (8,413) | (79,975) |
| Investments in real estate | -- | (29,585) | -- | (42,579) | (72,164) |
| Cash received from sale of businesses | -- | 108,399 | -- | -- | 108,399 |
| Other investing activities, net | -- | (1,511) | -- | 370 | (1,141) |
| Net cash provided by (used in) investing activities | -- | 5,771 | (30) | (50,622) | (44,881) |
| Cash flows from financing activities: | | | | | |
| Proceeds from exercise of stock options | 21,939 | -- | -- | -- | 21,939 |
| Payments on long-term debt | -- | (98,945) | -- | (4,621) | (103,566) |
| Advances to (from) affiliates | (17,249) | (30,562) | 18 | 47,793 | -- |
| Other financing activities, net | -- | (1,973) | -- | (1,608) | (3,581) |
| Net cash provided by financing activities | 4,690 | (131,480) | 18 | 41,564 | (85,208) |
| Net increase (decrease) in cash and cash equivalents | -- | 51,804 | (65) | 38,513 | 90,252 |
| Cash and cash equivalents: | | | | | |
| Beginning of period | -- | 41,075 | 171 | 5,082 | 46,328 |
| End of period | $ -- | $ 92,879 | $ 106 | $ 43,595 | $ 136,580 |

**Supplemental Condensed Consolidating Statement of Cash Flows**
**For the year ended July 31, 2004**
**(in thousands)**

| | Parent Company | 100% Owned Guarantor Subsidiaries | Larkspur | Other Subsidiaries | Consolidated |
|---|---|---|---|---|---|
| Cash flows from operating activities | $ 27,665 | $ 118,377 | $ (140) | $ 35,035 | $ 180,937 |
| Cash flows from investing activities: | | | | | |
| Capital expenditures | -- | (55,316) | (28) | (7,616) | (62,960) |
| Investments in real estate | -- | (33,778) | -- | 5,976 | (27,802) |
| Other investing activities | -- | 7,397 | -- | -- | 7,397 |
| Net cash used in investing activities | -- | (81,697) | (28) | (1,640) | (83,365) |
| Cash flows from financing activities: | | | | | |
| Net proceeds (payments) on long-term debt | 30,000 | (54,268) | -- | (7,713) | (31,981) |
| Payment of tender premium | (23,825) | -- | -- | -- | (23,825) |
| Advances to (from) affiliates | (27,574) | 53,147 | 222 | (25,795) | -- |
| Other financing activities | (6,266) | 997 | -- | (2,471) | (7,740) |
| Net cash (used in) provided by financing activities | (27,665) | (124) | 222 | (35,979) | (63,546) |
| Net increase (decrease) in cash and cash equivalents | -- | 36,556 | 54 | (2,584) | 34,026 |
| Net increase in cash due to adoption of FIN 46R | -- | -- | -- | 4,428 | 4,428 |
| Cash and cash equivalents: | | | | | |
| Beginning of period | -- | 5,898 | 117 | 1,859 | 7,874 |
| End of period | $ -- | $ 42,454 | $ 171 | $ 3,703 | $ 46,328 |

**Supplemental Condensed Consolidating Statement of Cash Flows**
**For the year ended July 31, 2003**
**(in thousands)**

| | Parent Company | 100% Owned Guarantor Subsidiaries | Larkspur | Other Subsidiaries | Consolidated |
|---|---|---|---|---|---|
| Cash flows from operating activities | $ (16,152) | $ 154,669 | $ 70 | $ 15,983 | $ 154,570 |
| Cash flows from investing activities: | | | | | |
| Capital expenditures | -- | (95,080) | (20) | (11,238) | (106,338) |
| Investments in real estate | -- | (43,659) | -- | 21,087 | (22,572) |
| Other investing activities | -- | 10,606 | -- | (12,419) | (1,813) |
| Net cash used in investing activities | -- | (128,133) | (20) | (2,570) | (130,723) |
| Cash flows from financing activities: | | | | | |
| Net proceeds (payments) on long-term debt | -- | (33,011) | -- | 8,210 | (24,801) |
| Advances to (from) affiliates | 17,222 | 3,598 | 16 | (20,836) | -- |
| Other financing activities | (1,070) | (1,605) | -- | (1,607) | (4,282) |
| Net cash provided by (used in) financing activities | 16,152 | (31,018) | 16 | (14,233) | (29,083) |
| Net (decrease) increase in cash and cash equivalents | -- | (4,482) | 66 | (820) | (5,236) |
| Cash and cash equivalents: | | | | | |
| Beginning of period | -- | 10,380 | 51 | 2,679 | 13,110 |
| End of period | $ -- | $ 5,898 | $ 117 | $ 1,859 | $ 7,874 |

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.**

None.

## ITEM 9A. CONTROLS AND PROCEDURES.

### Disclosure Controls and Procedures

Management of the Company, including the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), have evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by this report on Form

10-K. The term "disclosure controls and procedures" means controls and other procedures established by the Company that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Act is accumulated and communicated to the Company's management, including its CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure.

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

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

**Management's Annual Report on Internal Control Over Financial Reporting**

The report of management required under this ITEM 9A is contained in ITEM 8 of this Form 10-K under the caption "Management's Report on Internal Control over Financial Reporting".

**Attestation Report of Registered Public Accounting Firm**

**The attestation report required under this ITEM 9A is contained in ITEM 8 of this Form 10-K under the caption "Report of Independent Registered Public Accounting Firm".**

**Changes in Internal Control Over Financial Reporting**

There were no changes in the Company's internal control over financial reporting during the quarter ended July 31, 2005 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION.**

None.

**PART III**

**ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT.**

*Code of Ethics.* The Company has adopted a code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. The code of ethics is posted in the corporate governance section of the Company's website at www.vailresorts.com. The Company will post any waiver to the code of ethics granted to any of its officers on its website.

The additional information required by this item is incorporated herein by reference from the Company's proxy statement for the fiscal 2005 annual meeting of shareholders.

**ITEM 11. EXECUTIVE COMPENSATION.**

The information required by this item is incorporated herein by reference from the Company's proxy statement for the fiscal 2005 annual meeting of shareholders.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS.**

The information required by this item is incorporated herein by reference from the Company's proxy statement for the fiscal 2005 annual meeting of shareholders.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.**

The information required by this item is incorporated herein by reference from the Company's proxy statement for the fiscal 2005 annual meeting of shareholders.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES.

The information required by this item is incorporated herein by reference from the Company's proxy statement for the fiscal 2005 annual meeting of shareholders.

**PART IV**

## ITEM 15. EXHIBITS, FINANCIAL STATEMENTS SCHEDULES.

a) Index to Financial Statements and Financial Statement Schedules.

(1) See "Item 8. Financial Statements and Supplementary Data" for the index to the Financial Statements.

(2) All other schedules have been omitted because the required information is not applicable or because the information required has been included in the financial statements or notes thereto.

(3) Index to Exhibits

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

| Exhibit Number | Description | Sequentially Numbered Page |
|---|---|---|
| 3.1 | Amended and Restated Certificate of Incorporation of Vail Resorts, Inc. dated January 5, 2005. (Incorporated by reference to Exhibit 3.1 on Form 10-Q of Vail Resorts, Inc. dated as of January 31, 2005.) | |
| 3.2 | Amended and Restated By-Laws. (Incorporated by reference to Exhibit 3.1 on Form 8-K of Vail Resorts, Inc. filed September 30, 2004.) | |
| 4.1(a) | Purchase Agreement, dated as of January 15, 2004 among Vail Resorts, Inc., the guarantors named on Schedule I thereto, Banc of America Securities LLC, Deutsche Banc Securities, Inc., Bear, Stearns & Co. Inc., Lehman Brothers Inc., Piper Jaffray & Co. and Wells Fargo Securities LLC. (Incorporated by reference to Exhibit 4.2(c) on Form 10-Q of Vail Resorts, Inc. dated as of January 31, 2004.) | |
| 4.1(b) | Supplemental Purchase Agreement, dated as of January 22, 2004 among Vail Resorts, Inc., the guarantors named thereto, Banc of America Securities LLC, Deutsche Banc Securities, Inc., Bear, Stearns & Co. Inc., Lehman Brothers Inc., Piper Jaffray & Co. and Wells Fargo Securities LLC. (Incorporated by reference to Exhibit 4.2(d) on Form 10-Q of Vail Resorts, Inc. dated as of January 31, 2004.) | |
| 4.2(a) | Indenture, dated as of January 29, 2004, among Vail Resorts, Inc., the guarantors therein and the Bank of New York as Trustee. (Incorporated by reference to Exhibit 4.1 on Form 8-K of Vail Resorts, Inc. dated as of February 2, 2004.) | |
| 4.3(b) | Form of Global Note (Included in Exhibit 4.2(c) by reference to Exhibit 4.1 on Form 8-K of Vail Resorts, Inc. dated as of February 2, 2004.) | |
| 4.4 | Registration Rights Agreement dated as of January 29, 2004 among Vail Resorts, Inc., the guarantors signatory thereto, Banc of America Securities LLC, Deutsche Banc Securities, Inc., Bear, Stearns & Co. Inc., Lehman Brothers Inc., Piper Jaffray & Co. and Wells Fargo Securities LLC. (Incorporated by reference to Exhibit 4.5(c) on Form 10-Q of Vail Resorts, Inc. dated as of January 31, 2004.) | |
| 10.1 | Management Agreement by and between Beaver Creek Resort Company of Colorado and Vail Associates, Inc. (Incorporated by reference to Exhibit 10.1 of the Registration Statement on Form S-4 of Gillett Holdings, Inc. (Registration No. 33-52854) including all amendments thereto.) | |
| 10.2 | Forest Service Unified Permit for Heavenly ski area. (Incorporated by reference to Exhibit 99.13 of the report on Form 10-Q of Vail Resorts, Inc. for the quarter ended April 30, 2002.) | |
| 10.3(a) | Forest Service Unified Permit for Keystone ski area. (Incorporated by reference to Exhibit 99.2(a) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002.) | |
| 10.3(b) | Amendment No. 2 to Forest Service Unified Permit for Keystone ski area. (Incorporated by reference to Exhibit 99.2(b) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002.) | |
| 10.3(c) | Amendment No. 3 to Forest Service Unified Permit for Keystone ski area. | 49 |
| 10.3(d) | Amendment No. 4 to Forest Service Unified Permit for Keystone ski area. | 50 |
| 10.3(e) | Amendment No. 5 to Forest Service Unified Permit for Keystone ski area. | 53 |
| 10.4(a) | Forest Service Unified Permit for Breckenridge ski area. (Incorporated by reference to Exhibit 99.3(a) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002.) | |
| 10.4(b) | Amendment No. 1 to Forest Service Unified Permit for Breckenridge ski area. (Incorporated by reference to Exhibit 99.3(b) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002.) | |
| 10.4(c) | Amendment No. 2 to Forest Service Unified Permit for Breckenridge ski area. | 54 |
| 10.4(d) | Amendment No. 3 to Forest Service Unified Permit for Breckenridge ski area. | 55 |
| 10.4(e) | Amendment No. 4 to Forest Service Unified Permit for Breckenridge ski area. | 58 |
| 10.5(a) | Forest Service Unified Permit for Beaver Creek ski area. (Incorporated by reference to Exhibit 99.4(a) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002.) | |
| 10.5(b) | Exhibits to Forest Service Unified Permit for Beaver Creek ski area. (Incorporated by reference to Exhibit 99.4(b) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002.) | |

| | | |
|---|---|---|
| 10.5(c) | Amendment No. 1 to Forest Service Unified Permit for Beaver Creek ski area. | 59 |
| 10.5(d) | Amendment No. 2 to Forest Service Unified Permit for Beaver Creek ski area. | 60 |
| 10.5(e) | Amendment to Forest Service Unified Permit for Beaver Creek ski area. | 63 |
| 10.6(a) | Forest Service Unified Permit for Vail ski area. (Incorporated by reference to Exhibit 99.5(a) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002.) | |
| 10.6(b) | Exhibits to Forest Service Unified Permit for Vail ski area. (Incorporated by reference to Exhibit 99.5(b) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002.) | |
| 10.6(c) | Amendment No. 2 to Forest Service Unified Permit for Vail ski area. (Incorporated by reference to Exhibit 99.5(c) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002.) | |
| 10.6(d) | Amendment No. 3 to Forest Service Unified Permit for Vail ski area. | 64 |
| 10.6(e) | Amendment No. 4 to Forest Service Unified Permit for Vail ski area. | 65 |
| 10.7 | 1993 Stock Option Plan of Gillett Holdings, Inc. (Incorporated by reference to Exhibit 10.20 of the report on Form 10-K of Gillett Holdings, Inc. for the period from October 9, 1992 through September 30, 1993.) | |
| 10.8(a)* | Employment Agreement dated October 30, 2001 by and between RockResorts International, LLC and Edward Mace. (Incorporated by reference to Exhibit 10.21 of the report on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2002.) | |
| 10.8(b)* | Addendum to the Employment Agreement dated October 30, 2001 by and between RockResorts International, LLC and Edward Mace. (Incorporated by reference to Exhibit 10.21 of the report on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2002.) | |
| 10.9(a)* | Employment Agreement dated July 29, 1996 between Vail Resorts, Inc. and Adam M. Aron. (Incorporated by reference to Exhibit 10.21 of the report on Form S-2/A of Vail Resorts, Inc. (Registration # 333-5341) including all amendments thereto.) | |
| 10.9(b)* | Amendment to the Employment Agreement dated May 1, 2001 between Vail Resorts, Inc. and Adam M. Aron. (Incorporated by reference to Exhibit 10.14(b) of the report on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2001.) | |
| 10.9(c)* | Second Amendment to Employment Agreement of Adam M. Aron, as Chairman of the Board and Chief Executive Officer of Vail Resorts, Inc. dated July 29, 2003. (Incorporated by reference to Exhibit 10.14(c) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2003.) | |
| 10.10* | Amended and Restated Employment Agreement of Jeffrey W. Jones, as Chief Financial Officer of Vail Resorts, Inc. dated September 29, 2004. (Incorporated by reference to Exhibit 10.9 of Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2004.) | |
| 10.11(a)* | Employment Agreement of William A. Jensen as Senior Vice President and Chief Operating Officer - Breckenridge Ski Resort dated May 1, 1997. (Incorporated by reference to Exhibit 10.9(a) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2004.) | |
| 10.11(b)* | First Amendment to the Employment Agreement of William A. Jensen as Senior Vice President and Chief Operating Officer - Vail Ski Resort dated August 1, 1999. (Incorporated by reference to Exhibit 10.9(b) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2004.) | |
| 10.11(c)* | Second Amendment to the Employment Agreement of William A. Jensen as Senior Vice President and Chief Operating Officer - Vail Ski Resort dated July 22, 1999. (Incorporated by reference to Exhibit 10.9(c) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2004.) | |
| 10.12* | Employment Agreement and Addendum of Roger McCarthy as Senior Vice President and Chief Operating Officer - Breckenridge Ski Resort dated July 17, 2000. (Incorporated by reference to Exhibit 10.10 on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2004.) | |
| 10.13* | 1996 Stock Option Plan (Incorporated by reference from the Company's Registration Statement on Form S-3, File No. 333-5341). | |
| 10.14* | 2002 Long Term Incentive and Share Award Plan. (Incorporated by reference to Exhibit 10.17 on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002.) | |
| 10.15(a) | Sports and Housing Facilities Financing Agreement between the Vail Corporation (d/b/a "Vail Associates, Inc.") and Eagle County, Colorado, dated April 1, 1998. (Incorporated by reference to Exhibit 10 of the report on Form 10-Q of Vail Resorts, Inc. for the quarter ended April 30, 1998.) | |
| 10.15(b) | Trust Indenture dated as of April 1, 1998 securing Sports and Housing Facilities Revenue Refunding Bonds by and between Eagle County, Colorado and U.S. Bank, N.A., as Trustee. (Incorporated by reference to Exhibit 10.1 of the report on Form 10-Q of Vail Resorts, Inc. for the quarter ended April 30, 1998.) | |
| 10.16(a) | Fourth Amended and Restated Credit Agreement dated as of January 28, 2005 among The Vail Corporation (d/b/a Vail Associates, Inc.), as borrower, Bank of America, N.A., as Administrative Agent, U.S. Bank National Association and Wells Fargo Bank, National Association as Co-Syndication Agents, Deutsche Bank Trust Company Americas and LaSalle Bank National Association as Co-Documentation Agents and the Lenders party thereto. (Incorporated by reference to Exhibit 10.1 on Form 8-K of Vail Resorts, Inc. dated January 28, 2004.) | |

| | | |
|---|---|---|
| 10.16(b) | First Amendment to Fourth Amended and Restated Credit Agreement dated as of June 29, 2005 among The Vail Corporation (d/b/a Vail Associates, Inc.), as borrower and Bank of America, N.A., as Administrative Agent. | 68 |
| 10.17* | Vail Resorts, Inc. 1999 Long Term Incentive and Share Award Plan. (Incorporated by reference to the Company's registration statement on Form S-8, File No. 333-32320.) | |
| 10.18* | Vail Resorts Deferred Compensation Plan effective as of October 1, 2000. (Incorporated by reference to Exhibit 10.23 of the report on Form 10-K of Vail Resorts, Inc. for the fiscal year ended July 31, 2000). | |
| 10.19 | Conversion and Registration Rights Agreement between Vail Resorts, Inc. and Apollo Ski Partners, L.P. dated as of September 30, 2004. (Incorporated by reference to Exhibit 10.1 on Form 8-K of Vail Resorts, Inc. dated as of September 30, 2004.) | |
| 10.20(a) | Purchase and Sale Agreement by and between VAHMC, Inc. and DiamondRock Hospitality Limited Partnership, dated May 3, 2005. (Incorporated by reference to Exhibit 10.18(a) of the Company's Quarterly Report on Form 10-Q for the period ending April 30, 2005.) | |
| 10.20(b) | First Amendment to Purchase and Sale Agreement by and between VAHMC, Inc. and DiamondRock Hospitality Limited Partnership, dated May 10, 2005. (Incorporated by reference to Exhibit 10.18(b) of the Company's Quarterly Report on Form 10-Q for the period ending April 30, 2005.) | |
| 10.21 | Purchase and Sale Agreement by and between VA Rancho Mirage Resort L.P., Rancho Mirage Concessions, Inc. and GENLB-Rancho, LLC, dated July 1, 2005. | 78 |
| 10.22(a) | Construction Loan Agreement by and between Gore Creek Place, LLC and U.S. Bank National Association dated July 19, 2005. | 124 |
| 10.22(b) | Completion Guaranty Agreement by and between The Vail Corporation and U.S. Bank National Association dated July 19, 2005. | 264 |
| 10.23 | Amended and Restated Revolving Credit and Security Agreement between SSI Venture, LLC and U.S. Bank National Association dated September 23, 2005 (Incorporated by reference to Exhibit 10.1 on Form 8-K of Vail Resorts, Inc. dated September 29, 2005.) | |
| 10.24(a)* | Employment Agreement of Martha D. Rehm as Senior Vice President and General Counsel of Vail Resorts, Inc. dated May 10, 1999. | 273 |
| 10.24(b)* | First Amendment to Employment Agreement of Martha D. Rehm as Senior Vice President and General Counsel of Vail Resorts, Inc. dated April 8, 2004. | 285 |
| 21 | Subsidiaries of Vail Resorts, Inc. | 286 |
| 22 | Consent of Independent Registered Public Accounting Firm. | 289 |
| 23 | Power of Attorney. Included on signature pages hereto. | |
| 31 | Certifications of Adam M. Aron and Jeffrey W. Jones Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. | 290 |
| 32 | Certifications of Adam M. Aron and Jeffrey W. Jones Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. | 292 |
| 99.1 | Termination Agreement, dated as of October 5, 2004, by and among Vail Resorts, Inc., Ralcorp Holdings, Inc. and Apollo Ski Partners, L.P. (Incorporated by reference to Exhibit 99.6 on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2004.) | |
| 99.2 | Purchase and Sale Agreement between VR Holdings, Inc. as Seller and GHR, LLC as Purchaser dated December 8, 2004. (Incorporated by reference to Exhibit 99.2 on Form 8-K of Vail Resorts, Inc. dated December 8, 2004). | |

*Management contracts and compensatory plans and arrangements.

b) Exhibits

The exhibits filed herewith as indicated in the exhibit listed above following the Signatures section of this report.

c) Financial Statement Schedules

**Consolidated Financial Statement Schedule**

**Schedule II - Valuation and Qualifying Accounts and Reserves**

**(in thousands)**

**For the Fiscal Years Ended July 31**

| | Balance at beginning of period | Charged to costs and expenses | Deductions | Balance at end of period |
|---|---|---|---|---|
| Fiscal 2003 | | | | |
| Inventory Reserves | $1,242 | $1,662 | $ (1,627) | $1,277 |
| Valuation Allowance on Income Taxes | 464 | 29 | -- | 493 |

| | | | | |
|---|---|---|---|---|
| Trade Receivable Allowances | 367 | 2,709 | (1,985) | 1,091 |
| Fiscal 2004 | | | | |
| Inventory Reserves | 1,277 | 1,510 | (2,049) | 738 |
| Valuation Allowance on Income Taxes | 493 | 193 | -- | 686 |
| Trade Receivable Allowances | 1,091 | 729 | (555) | 1,265 |
| Fiscal 2005 | | | | |
| Inventory Reserves | 738 | 1,754 | (1,773) | 719 |
| Valuation Allowance on Income Taxes | 686 | 919 | -- | 1,605 |
| Trade Receivable Allowances | $1,265 | $ 766 | $ (696) | $1,335 |

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Vail Resorts, Inc.

By: /s/ Jeffrey w. Jones
Jeffrey W. Jones
Senior Vice President,
Chief Financial Officer and
Chief Accounting Officer

Dated: October 5, 2005

**POWER OF ATTORNEY**

Each person whose signature appears below hereby constitutes and appoints Jeffrey W. Jones or Martha D. Rehm his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any or all amendments or supplements to this Form 10-K and to file the same with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing necessary or appropriate to be done with this Form 10-K and any amendments or supplements hereto, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities indicated on October 5, 2005.

| **Signature** | **Title** |
|---|---|
| /s/ Adam M. Aron<br>Adam M. Aron | Chairman of the Board and Chief Executive Officer<br>(Principal Executive Officer) |
| /s/ Jeffrey W. Jones<br>Jeffrey W. Jones | Senior Vice President and Chief Financial Officer<br>(Principal Financial and Accounting Officer) |
| /s/ John S. Hannan<br>John S. Hannan | Director |
| /s/ Roland A. Hernandez<br>Roland A. Hernandez | Director |
| /s/ Robert A. Katz<br>Robert A. Katz | Director |
| /s/ Joe R. Micheletto<br>Joe R. Micheletto | Director |
| /S/ John F. Sorte<br>John F. Sorte | Director |
| /s/ William P. Stiritz<br>William P. Stiritz | Director |

**Exhibit 10.3(c)**

Authorization ID: DIL528901 Page 1 of 1

Contact ID: KEYSTONE FS-2700-23 (4/97)

Use Code: 161 OMB No. 0596-0082

U.S. DEPARTMENT OF AGRICULTURE

Forest Service

AMENDMENT

FOR

SPECIAL USE AUTHORIZATION

AMENDMENT NUMBER: 3

This amendment is attached to and made a part of the special use authorization (indicated above) issued to RALSTON RESORTS, INC. on 12/31/1996 which is hereby amended as follows:

**This amendment removes the old map dated October 1, 1991, and replaces it with a new map covering 8,376 acres, prepared by Erik J. Martin on June 11, 2002.**

This Amendment is accepted subject to the conditions set forth herein, and to conditions ____N/A___ to ____N/A___ attached hereto and made a part of this Amendment.

---

Holder: Keystone Ski Area Authorized Officer _____//s//_____

Roger McCarthy

Holder: _____N/A_____ Title: Senior Vice President /COO

Date: _____May 9, 2003_____ Date: _____May 9, 2003_____

Authorized Officer: _____//s//_____ Title: _____For: Forest Supervisor_____

Authorization ID: DIL528901 Page 1 of 3

Contact ID: KEYSTONE FS-2700-23 (4/97)

Use Code: 161 OMB No. 0596-0082

U.S. DEPARTMENT OF AGRICULTURE

Forest Service

AMENDMENT

FOR

SPECIAL USE AUTHORIZATION

AMENDMENT NUMBER: 4

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This amendment is attached to and made a part of the special use authorization (identified above) issued to RALSTON RESORTS, INC. on 12/31/1996 which is hereby amended as follows:

Remove the following clauses:

111.F. Temporary Suspension

VIII.A. Termination for Higher Public Purpose

VIII.B. Termination, Revocation and Suspension

XI.F. Water Rights.

Revise the heading of Section VII.TERMINATION to read REVOCATION AND SUSPENSION. In Section VIII, add clauses A. Revocation and Suspension, B. Opportunity Take Corrective Action, C. Revocation or Reasons in the Public Interest, and D. Suspension below:

A. Revocation and Suspension. The Forest Service may suspend or revoke this permit in whole or part:

1. For noncompliance with Federal, State, or local laws and regulations;
2. For noncompliance with the terms of this permit;
3. For failure of the holder to exercise the privileges granted by this permit;
4. With the consent of the holder; or
5. At the discretion of the authorized officer for specific and compelling reasons in the public interest.

A. Opportunity to Take Corrective Action Prior to revocation or suspension under clause VIII.A, the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

B. Revocation for Reasons in the Public Interest. If, during the term of this permit or any extension thereof, the Secretary of Agriculture or any official of the Forest Service with delegated authority determines in planning for the uses of the National Forest System that the public interest requires revocation of this permit, this permit shall be revoked after one hundred-eighty (180) day's written notice to the holder. The United States shall then have the right to purchase the holder's improvements, to remove them, or to require the holder to remove them, and the United States shall be obligated to pay an equitable consideration for the improvements or for removal of the improvements and damages resulting from their removal. If the amount of consideration is fixed by mutual agreement between the United States and the holder, that amount shall be accepted by the holder in full satisfaction of all claims against the United States under this clause. If mutual agreement is not reached, the Forest Service shall determine the amount of consideration. If the holder is dissatisfied with the amount determined by the Forest Service, the holder may appeal the determination under the agency's administrative appeal regulations.

C. Suspension. The Authorized offer may immediately suspend this permit, in whole or in part, when necessary to protect public health, safety, or the environment. The suspension decision must be in writing. Within 48 hours of the request of the holder,

the superior of the authorized officer shall arrange for an on-the-ground review of the adverse conditions with the holder. Following this review the superior shall take prompt action to affirm, modify, or cancel the suspension.

Under section XI MISCELLANEOUS PROVISIONS, revise the heading for clause F Water Rights to read Water Use Facilities. Replace the existing clause with the clause below:

F. Water Use Facilities

1. Water Use Facilities. The National Forest System (NFS) land which is the subject of this permit is hereinafter referred to as the permitted NFS land. The authorization of facilities to divert, store, or convey water on the permitted National Forest System (NFS) land (water facilities) in conjunction with water rights acquired by the holder is for the purpose of operating a winter or year-round resort and related facilities under this permit. If use of the water or the water facilities ceases, the authorization to use the permitted NFS land for such water facilities will also cease. The United States reserves the right to place conditions on the installation, operation, maintenance and removal of these water facilities necessary to protect public property, public safety, and natural resources on the permitted NFS land in compliance with applicable laws, provided, however, such conditions shall not permit the imposition of bypass flows on water transported to the permitted NFS land from points of diversion or storage that arise off of the permitted NFS land.
2. Water Rights. This permit does not confer any water rights on the holder. Water rights must be acquired by the holder under state law.
3. Future Applications and Revocation. After June 2004, any right to divert water from the permitted NFS land where the use of such water is on the same permitted NFS land shall be applied for and held in the name of the United States and the holder (hereinafter called the joint water rights). This provision shall not apply to water rights that are acquired by the permit holder from a source off of the permitted NFS land and transferred to a point of diversion or storage on the permitted NFS land. During the term of the permit and any reissuance thereafter, the permit holder shall be responsible for maintaining such joint water rights, an shall have the right to make any applications or other filings as may be necessary to maintain and protect such joint water rights. In the event of revocation of this permit, the United States shall succeed to the sole ownership of such joint water rights. All joint water rights subject to this clause are listed below.

State ID# Owner Type or Basis Purpose of Use

(decree, license, certificate)

This Amendment is accepted subject to the conditions set forth herein, and to conditions N/A to N/A attached hereto and made part of this Amendment.

___//s// Martha D. Rehm_____ _____//s//_____

(Holder Signature) (Authorized Officer Signature)

____ _____ _____

(Holder Signature) DON G. CARROLL, Acting Forest Supervisor

Date:_____9/13/04_____ Date:___9/20/04_____

**Authorization ID: DIL528901** FS-2700-23 (4/97)

Contact ID: KEYSTONE
OMB 0596-0082

Use Code: 161

**U.S. DEPARTMENT OF AGRICULTURE**

**Forest Service**

**AMENDMENT**

**FOR**

**SPECIAL USE AUTHORIZATION**

**AMENDMENT NUMBER: 5**

This amendment is attached to and made a part of the special use authorization (identified above) issued to RALSTON RESORTS, INC on 12/31/1996 which is hereby amended as follows:

Change the holder name to **"Vail Summit Resorts, Inc. dba Keystone Resort, Inc."**

This Amendment is accepted subject to the conditions set forth herein, and to conditions __N/A__ to __N/A__ attached hereto and made a part of this Amendment.

(Holder Signature) (Authorized Officer Signature)

MARIBETH GUSTAFSON, Forest Supervisor

(Holder Signature) (Name and Title)

Date: Date:

user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

**Exhibit 10.4(c)**

Authorization ID: DIL528904 Page 1 of 1

Contact ID: BRECKENRIDGE FS-2700-23 (4/97)

Use Code: 161 OMB No. 0596-0082

U.S. DEPARTMENT OF AGRICULTURE

Forest Service

AMENDMENT

FOR

SPECIAL USE AUTHORIZATION

AMENDMENT NUMBER: 2

This amendment is attached to and made a part of the special use authorization (indicated above) issued to VAIL RESORTS, INC. which is hereby amended as follows:

**This amendment removes the old map dated October 5, 1995, and replaces it with a new map covering 5,553 acres, prepared by Erik J. Martin on June 11, 2002.**

This Amendment is accepted subject to the conditions set forth herein, and to conditions ____N/A___ to ____N/A___ attached hereto and made a part of this Amendment.

---

Holder:__//s//_____ Authorized Officer __//s//_Martha J. Ketelle

Holder: __VP Mtn Ops_____ Title: Forest Supervisor

Date: _____10/3/02____ _____ Date: _____6/2/03_____ _____

Authorized Officer: _____//s//_____ Title: _____For: Forest Supervisor_____

Authorization ID: DIL528904 Page 1 of 3

Contact ID: BRECKENRIDGE FS-2700-23 (4/97)

Use Code: 161 OMB No. 0596-0082

U.S. DEPARTMENT OF AGRICULTURE

Forest Service

AMENDMENT

FOR

SPECIAL USE AUTHORIZATION

AMENDMENT NUMBER: 3

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This amendment is attached to and made a part of the special use authorization (identified above) issued to RALSTON RESORTS, INC. on 12/31/1996 which is hereby amended as follows:

Remove the following clauses:

111.F. Temporary Suspension

VIII.A. Termination for Higher Public Purpose

VIII.B. Termination, Revocation and Suspension

XI.F. Water Rights.

Revise the heading of Section VII.TERMINATION to read REVOCATION AND SUSPENSION. In Section VIII, add clauses A. Revocation and Suspension, B. Opportunity Take Corrective Action, C. Revocation or Reasons in the Public Interest, and D. Suspension below:

A. Revocation and Suspension. The Forest Service may suspend or revoke this permit in whole or part:

1. For noncompliance with Federal, State, or local laws and regulations;
2. For noncompliance with the terms of this permit;
3. For failure of the holder to exercise the privileges granted by this permit;
4. With the consent of the holder; or
5. At the discretion of the authorized officer for specific and compelling reasons in the public interest.

A. Opportunity to Take Corrective Action Prior to revocation or suspension under clause VIII.A, the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

B. Revocation for Reasons in the Public Interest. If, during the term of this permit or any extension thereof, the Secretary of Agriculture or any official of the Forest Service with delegated authority determines in planning for the uses of the National Forest System that the public interest requires revocation of this permit, this permit shall be revoked after one hundred-eighty (180) day's written notice to the holder. The United States shall then have the right to purchase the holder's improvements, to remove them, or to require the holder to remove them, and the United States shall be obligated to pay an equitable consideration for the improvements or for removal of the improvements and damages resulting from their removal. If the amount of consideration is fixed by mutual agreement between the United States and the holder, that amount shall be accepted by the holder in full satisfaction of all claims against the United States under this clause. If mutual agreement is not reached, the Forest Service shall determine the amount of consideration. If the holder is dissatisfied with the amount determined by the Forest Service, the holder may appeal the determination under the agency's administrative appeal regulations.

C. Suspension. The Authorized offer may immediately suspend this permit, in whole or in part, when necessary to protect public health, safety, or the environment. The suspension decision must be in writing. Within 48 hours of the request of the holder,

the superior of the authorized officer shall arrange for an on-the-ground review of the adverse conditions with the holder. Following this review the superior shall take prompt action to affirm, modify, or cancel the suspension.

Under section XI MISCELLANEOUS PROVISIONS, revise the heading for clause F Water Rights to read Water Use Facilities. Replace the existing clause with the clause below:

F. Water Use Facilities

1. Water Use Facilities. The National Forest System (NFS) land which is the subject of this permit is hereinafter referred to as the permitted NFS land. The authorization of facilities to divert, store, or convey water on the permitted National Forest System (NFS) land (water facilities) in conjunction with water rights acquired by the holder is for the purpose of operating a winter or year-round resort and related facilities under this permit. If use of the water or the water facilities ceases, the authorization to use the permitted NFS land for such water facilities will also cease. The United States reserves the right to place conditions on the installation, operation, maintenance and removal of these water facilities necessary to protect public property, public safety, and natural resources on the permitted NFS land in compliance with applicable laws, provided, however, such conditions shall not permit the imposition of bypass flows on water transported to the permitted NFS land from points of diversion or storage that arise off of the permitted NFS land.
2. Water Rights. This permit does not confer any water rights on the holder. Water rights must be acquired by the holder under state law.
3. Future Applications and Revocation. After June 2004, any right to divert water from the permitted NFS land where the use of such water is on the same permitted NFS land shall be applied for and held in the name of the United States and the holder (hereinafter called the joint water rights). This provision shall not apply to water rights that are acquired by the permit holder from a source off of the permitted NFS land and transferred to a point of diversion or storage on the permitted NFS land. During the term of the permit and any reissuance thereafter, the permit holder shall be responsible for maintaining such joint water rights, an shall have the right to make any applications or other filings as may be necessary to maintain and protect such joint water rights. In the event of revocation of this permit, the United States shall succeed to the sole ownership of such joint water rights. All joint water rights subject to this clause are listed below.

State ID# Owner Type or Basis Purpose of Use

(decree, license, certificate)

This Amendment is accepted subject to the conditions set forth herein, and to conditions N/A to N/A attached hereto and made part of this Amendment.

___//s// Martha D. Rehm_____ _____//s//_____

(Holder Signature) (Authorized Officer Signature)

____ _____ _____

(Holder Signature) DON G. CARROLL, Acting Forest Supervisor

Date:_____9/13/04_____ Date:___9/20/04_____

**Exhibit 10.4(e)**

**Authorization ID: DIL528904** FS-2700-23 (4/97)

Contact ID: BRECKENRIDGE OMB 0596-0082

Use Code: 161

**U.S. DEPARTMENT OF AGRICULTURE**

**Forest Service**

**AMENDMENT**

**FOR**

**SPECIAL USE AUTHORIZATION**

**AMENDMENT NUMBER: 4**

This amendment is attached to and made a part of the special use authorization (identified above) issued to RALSTON RESORTS, INC on 12/31/1996 which is hereby amended as follows:

Change the holder name to **"Vail Summit Resorts, Inc. dba Breckenridge Ski Resort, Inc."**

This Amendment is accepted subject to the conditions set forth herein, and to conditions __N/A__ to __N/A__ attached hereto and made a part of this Amendment.

(Holder Signature) (Authorized Officer Signature)

MARIBETH GUSTAFSON, Forest Supervisor

(Holder Signature) (Name and Title)

Date: Date:

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archaeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service Public reporting burden for collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

**Exhibit 10.5(c)**

Authorization ID: HOL419101 Page 1 of 1

Contact ID: BEAVER_CREEK FS-2700-23 (4/97)

Use Code: 161 OMB No. 0596-0082

U.S. DEPARTMENT OF AGRICULTURE

Forest Service

AMENDMENT

FOR

SPECIAL USE AUTHORIZATION

AMENDMENT NUMBER: 1

This amendment is attached to and made a part of the special use authorization (indicated above) issued to BEAVER CREEK ASSOCIATES, INC. on 11/17/1999 which is hereby amended as follows:

**This amendment removes the old map dated April 17, 1997, and replaces it with a new map covering 3,801 acres, prepared by Erik J. Martin on June 11, 2002.**

This Amendment is accepted subject to the conditions set forth herein, and to conditions ____N/A___ to ____N/A___ attached hereto and made a part of this Amendment.

---

Holder: __//s// William A. Jensen___ Authorized Officer _//s// Martha J. Ketelle_

Holder: _____ Title: Forest Supervisor

Date: _____5/21/03_____ Date: _____5/23/03____

Authorization ID: HOL419101 Page 1 of 3

Contact ID: BEAVER_CREEK FS-2700-23 (4/97)

Use Code: 161 OMB No. 0596-0082

U.S. DEPARTMENT OF AGRICULTURE

Forest Service

AMENDMENT

FOR

SPECIAL USE AUTHORIZATION

AMENDMENT NUMBER: 3

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This amendment is attached to and made a part of the special use authorization (identified above) issued to BEAVER CREEK ASSOCIATES, INC. on 11/17/1999 which is hereby amended as follows:

Remove the following clauses:

111.F. Temporary Suspension

VIII.A. Termination for Higher Public Purpose

VIII.B. Termination, Revocation and Suspension

XI.F. Water Rights.

Revise the heading of Section VII.TERMINATION to read REVOCATION AND SUSPENSION. In Section VIII, add clauses A. Revocation and Suspension, B. Opportunity Take Corrective Action, C. Revocation or Reasons in the Public Interest, and D. Suspension below:

A. Revocation and Suspension. The Forest Service may suspend or revoke this permit in whole or part:

1. For noncompliance with Federal, State, or local laws and regulations;
2. For noncompliance with the terms of this permit;
3. For failure of the holder to exercise the privileges granted by this permit;
4. With the consent of the holder; or
5. At the discretion of the authorized officer for specific and compelling reasons in the public interest.

A. Opportunity to Take Corrective Action Prior to revocation or suspension under clause VIII.A, the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

B. Revocation for Reasons in the Public Interest. If, during the term of this permit or any extension thereof, the Secretary of Agriculture or any official of the Forest Service with delegated authority determines in planning for the uses of the National Forest System that the public interest requires revocation of this permit, this permit shall be revoked after one hundred-eighty (180) day's written notice to the holder. The United States shall then have the right to purchase the holder's improvements, to remove them, or to require the holder to remove them, and the United States shall be obligated to pay an equitable consideration for the improvements or for removal of the improvements and damages resulting from their removal. If the amount of consideration is fixed by mutual agreement between the United States and the holder, that amount shall be accepted by the holder in full satisfaction of all claims against the United States under this clause. If mutual agreement is not reached, the Forest Service shall determine the amount of consideration. If the holder is dissatisfied with the amount determined by the Forest Service, the holder may appeal the determination under the agency's administrative appeal regulations.

C. Suspension. The Authorized offer may immediately suspend this permit, in whole or in part, when necessary to protect public health, safety, or the environment. The suspension decision must be in writing. Within 48 hours of the request of the holder,

the superior of the authorized officer shall arrange for an on-the-ground review of the adverse conditions with the holder. Following this review the superior shall take prompt action to affirm, modify, or cancel the suspension.

Under section XI MISCELLANEOUS PROVISIONS, revise the heading for clause F Water Rights to read Water Use Facilities. Replace the existing clause with the clause below:

F. Water Use Facilities

1. Water Use Facilities. The National Forest System (NFS) land which is the subject of this permit is hereinafter referred to as the permitted NFS land. The authorization of facilities to divert, store, or convey water on the permitted National Forest System (NFS) land (water facilities) in conjunction with water rights acquired by the holder is for the purpose of operating a winter or year-round resort and related facilities under this permit. If use of the water or the water facilities ceases, the authorization to use the permitted NFS land for such water facilities will also cease. The United States reserves the right to place conditions on the installation, operation, maintenance and removal of these water facilities necessary to protect public property, public safety, and natural resources on the permitted NFS land in compliance with applicable laws, provided, however, such conditions shall not permit the imposition of bypass flows on water transported to the permitted NFS land from points of diversion or storage that arise off of the permitted NFS land.
2. Water Rights. This permit does not confer any water rights on the holder. Water rights must be acquired by the holder under state law.
3. Future Applications and Revocation. After June 2004, any right to divert water from the permitted NFS land where the use of such water is on the same permitted NFS land shall be applied for and held in the name of the United States and the holder (hereinafter called the joint water rights). This provision shall not apply to water rights that are acquired by the permit holder from a source off of the permitted NFS land and transferred to a point of diversion or storage on the permitted NFS land. During the term of the permit and any reissuance thereafter, the permit holder shall be responsible for maintaining such joint water rights, an shall have the right to make any applications or other filings as may be necessary to maintain and protect such joint water rights. In the event of revocation of this permit, the United States shall succeed to the sole ownership of such joint water rights. All joint water rights subject to this clause are listed below.

State ID# Owner Type or Basis Purpose of Use

(decree, license, certificate)

This Amendment is accepted subject to the conditions set forth herein, and to conditions N/A to N/A attached hereto and made part of this Amendment.

___//s// Martha D. Rehm_____ _____//s//_____

(Holder Signature) (Authorized Officer Signature)

____ _____ _____ _____

(Holder Signature) DON G. CARROLL, Acting Forest Supervisor

Date:_____9/13/04_____ Date:___9/20/04_____

**Exhibit 10.5(e)**

| United States Department of Agriculture<br>Forest Service<br>AMENDMENT<br>FOR<br>SPECIAL USE PERMIT<br>Ref: FSM 2714<br>THIS AMENDMENT IS ATTACHED TO AND MADE A<br>PART OF THE<br>___/X/ TERM_____/ / ANNUAL PERMIT | a. Record no.<br>____ | b. Region<br>02 | c. Forest<br>15 |
|---|---|---|---|
| | d. District<br>07 | e. User No. | f. Kind of Use<br>153 |
| | g. State<br>08 | h. County<br>037 | k. Card no.<br>1 |

Vail Associates, Inc. dba Vail & Beaver Creek Ski School of PO Box 7, Vail, CO 81658

(hereinafter called the Holder) is hereby authorized to use or occupy National Forest System lands, to use subject to the conditions set out below, on the White River National Forest, Holy Cross Ranger District.

This permit amendment authorizes use of the McCoy Park area on the Holy Cross Ranger District, as shown on the location map attached to and made a part of this permit and is issued for the purpose of: Operating a Nordic Ski Area, which includes approximately 30 km of set-track nordic trails, snowshoe trails, warming facility at McCoy Patrol, warming tent and public biathlon course.

| | | | |
|---|---|---|---|
| PERMITTEE | Name of Permittee<br>CHRIS RYMAN | Signature of Authorized Officer<br>Title: Exec. Vice President | Date |
| ISSUING OFFICER | Name and Signature<br>WILLIAM A. WOOP | Title: District Ranger | |

Authorization ID: HOL405601 Page 1 of 1

Contact ID: VAIL_ASSOCIATES FS-2700-23 (4/97)

Use Code: 161 OMB No. 0596-0082

U.S. DEPARTMENT OF AGRICULTURE

Forest Service

AMENDMENT

FOR

SPECIAL USE AUTHORIZATION

AMENDMENT NUMBER: 3

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This amendment is attached to and made a part of the special use authorization (indicated above) issued to VAIL CORPORATION on 11/23/1993 which is hereby amended as follows:

**This amendment removes the old map dated October 1, 1991, and replaces it with a new map covering 12,226 acres, prepared by Erik J. Martin on June 11, 2002.**

This Amendment is accepted subject to the conditions set forth herein, and to conditions ____N/A___ to ____N/A___ attached hereto and made a part of this Amendment.

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Authorized Officer: _/s/ Martha Ketelle_____ Holder: __/s/ William A. Jensen_____

Title: Forest Supervisor Title: SVP & COO - Vail

Date: 5-23-03 Date: 5-21-03

Authorization ID: HOL405601 Page 1 of 3

Contact ID: VAIL_ASSOCIATES FS-2700-23 (4/97)

Use Code: 161 OMB No. 0596-0082

U.S. DEPARTMENT OF AGRICULTURE

Forest Service

AMENDMENT

FOR

SPECIAL USE AUTHORIZATION

AMENDMENT NUMBER: 4

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-

This amendment is attached to and made a part of the special use authorization (identified above) issued to THE VAIL CORPORATION on 11/23/1993 which is hereby amended as follows:

Remove the following clauses:

111.F. Temporary Suspension

VIII.A. Termination for Higher Public Purpose

VIII.B. Termination, Revocation and Suspension

XI.F. Water Rights.

Revise the heading of Section VII.TERMINATION to read REVOCATION AND SUSPENSION. In Section VIII, add clauses A. Revocation and Suspension, B. Opportunity Take Corrective Action, C. Revocation or Reasons in the Public Interest, and D. Suspension below:

A. Revocation and Suspension. The Forest Service may suspend or revoke this permit in whole or part:

1. For noncompliance with Federal, State, or local laws and regulations;
2. For noncompliance with the terms of this permit;
3. For failure of the holder to exercise the privileges granted by this permit;
4. With the consent of the holder; or
5. At the discretion of the authorized officer for specific and compelling reasons in the public interest.

A. Opportunity to Take Corrective Action Prior to revocation or suspension under clause VIII.A, the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

B. Revocation for Reasons in the Public Interest. If, during the term of this permit or any extension thereof, the Secretary of Agriculture or any official of the Forest Service with delegated authority determines in planning for the uses of the National Forest System that the public interest requires revocation of this permit, this permit shall be revoked after one hundred-eighty (180) day's written notice to the holder. The United States shall then have the right to purchase the holder's improvements, to remove them, or to require the holder to remove them, and the United States shall be obligated to pay an equitable consideration for the improvements or for removal of the improvements and damages resulting from their removal. If the amount of consideration is fixed by mutual agreement between the United States and the holder, that amount shall be accepted by the holder in full satisfaction of all claims against the United States under this clause. If mutual agreement is not reached, the Forest Service shall determine the amount of consideration. If the holder is dissatisfied with the amount determined by the Forest Service, the holder may appeal the determination under the agency's administrative appeal regulations.

C. Suspension. The Authorized offer may immediately suspend this permit, in whole or in part, when necessary to protect public health, safety, or the environment. The suspension decision must be in writing. Within 48 hours of the request of the holder,

the superior of the authorized officer shall arrange for an on-the-ground review of the adverse conditions with the holder. Following this review the superior shall take prompt action to affirm, modify, or cancel the suspension.

Under section XI MISCELLANEOUS PROVISIONS, revise the heading for clause F Water Rights to read Water Use Facilities. Replace the existing clause with the clause below:

F. Water Use Facilities

1. Water Use Facilities. The National Forest System (NFS) land which is the subject of this permit is hereinafter referred to as the permitted NFS land. The authorization of facilities to divert, store, or convey water on the permitted National Forest System (NFS) land (water facilities) in conjunction with water rights acquired by the holder is for the purpose of operating a winter or year-round resort and related facilities under this permit. If use of the water or the water facilities ceases, the authorization to use the permitted NFS land for such water facilities will also cease. The United States reserves the right to place conditions on the installation, operation, maintenance and removal of these water facilities necessary to protect public property, public safety, and natural resources on the permitted NFS land in compliance with applicable laws, provided, however, such conditions shall not permit the imposition of bypass flows on water transported to the permitted NFS land from points of diversion or storage that arise off of the permitted NFS land.
2. Water Rights. This permit does not confer any water rights on the holder. Water rights must be acquired by the holder under state law.
3. Future Applications and Revocation. After June 2004, any right to divert water from the permitted NFS land where the use of such water is on the same permitted NFS land shall be applied for and held in the name of the United States and the holder (hereinafter called the joint water rights). This provision shall not apply to water rights that are acquired by the permit holder from a source off of the permitted NFS land and transferred to a point of diversion or storage on the permitted NFS land. During the term of the permit and any reissuance thereafter, the permit holder shall be responsible for maintaining such joint water rights, an shall have the right to make any applications or other filings as may be necessary to maintain and protect such joint water rights. In the event of revocation of this permit, the United States shall succeed to the sole ownership of such joint water rights. All joint water rights subject to this clause are listed below.

State ID# Owner Type or Basis Purpose of Use

(decree, license, certificate)

This Amendment is accepted subject to the conditions set forth herein, and to conditions N/A to N/A attached hereto and made part of this Amendment.

___//s// Martha D. Rehm_____ _____//s//_____

(Holder Signature) (Authorized Officer Signature)

____ _____ _____

(Holder Signature) DON G. CARROLL, Acting Forest Supervisor

Date:_____9/13/04_____ Date:___9/20/04_____

**Exhibit 10.16(b)**

# FIRST AMENDMENT TO FOURTH AMENDED AND

# RESTATED CREDIT AGREEMENT

**THIS FIRST AMENDMENT TO FOURTH AMENDED AND RESTATED CREDIT AGREEMENT (this "*Amendment*") is dated as of June 29, 2005, among THE VAIL CORPORATION, a Colorado corporation doing business as "Vail Associates, Inc." (the "*Company*"), the Required Lenders (as defined in the Credit Agreement referenced below) party hereto, and BANK OF AMERICA, N.A., as Administrative Agent (hereinafter defined).**

## R E C I T A L S

A. The Company has entered into that certain Fourth Amended and Restated Credit Agreement dated as of January 28, 2005 (as amended, the "***Credit Agreement***"), with Bank of America, N.A., as Administrative Agent (in such capacity, the "***Administrative Agent***"), and certain other agents and lenders party thereto, providing for revolving credit loans, letters of credit, and swing line loans in the aggregate principal amount of up to $400,000,000. Unless otherwise indicated herein, all capitalized terms used herein shall have the meanings set forth in the Credit Agreement, and all Section references herein shall be references to sections in the Credit Agreement.

B. The Company has requested certain clarifications with respect to the non-recourse Debt which may be incurred by the Unrestricted Subsidiaries and the limited recourse to the Restricted Subsidiaries permitted with respect to such non-recourse Debt of the Unrestricted Subsidiaries.

C. The Required Lenders have agreed to amend the Credit Agreement to provide for such clarifications as set forth herein.

In consideration of the foregoing and the mutual covenants contained herein, the Company, the Required Lenders, the Guarantors (by execution of the attached Guarantors' Consent and Agreement), and the Administrative Agent agree as follows:

**1. Amendments.**

(a) New Definitions. ***Section 1.1*** is hereby amended by inserting the following new definitions, as follows:

(i) The definition of "***Completion Guaranty***" is added alphabetically to read as follows:

> "***Completion Guaranty*** means, with respect to any Real Estate Project of an Unrestricted Subsidiary, a completion guaranty or similar agreement entered into by a Restricted Company pursuant to which such Restricted Company (a) guarantees the timely completion of construction of such construction project in accordance with applicable plans and specifications, the payment of all costs incurred in connection with the construction of such construction project, the payment of the premiums of all insurance required to be maintained in connection with the Real Estate Project, or such other matters customarily included by institutional lenders in a completion guaranty, or (b) otherwise indemnifies a construction lender or other party from loss resulting from a failure to timely complete and pay all costs incurred in connection with construction of any project financed by such lender or other party in accordance with the applicable plans and specifications."

(ii) The definition of "***Customary Recourse Exceptions***" is added alphabetically to read as follows:

> "***Customary Recourse Exceptions*** means, with respect to any Non-Recourse Debt of an Unrestricted Subsidiary, exclusions from the exculpation provisions with respect to such Non-Recourse Debt for the bankruptcy of such Unrestricted Subsidiary, fraud, misapplication of cash, environmental claims, waste, willful destruction, and other circumstances customarily excluded by institutional lenders from exculpation provisions and/or included in separate indemnification agreements in non-recourse financings of real estate."

(iii) The definition of "***Non-Recourse Debt***" is added alphabetically to read as follows :

> "***Non-Recourse Debt*** means, for any Unrestricted Subsidiary, any Debt of such Unrestricted Subsidiary with respect to which the holder of such Debt (a) may not look to such Unrestricted Subsidiary directly for repayment, other than to the extent of any security therefor, or (b) may look to such Unrestricted Subsidiary directly for repayment (but not to any direct or indirect constituent equity holder of such Unrestricted Subsidiary, *other than* with respect to Permitted Recourse Obligations entered into by such direct or indirect constituent equity holder)."

(iv) The definition of "***Permitted Recourse Obligations***" is added alphabetically to read as follows:

> "***Permitted Recourse Obligations*** means, collectively, for any Restricted Company, obligations or liabilities arising with respect to Customary Recourse Exceptions, Completion Guaranties, and letters of credit or similar

arrangements entered into in support of obligations of an Unrestricted Subsidiary with respect to its Real Estate Project."

(v) The definition of "***Real Estate Project***" is added alphabetically to read as follows:

"***Real Estate Project*** means the acquisition, development, and operation or resale of any real estate asset or group of related real estate assets (and directly related activities) by any Unrestricted Subsidiary."

(b) Modifications of Existing Definitions. ***Section 1.1*** is further amended by modifying the following existing definitions as indicated:

(i) The definition of "***Debt***" is amended to address Permitted Recourse Obligations, by replacing the period at the end of ***clause (d)*** therein with a semi-colon (;) and adding the following proviso thereafter:

"*provided*, *that* repayment or reimbursement obligations of any Restricted Company with respect to Permitted Recourse Obligations shall not be considered Debt unless and until an event or circumstance occurs that triggers such Restricted Company's direct payment liability or reimbursement obligation (as opposed to contingent or performance obligations) to the lender or other party to whom such Permitted Recourse Obligation is actually owed, in which case the amount of such direct payment liability to such lender or other party shall constitute Debt; *provided*, *that* the satisfaction of performance obligations on behalf of the Unrestricted Subsidiary under a Completion Guaranty shall not constitute Debt."

(ii) The definition of "***Funded Debt***" is amended to address Permitted Recourse Obligations as follows:

(A) the following is added after "*instrument,*" in the parenthetical set forth in ***clause (a)***:

"as a direct (as opposed to contingent) payment obligation arising under a guaranty,";

(B) existing ***clause (d)*** is changed to ***clause (e)***; and

(C) the following is added as ***clause (d)*** before the phrase "*but expressly excluding*":

"(d) payment obligations with respect to Permitted Recourse Obligations which constitutes Debt hereunder,".

(iii) The definition of "***Permitted Debt***" is amended to conform with the new definitions added by this Amendment, as follows:

(A) ***Clause (e)(i)*** is deleted in its entirety and the following is substituted therefor:

"(i) (A) Non-Recourse Debt of Unrestricted Subsidiaries, and (B) other Debt of Unrestricted Subsidiaries which is recourse to the Restricted Companies (1) to the extent permitted by ***clause (iii)*** hereof or ***clauses (f)*** or ***(g)*** of the definition of "***Permitted Debt***," or (2) with respect to reimbursement obligations under the L/C described on ***Schedule 2.3*** issued in support of certain SSI obligations;"; and

(B) ***Clause (g)*** is amended by adding the following parenthetical after the word "Debt":

"(including, without limitation, payment obligations with respect to Permitted Recourse Obligations which constitutes Debt hereunder)".

(iv) ***Clause (d)*** of the definition of "***Permitted Liens***" is amended to conform with the new definition of "*Non-Recourse Debt*" by modifying ***clause (d)*** to read as follows:

"(d) Liens on assets of Unrestricted Subsidiaries securing Debt of Unrestricted Subsidiaries permitted by ***clause (e)(i)*** of the definition of "*Permitted Debt*";".

(v) The definition of "***Unrestricted Subsidiary***" is amended to conform with the new definition of "*Permitted Recourse Obligations*" by modifying the second parenthetical provision in ***clause (b)*** of the definition to read as follow:

"(*other than* (i) pursuant to Permitted Recourse Obligations and (ii) as otherwise permitted in ***clause (e)(i)*** of the definition of "*Permitted Debt*"),".

(c) Modifications to Covenants.

(i) Affiliate Transactions. ***Section 10.6*** is amended to address the Permitted Recourse Obligations between the Restricted Companies and the Unrestricted Companies by replacing the period at the end of ***clause (d)*** thereof with a semi-colon, and adding the following thereafter:

*"provided, that any Restricted Company may enter into Permitted Recourse Obligations in support of obligations of Unrestricted Subsidiaries, so long as no Default or Potential Default then exists or arises."*

(ii) Loan, Advances, and Investments. ***Section 10.8(m)*** is amended by adding the following parenthetical after the phrase "*investments in Unrestricted Subsidiaries*" in the first and second lines thereof:

"(including, without limitation, the amount of any Permitted Recourse Obligations which constitutes Debt hereunder)".

**2. Representations and Warranties.** As a material inducement to the Required Lenders and the Administrative Agent to execute and deliver this Amendment, the Company represents and warrants to the Required Lenders and the Administrative Agent (with the knowledge and intent that Required Lenders are relying upon the same in entering into this Amendment) that (a) the Company and the Guarantors have all requisite authority and power to execute, deliver, and perform their respective obligations under this Amendment and the Guarantor Consent and Agreement, as the case may be, which execution, delivery, and performance have been duly authorized by all necessary action, require no Governmental Approvals, and do not violate the respective certificates of incorporation or its bylaws, or other documents of such Companies; (b) upon execution and delivery by the Company, the Guarantors, the Administrative Agent, and the Required Lenders, this Amendment will constitute the legal and binding obligation of the Company and each Guarantor, enforceable against such entities in accordance with this Amendment's terms, *except* as that enforceability may be limited by general principles of equity or by bankruptcy or insolvency laws or similar laws affecting creditors' rights generally, (c) all representations and warranties in the Loan Papers are true and correct in all material respects as though made on the date hereof, *except* to the extent that any of them speak to a specific date or the facts on which any of them are based have been changed by transactions contemplated or permitted by the Credit Agreement, and (d) no Default or Potential Default has occurred and is continuing.

**3. Conditions Precedent to Effectiveness.** This Amendment shall be effective on the date (the "***Effective Date***") upon which Administrative Agent receives (i) counterparts of this Amendment executed by the Company, Administrative Agent, and Required Lenders, and (ii) the Guarantors' Consent and Agreement executed by each Guarantor

**4. Expenses.** The Company shall pay all reasonable costs, fees, and expenses paid or incurred by the Administrative Agent incident to this Amendment, including, without limitation, the reasonable fees and expenses of the Administrative Agent's counsel in connection with the negotiation, preparation, delivery, and execution of this Amendment and any related documents.

**5. Miscellaneous.** Unless stated otherwise herein, (a) the singular number includes the plural, and *vice versa*, and words of any gender include each other gender, in each case, as appropriate, (b) headings and captions shall not be construed in interpreting provisions of this Amendment, (c) this Amendment shall be governed by and construed in accordance with the laws of the State of New York, (d) if any part of this Amendment is for any reason found to be unenforceable, all other portions of it shall nevertheless remain enforceable, (e) this Amendment may be executed in any number of counterparts with the same effect as if all signatories had signed the same document, and all of those counterparts shall be construed together to constitute the same document, (f) this Amendment is a "*Loan Paper*" referred to in the Credit Agreement, and the provisions relating to Loan Papers in ***Section 14*** of the Credit Agreement are incorporated herein by reference, (g) this Amendment, the Credit Agreement, as amended by this Amendment, and the other Loan Papers constitute the entire agreement and understanding among the parties hereto and supercede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof, and (h) except as provided in this Amendment, the Credit Agreement, the Notes, and the other Loan Papers are unchanged and are ratified and confirmed.

**6. Parties.** This Amendment binds and inures to the benefit of the Company, the Guarantors, the Administrative Agent, the Lenders, and their respective successors and assigns.

The parties hereto have executed this Amendment in multiple counterparts as of the date first above written.

***Remainder of Page Intentionally Blank.***

***Signature Pages to Follow.***

Signature Page to that certain First Amendment to Fourth Amended and Restated Credit Agreement dated as of June 29, 2005, among The Vail Corporation (d/b/a "Vail Associates, Inc."), the other agents and Lenders party thereto, and Bank of America, N.A., as Administrative Agent for the Lenders.

**THE VAIL CORPORATION (D/B/A "VAIL ASSOCIATES, INC."), as the Company**

By:

Name:

Title:

**BANK OF AMERICA, N.A.**, as Administrative Agent

By:

Name:

Title:

**BANK OF AMERICA, N.A.**,

as an L/C Issuer, a Swing Line Lender, and a Lender

By:

Name:

Title:

**U.S. BANK NATIONAL ASSOCIATION**,

as Co-Syndication Agent, a Swing Line Lender, and a Lender

By:

Name:

Title:

**WELLS FARGO BANK, NATIONAL ASSOCIATION**, as Co-Syndication Agent, an L/C Issuer, and a Lender

By:

Name:

Title:

**DEUTSCHE BANK TRUST COMPANY AMERICAS**, as Co-Documentation Agent and a Lender

By:

Name:

Title:

By:

Name:

Title:

**LASALLE BANK NATIONAL ASSOCIATION**,
as Co-Documentation Agent and a Lender

By:

Name:

Title:

-

**CALYON NEW YORK BRANCH**,
as a Lender

-

By:

Name:

Title:

-

**JPMORGAN CHASE BANK, NA**,
as a Lender

-

By:

Name:

Title:

-

**COMPASS BANK**,
as a Lender

-

By:

Name:

Title:

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**GUARANTY BANK**,
as a Lender

-

By:

Name:

Title:

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**COMERICA WEST INCORPORATED**,
as a Lender

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By:

Name:

Title:

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**GUARANTORS' CONSENT AND AGREEMENT**

As an inducement to Administrative Agent and Required Lenders to execute, and in consideration of Administrative Agent's and Required Lenders' execution of the foregoing First Amendment to Fourth Amended and Restated Credit Agreement, the undersigned hereby consent thereto and agree that the same shall in no way release, diminish, impair, reduce or otherwise adversely affect the respective obligations and liabilities of each of the undersigned under each Guaranty described in the Credit Agreement, or any agreements, documents or instruments executed by any of the undersigned to create liens, security interests or charges to secure any of the indebtedness under the Loan Papers, all of which obligations and liabilities are, and shall continue to be, in full force and effect. This consent and agreement shall be binding upon the undersigned, and the respective successors and assigns of each, and shall inure to the benefit of Administrative Agent and Lenders, and the respective successors and assigns of each.

Vail Resorts, Inc.

Vail Holdings, Inc.

Beaver Creek Associates, Inc.

Beaver Creek Consultants, Inc.

Beaver Creek Food Services, Inc.

Breckenridge Resort Properties, Inc.

Complete Telecommunications, Inc.

Gillett Broadcasting, Inc.

Grand Teton Lodge Company

Heavenly Valley, Limited Partnership

Jackson Hole Golf and Tennis Club, Inc.

JHL&S LLC

Keystone Conference Services, Inc.

Keystone Development Sales, Inc.

Keystone Food & Beverage Company

Keystone Resort Property Management Company

Larkspur Restaurant & Bar, LLC

Lodge Properties, Inc.

Lodge Realty, Inc.

Mountain Thunder, Inc.

Property Management Acquisition Corp., Inc.

Rockresorts International, LLC

Rockresorts LLC

Rockresorts Cheeca, LLC

Rockresorts Equinox, Inc.

Rockresorts LaPosada, LLC

Rockresorts Wyoming, LLC

Rockresorts Casa Madrona, LLC

Rockresorts Rosario, LLC

Teton Hospitality Services, Inc.

The Village at Breckenridge Acquisition Corp., Inc.

Timber Trail, Inc.

VA Rancho Mirage I, Inc.

VA Rancho Mirage II, Inc.

VA Rancho Mirage Resort, L.P.

Vail/Arrowhead, Inc.

Vail Associates Holdings, Ltd.

Vail Associates Investments, Inc.

Vail Associates Real Estate, Inc.

Vail/Beaver Creek Resort Properties, Inc.

Vail Food Services, Inc.

Vail Resorts Development Company

Vail RR, Inc.

Vail Summit Resorts, Inc.

Vail Trademarks, Inc.

VAMHC, Inc.

VR Heavenly I, Inc.

VR Heavenly II, Inc.

VR Holdings, Inc.

By:

Name:_____

Title:_____

**Exhibit 10.21**

TABLE OF CONTENTS



SALE-PURCHASE AGREEMENT

between

**VA RANCHO MIRAGE RESORT, L.P., a Delaware limited partnership**

Seller,

**RANCHO MIRAGE CONCESSIONS, INC., a Delaware corporation**

Liquor License Seller,

and

**GENLB-RANCHO LLC, a Delaware limited liability company**

Buyer

This SALE-PURCHASE AGREEMENT (this "**Agreement**"), is made as of July 1, 2005 (the "**Execution Date**"), by and among VA RANCHO MIRAGE RESORT, L.P., a Delaware limited partnership ("**Seller**"), and OLYMPUS RANCHO MIRAGE CONCESSIONS, INC., a Delaware corporation ("**Liquor License Seller**"), all of whom having an office address of 137 Benchmark Road, Avon, Colorado 81620, and GENLB-RANCHO LLC, a Delaware limited liability company having an office address at 1221 Brickell Avenue, Suite 900, Miami, Florida 33131 ("**Buyer**").

W I T N E S S E T H

WHEREAS, Seller owns the real property and improvements commonly known as the "**The Lodge at Rancho Mirage**" and located at 68-900 Frank Sinatra Drive, Rancho Mirage, California 92270 (which also includes the Tennis Court Land (as defined in Section 26 hereinafter) (collectively, the "**Hotel Property**") and operates a hotel business thereon (the "**Hotel**"). The Seller also owns or leases the Personal Property and the Other Property (both as hereinafter defined). The Seller's right, title and interest in the Hotel Property, Personal Property and Other Property is herein collectively referred to as the "**Premises.**" The real property included within the Hotel Property is more particularly described on Schedule 1 hereto, and is sometimes referred to herein as the "**Real Property.**" Seller is the owner of the Premises.

WHEREAS, Seller and Buyer desire to enter into this Agreement whereby, subject to the terms and conditions contained herein, Seller shall sell the Premises to Buyer, and Buyer shall purchase the Premises from Seller.

WHEREAS, Liquor License Seller is the holder of the licenses listed on Schedule A and issued by the State of California for the sale of alcoholic beverages at or from the Premises (collectively referred to hereinafter as the "**Liquor License**").

WHEREAS, Liquor License Seller and Buyer desire to enter into this Agreement whereby, subject to the terms and conditions contained herein, and provided that Buyer completes the purchase of the Premises as described herein, Liquor License Seller shall sell the Liquor License to an assignee of Buyer, and such assignee shall purchase the Liquor License from Liquor License Seller.

WHEREAS, Buyer may develop that certain portion of the Real Property described on Schedule 26(a) for resale or lease as a commercial or residential development. In the event of such development, the parties intend that Seller receive additional consideration as a part of the transaction set forth herein.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, (i) Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, the Premises subject to and in accordance with the terms and conditions set forth in this Agreement, and (ii) Liquor License Seller agrees to sell to Buyer's assignee and Buyer agrees to cause its assignee to purchase from Liquor License Seller, the Liquor License subject to and in accordance with the terms and conditions set forth in this Agreement. The foregoing recitals shall be deemed to be a part of this Agreement for all purposes.

1. Sale of Premises, Liquor License and Liquor Inventory.
    a. Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, at the price and upon the terms and conditions set forth in this Agreement, all of Seller's right, title and interest in the Premises.
    b. As used herein, the "**Personal Property**" means all tangible personal property located on, at or about the Real Property or stored offsite for use upon the Real Property, including, but not limited to, the following: the fixtures, attachments, computers and computer equipment, computer software (whether owned or licensed), furnishings, art work, machinery, laundry facilities, and other articles attached to or located upon the Real Property, all goods, machinery, tools, equipment (including fire sprinklers and alarm systems, air conditioning, heating, boilers, refrigerating, electronic monitoring, water, lighting, power, sanitation, waste removal, entertainment, recreational, fitness and maintenance equipment, window or structural cleaning rigs and all other equipment of every kind), motor vehicles, machinery, lawn mowers, swimming pool equipment, all indoor or outdoor furniture (including tables, chairs, beds, planters, desks, sofas, shelves, lockers and cabinets), furnishings, appliances, televisions, radios, refrigerators, mini-bars, inventory, rugs, carpets and other floor coverings, paintings, pictures, artwork, decorations, sculptures, draperies, drapery rods and brackets, awnings, venetian blinds, partitions, chandeliers and all other indoor and outdoor lighting fixtures, including, without limitation, the items set forth on Schedule 1(b) attached hereto. Notwithstanding the foregoing, the Premises and the Personal Property specifically exclude the personal property of guests, customers and other invitees.
    c. As used herein, the "**Other Property**" shall mean the collective reference to the following:
        i. The Seller's rights as landlord or owner under any and all leases, subleases, concessions or licenses of any portion of the Real Property to any third parties entered into by Seller or its predecessors-in-interest prior to the Execution Date or, subject to Section 13(e) below, after the Execution Date (the "**Occupancy Agreements**").
        ii. Subject to Sections 6(f) and 13(e) below, all contract rights related to the Premises, including without limitation, that certain Amenities Agreement dated May 2, 1995 by and between MCO Properties Inc. and Seller, and the Development Agreement (as defined in Section 7(q)) contracts for the use or occupancy of guest rooms or meeting, banquet or other facilities of the Real Property, and all service, vendor, maintenance contracts, rental agreements, reservations, agreements for use, service agreements, equipment leases, leasing agreements, marketing agreements, utility contracts, construction contracts, guarantees, warranties and commitments relating to the Real Property or Personal Property (collectively, the "**Contracts**").

iii. Any security deposits, escrow deposits and utility deposits related to the Premises (together with any interest which has accrued thereon as required by the terms of such Occupancy Agreements, but only to the extent such interest has accrued for the account of the respective tenants under the Occupancy Agreements or as required by law).

iv. All engineering, maintenance and housekeeping supplies, food and beverage department supplies, including soap, cleaning materials and matches; stationery and printing; and other supplies of all kinds, whether used, unused, or held in reserve storage for future use in connection with the maintenance and operation of the Premises which are on hand as of the Closing Date ("**Consumables**").

v. All food and non-alcoholic beverage which is on hand as of the Closing Date, including mini-bar contents, whether issued to the food and beverage department or held in reserve storage ("**Food and Beverage**").

vi. All china, glassware, bar equipment and furnishings, linens, silverware and uniforms, whether in use or held in reserve storage for future use, in connection with the operations of the Premises which are on hand on the Closing Date ("**Operating Equipment**").

vii. Seller's interest in the licenses, franchises and permits used in or relating to the ownership, occupancy or operation of any part of the Real Property, including, without limitation, those identified on Schedule 1(c)(vii) hereto (collectively, "**Permits**").

viii. All books, records, correspondence and other files (other than appraisals and other materials prepared for the Seller's internal use in connection with the valuation or sale of the Premises) owned by the Seller and maintained or generated in the course of the operation of the Premises and which relate to the operation of the Premises.

ix. All of the Intellectual Property (as defined in Section 7(a)(i)(k)).

e. Liquor License Seller agrees to sell and convey to Buyer's assignee, and Buyer agrees to cause its assignee to purchase from Liquor License Seller, the Liquor License, along with all Liquor Inventory (as defined in Section 2(a)) located on the Premises as of the Closing Date, all subject to the terms and conditions set forth herein. The portion of the Purchase Price attributable to the Liquor License, the Liquor FF&E and the Liquor Inventory shall be the amount described as the "**Liquor License Purchase Price**" in Section 2(a) hereof.

3. Purchase Price.

a. The purchase price to be paid by Buyer to Seller for the Premises (the "**Property Purchase Price**") shall be Thirty-Two Million Nine Hundred Fifty-Five Thousand and No/100 Dollars ($32,955,000.00) and the purchase price to be paid by Buyer to Liquor License Seller for the Liquor License, the liquor furniture, fixtures and equipment ("**Liquor FF&E**") and the liquor inventory (the "**Liquor Inventory**") shall be One Hundred Forty-Five Thousand and No/100 Dollars ($145,000.00) (the "**Liquor License Purchase Price**") and together with the Property Purchase Price, the "**Purchase Price**"). The Property Purchase Price is allocated as follows: land and improvements – Twenty-Nine Million Nine Hundred Fifty-Five and No/100 Dollars ($29,955,000.00); personalty – Three Million and No/100 Dollars ($3,000,000.00).

b. Upon the Trigger Date (as hereinafter defined in Section 26) Buyer shall pay to Seller as additional consideration the Additional Consideration (as hereinafter defined in Section 26).

c. The Purchase Price, subject to the adjustments and prorations set forth in Section 3, shall be payable as follows:

i. One Million, Five Hundred Thousand and No/100 Dollars ($1,500,000.00) (the "**Deposit**"), contemporaneously with the execution hereof, by a bank wire transfer of immediately available funds to an interest bearing account designated by Chicago Title Company, 560 East Hospitality Lane, San Bernardino, CA 94208 (the "**Escrow Company**").

e. The Deposit and all earnings thereon shall be non-refundable, unless Buyer terminates this Agreement due to a default by Seller under Section 17(b) or a condition precedent to Buyer's performance hereunder shall not be satisfied or waived or as a result of a casualty or condemnation as more particularly set forth in Section 16 below. The Deposit shall be held and disbursed together with all interest thereon by the Escrow Company in accordance with the terms of Section 20. If the Closing shall occur, Seller shall receive the Deposit, and the Deposit shall be credited against the Purchase Price.

5. Adjustments And Prorations .

a. Adjustments and Prorations. The following matters and items pertaining to the Property shall be apportioned between the parties hereto or, where applicable, credited in total to a particular party, as of 12:01 a.m. on the Closing Date (the "**Apportionment Time**"). Net credits in favor of Buyer shall be deducted from the balance of the Purchase Price at the Closing and net credits in favor of Seller shall be paid by Buyer to Seller in cash at the Closing. Notwithstanding the provisions of this Section 3, Seller may, in its sole discretion, choose to retain certain assets and liabilities on its own books in lieu of the adjustment by proration as set forth in this Section 3. If Seller elects to maintain any such assets or liabilities, Seller shall notify Buyer of such election and the assets and liabilities to be retained no later than three (3) business days prior to Closing. With respect to such assets and liabilities to be retained, no proration shall be made hereunder.

Subject to the foregoing, and unless otherwise indicated below, Buyer shall receive a credit against the Purchase Price for any of the following items to the extent they are accrued but unpaid as of the Apportionment Time (whether or not due, owing or delinquent as of the Apportionment Time) and to the extent Buyer has assumed the obligations for them, and Seller shall receive a credit (and thereby be entitled to a payment from Buyer) with respect to any of the following items which shall have been paid prior to the Closing Date to the extent the payment thereof relates to any period of time after the Apportionment Time:

c. Cash Accounts. All funds held in any accounts maintained by or for the benefit of Seller at the Apportionment Time will be removed by Seller as of the Apportionment Time for the benefit of Seller.

d. House Banks. Seller shall receive a credit for the cash held in the Hotel house banks and any petty cash at the Hotel.

e. Guest Ledger. Guest ledger receivables (i.e., amounts, including, without limitation, room charges and charges for food and beverages, accrued to the accounts of guests and other customers of the Hotel as of the Apportionment Time) ("**Guest Ledger Receivables**") shall be prorated between Buyer and Seller. Seller shall receive a credit for all guest ledger receivables for all room nights and other charges up to but not including the room night during which the Apportionment Time occurs, and Buyer shall be entitled to the amounts of guest ledger receivables for the room nights and other charges after the Apportionment Time. The final night's room revenue (revenue from rooms occupied on the evening preceding the Closing Date), any taxes thereon, and any in-room telephone, movie and similar charges for such room night, shall be allocated 50% to Seller and 50% to Buyer. All revenues from restaurants, bars and lounge facilities for the room night during which the Apportionment Time occurs shall belong to Seller, and Seller shall bear all expenses related to such revenues, including but not limited to, payroll and food and beverage costs.

f. Other Accounts Receivable. Except as set forth in Section 3(d), all accounts receivable, including city ledger receivables, for all periods prior to the Apportionment Time shall remain the property of Seller. After the Closing Date, Buyer shall use commercially reasonable efforts to collect, without litigation, in the ordinary course of business all such accounts receivable (other than accounts receivable from credit card companies that shall be collected directly by Seller). Periodically (but no less frequently than monthly), Buyer shall submit to Seller all amounts received in respect of such accounts receivable, together with an itemization of such accounts receivable. If Buyer receives any amounts in respect of such accounts receivable after such date, Buyer shall promptly remit the same to Seller. Seller may utilize such procedures that it deems necessary in its sole discretion to collect accounts receivable, but Seller will not commence litigation against any obligors except with respect to collection of receivables due from Worldwide Kosher and from Tec 119.

g. Prepaid Expenses; Deposits. Seller shall receive a credit for prepaid expenses directly or indirectly related to the Premises and allocable to any period from and after the Closing Date, including, without limitation, prepaid rents under any equipment lease, Permit and inspection fees, fees for licenses, trade association dues and trade subscriptions, all security or other deposits paid by or on behalf of Seller to third parties to the extent the same are transferable and remain on deposit for the benefit of Buyer, and prepaid advertising which has not been published, mailed or aired, and marketing and advertising inventory items such as brochures and other materials if reported on the balance sheet of Seller in accordance with GAAP and related to marketing of the Hotel as a RockResort.

h. Food and Beverage. Seller shall receive a credit for the cost of any inventories of all food and non-alcoholic beverage, including mini-bar contents, whether issued to the food and beverage department or held in reserve storage and contained in unopened containers ("**Food and Beverage**") .

i. Insurance. Insurance premiums will not be prorated and Buyer shall not assume, and Seller shall not assign, any insurance policies, Buyer hereby acknowledging its obligation to obtain its own insurance related to or for the Property.

j. Taxes and Assessments. Seller shall be solely responsible for any taxes due in respect of its income, net worth or capital, if any, and any privilege, sales, transient occupancy tax, due or owing to any governmental entity in connection with the operation of the Property for any period of time prior to the Apportionment Time, and Buyer shall be solely responsible for all such taxes for any period from and after the Apportionment Time, and provided further that any income tax arising as a result of the sale and transfer of the Property by Seller to Buyer shall be the sole responsibility of Seller. All ad valorem taxes, special or general assessments, real property taxes, water and sewer rents, rates and charges, vault charges, and any municipal permit fees shall be prorated as of the Apportionment Time between Buyer and Seller. Seller shall also provide Buyer with a credit at Closing for real estate taxes attributable to the period from January 1, 2005 to the Closing Date, payable in 2006, such credit to be calculated based upon the most recent valuation and real property tax assessments applicable to the Real Property.

k. Utilities; Telephone. Telephone and telex charges and charges for the supply of heat, steam, electric power, gas, lighting, cable television and any other utility service shall be prorated as of the Apportionment Time between Buyer and Seller. Seller shall receive a credit for all deposits, if any, made by Seller as security under any such public service contracts if the same are transferable and provided such deposits remain on deposit for the benefit of Buyer. Where possible, cutoff readings will be secured for all utilities as of the Apportionment Time. To the extent cutoff readings are not available, the cost of such utilities shall be apportioned between the parties on the basis of the latest actual (not estimated) bill for such service.

l. Hotel Contracts, Association Documents and the Occupancy Agreements; Trade Payables and Receivables. Any amounts prepaid or payable under any Contracts or the Occupancy Agreements and any other trade payables and receivables shall be prorated as of the Apportionment Time between Buyer and Seller. All amounts known to be due under Contracts and the Occupancy Agreements with reference to periods prior to the Closing Date shall be paid by Seller or credited to Buyer if assumed by Buyer.

m. Bookings. Buyer shall receive a credit for advance payments and deposits, if any, under bookings for future guests.

n. Gift Certificates. Buyer shall receive a credit for the face value of all unredeemed gift certificates issued by Seller as of the Apportionment Time.

o. Vending Machines. Vending machine monies will be removed by Seller as of the Apportionment Time for the benefit of Seller.

p. Security Deposits. Buyer shall be entitled to a credit for all unapplied security and other deposits, if any, held by Seller as of the Apportionment Time with respect to the Occupancy Agreements.

q. Employee Costs. Buyer shall receive a credit for all employee costs accrued but unpaid as of the Apportionment Time, including salaries and wages, vacation and holiday pay, workers compensation, payroll taxes and bonuses.

r. Other Items. Such other items as are provided for in this Agreement or as are normally prorated and adjusted in the sale of real property or of a Hotel shall be prorated as of the Apportionment Time in accordance with local custom in the jurisdiction in which the Hotel is located.

s. Closing Statement; True Up. Seller and Buyer shall jointly prepare a proposed closing statement containing the parties' reasonable estimate of the items requiring prorations and adjustments in this Agreement. Subsequent final adjustments and payments (the "**True-Up**") shall be made in cash or other immediately available funds as soon as practicable, but no more than one-hundred twenty (120) days after the Closing Date (except with respect to ad valorem property taxes which shall be adjusted within thirty (30) days after receipt of the final tax bill), based upon an accounting performed by Seller and acceptable to Buyer. If the parties have not agreed with respect to the adjustments required to be made pursuant to this Section 3, upon application by either party, a certified public accountant reasonably acceptable to the parties shall determine any such adjustments which have not theretofore been agreed to between the parties. (If the parties cannot agree on a certified public accountant within thirty (30) days after the request by either party, the Judicial Arbitration and Mediation Services ("**JAMS**") located in Denver, Colorado shall appoint a certified public accountant.) The charges of such accountant (and JAMS, if applicable) shall be borne equally by the parties. All adjustments to be made as a result of the final results of the True-Up shall be paid to the party entitled to such adjustment within thirty (30) days after the final determination thereof.

t. Access. Buyer and Seller shall have the right to have their representatives present (i) before the Closing Date for the purpose of observing the taking of any inventories by Seller's designee (including the counting of house funds), the review of receivables, or any other matters to be performed pursuant to this Section 3, and (ii) after the Closing Date for the purpose of review of receivables or any other post-closing adjustments provided for in this Agreement, and such representatives shall be given reasonable access to the books and records which are relevant to the preparation of the proposed closing statement and the settlement statement.

u. Calculations. Where charges are not set forth for specific days, prorations shall be made on the basis of the actual number of days of the year, or month, as applicable, which shall have elapsed as of the Closing Date.

v. Survival. The provisions of this Section 3 shall survive the Closing and delivery of the deed.

7. Closing.

The consummation of the purchase and sale of the Premises contemplated by this Agreement (the "**Closing**") shall take place on or before July 27, 2005 (the "**Closing Date**"). The Closing shall occur at 10:00 a.m. on the Closing Date at the offices of the Escrow Company or such other location as is mutually acceptable to the parties.

The consummation of the purchase and sale of the Liquor License contemplated by this Agreement (the "**Liquor License Closing**") shall take place concurrently with or as soon as possible after the Closing for the purchase and sale of the Premises as described above.

If, solely as a result of Buyer not having deposited the Purchase Price as and when required hereunder, the Escrow Company has not transmitted the Purchase Price to Seller sufficiently early on the Closing Date to allow Seller to invest such funds for interest credit on the day of receipt, or to pay off any existing encumbrances such that interest thereon ceases on the Closing Date, then any and all adjustments to be made as of the day of Closing shall be made as of the next business day. In all other events, all adjustments shall be made on the day of Closing.

9. Title, Survey, Permitted Encumbrances.

On the Closing Date, the Seller's title to the Premises shall be free and clear of all liens, claims and encumbrances except (i) non-delinquent real property taxes and assessments, (ii) the special assessment (improvement lien) related to the construction of Frank Sinatra Drive adjacent to the Real Property, (iii) matters that are disclosed by the Title Policy (as hereinafter defined) and that are approved or deemed approved by Buyer as set forth herein, and (iv) matters that are disclosed by that ALTA Survey prepared by The Keith Companies dated September 14, 2001, as updated and revised (the "**Survey**") and are approved or deemed approved by Buyer, or that would be disclosed by a current survey or physical inspection of the Real Property (collectively, the "**Permitted Encumbrances**"). Seller shall order the updated and revised Survey. Seller has delivered to Buyer: (i) a current preliminary title report (for an ALTA Owner's Policy of Title Insurance (Form B, Rev. 10/17/70)) ("**Title Report**"); (ii) copies of all recorded documents referred to on Schedule B of the Title Report as exceptions to coverage (collectively, the "**Title Documents**"), and (iii) the Survey. Buyer has approved the Title Report, Title Documents and Survey.

If additional title documents, updates to the Title Report and/or updates to the Survey received after the Execution Date disclose any new defect, exception, or other matter affecting the Real Property (a "**Title Defect**") following the Execution Date, Buyer shall have five (5) business days following its receipt of written disclosure in which to object to any such additional Title Defect. If no objection is made during such period, the Title Defect shall be deemed a Permitted Encumbrance. Seller may, at its sole option, elect to cure or remove the objections made by Buyer; provided, however, Seller shall have no obligation to cure such Title Defect other than removing or causing to be released the following (collectively, the "**Mandatory Removal Items**"): (1) all mechanics' liens; (2) monetary liens encumbering the Property created by Seller's acts; and (3) liens of any financing obtained by Seller which are secured by the Premises. If Seller fails to remove any Mandatory Removal Items, such amounts as are necessary to remove them shall be held back from Seller's proceeds at Closing and not disbursed to Seller until they are removed and at Seller's election, the amounts held back shall be utilized either to "bond over" them through the Title Company or pay them at Closing. Should Seller elect to attempt to cure or remove the objections, Seller shall have thirty (30) days from the date of Buyer's written

notice of objections (the "**Cure Period**") in which to accomplish the cure (other than for Mandatory Removal Items for which there shall be no Cure Period). In the event Seller either elects not to cure or remove the objections or is unable to accomplish the cure prior to the expiration of the Cure Period, then Seller shall so notify Buyer in writing specifying which objections Seller does not intend to cure, and then Buyer shall be entitled, as Buyer's sole and exclusive remedies, either to (i) terminate this Agreement and obtain a refund of the Deposit by providing written notice of termination to Seller within five (5) business days from the date on which Buyer receives Seller's notice that it does not intend to cure or (ii) waive the objections and close this transaction as otherwise contemplated herein, and the Closing Date shall be extended by the portion of the Cure Period that extends beyond the original Closing Date.

11. Buyer's Due Diligence.
    a. Buyer acknowledges that various materials relating to the Premises (the "**Due Diligence Materials**") have been delivered by Seller to Buyer for its review, which materials are identified on Schedule 6(a) hereto. Buyer and Buyer's Representatives (hereinafter defined) have been given the opportunity to inspect, test, study and survey the Premises (and conduct environmental studies and assessments of the Premises). Buyer has performed its review of the Due Diligence Materials during the period of time prior to the Execution Date. The Deposit shall not be refundable to Buyer if Buyer should terminate this Agreement, except in the event of Seller's default under Section 17(b) hereof or a condition precedent to Buyer's performance hereunder shall not be satisfied or waived or as a result of a casualty or condemnation as more particularly set forth in Section 16 below.

    Notwithstanding anything to the contrary contained herein, in the event this Agreement is terminated for any reason, then Buyer shall promptly and at its sole expense return to Seller all Due Diligence Materials which have been delivered by Seller to Buyer in connection with Buyer's inspection of the Premises, along with copies of all reports, drawings, plans, studies, summaries, surveys, maps and other data prepared by or for Buyer in its investigation and inspection of the Real Property (collectively, "**Buyer's Reports**"), subject, however to any limitations on Buyer's right to make any such materials available to Seller that are imposed in any agreement with a third party consultant preparing any such reports or materials, and subject to Buyer's disclaimer that Buyer's Reports are provided without representation or warranty made by Buyer as to their accuracy or completeness. Buyer shall cooperate with Seller at no expense to Buyer in order to obtain a waiver of any such limitation.

    Except to the extent of any representation or warranty made by Seller hereunder, Buyer acknowledges that Seller is not representing or warranting that any of the Due Diligence Materials are accurate or complete, and that Seller has advised Buyer to independently verify the facts and conclusions set forth therein.

    c. During the term of this Agreement, Seller shall provide Buyer's Representatives access to the Premises and to (i) the accounting books and records related solely to operation of the Premises (and not to Seller's internal matters), and (ii) all Contracts which are in the Seller's possession or control, other than contracts with appraisers, appraisals and other materials prepared for the Seller's internal use in connection with valuing or selling the Premises.
    d. Buyer will give Seller one (1) business day advance notice of its schedule for inspections, examinations and other visits at the Premises, and Buyer and Seller will cooperate with each other in facilitating such activities with a minimum of interference with operations at the Premises. Buyer shall obtain Seller's prior approval of the scope and method of any environmental studies or assessments of the Premises (other than a Phase I environmental site assessment) and of any inspection which would materially affect the physical condition of the Premises, which may be withheld in Seller's sole discretion and subject to such further agreements regarding access and indemnity which Seller requires. Buyer shall provide to Seller a certificate of insurance evidencing at least Two Million and No/100 Dollars ($2,000,000.00) of general liability coverage naming Seller as an additional insured thereof. After such inspections, Buyer shall restore the Premises to its condition immediately before such inspections. Buyer shall have reasonable opportunity during the term of this Agreement to meet with and discuss all aspects of the operation and maintenance of the Premises with members of the executive committee and department heads at the Premises.
    e. Buyer shall indemnify, defend and hold Seller and the Premises harmless (including payment of reasonable attorneys' fees) against any and all claims, liabilities and losses from personal injury or property damage resulting from the activities of Buyer and Buyer's Representatives (as defined in Section 24) at the Premises pursuant to this Section 6, except to the extent caused by Seller's or Seller's managers, officers, partners, shareholders, members and/or property manager's negligence and to the extent caused by latent defects in the Premises. Buyer's obligations under this Section 6(d) shall survive Closing or termination of this Agreement.
    f. At Closing, Seller shall terminate any management agreement, any parking lease or other parking agreement with respect to the Premises and any other Contract which is terminable by Seller within the period prior to Closing and which is not an "Approved Contract," each effective as of the Closing Date and Seller shall pay any and all costs and expenses of termination thereof. As used herein, "**Approved Contract**" shall mean the Contracts set forth on Schedule 7(a)(i)(L) which Buyer has, by written notice to Seller given prior to expiration of the Title Review Period, agreed to assume at Closing. Any fees for termination of the Contracts with AG Guernsey Branch shall be paid by Seller. Buyer will not assume any employment agreements with key personnel of the Hotel.
13. Representations and Warranties.
    a. Seller and Liquor License Seller severally make the representations and warranties to Buyer which are set forth in this Section 7(a)(i). Notwithstanding the foregoing or any other provision hereof to the contrary, the representations and warranties of the Seller shall also be deemed to include or pertain to the Liquor License Seller, and the representations and warranties of Liquor License Seller are limited to matters pertaining to the Premises,

and do not extend or apply to other premises, or its activities relating to other premises, on or from which Liquor License Seller sells alcoholic beverages. Buyer hereby expressly acknowledges and agrees that Buyer has not received or relied upon, and Buyer shall not receive or rely upon, and neither Seller nor Liquor License Seller shall have any liability or responsibility for, any representation or warranty except for the representations and warranties set forth herein and the special warranties contained in the conveyance instruments to be delivered at the Closing.

A. Entity Status. Each Seller and Liquor License Seller is duly formed, validly existing and in good standing under the laws of its state of organization and has the requisite power and authority to own or lease its properties and to carry on its business as now being conducted. The Seller is a duly formed, validly existing and in good standing limited partnership organized under the laws of the State of Delaware and has the requisite power and authority to own or lease its properties and to carry on its business as now being conducted. The Seller is duly qualified under the laws of the State of California to conduct business therein. The Liquor License Seller is a duly formed, validly existing and in good standing corporation incorporated under the laws of the State of Delaware and has the requisite power and authority to own or lease its properties and to carry on its business as now being conducted. The Liquor License Seller is duly qualified under the laws of the State of California to conduct business therein. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, dissolution or other similar legal proceedings are pending or, to Seller's and Liquor License Seller's knowledge, threatened against them, nor are any such proceedings contemplated by them.

B. Power and Authority. Each Seller and Liquor License Seller has the full legal right, power and authority to execute and deliver this Agreement and all documents now or hereafter to be executed by Seller or Liquor License Seller (as the case may be) pursuant to this Agreement (collectively, the "**Seller Documents**"), to consummate the transaction contemplated hereby, and to perform its obligations hereunder and under Seller Documents executed by it. Each Seller and Liquor License Seller has taken all action necessary to authorize the execution and delivery of this Agreement and the other documents and instruments to be executed and delivered by such Seller or Liquor License Seller (as the case may be) pursuant hereto, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby.

C. Enforceability. This Agreement and the Seller Documents have been duly executed and delivered by Seller and Liquor License Seller and constitute legal, valid and binding obligations of each of them, enforceable against each of them in accordance with their terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles regardless of whether such enforceability is considered in a proceeding at law or in equity.

D. No Violation. The execution and delivery of this Agreement by each Seller and Liquor License Seller, the performance by them of their respective obligations hereunder and the consummation by them of the transactions contemplated by this Agreement will not (i) contravene any provision of their organizational documents, (ii) violate or conflict with any judgment, order, decree, writ or injunction issued against such Seller or Liquor License Seller or, to Seller's and Liquor License Seller's knowledge, any provision of any laws or governmental ordinances, rules, regulations, orders or requirements (collectively, "**Laws**") applicable to such Seller or Liquor License Seller, (iii) conflict with, result in any breach of, or constitute a default (or an event which would, with the passage of time or the giving of notice or both, constitute a default) under, or give rise to a right to terminate, amend, modify, abandon or accelerate, any Contract which is applicable to, binding upon or enforceable against Seller or Liquor License Seller, (iv) result in or require the creation or imposition, of any lien or other encumbrance upon or with respect to any of the Premises, or (v) require the consent, approval, authorization or permit of, or filing with or notification to, any governmental authority, any court or tribunal or any other person or entity, except as to Liquor License Seller which will file a transfer application with the Department as set forth in Section 18.

E. Interim Statements; Historical Statements. Seller has delivered to Buyer the unaudited interim financial statements of the Seller (and the unaudited interim financial statements of Liquor License Seller which are consolidated therein), consisting of balance sheets and related statements of income for the ten (10) months ended May 31, 2005 (the "**Interim Statements**"). Seller does not have audited financial statements for the ten (10) months ending May 31, 2005. Seller has delivered to Buyer the unaudited financial statements of the Seller (and the unaudited financial statements of Liquor License Seller which are consolidated therein), consisting of balance sheets and related statements of income for fiscal years 2002, 2003 and 2004 ("**Historical Statements**" and together with the Interim Statements, the "**Financial Statements**"). The Financial Statements fairly present the financial position of the Seller on the date thereof and have been prepared in accordance with GAAP. Since the date of the Interim Statements, there has been no material adverse change in the assets, operations, properties, financial condition or in the financial operations of the Seller. To Seller's knowledge, the Seller has no liabilities of any kind or nature, fixed or contingent, matured or unmatured, of a nature that would be required to be set forth on the Financial Statements which are not adequately reflected or reserved against on the face of the Financial Statements. Seller shall maintain current financial statements in the ordinary course of its business.

F. Litigation. There is no action, suit or other legal or administrative proceeding (including arbitration) or governmental or quasi-governmental investigation pending or, to Seller's knowledge, threatened

(1) by or against the Seller or Liquor License Seller or affecting the Seller or Liquor License Seller or any of their properties or assets, except as set forth on Schedule 7(a)(i)(F), or (2) which questions the validity or enforceability of this Agreement or the transactions contemplated hereby. There are no outstanding orders or decrees issued by any governmental authority in any proceeding to which the Seller or Liquor License Seller is or was a party which have not been complied with in full.

G. Environmental Matters. Except as set forth in Schedule 7(a)(i)(G) or in the Phase I environmental site assessment dated September, 2001, ("**Phase I Report**") prepared by Environmental Resources Management, (a copy of which has been provided to Buyer), to Seller's knowledge, none of the following exists at the Premises: (1) underground storage tanks; (2) friable asbestos-containing material; (3) materials or equipment containing polychlorinated biphenyls (other than utility-owned transformers); or (4) landfills, surface impoundments or disposal areas for Hazardous Substances. Except as set forth in Schedule 7(a)(i)(G) or in the Phase I Report, to Seller's knowledge, there are no: Hazardous Substances on or in the Premises, or any portion thereof, other than those used in compliance with applicable law, such as cleaning products, office supplies, spa and pool chemicals, fertilizers, commercial goods and building materials used or stored on the Hotel Property in accordance with applicable law, and to Seller's knowledge the Real Property is in compliance with applicable local, state or federal environmental laws, regulations, ordinances or administrative or judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and disposal of any Hazardous Substances with respect to the Real Property. As used herein, "Hazardous Substances" shall mean any substance or material that is regulated, monitored or defined as a hazardous or toxic substance or waste by a governmental authority having jurisdiction over the Premises and the environment, including hydrocarbons, petroleum, gasoline, crude oil, or any products, by products or components thereof and polychlorinated biphenyls.

H. Real Estate. There are no pending or, to Seller's knowledge, threatened condemnation proceedings, suits or administrative actions relating to the Real Property or any access thereto or other matters affecting adversely the current use, occupancy or value thereof. There are no outstanding options or rights of first refusal to purchase the parcels of Real Property or any portion thereof or interest therein. There are no leases, licenses or other occupancy agreements affecting any portion of the Premises on the Execution Date, except for the Occupancy Agreements listed in Schedule 7(a)(i)(H) hereto (copies of which have previously been furnished to Buyer). Schedule 7(a)(i)(H) attached hereto also sets forth a copy of the Rent Roll in effect for the month in which the Execution Date occurs, which such rent roll sets forth the security deposits under the Occupancy Agreements and is true, correct and complete in all material respects. The Occupancy Agreements are in full force and effect and have not been amended, and Seller has no knowledge of any default by the Seller under any Occupancy Agreements to which the Seller is an original party or of which the Seller is an assignee since the date of such assignment, Seller has no knowledge of any breach or default by the other party thereto or occurring prior to such assignment, and Seller has not given or received notice of any breach or default thereunder. Seller has no knowledge of any parties in possession or which have rights to possession of the Real Property, other than the Seller, the tenants under the Occupancy Agreements and other contractors, guests, customers and other invitees in the ordinary course of business. All of the security deposits held under the Occupancy Agreements are held in the form of cash and there are no letters of credit issued by any tenant under the Occupancy Agreements.

I. Title to Personal Property. Except for the equipment leases described on Schedule 7(a)(i)(I), the Seller has good and marketable title to its assets set forth on the balance sheets of the Financial Statements, and the Seller has not previously conveyed or assigned any portion of, or interest in, the Personal Property to any third party since the date of its acquisition by the Seller, other than in the ordinary course of business consistent with past practice. The Personal Property owned by Seller is free and clear of all liens and encumbrances. In no event shall any tangible Personal Property owned by Seller be removed from the Real Property after the Execution Date and prior to the Closing.

J. Compliance with Laws. Except as set forth on Schedule 7(a)(i)(J), the Seller has received no notice that the Premises are not in compliance with any laws, regulations and orders applicable to it. The Seller has not been cited, fined or otherwise notified in writing of any asserted material past or any present failure to comply with any laws, regulations or orders and no proceeding with respect to any such violation is pending or, to Seller's knowledge, threatened. To Seller's knowledge, Seller possesses for its sole benefit all Permits (other than the Liquor License possessed by Liquor License Seller) for its business and operations, including with respect to the operation of the Premises. To the knowledge of Seller, all such Permits are valid and in full force and effect, and Seller (or, if applicable, Liquor License Seller) is in full compliance with the respective requirements thereof. No proceeding is pending or, to the knowledge of Seller (or, to the extent applicable, Liquor License Seller), threatened to revoke or amend any of them.

K. Intellectual Property. Schedule 7(a)(i)(K) sets forth all trademarks, service marks, registered trade names, registered copyrights, patents and licenses (excluding licenses for the use of computer software programs) and other intellectual property owned by the Seller (the "**Intellectual Property**"). No payments are required for the continued use of the Intellectual Property.

L. Status of Contracts. Schedule 7(a)(i)(L) lists each Contract to which the Seller is a party or by which it or its properties and assets are bound, copies of which have been provided to Buyer. The copy of each Contract furnished to Buyer is a true and complete copy of the document it purports to represent and reflects all amendments thereto made through the date of this Agreement. Except as set forth on

Schedule 7(a)(i)(L), the Contracts have been duly executed and delivered and constitute legal, valid, binding and enforceable obligations of the parties thereto and are in full force and effect. Seller has not received any written notice of a violation by the Seller of any of the material terms or conditions of any Contract and, to Seller's knowledge, the Seller is not in breach of any such terms or conditions, all of the material covenants to be performed by any other party thereto have been performed, and there are no claims for breach or indemnification or notice of default or termination under any Contract. Except as set forth on Schedule 7(a)(i)(L), to Seller's knowledge, no event has occurred which constitutes, or after notice or the passage of time, or both, would constitute a material default by the Seller under any Contract, and no such event has occurred which constitutes or would constitute a material default by any other party. To Seller's knowledge, the Seller is not subject to any liability or payment resulting from renegotiation of amounts paid to it under any Contract.

M. Affiliate Transactions. Other than Liquor License Seller, no affiliate of the Seller owns any assets utilized in the operation of the Premises.

N. Utilities. All water, sewer, gas, electricity, telephone and other utilities serving the Hotel Property are supplied directly to the Hotel Property by facilities of public utilities and all installation costs or system development fees or similar capital charges applicable thereto have been fully paid.

O. Occupancy. Except for the Occupancy Agreements, to Seller's knowledge, no person (other than routine guests) has any right to possession or occupancy of any portion of the Hotel Property. Except for the Occupancy Agreements, Seller has not granted to any person (other than routine guests) any right to possession or occupancy of any portion of the Hotel Property.

P. Special Assessments. Seller has no knowledge of any special assessments currently affecting the Premises that are payable in installments, other than the special assessment relating to the construction of Frank Sinatra Drive adjacent to the Premises.

Q. Development Agreement. To the Seller's knowledge, each of the Seller and Hotel Property are in full compliance with (i) the terms and conditions applicable to the Hotel Property contained in that certain Development Agreement dated as of August 5, 1983, as amended, between the City and MCO Properties, Inc. (the "**Development Agreement**") and, (ii) all conditions of approval applicable to the Hotel Property contained therein or otherwise required by the City under the Development Agreement.

R. Amenities Agreement. The Amenities Agreement is in full force and effect and has not been amended, and Seller has no knowledge of any default by the Seller under the Amenities Agreement, Seller has no knowledge of any breach or default by the other party thereto or occurring prior to the Execution Date, and Seller has not given or received notice of any breach or default thereunder.

S. Liquor Licenses. Schedule A is a true, correct and complete list of all of the Liquor Licenses in Liquor License Seller's possession and/or issued to Liquor License Seller. No Liquor Licenses have been issued in Seller's name. The Liquor Licenses are active and in good standing without pending disciplinary action by the Department of Alcoholic Beverage Control or any other law enforcement agency.

T. Declaration. Seller has paid all amounts due under that certain Enabling Declaration for Establishment of Covenants, Conditions, Easements and Restrictions for the Mirada Community Association dated July 19, 1987 (the "**Declaration**").

U. Collective Bargaining Agreements. Neither Seller nor Liquor License Seller has entered into any collective bargaining agreements that are currently in effect.

V. Employment Agreements. Neither Seller or Liquor License Seller has entered into any employment agreements other than the employment agreement with Herbert Speigel.

ii. The representations and warranties of Seller and Liquor License Seller set forth in Section 7(a)(i) of this Agreement shall be true, accurate and correct in all material respects upon the execution of this Agreement and shall be deemed to be repeated on and as of the Closing Date, except as they relate only to an earlier date and except to the extent of any circumstances then existing that modify the representations and warranties (provided, however, that the foregoing shall not in any way be construed as contradicting Section 9(a)(i)). The representations and warranties of Seller and Liquor License Seller set forth in Section 7(a)(i) of this Agreement, or the Seller Documents, shall remain operative and shall survive for one (1) year following Closing. Any claim of Buyer based on an alleged breach or failure of any of Seller's or Liquor License Seller's representations or warranties must be made before expiration of one (1) year following Closing (the "**Claim Period**") or shall automatically be null, void and of no force or effect whatsoever. For purposes hereof, a claim shall be considered "**made**" only if written notice is given to Seller or Liquor License Seller before the end of the Claim Period. If Buyer closes hereunder with knowledge that any representation or warranty made by Seller or Liquor License Seller is untrue, it shall be deemed waived.

iii. To Seller's and Liquor License Seller's knowledge, Seller and Liquor License Seller are in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "**Orders**").

iv. To Seller's and Liquor License Seller's knowledge, neither Seller nor any partner or beneficial owner of Seller (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are

collectively referred to as the "**Lists**"), (ii) is a person who has been determined by competent authority to be subject to the prohibitions contained in the Orders, (iii) is owned or controlled by, nor acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders, or (iv) shall transfer or permit the transfer of any interest in Seller or any beneficial owner in Seller to any person or entity who is, or any of whose beneficial owners are, listed on the Lists. Seller and Liquor License Seller hereby covenant and agree that if either or both obtains knowledge that Seller or Liquor License Seller or any of their partners or beneficial owners becomes listed on the Lists or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Seller and/or Liquor License Seller, as the case may be, shall immediately notify Buyer in writing, and in such event, Buyer shall have the right to terminate this Agreement without penalty or liability to Seller immediately upon delivery of written notice thereof to Seller, in which event the Deposit shall promptly be returned to Buyer.

v. Seller's representations and warranties set forth in Section 7(a)(iii) and (iv) shall be true, accurate and correct in all material respects upon the execution of this Agreement and shall be deemed to be repeated on and as of the Closing Date. The representations and warranties of Seller and Liquor License Seller set forth in Section 7(a)(iii) and (iv) of this Agreement shall remain operative and shall survive the Closing.

As used in this Agreement, the words "**Seller's knowledge**" or "**Liquor License Seller's knowledge**" or words of similar import shall be deemed to mean, and shall be limited to, the actual (as distinguished from implied, imputed or constructive) knowledge of Seller's representatives, Herbert Speigel, general manager of the Hotel Property and Marla Steele and Ed Mace without such individuals having any obligation to make an independent inquiry or investigation and without imputation to such individuals of the knowledge of others, whether or not any such others would be deemed agents of Seller or of the named individuals. The named individuals are mentioned solely for establishing an objective reference for measuring Seller's knowledge, and are not making such representations and warranties in their individual capacities. Accordingly, only Seller (and not the named individuals) shall be liable in the event any such representations or warranties are breached. Seller and Liquor License Seller represent and warrant that the aforementioned individuals are the individuals currently in the employ of Seller, Liquor License Seller and/or their affiliates with sufficient knowledge concerning the matters that Seller and Liquor License Seller have made such representations and warranties and each such individual has asset management responsibility with respect to the Premises within its respective organization.

c. Buyer represents and warrants to Seller as follows:

A. Entity Status. Buyer is a duly formed, validly existing and in good standing limited liability company organized under the laws of the State of Delaware and has the requisite power and authority to own or lease its properties and to carry on its business as now being conducted. Buyer is, or will be at Closing, qualified under the laws of the State of California to conduct business therein. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, dissolution or other similar legal proceedings are pending or, to Buyer's knowledge, threatened against Buyer, nor are any such proceedings contemplated by Buyer.

B. Power and Authority. Buyer has the requisite legal right, power and authority to execute and deliver this Agreement and all documents now or hereafter to be executed by Buyer pursuant to this Agreement (collectively, the "**Buyer Documents**"), to consummate the transaction contemplated hereby, and to perform its obligations hereunder and under the Buyer Documents. Buyer has taken all action necessary to authorize the execution and delivery of this Agreement and the other documents and instruments to be executed and delivered by Buyer pursuant hereto, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby.

C. Enforceability. This Agreement and Buyer Documents have been duly executed and delivered by Buyer and constitute legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles regardless of whether such enforceability is considered in a proceeding at law or in equity.

D. No Violation. The execution and delivery of this Agreement by Buyer, the performance by Buyer of its obligations hereunder and the consummation by Buyer of the transactions contemplated by this Agreement will not (i) contravene any provision of its organizational documents, (ii) violate or conflict with any judgment, order, decree, writ or injunction issued against Buyer, or any Laws applicable to Buyer, (iii) conflict with, result in any breach of, or constitute a default (or an event which would, with the passage of tine or the giving of notice or both, constitute a default) under, or give rise to a right to terminate, amend, modify, abandon or accelerate, any material agreement which is applicable to, binding upon or enforceable against Buyer, (iv) result in or require the creation or imposition, of any lien upon or with respect to any of the property, assets or the issued and outstanding interests in Buyer, or (v) require the consent, approval, authorization or permit of, or filing with or notification to, any governmental authority, any court or tribunal or any other person.

E. Litigation. There is no action, suit or other legal or administrative proceeding or governmental investigation pending or, to Buyer's knowledge, threatened, by or against Buyer or affecting Buyer or any of its properties or assets or which questions the validity or enforceability of this Agreement or the transactions contemplated hereby. There are no outstanding orders or decrees issued by any

governmental authority in any proceeding to which Buyer is or was a party which have not been complied with in full.

ii. The execution, delivery and performance of this Contract and all documents contemplated hereby by Buyer have been duly and validly authorized by all necessary action on the part of Buyer and all required consents and approvals have been duly obtained and will not result in a breach of any of the terms or provisions of, or constitute a default under any indenture, agreement or instrument to which Buyer is a party.

iii. To the best of Buyer's knowledge, Buyer is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "**Orders**"); and

iv. To the best of Buyer's knowledge, neither Buyer nor any partner or beneficial owner of Buyer (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "**Lists**"), (ii) is a person who has been determined by competent authority to be subject to the prohibitions contained in the Orders, (iii) is owned or controlled by, nor acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders, or (iv) shall transfer or permit the transfer of any interest in Buyer or any beneficial owner in Buyer to any person or entity who is, or any of whose beneficial owners are, listed on the Lists. Buyer hereby covenants and agrees that if Buyer obtains knowledge that Buyer or any of its partners or beneficial owners becomes listed on the Lists or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Buyer shall immediately notify Seller in writing, and in such event, Seller shall have the right to terminate this Agreement without penalty or liability to Buyer immediately upon delivery of written notice thereof to Buyer, in which event the Deposit shall promptly be returned to Buyer.

v. Buyer's representations and warranties set forth in Section 7(b)(iii) and (iv) shall be true, accurate and correct in all material respects upon the execution of this Agreement and shall be deemed to be repeated on and as of the Closing Date. The representations and warranties of Buyer set forth in Section 7(b)(iii) and (iv) of this Agreement shall remain operative and shall survive the Closing.

As used in this Agreement, the words "**Buyer's knowledge**" or words of similar import shall be deemed to mean, and shall be limited to, the actual (and, to the extent of the information set forth in the Due Diligence Materials, imputed) knowledge of Greg Denton, an individual charged with responsibility for acquiring the Premises, without such individual having any obligation to make an independent inquiry or investigation and without imputation to such individual of the knowledge of others, whether or not any such others would be deemed agents of Buyer or of the named individual. The named individual is mentioned solely for establishing an objective reference for measuring Buyer's knowledge, and is not making such representations and warranties in its individual capacities. Accordingly, only Buyer (and not the named individual) shall be liable in the event any such representations or warranties are breached.

15. Dispute Resolution.

a. Disputes Subject to Arbitration. Subject to Section 7(a)(ii) hereof, if any claim, dispute or difference of any kind whatsoever (a "**Dispute**") shall arise out of or in connection with or in relation to this Agreement whether in contract, tort, statutory, or otherwise, and including any questions regarding the existence, scope, validity, breach or termination of this Agreement, the Dispute shall be finally settled by arbitration pursuant to the procedures set forth in this Section 8. The parties hereby agree that the Tribunal (as defined herein) shall have the power to order equitable remedies, including specific performance and injunctive relief.

b. Selection of Arbitral Tribunal. An arbitral tribunal of three arbitrators (the "**Tribunal**") shall be established in conformity with the Comprehensive Arbitration Rules and Procedures of JAMS, excluding Rule 30 32 thereof, in effect at the time such arbitration is commenced. Each party shall appoint an arbitrator within fifteen (15) days of the date of a request to initiate arbitration, and the two appointed arbitrators will then jointly appoint a third arbitrator within fifteen (15) days of the date of the appointment of the second arbitrator, to act as chairman of the Tribunal. Arbitrators not appointed within the time limits set forth in the preceding sentence shall be appointed by JAMS.

c. Arbitration Proceedings. The arbitration shall be conducted in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS, excluding Rule 30 32 thereof. The arbitrators shall apply the substantive law of California (exclusive of choice of law principles) in resolving the Dispute. Issues relating to the conduct of the arbitration and enforcement of any award shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1-16. No party to any Dispute shall be required to join any other person as a party to the Dispute pursuant to the arbitration provisions set forth in this Section 8.

d. The Award; Expenses. Except as expressly required by applicable law, the Tribunal shall limit its monetary awards to compensatory damages (which may include a requirement that the losing party bear attorneys' fees and costs of the arbitration proceeding) and shall not award punitive or exemplary damages of any kind. Unless the Tribunal determines otherwise, each party to an arbitration proceeding shall be responsible for all fees and expenses of such party's attorneys, witnesses, and other representatives, and one-half of the other fees and expenses of the Tribunal and the other costs of the arbitration shall be allocated to and paid by (i) the party or parties initiating the respective arbitration proceeding and (ii) the party or parties against whom the respective arbitration proceeding is brought. Any monetary award shall be in dollars of the United States of America. The

award rendered in any arbitration commenced hereunder shall be final and binding upon the parties, and each party hereby waives any claim or appeal whatsoever against it or any defense against its enforcement.

e. Obligation to Arbitrate. The obligation to arbitrate under this Section 8 is binding on the parties, successors and assigns. For purposes of appointing arbitrators, any party, successors and assigns shall jointly appoint such party's arbitrator.

f. Continuing Obligations. Until such time as a final determination of any Dispute is obtained pursuant to this Section 8 and, notwithstanding any termination of or default under, or alleged termination of or default under, this Agreement, all parties to this Agreement involved in such Dispute shall remain liable for, and shall be required to continue to satisfy, their respective obligations under this Agreement.

17. Conditions Precedent to Closing.

a. Buyer's obligation under this Agreement to purchase the Premises is subject to the fulfillment of each of the following conditions on or before the Closing Date:

i. The representations and warranties of Seller and Liquor License Seller contained herein shall continue to be true, accurate and correct in all material respects as of the Closing Date.

ii. Seller shall have delivered the documents and other items required pursuant to Section 10, and shall have performed in all material respects all other covenants, undertakings and obligations, and complied with all material conditions required by this Agreement to be performed or complied with by the Seller at or prior to the Closing.

iii. The Title Company issues or is irrevocably committed to issuing an ALTA Owner's Policy of Title Insurance (Form B, Rev. 10/17/70) (the "**Title Policy**") in the amount of the Purchase Price, insuring fee interest to the Real Property in Buyer, subject only to the Permitted Exceptions.

iv. There shall be no management agreement for the Premises in effect as of the Closing Date.

v. The City of Rancho Mirage shall have consented to the transfer of the Development Agreement in accordance with Section 20 of the Development Agreement.

vi. Seller shall have delivered to Buyer true, correct and complete unaudited interim financial statements of the Seller (and the unaudited interim financial statements of Liquor License Seller which shall be consolidated therein) consisting of balance sheets and related statements of income for the period between May 31, 2005 and the last day of the most recent month for which final unaudited interim financial statements are available.

vii. Seller shall have delivered to Buyer tax clearance certificates showing that all sales tax has been paid for the period prior to the month of Closing and a letter from the City of Rancho Mirage stating that the transient occupancy tax has been paid.

The foregoing requirements are for the benefit of Buyer and any condition may be waived by Buyer in its sole and absolute discretion.

c. Seller's and Liquor License Seller's obligations under this Agreement are subject to the fulfillment of each of the following conditions on or before the Closing Date:

i. The representations and warranties of Buyer contained herein shall be true, accurate and correct in all material respects as of the Closing Date.

ii. Buyer shall have delivered the funds required hereunder and the documents and other items required pursuant to Section 11 and shall have performed in all material respects all other covenants, undertakings and obligations, and complied with all material conditions required by this Agreement to be performed or complied with by Buyer at or prior to the Closing.

The foregoing requirements are for the benefit of Seller and any condition may be waived by Seller in its sole and absolute discretion.

19. Documents to be Delivered by Seller at Closing.

At the Closing, the Seller shall execute, acknowledge and/or deliver, as applicable, the following, to Escrow Company:

a. A grant deed in the form of Schedule 10(a) hereof;
b. A bill of sale transferring the Personal Property and Other Property in the form of Schedule 10(b) hereof;
c. An assignment and assumption of the Contracts, Permits and Occupancy Agreements in the form of Schedule 10(c) hereof;
d. The Covenants in the form attached hereto on Schedule 26(b);
e. All keys and all originals in Seller's possession of the Occupancy Agreements, Contracts and Permits;
f. To the extent in Seller's possession and not already located at the Premises, all Permits.
g. A "**FIRPTA**" certificate from each Seller in the form of Schedule 10(g) annexed hereto and made a part hereof.
h. An Owner's affidavit in form and substance reasonably satisfactory to Seller and Title Company.
i. All other documents Seller is required to deliver pursuant to the provisions of this Agreement.
j. Notice letters to all vendors under all Contracts which Buyer has agreed to assume hereunder and to the tenant under the Occupancy Agreements.
k. A resignation of Seller's appointees to the Board of Directors of the Mirada Community Association.
l. The Management Agreement in the form of Schedule 10(l) hereof.
m. Evidence, in form satisfactory to the Buyer, that the individual executing this Agreement and the other documents Seller is required to deliver pursuant to the provisions of this Agreement is authorized by Seller to execute such

documents on behalf of Seller and to bind Seller with respect thereto.

21. Documents to be Delivered by Buyer at Closing.

At the Closing, Buyer shall execute, acknowledge and/or deliver, as applicable, the following, to Escrow Company:

a. An assignment and assumption of the Contracts, Permits and Occupancy Agreements in the form of Schedule 10(c) hereof;
b. The Covenants in the form attached hereto on Schedule 26(b);
c. Immediately available funds equal to the Purchase Price, plus Buyer's share of any closing costs, in cash or other immediately available funds, subject to apportionments, credits and adjustments as provided in this Agreement.
d. The Management Agreement in the form of Schedule 10(l) hereof.
e. Evidence, in form satisfactory to the Seller, that the individual executing this Agreement and the other documents Buyer is required to deliver pursuant to the provisions of this Agreement is authorized by Buyer to execute such documents on behalf of Buyer and to bind Buyer with respect thereto.
f. A designation of Buyer's appointees to the Board of Directors of the Mirada Community Association.

23. Costs and Adjustments.

At Closing, the following items shall be paid or allocated:

a. The parties shall share equally any escrow fees in connection with the Closing. Each party will be responsible for the fees and expenses of their respective attorneys (provided that the foregoing is not intended to contradict Section 8(d) above).
b. Seller shall pay: (i) the premium of a CLTA basic policy of title insurance issued in accordance with the Title Policy; (ii) recording fees in connection with any reconveyance requested hereby, (iii) 50% of all state and county documentary transfer taxes applicable to the Real Property, (iv) 50% of any sales and use tax payable in connection with the sale of the Personal Property up to Two Hundred Thousand and No/100 Dollars ($200,000.00), and (v) any additional costs and charges customarily charged to sellers in accordance with common escrow practices in the county in which the Premises is located, other than those costs and charges specifically required to be paid by Buyer hereunder. Buyer shall pay: (i) the premium for any excess premium charged for an ALTA policy, the premium for a loan policy, the premium for extended coverage and for any other endorsements desired by Buyer, (ii) the recording fees required in connection with the transfer of the Premises to Buyer, (iii) 50% of all state and county documentary transfer taxes applicable to the Real Property, (iv) any sales and use tax payable in connection with the sale of the Personal Property that is not the obligation of Seller pursuant to clause (iv) above, and (v) any additional costs and charges customarily charged to buyers in accordance with common escrow practices in the county in which the Premises is located, other than those costs and charges specifically required to be paid by Seller hereunder. The update to the Survey shall be paid for by Buyer.

25. Operation of the Premises prior to the Closing Date.

a. Seller and Liquor License Seller covenant and agree that, between the Execution Date and the Closing Date, the Seller and Liquor License Seller shall operate their respective businesses in the ordinary course, consistent with past practice. Buyer acknowledges and agrees that the Consumables, Food and Beverage and Operating Equipment included in the Other Property are subject to variations and depletions in the ordinary course of business; provided, however, that at the Closing there shall be sufficient levels of such Other Property to operate the Hotel Property in the ordinary course of business consistent with past practice.
b. Buyer, Seller and Liquor License Seller shall use their respective commercially reasonable and timely efforts to take or cause to be taken all such actions required to consummate the transactions contemplated hereby including, without limitation, such actions as may be necessary to obtain, prior to the Closing, all necessary governmental or other third-party approvals and consents required to be obtained in connection with the consummation of the transactions contemplated by this Agreement.
c. The capital improvement or replacement projects for the Hotel Property that are in progress on the date hereof are described on Schedule 13 hereto. Seller agrees that it shall be responsible for completing and funding such projects to the extent described on Schedule 13.
d. In addition to Seller's other obligations hereunder, Seller shall, in between the Execution Date and the Closing Date, at Seller's sole cost and expense, maintain the Premises in good order, condition and repair, reasonable wear and tear excepted, pay all taxes, assessments, fines, penalties, charges and other operating expenses as they become due, and shall make all repairs, maintenance and replacements of the Personal Property and otherwise operate the Property in the same manner as before the making of this Agreement, the same as though Seller were retaining the Premises. Seller shall not make any alterations to the Premises (other than as set forth on Schedule 13) without first receiving Buyer's prior written consent thereof.
e. Seller shall not, in between the Execution Date and the Closing Date, enter into any lease, contract or agreement pertaining to the Premises, or waive any rights of Seller thereunder, terminate, amend or modify in any manner any Occupancy Agreements and/or Contracts, without in each case obtaining Buyer's prior written consent thereto, which may be granted or withheld in Buyer's sole and absolute discretion.
f. Seller shall not, in between the Execution Date and the Closing Date, mortgage, encumber or suffer to be encumbered all or any portion of the Premises, which encumbrances would survive the Closing Date, without in each case obtaining Buyer's prior written consent thereto, which may be granted or withheld in Buyer's sole and absolute discretion.

g. Seller shall maintain in full force and effect through the Closing Date all of the insurance policies that Seller has had for the three (3) month period prior to the Execution Date.
h. Seller shall, between the Execution Date and the Closing Date, continue to book hotel rooms to guests in the ordinary course of business and at the rates currently in effect.

27. As Is.

a. To induce Seller to enter into this Agreement, Buyer acknowledges and agrees that, except as otherwise expressly set forth herein, the Premises shall be conveyed and transferred "**AS IS, WHERE IS, AND WITH ALL FAULTS**" and, except to the extent of any representation or warranty made by Seller in Section 7, and except to the extent of any representation or warranty made by Seller in any document executed by Seller at Closing, Seller does not warrant or make any representation, express or implied, as to the merchantability, quantity, quality, condition, suitability or fitness of the Premises for any purpose whatsoever, including, without limitation, its compliance with applicable building codes and ordinances, zoning laws, and Environmental Law, including, without limitation, the Clean Air Act, the Comprehensive Response Compensation and Liability Act (CERCLA) and the Super Fund Amendments and Reauthorization Act (SARA), the Americans with Disabilities Act, and any other federal, state or local statutes, codes or ordinances. Buyer also acknowledges and agrees that the provisions in this Agreement for inspection and investigation of the Premises are adequate to enable Buyer to make Buyer's own determination with respect to the suitability or fitness of the Premises, including, without limitation, its compliance with applicable building codes and ordinances, zoning laws, Environmental Law, including, without limitation, the Clean Air Act, the Comprehensive Response Compensation and Liability Act (CERCLA) and the Super Fund Amendments and Reauthorization Act (SARA), the Americans with Disabilities Act, and any other federal, state or local statutes, codes or ordinances. As used herein, the term "**Environmental Law**" shall mean any law, rule or regulation relating to any Hazardous Substances.

Except to the extent of the representations and warranties made by Seller in Section 7 and in any documents executed and delivered by Seller at Closing, Buyer, for itself and its successors and assigns, releases Seller and its agents, employees, partners, officers, directors, managers, members, contractors, consultants and representatives from, and waives any and all causes of action or claims, known or unknown, against any of such persons for (a) any and all liability attributable to any physical condition of or at the Premises, including, without limitation, the presence on, under or about the Premises of any Hazardous Substances; (b) any and all liability resulting from the failure of the Premises to comply with any applicable laws, and (c) any liabilities, damages or injury arising from, connected with or otherwise caused by statements, opinions or information obtained from any of such persons with respect to the Premises.

This release includes claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist which, if known by Buyer, would materially affect Buyer's release of Seller. Buyer specifically waives the provision of California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR." THE PARTIES CONFIRM THAT THEY ARE EXECUTING THE FOREGOING WAIVER WITH THE ADVICE OF COUNSEL WHO HAS EXPLAINED TO THEM ITS LEGAL EFFECT.

_____ _____

SELLER'S INITIALS BUYER'S INITIALS

_____

LIQUOR LICENSE SELLER'S INITIALS

c. The provisions of this Section 14 shall survive the termination of this Agreement and the Closing.

29. No Brokerage Commission.

Buyer and Seller represent to each other that such representing party has not dealt with any broker in connection with Buyer's purchase of the Premises or the transactions described herein.

31. Casualty; Condemnation.

a. Damage or Destruction. If a "material" part of the Premises is damaged or destroyed by fire or other casualty, Seller shall notify Buyer of such fact and, except as hereinafter provided, Buyer shall have the option to terminate this Agreement upon notice to Seller given not later than fifteen (15) business days after receipt of Seller's notice (and if Buyer does not affirmatively terminate this Agreement within such period, then Buyer shall be deemed to have elected to terminate this Agreement). If this Agreement is so terminated, the provisions of Section 16(d) shall apply. If (i) Buyer does not elect to terminate this Agreement, or (ii) there is damage to or destruction of an "immaterial" part ("**immaterial**" is herein deemed to be any damage or destruction which is not "material," as such term is hereinafter defined) of the Premises, Buyer shall close as provided in this Agreement and, at the Closing, Seller shall, unless Seller has repaired such damage or destruction prior to the Closing, (x) pay over to Buyer the proceeds of any insurance collected by Seller less the amount of all costs incurred by Seller in connection with any action required by the governmental authority to maintain the Premises and in connection

with collection of the insurance proceeds and the amount of any deductible, and (y) assign and transfer to Buyer all right, title and interest of Seller in and to any uncollected insurance proceeds which Seller may be entitled to receive from such damage or destruction. A "**material**" part of the Premises for purposes of this Section 16(a) shall be deemed to have been damaged or destroyed if the cost of repair or replacement shall be $1,675,000, as reasonably estimated by Seller or a construction company reasonably acceptable to Buyer, or if such damage or destruction materially and adversely affects the ongoing operation of the Hotel Property, terminates any routes of ingress or egress to the Hotel Property, or results in a reduction of available parking area that causes the remaining number of parking spaces following condemnation to be less than required by applicable zoning codes.

b. Condemnation. If, prior to the Closing Date, all or any material portion (as hereinafter defined) of the Premises is taken by eminent domain or condemnation (or is the subject of a pending taking which has not been consummated) or if all or any portion of the Tennis Court Land is taken by eminent domain or condemnation (or is the subject of a pending taking which has not been consummated), Seller shall notify Buyer of such fact and the Buyer shall have the option to terminate this Agreement upon notice to the Seller given not later than fifteen (15) business days after receipt of the Seller's notice (and if Buyer does not affirmatively terminate this Agreement within such period, then Buyer shall be deemed to have elected to terminate this Agreement). If this Agreement is so terminated, the provisions of Section 16(d) shall apply. If Buyer does not elect to terminate this Agreement, or if an "immaterial" portion ("**immaterial**" is herein deemed to be any taking which is not "material", as such term is herein defined) of the Premises is taken by eminent domain or condemnation, at the Closing, Seller shall assign and turnover, and Buyer shall be entitled to receive and keep, all awards or other proceeds for such taking by eminent domain or condemnation, less any reasonable costs incurred by Seller in connection therewith. A "**material**" portion of the Premises for purposes of this Section 16(b) means more than ten percent (10%) of the gross floor area of the improvements which comprise the Hotel Property or any portion of the improvements necessary for the ongoing operation of the Hotel Property or a material reduction of available parking area occurs.

c. If Buyer elects to terminate this Agreement pursuant to Section 16(a) or 16(b), this Agreement shall be terminated and neither party shall have any further rights, obligations or liabilities hereunder, except for the Surviving Obligations and the Deposit shall promptly be returned to Buyer.

d. Seller and Buyer hereby agree that their respective rights in case of damage, destruction, condemnation or taking by condemnation shall be governed exclusively by the provisions of this Section 16.

33. Remedies.

a. IN THE EVENT OF A DEFAULT HEREUNDER BY BUYER PRIOR TO THE CLOSING DATE, OR IF THE CLOSING FAILS TO OCCUR BY REASON OF BUYER'S FAILURE OR REFUSAL TO PERFORM ITS OBLIGATIONS HEREUNDER ON THE CLOSING DATE FOR ANY REASON WHATSOEVER, EXCEPT SELLER'S OR LIQUOR LICENSE SELLER'S DEFAULT, THEN SELLER AND LIQUOR LICENSE SELLER SHALL, AS THEIR SOLE AND EXCLUSIVE REMEDY, TERMINATE THIS AGREEMENT BY NOTICE TO BUYER. IF SELLER AND LIQUOR LICENSE SELLER ELECT TO TERMINATE THIS AGREEMENT, THEN THIS AGREEMENT SHALL BE TERMINATED AND SELLER AND LIQUOR LICENSE SELLER SHALL RETAIN THE DEPOSIT, INCLUDING ANY INTEREST ACCRUED THEREON, AS LIQUIDATED DAMAGES FOR ALL LOSS, DAMAGE AND EXPENSES SUFFERED BY THEM, IT BEING AGREED THAT THEIR DAMAGES ARE IMPOSSIBLE TO ASCERTAIN, AND IT BEING FURTHER AGREED THAT THE LIQUIDATED DAMAGES AS DESCRIBED IN THIS SECTION 17(a) ARE REASONABLE UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THIS AGREEMENT WAS MADE, AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS, OBLIGATIONS OR LIABILITIES HEREUNDER, EXCEPT FOR THOSE OBLIGATIONS WHICH SPECIFICALLY SURVIVE ANY TERMINATION OF THIS AGREEMENT PURSUANT TO THE TERMS HEREOF (THE "**SURVIVING OBLIGATIONS**"). NOTHING CONTAINED HEREIN SHALL LIMIT OR RESTRICT SELLER'S AND LIQUOR LICENSE SELLER'S ABILITY TO PURSUE ANY RIGHTS OR REMEDIES THEY MAY HAVE AGAINST BUYER WITH RESPECT TO THE SURVIVING OBLIGATIONS. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER AND LIQUOR LICENSE SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

_____ _____

SELLER'S INITIALS BUYER'S INITIALS

_____

LIQUOR LICENSE SELLER'S INITIALS

c. In the event of a default hereunder by Seller or Liquor License Seller on or prior to the Closing Date for any reason whatsoever, except Buyer's default, Buyer may, as Buyer's sole and exclusive remedies, (i) enforce specific performance of this Agreement, provided, that Buyer may only bring an action for specific performance if (A) Buyer has notified Seller and Liquor License Seller in writing of the obligation which was not satisfied and Seller and Liquor License Seller have not cured such obligation within ten (10) days after receiving such notice, (B) Buyer files an action for specific performance within ninety (90) days after Seller's and Liquor License Seller's right to cure has lapsed, and (C) if successful, Buyer will purchase the Premises subject to the terms and conditions set forth in Section 14 and elsewhere in this Agreement, or (ii) terminate this Agreement by written

notice delivered to Seller and Liquor License Seller on or before the Closing Date if Buyer has notified Seller and Liquor License Seller in writing of the obligation which was not satisfied and Seller and Liquor License Seller have not cured such obligation within ten (10) days of receiving such notice, in which case the Deposit shall promptly be returned to Buyer; and upon termination, Buyer shall have the right to seek reimbursement of its reasonable and actual third party out of pocket expenses incurred by Buyer in connection with negotiating this Agreement and performing its due diligence of the Premises in an amount of no more than Three Hundred Thousand and No/100 Dollars ($300,000.00), and neither party shall have any further rights, obligations or liabilities hereunder, except for the Surviving Obligations, or (iii) waive Seller's and Liquor License Seller's default and proceed to consummate the transactions contemplated by this Agreement. Buyer agrees that its failure to timely commence any such action for specific performance within such ninety (90) day period shall be deemed a waiver by it of its right to commence such an action.

35. Liquor License.
    a. To facilitate the conveyance of the Liquor License, Buyer and Liquor License Seller agree that Liquor License Seller and Buyer shall promptly file a transfer application for such Liquor License with the California Department of Alcoholic Beverage Control ("**Department**") in accordance with all applicable laws; provided, however, that Buyer shall be solely responsible to prepare and file the application with the Department. Buyer shall be solely responsible for payment of any and all license fees and/or transfer fees required to achieve transfer of the Liquor License and liquor inventory to Buyer. Liquor License Seller agrees to reasonably cooperate with Buyer in filing such application.
    b. Within five (5) days of the opening of escrow, Escrow Company is instructed to open a second escrow ("**Liquor License Escrow**"), and to transfer from the Deposit held in the escrow to the Liquor License Escrow, being the sum of Forty Thousand and No/100 Dollars ($40,000.00) for the Liquor License, Five Thousand and No/100 Dollars ($5,000.00) for the Liquor FF&E and One Hundred Thousand and No/100 Dollars ($100,000.00) for the Liquor Inventory. Escrow Company is further instructed to thereafter promptly prepare and record the Notice of Intended Transfer as required under Section 24073 of the California Business and Professions Code and to concurrently therewith deliver a certified copy to Seller and Buyer. Escrow Company is further directed, no later than five (5) business days after the requirements for transfer as provided in Section 24049 of the California Business and Professions Code have been satisfied, to pay out of the Liquor License Purchase Price, the claims of bona fide creditors of the Liquor License Seller who file their claims with the Escrow Company before the Escrow Company is notified by the Department of its approval of the transfer of the Liquor License or if the Liquor License Purchase Price is insufficient to pay such claims in full, Escrow Company shall distribute the consideration as set forth in California Business and Professions Code Section 24074; provided, however, that Liquor License Seller may dispute any claim by delivering written notice of such dispute to Escrow Company, and upon receipt of such notice, Escrow Company shall notify the claimant thereof, and the amount or pro rata amount thereof shall be retained by the Escrow Company for a period of twenty-five (25) days, and if not attached shall be paid to Liquor License Seller.
    c. At the Liquor License Closing, Liquor License Seller shall execute, acknowledge and/or deliver, as applicable, to Escrow Company,
        i. A Bill of Sale of the Liquor Inventory ("**Liquor Inventory Bill of Sale**") in substantially the form of Schedule 18(c)(i) attached hereto and any and all other documents necessary to transfer the Liquor License; and
        ii. A sales tax clearance certificate showing that all sales tax has been paid for the period prior to the month of Closing.
    e. At the Liquor License Closing, Buyer shall execute, acknowledge and/or deliver, as applicable, to Escrow Company, Buyer's share of the Liquor License Escrow closing costs and any other costs to be borne by Buyer under the terms of this Agreement and necessary for the Liquor License Closing.
    f. Escrow Company is instructed to close the Liquor License Escrow as soon as possible after the occurrence of the following conditions precedent:
        i. The Closing for the purchase and sale of the Premises, and
        ii. Approval by the Department of the transfer of the Liquor License to Buyer.
        iii. Delivery by Buyer and Liquor License Seller of all documents and funds described in subparagraph (b) above.

    Buyer shall not be required to assume any lease between Liquor License Seller and any concessionaire that exists prior to or on the date of the Liquor License Closing.

    Upon transfer of the Liquor License and closing of the Liquor License Escrow, Escrow Company shall deliver to Buyer the Liquor Inventory Bill of Sale and shall deliver to Liquor License Seller the Liquor License Purchase Price less the amount of any creditor claims paid as provided herein and less Liquor License Seller's share of any Liquor License Escrow fees as provided herein.

    Buyer shall have the right to direct Heritage Bank of San Jose, California to assume the obligations of the Escrow Company under this Section 18, provided that if Heritage Bank will not prepare notices required to complete the Liquor License Closing, Buyer will do so. Such assumption shall become effective upon execution by the parties hereto and by Heritage Bank of an acceptable assumption agreement.

    h. Buyer and Liquor License Seller shall equally share any escrow fees for the Liquor License Escrow, but Buyer shall pay all sales tax due upon closing of the Liquor License Escrow. Buyer shall be solely responsible for any

license fees, transfer fees or other fees payable to the Department, recording and publication fees for the Notice of Intended Transfer and other costs related to the transfer of the Liquor License, except as otherwise specifically provided herein.

i. In the event that the conditions precedent to the Liquor License Closing have not occurred on or before the Closing Date, then Liquor License Seller agrees to assist Buyer in filing an application for a Temporary Retail Permit to Transferee of Licensed Premises (the "**Temporary Permit**") with the Department; provided, however, that Liquor License Seller shall not be required to place the existing Premises liquor license with the Department for safe keeping until such time as Liquor License Seller determines, in its sole discretion, that the Closing will occur as contemplated by this Agreement. If on the Closing Date, Buyer has not received the Temporary Permit, to the extent permitted by law, and at no expense to Seller or Liquor License Seller, Liquor License Seller (through a valid sublease with an affiliate of Seller as concessionaire) shall continue the sale of alcoholic beverage sales on the Premises for a period of not to exceed ninety (90) days after Closing, including, if necessary, the use of Liquor License Seller's existing liquor license, pending action upon Buyer's application to the Department.

Nothing in this Section 18 shall operate or be construed to mean that Buyer's ability to obtain a hotel liquor license from the Department is a condition to the Closing, nor shall Buyer's failure to obtain a hotel liquor license from such authority give Buyer the right to terminate this Agreement.

37. Indemnity.

a. Indemnification by Seller. Seller and Liquor License Seller shall indemnify and hold harmless the Buyer and its officers, directors, employees, constituent partners, affiliates and agents (each a "**Buyer Party**"), from and after the Closing Date, against and in respect of any and all damages, costs, liabilities, losses, judgments, penalties, fines, expenses or other costs, including reasonable attorneys' fees, costs of defense and costs of collection and consequential damages, but not punitive damages except to the extent that punitive damages are payable to a third party (collectively, "**Losses**") incurred by such persons arising from or relating to: (i) any breach of any of the representations or warranties made by Seller or Liquor License Seller in this Agreement or in any of the Seller Documents; (ii) any breach of the covenants and agreements made by Seller or Liquor License Seller in this Agreement or any of the Seller Documents; (iii) any liability or obligation of the Seller or Liquor License Seller owing for any period prior to the Closing Date (regardless of when billed or invoiced) including without limitation any liability to any employee for claims arising from termination of employment or claims relating to periods of employment by Seller or Liquor License Seller, (iv) any liability or obligation asserted against or incurred by Liquor License Seller in connection with the sale of alcoholic beverages at the Premises before Closing; (v) any broker's or finder's fee payable to any party with whom Seller has a relationship or is claiming a relationship with Seller or Liquor License Seller; or (vi) any other lawsuit or potential lawsuit described in Schedule 7(a)(i)(F).

b. Indemnification by Buyer. Buyer shall indemnify and hold harmless Seller and Liquor License Seller and their officers, constituent partners, employees, affiliates and agents (each a "**Seller Party**"), at all times from and after the Closing Date, against and in respect of all Losses incurred by such persons arising from or relating to: (i) any breach of any of the representations or warranties made by Buyer in this Agreement or any of the Buyer Documents, (ii) any breach of the covenants and agreements made by Buyer in this Agreement or any of the Buyer Documents including, without limitation, the obligation to return any security deposits maintained by the Seller and delivered to Buyer on the Closing Date, the loss of any guest property in the care of the Seller and delivered to Buyer on the Closing Date which do not relate to Seller's actions or WARN Act notice given, or which should have been given, by Seller; (iii) any liability or obligation of the Seller or Liquor License Seller owing for any period after the Closing Date (regardless of when billed or invoiced), other than any other liability or obligation of the Seller or Liquor License Seller that is expressly made their responsibility by the terms of this Agreement or with respect to which Buyer is indemnified under Section 19(a) above; (iv) any liability or obligation asserted against or incurred by Liquor License Seller because of the use of Liquor License Seller's existing liquor license for the continuance of alcoholic beverage sales at the Premises after Closing; (v) any claim made by any party arising from or in connection with Buyer's or its Affiliates acts or omissions relating to the development and Sale of the Tennis Court Land as described in Section 26, including without limitation claims for defective construction, illegal acts or omissions, negligence and breach of contract; or (vi) any broker's or finder's fee payable to any party with whom Buyer has a relationship or is claiming a relationship with Buyer.

c. Procedure for Claims by Third Parties. The rights and obligations of a party claiming a right to indemnification hereunder (each an "**Indemnitee**") from a party to this Agreement (each an "**Indemnitor**") in any way relating to a third party claim shall be governed by the following provisions of this Section 19(c):

i. The Indemnitee shall give prompt written notice to the Indemnitor of the commencement of any claim, action, suit or proceeding ("**Action**"), or any threat thereof, or any state of facts which Indemnitee determines will give rise to a claim by the Indemnitee against the Indemnitor based on the indemnity agreements contained in this Agreement setting forth, in reasonable detail, the nature and basis of the claim and the amount thereof, to the extent known, and any other relevant information in the possession of the Indemnitee (a "**Notice of Claim**"). The Notice of Claim shall be accompanied by any relevant documents in the possession of the Indemnitee relating to the claim (such as copies of any summons, complaint or pleading which may have been served and/or any written demand or document evidencing the same). No failure to give a Notice of Claim shall affect, limit or reduce the indemnification obligations of an Indemnitor hereunder, except to the extent such failure actually prejudices such Indemnitor's ability successfully to defend the Action giving rise to the indemnification claim.

ii. In the event that an Indemnitee furnishes an Indemnitor with a Notice of Claim, then upon the written acknowledgment by the Indemnitor given to the Indemnitee within thirty (30) days of receipt of the Notice of Claim, stating that the Indemnitor is undertaking and will prosecute the defense of the claim under such indemnity agreements and confirming that as between the Indemnitor and the Indemnitee, the claim covered by the Notice of Claim is subject to this Section 19(c) (without admitting responsibility to indemnify therefor) and that the Indemnitor would be able to pay the full amount of potential liability in connection with any such claim (including, without limitation, any Action and all proceedings on appeal or other review which counsel for the Indemnitee may reasonably consider appropriate) (an "**Indemnification Acknowledgment**"), then the claim covered by the Notice of Claim may be defended by the Indemnitor, at the sole cost and expense of the Indemnitor, subject to the terms hereof; provided, however, that the Indemnitee is authorized to file any motion, answer or other pleading that may be reasonably necessary or appropriate to protect its Premises during such 30-day period. However, in the event the Indemnitor does not furnish an Indemnification Acknowledgment to the Indemnitee or does not offer reasonable assurances to the Indemnitee as to Indemnitor's financial capacity to satisfy any final judgment or settlement or does not undertake the defense of the Action, the Indemnitee may, upon written notice to the Indemnitor, assume the defense (with legal counsel chosen by the Indemnitee) and dispose of the claim, at the sole cost and expense of the Indemnitor, subject to the terms hereof. If the Indemnitor disputes its responsibility for such Loss by written notice to the Indemnitee given within such 30-day period, then either the Indemnitor or the Indemnitee may demand arbitration. Notwithstanding receipt of an Indemnification Acknowledgment, the Indemnitee shall have the right to employ its own counsel in respect of any such Action, but the fees and expenses of such counsel shall be at the Indemnitee's own cost and expense, unless (x) the employment of such counsel and the payment of such fees and expenses shall have been specifically authorized by the Indemnitor in connection with the defense of such Action or (y) the Indemnitee shall have reasonably concluded based upon a written opinion of counsel that there may be specific defenses available to the Indemnitee which are different from or in addition to those available to the Indemnitor, or (z) the Indemnitor has not undertaken the defense of such Action, in which case the fees and expenses of counsel incurred by the Indemnitee shall be borne by the Indemnitor, subject to the terms hereof. After undertaking a defense, an Indemnitor may only relinquish or terminate such defense upon reasonable notice to such Indemnitee. In all events where such Indemnitor relinquishes or terminates the defense of such Action, such Indemnitor shall reasonably cooperate in providing a transition of such defense such that the defense is not hindered by such relinquishment or termination.

iii. The Indemnitee or the Indemnitor, as the case may be, who is controlling the defense of the Action shall keep the other fully informed of such Action at all stages thereof, whether or not such party is represented by counsel. The parties hereto agree to render to each other such assistance as they may reasonably require of each other in order to ensure the proper and adequate defense of any such Action. Subject to the Indemnitor furnishing the Indemnitee with an Indemnification Acknowledgment in accordance with this Section 19(c), the Indemnitee shall cooperate with the Indemnitor and provide such assistance, at the sole cost and expense of the Indemnitor, as the Indemnitee may reasonably request in connection with the defense of any such Action, including, but not limited to, providing the Indemnitor with access to and use of all relevant corporate records and making available its officers and employees for depositions, pre-trial discovery and as witnesses at trial, if required. In requesting any such cooperation, the Indemnitor shall have due regard for, and attempt to not be disruptive of, the business and day-to-day operations of the Indemnitee and shall follow the requests of the Indemnitee regarding any documents or instruments which the Indemnitee reasonably believes should be given confidential treatment.

iv. The Indemnitor shall not make or enter into any settlement of any Action which Indemnitor has undertaken to defend, without the Indemnitee's prior written consent (which consent shall not be unreasonably withheld or delayed), unless there is no obligation, directly or indirectly, on the part of the Indemnitee to contribute to any portion of the payment for any of the Losses, the Indemnitee receives a general and unconditional release with respect to the claim (in form, substance and scope reasonably acceptable to the Indemnitee), and there is no finding or admission of any violation of law by, or effect on any other claim that may be made against, the Indemnitee.

Any claim for indemnification that may be made under more than one subsection under this Section 19 may be made under the subsection that the claiming party may elect in its sole discretion, notwithstanding that such claim may be made under more than one subsection. If the Indemnitor disputes its responsibility for such Loss by written notice to the Indemnitee given within such 30-day period, then either the Indemnitor or the Indemnitee may demand arbitration.

e. Procedure for Claims between the Parties. Upon obtaining knowledge of a Loss which shall entitle an injured party to indemnification hereunder which does not arise from a third party claim, the injured party shall deliver a Notice of Claim to the Indemnitor. The Notice of Claim shall state in reasonable detail the nature and estimated amount of any such Loss giving rise to the right of indemnification hereunder. The Indemnitor shall have twenty (20) days after receipt of a Notice of Claim to respond to such Notice of Claim stating whether or not it disputes its liability or the amount thereof, and the basis for any objection. If the Indemnitor fails to respond to such Notice of Claim within such 20-day period, the Indemnitor shall be deemed to have acknowledged its responsibility for such Loss, and in such event, or if the Indemnitor does not dispute its liability, then the Indemnitor shall pay and discharge any such Loss which is not contested within forty-five (45) days after receipt of such Notice of Claim.

If the Indemnitor disputes its responsibility for such Loss by written notice to the Indemnitee given within such 20-day period, then either the Indemnitor or the Indemnitee may demand arbitration.

f. Limitations. Notwithstanding anything contained in this Agreement to the contrary:
   i. Seller's aggregate liability under Section 19(a)(i) shall not exceed five percent (5%) of the Purchase Price (the "**Cap**"); provided, however, the Cap shall not apply to actual fraud committed by Seller and/or Liquor License Seller or a breach of Seller's representations concerning ownership of the Premises or a breach of Liquor License Seller's representations concerning ownership of the Liquor License;
   ii. All of Seller's obligations pursuant to Section 19(a)(i) shall terminate upon expiration of the Claim Period, except as to those matters as to which Buyer has previously made claim against Seller; and
   iii. no claim for indemnification based on a breach of Seller's or Liquor License Seller's representations and warranties shall be asserted by Buyer under Section 19(a)(i) until the amounts payable exceed Three Hundred Thirty-Five Thousand and No/100 Dollars ($335,000.00) in the aggregate; and any claim for indemnification or reimbursement of defense costs by Buyer under Section 19(i) must be made during the Claim Period or shall automatically be null, void and of no force or effect whatsoever (a claim shall be considered "made" only if given by written notice to Seller or Liquor License Seller before the end of the Claim Period).

All notices and claims must be given in accordance with Section 23 to be effective. Except for any matter relating to a Cap Exclusion with regard to Buyer, each of Seller and Buyer hereby expressly waives and relinquishes all other rights or remedies available to it at law, in equity or otherwise (including, without limitation, the right to seek damages or equitable relief from the other) with respect to any Losses (including, without limitation, defense costs) incurred by such party for which such party is indemnified by the other party under Section 19. This Section 19(e) shall not limit or impair Buyer's or Seller's right to object to the final closing statement or the adjustments made thereunder in accordance with Section 3(c) above.

39. Escrow.

The Escrow Company shall hold the Deposit and all documents in escrow and shall dispose of them in accordance with the following provisions:

a. Subject to the provisions of Section 18 hereof, the Escrow Company shall deliver the Deposit to Seller or Buyer, as the case may be, as follows:
   i. to Seller, along with the Deposit, upon completion of the Closing and crediting of an equivalent amount against the Purchase Price; or
   ii. to Seller, after receipt of Seller's demand in which Seller certifies either that (A) Buyer has defaulted under this Agreement and Seller is not in material default, or (B) this Agreement has been otherwise terminated or cancelled, and Seller is thereby entitled to receive the Deposit; but the Escrow Company shall not honor Seller's demand until more than five (5) business days after the Escrow Company has given a copy of Seller's demand to Buyer in accordance with Section 20(c)(i), nor thereafter if the Escrow Company receives a Notice of Objection from Buyer within such ten (10) day period, or
   iii. to Buyer, if after the Execution Date and after receipt of Buyer's demand in which Buyer certifies either that (A) Seller has defaulted under this Agreement and Buyer is not in default, or (B) this Agreement has been otherwise terminated or cancelled, and Buyer is thereby entitled to receive the Deposit; but the Escrow Company shall not honor Buyer's demand until more than five (5) business days after the Escrow Company has given a copy of Buyer's demand to Seller in accordance with Section 20(c)(i), nor thereafter if the Escrow Company receives a Notice of Objection from Seller within such five (5) business day period.

Upon delivery of the Deposit, the Escrow Company shall be relieved of all liability hereunder and with respect to the Deposit. The Escrow Company shall deliver the Deposit, at the election of the party entitled to receive the same, by (i) a good, unendorsed certified check of the Escrow Company payable to the order of such party, (ii) an unendorsed official bank or cashier's check payable to the order of such party, or (iii) a bank wire transfer of immediately available funds to an account designated by such party.

c. At the Closing, Escrow Company shall deliver to Buyer those items and documents to be delivered by Seller that are described in Section 10.
d. Upon receipt of a written demand from Seller or Buyer under Section 20(a)(ii) or (iii), the Escrow Company shall send a copy of such demand to the other party. Within five (5) business days after the date of receiving same, but not thereafter, the other party may object to delivery of the Deposit to the party making such demand by giving a notice of objection (a "**Notice of Objection**") to the Escrow Company. After receiving a Notice of Objection, the Escrow Company shall send a copy of such Notice of Objection to the party who made the demand; and thereafter, in its sole and absolute discretion, the Escrow Company may elect either (A) to continue to hold the Deposit until the Escrow Company receives a written agreement of Buyer and Seller directing the disbursement of the Deposit, in which event the Escrow Company shall disburse the Deposit in accordance with such agreement; and/or (B) to take any and all actions as the Escrow Company deems necessary or desirable, in its sole and absolute discretion, to discharge and terminate its duties under this Agreement, including, without limitation, depositing the Deposit into any court of competent jurisdiction and bringing any action of interpleader or any other proceeding; and/or (C) in the event of any litigation between Seller and Buyer, to deposit the Deposit with the clerk of the court in which such litigation is pending.

i. If the Escrow Company is uncertain for any reason whatsoever as to its duties or rights hereunder (and whether or not the Escrow Company has received any written demand under Section 20(a)(ii) or (iii)), or Notice of Objection under Section 20(c)(i)), notwithstanding anything to the contrary herein, the Escrow Company may hold and apply the Deposit pursuant to this Section 20(c) and may decline to take any other action whatsoever. In the event the Deposit is deposited in a court by the Escrow Company pursuant to Section 20(c)(i), the Escrow Company shall be entitled to rely upon the final non-appealable decision of such court. In the event of any dispute whatsoever among the parties with respect to disposition of the Deposit, the non-prevailing party shall pay the attorneys' fees and costs incurred by the Escrow Company for any litigation in which the Escrow Company is named as, or becomes, a party.

f. Notwithstanding anything to the contrary in this Agreement, within one (1) business day after the date of this Agreement, the Escrow Company shall place the Deposit in an Approved Investment (hereinafter defined). The interest, if any, which accrues on such Approved Investment prior to the Closing Date shall accrue to the benefit of Buyer. The interest which accrues on such Approved Investment shall be considered part of the Deposit. The Escrow Company may not commingle the Deposit with any other funds held by the Escrow Company.

g. As used herein, the term "**Approved Investment**" means (i) any interest bearing demand account or money market funds in a financial institution approved by both Seller and Buyer (an "**Approved Institution**"), (ii) Treasury Bills or other short-term U.S. governmental obligations, repurchase contracts for the same or (iii) any other investment approved by both Seller and Buyer. The rate of interest or yield need not be the maximum available and deposits, withdrawals, purchases, reinvestment of any matured investment and sales shall be made in the sole discretion of the Escrow Company, which shall have no liability whatsoever therefor. Discounts earned shall be deemed interest for the purpose hereof. The Escrow Company is acting hereunder as an escrow agent only and shall not have any liability or obligation for loss of all or any portion of the Deposit by reason of the insolvency or failure of the institution or depository with whom the Deposit have been placed.

h. The Escrow Company shall have no duties or responsibilities except those set forth herein, which the parties hereto agree are ministerial in nature. Seller and Buyer acknowledge that the Escrow Company is serving solely as an accommodation to the parties hereto, and except for the Escrow Company's own willful default, misconduct or negligence, the Escrow Company shall have no liability of any kind whatsoever arising out of or in connection with its activity as the Escrow Company. Seller and Buyer jointly and severally agree to and do hereby indemnify and hold harmless the Escrow Company from all loss, cost, claim, damage, liability, and expense (including, without limitation, attorneys' fees and disbursements whether paid to retained attorneys or representing the fair value of legal services rendered to itself) which may be incurred by reason of its acting as the Escrow Company provided the same is not the result of the Escrow Company's willful default, misconduct or negligence.

i. Any Notice of Objection, demand or other notice or communication which may or must be sent, given or made under this Agreement to or by the Escrow Company shall be sent in accordance with the provisions of Section 23, and in the case of notices or communications sent to the Escrow Company, will be sufficient only if received by the Escrow Company within the applicable time periods set forth herein.

j. Simultaneously with their execution and delivery of this Agreement, Buyer and Seller shall furnish the Escrow Company with their true Federal Taxpayer Identification Numbers so that the Escrow Company may file appropriate income tax information returns with respect to any interest in the Deposit or other income from the Approved Investment. The party ultimately entitled to any accrued interest in the Deposit shall be the party responsible for the payment of any tax due thereon.

k. The Escrow Company shall not have any duties or responsibilities, except those set forth in this Section 20, and shall not incur any liability in acting upon any signature, written notice, written demand, request, waiver, comment, receipt or other paper or document believed by the Escrow Company to be genuine. The Escrow Company may assume that any person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so.

l. Any amendment of this Agreement which could alter or otherwise affect the Escrow Company's obligations hereunder will not be effective against or binding upon the Escrow Company without the Escrow Company's prior consent, which consent may be withheld in the Escrow Company's sole and absolute discretion.

m. The provisions of this Section 20 shall survive the termination of this Agreement and the Closing.

41. Assignment.

Except as stated in the next succeeding sentence, Buyer shall not have the right to assign any of its rights under this Agreement without the express written consent of Seller, which consent Seller shall have the right to withhold or grant in its sole and absolute discretion. Buyer may assign this Agreement to one or more persons or entities controlled by Buyer, under common control with Buyer, or controlling Buyer, provided that such assignees expressly assume all Buyer's obligations hereunder, Buyer remains fully liable for such obligations, and Buyer contemporaneously furnishes a copy of any such assignment to Seller. Upon such assignment, Buyer's assignees shall assume all Buyer's obligations hereunder but Buyer shall remain liable therefor.

43. Access to Records.

For a period of three (3) years subsequent to the Closing Date, Buyer and its affiliates shall be entitled to access during business hours to all documents, books and records of Seller relating to the income and expenses of the Hotel Property for tax and audit purposes, regulatory compliance, and cooperation with governmental investigations; and provided that Buyer gives reasonable prior notice to Seller. Buyer shall also have the right, at its sole cost and expense, to make copies of such documents, books and records.

45. Notices.

a. All notices, elections, consents, approvals, demands, objections, requests or other communications which Seller, Buyer or the Escrow Company may be required or desire to give pursuant to, under or by virtue of this Agreement must be in writing and either delivered by hand or by facsimile (with verification of transmission) or sent by express mail or courier (for next business day delivery), addressed as follows:

If to Seller or Liquor License Seller:

VA RANCHO MIRAGE RESORT, L.P.

Olympus Rancho Mirage Concessions, Inc.

137 Benchmark Road

Avon, Colorado 81658

Facsimile: (970) 845-2928

Telephone: (970) 845-2927

Attention: Martha D. Rehm, Senior Vice President and General Counsel

with a copy to:

Brownstein Hyatt & Farber, P.C.

410 – 17th Street, 22nd Floor

Denver, CO 80202

Facsimile: (303) 223-1111

Telephone: (303) 223-1100

Attention: Edward N. Barad, Esq.

If to Buyer:

GENLB-Rancho LLC

c/o Gencom Group

1221 Brickell Avenue, Suite 900

Miami, FL 33131

Phone: (305) 442-9808

Fax: (305) 442-9809

Attention: Greg Denton

LB Rancho Mirage LLC

c/o Lehman Brothers Inc.

399 Park Avenue, 8th Floor

New York, NY 10022

Phone: (212) 526-3137

Fax: (646) 758-3922

Attention: Joseph J. Flannery

with a copy to:

Herrick, Feinstein LLP
2 Park Avenue
New York, NY 10016

Phone: (212) 592-1400
Fax: (212) 545-3443

Attention: Paul Shapses, Esq.

Gardere Wynne Sewell LLP

1601 Elm Street, Suite 3000

Dallas, Texas 75201

Phone: (214) 999-4884

Fax: (214) 999-3883

Attention: Cynthia Brotman Nelson, Esq.

If to the Escrow Company:

Chicago Title Company

560 East Hospitality Lane

San Bernardino, CA 94208

Facsimile: (909) 884-9428

Telephone: (909) 884-0448

Attention: Steve Gallagher

c. Seller, Liquor License Seller, Buyer or the Escrow Company may designate another addressee or change their address for notices and other communications hereunder by a notice given to the other parties in the manner provided in this Section 23. A notice or other communication sent in compliance with the provisions of this Section 23 shall be deemed given and received on (i) the business date it is received or confirmed if sent by hand delivery or facsimile, respectively, or (ii) the business date it is delivered to the other party if sent by express mail or overnight courier.

47. Property Information and Confidentiality.

a. Buyer, Seller, and Liquor License Seller for the benefit of each other, hereby agree that, they will not release or cause or permit to be released any press notices, publicity (oral or written) or advertising promotion relating to, or otherwise announce or disclose or cause or permit to be announced or disclosed, in any manner whatsoever, the terms, conditions or substance of this Agreement or the transactions contemplated herein (or the identity of Buyer), without first obtaining the written consent of the other party hereto, which consent shall not be unreasonably withheld. The foregoing shall not preclude either party from discussing the substance or any relevant details of the transactions contemplated in this Agreement, with any of its attorneys, accountants, professional consultants or potential lenders, as the case may be, or prevent either party hereto from complying with Laws, including, without limitation, governmental, regulatory, stock exchange, disclosure, tax and reporting requirements, or prevent Seller from advising governmental authorities of this Agreement (and the identity of Buyer) if legally required to do so.

b. In the event this Agreement is terminated, Buyer and Buyer's Representatives shall use commercially reasonable efforts to deliver to Seller all originals and copies of information regarding the Real Property that is in the possession of Buyer or its directors, officers, employees, affiliates, partners, brokers, agents or other representatives, including, without limitation, attorneys, accountants, contractors, consultants, engineers and financial advisors (collectively, "**Buyer's Representatives**").

c. The provisions of this Section 24 shall survive the termination of this Agreement.

49. Antitrust Notification.

Seller and Buyer have been advised that the transactions contemplated by this Agreement are exempt from the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

51. Tennis Court Land Development.

In the event that the entirety, any phase, or any portion of the land described on Schedule 26(a) hereof (the "**Tennis Court Land**") is developed for any purpose other than a Hotel Expansion (the "**Project**"), Buyer shall pay to Seller such amounts in the manner and to the extent set forth in the covenants attached hereto as Schedule 26(b) (the "**Covenants**") and incorporated herein by reference. All capitalized terms in this Section 26 that are not defined herein shall have the meaning set forth in Schedule 26(b).

At Closing, the parties shall execute the Covenants and record them against the Tennis Court Land. Buyer shall also modify the distribution covenants of its charter or operating agreement to ensure that Seller is paid any amounts due to it hereunder prior to distributions made to any other Person except to Buyer's lender if an uncured event of default is then existing. Seller shall have no obligation as a partner, member or joint venturor of Buyer and no obligation to disgorge any payments made in accordance with its rights hereunder.

53. Miscellaneous.
    a. This Agreement shall not be altered, amended, changed, waived, terminated or otherwise modified in any respect or particular, and no consent or approval required pursuant to this Agreement shall be effective, unless the same shall be in writing and signed by or on behalf of the party to be charged.
    b. Except as provided in Section 20 of this Agreement with regards to Escrow Agent, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, executors, administrators, successors and permitted assigns.
    c. All prior statements, understandings, representations and agreements between the parties, oral or written, including without limitation that Letter of Intent dated April 18, 2005 between Buyer and the Seller, are superseded by and merged in this Agreement, which alone fully and completely expresses the agreement between them in connection with this transaction and which is entered into after full investigation, neither party relying upon any statement, understanding, representation or agreement made by the other not embodied in this Agreement. This Agreement shall be given a fair and reasonable construction in accordance with the intentions of the parties hereto, and without regard to or aid of canons requiring construction against Seller or the party drafting this Agreement.
    d. Buyer, Seller, and Liquor License Seller agree that, wherever this Agreement provides that Buyer, Seller or Liquor License Seller must send or give any notice, make an election or take some other action within a specific time period in order to exercise a right or remedy it may have hereunder, time shall be of the essence with respect to the taking of such action, and Buyer's, Seller's or Liquor License Seller's failure to take such action within the applicable time period shall be deemed to be an irrevocable waiver by Buyer, Seller, or Liquor License Seller of such right or remedy, except in the specific instances herein where such failure to give notice shall be deemed to a termination of this Agreement.
    e. No failure or delay of either party in the exercise of any right or remedy given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right or remedy has expired) shall constitute a waiver of any other or further right or remedy nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or any other right or remedy. No waiver by either party of any breach hereunder or failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.
    f. Neither this Agreement nor any memorandum thereof shall be recorded and any attempted recordation hereof shall be void and shall constitute a default.
    g. This Agreement may be executed in one or more counterparts, each of which so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.
    h. Each of the exhibits and schedules referred to herein and attached hereto is incorporated herein by this reference.
    i. The caption headings in this Agreement are for convenience only and are not intended to be a part of this Agreement and shall not be construed to modify, explain or alter any of the terms, covenants or conditions herein contained.
    j. If any provision of this Agreement shall be unenforceable or invalid, the same shall not affect the remaining provisions of this Agreement and to this end the provisions of this Agreement are intended to be and shall be severable.
    k. Following the Closing, upon reasonable request by a party hereto, the other party or parties shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such reasonable further acts and other documents and assurances as the requesting party shall reasonably request with respect to the requested party's performance of its obligations hereunder, provided that same is at no cost to the requested party, or if there is any cost, provided such cost is reimbursed by requesting party.
    l. Except as otherwise expressly stated herein, the provisions of this Agreement are solely for the benefit of Seller, Liquor License Seller and Buyer, and their successors and assigns and no provision of this Agreement shall be construed as creating in any party other than Seller, Liquor License Seller and Buyer, and their successors and assigns, any rights of any nature whatsoever.
    m. If any litigation is commenced in connection with any dispute under this Agreement, the prevailing party in such litigation shall be entitled to reimbursement of all reasonable attorneys' fees and expenses incurred by such prevailing party in connection with such litigation from the non-prevailing party.
    n. The validity, construction and enforceability of this Agreement shall be governed in all respects by the laws of the State of California without regard to its rules concerning conflict of laws. Each of the parties of this Agreement hereby submits to the jurisdiction of courts in the State of California and to the appropriate federal courts of the United States of America.
    o. Buyer, Seller, and Liquor License Seller mutually agree that all activities undertaken in the performance of this Agreement shall be in full compliance with the laws of the United States of America and, specifically, in the actions performed on behalf of Buyer, Seller and Liquor License Seller, the United States Foreign Corrupt Practices Act of 1977, as amended, 91 stat. 1494, et. seq. It is the policy of Buyer, Seller, and Liquor License Seller that their officers, partners, employees, agents and other persons undertaking activities on behalf of Buyer, Seller, Liquor License Seller or their subcontractors adhere strictly to the terms of that Act.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

**SELLER:**

VA RANCHO MIRAGE RESORT, L.P., a Delaware limited partnership

By: VA RANCHO MIRAGE I, INC., its General Partner

By:

Name:

Title: President

**LIQUOR LICENSE SELLER:**

OLYMPUS RANCHO MIRAGE CONCESSIONS, INC., a Delaware corporation

By:

Name:

Title:

**GUARANTOR:**

The undersigned does hereby guarantee the obligations of Seller under Section 19(a), but only to the extent that Seller would be liable under the terms of the Agreement.

THE VAIL CORPORATION, a Colorado corporation

By:

Name:

Title:

**BUYER:**

GENLB-RANCHO LLC, a Delaware limited liability company

By:

Name:

Title:

**ESCROW COMPANY:**

The undersigned does hereby accept and agree to perform the obligations set forth in Sections 18 & 20 hereunder:

CHICAGO TITLE COMPANY, the Escrow Company

By:

Name:

Title:

**LIST OF SCHEDULES**

Schedule A - List of All Liquor Licenses

Schedule 1 - Description of Real Property

Schedule 1(b) - List of Material Personal Property

Schedule 1(c)(vii) - List of Permits

Schedule 6(a) - List of Due Diligence Materials

Schedule 7(a)(i)(F) - Litigation

Schedule 7(a)(i)(G) - Environmental Matters

Schedule 7(a)(i)(H) - Occupancy Agreements

Schedule 7(a)(i)(I) - Equipment Leases

Schedule 7(a)(i)(J) - Violations of Laws

Schedule 7(a)(i)(K) - Intellectual Property

Schedule 7(a)(i)(L) - Contracts

Schedule 10(a) - Form of Grant Deed

Schedule 10(b) - Bill of Sale Transferring Personal Property and Other Property

Schedule 10(c) - Assignment and Assumption of Contracts, Permits and Occupancy Agreements

Schedule 10(g) - Seller's FIRPTA Certificate

Schedule 10(l) - Management Agreement

Schedule 13 (c) - Improvements and Repairs in Progress

Schedule 18(c)(i) - Liquor Inventory Bill of Sale

Schedule 26(a) - Legal Description of Tennis Court Land

Schedule 26(b) - Form of Covenants

# CONSTRUCTION LOAN AGREEMENT
**dated as of**
**July 19, 2005**
**among**
**GORE CREEK PLACE, LLC,**
**The LENDERS Party Hereto,**
**and**

**U.S. BANK NATIONAL ASSOCIATION,**
**as Administrative Agent,**

**$30,000,000**

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## CONSTRUCTION LOAN AGREEMENT

This CONSTRUCTION LOAN AGREEMENT is dated as of July 19, 2005 by and among GORE CREEK PLACE, LLC, a Colorado limited liability company (the "Borrower"); each of the lenders that is a signatory hereto identified under the caption "LENDERS" on the signature pages hereto (individually, a "Lender" and, collectively, the "Lenders"); and U.S. BANK

NATIONAL ASSOCIATION, a national banking association, as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the "Administrative Agent").

**RECITALS**

A. Borrower is the fee owner of that certain real property located in the County of Eagle, State of Colorado and being more fully described in Exhibit A attached hereto (the "Land").

B. Borrower proposes to construct the Improvements (as hereinafter defined) on the Land and, in connection therewith has requested and applied to the Lenders for a loan in the amount of $30,000,000 for the purposes of paying certain costs pertaining thereto. The Lenders have agreed to make such loans on and subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I**
**DEFINITIONS AND ACCOUNTING MATTERS**

1.01 Certain Defined Terms. As used herein, the following terms shall have the following meanings (all terms defined in this Section 1.01 or in other provisions of this Agreement in the singular shall have the same meanings when used in the plural and vice versa):

"Accessibility Laws" shall mean the Americans with Disabilities Act of 1990, as amended from time to time, and any similar state or local laws, rules or regulations relating to the accessibility of buildings or facilities.

"Administrative Agent" shall have the meaning assigned to such term in the preamble.

"Administrative Agent's Account" shall mean the account maintained by Administrative Agent with such bank as may from time to time be specified by Administrative Agent.

"Affiliate" shall mean, with respect to any Person, another Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person and, if such Person is an individual, any member of the immediate family (including parents, spouse, children and siblings) of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person who is controlled by any such member or trust.

"Agency Fee" shall mean any agency fees agreed to by Borrower and Administrative Agent pursuant to a Fee Letter.

"Agreement" shall mean this Construction Loan Agreement, as the same may be Modified from time to time.

"Anti-Terrorism Laws" shall mean any Applicable Laws relating to terrorism or money laundering, including, but not limited to, the Anti-Terrorism Order and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

"Anti-Terrorism Order" shall mean Executive Order No. 13,224, 66 Fed. Reg. 49,079 (2001), issued by the President of the United States of America (Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism).

"Applicable Law" shall mean any statute, law, regulation, ordinance, rule, judgment, rule of common law, order, decree, Government Approval, approval, concession, grant, franchise, license, agreement, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, whether now or hereinafter in effect and, in each case, as amended (including any thereof pertaining to land use, zoning and building ordinances and codes).

"Applicable Interest Rate" shall mean, subject to Section 14.24 below, with respect to any Loan, (a) the LIBOR-Based Rate, or (b) during the existing of any Event of Default, the Default Rate.

"Applicable Lending Office" shall mean, for each Lender, the "Lending Office" of such Lender (or of an Affiliate of such Lender) designated by such Lender from time to time in writing to Administrative Agent.

"Applicable Margin" shall mean 150 basis points.

"Appraisal" shall mean the appraisal report of the Project from National Valuation Consultants dated December 3, 2004, and any future appraisal of the Project prepared by an Appraiser, which Appraisal must comply in all respects with the standards for real estate appraisal established pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and otherwise in form and substance satisfactory to Administrative Agent.

"Appraised Bulk Value" shall mean the bulk discounted value to a single user "upon completion" of the Project as determined by the Appraisal.

"Appraised Land Value" shall mean the "as-is" appraised value of the Land only as determined by the Appraisal.

"Appraiser" shall mean National Valuation Consultants or any other "state certified general appraiser" as such term is defined and construed under applicable regulations and guidelines issued pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which appraiser must have been licensed and certified by the applicable Governmental Authority having jurisdiction in the state where the Project is located, and which appraiser shall have been selected by Administrative Agent.

"Architecture Agreement" shall mean that certain agreement entitled Architectural Work Release Agreement, dated as of May 1, 2003, and Project Work Release No. 2A dated May 1, 2004, between Borrower, as owner, and Borrower's Architect, as architect.

"Assignment and Assumption" shall mean an Assignment and Assumption, duly executed by the parties thereto and consented to by Borrower and Administrative Agent in accordance with Section 14.07(b).

"Assignment of Architectural Agreements" shall mean that certain Assignment of Architectural Agreements and Plans and Specifications of even date herewith, and the "Architect's Consent" dated July 12, 2005 attached thereto, executed by Borrower, and the Borrower's Architect, in favor of Administrative Agent, as the same may be Modified.

"Assignment of 1orrower's Rights in Purchase Contracts" shall mean that certain Assignment of Borrower's Rights in Purchase Contracts of even date herewith, executed by the Borrower in favor of the Administrative Agent, as the same may be Modified.

"Assignment of Construction Agreements" shall mean that certain Assignment of Construction Agreements, and the "Contractor's Consent" attached thereto, of even date herewith executed by Borrower, and the Borrower's Architect, in favor of Administrative Agent, as the same may be Modified.

"Authorized Officer" shall mean, (a) with respect to any Person, any authorized officer of such Person whose name appears on a certificate of incumbency delivered concurrently with the execution of this Agreement, as such certificate of incumbency may be amended from time to time to identify the names of the individuals then holding such offices, and (b) with respect to Borrower, its Managing Member.

"Bankruptcy Action" shall mean, as to any Person, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed, seeking (i) liquidation, reorganization or other relief in respect of such Person or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for a period of sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or (b) any Person shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (a) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official of such Person or for a substantial part of any of their assets, (iv) file an answer admitting the allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing.

"Bankruptcy Code" shall mean the Federal Bankruptcy Code of 1978, as amended from time to time.

"Base Building Work" shall mean all of that certain work to be performed by Borrower and/or its contractors constituting construction of the Improvements as more particularly described in the Plans and Specifications.

"Base Rate" shall mean, for any day, a rate per annum equal to the Prime Rate for such day. Each change in any interest rate provided for herein based upon the Base Rate resulting from a change in the Base Rate shall take effect at the time of such change in the Base Rate.

"Base Rate Loans" shall mean the portions of the Outstanding Principal Amount that bear interest at the Base Rate.

"Borrower" shall have the meaning assigned to such term in the preamble. "Borrower Party" shall mean each of Borrower, and Guarantor.

"Borrower's Account" shall mean an account maintained by Borrower with U.S. Bank, National Association as may from time to time be specified by or approved by Administrative Agent to accept the deposit of loan advances in accordance in this Agreement.

"Borrower's Architect" shall mean 42140 Architecture, Inc., or any replacement thereof approved by Administrative Agent.

"Business Day" shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in Colorado are authorized or required by law to remain closed; provided that, when used in connection with a borrowing, or Continuation of, or Conversion into, a payment or prepayment of principal of or interest on, or an Interest Period for, a LIBOR Rate Loan, or a notice by Borrower with respect to any such borrowing, Continuation, Conversion, payment, prepayment or Interest Period, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"Casualty" shall mean any loss of or damage to, any portion of the Project by fire or other casualty.

"CCR Agreement" shall mean any agreement regarding conditions, covenants and restrictions which may be entered into by Borrower which are related to all or any portion of the Project.

"Change of Control" shall mean any transaction that results in, directly or indirectly, (i) any Person other than the Vail Corporation or a wholly-owned subsidiary thereof, whether directly or indirectly, owning 51% or more of the Equity Interests in Borrower or (ii) any Person other than The Vail Corporation or a wholly-owned subsidiary thereof having the responsibility for managing and administering the day-to-day business and affairs of Borrower or (iii) in any other respects, any Person other than The Vail Corporation directly or indirectly Controlling Borrower.

"Change Order" shall mean any Modification to (a) the Plans and Specifications, (b) the Project Budget, (c) the Construction Schedule, or (d) the General Contract, a Major Subcontract or any subcontract, which increases the cost of Construction Work above the budgeted cost therefor previously approved by Administrative Agent but specifically excluding any Purchaser Upgrades.

"Closing Date" shall mean the date of this Agreement.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" shall mean, collectively, (a) all construction materials and equipment and all furniture, furnishings, fixtures, machinery, equipment, inventory and any other item of personal property in which Borrower now or hereafter owns or acquires any interest or right, including any of the foregoing that are leased, which are used or useful in the construction, operation, use, sale or occupancy of the Project (or any portion thereof); (b) all of Borrower's accounts receivable in connection with the Project (or any portion thereof); (c) all of Borrower's documents, instruments, contract rights (including any rights under any development agreement) and general intangibles relating to the present or future construction, use, sale, operation or occupancy of the Project (or any portion thereof), including the right to use the name "Gore Creek Place" or any such name given the Project, but excluding any rights to the Vail Resorts name and any tradenames or trademarks associated therewith; (d) all insurance proceeds from any policies of insurance covering any of the aforesaid; and (e) such other collateral as may be described in the Security Documents.

"Commitment" shall mean, as to each Lender, the obligation of such Lender to make Loans in an aggregate amount up to but not exceeding the amount set opposite the name of such Lender on Exhibit C attached hereto under the caption "Commitment" or, in the case of a Person that becomes a Lender pursuant to an assignment permitted under Section 14.07(b), as specified in the respective Assignment and Assumption (consented to by Borrower and Administrative Agent in accordance with Section 14.07(b)) pursuant to which such assignment is effected, in either case, as such percentage may be modified by any Assignment and Assumption.

"Completion Date" shall mean, subject to Section 14.27, the first to occur of (i) the date that is twenty-four (24) months after the initial funding, (ii) the Maturity Date, or (iii) solely as to the portion of the Improvements subject to a Qualified Purchase Contract, such earlier date required pursuant to the terms of such Qualified Purchase Contract.

"Completion Guaranty" shall mean that certain Guaranty of Completion executed by Guarantor in favor of Administrative Agent substantially concurrently herewith, as the same may be Modified from time to time.

"Condemnation" shall mean a taking or voluntary conveyance during the term hereof of all or part of the Project, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking) by any Governmental Authority affecting the Project or any portion thereof whether or not the same shall have actually been commenced.

"Condemnation Awards" shall mean all compensation, awards, damages, rights of action and proceeds awarded to Borrower by reason of a Condemnation.

"Consents" shall mean the written consents of the Borrower's Architect and the General Contractor attached to the Assignment of Architecture Agreement and the Assignment of Construction Agreements, respectively.

"Construction Consultant" shall mean RE Tech + and/or such other consultant as Administrative Agent may engage on behalf of the Lenders in connection herewith.

"Construction Schedule" shall mean the schedule prepared and certified by Borrower and verified by the Construction Consultant establishing a timetable for commencement and completion of the Construction Work, showing, on a monthly basis, the anticipated progress of the Construction Work and showing that all of the Construction Work will be completed on or before the Completion Date, as the same may from time to time hereafter be Modified in accordance with the terms of this Agreement.

"Construction Work" shall mean all work and materials (including all labor, equipment and fixtures with respect thereto) necessary to construct the Improvements, all of which shall be performed and completed in accordance with and as contemplated by the Plans and Specifications and all Applicable Laws.

"Consumer Price Index" shall mean the consumer price index for the Denver area for all Urban Consumers-All Items, published monthly by the Bureau of Labor Statistics of the United States Department of Labor.

"Continue", "Continuation" and "Continued" shall refer to the continuation pursuant to Section 2.07 of (a) a LIBOR Rate Loan from one Interest Period to the next Interest Period or (b) a Base Rate Loan at the Base Rate.

"Controlled Account" shall mean one or more deposit accounts established by Administrative Agent (for the benefit of the Lenders) at a depository bank or financial institution that is acceptable to Administrative Agent, and which is established and maintained in accordance with Section 14.25 herewith.

"Convert", "Conversion" and "Converted" shall refer to a conversion pursuant to Section 2.07 of one Type of Loans into another Type of Loans.

"Cost and Plan Review" shall mean a report of the Construction Consultant in form and substance reasonably satisfactory to Administrative Agent, as to the Project Budget, the Plans and Specifications, the Pro Forma Draw Schedule, the Construction Schedule, equipment selection, expected performance, operating costs and as to such other matters as Administrative Agent may reasonably request, including, without limitation, a detailed plan and cost review.

"Date Down Endorsement" shall mean any date down endorsements to the Title Policy or other evidence of date down of title acceptable to Administrative Agent in its reasonable discretion covering disbursements of loan proceeds made or to be made subsequent to the date of the Title Insurance Policy.

"Default" shall mean an event that with notice, lapse of time, or both would become an Event of Default.

"Default Rate" shall mean, as applicable, a rate per annum equal to the greater of (a) the LIBOR-Based Rate plus three and one-half percent (3.5%) or (b) the Base Rate as in effect from time to time plus three and one-half percent (3.5%); provided, however, that in no event shall the Default Rate exceed the Maximum Rate.

"Depository Bank" shall mean any bank or financial institution in which a Controlled Account is established in accordance with Section 14.25 hereof.

"Design Professional" shall mean, collectively, Borrower's Architect, structural engineer, mechanical engineer and other design professionals relating to the Construction Work, as approved by Administrative Agent, and any reference in this Agreement to a certification or other document to be executed by the applicable Design Professional shall mean one or more of such Design Professionals designated by Administrative Agent as the Design Professionals to execute such certification or document, depending on the areas of expertise covered by such certification or document.

"Discretionary Approvals" shall mean all discretionary governmental approvals, authorizations, permits and entitlements which have been or will be issued with respect to the Improvements, including, without limitation, all applicable building, land use and zoning approvals, annexation agreements, plot plan approvals, subdivision approvals (including the approval and recordation of any required subdivision map), environmental approvals (including a negative declaration or an environmental impact report if required under applicable law), and sewer and water permits.

"Distribution" shall mean a payment of cash, assets, or proceeds of any kind by a Person (the "Distributor") to any other Person (a "Distributee") that owns a direct or indirect Equity Interest in such Distributor, including, without limitation, repayment of any loans made by such Distributee to such Distributor, or a return of any capital contribution made by such Distributee, distributions upon termination, liquidation or dissolution of such Distributor.

"Dollars" and "$" shall mean lawful money of the United States of America.

"Earnest Money Deposits" shall mean any security deposits, letters of credit, or other cash or non-cash collateral or security paid or given as security for obligations of purchasers under any Qualified Purchase Contract.

"Eligible Assignee" shall mean any of the following, in each case acceptable to Administrative Agent and Borrower: (a) a commercial bank organized under the Laws of the United States, or any State thereof, and having (i) total assets in excess of $50 billion and (ii) the senior debt obligations of which for such bank's parents senior unsecured debt obligations are rated not less than Baa-2 by Moody's Investors Service, Inc.

"Environmental Claim" shall mean, with respect to any Person, any written request for information by a Governmental Authority, or any written notice, notification, claim, administrative, regulatory or judicial action, suit, judgment, demand or other written communication by any Person or Governmental Authority alleging or asserting liability with respect to Borrower or the Project, whether for damages, contribution, indemnification, cost recovery, compensation, injunctive relief, investigatory, response, Remediation, damages to natural resources, personal injuries, fines or penalties arising out of, based on or resulting from (i) the presence, use or Release into the environment of any Hazardous Substance originating at or from, or otherwise affecting, the Project, (ii) any fact, circumstance, condition or occurrence forming the basis of any violation, or alleged violation, of any Environmental Law by Borrower or otherwise affecting the health, safety or environmental condition of the Project or (iii) any alleged injury or threat of injury to health, safety or the environment by Borrower or otherwise affecting the Project.

"Environmental Indemnity" shall mean that certain Environmental Indemnity Agreement by executed by Borrower substantially concurrently herewith, in favor of Administrative Agent, as the same may be Modified from time to time.

"Environmental Laws" shall mean any and all present and future federal, state and local laws, rules or regulations, and any orders or decrees, in each case as now or hereafter in effect, relating to the regulation or protection of health, safety or the environment or the Release or threatened Release of Hazardous Substances into the indoor or outdoor environment, including ambient air, soil, surface water, ground water, wetlands, land or subsurface strata, or otherwise relating to the use of Hazardous Substances.

"Environmental Losses" shall mean any losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including but not limited to strict liabilities), obligations, debts, diminutions in value, fines, penalties, charges, costs of Remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, reasonable attorneys' fees and expenses, engineers' fees, environmental consultants' fees, and investigation costs (including, but not limited to, costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards relating to Hazardous Substances, Environmental Claims, Environmental Liens and violation of Environmental Laws.

"Environmental Reports" shall mean, collectively, (a) the Environmental Site Assessment (Phase I) prepared by Corn and Associates and dated February 8, 2005, and (b) any environmental surveys and assessments Administrative Agent in its reasonable discretion may require.

"Equity Interests" shall mean shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"Equity Rights" shall mean, with respect to any Person, any subscriptions, options, warrants, commitments, preemptive rights or agreements of any kind (including any `shareholders' or voting trust agreements) for the issuance, sale, registration or voting of, or securities convertible into, any additional shares of capital stock of any class, or partnership, membership or other ownership interests of any type in, such Person.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated) that, together with any Borrower Party, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" shall mean (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an

"accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by a Borrower Party or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by any Borrower Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by a Borrower Party or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by a Borrower Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from a Borrower Party or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"Excluded Taxes" shall mean, with respect to Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its Applicable Lending Office is located, or (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which Borrower is located.

"Facility Amount" shall mean the lesser of (a) $30,000,000, (b) eighty percent (80%) of the total Project Costs approved by Administrative Agent and (c) seventy-five percent (75%) of the Appraised Bulk Value.

"Fee Letter" shall mean one or more letter agreements between Borrower and Administrative Agent with respect to certain fees payable by Borrower in connection with the Loans, as the same may be modified or amended from time to time.

"Foreign Lender" shall mean any Lender that is organized under the laws of a jurisdiction other than that in which Borrower is located. For purposes of this definition, the United States of America, each state thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Funding Date" shall mean any Business Day on which proceeds of the Loan are advanced to or for the benefit of Borrower in accordance with and subject to the terms and conditions of this Agreement.

"GAAP" shall mean generally accepted accounting principles in the United States applied on a consistent basis, in accordance with Section 1.02(a4.

"General Assignment" shall mean that certain Assignment of Contracts, Licenses, Approvals and Rights executed by Borrower for the benefit of Administrative Agent substantially concurrently herewith, as the same may be Modified from time to time.

"General Contract" shall mean that certain Construction Contract dated as of April 18, 2005, between Borrower and the General Contractor, as the same may be Modified from time to time in accordance with the terms of this Agreement.

"General Contractor" shall mean R.A. Nelson & Associates, Inc., or another general contractor for the Construction Work acceptable to Administrative Agent.

"General Contractor Fee" shall mean the general contractor fees agreed to by Borrower and General Contractor as provided in the General Contract.

"Government Approval" shall mean any action, authorization, consent, approval, license, lease, ruling, permit, tariff, rate, certification, exemption, filing or registration by or with any Governmental Authority, including all licenses, permits, allocations, authorizations, approvals and certificates obtained by or in the name of, or assigned to, Borrower and used in connection with the ownership, construction, operation, use or occupancy of the Project, including building permits, zoning and planning approvals, business licenses, licenses to conduct business, certificates of occupancy and all such other permits, licenses and rights.

"Governmental Authority" shall mean any governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, federal, state, local, or foreign having jurisdiction over the matter or matters in question.

"Guarantor Documents" shall mean the Completion Guaranty. "Guarantor" shall mean The Vail Corporation, a Colorado corporation.

"Hard Costs" shall mean the aggregate costs of all labor, materials, equipment and fixtures necessary for completion of construction of the Improvements, as more particularly set forth in the Project Budget.

"Hazardous Substance" shall mean, collectively, (a) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls ("PCB"), (b) any chemicals or other materials or substances that are now or hereafter become defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants", "pollutants" or words of similar import under any Environmental Law and (c) any other chemical or other material or substance, exposure to which is now or hereafter prohibited, limited or regulated under any Environmental Law.

"Improvements" shall mean, collectively sixteen (16) luxury duplex residences (each a "Unit") within eight (8) residential buildings, containing approximately 63,576 square feet of residential space, all storage space contained therein, all signage improvements and all of the other improvements to be constructed on the Land, as more particularly described in the Plans and Specifications.

"Indebtedness" shall mean, for any Person: (a) obligations created, issued or incurred by such Person for borrowed money (whether by loan, the issuance and sale of debt securities or the sale of Property to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such Property from such Person), other than trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business so long as such trade accounts payable are payable within ninety (90) days of the date the respective goods are delivered or the respective services are rendered; (b) obligations of such Person to pay the deferred purchase or acquisition price of Property or services; (c)

Indebtedness of others secured by a Lien on the Property of such Person, whether or not the respective indebtedness so secured has been assumed by such Person; (d) obligations of such Person in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for account of such Person; and (e) Indebtedness of others Guaranteed by such Person. Indebtedness shall not include obligations to return Earnest Money Deposits to Purchasers of Units pursuant to a Qualified Purchase Contract.

"Indemnified Parties" shall mean Administrative Agent, the Affiliates of Administrative Agent, each Lender, and each of the foregoing parties' respective directors, officers, employees, attorneys, agents, successors and assigns.

"Indemnified Taxes" shall mean Taxes other than Excluded Taxes.

"Initial Equity Contribution" shall mean an equity contribution by Borrower which shall include the Appraised Land Value, in a minimum amount equal to ten percent (10%) of the total Project Costs, and all Earnest Money Deposits made on or prior to the date hereof.

"Insurance Proceeds" shall mean all insurance proceeds, damages, claims and rights of action and the right thereto under any insurance policies relating to the Project.

"Interest Period" shall mean each period commencing on the date such LIBOR Rate Loan is made or Converted from a Base Rate Loan or (in the event of a Continuation) the last day of the immediately preceding Interest Period for such Loan and ending on the numerically corresponding day in the first, second, third or sixth calendar month thereafter, as Borrower may select (subject to the terms and conditions hereof).

"Knowledge" shall mean, with respect to a Person, (a) the actual knowledge of such Person (and if such Person is an entity, the actual knowledge of the individuals with responsibility for the management, control, and day to day operations of such entity), including, without limitation, with respect to Borrower and its Affiliates, in connection with the acquisition, development and construction of the Improvements, and (b) the knowledge such Person would have after having undertaken and completed such commercially reasonable diligence and investigation that a similarly-situated commercial property owner or developer would have undertaken with respect to the matter about which the applicable representation is made.

"Land" shall have the meaning assigned to such term in the Recitals.

"Lender" shall have the meaning assigned to such term in the preamble.

"LIBOR" shall mean, as of the applicable date and time for determination provided herein, a per annum rate of interest (rounded upward, if necessary, to the nearest 1/16th of 1%) equal to the rate which appears on the Telerate Page 3750 (or any successor or substitute thereto selected by Administrative Agent in its sole discretion) as of 11:00 a.m., London time, two (2) Banking Days prior to the first day of the applicable LIBOR Period selected by Borrower, for United States dollar deposits having a term coinciding with the LIBOR Period selected by Borrower, adjusted for any reserve requirements and any subsequent costs arising from a change in government regulation; provided that if such rate does not appear on such page as of the date of determination, or if such page shall cease to be publicly available at such time, or if the information contained on such page, in the sole judgment of Administrative Agent shall cease accurately to reflect the rate offered by leading banks in the London interbank market, LIBOR

shall be based on the rate that appears as of 11:00 a.m. London time on such date of determination on the LIBOR Page of Reuters Screen for Dollar deposits having a term comparable to such Interest Period and in an amount comparable to the amount of the applicable LIBOR Rate Loan; and provided further if both of such pages shall cease to be publicly available as of the time of determination, or if the information contained on such page, in the sole judgment of Administrative Agent shall cease accurately to reflect the rate offered by leading banks in the London interbank market, LIBOR shall be based on the rate reported by any publicly available source of similar market data selected by Administrative Agent that, in its sole judgment, accurately reflects such rate offered by leading banks in the London interbank market.

"LIBOR-Based Rate" shall mean the sum of (a) LIBOR, plus (b) the Applicable Margin.

"LIBOR Rate Loans" shall mean the portions of the Outstanding Principal Amount that bear interest at LIBOR-Based Rate.

"Lien" shall mean, with respect to any Property (including the Project), any mortgage, deed of trust, lien, pledge, charge, security interest or encumbrance of any kind in respect of such Property. For purposes of this Agreement and the other Loan Documents, a Person shall be deemed to own subject to a Lien any Property that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement (other than an operating lease) relating to such Property.

"Lien Law" shall mean the mechanics' lien laws of the State of Colorado, as amended from time to time.

"Limiting Regulation" shall mean any law or regulation of any jurisdiction, or any interpretation, directive or request under any such law or regulation (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) by any court or Governmental Authority charged with the interpretation or administration thereof, or any internal bank policy resulting therefrom (applicable to loans made in the United States of America) which would or could in any way require a Lender to have the approval right contained in Section 10.03(d).

"Loan Documents" shall mean, collectively, this Agreement, the Notes, the Security Documents, the Guarantor Documents, any Fee Letters, the Representation Agreement, and each other agreement, instrument or document required to be executed and delivered in connection with, or evidencing, securing, or supporting, the Loans, together with any Modifications thereof.

"Loan to Value Ratio" shall mean the ratio, expressed as a percentage, that (a) the sum of the Facility Amount bears to (b) the Appraised BulkValue, as determined on the basis of the most recent Appraisal obtained by Administrative Agent, any such Appraisal to be conclusive absent demonstrable error.

"Major Subcontract" shall mean any subcontract, trade contract, material agreement or supply contract relating to the construction of the Improvements or a component thereof in the amount of $250,000 or more.

"Major Subcontractor" shall mean any subcontractor or trade contractor or supplier, other than a Design Professional, who is a party to a Major Subcontract.

"Managing Member" shall mean The Vail Corporation, a Colorado corporation, as managing member under the Organizational Documents of Borrower, and its successors thereunder as managing member of Borrower as permitted under the Loan Documents.

"Material Adverse Effect" shall mean (a) as to Borrower, the likely inability or reasonably anticipated inability of Borrower to pay and perform their respective obligations under and in full compliance with the terms of the Loan Documents (including, without limitation, completing the Improvements on or before the Completion Date) as a result of (i) a material and adverse effect on the condition (financial or otherwise), assets or business of Borrower (other than a change solely as a result of a change in the financial markets), (ii) a material and adverse effect on the value of the Project (other than a change solely as a result of a change in the financial markets), or (iii) a material and adverse effect on the status of the liens in favor of Administrative Agent on the Collateral, and (b) as to Guarantor, the acceleration of the Vail Corporation's Principal Bank Credit Facility as the result of any material default thereunder after giving effect to all applicable notice, cure and grace periods and all consents, waivers or modifications which have been entered into by the requisite lenders under the terms of the such facility (for purposes of this paragraph, The Vail Corporation's "Principal Bank Credit Facility" means that certain Fourth Amended and Restated Credit Agreement, dated as of January 28, 2005 among The Vail Corporation (d/b/a Vail Associates, Inc.), Bank of America, N.A., as Administrative Agent and the other financial institutions identified therein, as amended, modified, extended or replaced from time to time on substantially similar terms and conditions; in the event that such agreement or its successor is terminated without replacement or that such agreement or its successor is Modified on terms and conditions that are not substantially similar, "Principal Bank Credit Facility" as to The Vail Corporation shall mean The Vail Corporation's principal bank revolving credit agreement as in effect at the time of determination, and in the event that no such bank revolving credit agreement exists, "Principal Bank Credit Facility" shall mean The Vail Corporation's Principal Bank Credit Facility as most recently in effect).

"Material Agreement" shall mean, individually and collectively, the General Contract, Architecture Agreement, each Qualified Purchase Contract, any CCR Agreement, and Borrower's Organizational Documents.

"Maturity Date" shall mean the earliest to occur of (a) the Scheduled Maturity Date in the event Borrower does not properly exercise the Extension Option pursuant to Article IV below; (b) the Extended Maturity Date in the event Borrower has properly exercised the Extension Option pursuant to Article IV; (c) upon the occurrence of any Transfer prohibited by the Loan Documents; and (d) the date on which the Outstanding Principal Balance is accelerated pursuant to the terms of this Agreement.

"Member(s)" shall mean, collectively, the Managing Member and such other Person or Persons as may be a member of Borrower from time to time in accordance with the terms of the Loan Documents.

"Minimum Loan Coverage" shall mean that Qualified Purchase Contracts shall be in place at all times during the term of the Loan providing for Net Sale Proceeds from the sale of Units, aggregating a minimum of 120% of the amount of the Loan (after deducting Earnest Money Deposits used in construction).

"Ministerial Matter" shall mean matters of an administrative or ministerial nature with respect to the Borrower, the Improvements, or the Loan, including, without limitation, matters

involving: (a) construction budgets, schedules, plans and specifications, and any changes made (or requested by Borrower to be made) with respect thereto, (b) construction contracts, architecture contracts, bonds, and other documents related to the Project, and any changes made (or requested by Borrower to be made) thereto, (c) forms of documents and Collateral required to be executed and/or delivered by Borrower or any other Person in connection with the Loan, and (d) the satisfaction of conditions precedent to disbursements of the Loan to Borrower; provided, however, that Ministerial Matters shall not be deemed to include any of the matters described in Section 13.09(b) below.

"Modifications" shall mean any amendments, supplements, modifications, renewals, replacements, consolidations, severances, substitutions and extensions thereof from time to time; "Modify", "Modified", or related words shall have meanings correlative thereto.

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Net Sale Proceeds" shall mean (a) with respect to a request for a release of a Unit from the lien of the Security Instrument, the actual sales price of the Unit pursuant to a Qualified Purchase Contract less commissions and closing costs paid by Borrower to third parties; provided, however, in no event shall such commissions and closing costs exceed ten percent (10%) of the actual Unit sales price; (b) with respect to a casualty, the net amount of all Insurance Proceeds received by Administrative Agent pursuant to any Policies as a result of any Casualty, after deduction of Administrative Agent's costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same, and (c) with respect to a Condemnation, the net amount of any Condemnation Award, after deduction of Administrative Agent's costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same.

"Non-Discretionary Approvals" shall mean all non-discretionary governmental approvals, authorizations, permits and entitlements where issuing of the same is based solely on a determination of compliance or non-compliance with applicable laws and previously issued Discretionary Approvals, including, without limitation, all grading, shoring, excavating, and building permits.

"Notes" shall mean those certain Promissory Notes, each of even date herewith, executed and delivered by Borrower to the order of the Lender named therein, in the aggregate original principal amount of the Facility Amount, to evidence the Loans, as the same

may be Modified from time to time, and including any Replacement Notes.

"Obligations" shall mean all obligations, liabilities and indebtedness of every nature of Borrower, from time to time owing to Administrative Agent or any Lender under or in connection with this Agreement, the Notes or any other Loan Document to which it is a party, including principal, interest, fees (including fees of counsel), and expenses whether now or hereafter existing under the Loan Documents.

"Official Records" shall mean the Official Records of Eagle County, State of Colorado.

"Organizational Documents" shall mean (a) for any corporation, the certificate or articles of incorporation, the bylaws, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation, any shareholder rights agreement, and any

amendments thereto, (b) for any limited liability company, the articles of organization and any certificate relating thereto and the limited liability company (or operating) agreement of such limited liability company, and any amendments thereto, and (c) for any partnership (general or limited), the certificate of limited partnership or other certificate pertaining to such partnership and the partnership agreement of such partnership (which must be a written agreement), and any amendments thereto.

"Other Charges" shall mean all maintenance charges, impositions other than Real Estate Taxes, and any other charges, including license fees for the use of areas adjoining the Project, now or hereafter levied or assessed or imposed against the Project or any part thereof

"Other Taxes" shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

"Outstanding Principal Amount" shall mean the aggregate outstanding principal amount of the Loans at any point in time.

"Payment Date" shall mean the first Business Day of each calendar month. The first Payment Date shall be the first Business Day of the first calendar month following the making of the first Loan pursuant to this Agreement.

"PBGC" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Liens" shall mean (a) any Lien created by the Loan Documents, (b) those matters listed as exception on Schedule B to the Title Policy, (c) Liens for Real Estate Taxes and Other Charges imposed by any Governmental Authority not yet due or delinquent, and (d) such other title and survey exceptions as Administrative Agent may approve.

"Person" shall mean any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

"Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any of their ERISA Affiliates is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Plans and Specifications" shall mean the final plans and specifications for the construction of the Improvements delivered by Borrower to Administrative Agent, prepared by Borrower's Design Professionals and approved by Administrative Agent, the Construction Consultant and, to the extent then required, by any applicable Governmental Authority and such other parties whose approval or consent may be required under any law, regulation, prior agreement, this Agreement and all Modifications thereof made by Change Orders permitted pursuant to the terms of this Agreement. A list of the presently existing Plans and Specifications is attached hereto as Exhibit E.

"Prime Rate" shall mean the rate of interest most-recently announced by U.S. Bank at its principal office in Minneapolis, Minnesota, from time to time as its prime rate, notwithstanding the fact that Administrative Agent and the Lenders may lend funds to their customers at rates that are at, above or below said prime rate, it being understood that such prime commercial rate is a reference rate and does not necessarily represent the lowest or best rate being charged by U.S. Bank to any customer. Changes in the Prime Rate shall become effective on the same day as the date of any change in said prime rate.

"Principal Office" shall mean the office of Administrative Agent, located on the date hereof at 918 - 17th Street, 5th Floor, Denver, Colorado 80202, or such other office as Administrative Agent shall designate upon ten (10) days' prior notice to Borrower and the Lenders.

"Project" shall mean, collectively, (a) the Land, together with any air rights and other rights, privileges, easements, hereditaments and appurtenances thereunto relating or appertaining to the Land, (b) the Improvements, together with all fixtures and equipment required for the operation of the Improvements, (c) all building materials and personal property related to the foregoing, and (d) all other items described as "Property" in the Security Instrument.

"Project Budget" shall mean the budget attached as Exhibit B hereto as the same may be Modified from time to time in accordance with the provisions of this Agreement.

"Project Costs" shall mean, collectively, the Appraised Land Value, Hard Costs and Soft Costs.

"Project Documents" shall mean, collectively, (a) the General Contract, (b) the Architecture Agreement, (c) the Plans and Specifications, (d) all Major Subcontracts, (e) the Government Approvals, (f) the Construction Schedule, (g) Consents, (h) the Design Professionals' Certificates, and (i) the Development Agreement, as the same may be Modified from time to time as permitted under the Loan Documents.

"Property" shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

"Proportionate Share" shall mean, with respect to each Lender, the percentage set forth opposite such Lender's name on Exhibit C attached hereto under the caption "Proportionate Share".

"Protective Advance" shall mean all necessary costs and expenses (including attorneys' fees and disbursements) incurred by Administrative Agent (a) in order to remedy an Event of Default under the Loan Documents, which Event of Default, by its nature, may impair any portion of the Collateral for the Loans or the value of such Collateral, interfere with the enforceability or enforcement of the Loan Documents, or otherwise materially impair the payment of the Loan (including, without limitation, the costs of unpaid insurance premiums, foreclosure costs, costs of collection, costs incurred in bankruptcy proceedings and other costs incurred in enforcing any of the Loan Documents); or (b) in respect of the operation of the Project following a foreclosure under the Security Instrument.

"Punch List Items" shall mean minor construction items to be completed or constructed with respect to the Base Building Work which do not materially interfere either with the use of the Base Building Work or the acceptance and occupancy of the space to a buyer.

"Purchaser Upgrade" shall mean a Modification or upgrade to the Plans and Specifications for a Unit requested by the purchaser of such Unit and required to be paid for by such purchaser.

"Purchaser Upgrade Account" shall mean one or more deposit accounts established by Borrower with Administrative Agent, and which is established and into which deposits for Purchaser Upgrades shall be held for disbursement in accordance with Section 2.02(c).

"Qualified Purchase Contract" shall mean (i) each of the contracts listed on Exhibit D, provided the same is in full force and effect for the purchase of a Unit or (ii) such other or substitute contract for the purchase of a Unit which is in full force and effect and meets the following criteria: (a) is in substantially the form previously submitted to and accepted by Administrative Agent; (b) is with an unaffiliated third-party purchaser; (c) pursuant to which the purchaser of such Unit, in accordance with the provisions of such contract, has placed into escrow or delivered to Borrower or Guarantor a non-refundable cash Earnest Money Deposit equal to at least 15% of the purchase price; (d) contains no major contingencies (other than construction of the Improvements and customary inspection, title and financing contingencies); and (e) the Administrative Agent has received a fully executed copy of the contract.

"Real Estate Taxes" shall mean all real estate taxes and all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, all charges for utilities and all other public charges whether of a like kind or different nature, imposed upon or assessed against Borrower or the Project or any part thereof or upon the revenues, rents, issues, income and profits of the Project or arising in respect of the occupancy, use or possession thereof

"Regulations A, D, T, U and X" shall mean, respectively, Regulations A, D, T, U and X of the Board of Governors of the Federal Reserve System (or any successor), as the same may be Modified and in effect from time to time.

"Regulatory Change" shall mean, with respect to any Lender, any change after the Closing Date in federal, state or foreign law or regulations (including Regulation D) or the adoption or making after such date of any interpretation, directive or request applying to a class of banks including such Lender of or under any federal, state or foreign law or regulations (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) by any Governmental Authority or monetary authority charged with the interpretation or administration thereof

"Release" shall mean any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, including the movement of Hazardous Substances through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata.

"Release Price" shall mean the amount paid by Borrower to Administrative Agent to obtain a release or partial release of the Security Instrument. The Release Price for each Unit shall be equal to the Net Sales Proceeds for each Unit.

"Remediation" shall mean, without limitation, any investigation, site monitoring, response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances.

"Replacement Note(s)" shall mean any Note executed by Borrower to the order of a Lender upon the assignment by such Lender of all or any portion of such Lender's interest in the Loan and the Loan Documents.

"Representation Agreement" shall mean that certain Representation Agreement of even date herewith executed by Guarantor in favor of Administrative Agent and Lenders.

"Request for Continuation or Conversion" shall mean the notice to be given by Borrower to Administrative Agent in respect of each Loan, in the form of Exhibit G hereto.

"Request for Loan Advance" shall mean the notice to be given by Borrower to Administrative Agent in respect of each Loan, in the form of Exhibit H hereto.

"Required Lenders" shall mean Lenders having more than 60% of the aggregate amount of the Commitments or, if the Commitments shall have terminated, Lenders holding more than 60% of the Outstanding Principal Amount.

"Scheduled Maturity Date" shall mean July 19, 2007, as such date may be extended by the Extension Period.

"Security Documents" shall mean, collectively, the Security Instrument, the General Assignment, the Assignment of Architecture Agreements, the Assignment of Construction Agreements, any Controlled Account Agreement, any other agreements executed by any Borrower Party granting a Lien on any Property or rights as security for the Loans, and all Uniform Commercial Code financing statements required by this Agreement (provided in no event shall the Guarantor Documents or the Environmental Indemnity be deemed Security Documents).

"Security Instrument" shall mean the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by Borrower for the benefit of Administrative Agent concurrently herewith, as the same may be Modified from time to time.

"Solvent" shall mean, when used with respect to any Person, that at the time of determination: (i) the fair saleable value of its assets is in excess of the total amount of its liabilities (including contingent liabilities); (ii) the present fair saleable value of its assets is greater than its probable liability on its existing debts as such debts become absolute and matured; (iii) it is then able and expects to be able to pay its debts (including contingent debts and other commitments) as they mature; and (iv) it has capital sufficient to carry on its business as conducted and as proposed to be conducted.

"Soft Costs" shall mean interest payable on the principal amount of the Loans and all other costs in the Project Budget which constitute Project Costs, excluding the Appraised Land

Value and Hard Costs, which relate to the construction of the Improvements and the operation of the Project during the term of this Agreement.

"S&P" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto.

"Subsidiary" shall mean, with respect to any Person, any corporation, limited liability company, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, limited liability company, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, limited liability company, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

"Survey" shall mean a survey of the Project reasonably satisfactory to Administrative Agent in form and content and made by a registered land surveyor reasonably satisfactory to Administrative Agent.

"Taxes" shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"Title Company" shall mean Land Title Guaranty Co. and any one or more co-insurers or reinsurers acceptable to Administrative Agent.

"Title Policy" shall mean an ALTA policy or policies of title insurance satisfactory to Administrative Agent, together with evidence of the payment of all premiums due thereon, issued by the Title Company (a) insuring Administrative Agent for the benefit of the Lenders in an amount equal to the aggregate amount of the Commitments that Borrower is lawfully seized and possessed of a valid and subsisting fee simple interest in the Project and that the Security Instrument constitutes a valid fee simple deed of trust lien on

the Project, subject to no Liens other than Permitted Liens and (b) providing (i) affirmative insurance or endorsements for coverage against all mechanics' and materialmen's liens, and (ii) such other affirmative insurance and endorsements (including, without limitation, 100 or its equivalent (comprehensive endorsement, modified for a lender), 116.1 ( same land as shown on survey), 116.4 (contiguity endorsement), 103.4 or equivalent (street access endorsement), 100.30 (mineral protection) and ALTA 8.1 (environmental) as Administrative Agent may require.

"Trading with the Enemy Act" shall mean 50 U.S.C. App. 1 et seq.

"Transactions" shall mean, collectively, (a) the execution, delivery and performance by Borrower of this Agreement and the other Loan Documents, the borrowing of the Loans, the use of the proceeds thereof and (b) the execution, delivery and performance by the other Borrower Parties of the other Loan Documents to which they are a party and the performance of their obligations thereunder.

"Transfer" shall mean any transfer, sale, lease, assignment, mortgage, encumbrance, pledge or conveyance of all or a portion of any of (a) the Project, (b) the direct or indirect Equity

Interests in Borrower (other than Transfers of interest in Vail Resorts, Inc.), or (c) the direct or indirect right or power to direct the operations, decisions and affairs of Borrower, whether through the ability to exercise voting power, by contract or otherwise (other than rights in connection with the ownership of interest in Vail Resorts, Inc.).

"Types of Loans" refers to whether such Loan is a Base Rate Loan or a LIBOR Rate Loan, each of which constitutes a "Type". Loans hereunder are distinguished by "Type".

"Unavoidable Delay" shall mean any delay due to strikes, acts of God, fire, earthquake, floods, explosion, actions of the elements, other accidents or casualty, declared or undeclared war, terrorist acts, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market, failure of transportation, lockouts, actions of labor unions, condemnation, court orders, laws, rules, regulations or orders of Governmental Authorities, or other cause beyond the reasonable control of Borrower; provided, however, "Unavoidable Delays" shall not include delays caused by Borrower's lack of or inability to procure monies to fulfill Borrower's commitments and obligations under this Agreement or the other Loan Documents.

"Uniform Commercial Code" shall mean the Uniform Commercial Code of the State of Colorado and the state of formation/organization of Borrower, as applicable.

"Unit" shall mean each and any of the 16 townhome units comprising a portion of the Improvements.

"Unsatisfactory Work" shall mean any Construction Work which Administrative Agent and/or the Construction Consultant has reasonably determined has not been completed in a good and workmanlike manner, and, to the extent any Construction Work is not specifically addressed in the construction drawings and specifications, in a manner consistent with sound design principles and/or sound construction practices, or in substantial conformity with the Plans and Specifications, or in accordance with all Applicable Law.

"U.S. Bank" shall mean U.S. Bank National Association, a national association, and its successors and/or assigns.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

1.02 Accounting Terms and Determinations. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time.

1.03 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time Modified (subject to any restrictions on such

Modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits and Exhibits to, this Agreement, (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) whenever this Agreement provides that any consent or approval will not be "unreasonably withheld" or words of like import, the same shall be deemed to include within its meaning that such consent or approval will not be unreasonably delayed.

1.04 Additional Defined Terms. The following terms are defined in the following Sections:

"Additional Costs" Section 5.01

"Advance Date" Section 2.02(g)

"Advanced Amount" Section 13.11(b)

"Base Building Substantial Completion Conditions" Section 6.03

"Breakage Costs" Section 5.05

"Borrower Contingency Fund" Section 7.04 (a)

"Condemnation Threshold Amount" Section 11.02(b)

"Contingency Fund" Section 7.04(a)

"Controlled Account Agreement" Section 14.25(a)

"Controlled Account Collateral" Section 14.25(c)

"Default Cure Period" Section 13.11(f)

"Defaulting Lender" Section 13.11(a)

"Deficiency Deposit" Section 7.02(b)

"Design Professionals' Certificates Section 6.01

"Environmental Liens" Section 9.12(a)

"Event of Default" Article XII

"Extended Maturity Date" Section 4.01

"Extension Fee" Section 4.01(g)

"Extension Notice" Section 4.01(a)

"Extension Option" Section 4.01

"Extension Period" Section 4.01

"In Balance" Section 7.02(a)

"Insurance Premiums" Section 9.05(e)

"Insurance Threshold Amount" Section 11.02(a)

"Interest Reserve" Section 7.05(a)

"Late Charge" Section 3.03

"Loan" and "Loans" Section 2.01(a)

"Loan Transactions" Section 2.02(j)

"Losses" Section 14.04

"Maximum Rate" Section 14.24

"Non-Defaulting Lender" Section 13.11(a)

"Payee" Section 2.02(g)

"Policy" and "Policies" Section 9.05(b)

"Payor" Section 2.02(g)

"Project Budget Line-Item" Section 7.03(a)

"Project Contingency Fund" Section 7.04(a)

"Replacement Lender" Section 13.14(g)

"Required Payment" Section 2.02(g)

"Restoration" Section 11.01(a)

"Retainage" Section 7.06(a)

"Sales Tax Increment Financing" Section 10.15

"Significant Casualty" Section 11.02(b)

"Significant Condemnation Event" Section 11.02(b)

"Special Advance Lender" Section 13.11(a)

"Syndication" Section 14.07(c)

"Unpaid Amount" Section 13.11(b).

## ARTICLE II

## THE LOAN FACILITY

2.01 Loans.

(a) Each Lender severally agrees, on the terms and conditions of this Agreement, to make loans (each advance of such a loan being a "Loan" and collectively, the "Loans") on a non-revolving basis to Borrower in Dollars from time to time in amounts equal to its Proportionate Share of the aggregate amount of Loans to be made at such time; provided, however, that (i) in no event shall the aggregate principal amount advanced by each Lender exceed the applicable Lender's Commitment, subject to the provisions of Section 13.11; (ii) no more than five (5) LIBOR Rate Loans may be in effect at any one time provided that all LIBOR Rate Loans with the same Interest Period (commencing and ending on the same day) shall be considered one LIBOR Rate Loan for the purposes of this Section 2.01(a); and (iii) the Loans shall be advanced for the payment of Project Costs in accordance with the Project Budget.

(b) Subject to the terms of this Agreement, Borrower may borrow the Loans by Type, which shall mean as Base Rate Loans and/or LIBOR Rate Loans, and such Loans may be Converted or Continued pursuant to Section 2.07.

2.02 Borrowings; Certain Notices.

(a) Notices by the Borrower to Administrative Agent regarding (i) requests for Loans; (ii) the Continuations or Conversions of Loans, (iii) optional prepayments of the Loan, and (iv) requests for disbursements from the Purchaser Upgrade Account shall be irrevocable and shall be effective only if received by Administrative Agent not later than 2:00 p.m. Mountain time, on the number of Business Days prior to the date of the requested actions as specified below:

| | Number of Business Days Prior |
|---|---|
| **Notice** | |
| Request for Loan Advance | 7 |
| Designation of Applicable Interest | 3 prior to last day |
| Period of Requests for disbursements | of applicable LIBOR Period |
| from the Purchaser Upgrade Account | (or, for initial advance, 3 days prior) |
| | to initial advance |
| Optional Prepayment | 3 |

Each Request for Loan Advance or Request for Continuation or Conversion shall (A) be duly completed and signed by an Authorized Officer of Borrower, (B) be accompanied by all of the applicable documents and materials, required pursuant to Articles VI and VII, (C) specify the amount (subject to Section 2.02(j)), of such proposed Loan Transaction, and the date (which shall be a Business Day) of such proposed Loan Transaction, as applicable, and (D) in the case of a Request for Loan Advance, be accompanied by all documentation required by this Agreement as a condition precedent to the applicable Loans. Three (3) business days prior to the date of the proposed Loan Transaction, Borrower shall specify the Interest Period and shall specify the Loans to which such requested Interest Period is to relate. If Borrower fails to select the duration of any Interest Period for any LIBOR Rate Loan within the time period (i.e., three (3) Business Days prior to the first day of the next applicable Interest Period) and otherwise as provided in this Section 2.02(a), such Loan (if outstanding as a LIBOR Rate Loan) will be automatically Continued as a LIBOR Rate Loan with an Interest Period of one (1) month on the last day of the current Interest Period for such Loan (based on LIBOR determined two (2) Business Days prior to the first day of the next Interest Period). Requests for disbursements from the Purchaser Upgrade Account shall be delivered in writing as set forth above and shall contain such information and documentation as Administrative Agent deems reasonably necessary, which shall in no event be greater than the information and document requirement for a Loan Advance.

a. Funds for Borrowing. Not less than two (2) Business Days prior to any Funding Date, Administrative Agent shall notify the Lenders in writing of (i) its receipt of a Request for Loan Advance (and shall, within a reasonable time after being requested by a Lender, deliver or cause to be delivered to such Lender a copy of the Request for Loan Advance and supporting documentation), (ii) its determination that all conditions to the advance of Loan proceeds requested pursuant thereto have been satisfied by Borrower or, subject to Section 13 below, waived by Administrative Agent; and (iii) the Funding Date on which each Lender's Loan in respect thereof is required to be made. Not later than 10:00 a.m. Mountain time on the Funding Date specified by Administrative Agent, each Lender shall make available to Administrative Agent at the Administrative Agent's Account, in immediately available funds, such Lender's Proportionate Share of the portion of the Loan to be made pursuant to such Request for Loan Advance.
b. Disbursement to Borrower. Prior to 2:00 p.m. Mountain time on the applicable Funding Date, Administrative Agent shall, subject to the determination by Administrative Agent that all conditions to the advance of Loan proceeds or for a disbursement from the Purchaser Upgrade Account requested pursuant to the applicable Request for Loan Advance or Request for Purchaser Upgrade Account disbursement have been satisfied by Borrower or, waived by Administrative Agent, disburse the amounts made

available to Administrative Agent by the Lenders pursuant to Section 2.02(b) above (and such funds made available to Administrative Agent pursuant to Section 13.11 below) in like funds, or funds from the Purchaser Upgrade Account, as applicable, at Borrower's direction as set forth in the Request for Loan Advance or Request for Purchaser Upgrade Account disbursement, or, during the continuance of an Event of Default, at the election of Administrative Agent, (i) to the Borrower for disbursement in accordance with the Request for Loan Advance and application in accordance with the requirements of the Loan Documents, (ii) directly to General Contractor or other party any costs payable to such party, or (iii) at the Borrower's expense, to the Title Company, with instructions to such Person to pay said monies to the parties as so instructed by Administrative Agent. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable authorization to Administrative Agent to make direct advances provided for in this Section 2.02(c) and no further authorization from the Borrower shall be necessary to warrant such direct advances, and all such direct advances shall be secured by the Security Instrument as fully as if made directly to Borrower, regardless of the disposition thereof by any party so paid. At Administrative Agent's request, any advance of Loan proceeds made by and through the Title Company may be made pursuant to the provisions of a construction escrow agreement in the form then in use by such company with such Modifications thereto as are reasonably required by Administrative Agent. Borrower agrees to join as a party to such escrow agreement and to comply with the requirements set forth therein (which shall be in addition to and not in substitution for the requirements contained in this Agreement) and to pay the fees and expenses of the Title Company charged in connection with the performance of its duties under such construction escrow agreement.

a. Payments by Borrower. Except to the extent otherwise provided herein, all payments of principal, interest and other amounts to be made by the Borrower under this Agreement, the Notes, and any other Loan Document, shall be made in U.S. Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Administrative Agent (for the benefit of the Lenders) at Administrative Agent's Account, not later than 12:00 noon Mountain time, on the date on which such payment shall be due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).
b. Application of Payments. Provided no Event of Default then exits, Borrower shall, at the time of making each payment under this Agreement, any Note or any other Loan Document for the account of any Lender, be entitled to specify to Administrative Agent (which shall so notify the intended recipient(s) thereof) the Loans or other amounts to which such payment is to be applied (and if Borrower fails to so specify, or if an Event of Default exists, Administrative Agent may distribute such payment to the Lenders for application in such manner as it, subject to Section 2.02(h), may determine to be appropriate).
c. Payments to Lenders. Provided Administrative Agent has received such payment by 12:00 noon Mountain time, each payment received by Administrative Agent under this Agreement, the Notes or any other Loan Document for account of the Lenders shall, to the extent reasonably possible, be paid by Administrative Agent

to such Lender by 3:00 p.m. Mountain time on the Business Day on which Administrative Agent received such payment, in immediately available funds, at the account designated in writing by such Lender from time to time. If Administrative Agent has not received such payment by 12:00 noon Mountain time, such payment shall, to the extent reasonably possible, be paid by

Administrative Agent to such Lender by 10:00 a.m. Mountain time on the next Business Day following the Business Day on which Administrative Agent received such payment, in immediately available funds, at the account designated in writing by such Lender from time to time.

(g) Non-Receipt of Funds by Administrative Agent. Without limiting the provisions of Section 13.11 below as to the Lenders, and Section 12.01 below as to Borrower, unless Administrative Agent shall have been notified by a Lender or Borrower, as the case may be (for the purposes of this Section 2.02(g), each a "Payor") prior to the date on which such Payor is required to make payment to Administrative Agent of (in the case of a Lender pursuant to Section 2.02(b) above) the proceeds of a Loan to be made by such Payor hereunder, or (in the case of the Borrower pursuant to Section 2.02(d) above) a payment to Administrative Agent for the account of one or more of the Lenders hereunder (such payment being herein called a "Required Payment"), which notice shall be effective upon receipt, that such Payor does not intend to make such Required Payment to Administrative Agent, Administrative Agent may assume that such Required Payment has been made and may, in reliance upon such assumption (but shall not be required to), make the amount thereof available to the intended recipient(s) of such Required Payment (a "Payee") on such date. If such Payor has not in fact made the Required Payment to Administrative Agent, the Payee of such payment from Administrative Agent shall, within one (1) Business Day after Administrative Agent's demand therefor, repay to Administrative Agent the amount so paid together with interest thereon in respect of each day during the period commencing on the date (the "Advance Date") such amount was so paid by Administrative Agent until the date Administrative Agent recovers such amount at a rate per annum equal to (i) the Federal Funds Rate for such day in the case of payments required to be returned to Administrative Agent by any of the Lenders, or (ii) the Applicable Interest Rate due hereunder with respect to payments returned by the Borrower to Administrative Agent, and, if such Payee(s) shall fail to promptly make such payment, Administrative Agent shall be entitled to recover such amount, on demand, from the applicable Payor, together with interest at the aforesaid rates; provided, however, that if neither the Payee(s) nor applicable Payor shall return the Required Payment to Administrative Agent within three (3) Business Days of the Advance Date, then, retroactively to the Advance Date, such Payor and the Payee(s) shall each be obligated to pay interest on the Required Payment as follows:

A. if the Required Payment shall represent a payment to be made by Borrower to the Lenders, Borrower and the Payee(s) shall each be obligated to pay interest retroactively to the Advance Date in respect of the Required Payment at the Default Rate (without duplication of the obligation of Borrower under Section 3.01 to pay interest on the Required Payment at the Default Rate), it being understood that the return by the recipient(s) of the Required Payment to Administrative Agent shall not limit such obligation of Borrower under Section 3.01 to pay interest at the Default Rate in respect of the Required Payment, and
B. if the Required Payment shall represent proceeds of a Loan to be made by the Lenders to Borrower, such Payor and Borrower shall each be obligated to pay interest retroactively to the Advance Date in respect of the Required Payment pursuant to whichever of the rates specified in Section 3.01 is applicable to the Type of such Loan (without duplication of Borrower's obligation to pay interest pursuant to Section 3.01 on the Required Payment), it being understood that the return by Borrower of the Required Payment to Administrative Agent shall not limit any claim that Borrower may have against such Payor in

respect of such Required Payment and shall not relieve such Payor of any obligation it may have hereunder or under any other Loan Documents to Borrower and no advance by Administrative Agent to Borrower under this Section 2.02 shall release any Lender of its obligation to fund such Loan except as set forth in the following sentence. If any such Lender shall thereafter advance any such Required Payment to Administrative Agent, such Required Payment shall be deemed such Lender's applicable Loan to Borrower.

a. Pro Rata Treatment. Except to the extent otherwise provided herein: (i) each borrowing from the Lenders shall be made by the Lenders pro rata in accordance with the amounts of their respective Commitments; (ii) except as otherwise provided in Section 5.04, LIBOR Rate Loans having the same Interest Period shall be allocated pro rata among the Lenders according to the amounts of their respective Commitments (in the case of the making of Loans) or their respective Loans (in the case of Conversions and Continuations of Loans); (iv) each payment or prepayment of principal of Loans by Borrower shall be made for account of the Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by them; and (iv) each payment of interest on Loans by Borrower shall be made for the account of the Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders.
b. Computations. Interest on all LIBOR Rate Loans and Base Rate Loans shall be computed on the basis of a year of three hundred sixty (360) days and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

c. Minimum Amounts. Except for (i) mandatory prepayments made pursuant to Section 3.05, (ii) Conversions or prepayments made pursuant to Section 5.04, (iii) prepayments made pursuant to Section 10.03(d), and (iv) advances pursuant to Sections 2.02(c), 7.04., 7.05 and 7.11, each borrowing, Conversion, Continuation and optional partial prepayment of principal (collectively, "Loan Transactions") of Loans shall be in an aggregate amount at least equal to $100,000.00. Loan Transactions of or into Loans of different Types or Interest Periods at the same time hereunder shall be deemed separate Loan Transactions for purposes of the foregoing, one for each Type or Interest Period; provided that (A) if any Loans or borrowings would otherwise be in a lesser principal amount for any period, such Loans shall be Base Rate Loans during such period, (B) Loans for the payment of interest due under the Notes may be in a lesser principal amount, and (C) if any Loans are LIBOR Rate Loans, additional increments shall be in a minimum amount at least equal to $100,000.00. Notwithstanding the foregoing, the minimum amount of $100,000.00 shall not apply to Conversions of lesser amounts into a Type or Interest Period that has (or will have upon such Conversion) an aggregate principal amount exceeding such minimum amount and one Interest Period.

d. Extension to Next Business Day. If the due date of any payment under this Agreement or any Note would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and interest shall be payable for any principal so extended for the period of such extension; provided, however, that if such event relates to the Maturity Date, payments due on the Maturity Date shall be payable on the immediately preceding Business Day.

2.03 Changes to Commitments.

a. The respective Commitments shall reduce pro rata automatically by reason of any prepayment of the Loans applicable thereto in the amount of any such prepayment.

b. If the Scheduled Maturity Date is extended in accordance with Section 4.01, Borrower may elect to reduce the amount of the unused Commitments which shall be available during the Extension Period by notifying Administrative Agent of such reduced Commitment amounts in its Extension Notice.

c. The Commitments, once terminated or reduced, may not be reinstated. Each termination or reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

2.04 Lending Offices. The Loans of each Type made by each Lender shall be made and maintained at such Lender's Applicable Lending Office for Loans of such Type.

2.05 Several Obligations; Remedies Independent. The failure of any Lender to make any Loan to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its Loan on such date, but no Lender nor Administrative Agent shall be responsible for the failure of any other Lender to make a Loan required to be made by such other Lender. The amounts payable by Borrower at any time hereunder and under the Note to each Lender shall be a separate and independent debt.

2.06 Notes. The Loans made by each Lender shall be evidenced by its Note. No Lender shall be entitled to have its Note substituted or exchanged for any reason, or subdivided for promissory notes of lesser denominations. In the event of the loss, theft or destruction of any Note, upon Borrower's receipt of a reasonably satisfactory indemnification agreement executed in favor of Borrower by the holder of such Note, or in the event of the mutilation of any Note, upon the surrender of such mutilated Note by the holder thereof to Borrower, Borrower shall execute and deliver to such holder a replacement Note in lieu of the lost, stolen, destroyed or mutilated Note. The Notes shall not be necessary to establish the indebtedness of the Borrower to the Lenders on account of advances made under this Agreement.

2.07 Conversion and Continuations of Loans.

(a) Subject to Section 2.02(j), Borrower shall have the right to Convert Loans of one Type into Loans of another Type or Continue Loans of one Type as Loans of the same Type at any time or from time to time until one (1) month preceding the Maturity Date; provided that: (i) Borrower shall give Administrative Agent notice of each such Conversion or Continuation as provided in Section 2.02(a) above, (ii) LIBOR Rate Loans may be prepaid or Converted only on the last day of an Interest Period for such Loans unless Borrower complies with the terms of Section 5.05, (iii) subject to Sections 5.01 and 5.03, any Conversion or Continuation of Loans shall be pro rata among the Lenders, (iv) each Interest Period that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month; (v) each Interest Period that would otherwise end on a day that is not a Business Day shall end on the next succeeding Business Day (or, if such next succeeding Business Day falls in the next succeeding calendar month, on the immediately preceding Business Day); (vi) no Interest Period shall have a duration of less than one (1) month; (vi) in no event shall any Interest

Period extend beyond the Maturity Date; and (vii) there may be no more than 5 separate Interest Periods in respect of LIBOR Rate Loans outstanding from each Lender at any one time. Notwithstanding the foregoing, and without limiting the rights and remedies of Administrative Agent and the Lenders under Article XII, in the event that any Event of Default exists, Administrative Agent may (and at the request of the Required Lenders shall) suspend the right of Borrower to Convert any Loan into a LIBOR Rate Loan or Continue any Loan as a LIBOR Rate Loan for so long as such Event of Default remains outstanding, in which event all Loans shall be converted (on the last day(s) of the respective Interest Periods therefor) or Continued, as the case may be, as Base Rate Loans.

(b) Notwithstanding clause (a) above, (i) Borrower shall not be entitled to select a LIBOR Period that does not end on or before the Maturity Date; (ii) on each date for determination of LIBOR, the Administrative Agent shall determine the applicable LIBOR-Based Rate (which determination shall be conclusive in the absence of manifest error) and shall promptly give notice of the same to Borrower and Lender by telephone, telecopier or electronic mail; (iii) for the first three (3) calendar months following the closing of the Loan, Borrower shall not be entitled to elect any LIBOR Period other than a 30-day LIBOR Period; (iv) during the existence of an Event of Default, Borrower may not elect a LIBOR-Based Rate. Lender shall be deemed to have funded its Loans that bear interest at the LIBOR-Based Rate from LIBOR deposits obtained by Lender, regardless of whether Lender has funded such LIBOR-Based Loan from another source.

ARTICLE III

**PAYMENTS OF INTEREST AND PRINCIPAL**

3.01 Interest.

a. Borrower hereby promises to pay to Administrative Agent for account of each Lender interest on the unpaid principal amount of each Loan made by such Lender for the period from and including the date of such Loan to but excluding the date such Loan shall be paid in full, at the Applicable Interest Rate.
b. Accrued interest on each Loan shall be payable, in arrears, monthly on each Payment Date subject to Section 7.05(b); **provided** that (i) in the case of payment or prepayment of all or a portion of a Loan, interest accrued thereon shall be payable at the time of such payment or prepayment and (ii) interest payable at the Default Rate shall be payable from time to time on demand. Subject to the provisions of Articles VI and VII, such accrued interest shall be payable from the Interest Reserves established pursuant to the Project Budget; provided, however, that the allocation of Loan funds to the Interest Reserve shall not limit Borrower's obligation to pay such accrued interest.
c. Notwithstanding anything to the contrary contained herein, after the Maturity Date and during any period when an Event of Default exists, Borrower shall pay to Administrative Agent for the account of each Lender interest at the Default Rate on (i) the outstanding principal amount of any Loan made by such Lender, (ii) any interest payments thereon not paid when due, and (iii) on any other amount payable by Borrower hereunder, under the Notes and any other Loan Documents.

(d) Promptly after the determination of any interest rate provided for herein or any change therein, Administrative Agent shall give notice thereof to the Lenders to which such interest is payable and to Borrower, but the failure of Administrative Agent to provide such notice shall not affect Borrower's obligation for the payment of interest on the Loans.

3.02 Repayment of Loans. Borrower hereby promises to pay to Administrative Agent for the account of each Lender the principal of such Lender's outstanding Loans, together with accrued and unpaid interest, fees and all other amounts due under the Loan Documents, on the Maturity Date.

3.03 Late Charge. In addition to any sums due under Section 3.01(c), if Borrower fails to pay any installment of interest as provided in Sections 3.01 and 3.02 above, except the payment of principal due on the Maturity Date, within ten (10) days after the date on which the same is due, Borrower shall pay to Administrative Agent a late charge on such past-due amount, as liquidated damages and not as a penalty, equal to five percent (5.0%) of such amount (a "Late Charge"). In connection therewith, Borrower agrees as follows: (a) because of such late payment, Administrative Agent and Lender will incur certain costs and expenses including, without limitation, administrative costs, collection costs, loss of interest, and other direct and indirect costs in an uncertain amount; (b) it would be impractical or extremely difficult to fix the exact amount of such costs in such event; and (c) the Default Rate and the late charge are reasonable and good faith estimates of such costs. The application of the Default Rate or the assessment of a late charge to any such late payment as described in this Section 3.03 will not be interpreted or deemed to extend the period for payment or otherwise limit any of Administrative Agent's or Lender's remedies hereunder or under the other Loan Documents.

3.04 Optional Prepayments. Subject to the provisions of Sections 3.06 and 5.05, Borrower shall have the right to prepay Loans in whole or in part, without premium or penalty; provided that: (a) Borrower shall give Administrative Agent notice of each such prepayment as provided in Section 2.02(a) (and, upon the date specified in any such notice of prepayment, the amount to be prepaid shall become due and payable hereunder) and (b) except as otherwise set forth in Section 2.02(j), partial prepayments shall be in the minimum aggregate principal amount of $100,000.00, and in whole multiples of $100,000.00 above such amount. Loans that are prepaid cannot be reborrowed.

3.05 Mandatory Prepayments.

a. Casualties; Condemnations. If a Casualty or Condemnation shall occur with respect to the Project, Borrower, upon Borrower's or Administrative Agent's receipt of the applicable Insurance Proceeds or Condemnation Award, shall prepay the Loan, if required by the provisions of Article XI, on the dates and in the amounts specified therein without premium (but subject to the provisions of Section 5.05). Nothing in this subsection (a) shall be deemed to limit any obligation of Borrower under the Security Instrument or any other Security Document, including any obligation to remit to a collateral or similar account maintained by Administrative Agent pursuant to the Security Instrument or any of the other Security Documents the proceeds of insurance, condemnation award or other compensation received in respect of any Casualty or Condemnation.
b. Partial Release or Release of Security Instrument. Borrower shall have the right from time to time to obtain releases of individual Units from the lien of the Security Instrument following prepayment of the Loan as

follows:

i. Borrower shall provide written notice to Lender of the date such prepayment is intended to be made at least ten (10) days in advance thereof provided that such notice shall be revocable and the date of such prepayment shall be subject to adjustment upon such notice to Lender as shall be reasonably possible;
ii. the owners' association and related documents for the Project shall have been approved by all applicable Governmental Authorities, Administrative Agent and the title insurance company that agrees to issue owner's title insurance policies to purchasers of the Units;
iii. Borrower (A) shall have delivered a notice to Lender specifying (1) the legal description of the Unit to be released, and (2) the Release Price, and each notice shall be accompanied by a proper instrument of release, (B) shall execute and deliver to Lender any other documents or instruments reasonably required by Lender, including, without limitation, an amendment to the Security Instrument with respect to a revised legal description for the Project, and (C) prior to the closing of the Unit, shall have delivered to Lender and Lender shall have approved a settlement statement for such Unit;
iv. Borrower shall have paid to Lender the Release Price for the Unit being released;
v. after any release, the portion of the Project not released shall continue to be subject to the Security Instrument; and
vi. Borrower shall pay Lender's reasonable fees and expenses incurred in connection with each such release including, but not limited to, any Breakage Fees required pursuant to Section 5.05.

a. Unit Sale Exception. Notwithstanding subsection (b) above, Administrative Agent shall, to accommodate the sale of Units and the release of individual Units from the Lien of the Security Instrument, upon Borrower's request, deliver to the Title Company executed copies of the release documents necessary for the separate release of the Lien of the Security Document as to each Unit, with such release documents to be held in escrow, pursuant to an escrow agreement in form and substance satisfactory to Administrative Agent and Borrower, pending the sale of such Units and the receipt by the Title Company of the Net Sales Proceeds for such Unit, provided that Borrower has delivered to Administrative Agent the notices required by Section 3.05(b) and Administrative Agent has not delivered any objection to the release of such Unit to the Title Company prior to the earliest date set forth for the release of such Unit in the notice of prepayment delivered by Borrower.
b. Application. Prepayments pursuant to subsection (a) above shall be applied to the Loans then outstanding pro rata in the order set forth in Section 3.08.

3.06 Interest and Other Charges on Prepayment. If the Loans are prepaid, in whole or in part, pursuant to Section 3.04 or 3.05, each such prepayment shall be made on the prepayment date specified in the notice to Administrative Agent pursuant to Section 2.02(a) or as otherwise permitted pursuant to Section 3.05, and (in every case) together with (a) the accrued and unpaid interest on the principal amount prepaid, and (b) any amounts payable to the Lender pursuant to Section 5.05 as a result of such prepayment.

3.07 Lender's Records as to Sums Owing. Absent manifest error, Administrative Agent's records as to the amounts of principal, interest and other sums owing hereunder shall be conclusive and binding.

3.08 Application of Payments Received. All payments received by Administrative Agent hereunder shall be applied: First, to the payment of all fees, expenses and other amounts due Administrative Agent or the Lenders hereunder (excluding principal and interest); second, to accrued interest; and third, the balance to outstanding principal. As to sums applied to accrued interest under clause "second" above, such prepayment shall be applied first to LIBOR Rate Loans of the shortest maturity so as to minimize breakage costs. Notwithstanding anything to the contrary set forth in this Section 3.08 or in any of the Loan Documents, if an Event of Default exists, Administrative Agent may distribute payments to the Lenders for application in such manner as it, subject to Section 2.02(h), may determine to be appropriate.

3.09 Sharing of Payments, Etc.

a. Sharing. If any Lender obtains from Borrower payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement or any other Loan Document through the exercise of any right of set-off, banker's lien or counterclaim or similar right or otherwise (other than from Administrative Agent as provided herein), and, as a result of such payment, such Lender shall have received a greater percentage of the principal of or interest on the Loans or such other amounts then due hereunder or thereunder by Borrower to such Lender than the percentage received by any other Lender, it shall promptly purchase from such other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the Loans or such other amounts, respectively, owing to such other Lenders (or in interest due thereon, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Lenders shall share the benefit of such excess payment (net of any expenses that may be incurred by such Lender in obtaining or preserving such excess payment) pro rata in accordance with the unpaid principal of and/or interest on the Loans or such other amounts, respectively, owing to each of the Lenders. To such end, all the Lenders shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored. Each Lender

agrees that it shall turn over to Administrative Agent (for distribution by Administrative Agent to the other Lenders in accordance with the terms of this Agreement) any payment (whether voluntary or involuntary, through the exercise of any right of setoff or otherwise) on account of the Loans held by it in excess of its ratable portion of payments on account of the Loans obtained by all the Lenders.

b. Consent by Borrower. Borrower agrees that any Lender so purchasing such a participation (or direct interest) may exercise (subject, as among the Lenders, to Section 14.10) all rights of set-off, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

c. Rights of Lenders; Bankruptcy. Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of Borrower. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a set-off to which Section 14.10 applies, then

such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under Section 14.10 to share in the benefits of any recovery on such secured claim.

## ARTICLE IV
## EXTENSION OF THE MATURITY DATE

4.01 Extension of Scheduled Maturity Date. Borrower may, at its option, extend the Scheduled Maturity Date for a period (the "Extension Period") of six months (and the end of such period, the "Extended Maturity Date"), subject to the satisfaction of the following conditions (the "Extension Option"):

a. Borrower shall notify (the "Extension Notice") Administrative Agent of Borrower's exercise of such option at least sixty (60) days, but not more than one hundred twenty (120) days prior to the Scheduled Maturity Date;

b. As of the date of the Extension Notice and as of the Scheduled Maturity Date, (i) no Event of Default then exists, (ii) no Default then exists or would result from the extension of the maturity of the Loans for the Extension Period; and (iii) the Loans are In Balance;

c. Borrower and each Guarantor shall have executed and delivered to Administrative Agent such Modifications to and reaffirmations of the Loan Documents as Administrative Agent may reasonably require in connection with the foregoing.

d. Whether or not the extension becomes effective, Borrower shall pay all reasonable and actual out-of-pocket costs and expenses incurred by Administrative Agent and the Lenders in connection with the proposed extension (pre- and post-closing), including appraisal fees and legal fees; all such costs and expenses shall be due and payable upon demand, and any failure to pay such amounts shall constitute a Default under this Agreement and the Loan Documents;

e. Not later than the initial Scheduled Maturity Date, (i) the extension shall have been documented to the Lenders' reasonable satisfaction unless the failure to so document the extension is not the fault of Borrower and consented to by Borrower, Administrative Agent and all the Lenders, and (ii) Administrative Agent shall have been provided with an updated title report and judgment and lien searches, and appropriate title insurance endorsements shall have been issued as required by Administrative Agent;

f. On the Scheduled Maturity Date, Borrower shall pay to Administrative Agent (for payment to the Lenders in accordance with their respective Proportionate Shares) an extension fee in the amount of one-eighth of one per cent percent (1/8%) of the total Commitments of all Lenders (whether disbursed or undisbursed), which Commitments may have been reduced by prepayments by Borrower of principal on the Loans as permitted by the terms of this Agreement and may be reduced as part of the exercise of the Extension Option as set forth in Section 2.03(b) (the "Extension Fee").

Any such extension shall be otherwise subject to all of the other terms and provisions of this Agreement and the other Loan Documents.

## ARTICLE V
## INCREASED COSTS, LIBOR AVAILABILITY, ILLEGALITY, ETC.

5.01 Costs of Making or Maintaining LIBOR Rate Loans. Borrower shall pay to Administrative Agent (for the benefit of the applicable Lender) from time to time such amounts as any Lender may determine to be necessary to compensate such Lender for any costs that such Lender determines are attributable to its making or maintaining of any LIBOR Rate Loans or its obligation to make any LIBOR Rate Loans hereunder (in each case, as opposed to Base Rate Loans), or, subject to the following provisions of this Article V, any reduction in any amount receivable by such Lender hereunder in respect of any of such LIBOR Rate Loans or such obligation (such increases in costs and reductions in amounts receivable being herein called "Additional Costs"), provided such Additional Costs result from any Regulatory Change that:

a. shall subject any Lender (or its Applicable Lending Office for any of such LIBOR Rate Loans) to any tax, duty or other charge in respect of such LIBOR Rate Loans or its Note or changes the basis of taxation of any amounts payable to such Lender under this Agreement or its Note in respect of any of such LIBOR Rate Loans (other than Excluded Taxes); or

b. imposes or Modifies any reserve, special deposit or similar requirements (other than the Reserve Requirement utilized in the determination of the Adjusted LIBOR for such LIBOR Rate Loan) relating to any extensions of

credit or other assets of, or any deposits with or other liabilities of, such Lender (including any of such LIBOR Rate Loans or any deposits referred to in the definition of "LIBOR" in Section 1.01), or any commitment of such Lender (including the Commitment of such Lender hereunder); or

c. imposes any other condition affecting this Agreement or its Note (or any of such extensions of credit or liabilities) or its Commitment.

If any Lender requests compensation from Borrower under this Section 5.01, Borrower may, by notice to such Lender (with a copy to Administrative Agent), suspend the obligation of such Lender thereafter to make or Continue LIBOR Rate Loans, or Convert Base Rate Loans into LIBOR Rate Loans, until the Regulatory Change giving rise to such request ceases to be in effect or until Borrower notifies such Lender that Borrower is lifting such suspension (in which case the provisions of Section 5.04 shall be applicable); provided that such suspension shall not affect the right of such Lender to receive the compensation so requested for so long as any LIBOR Rate Loan remains in effect.

5.02 Limitation on LIBOR Rate Loans; LIBOR Not Available. Anything herein to the contrary notwithstanding, if, on or prior to the determination of any LIBOR for any Interest Period for any LIBOR Rate Loan:

(a) Administrative Agent determines, which determination shall be conclusive absent manifest error, that quotations of interest rates for the relevant deposits referred to in the definition of "LIBOR" are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for LIBOR Rate Loans as provided herein; or

(b) the Required Lenders determine, which determination shall be conclusive absent manifest error, and notify Administrative Agent that the relevant rates of interest referred to in the definition of "LIBOR" upon the basis of which the rate of interest for LIBOR Rate Loans for such Interest Period is to be determined are not likely adequate to cover the cost to such Lenders of making or maintaining LIBOR Rate Loans for such Interest Period;

then Administrative Agent shall give Borrower and each Lender prompt notice thereof and, so long as such condition remains in effect, the Lenders shall be under no obligation to make additional LIBOR Rate Loans, or to Continue LIBOR Rate Loans or to Convert Base Rate Loans into LIBOR Rate Loans, and Borrower shall, on the last day(s) of the then current Interest Period(s) for the outstanding LIBOR Rate Loans, either prepay such LIBOR Rate Loans or, in accordance with Section 2.07, Convert such LIBOR Rate Loans into Base Rate Loans or other LIBOR Rate Loans in amounts and maturities which are still being provided. Notwithstanding the foregoing, (i) if the applicable conditions under clauses (a) or (b) above affect only a portion of LIBOR Rate Loans, the balance of LIBOR Rate Loans may continue as LIBOR Rate Loans and (ii) if the applicable conditions under clauses (a) and (b) only affect certain Interest Periods, Borrower, subject to the terms and conditions of this Agreement, may elect to have LIBOR Rate Loans with such other Interest Periods.

5.03 Illegality. Notwithstanding any other provision of this Agreement, if it becomes unlawful for any Lender or its Applicable Lending Office to honor its obligation to make or maintain LIBOR Rate Loans hereunder, then such Lender shall promptly notify Administrative Agent thereof (who shall notify Borrower), and such Lender's obligation to make or Continue, or to Convert Loans of any other Type into LIBOR Rate Loans, shall be suspended until such time as such Lender may again make and maintain LIBOR Rate Loans (in which case the provisions of Section 5.04 shall be applicable).

5.04 Treatment of Affected Loans. If the obligation of any Lender to make LIBOR Rate Loans or to Continue or to Convert Base Rate Loans into LIBOR Rate Loans shall be suspended pursuant to Section 5.01 or 5.03, then such Lender's LIBOR Rate Loans shall be automatically Converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for LIBOR Rate Loans (or, in the case of a Conversion resulting from a circumstance described in Section 5.03, on such earlier date as such Lender may specify to Borrower with a copy to Administrative Agent) and, unless and until either (i) such Lender gives notice as provided below that the circumstances specified in Section 5.01 or 5.03 that gave rise to such conversion no longer exist or (ii) Borrower, in the case of Section 5.01, ends any suspension by Borrower:

a. to the extent that such Lender's LIBOR Rate Loans have been so Converted, all payments and prepayments of principal that would otherwise be applied to such Lender's LIBOR Rate Loans shall be applied instead to its Base Rate Loans; and

b. all Loans that would otherwise be made or Continued by such Lender as LIBOR Rate Loans shall be made or Continued instead as Base Rate Loans, and all Base Rate Loans of such Lender that would otherwise be Converted into LIBOR Rate Loans shall remain as Base Rate Loans.

If such Lender gives notice to Borrower with a copy to Administrative Agent that the circumstances specified in Section 5.01 or 5.03 that gave rise to the Conversion of such Lender's

LIBOR Rate Loans pursuant to this Section 5.04 no longer exist (which notice such Lender agrees to give promptly upon such circumstances ceasing to exist) or Borrower terminates its applicable suspension at a time when LIBOR Rate Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically Converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding LIBOR Rate Loans, to the extent necessary so that, after giving effect thereto, all Base Rate and LIBOR Rate Loans are allocated among the Lenders ratably (as to principal amounts, Types and Interest Periods) in accordance with their respective Commitments.

5.05 Compensation. Borrower shall pay to Administrative Agent for account of each Lender, upon the request of such Lender through Administrative Agent, such amount or amounts as shall be sufficient to compensate it for any loss, cost or expense (including, without limitation, any loss or expense sustained or incurred in obtaining, liquidating or employing deposits or other funds acquired to effect, fund or maintain any LIBOR Rate Loan) (collectively, "Breakage Costs") that such Lender determines is attributable to:

a. any failure by Borrower for any reason (including the failure of any of the conditions precedent specified in Article VI or VII to be satisfied) to (i) borrow a LIBOR Rate Loan from such Lender (other than the default of such Lender) on the date for such borrowing specified in the relevant Request for Loan Advance, or (ii) Continue or Convert a Loan on a date specified therefor in a notice thereof;
b. except as provided in Section 3.05(c), any payment, mandatory or optional prepayment or Conversion of a LIBOR Rate Loan made by such Lender for any reason (including the acceleration of the Loans pursuant to Article XII) on a date other than the last day of the applicable Interest Period;
c. any failure by Borrower for any reason to prepay a LIBOR Rate Loan pursuant to a notice of prepayment given in accordance with Section 3.04; or
d. the occurrence of any Event of Default, including, but not limited to, any loss or expense sustained or incurred or to be sustained or incurred in liquidating or employing deposits from third parties acquired to effect or maintain a LIBOR Rate Loan.

Without limiting the effect of the preceding sentence, such compensation shall include, without limitation, an amount equal to the excess, if any, of (i) the amount of interest that otherwise would have accrued on the principal amount so paid, prepaid, Converted or not borrowed for the period from the date of such payment, prepayment, Conversion or failure to borrow to the last day of the then current Interest Period for such Loan (or, in the case of a failure to borrow, the Interest Period for such Loan that would have commenced on the date specified for such borrowing) at the applicable Adjusted LIBOR for such Loan provided for herein over (ii) the amount of interest that such Lender would earn on such principal amount for such period if such Lender would have bid in the London interbank market for Dollar deposits of leading banks in amounts comparable to such principal amount and with maturities comparable to such period (as reasonably determined by such Lender), or if such Lender shall not, or shall cease to, make such bids, the equivalent rate, as reasonably determined by such Lender, derived from Telerate Page 3750 or other publicly available source as described in the definition of "LIBOR"). A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 5.05 shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such

certificate within ten (10) days after receipt thereof. Any payment due to any of the Lenders pursuant to this Section 5.05 shall be deemed additional interest under such Lender's Note.

5.06 Additional Waivers. Borrower acknowledges that, during any period in which Borrower has elected the LIBOR-Based Rate as the Applicable Interest Rate, payment or prepayment of any portion of the Loan on a date other than the last day of an applicable LIBOR Period shall result in Lender's incurring additional costs, expenses and/or liabilities and that it is extremely difficult and impractical to ascertain the extent of such costs, expenses and/or liabilities, and any such payment or prepayment therefore must include the Breakage Costs and other sums set forth above. Borrower hereby expressly (a) waives any rights it may have under Applicable Law to prepay any portion of the Loan without penalty or charge, upon acceleration of the maturity of this Note, and (b) agrees that if a prepayment of any portion of the Loans is made, following any acceleration of the maturity of the Notes by the holders thereof on account of any transfer or disposition as prohibited or restricted by the Loan Agreement or by the Security Instrument, then Borrower shall be obligated to pay, concurrently therewith, as a prepayment premium, the applicable Breakage Costs and other sums specified above.

5.07 Taxes.

a. Payments Free of Taxes. Any and all payments by or on account of any obligation of Borrower hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 5.07) Administrative Agent or the Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions and (iii) Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.
b. Payment of Other Taxes by Borrower. In addition, Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.
c. Indemnification by Borrower. Borrower shall indemnify Administrative Agent and each Lender, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 5.07) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the

amount of such payment or liability delivered to Borrower by a Lender or by Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Lender, shall be conclusive absent manifest error.

d. Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by Borrower to a Governmental Authority, Borrower shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such

Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(e) Refunds. If Administrative Agent or a Lender determines that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section 5.07, it shall pay over such refund to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Borrower under this Section 5.07 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund).

## ARTICLE VI
## CONDITIONS PRECEDENT

6.01 Conditions Precedent to Closing and the Effectiveness of Commitments. The Closing shall not be deemed to have occurred and, regardless as to whether Administrative Agent or any Lender has executed this Agreement, neither Administrative Agent nor any Lender shall have any obligation hereunder or under any of the other Loan Documents, unless and until the conditions and requirements set forth in this Section 6.01 have been completed and fulfilled to the satisfaction of Administrative Agent, in Administrative Agent's sole and absolute discretion, and at Borrower's sole cost and expense:

a. Loan Documents. Borrower and all other Borrower Parties shall have executed and delivered (or cause to be executed and delivered) to Administrative Agent the Loan Documents and such other documents as Administrative Agent may require, in form and substance acceptable to Administrative Agent. Administrative Agent may designate which of the Loan Documents are to be placed of record, the order of recording thereof, and the offices in which the same are to be recorded.
b. Recordation of Security Interest and Perfection of all Security Interests. The Security Instrument shall have been recorded in the Official Records in full compliance with the letter of title and escrow instructions from Administrative Agent to the Title Company, Administrative Agent shall, subject to the Permitted Liens, have a valid, perfected, first-priority lien on all Collateral covered by the Security Documents, and Borrower shall have paid all documentary, intangible, recording and/or registration taxes and/or fees due upon the Note, the Security Instrument, any Financing Statement and/or the other Loan Documents.
c. No Defaults. No Default or Event of Default shall then exist.
d. Representations and Warranties. All of the representations and warranties of Borrower and other Borrower Parties are true and correct.
e. Fees and Expenses. Borrower shall have paid any and all fees and charges due to Administrative Agent or the Lenders.
f. Discretionary Approvals. All Discretionary Approvals necessary as of such date shall have been granted and/or issued, as applicable, by the applicable Governmental Authority, the same shall be in full force and effect without any pending legal or regulatory

challenge thereto, and to the extent requested by Administrative Agent, Administrative Agent shall have received copies of the foregoing certified by an Authorized Officer of Borrower to be true and correct.

a. Project Budget. The Project Budget shall have been approved by Administrative Agent, and shall include all Hard Costs and Soft Costs, including line-item cost breakdown, and shall be sufficient to complete the Improvements based on Borrower's final Plans and Specifications.
b. Third-Party Reports. Administrative Agent shall have received and approved (i) the Cost and Plan Review; (ii) the Environmental Reports; and (iii) the Appraisal.
c. Pre-Sale Requirement. Qualified Purchase Contracts providing not less than the Minimum Loan Coverage.
d. Other Conditions. Evidence that the other conditions set forth in Article VII have been satisfied.
e. Other Documents and Deliveries. Administrative Agent shall have received and approved of all documents and other items described on Schedule 6.01.

(1) In the event Administrative Agent authorizes the recording of the Security Instrument or the making of any Loan at a time when all conditions described in this Section 6.01 have not been satisfied (including, without limitation, that all documents and other items described on Schedule 6.01 have not been approved by and/or delivered to Administrative Agent), such condition must be satisfied before any Loan (or additional Loan, as the case may be) shall be made.

6.02 Conditions Precedent to the making of any Loans. Neither Administrative Agent nor any of the Lenders shall be required to make any Loans hereunder until the conditions and requirements set forth in this Section 6.02 have been completed and fulfilled to

the satisfaction of Administrative Agent, in Administrative Agent's sole discretion, at Borrower's sole cost and expense. It is agreed, however, that Administrative Agent (on behalf of the Lenders) may, in its discretion, make advances prior to completion and fulfillment of any or all of the conditions and requirements set forth below, without waiving its right to require such completion and fulfillment before any additional advances are made. If all such conditions set forth below are not satisfied as of the date of each proposed Loan set forth in each Request for Loan Advance, neither Administrative Agent nor any of the Lenders shall have any further obligation to make any advances of Loan proceeds hereunder.

a. Closing Conditions. All conditions set forth in Section 6.01 (other than Section 6.01(d)) above shall be satisfied.
b. No Default. No Default or Event of Default shall have occurred and be continuing.
c. Representations and Warranties. The representations and warranties, both immediately prior to the making of such Loan and also after giving effect thereto, made by (i) Borrower in Article VIII and in each of the other Loan Documents to which it is a party and (ii) each Guarantor in the Loan Documents to which it is a party, shall be true and

complete in all material respects on and as of the date of the making of such Loan with the same force and effect as if made on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date).

a. Plans and Specifications. The Construction Work (or such part thereof as may have been constructed at the time of any borrowing) shall have been constructed substantially in accordance with the Plans and Specifications (as the same may have been Modified in accordance with this Agreement) and Government Approvals; and there shall exist no material defects in the Construction Work.
b. Construction Consultant. Administrative Agent shall have received advice from the Construction Consultant to the effect that the Construction Consultant has reviewed and approved the disbursement requested in the Request for Loan Advance for Hard Costs.

(1) Request for Loan Advance. A Request for Loan Advance as provided in Section 2.02(a) duly executed by an Authorized Officer of Borrower, together with the required attachments thereto;

(g) Casualty and Condemnation. The Project shall not have been subject to

(i) a material injury from fire or other casualty or (ii) a Condemnation, which, in either case, would, following the allocation of Insurance Proceeds or Condemnation Awards to the Project Budget, cause a failure of the Loans to be In Balance.

(h) Fees and Expenses. Borrower shall have paid (i) all installments of the fees and expenses that are then due and payable to Administrative Agent or the Lenders, and

(ii) any unreimbursed costs and expenses due to Administrative Agent, and/or any of the Lenders pursuant to Section 14.03.

(i) Prior Loans. To the extent not previously delivered to Administrative Agent, Borrower shall provide evidence of the payment of all costs, expenses and other charges for which advances of Loans shall have been previously provided.

(j) Non-Discretionary Approvals. All Non-Discretionary Approvals required as of such date shall have been granted and/or issued, as applicable, shall be in full force and effect without any pending legal or regulatory challenge thereto, and Administrative Agent shall have received evidence of the foregoing.

(k) Access. Borrower shall have provided the Construction Consultant, Administrative Agent and the Lenders, or their representatives, prompt and reasonable access to the Project, and copies of all such documents, bills, construction records, lien waivers, Change Orders, drawings, plans and specifications as the Construction Consultant shall reasonably require, to enable the Construction Consultant to review each Request for Loan Advance.

(I) Other Conditions. All of the requirements of Article VII shall have been complied with.

(m) Other Documents and Deliveries. Administrative Agent shall have received and approved of all documents and other items described on Schedule 6.02.

6.03 Conditions Precedent to the Final Loans. The obligation of the Lenders to make the final Loans to Borrower for Base Building Work is subject to the further condition precedent that all of the following requirements (collectively, the "Base Building Substantial Completion Conditions") shall have been completed to the satisfaction of Administrative Agent:

a. Loan Conditions. All conditions set forth in Section 6.02 above shall be satisfied.
b. Construction Consultant. Administrative Agent shall have received written advice from the Construction Consultant that the Base Building Work has been satisfactorily substantially completed in accordance with the Plans and Specifications, subject to completion of Punch List Items (which if incomplete on the date of the final disbursement of a Loan for Base Building Work, Administrative Agent may, in its sole discretion, hold

back an amount equal to (i) 150% of the estimated cost of completing such Punch List Items from the final disbursement minus (ii) any Retainage that Administrative Agent is still holding with respect to the applicable Punch List Items, such amount to be advanced to Borrower on completion of such Punch List Items and the satisfaction of the requirements of Section 7.06(b) with respect to Retainage, which Borrower shall diligently complete).

c. Other Documents and Deliveries. Administrative Agent and the Construction Consultant shall have received and approved of all documents and other items described on Schedule 6.03.

## ARTICLE VII

## DISBURSEMENT OF THE LOANS; LOAN BALANCING

7.01 General Conditions.

(a) Subject to (i) Borrower's satisfaction of the conditions precedent set forth in Article VI and (ii) Borrower's compliance with the applicable provisions of this Article VII, Administrative Agent shall disburse the proceeds of each Loan within five (5) Business Days after Administrative Agent's receipt all of the documents and items to be delivered or received pursuant to Articles VI and VII. Notwithstanding the foregoing, at no time shall Administrative Agent or the Lenders be obligated to: (A) advance to Borrower more than the amount that Borrower has funded from its own monies or is then required to fund to the party seeking payment or, in the case of reimbursement, to the party seeking reimbursement (subject to Retainage, if applicable), (B) make an advance if the Loans are not In Balance in accordance with Section 7.02, (C) subject to possible reallocation in accordance with Section 7.03, advance proceeds of a Loan in an amount in excess of the Project Budget Line-Items set forth in the Project Budget, as the same may be adjusted in accordance with the terms of this Agreement, (D) except as provided in Section 7.06 hereof, advance any portion of the Retainage, (E) except as provided in Section 9.27 hereof, make any Loans with respect to materials not yet incorporated into the Improvements, (F) make an advance in connection with any Change Order for which Administrative Agent's approval is required under Section 10.14 which has not been approved by Administrative Agent in accordance with Section 10.14, (G) make any Loans for payments to any subcontractor until (1) in the case of a Major Subcontractor, such Major Subcontractor has been approved by Administrative Agent and (2) in the case of a Major Subcontractor, duly executed and delivered to Administrative Agent the applicable consent and attornment agreement in substantially the form attached to

the Assignment of Construction Agreements, or (H) make any Loans with respect to any sums due a Design Professional until such Design Professional if the total amount of the projected costs payable to such Design Professional are in excess of $250,000 has (i) entered into a duly executed and delivered contract with Borrower, a copy (certified by an Authorized Officer of Borrower) of which contract has been delivered to Administrative Agent, and (ii) duly executed and delivered to Administrative Agent the applicable consent and attornment agreement in substantially the form attached to the Assignment of Architecture Agreement, or (I) make any Loans with respect to the General Contractor Fee except for General Contractor Fees advanced based upon percentage of completion with payment to be complete upon the issuance of all certificates of occupancy, release of all liens by contractors, materialmen and suppliers, and the Loans being In Balance.

a. Notwithstanding anything to the contrary contained in this Agreement, the Lenders shall have no obligation to advance any Loan unless Administrative Agent is, at all times, satisfied that the Improvements can be constructed Lien free, substantially in accordance with the Plans and Specifications for the sums set forth in the Project Budget as adjusted pursuant to this Agreement and subject to Article XI (or, if more, Borrower has furnished the difference in cash or cash equivalents, subject to the provisions of Sections 7.02, 7.03 and 7.04), by the Completion Date subject to Unavoidable Delay. Administrative Agent will endeavor to give notice to Borrower of its intention not to disburse any Loan proceeds based on the foregoing, but neither the Lenders nor Administrative Agent shall have any liability hereunder should Administrative Agent fail to do so, and no failure by Administrative Agent to give such notice shall affect Administrative Agent's or any Lender's rights under this subsection (b).
b. Disbursements shall be made no more frequently than once in each calendar month.
c. Upon the closing of the Loan, Borrower shall submit a Request for Loan Advance relating to all expenses incurred as of such date by Borrower in connection with Project Costs and Borrower shall be entitled to draw from the Earnest Money Deposits in payment of such amounts and, to the extent such Earnest Money Deposits are not sufficient for the payment of such amounts, Borrower shall be entitled, subject to the provisions of this Agreement, to a Loan advance in reimbursement of such excess costs.

7.02 Loan Balancing.

(a) Definition of "In Balance" Loans. Borrower represents that the Project Budget sets forth all anticipated costs to be incurred by Borrower in connection with the ownership, development, construction, financing, marketing, and maintenance of the Project from time to time through the Scheduled Maturity Date. Borrower acknowledges and agrees that the Loans shall be deemed not "In Balance" if, at any time, (i) the Loan to Value ratio is greater than 75%; (ii) the Loan coverage is less than the Minimum Loan Coverage; or (iii) the projected cost of any category of costs included in any individual Project Budget Line-Item (including, without limitation, the Interest Reserve and the Contingency Fund line items) exceeds the amount set forth in the Project Budget for such individual Project Budget Line-Item by more than fifteen percent (15%) (as the same may be adjusted in accordance with Section 7.04 and any other terms of this Agreement), as reasonably determined by

Administrative Agent and the Construction Consultant in their reasonable discretion. So long as the foregoing events do not exist, the Loans shall be deemed "In Balance."

(b) Deficiency Deposits. If at any time the Loans are deemed not "In Balance," then Borrower shall, provided sufficient funds do not remain in the Borrower Contingency Fund to cover such deficiency, within five (5) Business Days after written notice from Administrative Agent deposit with Administrative Agent an amount sufficient to cover such deficiency (a "Deficiency Deposit"), which Deficiency Deposit shall be deposited into a Controlled Account. Administrative Agent and the Lenders shall not be required to make any disbursement of any Loans before receiving payment of any such Deficiency Deposit and the prior application of any such Deficiency Deposit to the payment of any budgeted costs to bring the Loans In Balance. If an Event of Default shall occur and be continuing, Administrative Agent may (subject to the provisions of Section 13.03), at its option, (i) exercise any or all of its rights under the Loan Documents, (ii) apply any unexpended Deficiency Deposit to the costs of completion of the Improvements, and/or (iii) apply any unexpended Deficiency Deposit to the immediate reduction of any amounts due under the Notes and the other Loan Documents. Notwithstanding anything in this Section 7.02(b) or elsewhere in this Agreement to the contrary, nothing in this Section 7.02(b) or elsewhere in this Agreement or the Loan Documents shall obligate the holders of the Equity Interests for the payment of any amounts due from Borrower to Lender hereunder.

a. Additional Appraisals. At any time and from time to time Administrative Agent may obtain a new Appraisal of the Project, provided, however, unless an Event of Default has occurred and is continuing, Borrower shall not be obligated to pay or reimburse Administrative Agent for an Appraisal more that once during a twelve-month period.

7.03 Project Budget Line-Items; Loans to be Used for Specific Line-Items.

a. The Project Budget includes as line items (collectively, "Project Budget Line-Items") the cost of all labor, materials, equipment, fixtures and furnishings needed for the completion of all Construction Work, and all other costs, fees and expenses relating in any way whatsoever to the Construction Work and the operation of the Project prior to the Completion Date. Borrower agrees that all Loans shall be used only for the Project Budget Line-Items for which such Loans are made as reallocated from time to time in accordance with the terms of this Agreement. Administrative Agent shall not be obligated to advance any amount for any category of costs set forth as a Project Budget Line-Item which is greater than 115% of the amount set forth for such category in the applicable Project Budget Line-Item as adjusted pursuant to this Agreement.
b. Reallocation of Contingency Fund and Line-Items Based on Costs Savings. Borrower may apply the Borrower Contingency Fund (defined in Section 7.04(a) below) and/or savings from one Project Budget Line-Item to cost overruns in another Project Budget Line-Item or to the Project Contingency Fund, to any other unbudgeted Project Cost or to bring the Loans in Balance provided: (i) no Event of Default then exists, and (ii) as to reallocations from a Project Budget Line Item (A) all costs to be paid out of the Project Budget Line-Item from which funds are being reallocated have been paid or sufficient sums remain in said line item to pay such costs when the same become due, (B) said savings are actual savings and are documented to the reasonable satisfaction of Administrative Agent and the Construction Consultant in their reasonable discretion, and (C) such reallocation will not

violate the provisions of the Lien Law or affect the priority of the Security Instrument on the Project. Notwithstanding anything to the contrary contained herein, in the event Administrative Agent's approval of an adjustment to a Project Budget Line Item is required, Administrative Agent, in its reasonable discretion, may condition any such approval on obtaining, at Borrower's sole cost and expense, an endorsement to the Title Policy insuring against any statutory lien for services, labor or materials furnished or contracted for which at such time has gained (or may thereafter gain) priority over the lien of the Security Instrument as a result of such reallocation.

7.04 Project Budget Contingencies.

a. Contingency Fund Line-Item. The Project Budget shall initially contain a line item equal to two and one-half percent (2.5%) of Hard Costs (the "Project Contingency Fund") and a line item equal to two and one-half percent (2.5%), or more, of Hard Costs (the "Borrower Contingency Fund") designated for contingency which represent amounts necessary to provide reasonable assurances to Administrative Agent and the Lenders that additional funds are available to be used if additional costs, expenses and/or delays are incurred or additional interest accrues on the Loans, or unanticipated events or problems occur. The Project Contingency Fund and the Borrower Contingency Fund are sometimes referred to hereafter, collectively, as the "Contingency Fund". The Contingency Fund shall be subject to reduction upon reallocation, disbursement, or otherwise as provided herein. Administrative Agent may, in its sole discretion, reallocate the required amount of the Project Contingency Fund to other Project Budget Line-Items from time to time.
b. Use of Contingency Fund. In addition to Borrower's right to reallocate the Borrower Contingency Fund as set forth in Section 7.03(b), upon request of Borrower, Administrative Agent may (but shall not be obligated to do so), from time to time in its sole discretion, disburse the Project Contingency Fund or portions thereof to Borrower (thereby reducing the amount of the same) for use under the Project Budget Line-Items for which they are reallocated (subject to the provisions of the preceding sentence). Borrower agrees that except as set forth in Section 7.03(b), the decision with respect to utilizing any portion of the Project Contingency Fund in

order to keep the Loans In Balance shall be made by Administrative Agent in its sole discretion and that Borrower may be required to make a Deficiency Deposit or reallocate funds from Borrower's Contingency Fund even if funds remain in the Project Contingency Fund. Notwithstanding anything to the contrary contained herein, Administrative Agent may condition any such reallocation under this Section 7.04(b), on obtaining, at Borrower's sole cost and expense, an endorsement to the Title Policy insuring against any statutory lien for services, labor or materials furnished or contracted for which at such time has gained (or may thereafter gain) priority over the lien of the Security Instrument as a result of the reallocation of the Project Contingency Fund.

7.05 Interest; Fees; and Expenses.

(a) Included in the Project Budget are projected amounts for (i) interest on the Loans (the "Interest Reserve"), (ii) the fees payable to Administrative Agent and the Lenders, (iii) the fees and expenses of the Construction Consultant, Administrative Agent's counsel and the Title Company, and (iv) the fees and expenses related to the recording of the Security Instrument.

a. Borrower hereby authorizes and directs, and no further request shall be necessary from Borrower for, Administrative Agent to disburse the proceeds of any Loan as and when needed to pay (i) interest accrued on the Notes, (ii) the fees payable to Administrative Agent and the Lenders, (iii) the fees and expenses of the Construction Consultant, Administrative Agent's counsel and the Title Company, (iv) any expenses payable in accordance with Section 14.03 and (v) any Date Down Endorsements, notwithstanding that Borrower may not have requested a disbursement of such amounts. Administrative Agent shall give Borrower prompt written notice of any such disbursements.
b. Subject to the provisions of Section 13.03, Administrative Agent in its sole discretion may (but shall not be obligated to do so) make such disbursements authorized under this Section 7.05 notwithstanding that the Loans are not In Balance or that a Default or Event of Default exists under the terms of this Agreement or any other Loan Document. Such disbursements shall constitute a Loan and be added to the principal balance of the Notes, and the Lenders shall make the applicable Loans to fund any such disbursements. The authorization hereby granted is irrevocable, and no further direction or authorization from Borrower is necessary for Administrative Agent to make such disbursements.

7.06 Retainage.

a. Disbursement of the available proceeds of each Loan with respect only to Hard Costs shall be limited to ninety percent (90%) of the value of the Hard Costs set forth in the applicable Request for Loan Advance; provided, however, that in no event shall such percentage be less than the retainage percentage set forth in any contract or subcontract for such portion of the Improvements (the amounts retained by Administrative Agent pursuant to this Section 7.06(a) being, collectively, the "Retainage"). No Retainage will apply to (A) any Soft Costs or (B) the General Contractor Fees and general conditions performed by the General Contractor pursuant to the General Contract.
b. Administrative Agent shall advance proceeds of Loans pursuant to a Request for Loan Advance to pay portions of the Retainage with respect to each contract (including a Major Subcontract) prior to the completion of all Base Building Work, within fifteen (15) days after Borrower's compliance with the following conditions to the satisfaction of Administrative Agent with respect to such contracts:

i. all of the work under such contract is finally completed in accordance with the terms of such contract and the applicable Plans and Specifications, and Administrative Agent receives a certification to that effect from an Authorized Officer of Borrower and Borrower's Architect and such work has been approved by the Construction Consultant;
ii. the work performed by such contractor has been approved, to the extent such approval is required, by the Governmental Authorities having jurisdiction over the same and the applicable permits with respect to such work, if any, have been issued;
iii. the contract provides for such early release of the applicable Retainage;
iv. the applicable contractor (including the General Contractor), subcontractor, materialman or other supplier with respect to which the Retainage is being released delivers to Administrative Agent a final and complete unconditional release of Lien;
v. if and as required by Administrative Agent, Administrative Agent shall have received copies of any warranties, guaranties or "as built" drawings relating to the work performed by each such contractor, subcontractor, materialman or other supplier in connection with the Base Building Work; and
vi. all other applicable requirements and conditions with respect to such advance of Loan proceeds have been satisfied or previously waived in writing by Administrative Agent.

7.07 Unsatisfactory Work. If the Construction Consultant or Administrative Agent shall determine that a portion of the Construction Work for which Loans are sought is Unsatisfactory Work, Administrative Agent shall be entitled to (i) withhold from such Loans such amounts the proceeds of which are intended to pay for the Unsatisfactory Work and (ii) to the extent the Construction Consultant reasonably determines that the failure to remedy such Unsatisfactory Work prior to proceeding with Construction Work would have a material adverse impact on the value of the Project or the ability to complete other work pursuant to the Plans and Specifications, require the affected portion of the Construction Work to be stopped until such time as Administrative Agent and the Construction Consultant are satisfied that the Unsatisfactory Work is corrected, and no such action by

Administrative Agent shall be deemed to affect Borrower's obligation to complete the Improvements on or before the Completion Date or right to proceed with and receive Loans in connection with Construction Work that is not affected by the Unsatisfactory Work, and the Lenders shall, subject to compliance by Borrower with all other applicable requirements of this Agreement, be required to make Loans with respect to such Unsatisfactory Work only after the Construction Consultant and Administrative Agent shall have determined that the work which had been identified as Unsatisfactory Work has been corrected to the satisfaction of the Construction Consultant and Administrative Agent.

7.08 Intentionally Omitted.

7.09 No Waiver or Approval by Reason of Loan Advances. The making of any Loans by the Lenders shall not be deemed an acceptance or approval by Administrative Agent or the Lenders (for the benefit of Borrower or any third party) of the Construction Work or other work theretofore done or constructed or to the Lenders' obligations to make further Loans, nor, in the event Borrower is unable to satisfy any condition, shall any such failure to insist upon strict compliance have the effect of precluding Administrative Agent or the Lenders from thereafter declaring such inability to be an Event of Default as herein provided. Administrative Agent's and/or the Lenders' waiver of, or failure to enforce, any conditions to or requirements associated with any Loans in any one or more circumstances shall not constitute or imply a waiver of such conditions or requirements in any other circumstances.

7.10 Construction Consultant. Administrative Agent reserves the right to employ the Construction Consultant and any other consultants necessary, in Administrative Agent's reasonable judgment, to review Requests for Loan Advance, inspect all construction and the periodic progress of the same, the reasonable cost therefor to be borne by Borrower as a loan expense. Borrower shall make available to Administrative Agent and the Construction Consultant on reasonable notice during business hours, all documents and other information

(including, without limitation, receipts, invoices, lien waivers and other supporting documentation to substantiate the costs to be paid with the proceeds of any Request for Loan Advance) which any contractor or other Person entitled to payment for Construction Work is required to deliver to Borrower and shall use commercially reasonable efforts to obtain any further documents or information reasonably requested by Administrative Agent or the Construction Consultant in connection with any Loan or the administration of this Agreement. Borrower acknowledges and agrees that the Construction Consultant shall have no responsibilities or duties to Borrower, and shall be employed solely for the benefit of Administrative Agent and the Lenders. No default of Borrower will be waived by an inspection by Administrative Agent or the Construction Consultant. In no event will any inspection by Administrative Agent or the Construction Consultant be a representation that there has been or will be compliance with the Plans and Specifications or that the Construction Work is free from defective materials or workmanship. Any and all provisions of this Agreement in respect of the Construction Consultant shall be enforceable solely by, and at the option of, Administrative Agent, and Borrower shall not be a third-party beneficiary thereof. Any and all reports, advice or other information provided by the Construction Consultant to Administrative Agent and/or the Lenders or otherwise produced by or in the possession of the Construction Consultant shall be confidential and Borrower shall have no right to obtain or review same.

7.11 Authorization to Make Loan Advances to Cure Borrower's Defaults. If an Event of Default shall occur and be continuing, Administrative Agent (subject to the provisions of Section 13.03) may (but shall not be required to) perform any of such covenants and agreements with respect to which Borrower is in Default and of which Administrative Agent has notified Borrower. Any amounts expended by Administrative Agent in so doing and any amounts expended by Administrative Agent in connection therewith shall constitute a Loan and be added to the Outstanding Principal Amount, and the Lenders shall make the applicable Loans to fund any such disbursements. The authorization hereby granted is irrevocable, and no prior notice to or further direction or authorization from Borrower is necessary for Administrative Agent to make such disbursements.

7.12 Administrative Agent's Right to Make Loan Advances in Compliance with the Completion Guaranty. Any Loan proceeds disbursed by Administrative Agent as contemplated by Section 2 of the Completion Guaranty (whether the applicable work is being performed by the Guarantor or Administrative Agent) shall constitute a Loan and be added to the Outstanding Principal Amount, and the Lenders shall make the applicable Loans to fund any such disbursements. The authorization hereby granted is irrevocable and no prior notice to or further direction or authorization from Borrower is necessary for Administrative Agent to make such disbursements.

7.13 No Third-Party Benefit. This Agreement is solely for the benefit of the Lenders, Administrative Agent and Borrower. All conditions of the obligations of the Lenders to make advances hereunder are imposed solely and exclusively for the benefit of the Lenders and may be freely waived or Modified in whole or in part by the Lenders at any time if in their sole discretion they deem it advisable to do so, and no Person other than Borrower (provided, however, that all conditions have been satisfied) shall have standing to require the Lenders to make any Loan advances or shall be a beneficiary of this Agreement or any advances to be made hereunder.

## ARTICLE VIII

## REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Administrative Agent and the Lenders that:

8.01 Organization; Powers. Each of Borrower Parties is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, is qualified to

do business in, and is in good standing in, every jurisdiction where such qualification is required. Each of Borrower and the Guarantor is organized or qualified to do business and in good standing in the State of Colorado.

8.02 Authorization; Enforceability. The Transactions are within each of Borrower Party's organizational powers and have been duly authorized by all necessary organizational action under their respective Organizational Documents. This Agreement and the other Loan Documents have been duly executed and delivered by Borrower Parties party thereto and each of the Loan Documents to which a Borrower Party is a party when delivered will constitute, a legal, valid and binding obligation of the applicable Borrower Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws of affecting creditors' rights generally and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

8.03 Government Approvals; No Conflicts. The Transactions (a) do not require any Government Approvals of, registration or filing with, or any other action by, any Governmental Authority, except for (i) such as have been obtained or made and are in full force and effect (ii) filings and recordings in respect of the Liens created pursuant to the Security Documents and (iii) the Discretionary and Non-Discretionary Approvals required in connection with the Construction Work, (b) will not violate any Applicable Law or the Organizational Documents of any of Borrower Parties, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon any of Borrower Parties, or give rise to a right thereunder to require any payment to be made by any of Borrower Parties, and (d) except for the Liens created pursuant to the Security Documents, will not result in the creation or imposition of any Lien on any asset of any of Borrower Parties.

8.04 Financial Condition. Borrower has heretofore furnished to each of the Lenders certain financial statements of Borrower and Guarantor. All such financial statements are complete and correct in all material respects and fairly present the financial condition of Borrower and Guarantor as of the dates of such financial statements, all in accordance with GAAP. Neither Borrower or Guarantor has on the date hereof any Indebtedness, material contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments of a type required to be disclosed in said financial statements in accordance with GAAP, except as referred to or reflected or provided for in said balance sheets as at said dates. Since the applicable dates of such financial statements, there has been no event that would have a Material Adverse Effect.

8.05 Litigation. Except as disclosed in Schedule 8.05 hereto, (a) there are no legal or arbitral proceedings, or any proceedings by or before any Governmental Authority or agency, now pending or (to the Knowledge of Borrower) threatened against Borrower or the Project which could reasonably be expected to have a Material Adverse Effect.

8.06 ERISA. Borrower has not established any Plan which would cause Borrower to be subject to ERISA and none of Borrower's assets constitutes or will constitute "plan assets" of one or more Plans. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. Each Plan, and, to the Knowledge of Borrower Parties, each, Multiemployer Plan, is in compliance with, the applicable provisions of ERISA, the Code and any other Applicable Law.

8.07 Taxes. Each of Borrower Parties has timely filed or timely caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Borrower Party has set aside on its books adequate reserves in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

8.08 Investment and Holding Company Status. None of Borrower Parties is (a) an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a "holding company", or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company", as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

8.09 Environmental Matters. Except for matters set forth in the Environmental Reports:

a. To Borrower's Knowledge, Borrower and the Project are in compliance with all applicable Environmental Laws, except where the failure to comply with such laws is not reasonably likely to result in a Material Adverse Effect, and there are no underground storage tanks at the Project.
b. To Borrower's Knowledge, there is no Environmental Claim pending or threatened, and no penalties arising under Environmental Laws have been assessed, against Borrower, the Project or against any Person whose liability for any Environmental Claim Borrower has or may have retained or assumed either contractually or by operation of law, and no investigation or review is pending or, to the Knowledge of Borrower, threatened by any Governmental Authority, citizens group, employee or other Person with respect to any alleged failure by Borrower or the Project to have any environmental, health or safety permit, license or other authorization required under, or to otherwise comply with, any Environmental Law or with respect to any alleged liability of Borrower for any use or Release of any Hazardous Substances.
c. To Borrower's Knowledge, there have been no past, and there are no present, Releases of any Hazardous Substance that are reasonably likely to form the basis of any Environmental Claim against Borrower, the Project or against any Person whose liability for any Environmental Claim Borrower has or may have retained or assumed either contractually or by operation of law.
d. To Borrower's Knowledge, there is no threat of a Release of Hazardous Substances migrating to the Project.

e. To Borrower's Knowledge, without limiting the generality of the foregoing, there is not present at, on, in or under the Project, PCB-containing equipment, asbestos or asbestos containing materials, underground storage tanks or surface impoundments for Hazardous Substances, lead in drinking water (except in concentrations that comply with all Environmental Laws), or lead-based paint.
f. No Liens are presently recorded with the appropriate land records under or pursuant to any Environmental Law with respect to the Project and no Governmental Authority has been taking or is in the process of taking any action that could reasonably be expected to subject the Project to Liens under any Environmental Law.
g. There have been no environmental investigations, studies, audits, reviews or other analyses conducted by or that are in the possession of Borrower in relation to the Project which have not been made available to the Lenders.

8.10 Organizational Structure.

a. Borrower has heretofore delivered to Administrative Agent a true and complete copy of the Organizational Documents of each Borrower Party. The only members of Borrower on the date hereof are the Members. The Managing Member is the sole managing member of the Borrower. As of the date hereof, there are no outstanding Equity Rights with respect to Borrower or the Managing Member.
b. The sole Managing Member on the date hereof is The Vail Corporation, a Colorado corporation.
c. Schedule 8.10 contains a true and accurate chart reflecting the ownership of all of the direct and indirect Equity Interests in Borrower, including the percentage of ownership interest of the Persons shown thereon.
d. Borrower has no Subsidiaries.

8.11 Title.

a. Borrower owns and has on the date hereof good, marketable and insurable fee simple title to the Project free and clear of all Liens, other than Permitted Liens. Borrower owns and has on the date hereof good and marketable title to all other portions of the Project. There are no outstanding options to purchase or rights of first refusal affecting the Project.
b. Borrower owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by Borrower does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.
c. Subject to Section 10.02, Borrower is now and shall continue to be the sole owner of the Collateral free from any lien, security interest or adverse claim of any kind whatsoever, except for the Permitted Liens, liens or security interests in favor of Administrative Agent, the interest of a lessor pursuant to a lease of personal property approved

by Administrative Agent, in Administrative Agent's sole good faith discretion, or liens or security interests otherwise approved by Administrative Agent in Administrative Agent's sole good faith discretion.

8.12 No Bankruptcy Filing. Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's assets or property, and Borrower has no Knowledge of any Person contemplating the filing of any such petition against it.

8.13 Executive Offices; Places of Organization. The location of Borrower's and the Managing Member's principal place of business and chief executive office is the address set forth in the preamble of this Agreement, except to the extent changed in accordance with Section 10.07. Borrower and the Managing Member were organized, or incorporated, as applicable, in the State of Colorado.

8.14 Compliance; Government Approvals. Borrower, the Project and Borrower's use thereof and operations thereat comply, and upon completion of construction of the Improvements will comply, in all material respects with all Applicable Laws. All Government Approvals necessary in connection with the construction and operation of the Project as contemplated by the Loan Documents and the Project Documents and the Material Agreements, to be obtained by Borrower and any other Person on behalf of Borrower (to the Knowledge of Borrower) are, set forth in Schedule 8.14 hereto and, except for those Government Approvals set forth in Part B of Schedule 8.14 hereto, have been duly obtained, were validly issued, are in full force and effect, are not subject to appeal, are held in the name of Borrower and are free from conditions or requirements, the compliance with which could reasonably be expected to have a Material Adverse Effect or which Borrower does not reasonably expect to be able to satisfy. There is no proceeding pending or, to the Knowledge of Borrower, threatened that seeks, or may reasonably be expected, to rescind, terminate, Modify or suspend any such Government Approval. The information set forth in each application and other written material submitted by Borrower to the applicable Governmental Authority in connection with each such Government Approval is accurate and complete in all material respects. The Government Approvals set forth in Part B of Schedule 8.14 hereto are required solely in connection with later stages of construction and operation of the Improvements and are not customarily obtained until a later stage of construction or after residential occupancy has commenced. Borrower has no reason to believe that any Government Approval that has not been obtained by Borrower, but which will be required in the future, will not be granted to it in due course, on or prior to the date when required and free from any condition or requirement compliance with which could reasonably be expected to have a Material Adverse Effect or which Borrower does not reasonably expect to be able to satisfy. The Project, if constructed in accordance with the Plans and Specifications, the Project Documents and the Material Agreements, will conform to and comply in all material respects with all covenants, conditions, restrictions and reservations in the Government Approvals and

the Project Documents and the Material Agreements applicable thereto and all Applicable Laws. Borrower has no reason to believe that Administrative Agent, acting for the benefit of the Lenders, will not be entitled, without undue expense or delay, to the benefit of each Government Approval set forth on Schedule 8.14 hereto upon the exercise of remedies under the Security Documents. Administrative Agent has received a true and complete copy of each Government Approval heretofore obtained or made by Borrower.

8.15 Condemnation; Casualty. No Condemnation has been commenced or, to Borrower's Knowledge, is contemplated with respect to all or any portion of the Project or for the relocation of roadways providing access to the Project. No Casualty has occurred with respect to the Project.

8.16 Utilities and Public Access; No Shared Facilities. The Project has adequate rights of access to public ways and is or will be served by adequate electric, gas, water, sewer, sanitary sewer and storm drain facilities during both the construction and operation of the Improvements. All public utilities necessary to the use and enjoyment of the Project as intended to be used and enjoyed are or will be located in the public right-of-way abutting the Project. Telephone and communications services are available to the boundaries of the Land, adequate to serve the Project and not subject to any conditions (other than normal charges to the utility supplier) which would limit the use of such utilities. All streets and easements necessary for construction and operation of the Project are available to the boundaries of the Land. Except for public infrastructure improvements, there are no amenities, services or facilities (including those for access, parking, recreational activities and otherwise) not located or to be constructed upon the Project which are necessary to the use or enjoyment of, or intended to benefit the owner or occupants of, the Improvements.

8.17 Solvency. On the Closing Date and after and giving effect to the Loans occurring on the Closing Date, and the disbursement of the proceeds of such Loans pursuant to Borrower's instructions, each Borrower Party is and will be Solvent.

8.18 Governmental Regulations. Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended from time to time. No part of the proceeds of the Loan made hereunder will be used for "purchasing" or "carrying" "margin stock" as so defined or for any purpose which violates, or which would be inconsistent with, the provisions of the Regulations of the Board of Governors of the Federal Reserve System. The Loan is an exempt transaction under the Truth-in-Lending Act (15 U.S.C.A. Sections 1601, et seq.).

8.19 No Joint Assessment; Separate Lots. Borrower has not suffered, permitted or initiated the joint assessment of the Project with any other real property constituting a separate tax lot.

8.20 Security Documents and Liens. The Security Documents upon recording with the County Recorder of Eagle County, will create, as security for the Obligations, valid and enforceable, exclusive, perfected first priority security interests in and Liens on all of the respective collateral intended to be covered thereunder, in favor of Administrative Agent as administrative agent for the ratable benefit of the Lenders, subject to no Liens other than the Permitted Liens, except as enforceability may be limited by applicable insolvency, bankruptcy or other laws affecting creditors rights generally, or general principles of equity, whether such enforceability is considered in a proceeding in equity or at law. Such security interests in and Liens on such collateral shall be superior to and prior to the rights of all third parties in such collateral except as set forth in the Permitted Liens, and, other than in connection with any future change in Borrower's name or the location in which Borrower is organized or registered, no further recordings or filings are or will be required in connection with the creation, perfection or enforcement of such security interests and Liens, other than the filing of continuation statements in accordance with applicable law. Upon filing with the Secretary of State of Colorado and

recording with the County Recorder of Eagle County of a Uniform Commercial Code financing statement describing the Collateral covered by any Security Document that is governed by the Uniform Commercial Code (or irrevocably delivered to a title agent for such filing), such filing will perfect a valid first priority security interest with respect to the rights and property that are the subject of such Security Document to the extent a security interest in such Collateral can be perfected by filing a financing statement and subject to the Permitted Liens. Any agreement, executed with respect to the Project or any part thereof are and shall be subject and subordinate to the Security Instrument except as set forth in the Permitted Liens.

8.21 Project Documents. Borrower has heretofore delivered to Administrative Agent a true and complete copy of each Project Document and, subject to the terms of Section 10.13, none of the Project Documents has been further amended, modified or terminated. The Project Documents are in full force and effect and Borrower is not in default under or with respect to any Project Document. To the Borrower's Knowledge, no other party to a Project Document is in default under any material covenant or obligation set forth therein.

8.22 Material Agreements. Borrower has heretofore delivered to Administrative Agent a true, correct and complete copy of each Material Agreement, and the Material Agreements constitute all of the agreements to which Borrower (or any predecessor-in-interest to Borrower) is a party that materially affects or relates to the ownership or operation of the Project. Subject to the terms of Section 10.13, none of the Material Agreement has been further Modified. The Material Agreements are in full force and effect and Borrower is not in default beyond any applicable notice or cure periods under or with respect to any Material Agreement. To Borrower's Knowledge, as of the date hereof, no other party to a Material Agreement is in default under any material covenant or obligation set forth therein.

8.23 Project Budget. The amounts and allocations set forth in the Project Budget (including the Hard Costs and Soft Costs), as each may be amended in accordance with the terms of this Agreement, present a full, complete and good faith representation of all costs,

expenses and fees required to acquire and develop the Project and complete the Construction Work. Borrower is unaware of any other such costs, expenses or fees which are material and are not covered by the Project Budget.

8.24 [Intentionally Omitted].

8.25 [Intentionally Omittedl].

8.26 Insurance. Borrower has in force, and has paid the Insurance Premiums in respect of, all of the insurance required by Section 9.05.

8.27 Flood Zone. Except as shown on the Survey, no portion of the Improvements is located in a flood hazard area as designated by the Federal Emergency Management Agency or, if in the flood zone, flood insurance is maintained therefor in full compliance with the provisions of Section 9.05.

8.28 f Intentionally Omitted].

8.29 Boundaries. Except as may be disclosed on the Survey and in the Title Policy, none of the Improvements are outside the boundaries of the Project (or building restriction or setback lines applicable thereto) and no improvements on adjoining properties encroach upon the

Land and no easements or other encumbrances upon the Land encroach upon any of the Improvements so as to adversely effect the value or marketability of the Project.

8.30 Illegal Activity. No portion of the Project has been purchased with proceeds of any illegal activity and no part of the proceeds of the Loans will be used in connection with any illegal activity.

8.31 Permitted Liens. None of the Permitted Liens individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by the Loan Documents, materially and adversely affects the value of the Project, impairs the use or the operation of the Project or impairs Borrower's ability to pay its obligations in a timely manner.

8.32 Anti-Terrorism Laws.

a. None of Borrower or, to Borrower's Knowledge, its Affiliates is in violation of any Anti-Terrorism Laws.
b. None of Borrower or, to Borrower's Knowledge, any of its Affiliates, or any of its brokers or other agents acting or benefiting in any capacity in connection with the Loan is any of the following: (i) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Anti-Terrorism Order; (ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Anti-Terrorism Order; (iii) a person or entity with whom any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (iv) a person or entity who commits, threatens or conspires to commit or supports "terrorism" as defined in the Anti-Terrorism Order; or (v) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list.
c. None of Borrower or, to Borrower's Knowledge, any of its Affiliates or any of its brokers or other agents acting in any capacity in connection with the Loan (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in clause (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Anti-Terrorism Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

8.33 Defaults. No Event of Default exists under any of the Loan Documents.

34. [Intentionally Omitted].
35. [Intentionally Omitted].

8.36 Design Professionals' Certificates. To Borrower's Knowledge, the certifications set forth in the certificates of the Design Professionals which Borrower has furnished to Administrative Agent in connection herewith are true and correct.

8.37 Other Representations. All of the representations in the other Loan Documents by Borrower and its Affiliates are true and correct in all material respects as of the date hereof.

8.38 Loan In Balance. The Loan is In Balance.

8.39 Employee Benefit Plans. Borrower maintains no pension, retirement or profit sharing employee benefit plan that is subject to any provision of ERISA. Borrower has no employees.

8.40 No Construction. No construction, other than site development work and construction previously disclosed to Administrative Agent, has commenced on the Land.

8.41 Intentionally Omitted.

8.42 Appraisal. Borrower is not aware of any facts or circumstances of any nature which make, or are likely in the future to make, the Appraisal of the Project inaccurate in any material respect.

8.43 Labor Controversies. To Borrower's knowledge there are no labor controversies pending or threatened against Borrower with respect to the Project or any construction contractor involved in the construction of the Improvements which have not been disclosed in writing to the Administrative Agent or the Lenders and would not reasonably be expected to constitute or result in a Material Adverse Effect.

8.44 Insider. Neither Borrower nor any Affiliate of Borrower (which shall not include any limited partner of Borrower which is not deemed to have "control" of Borrower respectively, as the term "control" is defined in 12 U.S.C. §375b(9)(B) or in regulations promulgated pursuant thereto) nor any other Person having "control" (as so defined) of Borrower is, or is a "related interest" of, an "executive officer", "director", or Person who "directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities" or other "insider" (as those terms are defined in 12 U.S.C. §375b or in regulations promulgated pursuant thereto) of any Lender, of a bank holding company of which any Lender is a subsidiary, or of any subsidiary of a bank holding company of which any Lender is a subsidiary, or of any bank at which any Lender maintains a correspondent account, or of any bank which maintains a correspondent account with any Lender.

8.45 True and Complete Disclosure. To Borrower's Knowledge, the information, reports, financial statements, exhibits and schedules furnished in writing by or on behalf of Borrower Parties to Administrative Agent or any Lender in connection with the negotiation, preparation or delivery of this Agreement and the other Loan Documents or included herein or therein, when taken as a whole do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein under the circumstances made, not misleading. All written information furnished after the date hereof by any Borrower Party to Administrative Agent and the Lenders in connection with this Agreement and the other Loan Documents and the Transactions will be true, complete and accurate in every material respect, or (in the case of projections) based on reasonable estimates, on the date as of which such information is stated or certified.

8.46 Survival of Representations. Each Request for Loan Advance shall constitute an affirmation that the representations and warranties of Article VIII remain true and correct in all material respects as of the date of such Request for Loan Advance and will be so on the date of disbursement of the requested Loan, except with respect to (a) matters which have been disclosed in writing to and approved by Administrative Agent (subject, however, to the terms of this Agreement) or (b) liens of mechanics and materialmen and matters addressed in Section 8.05, would not, if adversely decided, be reasonably expected to have a Material Adverse Effect.

## ARTICLE IX
## AFFIRMATIVE COVENANTS OF BORROWER

Borrower covenants and agrees with the Lenders and Administrative Agent that, so long as any Commitment or Loan is outstanding and until payment in full of all amounts payable (other than contingent indemnification obligations) by Borrower hereunder:

9.01 Information. Borrower shall deliver to Administrative Agent:

a. within one hundred twenty (120) days after the close of each fiscal year of Borrower, certified annual financial statements (in form reasonably satisfactory to Administrative Agent) of Borrower, and the Guarantor for each such fiscal year, shall submit audited annual financial statements, including (i) a balance sheet and statement of profit and loss setting forth in comparative form figures for the preceding fiscal year, prepared in accordance with GAAP;
b. not later than forty-five (45) days after the close of each fiscal quarter of Borrower (in form reasonably satisfactory to Administrative Agent), quarterly financial statements (including a balance sheet, income statement and cash flow statement) for Borrower prepared in accordance with GAAP;
c. not later than ten (10) days after the close of each month, a monthly sales report detailing rent roll for the Project for the most recent month;
d. at the time of the delivery of each of the financial statements provided for in subsections (a), (b) and (c) of this Section 9.01, a certificate of an Authorized Officer of Borrower, the [Managing Member], as applicable, certifying that (i) such respective financial statements and reports as being true, correct, and accurate and (ii) that such officer has no knowledge (after due inquiry), except as specifically stated, of any Default or if a Default has occurred, specifying the nature thereof in reasonable detail and the action which Borrower is taking or proposes to take with respect thereto;
e. from time to time such other information regarding the financial condition, operations, business or prospects of Borrower, the Project and/or the other Borrower Parties as Administrative Agent may reasonably request.

9.02 Notices of Material Events. Borrower shall give to Administrative Agent prompt written notice of the following:

(a) the occurrence of any Default or Event of Default, including a description of the same in reasonable detail;

a. the commencement (or threatened commencement) of any legal or arbitral proceedings, and of all proceedings by or before any Governmental Authority, and any material development in respect of such legal or other proceedings, affecting any of Borrower, the Project, or any Material Agreement;
b. promptly after Borrower knows or has reason to believe that any material default by any other party has occurred under any Project Document or any Material Agreement, a notice of such default;
c. notice of any threatened Condemnation, or the occurrence of any Casualty; and
d. any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

9.03 Existence, Etc. Borrower will, and will cause each other Borrower Party to, preserve and maintain its legal existence and all material rights, privileges, licenses and franchises necessary for the maintenance of its existence and the conduct of its affairs.

9.04 Compliance with Laws; Adverse Regulatory Changes.

a. Borrower shall comply in all material respects (subject to such more stringent requirements as may be set forth elsewhere herein) with all Applicable Laws. Borrower shall maintain in full force and effect all Government Approvals and shall from time to time obtain all Government Approvals as shall now or hereafter be necessary under Applicable Law in connection with the construction, operation or maintenance of the Project or the execution, delivery and performance by Borrower of any of the Project Documents to which it is a party and shall comply with all such Government Approvals and keep them in full force and effect. Borrower shall promptly furnish a true and complete copy of each such Government Approval obtained after the date hereof to Construction Consultant.
b. After prior notice to Administrative Agent, Borrower, at its own expense, may contest by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, the validity or application of any Applicable Law; provided that: (i) no Event of Default or monetary Default of which Administrative Agent has given Borrower notice exists; (ii) Borrower shall pay any outstanding fines, penalties or other payments under protest unless such proceeding shall suspend the collection of such items; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or the Project is subject and shall not constitute a default thereunder; (iv) no part of or interest in the Project will be in imminent danger of being sold, forfeited, terminated, canceled or lost during the pendency of the proceeding; (v) such proceeding shall not subject Borrower, Administrative Agent or any Lender to criminal or civil liability (other than civil liability as to which adequate security has been provided pursuant to clause (vi) below); (vi) unless paid under protest, Borrower shall have furnished such security as may be required in the proceeding, or as may be reasonably requested by Administrative Agent, to insure the payment of any such items, together with all interest and penalties thereon, which shall not be less than 110% of the maximum liability of Borrower as reasonably determined by Administrative Agent, which security shall be deposited in a Controlled Account; and (vii) Borrower shall promptly upon final determination thereof pay the amount of such items, together with all costs, interest and penalties.

9.05 Insurance.

a. Borrower shall at all applicable times obtain and maintain, at Borrower's expense, for the benefit of Borrower, Administrative Agent and the Lenders, the insurance listed on Schedule 9.05.
b. Such insurance shall be obtained under valid and enforceable policies (individually, a "Policy" and, collectively, the "Policies") written by financially responsible companies (i) authorized to issue such insurance in the State of Colorado, (ii) having a Best's Rating of not less than A-IX and (iii) otherwise satisfactory to Administrative Agent.
c. If any such Insurance Proceeds required to be paid to Administrative Agent are instead made payable to Borrower, Borrower hereby appoints Administrative Agent as its attorney-in-fact, irrevocably and coupled with an interest, to endorse and/or transfer any such payment to Administrative Agent (on behalf of the Lenders).
d. Borrower shall deliver to Administrative Agent on or before the Closing Date valid evidence (i.e., Policies and/or certificates of insurance) acceptable to Administrative Agent of the Policies required by this Agreement or any other Loan Document establishing (i) the issuance of such policies, (ii) that the payment of all premiums (collectively, the "Insurance Premiums") payable for the period are current and (iii) coverage which meets all of the insurance requirements set forth in this Agreement.
e. Not less than thirty (30) days prior to the expiration, termination or cancellation of any Policy which Borrower is required to maintain hereunder, Borrower shall obtain a replacement or renewal Policy or Policies (or a binding commitment for such replacement or renewal Policy or Policies) meeting the requirements of this Agreement, which shall be effective no later than the date of the expiration, termination or cancellation of the previous Policy, and shall deliver to Administrative Agent (i) a valid binder in respect of such Policy or Policies in the same form and containing the same information as the expiring Policy or Policies required to be delivered by Borrower and (ii) evidence that the payment of all Insurance Premiums then due to the applicable insurer are current.
f. Without limiting the obligations of Borrower under the foregoing provisions of this Section 9.05, if Borrower shall fail to maintain in full force and effect insurance as required by the foregoing provisions of this Section 9.05, then Administrative Agent may, but shall have no obligation so to do, procure insurance covering the

interests of the Lenders and Administrative Agent in such amounts and against such risks as Administrative Agent (or the Required Lenders) shall deem reasonably appropriate and in accordance with the requirements hereof, and Borrower shall reimburse Administrative Agent in respect of any Insurance Premiums paid by Administrative Agent in respect thereof.

g. In the event of foreclosure of the Security Instrument or other transfer of title or assignment of the Project in extinguishment, in whole or in part, of the Loans, all right, title and interest of Borrower in and to all Policies of insurance required hereunder except the right to proceeds of such policies relating to events occurring prior to such transfer of title, shall inure to the benefit of and pass to the successor in interest to Administrative Agent and the Lenders or the purchaser or grantee of the Project.

(h) Notwithstanding the foregoing, Administrative Agent may require Borrower to obtain additional insurance coverages and amounts, provided that such additional insurance is then customarily required by other lenders for properties similar to the Project, as reasonably determined by Administrative Agent.

9.06 Real Estate Taxes and Other Charges.

a. Subject to the provisions of subsection (b) of this Section 9.06 and Section 9.14, Borrower shall pay all Real Estate Taxes and Other Charges now or hereafter levied or assessed or imposed against the Project or any part thereof before fine, penalty, interest or cost attaches thereto. Subject to the provisions of subsection (b) of this Section 9.06, Borrower shall furnish to Administrative Agent receipts for the payment of Real Estate Taxes and Other Charges prior to the date the same shall become delinquent; provided, however, that Borrower is not required to furnish such receipts for payment of Real Estate Taxes if Administrative Agent is paying the same pursuant to the reserves established under Section 9.14.

b. After prior written notice to Administrative Agent, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Real Estate Taxes and Other Charges, provided that: (i) no Default and no Event of Default exists; (ii) Borrower shall pay the Real Estate Taxes and Other Charges under protest unless such proceeding shall suspend the collection of the Real Estate Taxes and Other Charges; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or the Project is subject and shall not constitute a default thereunder; (iv) such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (v) neither the Project nor any part thereof or interest therein will, in the reasonable opinion of Administrative Agent, be in danger of being sold, forfeited, terminated, cancelled or lost during the pendency of the proceeding; (vi) Borrower shall have furnished such security as may be required in the proceeding, or as may be reasonably requested by Administrative Agent (but in no event less than [110%] of the Real Estate Taxes or Other Charges being contested), to insure the payment of any such Real Estate Taxes and Other Charges, together with all interest and penalties thereon; and (vii) Borrower shall promptly upon final determination thereof pay the amount of such Real Estate Taxes or Other Charges, together with all costs, interest and penalties.

9.07 [Intentionally Omitted].

9.08 Further Assurances. Borrower will, and will cause each of the other Borrower Parties to promptly, upon request by Administrative Agent, execute any and all further documents, agreements and instruments, and take all such further actions which may be required under any applicable law, or which Administrative Agent may reasonably request, to effectuate the Transactions, all at the expense of Borrower. Borrower, at its sole cost and expense, shall take or cause to be taken all action reasonably required or requested by Administrative Agent to maintain and preserve the Liens of the Security Documents and the priority thereof. Borrower shall from time to time execute or cause to be executed any and all further instruments (including financing statements, continuation statements and similar statements with respect to any of the Security Documents), and register and record such instruments in all public and other offices, and shall take all such further actions, as may be necessary or requested by Administrative Agent

for such purposes, including timely filing or refiling all continuations and any assignments of any such financing statements, as appropriate, in the appropriate filing offices.

9.09 Performance of Project Documents, Material Agreements, and Easements.

a. Borrower shall (i) perform and observe in all material respects all of its covenants and agreements contained in any of the Project Documents and Material Agreements to which it is a party, including the application of any funds to Project Costs received by Borrower from any party pursuant to any such Material Agreement, (ii) take all reasonable and necessary action to prevent the termination of any such Project Document or Material Agreement in accordance with the terms thereof or otherwise, (iii) enforce each material covenant or obligation of each such Project Document and Material Agreement in accordance with its terms, (iv) promptly give Administrative Agent copies of any default or other material notices given by or on behalf of Borrower received by or on behalf of Borrower from any other Person under the Project Documents or the Material Agreements, and (v) take all such action to achieve the purposes described in clauses (i), ii and (iii) of this

Section 9.09 as may from time to time be reasonably requested by Administrative Agent; provided, however, that Borrower shall be permitted, upon Administrative Agent's reasonable approval, to contest the validity or applicability of any requirement under the Project Documents or any Material Agreement.

b. Borrower will comply with all restrictive covenants and easements affecting the Project (unless the Title Company has insured against the enforcement of same in the Title Policy). All covenants, easements, cross easements or operating agreements which may hereafter be acquired, entered into or amended by Borrower affecting the Project (it being understood that Borrower will use commercially reasonable efforts to procure such of the foregoing items as Administrative Agent may reasonably deem appropriate) shall be submitted to Administrative Agent for Administrative Agent's approval, which shall not be unreasonably withheld or delayed, prior to the execution thereof by Borrower, accompanied by a drawing or survey showing the location thereof.

9.10 Performance of the Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions required to be observed, performed or satisfied by it under the Loan Documents, and shall pay when due all costs, fees and expenses required to be paid by it under the Loan Documents.

9.11 Books and Records; Inspection Rights. Borrower will, and will cause each of the other Borrower Parties to, keep proper books of record and account in which full, true, complete and correct entries are made of all dealings and transactions in relation to its business and activities. Borrower will, and will cause each of the other Borrower Parties to, permit any representatives designated by Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records relating to the Project and the overall financial condition of such parties, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

9.12 Environmental Compliance.

(a) Environmental Covenants. Borrower covenants and agrees that: (i) all uses and operations on or of the Project by Borrower shall be in compliance with all

Environmental Laws and permits issued pursuant thereto (and that Borrower will use commercially reasonable efforts to cause any other Person who uses the Project to do so in compliance with all Environmental Laws and permits issued pursuant thereto); (ii) Borrower shall not permit a Release of Hazardous Substances in, on, under or from the Project; (iii) Borrower shall not permit Hazardous Substances in, on, or under the Project, except those that are in compliance with all Environmental Laws (i.e., materials used in cleaning and other building operations) and matters disclosed in the Environmental Reports; (iv) Borrower shall keep the Project free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other Person (collectively, "Environmental Liens"); (v) notwithstanding clause (iii) above, Borrower shall not, or permit any other Person to, install any asbestos or asbestos containing materials on the Project; (vi) Borrower shall cause the Remediation of such Hazardous Substances present on, under or emanating from the Project, or migrating onto or into the Project, in accordance with and to the extent required by this Agreement and Environmental Laws; (vii) Borrower shall provide Administrative Agent, the Lenders and their representatives with access at reasonable times to all or any portion of the Project for purposes of inspection, provided that such inspections shall not unreasonably interfere with the operation of the Project or occupants thereof, and shall cooperate with Administrative Agent, the Lenders and their representatives in connection with such inspections, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; and (viii) promptly deliver to Administrative Agent copies of all required Government Approvals relating to the proper removal of any asbestos, any aboveground storage tank, and any underground storage tank currently existing at the Project.

(b) Environmental Notices. Borrower shall promptly provide notice to Administrative Agent of: (i) all Environmental Claims asserted or threatened against Borrower or any other party occupying the Project or any portion thereof or against the Project which become known to Borrower; (ii) the discovery by Borrower of any occurrence or condition on the Project or on any real property adjoining or in the vicinity of the Project which could reasonably be expected to lead to an Environmental Claim against Borrower, Administrative Agent or any of the Lenders; (iii) the commencement or completion of any Remediation at the Project; and (iv) any Environmental Lien. In connection therewith, Borrower shall transmit to Administrative Agent copies of any citations, orders, notices or other written communications received from any Person and any notices, reports or other written communications submitted to any Governmental Authority with respect to the matters described above.

9.13 [Intentionally Omitted].

9.14 Reserves. Administrative Agent may, following and during the continuance of an Event of Default, at any time and from time to time, at its option (or at the direction of the Required Lenders), to be exercised by written notice to Borrower, require the deposit by Borrower into a Controlled Account, at the time of each payment of an installment of interest or principal under the Notes, of additional amounts sufficient to discharge the obligations of Borrower under Sections 9.05 and 9.06 (if applicable, and excluding all income, franchise, single business or other taxes imposed on Borrower unless the same is in lieu of real estate taxes) when they become due. Simultaneously with the initial deposit under this Section 9.14, Borrower shall deposit with Administrative Agent an amount determined by Administrative Agent to be necessary to ensure that there will be on deposit with Administrative Agent an amount which,

when added to the monthly payments subsequently required to be deposited with Administrative Agent hereunder on account of Real Estate Taxes, Insurance Premiums will result in there being on deposit with Administrative Agent an amount sufficient to pay the next due periodic installment of Real Estate Taxes, Insurance Premiums at least one (1) month prior to the delinquency date thereof and the next periodic payments of insurance premiums and ground rent at least one (1) month prior to the due date thereof. Commencing on the first Business Day of the first calendar month after the occurrence of an Event of Default and continuing thereafter on the first Business Day of each month thereafter, Borrower shall pay to Administrative Agent deposits in an amount equal to one-twelfth (1/12) of the yearly amount of Real Estate Taxes and Insurance Premiums that will next become due and payable on the Project. The determination of the amount to be deposited with Administrative Agent with each installment shall be made by Administrative Agent in its sole discretion. Such amounts shall be held by Administrative Agent in a Controlled Account and applied (together with any interest earned thereon) to the payment of the obligations in respect to which such amounts were deposited or, at the option of Administrative Agent, to the payment of said obligations in such order or priority as Administrative Agent shall determine, on or before the respective dates on which the same or any of them would become delinquent. If one (1) month prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligations in full, Borrower, within five (5) Business Days after demand, shall deposit the amount of the deficiency Administrative Agent into the Controlled Account. Nothing herein contained shall be deemed to affect any right or remedy of Administrative Agent and/or the Lenders under the provisions of this Agreement or the other Loans Documents or of any statute or rule of law to pay any such amount and to add the amount so paid together with interest at the Default Rate to the indebtedness secured by the Security Instrument. Borrower hereby pledges to and grants to Administrative Agent a security interest in any and all monies now or hereafter deposited in such Controlled Account as additional security for the payment of the Loans and agrees to enter into an agreement with Administrative Agent and the bank where such account is established substantially in the form in order to perfect Administrative Agent's security interest therein. In making any payment from such Controlled Account, Administrative Agent may do so according to any bill, statement or estimate or procured from the appropriate public office (with respect to Real Estate Taxes), insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any such charge.

9.15 Accessibility Laws.

(a) Compliance. Borrower will perform and comply promptly with, and cause the Project, including any future alterations to the Project constructed by Borrower to be constructed, maintained, used and operated in accordance with all applicable Accessibility Laws and will maintain accurate records of all expenditures made in connection with any alterations with respect to Accessibility Laws to the Project. Upon the request of Administrative Agent, and if (i) any Governmental Authority having jurisdiction over the Project or Borrower shall issue a violation or a notice of violation with respect to any Accessibility Laws, (ii) required by any applicable Accessibility Laws or (iii) Administrative Agent reasonably believes an Accessibility Laws violation may exist at or affect the Project, Borrower shall conduct such surveys of the Project as Administrative Agent shall reasonably require to ascertain that the Project is in compliance with all Accessibility Laws.

(b) Notices. If Borrower receives any notice that Borrower or the Project is in default under or is not in compliance with any Accessibility Law, or notice of any proceeding initiated under or with respect thereto, Borrower will promptly furnish a copy of such notice to Administrative Agent.

16. [Intentionally Omitted].
17. [Intentionally Omitted].
18. [Intentionally Omitted].

9.19 Use of Proceeds; Margin Regulations. Borrower will use (a) the proceeds of the Loans in accordance with the Project Budget and (b) the disbursements from any Deficiency Deposit for the Project Costs. No part of the proceeds of the Loans will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with Regulation T, U, X or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements.

9.20 [Intentionally Omitted].

9.21 Inspection. Borrower shall permit representatives of Administrative Agent, the Construction Consultant and the Lenders, at reasonable times and on reasonable advance notice, to examine its books of record and account, to make copies and abstracts therefrom, and to discuss its affairs, finances and accounts with its principal officers, engineers and independent accountants (and by this provision Borrower authorizes said accountants to discuss with such Persons such affairs, finances and accounts, but after prior notice to Borrower of such discussions). Without limiting the foregoing, representatives of the Construction Consultant, Administrative Agent and the Lenders shall have the right at reasonable times and on reasonable advance notice to (a) inspect the Project and all materials to be used in connection with the construction of the Improvements from time to time and to witness the construction thereof, (b) to examine all detailed plans and shop drawings in connection with the construction of the Improvements and (c) meet with the representatives of the Design Professionals, the General Contractor and the Major Subcontractors to discuss the status and issues relating to the construction of the Improvements (and by this provision Borrower authorizes Borrower's Architect, the General Contractor and the Major Subcontractors to cooperate and discuss with such Persons such construction matters, but after reasonable prior notice to Borrower of such discussions). Borrower shall at all times cause a complete set of the

original plans (and all supplements thereto) relating to the construction of the Project to be maintained at the Project or construction office and available for inspection by such representatives.

9.22 Project Construction.

(a) Borrower will construct or cause the construction of the Construction Work in accordance with generally accepted engineering and construction practice, the Plans and Specifications, the Construction Schedule and Applicable Laws. Borrower will timely commence (but in no event later than sixty (60) days after the date hereof) construction of the Construction Work. Borrower shall cause such Construction Work to be completed by the Completion Date (other than Punch List items) subject to Section 14.27. Once begun, Borrower shall use its commercially reasonable efforts to cause the construction of the

Construction Work to be prosecuted with diligence in accordance with the Construction Schedule so as (i) to substantially complete the Base Building Work (including the satisfaction of the Base Building Substantial Completion Conditions') and obtain a temporary certificate of occupancy or such other permits or approvals as may be applicable to the Base Building Work on or before the Completion Date, free and clear of Liens or claims for Liens for materials supplied and for labor or services performed in connection with the construction of the Base Building Work and (ii) to complete each portion of the Construction Work prior to the date required pursuant to each Qualified Purchase Contract. Borrower shall not commence construction of the Construction Work, or any particular component or phase thereof, until Borrower has obtained all permits, licenses and approvals required under any Applicable Law for the commencement of construction of the Construction Work or such component or phase thereof, as the case may be. In no event will Borrower permit or suffer any party, including subcontractors, to commence proceedings to enforce any Lien unless and to the extent that said Lien is fully bonded; provided that such bonding effects the removal of any such Liens or claims.

a. Borrower will deliver to Administrative Agent, on demand, copies of all contracts, bills of sale, statements, receipted vouchers and agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Improvements, or subject to the lien of the Security Instrument.
b. Borrower will, upon demand of Administrative Agent based upon the advice of the Construction Consultant, correct any Unsatisfactory Work pursuant to Section 7.07; and the advance of any proceeds of any Loan shall not constitute a waiver of Administrative Agent's right to require compliance with this covenant with respect to any such defects or departures from the Plans and Specifications not theretofore discovered by or called to the attention of the Construction Consultant. Notwithstanding the above, none of Administrative Agent, the Lenders or the Construction Consultant shall have any affirmative duty to Borrower or any third party to inspect for said defects or to call them to the attention of Borrower or anyone else.
c. Borrower shall deliver to Administrative Agent and the Construction Consultant copies of all Major Subcontracts for Administrative Agent's approval and shall deliver to Construction Consultant all other subcontracts for informational purposes entered into for the construction of the Improvements.
d. Subject to the provisions of Section 10.13, Borrower shall from time to time promptly deliver to Administrative Agent and the Construction Consultant all Change Orders, pending or executed, along with evidence that all Government Approvals have been obtained, together with any documents related thereto and a written explanation of the reasons therefor.
e. Administrative Agent may (and if requested by the Required Lenders, shall) commission an Appraisal (i) upon the satisfaction of the Base Building Substantial Completion Conditions and (ii) at any other time if required by Applicable Law. Such Appraisals shall be completed at Borrower's expense and shall be prepared by an appraiser satisfactory to Administrative Agent.

9.23 [Intentionally Omitted].

9.24 Proceedings to Enjoin or Prevent Construction. If any proceedings are filed seeking to enjoin or otherwise prevent or declare invalid or unlawful all or any part of the Construction Work, Borrower, at its sole cost and expense, will use commercially reasonable efforts to cause such proceedings to be vigorously contested in good faith, and in the event of an adverse ruling or decision, use commercially reasonable efforts to prosecute all allowable appeals therefrom, and will, without limiting the generality of the foregoing, use commercially reasonable efforts to resist the entry or seek the stay of any temporary or permanent injunction that may be entered, and use its best efforts to bring about a favorable and speedy disposition of all such proceedings.

9.25 Administrative Agent's, Lenders' and Construction Consultant's Actions for their Own Protection Only. The authority herein conferred upon Administrative Agent, the Lenders and/or the Construction Consultant and any action taken by Administrative Agent, the Lenders and/or the Construction Consultant in making inspections, procuring sworn statements and waivers of lien, approving contracts and subcontracts and approving Plans and Specifications will be taken by Administrative Agent, the Lenders and the Construction Consultant for their own protection only, and none of Administrative Agent, the Lenders or the Construction Consultant shall be deemed to have assumed any responsibility to Borrower or any other party with respect to any such action herein authorized or taken by Administrative Agent, the Lenders or the Construction Consultant or with respect to the Construction Work, performance of contracts or subcontracts by any contractors or subcontractors, or prevention of claims for mechanics' liens. Any review, investigation or inspection conducted by Administrative Agent, the Lenders, the Construction Consultant or any other architectural or engineering consultants retained by Administrative Agent in order to verify independently Borrower's satisfaction

of any conditions precedent to advances under this Agreement, Borrower's performance of any of the covenants, agreements and obligations of Borrower under this Agreement, or the validity of any representations and warranties made by Borrower hereunder (regardless of whether or not the party conducting such review, investigation or inspection should have discovered that any of such conditions precedent were not satisfied or that any such covenants, agreements or obligations were not performed or that any such representations or warranties were not true), shall not affect (or constitute a waiver by Administrative Agent or the Lenders of) (i) any of Borrower's representations, warranties or obligations under this Agreement or Administrative Agent's and the Lenders' reliance thereon or right to require the performance thereof or (ii) Administrative Agent's or the Lenders' reliance upon any certifications of Borrower or the Design Professionals required under this Agreement or any other facts, information or reports furnished to Administrative Agent and/or the Lenders by Borrower hereunder.

9.26 Sign and Publicity. If Administrative Agent requests, Borrower shall, to the extent permitted by Applicable Law, erect a sign approved by Administrative Agent and Borrower on the Project in a conspicuous location indicating that the financing for the Project has been provided by the Lenders. The cost of any such sign shall be paid by Administrative Agent. In addition, Administrative Agent and the Lenders shall have the right to publicize the making of the Loans notwithstanding the provisions of Section 14.23.

9.27 On-Site and Off-Site Materials. Borrower shall cause all materials supplied for or intended to be utilized in, the construction of the Project, but not affixed to or incorporated into the Project, to be stored on the Project site or at such other location as may be approved by Administrative Agent in writing, with adequate safeguards, as required by Administrative Agent, to prevent loss, theft, damage or commingling with other materials or projects, such safeguards

shall include: (i) prior to making disbursements for materials which are stored on the Project or on property owned by an Affiliate of Borrower in the immediate vicinity of the Project (the "Lay-Down Yard") and intended to be incorporated into the Improvements pursuant to the Plans (collectively, "On-Site Stored Materials"), Administrative Agent shall have received (A) invoices, bills of sale and other documentation evidencing the amount owed for such materials, Borrower's ownership thereof, and evidence of the release of any right, title or lien in respect thereof by any vendor, conditioned only upon disbursement to such vendor of the disbursement amount requested, (B) evidence that such materials are covered by the insurance policies required by this Construction Loan Agreement and are identified and protected against loss, theft and damage in a manner acceptable to Administrative Agent and the Construction Consultant, and (C) evidence that advances made by the Lenders for any stored materials, whether or not such stored materials are stored on the Project or the Lay-Down Yard, do not at any one time exceed in the aggregate $1,000,000 inclusive of the amount requested; (ii) with respect to advances for the purchase of certain major building materials which are ready for delivery to the Property but are temporarily stored at off-site locations other than the Project or property adjacent to the Project (collectively, "Off-Site Stored Materials"), approved by the Administrative Agent and the Construction Consultant prior to the delivery to the Project or incorporation into the Improvements of such Off-Site Stored Materials; provided, however, that in the case of each such advance, the Administrative Agent shall have received (A) a written statement from the manufacturer or storer of such Off-Site Stored Materials (or a provision in the purchase order therefor to such effect) that Administrative Agent, the Construction Consultant and either of their agents may fully inspect such Off-Site Stored Materials at all reasonable times, and (B) evidence that advances to be made by the Lenders for all Off-Site Stored Materials do not exceed, at any one time $500,000, inclusive of the amount requested; and (iii) with respect to advances for the purchase of certain finally assembled, fully fabricated furniture, fixtures and equipment, which are ready for delivery to the Project but are temporarily stored at off-site locations other than the Project (collectively, "Off-Site Stored Furnishings"), approved by Administrative Agent and the Construction Consultant prior to delivery to the Project; provided, however, that in the case of each such Loan, the conditions contained herein have been satisfied with respect to the Off-Site Stored Furnishings and Administrative Agent shall have received a written statement from the manufacturer or storer of such Off-Site Stored Furnishings (or a provision in the purchase order therefor to such effect) that Administrative Agent, the Construction Consultant and either of their agents may fully inspect such Off-Site Stored Furnishings at all reasonable times.

## ARTICLE X

## NEGATIVE COVENANTS OF BORROWER

Borrower covenants and agrees that, until the payment in full of the Obligations (other than contingent indemnification obligations), it will not do or permit, directly or indirectly, any of the following:

10.01 Fundamental Change.

(a) Mergers; Consolidations; Disposal of Assets. Borrower will not merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) any substantial part of its Properties and assets whether now owned or hereafter acquired (but excluding any sale or disposition of obsolete or excess furniture,

fixture and equipment in the ordinary course of business if same is replaced with new furniture, fixtures and equipment of equal or greater utility), or wind up, liquidate or dissolve, or enter into any agreement to do any of the foregoing.

(b) Organizational Documents. Without the prior written consent of Administrative Agent, Borrower will not make any Modification of the terms or provisions in any such Person's Organizational Documents.

10.02 Limitation on Liens. Borrower will not create, incur, assume or suffer to exist any Lien upon any of the Project or its interest therein, whether now owned or hereafter acquired, except for the Permitted Liens. Borrower shall not be in Default under this Section 10.02 if (a) a Lien for the performance of work or the supply of materials is filed against the Project unless Borrower fails to discharge such Lien by payment or bonding on or prior to the date that is the earlier of (i) forty-five (45) days after the date of filing of such lien and (ii) the date on which the Project is subject to a levy, execution, attachment or sequestration, or (b) so long as Borrower contests in good faith the validity or amount of any asserted lien and diligently prosecutes or defends an action appropriate to obtain a binding determination of the disputed matter, and in connection with such contest provides Administrative Agent with such security as it may require in its sole discretion to protect Administrative Agent against all loss, damage, and expense, including reasonable attorneys' fees, which Administrative Agent might incur if the asserted lien is determined to be valid.

10.03 Transfer; Pledge.

a. Except as expressly permitted by or pursuant to this Agreement, Borrower shall not allow any Transfer to occur or permit any owner of the Equity Interests in Borrower to pledge or otherwise encumber such Equity Interests, or any of the economic or other benefits therefrom.
b. Notwithstanding anything herein to the contrary, direct and indirect Equity Interests in Borrower shall be permitted to be transferred to Persons that are wholly-owned subsidiaries of Vail Resorts, Inc.
c. Borrower acknowledges that Administrative Agent is making one or more advances under this Agreement in reliance on the expertise, skill and experience of Borrower; thus the Obligations secured by the Security Documents include material elements similar in nature to a personal service contract. In consideration of Administrative Agent's reliance, Borrower agrees that Borrower shall not make any Transfer if such Transfer is prohibited by this Agreement unless the Transfer is preceded by Administrative Agent's express written consent to the particular transaction and transferee. If any prohibited Transfer occurs, Administrative Agent in its sole discretion may declare the Obligations to be immediately due and payable, and Administrative Agent may invoke any rights and remedies provided under Section 12.02 hereof. Borrower acknowledges the materiality of the provisions of this Section 10.03(c) as a covenant of Borrower, and that such covenant was given individual weight and consideration by Administrative Agent in entering into the Obligations secured by the Security Documents, and that any Transfer in violation of the prohibited transfer provisions herein set forth shall result in a material impairment of Administrative Agent's interest in the Obligations and be deemed a breach of the foregoing covenant.

(d) Notwithstanding anything to the contrary in this Section 10.03, except as set forth in Section 10.03[b), any Change of Control or Transfer which would result in a Change of Control (in addition to any other consents or approvals required hereunder) shall be further subject to (i) Borrower providing prior written notice to Administrative Agent of any such transfer, (ii) no Default or Event of Default then existing, (iii) the proposed transferee being a corporation, partnership, joint venture, joint-stock company, trust or individual approved in writing by each Lender subject to a Limiting Regulation in its discretion, and (iv) payment to Administrative Agent on behalf of the Lenders of all costs and expenses incurred by Administrative Agent or any of the Lenders in connection with such transfer. Each Lender at the time subject to a Limiting Regulation shall, within ten (10) Business Days after receiving Borrower's notice of a proposed Change of Control or Transfer subject to this Section 10.03(d), furnish to Borrower a certificate (which shall be conclusive absent manifest error) stating that it is subject to a Limiting Regulation, whereupon such Lender shall have the approval right contained in clause (iii) above. Each Lender which fails to furnish such a certificate to Borrower during such ten (10) Business Day period shall be automatically and conclusively deemed not to be subject to a Limiting Regulation. If any Lender subject to a Limiting Regulation fails to approve a proposed transferee under clause (iii) above (any such Lender being herein called a "Rejecting Lender"), Borrower, upon three (3) Business Days notice, may (A) notwithstanding Section 2.02(h), prepay such Rejecting Lender's outstanding Loans in accordance with the provisions for prepayment set forth in Section 3.04 or (B) require that such Rejecting Lender transfer all of its right, title and interest under this Agreement and such Rejecting Lender's Note to an Eligible Assignee designated by Borrower that is approved by Administrative Agent provided that such Eligible Assignee assumes all of the obligations of such Rejecting Lender hereunder, and purchases all of such Rejecting Lender's Loans hereunder for consideration equal to the aggregate outstanding principal amount of such Rejecting Lender's Loans, together with interest thereon to the date of such purchase (to the extent not paid by Borrower), and satisfactory arrangements are made for payment to such Rejecting Lender of all other amounts accrued and payable hereunder to such Rejecting Lender as of the date of such transfer (including any fees accrued hereunder and any amounts that would be payable under Section 2.02(h) as if all such Rejecting Lender's Loans were prepaid in full on such date). Subject to the provisions of Section 14.07(b), such Eligible Assignee shall be a "Lender" for all purposes hereunder. Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements of Borrower contained in Sections 5.01, 5.07 and 14.03 shall survive for the benefit of such Rejecting Lender with respect to the time period prior to such replacement.

10.04 Indebtedness. Borrower shall not create, incur or suffer to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness except the following:

a. Indebtedness Under the Loan Documents. Indebtedness of Borrower in favor of Administrative Agent and the Lenders pursuant to this Agreement and the other Loan Documents;
b. Trade Payables. Indebtedness of Borrower with respect to trade payables and accrued expenses incurred in the ordinary course of the business of operating and constructing the Project, provided the same are not evidenced

by a promissory note, are paid when do (subject to good faith disputes), and do not exceed in the aggregate at any one time outstanding $500,000 or such greater amounts shown on the Project Budget.

10.05 Investments. Borrower will not make or permit to remain outstanding any Investments except operating deposit accounts with banks.

10.06 Restricted Payments. Borrower shall make no Distributions until the Notes have been paid in full.

10.07 Change of Organization Structure; Location of Principal Office. Borrower shall not change its name or change the location of its chief executive office, state of formation or organizational structure unless, in each instance, Borrower shall have (a) given Administrative Agent at least thirty (30) days' prior notice thereof, (b) made all filings or recordings, and taken all other action, necessary or desirable under Applicable Law to protect and continue the priority of the Liens created by the Security Documents, (c) if reasonably requested by Administrative Agent, delivered to Administrative Agent an opinion of counsel reasonably satisfactory to Administrative Agent covering the matters referred to in clause (b) above, and (d) if reasonably requested by Administrative Agent, caused the Title Company to issue an endorsement to the Title Policy reflecting such change and indicating that there has been no change in the state of title to the Project as a result of such change.

10.08 Transactions with Affiliates. Except for transactions with Slifer, Smith and Frampton, payments of project management fees or reimbursable expenses to Vail Resorts Development Company as provided in the Project Budget, or as expressly permitted by this Agreement, Borrower shall not enter into, or be a party to, any transaction with an Affiliate of Borrower, except in the ordinary course of business and on terms which are fully disclosed to Administrative Agent, and are no less favorable to Borrower than would be obtained in a comparable arm's length transaction with an unrelated third party.

10.09 [Intentionally Omitted].

10.10 No Joint Assessment; Separate Lots. Borrower shall not suffer, permit or initiate the joint assessment of the Project with any other real property constituting a separate tax lot.

10.11 Zoning. Borrower shall not, without Administrative Agent's reasonably prior written consent, seek, make, suffer, consent to or acquiesce in any change or variance in any zoning or land use laws or other conditions of use of the Project or any portion thereof. Borrower shall not use or permit the use of any portion of the Project in any manner that could reasonably be expected to result in such use becoming a non-conforming use under any zoning or land use law or any other applicable law or Modify any agreements relating to zoning or land use matters or with the joinder or merger of lots for zoning, land use or other purposes, without the prior written consent of Administrative Agent. Without limiting the foregoing, in no event shall Borrower take any action that would reduce or impair either (a) the number of parking spaces at the Improvements required by Applicable Law or (b) access to the Project from adjacent public roads.

10.12 ERISA. Borrower shall not shall not take any action, or omit to take any action, which would (a) cause Borrower's assets to constitute "plan assets" for purposes of ERISA or the Code or (b) cause the Transactions to be a nonexempt prohibited transaction (as such term is defined in Section 4975 of the Code or Section 406 of ERISA) that could subject Administrative Agent and/or the Lenders, on account of any Loan or execution of the Loan Documents hereunder, to any tax or penalty on prohibited transactions imposed under Section 4975 of the Code or Section 502(i) of ERISA.

10.13 Amendment of Contracts and Government Approvals. Borrower shall not, without Administrative Agent's prior consent (which shall not be unreasonably withheld or delayed, except with respect to clause (ii) below and to the extent otherwise provided in this Section 10.13), (i) take any action to cancel or terminate any Project Document, any Material Agreement, or any Government Approval to which it is a party; (ii) sell, assign, pledge, transfer, mortgage, hypothecate or otherwise dispose of (by operation of law or otherwise) or encumber any part of its interest in such Project Documents, Material Agreements or Government Approvals; (iii) waive any material default under or breach of any material provisions of any such Project Document, Material Agreement or Government Approval or waive, fail to enforce, forgive or release any material right, interest or entitlement, howsoever arising, under or in respect of any material provisions of any such Project Document, Material Agreement or Government Approval or vary or agree to the variation in any material way of any material provisions of any such Project Document, Material Agreement or Government Approval or of the performance of any other Person under any such Project Document, Material Agreement or Government Approval; (iv) Modify any material provision of, or give any material consent under, any such Project Document (including, without limitation, the Plans and Specifications, the Construction Schedule, the General Contract and any Major Subcontract), Material Agreement or Government Approval, including, without limitation, any Modification which, subject to Purchaser Upgrades and Borrower's right to make Change Orders pursuant to the provisions of Section 10.14 below, would materially increase the Project Budget (including, without limitation, any Project Budget Line-Item); (v) petition, request or take any other legal or administrative action that seeks, or may reasonably be expected, to rescind, terminate or suspend any such Project Document, Material Agreement or Government Approval or amend or modify all or any material part thereof; or (vi) enter into, or permit the General Contractor to enter into any new Major Subcontract.

10.14 Change Orders; Purchaser Upgrades.

a. Borrower shall not agree to or request any Change Order without Administrative Agent's and Construction Consultant's reasonable prior written consent except as specifically set forth in this Section 10.14;

b. Borrower may make changes to the Plans and Specifications without obtaining Administrative Agent's or Construction Consultant's consent pursuant to a Purchaser Upgrade or a Change Order if (A) Borrower obtains the approval of all parties whose approval is required, including, without limitation, any consent or approval required from the General Contractor, subcontractors, sureties and Governmental Authorities; (B) the structural integrity of the Improvements is not impaired; (C) no substantial change in architectural appearance is effected and the rentable square footage is not materially reduced; (E) the performance of the mechanical, electrical and life safety systems of the Improvements is not materially adversely affected and are in conformance with Applicable Laws; (F) the Government Approvals will not be revoked, rescinded or otherwise invalidated as a result of any such change or an aggregate of such changes; and (G) in the case of Change Orders, (i) no Event of Default has occurred and is continuing, (ii) Borrower notifies Administrative Agent and the Construction Consultant in writing of such change within three (3) Business Days thereafter, and (iii) the cost of or reduction resulting from any one such change does not exceed $75,000 and the aggregate change in cost of all such Change Orders does not exceed $500,000;
c. Any Change Order or Purchaser Upgrade permitted pursuant to this Section 10.14 or otherwise approved by Administrative Agent shall have the effect of Modifying the Plans and Specifications and the Project Budget consistent with such Change Order or Purchaser Upgrade.

10.15 Sales Tax Increment Financing. Borrower shall not enter into any sales tax increment financing agreement or other agreement with any Governmental Authority relating in any way to the Project ("Sales Tax Increment Financing") without (a) obtaining prior written consent of Administrative Agent and (b) executing an assignment of the proceeds from such Sales Tax Increment Financing pursuant to an assignment agreement in form and substance satisfactory to Administrative Agent in its sole discretion, as additional Collateral for the Obligations hereunder.

10.16 Intentionally Omitted].

10.17 Anti-Terrorism Law. Borrower shall not (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in Section 8.32 above, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Anti-Terrorism Order or any other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and Borrower shall deliver to the Lenders any certification or other evidence requested from time to time by any Lender in its reasonable discretion, confirming Borrower's compliance with this Section 10.17 and Section 8.32)).

## ARTICLE XI

**INSURANCE OR CONDEMNATION AWARDS** 11.01 Casualties and Condemnations.

a. If a Casualty shall occur, Borrower shall give prompt notice of such damage to Administrative Agent and shall promptly commence and diligently prosecute the completion of the repair and restoration of the Project in accordance with Applicable Law and the Material Agreements to, as nearly as reasonably possible, the condition the Project was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Administrative Agent and, to the extent required under any Material Agreement, any party thereto (a "Restoration"). Borrower shall pay all costs of such Restoration regardless of whether such costs are covered by Insurance Proceeds (and regardless of whether Borrower is entitled to any disbursement of Insurance Proceeds pursuant to Section 11.03 below). Administrative Agent may, but shall not be obligated to make proof of loss if not made promptly by Borrower.
b. Borrower shall promptly give Administrative Agent notice of the commencement of (or of any threatened) Condemnation proceedings and shall deliver to Administrative Agent copies of any and all papers served in connection with such actual or threatened Condemnation. Administrative Agent may participate in any Condemnation proceedings, and Borrower shall from time to time deliver to Administrative Agent all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Administrative Agent, its

attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings.

11.02 Insurance Proceeds and Condemnation Awards.

a. If (i) Restoration of the Project following a Casualty is reasonably expected to cost less than $750,000 (the "Insurance Threshold Amount"), or (ii) the Condemnation Award is reasonably expected to be less than $750,000 (the "Condemnation Threshold Amount"), provided no Default or Event of Default then exists, Borrower may, upon written notice to Administrative Agent but without the need to obtain the prior written consent of Administrative Agent, settle and adjust any claim with respect to a Casualty and settle or agree to any Condemnation Award, and Borrower is hereby authorized to collect such Insurance Proceeds or Condemnation Awards with respect thereto.
b. If Restoration of the Project is reasonably expected to cost an amount equal to or in excess of the Insurance Threshold Amount (a "Significant Casualty", or the Condemnation Award is reasonably expected to be an amount equal to or in excess of the Condemnation Threshold Amount (a "Significant Condemnation Event"),

then (i) Borrower shall not, without the reasonable prior written consent of Administrative Agent, settle or adjust any claim of Borrower or agree with any insurer(s) on the amount to be paid in connection with such Significant Casualty, or settle or agree to the amount of any such Condemnation Award, and (ii) all Insurance Proceeds and Condemnation Awards shall be due and payable solely to Administrative Agent and held in a Controlled Account in accordance with Section 11.03.

c. If an Event of Default exists, with respect to any Casualty or Condemnation, (i) Administrative Agent, in its sole discretion, may settle and adjust any claim or award without the consent of Borrower, (ii) all Insurance Proceeds and Condemnation Awards shall be due and payable solely to and held by Administrative Agent in a Controlled Account and applied in accordance with Section 11.03, and (iii) without Administrative Agent's prior consent, other than as required by any applicable insurance policy or Applicable Law Borrower shall not take any action or fail to take any action which would cause the amount of the Insurance Proceeds or Condemnation Awards to be affected or determined. Administrative Agent shall be under no obligation to question the amount of any Insurance Proceeds or Condemnation Award and may accept the same in the amount in which the same shall be paid.
d. If Borrower is a payee on any check representing Insurance Proceeds with respect to a Significant Casualty, Borrower shall immediately endorse, such check payable to the order of Administrative Agent. Borrower hereby irrevocably appoints Administrative Agent as its attorney-in-fact, coupled with an interest, to endorse such check payable to the order of Administrative Agent. All out-of-pocket expenses incurred by Administrative Agent in the settlement, adjustment and collection of the Insurance shall become part of the Obligations and shall be reimbursed by Borrower to Administrative Agent upon demand.
e. Notwithstanding the occurrence of any Casualty or Condemnation, (i) Borrower shall continue to pay the Obligations at the time and in the manner provided for its payment in this Agreement and the Obligations shall not be reduced until any Insurance Proceeds or Condemnation Awards shall have been actually received and applied by

Administrative Agent, after the deduction of expenses of collection, to the reduction or discharge of the Obligations, and (ii) subject to all other provisions of this Agreement, Administrative Agent shall continue to make Loan Advances to Borrower notwithstanding the existence of such Casualty or Condemnation.

(f) With respect to any Condemnation, (i) the Lenders shall not be limited to the interest paid on the Condemnation Award by the condemning authority but shall be entitled to receive out of the Condemnation Award interest at the rate or rates provided herein or in the Notes and this Agreement, (ii) if the Project or any portion thereof is subject to a Condemnation, provided that any Condemnation Awards are made available to Borrower for such purpose by Administrative Agent, Borrower shall promptly commence and diligently prosecute the Restoration of the Project and otherwise comply with the provisions of Section 11.03, (iii) if the Project is sold, through foreclosure or otherwise, prior to the receipt by Administrative Agent of the Condemnation Award, Administrative Agent and the Lenders shall have the right, whether or not a deficiency judgment on the Notes shall have been sought, recovered or denied, to receive the Condemnation Award, or a portion thereof sufficient to pay the Obligations. The failure by Borrower to apply Condemnation Awards in accordance with this Article XI shall be an Event of Default.

11.03 Application of Insurance Proceeds and Condemnation Awards.

(a) If either the Insurance Proceeds or the Condemnation Award are equal to or greater than the Insurance Threshold Amount or the Condemnation Threshold Amount, as applicable, Administrative Agent shall adjust the Project Budget to reflect any such Insurance Proceeds or Condemnation Award and shall make the Insurance Proceeds or Condemnation Award available to Borrower for Restoration so long as each of the following conditions are met (provided that, if at the time of any request for disbursement of Insurance Proceeds or Condemnation Awards Borrower shall fail to satisfy such conditions, Borrower shall be entitled, except as to clause (i), to cure such failure within 30 days after Administrative Agent's refusal to make such disbursement and resubmit such request for disbursement):

i. no Event of Default has occurred and then exists (including at any time required for any disbursements of such Insurance Proceeds or Condemnation Awards);
ii. intentionally omitted;
iii. such Insurance Proceeds or Condemnation Awards, together with such additional funds deposited by Borrower with Administrative Agent and/or allocated by Borrower from the Borrower Contingency Fund are sufficient to pay for all of the costs and expenses associated with the repair or restoration of the Improvements in the manner required by Section 11.01(a) or 11.02(f), as applicable;
iv. if (A) such Casualty or Condemnation occurs prior to the initial completion of the Improvements, the Improvements can be repaired, restored and completed prior to the Completion Date, or such later date as shall be approved by the Required Lenders and (B) such Casualty or Condemnation occurs after the initial completion of the Improvements, the Improvements can be repaired or restored to substantially the condition in which they existed prior to such Casualty or Condemnation prior to the Extended Maturity Date;
v. Administrative Agent (in the exercise of its reasonable discretion) and all applicable Governmental Authorities have approved the final plans and specifications for reconstruction or restoration of the damaged portion of the Improvements;

vi. Administrative Agent has approved (in the exercise of its reasonable discretion) all budgets, schedules, and architecture and construction contracts in connection with such repair or restoration;
vii. with respect to a Casualty, Administrative Agent has determined (in the exercise of its reasonable discretion) that after the reconstruction or restoration work is completed, the Loans will be In Balance;
viii. with respect to a partial Condemnation, Administrative Agent has determined (in the exercise of its reasonable discretion) that the remaining Improvements are sufficient to cause the Loans to be In Balance;
ix. [Intentionally Omitted];
x. [Intentionally Omitted];
xi. Borrower shall commence (which shall include commencing "soft" costs activities, i.e., obtaining development approval from the applicable Governmental Authorities, soliciting bid proposals, restoration planning, etc.) the Restoration as soon as reasonably practicable (but in no event later than ninety (90) days after such Casualty or Condemnation, as the case may be, occurs) and shall in any event have undertaken reasonable actions within ninety (90) days to obtain all necessary permits and shall within such ninety (90) days, have entered into a construction contract reasonably acceptable to Administrative Agent, and shall diligently pursue the same to completion to the reasonable satisfaction of Administrative Agent;
xii. Administrative Agent shall have received a guaranty of completion with respect to all Restoration in substantially the same form as the Completion Guaranty and otherwise reasonably satisfactory to Administrative Agent from Guarantor;
xiii. the Project and the use thereof after the Restoration will be in substantial compliance with and permitted under all Applicable Laws;
xiv. such Casualty or Condemnation, as the case may be, does not result in the permanent loss of access to the Project or the Improvements;

(b) Pending disbursement to Borrower, the Insurance Proceeds or Condemnation Awards shall be held by Administrative Agent in a Controlled Account. If the entire amount of Insurance Proceeds or a Condemnation Award are not required (i) to be made available for the Restoration or (ii) the conditions for Insurance Proceeds or Condemnation Awards to be made available to Borrower set forth in subsection (a) above are not satisfied and Borrower's right to cure such matters has expired, the Insurance Proceeds or Condemnation Award may (A) be retained and applied by Administrative Agent toward the payment of the Obligations not later than the end of the next Interest Period that is at least five (5) days after Borrower shall have failed to satisfy the funding conditions (subject to Borrower's cure rights), whether or not then due and payable, in such order, priority and proportions as Administrative

Agent in its sole discretion shall deem proper, or (B) at the sole discretion of Administrative Agent, the same may be paid, either in whole or in part, to Borrower for such purposes and upon such conditions as Administrative Agent shall designate.

## ARTICLE XII
## EVENTS OF DEFAULT

12.01 Events of Default. Any one or more of the following events shall constitute an "Event of Default":

a. Monetary Defaults. Borrower shall: (i) fail to pay any principal of or interest on) any Loan when due (including, without limitation, on the Maturity Date or any other date on which the same is due); or (ii) fail to pay any other monetary sum (other than an amount referred to in clause (i) above) payable by it under this Agreement or under any other Loan Document, when and as the same shall become due and payable, and, in the case of this clause (ii) such default shall continue for a period of five (5) days after Administrative Agent shall have delivered notice of such default to Borrower (provided such 5-day grace period shall not apply to any sums due on the Maturity Date); or
b. Negative Covenants. Borrower shall default in the performance of any of its obligations under any of Sections 9.05, 9.06, 9.19, or Article X; or
c. Representations and Warranties. Any representation, warranty or certification made or deemed made herein or in any other Loan Document (or in any Modification hereto or thereto) by Borrower or any request, notice or certificate furnished by or on behalf of any Borrower Party pursuant to the provisions hereof or thereof, shall prove to have been false or misleading as of the time made or furnished in any material respect; or
d. Borrower Insolvency. (i) Borrower shall admit in writing its inability to, or be generally unable to, pay its debts as such debts become due; or (ii) an involuntary proceeding shall be commenced or an involuntary petition shall be filed, seeking (A) liquidation, reorganization or other relief in respect of any Borrower or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (B) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any of Borrower Parties or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for a period of sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or (iii) Borrower shall (A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or

petition described in clause (ii) above, (C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Borrower or for a substantial part of any of its assets, (D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (E) make a general assignment for the benefit of creditors or (F) take any action for the purpose of effecting any of the foregoing; or

e. [Intentionally Omitted]

f. Default on other Indebtedness. Borrower defaults (after the passage of any grace or cure periods) on any other Indebtedness where U.S. Bank is acting as lender; or

g. Dissolution. Borrower or Guarantor shall be terminated, dissolved or liquidated (as a matter of law or otherwise) or proceedings shall be commenced by any Person (including any Borrower Party) seeking the termination, dissolution or liquidation of Borrower or Guarantor; or

h. Judgments Against Borrower. One or more (i) final, non-appealable judgments (or, regardless as to whether the same is final and non-appealable, a judgment shall be recorded as a lien against the Project) for the payment of money (exclusive of judgment amounts covered by insurance where the insurer has admitted liability in respect of such judgment) aggregating in excess of $100,000 shall be rendered against Borrower, unless the same is paid, bonded over to the reasonable satisfaction of Administrative Agent, or additional cash collateral in an amount satisfactory to Administrative Agent is deposited into a Controlled Account, in each case within thirty (30) consecutive days of such judgment; or (ii) final, non-appealable non-monetary judgments, orders or decrees shall be entered against Borrower which does or would reasonably be expected to have a Material Adverse Effect, and, in either case, the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of Borrower to enforce any such judgment; or

i. Judgments Against Guarantor. One or more (i) final, non-appealable judgments for the payment of money (exclusive of judgment amounts covered by insurance where the insurer has admitted liability in respect of such judgment) aggregating in excess of $1,500,000 shall be rendered against Guarantor, unless the same is paid, bonded over to the reasonable satisfaction of Administrative Agent, or additional cash collateral in an amount satisfactory to Administrative Agent is deposited into a Controlled Account, in each case within thirty (30) consecutive days of such judgment; or (ii) final, non-appealable non-monetary judgments, orders or decrees shall be entered against Guarantor which does or would reasonably be expected to have a Material Adverse Effect, and, in either case, the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of such Guarantor to enforce any such judgment; or

j. ERISA. An ERISA Event shall have occurred that, in the opinion of Administrative Agent, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect; or

k. Loan Document Liens. The Liens created by the Security Documents shall at any time not constitute a valid and perfected first priority Lien (subject to the Permitted Liens) on the collateral intended to be covered thereby in favor of Administrative Agent, free and clear of all other Liens (other than the Permitted Liens), or, except for expiration in accordance with its terms, any of the Security Documents shall for whatever reason be terminated or cease to be in full force and effect, or the enforceability thereof shall be contested by any Borrower Party or any of their Affiliates and Borrower does not cause such matter to be cured within ten (10) Business Days following written notice from Administrative Agent; or

(l) Guarantor Default. Any Event of Default shall occur under, or Guarantor shall revoke or attempt to revoke, contest or commence any action against or seeking to nullify or void its obligations under, any of the Guarantor Documents; or

a. [Intentionally Omitted]

b. Material Adverse Effect. An event shall occur that results in a Material Adverse Effect and such Material Adverse Effect shall be continuing; or

c. Access to Project. If (i) Administrative Agent or any of the Lenders, or its representatives or the Construction Consultant is not permitted, at all reasonable times, following prior notice to Borrower, to enter upon the Project, inspect the Improvements and the construction thereof and all materials, fixtures and articles used or to be used in connection therewith, and to examine all detailed plans, shop drawings and specifications which relate to the Improvements, or (ii) Borrower, the General Contractor or a Major Subcontractor shall fail to furnish to Administrative Agent, the Construction Consultant or their authorized representatives, within a reasonable period of time after requested, copies of such plans, drawings and specifications, or copies of any invoices, subcontracts, or bills of sale relating to the construction or equipping of the Improvements, and, in any of the foregoing cases such default remains uncured for a period of five (5) Business Days after notice thereof from Administrative Agent to Borrower; provided, however, that if such default is caused as a result of the General Contractor or a Major Subcontractor, such five (5) Business Day period shall be extended so long as Borrower is diligently pursuing its rights and remedies to cause compliance by the General Contractor or such Major Subcontractor; or

d. Deficiency Deposits. Borrower shall fail to make (or cause to be made) a Deficiency Deposit within the time and in the manner provided in Section 7.02; or

e. Material Agreements. Borrower shall default under any of the Material Agreements after the expiration any applicable notice or cure periods thereunder, or any Material Agreement is materially Modified or terminated without Administrative Agent's prior written approval if such approval is required pursuant to Section 10.13, and the benefits provided for in such Material Agreement are not promptly (but in no event later than thirty (30) days after any such termination) replaced to the reasonable satisfaction of Administrative Agent; or

f. Unsatisfactory Work. Borrower shall fail to cause any Unsatisfactory Work to be corrected to the reasonable satisfaction of Administrative Agent and the Construction Consultant within twenty (20) Business Days after notice of such disapproval; provided, however, that if such Unsatisfactory Work cannot reasonably be corrected within such twenty (20) day period, then so long as Borrower shall have commenced to cause the correction of such Unsatisfactory Work within such twenty (20) Business Day period and thereafter diligently and expeditiously proceeds to cause the correction of the same, such twenty (20) Business Day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cause the correction of such Unsatisfactory Work, but in no event beyond the date which is sixty (60) days after the applicable notice of disapproval or such later date as may be approved in Administrative Agent's sole discretion; or

g. Contractor Bankruptcy. The bankruptcy or insolvency of the General Contractor and failure of Borrower to procure a contract with a new general contractor or guarantor (such contract, general contractor, guaranty and guarantor, as the case may be, to be approved by Administrative Agent) within sixty (60) days after the occurrence of such bankruptcy or insolvency (such approval not to be unreasonably withheld); or

h. Completion Date. The Construction Work is not completed (subject to Section 14.27) on or before the Completion Date; or

i. Cessation of Construction. If the Construction Work shall, at any time, be discontinued (subject to Section 14.27) or abandoned for more than ten (10) Business Days, or a delay in the Construction Work shall occur so that the same cannot, in Administrative Agent's sole but reasonable judgment, be completed on or before the Completion Date; or

j. Change in Control. The occurrence of any Change of Control not permitted by this Agreement; or

k. General. If Borrower or Guarantor shall default as set forth in Sections 12.01(b), (c), (g) or (n) or under any of the other non-monetary terms, covenants or conditions of this Agreement or any other Loan Document not set forth above in this Section 12.01 and such default shall continue for thirty (30) days after notice from Administrative Agent to Borrower; provided, however, that if (i) such default is susceptible of cure but Administrative Agent reasonably determines that such non-monetary default cannot be reasonably cured within such thirty (30) day period and (ii) Administrative Agent determines, in its sole discretion, that such default does not create a material risk of sale or forfeiture of, or substantial impairment in value to, any material portion of the Project, then, so long as the Borrower or Guarantor, as appropriate, shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for the Borrower or Guarantor, as appropriate, in the exercise of due diligence to cure such default, but in no event shall such period exceed ninety (90) days after the original notice from Administrative Agent or extend beyond the Maturity Date; or

l. Other Loan Documents. Any "Event of Default" shall occur under and is defined by the provisions of any of the other Loan Documents.

12.02 Remedies. Upon the occurrence of an Event of Default and at any time thereafter during the continuance of such event, Administrative Agent may (subject to, and in accordance with, the provisions of Section 13.03) and, upon request of the Required Lenders shall, by written notice to Borrower, pursue any one or more of the following remedies, concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

(a) In the case of an Event of Default other than one referred to in clause (f! of Section 12.01 with respect to Borrower, terminate the Commitments and/or declare the Outstanding Principal Amount, and the accrued interest on the Loans and all other amounts payable by Borrower hereunder (including any amounts payable under Section 5.05) and under the Notes and the other Loan Documents to be forthwith due and payable whereupon such amounts shall be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by Borrower; provided,

however, that in the case of the occurrence of an Event of Default referred to in clause (f) of Section 12.01 with respect to a Borrower Party, the Commitments shall automatically be terminated and the Outstanding Principal Amount, and the accrued interest on, the Loans and all other amounts payable by Borrower hereunder (including any amounts payable under Section 5.05), under the Notes and the other Loan Documents shall automatically become immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by Borrower;

a. In the case of any Event of Default resulting from Borrower's failure, refusal or neglect to make any payment or perform any act required by the Loan Documents, then, while any Event of Default exists and without notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Administrative Agent may have because of such Event of Default, Administrative Agent may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrower, and shall have the right to enter upon the Project for such purpose and to take all such action thereon and with respect to the Project as it may deem necessary or appropriate. If Administrative Agent shall elect to pay any sum due with respect to the Project, Administrative Agent may do so in reliance on any bill, statement or

assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Administrative Agent shall not be bound to inquire into the validity of any apparent or threatened adverse title, Lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Additionally, after the occurrence of an Event of Default, if any Hazardous Substance affects or threatens to affect the Project, Administrative Agent may (but shall not be obligated to) give such notices and take such actions as it deems necessary or advisable in order to abate the discharge of or remove any Hazardous Substance;

b. Take possession of the Project and complete the construction and equipping of the Improvements and do anything in its sole judgment to fulfill the obligations of Borrower hereunder, including either the right to avail itself of and procure performance of existing contracts or let any contracts with the same contractors or others and to employ watchmen to protect the Project from injury. Without restricting the generality of the foregoing and for the purposes aforesaid, Borrower hereby appoints and constitutes Administrative Agent its lawful attorney-in-fact with full power of substitution in the Project to complete construction of the Improvements in the name of Borrower; to use unadvanced funds remaining under the Commitments or which may be reserved, or escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes (and all such amounts shall be payable by Borrower together with interest at the Default Rate), to complete the Improvements; to make changes in the Plans and Specifications which shall be necessary or desirable to complete the Improvements in substantially the manner contemplated by the Plans and Specifications; to retain or employ new general contractors, subcontractors, architects, engineers and inspectors as shall be required for said purposes; to pay, settle, or compromise all existing bills and claims, which may be liens or security interests, or to avoid such bills and claims becoming liens against the Project or security interest against fixtures or equipment, or as may be necessary or desirable for the completion of the construction and equipping of the Improvements or for the clearance of title; to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; to do any and every act which Borrower might do in its own

behalf; and to prosecute and defend all actions or proceedings in connection with the Project or fixtures or equipment; to take action and require such performance as it deems necessary under any bonds furnished in connection with the construction of the Improvements and to make settlements and compromises with surety or sureties thereunder, and in connection therewith, to execute instruments of release and satisfaction; it being understood and agreed that this power of attorney shall be a power coupled with an interest and cannot be revoked;

a. Exercise the Lenders' rights under the Completion Guaranty to require any Guarantor to perform thereunder, in which case Borrower hereby (A) authorizes Administrative Agent and the Lenders to make advances of the Loans directly to such Guarantor in accordance with the terms of the Completion Guaranty and this Agreement and (B) agrees that Borrower shall be liable to the Lenders for all such advances to such Guarantor and such advances shall be deemed Loans under this Agreement and be evidenced by the Notes and secured by the Security Instrument and the other Security Documents; and
b. Exercise or pursue any other remedy or cause of action permitted under this Agreement, any or all of the Security Documents, or any other Loan Document, or conferred upon Administrative Agent and the Lenders by operation of law.

WHETHER OR NOT ADMINISTRATIVE AGENT OR THE LENDERS ELECT TO EMPLOY ANY OR ALL OF THE REMEDIES AVAILABLE UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, NEITHER ADMINISTRATIVE AGENT NOR ANY OF THE LENDERS SHALL BE LIABLE FOR THE CONSTRUCTION OF OR FAILURE TO CONSTRUCT, COMPLETE OR PROTECT THE IMPROVEMENTS OR FOR PAYMENT OF ANY EXPENSES INCURRED IN CONNECTION WITH THE EXERCISE OF ANY REMEDY AVAILABLE TO ADMINISTRATIVE AGENT OR THE LENDERS OR FOR THE PERFORMANCE OR NON-PERFORMANCE OF ANY OTHER OBLIGATION OF BORROWER.

## ARTICLE XIII
## ADMINISTRATIVE AGENT

13.01 Appointment, Powers and Immunities. Each Lender hereby irrevocably appoints and authorizes Administrative Agent to act as its agent hereunder and under the other Loan Documents with such powers as are specifically delegated to Administrative Agent by the terms of this Agreement and of the other Loan Documents, together with such other powers as are reasonably incidental thereto. Administrative Agent shall be a party to each of the Loan Documents (other than the Notes) as secured party, beneficiary, indemnitee, and such other applicable capacities, on behalf of and for the benefit of Lenders (and each Lender hereby ratifies and reaffirms the Loan Documents so executed and agrees to be bound by the terms thereof) and hold all Collateral covered thereby for the benefit of the Lenders, and receive all payments or proceeds received in connection therewith for the undivided benefit and protection of the Lenders in accordance with the terms and conditions of this Agreement. As soon as practicable after each such receipt of proceeds by Administrative Agent, Administrative Agent shall determine the respective amounts to be distributed and promptly thereafter shall credit to itself the amount to which it is entitled (as Administrative Agent, Lender or otherwise) and wire the amounts to which the other Lenders are entitled in accordance with such written instruction as each Lender from time to time may deliver to Administrative Agent. Each Lender shall hold its

own Note and shall receive a copy of each Loan Document. Administrative Agent (which term as used in this Section 7 shall include reference to its Affiliates and its own and its Affiliates' officers, directors, employees and agents) shall not:

a. have any duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents, and shall not by reason of this Agreement or any other Loan Document be a fiduciary or trustee for any Lender except to the extent that Administrative Agent acts as an agent with respect to the receipt or payment of funds, nor shall Administrative Agent have any fiduciary duty to the Borrower nor shall any Lender have any fiduciary duty to the Borrower or any other Lender;
b. be responsible to the Lenders for any recitals, statements, representations or warranties contained in this Agreement or in any other Loan Document, or in any certificate or other document referred to or provided for in, or received by any of them under, this Agreement or any other Loan Document, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement, any Note or any other Loan Document or any other document referred to or provided for herein or therein or for any failure by the Borrower or any other Person to perform any of its Obligations hereunder or thereunder;
c. be responsible for any action taken or omitted to be taken by it hereunder or under any other Loan Document or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith, except for its own gross negligence or willful misconduct;
d. except to the extent expressly instructed in writing by the Required Lenders with respect to collateral security under the Loan Documents, be required to initiate or conduct any litigation or collection proceedings hereunder or under any other Loan Document; and
e. be required to take any action which is contrary to this Agreement or any other Loan Document or Governmental Requirement.

The relationship between and among Administrative Agent and each Lender is a contractual relationship only, and nothing herein shall be deemed to impose on Administrative Agent any obligations other than those for which express provision is made herein or in the other Loan Documents. Administrative Agent may employ agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith. Administrative Agent may deem and treat the payee of a Note as the holder thereof for all purposes hereof unless and until a notice of the assignment or transfer thereof shall have been filed with Administrative Agent pursuant to Section 14.07. Except to the extent expressly provided in Sections 13.08, 13.10, and 13.11(g), the provisions of this Section 13 are solely for the benefit of Administrative Agent and the Lenders, and the Borrower shall not have any rights as a third-party beneficiary of any of the provisions hereof and the Administrative Agent and Lenders may, pursuant to a written agreement executed by all such Persons, Modify or waive such provisions of this Section 13 in their sole and absolute discretion.

13.02 Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon any certification, notice, document or other communication (including any thereof by telephone, telecopy, telegram or cable) reasonably believed by it to be genuine and correct and to

have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Administrative Agent. As to any matters not expressly provided for by this Agreement or any other Loan Document, Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with instructions given by the Required Lenders, and such instructions of the Required Lenders and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders.

13.03 Borrower Defaults.

a. Administrative Agent shall give the Lenders notice of any material Default of which Administrative Agent has knowledge or notice. Except with respect to (i) the nonpayment of principal, interest or any fees that are due and payable under any of the Loan Documents, (ii) Defaults with respect to which Administrative Agent has actually sent written notice of to the Borrower and (iii) Defaults with respect to which Administrative Agent has entered into discussions with the Borrower, Administrative Agent shall be deemed to not have knowledge or notice of the occurrence of a Default unless Administrative Agent has received notice from a Lender or the Borrower specifying such Default and stating that such notice is a "Notice of Default". If Administrative Agent has such knowledge or receives such a notice from the Borrower or a Lender in accordance with the immediately preceding sentence with respect to the occurrence of a material Default, Administrative Agent shall give prompt notice thereof to the Lenders. Within ten (10) days of delivery of such notice of Default from Administrative Agent to the Lenders (or such shorter period of time as Administrative Agent determines is necessary), Administrative Agent and the Lenders shall consult with each other to determine a proposed course of action. Administrative Agent shall (subject to Section 13.07) take such action with respect to such Default as shall be directed by the Required Lenders; provided that (i) unless and until Administrative Agent shall have received such directions, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action (including decisions (A) to make Protective Advances that Administrative Agent determines are necessary to protect or maintain the Project and (B) to foreclose on the Project or exercise any other remedy), with respect to such Default as it shall deem advisable in the interest of the Lenders except to the extent that this Agreement expressly requires that such action be taken, or not be taken,

only with the consent or upon the authorization of all of the Lenders and (ii) no actions approved by the Required Lenders shall violate the Loan Documents or Governmental Requirement.

b. Each of the Lenders acknowledges and agrees that no individual Lender may separately enforce or exercise any of the provisions of any of the Loan Documents (including, without limitation, the Notes) other than through Administrative Agent. Administrative Agent shall advise the Lenders of all material actions which Administrative Agent takes in accordance with the provisions of this Section 13.03. Notwithstanding the foregoing, if the Required Lenders shall at any time direct that a different or additional remedial action be taken from that already undertaken by Administrative Agent, including the commencement of foreclosure proceedings, such different or additional remedial action shall be taken in lieu of or in addition to, the prosecution of such action taken by Administrative Agent; provided that all actions already taken by Administrative Agent pursuant to Section 13.03(a) shall be valid and binding on each Lender.

c. All money (other than money subject to the provisions of Section 13.03(g)) received from any enforcement actions, including the proceeds of a foreclosure sale of the Project, shall be applied: First, to the payment or reimbursement of Administrative Agent for expenses incurred in accordance with the provisions of Sections 13.03(d), (e) and (f) and 13.05 and to the payment of any fees and charges then due agent to the extent not paid by the Borrower; Second, to the Lenders for expenses incurred in accordance with the provisions of Section 13.03(d), (e) and f( and 13.05; Third, to the payment or reimbursement of the Lenders for any advances made pursuant to Section 13.03(d); and Fourth, pari passu to the Lenders in accordance with their respective Proportionate Shares, unless an Unpaid Amount is owed pursuant to Section 13.11, in which event such Unpaid Amount shall be deducted from the portion of such proceeds of the Defaulting Lender and be applied to payment of such Unpaid Amount to the Special Advance Lender.

d. All losses with respect to interest (including interest at the Default Rate) and other sums payable pursuant to the Notes or incurred in connection with the Loans, the enforcement thereof or the realization of the security therefor, shall be borne by the Lenders in accordance with their respective Proportionate Shares. The Lenders shall promptly, upon request, remit to Administrative Agent their respective Proportionate Shares of (i) any expenses incurred by Administrative Agent in connection with any Default to the extent any expenses have not been paid by the Borrower, (ii) any advances made to pay taxes or insurance or otherwise to preserve the lien of the Loan Documents or to preserve and protect the Project or made to effect the completion of the Improvements to be constructed pursuant to this Agreement whether or not the amount necessary to be advanced for such purposes exceeds the amount of the respective Commitments of the Lenders, (iii) any other expenses incurred in connection with the enforcement of the Security Instrument or other Loan Documents, and (iv) any expenses incurred in connection with the consummation of the Loans not paid or provided for by the Borrower. To the extent any such advances are recovered in connection with the enforcement of the Security Instrument or the other Loan Documents, each Lender shall be paid its Proportionate Share of such recovery after deduction of the expenses of Administrative Agent.

e. If any action is brought to collect on the Notes, foreclose under the Security Instrument, or enforce any of the Loan Documents, such action shall (to the extent permitted under applicable law and the decisions of the court in which such action is brought) be an action brought by Administrative Agent and the Lenders, collectively, to collect on all or a portion of the Notes or enforce the Loan Documents, and counsel selected by Administrative Agent shall prosecute any such action on behalf of Administrative Agent and the Lenders, and Administrative Agent and the Lenders shall consult and cooperate with each other in the prosecution thereof. The costs and expenses of foreclosure, to the extent not paid by Borrower within ten (10) days after Administrative Agent's demand therefor, will be borne by the Lenders in accordance with their respective Proportionate Shares.

f. If title is acquired to the Project after a foreclosure sale, nonjudicial foreclosure or by a deed in lieu of foreclosure, title shall be held by Administrative Agent in its own name in trust for the Lenders or, at Administrative Agent's election, in the name of a wholly owned subsidiary of Administrative Agent on behalf of the Lenders.

g. If Administrative Agent (or its subsidiary) acquires title to the Project or is entitled to possession of the Project during or after the foreclosure, all material decisions

with respect to the possession, ownership, development, construction, control, operation, leasing, management and sale of the Project shall be made by Administrative Agent. All income or other money received after so acquiring title to or taking possession of the Project with respect to the Project, including income from the operation and management of the Project and the proceeds of a sale of the Project, shall be applied: First, to the payment or reimbursement of Administrative Agent for expenses incurred in accordance with the provisions of this Section 13 and to the payment of any fees and charges then due agent to the extent not paid by the Borrower; Second, to the payment of operating expenses with respect to the Project; Third, to the establishment of reasonable reserves for the operation of the Project; Fourth, to the payment or reimbursement of the Lenders for any advances made pursuant to Section 13.03(d); Fifth to fund any capital improvement, leasing and other reserves established at the discretion of Administrative Agent; and Sixth, pari passu to the Lenders in accordance with their respective Proportionate Shares, unless an Unpaid Amount is owed pursuant to Section 13.11, in which event such Unpaid Amount shall be deducted from the portion of such proceeds of the Defaulting Lender and be applied to payment of such Unpaid Amount to the Special Advance Lender.

13.04 Rights as a Lender. With respect to its Loan Commitment and the Loans made by it, U.S. Bank National Association (and any successor acting as "Administrative Agent" hereunder) in its capacity as a Lender hereunder shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as Administrative Agent, and the term "Lender" or "Lenders" shall, unless the context otherwise indicates, include Administrative Agent in its individual capacity as

Lender. U.S. Bank National Association (and any successor acting as "Administrative Agent" hereunder) and any of its Affiliates may (without having to account therefor to any other Lender) accept deposits from, lend money to, make investments in and generally engage in any kind of banking, investment banking, trust or other business with the Borrower (and any of its Affiliates) as if it were not acting as Administrative Agent, and U.S. Bank National Association (and any such successor) and any of its Affiliates may accept fees and other consideration from the Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Lenders.

13.05 Indemnification. Each Lender agrees to indemnify Administrative Agent (to the extent not reimbursed by the Borrower, but without limiting the Obligations of the Borrower hereunder) ratably in accordance with their Proportionate Shares, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against Administrative Agent in its capacity as Administrative Agent (including by any Lender) arising out of or by reason of any investigation in or in any way relating to or arising out of this Agreement or any other Loan Document or any other documents contemplated by or referred to herein or therein (including the costs and expenses that the Borrower is obligated to pay hereunder) or the enforcement of any of the terms hereof or thereof; provided that no Lender shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of Administrative Agent.

13.06 Non-Reliance on Administrative Agent and Other Lenders. Each Lender agrees that it has, independently and without reliance on Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Borrower and the Guarantor and its decision to enter into this Agreement and that

it will, independently and without reliance upon Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or under any other Loan Document. Subject to the provisions of Section 13.5 above, Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Borrower or the Guarantor of this Agreement or any of the other Loan Documents or any other document referred to or provided for herein or therein or to inspect the properties or books of the Borrower or the Guarantor. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by Administrative Agent hereunder, Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of the Borrower or the Guarantor (or any of their Affiliates) that may come into the possession of Administrative Agent or any of its Affiliates. Without limiting the foregoing, Administrative Agent shall not be responsible in any manner to any Lender (or any permitted successor or assign of any Lender), and each Lender represents and warrants that it has not relied upon Administrative Agent for or in respect of, (a) the creditworthiness of Borrower and the risks involved to such Lender, (b) the effectiveness, enforceability, genuineness, validity, or the due execution of any Loan Document, (c) any representation, warranty, document, certificate, report, or statement made therein or furnished thereunder or in connection therewith, (d) the existence, priority, or perfection of any Lien granted or purported to be granted under any Loan Document, or (e) the observation of or compliance with any of the terms, covenants, or conditions of any Loan Document on the part of Borrower.

13.07 Failure to Act. Except for action expressly required of Administrative Agent hereunder and under the other Loan Documents, Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction from the Lenders of their indemnification obligations under Section 13.05 against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.

13.08 Resignation of Administrative Agent. It is agreed by the Lenders that Administrative Agent shall remain Administrative Agent under this Agreement and the other Loan Documents throughout the term of the Loan; provided, however, Administrative Agent may resign at any time by giving at least thirty (30) days prior notice thereof to the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent that shall be a Person that (1) meets the qualifications of an Eligible Assignee and (2) has substantial experience in construction loan administration, and if such successor Administrative Agent is not a Lender, as long as no Event of Default exists, the Borrower shall have the right to approve such successor Administrative Agent, which approval shall not be unreasonably withheld, conditioned or delayed. If no successor Administrative Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent's giving of notice of resignation of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, that shall be a Person that meets the requirements of clauses (1) and (2) above, and if such successor Administrative Agent is not a Lender, the Borrower, as long as no Event of Default exists, shall have the right to approve such successor Administrative Agent, which approval shall not be unreasonably withheld, conditioned or delayed. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent

shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder; provided, however, that the retiring Administrative Agent shall not be discharged from any liabilities which existed prior to the effective date of such resignation. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Section 13 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent.

13.09 Consents and Certain Actions under, and Modifications of, Loan Documents.

a. Administrative Agent may, except as provided below in clause (b) below, (i) grant or refuse to grant any consent or approval required or requested of it hereunder or under any of the other Loan Documents in its sole and absolute discretion (except where another standard of discretion is expressly required of Administrative Agent pursuant to the applicable Loan Document), and (ii) consent or refuse to consent to any Modification, supplement or waiver under any of the Loan Documents. Without limiting the foregoing, such authority shall include the power to grant approvals consents and make all decisions with respect to all Ministerial Matters.
b. Notwithstanding any other provision of this Agreement or the other Loan Documents to the contrary, Administrative Agent shall not, without the approval of the Required Lenders or all of the Lenders, as specified below, have the right or power (and Borrower acknowledges and agrees that Administrative Agent shall not have the right or power) to grant any consent or approval required or requested of it hereunder or under any of the other Loan Documents, consent to any Modification, supplement or waiver under any of the Loan Documents, or take any action, if the effect of such consent, approval, Modification, supplement, waiver or action would result in:

(i) Without the consent of all Lenders:

A. a waiver of any provision regarding the scheduled payment of principal of or interest on the Loan;
B. the postponement the Maturity Date;
C. the reduction or forgiveness of the principal amount of the Loan;
D. a decrease the Applicable Interest Rate under the Loan or the waiver of any interest (including interest at the Default Rate) thereon, except to the extent permitted in the Loan Documents;
E. a release of Borrower from its Obligations under the Loan Documents, or a release of any of the Guarantors under the Guaranties from their obligations with respect to the Loan (except upon payment in full of the Loan and all other sums due under the Loan Documents);
F. a release of any material portion of the Collateral from the lien of the applicable Loan Documents, except to the extent permitted in the Loan Documents; or any Extension Fee;
G. a waiver of any Late Charges, interest at the Default Rat

A. a consent to any waiver of the prohibitions on Transfer or encumbrances of the Project or Equity Interests in Borrower;
B. a Modification of the definition of "Required Lenders" or the provisions of Section 13, or alters the several nature of the Lenders' obligations under the Loan Documents;

(ii) Without the consent of the Required Lenders:

A. a decision to foreclose on, or exercise remedies in order to realize upon, any Collateral after a Default or an Event of Default, as the case may be or bring any action to enforce any of the Guaranties or other Loan Documents (provided, however, all decisions concerning the conduct of any receivership, the manner (i.e., judicial, non judicial, acceptance of deed-in-lieu of foreclosure) and conduct of any foreclosure action or trustee's sale, the collection of any judgment, the settlement of such action, any bid on behalf of Administrative Agent and the Lenders at a foreclosure sale, the manner of taking and holding title to the Project, and the commencement and conduct of any deficiency judgment proceeding shall be made by Administrative Agent);
B. a decision made with respect to the sale or disposition of the Project or any Collateral after Administrative Agent has obtained possession thereof; and
C. a decision on the use of application of proceeds from any insurance maintain by Borrower or any awards from a taking or condemnation of the Project.

(iii) Without the consent of the affected Lender, change such Lender's Proportionate Share (provided, however, that this clause shall not apply to reductions in or a deemed reduction in any Lender's Proportionate Share pursuant to Section 13.11 hereof, nor shall it be construed to prevent a Lender from assigning its interest in the Loan pursuant to Section 14.07).

(c) If Administrative Agent solicits any consents or approvals from the Lenders under any of the Loan Documents, each Lender shall within ten (10) Business Days of receiving such request, give Administrative Agent written notice of its consent or approval or denial thereof (or such shorter time as may be required under the applicable Loan Document for Administrative Agent to respond, in which case Lenders shall have the same time period minus one (1) Business Day); provided that if any Lender does not respond within such ten (10) Business Days, such Lender shall be deemed to have authorized Administrative Agent to vote such Lender's interest with respect to the matter which was the subject of Administrative Agent's solicitation as Administrative Agent elects. Any such solicitation by Administrative Agent for a consent or approval shall be in writing and shall include a description of the matter or thing as to which such consent or approval is requested and shall include Administrative Agent's recommended course of action or determination in respect thereof

13.10 Authorization. Administrative Agent is hereby authorized by the Lenders to execute, deliver and perform in accordance with the terms of each of the Loan Documents to

which Administrative Agent is or is intended to be a party and each Lender agrees to be bound by all of the agreements of Administrative Agent contained in such Loan Documents. The Borrower shall be entitled to rely on all written agreements, approvals and consents received from Administrative Agent as being that also of the Lenders, without obtaining separate acknowledgment or proof of authorization of same.

13.11 Defaulting Lenders.

a. If any Lender (a "Defaulting Lender"; and, for purposes hereof, any Lenders that is not a Defaulting Lender, a "Non-Defaulting Lender") shall for any reason fail to (i) make any respective Loan required pursuant to the terms of this Agreement or (ii) pay its Proportionate Share of an advance or disbursement to protect the Project or the lien of the Loan Documents, Administrative Agent and any of the Non-Defaulting Lenders may, but shall not be obligated to, make all or a portion of the Defaulting Lender's Proportionate Share of such advance; provided, however, that Administrative Agent or such Non-Defaulting Lender gives the Defaulting Lender and Administrative Agent three (3) Business Days prior notice of its intention to do so. The right to make such advances in respect of the Defaulting Lender shall be exercisable first by Administrative Agent, and then by the Non-Defaulting Lender holding the greatest Proportionate Share, and thereafter to each of the Non-Defaulting Lenders in descending order of their respective Proportionate Shares or in such other manner as the Required Lenders (excluding the Defaulting Lender) may agree on. Any Lender making all or any portion of a Defaulting Lender's Proportionate Share of the applicable Loan advance in accordance with the foregoing terms and conditions shall be referred to as a "Special Advance Lender". Subject to a Defaulting Lender's right to cure as provided in subsection (f), but notwithstanding anything else to the contrary contained in this Agreement, the Defaulting Lender's interest in, and any amounts due to a Defaulting Lender under, the Loan Documents (including, without limitation, all principal, interest, fees and expenses) shall be subordinate in lien priority and to the repayment of all amounts (including, without limitation, interest) then or thereafter due or to become due to the other Lenders under the Loan Documents, and the Defaulting Lender thereafter shall have no right to participate in any discussions among and/or decisions by the Lenders hereunder and/or under the other Loan Documents. Further, subject to subsection (f) below, any Defaulting Lender shall be bound by any amendment to, or waiver of, any provision of, or any action taken or omitted to be taken by Administrative Agent and/or the other Lenders under, any Loan Document which is made subsequent to the Defaulting Lender becoming a Defaulting Lender and, during such period, the Loan Commitment of and outstanding principal amount held by such Defaulting Lender shall be disregarded in any determination requiring the approval of the Lenders or the Required Lenders hereunder.
b. In any case where a Non-Defaulting Lender becomes a Special Advance Lender (i) the Special Advance Lender shall, at the election of such Special Advance Lender, be deemed to have purchased, and the Defaulting Lender shall be deemed to have sold, a senior participation in the Defaulting Lender's respective Loans to the extent of the amount so advanced or disbursed (the "Advanced Amount") bearing interest at the Applicable Interest Rate (including interest at the Default Rate, if applicable) and (ii) the Defaulting Lender shall have no voting rights under this Agreement or any other Loan Documents (and its Proportionate Share shall be disregarded in determining whether any act or decision requiring the approval of the Required Lenders shall have been approved) so long as it is a Defaulting Lender. It is expressly understood and agreed that each of the respective obligations of the

Lenders under this Agreement and the other Loan Documents, including to advance Loans, to share losses incurred in connection with the Loan, including costs and expenses of enforcement of the Loans, to make advances to preserve the lien of the Security Instrument or to preserve and protect the Project or to effect completion of the Improvements to be constructed pursuant to the Loan Documents, shall be without regard to any adjustment in the Proportionate Shares occasioned by the acts of a Defaulting Lender. The Special Advance Lender shall be entitled to an amount (the "Unpaid Amount") equal to the applicable Advanced Amount, plus any unpaid interest due and owing with respect thereto, less any repayments thereof made by the Defaulting Lender immediately upon demand. The Defaulting Lender shall have the right to repurchase the senior participation in its Loans from the Special Advance Lender pursuant to subsection (f) below by the payment of the Unpaid Amount.

a. A Special Advance Lender shall (i) give notice to the Defaulting Lender, Administrative Agent and each of the other Lenders (provided that failure to deliver said notice to any party other than the Defaulting Lender shall not constitute a default under this Agreement) of the Advance Amount and the percentage of the Special Advance Lender's senior participation in the Defaulting Lender's Loans and (ii) in the event of the repayment of any of the Unpaid Amount by the Defaulting Lender, give notice to the Defaulting Lender, Administrative Agent and each of the other Lenders of the fact that the Unpaid Amount has been repaid (in whole or in part), the amount of such repayment and, if applicable, the revised percentage of the Special Advance Lender's senior participation. Provided that Administrative Agent has received notice of such participation, Administrative Agent shall have the same obligations to distribute interest, principal and other sums received by Administrative Agent with respect to a Special Advance Lender's senior participation as Administrative

Agent has with respect to the distribution of interest, principal and other sums under this Agreement; and at the time of making any distributions to the Lenders, shall make payments to the Special Advance Lender with respect to a Special Advance Lender's senior participation in the Defaulting Lender's Loans out of the Defaulting Lender's share of any such distributions.

b. A Defaulting Lender shall immediately pay to a Special Advance Lender all sums of any kind paid to or received by the Defaulting Lender from the Borrower, whether pursuant to the terms of this Agreement or the other Loan Documents or in connection with the realization of the security therefor until the Unpaid Amount is fully repaid. Notwithstanding the fact that the Defaulting Lender may temporarily hold such sums, the Defaulting Lender shall be deemed to hold same as a trustee for the benefit of the Special Advance Lender, it being the express intention of the Lenders that the Special Advance Lender shall have an ownership interest in such sums to the extent of the Unpaid Amount.

c. Nothing contained in Section 13.11(a), (f) or fh) shall release or in any way limit a Defaulting Lender's obligations as a Lender hereunder and/or under any other of the Loan Documents or impair the Borrower's right to exercise its remedies against such Defaulting Lender which remedies shall include, without limitation, the recovery of any losses, costs and expenses incurred as a result thereof. Each Defaulting Lender shall indemnify, defend and hold Administrative Agent and each of the other Lenders harmless from and against any and all losses, damages, liabilities or expenses (including reasonable attorneys' fees and expenses and interest at the Default Rate) which they may sustain or incur by reason of the Defaulting Lender's failure or refusal to abide by its obligations under this

Agreement or the other Loan Documents, except to the extent a Defaulting Lender became a Defaulting Lender due to the gross negligence or willful misconduct of Administrative Agent and/or any Lender. Administrative Agent shall, after payment of any amounts due to any Special Advance Lender pursuant to the terms of subsection (c) above, set-off against any payments due to such Defaulting Lender for the claims of Administrative Agent and the other Non-Defaulting Lenders pursuant to this indemnity.

(1) A Defaulting Lender may cure a default arising out its failure to fund its Proportionate Share of an advance or to make any respective Loan required pursuant to this Agreement, and subject to the following, upon such cure shall no longer be deemed to be a Defaulting Lender, if, within five (5) days (the "Default Cure Period") of such default, it pays the full amount of the Unpaid Amount, together with interest thereon in respect of each day during the period commencing on the date such Advanced Amount was so paid by the Special Advance Lender until the date the Special Advance Lender recovers such amount at a rate per annum equal to the Federal Funds Rate in the event such cure is made within three (3) Business Days of such default; provided, however, if such Defaulting Lender fails to cure such default within such three (3) Business Days, the Special Advance Lender shall be entitled to recover, and such Defaulting Lender shall pay, such amount, on demand from Administrative Agent, together with interest thereon in respect of each day during the period commencing on such third (3rd) Business Day until the date the Special Advance Lender recovers such amount at a rate per annum equal to the Default Rate for each such day. If a Defaulting Lender pays the Unpaid Amount and interest due thereon within the Default Cure Period (or thereafter with the consent of Administrative Agent), such Defaulting Lender nonetheless shall be bound by any amendment to or waiver of any provision of, or any action taken or omitted to be taken by Administrative Agent and/or the other Lenders under, any Loan Document which is made subsequent to the Lender's becoming a Defaulting Lender and prior to its curing the default as provided in this Section 13.11(f); provided that such amendment or waiver of action was taken in accordance with the provisions of this Agreement. A Defaulting Lender shall have absolutely no right to cure any default after the expiration of the Default Cure Period unless Administrative Agent, in its sole discretion, elects to permit such cure.

(g) If any Lender becomes a Defaulting Lender and none of the other Lenders becomes a Special Advance Lender pursuant to Section 13.11(a), the Borrower shall have the right, provided there exists no Default or Event of Default that has not arisen as a result of the Defaulting Lender's failure to fund, to cause another financial institution acceptable to Administrative Agent to assume the Defaulting Lender's obligations with respect to the Advance Amount on the then-existing terms and conditions of the Loan Documents (such replacement institution, a "Replacement Lender"). It shall be a condition to such assumption that the Replacement Lender concurrently assumes the obligations of the Defaulting Lender with respect to the unfunded portion of the Commitments of such Defaulting Lender. Such assumption shall be pursuant to a written instrument reasonably satisfactory to Administrative Agent. Upon such assumption, the Replacement Lender shall become a "Lender" for all purposes hereunder, with a Loan Commitment in an amount equal to the Advance Amount, and the Defaulting Lender's Loan Commitment shall automatically be reduced by the Advance Amount. In connection with the foregoing, the Borrower shall execute and deliver to the Replacement Lender and the Defaulting Lender Replacement Notes. Such Replacement Notes shall be in amounts equal to, in the case of the Replacement Lender's note, the Advance Amount and, in the case of the Defaulting Lender's note, its Commitment, as reduced as aforesaid. Such replacement notes shall constitute "Notes" and

the obligations evidenced thereby shall be secured by the Security Instrument. In connection with the Borrower's execution of replacement notes as aforesaid, the Borrower shall deliver to Administrative Agent such evidence of the due authorization, execution and delivery of the replacement notes and any related documents as Administrative Agent may reasonably request. The execution and delivery of replacement notes as required above shall be a condition precedent to any further advances of Loan proceeds. Upon receipt of its replacement note, the Defaulting Lender will return to the Borrower its note(s) that was replaced; provided that the delivery of a replacement note to the Defaulting Lender pursuant to this Section 13.11(g) shall

operate to void and replace the note(s) previously held by the Defaulting Lender regardless of whether or not the Defaulting Lender returns same as required hereby.

a. In addition to the foregoing, in the event the Defaulting Lender has not cured such default within the Default Cure Period, Administrative Agent (unless the Lender serving in the capacity of Administrative Agent is the Defaulting Lender) and the Non-Defaulting Lenders, shall, in accordance with the priority established pursuant to Section 13.11(a) above, be entitled to purchase such Defaulting Lender's entire Loan Commitment, excluding accrued and unpaid interest thereon, for a purchase price equal to the outstanding principal balance of all Loans which have been funded by such Defaulting Lender as of the date of such purchase.
b. The Borrower, Administrative Agent and Lenders shall, at the Borrower's expense solely with respect to Administrative Agent's reasonable costs and expenses in connection therewith, execute such modifications to the Loan Documents as shall, in the reasonable judgment of Administrative Agent, be necessary in order to effect the substitution of Lenders in accordance with the foregoing provisions of this Section 13.11(i). The Lenders shall reasonably cooperate with the Borrower's attempts to obtain a Replacement Lender, but they shall not be obligated to modify the Loan Documents in connection therewith, other than modifications pursuant to the immediately preceding paragraph.

13.12 Amendments Concerning Agency Functions. Notwithstanding anything to the contrary contained in this Agreement, Administrative Agent shall not be bound by any Modification of this Agreement or any other Loan Document which affects its duties, rights, and/or functions hereunder or thereunder unless it shall have given its prior written consent thereto.

13.13 Liability of Administrative Agent. Administrative Agent shall not have any liabilities or responsibilities to the Borrower on account of the failure of any Lender (other than Administrative Agent in its capacity as a Lender) to perform its obligations hereunder or to any Lender on account of the failure of the Borrower to perform its obligations hereunder or under any other Loan Document.

13.14 Transfer of Agency Function. Without the consent of the Borrower or any Lender, Administrative Agent may at any time or from time to time transfer its functions as Administrative Agent hereunder to any of its offices wherever located in the United States; provided that Administrative Agent shall promptly notify the Borrower and the Lenders thereof.

13.15 Sharing of Payments, Etc. If any Lender shall obtain from the Borrower payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement or any other Loan Document through the exercise of any right of set-off, banker's

lien or counterclaim or similar right or otherwise (other than from Administrative Agent as provided herein), and, as a result of such payment, such Lender shall have received a greater percentage of the principal of or interest on the Loans or such other amounts then due hereunder or thereunder by the Borrower to such Lender than the percentage received by any other Lender, it shall promptly purchase from such other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the Loans or such other amounts, respectively, owing to such other Lenders (or in interest due thereon, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Lenders shall share the benefit of such excess payment (net of any expenses that may be incurred by such Lender in obtaining or preserving such excess payment) pro rata in accordance with the unpaid principal of and/or interest on the Loans or such other amounts, respectively, owing to each of the Lenders. To such end, all the Lenders shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored. Each Lender agrees that it shall turn over to Administrative Agent (for distribution by Administrative Agent to the other Lenders in accordance with the terms of this Agreement) any payment (whether voluntary or involuntary, through the exercise of any right of setoff or otherwise) on account of the Loans held by it in excess of its ratable portion of payments on account of the Loans obtained by all the Lenders. Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or Obligation of the Borrower. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a set-off to which Section 14.10 applies, then such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under Section 14.10 to share in the benefits of any recovery on such secured claim.

13.16 Bankruptcy of Borrower. In the event a bankruptcy or other insolvency proceeding is commenced by or against the Borrower or any Guarantor, Administrative Agent shall have the sole and exclusive right to file and pursue a joint proof of claim on behalf of the Lenders. Each Lender irrevocably waives its right to file or pursue a separate proof of claim in any such proceedings.

13.17 Termination. The rights and obligations of Administrative Agent and the Lenders shall terminate when the Obligations of Borrower hereunder have been paid and finally discharged in full and the obligations of the Lenders to advance funds to the Borrower under this Agreement are terminated or, if the Administrative Agent or Administrative Agent's nominee takes title to the Project by foreclosure or conveyance in lieu of foreclosure, when the Project is thereafter sold to a third-party purchaser. All indemnification provisions in favor of Administrative Agent herein and in the other Loan Documents shall survive the termination hereof.

## ARTICLE XIV
## MISCELLANEOUS

14.01 Non-Waiver; Remedies Cumulative. No failure on the part of Administrative Agent, any Lender or Borrower to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under this Agreement or any other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or

privilege under this Agreement or any other Loan Documents preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein and the other Loan Documents are cumulative and not exclusive of any remedies provided by law.

14.02 Notices.

(a) All notices, requests, demands, statements, authorizations, approvals, directions, consents and other communications provided for herein and under the Loan Documents (to which Borrower is a party) shall be given or made in writing and shall be deemed sufficiently given or served for all purposes as of the date (i) when hand delivered (provided that delivery shall be evidenced by a receipt executed by or on behalf of the addressee), (ii) one (1) Business Day after being sent by reputable overnight courier service (with delivery evidenced by written receipt) for next Business Day delivery, or (iii) with a simultaneous delivery by one of the methods in clause (i) or (ii) above, by facsimile, when sent, with confirmation and a copy sent by first class mail, in each case addressed to the intended recipient at the address specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party hereto. Unless otherwise expressly provided in the Loan Documents, Borrower shall only be required to send notices, requests, demands, statements, authorizations, approvals, directions, consents and other communications to Administrative Agent on behalf of all of the Lenders.

If to Borrower: Gore Creek Place, LLC
c/o Vail Resorts Development Co
137 Benchmark Road
Avon, CO 81620
Attention: Mr. Greg Dickhens
Facsimile: 970-845-2555

With a copy to: Brownstein Hyatt & Farber, P.C.
410 Seventeenth Street
22nd Floor
Denver, CO 80202
Attention: Patricia L. Gruber, Esq.
Facsimile: 303-223-1111

If to Administrative Agent: U.S. Bank National Association
DN-CO-BB5R
918 Seventeenth Street, 5th Floor
Denver, CO 80202
Attention: Mr. Matthew Carrothers
Facsimile: 303-585-4198

With a copy to: U.S. Bank National Association
Real Estate Capital Markets
BC-MN-HO3R
800 Nicollet Mall
Minneapolis, Minnesota 55402-7020
Attention: Mr. Huvishka Ali
Facsimile: 972-3 86-83 70

With a copy to: Snell & Wilmer L.L.P.
1200 Seventeenth Street, Suite 1900
Denver, CO 80202
Attn: Thomas L. DeVine, Esq
Facsimile: 3 03 -634-2020

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by Administrative Agent and the applicable Lender. Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

14.03 Expenses, Etc. Borrower agrees to pay on demand or reimburse on demand to the applicable party: (a) all out-of-pocket costs and expenses of Administrative Agent (including, but not limited to, the reasonable legal fees and expenses of its counsel, (ii) due

diligence expenses, including title insurance reports and policies, surveys, title and lien searches, appraisals (including the Appraisal and any additional Appraisals ordered as a result of Borrower's election to extend the Scheduled Maturity Date pursuant to Section 4.01), the Environmental Report, the Construction Consultant's Construction, Cost and Plan Review, (iii) accounting firms, (iv) insurance consultants and (v) the Construction Consultant) in connection with (A) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the syndication, making and administration of the Loans hereunder, (B) the creation, perfection or protection of the Liens to be created by the Security Documents, (C) the negotiation or preparation of any Modification or waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated) and the construction of the Improvements and (D) Administrative Agent's duties under this Agreement and the other Loan Documents; (b) all reasonable out-of-pocket costs and expenses of the Lenders and Administrative Agent (including the reasonable fees and expenses of legal counsel in connection with (i) any Default and any enforcement or collection proceedings resulting therefrom, including all manner of participation in or other involvement with (A) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, (B) judicial or regulatory proceedings and (C) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated) and (ii) the enforcement of this Section 14.03; and (c) all transfer, stamp, documentary or other similar taxes, assessments or charges levied by any governmental or revenue authority in respect of this Agreement or any of the other Loan Documents or any other document referred to herein or therein and all costs, expenses, taxes, assessments and other charges incurred in connection with any filing, registration, recording or perfection of any security interest contemplated by any Security Document or any other document referred to therein.

14.04 Indemnification. Borrower hereby agrees to (a) indemnify the Indemnified Parties from, and hold each of them harmless, from and against all damages, losses, claims, actions, liabilities (or actions, investigations or other proceedings commenced or threatened in respect thereof) penalties, fines, costs and expenses including reasonable attorneys' fees and expenses (collectively and severally, "Losses") which may be imposed upon, asserted against or incurred or paid by any of them resulting from the claims of any third party relating to or arising

out of (i) the Project, (ii) any of the Loan Documents or the Transactions, (iii) any ERISA Events, (iv) any Environmental Losses, (iii) any defective workmanship or materials occurring in the construction of the Improvements or any Restoration and (vi) any act performed or permitted to be performed by any Indemnified Party under any of the Loan Documents, except for Losses to the extent determined by a court of competent jurisdiction to be caused by the gross negligence or willful misconduct of an Indemnified Party (but the effect of this exception only eliminates the liability of Borrower with respect to the Indemnified Party (and if such Indemnified Party is not a Lender, the Lender on whose behalf such Indemnified Party was acting) to the extent such Indemnified Party has been adjudged to have so acted and not with respect to any other Indemnified Party), and (b) reimburse each Indemnified Party on demand for any expenses (including attorneys' fees and disbursements) reasonably incurred in connection with the investigation of, preparation for or defense of any actual or threatened claim, action or proceeding arising therefrom (excluding any action or proceeding where the Indemnified Party is not a party to such action or proceeding out of which any such expenses arise unless such Indemnified Party is required to participate or respond in connection with such action or proceeding (e.g., by way of deposition, discovery requests, testimony, subpoena or similar reason)). The Obligations shall not be considered to have been paid in full unless all obligations of Borrower under this Section 14.04 shall have been fully performed (except for contingent indemnification obligations for which no claim has actually been made pursuant to this Agreement). This Section 14.04 shall survive repayment in full of the Loans and the assignment, sale or other transfer of Administrative Agent's or any Lender's interest hereunder.

14.05 Amendments, Etc. Except as otherwise expressly provided in this Agreement or the other Loan Documents, and subject to the provisions of Section 13.11(a), this Agreement and the other Loan Documents may be Modified only by an instrument in writing signed by Borrower and the Required Lenders, or by Borrower and Administrative Agent acting with the consent of the Required Lenders, and any provision of this Agreement may be waived by Administrative Agent as expressly provided in any Loan Document, by the Required Lenders or by Administrative Agent acting with the consent of the Required Lenders; provided that: (a) no Modification or waiver shall, unless by an instrument signed by all of the Lenders or by Administrative Agent acting with the consent of all of the Lenders: (i) subject to Borrower's right to extend pursuant to Section 4.01, extend the date fixed for the payment of principal of or interest on any Loan or any fee hereunder, (ii) reduce the amount of any such payment of principal, (iii) reduce the rate at which interest is payable thereon or any fee is payable hereunder, (iv) alter the rights or obligations of Borrower to prepay Loans, (v) alter the manner in which payments or prepayments of principal, interest or other amounts hereunder shall be applied as between the Lenders or Types of Loans, (vi) alter the terms of this Section 14.05, (vii) Modify the definition of the term "Required Lenders" or Modify in any other manner the number or percentage of the Lenders required to make any determinations or waive any rights hereunder or to Modify any provision hereof, (viii) alter the several nature of the Lenders' obligations hereunder, (ix) release Borrower, any collateral or any Guarantor or otherwise terminate any Lien under any Security Document providing for collateral security (except that no such consent shall be required, and Administrative Agent is hereby authorized, to release any Lien covering the collateral under the Security Documents (A) as expressly provided in the Loan Documents and (B) upon payment of the Obligations in full in accordance with the terms of the Loan Documents), (x) agree to additional obligations being secured by such collateral security, or (xi) alter the relative priorities of the obligations entitled to the benefits of the Liens created under the Security Documents; (b) any Modification of Article XIII, or of any of the rights or duties of Administrative Agent hereunder, shall require the consent of Administrative Agent and

the Required Lenders; and (c) no Modification shall increase the Commitment of any Lender without the consent of such Lender. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, Administrative Agent Administrative Agent is hereby authorized to enter into Modifications to the Loan Documents which are ministerial in nature, including the preparation and execution of Uniform Commercial Code forms, and Assignments and Acceptances.

14.06 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

14.07 Assignments and Participations.

a. Consent Required for Assignments by Borrower. Borrower may not assign any of its rights or obligations hereunder or under the Loan Documents without the prior consent of all of the Lenders and Administrative Agent.
b. Assignments to Operation of Law or Pledges. Notwithstanding anything to the contrary herein, each Lender shall have the right at any time and from time to time, to (i) assign an undivided interest in the Loan to any Affiliate of such Lender or to a successor entity by reason of any merger affecting Lender, or to an Eligible Assignee (ii) pledge or assign the same to any Federal Reserve Bank in accordance with applicable law as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any operating circular issued by such Federal Reserve Bank; provided that (i) no Lender shall, as between Borrower and such Lender, be relieved of any of its obligations hereunder as a result of any such assignment and pledge and (ii) in no event shall such Federal Reserve Bank be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.
c. Cooperation with Syndication Efforts. Borrower acknowledges that a portion of the Loan Commitments will be syndicated to one or more Lenders (the "Syndication") and in connection therewith, the Borrower will take all actions as Administrative Agent and the Lenders may request to assist in the Syndication effort.
d. Provision of Information to Assignees and Participants. A Lender may furnish any information concerning Borrower, the Project, the Loans and any Guarantor in the possession of such Lender from time to time to assignees, pledgees and participants (including prospective assignees, pledgees and participants), subject, however, to the party receiving such information confirming in writing that such party and such information is subject to the provisions of Section 14.23.

14.08 Survival. The obligations of Borrower under Sections 5.01, 5.05, 5.07, 14.03, 14.04 and 14.12, and the obligations of the Lenders under Sections 13.05 and 13.11(e), shall survive the repayment of the Obligations and the termination of the Commitments and, in the case of any Lender that may assign any interest under the Loan Documents in accordance with the terms thereof including any Lender's interest in its Commitment or Loans hereunder, shall survive the making of such assignment, notwithstanding that such assigning Lender may cease to be a "Lender" hereunder. In addition, each representation and warranty made, or deemed to be made by a Request for Loan Advance, herein or pursuant hereto by Borrower shall survive the making of such representation and warranty, and no Lender shall be deemed to have waived, by reason of making any Loan, any Default that may arise by reason of such representation or

warranty proving to have been false or misleading, notwithstanding that such Lender or Administrative Agent may have had notice or knowledge or reason to believe that such representation or warranty was false or misleading at the time such Loan was made.

14.09 Multiple Copies. Each document to be delivered to Administrative Agent hereunder or under any other Loan Document shall be delivered in duplicate.

14.10 Right of Set-off.

a. Upon the occurrence and during the continuance of any Event of Default, each of the Lenders is, subject (as between the Lenders) to the provisions of subsection (c) of this Section 14.10, hereby authorized at any time and from time to time, without notice to Borrower (any such notice being expressly waived by Borrower) and to the fullest extent permitted by law, to set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and other indebtedness at any time owing, by such Lender in any of its offices, in Dollars or in any other currency, to or for the credit or the account of Borrower against any and all of the respective obligations of Borrower now or hereafter existing under the Loan Documents, irrespective of whether or not such Lender or any other Lender shall have made any demand hereunder and although such obligations may be contingent or unmatured and such deposits or indebtedness may be unmatured. Each Lender hereby acknowledges that the exercise by any Lender of offset, set-off, banker's lien, or similar rights against any deposit or other indebtedness of Borrower whether or not located in Colorado or any other state with certain laws restricting lenders from pursuing multiple collection methods, could result under such laws in significant impairment of the ability of all the Lenders to recover any further amounts in respect of the Loan. Therefore, each Lender agrees that no Lender shall exercise any such right of set-off, banker's lien, or otherwise, against any assets of Borrower (including all general or special, time or demand, provisional or other deposits and other indebtedness owing by such Lender to or for the credit or the account of Borrower) without the prior written consent of Administrative Agent and the Required Lenders.
b. Each Lender shall promptly notify Borrower and Administrative Agent after any such set-off and application; provided that the failure to give such notice shall not affect the validity of such set-off and application. The

rights of the Lenders under this Section 14.10 are in addition to other rights and remedies (including other rights of set-off) which the Lenders may have.

c. If an Event of Default has resulted in the Loans becoming due and payable prior to the stated maturity thereof, each Lender agrees that it shall turn over to Administrative Agent any payment (whether voluntary or involuntary, through the exercise of any right of setoff or otherwise) on account of the Loans held by it in excess of its ratable portion of payments on account of the Loans obtained by all the Lenders.

14.11 Intentionally Omitted.

14.12 Brokers. Borrower hereby represents to Administrative Agent and each Lender that it has not dealt with any broker, underwriters, placement agent, or finder in connection with the Transactions. Borrower hereby agrees to indemnify and hold Administrative Agent and each Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind

in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower in connection with the Transactions.

14.13 Estoppel Certificates.

a. Borrower, within ten (10) Business Days after Administrative Agent's request, shall furnish to Administrative Agent a written statement, duly acknowledged, certifying to Administrative Agent and each Lender and/or, subject to the terms of Section 14.07, any proposed assignee of any portion of the interests hereunder: (i) the amount of the Outstanding Principal Amount then owing under this Agreement and each of the Notes, (ii) the terms of payment and Scheduled Maturity Date of the Loans (or if earlier, the Maturity Date), (iii) the date to which interest has been paid under each of the Notes, (iv) whether any offsets or defenses exist against the repayment of the Loans and, if any are alleged to exist, a detailed description thereof, (v) the extent to which the Loan Documents have been Modified and (vi) such other information as Administrative Agent shall reasonably request.

b. Administrative Agent, within ten (10) Business Days after Borrower's reasonable request therefor, shall furnish to Borrower a written statement, duly acknowledged, certifying to any prospective permitted purchaser of an interest in Borrower or any prospective permitted lender to Borrower: (i) the amount of the Outstanding Principal Amount, (ii) the terms of payment and Scheduled Maturity Date of the Loans (or if earlier, the Maturity Date), (iii) the date to which interest has been paid under each of the Notes, (iv) whether, to the actual knowledge of the Person signing on behalf of Administrative Agent, there are any Defaults on the part of Borrower hereunder or under any of the other Loan Documents, and, if any are alleged to exist, a detailed description thereof, (v) the extent to which the Loan Documents have been Modified, and (vi) such other information as Borrower shall reasonably request.

14.14 Preferences. To the extent that Borrower makes a payment or payments to Administrative Agent and/or any Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Administrative Agent or a Lender, as the case may be.

14.15 Certain Waivers. Borrower hereby irrevocably and unconditionally waives (a) notice of any actions taken by Administrative Agent or any Lender hereunder or under any other Loan Document or any other agreement or instrument relating thereto except to the extent (i) otherwise expressly provided herein or therein or (ii) Borrower is not, pursuant to Applicable Law, permitted to waive the giving of notice, (b) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of Borrower's obligations hereunder and under the other Loan Documents, the omission of or delay in which, but for the provisions of this Section 14.15, might constitute grounds for relieving Borrower of any of its obligations hereunder or under the other Loan Documents, except to the extent that Borrower is not, pursuant to Applicable Law, permitted to waive the giving of notice, (d) any requirement that Administrative Agent or any Lender protect, secure, perfect or insure any lien on any collateral for the Loans or exhaust any right or take any action against Borrower or any other

Person or against any collateral for the Loans, (e) any right or claim of right to cause a marshalling of Borrower's assets and (f) all rights of subrogation or contribution, whether arising by contract or operation of law or otherwise by reason of payment by Borrower pursuant hereto or to the other Loan Documents.

14.16 Entire Agreement. This Agreement, the Notes and the other Loan Documents constitute the entire agreement between Borrower, Administrative Agent and the Lenders with respect to the subject matter hereof and all understandings, oral representations and agreements heretofore or simultaneously had among the parties are merged in, and are contained in, such documents and instruments.

14.17 Severability. If any provision of this Agreement shall be held by any court of competent jurisdiction to be unlawful, void or unenforceable for any reason as to any Person or circumstance, such provision or provisions shall be deemed severable from and shall in no way affect the enforceability and validity of the remaining provisions of this Agreement.

14.18 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

14.19 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

14.20 GOVERNING LAW. THIS AGREEMENT, THE NOTES AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF COLORADO, EXCEPT TO THE EXTENT OTHERWISE SPECIFIED IN ANY OF THE LOAN DOCUMENTS.

14.21 SUBMISSION TO JURISDICTION. BORROWER, ADMINISTRATIVE AGENT AND EACH OF THE LENDERS HEREBY IRREVOCABLY (I) AGREE THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTES, THE GUARANTY, ANY SECURITY DOCUMENT, OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN A COURT OF RECORD IN THE STATE OF COLORADO, CITY AND COUNTY OF DENVER OR IN THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN SUCH STATE AND COUNTY, (II) CONSENT TO THE JURISDICTION OF EACH SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING, (III) WAIVE ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY OF SUCH COURTS AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND (IV) AGREE AND CONSENT THAT ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING IN COLORADO STATE OR FEDERAL COURT SITTING IN DENVER, MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BORROWER, ADMINISTRATIVE AGENT OR A LENDER, AS APPLICABLE, AT THE ADDRESS FOR NOTICES PURSUANT TO SECTION 14.02 HEREOF, AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF ADMINISTRATIVE AGENT OR ANY LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF

ADMINISTRATIVE AGENT OR ANY LENDER TO BRING ANY SUIT, ACTION OR PROCEEDING AGAINST BORROWER OR THE PROPERTY OF BORROWER IN THE COURTS OF ANY OTHER JURISDICTIONS.

14.22 WAIVER OF JURY TRIAL-, COUNTERCLAIM. EACH OF BORROWER, ADMINISTRATIVE AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTES, THE GUARANTY, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS. BORROWER FURTHER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY LEGAL PROCEEDING BROUGHT BY OR ON BEHALF OF ADMINISTRATIVE AGENT OR THE LENDERS WITH RESPECT TO THIS AGREEMENT, THE NOTES , THE OTHER LOAN DOCUMENTS OR OTHERWISE IN RESPECT OF THE LOANS, ANY AND EVERY RIGHT BORROWER MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN, OTHER THAN A COMPULSORY COUNTERCLAIM, AND (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING CONTAINED IN THE IMMEDIATELY PRECEDING SENTENCE SHALL PREVENT OR PROHIBIT BORROWER FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST ADMINISTRATIVE AGENT OR THE LENDERS WITH RESPECT TO ANY ASSERTED CLAIM.

14.23 Confidentiality. Each of Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information that may be disclosed (a) to its Subsidiaries and Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 14.23, to (i) any assignee or pledgee of or Participant in, or any prospective assignee or pledgee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and its obligations, (g) with the consent of Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 14.23 or (ii) becomes available to Administrative Agent or any Lender on a nonconfidential basis from a source other than Borrower. For the purposes of this Section 14.23, "Information" shall mean all information received from or on behalf of Borrower relating to Borrower, its Subsidiaries or Affiliates or their respective businesses, other than any such information that is available to Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Borrower; provided that in the case of information received from Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 14.23 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Notwithstanding anything herein to the

contrary, the information subject to this Section 14.23 shall not include, and Administrative Agent and each Lender may disclose without limitation of any kind, any information with respect to the "tax treatment" and "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to Administrative Agent or such Lender relating to such tax treatment and tax structure; provided that with respect to any document or similar item that in either case contains information concerning the tax treatment or tax structure of the transactions as well as other information, this sentence shall only apply to such portions of the document or similar item that relate to the tax treatment or tax structure of the Loans and transactions contemplated hereby.

14.24 Usury Savings Clause. It is the intention of Borrower, Administrative Agent and the Lenders to conform strictly to the usury and similar laws relating to interest payable on loans from time to time in force, and all Loan Documents between Borrower, Administrative Agent and the Lenders, whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever, whether by acceleration of maturity hereof or otherwise, shall the amount paid or agreed to be paid in the aggregate to the Lenders as interest (whether or not designated as interest, and including any amount otherwise designated by or deemed to constitute interest by a court of competent jurisdiction) hereunder or under the other Loan Documents or in any other agreement given to secure the Loans, or in any other document evidencing, securing or pertaining to the Loans, exceed the maximum amount (the "Maximum Rate") permissible under Applicable Laws. If under any circumstances whatsoever fulfillment of any provision hereof, of this Agreement or of the other Loan Documents, at the time performance of such provisions shall be due, shall involve exceeding the Maximum Rate, then, ipso facto, the obligation to be fulfilled shall be reduced to the Maximum Rate. For purposes of calculating the actual amount of interest paid and/or payable hereunder in respect of laws pertaining to usury or such other laws, all sums paid or agreed to be paid to the Lenders for the use, forbearance or detention of the Loans evidenced hereby, outstanding from time to time shall, to the extent permitted by Applicable Law, be amortized, pro-rated, allocated and spread from the date of disbursement of the proceeds of the Notes until payment in full of all of such indebtedness, so that the actual rate of interest on account of such Loans is uniform through the term hereof. If under any circumstances any Lender shall ever receive an amount which would exceed the Maximum Rate, such amount shall be deemed a payment in reduction of the principal amount of the applicable Loans and shall be treated as a voluntary prepayment under this Agreement and shall be so applied in accordance with the provisions of this Agreement, or if such excessive interest exceeds the outstanding amount of the applicable Loans and any other Obligations, the excess shall be deemed to have been a payment made by mistake and shall be refunded to Borrower.

14.25 Controlled Accounts. Borrower hereby agrees with Administrative Agent, as to any Controlled Account into which this Agreement requires Borrower to deposit funds, as follows:

(a) Establishment and Maintenance of the Controlled Account.

(i) Each Controlled Account (A) shall be a separate and identifiable account from all other funds held by the Depository Bank and (B) shall contain only funds required to be deposited pursuant to this Agreement. Any interest which may accrue on the amounts on deposit in a Controlled Account shall be added to and shall become part of the

balance of such Controlled Account. Borrower, Administrative Agent and the applicable Depository Bank shall enter into an agreement (the "Controlled Account Agreement"), in form and content acceptable to Administrative Agent which shall govern the Controlled Account and the rights, duties and obligations of each party to the Controlled Account Agreement.

(ii) The Controlled Account Agreement shall provide that (A) the Controlled Account shall be established in the name of Administrative Agent (on behalf of the Lenders), (B) the Controlled Account shall be subject to the sole dominion, control and discretion of Administrative Agent, and (C) neither Borrower nor any other Person, including, without limitation, any Person claiming on behalf of or through Borrower, shall have any right or authority, whether express or implied, to make use of or withdraw, or cause the use or withdrawal of, any proceeds from the Controlled Account or any of the other proceeds deposited in the Controlled Account, except as expressly provided in this Agreement or in the Controlled Account Agreement.

a. Deposits to and Disbursements from the Controlled Account. All deposits to and disbursements of all or any portion of the deposits to the Controlled Account shall be in accordance with this Agreement and the Controlled Account Agreement. Any disbursement of funds held in any Controlled Account shall be subject to the satisfaction of all applicable conditions precedent to the making of a Loan advance by the Lenders hereunder (including, without limitation, that no Event of Default then exists, and that Borrower shall have submitted a written request for such amount in accordance with the procedures generally applicable to advances of the Loan). Borrower hereby agrees to pay any and all fees charged by Depository Bank in connection with the maintenance of the Controlled Account and the performance of its duties. Under no circumstances shall Administrative Agent or the Lenders be obligated to make advances of the Loan while funds are available in a Controlled Account to pay for costs of the Construction Work.
b. Security Interest. Borrower hereby grants a first priority security interest in favor of Administrative Agent for the ratable benefit of the Lenders in each Controlled Account and all financial assets and other property and sums at any time held, deposited or invested therein, and all security entitlements and investment property relating thereto, together with any interest or other earnings thereon, and all proceeds thereof, whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities (collectively, "Controlled Account Collateral"), together with all rights of a secured party with respect thereto (even if no further documentation is requested by Administrative Agent or the Lenders or executed by Borrower with respect thereto).

14.26 Financing Statements. Borrower authorizes Administrative Agent to file such financing statements (and any continuations statements with respect thereto) under the Uniform Commercial Code as Administrative Agent may deem necessary in order to perfect or maintain the perfection of any security interest granted or to be granted to Administrative Agent pursuant to any of the Loan Documents, in such jurisdictions as Administrative Agent may elect.

14.27 Unavoidable Delay. If the work of construction is directly affected and delayed by an Unavoidable Delay, Borrower must notify Administrative Agent in writing within ten (10) Business Days after the occurrence of any such Unavoidable Delay. So long as no Event of Default has occurred and is continuing and such notice has been given in a timely manner, and provided further that in each case, (i) the cause of the Unavoidable Delay is not within the

control of Borrower, (ii) after giving effect to the consequences of each such delay, the Loans shall remain In Balance, (iii) Borrower shall use all commercially reasonable efforts to mitigate the delay caused by such event of Unavoidable Delay, and (iv) Administrative Agent reasonably acknowledges that such delay is due to one of the foregoing causes (which acknowledgment shall not be unreasonably withheld or delayed), then Administrative Agent shall extend the Completion Date and the time for performance of any other construction obligations hereunder by a period of time equal to the period of such Unavoidable Delay. No such extension shall affect the time for performance of, or otherwise modify, any of Borrower's other Obligations under the Loan Documents or the maturity of the Notes. Neither Administrative Agent nor any Lender shall be liable in any way for Administrative Agent's or such Lender's failure to perform or delay in performing under the Loan Documents, and Administrative Agent may suspend or terminate all or any portion of its and the Lenders' obligations under the Loan Documents if such delay or failure to perform results directly or indirectly from, or is based upon, an Unavoidable Delay.

***[Signature Pages Follow]***

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

**BORROWER:**

GORE CREEK PLACE, LLC, a Colorado limited liability company

By: The Vail Corporation, a Colorado corporation, its Managing Member

By: _____
Gregory S. Dickens
Authorizes Agent

***[Signatures continued on next page.]***

**ADMINISTRATIVE AGENT:**

U.S. Bank National Association, a national banking association, as Administrative Agent for the Lenders

By: _____
Matthew W. Carrothers
Assistant Vice President

***[Signatures continued on next page.]***

**LENDER:**

U.S. Bank National Association, a national banking association

By: _____

Matthew W. Carrothers

Assistant Vice President

*[Signatures continued on next page.]*

**Exhibit A**
Description of Land

LOT 3, WEST DAY SUBDIVISION, ACCORDING TO THE PLAT RECORDED MARCH 10, 2005 RECEPTION NO. 908760, COUNTY OF EAGLE, STATE OF COLORADO

**Exhibit B**

Project Budget

(See attached)

**Exhibit C**
List of Commitments and Proportionate Shares

| Lender | Amount of Commitment | Proportionate Share |
|---|---|---|
| U.S. Bank National Association | $30,000,000 | 100% |
| **Total:** | **$30,000,000** | **100%** |

**Exhibit D**

Qualified Purchase Contracts

See Attached

**Gore Creek Place, LLC**

**Contract List 16 Units**

as of 7/11/05

| Unit | Buyer | Date of Execution | Date Amend. Exec. |
|---|---|---|---|
| 1W | Robert B. Carey | 8/13/2004 | 10/15/2004 |
| 2E | Mark Greenhill | 7/22/2004 | 10/12/2005 |
| 3W | Emilio Azarraga | 1/11/2005 | N/A |
| 4E | ACCP Investments, LLC | 1/4/2005 | |
| 5W | Alfonso de Angoitia | 1/11/2005 | |

| | | | |
|---|---|---|---|
| 6E | Kenneth Schiciano | 1/18/2005 | 2/25/2005 |
| 7W | Share Syndicate XIII, LLC | 9/8/2004 | 9/8/2004 |
| 8E | Jan Sauvage Trust | 9/20/2004 | 10/12/2004 |
| 9 | Wayne Ruting | 7/22/2004 | 10/12/2004 |
| 10 | Luis Orvananos | 11/4/2004 | N/A |
| 11 | Castletop Capital Equities | 1/24/2005 | N/A |
| 12 | Arthur Rhein | 7/22/2004 | 4/17/2005 |
| 13 | Jose Ortega | 7/22/2004 | 10/21/2004 |
| 14 | John Klutznick | 7/22/2004 | 10/11/2004 |
| 15 | Jim Sepic | 7/22/2004 | 7/22/2004 |
| 16 | Jeffrey Mascio | 7/22/2004 | 7/22/2004 |

**Exhibit E**

List of Plans and Specifications

1. [_____]

2. [_____]

3. [_____]

4. [_____]

**Exhibit F**

[Reserved]

**Exhibit G**

Form of Request for Continuation or Conversion

**REQUEST FOR CONTINUATION OR CONVERSION**

Pursuant to Section [_____] of that certain Construction Loan Agreement among [_____] ("Borrower"), the Lenders party thereto, and U.S. Bank National Association, as Administrative Agent for the Lenders ("Administrative Agent"), this represents Borrower's irrevocable notice to the Administrative Agent of Borrower's intention to:

a. [___] continue the Loan with the Prime-Based Rate as the Applicable Interest Rate;
b. [___] continue the Loan with a LIBOR-Based Rate as the Applicable Interest Rate for a [___] one (1) / [___] two (2) / [___] three (3) / [___] six (6) month LIBOR Period;
c. [___] convert the Loan to the Prime-Based Rate as the Applicable Interest Rate;
d. [___] convert the Loan to a LIBOR-Based Rate as the Applicable Interest Rate for a [___] one (1) / [___] two (2) / [___] three (3) / [___] six (6) month LIBOR Period.

Borrower certifies that:

1. after giving effect to any continuation or conversion of the Loan, all the requirements contained in the Notes and the Loan Agreement applicable thereto are satisfied;
2. the representations and warranties contained in the Loan Agreement and the other Loan Documents are true and correct in all material respects on and as of the date hereof to the same extent as though made on and as of the date hereof, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects on and as of such earlier date; and
3. no event has occurred and is continuing or would result from the consummation of the continuation or conversion contemplated hereby that would constitute an Event of Default.

*[Signature Page Follows]*

DATED:_____

**BORROWER:**

GORE CREEK PLACE, LLC, a Colorado limited liability company

By: The Vail Corporation, a Colorado corporation, its Managing Member

By: _____
Gregory S. Dickhens

Authorized Agent

**Exhibit H**

Form of Request for Loan Advance

REQUEST FOR LOAN ADVANCE

_____, 200__

Re: U.S. BANK NATIONAL ASSOCIATION, as Administrative Agent, Loans in the aggregate amount of $[ ] to [_____]

Project: [INSERT ADDRESS]

Ladies and Gentlemen:

Reference is made to that certain Construction Loan Agreement dated 200__ among U.S. BANK NATIONAL ASSOCIATION, as Administrative Agent, certain lenders party thereto and the undersigned (the "Construction Loan Agreement"). Terms not defined in this Request for Loan Advance shall have the same meaning as in the Construction Loan Agreement.

This Request for Loan Advance (i) is request No. under the Construction Loan Agreement, (ii) constitutes Borrower's request to borrow Loans in the amounts and in the manner set forth below and (iii) is otherwise subject to the terms of the Construction Loan Agreement. The information relating to the proposed Loans is as follows:

1. The date of the proposed Loans is _____ , _____.
2. The aggregate amount of the proposed Loans (after deducting an aggregate Retainage of $ ) is $_____.
3. The aggregate amount of the proposed Loans which are to bear interest as LIBOR Rate Loans is $ _____.
4. The aggregate amount of Loans requested hereunder, when added to prior (if any) Loans funded under the Construction Loan Agreement, will result in total Loans outstanding under the Construction Loan Agreement of $_____.
5. Funds undrawn under the aggregate Commitments after giving effect to the Loans requested hereunder will then be $_____.

Attached to this Request for Loan Advance are the following items:

A To the extent not previously delivered to Administrative Agent, for funds due under the General Contract, copies of the General Contractor's invoices relating to payments requested under this Request for Loan Advance, together with paid invoices evidencing payment of funds previously advanced to the General Contractor pursuant to Loans, provided, however, presentation of invoices shall not be required when the amount of the payment requested from the proceeds of the Advance is less than $100,000; in those circumstances, presentation of general ledger entries evidencing the amount due shall be sufficient;

A. To the extent not previously delivered to Administrative Agent, for funds paid directly by Borrower, copies of all invoices relating to payments requested under this Request for Loan Advance, together with paid invoices evidencing payment of funds previously advanced to Borrower pursuant to Loans, provided, however, presentation of invoices shall

not be required when the amount of the payment requested from the proceeds of the Advance is less than $100,000; in those circumstances, presentation of general ledger entries evidencing the amount due shall be sufficient;

B. Copy of the Project Budget attached as Exhibit 1 hereto, showing the portion of each budget line item comprising the aggregate Loans subject to this request and any Retainage with respect thereto, and the total of all Loans to date, inclusive of the Loans subject to this request;
C. Copies of sworn unconditional lien wavers from each trade contractor, subcontractor, materialman, supplier and vendor (each a "Subcontractor") who is to be paid from the proceeds of this Advance, to the extent not previously delivered to Administrative Agent releasing any right to a lien through a date not more than 30 days prior to the date hereof Lien waivers shall not be required from any Subcontractor when the amount to be paid to such Subcontrator from the proceeds of the Advance is less than $10,000 and the aggregate amount paid to such Subcontractor is less than $50,000;
D. Borrower's Architect's Certificate for Payment in accordance with AIA Document G-702;
E. Requisition form duly executed by the General Contractor; and
F. Copies of all other documents required pursuant to Articles VI and VII of the Construction Loan Agreement.

In connection with this advance, Borrower hereby certifies that the following are true and

correct:

a. The facts set forth in the General Contractor's invoices and in Exhibit 1 and Exhibit 2;
b. Except for contractors, subcontractors, materialmen, suppliers or vendors who are to be paid from proceeds of the Loans requested hereunder, there is no outstanding Indebtedness of the undersigned for labor, wages or materials in connection with the construction of the Improvements which is currently due and which could become the basis of a Lien on the Project;

c. All sums previously requisitioned have been applied to the payment of the Hard Costs and the Soft Costs heretofore incurred;
d. All Change Orders have been submitted to Administrative Agent and the Construction Consultant and all Change Orders for which a Loan is requested hereby have been approved by Administrative Agent and the Construction Consultant to the extent required by the Construction Loan Agreement;
e. In the judgment of Borrower, the Improvements are % complete;
f. Borrower is not in Default under any of the terms and conditions of the Loan Documents;
g. After giving effect to this advance, the Loans will remain In Balance in accordance with Section 7.02 of the Construction Loan Agreement, and all conditions to this advance have been satisfied in accordance with Section 7.01 of the Construction Loan Agreement

a. Each representation and warranty of Article VIII of the Construction Loan Agreement remains true and correct in all material respects as of the date of this Request for Loan Advance and will be so on the date of disbursement of the requested Loan, except with respect to (a) matters which have been disclosed in writing to and approved by Administrative Agent (subject, however, to the terms of the Construction Loan Agreement) or (b) liens of mechanics and materialmen and matters addressed in Section 8.05 of the Construction Loan Agreement, which would not, if adversely decided, have a Material Adverse Effect;
b. No litigation or arbitral proceedings are pending or, to the best of Borrower's knowledge, threatened against Borrower, any Guarantor or the Manager, which could or might (1) affect the validity or priority of the liens of the Security Instrument or (2) or, if adversely decided, would reasonably be expected have a Material Adverse Effect; and
c. All Government Approvals, to the extent then required for the construction of the Construction Work, have been obtained and that all Applicable Laws relating to the construction and operation of the Project have been and will continue to be complied with.

The undersigned requests that the requested Loans be advanced by depositing the same into Borrower's account to be designated by Borrower (Account No_____). The person signing
this Request for Loan Advance on behalf of Borrower represents and warrants to you that such person is authorized to execute this letter on behalf of Borrower.

**BORROWER:**

GORE CREEK PLACE, LLC, a Colorado limited liability company

By: The Vail Corporation, a Colorado corporation, its Managing Member

By:_____
Name & Title:

**Schedule 6.01**
Closing Conditions

a. Title Insurance. An unconditional and irrevocable commitment from the Title Company to issue the Title Policy. The Title Policy and all endorsements thereto shall be approved by Administrative Agent in its reasonable discretion. In addition, Borrower shall have paid to the Title Company all expenses and premiums of the Title Company in connection with the issuance of such policies as and when required by the Title Company and all recording, mortgage taxes and

filing fees payable in connection with recording the Security Instrument and the filing of the Uniform Commercial Code financing statements related thereto in the appropriate offices.

b. Opinion of Borrower's and Each Borrower Party's Attorneys. A current written opinion from outside counsel for Borrower covering matters in scope, form and substance acceptable to Administrative Agent.

c. Qualified Purchase Contracts. Copies of all Qualified Purchase Contracts in effect with respect to the Project.

d. Survey. An ALTA survey of the Land certified to Administrative Agent, Title Company and their successors and assigns, acceptable to Administrative Agent in its reasonable discretion, made by a registered land surveyor satisfactory to Administrative Agent, showing, through the use of course bearings and distances, (i) all foundations of the Improvements and driveways, if any, in place; (ii) all easements and roads or rights of way and setback lines, if any, affecting the Improvements and that the same are unobstructed; (iii) all foundations and other structures, if any, so placed that the Improvements are within the lot lines or applicable easements and in compliance with any restrictions of record or ordinances relating to the location thereof; (iv) the dimensions of all existing buildings and distance of all material Improvements from the lot lines; (v) any encroachments by improvements located on adjoining property; (vi) access to a public road; and (vii) such additional information which may be required by Administrative Agent. Said survey shall be dated a date required by Administrative Agent, bear a certificate in an acceptable form, and include the legal description of the Land.

e. Organizational Documents; Resolutions. Copies of all Organizational Documents for each Borrower Party and appropriate resolutions authorizing such parties to enter into and perform under the applicable Loan Documents, each certified to be true and correct by an Authorized Officer of such Borrower Party and each in form and content reasonably acceptable to Administrative Agent, and evidence of the good standing of each Borrower Party issued by the applicable Governmental Authority where such Borrower Party is organized.

f. Project Documents. A schedule of the Project Documents. A certificate of Borrower executed by an Authorized Officer certifying that (i) each of the Project Documents has been duly executed and delivered by each Person that is a party thereto and is in full force and effect; (ii) neither Borrower nor, to the best of Borrower's knowledge, any other Person which is party to any of the Project Documents, is in default thereunder beyond any applicable cure and notice periods; (iii) no term or condition thereof shall have been Modified or waived without the prior consent of Administrative Agent; and (iv) a true and correct copy of each such Project Document.

g. Violations. Municipal searches showing no violations of Applicable Law with respect to any portion of the Project; and if violations are shown, then Administrative Agent must have received (in Administrative Agent's sole discretion) either satisfactory evidence of the curing of the same or such undertakings, indemnities, escrow deposits or affidavits relating thereto as Administrative Agent shall require.

h. Insurance. A certified copy of the insurance policies required by Section 9.05 or certificates of insurance with respect thereto, such policies or certificates, as the case may be, to be in form and substance, and issued by companies reasonably acceptable to Administrative Agent and otherwise in compliance with the terms of Section 9.05, together with evidence of the payment of all premiums therefor.

i. Lien Waivers. Sworn partial waivers of liens from Major Subcontractors covering all work and materials performed or supplied prior to the Closing Date (if any).

j. Plans and Specifications. The final Plans and Specifications, together with any required Governmental Approvals related thereto and sealed by the applicable Design Professionals.

k. Construction Schedule. The Construction Schedule, including evidence reasonably satisfactory to Administrative Agent that the development of the Construction Work is proceeding on time and on budget.

(I) Construction Status. The most recent General Contractor's progress payment request approved by the Developer showing the percentage of completion, the amount funded and Change Order status.

a. Design Professionals' Certificates. Certificates of Borrower's Architect, or other appropriate Design Professional, in favor of Administrative Agent (on behalf of the Lenders) (the "Architect Certificates"), or other evidence satisfactory to Administrative Agent, that to the best of the Design Professional's knowledge (i) the Plans and Specifications are in full compliance with all applicable building code and environmental, health and safety laws, statutes, regulations and requirements; (ii) the Plans and Specifications are full and complete in all respects and contain all details necessary for construction of the Base Building Work; (iii) all Government Approvals to the extent presently necessary for construction of the Base Building Work have been issued; (iv) the gross square footage as shown on a schedule attached to the certificate of the applicable Design Professional accurately reflects the gross square footage relating to the Plans and Specifications; (v) there exists adequate water, storm and sanitary sewerage facilities and other required public utilities, together with a means of ingress and egress to and from the Project over public streets; (vi) no building or parking structure to be constructed on the Project will exceed the height of any building permitted on the Project as of the Closing Date; and (vii) the Construction Schedule and the Project Budget are realistic and can be adhered to in completing the Base Building Work in accordance with the Plans and Specifications.

b. Initial Equity. A certificate of an Authorized Officer of Borrower certifying that Borrower shall have provided the Initial Equity and itemizing the uses of the Initial Equity, such certificate to be accompanied by backup materials evidencing such Initial Equity and the use of same.

c. UCC Searches. Uniform Commercial Code searches with respect to Borrower and each Borrower Party, the Managing Member and each Guarantor as required by Administrative Agent.

d. Non-Foreign Status. A certificate by an Authorized Officer of Borrower certifying Borrower's tax identification number and the fact that it is not a foreign person under the Code.

e. Other Documents. Such other documents as Administrative Agent may reasonably request.

**Schedule 6.02**
Conditions to Loans

a. Title Continuation. Administrative Agent shall have received a notice of title continuation or a Date Down Endorsement to the Title Policy indicating that since the last preceding Loan, there has been no change in the state of title and no new adverse survey exceptions have been raised by the Title Company not theretofore approved by Administrative Agent, which Date Down Endorsement shall have the effect of increasing the coverage of the Title Policy (including full coverage against mechanic's liens) by an amount equal to the advance then made if the Title Policy does not by its own terms provide for such an increase. If any mechanics' liens are filed against the Project, Borrower shall use commercially reasonable efforts to cause such liens to be discharged by payment or other shall mean; provided, however, that if such mechanics' liens are less than $250,000 in the aggregate, Borrower may elect to cause the Title Company to provide affirmative coverage over such liens insuring against "any statutory lien for services, labor or materials furnished or contracted for prior to the date hereof [i.e., the date of such endorsement] (or any statutory lien for services, labor or materials furnished after the date hereof, the priority of which lien relates back to services, labor or materials furnished or contracted for prior to the date hereof), and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Exhibit A of this policy"; and provided further, however, that, Borrower shall obtain a bond reasonably acceptable to Administrative Agent to cover all mechanics' liens that exceed $1,000,000 in the aggregate of all such liens;
b. Lien Waivers. Unconditional waivers of lien from Major Subcontractors covering all work for which funds have been advanced pursuant to a prior disbursement and, at Administrative Agent's election, conditional waivers of lien from Major Subcontractors covering all work of such Persons for which funds are being advanced pursuant to the then current Request for Loan Advance, all in compliance with the Lien Law together with such invoices, contracts, or other supporting data as Administrative Agent may reasonably require to evidence that all Project Costs for which disbursement is sought have been incurred;
c. Change Orders. Copies of any material Change Orders which have not been previously furnished to Administrative Agent and the Construction Consultant;
d. Contracts. Copies of all Major Subcontracts which have been executed or Modified since the last Loan, together with (A) a certificate by an Authorized Officer of Borrower certifying that the delivered items are true, accurate and complete copies and (B) Consents and Agreements in the applicable form attached to the General Assignment from any Major Subcontractors who have executed a Major Subcontract not previously delivered;
e. Stored Materials. Inventory of materials and equipment stored on the Project;
f. Testing Reports. Testing reports for materials-in-place as applicable;
g. Governmental Approvals. Copies, certified by an Authorized Officer of Borrower, of all required Governmental Approvals (to the extent required as of such date) not previously delivered to Administrative Agent;
h. Contract Disputes. If any material dispute arises between or among Borrower, the General Contractor or any Major Subcontractor, a written summary of the nature of such dispute;
i. Project Budget Amendments. If the Project Budget shall have been Modified, copies of all such Modifications, all of which shall be subject to Administrative Agent's review and approval in accordance with this Agreement Administrative Agent Borrower;
j. Updated Survey and Title Endorsement. Promptly after the completion of the construction of the foundation of the Base Building Work, Borrower shall provide to Administrative Agent a current survey of the Project showing all Improvements located thereon and complying with the requirements set forth in Schedule 6.01(d) and shall obtain a foundation endorsement to the Title Policy in form satisfactory to Administrative Agent insuring that all foundations are located within applicable property and setback lines and do not encroach upon any easements or rights of way; and
k. Insurance. To the extent not previously delivered to Administrative Agent, evidence showing compliance with the provisions of Section 9.05.

(l) Additional Project Documents and Plans and Plans and Specifications. To the extent not previously received and approved by Administrative Agent, Administrative Agent shall have received and approved all Project Documents and all Plans and specifications relating to the aspect of the Improvements for which such Loan is being requested.

(m) Other Documents. Such other documents and items as Administrative Agent may reasonably request.

**Schedule 6.03**
Conditions to Final Loans

a. Approval by Governmental Authority. Evidence of the approval by the applicable Governmental Authorities of the Base Building Work in its entirety for operation to the extent any such approval is a condition of the lawful use of the Base Building Work, including, without limitation, valid certificates of occupancy (or other evidence) to the extent required for the Base Building Work, which core and shell certificates of occupancy (or other evidence) may be temporary core and shell certificates of occupancy;
b. Survey. A final as-built survey covering the completed Base Building Work and any paving, driveways and exterior improvements and otherwise in compliance with Schedule 6.01(d), together with an endorsement to the Title Policy amending any survey exception to reflect such final survey;
c. Plans and Specifications. A full and complete certified set of "as built" Plans and Specifications for the Base Building Work;

d. Lien Waivers. Conditional waivers of lien and sworn statements from all (A) contractors and subcontractors and (B) any materialmen, suppliers and vendors with respect to the Base Building Work, and Borrower shall deliver final waivers of lien and sworn statements from all such parties to Administrative Agent within sixty (60) days thereafter;
e. Design Professionals' Certificates. Certificates from the Architect stating that, to the best of Architect's knowledge, (A) the Base Building Work (1) has been substantially completed in accordance with the Plans and Specifications, (2) is structurally sound (the certification as to structural soundness to be made by the structural engineer only) and (3) is available for occupancy (subject to completion of Punch List Items), and (B) the Base Building Work as so completed complies with all applicable building codes;
f. Testing Engineer Statement. Statement from the testing engineer performing construction materials testing indicating that all Base Building Work was performed according to the Plans and Specifications;
g. Violation Searches. If available and requested by Administrative Agent, violation searches with Governmental Authorities indicating no notices of violation have been issued with respect to the Project;
h. UCC Searches. Current searches of all Uniform Commercial Code financing statements filed with the Secretary of State of the State of Colorado and of the state of formation/organization of Borrower, showing that no Uniform Commercial Code financing statements are filed or recorded against Borrower in which the collateral is personal property or fixtures located on the Project or used in connection with the Project other than fmancing statements with respect to the Loans;
i. Borrower's Certificate. A certificate of an Authorized Officer of Borrower certifying that:

i. no condemnation of any portion of the Project or any action which could result in a relocation of any roadways abutting the Project or the denial of access, which, in Administrative Agent's sole judgment, adversely affects the Lenders' security or the operation of the Project, has commenced or, to the Borrower's Knowledge, is contemplated by any Governmental Authority;
ii. all fixtures, attachments and equipment necessary for the operation of the Base Building Work have been installed or incorporated into the Project and are operational; all Guaranties and warranties have been transferred/assigned to Borrower; and, that Borrower is the absolute fee owner of all of said property free and clear of all chattel mortgages, conditional vendor's liens and other liens, encumbrances and security interests, and that all of said property is in good working order, free from defects; and
iii. all Project Costs relating to the Base Building Work have been paid in full except (A) to the extent covered by the final Loans then being requested and (B) amounts for Hard Costs which Borrower is disputing in good faith and with due diligence; provided that Administrative Agent may, in its sole discretion, hold back an amount equal to (x) 150% of the disputed amount minus (y) any Retainage that Administrative Agent is still holding with respect to the applicable Hard Costs and (3) amounts held by Administrative Agent with respect to Punch List Items with respect to the applicable Hard Costs.

(j) Engineering Report. At Borrower's expense, a report from the Construction Consultant, satisfactory in form and content to Administrative Agent, which shall verify that the Construction Work has been completed in accordance with the Plans and Specifications, approved by the appropriate Governmental Authorities and that the Project, and the Improvements constructed thereon, satisfy all Applicable Law.

**Schedule 8.05**

Pending Litigation

None.

**Schedule 8.10**

Organizational Chart

(See attached)

**Schedule 8.14**
Government Approvals

**Part A - Existing Approvals Obtained**

(i) Town of Vail Planning Commission Approval;

(ii) Town of Vail Design Review Board Approvals;

(iii) Town Council/Town of Vail Approval of Development Agreement and Amendment(s) thereto;

(iv) Town of Vail Covenant Condemnation Approval and Recordation;

(v) Building Permit(s);

(vi) Lot 3 Resubdivision Plat;

(vii) HUD Registration Approval;

**Part B - Approvals to be Obtained at Later Date**

(viii) Temporary Certificate of Occupancy;

(ix) Certificate of Occupancy;

(x) Condominium Project Document Approvals (Condominium Map and Declaration, and any Amendments and Supplements thereto); and

(xi) Design Board Reapprovals resulting from Owner Change Orders).

**Schedule 9.05**
Insurance Requirements

**I. PROPERTY INSURANCE**

A. **DURING CONSTRUCTION**

**An ORIGINAL (or certified copy) Builder's Causes of as - Special Form ("All-Risk"), Completed Value, Non-Reporting Form Policy or ORIGINAL Acord 27 Certificate of Insurance naming the borrowing entity as an insured, reflecting coverage of 100% of the replacement cost, and written by a carver approved by Lender with a current A.M. Best's Insurance Guide Rating of at least A- IX (which is authorized to do business in the state in which the property is located) that affirmatively includes the following:**

1. **Mortgagee Clause naming U.S. Bank National Association as Mortgagee with a 10-day notice to Lender in the event of cancellation, non-renewal or material change. Address for U.S. Bank National Association is as follows:**

   **U.S. Bank National Association**
   **918 17th Street, Fifth Floor**
   **Denver, Colorado 80202**
   **Attention: Matthew Carrothers**

3. **Lender's Loss Payable Endorsement with a Severability of Interest Clause with a 30-day notice to Lender in the event of cancellation, non-renewal or material change.**
4. **Replacement Cost Endorsement.**
5. **No Exclusion for Acts of Terrorism.**
6. **No Coinsurance Clause.**
7. **Collapse Coverage.**
8. **Vandalism and Malicious Mischief Coverage.**
9. **Demolition, Increased Cost of Construction Coverage.**
10. **In-Transit Coverage.**
11. **Partial Occupancy Permitted.**
12. **Borrower's coverage is primary and non-contributory with any insurance or self-insurance carried by U.S. Bank National Association.**
13. **Waiver of Subrogation against any party whose interest are covered in the policy.**

A. **UPON COMPLETION**

An ORIGINAL (or certified copy) Causes of Loss-Special Form ("All-Risk") Hazard Insurance Policy or ORIGINAL Acord 27 Certificate of Insurance naming the borrowing entity as an insured, reflecting coverage of 100% of the replacement cost, and written by a carrier approved by Lender with a current A.M. Best's Insurance Guide Rating of at least A- IX (which is authorized to do business in the state in which the property is located) that affirmatively includes the following

1. Mortgagee Clause naming U.S. Bank National Association as Mortgagee with a 30-day notice to Lender in the event of cancellation, non-renewal or material change. Address for U.S. Bank National Association is as follows:

   U.S. Bank National Association
   918 17th Street, Fifth Floor
   Denver, Colorado 80202
   Attention: Matthew Carrothers

3. Lender's Loss Payable Endorsement with a Severability of Interest Clause with a 10-day notice to Lender in the event of cancellation, non-renewal or material change.
4. Replacement Cost Endorsement

5. No Exclusion for Acts of Terrorism.
6. No Coinsurance Clause.
7. Boiler and Machinery Coverage.
8. Sprinkler Leakage Coverage.
9. Vandalism and Malicious Mischief Coverage.
10. Loss of Rents Insurance in an amount of not less than 100% of one year's Rental Value of the Project "Rental Value" shall include:

    (i) The total projected gross rental income from tenant occupancy of the Project as set forth in the Budget,

    (ii) The amount of all charges which are the legal obligation of tenants and which would otherwise be the obligation of Borrower, and

    (iii) The fair rental value of any portion of the Project which is occupied by Borrower.

12. One year's business interruption insurance in an amount acceptable to Lender.
13. Collapse and Earthquake Coverage.
14. Exam Expense Coverage.
15. Borrower's coverage is primary and non-contributory with any insurance or self-insurance carried by U.S. Bank National Association.
16. Waiver of Subrogation against any party whose interest are covered in the policy.

**II. <u>LIABILITY INSURANCE</u>**

An ORIGINAL Acord 25 Certificate of General Comprehensive Liability Insurance naming the borrowing entity as an insured, providing coverage on an "occurrence" rather than a "claims made" basis and written by a carrier approved by Lender with a current A.M. Best's Insurance Guide Rating of at least A- IX (which is authorized to do business in the state in which the property is located) that affirmatively includes the following:

1. Combined general liability policy limit of at least $5,000,000.00 each occurrence, applying liability for Bodily Injury, Personal Injury, Property Damage, Contractual, Products and Completed Operations which combined It may be satisfied by the limit afforded under the Commercial General Liability Policy, or by such Policy in combination with the limits afforded by an Umbrella or Excess Liability Policy (or policies); provided, the coverage afforded under any such Umbrella or Excess Liability Policy is at least as broad in all material respects as that afforded by the underlying Commercial General Liability Policy.
2. No Exclusion for Acts of Terrorism.
3. Aggregate limit of not less than $150,000,000.
4. Borrower's coverage is primary and non-contributory with any insurance or self-insurance carried by U.S. Bank National Association.
5. Waiver of Subrogation against any party whose interest are covered in the policy.

Additional Insured Endorsement naming U.S. Bank National Association as an additional insured with a 10-day notice to Lender in the event of cancellation, non-renewal or material change. A Severability of Interests provision should be included

Address for U.S. Bank National Association is as follows:

U.S. Bank National Association
918 17th Street, Fifth Floor
Denver, Colorado 80202
Attention: Matthew Carrothers

**III. <u>WORKER'S COMPENSATION</u>**

To the extent not provided by the General Contractor ORIGINAL Certificate indicating Worker's Compensation coverage in the statutory amount and Employer's Liability Coverage with minimum limits of $500,000 / $500,000 / $500,000 naming the General Contractor and written by a carrier approved by Lender.

# COMPLETION GUARANTY AGREEMENT

In order to induce U.S. BANK NATIONAL ASSOCIATION, a national banking association, as Administrative Agent under the Construction Loan Agreement for the Lenders therein (hereinafter, together with its successors and assigns, referred to as the **"Bank"),** to make advances to GORE CREEK PLACE, LLC, a Colorado limited liability company (hereinafter referred to as the **"Borrower"),** in connection with a construction loan, pursuant to and in accordance with a Construction Loan Agreement, dated as of even date herewith, by and between the Borrower and the Bank (hereinafter referred to as the **"Construction Loan Agreement")** and evidenced by one or more promissory notes of even date herewith in the maximum aggregate principal amount of $30,000,000 (hereinafter referred to, collectively, as the **"Note"),** the undersigned, THE VAIL CORPORATION, a Colorado corporation (hereinafter referred to as the **"Guarantor"),** hereby agrees as follows pursuant to this Completion Guaranty Agreement (this **"Guaranty"):**

1. Subject to the terms hereof, the Guarantor unconditionally and absolutely guarantees to the Bank, following an Event of Default by Borrower, completion of construction of the Improvements (as defined in the Construction Loan Agreement) in the manner required by the Construction Loan Agreement, the Note and the other documents and instruments executed in connection therewith (all of the foregoing being hereinafter collectively referred to as the **"Loan Documents").** Specifically, following an Event of Default under the Loan Documents by Borrower and written request to Guarantor from Bank for performance hereunder, the Guarantor agrees:

a. to perform, complete, and pay for the construction of the Improvements in accordance with the Plans and Specifications, as such Plans and Specifications have been or may be modified or amended from time to time, within the time period allotted therefor (if any) and to pay all costs of said construction and all costs associated therewith if the Borrower shall fail to perform or complete such work as required by the Construction Loan Agreement;
b. provided that such actions by the Bank are authorized pursuant to the Loan Documents and provided Guarantor has failed to perform its obligations pursuant to Paragraph 1(a) hereof, to reimburse the Bank for all costs and expenses incurred by the Bank in taking possession of the property described in the deed of trust securing the Note (hereinafter referred to as the **"Property")** and constructing the Improvements (whether in whole or in part) in accordance with the Plans and Specifications as approved at the time the Bank takes possession of the Property subject to such modifications thereto as Bank shall determine are reasonably necessary provided that the same shall not materially increase Guarantor's obligations hereunder (unless as a result of unforeseen site conditions which have been confirmed by an engineer reasonably acceptable to Guarantor), including, without limitation, any sums expended in excess of the principal amount of the Note and whether or not construction is actually completed;
c. if any mechanic's or materialman's liens should be filed, or should attach, with respect to the Property by reason of the construction undertaken pursuant to the Construction Loan Agreement, to cause the removal of such liens within 45 days after the recording thereof, or the posting of security against the consequences of their possible foreclosure and the procurement of title insurance policies or endorsements insuring the Bank

against the consequences of the foreclosure or enforcement of such liens, if the Borrower shall fail to take such actions;

a. to pay the costs and fees of all contractors, architects and engineers employed by the Borrower or the Bank (to the extent permitted under the Loan Documents) to complete the Improvements if said costs and fees are not paid by the Borrower;
b. to pay the premiums for all policies of insurance required to be furnished by the Borrower pursuant to the Construction Loan Agreement if such premiums are not paid by the Borrower and written request from Lender has been given to Guarantor in connection with any of the foregoing provisions of this Paragraph 1; and
c. to pay all of the Bank's reasonable costs and expenses, including, without limitation, attorney's fees, incurred in the enforcement of this Guaranty and the provisions of the Loan Documents covered by this Guaranty.

2. Without in any way limiting the generality of the foregoing, following written request from Bank for performance by Guarantor hereunder to complete construction of the Improvements, Bank shall make available any undisbursed Commitments which are not subject to legal impairment to disbursement pursuant to a court order, a mechanic's or materialman's lien, a bankruptcy proceeding or notice to disburser and which have been designated in the Project Budget for the payment of Project Costs directly related to the construction of the Improvements. Such funds shall be disbursed only upon satisfaction by Guarantor of all requirements for disbursement set forth in the Construction Loan Agreement and in accordance with the disbursement procedures set forth in the Construction Loan Agreement, and any amendments thereof, except that Guarantor shall not be required to satisfy Borrower's requirements set forth in Sections 6.01 (d) and 6.02 (a) and (c)(i), (or to cure any Events of Default by Borrower in connection with the matters addressed in those sections) nor shall Guarantor be obligated to repay to Bank and Lenders the Loans. In connection with Guarantor's obligations hereunder, Guarantor shall be entitled to all rights of Borrower under the Construction Loan Agreement to reallocate the Borrower Contingency Fund so long as Guarantor has satisfied the requirements set forth in the preceding sentence. In the event that Guarantor does not satisfy all of the requirements for disbursement of Loans set forth hereinabove, does not comply with the disbursement procedures set forth in the Construction Loan Agreement following a request from Bank pursuant to Paragraph 1, or any representation warranty or certification made by Guarantor in the Representation

Agreement shall prove to be false or misleading: (i) Bank shall have no further obligation to disburse any portion of the Commitments to Guarantor; (ii) Bank may pursue whatever remedies it may have available at law or in equity for breach of such terms and conditions; and (iii) at Bank's option, to be exercised in its sole discretion, Guarantor shall perform the Completion Obligations at its sole cost and expense without any right or recourse to any portion of the Commitments or Bank may complete the Project itself or cause the Project to be completed by a third party and charge the entire cost thereof to Guarantor. In connection with the Guarantor's obligations hereunder, whenever it is necessary for Guarantor to cure an Event of Default in order to satisfy any such requirement or procedure for disbursements described herein, Guarantor shall have such time to cure an Event of Default as may be granted by Bank, in its sole discretion, but in no event less

than ten (10) Business Days after Guarantor receives a request from Bank under Paragraph 1 for performance hereunder.

1. This is a guaranty of performance and not of collection, and the Bank shall not be required to take any action against the Borrower (other than providing such notice to Borrower as is required by the Construction Loan Agreement) or resort to any other security given for the performance of the Borrower's obligations as a precondition to the obligations of the Guarantor hereunder. Nothing herein shall constitute a guaranty of repayment of the Loan by Guarantor.
2. The Bank, in its sole discretion, following the delivery of such notice to Borrower as is required by the Construction Loan Agreement, may proceed to exercise any right or remedy which the Bank may have under this Guaranty or the Representation Agreement without pursuing or exhausting any right or remedy which it may have against the Borrower, against any other guarantor or against any other person or entity, and the Bank may proceed to exercise any right or remedy which the Bank may have under this Guaranty without regard to any actions or omissions of the Borrower or any other person or entity.
3. The Guarantor authorizes the Bank, without notice to the Guarantor and without impairing the liability of the Guarantor hereunder, to exercise the Bank's right to complete construction in accordance with the Construction Loan Agreement pursuant to the Plans and Specifications, and, subject to Paragraph 1(b), to add expenses incurred during the course of such completion to the Borrower's principal obligations under the Loan (as defined in the Construction Loan Agreement). The Guarantor acknowledges that the Bank has no obligation to exercise such right, and that the Bank is entitled to make expenditures toward completion without actually completing construction. The Guarantor waives any claims, rights or defenses resulting from (a) the Bank's proper exercise of its right to complete construction, and (b) the Bank's failure to complete construction. The Guarantor agrees that appropriate expenses to complete construction in accordance with Paragraph 1(b) hereof, include, without limitation, payments to release liens, payments to contractors, laborers, materialmen and suppliers, purchase of equipment, services of experts, interest on amounts advanced, and all additional categories of expense, both hard and soft, set forth on the Project Budget defined in and attached to the Construction Loan Agreement.
4. The obligations of the Guarantor hereunder shall be direct and independent of any obligations of the Borrower to the Bank and absolute and unconditional irrespective of the validity, legality or enforceability of any of the Loan Documents, or any other circumstances (except for those actions of the Bank in violation of the Loan Documents or applicable law) which might otherwise constitute a legal or equitable discharge of a surety or guarantor (including, without limitation, the finding or conclusions of any proceeding under the federal Bankruptcy code or of similar present or future federal or state law), it being agreed that the obligations of the Guarantor hereunder shall not be discharged except by payment or performance as herein provided.
5. From and after the date that Guarantor satisfies the requirements for disbursements of Loans as set forth in paragraph 2 hereof, and so long as there shall occur no other Event of Default, interest shall accrue on the outstanding principal balance of the Loans at the LIBOR-Based Rate . In addition, Bank agrees to forbear pursuit of remedies against

Borrower for Events of Default during any period of time that Guarantor is performing its obligations hereunder and satisfying the requirements for disbursement of Loans pursuant paragraph 2 hereof.

8. Without limiting the generality of Paragraph 5 above, the Guarantor hereby consents and agrees that, at any time and from time to time:

a. any action may be taken under any of the Loan Documents in the exercise of any remedy, power or privilege therein contained (including, without limitation, the acceleration of the maturity of the Note) or otherwise with respect thereto, or such remedy, power or privilege may be waived, omitted, or not enforced;
b. the time for the Borrower's performance of or compliance with any term, covenant or agreement on its part to be performed or observed under any of the Loan Documents may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to;
c. any of the Loan Documents (except this Guaranty), or any terms thereof may be amended or modified in any respect (including without limitation, with respect to interest on the Note); and
d. the Guarantor waives any rights it might otherwise have under Colorado Revised Statutes 13-50-102 or 13-50-103 (or under any corresponding future statute or rule of law in any jurisdiction) by reason of any release of fewer than all of the guarantors of the obligations of the Guarantor hereunder,

all in such manner and upon such terms as the Bank may deem proper, and without notice to or further assent from the Guarantor, and all without affecting this Guaranty or the obligations of the Guarantor hereunder, which shall continue in full force and effect until all of the obligations of the Guarantor hereunder shall have been fully paid and performed.

9. The Guarantor hereby waives notice of acceptance of this Guaranty, presentment, demand, protest, notice of the occurrence of an event of default under the Loan Documents and any other notice of any kind whatsoever, with respect to any or all of the obligations of Guarantor hereunder and promptness in making any claim or demand hereunder; but no act or omission of any kind shall in any way affect or impair this Guaranty.

10. The Guarantor hereby represents and warrants as follows:

a. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction indicated in the first paragraph hereof and has all requisite power and authority, corporate or otherwise, to conduct its business, to own its properties and to execute and deliver, and to perform all of its obligations under, this Guaranty.
b. The execution, delivery and performance of this Guaranty by Guarantor will not (i) require any consent or approval of any person, (ii) violate any provision of any law, rule, regulation, order, it, judgment, injunction, decree, determination or award presently in effect having applicability to the Guarantor, or (iii) result in a breach of or constitute a default

under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the Guarantor is a party or by which Guarantor or its properties may be bound or affected; and the Guarantor is not in default under any such law, rule, regulation, order, it, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

a. This Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable against Guarantor in accordance with its terms, except as limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws or equitable principles relating to or affecting the rights of creditors and general principles of equity.
b. There are no actions, suits or proceedings pending or, to the knowledge of the Guarantor, threatened against or affecting it or any of its assets before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, if determined adversely to the Guarantor, would have a material adverse effect on any of his financial condition, properties, or operations.
c. No authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary to the valid execution, delivery or performance by the Guarantor of this Guaranty.

1. No failure or delay on the part of the Bank in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No amendment, modification, termination, or waiver of any provision of this Guaranty nor consent to any departure by the Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank (and Guarantor as to any modification or amendment of this Guaranty), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice or demand in similar or other circumstances.
2. All notices, requests, demands, statements, authorizations, approvals, directions and other communications provided for herein shall be given or made in writing and shall be deemed sufficiently given or served for all purposes as of the date (i) when hand delivered (provided that delivery shall be evidenced by a receipt executed by or on behalf of the addressee), (ii) one (1) Business Day after being sent by reputable overnight courier service (with delivery evidenced by written receipt), or (iii) with a simultaneous delivery by one of the shall mean in clause (i) or (ii) above, by facsimile, when sent, with confirmation and a copy sent by first class mail, in each case addressed to the intended recipient at the address specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party hereto. Guarantor shall only be required to send notices, requests, demands, statements, authorizations, approvals, directions and other communications to Bank on behalf of all of the Lenders.

If to Guarantor: The Vail Corporation
137 Benchmark Road
Avon, Colorado 81620
Attention: Mr. Greg Dickhens
Facsimile: 970-845-2555

With a copy to: Brownstein Hyatt & Farber, P.C.
410 Seventeenth Street Twenty-Second Floor
Denver, Colorado 80202
Attention: Patricia L. Gruber, Esq.
Facsimile: 303-223-1111

If to Bank: U.S. Bank National Association
DN-CO-BB5R
918 Seventeenth Street, 5th Floor

Denver, Colorado 80202
Attention: Mr. Matthew Carrothers
Facsimile: 303-585-4198

With a copy to: U.S. Bank National Association
Real Estate Capital Markets
BC-MN-H03R
800 Nicollet Mall
Minneapolis, Minnesota 55402-7020
Attention: Mr. Huvishka Ali
Facsimile: 972-386-8370

With a copy to: Snell & Wilmer L.L.P.
1200 Seventeenth Street, Suite 1900
Denver, Colorado 80202
Attention: Thomas L. DeVine, Esq.
Facsimile: 303-634-2020

Bank or Guarantor may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

13. The Guarantor hereby waives and agrees not to assert or take advantage of any duty on the part of the Bank to disclose to the Guarantor any facts Bank may now or hereafter know about the Borrower, regardless of whether the Bank has reason to believe that any such facts materially increase the risk beyond that which the Guarantor intends to assume or has reason to believe that such facts are unknown to the Guarantor or has a reasonable opportunity to communicate such facts to the Guarantor, it being understood and agreed that the Guarantor is fully responsible for being and keeping informed of the financial condition of the Borrower and of any and all circumstances bearing the risk of non-payment on any obligations hereby guaranteed.

1. The Guarantor will file all claims against the Borrower in any bankruptcy or other similar proceedings in which the filing of claims is required by law upon any indebtedness of the Borrower to the Guarantor and will assign to the Bank all rights of the Guarantor thereunder. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to the Bank the full amount thereof and to the full extent necessary for that purpose, the Guarantor hereby assigns to the Bank all of the Guarantor's rights to any such payments or distributions to which the Guarantor would otherwise be entitled; provided that the Bank shall thereafter be obligated to deliver to Guarantor any payments or distributions so received by the Bank in excess of the amounts due from Guarantor to the Bank hereunder.
2. To the extent that the Guarantor receives any payments, distributions or any other consideration with respect to any shares, debentures or partnership interests of the Borrower however described, the Guarantor shall immediately pay over and deliver such payments, distributions or other consideration to the Bank to the extent that such payments, distributions or other consideration were made in contravention of the Loan Documents.
3. By execution hereof, the Guarantor certifies to the Bank that the Guarantor has received a copy of the Construction Loan Agreement and all other Loan Documents in execution form and represents that Guarantor is knowledgeable of the contents thereof.
4. Wherever possible each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty.
5. The Guarantor hereby represents and agrees that this is a continuing guaranty and (a) shall remain in full force and effect until such time as a temporary certificate of occupancy is issued for the Project (as defined in the Construction Loan Agreement), so long as sufficient Loan funds remain available under the Loan Budget to cover all of the punch list items remaining to be completed and thereupon Bank shall provide written confirmation to Guarantor of termination hereof in such form as is reasonably requested by Guarantor, (b) shall be governed by, and construed in accordance with, the laws of the State of Colorado, (c) shall be binding upon the Guarantor, its successors, and assigns, and (d) shall inure to the benefit of and be enforceable by the Bank and its respective successors, transferees and assigns. Without limiting the generality of the foregoing clause (d), the Bank may assign or otherwise transfer the Note held by it to any other person or entity, and such subsequent holder of the Note shall thereupon become vested with all the powers and rights in respect thereof granted to the Bank herein or otherwise.
6. The Guarantor shall furnish to the Bank as and when required by the Construction Loan Agreement the financial statements required to be furnished by the Guarantor.
7. The Guarantor shall indemnify and hold the Bank harmless from any loss, cost, claim or expense (including, without limitation, attorneys' fees) suffered by the Bank as the result of a claim by third party arising from any failure by the Borrower to return any earnest

money deposits made by purchasers under the Purchase Contracts (as defined in the Construction Loan Agreement) as required by the terms of such Purchase Contracts. Guarantor's liability under this Paragraph 20 is in addition to the sums referenced in

Paragraph 1 above.

1. Both the Guarantor and the Bank hereby waives any right to jury trail of any claim, cross-claim or counter-claim relating to or arising out of or in connection with this Guaranty.
2. FOR PURPOSES OF ANY ACTIONS RELATING TO THIS GUARANTY, THE GUARANTOR AND THE BANK CONSENT TO THE PERSONAL JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE OF COLORADO.
3. This Guaranty may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

***[REMAINDER OF PAGE INTENTIONALLY BLANK)***

SIGNED AND DELIVERED as of the 19th day of July, 2005.

GUARANTOR:

THE VAIL CORPORATION, a Colorado corporation

By: _____

Gregory S. Dickhens

Authorized Agent

BANK:

U.S. Bank National Association, a national banking

association, as Administrative Agent for the Lenders

By:
_____

Matthew W Carrothers

Assistant Vice President

**Exhibit 10.24(a)**

# EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT dated as of May 10, 1999 by and between VAIL RESORTS, INC., a Colorado [sic] corporation ("VRI") and Martha Dugan Rehm (hereinafter referred to as "Executive").

## RECITALS

1. VRI desires to employ Executive to render services to it for the period and upon the terms and conditions provided for in this Agreement; and
2. Executive wishes to serve in the employ of VRI for its benefit for the period and upon the terms and conditions provided for in this Agreement.

## COVENANTS

NOW, THEREFORE, the parties hereto agree as follows:

1. Employment.
    a. VRI hereby employs Executive to serve as Senior Vice President & General Counsel and Secretary of VRI and all of its subsidiaries on the terms and conditions set forth herein. In such capacity, Executive shall be the chief legal officer of the corporation, responsible for directing all legal affairs of VRI and its subsidiaries, including legal and regulatory compliance, and have the responsibilities normally associated with such position, subject to the supervision and control of the Board of Directors (the "Board") and chief executive officer (the "CEO") of Vail Resorts, Inc., including supervising and directing in house legal staff in various locations, participating in public company governance, SEC filings and disclosure, performing traditional duties of corporate secretary office, participating in governmental and public agency relations, managing litigation and outside counsel, supporting human resources on employee issues, managing business law aspects of corporate finance, acquisition and major corporate and real estate transactions, and discharging such other duties as may be assigned by the CEO or the Board.
    b. Executive accepts employment by VRI and agrees that, during the term of her employment, she will devote substantially all her time during normal business hours and best efforts to the performance of her duties hereunder, which duties shall be performed in an efficient and competent manner and to the best of her ability. Executive further agrees that, during the term of this Agreement, she will not, without the prior written consent of the CEO, directly or indirectly engage in any manner in any business or other endeavor, either as an owner, employee, officer, director, independent contractor, agent, partner, advisor, or in any other capacity calling for the rendition of her personal services. This restriction will not preclude Executive from having passive investments, and devoting reasonable time to the supervision thereof (so long as such does not create a conflict of interest or interfere with Executive's obligations hereunder), in any business or enterprise which is not in competition with any business or enterprise of VRI or any of its subsidiaries or affiliates (collectively, the "Companies").
3. Compensation. For all services rendered by Executive to or on behalf of the Companies, VRI shall provide to Executive, subject to any and all withholdings and deductions required by law, the following:
    a. Base Salary. Executive shall receive regular compensation at the initial rate of $275,000 per year (the "Base Salary"), which Base Salary shall be payable in accordance with the normal payroll practices of VRI. Executive's Base Salary shall be reviewed annually by the CEO and the Board; Executive's initial review shall occur on or before September 30, 1999. Any increases or decreases in such Base Salary shall be at the discretion of the CEO and the Board, and Executive acknowledges that the CEO and the Board are not obligated to make any increases. Executive's Base Salary shall not be lowered from the initial Base Salary set forth above during the term of this Agreement without her written consent.
    b. Bonuses, Stock Options, etc. Executive shall also be considered annually for bonuses, and/or stock options based upon her performance in light of objectives established by the Board, it being understood that any such awards are at the discretion of the CEO and the Board. Without limiting the generality of the foregoing, Executive shall be eligible to participate in (i) the Long Term Incentive Plan of VRI (the "LTIP"), and (ii) any other bonus, incentive, and fringe benefit plans as VRI shall make generally available to other employees in senior management positions in accordance with the terms of the relevant contracts, policies or plans providing such benefits, all on such terms as the Board may determine. If any such compensation or benefits are paid or made available, it shall be at such time or times as the Board shall determine, based upon such factors, if any, as the Board may establish. Notwithstanding the above, (w) Executive shall be granted ISO options to buy up to 40,000 shares of common stock through the Vail Resorts, Inc. 1996 Long Term Incentive and Share Award Plan ("1996 Plan") or other appropriate plan upon terms as specifically set forth in the Vail Resorts, Inc.'s standard stock option agreement, which terms shall include vesting over three years (with the first anniversary being May 10, 2000), term of ten years and an exercise price equal to $18.75, the closing market price on May 10, 1999, (y) Executive shall be eligible to participate in annual option grant(s) made by the Board, if any, granted by the Board in its discretion, at an exercise price equal to the closing market price on the day of the grant, if made by the Board, all subject to the terms of the applicable stock option agreement.
    c. Insurance. Executive shall also receive, at VRI's expense, health, medical, dental, long-term disability and life insurance pursuant to such plans as are from time to time adopted by the Board.

d. Expense Reimbursement; Club Memberships. Executive shall have a travel and entertainment budget which is reasonable in light of her position and responsibilities and shall be reimbursed for all reasonable business-related travel and entertainment expenses incurred by her thereunder upon submission of appropriate documentation thereof. Executive shall, subject to applicable rules and bylaws in effect from time to time, be entitled to the benefits of a membership at the Beaver Creek Club (which includes golf at the Beaver Creek Golf Course and access to Beano's Cabin and the Hyatt Spa), and, if available, also at the Game Creek Club; provided, however, that Executive shall not actually be a member of such clubs and in no event shall Executive be entitled to any claim or reimbursement of any initiation or similar fee. Executive shall be solely responsible for the payment of any and all charges incurred as such facilities, excluding only the payment of any regular dues, which Executive shall not be obligated to pay, and properly reimbursed expenses. In addition, Executive shall, subject to the applicable rules and bylaws in effect from time to time, be entitled to the benefits of membership at either The Country Club of the Rockies or The Club at Cordillera, whichever Executive elects (subject to availability); provided, however, that Executive shall not actually be a member of such club and in no event shall Executive be entitled to any claim of reimbursement of any initiation or similar fee. Further, Executive shall be solely responsible for the payment of any and all charges incurred at such club, and the payment of one-half of any of the regular dues associated with such club, and VRI shall pay the remaining one-half of any of the regular dues associated with such club.

e. Relocation Reimbursement. Executive shall be entitled to receive $20,000 for unspecified moving and relocation costs, payable upon commencement of employment, but reimbursed to VRI in full if Executive submits a voluntary resignation prior to September 15, 1999. Also Executive shall be entitled to reimbursement for all documented moving and relocation expenses, including a tax equivalency payment (i.e., a Gross Up for state and federal income taxes). Reimbursement shall be made to Executive within 15 days of written request therefor accompanied by appropriate documentation of such expenses, and shall include repayment of (I) all costs incurred (not income taxes) by Executive in selling either of her residences in Colorado (but not both) so long as the sales contract relating to such sale is entered into within 12 months of May 10, 1999, including legal fees, transfer and stamp taxes, brokers' commissions, and other customary closing costs, and (II) all costs of moving and/or storing Executive's furniture, other possessions and automobiles.

f. Administrative/Miscellaneous. Executive shall have a full time secretary/administrative assistant, if deemed necessary by Executive. Executive shall have office space on or in close proximity/adjacent to ski row where CEO office is located, or other mutually acceptable space. Executive shall be entitled to four (4) weeks vacation annually starting in fiscal year 1999 (already scheduled week of September 20, 1999).

5. Term and Termination.

a. Term and Renewal. The "Effective Date" of this Agreement shall be May 10, 1999. Unless terminated earlier, as hereinafter provided, the term of this Agreement shall be for the period commencing with the Effective Date and continuing through April 30, 2002; provided, however, that unless either VRI or Executive gives written notice of non-renewal to the other not less than 120 days prior to the then-current scheduled expiration date, this Agreement shall thereafter be automatically renewed for successive one-year periods.

b. Termination for Cause. VRI acting through the CEO may terminate this Agreement at any time for cause by giving Executive written notice specifying the effective date of such termination and the circumstances constituting such cause. For purposes of this Agreement, "cause" shall mean (i) any conduct involving dishonesty, gross negligence, gross mismanagement, the unauthorized disclosure of confidential information or trade secrets or a violation of VRI's code of conduct which has a material detrimental impact on the reputation, goodwill or business position of any of the Companies; (ii) gross obstruction of business operations or illegal or disreputable conduct by Executive which materially impairs the reputation, goodwill or business position of any of the Companies, including acts of unlawful sexual harassment; or (iii) any action involving a material breach of the terms of the Agreement, including, without limitation after 15 days' written notice and opportunity to cure to the Board's satisfaction, material inattention to or material neglect of duties. In the event of a termination for cause, Executive shall be entitled to receive only her then-current Base Salary through the date of such termination and any fully vested stock options or shares and other applicable benefits generally available to terminated executives at VRI (not to be deemed to include severance payments or salary continuation). Further, Executive acknowledges that in the event of such a termination for cause, she shall not be entitled to receive any LTIP or other bonus for the year of termination.

c. Termination Without Cause or Non-Renewal. VRI may terminate this Agreement at any time without cause, by giving Executive written notice specifying the effective date of such termination. In the event of a termination without cause, or if VRI gives notice of non-renewal of this Agreement as provided in Section 3(a), and provided that Executive executes a written release in connection with such termination substantially in the form attached hereto as Annex I (the "Release"), Executive shall be entitled to receive (i) her then-current Base Salary through the date of such termination or non-renewal, (ii) in the event that the applicable Board-established performance targets for the year are achieved, a pro-rated bonus for the portion of the year in which such termination or non-renewal occurs, which pro-rated bonus shall be payable in the same form and at the same time as bonus payments are made to VRI's senior executives generally, (iii) continuation of her then-current Base Salary through the first anniversary of the date of termination or non-renewal, and (iv) any fully vested stock options or shares. Notwithstanding the foregoing, should VRI and Executive mutually agree to waive, in writing, Executive's compliance with the provisions of Section 4 hereof within 60 days of such termination or expiration, then Executive shall be under an obligation to mitigate damages by seeking other employment and the Base Salary continuation shall be reduced by compensation received by Executive from other employment or self-employment following such waiver.

d. Termination By Executive For Good Reason. Executive shall be entitled to terminate this Agreement at any time for good reason by giving VRI not less than ninety (90) days' prior written notice. For purposes of this Agreement, "good reason" shall mean (i) VRI shall breach its obligations hereunder in any material respect and shall fail to cure such breach within 60 days following written notice thereof from Executive, (ii) VRI shall decrease Executive's then-current Base Salary and/or (iii) VRI shall effect a material diminution in Executive's reporting responsibilities, titles, authority, offices or duties as in effect immediately prior to such change. In such event, provided that Executive has executed the Release, Executive shall be entitled to receive (w) her then-current Base Salary through the date of such termination, (x) in the event that the applicable Board-established performance targets for the year are achieved, a pro-rated bonus for the portion of the year in which such termination occurs, which pro-rated bonus shall be payable in the same form and at the same time as bonus payments are made to VRI's senior executives generally, (y) continuation of her then-current Base Salary through the first anniversary date of such termination, and (z) any fully vested stock options or shares.

e. Termination By Executive Without Good Reason. Executive may also terminate this Agreement at any time without good reason by giving VRI at least sixty (60) days' prior written notice. In such event, provided that Executed has executed the Release, Executive shall be entitled to receive only her then-current Base Salary through the date of termination and any fully vested stock options or shares and other applicable benefits generally available to terminated executives at VRI (not to be deemed to include severance payments or salary continuation). Further, Executive acknowledges that in the event of such a termination without good reason, she shall not be entitled to receive any LTIP or other bonus for the year of termination.

f. Termination Due To Disability. In the event that Executive becomes permanently disabled (as determined by the CEO and the Board in good faith according to applicable law), VRI shall have the right to terminate this Agreement upon written notice to Executive; provided, however, that in the event that Executive executes the Release, Executive shall be entitled to receive (i) her then-current Base Salary through the date of such termination, (ii) in the event the applicable Board-established performance targets for the year are achieved, a pro-rated bonus for the portion of the year in which such termination occurs, which pro-rated bonus shall be payable in the same form and at the same time as bonus payments are made to VRI's senior executives generally, and (iii) continuation of her then-current Base Salary through the earlier of (x) the scheduled expiration date of this Agreement (but in no event less than 12 months from the date of disability) or (y) the date on which her long-term disability insurance payments commence. Further, Executive shall be entitled to retain all fully vested stock options and shares.

g. Termination Due To Death. This Agreement shall be deemed automatically terminated upon the death of Executive. In such event, provided Executive's personal representative executes a release substantially in the form of the Release, Executive's personal representative shall be entitled to receive (i) the Executive's then-current Base Salary through such date of termination, and (ii) in the event that the applicable Board-established performance targets for the year are achieved, a pro-rated bonus for the portion of the year in which such termination occurs, which pro-rated bonus shall be payable in the same form and at the same time as bonus payments are made to senior executives generally. Further, Executive's personal representative shall be entitled to retain any stock options pursuant to the terms of the applicable stock option agreement.

h. Change in Control. In the event that at any time following a change in control of VRI (i) this Agreement is terminated by VRI without cause, (ii) this Agreement is terminated by Executive for good reason, or (iii) VRI gives notice of non-renewal of this Agreement, then in each such case, provided that Executive has executed the Release, Executive shall be entitled to receive (i) her then current Base Salary through the date of such termination or non-renewal, (ii) in the event that the applicable Board established performance targets for the year are achieved, a pro-rated bonus shall be payable in the same form and at the same time as bonus payments are made to senior executives generally, (iii) continuation of her then current Base Salary for a period of 18 months from the date of termination or non-renewal, (iv) any fully vested stock options or shares. For purposes of this Agreement "change in control" shall mean the acquisition by any person or group of affiliated persons (other than Apollo Ski Partners, L.P. and its affiliates) of equity securities of VRI or Vail Associates, Inc. representing either a majority of the combined ordinary voting power of all outstanding voting securities of VRI or Vail Associates, Inc. or a majority of the common equity interest in VRI or Vail Associates, Inc. In the event of a change in control of VRI, all of Executive's rights with respect to her options will vest immediately if (1) she remains employed with VRI for at least six months after the change of control occurs, or (2) following the change in control, her employment is terminated as a result of death, disability, or terminated without cause.

i. Other Benefits. During any period in which Executive is entitled to Base Salary continuation following termination or expiration of this Agreement under the terms of this Section 3, Executive shall also be entitled to continuation of then-current health, dental and other insurance benefits for Executive and her dependents at VRI's expense. Except as expressly set forth in this Section 3, Executive shall not be entitled to receive any compensation or other benefits in connection with termination of her employment. Notwithstanding the foregoing, all deferred compensation shall be forfeited by Executive in the event of termination of employment pursuant to Section 3(b) or Section 3(e) of this Agreement.

j. Payment of Salary Continuation. Payment of Base Salary following termination of this Agreement as required by this Section 3 shall be made in accordance with VRI's normal payroll practices; provided, however, that in the event of a breach by Executive of the provisions of Sections 4, 5, 6 or 7 hereof, VRI shall be entitled to cease all such payments. No termination of this Agreement shall affect any of the rights and obligations of the parties hereto under Sections 4, 5, 6 and 7, but such rights and obligations shall survive such termination in accordance with the terms of such sections.

7. Non-Competition. The provisions of this Section 4 shall apply for a period of one (1) year beginning with the date of termination of Executive's employment with VRI for any reason. During such period, Executive will not, without the

prior written consent of the CEO, directly or indirectly, become associated, either as owner, employee, officer, director, independent contractor, agent, partner, advisor or in any other capacity calling for the rendition of personal services, with any individual, partnership, corporation, or other organization in the states of Colorado, Nevada, Idaho, California or Utah whose business or enterprise is alpine or nordic ski area operation; provided, however, that the foregoing shall not preclude Executive from having passive investments in less than five percent (5%) of the outstanding capital stock of a competitive corporation which is listed on a national securities exchange or regularly traded in the over-the-counter market or which have been approved in writing by the CEO. If, for any reason, any portion of this covenant shall be held to be unenforceable it shall be deemed to be reformed so that it is enforceable to the maximum extent permitted by law.

Further, Executive covenants and agrees that, during her employment by VRI and for the period of one year thereafter, Executive will not solicit for another business or enterprise any person who is a managerial or higher level employee of Vail Resorts, Inc. or any of its subsidiaries at the time of Executive's termination.

9. Document Return; Resignations. Upon termination of Executive's employment with VRI for any reason, Executive agrees that she shall promptly surrender to VRI all letters, papers, documents, instruments, records, books, products, and any other materials owned by any of the Companies or used by Executive in the performance of her duties under this Agreement. Additionally, upon termination of Executive's employment with VRI for any reason, Executive agrees to immediately resign from, and execute appropriate resignation letters relating to, all officer, director, management or board positions she may have by reason of her employment or involvement with VRI, specifically including but not limited to the Board, the boards of any companies and any other boards, districts, homeowner and/or industry associations in which Executive serves at the direction of VRI (collectively the "Associations").
10. Confidentiality. During the term of this Agreement, and at all times following the termination of Executive's employment with VRI for any reason, Executive shall not disclose, directly or indirectly, to any person, firm or entity, or any officer, director, stockholder, partner, associate, employee, agent or representative thereof, any confidential information or trade secrets of any of the Companies or the Associations.
11. Non-Disparagement. For a period of five (5) years following the termination of Executive's employment with VRI for any reason, Executive agrees that she shall not make any statements disparaging of any of the Companies, the Board, and the officers, directors, stockholders, or employees of any of the Companies or the Associations. VRI shall similarly not disparage Executive following such termination, it being understood that, subject to the terms of this Section 7, VRI and Executive, as appropriate, may respond truthfully to inquiries from prospective employers of Executive, or as may be required by any governmental or judicial body acting in their official capacity.
12. Injunctive Relief. The parties acknowledge that the remedy at law for any violation or threatened violation of Sections 4, 5, 6, 7 and/or 9 of this Agreement may be inadequate and that, accordingly, either party shall be entitled to injunctive relief in the event of such a violation or threatened violation without being required to post bond or other surety. The above stated remedies shall be in addition to, and not in limitation of, any other rights or remedies to which either party is or may be entitled at law, in equity, or under this Agreement.
13. Non-Assignability. It is understood that this Agreement has been entered into personally by the parties. Neither party shall have the right to assign, transfer, encumber or dispose of any duties, rights or payments due hereunder, which duties, rights and payments with respect hereto are expressly declared to be non-assignable and non-transferable, being based upon the personal services of Executive, and any attempted assignment or transfer shall be null and void and without binding effect on either party; provided, however, that VRI may assign this Agreement to any affiliate or successor corporation which then shall be bound by this Agreement.
14. Complete Agreement. This Agreement constitutes the full understanding and entire employment agreement of the parties, and supersedes and is in lieu of any and all other understandings or agreements between VRI and Executive. Nothing herein is intended to limit any rights or duties Executive has under the terms of any applicable stock option, incentive or other similar agreements.
15. Arbitration. Other than the parties' right to seek injunctive relief in accordance with Section 8 of this Agreement, any controversy or claim arising out of or in relation to this Agreement or any breach thereof shall be resolved by final and binding arbitration, in accordance with the rules for contractual disputes, by the Judicial Arbiter Group ("JAG"), Denver, Colorado, and judgment on the award rendered may be entered in any court having jurisdiction. In the event that any controversy or claim is submitted for arbitration hereunder relating to the failure or refusal by VRI or Executive to perform in full all of its obligations hereunder, VRI or Executive, as applicable, shall have the burden of proof (as to both production of evidence and persuasion) with respect to the justification for such failure or refusal. The arbitrator(s) shall award the prevailing party its reasonable attorneys' fees and costs. The arbitrator(s) shall not have the power to direct equitable relief.
16. Amendments. Any amendment to this Agreement shall be made only in writing and signed by each of the parties hereto.
17. Governing Law. The internal laws of the State of Colorado shall govern the construction and enforcement of this Agreement.
18. Notices. Any notice required or authorized hereunder shall be deemed delivered with deposited, postage prepaid, in the United States mail, certified, with return receipt requested, addressed to the parties as follows:

    Martha Dugan Rehm

    P.O. Box 901

    Minturn, Colorado 81645

Vail Associates, Inc.

P.O. Box 7

Vail, Colorado 81658

Attn: Chief Executive Officer

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

EMPLOYER:

VAIL RESORTS, INC.

By: _____/s/_____

Its Chief Executive Officer

EXECUTIVE:

_____/s/_____

Martha Dugan Rehm

**MUTUAL RELEASE**

This mutual release (this "Release") is entered into as of this _____ day of _____, _____ (the "Release Date") by Martha Dugan Rehm ("Employee"), on the one hand and Vail Resorts, Inc. ("VRI") on the other hand.

1. Reference is hereby made to the employment agreement dated May 10, 1999 (the "Employment Agreement") by the parties hereto setting forth the agreements among the parties regarding the termination of the employment relationship between Employee and VRI. Capitalized terms used but not defined herein have the meanings ascribed to them in the Employment Agreement.
2. Employee, for herself, her spouse, heirs, executors, administrators, successors, and assigns, hereby releases and discharges VRI and its respective direct and indirect parents and subsidiaries, and other affiliated companies, and each of their respective past and present officers, directors, agents and employees, from any and all actions, causes of action, claims, demands, grievances, and complaints, known and unknown, which Employee or her spouse, heirs, executors, administrators, successors, or assigns ever had or may have at any time through the Release Date. Employee acknowledges and agrees that this Release is intended to and does cover, but is not limited to, (i) any claim of employment discrimination of any kind whether based on a federal, state, or local statute or court decision, including the Age Discrimination in Employment Act with appropriate notice and rescission periods observed; (ii) any claim, whether statutory, common law, or otherwise, arising out of the terms or conditions of Employee's employment at VRI and/or Employee's separation from VRI including, but not limited to, any claims in the nature of tort or contract claims, wrongful discharge, promissory estoppel, intentional or negligence infliction of emotional distress, and/or breach of covenant of good faith and fair dealing; enumeration of specific rights, claims, and causes of action being released shall not be construed to limit the general scope of this Release. It is the intent of the parties that by this Release Employee is giving up all rights, claim and causes of action occurring prior to the Release Date, whether or not any damage or injury therefrom has yet occurred. Employee accepts the risk of loss with respect to both undiscovered claim and with respect to claims for any harm hereafter suffered arising out of conduct, statements, performance or decisions occurring before the Release date.
3. VRI hereby releases and discharges Employee, her spouse, heirs, executors, administrators, successors, and assigns, from any and all actions, causes of actions, claims, demands, grievances and complaints, known or unknown, which VRI ever had or may have at any time through the Release Date. VRI acknowledges and agrees that this Release is intended to and does cover, but is not limited to, (i) any claim, whether statutory, common law, or otherwise, arising out

of the terms or conditions of Employee's employment at VRI and/or Employee's separation from VRI, and (ii) any claim for attorneys' fees, costs, disbursements, or other like expenses. The enumeration of specific rights, claims, and causes of action being released shall not be construed to limit the general scope of this Release. It is the intent of the parties that by this Release VRI is giving up all of its respective rights, claims, and causes of action occurring prior to the Release Date, whether or not any damage or injury therefrom has yet occurred. VRI accepts the risk of loss with respect to both undiscovered claims and with respect to claims for any hard hereafter suffered arising out of conduct, statements, performance or decisions occurring before the Release Date.

4. This Release shall in no event (i) apply to any claim by either Employee or VRI arising from any breach by the other party of its obligations under the Employment Agreement occurring on or after the Release Date, (ii) waive Employee's claim with respect to compensation or benefits earned or accrued prior to the Release Date to the extent such claim survives termination of Employee's employment under the terms of the Employment Agreement, or (iii) waive Employee's right to indemnification under the bylaws of the Company.
5. This Mutual Release shall be effective as of the Release Date and only if executed by both parties.

IN WITNESS WHEREOF, each party hereto, intending to be legally bound, has executed this Mutual Release on the date indicated below.

VAIL RESORTS, INC.

_____ By: _____

Martha Dugan Rehm

Date: _____ Date: _____

**Exhibit 10.24(b)**

April 8, 2004

TO: Martha Rehm

FR: Adam Aron

RE: Your Base Salary Compensation

This memo will confirm our discussion that your annual base salary will adjust to become $350,000, effective October 1, 2004.

This has been reviewed with and approved by both the CEO and the Chairman of the Compensation Committee of the Board, and shall be a binding commitment to you from the Company.

Adam Aron (//s//)

**Exhibit 21**

# SUBSIDIARIES

# OF

# VAIL RESORTS, INC.

| Name | State of Incorporation | Trade Names |
|---|---|---|
| Arrabelle at Vail Square, LLC | Colorado | |
| Avon Partners II Limited Liability Company | Colorado | |
| Beaver Creek Associates, Inc. | Colorado | |
| Beaver Creek Consultants, Inc. | Colorado | |
| Beaver Creek Food Services, Inc. | Colorado | "Beaver Creek Mountain Dining Company" |
| Boulder/Beaver, LLC | Colorado | |
| Breckenridge Resort Properties, Inc. | Colorado | |
| Breckenridge Terrace, LLC | Colorado | |
| Colter Bay Corporation | Wyoming | |
| Complete Telecommunications, Inc. | Colorado | "VR Telecommunications, Inc." |
| Eagle Park Reservoir Company | Colorado | |
| Forest Ridge Holdings, Inc. | Colorado | |
| Gillett Broadcasting, Inc. | Delaware | |
| Gore Creek Place, LLC | Colorado | |
| Grand Teton Lodge Company | Wyoming | |
| Gros Ventre Utility Company | Wyoming | |
| Heavenly Valley, Limited Partnership | | |
| Jackson Hole Golf and Tennis Club, Inc. | Wyoming | |
| Jackson Lake Lodge Corporation | Wyoming | |
| Jenny Lake Lodge, Inc. | Wyoming | |
| JHL&S LLC | Wyoming | "Snake River Lodge and Spa" |
| Keystone Conference Services, Inc. | Colorado | |
| Keystone Development Sales, Inc. | Colorado | |
| Keystone Food and Beverage Company | Colorado | |
| Keystone Resort Property Management Company | Colorado | |
| Keystone/Intrawest, LLC | Colorado | |
| Larkspur Restaurant & Bar, LLC | Colorado | |
| Lodge Properties, Inc. | Colorado | "The Lodge at Vail" |
| Lodge Realty, Inc. | Colorado | |
| Mountain Thunder, Inc. | Colorado | |
| Property Management Acquisition Corp., Inc. | Tennessee | |
| Rockresorts Casa Madrona, LLC | Delaware | |
| Rockresorts Cheeca, LLC | Delaware | |
| Rockresorts Cordillera Lodge Company, LLC | Colorado | |
| Rockresorts Equinox, Inc. | Vermont | |
| Rockresorts International, LLC | Delaware | |
| Rockresorts LaPosada, LLC | Delaware | |
| Rockresorts Rosario, LLC | Delaware | |
| Rockresorts Wyoming, LLC | Wyoming | |
| Rockresorts, LLC | Delaware | |
| RT Partners, Inc. | Delaware | |
| RTP, LLC (f/k/a Resort Technology Partners, LLC) | Colorado | |
| Slifer Smith & Frampton/Vail Associates Real Estate, LLC | Colorado | |

| | | |
|---|---|---|
| Soho Development, LLC | Colorado | |
| SSI Venture, LLC | Colorado | "Specialty Sports Venture LLC" and "Specialty Sports Network" |
| Tenderfoot Seasonal Housing, LLC | Colorado | |
| Teton Hospitality Services, Inc. | Wyoming | |
| The Vail Corporation | Colorado | "Vail Associates, Inc." and "Vail Resorts Management Company" |
| The Village at Breckenridge Acquisition Corp., Inc. | Tennessee | |
| Timber Trail, Inc. | Colorado | |
| VA Rancho Mirage I, Inc. | Colorado | |
| VA Rancho Mirage II, Inc. | Colorado | |
| VA Rancho Mirage Resort, L.P. | Delaware | |
| Vail Associates Holdings, Ltd. | Colorado | |
| Vail Associates Investments, Inc. | Colorado | |
| Vail Associates Real Estate, Inc. | Colorado | |
| Vail Food Services, Inc. | Colorado | "Vail Mountain Dining Company" |
| Vail Holdings, Inc. | Colorado | |
| Vail Hotel Management Company, LLC | Colorado | |
| Vail Resorts Development Company | Colorado | |
| Vail RR, Inc. | Colorado | |
| Vail Summit Resorts, Inc. | Colorado | "Breckenridge Ski Resort, Inc." and "Keystone Resort, Inc." and "Ralston Resorts, Inc." |
| Vail Trademarks, Inc. | Colorado | |
| Vail/Arrowhead, Inc. | Colorado | |
| Vail/Beaver Creek Resort Properties, Inc. | Colorado | |
| VAMHC, Inc. | Colorado | |
| VR Heavenly I, Inc. | Delaware | |
| VR Heavenly II, Inc. | Delaware | |
| VR Holdings, Inc. | Colorado | |

Includes only those entities owned 50% or greater.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-3 (No. 333-112601), on Form S-4 (Nos. 333-113929), and on Forms S-8 (Nos. 333-111020, 333-32320, and 333-38321) of Vail Resorts, Inc. of our report dated October 4, 2005 relating to the financial statements, financial statement schedule, management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers, LLP

Denver, Colorado

October 4, 2005

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER**

**PURSUANT TO SECTION 302 OF THE**

**SARBANES-OXLEY ACT OF 2002**

## I, Adam M. Aron, certify that:

1. I have reviewed this annual report on Form 10-K of Vail Resorts, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by the report based on such evaluation; and
   c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 5, 2005

/s/ Adam M. Aron
Adam M. Aron
Chairman of the Board and
Chief Executive Officer

**CERTIFICATION OF THE CHIEF FINANCIAL OFFICER**

**PURSUANT TO SECTION 302 OF THE**

**SARBANES-OXLEY ACT OF 2002**

## I, Jeffrey W. Jones, certify that:

1. I have reviewed this annual report on Form 10-K of Vail Resorts, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
    (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
    (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by the report based on such evaluation; and
    c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
    (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: October 5, 2005

/s/ Jeffrey W. Jones
Jeffrey W. Jones
Senior Vice President and
Chief Financial Officer

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER**

**AND THE CHIEF FINANCIAL OFFICER**

**PURSUANT TO SECTION 906**

**OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, each of the undersigned hereby certifies in his capacity as an officer of Vail Resorts, Inc. (the "Company") that the annual report of the Company on Form 10-K for the year ended July 31, 2005 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in such Report fairly presents, in all material respects, the financial condition and the results of operations of the Company at the end of and for the periods covered by such Report.

Date: October 5, 2005

/s/ Adam M. Aron
Adam M. Aron
Chairman of the Board and
Chief Executive Officer

Date: October 5, 2005

/s/ Jeffrey W. Jones
Jeffrey W. Jones
Senior Vice President and
Chief Financial Officer

This certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, is not a part of the Form 10-K to which it refers, and is, to the extent permitted by law, provided by each of the above signatories to the extent of his respective knowledge. A signed original of this written statement required by Section 906 has been provided to Vail Resorts, Inc. and will be furnished to the Securities and Exchange Commission or its staff upon request.