

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

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the quarterly period ended January 31, 2006

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)

(970) 845-2500

(Registrant's telephone number, including area code)

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.

Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Yes  No

As of March 6, 2006, 37,983,854 shares of Common Stock were issued and outstanding.

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PART I FINANCIAL INFORMATION

Item 1. Financial Statements -- Unaudited

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

	January 31, 2006 (unaudited)	July 31, 2005	January 31, 2005 (unaudited)
<b>Assets</b>			
<b>Current assets:</b>			
Cash and cash equivalents	\$ 175,541	\$ 136,580	\$ 19,117
Restricted cash	23,715	18,253	19,007
Receivables, net	39,712	33,136	51,917
Inventories, net	43,977	36,078	37,364
Other current assets	43,909	32,102	34,816
Assets held for sale	--	26,735	--
<b>Total current assets</b>	<b>326,854</b>	<b>282,884</b>	<b>162,221</b>
Property, plant and equipment, net (Note 5)	858,200	843,047	991,687
Real estate held for sale and investment	221,048	154,874	135,297
Goodwill, net	135,811	135,507	145,090
Intangible assets, net	77,541	76,974	83,620
Other assets	33,226	32,635	33,894
<b>Total assets</b>	<b>\$ 1,652,680</b>	<b>\$ 1,525,921</b>	<b>\$ 1,551,809</b>
<b>Liabilities and Stockholders' Equity</b>			
<b>Current liabilities:</b>			
Accounts payable and accrued expenses (Note 5)	\$ 295,092	\$ 209,369	\$ 289,153
Income taxes payable	6,324	12,979	--
Long-term debt due within one year (Note 4)	5,673	2,004	2,222
<b>Total current liabilities</b>	<b>307,089</b>	<b>224,352</b>	<b>291,375</b>
Long-term debt (Note 4)	517,638	519,706	546,421
Other long-term liabilities	132,933	140,421	102,381
Deferred income taxes	77,037	71,209	79,914
Commitments and contingencies (Note 10)	--	--	--
Put option liabilities (Note 8)	--	34	--
Minority interest in net assets of consolidated subsidiaries	31,345	29,670	36,100
<b>Stockholders' equity:</b>			
Preferred stock, \$0.01 par value, 25,000,000 shares authorized, zero shares issued and outstanding	--	--	--
Common stock, \$0.01 par value, 100,000,000, 100,000,000 and 80,000,000 shares authorized respectively, 37,965,853 (unaudited), 36,596,193 and 35,560,911 (unaudited) shares issued and outstanding as of January 31, 2006, July 31, 2005, and January 31, 2005, respectively (Note 12)	380	366	355
Additional paid-in capital	479,611	442,527	420,151
Deferred compensation	--	(329)	(500)
Retained earnings	106,647	97,965	75,612
<b>Total stockholders' equity</b>	<b>586,638</b>	<b>540,529</b>	<b>495,618</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 1,652,680</b>	<b>\$ 1,525,921</b>	<b>\$ 1,551,809</b>

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

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

	<b>Three Months Ended</b>	
	<b>January 31,</b>	
	2006	2005
<b>Net revenue:</b>		
Mountain	\$ 246,228	\$ 214,166
Lodging	32,079	42,589
Real estate	9,709	7,873
<b>Total net revenue</b>	<b>288,016</b>	<b>264,628</b>
<b>Segment operating expense:</b>		
Mountain	150,666	132,849
Lodging	32,894	40,570
Real estate	6,383	6,714
<b>Total segment operating expense</b>	<b>189,943</b>	<b>180,133</b>
<b>Other operating (expense) income:</b>		
Depreciation and amortization	(21,431)	(23,273)
Mold remediation credit (Note 10)	852	--
Loss on disposal of fixed assets, net	(486)	(623)
<b>Income from operations</b>	<b>77,008</b>	<b>60,599</b>

Mountain equity investment income, net	1,455	771
Lodging equity investment loss, net	--	(761)
Real estate equity investment income (loss), net	31	(24)
Investment income, net	1,046	1,174
Interest expense	(9,502)	(10,809)
Loss on extinguishment of debt	--	(612)
Gain on sale of businesses, net (Note 7)	4,625	5,693
Gain on put options, net	1,026	975
Other income, net	51	84
Minority interest in income of consolidated subsidiaries, net	(5,231)	(4,665)
Income before provision for income taxes	70,509	52,425
Provision for income taxes	(27,498)	(20,184)
Net income	\$ 43,011	\$ 32,241

Per share amounts (Note 3):

Basic net income per share	\$ 1.15	\$ 0.91
Diluted net income per share	\$ 1.12	\$ 0.89

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

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

	Six Months Ended	
	January 31,	
	2006	2005
Net revenue:		
Mountain	\$ 286,505	\$ 248,659
Lodging	73,829	88,864
Real estate	13,102	24,989
Total net revenue	373,436	362,512
Segment operating expense:		
Mountain	222,957	196,811
Lodging	70,535	84,119
Real estate	12,452	16,775
Total segment operating expense	305,944	297,705
Other operating (expense) income:		
Depreciation and amortization	(40,354)	(44,348)
Asset impairment charge	(136)	--
Mold remediation credit (Note 10)	852	--
Loss on disposal of fixed assets, net	(726)	(1,481)
Income from operations	27,128	18,978
Mountain equity investment income, net	2,305	1,565
Lodging equity investment loss, net	--	(2,679)
Real estate equity investment income (loss), net	100	(59)
Investment income, net	2,234	1,301
Interest expense	(18,939)	(21,385)
Loss on extinguishment of debt	--	(612)
Gain on sale of businesses, net (Note 7)	4,625	5,693
Gain on put options, net	34	1,188
Other income, net	51	52
Minority interest in income of consolidated subsidiaries, net	(3,305)	(2,765)
Income before provision for income taxes	14,233	1,277
Provision for income taxes	(5,551)	(492)
Net income	\$ 8,682	\$ 785
Per share amounts (Note 3):		
Basic net income per share	\$ 0.23	\$ 0.02
Diluted net income per share	\$ 0.23	\$ 0.02

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

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

	Six Months Ended	
	January 31,	
	2006	2005
Net cash provided by operating activities	\$ 100,426	\$ 110,720
Cash flows from investing activities:		
Capital expenditures	(55,112)	(48,563)
Investments in real estate	(64,905)	(25,827)
Proceeds from sale of businesses	30,712	12,736

Other investing activities, net	(4,018)	(464)
Net cash used in investing activities	(93,323)	(62,118)
Cash flows from financing activities:		
Proceeds from borrowings under long-term debt	26,213	62,217
Payments of long-term debt	(24,909)	(139,353)
Proceeds from exercise of stock options	27,635	3,402
Other financing activities, net	2,919	(2,079)
Net cash provided by (used in) financing activities	31,858	(75,813)
Net increase (decrease) in cash and cash equivalents	38,961	(27,211)
Cash and cash equivalents:		
Beginning of period	136,580	46,328
End of period	\$ 175,541	\$ 19,117

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

**Vail Resorts, Inc.**

**Notes to Consolidated Condensed Financial Statements**

**(Unaudited)**

**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 ("JHG&TC") 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, Variable Interest Entities).

In the opinion of the Company, the accompanying consolidated condensed financial statements reflect all adjustments necessary to state fairly the Company's financial position, results of operations and cash flows for the interim periods presented. All such adjustments are of a normal recurring nature. Results for interim periods are not indicative of the results for the entire year. The accompanying consolidated condensed financial statements should be read in conjunction with the audited Consolidated Financial Statements included in the Company's Annual Report on Form 10-K for the fiscal year ended July 31, 2005. Certain information and footnote disclosures, including significant accounting policies, normally included in fiscal year financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted. The July 31, 2005 consolidated condensed balance sheet was derived from audited financial statements.

**2. Summary of Significant Accounting Policies**

*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 condensed financial statements as of and for the three and six months ended January 31, 2005 to conform to the current period presentation.

*Stock Compensation*--At January 31, 2006, the Company had four stock-based compensation plans, which are described more fully in Note 11, Stock Compensation Plans. Prior to August 1, 2005, the Company accounted for those plans under the recognition and measurement provisions of Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") and related interpretations, as permitted by Statement of Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock Based Compensation" ("SFAS 123"). The Company recognized \$176,000 and \$267,000 of stock-based employee compensation cost in its consolidated condensed statements of operations for the three and six months ended January 31, 2005, respectively, pursuant to APB 25.

Effective August 1, 2005, the Company adopted the fair value recognition provisions of SFAS No. 123R, "Share-Based Payment" ("SFAS 123R"), using the modified prospective method. Under that transition method, compensation cost recognized in fiscal 2006 includes: (a) compensation cost for all stock-based payments granted prior to, but not yet vested as of August 1, 2005, based on the grant-date fair value estimated in accordance with the original provisions of SFAS 123, and (b) compensation cost for all stock-based payments granted subsequent to August 1, 2005, based on the grant-date fair value estimated in accordance with the provisions of SFAS 123R. The grant-date fair value of share-based payments is amortized to expense ratably over the awards' vesting periods. Results for prior periods have not been restated. The following table shows total stock-based compensation expense for the three and six months ended January 31, 2006 and 2005 included in the consolidated condensed statements of operations (in thousands):

	Three Months Ended		Six Months Ended	
	January 31,		January 31,	
	2006	2005	2006	2005
Mountain operating expense	\$ 999	\$ 104	\$ 1,954	\$ 157
Lodging operating expense	414	35	821	54
Real estate operating expense	401	37	781	56
Pre-tax stock-based compensation expense	1,814	176	3,556	267
Less: benefit for income taxes	681	66	1,336	100
Net stock-based compensation expense	\$ 1,133	\$ 110	\$ 2,220	\$ 167

As a result of adopting SFAS 123R on August 1, 2005, the Company's income before income taxes and net income for the three months ended January 31, 2006 decreased \$1.6 million and \$1.0 million, respectively, and for the six months ended January 31, 2006 decreased \$3.3 million and \$2.1 million, respectively, as compared to accounting for share-based compensation under APB 25, after considering the change in the Company's compensation strategy to issue more restricted stock to replace the granting of stock options to certain levels of employees. The after-tax impact of stock-based compensation recorded pursuant to SFAS 123R resulted in a reduction in basic and diluted net income per share of \$0.03 and \$0.06 for the three and six months ended January 31, 2006, respectively.

Prior to the adoption of SFAS 123R, the Company reported all tax benefits for deductions resulting from the exercise of stock options as operating cash flows in the consolidated condensed statements of cash flows. SFAS 123R requires that cash flows resulting from the tax benefits to be realized in excess of the compensation expense recognized in the consolidated condensed statements of operations before considering the impact of stock options that expire unexercised or forfeited (the "excess tax benefit") be classified as financing cash flows. The excess tax benefit of \$6.4 million classified as a financing cash inflow for the six months ended January 31, 2006 would have been classified as an operating cash inflow if the Company had not adopted SFAS 123R.

The following table illustrates the effect on net income (loss) and net income (loss) per share if the Company had recorded in its consolidated condensed statements of operations the fair value recognition provisions of SFAS 123 to options granted under the Company's stock option plans through the three and six months ended January 31, 2005. For purposes of this pro forma disclosure, options granted subsequent to January 31, 2005 are not considered, the value of the options is estimated using a Black-Scholes option-pricing formula and the expense is amortized ratably over the options' vesting periods (in thousands, except per share amounts).

	Three Months	Six Months
	Ended	Ended

	January 31, 2005	January 31, 2005
Net income (loss)		
As reported	\$ 32,241	\$ 785
Add: stock-based employee compensation expense included in reported net income, net of related tax effects	110	167
Deduct: total stock-based employee compensation expense determined under fair value-based method for all awards, net of related tax effects	(776)	(1,514)
Pro forma	\$ 31,575	\$ (562)
Basic net income (loss) per share		
As reported	\$ 0.91	\$ 0.02
Pro forma	\$ 0.89	\$ (0.02)
Diluted net income (loss) per share		
As reported	\$ 0.89	\$ 0.02
Pro forma	\$ 0.87	\$ (0.02)

### 3. Net Income Per 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 consolidated condensed statement of operations 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 stock that would then share in the earnings of the Company. Presented below is basic and diluted EPS for the three months ended January 31, 2006 and 2005 (in thousands, except per share amounts):

	Three Months Ended January 31,			
	2006		2005	
	Basic	Diluted	Basic	Diluted
Net income per share:				
Net income	\$ 43,011	\$ 43,011	\$ 32,241	\$ 32,241
Weighted-average shares outstanding	37,467	37,467	35,475	35,475
Effect of dilutive securities	--	855	--	559
Total shares	37,467	38,322	35,475	36,034
Net income per share	\$ 1.15	\$ 1.12	\$ 0.91	\$ 0.89

The number of shares issuable on the exercise of common stock options that were excluded from the calculation of diluted net income per share because the effect of their inclusion would have been anti-dilutive totaled 448,000 and 751,000 for the three months ended January 31, 2006 and 2005, respectively.

Presented below is basic and diluted EPS for the six months ended January 31, 2006 and 2005 (in thousands, except per share amount):

	Six Months Ended January 31,			
	2006		2005	
	Basic	Diluted	Basic	Diluted
Net income per share:				
Net income	\$ 8,682	\$ 8,682	\$ 785	\$ 785
Weighted-average shares outstanding	37,133	37,133	35,420	35,420
Effect of dilutive securities	--	848	--	737
Total shares	37,133	37,981	35,420	36,157
Net income per share	\$ 0.23	\$ 0.23	\$ 0.02	\$ 0.02

The number of shares issuable on the exercise of common stock options that were excluded from the calculation of diluted net income per share because the effect of their inclusion would have been anti-dilutive totaled 448,000 and 905,000 for the six months ended January 31, 2006 and 2005, respectively.

### 4. Long-Term Debt

Long-term debt as of January 31, 2006, July 31, 2005 and January 31, 2005 is summarized as follows (in thousands):

	Maturity (d)	January 31,	July 31,	January 31,
		2006	2005	2005
Credit Facility Revolver (a)	2010	\$ --	\$ --	\$ 25,000
Credit Facility Term Loan (a)	--	--	--	--
SSV Facility (b)	2011	6,233	9,429	10,628
Industrial Development Bonds	2007-2020	61,700	61,700	61,700
Employee Housing Bonds	2027-2039	52,575	52,575	52,575
Non-Recourse Real Estate Financings (c)	2007-2009	5,233	--	--
6.75% Senior Subordinated Notes ("6.75% Notes")	2014	390,000	390,000	390,000
Other	2006-2029	7,570	8,006	8,740

	523,311	521,710	548,643
Less: current maturities (e)	5,673	2,004	2,222
	<u>\$ 517,638</u>	<u>\$ 519,706</u>	<u>\$ 546,421</u>

- (a) In January 2005, the Company amended its senior credit facility ("Credit Facility") to expand its revolving credit facility ("Credit Facility Revolver" to \$400 million and paid off the \$100 million term loan ("Credit Facility Term Loan").
- (b) In September 2005, SSV entered into a new credit facility ("SSV Facility"), with US Bank National Association ("U.S. Bank") as lender, to refinance its existing credit facility and to provide additional financing for future acquisitions. The new facility provides for financing up to an aggregate \$33 million, 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 SSV Facility are collateralized by a first priority security interest in all the assets of SSV. Availability under the SSV Facility is based on the book values of accounts receivable, inventories and rental equipment of SSV. The SSV Facility matures September 2010. Borrowings bear interest annually at SSV's option of (i) LIBOR plus 0.875% (5.45% at January 31, 2006) or (ii) U.S. Bank's prime rate minus 1.75% (5.50% at January 31, 2006). 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 were 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 SSV Facility contains certain restrictive financial covenants, including the Consolidated Leverage Ratio and Minimum Fixed Charge Coverage Ratio (each as defined in the underlying credit agreement).
- (c) In July 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. 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. At January 31, 2006, borrowings under the Gore Creek Facility were \$5.2 million.

In January 2006, Arrabelle at Vail Square, LLC ("Arrabelle"), a wholly-owned subsidiary of the Company entered into a Construction Loan Agreement (the "Arrabelle Facility") in the amount of up to \$175 million with U.S. Bank National Association ("U.S. Bank"), as administrative agent and U.S. Bank and Wells Fargo, N.A., as joint lead arrangers. Borrowings under the Arrabelle Facility are non-revolving and must be used for the payment of certain costs associated with the construction and development of Arrabelle at Vail Square, a mixed-use development consisting of 67 luxury residential condominium units, a 36-room RockResorts hotel, approximately 33,000 square feet of retail and restaurant space, a spa, private membership club and skier services facilities. The Arrabelle Facility matures on August 1, 2008, and principal payments are due at maturity, with certain pre-payment requirements, including upon the closing of the condominium units. Arrabelle has the option to extend the term of the Arrabelle Facility for six months, subject to certain requirements. Borrowings under the Arrabelle Facility bear interest annually at Arrabelle's option at the rate of (i) LIBOR plus 1.45% (5.99% at January 31, 2006) or (ii) the administrative agent's prime commercial lending rate (7.25% at January 31, 2006). Interest is payable monthly in arrears. The Arrabelle Facility provides for affirmative and negative covenants that restrict, among other things, Arrabelle's ability to dispose of assets, transfer or pledge its equity interest, incur indebtedness and make investments or distributions. The Arrabelle Facility contains non-recourse provisions to the Company with respect to repayment, whereby under event of default, U.S. Bank has recourse only against Arrabelle's assets (\$38.7 million at January 31, 2006) and as provided for below. U.S. Bank does not have recourse against assets held by the Company or The Vail Corporation, a wholly-owned subsidiary of the Company. All assets of Arrabelle are provided as collateral under the Arrabelle Facility. At January 31, 2006, the Company had zero borrowings under the Arrabelle Facility.

In connection with the Gore Creek Facility and the Arrabelle Facility (collectively, "Non-Recourse Real Estate Financings"), the Company and/or certain subsidiaries entered into completion guarantees, pursuant to which the Company and/or certain subsidiaries guarantee the completion of the construction of the projects (but not the repayment of any amounts drawn under the facilities). However, certain subsidiaries could be responsible to pay damages under very limited circumstances. If either the Company or certain subsidiaries are required to perform Gore Creek or Arrabelle's obligations to complete the projects, any undisbursed commitments under the facilities for the completion of construction and development of the projects will be made available to the Company.

- (d) Maturities are based on the Company's July 31 fiscal year end.
- (e) Current maturities represent principal payments due in the next 12 months.

Aggregate maturities for debt outstanding as of January 31, 2006 are as follows (in thousands):

Fiscal 2006	\$ 842
Fiscal 2007	10,886
Fiscal 2008	1,619
Fiscal 2009	16,507
Fiscal 2010	1,387
Thereafter	492,070
<u>Total debt</u>	<u>\$ 523,311</u>

The Company incurred gross interest expense of \$9.8 million and \$10.8 million for the three months ended January 31, 2006 and 2005, respectively, of which \$483,000 and \$533,000 was amortization of deferred financing costs. The Company incurred gross interest expense of \$19.3 million and \$21.4 million for the six months ended January 31, 2006 and 2005, respectively, of which \$1.0 million and \$1.1 million was amortization of deferred financing costs.

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

The composition of property, plant and equipment follows:

	January 31, 2006	July 31, 2005	January 31, 2005
Land and land improvements	\$ 244,841	\$ 236,424	\$ 253,665
Buildings and building improvements	526,808	504,662	621,594
Machinery and equipment	426,726	398,342	398,663
Vehicles	25,436	24,449	24,121
Furniture and fixtures	111,610	97,780	126,241
Construction in progress	21,024	47,973	38,567
Gross property, plant and equipment	1,356,445	1,309,630	1,462,851
Accumulated depreciation	(498,245)	(466,583)	(471,164)
Property, plant and equipment, net	\$ 858,200	\$ 843,047	\$ 991,687

The composition of accounts payable and accrued expenses follows:

	January 31, 2006	July 31, 2005	January 31, 2005
Trade payables	\$ 92,565	\$ 67,368	\$ 82,822
Deferred revenue	62,048	32,474	63,358
Deposits	43,885	21,609	46,200
Accrued salaries, wages and deferred compensation	29,181	26,571	26,387
Accrued benefits	20,011	19,379	20,516
Accrued interest	14,686	14,274	14,307
Liabilities to complete real estate projects, short term	7,575	5,188	6,773
Other accruals	25,141	22,506	28,790
Total accounts payable and accrued expenses	\$ 295,092	\$ 209,369	\$ 289,153

## 6. Variable Interest Entities

The Company has determined that it is the primary beneficiary of four employee housing entities (collectively, the "Employee Housing Entities"), Breckenridge Terrace, LLC ("Breckenridge Terrace"), The Tarnes at BC, LLC ("Tarnes"), BC Housing LLC ("BC Housing") and Tenderfoot Seasonal Housing, LLC ("Tenderfoot"), which are Variable Interest Entities ("VIEs"), and has consolidated them in its consolidated condensed financial statements. As a group, as of January 31, 2006, the Employee Housing Entities had total assets of \$44.0 million (primarily recorded in property, plant and equipment) and total liabilities of \$64.2 million (primarily recorded in long-term debt as "Employee Housing Bonds"). All of the assets of Tarnes serve as collateral for Tarnes' Tranche B obligations (\$2.4 million as of January 31, 2006). 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 Avon Partners II ("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 \$4.1 million (primarily recorded in property, plant and equipment) and no debt as of January 31, 2006.

The Company has determined that it is the primary beneficiary of FFT Investment Partners ("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 January 31, 2006.

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, began managing three of the properties during the fourth quarter of fiscal 2005 and began managing two of the properties during the second quarter of fiscal 2006. 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. Based on information provided to the Company by owners of the entities, these VIEs had total assets of approximately \$270.6 million and total liabilities of approximately \$103.5 million as of January 31, 2006. 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 \$1.6 million and the net book value of the intangible asset associated with the management agreements in the amount of \$5.0 million at January 31, 2006.

## 7. Sale of Businesses

On January 19, 2006, JHL&S LLC, a limited liability company owned by wholly-owned subsidiaries of the Company, sold the assets constituting Snake River Lodge & Spa ("SRL&S") to Lodging Capital Partners, a private, Chicago-based hospitality investment firm ("LCP"), for \$32.5 million, the proceeds of which were adjusted for normal working capital pro-rations. The carrying value of the assets sold (net of liabilities assumed) was \$26.9 million, which were recorded as "assets held for sale" prior to the sale. The Company recorded a \$4.7 million gain in the three and six months ended January 31, 2006 after consideration of all costs involved, which is included in "gain on sale of businesses, net" in the accompanying consolidated condensed statements of operations for the three and six months ended January 31, 2006. The Company will continue to manage SRL&S pursuant to a 15-year management agreement with LCP.

On December 8, 2004, the Company sold its 49% minority equity interest in Bachelor Gulch Resort, LLC ("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 "gain on sale of businesses, net" in the accompanying consolidated condensed statements of operations for the three and six months ended January 31, 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 for the three and six months ended January 31, 2005. In conjunction with the sale, the Company had guaranteed payment of certain contingencies of BG Resort upon settlement. At the time of sale, the Company recorded a liability related to these contingencies in the amount of \$130,000. In February 2006, the Company reached a settlement of these contingencies and recorded an additional liability in the amount of \$82,000; which has been recorded as a loss within "gain on sale of businesses, net" in the accompanying consolidated condensed statements of operations for the three and six months ended January 31, 2006. The Company's interest was acquired by GHR, LLC, a new joint venture between Gencom BG, LLC and Lehman BG, LLC.

## 8. 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 three and six months ended January 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 and GSSI have the 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 or call period, as applicable.

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 an aggregate one-third of its original 49% interest in RTP to the Company during the period from 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 three and six months ended January 31, 2006, the Company recorded gains of \$1.0 million and \$34,000, respectively, representing a decrease in the estimated fair value of the put option liability during those periods. For the three and six months ended January 31, 2005, the Company recorded a gain of \$362,000 and \$576,000, respectively, representing a decrease in the estimated fair value of the put option liability during those periods. As of January 31, 2006, the Company had a 54.5% interest in RTP. RTP's minority shareholder has the option to put 27.8% of its remaining interest in RTP to the Company as of January 31, 2006.

## 9. Related Party Transactions

Historically, the Company had paid a fee to Apollo Advisors for management services and expenses related thereto. 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 zero and \$83,000 of expense related to this fee in the three and six months ended January 31, 2005, respectively. See Note 12, Class A Common Stock Conversion, for more information regarding this matter.

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 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.

As of January 31, 2006, the Company had outstanding a \$500,000 note receivable from Keystone/Intrawest, LLC ("KRED"), a real estate development venture in which the Company has an equity-method investment. 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 no repayments under this note during the three and six months ended January 31, 2006. The Company has recorded this note receivable as an investment in KRED.

## 10. 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 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, \$1.7 million and \$1.9 million, primarily within "other long-term liabilities" in the accompanying consolidated condensed balance sheet, at January 31, 2006, July 31, 2005 and January 31, 2005, 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.

### Guarantees

As of January 31, 2006, the Company had various other letters of credit outstanding in the amount of \$67.9 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, \$3.3 million related to workers' compensation for Heavenly and The Lodge at Rancho Mirage ("Rancho Mirage"), \$9.2 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 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 these indemnifications as of January 31, 2006 because the Company has assessed the fair market value associated with potential payment obligations under the indemnifications to be immaterial or because the indemnifications were entered into prior to January 1, 2003 and is therefore not subject to the measurement requirements of FIN 45.

The Company guarantees the revenue streams associated with selected routes flown by certain airlines into Eagle County, Colorado, Regional Airport; these guarantees are generally capped at certain levels. As of January 31, 2006, the Company has recorded a liability related to the airline guarantees of \$1.7 million, 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.

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 condensed financial statements, either because the Company has recorded on its consolidated condensed 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 moves forward with 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 condensed balance sheets, to complete or fund certain improvements with respect to real estate developments; the Company has estimated such costs to be approximately \$8.1 million as of January 31, 2006, and anticipates completion of the majority of these commitments within the next two years.

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"), Beaver Creek Resort Company ("BCRC") and Beaver Creek Property Owner Association. BGVA and BCRC collectively contributed \$9 million to fund construction of the chairlifts. The Company completed the chairlifts and related infrastructure as required for the 2004/05 and 2005/06 ski seasons.

### Self Insurance

The Company is self-insured for medical and worker's 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 (Mountain and Lodging) 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.

### 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, 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 Breckenridge Terrace. As of January 31, 2006, 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. During the second fiscal quarter of 2006,



Breckenridge Terrace received reimbursement from third parties for costs incurred in conjunction with its mold remediation efforts in the amount of \$852,000 which has been recognized as "mold remediation credit" in the accompanying consolidated condensed statements of operations for the three and six months ended January 31, 2006.

Securities and Exchange Commission ("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.

**11. Stock Compensation Plans**

The Company has four stock-based compensation plans which have been approved by the Company's shareholders: 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. 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. All stock-based awards granted under these plans have a life of ten years. Most awards vest ratably over three years; however some have been granted with different vesting schedules. 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, 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. 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 four plans. At January 31, 2006, approximately 106,000, 142,000, 115,000 and 518,000 stock-based awards were available under the 1993 Plan, 1996 Plan, 1999 Plan and 2002 Plan, respectively.

The fair value of each option award granted prior to August 1, 2005 was estimated on the date of grant using a Black-Scholes option-pricing model that uses the assumptions noted in the table below. With the adoption of SFAS 123R, the Company has decided that a lattice-based option valuation model will be used for grants subsequent to August 1, 2005 if sufficient historical data is available by type of option grant to estimate the fair value of options granted. A lattice-based model considers factors such as exercise behavior, and assumes employees will exercise options at different times over the contractual life of the option. As a lattice-based model considers these factors, and is more flexible, the Company considers it to be a better method of valuing options than a closed-form Black-Scholes model.

The fair value of most option awards granted in the six months ended January 31, 2006 were estimated on the date of grant using a lattice-based option valuation model that applies the assumptions noted in the table below. The fair value of other equity awards with cliff vesting was estimated on the date of grant using a Black-Scholes option-pricing model, due to the lack of historical employee exercise behavior, which applies assumptions within the ranges as noted in the table below. Because lattice-based option valuation models incorporate ranges of assumptions for inputs, those ranges are disclosed. Expected volatilities are based on historical volatility of the Company's stock. The Company uses historical data to estimate option exercise and employee termination within the valuation model; separate groups of employees that have similar historical exercise behavior are considered separately for valuation purposes. The expected term of options granted is derived from the output of the option valuation model and represents the period of time that options granted are expected to be outstanding; the range given below results from certain groups of employees exhibiting different behavior. The risk-free rate for periods within the contractual life of the option is based on the U.S Treasury yield curve in effect at the time of grant.

	Six Months Ended	
	January 31,	
	2006	2005
Expected volatility	38.9 %	35.3 %
Expected dividends	-- %	-- %
Expected term (in years)	5.8-7.0	5.0
Risk-free rate	4.0-4.6 %	3.3 %

The Company has estimated forfeiture rates that range from 6.5% to 9.1% in its calculation of stock-based compensation expense for the six months ended January 31, 2006. These estimates are based on historical forfeiture behavior by employees of the Company.

A summary of option activity under the stock-based compensation plans as of January 31, 2006, and changes during the six months then ended is presented below (in thousands, except exercise price and term amounts):

Options	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding at August 1, 2005	3,880	\$ 18.64		
Granted	478	28.37		
Exercised	(1,367)	20.38		
Forfeited or expired	(171)	19.74		
Outstanding at January 31, 2006	2,820	\$ 19.38	7.3 years	\$ 31,142
Exercisable at January 31, 2006	1,685	\$ 17.76	5.1 years	\$ 21,306

The weighted-average grant-date fair value of options granted during the six months ended January 31, 2006 and 2005 was \$12.16 and \$6.83, respectively. The total intrinsic value of options exercised during the six months ended January 31, 2006 and 2005 was \$16.6 million and \$1.0 million, respectively. The Company granted 169,000 restricted stock awards during the six months ended January 31, 2006 with a weighted-average grant-date fair value of \$28.27. No restricted stock awards were granted during the six months ended January 31, 2005. The Company had 14,000 restricted stock awards that vested during the six months ended January 31, 2006 and 2005.

A summary of the status of the Company's nonvested options as of January 31, 2006, and changes during the six months then ended, is presented below (in thousands, except fair value amounts):

Options	Shares	Weighted-Average Grant-Date Fair Value
Outstanding at August 1, 2005	1,472	\$ 6.17
Granted	478	12.16
Vested	(707)	5.99
Forfeited	(108)	6.84
Nonvested at January 31, 2006	1,135	\$ 8.74

A summary of the status of the Company's nonvested restricted stock awards as of January 31, 2006, and changes during the six months then ended, is presented below (in thousands, except fair value amounts):

Restricted Stock	Shares	Weighted-Average	
		Grant-Date	Fair Value
Outstanding at August 1, 2005	31	\$	15.16
Granted	169		28.27
Vested	(14)		15.66
Forfeited	(6)		28.08
Nonvested at January 31, 2006	180	\$	27.03

As of January 31, 2006, there was \$11.9 million of total unrecognized compensation expense related to nonvested share-based compensation arrangements granted under the stock-based compensation plans, of which \$3.4 million is expected to be recognized in the last two quarters of fiscal 2006 and \$5.0 million, \$3.2 million and \$311,000 of expense is expected to be recognized in fiscal 2007, fiscal 2008 and 2009, respectively, assuming no future stock-based awards.

Cash received from option exercises under all share-based payment arrangements was \$27.6 million and \$3.4 million for the six months ended January 31, 2006 and 2005, respectively. The actual tax benefit to be realized for the tax deductions from options exercised and restricted stock awards vested totaled \$6.4 million and \$1.0 million for the six months ended January 31, 2006 and 2005, respectively.

## 12. 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 (which has since been withdrawn), covering certain of the shares owned by the limited partners of Apollo. Before the conversion, Apollo owned 6.1 million shares of Class A common stock 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 only has 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 condensed balance sheet no longer presents any Class A common stock and the full balance of the Company's common stock outstanding is presented under "Common stock".

## 13. 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, SSV, Larkspur Restaurant & Bar, LLC ("Larkspur"), Vail Associates Investments, Inc., Arrabelle, 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 condensed financial information, but are not considered subsidiaries under the indentures governing the 6.75% Notes.

Presented below is the consolidated condensed financial information of Vail Resorts (or the "Parent Company"), the Guarantor Subsidiaries and the Non-Guarantor Subsidiaries. Financial information for 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 three and six months ended January 31, 2005 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 January 31, 2006, July 31, 2005 and January 31, 2005. Statements of operations are presented for the three and six months ended January 31, 2006 and 2005. Statements of cash flows are presented for the six months ended January 31, 2006 and 2005.

Investments in subsidiaries are accounted for by the Parent Company and Guarantor Subsidiaries using the equity method of accounting. Net income (loss) 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 (loss) 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 January 31, 2006 (in thousands)

	100% Owned					Eliminating Entries	Consolidated
	Parent Company	Guarantor Subsidiaries	Larkspur	Other Subsidiaries			
Current assets:							
Cash and cash equivalents	\$ --	\$ 134,279	\$ 237	\$ 41,025	\$ --	\$ --	\$ 175,541
Restricted cash	--	20,546	--	3,169	--	--	23,715
Receivables, net	--	35,038	135	4,539	--	--	39,712
Inventories, net	--	8,669	194	35,114	--	--	43,977
Other current assets	12,769	24,764	26	6,350	--	--	43,909
Total current assets	12,769	223,296	592	90,197	--	--	326,854
Property, plant and equipment, net	--	787,860	482	69,858	--	--	858,200
Real estate held for sale and investment	--	138,559	--	82,489	--	--	221,048
Goodwill, net	--	135,811	--	--	--	--	135,811
Intangible assets, net	--	42,902	--	34,639	--	--	77,541
Other assets	5,711	16,292	--	11,223	--	--	33,226
Investments in subsidiaries and advances to (from) parent	979,831	(449,031)	(160)	(70,742)	(459,898)	--	--
Total assets	\$ 998,311	\$ 895,689	\$ 914	\$ 217,664	\$ (459,898)	\$ --	\$ 1,652,680
Current liabilities:							
Accounts payable and accrued expenses	\$ 14,986	\$ 224,339	\$ 483	\$ 55,284	\$ --	\$ --	\$ 295,092
Income taxes payable	6,324	--	--	--	--	--	6,324
Long-term debt due within one year	--	4,044	--	1,629	--	--	5,673
Total current liabilities	21,310	228,383	483	56,913	--	--	307,089
Long-term debt	390,000	57,767	--	69,871	--	--	517,638
Other long-term liabilities	362	98,649	--	33,922	--	--	132,933
Deferred income taxes	--	76,770	--	267	--	--	77,037
Minority interest in net assets of consolidated subsidiaries	--	--	100	31,245	--	--	31,345
Total stockholders' equity	586,639	434,120	331	25,446	(459,898)	--	586,638
Total liabilities and stockholders' equity	\$ 998,311	\$ 895,689	\$ 914	\$ 217,664	\$ (459,898)	\$ --	\$ 1,652,680

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

	Parent Company	100% Owned Guarantor Subsidiaries	Larkspur	Other Subsidiaries	Eliminating Entries	Consolidated
<b>Current assets:</b>						
Cash and cash equivalents	\$ --	\$ 92,879	\$ 105	\$ 43,596	\$ --	\$ 136,580
Restricted cash	--	7,390	--	10,863	--	18,253
Receivables, net	--	27,867	103	5,166	--	33,136
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
<b>Total current assets</b>	<b>11,418</b>	<b>178,471</b>	<b>405</b>	<b>92,590</b>	<b>--</b>	<b>282,884</b>
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
Goodwill, net	--	118,475	--	17,032	--	135,507
Intangible assets, net	--	60,482	--	16,492	--	76,974
Other assets	6,067	16,320	--	10,248	--	32,635
Investments in subsidiaries and advances to (from) parent	942,888	(424,752)	(202)	(58,036)	(459,898)	--
<b>Total assets</b>	<b>\$ 960,373</b>	<b>\$ 832,198</b>	<b>\$ 733</b>	<b>\$ 192,515</b>	<b>\$ (459,898)</b>	<b>\$ 1,525,921</b>
<b>Current liabilities:</b>						
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
<b>Total current liabilities</b>	<b>29,579</b>	<b>161,919</b>	<b>273</b>	<b>32,581</b>	<b>--</b>	<b>224,352</b>
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
<b>Total stockholders' equity</b>	<b>540,527</b>	<b>435,411</b>	<b>360</b>	<b>24,129</b>	<b>(459,898)</b>	<b>540,529</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 960,373</b>	<b>\$ 832,198</b>	<b>\$ 733</b>	<b>\$ 192,515</b>	<b>\$ (459,898)</b>	<b>\$ 1,525,921</b>

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

	Parent Company	100% Owned Guarantor Subsidiaries	Larkspur	Other Subsidiaries	Eliminating Entries	Consolidated
<b>Current assets:</b>						
Cash and cash equivalents	\$ --	\$ 12,095	\$ 224	\$ 6,798	\$ --	\$ 19,117
Restricted cash	--	19,007	--	--	--	19,007
Receivables, net	4,976	41,271	127	5,543	--	51,917
Inventories, net	--	8,273	176	28,915	--	37,364
Other current assets	10,394	22,613	36	1,773	--	34,816
<b>Total current assets</b>	<b>15,370</b>	<b>103,259</b>	<b>563</b>	<b>43,029</b>	<b>--</b>	<b>162,221</b>
Property, plant and equipment, net	--	923,143	590	67,954	--	991,687
Real estate held for sale and investment	--	124,015	--	11,282	--	135,297
Goodwill, net	--	128,342	--	16,748	--	145,090
Intangible assets, net	(10,188)	76,609	--	17,199	--	83,620
Other assets	6,412	17,207	--	10,275	--	33,894
Investments in subsidiaries and advances to (from) parent	882,224	(5,755)	(308)	5,586	(881,747)	--
<b>Total assets</b>	<b>\$ 893,818</b>	<b>\$ 1,366,820</b>	<b>\$ 845</b>	<b>\$ 172,073</b>	<b>\$ (881,747)</b>	<b>\$ 1,551,809</b>
<b>Current liabilities:</b>						
Accounts payable and accrued expenses	\$ 12,771	\$ 244,426	\$ 346	\$ 31,610	\$ --	\$ 289,153
Long-term debt due within one year	--	575	--	1,647	--	2,222
<b>Total current liabilities</b>	<b>12,771</b>	<b>245,001</b>	<b>346</b>	<b>33,257</b>	<b>--</b>	<b>291,375</b>
Long-term debt	390,000	87,134	--	69,287	--	546,421
Other long-term liabilities	313	102,029	--	39	--	102,381
Deferred income taxes	(4,883)	84,290	--	507	--	79,914
Minority interest in net assets of consolidated subsidiaries	--	7,454	100	28,546	--	36,100
<b>Total stockholders' equity</b>	<b>495,617</b>	<b>840,912</b>	<b>399</b>	<b>40,437</b>	<b>(881,747)</b>	<b>495,618</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 893,818</b>	<b>\$ 1,366,820</b>	<b>\$ 845</b>	<b>\$ 172,073</b>	<b>\$ (881,747)</b>	<b>\$ 1,551,809</b>

**Supplemental Condensed Consolidating Statement of Operations**  
**For the three months ended January 31, 2006**  
(in thousands)

	Parent Company	100% Owned Guarantor Subsidiaries	Larkspur	Other Subsidiaries	Eliminating Entries	Consolidated
Total net revenue	\$ --	\$ 226,506	\$ 1,364	\$ 62,206	\$ (2,060)	\$ 288,016
Total operating expense	4,082	160,439	1,233	47,314	(2,060)	211,008
(Loss) income from operations	(4,082)	66,067	131	14,892	--	77,008
Other expense, net	(6,872)	(722)	(9)	(802)	--	(8,405)
Equity investment income, net	--	1,486	--	--	--	1,486
Gain on sale of businesses, net	--	4,625	--	--	--	4,625
Gain on put options, net	--	1,026	--	--	--	1,026
Minority interest in income of consolidated subsidiaries, net	--	--	--	(5,231)	--	(5,231)
(Loss) income before income taxes	(10,954)	72,482	122	8,859	--	70,509
Benefit (provision) for income taxes	4,272	(31,831)	--	61	--	(27,498)
Net (loss) income before equity in income (loss) of consolidated subsidiaries	(6,682)	40,651	122	8,920	--	43,011
Equity in income (loss) of consolidated subsidiaries	49,691	--	--	--	(49,691)	--
Net income (loss)	\$ 43,009	\$ 40,651	\$ 122	\$ 8,920	\$ (49,691)	\$ 43,011

**Supplemental Condensed Consolidating Statement of Operations**  
**For the three months ended January 31, 2005**  
(in thousands)

	Parent Company	100% Owned Guarantor Subsidiaries	Larkspur	Other Subsidiaries	Eliminating Entries	Consolidated
Total net revenue	\$ 1	\$ 216,144	\$ 1,084	\$ 51,049	\$ (3,650)	\$ 264,628
Total operating expense	4,479	161,554	986	40,660	(3,650)	204,029
(Loss) income from operations	(4,478)	54,590	98	10,389	--	60,599
Other expense, net	(7,342)	(2,075)	(14)	(732)	--	(10,163)
Equity investment loss, net	--	(14)	--	--	--	(14)
Gain on sale of business	--	5,693	--	--	--	5,693
Gain on put options, net	--	975	--	--	--	975
Minority interest in (income) loss of consolidated subsidiaries, net	--	76	--	(4,741)	--	(4,665)
(Loss) income before income taxes	(11,820)	59,245	84	4,916	--	52,425
Benefit (provision) for income taxes	24,789	(45,014)	--	41	--	(20,184)
Net income before equity in income (loss) of consolidated subsidiaries	12,969	14,231	84	4,957	--	32,241
Equity in income (loss) of consolidated subsidiaries	19,272	--	--	--	(19,272)	--
Net income (loss)	\$ 32,241	\$ 14,231	\$ 84	\$ 4,957	\$ (19,272)	\$ 32,241

**Supplemental Condensed Consolidating Statement of Operations**  
**For the six months ended January 31, 2006**  
(in thousands)

	Parent Company	100% Owned Guarantor Subsidiaries	Larkspur	Other Subsidiaries	Eliminating Entries	Consolidated
Total net revenue	\$ --	\$ 287,303	\$ 1,690	\$ 88,510	\$ (4,067)	\$ 373,436
Total operating expense	7,850	261,145	1,821	79,559	(4,067)	346,308
(Loss) income from operations	(7,850)	26,158	(131)	8,951	--	27,128
Other expense, net	(13,632)	(1,571)	(13)	(1,438)	--	(16,654)
Equity investment income, net	--	2,405	--	--	--	2,405
Gain on sale of businesses, net	--	4,625	--	--	--	4,625
Gain on put options, net	--	34	--	--	--	34
Minority interest in income of consolidated subsidiaries, net	--	--	--	(3,305)	--	(3,305)
(Loss) income before income taxes	(21,482)	31,651	(144)	4,208	--	14,233
Benefit (provision) for income taxes	8,378	(14,036)	--	107	--	(5,551)
Net (loss) income before equity in income (loss) of consolidated subsidiaries	(13,104)	17,615	(144)	4,315	--	8,682
Equity in income (loss) of consolidated subsidiaries	21,785	--	--	--	(21,785)	--
Net income (loss)	\$ 8,681	\$ 17,615	\$ (144)	\$ 4,315	\$ (21,785)	\$ 8,682

**Supplemental Condensed Consolidating Statement of Operations**  
**For the six months ended January 31, 2005**  
(in thousands)

	Parent Company	100% Owned Guarantor Subsidiaries	Larkspur	Other Subsidiaries	Eliminating Entries	Consolidated
Total net revenue	\$ 1	\$ 294,502	\$ 1,431	\$ 72,697	\$ (6,119)	\$ 362,512
Total operating expense	5,969	275,597	1,504	66,583	(6,119)	343,534
(Loss) income from operations	(5,968)	18,905	(73)	6,114	--	18,978
Other expense, net	(14,187)	(5,014)	(16)	(1,427)	--	(20,644)
Equity investment loss, net	--	(1,173)	--	--	--	(1,173)
Gain on sale of business	--	5,693	--	--	--	5,693
Gain on put options, net	--	1,188	--	--	--	1,188
Minority interest in income (loss) of consolidated subsidiaries, net	--	76	--	(2,841)	--	(2,765)
(Loss) income before income taxes	(20,155)	19,675	(89)	1,846	--	1,227
Benefit (provision) for income taxes	8,333	(8,893)	--	68	--	(492)
Net (loss) income before equity in income (loss) of consolidated subsidiaries	(11,822)	10,782	(89)	1,914	--	785
Equity in income (loss) of consolidated subsidiaries	12,607	--	--	--	(12,607)	--
Net income (loss)	\$ 785	\$ 10,782	\$ (89)	\$ 1,914	\$ (12,607)	\$ 785

**Supplemental Condensed Consolidating Statement of Cash Flows**  
**For the six months ended January 31, 2006**  
(in thousands)

	Parent Company	100% Owned Guarantor Subsidiaries	Larkspur	Other Subsidiaries	Consolidated
Net cash provided by operating activities	\$ (19,028)	\$ 95,386	\$ 89	\$ 23,979	\$ 100,426
Cash flows from investing activities:					
Capital expenditures	--	(48,510)	(31)	(6,571)	(55,112)
Investments in real estate	--	(30,513)	--	(34,392)	(64,905)
Proceeds from sale of businesses	--	30,712	--	--	30,712
Other investing activities, net	--	414	--	(4,432)	(4,018)
Net cash used in investing activities	--	(47,897)	(31)	(45,395)	(93,323)
Cash flows from financing activities:					
Proceeds from borrowings under long-term debt	--	20,392	--	5,821	26,213
Payments of long-term debt	--	(24,909)	--	--	(24,909)
Proceeds from exercise of stock options	27,635	--	--	--	27,635
Other financing activities, net	6,376	1,792	--	(5,249)	2,919
Advances (from) to affiliates	(14,983)	(3,364)	74	18,273	--
Net cash (used in) provided by financing activities	19,028	(6,089)	74	18,845	31,858
Net increase (decrease) in cash and cash equivalents	--	41,400	132	(2,571)	38,961
Cash and cash equivalents:					
Beginning of period	--	92,879	105	43,596	136,580
End of period	\$ --	\$ 134,279	\$ 237	\$ 41,025	\$ 175,541

**Supplemental Condensed Consolidating Statement of Cash Flows**  
**For the six months ended January 31, 2005**  
(in thousands)

	Parent Company	100% Owned Guarantor Subsidiaries	Larkspur	Other Subsidiaries	Consolidated
Net cash flows (used in) provided by operating activities	\$ (2,195)	\$ 93,793	\$ 118	\$ 19,004	\$ 110,720
Cash flows from investing activities:					
Capital expenditures	--	(42,367)	(14)	(6,182)	(48,563)
Investments in real estate	--	(25,777)	--	(50)	(25,827)
Proceeds from sale of business	--	12,736	--	--	12,736
Other investing activities, net	--	(687)	--	223	(464)
Net cash used in investing activities	--	(56,095)	(14)	(6,009)	(62,118)
Cash flows from financing activities:					
Proceeds from borrowings under long-term debt	--	62,217	--	--	62,217
Payments of long-term debt	--	(136,213)	--	(3,140)	(139,353)
Advances to (from) affiliates	2,195	11,265	(51)	(13,409)	--
Other financing activities, net	--	1,470	--	(147)	1,323

Net cash provided by (used in ) financing activities	2,195	(61,261)	(51)	(16,696)	(75,813)
Net increase (decrease) in cash and cash equivalents	--	(23,563)	53	(3,701)	(27,211)
Cash and cash equivalents:					
Beginning of period	--	42,456	171	3,701	46,328
End of period	\$ --	\$ 18,893	\$ 224	\$ --	\$ 19,117

#### 14. Subsequent Events

##### Restructuring

On February 28, 2006, the Company named Robert Katz as Chief Executive Officer, effective immediately. Mr. Katz succeeded Adam Aron who resigned as our Chairman and Chief Executive Officer on February 27, 2006. In connection with Mr. Aron's resignation, the Company entered into a separation agreement with Mr. Aron, whereby the Company will record \$2.7 million of separation related expenses in the third quarter of fiscal year 2006. The Company also announced that Joe Micheletto had been elected as Chairman of the Board.

In addition, the Company announced on February 28, 2006 that the Company's corporate and administrative operations that are currently located in Avon, Colorado will relocate to new offices in the metro Denver area, with some positions moving to a location near Keystone Resort in Summit County, Colorado. The Company anticipates that the costs associated with the relocation (which may include moving expenses, relocation packages provided to its employees, contract termination fees, consultants fees, and one-time termination benefits) will be incurred during the remainder of fiscal year 2006 and the first quarter of fiscal year 2007.

##### Share Repurchase Plan

On March 9, 2006, the Company's Board of Directors approved the repurchase of up to three million shares of common stock. Shares of common stock purchased pursuant to the repurchase program will be held as treasury shares and may be used for the issuance of shares under the Company's employee stock plans. Acquisitions under the share repurchase program will be made from time to time at prevailing prices as permitted by applicable laws, and subject to market conditions and other factors. The Company is under no obligation to purchase any shares under the stock repurchase program and the timing as well as the number of shares that may be repurchased under the program will depend on a number of factors including the Company's future financial performance, the Company's available cash resources and competing uses for cash that may arise in the future, the restrictions in the Company's credit agreements and in the indenture governing the Company's 6.75% Notes, prevailing prices of the Company's common stock, and the number of shares that become available for sale at prices that the Company believes are attractive. The stock repurchase program may be discontinued at any time and is not expected to have a significant impact on the Company's capitalization.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following Management's Discussion and Analysis of the financial condition and results of operations of Vail Resorts, Inc. ("Vail Resorts") and its subsidiaries (collectively, the "Company") should be read in conjunction with the Company's Annual Report on Form 10-K for the year ended July 31, 2005 ("Form 10-K") and the Consolidated Condensed Financial Statements as of January 31, 2006 and 2005 and for the three and six months then ended, included in Part I, Item 1 of this Form 10-Q, which provide additional information regarding the financial position, results of operations and cash flows of the Company. 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, war, terrorism and other factors discussed elsewhere herein and in the Company's filings with the Securities and Exchange Commission ("SEC").

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 the non-GAAP measures, Reported EBITDA (defined as segment net revenues less segment specific operating expenses plus gain on transfer of property, as applicable, plus segment equity income or loss) and Reported EBITDA excluding stock-based compensation, in the following discussion because management considers these measurements 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 and Reported EBITDA excluding stock-based compensation. The Company primarily uses Reported EBITDA excluding stock-based compensation targets in determining management bonuses. Additionally, the Company believes that Reported EBITDA excluding stock-based compensation is an important measurement for comparability purposes as prior periods do not reflect the impact of the adoption of Statement of Financial Accounting Standards ("SFAS") No. 123R, "Share-Based Payment" ("SFAS 123R"). Refer to the end of the Results of Operations section for a reconciliation of Reported EBITDA and Reported EBITDA excluding stock-based compensation to net income (loss).

Reported EBITDA and Reported EBITDA excluding stock-based compensation are not measures of financial performance under accounting principles generally accepted in the United States of America. Items excluded from Reported EBITDA and Reported EBITDA excluding stock-based compensation are significant components in understanding and assessing financial performance. Reported EBITDA and Reported EBITDA excluding stock-based compensation 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 condensed financial statements as indicators of financial performance or liquidity. Because Reported EBITDA and Reported EBITDA excluding stock-based compensation are not measurements determined in accordance with accounting principles generally accepted in the United States of America and are thus susceptible to varying calculations, Reported EBITDA and Reported EBITDA excluding stock-based compensation 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. The Mountain segment is comprised of the operations 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 International, LLC ("RockResorts") brand, including five proximate to the Company's ski resorts, 2) the operations of Grand Teton Lodge Company ("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 five ski resorts opened for business in November, which falls in the Company's second fiscal quarter; the period during which the ski resorts are open (generally November through April) is the peak operating season for the Mountain segment. The largest source of revenue in the second quarter of fiscal 2006 is the sale of lift tickets (including season passes), which represented approximately 39% of net revenue during the quarter. 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 54% of the Company's skier visits, while the In-State market comprises approximately 46% of the Company's skier visits. 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, the Company sells season passes, which are marketed primarily to In-State guests. Through January 31, 2006, approximately 27% of the total lift revenue recognized resulted from the sale of season passes (which season pass revenue recognized represents approximately 52% of total fiscal 2006 season pass sales through January 31, 2006). The cost structure of ski resort operations is largely fixed (with the exception of retail/rental and dining); 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; therefore, these properties benefit from ski operations in the Mountain segment in the Company's second and third fiscal quarters. 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 the seasonality of those hotels and trends within the overall travel industry. Revenues of the Lodging segment during the Company's first and fourth fiscal quarters are generated primarily by the operations of GTLC (as GTLC's peak operating season occurs during the summer months), golf operations, and seasonally low operations from the Company's owned and managed properties.

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 attempts to mitigate the risk of vertical development by utilizing fixed price contracts, pre-selling all or a portion of the project, requiring significant non-refundable deposits and obtaining 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

Together with those factors identified in the Company's Form 10-K, 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. Total season pass sales through January 31, 2006 have increased \$5.9 million in fiscal 2006 as compared to fiscal 2005, of which \$3.0 million has been recognized as of January 31, 2006. The Company will recognize the remainder of season pass sales (\$29.5 million) primarily in the Company's third quarter of fiscal 2006.

The Company raised 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 timing of major holidays can impact vacation patterns and therefore visitation at the Company's ski resorts. Easter falls in mid-April in fiscal 2006, the impact of which management anticipates will compare unfavorably to the impact of the March Easter holiday in fiscal 2005.

In fiscal 2006 and 2005, the Company successfully executed its strategy to reduce hotel ownership in favor of selectively increasing its managed property portfolio with the sales of the assets constituting the Snake River Lodge & Spa ("SRL&S") in January 2006, The Lodge at Rancho Mirage ("Rancho Mirage") in July 2005, Vail Marriott Mountain Resort & Spa ("Vail Marriott") in June 2005, and the sale of the Company's investment in the Ritz-Carlton, Bachelor Gulch ("BG Resort") in December 2004. The Company retained management contracts for SRL&S, Rancho Mirage and Vail Marriott. 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. On March 6, 2006, RockResorts was notified by the ownership of Cheeca Lodge & Spa, a RockResorts managed property, that its management agreement was being terminated effective immediately. RockResorts believes that the termination is in violation of the management agreement and intends to pursue its legal rights. RockResorts recorded \$0.7 million in revenue related to the management of this property in fiscal year 2005. Additionally, the Company continues to pursue new management contracts, and obtained management contracts for the Austria Haus Hotel (located in Vail Village) in December 2005 and the Lodge & Spa at Cordillera in May 2005.

GTLC has operated three lodging properties, food and beverage services, retail, camping and other services within Grand Teton National Park under a concession contract with the National Park Service (the "Park Service"). The Park Service is currently considering bids for a new concession contract and in October 2005, GTLC submitted its bid to continue as concessionaire for another 15 years. If the Company is not awarded the new contract, the Company's Lodging Reported EBITDA following the 2006 summer concession season will be significantly impacted due to the historically positive Reported EBITDA generated by GTLC. However, in such event, the Company would receive the proceeds for the value of its possessory interest which value has been agreed to by the Park Service in an amendment to the existing contract and must be paid by any new concessionaire. The Company estimates that proceeds to be received for its possessory interest, if in fact it is not successful in retaining the concession contract, will exceed its investment in GTLC.

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 and beyond. Recent increases in construction costs, including construction-related commodities, have resulted in increases in the total costs for certain of the Company's current development projects. Additionally, the profitability and/or viability of current or proposed real estate development projects could be adversely affected by continued escalation in construction costs and/or a slow-down in market demand, as well as project difficulties or delays and the resulting potential negative financial impact associated with design or construction issues that may arise in the course of construction.

The Company's operating expenses have increased by \$1.6 million and \$3.3 million for the three and six months ended January 31, 2006, as compared to same periods in fiscal 2005 due to the adoption of SFAS 123R, after considering the change in the Company's compensation strategy to issue more restricted stock to replace the granting of stock options to certain levels of employees. The Company cannot predict the impact to future operating results of expensing stock-based compensation as the expense is predicated on the amount and type of future stock based compensation awards granted and the fair value of those awards to be determined at the time of grant.

In connection with Adam Aron's resignation as our Chairman and Chief Executive Officer on February 27, 2006, the Company entered into a separation agreement with Mr. Aron, whereby the Company will record \$2.7 million of separation related expenses in the third quarter of fiscal year 2006. In addition, the Company announced on February 28, 2006 that the Company's corporate and administrative operations that are currently located in Avon, Colorado will relocate to new offices in the metro Denver area, with some positions moving to a location near Keystone Resort in Summit County, Colorado. The Company anticipates that the restructuring charges associated with this announcement may have an unfavorable impact on the Company's results of operations for the remainder of fiscal year 2006 and the first quarter of fiscal year 2007.

The data provided in this section should be read in conjunction with the risk factors identified elsewhere in this document and within the Company's 10-K.

## RESULTS OF OPERATIONS

### Summary

The Company recorded net income of \$43.0 million for the three months ended January 31, 2006 as compared to net income of \$32.2 million for the three months ended January 31, 2005. The \$10.8 million increase in the Company's net income is primarily attributable to a \$15.9 million improvement in Mountain Reported EBITDA excluding stock-based compensation and a \$2.6 million improvement in Real Estate Reported EBITDA excluding stock-based compensation, partially offset by a \$1.7 million decrease in Lodging Reported EBITDA excluding stock-based compensation, a \$1.6 million increase in stock-based compensation expense recorded pursuant to the adoption of SFAS 123R and a \$1.1 million decrease in gain on sale of businesses, net in the three months ended January 31, 2006 as compared to the same period last year. In addition, depreciation and amortization expense decreased \$1.8 million and interest expense decreased \$1.3 million in the three months ended January 31, 2006 as compared to the same period last year.

The Company recorded net income of \$8.7 million for the six months ended January 31, 2006 as compared to net income of \$0.8 million for the six months ended January 31, 2005. The \$7.9 million increase in the Company's net income is primarily attributable to a \$14.3 million improvement in Mountain Reported EBITDA excluding stock-based compensation, a \$2.0 million improvement in Lodging Reported EBITDA excluding stock-based compensation, a decrease in depreciation and amortization expense of \$4.0 million and a decrease in interest expense of \$2.4 million, partially offset by a \$6.7 million decrease in Real Estate Reported EBITDA excluding stock-based compensation, a \$3.3 million increase in stock-based compensation expense recorded pursuant to the adoption of SFAS 123R and a \$1.1 million decrease in gain on sale of businesses, net in the six months ended January 31, 2006 as compared to the same period last year.

Effective August 1, 2005, the Company adopted the fair value recognition provisions of SFAS 123R, using the modified prospective method. As a result, the Company recorded total stock-based compensation expense of \$1.8 million and \$3.6 million in the three and six months ended January 31, 2006, respectively (see Note 2, Summary of Significant Accounting Policies and Note 11, Stock Compensation Plans, of the notes to consolidated condensed financial statements, for more information regarding this item).

Presented below is more detailed comparative data and discussion regarding the Company's results of operations for the three and six months ended January 31, 2006 versus the three and six months ended January 31, 2005.

### Mountain Segment

Mountain segment operating results for the three and six months ended January 31, 2006 and 2005 are presented by category as follows (in thousands, except effective ticket price, "ETP", amounts):

	Three Months Ended		Percentage Increase
	January 31,		
	2006	2005	
Lift tickets	\$ 113,468	\$ 102,882	10.3 %
Ski school	30,752	27,092	13.5 %
Dining	21,266	19,415	9.5 %
Retail/rental	56,913	45,776	24.3 %
Other	23,829	19,001	25.4 %
Total Mountain net operating revenue	246,228	214,166	15.0 %
Total Mountain operating expense	150,666	132,849	13.4 %
Mountain equity investment income, net	1,455	771	88.7 %
Total Mountain Reported EBITDA	\$ 97,017	\$ 82,088	18.2 %
Total Mountain Reported EBITDA excluding stock-based compensation	\$ 98,016	\$ 82,192	19.3 %
Total skier visits	2,875	2,664	7.9 %
ETP	\$ 39.47	\$ 38.62	2.2 %

Total Mountain Reported EBITDA includes \$999,000 and \$104,000 of stock-based compensation expense for the three months ended January 31, 2006 and 2005, respectively.

	Six Months Ended		Percentage Increase
	January 31,		
	2006	2005	
Lift tickets	\$ 113,468	\$ 102,882	10.3 %
Ski school	30,752	27,092	13.5 %
Dining	24,772	23,401	5.9 %
Retail/rental	78,618	62,975	24.8 %
Other	38,895	32,309	20.4 %
Total Mountain net operating revenue	286,505	248,659	15.2 %
Total Mountain operating expense	222,957	196,811	13.3 %
Mountain equity investment income, net	2,305	1,565	47.3 %
Total Mountain Reported EBITDA	\$ 65,853	\$ 53,413	23.3 %
Total Mountain Reported EBITDA excluding stock-based compensation	\$ 67,807	\$ 53,570	26.6 %
Total skier visits	2,875	2,664	7.9 %
ETP	\$ 39.47	\$ 38.62	2.2 %

Total Mountain Reported EBITDA includes \$2.0 million and \$157,000 of stock-based compensation expense for the six months ended January 31, 2006 and 2005, respectively.

Certain reclassifications have been made to the Mountain segment operating results for the three and six months ended January 31, 2005 to conform to current period presentation.

As the Company's five ski resorts generally open during the second quarter, the results of the six months ended January 31, 2006 and 2005 are driven by substantially the same factors and trends as the three months ended January 31, 2006 and 2005.

Lift revenues increased 10.3% during the quarter ended January 31, 2006 compared to the same quarter last year due to increased ticket pricing, as well as an increase in visitation and an increase in season pass sales. ETP excluding season pass revenue increased 6.5% due primarily to absolute price increases. Overall, ETP increased by 2.2% due to increased pricing which was partially offset by increased early season visitation by season pass holders as a result of favorable early season snow conditions in Colorado. Total season pass revenue recognized through January 31, 2006 increased by approximately \$3.0 million in the quarter compared to the same period last year due to an increase in sales volume. Visitation at the Company's Colorado resorts was up 11.4%, while visitation at the Company's Heavenly resort was down 8.1% due to unfavorable weather conditions, including during the Christmas holiday period.

Revenues from ancillary businesses improved commensurate with the increased skier visitation with the exception of dining, which experienced a lower percentage growth due to the reduction in revenue resulting from the conversion of certain formerly owned restaurants to leased operations. Additionally, retail/rental revenue grew \$6.7 million as a result of the acquisition by SSI Venture LLC ("SSV") in the first quarter of fiscal 2006 of six retail locations in the San Francisco Bay Area. Other revenue growth was primarily due to increased marketing activities resulting in higher marketing revenues being earned from strategic partners.

Segment expenses increased 13.4% during the quarter ended January 31, 2006 compared to the same period last year due primarily to the retail/rental operations resulting from increased sales volume and the acquisition previously mentioned above. Excluding retail/rental, expenses during the quarter increased 7.1%, or \$9.5 million, of which only \$4.0 million related to the Company's on-mountain services, supporting the fixed cost nature of the ski operations. The remaining expense increases are attributed to increased marketing expense, stock-based compensation expense, corporate allocations and higher costs associated with other ancillary businesses.

### Lodging Segment

Lodging segment operating results for the three and six months ended January 31, 2006 and 2005 are presented by category as follows (in thousands, except Average Daily Rate "ADR"):

	Three Months Ended		Percentage Increase (Decrease)
	January 31,		
	2006	2005	
Total Lodging net operating revenue	\$ 32,079	\$ 42,589	(24.7) %
Total Lodging operating expense	32,894	40,570	(18.9) %
Lodging equity investment loss, net	--	(761)	100.0 %



Total Lodging Reported EBITDA	\$ (815)	\$ 1,258	(164.8) %
Total Lodging Reported EBITDA excluding stock-based compensation	\$ (401)	\$ 1,293	(131.0) %
ADR	\$ 242.67	\$ 223.72	8.5 %

Total Lodging Reported EBITDA includes \$414,000 and \$35,000 of stock-based compensation expense for the three months ended January 31, 2006 and 2005, respectively.

	Six Months Ended January 31,		Percentage Increase (Decrease)
	2006	2005	
Total Lodging net operating revenue	\$ 73,829	\$ 88,864	(16.9) %
Total Lodging operating expense	70,535	84,119	(16.1) %
Lodging equity investment loss, net	--	(2,679)	100.0 %
Total Lodging Reported, EBITDA	\$ 3,294	\$ 2,066	59.4 %
Total Lodging Reported EBITDA excluding stock-based compensation	\$ 4,115	\$ 2,120	94.1 %
ADR	\$ 201.00	\$ 187.95	6.9 %

Total Lodging Reported EBITDA includes \$821,000 and \$54,000 of stock-based compensation expense for the six months ended January 31, 2006 and 2005, respectively.

In fiscal 2005, the Company sold its minority interest in BG Resort and the assets constituting the Vail Marriott and Rancho Mirage. For the three and six months ended January 31, 2005, Lodging Reported EBITDA includes revenues of \$11.9 million and \$19.0 million, operating expenses of \$9.6 million and \$17.6 million, and equity investment losses of \$761,000 and \$2.7 million related to these entities, respectively. Commencing with the sale of the assets constituting Vail Marriott and Rancho Mirage, the Company is earning base management fees of approximately 3% of each hotel's revenue. Lodging Reported EBITDA includes incremental management fee revenues of \$366,000 and \$595,000 for the Vail Marriott and Rancho Mirage for the three and six months ended January 31, 2006, respectively. On January 19, 2006, the Company sold the assets constituting SRL&S, which had minimal impact on Lodging segment results for the three and six months ended January 31, 2006 due to the timing of the sale.

Excluding the impact of the sales of Vail Marriott and Rancho Mirage, revenue increased \$1.4 million, or 4.6%, for the three months ended January 31, 2006, and increased \$3.9 million, or 5.6%, for the six months ended January 31, 2006, due to increases in ADR of 7.0% and 5.2% and occupancy rates of 4.4% and 7.5% for the three and six months ended January 31, 2006, respectively. This was primarily driven by the properties at or around the Company's ski resorts and increases in group business, particularly in the Keystone markets. The increased group business is a result of the overall improvement in the lodging industry and the Company's ability to capture and maximize on the improved group business market. Excluding the impact of the sales of Vail Marriott and Rancho Mirage and stock-based compensation expense, expenses increased \$1.5 million and \$3.2 million, or 5.0% and 4.8%, for the three and six months ended January 31, 2006, respectively, due to increased variable costs associated with occupancy and increased labor and benefits costs.

#### Real Estate Segment

Real Estate segment operating results for the three and six months ended January 31, 2006 and 2005 are presented by major project categories as follows (in thousands):

	Three Months Ended January 31,		Percentage Increase (Decrease)
	2006	2005	
Single family land sales	\$ 1,750	\$ 2,666	(34.4) %
Multi-family land sales	7,562	4,979	51.9 %
Other	397	228	74.1 %
Total Real Estate net operating revenue	9,709	7,873	23.3 %
Total Real Estate operating expense	6,383	6,714	(4.9) %
Real Estate equity investment income (loss), net	31	(24)	229.2 %
Total Real Estate Reported EBITDA	\$ 3,357	\$ 1,135	195.8 %
Total Real Estate Reported EBITDA excluding stock-based compensation	\$ 3,758	\$ 1,172	220.6 %

Real Estate Reported EBITDA includes \$401,000 and \$37,000 of stock-based compensation expense for the three months ended January 31, 2006 and 2005, respectively.

	Six Months Ended January 31,		Percentage Increase (Decrease)
	2006	2005	
Single family land sales	\$ 2,744	\$ 19,505	(85.9) %
Multi-family land sales	9,849	5,168	90.6 %
Other	509	316	61.1 %
Total Real Estate net operating revenue	13,102	24,989	(47.6) %
Total Real Estate operating expense	12,452	16,775	(25.8) %
Real Estate equity investment income (loss), net	100	(59)	269.5 %
Total Real Estate Reported EBITDA	\$ 750	\$ 8,155	(90.8) %
Total Real Estate Reported EBITDA excluding stock-based compensation	\$ 1,531	\$ 8,211	(81.4) %

Real Estate Reported EBITDA includes \$781,000 and \$56,000 of stock-based compensation expense for the six months ended January 31, 2006 and 2005, respectively.

Certain reclassifications have been made to the Real Estate segment operating results for the three and six months ended January 31, 2005 to conform to current period presentation.

The Company's Real Estate operating revenues are primarily driven by the timing of closings and the mix of real estate sold in any given period. Different types of projects have different revenue and expense volumes and margins; therefore, as the real estate inventory mix changes it can greatly impact Real Estate segment operating revenues and operating expenses, and, to a lesser degree, Real Estate Reported EBITDA.

The Company is currently in the development stage for several major real estate projects, including The Arrabelle at Vail Square, Gore Creek Place Townhomes, the Jackson Hole Golf & Tennis residential development and the second phase of the Mountain Thunder condominiums in Breckenridge, among other projects. Accordingly, there were minimal closings on real estate sales in the three and six months ended January 31, 2006. Revenues in the current year were primarily generated by contingent gains on development parcel sales that closed in prior periods. Operating expense included cost of sales commensurate with revenue recognized, as well as overhead costs such as labor and benefits (including stock-based compensation expense), marketing costs and professional services fees. Real Estate Reported EBITDA in the three and six months ended January 31, 2005 were driven primarily by percentage of completion recognition on Jackson Hole Golf & Tennis lot sales and recognition of contingent gains associated with development parcels sold in prior periods, and for the six months ended January 31, 2005, the sale of four single-family homesites in LionsHead (Vail) which closed in the first quarter of fiscal 2005.

#### Other Items

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

**Depreciation and amortization.** Depreciation and amortization expense for the three and six months ended January 31, 2006 decreased primarily as a result of a decrease in depreciation of \$1.7 million and \$3.5 million for the three and six months ended January 31, 2006, respectively, due to the sale of assets constituting the Vail Marriott and Rancho Mirage and the classification of the assets constituting SRL&S as held for sale prior to completing the sale in January 2006. Additionally, higher fiscal 2005 accelerated depreciation for certain assets which were retired in advance of their previously estimated useful lives as a result of fiscal 2005 decisions related to redevelopment and capital improvements was mostly offset by an increased fixed asset base due to capital expenditures in the current year. The average annualized depreciation rate for the three and six months ended January 31, 2006 was 7.9% and 7.4%, respectively, as compared to an average annualized depreciation rate for the three and six months ended January 31, 2005 of 7.8% and 7.4%, respectively.

**Mold remediation credit.** During the second fiscal quarter of 2006, Breckenridge Terrace received reimbursement from third parties for costs incurred in conjunction with its mold remediation efforts in the amount of \$852,000, which has been recognized by the Company as reduction of the remediation expense that was recognized in previous periods. See Note 10, Commitments and Contingencies, of the notes to consolidated condensed financial statements, for more information regarding this item.

**Interest expense.** The Company's primary sources of interest expense are its senior credit facility ("Credit Facility"), including the \$400 million revolving credit facility ("Credit Facility Revolver") thereunder, the Industrial Development Bonds, Employee Housing Bonds and the Company's Senior Subordinated Notes due 2014 ("6.75% Notes"). The decrease in interest expense for the three and six months ended January 31, 2006 versus the same period in the prior year is due to the January 2005 Credit Facility refinancing which, among other things, resulted in the extinguishment of the Credit Facility Term Loan and improved pricing for interest rate and commitment fee margins. In addition, the Funded Debt to Adjusted EBITDA ratio (as defined in the Fourth Amended and Restated Credit Agreement, dated as of January 28, 2005, between the Vail Corporation (a wholly owned subsidiary of the Company) Bank of America, N.A., as administrative agent and the Lenders party thereto ("Credit Agreement") underlying the Credit Facility) improved, which determines margin levels for pricing on interest rates and commitment fees under the Credit Facility, and average borrowings under the Credit Facility Revolver were less than \$0.1 million for the three and six months ended January 31, 2006, respectively, versus \$8.3 million and \$6.6 million for the three and six months ended January 31, 2005, respectively.

**Gain on sale of businesses, net.** The Company recorded a \$4.7 million gain in the three and six months ended January 31, 2006 associated with the sale of the assets constituting SRL&S. Additionally, the Company recorded an \$82,000 loss in the three and six months ended January 31, 2006 associated with the sale of the Company's interest in BG Resort due to the settlement of certain contingencies. The Company recorded a \$5.7 million gain in the three and six months ended January 31, 2005 associated with the sale of the Company's interest in BG Resort. See Note 7, Sale of Businesses, in the notes to consolidated condensed financial statements, for more information regarding the sale of businesses.

**Gain/loss on put option.** 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 the three and six months ended January 31, 2006 was related to the decrease in the estimated fair market value of the liability associated with the RTP put option. The net gain in the three and six months ended January 31, 2005 was primarily related to the decrease in the estimated fair market value of the liabilities associated with the SSV and RTP put options. See Note 8, Put and Call Options, of the notes to consolidated condensed financial statements, for more information regarding the Company's put options.

**Income taxes.** The effective tax rate for the three and six months ended January 31, 2006 was 39.0% compared to 38.5% for the same periods last year. The interim period effective tax rate for the current and prior year is primarily driven by the anticipated pre-tax book income for the full fiscal year and an estimate of the amount of non-deductible items for tax purposes.

The Internal Revenue Service has completed its exam of the Company's tax returns for tax years 2001 through 2003 and has issued a report of its findings (a "30 day letter"). The examiner's primary finding is the disallowance of the Company's position to remove the restrictions under Section 382 of the Internal Revenue Code of approximately \$73.8 million of net operating losses ("NOLs"). These restricted NOLs relate to fresh start accounting from the Company's reorganization in 1992. The Company plans on appealing the examiner's disallowance of these NOLs to the Office of the Appeals. If the Company is unsuccessful in its appeals process, it will not negatively impact the Company's financial position or results of operations.

#### Reconciliation of Non-GAAP Measures

The following table reconciles from segment Reported EBITDA and Reported EBITDA excluding stock-based compensation to net income (in thousands):

	Three Months Ended		Six Months Ended	
	January 31,		January 31,	
	2006	2005	2006	2005
Mountain Reported EBITDA excluding stock-based compensation	\$ 98,016	\$ 82,192	\$ 67,807	\$ 53,570
Mountain segment stock-based compensation	(999)	(104)	(1,954)	(157)
Mountain Reported EBITDA	97,017	82,088	65,853	53,413
Lodging Reported EBITDA excluding stock-based compensation	(401)	1,293	4,115	2,120
Lodging segment stock-based compensation	(414)	(35)	(821)	(54)
Lodging Reported EBITDA	(815)	1,258	3,294	2,066
Real Estate Reported EBITDA excluding stock-based compensation	3,758	1,172	1,531	8,211
Real Estate segment stock-based compensation	(401)	(37)	(781)	(56)
Real Estate Reported EBITDA	3,357	1,135	750	8,155
Total Reported EBITDA	99,559	84,481	69,897	63,634
Depreciation and amortization	(21,431)	(23,273)	(40,354)	(44,348)
Asset impairment charge	--	--	(136)	--
Mold remediation credit	852	--	852	--
Loss on disposal of fixed assets, net	(486)	(623)	(726)	(1,481)
Investment income, net	1,046	1,174	2,234	1,301
Interest expense	(9,502)	(10,809)	(18,939)	(21,385)
Loss on extinguishment of debt	--	(612)	--	(612)
Gain on sale of businesses, net	4,625	5,693	4,625	5,693
Gain on put options, net	1,026	975	34	1,188
Other income, net	51	84	51	52
Minority interest in income of consolidated subsidiaries, net	(5,231)	(4,665)	(3,305)	(2,765)
Income before provision for income taxes	70,509	52,425	14,233	1,277
Provision for income taxes	(27,498)	(20,184)	(5,551)	(492)
Net income	\$ 43,011	\$ 32,241	\$ 8,682	\$ 785

#### 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**

Historically, the Company's second and third fiscal quarters are seasonally high for cash on hand as the Company's ski resorts are generally open for ski operations from mid-November to mid-April. The Company generated \$100.4 million of cash from operating activities during the six months ended January 31, 2006, compared to \$110.7 million generated during the six months ended January 31, 2005. The \$10.3 million decrease in cash generated from operating activities was primarily attributable to a \$12.1 million decrease in Real Estate Reported EBITDA adjusted for non-cash costs of real estate sold. Additionally, the Company generated \$30.7 million of cash from investing activities in the six months ended January 31, 2006 from the sale of SRL&S. The Company's financing activities generated \$31.9 million of cash in the six months ended January 31, 2006, as compared to using \$75.8 million in the same period last year, which was primarily related to the prior year repayment of the Credit Facility Term Loan and increased cash in the current year generated from the exercise of stock options of \$24.2 million, partially offset by reduced borrowings of \$36.0 million.

The Company anticipates that, in the near-term, it will continue to have excess cash. On March 9, 2006, the Company's Board of Directors approved a share repurchase program, which is described below in Significant Uses of Cash. The Credit Agreement and the Indenture, dated as of January 29, 2004 among the Company, the guarantors therein and the Bank of New York, as Trustee ("Indenture"), relating to the 6.75% Notes, 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 and the timing of the use of such funds, generally requiring the net proceeds from such transactions to be invested in capital improvements, acquisitions, retirement of debt senior to the 6.75% Notes or used to tender for a portion of the 6.75% Notes outstanding. The Company does not believe it will be obligated to tender for a portion of the 6.75% Notes outstanding with the proceeds on asset sales to date as a result of the actual or anticipated reinvestment of such proceeds for capital expenditures.

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 liquidity needs over the next few years will also be met through borrowings under Non-Recourse Real Estate Financings. See Note 4, Long-Term Debt, of the notes to consolidated condensed financial statements, for more information on Non-Recourse Real Estate Financings.

In January 2006, Arrabelle at Vail Square, LLC ("Arrabelle"), a wholly-owned subsidiary of the Company, obtained project-specific non-recourse financing (the "Arrabelle Facility") in the amount of up to \$175 million. The Arrabelle Facility matures on August 1, 2008, and principal payments are due at maturity, with certain pre-payment requirements, including upon the closing of the condominium units. See Note 4, Long-Term Debt, of the notes to consolidated condensed financial statements, for more information regarding this item.

The Company cannot predict whether cash generated from stock option exercises will continue at the level generated in the first six months of fiscal 2006 (\$27.6 million); however, as of January 31, 2006, there were 1.7 million exercisable options outstanding with a weighted-average exercise price of \$17.76 per share. In September 2005, the Company's Compensation Committee altered its compensation philosophy by making restricted share awards a more significant portion of total incentive compensation and reducing the aggregate number of stock options granted. This change in compensation strategy could have a long-term impact on cash generated from the exercise of stock options, with an offset of less shares issued upon exercise.

## **Significant Uses of Cash**

For the six months ended January 31, 2006, the Company used \$93.3 million, net of proceeds from the sale of businesses, in cash for investing activities, which represents a \$31.2 million increase over the same period in the prior year. This increase is primarily a result of the significant vertical development underway in the Company's real estate operations.

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 it will incur significant cash income tax expense (generally expected to approximate its statutory income tax rate) due to the improved operating results and the limitations on the usage of NOLs generated in prior periods. Historically, the Company has not been a significant cash income tax payer.

The Company currently has several major real estate development projects under construction, including Arrabelle, the Gore Creek Place townhomes, the JHG&TC development and the Mountain Thunder condominiums. The Company has entered into contracts with third parties to provide construction-related services to the Company throughout the course of construction for these projects; commitments for future services under such contracts total approximately \$173 million. The Company expects to spend approximately \$185 million to \$195 million in calendar year 2006 for real estate development projects, including the construction of associated resort-related depreciable assets. The primary projects are expected to include continued construction on the aforementioned projects and development costs associated with Vail's Front Door, as well as planning and infrastructure costs associated with planned development projects in and around each of the Company's ski areas. The Company expects real estate capital expenditures will be higher than historical levels for the next several years as the Company continues development associated with the Town of Vail developments. As noted above, the Company obtained non-recourse financing to fund construction of the Arrabelle and Gore Creek Place projects; the Company expects to utilize similar financing arrangements for certain other development projects. 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-related (Mountain and Lodging) operations, and expects to continue to invest significant cash in the future. The Company evaluates additional capital improvements based on expected strategic impacts and/or expected return on investment. The Company currently anticipates it will spend \$75 million to \$80 million of resort-related capital expenditures for calendar 2006 excluding projects arising from real estate activities noted above. Included in these annual capital expenditures are approximately \$30 million to \$40 million which are necessary to maintain the appearance and level of service appropriate to the Company's resort-related operations. This capital investment will allow the Company to maintain its high quality standards, as well as for incremental discretionary improvements at the Company's five ski resorts and throughout its hotels. Highlights of these expenditures include a proposed new gondola at Breckenridge to connect the Town to Peaks 7 and 8; a new high-speed chairlift at Heavenly ski resort; a greatly expanded spa at the Keystone Lodge; snowmaking upgrades at Vail, Beaver Creek, Keystone and Breckenridge; on-mountain restaurant upgrades at Vail, Beaver Creek and Heavenly; and upgrades to the central reservations, marketing database and ecommerce booking systems, among other projects. The Company plans to utilize cash flow from operations, cash on hand and, as necessary, borrowings under its Credit Facility to provide the cash necessary to execute its capital plan.

Principal payments on the vast majority of the Company's long-term debt (\$492.1 million of the total \$523.3 million debt outstanding as of January 31, 2006) are not due until fiscal 2011 and beyond.

The Company's debt service requirements can be impacted by changing interest rates as the Company had \$64.0 million of variable-rate debt outstanding as of January 31, 2006. A 100-basis point (or 1.0%) change in LIBOR would cause the Company's annual interest expense to change by approximately \$640,000. 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.

On March 9, 2006, the Company's Board of Directors approved the repurchase of up to three million shares of common stock. Shares of common stock purchased pursuant to the repurchase program will be held as treasury shares and may be used for the issuance of shares under the Company's employee stock plans. Acquisitions under the share repurchase program will be made from time to time at prevailing prices as permitted by applicable laws, and subject to market conditions and other factors. The Company is under no obligation to purchase any shares under the stock repurchase program and the timing as well as the number of shares that may be repurchased under the program will depend on a number of factors including the Company's future financial performance, the Company's available cash resources and competing uses for cash that may arise in the future, the restrictions in the Company's credit agreements and in the indenture governing the Company's 6.75% Notes, prevailing prices of the Company's common stock, and the number of shares that become available for sale at prices that the Company believes are attractive. The stock repurchase program may be discontinued at any time and is not expected to have a significant impact on the Company's capitalization.

## **Covenants and Limitations**

The Company must abide by certain restrictive financial covenants in relation to its Credit Facility 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 January 31, 2006. The Company expects it will meet all applicable quarterly financial covenants 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 Apollo 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 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 (which has since been withdrawn) 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.

## **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.

## NEW ACCOUNTING PRONOUNCEMENTS

In December 2004, the Financial Accounting Standards Board ("FASB") issued SFAS No. 123R, which replaces SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123") and supersedes Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25"). SFAS 123R requires the measurement of all employee share-based payments 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 payments 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.

Effective August 1, 2005, the Company adopted the fair value recognition provisions of SFAS 123R, using the modified prospective method. Under that method, compensation cost recognized in fiscal 2006 includes: (a) compensation cost for all share-based payments granted prior to, but not yet vested as of August 1, 2005, based on the grant date fair value estimated in accordance with the original provisions of SFAS 123, and (b) compensation cost for all share-based payments granted subsequent to August 1, 2005, based on the grant date fair value estimated in accordance with the provisions of SFAS 123R. Results for prior periods have not been restated.

As a result of adopting SFAS 123R on August 1, 2005, the Company's income before income taxes and net income for the three months ended January 31, 2006 decreased \$1.6 million and \$1.0 million, respectively, and for the six months ended January 31, 2006 decreased \$3.3 million and \$2.1 million, respectively, as compared to accounting for share-based compensation under APB 25, after considering the change in the Company's compensation strategy to issue more restricted stock to replace the granting of stock options to certain levels of employees. The after-tax impact of stock-based compensation recorded pursuant to SFAS 123R resulted in a reduction in basic and diluted net income per share of \$0.03 and \$0.06 for the three and six months ended January 31, 2006, respectively. See Notes 2, Summary of Significant Accounting Policies, and 11, Stock Compensation Plans, of the notes to consolidated condensed financial statements, for more information regarding the implementation of SFAS 123R.

## CAUTIONARY STATEMENT

*Statements in this Form 10-Q, 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:*

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

*Readers are also referred to the uncertainties and risks identified in the Company's Annual Report on Form 10-K for the year ended July 31, 2005.*

## ITEM 3. 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 January 31, 2006, the Company had \$64.0 million of variable rate indebtedness, representing 12.2% of total debt outstanding, at an average interest rate during the six months ended January 31, 2006 of 5.5%, including commitment fees on the Credit Facility Revolver. Based on the variable-rate borrowings outstanding as of January 31, 2006, a 100 basis-point (or 1.0%) change in LIBOR would have caused the Company's monthly interest expense to change by approximately \$53,000.

## ITEM 4. 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-Q. 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 Securities Exchange Act or 1934, as amended (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 as of the end of the period covered by this report on Form 10-Q 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.

### Changes in Internal Control over Financial Reporting

There were no changes in the Company's internal control over financial reporting during the period covered by this Form 10-Q that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

## PART II OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

None.

### ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

### ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

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

The Company held its annual meeting of shareholders on December 14, 2005 in Teton Village, Wyoming. 35,505,966 shares of common stock, 95.53% of outstanding shares, were represented at the meeting.

- a) The following persons were elected to serve as Directors of the Company until the next annual meeting of the shareholders by holders of record of common stock of the Company as of the close of business on November 4, 2005. The voting results for each Director follows:

<u>Director</u>	<u>For</u>	<u>Withheld</u>
Adam M. Aron	34,847,382	658,584
John J. Hannan	27,339,065	8,166,901
Roland A. Hernandez	34,707,192	798,774
Robert A. Katz	33,419,098	2,086,868
Joe R. Micheletto	35,353,237	152,729
John F. Sorte	34,819,372	686,594
William P. Stiritz	33,323,186	2,182,780

- b) Ratification of the Appointment of Independent Registered Public Accounting Firm.

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Vote</u>
34,844,662	656,281	5,023	--

### ITEM 5. OTHER INFORMATION

None.

### ITEM 6. 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.

<u>Exhibit Number</u>	<u>Description</u>	<u>Sequentially Numbered Page</u>
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. (Incorporated by reference to Exhibit 10.3 (c) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 10.3(d) Amendment No. 4 to Forest Service Unified Permit for Keystone ski area. (Incorporated by reference to Exhibit 10.3 (d) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 10.3(e) Amendment No. 5 to Forest Service Unified Permit for Keystone ski area. (Incorporated by reference to Exhibit 10.3 (e) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 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. (Incorporated by reference to Exhibit 10.4 (c) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 10.4(d) Amendment No. 3 to Forest Service Unified Permit for Breckenridge ski area. (Incorporated by reference to Exhibit 10.4 (d) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 10.4(e) Amendment No. 4 to Forest Service Unified Permit for Breckenridge ski area. (Incorporated by reference to Exhibit 10.4 (e) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 10.4(f) Amendment No. 5 to Forest Service Unified Permit for Breckenridge ski area. 20
- 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. (Incorporated by reference to Exhibit 10.5 (c) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 10.5(d) Amendment No. 2 to Forest Service Unified Permit for Beaver Creek ski area. (Incorporated by reference to Exhibit 10.5 (d) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 10.5(e) Amendment to Forest Service Unified Permit for Beaver Creek ski area. (Incorporated by reference to Exhibit 10.5 (e) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 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. (Incorporated by reference to Exhibit 10.6 (d) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 10.6(e) Amendment No. 4 to Forest Service Unified Permit for Vail ski area. (Incorporated by reference to Exhibit 10.6 (e) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 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 as of 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. (Incorporated by reference to Exhibit 10.16(b) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 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. (Incorporated by reference to Exhibit 10.21 on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 10.22(a) Construction Loan Agreement by and between Gore Creek Place, LLC and U.S. Bank National Association dated July 19, 2005. (Incorporated by reference to Exhibit 10.22(a) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 10.22(b) Completion Guaranty Agreement by and between The Vail Corporation and U.S. Bank National Association dated July 19, 2005. (Incorporated by reference to Exhibit 10.22 (b) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 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. (Incorporated by reference to Exhibit 10.24 (a) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)
- 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.

	(Incorporated by reference to Exhibit 10.24 (b) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005.)	
10.25*	Employment Agreement, dated as of February 28, 2006, between Vail Resorts, Inc. and Robert A. Katz. (Incorporated by reference to Exhibit 10.1 on Form 8-K of Vail Resorts, Inc. filed on March 3, 2006.)	
10.26*	Separation Agreement and General Release, dated as of February 27, 2006, between Adam M. Aron and Vail Resorts, Inc. (Incorporated by reference to Exhibit 10.2 on Form 8-K of Vail Resorts, Inc. filed on March 3, 2006.)	
10.27	Second Amendment to Fourth Amended and Restated Credit Agreement among The Vail Corporation, the Required Lenders and Bank of America, as Administrative Agent. (Incorporated by reference to Exhibit 10.3 on Form 8-K of Vail Resorts, Inc. filed on March 3, 2006.)	
10.28*	Form of Restricted Share Agreement. (Incorporated by reference to Exhibit 10.4 on Form 8-K of Vail Resorts, Inc. filed on March 3, 2006.)	
10.29*	Form of Stock Option Agreement. (Incorporated by reference to Exhibit 10.5 on Form 8-K of Vail Resorts, Inc. filed on March 3, 2006.)	
10.30*	Stock Option Letter Agreement between Vail Resorts, Inc. and Jeffrey W. Jones. (Incorporated by reference to Exhibit 10.6 on Form 8-K of Vail Resorts, Inc. filed on March 3, 2006.)	
10.31*	Restricted Share Agreement between Vail Resorts, Inc. and Jeffrey W. Jones. (Incorporated by reference to Exhibit 10.6 on Form 8-K of Vail Resorts, Inc. filed on March 3, 2006.)	
10.32	Purchase and Sale Contract between JHL&S, LLC and Lodging Capital Partners, LLC, dated December 22, 2005.	21
10.33(a)	Construction Loan Agreement dated January 31, 2006 among Arrabelle at Vail Square, LLC, U.S. Bank National Association and Wells Fargo Bank, N.A.	98
10.33(b)	Completion Guaranty Agreement by and between The Vail Corporation and U.S. Bank National Association dated January 31, 2006.	271
10.33(c)	Completion Guaranty Agreement by and between Vail Resorts, Inc. and U.S. Bank National Association dated January 31, 2006.	280
10.34	Supplemental Indenture dated as of March 10, 2006 to Indenture dated as of January 29, 2004 among Vail Resorts, Inc., as Issuer, the Guarantors named therein, as Guarantors, and The Bank of New York, as Trustee.	289
31	Certifications of Robert A. Katz and Jeffrey W. Jones Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	296
32	Certifications of Robert A. Katz and Jeffrey W. Jones Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	298
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.	

## SIGNATURES

Pursuant to the requirements 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 on March 13, 2006.

Vail Resorts, Inc

By: /s/ Jeffrey W. Jones  
Jeffrey W. Jones  
Senior Executive Vice President and  
Chief Financial Officer

Dated: March 13, 2006



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: 5**

This amendment is attached to and made a part of the special use authorization (identified above) issued to Vail Summit Resorts, Inc. dba Breckenridge Ski Resort, Inc. on 12/31/1996 which is hereby amended as follows:

**This amendment removes the old map dated June 11, 2002, and replaces it with a new map covering 5,702 acres, prepared by Arthur Bauer on January 30, 2006.**

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.

/s/ Roger McCarthy

(Holder Signature)

/s/ Maribeth Gustafson

(Authorized Officer Signature)

ROGER MCCARTHY, President

(Holder Signature)

MARIBETH GUSTAFSON, Forest Supervisor

(Name and Title)

Date: 3/10/06

Date: 3/10/06

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.

**PURCHASE AND SALE CONTRACT**

*BETWEEN*

JHL&S LLC,  
a Wyoming limited liability company

*AS SELLER  
AND*

Lodging Capital Partners, LLC,  
an Illinois limited liability company

*AS PURCHASER*

**SNAKE RIVER LODGE & SPA**

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## PURCHASE AND SALE CONTRACT

**THIS PURCHASE AND SALE CONTRACT** (this "**Contract**") is entered into as of December 22, 2005 (the "**Effective Date**"), by and between **JHL&S LLC**, a Wyoming limited liability company, having an address at c/o Vail Associates, Inc., 137 Benchmark Road, Avon, Colorado 81620 ("**Seller**"), and **Lodging Capital Partners, LLC**, an Illinois limited liability company, having a principal address at 430 W. Erie, Suite #501, Chicago, Illinois 60610 ("**Purchaser**").

NOW, THEREFORE, in consideration of mutual covenants set forth herein, Seller and Purchaser .. hereby agree as follows.:

### RECITALS

- A. Seller owns the real estate located in Teton Village, Wyoming, as more particularly described in **Exhibit A** attached hereto and made a part hereof, and the improvements thereon, commonly known as "**Snake River Lodge & Spa**" (the "**Hotel**").
- B. Purchaser desires to purchase, and Seller desires to sell, such land, improvements and certain associated property, on the terms and conditions set forth below.

### ARTICLE I DEFINED TERMS

1.1 **Definitions.** As used herein, the terms below shall have the following meanings:

- 1.1.1 "**Affiliate**" means a Person controlled by, under common control with or controlling another Person.
- 1.1.2 "**Allocation Statement**" shall have the meaning set forth in Section 6.5.
- 1.1.3 "**Apportionment Time**" shall have the meaning set forth in Section 6.7.
- 1.1.4 "**Assignment and Assumption Agreement**" shall have the meaning set forth in Section 6.2.4.
- 1.1.5 "**Assumed Obligations**" shall have the meaning set forth in Section 2.1.
- 1.1.6 "**Bookings**" means the contracts or reservations for the use or occupancy of the guest rooms and/or the meeting, banquet, spa, restaurant or other facilities of the Hotel, other than property subject to Leases, for the period after the Closing Date.
- 1.1.7 "**Broker**" shall have the meaning set forth in Section 11.1.
- 1.1.8 "**Business Day**" means any day other than a Saturday or Sunday or Federal holiday or legal holiday in the States of Colorado or Wyoming.
- 1.1.9 "**Case**" shall have the meaning set forth in Section 10.6.
- 1.1.10 "**Casualty**" shall have the meaning set forth in Section 13.1.1.
- 1.1.11 "**Casualty Notice**" shall have the meaning set forth in Section 13.1.1.
  - 1.1.12 "**Closing**" means the consummation of the purchase and sale and related transactions contemplated by this Contract in accordance with the terms and conditions of this Contract.
- 1.1.13 "**Closing Date**" means the date on which date the Closing of the conveyance of the Property is required to be held pursuant to Section 6.1.
- 1.1.14 "**Code**" shall have the meaning set forth in Section 2.5.6.
  - 1.1.15 "**Condominium Property**" means the condominium development adjacent to the Real Property, commonly referred to as "The Residences at Snake River Lodge & Spa."
- 1.1.16 "**Confidentiality Agreement**" means the Confidentiality Agreement, relating to the Property by and between Purchaser and Broker and as to which Seller is an express third--party beneficiary.
  - 1.1.17 "**Consultants**" means any agent, contractor, engineer, surveyor, attorney or employee of the Purchaser.
- 1.1.18 "**Consumables**" means all engineering, maintenance and housekeeping supplies, food and beverage department supplies, including soap, cleaning materials and matches; stationery and printing supplies; and other supplies of all kinds, whether containing the RockResorts Marks or Vail Marks, used, unused, or held in reserve storage for future use in connection with the maintenance and operation of the Hotel that are on hand as of the Closing Date, excluding, however, (a) all Inventory, (b) Operating Equipment or, (c) items or property owned by Invitees, Tenants, or the Hotel Manager.
  - 1.1.19 "**Contract**" shall have the meaning set forth in the Introduction.
  - 1.1.20 "**Contracts Notice**" shall have the meaning set forth in Section 3.3.
    - 1.1.21 "**Damage Cap**" shall have the meaning set forth in Section 10.2.2.
  - 1.1.22 "**Deed**" shall have the meaning set forth in Section 6.2.1.

1.1.23 "**Deposit**" shall have the meaning set forth in Section 2.3.1.

1.1.24 "**Designated Representative(s)**" shall have the meaning set forth in Section 8.1.2.

1.1.25 "**Dispute**" shall have the meaning set forth in Section 15.19.1.

1.1.26 "**Effective Date**" shall have the meaning set forth in the Introduction.

1.1.27 "**Emergency**," means any situation where the applicable Person, in its reasonable judgment, concludes that a particular action (including, without limitation, the expenditure of funds) is necessary (i) to avoid material damage to property, or (ii) to protect any natural Person from physical harm.

1.1.28 "**Environmental Laws**" means all federal, state and local laws, statutes, rules, ordinances and regulations relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata), including, without limitation, laws, statutes, rules, ordinances and regulations relating to emissions, discharges, releases of hazardous substances or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous substances, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.; the Toxic Substance Control Act, 15 U.S.C. §§ 2601 et seq.; the Water Pollution Control Act (also known as the Clean Water Act) 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., as the same may be amended or modified prior to the Closing Date.

1.1.29 "**Environmental Reports**" means the Phase 1 Environmental Assessment dated October 31, 2005.

1.1.30 "**Escrow Agent**" shall have the meaning set forth in Section 2.3.1.

1.1.31 "**Excluded Permits**" means those Permits which, under applicable law, are nontransferable and such other Permits, if any, as may be designated as Excluded Permits on Schedule 1.1.31.

1.1.32 "**Excluded Property**" means those items listed on Schedule 1.1.32.

1.1.33 "**Executive Order**" shall have the meaning set forth in Section 1.1.67.

1.1.34 "**Existing Liquor License**" means all Permits related to the retail sale of alcoholic beverages at the Hotel or on the Condominium Property held by Seller.

1.1.35 "**Existing Hotel Management Agreement**" means the Hotel Advisory Agreement, dated December 21, 2000, between Seller and Teton Hospitality Services, Inc.

1.1.36 "**Financial Statements**" shall have the meaning set forth in Section 8.1.1.15.

1.1.37 "**Food and Beverage Inventory**" means all food and beverage (alcoholic and non-alcoholic (to the extent lawfully transferable to Purchaser)) which are owned by Seller and on hand as of the Closing Date, whether issued to the food and beverage department or held in reserve storage.

1.1.38 "**Good Funds**" shall have the meaning set forth in Section 2.3.1.

1.1.39 "**Guest Ledger Receivables**" shall have the meaning set forth in Section 6.7.2.

1.1.40 "**Hotel**" shall have the meaning set forth in Recital A.

1.1.41 "**Hotel Books and Records**" means all books, records, ledgers, files, information and data that are transferable and are in the possession of Seller relating to the ownership and operation of the Property, excluding, however, information that is subject to the attorney-client or attorney work products privilege, or is confidential and proprietary with respect to the operation, financial condition or finances of Seller's Affiliates (as compared to the Hotel).

1.1.42 "**Hotel Management Agreement**" shall have the meaning set forth in Section 6.2.9.

1.1.43 "**Hotel Manager**" means RockResorts Wyoming, LLC.

1.1.44 "**Improvements**" means the Hotel and all other buildings, structures, fixtures, walls, fences, landscaping and improvements located on the Land.

1.1.45 "**Indemnitor**" shall have the meaning set forth in Section 10.2.4.

1.1.46 "**Intellectual Property**" shall have the meaning set forth in Section 8.1.1.22.

1.1.47 "**Inventory**" means, collectively, all the Food and Beverage Inventory, the Spa Retail Inventory, the Spa Production Inventory and the Mini-Bar Inventory.

1.1.48 "**Investigation**" means any and all studies, tests, examinations, inquiries and inspections or investigations conducted or made by Purchaser on the Property (including, without limitation, engineering and feasibility studies, evaluation or drainage and flood plain, and surveys, including topographical surveys).

1.1.49 "**Invitee(s)**" means any customer, guest, employee, or other person furnishing goods or services to the Property.

1.1.50 "**Land**" means all of those certain tracts of land located in the State of Wyoming described on Exhibit A, and all rights, privileges and appurtenances pertaining thereto.

1.1.51 "**Lease(s)**" means Seller's right and obligations as landlord or owner under any and all leases, subleases, concessions, licenses, and other occupancy contracts, whether or not of record, which provide for the use or occupancy of space or facilities on or relating to the Property and which are in force as of the Closing Date for the applicable Property.

1.1.52 "**Liabilities**" shall have the meaning set forth in Section 2.3.

1.1.53 "**Liquor Authority**" means, collectively, the Wyoming State Department of Revenue Liquor Distribution Division and the County Clerk of Teton County, Wyoming.

1.1.54 "**Liquor License Agreement**" shall have the meaning set forth in Section 10.1.

1.1.55 "**Losses**" means any and all damages, mechanics' liens, liabilities, losses, demands, actions, causes of action, claims, costs and expenses (including reasonable attorneys' fees, including the cost of in-house counsel and appeals).

1.1.56 "**Material**" shall have the meaning set forth in Section 14.2.

1.1.57 "**Materials**" means any documents with respect to the Property or Hotel reviewed by Purchaser during its Investigation in accordance with the Site Access Agreement.

1.1.58 "**Mini-Bar Inventory**" means all of the retail merchandise, including beverage items such as soft drinks, juices and bottled water, that is held for sale in the mini-bars in the guest rooms, whether in the individual guest rooms or in storage for future use.

1.1.59 "**Miscellaneous Property Assets**" means all transferable or assignable contract rights, leases, concessions, warranties, plans, drawings, all Intellectual Property and other items of intangible personal property relating to the ownership or operation of the Property, excluding, however, (a) Working Capital, (b) Property Contracts, (c) Leases, (d) Permits, (e) Bookings, (f) the Existing Hotel Management Agreement, (g) Hotel Books and Records, (h) Seller's proprietary books and records, (i) any right, title or interest in or to the Vail Marks or RockResorts Marks, or (j) the Excluded Property.

1.1.60 "**Non-Material Property Contracts**" shall have the meaning set forth in Section 8.1.1.14.

1.1.61 "**OFAC**" means the U.S. Treasury Department's Office of Foreign Assets Control as set forth in Section 1.1.67.

1.1.62 "**Operating Equipment**" means all china, glassware, bar equipment and furnishings, linens, silverware and uniforms, whether in use or held in reserve storage for future use, that are owned by Seller and are on hand on the Closing Date.

1.1.63 "**Permits**" means all licenses and permits granted by any governmental authority having jurisdiction over the Property owned by Seller and required in order to own and operate the Property.

1.1.64 "**Permitted Exceptions**" shall have the meaning set forth in Section 4.3.

1.1.65 "**Person**" means any individual, limited partnership, limited liability company, general partnership, association, joint stock company, joint venture, estate, trust

(including any beneficiary thereof), unincorporated organization, government or any political subdivision thereof, governmental unit or authority or any other entity.

1.1.66 "**Personal Property**" means all tangible personal property located on 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, 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. The term "Personal Property" does not include (a) equipment leased by Seller, (b) property owned or leased by any Invitee or Tenant, (c) Inventory, or (d) the Excluded Property.

1.1.67 "**Prohibited Person**" means any of the following: (a) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001) (the "**Executive Order**"); (b) 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 Executive Order; (c) a person or entity that is named as a "specially designated national" or "blocked

person" on the most current list published by OFAC at its official website, <http://www.treas.gov/offices/enforcement/ofac>; (d) a person or entity that is otherwise the target of any economic sanctions program currently administered by OFAC; or (e) an Affiliate with any person or entity identified in clause (a), (b), (c) and/or (d) above.

1.1.68 "**Property**" means (a) the Real Property and all rights of Seller, if any, in and to all of the easements, rights, privileges, and appurtenances belonging or in any way appertaining to the Land and Improvements, (b) the right, if any and only to the extent transferable, of Seller in the Property Contracts, Leases, Permits (other than Excluded Pets), the Personal Property, the Consumables, the Operating Equipment and the Hotel Books and Records and (c) the Miscellaneous Property Assets owned by Seller that are located on the Property and used in its operation, but specifically does not include the Excluded Property or the Condominium Property.

1.1.69 "**Property Contracts**" means all contracts, agreements, equipment leases, purchase orders, reservation and telephone equipment and system contracts, maintenance, service, or utility contracts and similar contracts, that relate to the ownership, maintenance, operation, provisioning or equipping of the Hotel, but only to the extent assignable by their terms or applicable law, and not including (a) Leases, (b) Bookings, (c) any national contracts entered into by Seller, Hotel Manager or Vail with respect to the Property that terminate automatically upon transfer of the Property by Seller, or (d) the Existing Hotel Management Agreement.

1.1.70 "**Proration Schedule**" shall have the meaning set forth in Section 6.8.

1.1.71 "**Purchase Price**" means the consideration to be paid by Purchaser to Seller for the purchase of the Property pursuant to Section 2.3.

1.1.72 "**Purchaser**" shall have the meaning set forth in the Introduction.

1.1.73 "**Purchaser's Claims**" shall have the meaning set forth in Section

10.2.2.

1.1.74 "**Purchaser Indemnified Parties**" shall have the meaning set forth in

Section 10.2.2.

1.1.75 "**Purchaser's Update Certificate**" shall have the meaning set forth in

Section 6.3.10.

1.1.76 "**Real Property**" means the Land and the Improvements.

"**RockResorts Marks**" means those trademarks, tradenames,

1.1.77 copyrights

and logos owned by the Hotel Manager or its Affiliates (other than Seller).

1.1.78 "**Seller**" shall have the meaning set forth in the Introduction.

1.1.79 "**Seller Documents**" means this Contract and all documents now or hereafter to be executed by Seller pursuant to this Contract.

1.1.80 "**Seller's Claims**" shall have the meaning set forth in Section 10.2.1.

1.1.81 "**Seller's Indemnified Parties**" shall have the meaning set forth in

Section 15.15.

1.1.82 "**Seller's Representations**" shall have the meaning set forth in

Section 8.1.

1.1.83 "**Seller's Update Certificate**" shall have the meaning set forth in

Section 6.2.12.

1.1.84 "**Settlement Statement**" shall have the meaning set forth in Section

6.2.10.

1.1.85 "**Site Access Agreement**" means the Site Access Agreement, dated

November 16, 2005, between Seller and Buyer.

1.1.86 "**Spa Retail Inventory**" means all of the retail merchandise available for sale in the Hotel's spa, whether issued to the Hotel's spa or held in reserve storage or whether containing a RockResorts Mark or Vail Mark.

1.1.87 "**Spa Production Inventory**" means the professional products and supplies used in the Hotel's spa, whether in the spa treatment rooms or in reserve storage for future use.

1.1.88 "**Survey**" shall have the meaning ascribed thereto in Section 4.2.

1.1.89 "**Survival Provisions**" shall have the meaning set forth in Section 15.21.

1.1.90 "**Tenant(s)**" means any person or entity entitled to occupy any portion of the Property under a Lease.

1.1.91 "**Terminated Contracts**" shall have the meaning set forth in Section 3.3.

1.1.92 "**Third-Party Reports**" means any reports, studies or other information prepared or compiled for Purchaser by any Consultant or other third-party in connection with Purchaser's investigation of the Property.

"**Threshold**" shall have the meaning set forth in Section 10.2.2. "**Title Commitment**" shall have the meaning set forth in Section 4.1. "**Title Insurer**" shall have the meaning set forth in Section 2.3.1. "**Title Policy**" shall have the meaning set forth in Section 4.1. "**Tribunal**" shall have the meaning set forth in Section 15.19.2.

"**True-Up**" shall have the meaning set forth in Section 6.8.

1.1.99 "**Vail**" means The Vail Corporation, a Colorado corporation, and any of its Affiliates or subsidiaries (other than Seller).

1.1.100 "**Vail Marks**" means those trademarks, tradenames, copyrights and logos owned by Vail.

1.1.101 "**Working Capital**" means the current assets and current liabilities on the Hotel's monthly Financial Statements.

1.2 **References.** Except as otherwise specifically indicated, all references in this Contract to Article and Section numbers refer to Article and Sections of this Contract, and all references to Exhibits refer to the Exhibits attached hereto. Unless otherwise expressly stated, the words "herein," "hereof," "hereby," "hereunder," "hereinafter," and words of similar import refer to this Contract as a whole and not to any particular Article or Section hereof. Any of the terms defined herein may, unless the content otherwise requires, be used in the singular or the plural depending on the reference. All words or terms used in this Contract, regardless of the number or gender in which they are used, shall include any other number or gender, as the

context may require. References to contracts, agreements and other contractual instruments shall be deemed to include all subsequent amendments, supplements and other modifications thereto, but only to the extent such amendments, supplements and other modifications are not prohibited by the terms of this Contract. The term "including" shall mean "including, without limitation," except where the context otherwise requires. The terms "law," "laws," "provisions of law," "requirements of law," and words of similar import shall mean all laws, statutes, ordinances, codes (including building and fire codes), rules, regulations, requirements, judgments, arbitration awards or decisions, rulings, decrees, executive, judicial and other orders and directives of any or all of the federal, state, county and city and local governments and all agencies, authorities, bureaus, courts, departments, subdivisions, or offices thereof, and of any other governmental, public or quasi-public authorities (including board of fire underwriters or other insurance body) having jurisdiction and the direction of any public officer pursuant to law, and all amendments and supplements thereto effective prior to the Closing Date. References to specific statutes include (i) any and all amendments and modifications thereto in effect at the time in question, (ii) successor statutes of similar purpose and import and (iii) all rules, regulations and orders promulgated thereunder. The captions and paragraph headings contained in this Contract are for convenience only and shall in no way enlarge or limit the scope or meaning of any part of this Contract. This Section 1.2 shall survive the Closing or termination of this Contract.

1.3 **Construction.** The parties acknowledge that they are sophisticated parties, that their respective attorneys have reviewed this Contract and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or Exhibits hereto. This Section 1.3 shall survive the Closing or termination of this Contract.

## ARTICLE II PURCHASE AND SALE, PURCHASE PRICE & DEPOSIT

2.1 **Purchase and Sale.** Seller agrees to sell and convey the Property to Purchaser and Purchaser agrees to purchase the Property from Seller and assume and be responsible for the timely satisfaction or performance, as the case may be, of all liabilities or obligations arising under or in connection with the Bookings, Property Contracts, Leases, the Permits (other than Excluded Permits), Hotel Books and Records, Miscellaneous Property Assets and the Permitted Exceptions, to the extent such liabilities or obligations arise or are incurred and are first required to be performed after Closing, including return of any security and other deposits with respect to Property Contracts and Leases, or otherwise expressly assumed by Purchaser elsewhere in this Contract (collectively, the "**Assumed Obligations**"), all in accordance with the terms and conditions set forth in this Contract.

2.2 **No Assumption of Seller's Obligations.** Purchaser shall not assume, or become obligated with respect to, any liability, demand, lien, interest, claim, action or cause of action, loss, fine, penalty, cost, damage or expense arising prior to the Closing, including, without limitation, those asserted by any Federal, state or local government agency, third-party or former or present employee, including attorneys', consultants' and expert witness fees and expenses (collectively, "**Liabilities**") in connection with the Hotel or Liabilities of Seller, Manager or their respective Affiliates, including, but not limited to, the following:

- i. Liabilities of Seller, Manager or their respective Affiliates now existing or which may arise prior to the Closing Date with respect to any accounts payable or other payables, except and to the extent that Purchaser receives a credit with respect thereto on the Settlement Statement;
- ii. Liabilities prior to the Closing Date of any term, covenant or provision of any employee benefit plan, employment contract, operating agreement or Lease, except and to the extent that Purchaser receives a credit with respect thereto on the Settlement Statement;
- iii. Liabilities of Seller, Manager or their respective Affiliates now existing or which may hereafter exist by reason of or in connection with any alleged misfeasance or malfeasance by Seller in the conduct of its business, and with respect to any tort liability;
- iv. Liabilities to employees with respect to any compensation (or pursuant to any employment contract or employee benefit plan), except Liabilities the Purchaser expressly agrees to assume in its sole discretion in writing delivered to Seller no later than three Business



Days prior to Closing, but only to the extent that Purchaser receives a credit with respect thereto on the Settlement Statement; v. Liabilities of Seller or Seller's Affiliates arising under or incurred pursuant to the Existing Hotel Management Agreement; and vi. Liabilities with respect to any litigation, whether pending or not, in connection with the Hotel, the Hotel Manager, Seller or their respective Affiliates.

**2.3 Purchase Price and Deposit Delivery.** Subject to the Working Capital adjustments and other prorrations set forth in Section 6.7, the total purchase price ("**Purchase Price**") to be paid for the Property at the Closing shall be an amount equal to \$32,500,000, which amount shall be paid by Purchaser, as follows:

2.3.1 On the Effective Date, Purchaser shall deliver to Jackson Hole Title Company ("**Escrow Agent**" or "**Title Insurer**") a deposit (the "**Deposit**") of \$1,000,000 by wire transfer of immediately available funds ("**Good Funds**").

2.3.2 The balance of the Purchase Price for the Property shall be paid to and received by Escrow Agent by wire transfer of Good Funds no later than 11:00 a.m., Mountain Time, on the Closing Date.

**2.4 Deposit.** The Deposit and all earnings thereon shall be non-refundable, unless Purchaser terminates this Contract (a) due to a default by Seller of Section 12.2, (b) the conditions precedent set forth in Section 7.1 to Purchaser's performance shall not be satisfied or waived or (c) pursuant to Section 13.1.2. The Deposit shall be held and disbursed in accordance with the escrow provisions set forth in Section 2.5. If the Closing shall occur, Seller shall receive the Deposit and one-half of the earnings thereon (with Seller being entitled to the remaining one-half of the earnings thereon), and the Deposit and one-half of the earnings thereon

shall be credited against the Purchase Price. The Deposit will not begin to accrue interest until Purchaser has delivered a completed IRS Form W-9 to the Escrow Agent, which Purchaser shall deliver to Escrow Agent concurrent with its execution and delivery of this Contract to Seller.

**2.5 Escrow Provisions Regarding Deposit.**

2.5.1 Escrow Agent shall hold the Deposit and make delivery of the Deposit to the party entitled thereto under the terms of this Contract. Escrow Agent shall invest the Deposit in (a) Treasury Bills or other short-term U.S. governmental obligations or repurchase contracts for the same, (b) one or more money market funds, the sole assets of which are Treasury Bills or other short-term U.S. governmental obligations or repurchase contracts for the same, or (c) any other investment approved by both Seller and Purchaser. Upon completion of all documentation required by the Escrow Agent, including a completed IRS Form W-9 from Purchaser, all interest and income thereon shall become part of the Deposit and shall be remitted to the party entitled to the Deposit pursuant to this Contract.

2.5.2 Escrow Agent shall hold the Deposit until the earlier occurrence of (i) the Closing Date, at which time the Deposit shall be applied against the Purchase Price, or (ii) the date on which Escrow Agent shall be authorized to disburse the Deposit as set forth in Section 2.5.3. The tax identification numbers of the parties shall be furnished to Escrow Agent upon request.

2.5.3 If the Deposit has not been released earlier in accordance with Section 2.5.2, and either party makes a written demand in accordance with Section 15.5 upon Escrow Agent for payment of the Deposit, Escrow Agent shall give written notice to the other party of such demand. If Escrow Agent does not receive a written objection from the other party to the proposed payment within five Business Days after the giving of such notice, Escrow Agent is hereby authorized to make such payment (subject to Purchaser's obligation under Section 3.2 to return all Third-Party Reports and information and Materials provided to Purchaser as a pre-condition to the return of the Deposit to Purchaser). If Escrow Agent does receive such written objection within such five-Business Day period, Escrow Agent shall continue to hold such amount until otherwise directed by written instructions from the parties to this Contract or notification of a final judgment or arbitrator's decision. However, Escrow Agent shall have the right at any time to deposit the Deposit and interest thereon, if any, with a court of competent jurisdiction in the State of Wyoming. Escrow Agent shall give written notice of such deposit to Seller and Purchaser. Upon such deposit, Escrow Agent shall be relieved and discharged of all further obligations and responsibilities hereunder.

2.5.4 The parties acknowledge that Escrow Agent is acting solely as a stakeholder at their request and for their convenience, and that Escrow Agent shall not be deemed to be the agent of either of the parties or liable for any act or omission on its part unless taken or suffered in bad faith in willful disregard of this Contract or involving gross negligence. Seller and Purchaser jointly and severally shall indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorney's fees, incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith, in willful disregard of this Contract or involving gross negligence on the part of the Escrow Agent.

2.5.5 The parties shall deliver to Escrow Agent an executed copy of this Contract, which shall constitute the sole instructions to Escrow Agent. Escrow Agent shall execute the signature page for Escrow Agent attached hereto with respect to the provisions of this Section 2.5; provided, however, that (a) Escrow Agent's signature hereon shall not be a prerequisite to the binding nature of this Contract on Purchaser and Seller, and the same shall become fully effective upon execution by Purchaser and Seller, and (b) the signature of Escrow Agent shall not be necessary to amend any provision of this Contract other than this Section 2.5.

2.5.6 Escrow Agent, as the person responsible for closing the transaction within the meaning of Section 6045(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "**Code**"), shall at Closing provide to Seller or Purchaser, as appropriate, a completed IRS Form 1099-S and shall cause a completed IRS Form 1099-MT to be prepared and provided to Seller or Purchaser, as appropriate.

2.5.7 The provisions of this Section 2.5 shall survive the termination of this Contract, and if not so terminated, shall survive the Closing and delivery of the Deed.

### ARTICLE III INVESTIGATION

**3.1 Conduct of Investigation.** Purchaser shall conduct its Investigation in accordance with the Site Access Agreement, which provisions in the Site Access Agreement regarding access and inspection of the Property shall be incorporated herein by reference. This Section 3.1 and the Site Access Agreement shall survive the termination of this Contract, and, if not so terminated, shall survive the Closing and delivery of the Deed.

**3.2 Property Materials.** In providing information and Materials to Purchaser, other than Seller's Representations, Seller makes no representation or warranty, express, written, oral, statutory, or implied, and all such representations and warranties are hereby expressly excluded and disclaimed. Any information and Materials provided by Seller to Purchaser under the terms of this Contract are for informational purposes only and, together with all Third-Party Reports,

shall be returned by Purchaser to Seller if this Contract is terminated for any reason. Except with respect to Seller's Representations, Purchaser shall not in any way be entitled to rely upon the accuracy of such information and Materials. The provisions of this Section 3.2 shall survive the Closing and delivery of the Deed to Purchaser.

**3.3 Property Contracts.** No later than December 29, 2005, Purchaser may deliver written notice to Seller (the "**Contracts Notice**") specifying any Property Contracts or Leases that Purchaser desires to terminate at the Closing (the "**Terminated Contracts**"); provided that (a) such notice of termination shall not be delivered to the third party to such Terminated Contract until on or after the Closing Date, (b) such termination shall be subject to the express terms of such Terminated Contracts (and, to the extent that the effective date of termination of any Terminated Contract is after the Closing Date, Purchaser shall be deemed to have assumed all of Seller's obligations under such Terminated Contract as of the Closing Date), (c) if any such Terminated Contract cannot by its terms be terminated, it shall be assumed by Purchaser and not be a Terminated Contract, and (d) to the extent that any such Terminated Contract requires payment of a penalty or premium for cancellation, Purchaser shall be solely responsible for the

payment of any such cancellation fees or penalties. If Purchaser fails to deliver the Contracts Notice on the Effective Date, there shall be no Terminated Contracts and Purchaser shall assume all Property Contracts and Leases at the Closing.

#### ARTICLE IV TITLE

4.1 **Title Documents.** Purchaser acknowledges it has received and reviewed the form commitment for title insurance case number 111005--6 (the "**Title Commitment**"). At the Closing, Seller shall cause the Title Insurer to issue to Purchaser, in accordance with the Title Commitment, an owner's title insurance policy on the most recent standard--AmericanLand Title Association form for the Property in an amount equal to the Purchase Price, subject only to the Permitted Exceptions (the "**Title Policy**"). Seller shall be responsible only for payment of the basic premium for the Title Policy. Purchaser shall be solely responsible for payment of all other costs relating to procurement of the Title Commitment, the Title Policy, any requested endorsements and any policy of mortgagee's title insurance.

4.2 **Survey.** Purchaser acknowledges that Seller has delivered to Purchaser or made available at the Property the existing survey of the Property (the "**Survey**"). To the extent that Purchaser desires that a new survey of the Property be prepared or that the Survey be updated, Purchaser shall be solely responsible for obtaining such new or updated survey, including the cost and expense of the preparation of such new or updated survey.

4.3 **Permitted Exceptions.** The Deed delivered pursuant to this Contract shall be subject to the following, all of which shall be deemed "**Permitted Exceptions**":

4.3.1 All matters shown in the Title Commitment and the Survey, other than (a) monetary liens, including mechanics' liens and taxes due and payable with respect to the period preceding Closing, (b) the standard exception regarding the rights of parties in possession, which shall be limited to those parties in possession pursuant to the Leases, and (c) the standard exception pertaining to taxes, which shall be limited to taxes and assessments payable in the year in which the Closing occurs and subsequent taxes and assessments;

4.3.2 All Leases;

4.3.3 Applicable zoning and governmental regulations and ordinances;

4.3.4 Any defects in or objections to title to the Property, or title exceptions or encumbrances, arising by, through or under Purchaser;

4.3.5 the Hotel Facilities, Spa and Services Agreement, dated July 3, 2001, between RCD, Inc., Mountainside, LLC and Seller; and

4.3.6 The terms and conditions of this Contract.

#### ARTICLE V CONDITION OF THE PROPERTY

5.1 AS IS. PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT:

5.1.1 EXCEPT FOR "SELLER'S REPRESENTATIONS," PURCHASER IS PURCHASING THE PROPERTY "AS IS," "WHERE IS," AND "WITH ALL FAULTS." EXCEPT FOR "SELLER'S REPRESENTATIONS," SELLER IS NOT MAKING, AND PURCHASER IS NOT RELYING ON, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, FROM SELLER OR ANY PARTNER, DIRECTOR, SHAREHOLDER, MEMBER, MANAGER, OFFICER, EMPLOYEE, AFFILIATE, ATTORNEY, AGENT, ADVISOR OR BROKER THEREOF, AS TO ANY MATTER CONCERNING THE PROPERTY, OR SET FORTH, CONTAINED OR ADDRESSED IN ANY DUE DILIGENCE MATERIALS (INCLUDING, WITHOUT LIMITATION, THE COMPLETENESS THEREOF), INCLUDING, WITHOUT LIMITATION:

5.1.1.1 the quality, nature, habitability, merchantability, use, operation, value, marketability, adequacy or physical condition of the Property or any aspect or portion thereof, including, without limitation, structural elements, foundation, roof, appurtenances, access, landscaping, electrical, mechanical, HVAC, plumbing, sewage, water and utility systems, and facilities and appliances;

5.1.1.2 the zoning or other legal status of the Property or the existence of any other public or private restrictions on the use of the Property;

5.1.1.3 the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental authority or of any other person or entity (including, without limitation, the Americans with Disabilities Act of 1990, as amended);

5.1.1.4 the presence, absence, condition or compliance of any hazardous materials, mold or wetlands on, in, under, above or about the Property or neighboring property or the compliance of the Property with Environmental Laws;

5.1.1.5 the quality of any labor or materials used in the Improvements;

5.1.1.6 any leases, permits, warranties, service contracts or any other agreements affecting the Property or the intentions of any party with respect to the negotiation and/or execution of any lease or contract with respect to the Property; or

5.1.1.7 the economics of, or the income and expenses, revenue or expense projections or other financial matters, relating to the operation of the Property.

5.1.2 Except for Seller's Representations, Purchaser is taking the Property subject to all violations of any federal, state or local law, including, without limitation, those violations (a) disclosed in the Title Report or violations searches, or (b) contained in the Permits.

5.1.3 Except for Seller's Representations, Seller shall not be liable or bound in any manner by any express or implied warranties, guaranties, promises, statements, representations or information pertaining to the Property made or furnished by any real estate broker, dealer, agent, employee, financial advisor or other person representing or purporting to represent Seller.

5.1.4 Purchaser represents and warrants that, as of the Effective Date and as of the Closing Date, it has and shall have reviewed and conducted such independent analyses, studies (including, without limitation, environmental studies and analyses concerning the presence of lead, mold, asbestos, PCBs and radon in and about the Property), reports, investigations and inspections as it deems appropriate in connection with the Property.

5.1.5 Purchaser agrees that, if Seller provides or has provided any documents, summaries, opinions or work product of consultants, surveyors, architects, engineers, title companies, governmental authorities or any other Person with respect to the Property, including, without limitation, the Environmental Reports, Seller has done so or shall do so only for the convenience of both parties, and the reliance by Purchaser upon any such documents, summaries, opinions or work product shall not create or give rise to any liability of or against Seller Indemnified Parties, except to the extent related to any fraud

committed by such Seller Indemnified Party or to the extent of any breach or violation of any of Seller's Representations. Absent fraud or a breach of Seller's Representations, Purchaser shall rely only upon any title insurance obtained by Purchaser with respect to title to the Real Property.

5.1.6 Other than Seller's Representations, Seller makes no representation or warranty, express, written, oral, statutory, or implied, and all such representations and warranties are hereby expressly excluded and disclaimed. Any Materials are for informational purposes only and, together with all Third-Party Reports (to the extent Purchaser is not legally prohibited in its reasonable judgment from delivering such materials to Seller), shall be returned by Purchaser to Seller promptly following the return of the Deposit to Purchaser (if Purchaser is otherwise entitled to such Deposit pursuant to the terms of this Contract) or if this Contract is terminated for any reason. Except for Seller's Representations, Purchaser shall not in any way be entitled to rely upon the accuracy of the Materials. Purchaser recognizes and agrees that the Materials may not be complete or constitute all of such documents that are in Seller's possession or control, but are those that are readily available to Seller and its Affiliates after reasonable inquiry to ascertain their availability. Purchaser understands that, although Seller will use commercially reasonable efforts to locate and make available the Materials and other documents required to be delivered or made available by Seller pursuant to this Contract, Purchaser will not, except as expressly provided in any Seller's Representation, rely on the Materials or other documents as being a complete and accurate source of information with respect to the Property, and will instead in all instances rely exclusively on its own inspections and consultants with respect to all matters which it deems relevant to its decision to acquire, own and operate the Property.

5.1.7 Section 5.1 shall survive the Closing.

## ARTICLE VI CLOSING

6.1 **Closing Date.** The Closing shall occur no later than 30 days following the Effective Date (the "**Closing Date**") through an escrow with Escrow Agent, whereby Seller, Purchaser and their attorneys need not be physically present at the Closing and may deliver documents by overnight air courier or other means. Notwithstanding the foregoing to the contrary, Seller shall have the option, by delivering written notice to Purchaser, to extend the Closing Date to the last Business Day of the month in which the Closing Date otherwise would occur pursuant to the preceding sentence.

6.2 **Seller Closing Deliveries.** At Closing, Seller shall deliver, or cause to be delivered, to Escrow Agent, each of the following items:

6.2.1 A duly executed and acknowledged special warranty deed (the "**Deed**") in the form attached as **Exhibit B** to Purchaser, subject to the Permitted Exceptions.

6.2.2 A duly executed bill of sale substantially in the form attached hereto as **Exhibit C**, transferring to Purchaser all of Seller's right, title and interest in and to the Personal Property, Inventory, Consumables and Operating Equipment;

6.2.3 A duly executed Liquor License Agreement;

6.2.4 A duly executed assignment and assumption agreement in the form attached hereto as **Exhibit D** (the "**Assignment and Assumption Agreement**"), whereby Seller conveys and transfers to Purchaser all of Seller's right, title and interest in, to and under the Bookings, the Property Contracts, the Leases, the Permits (other than Excluded Permits), the Hotel Books and Records, and the Miscellaneous Property Assets, and Purchaser assumes the Assumed Obligations thereunder;

6.2.5 The originals, or, if not reasonably available, copies of all Permits

(other than Excluded Permits) and material governmental approvals in the possession of Seller, if any, including, without limitation, the current certificates of occupancy for the Improvements. The location of such items at the Hotel on the Closing Date shall constitute delivery to Purchaser;

6.2.6 An affidavit certifying that Seller is not a "foreign person" within the meaning of the Code, that the transaction contemplated hereby does not constitute a disposition of a United States real property interest by a foreign person, and that, at Closing, Seller will not be subject to the withholding requirements of Section 1445 of the Code;

6.2.7 The originals, or, if not reasonably available, copies, of the Property Contracts, Hotel Books and Records, Leases and other Miscellaneous Hotel Assets (to the extent not specifically referred to above and to the extent the same are of a nature that are capable of being physically delivered at Closing) that are in written format and are in Seller's possession; provided, however, that the existence of such contracts, records and leases at the Hotel on the Closing Date shall constitute delivery of Purchaser, provided Purchaser is advised of the location thereof;

6.2.8 As soon as practicable after the Closing, Seller shall deliver to Purchaser (if not then located in the Improvements) all combinations to safes, keys, codes and passcards relating to the operation of the Hotel and forming part of the Personal Property. The location of such items at the Hotel on the Closing Date shall constitute delivery to Purchaser;

6.2.9 A duly executed Hotel management agreement in the form attached hereto as **Exhibit E** (the "**Hotel Management Agreement**") executed by Manager;

6.2.10 A duly executed settlement statement reflecting adjustments and prorations as required under this Contract (the "**Settlement Statement**");

6.2.11 Resolutions, certificates of good standing, and such other organizational documents as Title Insurer shall reasonably require evidencing Seller's authority to consummate this transaction; and

6.2.12 A closing certificate from Seller (the "**Seller's Update Certificate**") reaffirming Seller's Representations in accordance with Section 8.1.3.

6.2.13 A duly executed consent from Jackson Hole Mountain Resort Corporation regarding certain access rights substantially in the form attached hereto as **Exhibit F**.

6.2.14 A duly executed assignment and consent of Seller of the Management Agreement of the Residences at Snake River Lodge & Spa Owners Association in the form and substance agreed to by Purchaser and Seller.

6.3 **Purchaser Closing Deliveries.** At Closing, Purchaser shall deliver to the Escrow Agent each of the following items:

6.3.1 The full Purchase Price (with credit for the Deposit), plus or minus the adjustments or prorations required by this Contract;

6.3.2 A duly executed Assignment and Assumption Agreement;

6.3.3 A duly executed Hotel Management Agreement;

6.3.4 A duly executed Settlement Statement;

6.3.5 A duly executed Liquor License Agreement;

6.3.6 Notification letters to all Tenants prepared and executed by Purchaser in the form attached hereto as **Exhibit G**;

6.3.7 An affidavit certifying that Purchaser is not a "foreign person" within the meaning of the Code;

6.3.8 Any cancellation fees or penalties due under any Terminated Contract as a result of the termination thereof;

6.3.9 Resolutions, certificates of good standing, and such other organizational documents as Title Insurer shall reasonably require evidencing Purchaser's authority to consummate this transaction; and

6.3.10 A closing certificate from Purchaser (the "**Purchaser's Update Certificate**") reaffirming Purchaser's representations and warranties set forth in Section 8.2 in accordance with Section 8.2.2.

Seller and Purchaser will prepare and execute such additional instruments, affidavits, certificates, assignments and other assurances as are reasonably requested by either party hereto or by the Title Insurer and are customary for similar transactions in order to convey, assign and transfer all of Seller's right, title and interest in and to the Property to Purchaser.

**6.4 Closing Costs.** Purchaser shall pay any recording, documentary and filing fees in connection with the recordation of the Deed and any other instruments executed in connection with the Closing. Any fees and expenses of the Escrow Agent shall be paid in equal shares by Purchaser and Seller.

**6.5 Allocation of Purchase Price.** No later than three Business Days prior to Closing, Purchaser agrees to reasonably propose, and prior to Closing, and Purchaser and Seller agree to negotiate in good faith, a written statement containing the respective values of the Real Property, the Personal Property and the goodwill being transferred to Purchaser pursuant to the terms of this Contract (the "**Allocation Statement**"). The parties hereto acknowledge that the value of the Personal Property between the date and time that Purchaser and Seller may agree upon an Allocation Statement and the Closing Date may change, and if, in the reasonable determination of Seller and Purchaser, the value of the Personal Property has changed as of the Closing Date, the parties shall cooperate in good faith to modify the Allocation Statement accordingly. If Seller and Purchaser are able to agree upon the Allocation Statement, each (a) shall be bound by such Allocation Statement for purposes of determining any taxes, (b) shall prepare and file all tax returns in a manner consistent with such allocations, and (c) shall take no position inconsistent with such allocations in any tax return, any proceeding before any taxing authority or otherwise. In the event that any such Allocation Statement is disputed by any taxing authority, the party receiving notice of such dispute shall promptly notify and consult with the other party hereto concerning the resolution of such dispute. If the parties are unable to agree upon the Allocation Statement, the parties agree that each party shall be responsible for resolving any dispute with any taxing authority concerning such party's proposed allocation of the respective values of the Real Property, the Personal Property and the goodwill being transferred to Purchaser pursuant to this Contract.

**6.6 Order of Recording.** Notwithstanding anything in this Contract to the contrary, the Deed shall be recorded prior to any financing or other liens or encumbrances imposed upon the Real Property by Purchaser after its acquisition.

**6.7 Working Capital Adjustments and Prorations.** The Working Capital 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 Purchaser shall be deducted from the balance of the Purchase Price at the Closing, and net credits in favor of Seller shall be paid by Purchaser to Seller in cash at the Closing. Notwithstanding the provisions of this Section 6.7, Seller may, in its sole discretion, choose to retain certain Working Capital items on its own books in lieu of the adjustment by proration as set forth in this Section 6.7. If Seller elects to maintain any such Working Capital items, Seller shall notify Purchaser of such election and the Working Capital items to be retained no later than three Business Days prior to Closing. With respect to such Working Capital items to be retained, no proration shall be made hereunder. Subject to the foregoing, and unless otherwise indicated below, Purchaser shall receive a credit against the Purchase Price for any of the following items to the extent the same 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 Purchaser has assumed the obligations for the same, and Seller shall receive a credit (and thereby be entitled to a payment from Purchaser) with respect to any of the following items that 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:

**6.7.1 Cash Accounts.** Except for those amounts held in accounts listed on Schedule 6.7.1 that are required by law to be maintained in separate 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. Seller shall receive a credit for (a) all cash held in the Hotel house banks or vaults and any petty cash located at the Hotel as of the Apportionment Time and (b) all funds held in any account listed on Schedule 6.7.1 as of the Apportionment Time.

**6.7.2 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 Purchaser 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 Purchaser 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) and any taxes thereon shall be allocated 50% to Seller and 50% to Purchaser. All revenues from restaurants, bars, lounge facilities, retail sales, in--room movies, telephone charges and all other revenues for the 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 costs of sales.

**6.7.3 City Ledger Receivables.** Seller shall receive a credit for, and Purchaser shall purchase from Seller, all city ledger accounts receivable that are less than 120 days old. Such credit shall equal the amount of the accounts receivable, less 2% (representing historic reserves or write offs for bad debt under 120 days old for uncollectible amounts).

**6.7.4 Other Accounts Receivable.** Except as set forth in Sections 6.7.2 and 6.7.3, all accounts receivable for all periods prior to the Apportionment Time shall remain the property of Seller. After the Closing Date, Purchaser shall use commercially reasonable efforts to collect 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), Purchaser shall submit to Seller all amounts received in respect of such accounts receivable, together with an itemization of such accounts receivable. If Purchaser receives any amounts in respect of such accounts receivable after such date, Purchaser shall be deemed to be the trustee of Seller with respect thereto, and Purchaser 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.

**6.7.5 Inventory.** Seller shall receive a credit for the cost of all Inventory existing at the Apportionment Time, provided that, for Food and Beverage Inventory, Seller shall receive a credit only for the cost of Food and Beverage Inventory in unopened containers at the Apportionment Time.

**6.7.6 Prepaid Expenses, Deposits and Insurance.** Seller shall receive a credit for prepaid expenses directly or indirectly allocable to any period from and after the Closing Date, including, without limitation, prepaid rents under any equipment lease, annual 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 Purchaser, and prepaid advertising that has not been published, mailed or aired, and marketing and advertising inventory items such as brochures and other material if related to the marketing of the Hotel as a RockResorts. Prepaid insurance premiums will not be prorated, and Purchaser shall not assume, and Seller shall not assign, any insurance policies, Purchaser hereby acknowledging its obligation to obtain its own insurance related to or for the Property.

**6.7.7 Property Contracts, Leases; Trade Payables.** Any amounts prepaid or payable under any Property Contracts, Leases and any other trade payables shall be prorated as of the Apportionment Time between Purchaser and Seller. All amounts known to be due under Property Contracts and Leases with

reference to periods prior to the Closing Date shall be paid by Seller or credited to Purchaser, as appropriate.

6.7.8 **Utilities; Telephone.** Telephone and facsimile 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 Purchaser and Seller. 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.

6.7.9 **Gift Certificates.** Purchaser shall receive a credit for 50% of the face value of all unredeemed gift certificates issued by Seller or Hotel Manager as of the Apportionment Time.

6.7.10 **Payroll Liabilities.** All amounts known to be due to employees or to taxing authorities, or to other third parties, related to payroll costs incurred during periods prior to the Closing Date, including, without limitation, accrued bonus, vacation and sick pay and other employee benefits shall be paid by Seller or credited to Purchaser.

6.7.11 **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 Purchaser shall be solely responsible for all such taxes for any period from and after the Apportionment Time, provided that any income tax arising as a result of the sale and transfer of the Property by Seller to Purchaser 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 Purchaser and Seller. Seller shall also provide Purchaser with a credit at Closing for then unpaid 2005 real estate taxes (payable in 2006). Seller shall further provide Purchaser with a credit at Closing for 2006 real estate taxes (payable in 2007) attributable to the period from January 1, 2006 to the Closing Date, such credit to be calculated based upon the actual 2005 real estate taxes paid increased by 3% and prorated based on the number of days in 2006 from January 1, 2006 to Closing.

6.7.12 **Bookings.** Purchaser shall receive a credit for advance payments and deposits under Bookings.

6.7.13 **Security Deposits.** Except as set forth in Section 6.7.1, Purchaser 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 Property Contracts and Leases.

6.7.14 **Capital Leases.** At Closing, Purchaser will assume all obligations related to the capital leases identified on Schedule 6.7.14 without adjustment or proration.

6.7.15 **Other Items.** Other Working Capital items and such other items as are provided for in this Contract 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 State of Wyoming.

6.8 **Closing Statement; True-Up.** Seller and Purchaser shall jointly prepare a proposed proration schedule containing the parties' reasonable estimate of the items requiring prorations and adjustments in this Contract (the "**Proration Schedule**"). Subsequent final adjustments and payments of all such items (the "**True-Up**") shall be made in cash or other immediately available funds as soon as practicable, but no more than 90 days after the Closing Date (except with respect to ad valorem property taxes which shall be adjusted within 30 days after receipt of the final tax bill), based upon an accounting performed by Seller and acceptable to Purchaser. If the parties have not agreed with respect to the adjustments required to be made pursuant to Section 6.4, upon application by either party, a certified public accountant reasonably acceptable to the parties shall determine any such adjustments that have not theretofore been agreed to between the parties. (If the parties cannot agree on a certified public accountant within 30 days after the request by either party, the 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 30 days after the final determination thereof.

6.8.1 **Access.** Purchaser 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 6.8, and (ii) after the Closing Date for the purpose of review of receivables or any other post-closing adjustments provided for in this Contract, and such representatives shall be given reasonable access to the Hotel Books and Records that are relevant to the preparation of the proposed closing statement and the Settlement Statement.

6.8.2 **Calculations.** All 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.

6.9 **Survival.** The provisions of Sections 6.4 through 6.8 shall survive the Closing and delivery of the Deed to Purchaser.

## ARTICLE VII

### CONDITIONS PRECEDENT TO CLOSING

7.1 **Purchaser's Conditions to Closing.** Purchaser's obligation to close under this Contract shall be subject to and conditioned upon the fulfillment of each and all of the following conditions precedent:

7.1.1 All of the documents required to be delivered by Seller to Purchaser at the Closing pursuant to Section 6.2 shall have been delivered;

7.1.2 Each of Seller's Representations shall be true in all material respects as of the Closing Date;

7.1.3 The Title Insurer shall be irrevocably committed to issue a policy in conformance with the Title Report, subject only to the Permitted Exceptions;

7.1.4 Seller shall have complied with, fulfilled and performed in all material respects each of the covenants, terms and conditions to be complied with, fulfilled or performed by Seller hereunder;

7.1.5 Seller shall have terminated the Existing Hotel Management Agreement; and

7.1.6 There shall not be pending or, to the knowledge of either Purchaser or Seller, any litigation or threatened litigation which, if determined adversely, would restrain the consummation of any of the transactions contemplated by this Contract or declare illegal, invalid or nonbinding any of the covenants or obligations of Purchaser.

Notwithstanding anything to the contrary, there are no other conditions on Purchaser's obligation to Close except as expressly set forth in this Section 7.1. If any condition set forth in Sections 7.1.1, 7.1.2, 7.1.4, or 7.1.5 is not met, Purchaser may (a) waive any of the foregoing conditions and proceed to Closing on the Closing Date with no offset or deduction from the

Purchase Price, or (b) if such failure constitutes a default by Seller, exercise any of its remedies pursuant to Section 12.2. If the condition set forth in Section 7.1.3 or Section 7.1.6 is not met, Purchaser may, as its sole and exclusive remedy, (i) notify Seller of Purchaser's election to terminate this Contract and receive a return of the Deposit from the Escrow Agent, or (ii) waive such condition and proceed to Closing on the Closing Date with no offset or deduction from the Purchase Price.

7.2 **Seller's Conditions to Closing.** Seller's obligation to close under this Contract shall be subject to and conditioned upon the fulfillment of each and all of the following conditions precedent:

- 7.2.1 All of the documents and funds required to be delivered by Purchaser to Seller at the Closing pursuant to Section 6.3 shall have been delivered;
- 7.2.2 Each of the representations and warranties of Purchaser contained herein shall be true in all material respects as of the Closing Date;
- 7.2.3 Purchaser shall have complied with, fulfilled and performed in all material respects each of the covenants, terms and conditions to be complied with, fulfilled or performed by Purchaser hereunder;
- 7.2.4 Seller shall have received all consents, documentation and approvals necessary to consummate and facilitate the transactions contemplated hereby; and
- 7.2.5 There shall not be pending or, to the knowledge of either Purchaser or Seller, any litigation or threatened litigation which, if determined adversely, would restrain the consummation of any of the transactions contemplated by this Contract or declare illegal, invalid or nonbinding any of the covenants or obligations of Purchaser.

If any of the foregoing conditions to Seller's obligation to close with respect to conveyance of the Property under this Contract are not met, Seller may (a) waive any of the foregoing conditions and proceed to Closing on the Closing Date, or (b) terminate this Contract, and, if such failure constitutes a default by Purchaser, exercise any of its remedies under Section 12.1.

## ARTICLE VIII REPRESENTATIONS AND WARRANTIES OF SELLER AND PURCHASER

### 8.1 Seller's Representations and Warranties.

#### 8.1.1 Seller makes the following representations and warranties to Purchaser ("**Seller's Representations**");

8.1.1.1 **Organization and Power.** Seller is a limited liability company, duly organized, validly existing and authorized to do business and is in good standing under the laws of the State of Wyoming. Seller has all requisite limited liability company powers and authorizations to carry on its business as now conducted and to enter into and

perform its obligations hereunder and under any document or instrument executed and delivered on behalf of Seller hereunder.

8.1.1.2 **Bankruptcy.** Seller is not the subject debtor under any federal, state or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets.

8.1.1.3 **Authorization and Execution.** This Contract has been duly authorized by all necessary action on the part of Seller, has been duly executed and delivered by Seller, constitutes the valid and binding agreement of Seller and is enforceable in accordance with its terms, and the documents or instruments contemplated hereby and thereby have been duly authorized by all necessary action on the part of Seller, will be duly executed and delivered by Seller, and, when so executed and delivered, will constitute, the valid and binding agreements of Seller, enforceable against Seller in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws affecting enforcement of creditor's rights generally and by general principles of equity (whether applied in a proceeding at law or equity). Each person executing this Contract and the other documents contemplated hereby on behalf of Seller has (or will have at the time of such execution) the authority to do so.

8.1.1.4 **Non--contravention.** The execution and delivery of, and the performance by Seller of its obligations under, this Contract does not and will not contravene, or constitute a material default under, any provision of applicable law or regulation or any agreement, judgment, injunction, order, decree or other instrument binding upon Seller or to which the Property is subject, or result in the creation of any lien or other encumbrance on any asset of Seller.

8.1.1.5 **Seller Is Not a "Foreign Person".** Seller is not a "foreign person" within the meaning of Section 1445 of the Code, (i.e., Seller is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person as those terms are defined in the Code and regulations promulgated thereunder).

8.1.1.6 **No Approvals.** Other than as disclosed in the Title Report or documents provided therewith, routine transfers of local business licenses and the payment of fees and taxes related thereto, and as set forth on Schedule 8.1.1.6, no governmental authority or third--party filings, approvals or consents are required for Seller's execution and delivery of, or performance of its obligations under, this Contract, and Seller's execution, delivery and performance of this Contract, do not and will not violate, and are not restricted by, any contractual obligation of Seller or any federal, state or local laws, statutes or ordinances to which Seller is a party or by which Seller or any of the Property is bound.

8.1.1.7 **Prohibited Person.** Seller is not a Prohibited Person. The assets Seller will transfer to Purchaser under this Contract are not the property of, nor is any controlling interest therein beneficially owned, directly or indirectly, by a Prohibited Person.

8.1.1.8 **Compliance with Existing Laws.** Neither Seller nor any Affiliate of Seller has received any uncorrected written notice of any violation of any laws

binding upon Seller or to which the Property is subject, which violation would be reasonably expected to have a Material adverse effect on Seller. Seller further represents that no written notice from any governmental authority has been received by Seller or any Affiliate of Seller revoking, canceling, denying renewal of, or threatening any such action with respect to any

authorization.

8.1.1.9 **Employees.** Seller has not entered into any employment agreements that are currently in effect.

8.1.1.10 **Collective Bargaining Agreements.** Seller has not entered into any collective bargaining agreements that are currently in effect.

8.1.1.11 **Condemnation Proceedings.** There is no condemnation or eminent domain proceeding pending, or, to the knowledge of Seller, threatened, against any part of the Real Property.

8.1.1.12 **Actions or Proceedings.** Except as set forth in Schedule 8.1.1.12, there is no action, suit or proceeding pending, or to the knowledge of Seller, threatened against or affecting Seller or the Property in any court, before any arbitrator or before or by any governmental authority.

8.1.1.13 **Hazardous Substances.** Other than as set forth in Schedule 8.1.1.13 or in the Environmental Reports:

8.1.1.13.1 Seller has received no written notice from any governmental authority of any actual or potential violation of or failure to comply with any Environmental Law with respect to the Real Property which remains uncorrected, or of any actual or threatened obligation to undertake or bear the cost of any clean--up, removal, containment, or other remediation under any Environmental Law with respect to the Real Property which remains unperformed.

8.1.1.13.2 There are no pending or, to Seller's knowledge, threatened actions arising under or pursuant to any Environmental Law with respect to or affecting the Real Property.

8.1.1.13.3 To Seller's knowledge, other than (i) hazardous substances used in the ordinary course of maintaining and cleaning the Property in commercially reasonable amounts or used during the renovation projects in accordance with applicable Environmental Laws, and (ii) hazardous substances used as fuels, lubricants or otherwise in connection with vehicles, machinery and equipment located at the Property in commercially

reasonable amounts, no hazardous substances are present on or in the Property. To Seller's knowledge, the hazardous substances described in the foregoing clauses (i) and (ii) are being used and disposed of in compliance with all Environmental Laws.

8.1.1.14 **Contracts.** There are no Property Contracts or Leases that will affect the Property following the Closing Date, except as set forth on Schedule 8.1.1.14 or as otherwise permitted under this Contract. If there exists any Property Contract that is not shown on Schedule 8.1.1.14, the foregoing representation shall not be deemed to be incorrect to the

extent (a) amounts paid under such Property Contract are reflected in the Financial Statements, (b) amounts to be paid under such Property Contracts do not exceed after the Closing Date \$30,000, in the aggregate, in any year, (c) such Property Contract is entered into after the Effective Date in accordance with this Contract in the ordinary course of business, (d) such contracts for the rental of a Hotel room, suite, banquet or meeting room or convention facilities, (e) such contract constitutes a purchase order for Consumables, Operating Equipment or any Inventory in the ordinary course of business, or (f) such contract is terminable by Purchaser without penalty on not more than 60 days' prior notice (the contracts identified in subsections (b), (d), (e) and (f) collectively may be referred to as "**Non--Material Property Contracts**"). Each Lease and Property Contract (other than Non--Material Property Contracts) is in full force and effect, and, to Seller's knowledge, there are no defaults or events that, with notice or lapse of time or both, that constitute a default by Seller under such Leases or Property Contracts (other than Non--Material Property Contracts) and, to Seller's knowledge, by any other party thereto.

8.1.1.15 **Financial Information.** Seller has provided to Purchaser a copy of a balance sheet as of November 30, 2005 and as of July 31, 2005 and income statements for the four--month period ending November 30, 2005 and for the fiscal year ending July 31, 2005 (collectively, "**Financial Statements**"). The Financial Statements are (a) true, complete and correct in all material respects, and (b) accurately represent the financial condition and results of operations of Seller or the Property, as applicable, as of the date of such reports.

8.1.1.16 **Insurance.** Schedule 8.1.1.16 is a true, correct and complete list of the insurance policies maintained by Seller or on Seller's behalf for the Property. Seller has not received written notice from any insurance company that any such insurance policy has been terminated.

8.1.1.17 **Title.** Seller owns the Personal Property free and clear of liens, other than the Permitted Exceptions to the extent applicable to the Personal Property. All Bookings are held in Seller's name.

8.1.1.18 **Property Tax Appeals.** Except as otherwise set forth on Schedule 8.1.1.18, there are no pending ad valorem property tax appeals that have been filed by Seller or its Affiliates with respect to the Property.

8.1.1.19 **Permits.** To Seller's knowledge, all Permits maintained by Seller for the operation of the Hotel are in full force and effect. Except as otherwise disclosed to Purchaser in said Schedule 8.1.1.19, as of the date hereof, Seller has not received written notice of any material violations of any Permit.

8.1.1.20 **Liquor License.** Schedule 8.1.1.20 is a true, correct and complete list of the Existing Liquor License. The Existing Liquor License is active and in good standing without pending disciplinary action by the Liquor Authority.

8.1.1.21 **Right of First Refusal.** There do not exist any rights of first refusal to acquire any part of the Hotel.

8.1.1.22 **Trademarks.** Schedule 8.1.1.22 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 Seller (the "**Intellectual Property**").

8.1.2 Any representations and warranties made "to Seller's knowledge" (or similar variations) shall not be deemed to imply any duty of inquiry. For purposes of this Contract, the term Seller's "knowledge" shall mean and refer only to actual present knowledge of the Designated Representatives and shall not be construed to refer to the knowledge of any other partner, officer, director, agent, member, manager, employee or representative of Seller, or any Affiliate of Seller, or to impose upon such Designated Representatives any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such Designated Representatives any individual personal liability. As used herein, the term "**Designated Representatives**" shall refer to Marla Steele, Edward Mace and Bruce Grosbety.

8.1.3 Seller's Representations set forth in Section 8.1 of this Contract shall be true, accurate and correct in all material respects upon the Effective Date 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 7.1.2). Seller's Representations in any other Seller Documents shall remain operative and shall survive for nine months following Closing.

8.1.4 Notwithstanding anything in this Contract to the contrary, Purchaser shall be required to give Seller prompt written notice of any matter of which Purchaser has actual knowledge prior to the Closing with respect to which Purchaser reasonably concludes indicates that Seller has breached any of its representations or warranties made by Seller under this Contract. In furtherance thereof, Seller shall have no liability with respect to any of the foregoing representations and warranties or any representations and warranties made in any other Seller Document, to the extent that (i) on or before the Closing, Purchaser obtained actual knowledge (from whatever source, including, without limitation, information provided in the Materials, including the Title Report and documents related thereto, as a result of Purchaser's own due diligence tests, investigations and inspections of the Property, or disclosure by Seller or any of Seller's agents and employees) or (ii) otherwise is contained in any Materials delivered to Purchaser or Broker, the Title Report and documents related thereto, or the results of any of Purchaser's own due diligence tests, investigations and inspections of the Property, contained information that contradicts the applicable representations and warranties, or renders the applicable representations and warranties untrue or incorrect, and Purchaser nevertheless consummates the transaction contemplated by this Contract.

## 8.2 Purchaser's Representations and Warranties.

### 8.2.1 Purchaser makes the following representations and warranties to Seller:

8.2.1.1 **Qualification and Good Standing.** Purchaser is duly qualified to do business and is in good standing under the laws of the State of Delaware. Purchaser has all requisite authority, powers and authorizations to carry on its business as now conducted and to enter into and perform its obligations hereunder and under any document or instrument executed and delivered on behalf of Purchaser hereunder.

8.2.1.2 **Authorization and Execution.** This Contract has been duly authorized by all necessary action on the part of Purchaser, has been duly executed and delivered by Purchaser, constitutes the valid and binding agreement of Purchaser and is enforceable in accordance with its terms, and the documents or instruments contemplated hereby have been duly authorized by all necessary action on the part of Purchaser, will be duly executed and delivered by Purchaser, and, when so executed and delivered will constitute, the valid and binding agreements of Purchaser, enforceable in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws affecting enforcement of creditor's rights generally and by general principles of equity (whether applied in a proceeding at law or equity). Each person executing this Contract and the other documents contemplated hereby on behalf of Purchaser has (or will have at the time of such execution) the authority to do so.

8.2.1.3 **Non--contravention.** The execution and delivery of, and the performance by Purchaser of its obligations under, this Contract, do not and will not contravene, or constitute a default under, any provision of applicable law or regulation or any agreement, judgment, injunction, order, decree or other instrument binding upon Purchaser.

8.2.1.4 **No Approvals.** No governmental authority or third-party filings, approvals or consents are required for Purchaser's execution and delivery of, or performance of its obligations under, this Contract, and Purchaser's execution, delivery and performance of this Contract, do not and will not violate, and are not restricted by, any other contractual obligation or any federal, state or local laws, statutes or ordinances to which Purchaser is a party or by which Purchaser is bound.

8.2.1.5 **Litigation.** No pending or, to the knowledge of Purchaser, threatened litigation exists which if determined adversely would restrain the consummation of the transactions contemplated by this Contract or would declare illegal, invalid or non-binding any of Purchaser's obligations or covenants to Seller.

8.2.1.6 **Prohibited Person.** Purchaser is not a Prohibited Person. To Purchaser's knowledge, none of its controlling investors, nor any brokers or other agents (if any) acting or benefiting in any capacity in connection with this Contract, is a Prohibited Person. The funds or other assets Purchaser will transfer to Seller under this Contract are not the property of, and no controlling interest therein is beneficially owned, directly or indirectly, by, a Prohibited Person. No funds or other assets Purchaser will transfer to Seller under this Contract are the proceeds of specified unlawful activity as defined by 18 U.S.C. § 1956(c) (7).

8.2.2 Purchaser's representations and warranties set forth in this Section 8.2 shall be true, accurate and correct in all material respects upon the Effective Date 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 7.2.2), Purchaser's representations and warranties shall remain operative and shall survive for nine months following Closing.

## ARTICLE IX OPERATION OF THE PROPERTY PENDING CLOSING

9.1 **Actions and Operations Pending Closing.** Seller agrees that, between the date hereof and the earlier of the Closing Date or the termination of the Contract pursuant to the terms hereof:

9.1.1 the Hotel will continue to be operated and maintained substantially in accordance with its present standards;

9.1.2 Seller will not, without the prior written consent of Purchaser, which may be granted or withheld in Purchaser's reasonable discretion, enter into any contracts or commitments with respect to the Hotel involving any capital expenditures or material construction; provided, however, that such consent of Purchaser shall not be required (a) in the event of a Casualty or an Emergency or (b) with respect to matters set forth on Seller's calendar year 2005 capital expenditures budget;

9.1.3 Seller will not, without the prior written consent of Purchaser, which may be granted or withheld in Purchaser's reasonable discretion, (a) sell, pledge or transfer any of its interest in any of the Property other than in the ordinary course of business, (b) enter into any (i) new Property Contracts or (ii) new licenses or permits or (iii) cancel, materially modify or renew any of the existing Property Contracts (other than a Non-Material Property Contract) or Leases; provided, however, that Seller may, without Purchaser's prior consent, enter into (I) Non-Material Contracts, (II) purchase orders for Personal Property, any Inventory, Consumables and/or Operating Equipment in the ordinary course of business, and (III) applications to obtain or renew Permits used in the ordinary course of business or required for the continued operation of the business of the Hotel or the transfer contemplated hereby;

9.1.4 Notwithstanding the provisions of Section 9.1.2, Seller shall have the right, without giving notice to or receiving the consent of Purchaser, to make and accept cancellations of Bookings in the ordinary course of business;

9.1.5 Except as set forth in Section 10.1, Seller will execute, and Purchaser will cooperate in the execution of, all applications and instruments reasonably requested by Purchaser which are required in connection with the transfer of all transferable Permits (other than Excluded Permits) in order to transfer the benefits of such Permits to Purchaser on the Closing Date; provided, however, no such transfer shall be effective unless and until the Closing occurs. Purchaser shall be responsible for, and pay immediately upon Seller's request, all costs related to such applications and instruments. Seller, subject to the next succeeding sentence, shall use commercially reasonable efforts to preserve in force all existing Permits and to cause all those expiring during the period between the date hereof and the Closing to be renewed prior to the Closing Date. If any such Permit (other than Excluded Permits, but inclusive of the Existing Liquor License) shall be suspended or revoked, Seller shall promptly so notify Purchaser and shall use commercially reasonable efforts to cause the reinstatement of such Permit without any additional limitation or condition;

9.1.6 During the seven-day period prior to the Closing Date, Purchaser shall be entitled to have up to two representatives at the Hotel, at reasonable times and under reasonable circumstances, to observe the operations of the Hotel, provided (a) at least 48 hours in advance, Purchaser makes arrangements with Hotel management regarding sending such representative(s) to the Hotel and (b) such representative(s) do not interfere with Hotel management or employees or any of the operations of the Hotel; and

9.1.7 To the extent maintained by a prudent owner of comparable properties that are similarly situated to the Hotel, Seller will maintain in effect all policies of insurance for the Hotel which are in effect as of the date hereof, or similar policies of insurance, with no less than the limits of coverage now carried with respect to the Hotel.

9.2 **Liens.** Other than utility easements and temporary construction easements granted by Seller in the ordinary course of business, Seller covenants that it will not voluntarily create or cause any lien or encumbrance to attach to the Property between the Effective Date and the Closing Date (other than Leases and Property Contracts as provided in Section 9.1) unless Purchaser approves such lien or encumbrance, which approval shall not be unreasonably withheld, conditioned or delayed. If Purchaser approves any such subsequent lien or encumbrance, the same shall be deemed a Permitted Encumbrance for all purposes hereunder.

## ARTICLE X COVENANTS

10.1 **Liquor License.** Purchaser hereby acknowledges and agrees that it is Purchaser's sole responsibility to arrange for the transfer of the Existing Liquor License (to the extent allowed by applicable law) to Purchaser to allow Purchaser to conduct the service of alcoholic beverages at the Hotel from and after Closing. At Purchaser's sole cost and expense, Seller shall cooperate with Purchaser in arranging for such transfer or issuance, and to that end, Seller shall execute a consent to transfer of Existing Liquor License in the form attached hereto as Exhibit H. In arranging for transfer of the Existing Liquor License from Seller to Purchaser and for purposes of satisfying the requirements of the Wyoming Department of Revenue, Liquor Division, Purchaser and Seller shall, in the application for transfer of the Existing Liquor License, designate the General Manager of the Hotel as an officer of Purchaser and shall list the Hotel Manager on the application for transfer as designated by the Wyoming Department of Revenue. Seller and Purchaser shall use commercially reasonable efforts to complete and file the application for transfer of the Existing Liquor License within 30 days after Closing. Transfer of the Existing Liquor License shall not be a condition to Closing; however, if such transfer is not completed at or prior to Closing (and provided Seller is not precluded by law or appropriate governmental authority), in order to enable Purchaser to serve such alcoholic beverages from and after Closing, Seller shall, on or prior to the Closing Date, enter into such appropriate arrangement as shall be reasonably acceptable to Seller and Purchaser (but only for a period of up to five months after Closing), including, without limitation, a leasing of the space in which alcoholic beverages are sold pursuant to any applicable liquor license and/or a liquor license management contract (a "**Liquor License Agreement**"). The parties agree to use commercially reasonable efforts to agree upon a form of Liquor License Agreement with respect to such anticipated arrangement within 15 days after the Effective Date. In such event, Purchaser shall purchase insurance in such amounts and in such forms as Seller shall reasonably require,



including, without limitation, dram shop liability insurance, insuring Seller and such related entities and individuals as Seller shall specify against any and all liabilities which may arise pursuant to such arrangement. Purchaser shall indemnify, defend and hold Seller harmless from any claim, expense (including, without limitation, reasonable attorneys' fees and disbursements), loss, liability or other damage incurred by Seller by reason of such arrangement. The provisions of this Section 10.1 shall survive Closing.

## 10.2 Indemnities and Releases.

**10.2.1 Purchaser's Indemnity.** From and after the Closing, Purchaser shall protect, defend, indemnify and hold Seller Indemnified Parties free and harmless from and against (a) any and all third-party Losses for personal injury or death and property damage to the extent related to the Hotel and also accruing from and after the Closing, and (b) any Losses to the extent arising from a breach of Purchaser's representations set forth in Section 8.2 ("**Seller's Claims**"). Notwithstanding anything in this Contract to the contrary, (x) the indemnity set forth in subsentence (a) shall survive until the expiration of the applicable statute of limitations and (y) the indemnity set forth in subsentence (b) above shall survive for 9 months after the Closing Date. Such indemnity, as well as Purchaser's representations set forth in Section 8.2 shall automatically be null and void and of no further force and effect on the date immediately succeeding the 9-month anniversary of the Closing Date, unless on or before such date, Seller shall have provided notice hereunder to Purchaser alleging that Purchaser shall be in breach of such representation or warranty and that Seller shall have suffered actual damages as a result thereof. Seller shall then have 30 days following delivery of such notice to commence a legal proceeding against Purchaser. If Seller has not commenced a legal proceeding against Purchaser within such 30-day period following delivery of notice, then such representations and indemnity shall be null and void and Purchaser's obligations under this Section 10.2.1 with respect to such representations and indemnity shall terminate.

**10.2.2 Seller's Indemnity.** From and after the Closing, Seller shall protect, defend, indemnify and hold Purchaser and Purchaser's officers, directors, shareholders, Affiliates, partners, members, parents, subsidiaries, successors and assigns (collectively, "**Purchaser Indemnified Parties**"), free and harmless from and against (a) any and all third-party Losses for personal injury or death and property damage to the extent related to the Hotel and also accruing prior to the Closing, (b) any Losses to the extent arising from (i) a breach of Seller's Representations, or (ii) a breach of Seller's covenants set forth in Sections 9.1.2 and 9.1.3 (except to the extent that Purchaser has knowledge of an inaccuracy or breach of representation, warranty or covenant as provided in the last sentence of the last paragraph of Section 8.1 and nonetheless closes), or (iii) a breach of Seller's covenant set forth in Section 10.7 (collectively, "**Purchaser's Claims**"). Notwithstanding anything in this Contract to the contrary, (x) the indemnity set forth in subsentence (a) shall survive until the expiration of the applicable statute of limitations and (y) the indemnity set forth in subsentence (b) above shall survive for 9 months after the Closing Date other than the indemnity under clause (iii) of subsentence (b), which shall survive until the issuance of a "no further action" or equivalent advice from the applicable governmental agency. Such indemnity shall automatically be null and void and of no further force and effect on the date immediately succeeding the periods set forth in clauses (x) and (y), unless on or before such applicable date, Purchaser shall have provided notice hereunder alleging that Seller shall be in breach of such representation or warranty and that Purchaser shall have

suffered actual damages as a result thereof. Purchaser shall then have 30 days following delivery of such notice to commence a legal proceeding against Seller. If Purchaser has not commenced a legal proceeding against Seller within such 30-day period following delivery of notice, then such representations and indemnity shall be null and void and Seller's obligations under this Section

10.2.2 with respect to such representations and indemnity shall terminate. The maximum aggregate amount of liability that Seller shall have under any circumstance under this Contract for any claim or Loss (singularly or in aggregate of all claims and Losses) for a breach of Seller's Representations and the indemnity obligation set forth in subsentence (ii) shall not exceed, in the aggregate, \$1,500,000 (the "**Damage Cap**"); provided, however, that Purchaser shall not have the right to assert a claim under this Section 10.2.2 for a breach of Seller's Representations or the indemnity obligation set forth in subsentence (ii) unless the Loss to Purchaser on account of such breach (individually or when combined with Losses from other breaches) equals or exceeds \$75,000 (the "**Threshold**"), in which event Purchaser may assert claims for the full amount of such Loss in excess of such Threshold, but in no event to exceed the Damage Cap. Notwithstanding the foregoing, (i) the Threshold shall not apply to any claim for indemnification under clause (iii) of subsentence (b) of this Section 10.2.2 and (ii) to the extent that the Hotel maintains insurance with respect to a matter that would be a Purchaser Claim, Purchaser shall first seek recovery from such insurance (and not from Seller) and only the amounts not so covered by insurance shall count toward the Threshold.

**10.2.3 Assumed Obligations.** Whenever it is expressly provided in this Contract that one party shall assume an obligation or be responsible for a payment, the party assuming such obligation shall be deemed to have also agreed to indemnify and hold harmless the other party from all Losses arising from any failure of the assuming party to perform such obligation or make such payment.

**10.2.4 Indemnification Process.** The party seeking or entitled to indemnification under this Contract shall provide prompt notice to the other party (the "**Indemnitor**") specifying, with reasonable detail, the matter for which such indemnification is claimed. The Indemnitor shall have the right, upon giving Notice to the other party within 30 days after the date it received Notice from such party, to take primary responsibility for the prosecution or defense of such matter, provided such prosecution or defense is diligently pursued with counsel reasonably satisfactory to the indemnified party. If the Indemnitor takes responsibility for the prosecution or defense of the action, the indemnitee may participate at the indemnitee's own cost and defense in such action. The Indemnitor shall not settle or compromise any claim without the indemnitee's consent, unless the Indemnitor does so without imposing any obligations on the indemnitee or admitting liability on behalf of the indemnitee.

**10.2.5 Survival.** This Section 10.2 shall survive the Closing or termination of this Contract.

**10.3 Hotel Books and Records.** For a period of 90 days following the Closing Date, Seller and its Affiliates shall, subject to any confidentiality and/or proprietary restrictions, make available to Purchaser any computer systems, books, records, ledgers, files, information and data that are in the possession of Seller or its Affiliates and relate to the ownership or operation of the Property but were not included within the Hotel Books and Records conveyed to Purchaser at Closing.

**10.4 Assignment of Property Contracts.** If any Property Contract or Lease requires consent to such assignment from Seller to Purchaser, but such consent has not been obtained prior to Closing, this Contract, to the extent permitted by law, shall constitute an equitable assignment by Seller to Purchaser of all of Seller's rights, benefits, title and interest in and to the assigned Property Contracts or Leases, and Purchaser shall, as between Purchaser and Seller, assume the obligations of Seller under such Property Contracts or Leases and indemnify Seller from any Losses arising from such Property Contracts or Leases from and after the Closing Date, as set forth in Section 10.2.3. The terms of this Section 10.4 shall survive the termination of this Contract, and if not so terminated, the Closing and delivery of the Deed.

**10.5 Confidentiality/Return of Documents.** Purchaser and Seller each hereby agree to comply with the Confidentiality Agreement, at all times after the date of this Contract and prior to the Closing, unless otherwise expressly consented to in writing by the other party. In addition, Seller and Purchaser each agree to keep strictly confidential the existence and terms of this Contract and all information provided to or obtained by Seller or Purchaser pursuant to this Contract or otherwise in connection with the transaction contemplated hereby; provided, however, that such information may be disclosed (a) to employees, officers and directors of Purchaser or Seller or to Purchaser's or Seller's outside counsel and accountants or other consultants subject to the same standard of confidentiality, (b) as may be required by law or a court or (c) to the extent required under any filings with the Securities and Exchange Commission or any securities exchange. In addition, Seller may publicly announce the existence of the Contract, the Purchase Price, name of Purchaser, scheduled Closing Date, the existence of a Hotel Management Agreement and the Hotel Manager. Prior to or simultaneously with making any permitted disclosure, the party making such disclosure agrees to provide the other party hereto with a true and complete copy thereof Purchaser hereby acknowledges and agrees that all materials and information relating to the Property supplied to Purchaser by or on behalf of Seller or obtained by Purchaser in accordance with Article III and Article IV shall be treated in accordance with the terms and provisions of this Section 10.5. Such information shall be used solely for evaluating Purchaser's investment in the Property. If this Contract terminates or the transaction contemplated under this Contract fails to close for any reason whatsoever, Purchaser shall deliver to Seller all of the documents, financial

statements, reports or other information relating to the Property supplied to Purchaser by or on behalf of Seller and all Third-Party Reports (to the extent Purchaser is not legally prohibited in its reasonable judgment from delivering such materials to Seller). This Section 10.5 shall survive the Closing or termination of this Contract.

**10.6 Assignment of Certain Litigation.** Seller hereby assigns to Purchaser all of its interest in the litigation case pending in the District Court in and for Teton County, Wyoming, Ninth Judicial District, styled JHL&S LLC, a Wyoming limited liability company, Plaintiff, v. Union Pointe General Contractors; Design Resources, an Idaho corporation (Civil Case No. 13239) (the "**Case**"), and to use commercially reasonable efforts to obtain the court's approval of any order substituting Purchaser for Seller, as plaintiff in the Case. In the event that Seller is not able to obtain the court's approval of such substitution within a reasonable time after Closing, Seller agrees to use commercially reasonable efforts to pursue recovery in the Case, provided that Purchaser shall be entitled to any of the proceeds of any recovery therein (including any recovery pursuant to settlement of the Case), after deduction and prompt payment to Seller of all fees and expenses thereof, including, without limitation, the fees and costs of any of Seller's

attorneys or experts and the costs relating to any professional testing incurred by Seller in connection with the Case.

**10.7 Remediation of Underground Storage Tank.** Seller shall pay, or promptly reimburse Purchaser for, any costs of environmental remediation for any release of heating oil from, or other non-compliance with applicable Environmental Laws in connection with, that certain underground storage tank that was used by Seller for the storage of heating oil for the operation of certain boilers in the Hotel until December 1, 2005 to the extent necessary to obtain a "no further action" letter or equivalent advice from the applicable governmental agency.

**10.8 General Ledger Software.** Seller shall pay, or promptly reimburse Purchaser for, the reasonable costs of purchasing a license for, and initial installation of, general ledger software for the operation of the Hotel subsequent to the Closing.

**10.9 Jackson Hole Access Agreement.** Seller agrees to use commercially reasonable efforts to obtain termination of that certain letter agreement, dated August 7, 2002, with Jackson Hole Mountain Resort that provides ski-in access across the land owned by Jackson Hole Mountain Resort land, including execution by Seller and Jackson Hole Mountain Resort of a release agreement regarding such letter agreement.

## ARTICLE XI BROKERAGE

**11.1 Broker Indemnity.** Seller represents and warrants to Purchaser that it has dealt only with Jones Lang LaSalle Hotels, 355 South Grand Avenue, Suite 3100, Los Angeles, California ("**Broker**"), in connection with this Contract. Seller and Purchaser each represents and warrants to the other that, other than Broker, it has not dealt with or utilized the services of any other real estate broker, sales person or finder in connection with this Contract, and each party agrees to indemnify, hold harmless, and, if requested, in the sole and absolute discretion of the indemnitee, defend (with counsel approved by the indemnitee) the other party from and against all Losses relating to brokerage commissions and finder's fees arising from or attributable to the acts or omissions of the indemnifying party. The provisions of this Section 11.1 shall survive the termination of this Contract, and if not so terminated, the Closing and delivery of the Deed.

**11.2 Broker Commission.** If the Closing occurs, Seller agrees to pay Broker a commission according to the terms of a separate contract. Broker shall not be deemed a party or third-party beneficiary of this Contract.

**11.3 Broker Signature Page.** As a condition to Seller's obligation to pay the commission pursuant to Section 11.2, Broker shall execute the signature page for Broker attached hereto solely for purposes of confirming the matters set forth therein; provided, however, that (a) Broker's signature hereon shall not be a prerequisite to the binding nature of this Contract on Purchaser and Seller, and the same shall become fully effective upon execution by Purchaser and Seller, and (b) the signature of Broker will not be necessary to amend any provision of this Contract.

## ARTICLE XII DEFAULTS AND REMEDIES

**12.1 Purchaser Default.** If Purchaser defaults in its obligations hereunder to (a) deliver the Deposit (or any other deposit or payment required of Purchaser hereunder), (b) deliver to Seller the deliveries specified under Section 6.3 on the date required thereunder, or (c) deliver the Purchase Price at the time required by Section 2.3.2 and close on the purchase of the Property on the Closing Date, then, immediately and without notice or cure, Purchaser shall forfeit the Deposit, and the Escrow Agent shall deliver the Deposit to Seller, and neither party shall be obligated to proceed with the purchase and sale of the Property. If Purchaser defaults in any of its other representations, warranties or obligations under this Contract, and such default continues for more than ten days after written notice from Seller, then Purchaser shall forfeit the Deposit, and the Escrow Agent shall deliver the Deposit to Seller, and neither party shall be obligated to proceed with the purchase and sale of the Property. The Deposit is liquidated damages, and recourse to the Deposit is, except for Purchaser's indemnity and confidentiality obligations hereunder, Seller's sole and exclusive remedy for Purchaser's breach of this Contract and failure to perform its obligation to purchase the Property. Seller expressly waives the remedies of specific performance and additional damages for such default by Purchaser. SELLER AND PURCHASER ACKNOWLEDGE THAT SELLER'S DAMAGES WOULD BE DIFFICULT TO DETERMINE, AND THAT THE DEPOSIT IS A REASONABLE ESTIMATE OF SELLER'S DAMAGES RESULTING FROM A DEFAULT BY PURCHASER IN ITS OBLIGATION TO PURCHASE THE PROPERTY. SELLER AND PURCHASER FURTHER AGREE THAT THIS SECTION 12.1 IS INTENDED TO AND DOES LIQUIDATE THE AMOUNT OF DAMAGES DUE SELLER, AND SHALL BE SELLER'S EXCLUSIVE REMEDY AGAINST PURCHASER, BOTH AT LAW AND IN EQUITY, ARISING FROM OR RELATED TO A BREACH BY PURCHASER OF ITS OBLIGATION TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THIS CONTRACT, OTHER THAN WITH RESPECT TO PURCHASER'S INDEMNITY AND CONFIDENTIALITY OBLIGATIONS HEREUNDER.

**12.2 Seller Default.** If Seller, prior to the Closing, defaults in its representations, warranties, covenants, or obligations under this Contract, including to sell the Property as required by this Contract, and such default continues for more than ten days after written notice from Purchaser, then, at Purchaser's election and as Purchaser's sole and exclusive remedy, either

- a. this Contract shall terminate, and all payments and things of value, including the Deposit, provided by Purchaser hereunder shall be returned to Purchaser, and Purchaser may recover, as its sole recoverable damages (but without limiting its right to receive a refund of the Deposit), its direct and actual out-of-pocket expenses and costs (documented by paid invoices to third parties) in connection with this transaction, which damages shall not exceed \$100,000 in aggregate, or
- b. Purchaser may seek, within 60 days after the expiration of the cure period for such default, specific performance of Seller's obligation to deliver the Deed and all other documents provided for herein and perform all of its obligations pursuant to this Contract (but not damages). Purchaser agrees that it shall promptly deliver to Seller an assignment of all of Purchaser's right, title and interest in and to (together with possession of) all plans, studies, surveys, reports, and other materials paid for with the out-of-pocket expenses reimbursed by Seller pursuant to the foregoing sentence, except to the extent that such assignments are prohibited by contract. SUBJECT TO PURCHASER'S RIGHTS UNDER CLAUSE (b) ABOVE, SELLER AND

PURCHASER FURTHER AGREE THAT THIS SECTION 12.2 IS INTENDED TO AND DOES LIMIT THE AMOUNT OF DAMAGES DUE PURCHASER TO \$100,000.00 AND THE REMEDIES AVAILABLE TO PURCHASER, AND SHALL BE PURCHASER'S EXCLUSIVE REMEDY AGAINST SELLER, BOTH AT LAW AND IN EQUITY, ARISING FROM OR RELATED TO A BREACH BY SELLER OF ITS REPRESENTATIONS, WARRANTIES, OR COVENANTS OR ITS OBLIGATION TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THIS CONTRACT IN THE EVENT THAT THE CLOSING DOES NOT OCCUR. UNDER NO CIRCUMSTANCES MAY PURCHASER SEEK OR BE ENTITLED TO RECOVER ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES, ALL OF WHICH PURCHASER SPECIFICALLY WAIVES, FROM SELLER FOR ANY BREACH BY SELLER, OF ITS REPRESENTATIONS, WARRANTIES OR COVENANTS OR ITS OBLIGATIONS UNDER THIS CONTRACT. PURCHASER SPECIFICALLY WAIVES THE RIGHT TO FILE ANY LIS PENDENS OR ANY LIEN AGAINST THE PROPERTY UNLESS AND UNTIL IT HAS IRREVOCABLY ELECTED TO SEEK SPECIFIC PERFORMANCE OF THIS CONTRACT AND HAS FILED AN ACTION SEEKING SUCH REMEDY.

ARTICLE XIII  
RISK OF LOSS OR CASUALTY

13.1 Casualties .

13.1.1 **Notice.** If any substantial damage to the Property shall occur on or before the Closing Date by reason of fire or other casualty (a "**Casualty**"), Seller will give Purchaser Notice (a "**Casualty Notice**") of such event upon the earlier of the Closing Date or five Business Days following such Casualty.

13.1.2 **Restoration.** If the cost to repair and restore the Real Property exceeds \$3,000,000 or more than 40 rooms will be out of service for more than 120 days (as reasonably estimated by an independent and disinterested architect or registered professional engineer competent to make such estimate and selected by Seller no later than 15 Business Days following such Casualty), then Purchaser shall have the option to terminate this Contract by giving Seller notice to such effect within five Business Days after the receipt of the report of the architect or engineer referred to above. If Purchaser elects to terminate this Contract pursuant to this Section 13.1.2, this Contract shall be deemed null and void (except for those obligations which expressly survive termination), the parties hereto shall have no further obligations to or recourse against each other except as otherwise expressly set forth herein, and the Deposit shall be returned to Purchaser. If Purchaser does not timely elect to terminate this Contract as hereinabove provided, or if Purchaser is obligated to close because the cost to repair or restore the Casualty (as reasonably estimated by the independent and disinterested architect or registered professional engineer described above) does not exceed the amount set forth above, then the Closing shall take place as herein provided without adjustment of the Purchase Price, and, subject to Section 13.1.3 hereof, Seller shall, at the Closing, pay or assign to Purchaser (by written instrument in the case of any assignment, but without recourse, representation or warranty) the proceeds from all fire and other casualty insurance paid or payable to Seller with respect to the Casualty.

13.1.3 To the extent that Seller, in accordance with this Contract, elects to commence any repair, replacement or restoration of the Property prior to Closing, then Seller shall be entitled to receive and apply available insurance proceeds to any portion of such repair, replacement or restoration completed or installed prior to Closing, with Purchaser being responsible for completion of such repair, replacement or restoration after Closing from the balance of any available insurance proceeds. The provisions of this Section 13.1.3 shall survive the Closing and delivery of the Deed to Purchaser.

ARTICLE XIV  
EMINENT DOMAIN

14.1 Condemnation.

14.1.1 In the event that, at the time of Closing, any part of the Real Property is permanently taken by condemnation or power of eminent domain (or is the subject of a pending permanent taking that has not yet been consummated), Seller shall notify Purchaser of such fact promptly after obtaining knowledge thereof. If such taking is Material, Purchaser shall have the right to terminate this Contract by giving written notice within ten days after Purchaser's receipt from Seller of notice of the occurrence of such event, and if Purchaser so terminates this

Contract, Purchaser shall recover the Deposit (subject to Purchaser's obligation under Section 3.2 to return all Third-Party Reports and information and Materials provided to Purchaser as a pre-condition to the return of the Deposit). If Purchaser fails to terminate this Contract within such ten-day period or does not have the right to terminate this Contract under this Article XIV, Purchaser shall accept so much of the Real Property as remains after such taking (or subject to a pending taking that has not yet been consummated, as the case may be) in its "as-is" condition and proceed with Closing with no abatement of the Purchase Price. At Closing, Seller shall assign and turn over to Purchaser, without recourse, the rights of Seller to any awards for the taking, and Purchaser shall be entitled to receive and retain such awards, in any event less reasonable out-of-pocket costs incurred by Seller to collect same and the portion thereof that Seller uses to make (i) temporary or emergency repairs to the Real Property arising from such taking, (ii) except for temporary or emergency repairs to the Real Property arising from such taking, Seller shall not make any repairs or restore the Real Property or enter into any contracts with respect thereto without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, delayed or conditioned (it being understood and agreed that Seller shall have no duty or obligation to Purchaser to repair or restore the Real Property), and (iii) at the Closing, Seller shall assign to Purchaser all of Seller's rights under, and Purchaser shall assume all of Seller's obligations thereafter arising under, any contracts to which Seller is a party with respect to any such repair or restoration of the Real Property resulting from such taking permitted under clauses (i) and (ii) above.

14.1.2 If, prior to the Closing Date, all or any portion of the Real Property is temporarily taken by condemnation or power of eminent domain (or is the subject of a pending temporary taking that has not yet been consummated), (a) Seller shall notify Purchaser of such fact promptly after obtaining knowledge thereof, (b) Purchaser shall accept the Real Property in its "as-is" condition and proceed with Closing with no abatement of the Purchase Price, (c) Seller shall not compromise, settle or adjust any claims to awards for the taking without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, delayed or

conditioned, (d) at Closing, Seller shall assign and turn over to Purchaser, without recourse, the rights of Seller to awards, if any, for the taking to the extent relating to or allocable to the period from and after the Closing Date (it being understood and agreed that Seller shall be entitled to receive and retain any such award to the extent that it relates to or is allocable to the period prior to the Closing Date, whether or not the award is received prior to, on or after Closing), and Purchaser shall be entitled to receive and keep such awards for the taking, in any event less an allocable share of the costs incurred by Seller to collect same and the portion thereof that Seller uses to make temporary or emergency repairs to the Real Property arising from such taking.

14.2 **Defined Terms.** As used in this Article XIV, the term "**Material**" means, in the case of a taking, if, as a result of such taking, the remaining portion of the Real Property, if any, cannot reasonably be expected to be operated in a manner that yields substantially the same economic return on Purchaser's investment as the Real Property immediately prior to such taking, or such taking results in the taking or other permanent loss of any necessary legal ingress and/or egress from the Real Property to public roads.

ARTICLE XV  
MISCELLANEOUS

15.1 **Binding Effect of Contract.** This Contract shall not be binding on either party until executed by both Purchaser and Seller. As provided in Section 2.5.5 and Section 11.3, neither the Escrow Agent's nor the Broker's execution of this Contract shall be a prerequisite to its effectiveness.

15.2 **Assignability.** This Contract is not assignable by Purchaser without first obtaining the prior written approval of Seller, except that Purchaser may assign this Contract to one or more entities so long as (a) Purchaser is an Affiliate of the purchasing entity(ies) or Purchaser is a member owning not less than 10% of the voting equity securities or equity of the purchasing entity(ies), (b) Purchaser is not released from its liability hereunder, and (c) Purchaser provides written notice to Seller of any proposed assignment no later than ten days prior to the Closing Date. Upon such assignment, Purchaser's assignees shall assume all Purchaser's obligations hereunder.

15.3 **Binding Effect.** Subject to Section 15.2, this Contract shall be binding upon and inure to the benefit of Seller and Purchaser, and their respective successors, heirs and permitted assigns.

15.4 **Captions.** The captions, headings, and arrangements used in this Contract are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof

15.5 **Notices.** All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered with a written receipt of delivery; (b) sent by a nationally-recognized overnight delivery service requiring a written

acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by confirmed facsimile transmission, with an original copy thereof transmitted to the recipient by

one of the means described in subsections (a) through (c) no later than three Business Days thereafter. All notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that, if the notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this [Section 15.5](#), then the first attempted delivery shall be deemed to constitute delivery. Each party shall be entitled to change its address for notices from time to time by delivering to the other party notice thereof in the manner herein provided for the delivery of notices. All notices shall be sent to the addressee at its address set forth following its name below:

To Purchaser:

Lodging Capital Partners, LLC

430 W. Eric, #501

Chicago, Illinois 60610

Attention: Telephone: Telecopy:

and a copy to:

Heller Ehrman, LLP

333 Bush Street

San Francisco, California 94104 Attention: P. Peter Benudiz, Esq. Telephone: (213) 689--0200 Facsimile: (213) 244--7683

To Seller:

JHL&S LLC

c/o Vail Associates, Inc. 137 Benchmark Road

**Avon, Colorado 81620**

Attention: General Counsel Telephone: (970) 845--2927 Telecopy: (970) 845--2928

and a copy to:

Brownstein Hyatt & Farber, P.C. 410 17<sup>th</sup> Street, 22<sup>nd</sup> Floor

Denver, Colorado 80202

Attention: Kevin A. Cudney, Esq. Telephone: (303) 223--1100

Facsimile: (303) 223--1111

Any notice required hereunder to be delivered to the Escrow Agent shall be delivered in accordance with above provisions as follows:

Title Contact:

Jackson Hole Title & Escrow Company 255 Maple Way

P.O. Box 921

Jackson, Wyoming 83001

Attention: Nancy Hughes, Vice President Telephone: (307) 733--3153

Telecopy: (307) 733--9534

Unless specifically required to be delivered to the Escrow Agent pursuant to the terms of this Contract, no notice hereunder must be delivered to the Escrow Agent in order to be effective so long as it is delivered to the other party in accordance with the above provisions.

**15.6 Governing Law And Venue.** The internal laws of the State of Wyoming shall govern the validity, construction, enforcement, and interpretation of this Contract, unless otherwise specified herein, except for the conflict of laws provisions thereof Subject to [Section 15.19](#), all claims, disputes and other matters in question arising out of or relating to this Contract, or the breach thereof, shall be decided by proceedings instituted and litigated in a court of competent jurisdiction in the State of Wyoming, and the parties hereto expressly consent to the venue and jurisdiction of such court. FURTHER, PURCHASER AND SELLER HEREBY WAIVE TRIAL BY JURY IN ANY SUCH ACTION.

**15.7 Entire Agreement.** This Contract, together with the Site Access Agreement and all Exhibits or Schedules hereto, which are incorporated herein by reference, embodies the entire Contract between the parties hereto concerning the subject matter hereof and supersedes all prior conversations, proposals, negotiations, understandings and contracts, whether written or oral.

**15.8 Amendments.** This Contract shall not be amended, altered, changed, modified, supplemented or rescinded in any manner except by a written contract executed by all of the parties; provided, however, that, (a) as provided in [Section 2.5.5](#), the signature of the Escrow Agent shall not be required as to any amendment of this Contract other than an amendment of [Section 2.5](#), and (b) as provided in [Section 11.3](#), the signature of the Broker shall not be required as to any amendment of this Contract.

**15.9 Severability.** In the event that any part of this Contract shall be held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be reformed and enforced to the maximum extent permitted by law. If such provision cannot be reformed, it shall be severed from this Contract, and the remaining portions of this Contract shall be valid and enforceable, unless the invalidation of such provision or its application materially interferes with the intent of the parties hereto.

**15.10 Multiple Counterparts/Facsimile Signatures.** This Contract may be executed in a number of identical counterparts. This Contract may be executed by facsimile signatures that shall be binding on the parties hereto, with original signatures to be delivered as soon as reasonably practical thereafter.

15.11 **Time Of The Essence.** It is expressly agreed by the parties hereto that time is of the essence with respect to this Contract.

15.12 **Waiver.** No delay or omission to exercise any right or power accruing upon any default, omission, or failure of performance hereunder shall impair any right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver, amendment, release, or modification of this Contract shall be established by conduct, custom, or course of dealing, and all waivers must be in writing and signed by the waiving party.

15.13 **Attorneys' Fees.** In the event either party hereto commences litigation or arbitration against the other to enforce its rights hereunder, the substantially prevailing party in such litigation shall be entitled to recover from the other party its reasonable attorneys' fees and expenses incidental to such litigation and arbitration, including the cost of in-house counsel and any appeals.

15.14 **Time Periods.** Should the last day of a time period fall on a weekend or legal holiday, the next Business Day thereafter shall be considered the end of the time period.

15.15 **Third-Party Beneficiaries.** This Contract shall solely benefit the parties hereto. There are no third-party beneficiaries to this Contract, except for Seller's Affiliates, parent and subsidiary entities, successors, assigns, partners, managers, members, employees, officers, directors, trustees, shareholders, counsel, representatives, agents, Hotel Manager and Vail (collectively, including Seller, "**Seller's Indemnified Parties**"), with respect to Purchaser's indemnification obligations hereunder, and the Purchaser Indemnified Parties, with respect to Seller's indemnification obligations hereunder.

15.16 **Successors.** The terms and provisions of this Contract shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

15.17 **No Recording.** Purchaser shall not cause or allow this Contract or any contract or other document related hereto, nor any memorandum or other evidence hereof, to be recorded or become a public record without Seller's prior written consent, which consent may be withheld at Seller's sole discretion. If Purchaser records this Contract or any other memorandum or evidence thereof, Purchaser shall be in default of its obligations under this Contract. Purchaser

hereby appoints Seller as Purchaser's attorney-in-fact to prepare and record any documents necessary to effect the nullification and release of this Contract or other memorandum or evidence thereof from the public records. This appointment shall be coupled with an interest and irrevocable.

15.18 **Relationship of Parties.** Purchaser and Seller acknowledge and agree that the relationship established between the parties pursuant to this Contract is only that of a seller and a purchaser of property. Neither Purchaser nor Seller is, nor shall either hold itself out to be, the agent, employee, joint venturer or partner of the other party.

15.19 **Dispute Resolution.** 15.19.1 Disputes Subject to Arbitration. 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 Contract, whether in contract, tort, statutory, or otherwise, and including any questions regarding the existence, scope, validity, breach or termination of this Contract, the Dispute shall be finally settled by arbitration pursuant to the procedures set forth in this **Section 15.19**. The parties hereby agree that the Tribunal shall have the power to order equitable remedies, including specific performance and injunctive relief

15.19.2 **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 thereof, in effect at the time such arbitration is commenced. Each party shall appoint an arbitrator within 15 days after the date of a request to initiate arbitration, and the two appointed arbitrators will then jointly appoint a third arbitrator within 15 days after 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.

15.19.3 **Arbitration Proceedings.** The arbitration shall be conducted in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS, excluding Rule 30 thereof. The arbitrators shall apply the internal laws of the State of Wyoming (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 15.19**.

15.19.4 **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.

15.19.5 **Obligation to Arbitrate.** The obligation to arbitrate under this **Section 15.19** 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.

15.19.6 **Continuing Obligations.** Until such time as a final determination of any Dispute is obtained pursuant to this **Section 15.19** and, notwithstanding any termination of or default under, or alleged termination of or default under, this Contract, all parties to this Contract involved in such Dispute shall remain liable for, and shall be required to continue to satisfy, their respective obligations under this Contract.

15.20 **Special Taxing Districts.** Seller provides the following disclosures to Purchaser: SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

21. **Survival.** Except for (a) all of the provisions of this Article XV, and (b) any provision of this Contract which expressly states that it shall so survive, and (c) any payment obligation of Purchaser under this Contract (the foregoing (a), (b) and (c) referred to herein as the "**Survival Provisions**"), none of the terms and provisions of this Contract shall survive the termination of this Contract, and, if the Contract is not so terminated, all of the terms and provisions of this Contract (other than the Survival Provisions) shall be merged into the Closing documents and shall not survive Closing.

NOW, THEREFORE, the parties hereto have executed this Contract as of the date first set forth above.

**Seller:**

JHL&S LLC,

**a Wyoming limited liability company**

By:

Name:

Title:

*Purchaser:*

**LODGING CAPITAL PARTNERS, LLC, an Illinois limited liability company**

By:

Name:

Title:

**Purchaser's Tax Identification Number/Social Security Number:**

*Guarantor:*

The undersigned hereby guarantees the obligations of Seller under Section 10.2.2, but only to the extent that Seller would be liable under the terms of this Contract.

**THE VAIL CORPORATION, a Colorado corporation**

By:

Name:

Title:

NOW, THEREFORE, the parties hereto have executed this Contract as of the date first set forth above,

*Seller:*

**Purchaser:**

**LODGING CAPITAL PAR LLC, an Illinois limited liability company**

By:

Name:

Title;

**Purchaser's Tax Identification Number/Social Security Number:**

*Guarantor:*

The undersigned hereby guarantees the obligations of Seller mder Section 10.2.2, but only to the extent that Seller would be liable under the terms of this Contract.

**ESCROW AGENT SIGNATURE PAGE**

The undersigned executes the Contract to which this signature page is attached for the purpose of agreeing to the provisions of Section 2.5 of the Contract, and hereby establishes December 22, 2005 as of the date of opening of escrow and designates as the escrow number assigned to this escrow.

ESCROW AGENT:

JACKSON HOLE TITLE COMPANY

By:

Name:

Title:

**BROKER SIGNATURE PAGE**

The undersigned Broker hereby executes this Broker Signature Page solely to confirm the following: (a) Broker represents only Seller in the transaction described in the Contract to which this signature page is attached, (b) Broker acknowledges that the only compensation due to Broker in connection with the Closing of the transaction described in the Contract to which this signature page is attached is as set forth in a separate agreement between Seller and Broker, and (c) Broker represents and warrants to Seller that Broker and its Affiliates has not and will not receive any compensation (cash or otherwise) from or on behalf of Purchaser or any Affiliate thereof in connection with the transaction, and do not, and will not at the Closing, have any direct or indirect legal, beneficial, economic or voting interest in Purchaser (or in an assignee of Purchaser, which pursuant to Section 11.3 of the Contract, acquires the Property at the Closing) nor has Purchaser granted (as of the Effective Date or the Closing Date) to the Broker or any of its Affiliates any right or option to acquire any direct or indirect legal, beneficial, economic or voting interest in Purchaser.

**BROKER:**

JONES LANG LASALLE HOTELS

By:

Name: Title:

**EXHIBIT A**  
**DESCRIPTION OF LAND**

Lot 1 of the Jackson Hole Ski Corporation Addition, First Filing -- Amended, Teton County, Wyoming, according to that plat recorded in the Office of the Teton County Clerk on April 21, 1972 as Plat No. 209.

Lot 216 of the Jackson Hole Ski Corporation Addition, Replat of the Nineteenth Filing, Teton County, Wyoming, according to that plat recorded in the Office of the Teton County Clerk on July 3, 2001 as Plat No. 1017.

**EXHIBIT B**  
**FORM OF SPECIAL WARRANTY DEED**

THIS SPECIAL WARRANTY DEED, effective as of the -- day of 2006,

BETWEEN:

JHL&S LLC, a Wyoming limited liability company, having an address at c/o Vail Associates, Inc., 137 Benchmark Road, Avon, Colorado 81620, hereinafter referred to as Grantor;

AND

a  
having an address at  
, hereinafter referred to  
as Grantee.

WITNESSETH:

That the Grantor in consideration of Ten (\$10.00) Dollars, lawful money of the United States, and other good and valuable consideration, paid by the Grantee, does hereby grant and release and convey unto the Grantee, the heirs or successors and assigns of the Grantee forever,

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the County of Teton, State of Wyoming, having an address at 7710 Granite Loop Road, Teton Village, Wyoming 83025, commonly known as Snake River Lodge & Spa, and more particularly described on Schedule A annexed hereto and made a part hereof;

SUBJECT to all easements, covenants, restrictions and other matters sight and of record affecting the above described premises.

TOGETHER with all right, title and interest, if any, of the Grantor in and to any streets and roads abutting the described premises to the center lines thereof;

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises;

TO HAVE AND TO HOLD the premises herein granted unto the Grantee, the heirs or successors and assigns of the Grantee forever. The Grantor will warrant and forever defend the right and title to the above described property unto Grantee against the lawful claims of all persons owning, holding or claiming by, through or under Grantor, other than and subject to claims arising from or under easements, covenants, restrictions and other matters sight and of record.

IN WITNESS WHEREOF, the Grantor has executed this instrument on the date set forth in the acknowledgment below but to be effective for all purposes as of the date first above written.

JHL&S LLC,  
a Wyoming limited liability company,  
By: Name: Title:

WITNESSES:

Print Name:

Print Name:

STATE OF

COUNTY OF

Before me, a Notary Public in and for this State, on this day of , 2005,

personally appeared , to me known (or proved to me on the basis of satisfactory evidence), to be the identical person whose name is subscribed to

the foregoing instrument in his/her capacity as of

, in its capacity as of

JHL&S LLC, a Wyoming limited liability company, and acknowledged to me that he/she executed the instrument for the purposes and consideration expressed in the instrument.

X

Print Name of Notary Public:

(AFFIX SEAL OR STAMP) My Commission Expires on:

SEND TAX BILLS TO:

**SCHEDULE A Legal Description**

Lot 1 of the Jackson Hole Ski Corporation Addition, First Filing -- Amended, Teton County, Wyoming, according to that plat recorded in the Office of the Teton County Clerk on April 21, 1972 as Plat No. 209.

Lot 216 of the Jackson Hole Ski Corporation Addition, Replat of the Nineteenth Filing, Teton County, Wyoming, according to that plat recorded in the Office of the Teton County Clerk on July 3, 2001 as Plat No. 1017.

**EXHIBIT C,**  
**FORM OF BILL OF SALE**

THIS BILL OF SALE ("Bill of Sale") is made this day of , 2006 by JHL&S LLC, a Wyoming limited liability company ("Seller"), in favor of , a Delaware limited liability company ("Purchaser").

WITNESSETH:

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Contract dated as of December , 2005 ("Contract") with respect to the sale of certain the Real Property identified on Schedule A attached thereto and the Improvements located thereon. (Any term with its initial letter capitalized and not otherwise defined herein shall have the meaning set forth in the Contract.)

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, sell, transfer, set over, assign, convey, release, confirm and deliver to Purchaser all of the Personal Property, Inventory, Consumables and Operating Equipment, without representation or warranty of any kind whatsoever except as set forth in and subject to the terms of the Contract.

WITH RESPECT TO ALL MATTERS TRANSFERRED, WHETHER TANGIBLE OR INTANGIBLE, PERSONAL OR REAL, SELLER EXPRESSLY DISCLAIMS A WARRANTY OF MERCHANTABILITY AND WARRANTY FOR FITNESS FOR A PARTICULAR USE OR ANY OTHER WARRANTY EXPRESSED OR IMPLIED THAT MAY ARISE BY OPERATION OF LAW OR UNDER THE UNIFORM COMMERCIAL CODE FOR THE STATE IN WHICH THE PROPERTY IS LOCATED (OR ANY OTHER STATE).

This Bill of Sale shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of Purchaser and Seller.

This Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of Wyoming.

EXECUTED as of the day of , 2006. **Seller:**

JHL&S LLC,

**a Wyoming limited liability company**

By:

Name:

Title:

**EXHIBIT D**  
**ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (this "Assignment") is executed by JHL&S LLC, a Wyoming limited liability company ("Seller"), in favor of Lodging Capital Partners, LLC, an Illinois limited liability company ("Purchaser") as of , 2006 (the "Effective Date").

Seller and Purchaser, have entered into that certain Purchase and Sale Contract dated as of 200 ("Contract"), in which Seller has agreed to sell and Purchaser has agreed to purchase the Land described in Schedule A attached thereto and the Improvements located thereon (collectively, the "Hotel"). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Contract.

Pursuant to the Contract, Seller has agreed to assign, without recourse or warranty, to Purchaser all of Seller's right, title and interest, if any, in and to the Bookings, the Property Contracts, the Leases, the Permits (other than Excluded Permits), the Hotel Books and Records, and the Miscellaneous Property Assets, and Purchaser assumes the Assumed Obligations thereunder.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. Assignment. As of the Effective Date, Seller hereby assigns, sells and transfers, without recourse or warranty, to Purchaser all of Seller's right, title and interest, if any, in and to the Bookings, the Property Contracts, the Leases, the Permits (other than Excluded Permits), the Hotel Books and Records and the Miscellaneous Property Assets.
  2. Assumption. As of the Effective Date, Purchaser expressly agrees to assume and hereby assumes all liabilities and obligations of Seller in connection with Bookings, the Property Contracts, the Leases, the Permits (other than Excluded Permits), the Hotel Books and Records and the Miscellaneous Property Assets; provided, however, that to the extent that any Property Contract or Lease constitutes a Terminated Contract, Purchaser assumes such Property Contract only (a) through the effective date of the termination of such Property Contract pursuant to its express terms and (b) to the extent of any cancellation fees or penalties due as a result of such termination.
  3. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument.
  4. Attorneys' Fees. If any action or proceeding is commenced by either party to enforce its rights under this Assignment, the substantially prevailing party in such action or proceeding shall be awarded all reasonable costs and expenses incurred in such action or proceeding, including reasonable attorneys' fees and costs (including the cost of in-house counsel and appeals), in addition to any other relief awarded by the court.
1. Applicable Law. This Assignment shall be governed by and interpreted in accordance with the laws of the State of Wyoming.
  2. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors, and assigns.

WITH RESPECT TO ALL MATTERS TRANSFERRED, WHETHER TANGIBLE OR INTANGIBLE, PERSONAL OR REAL, SELLER EXPRESSLY DISCLAIMS A WARRANTY OF MERCHANTABILITY AND WARRANTY FOR FITNESS FOR A PARTICULAR USE OR ANY OTHER WARRANTY EXPRESSED OR IMPLIED THAT MAY ARISE BY OPERATION OF LAW OR UNDER THE UNIFORM COMMERCIAL CODE FOR THE STATE IN WHICH THE PROPERTY IS LOCATED (OR ANY OTHER STATE).

[Remainder of Page Intentionally Left Blank]

WITNESS the signatures of the undersigned. Dated: , 2006



Seller:

**JHL&S LLC, a Wyoming limited liability company**

By: Name: Title:

Purchaser:

**LODGING CAPITAL PARTNERS, LLC, an Illinois limited liability company**

By: Name: Title:

**EXHIBIT E**  
FORM OF MANAGEMENT AGREEMENT

[TO COME]

**EXHIBIT F**  
FORM OF JACKSON HOLE MOUNTAIN RESORT CORPORATION CONSENT

Mr. Jerry Blann

Jackson Hole Mountain Resort Corporation P.O. Box 290

Teton Village, Wyoming 83025

Re: Consent to Assignment of Easement and License Agreements pursuant to the proposed sale of the Snake River Lodge & Spa by JHL&S LLC, a Wyoming limited liability company ("Seller") to Lodging Capital Partners, LLC, a Delaware limited liability company, or its designee ("Buyer").

Dear Mr. Blann:

As you are aware, Buyer and Seller are engaged in negotiations for the purchase and sale of the Snake River Lodge & Spa (the "Hotel") in Teton County, Wyoming. In connection with the proposed sale of the Hotel, Seller has agreed to assign to Buyer certain easement and license agreements (collectively, the "Agreements") granted to Seller by Jackson Hole Mountain Resort Corporation ("JHMR"). The Agreements proposed to be assigned are as follows: (i) the Easement Agreement dated November 26, 2003 (the "Easement Agreement"), which provides for pedestrian access across the "Access Way" between the Hotel and the Bridger Center Plaza, (ii) the License Agreement dated November 26, 2003, which provides for skier and snowboarder access across the "License Way" at the Bridger Center Plaza, and (iii) the Skier Access Way License Agreement dated November 26, 2003, which provides for pedestrian, skier and snowboarder access across the "Pedestrian Plaza" at the Bridger Center Plaza. For ease of reference, the foregoing Agreements are attached hereto as Exhibits A, B and C, respectively.

By this letter, Buyer respectfully requests that JHMR consent to Seller's assignment of the Agreements to Buyer and confirm certain other information and understandings.

Accordingly, by its countersignature below, JHMR hereby confirms the following, upon which Buyer and Buyer's lenders shall be entitled to rely:

1. JHMR hereby consents to Seller's assignment of the Agreements to Buyer;
2. JHMR hereby represents and warrants that (i) the Agreements are in full force and effect, (ii) neither Seller nor JHMR are currently in default under any of the Agreements, and (iii) no sums payable under any of the Agreements are currently past due; and
3. JHMR hereby agrees that, upon Buyer's purchase of the Hotel, Buyer may engage a surveyor to prepare, at Buyer's sole cost and expense and for the benefit of all parties: (i) a recordable metes and bounds (legal) description of the Access Way easement granted in the Easement Agreement, and (ii) an amended map, to be attached to each of the Agreements, which clearly identifies (A) the entire access route between the

Hotel and the Bridger Center Plaza, and (B) the precise legal boundaries of the Access Way, the License Way and the Pedestrian Plaza, respectively, provided that such description and map shall be subject to prior review and approval by JHMR.

Please acknowledge your agreement to the foregoing by signing where indicated below and returning one copy of this letter with your original signature to the undersigned.

Very truly yours,

LODGING CAPITAL PARTNERS, a Delaware limited liability company

By: Its:

AGREED TO AND ACKNOWLEDGED THIS DAY OF DECEMBER, 2005

JACKSON HOLE MOUNTAIN RESORT CORPORATION, a Wyoming corporation

By:

Its:

**EXHIBITS A, B, C**  
[OMITTED]

**EXHIBIT G**  
TENANT NOTIFICATION

(Date)

**[FORM TO BE REVIEWED BY LOCAL COUNSEL] To Tenants of [insert name of Community];**

Ladies and Gentlemen:

This is to advise you that, effective this date, Snake River Lodge & Spa has been sold to ("Purchaser").

Effective immediately, please make all rent checks payable to and

make all rental payments to . Purchaser is solely responsible for returning any security deposit to which you are entitled at the termination of your lease.

Please contact at if you have any questions regarding this transfer.

Very truly yours,

**[PURCHASER]**

a **[Purchaser's State] [type entity]**

By:

Name:

Title:

**EXHIBIT H**  
**FORM OF LIQUOR LICENSE TRANSFER**

This ASSIGNMENT is entered into as of this day of , 2006 by and between JHL&S LLC, a Wyoming limited liability company ("Assignor") and ("Assignee").

WHEREAS, Assignor is also sold certain real property and improvements on to Assignee commonly known as the Snake River Lodge & Spa which is located in Teton Village, Wyoming (the "Sale");

WHEREAS, on or about , the Board of County

Commissioners of Teton County issued liquor license No. to Assignor to be used by the Assignor for the benefit of the Snake River Lodge & Spa (the "Liquor License"); and

WHEREAS, pursuant to the terms of the Sale, Assignee and Assignor agreed to assign and generally cooperate in the transfer of the Liquor License to Assignee.

NOW, THEREFORE, for good and valuable consideration the sufficiency of which is hereby acknowledged, Assignor does hereby assign all of its interest, rights, liabilities and obligations under the Liquor License to Assignee. Assignee does hereby agree to abide by all of the terms and conditions of the Liquor License and the transfer provisions provided for in Wyo. Stat. §12--4--601 *et. seq.*

IN WITNESS WHEREOF, the parties duly authorized representatives have executed this Assignment on the date first set forth above.

ASSIGNOR:

JHL&S LLC,

a Wyoming limited liability company

Edward Mace, Manager **ASSIGNEE:**

SCHEDULE 1.1.30  
EXCLUDED PERMITS

None.

**SCHEDULE 1.1.31**

**EXCLUDED PROPERTY**

- Fish Lamp in Lobby
- All furniture and fixtures in Real Estate of Jackson Hole leased space • Beleza operating supplies
- Beleza furniture in leased space:
  - 1 -- Cash register
  - 1 -- Refrigerator
  - 2 -- large product shelves 1 -- glass product shelf
- 1. -- air purifier
- 2. -- floor mats
- Consignment artwork in *GameFish*
- Consignment artwork in Lower Lobby
- Consignment Bear Lamp in upper lobby near *GameFish* entrance
- Mail scale and meter equipment leased from Pitney Bowes
- Guest property
- Employee property
- PeopleSoft accounting software

**SCHEDULE 6.7.1**  
**RESTRICTED CASH ACCOUNT(S)**

-  
**SCHEDULE 6.7.14**

**CAPITAL LEASES**

Pitney Bowes Lease of mail scale and postage meter equipment

**SCHEDULE 8.1.1.6**  
**APPROVALS**

None.

**SCHEDULE 8.1.1.12**  
**ACTIONS OR PROCEEDINGS**

<u>PARTY/CASE NAME</u>	<u>DETAILS</u>
McDonald, Dorothy v.	Slip and fall
JHL&S, LLC, Snake River Property Management, Cheyenne Creek Improved Property, LLC	
Andrew Lehman	Guest alleges that he received burns on his legs from a spa treatment.
Sainsbury Construction Co. Inc. vs. Union Pointe Construction Corporation, Union Pointe LLC, RCD. Inc., Mountainside, LLC, and JHL&S LLC	Subcontractor collection suit relating to construction of the condominium building adjacent to the hotel. JHL&S is an improper party as it was never involved in the ownership or development of the condominium building.
JHL&S LLC vs. Union Pointe Construction Corporation, LLC and Design Resources Crickett L. Reid and David	Defective construction suit against Union Pointe (general contractor) and Design Resources (architect) for work performed on the spa building.
G. McConnell vs. Mech Co et al	JHL&S is not named in suit but JHL&S affiliates were named, and were subsequently dismissed. There is a potential for further claim by third-- party defendant, although there is no knowledge of any such claim.

**SCHEDULE 8.1.1.13**  
**HAZARDOUS SUBSTANCES**

None.

**SCHEDULE 8.1.1.14**  
**PROPERTY CONTRACTS**

**CONTRACT PARTY** David Green Organization Hinton & Grusich, Inc.

Preferred Hotels and Resorts Worldwide, Inc.

Spafinder

Jackson Hole Airport Board Virtuoso

Virtuoso

Jackson Hole Net

Digital Alchemy VRX Studios VRX Studios Trave1CLICK Hotelligence Jackson Hole Central Reservations

Luxury Link

Airport Vending

H&H Business Systems

High Country Linen Supply

Jazz Software

Lodgenet

MDU (Bresnan Communications)

Shift4 Corporation

USA Today

Jackson Hole Compunet

Jackson Hole Air

Wayport

Newmarket International (Delphi ) Tharaldson Communications, Inc. Gym Outfitters

Ecolab

Thyssenkrupp Elevator

## DESCRIPTION

Sales representation services Group sales support services

Reservations and promotional services

Property listing services Advertising space

Preferred Supplier Agreement 2005 Preferred Supplier Agreement 2006 Advertising & directory listings Computer marketing systems Virtual Tours for Website Web hosting services

Competitive data

Reservations

Marketing

Vending machine service Office machine maintenance Laundry services

Call Accounting software license and maintenance

Pay per view services

Cable television services

Credit card processing software installation and support Newspaper delivery service Tech support

Participation in airline guarantees program

Wireless Internet Installation & Service

Annual support & maintenance Phone system support & maintenance

Fitness equipment semi--annual preventive maintenance Pest elimination

Elevator maintenance

Thyssenkrupp Elevator

Jackson Hole Mountain Resort Jackson Hole Mountain Resort Jackson Hole Mountain Resort

RCD, Inc. and Mountainside, LLC

The Residences at Snake River Lodge and Spa Owners Association

Jackson Hole Mountain Resort Pegasus

Springer--Miller Systems Inc. (SMS) Boxport, LLC

Resort Technologies Partners (RTP) Laura Davidson Public Relations Carino Collection

HelmsBriscoe Performance Group, Inc.

Cramer Consulting

Total Response

Starbucks E.B. Lane Data Plus

CS 204 -- CSMH, LLC

CS 206 -- Edwin Lojeski & Maureen Bolton

CS 301 -- Robinson and Sons, LLC CS 305 -- Deborah and Johnny Jallad

CS 402 -- C2H, LLC

CS 403 -- Richard H. Cullifer Revocable Trust

CS 404 -- Dreamspot LLC, Sandy Hesler, Executor

CS 406 -- CS1, LLC

Examination & lubrication service Easement Agreement (Skiway Access)

Skier Access Way License Agreement

License Agreement (Skiway Access)

Hotel Facilities, Spa and Services Agreement ("Facilities Agreement")

Association Management Agreement

Letter Agreement permitting the encroachment of the porte

cochere and entrance loop onto JHMR property Reservations

Software support & maintenance

Purchasing

Website design Public relations Sales representation

Sales representation Sales representation Brochure fulfillment Coffee & tea products Advertising

Software support & maintenance

Property Management Agreement

Property Management Agreement Property Management Agreement Property Management Agreement Property Management Agreement

***Property Management Agreement***

Property Management Agreement Property Management Agreement

Res 130 -- Cheyenne Creek Improved Property, LLC Property Management Agreement

Property Management Agreement

Res 131/132 -- Glenn E. Sugden Living Trust

Res 434 -- Cheyenne Creek Improved Property, LLC

Res 435 -- Cheyenne Creek Improved Property, LLC

Res 436 -- Ella Kedan Revocable Trust Res 437 -- Louis P. Ferris

Res 438 -- Randall Mayers

Res 439/440 -- Richard Sugden

Res 441 -- Dennis and Mary Kass Schumer

Res 530 -- Real Estate of Jackson Hole Res 535 -- Jerry Johnson

Underground, Inc. (Real Estate of Jackson Hole)

Beleza

Jackson Hole Mountain Resort M&J Storage

Pitney Bowes

Property Management Agreement

Property Management Agreement

Property Management Agreement Property Management Agreement Property Management Agreement Property Management Agreement Property Management Agreement

Property Management Agreement Property Management Agreement Real Property Lease

Real Property Lease Real Property Lease Real Property Lease Personal Property Lease

i The original agreement was dated May 15, 1998. Underground, Inc. has been unwilling to acknowledge the effectiveness of any amendment to the original agreement, which amendment is dated December 21, 2000."

**Property -- Travelers Property Casualty Company of America**

<input type="checkbox"/> Blanket Real & Personal Property, Business Income & Extra Expense	\$500,000,000
<input type="checkbox"/> Boiler & Machinery-- Total Limit per Breakdown	\$100,000,000
<input type="checkbox"/> Per occurrence -- Annual Aggregate for Flood	\$25,000,000
<input type="checkbox"/> Per occurrence--Annual Aggregate for Earthquake	\$25,000,000
<input type="checkbox"/> California Earthquake	\$10,000,000
<input type="checkbox"/> Electronic Data Processing Equipment	\$10,000,000
<input type="checkbox"/> Accounts Receivable	\$10,000,000
<input type="checkbox"/> Valuable Papers	\$10,000,000
<input type="checkbox"/> Fine Arts	\$10,000,000
<input type="checkbox"/> Newly Constructed or Acquired-- 120 Days	\$25,000,000
<input type="checkbox"/> Outdoor Property including Debris Removal	\$25,000,000
<input type="checkbox"/> Tees & Greens	\$10,000,000
<input type="checkbox"/> Ordinance or Law, Demolition, Increased Cost of Construction	\$10,000,000
<input type="checkbox"/> Utility Services	\$10,000,000
<input type="checkbox"/> Cranes & Booms	\$500,000
<input type="checkbox"/> Extended Period of Indemnity	365 Days

**Deductibles**

Per occurrence-- Property Damage, Boiler & Machinery	\$100,000
Flood & Earthquake	\$100,000
California Earthquake	5% or min. of \$100,000
Restaurants	\$25,000
Mobile Equipment	\$25,000
Time Element	24 Hours

**California Earthquake -- Underwriters at Lloyd's, London/ Alea London, Ltd. NSM25347/UAL25347/AX0636**

- Property Damage and Business Interruption \$15,000,000 xs \$10,000,000 P

**Deductible** 5% per unit

**Commercial General Liability -- Liberty Mutual Insurance Company EB1--661--004265--035**

<input type="checkbox"/> Each Occurrence	\$4,000,000
<input type="checkbox"/> Products/Completed Operations Aggregate Limit	\$4,000,000
<input type="checkbox"/> General Aggregate	\$9,000,000
<input type="checkbox"/> Employers Liability-- WY Excess over SIR	\$1,000,000
<input type="checkbox"/> Sexual Abuse & Molestation	\$1,000,000
<input type="checkbox"/> Employee Benefits Liability (Claims Made-- Each Occurrence & Agg.)	\$1,000,000

**Retention**

Per Occurrence-- Self--Insured Retention \$1,000,000

**Automobile -- Liberty Mutual Insurance Company**

- Liability
- Medical Payments
- Uninsured/Underinsured Motorists
  - Drive Other Car-- Scheduled (Exec. Officers only) **Deductible**

Per Occurrence

**Umbrella Liability -- Ace American Insurance Company**

- Each Occurrence
- Aggregate

Retention

**Excess Liability -- Westchester Fire Insurance Company**

- Each Occurrence
  - Aggregate
- \$25,000,000 xs \$5,000,000**

**Excess Liability -- RSUI Indemnity Company**

- Each Occurrence
  - Aggregate
- \$30,000,000 xs \$30,000,000**

**Excess Liability -- Ace American Insurance Company**

- Each Occurrence

- Aggregate  
\$10,000,000 xs \$60,000,000

**Excess Liability -- St. Paul Fire and Marine Insurance Company.**

- Each Occurrence
- Aggregate  
\$25,000,000 xs \$70,000,000

**Excess Liability -- Starr Excess Liability Company**

- Each Occurrence
- Aggregate

\$50,000,000 xs \$95,000,000

**D&O Liability -- National Union Fire Insurance Company of Pittsburgh, PA Claims Made**

- Per Claim Aggregate Limit of Liability

*Retentions*

- Non--Indemnifiable \$0
- Company Reimbursement (Securities Claims) \$1,000,000
- Company Reimbursement (Employment Practices Claims) \$1,000,000

**D&O Liability -- Excess -- St. Paul Mercury Insurance Company 583CM0455**

- Limit of Liability \$10,000,000
- Underlying Policy Limit \$15,000,000
- Underlying Insurance Company National Union Fire

**D&O Liability -- Excess -- Lloyd's of London FD0504601**

- Limit of Liability \$5,000,000
- Underlying Policy Limit \$25,000,000
- Underlying Insurance Company National Union/St. Paul

**Directors & Officers Liability --Side A -- DIC Excess -- Federal Insurance Company 6801--2619**

- Limit of Liability \$10,000,000
- Underlying Policy Limit \$30,000,000

**Crime Coverage -- Federal Insurance Company**

8103--1593

**Employee Theft**

8103--1593

**Premises Coverage**

4932618

**In Transit**

**Forgery**

**Computer Fraud**

**Funds Transfer Fraud**

**Retentions Each Claim**

**Fiduciary Liability -- Federal Insurance Company Claims Made**

- Each Claim
- Policy Limit

**Retentions**

\$5,000,000  
\$5,000,000  
\$5,000,000  
\$5,000,000  
\$5,000,000  
\$5,000,000

Each Claim

**Employed Lawyers Prof. -- American International Specialty Lines Ins. Co. Claims Made**

\$100,000

Each Claim

\$10,000,000  
\$10,000,000

Policy Limit

\$50,000

Securities Claims

\$2,000,000  
\$2,000,000  
\$2,000,000

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PROPERTY TAX APPEALS,**

None.

**SCHEDULE 8.1.1.19  
PERMITS**

None.

**SCHEDULE 8.1.1.20 LIQUOR LICENSE**

Resort Liquor License No. 2553

**SCHEDULE 8.1.1.22  
TRADEMARKS**

<b>Type of Intellectual Property</b>	<b>Description</b>	<b>Registered</b>
Trade Name	Snake River Lodge & Spa	Wyoming
Trade Name	Snake River Property Management	Wyoming
URL	Company snakeriverlodge.com	



**CONSTRUCTION LOAN AGREEMENT**

**dated as of**

**January 31, 2006**

**among**

**ARRABELLE AT VAIL SQUARE, LLC,**

**The LENDERS Party Hereto,**

**and**

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

**as Administrative Agent,**

---

**\$175,000,000**

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**U.S. BANK NATIONAL ASSOCIATION and WELLS FARGO BANK, N.A.,**

**Joint Lead Arrangers**

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## CONSTRUCTION LOAN AGREEMENT

This CONSTRUCTION LOAN AGREEMENT is dated as of January 31, 2006, by and among ARRABELLE AT VAIL SQUARE, 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

1. 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").
2. 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 One Hundred Seventy--Five Million and No/100 Dollars (\$175,000,000.00) or such other amount as may be permitted by the terms hereof 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:

I.

### DEFINITIONS AND ACCOUNTING MATTERS

1. 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.

"Agreement" shall mean this Construction Loan Agreement, as the same may be Modified from time to time.

"Anticipated Encumbrances" shall mean those encumbrances, easements and agreements first appearing after the date hereof that Borrower reasonably anticipates will be required to obtain final Government Approval of the Project or for the sale or operation of the Project. No encumbrance, easement or agreement materially adversely affecting the Project may be an "Anticipated Encumbrance." A preliminary description of Anticipated Encumbrances is included as Exhibit K.

"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 14.23 below, with respect to any Loan, (a) the LIBOR--Based Rate, (b) the Base Rate, or (c) during the existence 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 145 basis points.

"Appraisal" shall mean the appraisal report of the Project from National Valuation Consultants, Inc. dated April 27, 2005, and any future appraisal of the Project ordered by Administrative Agent and 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 Land Value" shall mean the "as--is" appraised value of the Land only as determined by the Appraisal dated April 27, 2005, which amount is Thirty--Six Million, Seven Hundred Fifty Thousand and No/100 Dollars (\$36,750,000.00) determined pursuant to the Appraisal by National Valuation Consultants, Inc.

"Appraised Value" shall mean the sum of the values of the Residential and Commercial Components as determined by an Appraisal. With respect to the Residential Component, the Appraised Value is the bulk discounted value to a single user "upon completion" of the Project, which amount, based upon the Appraisal dated April 27, 2005, is One Hundred Ninety--Nine Million and No/100 Dollars (\$199,000,000.00), and with respect to the Commercial Component, the Appraised Value is the value "upon completion" of construction, which amount is Forty--Eight Million, Nine Hundred Thirty Thousand and No/100 Dollars (\$48,930,000.00), as determined pursuant to the Appraisal dated April 27, 2005, by National Valuation Consultants, Inc.

"Appraiser" shall mean National Valuation Consultants, Inc., 950 S. Cherry Street, #800, Denver, CO 80246 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 between The Vail Corporation and 42|40 Architecture, Inc., dated May 1, 2003, as amended.

"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 effective January 31, 2006 attached thereto, executed by Borrower, and the Borrower's Architect, in favor of Administrative Agent, for the benefit of the Lenders, as the same may be Modified.

"Assignment of Borrower'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, for the benefit of the Lenders, 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 General Contractor, in favor of Administrative Agent, for the benefit of the Lenders, 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.

"Available Contingency Amount" shall mean an amount equal to the applicable percentage of the Contingency Fund available to Borrower for reallocation as set forth in Section 7.03(b) during each phase of Project Completion as follows: (a) 0% -- 25% complete 25% shall be available, (b) 26 -- 50% complete 50% shall be available, (c) 51% -- 75% complete 75% shall be available, and (d) 76% -- 100% complete 100% shall be available. The percentage of Completion shall be as determined by Administrative Agent and the Construction Consultant in their reasonable discretion.

"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 (except for (i) minor Punch List Items that do not adversely affect the use, occupancy or operation of the Project and (ii) tenant improvements to rentable space in the Commercial Component that is not yet occupied.)

"Base Rate" shall mean, for any day, a rate per annum equal to the greater of the (a) Prime Rate for such day, and (b) the Federal Funds Rate in effect on that day as announced by the Federal Reserve Bank of New York, plus 0.5%. 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 with this Agreement.

"Borrower's Architect" shall mean 42|40 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, (a) any Person other than Vail Resorts, Inc. or the Vail Corporation or a wholly--owned subsidiary thereof, whether directly or indirectly, owning 51% or more of the Equity Interests in Borrower, (b) any Person other than Vail Resorts, Inc. or 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, (c) in any other respects, any Person other than Vail Resorts, Inc. or The Vail Corporation directly or indirectly controlling Borrower, or (d) a "Change of Control Transaction" under the Principal Bank Credit Facility.

"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 "ArraBelle at Vail Square" 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.

"Commercial Component" shall mean, collectively, the Hotel Component, Parking Club Component, Resort Services Component and the Retail Component.

"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, as such amount may be modified by any Assignment and Assumption or as determined by Administrative Agent.

"Completion" as applicable to the Construction Work, Project or Improvements shall mean the satisfaction of all of the following conditions: (a) the Construction Work (except for (i) minor Punch List Items that do not adversely affect the use, occupancy or operation thereof and (ii) tenant improvements to rentable space in the Commercial Component that is not yet occupied) or Base Building Work, as appropriate, shall be completed substantially in accordance with the Plans and Specifications; (b) the Construction Consultant or Design Professional, at Administrative Agent's discretion, shall have issued to Administrative Agent a report confirming the satisfaction of the condition set forth in clause (a) above; (c) valid certificates of occupancy for the entire Project (except the incomplete portions thereof referred to in clause (a) above) shall have been issued by the appropriate Governmental Authority (which certificates of occupancy may be temporary certificates of occupancy), and (d) the statutory lien period or periods within which contractors, subcontractors, mechanics, materialmen and others providing labor and/or materials must file mechanic's and other liens shall have expired or appropriate waivers of such liens or bonds sufficient to cover the amount of such liens reasonably acceptable to Administrative Agent shall have been obtained from such parties or the Borrower, as appropriate.

"Completion Date" shall mean, subject to Section 14.26, (a) with respect to the Residential Component, the first to occur of (i) the date that is fifteen (15) days in advance of the date required for delivery of a Unit pursuant to the terms of a Qualified Purchase Contract, or (ii) the date that is twenty-six (26) months after the Closing Date, and (b) with respect to the Project (other than the Residential Component), the Scheduled Maturity Date.

"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 14.24 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 14.24 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.

"Development Agreement" shall mean that certain Core Site Development Agreement dated effective November 8, 2004, by and among the Town of Vail, Vail Reinvestment Authority, and The Vail Corporation, d/b/a Vail Associates, Inc.



"Development Agreement Guaranty" shall mean that certain Development Agreement Guaranty executed by Guarantor in favor of Administrative Agent substantially concurrently herewith, as the same may be Modified from time to time.

"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 cash deposits, paid or given as security for obligations of purchasers under any Qualified Purchase Contract and referred to therein as a "Construction Deposit," "Reservation Deposit" or "Earnest Money." Earnest Money Deposits may be used in connection with construction of Improvements subject to a 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 \$10 billion and (ii) the senior debt obligations of which for such bank's parents senior unsecured debt obligations are rated not less than (1) Baa-2 by Moody's Investors Service, Inc., or (2) BBB by S&P.

"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 (a) the presence, use or Release into the environment of any Hazardous Substance originating at or from, or otherwise affecting, the Project, (b) 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 (c) 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 and Guarantor 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 in May, 2005, by Stewart Environmental Consultants, Inc., (b) the Shaw Discharge Report, (c) Report of Air Monitoring and Visual Inspections prepared July 15, 2005, by Stewart Environmental Consultants, Inc., and (d) 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 One Hundred Seventy--Five Million and No/100 Dollars (\$175,000,000.00) as such amount may be reduced pursuant to Sections 3.04 and 3.05 hereof.

"Federal Funds Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary,

to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"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 Commitment 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.

"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 15, 2005, as amended by Change Orders, including without limitation, Change Order 13 dated January 13, 2006, 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 Shaw Construction.

"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 and the Development Agreement Guaranty.

"Guarantor" shall mean each of Vail Resorts, Inc., a Delaware corporation and The Vail Corporation, a Colorado corporation, and sometimes referred to collectively herein as "Guarantor."

"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.

"Hotel Component" shall mean the 36--room hotel unit comprising a portion of the Improvements, which hotel component shall include an approximately 11,125 square foot spa, and approximately 11,673 square feet of meeting space and a restaurant.

"Improvements" shall mean a mixed--use development comprised of the Residential Component and Commercial Component, and all of the other improvements to be constructed on the Land, as more particularly described in the Plans and Specifications, and including the "On--Site Streetscape," "Off--Site Streetscape" and "Lionshead Place" improvements.

"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 in a minimum amount equal to Seventy Million Six Hundred One Thousand and No/100 Dollars (\$70,601,000.00) which shall be comprised of the Land at its Appraised Land Value of Thirty--Six Million Seven Hundred Fifty Thousand and No/100 Dollars (\$36,750,000.00) and all Earnest Money Deposits in an amount not less than Thirty--Three Million Eight Hundred Fifty Thousand Five Hundred and No/100 Dollars (\$33,850,500.00) and cash contributions from Borrower in an amount not less than Nineteen Million Eight Hundred Eighty--six Thousand Eight Hundred Seventy --two and No/100 Dollars (\$19,886,872.00).

"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 1/100th 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 Interest Period selected by Borrower, for United States dollar deposits having a term coinciding with the Interest 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, 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 Par Value" shall mean the portion of the Facility Amount allocated to each Unit as set forth on Exhibit F.

"Loan to Cost Ratio" shall mean the ratio, expressed as a percentage that (a) the Facility Amount bears to (b) the Project Budget.

"Loan to Value Ratio" shall mean the ratio, expressed as a percentage, that (a) the Facility Amount bears to (b) the Appraised Value 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 One Million and No/100 Dollars (\$1,000,000.00) 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 Vail Resorts Development Company, 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 its respective obligations under and in full compliance with the terms of the Loan Documents (including, without limitation, Completion of the Base Building Work 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; (b) as to Guarantor Vail Resorts, Inc., the acceleration of that certain Indenture dated as of January 29, 2004, by Vail Resorts, Inc. as Issuer and The Bank of New York, as Trustee, as a result of any material default thereunder after giving effect to all applicable notice, cure and grace periods and all consents, waivers or modifications entered into or permitted therein, and (c) as to Guarantor Vail Corporation, 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. In the event that the Principal Bank Credit Facility 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 those covenants agreed upon by Borrower and Administrative Agent to be incorporated herein, which covenants shall be substantially similar to those contained in the Principal Bank Credit Facility at the time of its termination in which case "Material Adverse Effect" shall mean a material default of any such covenants.

"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) 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.

"Metro District" shall mean the Vail Square Metropolitan Districts 1, 2 and 3.

"Metro District Bonds" shall mean Metro District bond proceeds in the amount of approximately Eight Million Five Hundred Thousand and No/100 Dollars (\$8,500,000.00), (or such greater amount as may be approved by Administrative Agent) that may be available to Borrower from a planned bond offering and which may be used to fund certain Project Costs related to construction of infrastructure improvements.

"Minimum Loan Coverage Ratio" shall mean the ratio that (a) Net Sales Proceeds derived from sales pursuant to Qualified Purchase Contracts bears to (b) the Facility Amount, which ratio shall not be less than 1:1.

"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, including documents relating to Anticipated Encumbrances, (d) approval of Anticipated Encumbrances and Subordination of the Security Documents thereto, and (e) 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, 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, less Earnest Money Deposit, if applicable, and less commissions and closing costs paid by Borrower to third parties; provided, however, in no event shall such commissions and closing costs exceed seven percent (7%) of the actual Unit sales price, and, with respect to the calculation of the Minimum Loan Coverage Ratio, the projected aggregate amount of the actual sales prices less commissions and closing costs and Earnest Money Deposits described above, for Units subject to Qualified Purchase Contracts.

"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 the office of the Clerk and Recorder 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.

"Parking Club" shall mean the private membership club comprised of approximately 300 members who have paid a Parking Club Membership fee for the privilege of access to and use of the Parking Club Component.

"Parking Club Component" shall mean the approximately 100 underground parking spaces comprising a portion of the Improvements to be available for use to third party purchasers of memberships in the Parking Club.

"Parking Club Memberships" shall mean the approximately 300 memberships in the Parking Club sold by Borrower pursuant to membership agreements.

"Parking Club Membership Fee" shall mean the initial fee of not less than Fifty Thousand Dollars (\$50,000.00) paid to Borrower for each of the Parking Club Memberships.

"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, (d) the Anticipated Encumbrances approved by Administrative Agent, and (e) any Lien created by the recordation of documents required for the establishment of a homeowners association, and 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 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 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

"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," as such percentage may change from time to time as permitted herein.

"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 or Construction Work which do not materially interfere either with the use of the Improvements 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 with respect to Units in the Residential Component (a) each of the contracts listed on Exhibit D, provided no defaults exist thereunder and the same is in full force and effect for the purchase of a Unit or (b) such other or substitute contract for the purchase of a Unit which is in full force and effect and meets the following criteria: (i) is in substantially the form previously submitted to and accepted by Administrative Agent; (ii) is with an unaffiliated third-party purchaser purchasing no more than two (2) Units (except as described herein); (iii) 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; (iv) contains no major contingencies (other than construction of the Improvements and customary inspection, and title); and (v) the Administrative Agent has received a fully executed copy of the contract. The provisions of (ii) above notwithstanding, up to five (5) Units may be sold to Purchasers affiliated with Borrower and up to 10 Units may be purchased by Exclusive Resorts, Inc. pursuant to agreements reasonably acceptable to Administrative Agent and still be classified as Qualified Purchase Contracts hereunder. The Administrative Agent acknowledges that all of the contracts currently listed on Exhibit D constitute "Qualified Purchase Contracts."

"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. With respect to the Residential Component, the Release Price for each Unit shall be equal to the greater of (a) Net Sales Proceeds for each Unit, and (b) Loan Par Value. With respect to each Commercial Component, the Release Price shall be equal to the greater of (a) the Net Sales Proceeds and (b) the minimum release price established therefore on Exhibit J.

"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 holding an aggregate Proportionate Share of at least 66.67% of the Facility Amount, or, if the Commitments have been terminated, then Lenders holding an aggregate Proportionate Share of the Outstanding Principal Balance of at least 66.67%.

"Residential Component" shall mean, collectively, the 67 residential condominium Units comprising a portion of the Improvements.

"Resort Services Component" shall mean the approximately 23,124 square foot Unit comprising a portion of the Improvements designated for use for skier services and mountain operations offices.

"Retail Component" shall mean the approximately 33,094 square foot Unit comprising a portion of the Improvements designated for use as retail space.

"Scheduled Maturity Date" shall mean August 1, 2008, 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, the Assignment of Accounts, 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.

"Shaw Discharge Report" shall mean the reported unlawful discharge by the General Contractor of non--Hazardous Substances in to Gore Creek resulting in the General Contractor being cited for a violation of the Town of Vail Municipal Code.

"Solvent" shall mean, when used with respect to any Person, that at the time of determination: (a) the fair saleable value of its assets is in excess of the total amount of its liabilities (including contingent liabilities); (b) 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; (c) it is then able and expects to be able to pay its debts (including contingent debts and other commitments) as they mature; and (d) it has capital sufficient to carry on its business as conducted and as proposed to be conducted.

"Soft Costs" shall mean those Project Costs associated with the development, construction, marketing, leasing, operation and maintenance of the Improvements which are not Hard Costs or Appraised Land Value, including, without limitation, the sales and leasing commissions, architectural and engineering fees, consultant fees, professional fees, marketing fees and expenses, real estate taxes, insurance and bonding costs, financing fees, interest payable on the principal amount of the Loans and any other items identified as "Soft Costs" on the Project Budget.

"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 an ALTA 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 Facility Amount 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 as Administrative Agent may require (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).

"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 (other than an Anticipated Encumbrance), pledge or conveyance (other than an Anticipated Encumbrance) 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 (i) 67 residential condominium units comprising the Residential Component, including Purchaser Upgrades and Unit Specific Personal Property, (ii) the approximately 100 Units comprising the Parking Club Component and (iii) each of the Hotel Component, the Resort Services Component, and the Retail Component.

"Unit Specific Personal Property" shall mean furnishings and other personal property sold or conveyed in connection with the sale of a Unit pursuant to a Qualified Purchase Contract.

"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 banking 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.

3. 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.

4. 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.

5. 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

"Bond Financing" Section 10.14

"Breakage Costs" Section 5.05

"Condemnation Threshold Amount" Section 11.02(a)

"Contingency Fund" Section 7.04(a)

"Controlled Account Agreement" Section 14.24(a)(i)

"Controlled Account Collateral" Section 14.24(c)

"Default Cure Period" Section 13.11(f)

"Defaulting Lender" Section 13.11(a)

"Deficiency Deposit" Section 7.02(b)

"Environmental Liens" Section 9.11(a)

"Event of Default" Article XII

"Extended Maturity Date" Section 4.01

"Extension Fee" Section 4.01(f)

"Extension Notice" Section 4.01(a)

"Extension Option" Section 4.01

"Extension Period" Section 4.01

"In Balance" Section 7.02(a)

"Information" Section 14.22

"Insurance Premiums" Section 9.05(d)

"Insurance Threshold Amount" Section 11.02(a)

"Interest Reserve" Section 7.05(a)

"Late Charge" Section 3.03

"Lay--Down Yard" Section 9.20

"Loan" and "Loans" Section 2.01(a)

"Loan Transactions" Section 2.02(j)

"Losses" Section 14.04

"Maximum Rate" Section 14.23

"Non--Defaulting Lender" Section 13.11(a)

"Off--Site Stored Furnishings" Section 9.20

"Off--Site Stored Materials" Section 9.20

"On--Site Stored Materials" Section 9.20

"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)

"Rejected Lender" Section 10.03(d)

"Replacement Lender" Section 13.11(g)

"Required Payment" Section 2.02(g)

"Restoration" Section 11.01(a)

"Retainage" Section 7.06(a)

"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)

III.

**THE LOAN FACILITY**

1. 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.

3. 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 Loans, 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 1:00 p.m. Mountain time, on the number of Business Days prior to the date of the requested actions as specified below:

<u>Notice</u>	<u>Number of Business Days Prior</u>
Request For Loan Advance	8
Designation of Applicable Interest Period	2 prior to last day of applicable LIBOR Period (or, for initial advance, 3 days prior to initial advance)
Requests for disbursements from the Purchaser Upgrade Account or Optional Prepayment	3

Each Request for Loan Advance or Request for Continuation or Conversion shall (1) be duly completed and signed by an Authorized Officer of Borrower, (2) be accompanied by all of the applicable documents and materials, required pursuant to Article VI and Article VII, (3) 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 (4) 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. Two (2) 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.

- c. Funds for Borrowing. Not less than six (6) Business Days prior to any Funding Date, Administrative Agent shall notify the Lenders in writing of 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). Not less than two (2) Business Days prior to any Funding Date, Administrative Agent shall notify Lender in writing of (i) its determination that all conditions to the advance of Loan proceeds requested



- pursuant thereto have been satisfied by Borrower or, subject to Article XIII below, waived by Administrative Agent; and (ii) 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.
- d. 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.
- e. 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).
- f. Application of Payments. Provided no Event of Default then exists, 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).
- g. 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. In the event Administrative Agent fails to make payments to Lenders as set forth in this Section 2.02(f), the amount of such payments shall accrue interest at the Federal Funds Rate until paid.
- h. 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:
- i. 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
- ii. 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.
- j. 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.
- k. 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.
- l. 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 7.10, 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 One Hundred Thousand and No/100 Dollars (\$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 (1) 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, (2) Loans for the payment of interest due under the Notes may be in a lesser principal amount, and (3) if any Loans are LIBOR Rate Loans, additional increments shall be in a minimum amount at least equal to One Hundred Thousand and No/100 Dollars (\$100,000.00). Notwithstanding the foregoing, the minimum amount of One Hundred Thousand and No/100 Dollars (\$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.

- m. 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.

5. 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.

7. 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.

8. 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.

9. 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.

10. Conversion and Continuations of Loans.

- a. Subject to Section 2.02(i), 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; (vii) in no event shall any Interest Period extend beyond the Maturity Date; and (viii) 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 Section 2.07(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; and (iii) 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.

12. Metro District Bonds.

- a. The parties hereto acknowledge that: (i) the Metro District has been formed by Borrower and there may be issued Metro District Bonds; (ii) Borrower is not required to cause any Metro District Bonds to be issued; (iii) if Metro District Bonds are issued, the principal amount thereof is not presently known but is anticipated to be approximately Eight Million Five Hundred Thousand and No/100 Dollars (\$8,500,000.00); (iv) if Metro District Bonds are issued, they will be secured, in whole or in part, solely by property taxes levied on taxable real and personal property in the Metro District and development fees and in no event by the Project and may be issued by the Metro District or by another legally qualified issuer; and (v) interest on Metro District Bonds may be taxable, tax exempt or partially taxable or partially tax exempt.
- b. Borrower agrees that the Metro District Bonds shall be paid and applied either (i) directly by the Metro District, whether pursuant to Applicable Law or the terms of the instrument governing the issuance of the Metro District Bonds (the "Bond Indenture"), to construct eligible improvements ("Metro District Improvements"), or (ii) to reimburse the Borrower or its affiliates for the costs of constructing Metro District Improvements on behalf of the Metro District. Borrower agrees that all Project Costs to be funded by Metro District Bonds shall be specifically identified in the final Project Budget.
- c. Borrower agrees that the specific terms and conditions of the Bond Indenture are not known as of the date of this Construction Loan Agreement. As a result, Borrower agrees that the Construction Loan Agreement shall, if reasonably requested by Administrative Agent, be modified to incorporate reasonable conditions and covenants deemed necessary by Administrative Agent once the specific terms and conditions of the Bond Indenture are known.
- d. To the extent Metro District Bonds are applied by the Metro District to the construction of Metro District Improvements included as Project Costs as described in Section 2.08(b)(i), the Commitments shall be reduced, on a pro rata basis, by the full amount of such Metro District Bonds so applied, and in such event, Administrative Agent shall make such corresponding adjustments to Exhibit B and Exhibit C as Administrative Agent deems appropriate.
- e. **Borrower shall only be permitted to apply Loan proceeds to the construction of Metro District Improvements if Borrower shall first enter into a reimbursement agreement with the Metro District providing for the payment of Metro District Bonds to Borrower, in the amount of the Loan proceeds so used, for application to the Outstanding Principal Amount. The terms and conditions of any such reimbursement agreement shall be subject to the prior review and approval of the Administrative Agent, in its reasonable discretion.**
- f. Promptly upon reimbursement to Borrower as described in Section 2.08(b)(ii) or Section 2.08(e), Borrower shall repay the Outstanding Principal Amount to the extent of such Metro District Bond proceeds received in reimbursement for Metro District Improvements included as Project Costs. If the Outstanding Principal Amount is, or upon application of the Metro District Bond proceeds as provided herein, has been reduced to zero, then the remaining balance of the proceeds so reimbursed shall be deposited into a Controlled Account to the extent that Commitments remain outstanding.

1. 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 Article VI and Article 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. 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.
4. 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.
5. 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 One Hundred Thousand and No/100 Dollars (\$100,000.00), and in whole multiples of One Hundred Thousand and No/100 Dollars (\$100,000.00) above such amount. Loans that are prepaid cannot be reborrowed.
6. 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 Section 3.05(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. Provided no Event of Default has occurred and is continuing, Borrower shall have the right from time to time to obtain releases of individual Units and Unit Specific Personal Property from the lien of the Security Instrument following prepayment of the Loan as follows:
    - i. Borrower shall provide written notice to Administrative Agent 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 Administrative Agent as shall be reasonably possible;
    - ii. the subdivision plat, condominium map, 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 and all such referenced documents, where appropriate, shall be recorded in the Official Records;
    - iii. Borrower (1) shall have delivered a notice to Administrative Agent specifying (A) the legal description of the Unit to be released, and (B) the Release Price, and each notice shall be accompanied by a proper instrument of release, (2) shall execute and deliver to Administrative Agent any other documents or instruments reasonably required by Administrative Agent, including, without limitation, an amendment to the Security Instrument with respect to a revised legal description for the Project, and (3) prior to the closing of the Unit, shall have delivered to Administrative Agent and Administrative Agent shall have approved a settlement statement for such Unit;
    - iv. Borrower shall have paid to Administrative Agent the Release Price for the Unit being released;
    - v. Administrative Agent shall have received such endorsements to the Title Policy as it deems appropriate and has confirmed that the Title Policy remains in full force and effect with respect to that portion of the Project not released;
    - vi. after any release, the portion of the Project and the personal property Collateral not released shall continue to be subject to the Security Instrument;
    - vii. Borrower shall pay Administrative Agent'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;
    - viii. Borrower shall have provided evidence to Administrative Agent that any bond assessment that constitutes a lien against the property has been properly allocated between the Unit(s) to be released and the portion of the Project not released; provided, however, an allocation shall be deemed proper if the allocation is in accordance with the assessed value;
- Furthermore, with respect to each request for a partial release or release of a Commercial Component, in addition to the requirements in Sections 3.05(b)(i) through 3.05(b)(viii) above, Borrower shall:
- x. Other than with respect to the sale of memberships for use of Units in the Parking Club Component, provide written notice to Administrative Agent of the date such prepayment is intended at least thirty (30) 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 Administrative Agent as shall be reasonably possible;
  - xi. Provide evidence satisfactory to the Administrative Agent that:

(1) The Commercial Component to be released and the portion of the Commercial Component that would remain encumbered by the Deed of Trust are each legal parcels lawfully created and are in compliance with all subdivision laws and ordinances;

(2) The remaining Commercial Components have the benefit of all utilities, easements, public or private streets, covenants, conditions or restrictions as may be necessary for the continued use and operation thereof for its intended purpose; and

(3) The release of any Commercial Component will not adversely affect the use, operation or value of the remaining Project Components.

- d. Unit Sales Exception. Notwithstanding Section 3.05(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.

- e. Parking Club Memberships. Promptly upon receipt of a Parking Club Membership Fee, Borrower shall prepay the Loan by the amount of each such Parking Club Membership Fee, less reasonable selling commissions and fees, if any, the total amount of which shall not exceed One Thousand Dollars (\$1,000.00) per Parking Club Membership.
  - f. Covenant Compliance. If Borrower is not in compliance with the provisions of Section 7.02(a)(i) and (ii) or Section 9.21, Borrower shall prepay the Loan by such amount necessary for compliance with such provisions, as appropriate.
  - g. Metro District. If Metro District Bonds are available pursuant to Section 2.08, Borrower shall prepay the Loan as set forth therein.
  - h. Application. Prepayments pursuant to Section 3.05(a) above shall be applied to the Loans then outstanding pro rata in the order set forth in Section 3.08.
8. Interest and Other Charges on Prepayment. If the Loans are prepaid, in whole or in part, pursuant to Sections 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.
  9. Lender's Records as to Sums Owning. Absent manifest error, Administrative Agent's records as to the amounts of principal, interest and other sums owing hereunder shall be conclusive and binding.
  10. 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.
  11. 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.

VII.

#### **EXTENSION OF THE MATURITY DATE**

1. 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 ninety (90) days, but not more than one hundred eighty (180) 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; (iii) the Loans are In Balance; (iv) Completion of the construction of the Improvements shall have occurred; (v) no liens shall exist against the Project; (vi) the Minimum Loan Coverage Ratio requirement shall be met; and (vii) Borrower shall have closed on the sale of at least 45 Units from the Residential Component of the Project pursuant to the terms of Qualified Purchase Contracts.
  - 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 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 (.125%) 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.

IX.

#### **INCREASED COSTS, LIBOR AVAILABILITY, ILLEGALITY, ETC.**

1. 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.

3. 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 Sections 5.02(a) or 5.02(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 Sections 5.02(a) and 5.02(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. 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).
6. 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 Sections 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 Sections 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 Sections 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.

8. 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 Article 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(a), 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 (a) 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 (b) 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.

10. 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, to the extent specified herein, 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.

#### 11. 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).

XI.

#### CONDITIONS PRECEDENT

1. 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 closing 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 in all material respects.
  - 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.
  - g. 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 for Completion of the Improvements based on Borrower's final Plans and Specifications.
  - h. Third-Party Reports. Administrative Agent shall have received and approved (i) the Cost and Plan Review; (ii) the Environmental Reports; and (iii) the Appraisal.
  - i. Pre-Sale Requirement. Qualified Purchase Contracts providing not less than the Minimum Loan Coverage Ratio.
  - j. Other Conditions. Evidence that the other conditions set forth in Article VII have been satisfied.
  - k. Other Documents and Deliveries. Administrative Agent shall have received and approved all documents and other items described on Schedule 6.01.
    1. In the event Administrative Agent, subject to Section 13.09(b)(ii), 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 additional Loan shall be made.
3. 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, subject to Section 13.09(b)(ii), 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 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).
  - d. Plans and Specifications. The Construction Work (or such part thereof as may have been constructed at the time of any borrowing) shall have been substantially completed 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 Improvements.
  - e. 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.
  - f. 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.
  - l. 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.
5. 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 Completion of the Base Building Work has been satisfactorily accomplished 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.

XIII.

## DISBURSEMENT OF THE LOANS; LOAN BALANCING

### 1. 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 eight (8) Business Days after Administrative Agent's receipt all of the documents and items to be delivered or received pursuant to Article VI and Article VII. Notwithstanding the foregoing, at no time shall Administrative Agent or the Lenders be obligated to: (1) 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), (2) make an advance if the Loans are not In Balance in accordance with Section 7.02, (3) 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, (4) except as provided in Section 7.06 hereof, advance any portion of the Retainage, (5) except as provided in Section 9.20 hereof, make any Loans with respect to materials not yet incorporated into the Improvements, (6) make an advance in connection with any Change Order for which Administrative Agent's approval is required under Section 10.13 which has not been approved by Administrative Agent in accordance with Section 10.13, (7) make any Loans for payments to any subcontractor until (A) in the case of a Major Subcontractor, such Major Subcontractor has been approved by Administrative Agent and (B) 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 (8) 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 Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) has (A) 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 (B) 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 (C) 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.
- b. 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 Section 7.01(b).
- c. Disbursements shall be made no more frequently than once in each calendar month.
- d. Upon the Closing Date, 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.

### 3. 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, and marketing 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 Ratio; (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), or (iv) the projected cost to achieve Completion of the Project exceeds the Project Budget as 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," with respect to Section 7.02(a)(iii) and (iv) above then Borrower shall, provided sufficient funds do not remain in the Contingency Fund to cover such deficiency, within ten (10) 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 (other than the Development Agreement Guaranty) shall obligate the holders of any Equity Interests for the payment of any amounts due from Borrower to Lender hereunder.

- c. 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 than once during a twelve-month period.
5. 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 thereto. 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 Available Contingency Amount and/or savings from one Project Budget Line--Item to cost overruns in another Project Budget Line--Item, 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 (1) 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, (2) said savings are actual savings and are documented to the reasonable satisfaction of Administrative Agent and the Construction Consultant in their reasonable discretion, (3) such reallocation will not violate the provisions of the Lien Law or affect the priority of the Security Instrument on the Project, and (4) no Interest Reserve funds are reallocated. 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. Project Budget Contingencies.
- a. Contingency Fund Line--Item. The Project Budget shall initially contain a line item equal to six percent (6.0%) of Hard Costs (the "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 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 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 Available Contingency Amount 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 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. Borrower agrees that except as set forth in Section 7.03(b), the decision with respect to utilizing any portion of the 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 even if funds remain in the 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 Contingency Fund.
9. 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.
- b. 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.
- c. 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.
11. 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 (i) any Soft Costs or (ii) 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:
- except with respect to the payment of interim retainage prior to the completion of all of the work in accordance with the terms of the applicable contract, 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;
  - 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;
  - the contract provides for such early release of the applicable Retainage;
  - 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;
  - 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
  - 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.
13. 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 (a) withhold from such Loans such amounts the proceeds of which are intended to pay for the Unsatisfactory Work and (b) 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 Completion obligation with respect to 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.



14. 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 completed 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.
15. 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.
16. 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.
17. Administrative Agent's Right to Make Loan Advances in Compliance with the Completion Guaranty and Development Agreement Guaranty. Any Loan proceeds disbursed by Administrative Agent as contemplated by Section 2 of the Completion Guaranty and Development Agreement 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.
18. 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.

XV.

## REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Administrative Agent and the Lenders that:

1. 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.
2. 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).
3. 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 Permitted Liens and 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.
4. Financial Condition. Borrower has heretofore furnished to each of the Lenders certain financial statements of Borrower and Guarantor Vail Resorts, Inc. All such financial statements are complete and correct in all material respects and fairly present the financial condition of Borrower and Guarantor Vail Resorts, Inc. as of the dates of such financial statements, all in accordance with GAAP. Neither Borrower or Guarantor Vail Resorts, Inc. 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.
5. 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.
6. 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.
7. 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. 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.
9. 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 Environmental Effect and there are no underground storage tanks at the Project. The term "Material Adverse Environmental Effect" is defined herein as (i) any further violations regarding matters set forth in the Shaw

- Discharge Report, (ii) any violation of Environmental Laws, (iii) any Environmental Claim or penalty arising under Environmental Laws, or (iv) any Release of Hazardous Substances; resulting in Environmental Losses of Five Hundred Thousand and No/100 Dollars (\$500,000.00) or more.
- b. To Borrower's Knowledge, there is no Environmental Claim pending or Environmental Claim 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, 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, except where the failure to have any such permit or comply with such Environmental Law is not reasonably likely to result in a Material Adverse Environmental Effect.
  - 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, which Environmental Claim is reasonably likely to result in a Material Adverse Environmental Effect.
  - d. To Borrower's Knowledge, there is no threat of a Release of Hazardous Substances migrating to the Project which is reasonably likely to result in a Material Adverse Environmental Effect.
  - 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.
11. 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 Vail Resorts Development Company, 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.
13. 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.
15. 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.
16. 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.
17. 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, including conditions and requirements related to employee housing, 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.
18. 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.
19. 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 as set forth in the Plans and Specifications. Telephone and communications services are, or will be, 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, or as otherwise shown in the Plans and Specifications, 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.
20. 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.
21. 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.).

22. 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.
23. 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.
24. 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 10.12, 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 material provisions of 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.
25. Material Agreements. Borrower has heretofore delivered to Administrative Agent a true, correct and complete copy of each Material Agreement, and the Material Agreements, together with matters appearing in the Official Records and other agreements delivered to Administrative Agent prior to the date hereof, 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 10.12, 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 provisions of any Material Agreement. To Borrower's Knowledge, as of the date hereof, except as set forth herein, no other party to a Material Agreement is in default under any material covenant or obligation set forth therein.
26. 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 for Completion of 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.
27. Insurance. Borrower has in force, and has paid the Insurance Premiums in respect of, all of the insurance required by Section 9.05.
28. 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.
29. Boundaries. Except as may be disclosed on the Survey and in the Title Policy or as set forth in the Plans and Specifications (with respect to which easements are in effect), 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.
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.
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.
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 Section 8.29(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.
34. Defaults. No Event of Default exists under any of the Loan Documents.
35. 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 in all material respects.
36. 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.
37. Loan In Balance. The Loan is In Balance.
38. 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.
39. No Construction. No construction, other than site development work and construction previously disclosed to Administrative Agent, has commenced on the Land.
40. 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.
41. 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.
42. Insider. Neither Borrower nor any Affiliate of Borrower (which shall not include any member 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.
43. 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.

44. **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.

XVII.

## 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:

1. **Information.** Borrower shall deliver to Administrative Agent:

- a. within one hundred twenty (120) days after the close of each fiscal year of Borrower, Borrower prepared annual financial statements, in form reasonably satisfactory to Administrative Agent and certified by Borrower as being true and correct in all material respects, including a balance sheet, a statement of cash flows and a 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 ten (10) days after the close of any month during which a Qualified Purchase Contract has been modified, amended, replaced or terminated, a sales report detailing the sales of Units in the Residential Component and including gross and net sales proceeds to date, Units under contract and expected closing dates and remaining Unit inventory for the Project for the most recent month;
- c. commencing with the first month following Completion and initial occupancy of each of the Hotel Component, Parking Club Component, Resort Services Component, and the Retail Component monthly operating statement, rent rolls, and report of Parking Club Membership sales, as appropriate, not later than 10 days following the end of each month.
- d. at the time of the delivery of each of the financial statements provided for in Sections 9.01(a), 9.01(b), and 9.01(c), 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. within one hundred twenty (120) days after the close of each fiscal year of Guarantor Vail Resorts, Inc., audited annual financial statements of Vail Resorts, Inc., including a balance sheet, a statement of cash flows, and a statement of profit and loss setting forth, in comparative form, figures for the preceding fiscal year, prepared in accordance with GAAP.
- f. within forty--five (45) days after the close of each fiscal quarter of Vail Resorts, Inc., quarterly financial statements of Guarantor Vail Resorts, Inc., in a form consistent with the financial statements previously provided to Administrative Agent by Vail Resorts, Inc., certified as true and correct by an authorized officer of Vail Resorts, Inc., and containing a balance sheet, statement of cash flows and a statement of profit and loss.
- g. within ninety (90) days after the close of each fiscal year of Guarantor Vail Resorts, Inc., a statement of annual cash flow projections for Vail Resorts, Inc.
- h. within five (5) days after furnishing to the Lenders under the Vail Corporation's Principal Bank Credit Facility, a copy of the compliance certificate required thereunder.
- i. 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.

3. **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;
- b. the commencement (or threatened commencement) of any legal or arbitral proceedings, and of all proceedings, other than any proceeding in connection with Anticipated Encumbrances, 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;
- c. 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 (other than a Qualified Purchase Contract), a notice of such default;
- d. notice of any threatened Condemnation, or the occurrence of any Casualty; and
- e. any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

5. **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.

6. **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.

8. **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.
10. Real Estate Taxes and Other Charges.
- a. Subject to the provisions of Section 9.06(b) of this Section 9.06 and Section 9.12, 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 Section 9.06(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 9.12.
  - 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.
12. 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.
13. 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 (other than a Qualified Purchase Contract) 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 9.08 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.
15. 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.
16. 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.
17. Environmental Compliance.
- a. Environmental Covenants. Borrower covenants and agrees that: (i) all uses and operations on or off 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), except where the failure to comply with such laws and permits is not reasonably likely to result in a Material Adverse Environmental Effect; (ii) Borrower shall not permit a Release of Hazardous Substances in, on, under or from the Project, which release results in a Material Adverse Environmental Effect; (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, any underground storage tank currently existing at the Project relating to Remediation of any Release of Hazardous Substances or evidencing compliance with violations addressed in the Shaw Discharge Report.

- b. Environmental Notices. Borrower shall promptly provide notice to Administrative Agent of: (i) all Environmental Claims asserted and material Environmental Claims threatened against Borrower or the Project and any material Environmental Claims asserted or threatened against any other party occupying the Project or any portion thereof 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.
19. 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 9.12, 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.
20. 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.
22. Use of Proceeds; Margin Regulations.
- a. Borrower will use (i) the proceeds of the Loans in accordance with the Project Budget and (ii) the disbursements from any Deficiency Deposit for the Project Costs.
- b. 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.
24. 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.
25. Project Construction.
- a. Borrower will prosecute or cause to be prosecuted 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) the Construction Work. Borrower shall cause Completion of such Construction Work to be accomplished by the Completion Date (other than Punch List items that do not adversely affect the use, occupancy or operation of the Project and tenant improvements to rentable space in the Commercial Component that is not yet occupied) subject to Section 14.26. Once begun, Borrower shall use its commercially reasonable efforts to cause the Construction Work to be prosecuted with diligence in accordance with the Construction Schedule so as (i) to achieve Completion of 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 Base Building Work and (ii) to achieve Completion of each portion of the Construction Work prior to the date required pursuant to each Qualified Purchase Contract. Borrower shall not commence 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 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.
- b. 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.
- c. 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.

- d. 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.
  - e. Subject to the provisions of Section 10.12, 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 then required have been obtained, together with any documents related thereto and a written explanation of the reasons therefor.
  - f. 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, (ii) at any other time if required by Applicable Law or (iii) as may be required to determine compliance with Section 9.22. Such Appraisals shall be completed at Borrower's expense and shall be prepared by an appraiser satisfactory to Administrative Agent, provided however, if no Event of Default has occurred, Borrower shall not be required to pay for any such Appraisal more than once in any twelve (12) month period.
27. 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.
28. 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) (a) 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 (b) 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.
29. 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 14.22.
30. 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: (a) 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 (i) 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, (ii) 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 (iii) 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, without the prior approval of the Administrative Agent, at any one time exceed in the aggregate Ten Million and No/100 Dollars (\$10,000,000.00) inclusive of the amount requested; (b) 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 (i) 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 (ii) evidence that advances to be made by the Lenders for all Off--Site Stored Materials do not, without the prior approval of the Administrative Agent, exceed, at any one time Two Million and No/100 Dollars (\$2,000,000.00), inclusive of the amount requested; and (c) 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.
31. Minimum Loan Coverage Ratio. At all times during the term of this Agreement, Borrower shall maintain the Minimum Loan Coverage Ratio. If at any time Borrower shall fail to maintain the Minimum Loan Coverage Ratio, Borrower shall, within thirty (30) days after receipt of notice from Administrative Agent, (a) repay the Loan in an amount sufficient to comply with this Section 9.21 or (b) provide evidence satisfactory to Administrative Agent in its sole discretion, that Qualified Purchase Contracts are in place to provide Net Sales Proceeds sufficient to meet the requirements of this Section 9.21.
32. Loan to Value and Loan to Cost. At all times during the term of this Agreement, Borrower shall maintain a Loan to Value Ratio of not greater than 75% and a Loan to Cost Ratio percent not greater than 80%. If at any time Administrative Agent shall determine, based upon an Appraisal obtained pursuant to Section 9.16(f), that the Loan to Value Ratio is greater than 75%, or the Loan to Cost Ratio is greater than 80%, Borrower shall, within thirty (30) days after receipt of Notice from Administrative Agent, repay the Loan in an amount sufficient to comply with this Section 9.22.
33. Leasing.
- a. The Administrative Agent shall be given an opportunity to review leases for rentable space in the Commercial Component; **provided, however**, that Administrative Agent's approval of such leases will not be required if such lease provides for rents that are at commercially reasonable rates and contain commercially reasonable terms and conditions and are with third--party tenants unrelated to Borrower, or such lease is for rental of less than 7,500 square feet. In no event may any lease contain an option to purchase. In all other cases, Administrative Agent shall use reasonable efforts to approve or disapprove any proposed lease within seven (7) Business Days of receipt by Administrative Agent of the lease and all other information reasonably deemed necessary by Administrative Agent in connection with approval of the lease. Failure of the Administrative Agent to disapprove any such lease within such seven (7) Business Day period shall be deemed to be approval of such lease. Administrative Agent shall not unreasonably withhold its approval of any proposed lease. Without limiting the foregoing, Administrative Agent may condition approval of any such proposed lease on the execution and delivery by the tenant of a subordination, non--disturbance and attornment agreement in a form that is reasonably acceptable to Administrative Agent.
  - b. Borrower shall use commercially reasonable efforts to deliver to Administrative Agent within fifteen (15) Business Days following a request therefore, a subordination, non--disturbance and attornment agreement and/or an estoppel certificate, for the benefit of Lenders, each in form and

substance substantially similar to the forms attached hereto as Exhibit L, reasonably satisfactory to Administrative Agent, from such tenant or tenants as Administrative Agent shall specify.

- c. Within ten (10) days after the execution thereof, Borrower shall deliver to Administrative Agent copies of all leases.
  - d. Borrower shall not amend or modify any lease requiring approval by Administrative Agent in any material respect, or waive or release any of the material provisions thereof.
  - e. Borrower shall at all times comply with all of the terms and conditions of the leases and shall not permit any violation of the terms thereof or default thereunder.
35. Parking Club Memberships. Within ten (10) days after the execution thereof, Borrower shall deliver to Administrative Agent copies of all membership agreements in connection with the sale of Parking Club Memberships, and shall promptly, upon receipt of Parking Club Membership Fees, repay the Loan by the amount of any such Membership Fees less reasonable selling commissions and fees, if any, the total amount of which shall not exceed One Thousand Dollars (\$1,000.00) per Parking Club Membership.

XIX.

## 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:

1. 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.
3. 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.
4. 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, direct or indirect, 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(b), 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 (ii) 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 (1) 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 (2) 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.
6. 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 due (subject to good faith disputes), and do not exceed in the aggregate at any one time outstanding One Million and No/100 Dollars (\$1,000,000.00) or such greater amounts shown on the Project Budget.
  - c. Metro District Bonds. Indebtedness of Borrower arising from the issuance of the Metro District Bonds.
8. Investments. Borrower will not make or permit to remain outstanding any Investments except operating deposit accounts with banks.
9. Restricted Payments. Borrower shall make no Distributions until the Notes have been paid in full; provided, however, Distributions for repayment of sums advanced for payment of Project Costs shall be permitted so long as the sums advanced are in addition to Borrower's Initial Equity Contribution.
10. 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.
11. 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.
  12. 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.
  13. 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.
  14. 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.
  15. 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 (b) below and to the extent otherwise provided in this Section 10.12), (a) take any action to cancel or terminate any Project Document, any Material Agreement other than a Qualified Purchase Contract, or any Government Approval to which it is a party; (b) 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; (c) 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; (d) 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 10.13 below, would materially increase the Project Budget (including, without limitation, any Project Budget Line-Item); (e) 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 (f) enter into, or permit the General Contractor to enter into any new Major Subcontract.
  16. 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 10.13. Each request for a Change Order shall be accompanied by appropriate supporting documents and shall be processed by the Administrative Agent within eight (8) Business Days of receipt of such a request except as otherwise provided in Section 10.13(e) and Section 13.09(b)(ii)(5).
    - b. In addition to the rights under Section 10.12 to make non-material changes, 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 (i) 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; (ii) the structural integrity of the Improvements is not impaired; (iii) no substantial change in architectural appearance is effected and the rentable square footage is not materially reduced; (iv) 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; (v) 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 (vi) in the case of Change Orders, (1) no Event of Default has occurred and is continuing, (2) Borrower notifies Administrative Agent and the Construction Consultant in writing of such change within three (3) Business Days thereafter, and (3) the cost of or reduction resulting from any one such change does not exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00) and the aggregate change in cost of all such Change Orders does not exceed Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00);
    - c. The provisions of Section 10.13(b) notwithstanding, Borrower shall not be required to obtain Administrative Agent's consent for Change Orders resulting from "scope outside of General Contract" costs. These "scope outside of General Contract" costs for the work identified on Exhibit B are approximately \$7,650,000.00, and are costs that have been identified by Borrower and approved by Administrative Agent, but, as of the date of this Construction Loan Agreement have not yet been allocated to the General Contract.
    - d. Any Change Order or Purchaser Upgrade permitted pursuant to this Section 10.13 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.
    - e. The provisions of Section 2.02 and Section 10.13 notwithstanding, Borrower may elect, not more than three (3) times during the term of the Loan, to request an expedited response to a request for consent to changes to the Plans and Specifications or request a Change Order (to the extent either such consent is required under the terms of this Construction Loan Agreement). Such request shall specifically state that "BORROWER REQUESTS EXPEDITED CONSENT PURSUANT TO SECTION 10.13(e) THE CONSTRUCTION LOAN AGREEMENT." If such request pursuant to this paragraph (e) requires approval of the Required Lenders under Section 13.09(b)(ii), then Administrative Agent shall request such approval within five (5) Business Days of receipt of the request, and the Lender reply period under Section 13.09(c), solely for purposes of the provisions of this paragraph (e), shall be reduced to five (5) Business Days; in such event, unless a Lender shall give written notice to Administrative Agent within such five (5) Business Day period that such Lender objects to the Plans and Specifications or changes therein submitted with the request (together with a written explanation of the reasons behind the objection), such Lender shall be deemed to have approved the request. If a request under this paragraph (e) does not require approval of the Required Lenders, the Administrative Agent shall be required to respond to such request within five (5) Business Days of receipt of the request.
  18. Metro District / Sales Tax Increment Financing. Borrower shall not cause the formation of any additional special districts, other than the Metro District. Borrower shall monitor the activities of the Metro District, and shall provide notice to Lender of any pending action of the Metro District involving: (i) the filing of any petition with respect to the Metro District or any assessment in respect of the Metro District; (ii) the issuance, execution, delivery, amendment, modification or termination of the Metro District Bonds; (iii) approval of any sales tax increment financing agreement or other financing agreement with any Governmental Authority relating in any way to the Project.
  19. Anti-Terrorism Law. Borrower shall not (a) 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 8.29 above, (b) 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 (c) 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 10.15 and Section 8.29).

## INSURANCE OR CONDEMNATION AWARDS

### 1. 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.
3. Insurance Proceeds and Condemnation Awards.
- a. If (i) Restoration of the Project following a Casualty is reasonably expected to cost less than One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) (the "Insurance Threshold Amount"), or (ii) the Condemnation Award is reasonably expected to be less than One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) (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 (not cured within any applicable cure period) shall be an Event of Default.
5. 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 Section 11.03(a)(i), to cure such failure within ten (10) 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. such Insurance Proceeds or Condemnation Awards, together with such additional funds deposited by Borrower with Administrative Agent and/or allocated by Borrower from the 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 Sections 11.01(a) or 11.02(f), as applicable;
  - iii. if (1) 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 (2) 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;
  - iv. 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;
  - v. 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;
  - vi. 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;
  - vii. 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;
  - viii. 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;
  - ix. 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;
  - x. the Project and the use thereof after the Restoration will be in substantial compliance with and permitted under all Applicable Laws;
  - xi. such Casualty or Condemnation, as the case may be, does not result in the permanent loss of access to the Project or the Improvements;

- c. 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 Section 11.03(a) above are not satisfied and Borrower's right to cure such matters has expired, the Insurance Proceeds or Condemnation Award may (1) 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 (2) 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.

XXIII.

## EVENTS OF DEFAULT

### 1. 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 9.14(b), 9.21, 9.22, 10.01(a), 10.02, 10.03, 10.07, or 10.15.
- 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 (1) 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 (2) 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 (1) 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, (2) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (ii) above, (3) 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, (4) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (5) make a general assignment for the benefit of creditors or (6) take any action for the purpose of effecting any of the foregoing; or
- e. Default on other Indebtedness. Borrower defaults (after the passage of any grace or cure periods) on any other Indebtedness where any Lender is acting as lender; or
- f. 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
- g. 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 Five Hundred Thousand and No/100 Dollars (\$500,000.00) 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
- h. 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 One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) 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
- i. 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
- j. 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
- k. 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
- l. Material Adverse Effect. An event shall occur that results in a Material Adverse Effect and such Material Adverse Effect shall be continuing; or
- m. 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
- n. 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
- o. 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 other than a Qualified Purchase Contract is materially Modified or terminated without Administrative Agent's prior written approval if such approval is required pursuant to Section 10.12, 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
- p. 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

- q. **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
  - r. **Completion Date.** Completion of the Project is not achieved (subject to Section 14.26) on or before the Completion Date; or
  - s. **Cessation of Construction.** If the Construction Work shall, at any time, be discontinued (subject to Section 14.26) 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
  - t. **Change in Control.** The occurrence of any Change of Control not permitted by this Agreement; or
  - u. **General.** If Borrower or Guarantor shall default as set forth in Sections 12.01(c), or 12.01(l) 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
  - v. **Other Loan Documents.** Any "Event of Default" shall occur under and is defined by the provisions of any of the other Loan Documents.
3. **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 Sections 12.01(d) or 12.01(f) 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 Sections 12.01(d) or 12.01(f) 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;
  - b. 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 and the Lenders 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;
  - c. Take possession of the Project and cause Completion 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 cause Completion 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 cause Completion the Improvements; to make changes in the Plans and Specifications which shall be necessary or desirable for Completion of 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 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;
  - d. Exercise the Lenders' rights under the Completion Guaranty and Development Agreement Guaranty to require any Guarantor to perform thereunder, in which case Borrower hereby (i) 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 Development Agreement Guaranty and this Agreement and (ii) 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
  - e. 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.

XXV.

#### **ADMINISTRATIVE AGENT**

1. **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 13.01 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 Article XIII 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 Article XIII in their sole and absolute discretion.

3. 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.

4. 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 (1) to make Protective Advances that Administrative Agent determines are necessary to protect or maintain the Project and (2) 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), 13.03(e), and 13.03(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), 13.03(e), and 13.03(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 Article XIII 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.
6. 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.
7. 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.
8. 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 13.05 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.
9. 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.
10. Resignation and Removal of Administrative Agent.
- a. 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:
    - i. meets the qualifications of an Eligible Assignee; and
    - ii. 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 (i) and (ii) 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 Article XIII 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.
- c. Administrative Agent may be removed by the Required Lenders if:
    - i. Administrative Agent shall have failed to pay to Lenders any amount due to any Lender pursuant to this Agreement (and not reasonably disputed by Administrative Agent) within seven (7) Business Days of the date Administrative Agent is notified of a default in a payment due from Administrative Agent to such Lenders;
    - ii. Administrative Agent shall have failed to perform any of its obligations under this Agreement in any material respect and such failure shall not have been cured within thirty (30) calendar days after written notice from Lenders to Administrative Agent of such failure, or if such failure cannot reasonably be cured within such thirty (30) day period, within such longer period of time as may be necessary to complete such cure so long as Administrative Agent commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion; or
    - iii. Administrative Agent is a Defaulting Lender.
12. Consents and Certain Actions under, and Modifications of, Loan Documents.

- a. Administrative Agent may, except as provided below in Section 13.09(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:
    - (1) a waiver of any provision regarding the scheduled payment of principal of or interest on the Loan;
    - (2) the postponement the Maturity Date;
    - (3) the reduction or forgiveness of the principal amount of the Loan;
    - (4) a decrease in 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;
    - (5) 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);
    - (6) 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;
    - (7) a waiver of any Late Charges, interest at the Default Rate, or any Extension Fee;
    - (8) a consent to any waiver of the prohibitions on Transfer or encumbrances, other than an Anticipated Encumbrance, of the Project or Equity Interests in Borrower;
    - (9) a Modification of the definition of "Required Lenders" or the provisions of Article XIII, or alters the several nature of the Lenders' obligations under the Loan Documents;
  - iii. Without the consent of the Required Lenders:
    - (1) 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);
    - (2) a decision made with respect to the sale or disposition of the Project or any Collateral after Administrative Agent has obtained possession thereof;
    - (3) 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;
    - (4) a Protective Advance that exceeds Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) or Protective Advances that exceed, in the aggregate, Five Hundred Thousand and No/100 Dollars (\$500,000.00) in any calendar year; and
    - (5) a single Change Order in excess of One Million and No/100 Dollars (\$1,000,000.00) and all Change Orders at such time as the aggregate amount of Change Orders exceeds Seven Million and No/100 Dollars (\$7,000,000.00).
    - (6) a waiver of the conditions precedent to the making of Loans set forth in Section 6.02.
  - v. 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).
- d. 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.
14. 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.
15. 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 Section 13.11(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 [Section 13.11\(f\)](#) 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 [Section 13.11\(f\)](#) below by the payment of the Unpaid Amount.
- c. 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.
- d. 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.
- e. Nothing contained in [Section 13.11\(a\)](#), [13.11\(f\)](#) or [13.11\(h\)](#) 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 [Section 13.11\(c\)](#) 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.
- f. 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.
- h. 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.
- i. 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.

17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.

XXVII.

#### MISCELLANEOUS

1. 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.
2. 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: ArraBelle at Vail Square, LLC

c/o Vail Resorts Development Co.

137 Benchmark Road

Avon, CO 81620

Attention: Mr. Jeffrey W. Jones

Facsimile: 970--845--2555

With a copy to: Holme Roberts & Owen, LLP

1700 Lincoln Street

Suite 4100

Denver, CO 80203

Attention: Robert H. Bach, Esq.

Facsimile: 303--866--0200

If to Administrative Agent: U.S. Bank National Association

DN--CO--BB5R

918 Seventeenth Street, 5<sup>th</sup> 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

14241 Dallas Parkway

Suite 490

Dallas, TX 75254

Attention: Mr. Huvishka Ali

Facsimile: 972--386--8370

With a copy to: Snell & Wilmer L.L.P.

1200 Seventeenth Street, Suite 1900

Denver, CO 80202

Attn: Thomas L. DeVine, Esq.

Facsimile: 303--634--2020

- c. 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.
4. 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 (1) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the syndication, making and administration of the Loans hereunder, (2) the creation, perfection or protection of the Liens to be created by the Security Documents, (3) 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 (ii) the enforcement of the Improvements and (4) 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 (1) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, (2) judicial or regulatory proceedings and (3) 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.
5. 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 Improvements, (iii) any ERISA Events, (iv) any Environmental Losses, (v) 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.
6. 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 (1) as expressly provided in the Loan Documents and (2) 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.

7. 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.
8. Assignments and Participations.
- 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.
  - 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, in minimum amounts of Ten Million and No/100 Dollars (\$10,000,000.00), and upon payment to Administrative Agent of an assignment fee of Three Thousand Five Hundred and No/100 Dollars (\$3,500.00) for each such assignment 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 (1) 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 (2) 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.
  - 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, including the execution by Borrower of Replacement Notes.
  - 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 14.22.
10. Survival. The obligations of Borrower under Sections 5.01, 5.05, 5.07, 14.03, 14.04 and 14.11, 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.
11. Multiple Copies. Each document to be delivered to Administrative Agent hereunder or under any other Loan Document shall be delivered in duplicate.
12. Right of Set-off.
- 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 Section 14.10(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.
  - 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.
  - 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. 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.
15. Estoppel Certificates.
- 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.
  - 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.
17. 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.
18. 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 14.14, 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, (c) 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, (d) any right or claim of right to cause a marshalling of Borrower's assets and (e) 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.
19. 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.
20. **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.
21. **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.
22. **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.
23. **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.
24. **SUBMISSION TO JURISDICTION.** Borrower, ADMINISTRATIVE AGENT AND EACH OF THE LENDERS HEREBY IRREVOCABLY (A) 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, (B) CONSENT TO THE JURISDICTION OF EACH SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING, (C) 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 (D) 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.
25. **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.
26. **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 14.22, 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 14.22 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 14.22, "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 14.22 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 14.22 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.
27. **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.
28. **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 (1) shall be a separate and identifiable account from all other funds held by the Depository Bank and (2) 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 (1) the Controlled Account shall be established in the name of Administrative Agent (on behalf of the Lenders), (2) the Controlled Account shall be subject to the sole dominion, control and discretion of Administrative Agent, and (3) 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.
- c. **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.
- d. **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).
30. **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.
31. **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, (a) the cause of the Unavoidable Delay is not within the control of Borrower, (b) after giving effect to the consequences of each such delay, the Loans shall remain In Balance, (c) after giving effect to the consequences of each such delay, the Qualified Purchase Contracts remain in full force and effect, (d) Borrower shall use all commercially reasonable efforts to mitigate the delay caused by such event of Unavoidable Delay, and (e) 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:**

ARRABELLE AT VAIL SQUARE, LLC, a Colorado limited liability company

By: Vail Resorts Development Company, a Colorado corporation, its Managing Member

By:

Jeffrey W. Jones

Senior Vice President

*[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

Vice President

*[Signatures continued on next page.]*

**LENDER:**

U.S. BANK NATIONAL ASSOCIATION, a national banking association

By:

Matthew W. Carrothers

Vice President

*[Signatures continued on next page.]*

**LENDER:**

WELLS FARGO BANK, N.A., a national banking association

By:

John W. McKinny

Senior Vice President

*[Signatures continued on next page.]*

**LENDER:**

JPMORGAN CHASE BANK, N.A., a national banking association

By:

Jane B. Reed  
Senior Vice President

*[Signatures continued on next page.]*

**LENDER:**

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By:

Kenneth A. Whitelam  
First Vice President

*[Signatures continued on next page.]*

**LENDER:**

COMPASS BANK, an Alabama banking corporation

By:

John Lozano  
Vice President

*[Signatures continued on next page.]*

**LENDER:**

COMERICA WEST INCORPORATED

By:

Kevin T. Urban  
Assistant Vice President

*[Signatures continued on next page.]*

**LENDER:**

BANK OF AMERICA, N.A.

By:

Juli Elston  
Senior Vice President

**Exhibit A**

Description of Land

LOT 1, LIONSHEAD SIXTH FILING, ACCORDING TO THE PLAT RECORDED NOVEMBER 21, 2005 AT RECEPTION NO. 937664, COUNTY OF EAGLE, STATE OF COLORADO.

**Exhibit B**

Project Budget

<b>Sources</b>	<b>%</b>	
Equity (land)	13.8%	\$36,750,000
Escrow Deposits	12.8%	\$33,850,500
Additional Borrower Equity (Cash)	7.5%	\$19,886,872
Construction Facility	65.9%	\$175,000,000
<b>Total Sources</b>	<b>100.0%</b>	<b>\$265,487,372</b>
<b>Uses</b>		
Land Costs	13.8%	\$36,750,000
Building Costs	59.6%	\$158,140,405

Sitework & Utilities	4.1%	\$11,010,522
<b>Hard Cost Sub--Total</b>		<b>\$205,900,927</b>
Project Management (In--house)	0.4%	\$1,005,000
Interest Reserve and Fees	4.3%	\$11,500,000
Contingency	3.9%	\$10,356,626
Planning, Design, & Engineering	6.5%	\$17,256,964
FF&E	4.4%	\$11,650,046
Fees, Permits, and Taxes	0.7%	\$1,786,202
Financial Exp. (Blders Risk, Etc.)	1.9%	\$5,006,884
Other	0.4%	\$1,024,723
<b>Soft Cost Sub--Total</b>		<b>\$59,586,445</b>
<b>Total Uses</b>	<b>100.0%</b>	<b>\$265,487,372</b>

### Exhibit C

#### List of Commitments and Proportionate Shares

Lender	Amount of Commitment	Proportionate Share
U.S. Bank National Association	\$45,000,000.00	25.7142857143%
Wells Fargo Bank, N.A.	\$45,000,000.00	25.7142857143%
JPMorgan Chase Bank, N.A.	\$23,000,000.00	13.1428571429%
LaSalle Bank National Association	\$22,000,000.00	12.5714285714%
Compass Bank	\$18,000,000.00	10.2857142857%
Comerica West Incorporated	\$12,000,000.00	6.8571428571%
Bank of America, N.A.	\$10,000,000.00	5.7142857143%
<b>Total:</b>	<b>\$175,000,000.00</b>	<b>100%</b>

### Exhibit D

#### Summary Qualified Purchase Contracts

### Exhibit E

#### List of Plans and Specifications

(See attached)

### Exhibit F

#### Loan Par Value

	Unit	Par Value
1	201	\$3,097,997
2	217	\$1,314,419
3	229	\$1,934,794
4	243	\$2,167,435
5	255	\$2,167,435
6	259	\$1,004,232
7	272	\$1,236,872
8	274	\$1,236,872
9	282	\$2,942,903
10	284	\$3,097,997
11	287	\$1,857,247

12	301	\$3,873,466
13	329	\$4,106,106
14	330	\$1,159,326
15	343	\$2,244,982
16	355	\$2,865,356
17	368	\$1,469,513
18	372	\$1,934,794
19	374	\$1,857,247
20	382	\$2,942,903
21	384	\$3,253,091
22	387	\$1,934,794
23	408	\$2,167,435
24	414	\$1,469,513
25	422	\$1,624,607
26	429	\$4,261,200
27	430	\$2,244,982
28	443	\$2,400,075
29	444	\$1,857,247
30	455	\$3,408,185
31	460	\$926,685
32	461	\$1,702,154
33	468	\$1,547,060
34	472	\$2,244,982
35	476	\$2,012,341
36	482	\$2,632,716
37	484	\$10,856,560
38	487	\$1,004,232
39	508	\$2,322,528
40	514	\$1,624,607
41	522	\$1,779,700
42	529	\$4,416,294
43	530	\$2,322,528
44	543	\$2,477,622
45	544	\$1,934,794
46	555	\$3,485,731
47	560	\$1,004,232
48	561	\$1,779,700
49	568	\$1,779,700
50	572	\$2,244,982
51	576	\$2,089,888
52	582	\$2,787,810
53	587	\$1,236,872
54	608	\$2,942,903
55	614	\$1,934,794
56	617	\$2,632,716
57	622	\$2,012,341
58	629	\$5,191,762
59	630	\$2,632,716



60	642	\$3,330,638
61	643	\$4,648,934
62	655	\$3,563,278
63	661	\$1,857,247
64	668	\$3,795,919
65	672	\$4,106,106
66	682	\$3,873,466
67	755	\$7,130,434
<b>TOTAL</b>	<b>67</b>	<b>\$175,000,000</b>

**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 Base 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 a Based Rate Loan 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:**

ARRABELLE AT VAIL SQUARE, LLC, a Colorado limited liability company

By: Vail Resorts Development Company, a Colorado corporation, its Managing Member

By:

Name:

Its:

**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 January 31, 2006 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 (a) is request No.----- under the Construction Loan Agreement, (b) constitutes Borrower's request to borrow Loans in the amounts and in the manner set forth below and (c) 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 the proposed Loans which are to bear interest at Base Rate Loans is \$-----.
5. 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 \$-----.
6. 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 \$250,000; in those circumstances, presentation of general ledger entries evidencing the amount due shall be sufficient;
- B. 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 \$250,000; in those circumstances, presentation of general ledger entries evidencing the amount due shall be sufficient;
- C. 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;
- D. Copies of sworn unconditional lien waivers 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 Subcontractor from the proceeds of the Advance is less than \$25,000 and the aggregate amount paid to such Subcontractor is less than \$100,000;
- E. Borrower's Architect's Certificate for Payment in accordance with AIA Document G--702;
- F. Requisition form duly executed by the General Contractor; and
- G. Copies of all other documents required pursuant to Article VI and Article 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;
- (h) 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 (i) matters which have been disclosed in writing to and approved by Administrative Agent (subject, however, to the terms of the Construction Loan Agreement) or (ii) 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;
- (i) 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 (i) affect the validity or priority of the liens of the Security Instrument or (ii) or, if adversely decided, would reasonably be expected have a Material Adverse Effect; and
- (j) All Government Approvals, to the extent then required for 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.
- (k) Borrower has contributed the required Initial Equity Contribution.

The undersigned requests that the requested Loans be advanced by depositing the same into Borrower's 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:**

ARRABELLE AT VAIL SQUARE, LLC, a Colorado limited liability company

By: Vail Resorts Development Company, a Colorado corporation, its Managing Member

By:

Name:

Its:

ACKNOWLEDGMENT

Each representation and warranty contained in the Representation Agreement remains true and correct in all material respects as of the date of this Request for Loan Advance.

**GUARANTOR:**

VAIL RESORTS, INC., a Delaware corporation

By:

Its:

VAIL CORPORATION, a Colorado corporation

By:

Its:

**Exhibit I**

Major/Bonded Subcontractors

<b>Major Subcontractors</b>	<b>Original Subcontract Value</b>	<b>% of GMP</b>	<b>Bonded</b>
Hulm	695,748	0.4%	Yes
LVI	831,260	0.5%	Yes
DCA (Appliances)	1,023,007	0.6%	No
Kolbe & Kolbe Windows	1,112,868	0.7%	No
Colorado Restaurant Supply	1,148,766	0.7%	No
Aluminum Storefront -- TBD	1,152,222	0.7%	No
National Networks	1,189,173	0.7%	No
RMS Concrete	1,229,306	0.8%	No
AllState Fire Protection	1,272,758	0.8%	Yes
Genesis Wood Flooring	1,292,105	0.8%	No
Stan Miller Inc.	1,373,634	0.9%	No
Chester Pools	1,663,179	1.0%	No
Schiros	1,734,250	1.1%	Yes
Platte Valley Lumber	1,777,823	1.1%	No
Otis Elevator	1,801,700	1.1%	No
IWC	2,119,510	1.3%	Yes
Schnabel	2,165,830	1.4%	Yes
The Roofing Company	2,172,566	1.4%	Yes
New World	4,005,000	2.5%	Yes
Guys Flooring	4,056,662	2.5%	Yes
RMP	5,359,160	3.4%	Yes
Heyl	5,416,830	3.4%	Yes
B&B Electric	7,317,138	4.6%	Yes
Gallegos (masonry, flatwork, tile)	9,678,419	6.1%	Yes
M&D	12,056,215	7.6%	Yes
SUBTOTAL	13,390,149	8.4%	No
Zimmerman	13,530,258	8.5%	Yes
KK Mechanical	16,654,751	10.4%	Yes
SUBTOTAL	117,220,287	73.5%	

Exhibit J

Minimum Release Prices for Commercial Component

Commercial Component \$25,200,000.00

Hotel Component (including the Hotel Management Contract) \$15,700,000.00

Alpine Club (including the Parking Club) \$14,730,000.00

Exhibit K

Anticipated Encumbrances

- 1. Further replatting of new Lionshead 6<sup>th</sup> Filing, to reflect the extinguishment of old platted easements upon completion of utility relocations.
- 2. Public easement grant to Town of Vail for vehicular turnaround access (at Certificate of Occupancy, based on as--built conditions).
- 3. Public easement grant to Town of Vail for pedestrian courtyard access (at Certificate of Occupancy, based on as--built conditions).
- 4. Loading/Delivery Easement Agreement between Borrower and Town of Vail, for public use of loading/delivery facility -- a condition to Certificate of Occupancy under Town of Vail PEC approvals.
- 5. Any easement or other interests to be granted to the Metro District for any applicable courtyard improvements.
- 6. Master Transformer Agreement with Holy Cross -- still being negotiated (may still get done before loan closing).
- 7. Implementation of ownership structure (will have to be implemented prior to residential condominium unit closings).
  - i. Further three--dimensional resubdivision to establish air space "box" for residential condominium units.
  - ii. Establish Reciprocal Easement and Covenants Agreement: creates ownership relationship between the residential condominium "box" and the hotel/commercial facilities.
  - iii. Residential condominium map and declaration.

(iv) Condominium map and declaration done for any portion of the Parking Club Component, Hotel Component, Resort Services Component or Retail Component.

9. Miscellaneous matters:

- i. Any other needs for easements or other grants that may arise in the ordinary course of development.
- ii. Any other measures necessary to satisfy Town of Vail / Vail Reinvestment Authority requirements associated with development approvals.
- iii. Density reallocation.
- iv. Amendments of the CCR Agreement and other property agreements.

11. Parking Club -- All documents governing the Parking Club Component.

Exhibit L

Subordination, Non--Disturbance and Attornment Agreement

When recorded, return to:

Snell & Wilmer L.L.P.

1200 Seventeenth Street, Suite 1900

Denver, Colorado 80202

Attn: Thomas L. DeVine

(Space Above For Recorder's Use)

AGREEMENT OF SUBORDINATION,

NON--DISTURBANCE AND ATTORNMENT

THIS AGREEMENT OF SUBORDINATION, NON--DISTURBANCE AND ATTORNMENT is made as of the ----- day of -----, 200---, by and among Arrabelle at Vail Square, LLC, a Colorado limited liability company ("Landlord"), - -----, a ----- ("Tenant"), and U.S. Bank National Association, a national banking association, as Administrative Agent under the Loan Agreement (defined below) for the Lenders therein (hereinafter, together with its successors and assigns, referred to as the "Lender").

WITNESSETH:

WHEREAS, Landlord is the owner of a certain tract of land with improvements thereon ("Property"), and said tract is more fully described in Exhibit "A", which is attached hereto and incorporated herein by this reference; and

WHEREAS, under that certain lease ("Lease") dated ----- between Landlord and Tenant, Landlord did lease, let and demise a portion of the Property ("Premises") as described in the Lease to Tenant for the period of time and upon the covenants, terms and conditions therein stated; and

WHEREAS, Bank has agreed to make a loan to Arrabelle in the maximum amount not to exceed One Hundred Seventy--Five Million Dollars (\$175,000,000) pursuant to that certain Construction Loan Agreement dated as of January 31, 2006 (the "Loan Agreement") to be secured by, among other things, a Deed of Trust to Public Trustee, Security Agreement, Financing Statement, Assignment of Rents and Leases and Fixture Filing of even date herewith granted by Arrabelle for the benefit of Bank (the "Deed of Trust") covering the Property; and

WHEREAS, Lender desires that the Lease be subordinated to the Deed of Trust, and that Tenant agree to attorn to the purchaser at foreclosure of the Deed of Trust in the event of such foreclosure or to Lender in the event of collection of the rent by Lender; and

WHEREAS, Tenant is willing to agree to attorn if Lender will recognize Tenant's rights under the Lease.

NOW, THEREFORE, in consideration of the covenants, terms, conditions and agreements herein contained, and for other good and valuable consideration, each to the other, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree, covenant and warrant as follows:

1. That the terms and conditions of the Lease and the rights of the Tenant thereunder are and will continue to be subordinate to the Deed of Trust, and the lien thereof, and to any renewal, substitution, extension or replacement thereof.
2. So long as (i) Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance or observance of any of the other terms, covenants, provisions or conditions of the Lease on Tenant's part to be performed or observed, (ii) Tenant is not in default under this Agreement and (iii) the Lease is in full force and effect: (a) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be affected in accordance with any option therefor which is contained in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof and (b) Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Deed of Trust or to enforce any rights or remedies of Lender under the Deed of Trust which would cut-off, destroy, terminate or extinguish the Lease or Tenant's interest and estate under the Lease (except to the extent that Tenant's right to receive or set-off any monies or obligations owed or to be performed by any of Lender's predecessors--in--interest shall not be enforceable thereafter against Lender or any of Lender's successors--in--interest).
3. (A) After notice is given by Lender that the Deed of Trust is in default and that the rentals under the Lease should be paid to Lender, Tenant will attorn to Lender and shall be authorized to pay to Lender, or pay in accordance with the directions of Lender, all rentals and other monies due and to become due to Landlord under the Lease or otherwise in respect of the Premises in full and complete satisfaction of its obligation to pay such amounts in accordance with the terms and conditions of the Lease; and such payments shall be made regardless of any right of set-off, counterclaim or other defense which Tenant may have against Landlord, whether as the Tenant under the Lease or otherwise.

(B) In addition, if Lender (or its nominee or designee) shall succeed to the rights and obligations of Landlord under the Lease through possession or foreclosure action, delivery of a deed or otherwise, or another person purchases the Premises upon or following foreclosure of the Deed of Trust, then at the request of Lender (or its nominee or designee) or such purchaser (Lender, its nominees and designees, and such purchaser, each being a "Successor--Landlord"), Tenant shall attorn to and recognize Successor--Landlord as Tenant's landlord under the Lease and shall promptly execute and deliver any instrument that Successor--Landlord may reasonably request to evidence such attornment. Upon such attornment, the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor--Landlord and Tenant upon all terms, conditions and covenants as are set forth in the Lease, and Successor Landlord shall be subject to all obligations and liabilities of Landlord under the Lease, except that Successor--Landlord shall not:

- i. be liable for any previous act or omission of Landlord under the Lease;
- ii. be subject to any off-set, defense or counterclaim which shall have theretofore accrued to Tenant against Landlord;
- iii. be bound by any modification of the Lease or by any previous prepayment of rent or additional rent for more than one (1) month which Tenant might have paid to Landlord, unless such modification or prepayment shall have been expressly approved in writing by Lender; and
- iv. be liable for any security deposited under the Lease unless such security has been physically delivered to Lender.

5. Tenant shall use reasonable efforts to notify Lender promptly after Tenant becomes aware of any default by Landlord under the Lease and of any act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease or to claim a partial or total eviction. In the event of a default by Landlord under the Lease which would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate the Lease or to claim a partial or total eviction, or in the event of any other act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease, Tenant shall not exercise such right (i) until Tenant has given written notice of such default, act or omission to Lender and (ii) unless Lender has failed, within sixty (60) days after Lender receives such notice, to cure or remedy the default, act or omission or, if such default, act or omission shall be one which is not reasonably capable of being remedied by Lender within such sixty (60) day period, until a reasonable period for remedying such default, act or omission shall have elapsed following the giving of such notice (which reasonable period shall in no event be less than the period to which Landlord would be entitled under the Lease or otherwise, after similar notice, to effect such remedy), provided that Lender shall with due diligence give Tenant written notice of its intention to and shall commence and continue to, remedy such default, act or omission. If Lender cannot reasonably remedy a default, act or omission of Landlord until after Lender obtains possession of the Premises, Tenant may not terminate or cancel the Lease or claim a partial or total eviction by reason of such default, act or omission until the expiration of a reasonable period necessary for the remedy after Lender secures possession of the Premises.
6. Except as specifically provided in this Agreement and subject to Paragraph 3(B) herein, Lender shall not, by virtue of this Agreement, the Deed of Trust or any other instrument to which Lender may be a party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise.
7. All notices, demands, requests and other communications made hereunder shall be in writing and shall be properly given and deemed delivered on the date of delivery if sent by personal delivery or nationally recognized overnight courier and on the third business day following mailing if sent by certified or registered mail, postage prepaid, return receipt requested, as follows:

If to Lender: U.S. Bank National Association

Real Estate Banking  
 918 Seventeenth Street, Fifth Floor  
 Denver, Colorado 80202

If to Tenant: -----  
 -----  
 -----  
 -----

9. The agreements herein contained shall bind and inure to the benefit of the successors and assigns in interest of the parties hereto and, without limiting such, the agreement of the Lender shall specifically be binding upon any purchaser of the Property at a sale foreclosing the Deed of Trust.
10. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and delivered in their respective names and on their behalf; and if a corporation, by its officers duly authorized, on the day and year first above written.

TENANT:

[-----], a -----

By:

Its:

LANDLORD:

Arrabelle at Vail Square, LLC, a Colorado limited liability company

By:

Title:

LENDER:

U.S. BANK NATIONAL ASSOCIATION, a national banking association

By:

Its:

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

Notary Public

My Commission Expires:-----

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of Arrabelle at Vail Square, LLC, a Colorado limited liability company.

Witness my hand and official seal.

Notary Public

My Commission Expires:-----

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of U.S. Bank National Association, a national banking association.

Witness my hand and official seal.

Notary Public

My Commission Expires:-----

**EXHIBIT A**

Legal Description of Property

LOT 1, LIONSHEAD SIXTH FILING, ACCORDING TO THE PLAT RECORDED NOVEMBER 21, 2005 AT RECEPTION NO. 937664, COUNTY OF EAGLE, STATE OF COLORADO.

**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 Residential Component.

(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) except as set forth in the Plans and Specifications, 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 Construction Work is proceeding on time and on budget.
- (l) 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.
- (m) 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 the Base Building Work; (iii) all Government Approvals to the extent presently necessary for 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 or will exist 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.
- (n) 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.
- (o) 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.
- (p) 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.
- (q) Standard Forms. Standard forms of agreements and/or leases with respect to the Commercial Component.
- (r) Contractor's Agreement. A copy of the fully executed GMP Agreement with Shaw Construction.
- (s) Architect's Agreement. A copy of the fully executed Architect's Agreement.
- (t) 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 (i) a certificate by an Authorized Officer of Borrower certifying that the delivered items are true, accurate and complete copies and (ii) 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, except as set forth on the Plans and Specifications, 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. To the extent available, 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 (i) contractors and subcontractors and (ii) 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, (i) the Base Building Work (1) has been substantially completed in accordance with the Plans and Specifications, (2) the Improvements are structurally sound (the certification as to structural soundness to be made by the structural engineer only) and (3) except for tenant improvements to rentable space in the Commercial Component that is not yet occupied is available for occupancy (subject to completion of Punch List Items), and (ii) the Improvements as so completed comply 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 financing 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 Construction Work have been paid in full except (1) to the extent covered by the final Loans then being requested and (2) 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 Base Building 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



## Schedule 8.14

### Government Approvals

#### **Part A -- Existing Approvals Obtained**

Town of Vail Planning and Environmental Commission Approval;

Town of Vail Design Review Board Approvals (subject to remaining approvals referenced in Part B);

Town Council/Town of Vail Approval of Core Site Development Agreement and Amendment to Core Site Development Agreement and Core Site Developer Improvement Agreement supplementing same;

Vail Reinvestment Authority (VRA) Covenant Condemnation Approval and Completion of Condemnation;

Existing Building Permit(s);

Resubdivision Plat;

HUD Registration Approval;

Town of Vail approval and making of Intergovernmental Agreement with Metro Districts for maintenance of Lionshead Place; and

VRA approval and making of Intergovernmental Agreement with Metro Districts for tax increment financing.

#### **Part B -- Approvals to be Obtained at Later Date**

Temporary Certificate(s) of Occupancy;

Certificate(s) of Occupancy;

Condominium Project Document Approvals (further Resubdivision to establish residential condominium air space, Reciprocal Easements and Covenants Agreement, Condominium Map and Declaration, and any Amendments and Supplements thereto);

Town of Vail Design Review Board Approvals necessitated by Core Site Developer Improvement Agreement and Reapprovals resulting from Owner Change Orders); and

Future Building Permits.

HUD Registration Amendment

## Schedule 9.05

### Insurance Requirements

#### **I. PROPERTY INSURANCE**

##### **A. DURING CONSTRUCTION**

An ORIGINAL (or certified copy) Builder's Causes of Loss -- 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 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 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.

##### **C. 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. Extra 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.

### **III. LIABILITY INSURANCE**

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 limit 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

### **V. WORKER'S COMPENSATION**

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 ARRABELLE AT VAIL SQUARE, 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 not to exceed \$175,000,000 (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) including all extensions thereof, 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 and such failure is not cured within thirty (30) days after written notice from the Bank), 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;

(d) 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;

(e) 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

(f) 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 or does not comply with the disbursement procedures set forth in the Construction Loan Agreement in any material respect (and such failure is not cured within ten (10) days after request by Bank), 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.

**3. 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 hereunder or 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.**

**4. The Bank, in its sole discretion, following the delivery of such notice to Borrower as is required hereunder or 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.**

**5. 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.**

**6. 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.

7. 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, writ, 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, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

(c) 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.

(d) 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.

(e) 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.

11. 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.

12. 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: Jeffrey W. Jones

Facsimile: 970--845--2555

With a copy to: Holme Roberts & Owen LLP

1700 Lincoln Street, Suite 4100

Denver, Colorado 80203

Attention: Robert H. Bach, Esq.

Facsimile: 303--866--0200

If to Bank: U.S. Bank National Association

DN--CO--BB5R

918 Seventeenth Street, 5<sup>th</sup> Floor

Denver, Colorado 80202

Attention: Mr. Matthew Carrothers

Facsimile: 303--585--4198

With a copy to: U.S. Bank National Association

Capital Markets Group

14241 Dallas Parkway

Suite 490

Dallas, Texas 75274

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.

14. 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.

15. Except to the extent permitted by the Loan Agreement, 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.

16. 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.

17. 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.

18. The Guarantor hereby represents and agrees that this is a continuing guaranty and (a) shall remain in full force and effect until the Loan has been repaid in full and the Commitments terminated or until such time as the Project reaches Completion (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.

19. 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.

20. 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.

21. Both the Guarantor and the Bank hereby waives any right to jury trial of any claim, cross--claim or counter--claim relating to or arising out of or in connection with this Guaranty.

22. 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.

23. 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 31<sup>st</sup> day of January, 2006.

GUARANTOR:

THE VAIL CORPORATION, a Colorado  
corporation

By: -----  
-----

Name: -----  
-----

Title: -----  
-----

BANK:

U.S. BANK NATIONAL ASSOCIATION, a  
national banking association

By: -----  
-----

Name: Matthew W. Carrothers

Title: Vice President

## 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 ARRABELLE AT VAIL SQUARE, 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 not to exceed \$175,000,000 (hereinafter referred to, collectively, as the "**Note**"), the undersigned, VAIL RESORTS, INC., a Delaware 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) including all extensions thereof, 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 and such failure is not cured within thirty (30) days after written notice from the Bank), 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;

(d) 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;

(e) 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

(f) 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 or does not comply with the disbursement procedures set forth in the Construction Loan Agreement in any material respect (and such failure is not cured within ten (10) days after request by Bank), 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.

**3. 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 hereunder or 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.**

**4. The Bank, in its sole discretion, following the delivery of such notice to Borrower as is required hereunder or 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.**

**5. 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.**

**6. 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.

7. 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, writ, 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, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

(c) 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.

(d) 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.

(e) 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.

11. 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.

12. 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: Vail Resorts, Inc.

137 Benchmark Road

Avon, Colorado 81620

Attention: Jeffrey W. Jones

Facsimile: 970--845--2555

With a copy to: Holme Roberts & Owen LLP

1700 Lincoln Street, Suite 4100

Denver, Colorado 80203

Attention: Robert H. Bach, Esq.

Facsimile: 303--866--0200



If to Bank: U.S. Bank National Association

DN--CO--BB5R

918 Seventeenth Street, 5<sup>th</sup> Floor

Denver, Colorado 80202

Attention: Mr. Matthew Carrothers

Facsimile: 303--585--4198

With a copy to: U.S. Bank National Association

Capital Markets Group

14241 Dallas Parkway

Suite 490

Dallas, Texas 75274

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.

14. 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.

15. Except to the extent permitted by the Loan Agreement, 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.

16. 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.

17. 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.

18. The Guarantor hereby represents and agrees that this is a continuing guaranty and (a) shall remain in full force and effect until the Loan has been repaid in full and the Commitments terminated or until such time as the Project reaches Completion (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.

19. 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.

20. 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.

21. Both the Guarantor and the Bank hereby waives any right to jury trial of any claim, cross--claim or counter--claim relating to or arising out of or in connection with this Guaranty.

22. 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.

23. 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.

SIGNED AND DELIVERED as of the 31<sup>st</sup> day of January, 2006.

**GUARANTOR:**

VAIL RESORTS, INC., a Delaware corporation

By: -----  
-----

Name: -----  
-----

Title: -----  
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**BANK:**

U.S. BANK NATIONAL ASSOCIATION, a  
national banking association

By: -----  
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Name: Matthew W. Carrothers

Title: Vice President

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SUPPLEMENTAL INDENTURE

Dated as of March 10, 2006

to

INDENTURE

Dated as of January 29, 2004

among

VAIL RESORTS, INC., as Issuer,

the Guarantors named therein, as Guarantors,

and

THE BANK OF NEW YORK, as Trustee

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6 3/4 % Senior Subordinated Notes due 2014

SUPPLEMENTAL INDENTURE, dated as of March 10, 2006, among Vail Resorts, Inc., a Delaware corporation (the "Issuer"), the Guarantors named on the signature pages hereto (the "Guarantors"), the Additional Guarantors named on the signature pages hereto (collectively the "Additional Guarantors"), and The Bank of New York, as Trustee (the "Trustee").

WHEREAS, the Issuer and the Guarantors have heretofore executed and delivered to the Trustee an Indenture dated as of January 29, 2004 (the "Indenture") providing for the issuance of \$390,000,000 aggregate principal amount of 6 3/4% Senior Subordinated Notes due 2014 of the Company (the "Notes"); and

WHEREAS, subsequent to the execution of the Indenture and the issuance of \$390,000,000 aggregate principal amount of the Notes, each of the Additional Guarantors has become a guarantor under the Credit Agreement; and

WHEREAS, pursuant to and as contemplated by Sections 4.18 and 9.01 of the Indenture, the parties hereto desire to execute and deliver this Supplemental Indenture for the purpose of providing for each Additional Guarantor to expressly assume all the obligations of a Guarantor under the Notes and the Indenture;

NOW, THEREFORE, in consideration of the above premises, each party agrees, for the benefit of the other and for the equal and ratable benefit of the Holders of the Notes, as follows:

I.

ASSUMPTION OF GUARANTEES

Each Additional Guarantor, as provided by Section 4.18 of the Indenture, jointly and severally, hereby unconditionally expressly assumes all of the obligations of a Guarantor under the Notes and the Indenture to the fullest as set forth in Article 12 of the Indenture; and each Additional Guarantor may expressly exercise every right and power of a Guarantor under the Indenture with the same effect as if it had been named a Guarantor therein.

II.

MISCELLANEOUS PROVISIONS

A. Terms Defined.

For all purposes of this Supplemental Indenture, except as otherwise defined or unless the context otherwise requires, terms used in capitalized form in this Supplemental Indenture and defined in the Indenture have the meanings specified in the Indenture.

B. Indenture.

Except as amended hereby, the Indenture and the Notes are in all respects ratified and confirmed and all the terms shall remain in full force and effect.

C. Governing Law.

**THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED ENTIRELY WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.**

D. Successors.

All agreements of the Company, the Guarantors and the Additional Guarantors in this Supplemental Indenture, the Notes and the Guarantees shall bind their respective successors. All agreements of the Trustee in this Supplemental Indenture shall bind its successors.

E. Duplicate Originals.

The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together shall represent the same agreement.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first written above.

ISSUER:

VAIL RESORTS, INC.

By: Martha D. Rehm  
Name: Martha Dugan Rehm  
Title: Executive Vice President

GUARANTORS:

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 AND BEVERAGE COMPANY  
KEYSTONE RESORT PROPERTY MANAGEMENT  
COMPANY  
LODGE PROPERTIES, INC.  
LODGE REALTY, INC.  
PROPERTY MANAGEMENT ACQUISITION CORP.,  
INC.  
ROCKRESORTS CASA MADRONA, LLC  
ROCKRESORTS CHEECA, LLC  
ROCKRESORTS EQUINOX, INC.  
ROCKRESORTS INTERNATIONAL, LLC  
ROCKRESORTS, LLC  
ROCKRESORTS LA POSADA, LLC  
ROCKRESORTS ROSARIO, LLC  
ROCKRESORTS WYOMING, LLC  
TETON HOSPITALITY SERVICES, INC.  
THE VAIL CORPORATION  
THE VILLAGE AT BRECKENRIDGE ACQUISITION  
CORP., INC.  
VAIL ASSOCIATES HOLDINGS, LTD.  
VAIL ASSOCIATES REAL ESTATE, INC.  
VAIL FOOD SERVICES, INC.  
VAIL HOLDINGS, INC.  
VAIL RESORTS DEVELOPMENT COMPANY  
VAIL SUMMIT RESORTS, INC.  
VAIL TRADEMARKS, INC.  
VAIL/ARROWHEAD, INC.  
VAIL/BEAVER CREEK RESORT PROPERTIES,  
INC.  
VAMHC, INC.

VAIL RR, INC.

VA RANCHO MIRAGE I, INC.

VA RANCHO MIRAGE II, INC.

VA RANCHO MIRAGE RESORT, L.P.

VR HEAVENLY I, INC.

VR HEAVENLY II, INC.

Each by its authorized officer or signatory:

By: Martha D. Rehm

Name: Martha D. Rehm

Title: Senior Vice President of each

Guarantor listed above

ADDITIONAL GUARANTORS:

Rockresorts Cordillera Lodge

Company, LLC

SOHO DEVELOPMENT, LLC

SSV HOLDINGS, INC.

VAIL HOTEL MANAGEMENT COMPANY, LLC

By: Martha D. Rehm

Name: Martha D. Rehm

Title: Senior Vice President of each Additional

Guarantor listed above

TRUSTEE:

THE BANK OF NEW YORK, as Trustee

By:     /Sandee Parks    

Name: Sandee Parks

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE  
SARBANES-OXLEY ACT OF 2002**

**I, Robert A. Katz, certify that:**

1. I have reviewed this quarterly report on Form 10-Q of Vail Resorts, Inc.;
2. Based on my knowledge, this 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this 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 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 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 this report based on such evaluation; and
  - d) 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 fiscal 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: March 13, 2006

/s/ Robert A. Katz  
Robert A. Katz  
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 quarterly report on Form 10-Q of Vail Resorts, Inc.;
2. Based on my knowledge, this 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this 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 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 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 this report based on such evaluation; and
  - d) 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 fiscal 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: March 13, 2006

/s/ Jeffrey W. Jones

Jeffrey W. Jones  
Senior Executive 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 quarterly report of the Company on Form 10-Q for the quarter ended January 31, 2006 (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: March 13, 2006

/s/ Robert A. Katz  
Robert A. Katz  
Chief Executive Officer

Date: March 13, 2006

/s/ Jeffrey W. Jones  
Jeffrey W. Jones  
Senior Executive 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-Q 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.