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**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING AND  
SECURITY AGREEMENT**

This Fee Deed of Trust, Assignment of Leases and Rents, Fixture Filing and Security Agreement (the "**Deed of Trust**") is made as of January 21, 2002, by and among Heavenly Valley, Limited Partnership, a Nevada limited partnership, having a place of business at c/o American Skiing Company, P.O. Box 450, Bethel, Maine 04217 ("**Trustor**"), Western Title Company, a Nevada corporation having a place of business at 1626 Highway 395, Minden, Nevada 89423 ("**Trustee**") and Fleet National Bank, as Administrative Agent for itself and the other Lenders party to the Credit Agreement (as defined in Section 1.a hereof) having a place of business at 115 Perimeter Circle, Atlanta, GA 30346 ("**Beneficiary**"). All capitalized terms used herein without definition shall have the meanings ascribed to them in the Credit Agreement.

WHEREAS, Trustor, Beneficiary, and certain other parties named therein are parties to the Credit Agreement (as defined in Section 1.a. hereof) pursuant to which Beneficiary and the Lenders have severally agreed to make a loan to Trustor in the aggregate principal amount of up to One Hundred Sixty-Five Million Dollars (\$165,000,000) (the "**Loan**"); and

WHEREAS, one of the conditions to the agreement of the Beneficiary and Lenders to make the Loan is that Trustor execute and deliver this Deed of Trust for the benefit of Beneficiary to secure Trustor's obligations under the Credit Agreement (as defined in Section 1.a. hereof).

NOW THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to induce Trustor to make the Loan, Trustor hereby agrees as follows:

1. Grant. For consideration paid, the Trustor, to secure:

(a) The full and prompt payment and performance as and when due, whether by acceleration or otherwise, with such interest, commitment fees, prepayment fees and other charges as may accrue thereon, either before or after maturity thereof, by Trustor, its successors or assigns, and the other Borrowers named in the Credit Agreement and their respective successors or assigns (collectively referred to herein as the "**Borrowers**") of all Indebtedness and other sums due and all covenants and obligations to be performed by the Borrowers pursuant to that certain Amended, Restated and Consolidated Credit Agreement dated as of October 12, 1999 and as amended by that certain Second Amendment to the Amended, Restated and Consolidated Credit Agreement and Third Amendment to the Amended, Restated and consolidated Credit Agreement, together with any and all other restatements, renewals, amendments, modifications, consolidations and extensions thereof (as so amended, the "**Credit Agreement**"), TOGETHER WITH accompanying Term Notes, Revolving Credit Notes and Swing Line Notes dated as the date hereof in the principal face amount of up to One Hundred Sixty-Five Million Dollars (\$165,000,000), all together with any amendments renewals, modifications, consolidations and extensions of the foregoing (all collectively the "**Notes**");

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(b) Any and all future advances made by Beneficiary to or for the benefit of the Trustor, Borrowers or any one or more of them, whether jointly or severally liable, direct or indirect, together with interest, fees, costs, prepayment fees, and other amounts now existing or hereafter arising:

(c) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations set forth in this Deed of Trust or in any other Lender Agreements (as defined in the Credit Agreement);

(d) Any and all additional advances made to preserve, enforce and protect the Property (as hereinafter defined), the Leases (as hereinafter defined), the security interest created hereby on the Property, or this Deed of Trust and the Lender Agreements, including, without limitation, taxes, assessments or insurance premiums or for performance of any of the Borrowers obligations under the Lender Agreements (whether or not the original Borrower remains the owner of the Property at the time of such advances); and

(e) Any and all other indebtedness, however incurred, which may now or hereafter be due and owing from Borrowers or any one or more of them, whether joint or several, to Beneficiary, now existing or hereafter coming into existence, however and whenever incurred or evidenced, whether expressed or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations and extensions thereof.

(all of the foregoing collectively the "**Secured Obligations**")

Does hereby GIVE, GRANT, BARGAIN, SELL, TRANSFER, ASSIGN and CONVEY unto Trustee, in Trust, for the benefit and security of Beneficiary as beneficiary in trust, its successors and assigns, forever, WITH POWER OF SALE AND RIGHT OF ENTRY AND RIGHT OF POSSESSION, under and subject to the terms and conditions hereinafter set forth, all right, title and interest of Trustor in, to and under the following property, rights, interest and estates, whether now owned or hereafter acquired (hereinafter collectively referred to as the "**Property**"):

(f) All plots, pieces or parcels of real estate located in Douglas County, Nevada, more particularly described in Exhibit A attached hereto (the "**Land**");

(g) All buildings, structures, parking areas, landscaping, and other improvements of every nature now or hereafter situated, erected or placed on the Land or appurtenant thereto, including, without limitation, all plumbing, electrical, heating, ventilating, air conditioning, and all other building components, (the "**Improvements**"), and all materials intended for construction, reconstruction, alteration and repairs of the Improvements All plots, pieces or parcels of real estate located in Douglas County, now

or hereafter erected, all of which materials shall be deemed to be included within the Improvements immediately upon the delivery thereof to the Land;

(h) All easements, rights of way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, wells, snowmaking and water rights, ditches, reservoirs, air rights and development rights, mineral rights, lateral supports, foundations and drainage, all estates, rights, interest, reversions, remainders, tenements, hereditaments and appurtenances of any nature whatsoever located on, under, above or pertaining to the Land or Improvements;

(i) All licenses, operating agreements, condominium rights, waters, water courses, water and flowage rights and powers, stock in water companies, minerals and soil, plants, and standing and fallen timber and other emblements now or hereafter located on the Land or under or above same, and all other appurtenances whatsoever belonging or relating to said Land or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor and the reversion and reversions, remainder and remainders, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Trustor of, in and to the same;

(j) All fixtures, machinery, equipment, furniture, inventory, building supplies, ski lifts, snowmaking equipment, appliances and other articles of personal property and all other fixtures and equipment now or hereafter owned by Trustor and located in, on or about, or used or intended to be used with or in connection with the Land or the Improvements, whether installed in such a way as to become a part thereof or not, including all additions, improvements, betterments, renewals and replacements of any of the foregoing, whether now owned or hereafter acquired by Trustor (the "**Personal Property**");

(k) All present and future leases, tenancies, occupancies and licenses, whether written or oral, of the Land, the Improvements, the Personal Property and the Intangible Property, or any combination or part thereof (the "**Rental Leases**"), and all income, revenues, receipts, rents, issues, royalties, profits, rent rolls, security deposits and other benefits of the Land, the Improvements, the Personal Property and the Intangible Property, from time to time accruing, and all payments under the Rental Leases (the "**Revenues**");

(l) All right, title and interest of Trustor in and to all policies of insurance, licenses, franchises, development rights, snowmaking and water rights, permits, leases, approvals, service and maintenance contracts, property management agreements, equipment leases, tradenames, trademarks, servicemarks, computer programs, information and data, logos, goodwill, accounts, chattel paper and general intangibles as defined in the Uniform Commercial Code as enacted in the State of Nevada, which in any way now or hereafter belong, relate or appertain to the Land, the Improvements or the



Personal Property or any part thereof, all whether now owned or hereafter acquired by Trustor, including, without limitation, all condemnation payments, insurance proceeds, accounts and escrow funds and all other property of Trustor deposited with Beneficiary or held by Beneficiary pursuant to the Credit Agreement or the Lender Agreements (the **"Intangible Property"**);

(m) All the right, title, interest of Trustor in and to all engineering, survey and architectural specifications, plans and data, all other records, plans and specifications relating to the Improvements on the Land and Personal Property (hereinafter collectively referred to as the **"Plans"**);

(n) All judgments, awards of damages and settlements hereafter made as a result or in lieu of any taking of the Property under the power of eminent domain, or for any damage to the Property (the **"Awards"**);

(o) If any portion of the Property is or hereafter becomes subject to a Declaration of Condominium, all special rights, powers and privileges of Trustor, including any rights as declarant under such Declaration of Condominium (the **"Condominium Rights"**); and

(p) All proceeds, products, substitutions and accessions of the foregoing of every type, all whether now owned or hereafter acquired.

TO HAVE AND TO HOLD the Property, with all the privileges and appurtenances to the same belonging, to Trustee, in trust, for the benefit and security of Beneficiary, its respective successors and assigns, to Trustee, in trust, for the benefit and security of Beneficiary, and its use and behoof forever;

Advances secured hereby may be made to or for the benefit of the Trustor, any Borrower, or any one or more of them.

As continuing security for the Secured Obligations, Trustor hereby pledges, assigns and grants to the Beneficiary a continuing security interest in the Property constituting personal property or fixtures. This Deed of Trust shall be deemed to be a security agreement and financing statement pursuant to the terms of the Uniform Commercial Code of The State of Nevada. Trustor shall execute and deliver to the Beneficiary such financing statements evidencing the security interest hereby granted to the Beneficiary as the Beneficiary shall require for filing with the Nevada Secretary of State, with the appropriate town clerks' offices and with such other governmental authorities as the Beneficiary shall deem necessary.

Trustor COVENANTS and AGREES with Beneficiary and Trustee as follows:

2. Secured Obligations. Trustor shall promptly pay and perform the Secured Obligations. The parties may from time to time extend, renew, alter, restate, and amend the Secured Obligations secured hereby. All provisions of this Deed of Trust shall apply to each

further advance as well as to all other Secured Obligations secured hereby regardless of whether the advance is designated as being secured hereby. Nothing herein contained, however, shall limit the amount secured by this Deed of Trust if such amount is increased by accrued interest, advances made by Beneficiary, as herein elsewhere provided for to protect the security or is increased by costs of collection and foreclosure.

3. Representations. The Trustor warrants and represents that (i) this Deed of Trust has been duly authorized, executed and delivered by and on behalf of the Trustor, (ii) the Trustor is duly existing and in good standing with all power, authority and legal right to engage in the transaction contemplated by this Deed of Trust and the Lender Agreements, (iii) the execution and delivery of this Deed of Trust and the Lender Agreements and the carrying out of the transaction contemplated thereby will not conflict with or result in a breach of the terms of any agreement or law or order of any court or governmental body, (iv) there are no material actions, suits or proceedings, including, without limitation, eminent domain proceedings pending, or to the knowledge of the Trustor, threatened before any court or other governmental body or agency which would have a material adverse effect on the Property or the Trustor or the Trustor's ability to perform its obligations under this Deed of Trust or under the other Lender Agreements, (v) the Land is in material compliance with applicable zoning, building, environmental and all other laws, ordinances and regulations relating to the use and occupancy thereof and the Trustor has no knowledge of any claim of violation of any such legal requirements, (vi) all material licenses and permits necessary for the use and occupancy of the Land have been issued and are in full force and effect, (vii) the material improvements on the Land and the tangible Personal Property are in good working order and free from structural defects, (viii) the Trustor has no knowledge of any claim challenging the Trustor's title to the Real Property, and (ix) the Trustor has no knowledge of any existing default, or claim thereof, under any leases or other arrangements for the use of the Real Property, either on the part of the Trustor or any other party thereto.

4. Title. Trustor represents, warrants and covenants that except as disclosed or referred to in Exhibit B, Trustor has good, record and marketable title to an indefeasible estate in fee simple in the Land and Improvements and good title to the Personal Property, free and clear of all liens and encumbrances, except as expressly permitted under the Credit Agreement. Trustor further represents, warrants and covenants that Trustor has good right and power to convey the Real Property, Land, Personal Property and Improvements to Trustee to hold as aforesaid, that this Deed of Trust is and will remain a valid and enforceable first lien and security interest on the aforesaid property, and that Trustor shall and will warrant and defend the same to Trustee and to Beneficiary forever against the claims and demands of all persons except as aforesaid.

5. Taxes and Assessments. Trustor shall promptly pay and discharge, when due, all taxes and assessments of every type or nature levied or assessed against the Real Property, all water and sewerage charges, and any other governmental claim, obligation or encumbrance against the Real Property which may be or become superior to this Deed of Trust (collectively, the "Impositions") except as permitted in accordance with the provisions of the Credit Agreement. Subject to the provisions of the Credit Agreement, if at any time the Beneficiary

does not require the escrow of payments pursuant to Paragraph 7 herein, Trustor shall deliver to Beneficiary receipts evidencing payments of such taxes, assessments, charges and encumbrances not later than twenty days after the final date for payment without interest or penalty.

6. Monthly Reserve Payments. Upon the occurrence of an Event of Default which has not been waived in writing by Beneficiary and the Super Required Lenders (as defined in the Credit Agreement), Beneficiary may require that the Trustor pay to Beneficiary monthly, on the first day of each month, a sum reasonably determined by Beneficiary to be sufficient to provide in the aggregate a fund adequate to pay each Imposition at least thirty (30) days before it becomes delinquent, and, in addition, shall pay to Beneficiary on demand any balance necessary to pay in full each Imposition at least thirty (30) days before the date on which it becomes due and payable. Such sums shall not bear interest and may be commingled with the general assets of Beneficiary. The Trustor shall furnish to Beneficiary all original bills relating to any Imposition promptly upon issuance. Trustor agrees that should there be insufficient funds so deposited with Beneficiary for said taxes, assessments, charges and premiums when due, it will upon demand by Beneficiary promptly pay to Beneficiary amounts necessary to make such payments in full; any surplus of such reserve funds may be applied toward the payment of the Secured Obligations or credited toward such taxes, assessments charges and premiums. Beneficiary may apply such funds toward the payment of the Secured Obligations without causing thereby a waiver of any rights, statutory or otherwise, and specifically such application shall not constitute a waiver of any default, Event of Default or any rights or remedies, statutory or otherwise, and specifically such application shall not constitute a waiver of the right of foreclosure by power of sale or otherwise hereunder. Trustor hereby pledges to Beneficiary all the foregoing sums so held hereunder for such purposes. Subject to the above, Beneficiary and/or Trustee may discharge taxes, liens, security interests, or other encumbrances at any time levied against or placed on the Property except as noted herein and except those which are permitted or are being contested in accordance with the provisions of the Credit Agreement, pay any premiums on any insurance to be carried by Trustor, or provide for the maintenance and preservation of the Real Property and add the expense thereof to the Secured Obligations secured hereby and charge interest thereon as provided hereinafter without waiving any default.

The Trustor shall have the right, after giving written notice to Beneficiary and subject to the conditions stated below, to contest by appropriate legal proceedings the amount or validity of any Imposition. Notwithstanding anything to the contrary in the Credit Agreement, in no event shall the Trustor be entitled to delay payment of any Imposition if the delay in payment could subject any portion of the Property to possible foreclosure or in any event unless the Trustor deposits with Beneficiary a sum of money or such other security as Beneficiary deems reasonable to cover the amount of such Imposition plus any interest or penalty that may become due as a result of such contest.

7. Insurance; Casualty and Condemnation.

(a) Trustor shall keep the Real Property, Personal Property and Improvements insured against loss or damage by fire, the perils against which insurance is afforded by



the extended coverage endorsement, and such other risks and perils as Beneficiary may reasonably require from time to time, including, without limitation, insurance against flood damage if the Improvements are located in a flood hazard area or required by federal law or regulation (to the minimum amount required by federal law or regulation) and insurance against loss of rental income.

Such policy or policies of such insurance shall be in such form and shall be in such amounts as Beneficiary may reasonably require. Whenever requested by Beneficiary, such policies shall be delivered immediately to Beneficiary. Any and all amounts received by Beneficiary under any of such policies may be applied by Beneficiary to the Secured Obligations secured hereby in such manner as Beneficiary may elect, or, at the option of Beneficiary, the entire amount so received or any part thereof may be released. Upon foreclosure of this Deed of Trust or other acquisition of the Property or any part thereof by Beneficiary, such policies shall become the absolute property of Beneficiary, but receipt of any insurance proceeds and any disposition of the same by Beneficiary shall not constitute a waiver of any rights of Beneficiary or Trustee, statutory or otherwise, and specifically shall not constitute a waiver of the right of foreclosure by Beneficiary or Trustee upon an Event of Default.

(b) Trustor shall pay all premiums on insurance policies, and at Beneficiary's option, shall pay in the manner provided under Section 7. The liability insurance policies shall name Beneficiary as an "additional insured." The property insurance policies shall name Beneficiary as "mortgagee and loss payee" shall be first payable in case of loss to Beneficiary, and shall contain mortgage clauses and lender's loss payable endorsements in form and substance reasonably acceptable to Beneficiary. Trustor shall deliver proof of all such insurance to Beneficiary, and upon request, Trustor shall promptly furnish to Beneficiary all renewal notices and all receipts of paid premiums.

(c) All policies of insurance required by this Deed of Trust shall contain a "standard mortgagee clause" and such other clauses or endorsements to the effect that (i) no act or omission of either Trustor or anyone acting for Trustor (including, without limitation, any representations made by Trustor in the procurement of such insurance), which might otherwise result in a forfeiture of such insurance or any part thereof, no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy, and no foreclosure or any other change in title to the Property or any part thereof, shall affect the validity or enforceability of such insurance insofar as Beneficiary is concerned, (ii) the insurer waives any right of setoff, counterclaim, subrogation, or any deduction in respect of any liability of Trustor and Beneficiary, (iii) such insurance is primary and without right of contribution from any other insurance which may be available, (iv) such policies shall not be modified, canceled or terminated without the insurer thereunder giving at least thirty (30) days prior written notice to Beneficiary by certified or registered mail, and (v) that Beneficiary shall not be liable for any premiums thereon or subject to any assessments thereunder. All policies shall in all events be in amounts sufficient to avoid any coinsurance liability.

(d) All policies of insurance required by this Deed of Trust shall be issued by companies licensed to do business in the State of Nevada and shall be reasonably acceptable to Beneficiary.

(e) In the event of any loss or damage to the Real Property, Improvements or Personal Property in excess of One Hundred Thousand Dollars (\$100,000.00), Trustor shall give immediate written notice to the insurance carrier and Beneficiary and shall promptly proceed to satisfy all conditions to the receipt of insurance proceeds. Upon an Event of Default which has not been waived in writing by the Beneficiary and the Super Required Lenders, Trustor hereby irrevocably authorizes and empowers Beneficiary, at Beneficiary's option and in Beneficiary's sole discretion, as attorney in fact for Trustor, to make proof of such loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's reasonable expenses incurred in the collection of such proceeds. Subject to the foregoing conditions, Trustor further authorizes Beneficiary, at Beneficiary's option, to (i) apply the balance of such proceeds to the payment of the Secured Obligations whether or not then due, or (ii) if Beneficiary shall require the reconstruction or repair of the Property, to hold the balance of such proceeds to be used to pay Impositions and the Secured Obligations as they become due during the course of reconstruction or repair of the Property and to reimburse Trustor, in accordance with such terms and conditions as Beneficiary may prescribe, for the costs of reconstruction or repair of the Property, and upon completion of such reconstruction or repair to apply any excess to the payment of the Secured Obligations. If the Property is sold or the Property is acquired by Beneficiary or Trustee, all right, title and interest of Trustor in and to any insurance policies and unearned premiums thereon and in and to the proceeds thereof resulting from loss or damage to the Property prior to the sale or acquisition shall pass to Beneficiary or any other successor in interest to Trustor or purchaser or grantor of the Property but receipt of any insurance proceeds and any disposition of the same by Beneficiary shall not constitute a waiver of any rights of Beneficiary or Trustee, statutory or otherwise, and specifically shall not constitute a waiver of any default, Event of Default or any rights or remedies, including without limitation, the right the right of foreclosure by power of sale or otherwise by Trustee or Beneficiary upon an Event of Default or failure of performance by Trustor of any of the Secured Obligations.

In the event any loss or damage to the Real Property, Improvements or Personal Property is less than One Hundred Thousand Dollars (\$100,000.00), the Trustor shall promptly restore the damaged property to its condition prior to such damage.

(f) In the event of any condemnation or other taking of all or any portion of the Property, Trustor shall give prompt written notice to Beneficiary thereof. Any and all proceeds, awards or other amounts payable to Trustor are hereby assigned to Beneficiary and may be applied by Beneficiary at its option to the Secured Obligations in such manner as Beneficiary may elect. If received by Trustor, all proceeds, awards or other



amounts hereby assigned to Beneficiary shall be held in trust for Beneficiary and promptly transferred to Beneficiary.

8. Preservation and Maintenance of the Property.

(a) Trustor shall not permit or commit waste, impairment, or deterioration of the Property or abandon the Property; shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property in the event of any material damage, injury or loss thereto, to the substantial equivalent of its condition prior to such damage, injury or loss, or such other condition as Beneficiary may approve in writing (provided, however, the insufficiency of such proceeds shall not relieve Trustor of its obligations to restore hereunder), shall keep the Property, including the Improvements and the Personal Property, in good order, repair and working condition and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good order, repair, and working condition and in accordance with the requirements of all fire underwriters and licensing boards, and shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property unless such non-compliance does not have a material adverse effect on the Property and/or the Mortgagor.

(b) Trustor covenants and agrees that Trustor and the Property shall at all times comply with the requirements of all present and future federal, state, and local land use and zoning statutes, regulations, ordinances, licenses, permits, agreements and orders, unless such noncompliance would not result in a material adverse effect on the Property and/or the Mortgagor.

(c) Trustor covenants and agrees to give Beneficiary prompt written notice of any non-compliance with such laws, ordinances, regulations or requirements and of any notice of non-compliance therewith which it receives or any threatened or pending proceedings in respect thereto or with respect to the Property (including, without limitation, material changes in zoning classifications or land use requirements) which, if adversely determined, would result in a material adverse effect on the Property and/or the Mortgagor.

(d) Neither Trustor nor any tenant or other person shall remove, demolish or alter any Improvements now existing or hereafter erected on the Property or any Personal Property in or on the Property except when incident to the replacement of Personal Property with items of like kind and value. Except as specifically provided in the Credit Agreement, Trustor further covenants and agrees that, without the prior written consent of Beneficiary, herein, no additional part of the Property shall be declared, or become the subject of, a condominium under applicable state law, as it may be amended or supplemented, or become the subject of any covenants or restrictions, or any planned unit development, or any other type of development that would control or restrict the uses to which the Land and Improvements may be put or the scheme or arrangement or its

development or the design, location or character of its buildings or improvements, or which would impose Impositions or assessments of any type upon any owners or tenants of the Property, or upon any other parties who may use or enjoy the Property.

(e) If at any time the then existing structures located on or use or occupancy of the Property shall be permitted pursuant to any zoning or other law, ordinance or regulation, only so long as such use or occupancy shall continue, that Trustor covenants and agrees that it shall not cause or permit such use or occupancy to be discontinued without the prior written consent of the Beneficiary, unless such discontinuance would not result in a material adverse effect on the Property and/or the Trustor.

9. Inspection. Subject to any limitations as set forth in the Credit Agreement, Beneficiary shall have the right to visit and inspect the Property and any other of the properties of the Trustor, to examine the records and books of account of the Trustor, and to discuss the affairs, finances and accounts of the Trustor with and to be advised as to the same by its and their officers, all at such reasonable times and intervals as the Beneficiary may desire. Trustor shall permit the Beneficiary and its representatives to examine said books and records and all supporting vouchers and data any time and from time to time upon request by the Beneficiary at the Property or at such other place as such books and records are customarily kept; and Trustor hereby agrees to furnish to Beneficiary financial statements in such form and detail as required by the Credit Agreement.

10. Environmental Matters. Except as expressly set forth in the Credit Agreement, the Property is in compliance in all material respects with all provisions of Environmental Laws relating to the handling, manufacturing, processing, generation, storage and/or disposal of any Hazardous Materials. From time to time, if Beneficiary in good faith determines that an updated environmental site assessment is needed to ascertain the existence or occurrence on the Property of Hazardous Materials, then Beneficiary may, at its option, either request that Trustor cause to be prepared and delivered to Beneficiary within thirty (30) days of Beneficiary's request therefor an updated environmental site assessment for the Property, or upon written notice to Trustor, Beneficiary may engage a consultant, at Trustor's sole cost and expense, to prepare such updated environmental site assessment. Trustor agrees that any consultant so engaged by Beneficiary shall have the right to enter on the Property and perform such activities as are necessary to complete its assessment of the Property.

11. Releases, Amendments, Etc. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Notes secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of said Property, Trustee may (i) reconvey any part of said Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, (iv) or join in any extension agreement or any agreement subordinating the lien or charge hereof.

Without affecting the liability of Trustor or any other person (except any person expressly released in writing) for payment or for performance of any of the Secured Obligations contained herein, and without affecting the rights of Beneficiary or Trustee with respect to any other security not expressly released in writing, and without impairing the validity or priority of this Deed of Trust, Beneficiary may at any time and from time to time, either before or after the maturity of the Secured Obligations without notice or consent:

- (i) Release in whole or part the liability of any person or of any other security for payment or performance of all or any part of the Secured Obligations,
- (ii) Extend the time or otherwise alter, increase or decrease the terms of payment or interest rate subject to the terms of the Credit Agreement of all or any part of the Secured Obligations or modify or waive any Secured Obligations, or subordinate, release, modify or otherwise deal with the lien or charge hereof,
- (iii) Exercise or refrain from exercising or waive any right Beneficiary or Trustee may have, including, without limitation, the declaration of default under and foreclosure of this Deed of Trust without first exhausting other remedies or collateral or taking any other action against any other person,
- (iv) Accept additional security of any kind, or
- (v) Release or otherwise deal with any property, real or personal, securing the Secured Obligations, including all or any part of the Property.

No delay by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

Without limiting the generality of the foregoing, Trustor agrees to the provisions of any instrument evidencing, securing or otherwise executed in connection with the Secured Obligations, and agrees that the obligations of any Borrower hereunder shall not be released or discharged, in whole or in part, or otherwise affected by (i) the failure of the Beneficiary to assert any claim or demand or to enforce any right or remedy against any other Borrower; (ii) any extensions or renewals of the Secured Obligations; (iii) any rescissions, waivers, amendments or modifications of any of the terms or provisions of the Secured Obligations, the Credit Agreement or of the Lender Agreements or any other agreement evidencing, securing or otherwise executed in connection with this Secured Obligations or the Credit Agreement; (iv) the substitution or release of any entity primarily or secondarily liable for the Secured Obligations or Credit Agreement or the Lender Agreements; (v) the adequacy of any rights the Beneficiary may have against any collateral or other means of obtaining repayment of the Secured Obligations and the Credit Agreement; (vi) the impairment of any collateral securing the Secured Obligations and the Credit Agreement, including, without limitation, the failure to perfect or preserve any rights the Beneficiary might have in such collateral or the substitution, exchange, surrender, release, loss or



destruction of any such collateral; or (vii) any other act or omission which might in any manner or to any extent vary the risk of the Trustor or otherwise operate as a release or discharge of any Borrower, all of which may be done without notice to the Trustor.

Any agreement hereafter made by Trustor and Beneficiary pursuant to or amending this Deed of Trust and the Secured Obligations shall be superior to the rights of the holder of any intervening lien or encumbrance to the extent allowed by law.

12. Further Assurances. Trustor at Trustor's expense will do, execute, acknowledge and deliver to or for the benefit of Beneficiary such further deeds, acts, conveyances, deeds of trust, mortgages, assignments, transfers and assurances as Beneficiary in its discretion may reasonably require from time to time to better establish and perfect the property and rights created or intended by Beneficiary to be created hereunder or to facilitate the Trustor's performance hereunder, including, without limitation, the execution and delivery, recording and/or filing and from time to time thereafter at such time and in such offices and places as shall be deemed desirable by Beneficiary, any and all such other and further assignments, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of Beneficiary, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Trustor under this Deed of Trust, and (b) the lien and security interest created by this Deed of Trust upon the Property. Trustor hereby irrevocably appoints Beneficiary (or Trustee, as applicable) as its attorney-in-fact, coupled with an interest, and authorizes Beneficiary to file with the appropriate public office on its behalf any of the foregoing at Trustor's cost and expense.

13. Transfers, Etc. Except as expressly permitted in the Credit Agreement, the Trustor herein shall not sell, convey, assign, option, mortgage, encumber, hypothecate or otherwise dispose of the Property or any portion thereof or interest therein, whether legal or equitable, either voluntarily or involuntarily, by any means whatsoever, or create or suffer to exist any lien, encumbrance, security interest, pledge, restriction, mechanics lien, attachment or other charge upon the Real Property, Personal Property or Improvements or any other Property, including, without limitation, any lease with an option to purchase, bond for deed, purchase and sale contract coupled with transfer of possession or lease with a term of more than two (2) years not approved by Beneficiary hereunder. This condition shall continue until all Secured Obligations secured hereby are satisfied, and permission given or election not to foreclose or accelerate said Secured Obligations by Beneficiary, its successors or assigns, as to any one such transfer, shall not constitute a waiver of any rights as to any subsequent such transfer of title as to which this condition shall fully remain in force and effect.

14. Events of Default. This Deed of Trust and the Secured Obligations shall at the option of the Beneficiary herein become immediately due and payable upon each of the following (an "Event of Default"):

- (a) An Event of Default under the Credit Agreement;

(b) Breach of any covenant contained in Sections 6, 7, 8 or 13 herein.

(c) Trustor fails to duly observe or perform any other term, covenant, condition or agreement contained in this Deed of Trust, and the continuance of such failure for a period of twenty (20) days after written notice thereof from Beneficiary, except as otherwise provided herein; or

(d) any representation or warranty made in writing by or on behalf of Trustor or any Borrower herein or in connection with any of the transactions contemplated hereby shall prove to have been false or incorrect in any material respect on the date as of which made.

15. Remedies. If an Event of Default has occurred which has not been waived in writing by the Beneficiary and the Majority Lenders (or such Lenders as otherwise required by the Credit Agreement), Beneficiary (and/or Trustee, as applicable) may, at its option and to the extent permitted by law, without notice of its election and without demand, do any one or more of the following, all of which are authorized by Trustor:

(a) To the extent not otherwise expressly prohibited in the Credit Agreement, declare the Secured Obligations whether evidenced by any instrument or agreement and whether or not secured hereby, and the underlying agreements of other parties securing the Secured Obligations, immediately due and payable.

(b) To the extent not otherwise provided in the Credit Agreement, cease advancing money or extending credit to or for the benefit of the Trustor under any agreement, whether or not secured hereby without need for the expiration of any applicable cure period.

(c) Foreclose this Deed of Trust as a mortgage in any manner provided by law for the foreclosure of mortgages of real property. Such foreclosure may be against the entire Property or such portions thereof in such order and at such times as Beneficiary may determine all in its discretion, and the deferral or delay in foreclosure against any portion of the Property shall not impair the right of Beneficiary or Trustee to subsequently foreclose.

(d) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Property to be sold, which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of the County in which the Property is located.

(e) To the extent not otherwise provided in the Credit Agreement, exercise all of the remedies of a secured party under the Uniform Commercial Code as now in effect in the State of Nevada, and such further remedies as may from time to time hereafter be provided in the State of Nevada for a secured party or creditor. Trustor agrees that all rights of Beneficiary as to Personal Property, Intangible Property and Plans as to the

Land, Improvements and Revenues, and rights and interest appurtenant thereto, may be exercised together or separately and in such order as the Beneficiary may elect. Trustor further agrees that in exercising the power of sale as to the Property constituting personal property and/or fixtures and rights and interest appurtenant thereto, the Beneficiary and/or Trustee may sell said collateral or any part thereof, either separately from or together with the said real estate, rights and interests appurtenant thereto, or any part thereof, all as the Beneficiary may in its discretion elect. In particular, the Beneficiary may proceed to enforce rights against, seek the replevin of, and/or sell personal property collateral prior to or during the pendency of any real estate foreclosure proceeding, redemption period, or foreclosure sale without waiving said foreclosure.

(f) Enter upon and take possession of the Property or any part thereof, either directly, by an agent, or through a receiver, and exclude the Trustor, its agents, managers and servants, and to perform any acts Beneficiary deems necessary or proper to conserve the security, and to collect and receive all Revenues, Intangible Property, proceeds and profits thereof, including those past due as well as those accruing thereafter, and use, manage, operate and control the Property. Beneficiary, its agents, or a receiver may also take possession of, and for these purposes use, any and all Property used by Trustor in the operation, rental or leasing thereof or any part thereof. The expense (including receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby. Beneficiary shall (after payment of all costs and expenses incurred) apply such Revenues received by it on the Secured Obligations in such order as Beneficiary determines in accordance with the provisions of the Credit Agreement; and Trustor agrees that exercise of such rights and disposition of such funds shall not constitute a waiver of any foreclosure once commenced nor preclude the later commencement of foreclosure for breach hereof. The right to enter and take possession of said property, to manage and operate the same, and to collect the income, rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independent thereof. Beneficiary shall be liable to account only for such income, rents, security deposits, proceeds and profits actually received by Beneficiary.

(g) Prevent or cure any defaults under the Leases as Beneficiary deems necessary or desirable in order to preserve the Leases, without awaiting the expiration of any grace period, including any default specified in a notice of default from any of the landlords under the Leases;

(h) In the name of the Trustor or otherwise perform the Trustor's obligations under the Leases and exercise all rights, options, powers and privileges of the Trustor granted under the Leases without notice to the Trustor and with full power to renew, amend or alter the Leases or disclaim any subleases;



(i) Reassign any part or all of the Trustor's right, title and interest in and to the Leases with notice to the Trustor, but without liability on the part of the Trustor to cure defaults or to pay damages relating to the default;

(j) Sell or otherwise dispose of the Property (in its then condition or after further construction and preparation thereof, utilizing in connection therewith any of Trustor's assets, without charge or liability therefor), at foreclosure or secured party's sale (which sale Beneficiary may postpone from time to time to the extent permitted by law), all as Beneficiary deems advisable, for cash or credit; provided, however, that Trustor shall be credited with the net proceeds of such sale only when such proceeds are finally collected by Beneficiary and the Trustor shall pay any deficiency on demand. Beneficiary may become the purchaser at any such sale.

(k) Use or transfer, without charge or liability to Beneficiary therefore, any of Trustor's General Intangibles, Plans, tradenames, servicemarks, trademarks, licenses, certificates of authority or advertising materials in advertising for the operation, sale and selling of the Property.

(l) Cause one or more environmental assessments to be taken, arrange for the clean-up of any Hazardous Substance, or otherwise cure Trustor's failure to comply with any statute, regulation or ordinance relating to the presence or clean-up of any Hazardous Substance, the costs and expenses of which shall be added to the Secured Obligations; provided that the exercise of any such remedies shall not be deemed to have relieved Trustor from any responsibility therefor or give the Beneficiary "control" over the Property or cause the Beneficiary to be considered to be an "owner" or "operator" of the Property or to be otherwise in possession of the Property, for purposes of any applicable law, rule or regulation pertaining to Hazardous Substances.

(m) Enter into, modify or terminate leases, subleases, occupancy arrangements, licenses, easements, rights of way, management agreements and other arrangements in connection with all or any portion of the Property.

(n) Trustor recognizes that in the event Trustor defaults, no remedy of law will provide adequate relief to Beneficiary, therefore, Trustor agrees that Beneficiary shall be entitled to temporary and permanent injunctive relief to cure such default in any such case without the necessity of proving actual damages.

(o) Exercise all other rights and remedies provided herein, in any other Lender Agreement or other document or agreement now or hereafter securing all or any portion of the Secured Obligations.

Trustor shall pay to Beneficiary, immediately and without demand, all sums of money advanced by Beneficiary, together with interest on each such advancement secured hereby at a rate of interest at the highest interest rate per annum required by the Credit Agreement, and all

such sums and interest thereon shall be secured hereby. Beneficiary in its discretion, after the payment of expenses and the costs of protection, preservation and sale of the Property, may apply the net proceeds of the Property to the Secured Obligations. Trustor specifically agrees that if an Event of Default shall have occurred which has not been waived in writing by the Beneficiary and the Majority Lenders (or such Lenders as otherwise required by the Credit Agreement), Beneficiary, upon application to a court of competent jurisdiction, as a matter of strict right without notice and without regard to the occupancy or value of the Property or the solvency of any party bound for payment of the Secured Obligations secured hereby, without any showing of fraud or mismanagement on the part of the Trustor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver to take possession of and to operate the Property and to collect and apply the Revenues. Upon request of the Beneficiary, the court making such appointment may confer upon the receiver any of the rights or powers granted to the Beneficiary in this Deed of Trust. The Beneficiary, in its discretion but without any obligation to do so, may make such advances to the receiver as the Beneficiary may deem necessary or appropriate for the proper administration of the receivership, and all such advances shall be secured by this Deed of Trust as provided herein. The receiver shall have all of the rights and powers permitted under the laws of the State of Nevada. Trustor will pay to Beneficiary upon demand, all expenses, including receiver's fees, reasonable attorneys' fees, costs and agent's compensation, incurred pursuant to such appointment and all such expenses shall be a portion of the Secured Obligations. The entering upon and taking possession of and maintaining of control of the Property by Beneficiary, its agents, or the receiver and the application of Revenues as provided herein shall not cure or waive any Event of Default or invalidate any other right or remedy of Beneficiary or Trustee hereunder.

All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust, the Notes, the Credit Agreement or under the other Lender Agreements or afforded by law or equity, and may be exercised concurrently, independently or successively against Trustor or any Borrower or any other collateral for the Secured Obligations, without waiving or impairing this Deed of Trust. All of Trustee's and Beneficiary's rights and remedies are cumulative and non-exclusive, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies.

16. Foreclosure By Power of Sale. Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Notes and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell

the Property at the time and place of sale fixed by it in said Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale in the following priority, to payment of: (i) first, all sums expended under the terms hereof, not then repaid, with accrued interest at the highest interest rate per annum required by the Credit Agreement; (ii) second, all other sums then secured hereby; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

(c) Subject to applicable law, Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(d) Request for Notice. Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it in the manner provided in Section 22 of this Deed of Trust.

17. Expenses. The Trustor shall pay to or reimburse the Beneficiary and Trustee on demand and as a part of the Secured Obligations secured hereby any and all reasonable expenses, including, without limitation, reasonable counsel fees and expenses and/or receiver's expenses, incurred or paid by the Beneficiary and/or Trustee in connection with the preparation, execution, administration, preservation, collection or enforcement of this Deed of Trust, the Property or the Secured Obligations, or such expenses to be paid including without limitation those incurred in any litigation, contest, dispute, suit or proceeding (whether instituted by Beneficiary, Trustee, Trustor, any Borrowers or any other party) to protect, collect, enforce, sell, take possession of or liquidate any of the Property, to enforce any rights of Beneficiary and/or Trustee against Trustor, any Borrowers or against any other person and those expenses incurred by Beneficiary in defending, settling or satisfying any claim, action or demand asserted by any receiver, trustee, creditor's committee or debtor-in-possession in any bankruptcy or reorganization, any assignee or assignee for the benefit of creditors, creditor, stockholder, or by any other person, whether in connection with the Trustor, any Borrowers, the Secured Obligations or any documents, transaction or Collateral related thereto, or any alleged theory of preference, fraudulent



conveyance, subordination, usury, ultra vires, invalidity, interference, control, misrepresentation, conspiracy, or similar theory, or otherwise.

18. Survival. All representations and warranties of Trustor, and all terms, provisions, conditions and agreements to be performed by Trustor contained herein, and in any of the other Lender Agreements shall be true and satisfied at the time of the execution of this Deed of Trust, and shall survive the closing hereof and the execution and delivery of this Deed of Trust.

19. Governing Law. This Deed of Trust shall be construed in accordance with, and governed by, the laws of the State of Nevada. Wherever possible, each provision of this Deed of Trust shall be interpreted in such manner as to be effective and valid under applicable law, but if any provisions of this Deed of Trust shall conflict with, be prohibited by or invalid under applicable 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 Deed of Trust. In the event that any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions which can be given effect without the conflicting provision, and to this end, the provisions of this Deed of Trust are declared to be severable.

20. Payments. Trustor irrevocably waives the right to direct the application of any and all payments at any time or times hereafter received by Beneficiary from Trustor, and Trustor does hereby irrevocably agree that Beneficiary shall have the continuing exclusive right to apply and reapply any and all payments received at any time or times hereafter against the Secured Obligations hereunder in such manner as Beneficiary may deem advisable.

21. Binding Effect Etc. The covenants and agreements herein contained shall bind, and the benefits and advantages thereof shall inure to, the respective heirs, executors, administrators, successors and assigns and shall inure to the benefit of the Trustor, Trustee and Beneficiary. Wherever used, the singular number shall include the plural, the plural the singular, the use of any gender shall be applicable to all genders.

22. Notices. Any and all notices, demands, elections or requests provided for or permitted to be given pursuant to this Deed of Trust (hereinafter in this Section referred to as "Notice") shall be in writing to the parties at the addresses provided in the introductory paragraph and shall otherwise be given in accordance with the provisions of the Credit Agreement.

23. Collateral Agent/Administration. The Lenders have authorized and hereby authorize Beneficiary to act as Administrative Agent and attorney in fact for the Lenders in order to represent and act on behalf of the Lenders in the administration, enforcement, collection, and foreclosure of this Deed of Trust and the Lender Agreements, with the specific right and authority to execute or cause to be executed reconveyances, releases, discharges, partial reconveyances, partial releases, joinders, and consents hereunder in the name of and on behalf of the Lenders. This power of attorney is coupled with an interest and the authority conferred

thereby shall remain in effect until written notice to the contrary is recorded in the Registry in which this Deed of Trust is recorded. No person dealing with Beneficiary as Administrative Agent shall be required to inquire further as to the scope of said authority until and unless such notice is recorded.

The relationship between Beneficiary in its capacity as collateral agent to the Lenders is and shall be that of agent and principal only, and nothing contained in this Deed of Trust or any of the other Lender Agreements shall be construed to constitute a trust for or to establish any confidential or fiduciary relationship with respect to any Lender or Trustor.

24. Waivers. No delay or omission of Beneficiary or of any holder of the Notes to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Deed of Trust to Trustee and/or to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary. No consent or waiver, expressed or implied, by Beneficiary to or of any Event of Default shall be deemed or construed to be a consent or waiver to or of any other Event of Default. Failure on the part of Beneficiary to complain of any act or failure to act which constitutes an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Beneficiary of Beneficiary's or Trustee's rights hereunder or impair any rights, powers or remedies consequent on any Event of Default. No act or omission of Beneficiary shall preclude Beneficiary or Trustee from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default; nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien of this Deed of Trust be altered thereby. No acceptance of partial payment or performance shall waive, affect or diminish any right of Beneficiary or of Trustee or Trustor's duty of compliance and performance therewith. Any Secured Obligation which this Deed of Trust secures is a separate instrument and may be negotiated, extended or renewed by Beneficiary without releasing Trustor or any Borrower. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, Beneficiary and Trustee, without notice, are hereby authorized and empowered to deal with any such vendee or transferee with reference to the Property or the Secured Obligations or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as they might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.

25. Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Trustor under this Deed of Trust, the Note, the Credit Agreement and any and all other Lender Agreements.

26. Indemnification; Subrogation; Waiver of Offset.

(a) Trustor shall indemnify, defend and hold Trustee and Beneficiary harmless against: (i) any and all claims for brokerage, leasing, finders or similar fees

which may be made relating to the Property or the Secured Obligations, and (ii) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including Trustee's and Beneficiary's reasonable attorneys' fees, together with reasonable appellate counsel fees, if any) of whatever kind or nature which may be asserted against, imposed on or incurred by Trustee or Beneficiary in connection with this Deed of Trust, the Property, or any part thereof, or the exercise by Trustee and/or Beneficiary of any rights or remedies granted to them under this Deed of Trust; provided, however, that nothing herein shall be construed to obligate Trustor to indemnify, defend and hold harmless Trustee or Beneficiary from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses enacted against, imposed on or incurred by Trustee or Beneficiary by reason of their willful misconduct or gross negligence.

(b) If Trustee and/or Beneficiary is made a party defendant to any litigation or any claim is threatened or brought against Trustee and/or Beneficiary concerning the Secured Obligations, this Deed of Trust, the Property, or any part thereof, or any interest therein, or the maintenance, operation or occupancy or use thereof, then Trustor shall indemnify, defend and hold Trustee and Beneficiary harmless from and against all liability by reason of said litigation or claims, including reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses incurred by Trustee and/or Beneficiary in any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgment excepting claims arising from the willful misconduct or gross negligence of Beneficiary. If Beneficiary and/or Trustee commences an action against Trustor to enforce any of the terms hereof or to prosecute any breach by Trustor of any of the terms hereof or to recover any sum secured hereby, Trustor shall pay to Beneficiary and Trustee their reasonable attorneys' fees (together with reasonable appellate counsel, fees, if any) and expenses. The right to such attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Trustor breaches any term of this Deed of Trust, Beneficiary and/or Trustee may engage the services of an attorney or attorneys to protect their rights hereunder, and in the event of such engagement following any breach by Trustor, Trustor shall pay Beneficiary and Trustee reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses incurred by Beneficiary and/or Trustee, whether or not an action is actually commenced against Trustor by reason of such breach. All references to "attorneys" in this Subsection and elsewhere in this Deed of Trust shall include without limitation any attorney or law firm engaged by Beneficiary and/or Trustee and Beneficiary's and Trustee's in-house counsel, and all references to "fees and expenses" in this Subsection and elsewhere in this Deed of Trust shall include without limitation any fees of such attorney or law firm and any allocation charges and allocation costs of Beneficiary's and Trustee's in-house counsel.



(c) All sums payable by Trustor hereunder shall be paid without notice (except as may otherwise be provided herein or in the Credit Agreement), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Land or the Improvements on the Land or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Trustee or Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary or of Trustee, or by any court, in such proceeding; (v) any claim which Trustor has, or might have, against Beneficiary and/or Trustee; (vi) any default or failure on the part of Trustee or Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Trustor shall have notice or knowledge of any of the foregoing. Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Trustor.

27. Future Advances by Beneficiary. This Deed of Trust is an instrument (as defined in NRS 106.330, as amended or recodified from time to time) which secures future advances (as defined in NRS 106.320, as amended or recodified from time to time) and which is governed pursuant to NRS 106.300 through 106.400, as amended or recodified from time to time. It is the intention of the parties that the Secured Obligations include the obligation of the Trustor to repay future advances of principal (as defined in NRS 106.345, as amended or recodified from time to time) provided however that the lien of this Deed of Trust secures the obligation of Trustor to repay all such future advances with the priority set forth in NRS 106.370(1), as amended or recodified from time to time.

28. The Trustee.

(a) Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

(b) Certain Rights. Trustee shall have the right to take any and all of the following actions: (a) to select, employ and consult with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel; (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through its agents or attorneys; (c) to select and employ, in and about the execution of its duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact,

either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith; and (d) to take any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable, except for its gross negligence or wilful misconduct, in case of entry by it, or anyone entering by virtue of the powers herein granted to it, upon the Property for debts contracted or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. Trustee shall be entitled to reimbursement for reasonable expenses incurred by it in the performance of its duties hereunder and to reasonable compensation for such of its services hereunder as shall be rendered. Trustor will, from time to time, pay the reasonable compensation due to Trustee hereunder and reimburse Trustee for, and save it harmless against, any and all liability and expenses which may be incurred by it in the performance of its duties.

(c) Retention of Moneys. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law) and Trustee shall be under no liability for interest on any moneys received by it hereunder.

(d) Successor Trustees. Trustee may resign by the giving of written notice of such resignation in recordable form to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this Trust, or shall fail or refuse to execute the same when requested by Beneficiary so to do, or if, for any reason, Beneficiary shall determine that it is prudent to appoint a substitute trustee or trustees to act instead of the aforementioned Trustee, Beneficiary shall (after reasonable notice to Trustor) have full power to appoint a substitute trustee or trustees and, if preferred, several substitute trustees in succession who shall succeed to all the estates, properties, rights, powers and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent or officer of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the Board of Directors or any superior officer of the corporation. Such appointment shall be duly recorded in the appropriate real estate records at any time before or, if permitted by applicable law, upon sale of the Property by the successor appointed thereby. Trustor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or its successor or successors in this Trust, lawfully does by virtue hereof. Trustor shall reimburse Beneficiary and/or Trustee for any reasonable expenses incurred pursuant to the provisions of this section.

(e) Perfection of Appointment. Should any deed, conveyance or instrument of any nature be required from Trustor by any successor Trustee to more fully and certainly vest in and confirm to such new Trustee such estates, rights, powers and duties, then, upon request by such Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Trustor and Trustor shall pay for any expenses incurred by Trustee pursuant to this section.

(f) Succession Instruments. Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its or its predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument in recordable form transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the successor Trustee so appointed in its place.

29. References to Foreclosure. References in this Deed of Trust to foreclosure and related phrases are references to the appropriate procedure in connection with Trustee's private power of sale, any judicial foreclosure proceeding, and any deed given in lieu of foreclosure.

30. Joinder of Foreclosure. If Beneficiary holds any other or additional security for the payment of and performance of any Secured Obligation, its sale or foreclosure, on any default in the payment or performance, in Beneficiary's sole discretion, may be prior to, subsequent to, or joined or otherwise contemporaneous with any sale or foreclosure. In addition to the rights in this Deed of Trust specifically conferred, Beneficiary, at any time and from time to time, may exercise any right or remedy now or later given by law to beneficiaries under deeds of trust generally, or to the holders of any obligations of the kind secured.

31. Mortgage with Power of Sale. To the extent that the grant to the Trustee shall be ineffective, this Deed of Trust is a mortgage with power of sale, with Trustor being the mortgagor and Beneficiary being the mortgagee, and Beneficiary shall be entitled to all of the rights of the Trustee hereunder with respect to the enforcement of this instrument and the power of sale granted hereunder.

32. Reconveyance by Trustee. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Notes to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."



IN WITNESS WHEREOF, the said authorized officer of Trustor has signed this Deed of Trust as of the date first set forth above.

SIGNED, SEALED & DELIVERED

in the presence of:

HEAVENLY VALLEY, LIMITED  
PARTNERSHIP

Joseph M. Dean  
Witness

By: Robert Stewart  
Name: Robert Stewart  
Title: SVP

C O R P

STATE OF MAINE )  
 ) ss.  
COUNTY OF CUMBERLAND )

This instrument was acknowledged before me on this 18<sup>th</sup> day of Jan, 2002 by Foster A. Stewart [name] as Senior Vice President of Heavenly Valley, Limited Partnership

*Jennifer M. Davis*  
(Signature of notarial officer)

**SEAL**

(Seal, if any)

\_\_\_\_\_  
(Title and rank)

(My commission expires: 6/1/08)

## EXHIBIT A

### Legal Description of the Real Property

All that certain lot, piece or parcel of land situate in the County of Douglas, State of Nevada, described as follows:

#### PARCEL 1:

All that portion of Section 30, Township 13 North, Range 19 East, M.D.B.&M., more particularly described as follows:

Beginning at a point which bears South 22°53'48" West 2196.47 feet from the Northeast corner of said Section 30: thence South 31°23'10" West 1138.29 feet; thence North 58°36'37", West 447.33 feet, thence North 69°53'40" East 37.48 feet; thence along a tangent curve to the left with a radius of 420.00 feet, a central angle of 08°01'30" and an arc length of 58.83 feet; thence North 61°52'10" East 143.98 feet; thence along a tangent curve to the left with a radius of 520.00 feet, a central angle of 14°04'13" and an arc length of 127.70 feet; thence North 47°47'57" East 142.90 feet; thence along a tangent curve to the left with a radius of 120.00 feet, a central angle of 28°37'46" and an arc length of 59.96 feet; thence North 19°10'11" East 73.41 feet; thence along a tangent curve to the right with a radius of 130.00 feet, a central angle of 20°57'28" and an arc length of 47.55 feet; thence North 40°07'39" East 47.70 feet; thence along a tangent curve to the left with a radius of 370.00 feet, a central angle of 25°56'59" and an arc length of 167.58; thence North 14°10'40" East 50.73 feet; thence along a tangent curve to the right with a radius of 70.00 feet, a central angle of 41°10'14" and an arc length of 50.30 feet; thence North 55°20'54" East 15.98 feet; thence along a tangent curve to the left with a radius of 170.00 feet, a central angle of 46°21'12" and an arc length of 137.53 feet; thence North 08°59'42" East 49.04 feet; thence South 58°36'37" East 268.88 feet to the True Point of Beginning.

A.P.N. 42-010-02

#### PARCEL 2:

Together with an exclusive snow stacking and right of way easement further described as follows:

BEGINNING at Point "C" as shown on the Fifth Amended Map of Tahoe Village Unit No. 3, said point lying on the Easterly right-of-way of Quaking Aspen Drive, said point also being the POINT OF BEGINNING; thence from the POINT OF BEGINNING along the Easterly right-of-way of Quaking Aspen Drive, South 9°11'24" West 123 feet, more or less, to the Northerly right-of-way of Ridge Road; thence along the Northerly right-of-way of Ridge Road 172 feet, more or less; thence North 12°45'27" East 130 feet, more or less, to a point on the Southerly right-of-way of Galaxy Way; thence bearing Northwesterly along the Southern right-of-way of Galaxy Way 120 feet more or less; thence bearing Northwesterly 70 feet to the POINT OF BEGINNING.



**PARCEL 3:**

Together with a ski run easement described as follows:

A parcel of land 250 feet in width situate in the Northwest ¼ and the Northwest ¼ of the Southeast ¼ of Section 30, Township 13 North, Range 19 East, M.D.B.&M., located Northerly of and adjacent to the Northerly line of the U.S. Forest Boundary which is the East/West centerline of the Southeast ¼ of Section 30; beginning at a point 1,000 feet Easterly of the North/South centerline of Section 30 and continuing 500 feet Easterly along the U.S. Forest Boundary.

**PARCEL 4:**

Together with a ski facilities easement described as follows:

A parcel of land situate in Section 30, Township 13 North, Range 19 East, M.D.B.&M., being more particularly described as follows:

BEGINNING at Point "N" as shown on the Record of Survey filed as Document No. 64394 on February 22, 1973, Douglas County, Nevada; thence South 05°26'45" East 427.65 feet; thence South 09°56'03" West 161.74 feet; thence South 00°21'10" West 210.90 feet; thence South 39°34'28" West 179.98 feet; thence South 11°23'29" West 123.43 feet; thence South 53°04'47" West 183.19 feet to the Southerly terminus of this easement description, excepting therefrom that portion being within Quaking Aspen Lane Right-of-Way.

**PARCEL 5:**

Together with a ski facilities easement described as follows:

A parcel of land situate in Section 30, Township 13 North, Range 19 East, M.D.B.&M., being more particularly described as follows:

COMMENCING at Point "N" as shown on the Record of Survey filed as Document 64394 on February 22, 1973, Official Records, Douglas County, Nevada; thence South 10°23'30" East 352.48 feet to the True Point of Beginning; thence South 00°11'42" West 936.49 feet; to a point on the Boundary between U.S. Forest Service and Tahoe Village Unit No. 3; thence along said boundary South 89°51'46" West 835.73 feet and North 00°11'42" East 745.65 feet to a point on the Southeasterly right-of-way line of Quaking Aspen Lane, Tahoe Village Unit No. 1; thence along said right-of-way line the following courses;

North 47°58'26" East 214.40 feet; thence along a curve to the left, having a central angle of 18°23'04" and a radius of 580 feet, a distance of 186.10 feet; thence along a curve to the right, having a central angle of 40°30'00" and a radius of 280 feet, a distance of 197.92 feet; thence North 69°53'40" East 33.19 feet; thence leaving said right-of-way line South 58°36'37" West 447.33 feet to the True Point of Beginning.

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NOTE:(NRS 111.312) THE above metes and bounds description appeared previously in that certain Deed, recorded in the office of eht County Recorder of Douglas County, Nevada on September 30, 1998 as Document No. 450711, of Official Records.

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**EXHIBIT B**

List of Encumbrances

(See Attached)

COPY

ENCUMBRANCES

1. **State and County Taxes for the fiscal year July 1, 2001-June 30, 2002, together with any other taxes or assessments collected therewith, a lien, not yet due and payable**  
**ASSESSORS' PARCEL NUMBER: 42-010-020**
  
2. **Any additional liens which may be levied by reason of said premises being within the KINGSBURY GENERAL IMPROVEMENT DISTRICT. (PAID CURRENT)**
  
3. **Reservations of mineral rights as contained in Deed from Clover Valley Lumber Company**  
**Recorded: December 20, 1947, in Book Y of Deeds, Page 321, Document NO. 06199 DOUGLAS County, Nevada records**
  
4. **Reservations of right-of-way for road purposes contained in Deed from Placerville Lumber Company**  
**Recorded: March 21, 1960, in Book 1, Page 614, Document NO. 15743 Official Records of DOUGLAS County, Nevada.**
  
5. **Agreement relative to rights-of-way for road purposes by and between Mary Hansen and Placerville Lumber Company, a co-partnership**  
**Recorded: March 21, 1960, in Book 1, Page 618, Document No. 15744, Official Records of DOUGLAS County, Nevada.**
  
6. **An agreement by and between Harich Tahoe and Heavenly Valley regarding drainage, roadway easement and snow storage area**  
**Recorded: October 29, 1981, in Book 1081, Page 1588, Document No. 61593, Official Records of DOUGLAS County, Nevada.**
  
7. **A release and indemnity agreement by and between Tahoe Village, Inc., and Heavenly Valley, and its terms and conditions**  
**Recorded: October 29, 1981, in Book 1081, Page 1599, Document No. 61594 Official Records of DOUGLAS County, Nevada.**
  
8. **A drainage easement by Heavenly Valley to Harich Tahoe Developments**  
**Recorded: March 14, 1983, in Book 383, Page 1308, Document No. 77185, Official Records of DOUGLAS County, Nevada.**
  
9. **An easement for water and sewer lines as evidenced by a Record of Survey for Heavenly Valley**  
**Recorded: August 15, 1985, in Book 885, Page 1599, Document No. 121585, Official Records of DOUGLAS County, Nevada.**
  
10. **Easement to erect, install, construct, repair, replace, reconstruct, maintain on, over, under, upon, across or along any public way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other related property or equipment as may necessary or appurtenant to the cable systems, and incidental purposes**  
**Granted to: TV PIX, INC.**  
**By: an instrument**  
**Recorded: November 12, 1986, in Book 1186, Page 1061, Document No. 144940, Official Records of DOUGLAS County, Nevada.**
  
- Second Amendment to Franchise Agreement,**  
**Recorded: February 19, 1999, in Book 299, Page 3900, Document No. 461494, Official Records of DOUGLAS County, Nevada.**
  
11. **An Erosion Control Agreement by and between HEAVENLY VALLEY and KINGSBURY GENERAL IMPROVEMENT DISTRICT, Quasi-Political Subdivision its terms and conditions as contained therein**  
**Recorded: July 31, 1992, in Book 792, Page 5981, Document No. 284934, Official Records of DOUGLAS County, Nevada.**

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12. **A Corrective Right-of-Way Agreement, Grant of Easement and Quitclaim of Easement by and between SIERRA PACIFIC POWER COMPANY, CONTINENTAL TELEPHONE COMPANY and HEAVENLY CORPORATION, A Delaware Corporation, upon the terms and conditions contained therein**  
Recorded: November 9, 1994, in Book 1194, Page 1580, Document No. 350389, Official Records of DOUGLAS County, Nevada.
13. **An easement for a 50 foot access and utility easement and rights incidental thereto as set forth in a Document granted to KINGSBURY GENERAL IMPROVEMENT DISTRICT affecting the Northeasterly portion of said parcel**  
Recorded: July 11, 1997, in Book 797, Page 1839, Document No. 416997, Official Records of DOUGLAS County, Nevada.  
  
Re-Recorded: July 21, 1997, in Book 797, Page 3404, Document No. 417620, Official Records of DOUGLAS County, Nevada.
14. **A Collateral Assignment of Leases and Rents as additional security, which assignment was**  
Executed by: HEAVENLY VALLEY LIMITED PARTNERSHIP, a Nevada limited partnership  
To: BANKBOSTON, N.A.  
Recorded: November 17, 1997, Book 1197, Page 3141 as Document No. 426466, Official Records of DOUGLAS County, Nevada.
15. **A financing statement filed in the office of the County Recorder, showing**  
Secured Party: BANKBOSTON, N.A.  
Debtor: HEAVENLY VALLEY LIMITED PARTNERSHIP  
Recorded: November 17, 1997, in Book 1197, Page 3180, Document No. 426468, Official Records of DOUGLAS County, Nevada.  
  
A partial release and amendment of Financing Statement  
Recorded: May 30, 2001, in Book 0501, Page 8981, Document No. 515385, Official Records of DOUGLAS County, Nevada.
16. **A Declaration of Parcel Boundary Consolidation upon the terms and conditions contained therein**  
Recorded: October 19, 1998, in Book 1098, Page 3460, Document No. 451973, Official Records of DOUGLAS County, Nevada.

REQUESTED BY  
WESTERN TITLE COMPANY, INC.  
IN OFFICIAL RECORDS OF  
DOUGLAS CO. NEVADA

2002 JAN 23 PM 12:46

LINDA SLATER  
RECORDER

\$4300 PAID BC DEPUTY

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