

WHEN RECORDED TO:  
Bank One, Utah, NA

OFFICE COMMERCIAL CREDIT SERVICES  
ADDRESS 80 WEST BROADWAY, SUITE 330  
SALT LAKE CITY, UTAH 84101

Borrower COLE SPORT LTD.  
1615 PARK AVENUE PARK CITY, UT  
Address GARY E. COLE, INC.  
3348 AMERICAN SADDLER DRIVE  
PARK CITY, UTAH 84060

## TRUST DEED

WITH ASSIGNMENT OF RENTS

THIS TRUST DEED between GARY E. COLE, INC., a Utah corporation

hereinafter called "Trustor" (which reference is joint and several if more than one person is named) and who designate the following address for all notice purposes hereunder:

|                                    |                  |             |              |
|------------------------------------|------------------|-------------|--------------|
| <u>3348 AMERICAN SADDLER DRIVE</u> | <u>PARK CITY</u> | <u>UTAH</u> | <u>84060</u> |
| (Street)                           | (City)           | (State)     | (Zip)        |

and BANK ONE, UTAH, NA, hereinafter called "Trustee" and BANK ONE, UTAH, NA, which address is 50 West Broadway, 2nd Floor, Salt Lake City, Utah 84101, hereinafter called "Beneficiary."

WITNESSETH:

Trustor hereby CONVEYS AND WARRANTS to Trustee, its successors and assigns, in Trust, with Power of Sale, that property in

SUMMIT County, State of Utah, and described as follows, to-wit:

LEGAL DESCRIPTION AS PER THE ATTACHED EXHIBIT "A"

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ALAN SPRIGGS, SUMMIT COUNTY RECORDER  
1996 JAN 09 15:34 PM FEE \$16.00 BY DMG  
REQUEST: HIGH COUNTRY TITLE

TOGETHER WITH all and singular the tenements, hereditaments, rights, rights of way, easements, privileges and appurtenances thereunto belonging, or in anywise appertaining (all as part of the premises hereby conveyed) which shall be deemed to include but not to be limited to (1) all mineral rights, rents, issues, profits, damages, royalties, revenue and benefits therefrom; (2) all improvements, fixtures and equipment (whether or not annexed thereto) now or hereafter used in connection therewith; (3) all water and water rights relating to or used in connection with said property; together with all shares of stock evidencing any such water rights, and all fixtures and equipment for irrigation or drainage. Household appliances are deemed to be fixtures and a part of the realty. All of which aforementioned property, whether real, personal or mixed, shall be hereinafter collectively referred to as "subject property."

The subject property is transferred to the Trustee for the purpose of securing the following obligations of the above named Borrower and the Trustor:

ONE  \$ \_\_\_\_\_ Promissory Note "Obligation" dated as of even date and renewals and/or extensions and/or modifications thereof together with interest, prepayment penalties (which are also applied if payment of the Obligation is accelerated by reason of default) and other charges provided therein; and/or

\$ \_\_\_\_\_ Home Equity Credit Line Agreement "Obligation" dated as of even date creating an open-end credit arrangement wherein the face amount has been advanced and the beneficiary, from time to time, is obligated to advance to the limit above set forth on a nondiscretionary basis; and/or,

\$ 700,000.00 Commercial Line of Credit Agreement "Obligation" dated as of even date wherein the beneficiary is required to advance to the limit set forth on a nondiscretionary basis; and/or

\$ \_\_\_\_\_ "Obligation" represented by (describe) \_\_\_\_\_

TWO: Prepayment of further advances and interest thereon, which may be made by Beneficiary as provided herein.

THREE: Payment of all other moneys herein agreed or provided to be paid or advanced by Trustor and Beneficiary.

FOUR: Performance of all loan agreements and other agreements between Trustor and Beneficiary relating to this Trust Deed.

TRUSTOR AGREES:

1. To pay (a) before delinquent, all taxes and assessments of every type or nature affecting subject property; (b) all rents or charges for water and all assessments on any water stock; (c) all other charges and encumbrances which now are or shall hereafter be or appear to be a lien upon the subject property and comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the subject property.

2. To keep subject property insured against loss or damage by fire, and casualties covered by an extended coverage insurance endorsement, and other casualties in form of coverage, amounts and in insurance companies approved by Beneficiary. As further security all policies shall be payable and delivered to

Beneficiary. When the subject property is identified by the Secretary of Housing and Urban Development as having special flood hazards, then when flood insurance is available it shall be similarly obtained and in an amount equal to the principal secured or maximum limit, whichever is less. If Trustor substitutes or replaces policies before the expiration thereof Trustor shall pay to Beneficiary a reasonable fee to cover substitution costs. Any and all amounts received by Beneficiary under any of such policies may be applied by Beneficiary on the obligation secured hereby in such manner as Beneficiary may, in its sole discretion, elect. Neither the application nor the release of any such amounts shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Insurance shall inure to the benefit of and pass to the purchaser of said premises at any foreclosure sale, or any Trustee's sale held pursuant hereto. Trustor shall give immediate notice to Beneficiary of any insurance loss. If adequate insurance is not maintained, Trustor may provide single interest insurance to cover the risk specified herein and the cost thereof shall be added to the balance due and is payable on demand.

3. If the Trustor has not otherwise elected, in writing, at the closing of this transaction, the Beneficiary may, on notice to Trustor, add to the periodic payments required by the obligation such equal periodic payments as are necessary in any annual period to create a cash non-interest bearing demand reserve for the payment of taxes and insurance and such amount shall be a first deduction from any payment made by Trustor and held separately for such purposes and such reserves are deposited to assure the payments and the performance of the agreements to maintain insurance and pay taxes as provided by this Trust Deed. The creation of such reserves and/or the crediting amounts thereto and accounting therefor being agreed full consideration for the waiver of any interest on the reserve accounts. Further, the creation of the reserves does not relieve the Trustor of the duties required in Paragraphs 1 and 2, but only vests in Beneficiary the right to apply any reserves to the tax and insurance obligations.

4. To keep subject property in good condition and repair, and not to commit or permit waste thereof nor remove, demolish, alter or impair the design or structural character of any building, fixture, equipment, fence, canal, well or other improvement now or hereafter situated upon said premises and, further, to restore when damaged any fixture, fence or improvement.

5. To defend subject property and the title thereto. If, during the existence of these trusts, there be commenced or pending any action or proceeding, affecting subject property, or the title thereto, Trustee or Beneficiary, or both, may appear in said action or proceeding and retaining counsel therein and defend the same, or otherwise take such action therein as they or either of them may deem advisable, and may settle or compromise the same and such sums of money as they, or either of them may expend for these purposes are secured hereby.

6. Trustor agrees that Trustor will not sell or transfer or enter into any agreement that could, under any circumstances, require the transfer of the title to, or any beneficial interest in, the subject property. The transfer of more than 20% interest in a Trustor, which is composed of or owned by many parties, constitutes a transfer of a beneficial interest.

7. To pay to Trustee and Beneficiary, respectively, immediately and without demand, the amounts of all sums of money which they shall respectively advance pursuant to any of the provisions herein contained together with interest (computed in accordance with the terms of the obligation) upon each of said amounts from the time of the advance of such amounts until paid.

8. If trustor fails to perform these agreements, or any of them, Beneficiary, without demand or notice may do any or all things required of Trustor by any of the provisions herein contained and incur and pay expenses, including attorney fees, in connection therewith the cost of which shall be secured hereby. After any default, without notice to Trustor, which notice is hereby waived, a receiver may be appointed and in addition to basic receiver's powers, the receiver may be authorized to continue any projects that were contemplated by or involved in the financing represented by the obligation secured by this Trust Deed.

IT IS MUTUALLY AGREED THAT:

9. All of the rents, issues and profits of subject property are hereby assigned to beneficiary as further security for payment of the obligation and performance of the covenants, promises and agreements secured hereby. In case of default, Beneficiary shall be entitled at any time without notice, in its sole discretion, either by its agents, attorneys, employees, or by a receiver and without regard to the adequacy of any security, to enter upon and take possession of the subject property or any part or parcel thereof, and to do and perform any acts that Beneficiary may deem necessary or proper to conserve the value thereof, collect and receive all rents, issues and expense (including, without limitation receiver's fees, costs, compensation to any agent appointed by Beneficiary, attorney's fees, costs and disbursements) incurred in taking possession and effecting collection, shall be deemed a portion of the expense of this trust and secured hereby. No action by the Trustee or Beneficiary hereunder shall cure or waive any default or Notice of Default hereunder or invalidate any act done pursuant to such Notice.

10. If the obligation secured hereby is now or hereafter further secured, Beneficiary at its option may exhaust any one or more of said securities as well as the security hereunder, or parts thereof either concurrently or independently and in such order as it may determine, and may apply the proceeds received upon any obligation without affecting the status of, or waiving any right to exhaust all or any other security including the security hereunder and without waiving any breach or default or any right or power, whether exercised hereunder or contained herein, or in any such other security.

11. If the only default of the Trustor arises by reason of violation of paragraph 6 and state or federal law or regulations then legally enforceable contain provisions limiting the enforcement of paragraph 6 then those provisions are incorporated herein and if Trustee or Beneficiary is required to accept the transfer, the assumption of the debt shall be effected in accordance with said provisions.

12. Time is of the essence hereof. Upon any default by Trustor, at the option of Beneficiary, all sums secured hereby shall immediately become due and payable. In the event of default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause subject property to be sold to satisfy the obligations hereof; and Trustee shall file such notice for record in each county wherein subject property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee the note and all documents evidencing amounts secured hereby. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell subject property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parts or parcels, and in such order as it may determine, at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of the sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every such case, postponement shall be given by public declaration thereof at the time and place last appointed for sale; provided, if the sale is postponed for longer than three days beyond the day designated in the notice of sale notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its Deed conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale; (3) all sums expended under the terms hereof, not then paid, with accrued interest, computed in accordance with the terms of the obligation, for the date of such expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit said remainder with the County Clerk of the county in which the sale took place.

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13. All judgments, awards of damages and settlements made as a result of or in lieu of any condemnation or for any damage to or taking of subject property or the improvements thereon are hereby assigned and shall be paid to Beneficiary, and Trustor will execute such documents as Beneficiary may require to cause rights to vest in or moneys to be paid to Beneficiary. Beneficiary may apply such sums received in such manner as it elects or my release parts or portions thereof. Surcharges relating to prepayment's shall apply even though prepayment's is involuntary. Neither the application nor the release of any sum cures or waives any default or Notice of Default hereunder or invalidates any act done pursuant to such Notice.

14. Without affecting the liability of parties hereto who are not released or the lien of this instrument, the Beneficiary may, from time to time, release any party, extend, alter or renew the terms of payment or performance, substitute security, and/or release any portion of the subject property.

15. Trustee may at its sole discretion from time to time upon the written request of Beneficiary (a) consent to the making of any map or plat of the subject property, (b) join in granting any easement or in renting or releasing any covenants restricting the use or occupancy of subject property, (c) reconvey, without warranty, any part of said property, (d) join in any agreement subordinating the lien or charge hereof.

16. The term "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Trust Deed, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. Trustor represents and warrants to Beneficiary that: (a) During the period of Trustor's ownership of the

subject property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, or about the subject property. (b) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Beneficiary in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of the subject property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters. (c) Except as previously disclosed to and acknowledged by Beneficiary in writing, (i) neither Trustor nor any tenant, contractor, agent or other authorized user of the subject property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the subject property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances described above. Trustor authorizes Beneficiary and its agents to enter upon the subject property to make such inspections and tests as Beneficiary may deem appropriate to determine compliance of the subject property with this section of the Trust Deed. Any inspections or tests made by Beneficiary shall be for Beneficiary's purposes only and shall not be construed to create any responsibility or liability on the part of Beneficiary to Trustor or to any other person. The cost of the environmental investigation and report shall be borne by the Trustor if the Trustor is in default of this Trust Deed or any related loan documents or in the event the Beneficiary is required by law or regulation to obtain such a report. The representations and warranties contained herein are based on the Trustor's due diligence in investigating the subject property for hazardous waste.

17. The Beneficiary reserves the right, in its sole and absolute discretion at any time, to retain an independent professional appraiser to appraise the subject property. The cost of the appraisal shall be borne by Trustor if Trustor is in default of this Trust Deed or any related loan documents or in the event Beneficiary is required by law or regulation to obtain such a report. The Trustor grants to the Beneficiary, its agents, employees, consultants, and contractors, the right to enter upon subject property and to perform such reviews and investigations on subject property as reasonably necessary to prepare the appraisal report.

18. The acceptance by Beneficiary of any sum in payment, or part payment, of any obligation secured hereby, after the same is due or after the recording of a Notice of Default, shall not be considered a waiver of the right to require prompt payment when due, of other sums or shall such acceptance cure or waive any remaining default or invalidate any sale held pursuant to Notice for any remaining default.

### 12. The trusts being created are impermeable

20. Upon the request of the Trustor or his successors in ownership of the land, the Beneficiary may hereafter at its option, at any time before full payment of the obligation secured hereby, make further advances to the Trustor or his successors in ownership, and the same, with interest and late charges, is secured by this Trust Deed; provided, however, that the amount of principal secured by this Trust Deed and remaining portions of this Trust Deed or any part thereof, and this Trust Deed shall be construed as if such invalid covenants, phrases, clauses, sentences or paragraphs, if any, had not been inserted

21. The invalidity of any one or more covenants, phrases, clauses, sentences or paragraphs of this Trust Deed shall not affect the remaining portions of this Trust Deed or any part thereof, and this Trust Deed shall be construed as if such invalid covenants, phrases, clauses, sentences or paragraphs, if any, had never been inserted herein.

**22. All agreements or representations directly or indirectly relating to the subject property and the secured obligation are merged into and incorporated in this Agreement and this Agreement can only be amended by a writing subscribed by all parties hereto.**

UPON WRITTEN REQUEST OF BENEFICIARY stating that all sums secured hereby have been paid, and delivery of this Trust Deed and said Note to Trustee for cancellation, and payment by Trustor of Trustee's fees, Trustee shall reconvey, without warranty, the estate in the premises then held by Trustee. The Grantee in such reconveyance may be designated and described as the "person or persons legally entitled thereto."

This Trust Deed shall inure to the benefit of and be binding upon the heirs, legatees, devisees, administrators, executors, successors and assigns of the parties hereto. The use of the singular number shall include the plural number and the use of the plural number shall include the singular number. The use of the masculine gender shall include the feminine gender, and corporation or corporations that may be a party or parties hereto. The term Beneficiary shall mean the owner and holder of the obligation secured hereby, whether or not named as Beneficiary herein.

TRUSTOR hereby requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinabove set forth.

This Agreement is a final expression of the agreement between the Trustor and Bank and this written agreement may not be contradicted by evidence of any alleged oral agreement.

IN WITNESS WHEREOF and by authority duly vested, the parties have caused this Agreement to be executed as of this

day of JANUARY , 19 96

**TRUSTOR**

~~GARY E. COLE, INC., a Utah corporation~~

BY

~~Gary S. Cole.~~ President

**STATE OF UTAH**

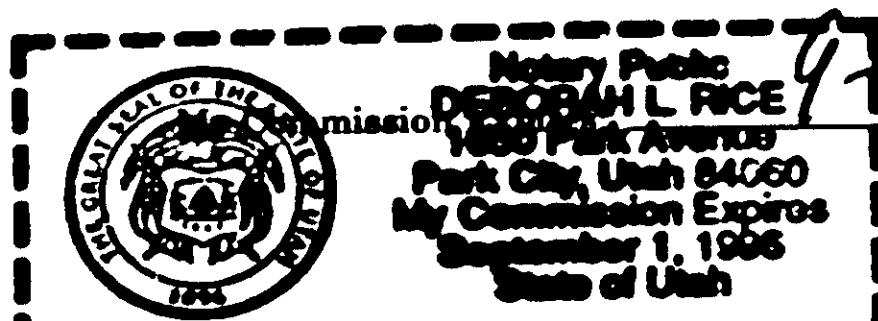
**COUNTY OF**

On the .

Summit } ss.

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On the 5th day of January, 1989, personally appeared before me the signer(s) of the above instrument who being personally known to me or whose identity was proved to me, duly acknowledged to me that (he, she or they) executed the same (and if a corporation/partnership, the executing officer(s)/partner(s) being duly sworn acknowledged that they were the officer(s), agent(s), or partner(s) of the corporation/partnership as above specified and that the instrument was executed on behalf of such corporation/partnership by authority of its by-laws/partnership agreement or a resolution duly adopted.)



NOTA DI PUBBLICO

Residing at St. George County, UT.

EXHIBIT "A"

Summit County, Utah

BEGINNING at a point which is South 1473.36 feet and East 1127.53 feet from the West quarter corner of Section 9, Township 2 South, Range 4 East, Salt Lake Base and Meridian; said point of beginning also being on the Westerly right-of-way line of State Highway U-224 and the Southeasterly corner of the Park Avenue Condominiums, as recorded, and running thence South 24°00'00" East along said Westerly right-of-way line 148.00 feet to a point on a 45.00 foot radius curve to the right (center bears South 66°00'00" West of which the central angle is 90°00'00"); thence Southwesterly along the arc of said curve 70.69 feet to the Northerly right-of-way line of Empire Avenue; thence South 66°00'00" West along said Northerly right-of-way line 111.85 feet to a point on a 285.00 foot radius curve to the left (center bears South 24°00'00" East 285.00 feet of which the central angle is 13°50'08"); thence Southwesterly along the arc of said curve and Northerly right-of-way line 68.82 feet to the Easterly boundary line of All Seasons Condominiums; thence North 24°00'00" West along said Easterly boundary line 201.28 feet to the Southerly boundary line of the before mentioned Park Avenue Condominiums; thence North 66°00'00" East along said Southerly boundary line 225.00 feet to the point of BEGINNING



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