

WHEN RECORDED PLEASE RETURN TO:

Steven D. Peterson
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
201 South Main St., Suite 600
Salt Lake City, Utah 84111-2221

00701574 BK01629 PG00071-00079

ALAN SPRIGGS, SUMMIT CO RECORDER
2004 JUN 18 15:09 PM FEE \$28.00 BY CJW
REQUEST: COALITION TITLE

Tax Parcel I.D. No. _____

NONEXCLUSIVE ACCESS EASEMENT

THIS NONEXCLUSIVE ACCESS EASEMENT (this "Agreement") is made this 7th day of JUNE, 2004, by and between THE LODGES AT DEER VALLEY OWNERS ASSOCIATION, INC., a Utah non profit corporation ("Grantor"), and SILVER BARON PARTNERS, L.C., a Utah limited liability company ("Grantee").

RECITALS

A. Grantor is the owner in fee simple of certain real property as more particularly described in Exhibit "A" which is attached hereto and incorporated herein for all purposes, which is located adjacent to certain land owned by Grantee (the "Grantor Property").

B. Grantee is owner in fee simple of certain real property as more particularly described in Exhibit "B" which is attached hereto and incorporated herein by this reference for all purposes (the "Grantee Property").

C. Grantor has agreed to grant and convey to the Grantee a nonexclusive perpetual easement and right-of-way over, across and under the property more particularly described in Exhibit "C" which is attached hereto and incorporated herein for all purposes (the "Easement Property"). Such easement shall be for the use and benefit of the following parties ("Benefited Parties"): (a) Grantee and its respective successors and assigns; (b) all tenants, subtenants, guests, employees, agents, customers, invitees and concessionaires of Grantee; and (c) any owners' associations or similar entities that may be formed in connection with the development of the Grantee Property, and all owners in connection with and members of any such associations.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the sum of Ten Dollars paid by Grantee to Grantor, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Grantor and Grantee hereby agree as follows:

1. Grant of Easement. Subject to the terms and conditions set forth in this Agreement, Grantor hereby grants and conveys to Grantee, for the use and benefit of the

Benefited Parties, a perpetual nonexclusive easement and right-of-way over, across, under and to the Easement Property for the purpose of motor vehicle and pedestrian ingress and egress to and from the Grantee's Property and for the installation, construction, operation, repair and maintenance of water lines, sewer lines, electricity facilities, gaslines, telephone and other communication facilities, cable television and other entertainment facilities, internet and other data transmission facilities, and all other utilities equipment existing now or in the future (the "Easement").

2. Easement Appurtenant to Grantee Property. The Easement shall be appurtenant to and run with the land and constitute a portion of the Grantee Property and each part thereof.

3. Construction, Maintenance and Replacement; Liens. Grantee shall be responsible, at its sole cost and expense, for the initial improvements to the Easement Property. No such improvements shall be constructed without the prior written approval of Grantor, which shall not be unreasonably withheld or delayed. After completion of the initial improvements to the Easement Property, Grantee shall maintain the Easement Property in good condition and repair, and Grantor and Grantee shall share equally the costs and expenses of the maintenance and repair of the Easement Property. Provided, however, Grantee shall be responsible to maintain, service and improve at its own expense all utilities serving the Grantee Property. Grantee shall also be responsible for restoring and revegetating all unpaved areas of the Easement Property that are damaged in connection with any improvements made, or caused to be made by Grantee, and any damage resulting from Grantee's use of the Easement Property. Grantee shall not permit any lien or claim of mechanics or laborers to be filed against the Easement Property, or any part or parts thereof, for any work, labor or materials furnished, alleged to have been furnished or to be furnished pursuant to any agreement by any Benefited Party related to the Easement Property. Within thirty (30) days after Grantee receives notice of the filing or recording of any such lien, Grantee shall cause the same to be paid and discharged of record. Grantor shall not permit any lien or claim of mechanics or laborers to be filed against the Easement Property, or any part or parts thereof, for any work, labor or materials furnished, alleged to have been furnished or to be furnished pursuant to any agreement by Grantor related to the Easement Property. Within thirty (30) days after Grantor receives notice of the filing or recording of any such lien, Grantor shall cause the same to be paid and discharged of record.

4. Grantor's Reservation of Rights; Existing Easements. Grantor reserves unto itself the right to cross over or under the Easement Property so long as such other uses do not unreasonably interfere with Grantee's use of the Easement Property for the purposes herein granted. Grantee acknowledges that the Easement Property is subject to certain existing utility easements and rights of way and any improvements to the Easement Property may require the consent of the owners of such easements.

5. Costs and Expenses. In the event of a breach in any of the covenants or agreements contained herein, the breaching party shall pay all costs and expenses, including reasonable attorneys' fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided by the laws of the State of Utah, whether such remedies are pursued by filing suit or otherwise. Grantor and Grantee acknowledge that in the event of any default hereunder, it would be difficult to ascertain the exact money damages suffered by the

non-defaulting party. Accordingly, the parties agree that such non-breaching party is entitled to appropriate equitable remedies in the event of any such default.

6. Indemnity. Grantee shall indemnify and hold harmless Grantor, its members, partners, directors, officers, agents, contractors and employees, free from or against any and all liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage to the extent arising from the use of the Easement Property, except for any such liability, loss, damage, costs and expenses to the extent arising directly and solely from the acts of Grantor. Grantor shall indemnify and hold harmless Grantee, its members, partners, directors, officers, agents, contractors and employees, free from or against any and all liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage to the extent arising from the use of the Easement Property, except for any such liability, loss, damage, costs and expenses to the extent arising directly and solely from the acts of Grantee.

7. Covenants to Run With the Land. Subject to the terms of this Agreement, the Easement shall constitute covenants running with the land, and shall burden the Easement Property as the servient estate, and benefit the Grantee Property as the dominant estate, and shall be binding upon the Grantor, its successors, assigns, and any person acquiring, leasing, or otherwise owning an interest in the Easement Property.

8. Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or a dedication of any portion of the Easement Property, or any portion thereof, to or for the general public or for any public purpose whatsoever, it being the intent of the parties that this Agreement be strictly limited to and for the purposes expressed herein, and that the Easement Property at all times maintain its ownership and character as a private thoroughfare.

9. No Relationship. The parties hereto do not, by this Agreement nor by any parties' acts, become principal and agent, limited or general partners, joint venturers or of any other similar relationship of each other in the conduct of their respective businesses, or otherwise.

10. Cooperation. The parties hereto agree to cooperate reasonably to attempt to resolve any disputes that may arise in the future between them with respect to the use of the Easement Property by Grantee and Grantor.

11. No Waiver. Failure of a party hereto to insist upon strict performance of any provisions hereof shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this instrument shall be deemed to have been waived unless such waiver is in writing and signed by the party alleged to have waived its rights.

12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, legal representatives, and assigns.

13. Assignment of Easement Rights. Grantee shall have the right, at Grantee's sole discretion, to assign all or a portion of its rights under this Agreement and to the Easement, for the benefit of that certain property located adjacent to the eastern boundary of the Grantee

Property and the southeastern boundary of the Easement Property (the "Adjacent Property"). Upon such assignment, Grantor and Grantee agree to enter into an amendment to this Agreement which shall include the owner of the Adjacent Party as an additional "Grantee" hereunder and shall include the Adjacent Property as part of the servient estate benefited by the Easement.

14. Duration and Amendment. This Agreement and the Easement shall be perpetual. Notwithstanding anything within this Agreement to the contrary, the parties may terminate this Agreement only by a written notice of termination executed by the parties, and recorded in the office of the Summit County Recorder. The parties may amend this Agreement only by a written instrument executed by the parties, and recorded in the office of the Summit County Recorder.

15. Recitals. The Recitals set forth above shall be binding upon the parties to this Agreement.

16. Counterparts. This Agreement may be executed in one or more counterparts which together shall constitute the Agreement.

17. Authority. The undersigned represent and warrant that each of them has been duly authorized by all necessary corporate or company action, as appropriate, to execute this Agreement for and on behalf of the respective parties. The undersigned represent and warrant that this Agreement, when fully executed, shall constitute a legal, valid, and binding agreement for each of the respective parties, enforceable in accordance with its terms. Grantor further represents and warrants that it has complied with all of the requirements and approval procedures set forth in the governing documents of "The Lodges at Deer Valley" as necessary to enter into this Agreement.

18. Enforcement. Each party shall have the full power and authority to enforce compliance with this Agreement in any manner provided for in law or in equity, including without limitation, the right to bring an action for damages, to enjoin the violation, or specifically enforce the provisions of this Agreement, and if that party prevails in such action, it shall recover as part of its costs all reasonable attorney's fees, court costs and expert witness fees.

19. Partial Invalidity. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.


20. Applicable Law. This Agreement shall be governed by and construed in accordance with and interpreted under the laws of the State of Utah.

[Signature Page to Follow]

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

GRANTOR:

THE LODGES AT DEER VALLEY OWNERS ASSOCIATION, INC., a Utah non profit corporation

By: 
Its: PRESIDENT

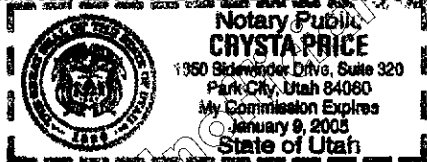
GRANTEE:

SILVER BARON PARTNERS, L.C., a Utah limited liability company

By: 
Its: _____

STATE OF Utah)
COUNTY OF Summit) :ss.

The foregoing instrument was acknowledged before me this 7th day of June, 2004, by F. Lynn Padan the President of The Lodges at Deer Valley Owners Association, Inc., a Utah non profit corporation.

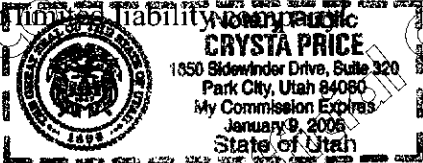


Crysta Price
NOTARY PUBLIC
Residing at: Wasatch County

My Commission Expires:
1/9/2005

STATE OF Utah)
COUNTY OF Summit) :ss.

The foregoing instrument was acknowledged before me this 7th day of June, 2003, by Fred Fairclough, the Partner of Silver Baron Partners, L.C., a Utah Limited Liability



Crysta Price
NOTARY PUBLIC
Residing at: wasatch county

My Commission Expires:
1/9/2005

EXHIBIT "A"

LEGAL DESCRIPTION OF GRANTOR PROPERTY

BUILDINGS B, C, D AND E

BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY LINE OF DEER VALLEY DRIVE EAST; SAID POINT BEING SOUTH 1129.51 FEET AND EAST 4094.91 FEET FROM THE EAST QUARTER CORNER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN; SAID POINT ALSO BEING ON A 300-FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS SOUTH 65°50'05" EAST); AND RUNNING THENCE ALONG SAID EAST RIGHT-OF-WAY LINE AND THE ARC OF SAID 300-FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 12°50'05" A DISTANCE OF 67.20 FEET TO A POINT OF TANGENCY; THENCE NORTH 37°00'00" EAST 296.50 FEET TO A POINT OF CURVATURE OF A 464.15-FOOT RADIUS CURVE TO THE LEFT (CENTER BEARS NORTH 53°00'00" WEST); AND RUNNING THENCE ALONG SAID EAST RIGHT-OF-WAY LINE AND ARC OF SAID 464.15 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 36°09'46" A DISTANCE OF 292.95 FEET TO A POINT OF REVERSE CURVATURE OF A 25-FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS SOUTH 89°09'46"); AND RUNNING THENCE NORTHEASTERLY ALONG SAID 25-FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 84°07'59" A DISTANCE OF 36.71 FEET TO A POINT OF REVERSE CURVATURE ON THE SOUTH RIGHT-OF-WAY LINE OF QUEEN ESTHER DRIVE (CENTER BEARS NORTH 05°01'47" WEST); AND RUNNING THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE AND ARC OF SAID 200-FOOT RADIUS CURVE TO THE LEFT 118.77 FEET; THENCE SOUTH 39°03'24" EAST 94.43 FEET; THENCE SOUTH 81°27'39" EAST 97.62 FEET; THENCE SOUTH 66°01'24" EAST 170.47 FEET; THENCE SOUTH 10°11'15" WEST 541.77 FEET; THENCE NORTH 85°42'00" WEST 689.87 FEET TO THE POINT OF BEGINNING.

BK1629 PG0077

EXHIBIT "B"

LEGAL DESCRIPTION OF GRANTEE PROPERTY

BUILDING F LEGAL

A PARCEL OF LAND LOCATED IN SECTION 15, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN; BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY OF DEER VALLEY DRIVE EAST, SAID POINT BEING SOUTH 1129.51 FEET AND EAST 4094.91 FEET FROM THE EAST QUARTER CORNER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE SOUTH 85°42'00" EAST 208.79 FEET; THENCE SOUTH 00°11'40" EAST 433.87 FEET; THENCE NORTH 89°20'00" WEST 239.77 FEET TO THE EAST RIGHT-OF-WAY LINE OF DEER VALLEY DRIVE; THENCE NORTH 00°40'00" EAST 327.44 FEET ALONG THE EAST RIGHT-OF-WAY LINE (CHORD BEARS NORTH 12°24'56" EAST 122.17 FEET); THENCE NORTHEASTERLY ALONG SAID CURVE AND SAID EASTERLY RIGHT-OF-WAY LINE 123.03 FEET TO THE POINT OF BEGINNING.

BK1629 PG0078

EXHIBIT "C"

LEGAL DESCRIPTION OF EASEMENT PROPERTY

LEGAL DESCRIPTION

NON-EXCLUSIVE UTILITY EASEMENT BETWEEN THE LODGES AT DEER VALLEY BUILDING E AND THE MINOR SUBDIVISION BUILDING A

BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY LINE OF DEER VALLEY DRIVE, SAID POINT BEING SOUTH 1129.51 FEET AND EAST 4094.91 FEET FROM THE EAST QUARTER CORNER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN; SAID POINT ALSO BEING A POINT ON A 300-FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS SOUTH 65°50'05" EAST) AND RUNNING THENCE ALONG SAID EAST RIGHT-OF-WAY LINE AND THE ARC OF SAID 300-FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 12°50'05" A DISTANCE OF 67.20 FEET TO A POINT OF TANGENCY; THENCE NORTH 37°00' EAST 53.00 FEET; THENCE SOUTH 61°19'49" EAST 62.56 FEET; THENCE SOUTH 80°50'40" EAST 580.41 FEET; THENCE SOUTH 10°11'15" WEST 30.33 FEET; THENCE NORTH 85°42'00" WEST 689.74 FEET TO THE POINT OF BEGINNING.