

Form PTO-1594

(Rev. 6-93)

06-01-1999

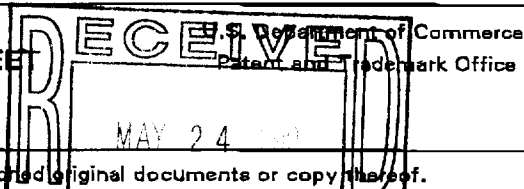


OMB No. 0651-0011 (exp. 4/94)

101051122

1 SHEET

JULY



To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

## 1. Name of Conveying party(ies):

Winter Park Recreational Association

- ☐ Individual(S)                      ☐ Association  
☐ General Partnership           ☐ Limited Partnership  
☒ Corporation-State Colorado  
☐ Other

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

## 3. Nature of conveyance:

- ☐ Assignment                      ☐ Merger  
☒ Security Agreement           ☐ Change of Name  
☐ Other

Execution Date: 5-20-99

## 2. Name and address of receiving party(ies):

Name: Wells Fargo Bank, N.A.

Internal Address: N/A

Street Address: 633 Seventeenth Street

City: Denver State: CO ZIP: 80270

- ☐ Individual(S) citizenship  
☒ Association National  
☐ General Partnership  
☐ Limited Partnership  
☐ Corporation-State  
☐ Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☐ No

(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached? ☐ Yes ☒ No

## 4. Application number(S) or registration number(S):

A. Trademark Application No.(S)

B. Trademark Registration No.(S)

See attached list

Additional numbers attached? ☒ Yes ☐ No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Elizabeth C. Darling

Internal Address: Steiner, Darling, Hutchinson &amp; Wilson LLP

Street Address: 303 East 17th Avenue, Suite 850

City: Denver State: CO ZIP: 80203

## 6. Total number of applications and registrations involved

9

## 7. Total fee (37 CFR 3.41): \$240.00

- ☒ Enclosed  
☐ Authorized to be changed to deposit account

## 8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

05/28/1999 MTHAI1 00000191 1990886

DO NOT USE THIS SPACE

01 FC:481 40.00 DP  
 02 FC:482 200.00 DP

## 9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Elizabeth C. Darling

Name of Person Signing

Elizabeth C. Darling

Signature

5-21-99

Date

Total number of pages including cover sheet, attachments, and document:

9

Mail documents to be recorded with required cover sheet information to:  
 Commissioner of Patents & Trademarks, Box Assignments  
 Washington, D.C. 20231

Trademark Registration Nos.

Registration No. 1990886  
Registration No. 2002327  
Registration No. 0961726  
Registration No. 2000722  
Registration No. 1864634  
Registration No. 1999322  
Registration No. 1999321  
Registration No. 2013187  
Registration No. 2020248

**SCHEDULE 1  
TO  
FIRST AMENDMENT  
TO  
INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**Revised Schedule 1 (U.S. Trademarks)**

**FEDERAL TRADEMARK REGISTRATIONS**

Mary Jane, Class 41 (Words Only), Registered 2-9-92 as Registration No. 1189581.

Mary Jane and Design, Classes 41, 25, 16 (Words and Design), Registered 8-6-96 as Registration No. 1990886. **[New]**

Extremely Colorado, Classes 41, 25, 16 (Words Only), Registered 9-24-96 as Registration No. 2002327. **[New]**

Winter Park and Design, Classes 41, 42 (Words and Design), Registered 6-19-73 as Registration No. 0961726. **[New]**

Winter Park Resort and Design, Classes 41, 42 (Words and Design), Registered 6-15-86 as Registration No. 1401619.

(Registered in additional Classes 15, 25 and 28 effective 9-17-96, Registration No. 2000722)

Sunspot, Class 42 (Words Only), Registered 10-19-93 as Registration No. 1800300.

Sunspot and Design, Classes 25, 21, 14 (Words and Design), Registered 11-29-94 as Registration No. 1864634. **[New]**

The Lodge at Sunspot, Class 42 (Words Only), Registered 10-19-93 as Registration No. 1800302.

The Lodge at Sunspot and Design, Class 42 (Words and Design), Registered 10-19-93 as Registration No. 1800301.

Colorado's Favorite (Stylized Lettering), Classes 41, 25 (Words with Stylized Lettering), Registered 9-10-96 as Registration No. 1999322. **[New]**

Colorado's Favorite (Block Lettering), Classes 41, 25 (Words with Block Lettering Style), Registered 9-10-96 as Registration No. 1999321. **[New]**

Colorado's Favorite Ski Resort (Block Lettering), Classes 41, 25 (Words with Block Lettering Style), Registered 11-5-96 as Registration No. 2013187. **[New]**

Colorado's Favorite Ski Resort (Stylized Lettering) - Classes 41, 25 (Words with Stylized Lettering), Registered 12-3-96 as Registration No. 2020248. **[New]**

**FIRST AMENDMENT**  
**TO**  
**INTELLECTUAL PROPERTY SECURITY AGREEMENT**

THIS FIRST AMENDMENT TO INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "Amendment") is made and entered into as of the 20th day of May, 1999, by and between WINTER PARK RECREATIONAL ASSOCIATION, a Colorado nonprofit corporation whose address is 677 Winter Park Drive, P.O. Box 36, Winter Park, Colorado 80482 (hereinafter called "Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, successor by merger to FIRST INTERSTATE BANK OF DENVER, N.A. (hereinafter called "Wells Fargo"), in its capacity as the Collateral Trustee, defined below, and in its capacity as the Bank, defined below, whose address is 633 Seventeenth Street, Denver, Colorado 80270.

**ARTICLE 1. RECITALS**

1.1 Revolving Credit Agreement. Wells Fargo (in such capacity, "Bank") and Borrower have entered into the Revolving Loan Agreement dated as of September 30, 1993 (the "Revolving Credit Agreement") pursuant to which Bank has agreed to lend to Borrower the principal sum of \$10,000,000 (the "Revolving Loan"). Pursuant to the Revolving Credit Agreement, Borrower has executed its Promissory Note, dated September 30, 1993, in the principal amount of \$10,000,000, payable to the order of the Bank (the "Revolving Credit Note"). The Revolving Credit Note represents a revolving credit, all or any portion of which may be advanced, repaid and readvanced pursuant to the terms of the Revolving Credit Agreement, and the Revolving Credit Note provides for changes from time to time in the rate of interest borne by the indebtedness evidenced by the Revolving Credit Note.

1.2 Term Loan Agreement. Bank and Borrower have entered into the Term Loan Agreement dated as of September 30, 1993 (as amended, the "Loan Agreement") pursuant to which Bank has agreed to lend to Borrower the principal amount of \$15,000,000. Pursuant to the Loan Agreement, Borrower has executed its Promissory Note, dated September 30, 1993 in the principal amount of \$15,000,000, payable to the order of Bank (the "Original Loan Agreement Note"). Pursuant to the Fifth Modification Agreement of even date herewith among Borrower, Bank and Collateral Trustee, the Loan Agreement has been modified, and the Original Loan Agreement Note has been amended and restated by the Replacement Term Promissory Note of even date herewith in the principal amount of \$17,000,000 (the "Replacement Term Note"). The Replacement Term Note evidences the same indebtedness as the Original Loan Agreement Note, and the Original Loan Agreement Note, as amended and restated by the Replacement Term Note, are collectively referred to as the "Term Note."

1.3 Financing Agreement. Borrower and Grand County, Colorado (the "Issuer") are parties to a Sports Facility Financing Agreement dated as of September 30, 1993 (the "Financing Agreement"), pursuant to which the Issuer has agreed to lend to Borrower the proceeds of its 1993 Sports Facilities Revenue Refunding Note in the principal amount of \$6,000,000 (the "Issuer Note") on the terms and conditions set forth therein and in its Resolution authorizing the issuance of the Issuer Note. The Issuer has assigned to the Bank, the Issuer Note, all of the

Issuer's right, title and interest in, to and under the Financing Agreement (except for certain rights specified therein) and Borrower's Promissory Note in the principal amount of \$6,000,000 (the "Financing Agreement Note").

1.4 Collateral Trust Agreement. Wells Fargo (in its capacity as the Collateral Trustee under the Collateral Trust Agreement, defined below, hereinafter called "Collateral Trustee") and Borrower have entered into the Collateral Trust Agreement, dated as of September 1, 1993, as amended by the First Amendment to Collateral Trust Agreement of even date herewith (the "Collateral Trust Agreement"), pursuant to which Borrower has agreed to grant to the Collateral Trustee for the benefit of the Secured Parties liens and continuing security interests on and in certain of its assets, as security for the Secured Obligations. Capitalized terms used in this Amendment and not defined in this Amendment shall have the meanings given in the Collateral Trust Agreement.

1.5 Security Documents. The Secured Obligations are secured in part by the following documents (collectively, the "Security Documents"):

(1) Deed of Trust and Security Agreement, dated September 30, 1993, from Borrower to the Public Trustee of Grand County, Colorado, for the benefit of Collateral Trustee, recorded on October 4, 1993 at Reception No. 93010012 in the Office of the Clerk and Recorder of Grand County, Colorado (the "Grand County Records"), encumbering the real property, personal property and fixtures located in Grand County, Colorado described such Deed of Trust and Security Agreement (the "Deed of Trust");

(2) Assignment of Leases and Rents and Other Income, dated September 30, 1993, from Borrower to Collateral Trustee, recorded on October 4, 1993 at Reception No. 93010013 in the Grand County Records (the "Assignment of Rents");

(3) Pledge and Security Agreement, dated September 30, 1993, between Borrower and Collateral Trustee (the "Security Agreement");

(4) Intellectual Property Security Agreement, dated September 30, 1993, between Borrower and Collateral Trustee (the "Intellectual Property Security Agreement"); and

(5) UCC-1 Financing Statements from Borrower, as debtor, to Collateral Trustee, as secured party, filed in the office of the Colorado Secretary of State on October 4, 1993, at File No. 932072211, and in the UCC records of the Clerk and Recorder of Boulder County, Colorado on October 5, 1993, at File No. 40139240 and in the UCC and real property records of the Grand County Records on October 4, 1993 at Reception No. 93010014 and at Reception No. 93010015 (collectively, the "Financing Statements").

1.6 Loan Documents. The Collateral Trust Agreement, the Financing Agreement, the Loan Agreement, the Revolving Credit Agreement, the Issuer Note, the Financing Agreement Note, the Revolving Credit Note, the Term Note, the Security Documents, and each other document executed or delivered by Borrower as security for any of the above-described Notes (the "Notes") or in connection with the transaction pursuant to which such Notes have been executed and delivered as such documents are, have been or may hereafter be, from time to time modified, extended, renewed or replaced, are hereinafter referred to as the "Loan Documents." The Loan Documents were modified by the Modification Agreement dated as of September 30, 1995, recorded on November 13, 1995 at Reception No. 95009985 in the Grand

County Records, by the Second Modification Agreement dated as of September 20, 1996, recorded on September 25, 1996 at Reception No. 96008227 in the Grand County Records, by the Third Modification Agreement and Subordination Agreement dated as of February 25, 1997, recorded on March 24, 1997 at Reception No. 97002244 in the Grand County Records, by the Fourth Modification Agreement dated as of September 30, 1997, recorded on October 10, 1997 at Reception No. 97008998 in the Grand County Records, by the Subordination Agreement (Reciprocal Easement Agreement) dated as of June 30, 1998, recorded on July 1, 1998 at Reception No. 98007048 in the Grand County Records, and by the Fifth Modification Agreement of even date herewith (collectively, the "Modification Agreements"), and any references to any Loan Document shall refer to such Loan Document as modified by such Modification Agreements.

1.7 Amendments. Since the original execution of the Intellectual Property Security Agreement, Borrower has obtained certain additional U.S. Trademarks, as defined in the Intellectual Property Security Agreement. Borrower, Bank and Collateral Trustee desire to amend the Intellectual Property Security Agreement to acknowledge that Borrower has granted to Collateral Trustee a security interest in such additional U.S. Trademarks.

## ARTICLE 2. AMENDMENTS.

2.1 Amendment to Schedule 1. Schedule 1 to the Intellectual Property Security Agreement is hereby amended in its entirety and replaced with the revised Schedule 1-1 attached to this Amendment as Schedule 1-1. Borrower acknowledges and agrees that the U.S. Trademarks listed in the revised Schedule 1-1 are and have continuously been encumbered by the Intellectual Property Security Agreement, and Borrower hereby grants to Collateral Trustee for the benefit of the Secured Parties a continuing security interest in the U.S. Trademarks described in Schedule 1-1 attached hereto and all Proceeds (as defined in the Intellectual Property Security Agreement) thereof, together with all the goodwill of the business connected to the use thereof or symbolized thereby, subject to the proviso stated in the Intellectual Property Security Agreement.

## ARTICLE 3. OTHER MODIFICATIONS, RATIFICATIONS AND AGREEMENTS.

3.1 Modification of Loan Documents. Each provision of any Loan Document that is inconsistent with the modifications made by this Amendment is hereby amended to conform to such modifications. All references to the Intellectual Property Security Agreement in the other Loan Documents are hereby amended to refer to the Intellectual Property Security Agreement as amended by this Amendment.

3.2 Reaffirmation. Borrower reaffirms to Bank and Collateral Trustee each of the representations, warranties, covenants and agreements of Borrower set forth in the Intellectual Property Security Agreement, with the same force and effect as if each were separately stated herein and made as of the date of this Amendment, including, without limitation, all representations, warranties, covenants and agreements relating to any U.S. Trademarks not originally listed in the Intellectual Property Security Agreement.

3.3 Ratification. Borrower ratifies, reaffirms, acknowledges, and agrees that the Intellectual Property Security Agreement, as amended by this Amendment, represents the valid,

enforceable and collectible obligation of Borrower subject to state and federal bankruptcy and insolvency laws and equitable principles affecting the enforcement of creditors' rights; and that there are no existing claims, defenses, personal or otherwise, or rights of setoff whatsoever with respect to the Intellectual Property Security Agreement. In addition, Borrower hereby expressly waives, releases and absolutely and forever discharges Bank and Collateral Trustee and their shareholders, directors, officers, employees and agents, and their heirs, personal representatives, successors and assigns, from any and all liability, claims, demands, damages, actions and causes of action that Borrower may now have, or has had prior to the date hereof and, without limiting the generality of the foregoing, from any and all liability, claims, demands, damages, actions and causes of action arising out of, or in any way connected with, the Intellectual Property Security Agreement. Borrower further acknowledges and represents that no Event of Default exists.

3.4 Provisions Unaffected. All terms, conditions and provisions of the Intellectual Property Security Agreement are continued in full force and effect and shall remain unaffected and unchanged except as specifically amended by this Amendment.

3.5 Default Under Loan Documents. Borrower acknowledges and agrees that any default by Borrower under this Amendment shall constitute an Event of Default under each of the Loan Documents, entitling Bank and Collateral Trustee to exercise any or all rights and remedies provided for in the Loan Documents. Bank's and Collateral Trustee's execution and delivery of this Amendment shall not be construed as a waiver of any existing Event of Default under any of the Loan Documents, whether or not such default is known to Bank or Collateral Trustee; provided, however, that Bank and Collateral Trustee are not aware that any Event of Default exists under any of the Loan Documents.

#### ARTICLE 4. GENERAL.

4.1 Additional Acts. Borrower shall execute and deliver such additional documents and do such other acts as Bank or Collateral Trustee may reasonably require to fully implement the intent of this Amendment.

4.2 Costs and Expenses. Borrower shall pay all costs and expenses, including, without limitation, recording fees and reasonable attorneys' fees incurred by Bank or Collateral Trustee in connection with this Amendment. Bank, at its option, but without any obligation to do so, may advance funds under the Revolving Credit Agreement to pay any such costs and expenses that are the obligation of the Borrower, and all such funds advanced shall bear interest at the rate provided in the Revolving Credit Note, shall be due and payable upon demand and shall be secured by all of the Loan Documents.

4.3 No Further Amendment. Notwithstanding anything to the contrary contained herein or in any other instrument executed by Borrower, Bank or Collateral Trustee, or in any other action or conduct undertaken by Borrower, Bank or Collateral Trustee on or before the date of this Amendment, the agreements, covenants and provisions on or before the date hereof, the agreements, covenants and provisions contained herein shall constitute the only evidence of Bank's and Collateral Trustee's consent to modify the terms and provisions of the Intellectual Property Security Agreement. Accordingly, no express or implied consent to any further modifications involving any of the matters set forth in this Amendment or otherwise shall be inferred or implied by Bank's and Collateral Trustee's execution of this Amendment. Further,

Bank's and Collateral Trustee's execution of this Amendment shall not constitute a waiver (either express or implied) of the requirement that any further modification of the Loan Documents shall require the express written approval of Bank and Collateral Trustee; no such approval (either express or implied) has been given as of the date of this Amendment.

4.4 Binding Effect. This Amendment shall be binding upon, and shall inure to the benefit of, the parties hereto and their heirs, personal representatives, successors and assigns.

4.5 No Third Party Beneficiaries. This Amendment is made for the sole protection and benefit of the parties hereto, and no other person or entity shall have any right of action hereon.

4.6 Governing Law. This Amendment shall be governed by and construed according to the laws of the State of Colorado.

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BORROWER:

WINTER PARK RECREATIONAL ASSOCIATION,  
a Colorado nonprofit  
corporation

By: 

Gary J. DeFrange  
President/CEO

COLLATERAL TRUSTEE:

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, successor by merger to  
FIRST INTERSTATE BANK OF  
DENVER, N.A., as Trustee

By: 

James K. Edwards  
Vice President

BANK:

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, successor by merger to  
FIRST INTERSTATE BANK OF  
DENVER, N.A.

By: 

James K. Edwards  
Vice President