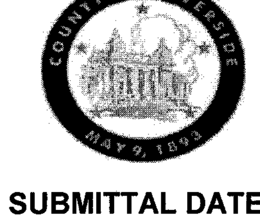

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

2481

SUBMITTAL DATE:
October 17, 2016

FROM : ECONOMIC DEVELOPMENT AGENCY (EDA)::

SUBJECT: Vail Ranch Historic Site – Acceptance of Dedication and Approval of Developer Lease, CEQA Exempt, District 3; ($71,000), General Fund Sub-Fund 11183 2%, ($3,516,348) STSA Escrow Account Sub-fund 11103 98%, [Total Cost $3,516,348]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15301, Class 1 Existing Facilities Exemption and 15061 (b)(3) "Common Sense" Exemption, and direct the Clerk of the Board to file the Notice of Exemption;

2. Authorize the Chairman to accept the dedication of the Vail Ranch Historic Site from Vail Headquarters, LLC (VHQ);

3. Approve and authorize the Chairman to execute the Developer Lease between the County of Riverside and VHQ for the Vail Ranch Historic Site;

4. Approve and authorize the Chairman to execute the Memorandum of Lease between the County of Riverside and VHQ for the Vail Ranch Historic Site;

5. Approve and authorize the Chairman to execute IRS Form 8283 to evidence the donation of the Vail Ranch Historic Site from VHQ to the County;

6. Authorize distribution of $3,445,348 from the STSA Escrow to VHQ pursuant to the terms of the Offer to Dedicate and Lease Agreement;

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	$ 3,516,348	$ 0	$ 3,516,348	$ 0
NET COUNTY COST	$ 0	$ 0	$ 0	$ 0
SOURCE OF FUNDS: $71,000 General Fund Sub-Fund 11183 2% $3,445,348 STSA Escrow Sub-fund 11103 98%			Budget Adjustment: Yes	
			For Fiscal Year: 2016/17	

C.E.O. RECOMMENDATION: [CEO use]

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Tavaglione and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington and Ashley
Nays: None
Absent: Benoit
Date: November 1, 2016
xc: EDA, Auditor, Recorder

Kecia Harper-Ihem
Clerk of the Board
By: [signature] Deputy

3-8

SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

RECOMMENDED MOTION: Continued:

7. Delegate authority to the Assistant County Executive Officer/EDA or his designee to implement the Developer Lease and to approve any other documents necessary to accomplish the transfer of the Historic Site to the County;

8. Ratify and authorize a reimbursement to EDA/Real Estate Division in an amount not to exceed $71,000 from General Fund Sub-Fund 11183 and authorize reimbursement to EDA/Real Estate Division from General Fund Sub-Fund 11183, or any other available funds, for all costs incurred in administering the Developer Lease; and,

9. Approve and authorize the Auditor-Controller to make the budget adjustments totaling $71,000 listed on Schedule A, attached.

BACKGROUND:
Summary

Pursuant to a Settlement Agreement dated January 27, 1998, on May 13, 2003, the Board of Supervisors approved and executed an Offer to Dedicate and Lease Agreement between the County and Redhawk Towne Center, LLC (the Historic Site Lease) to restore, lease and maintain the Vail Ranch Historic Site (the Historic Site). The primary features of the Historic Site Lease and all amendments are as follows:

- Upon completion and restoration of the entire site, the Developer will dedicate the four acre Historic Site to the County while retaining title to the restored structures during the term of the Developer Lease as stated below;

- The County will lease the four acre historic site back to the Developer for a period of 65 years (the Developer Lease);

- The Developer will sublease to the County 1,400 square feet of improved space for a period of 65 years, and provide a license for use of the entire site for educational and community activities (the County Sublease);

- The County will pay $3.2 million plus accrued interest in sublease payments to the Developer from sales and use tax generated on the adjacent retail development site; and,

- At the end of the 65-year lease period, the County will have exclusive possession and ownership of the entire historic site, including the restored structures, without any further compensation to the Developer.

BACKGROUND:

Summary (Continued)

The Historic Site is comprised of six historic structures on approximately four acres of a larger site that was approved for 400,000 square feet of retail space that was subsequently developed. Redhawk Towne Center, LLC, was acquired by a new parent company, Kimco Realty Corporation. Kimco did not have expertise in adaptive re-use of historic structures and proposed that a developer with experience in this area be solicited for the project. Kimco issued a request for proposals for the restoration and re-use of the historic site, and Arteco Partners was selected based on extensive experience on adaptive re-use for commercial and residential projects in the Inland Empire. Arteco Partners is family-owned and operated, and it is their mission to foster historic preservation through investment and long-term commitment to communities through public-private partnerships. An assignment obligated Vail Headquarters, LLC, a limited liability corporation formed by the members of Arteco Partners (VHQ), to complete the project based on the same terms and conditions that were agreed to in the original agreement and subsequent amendments in 2007, 2008 2009 and 2016.

The Real Estate Division of the Economic Development Agency has confirmed that all required restoration improvements have been materially completed as agreed. Following the completion of those improvements, the Historic Site Lease requires that the County accept the dedication of the four acre historic site from VHQ, while VHQ is to retain title to the restored structures throughout the term of the Developer Lease.

As a part of the Offer to Dedicate and Lease, the County acknowledged that the dedication of the Historic Site to the County would constitute a gift. Accordingly, VHQ has requested the County execute IRS Form 9283 "Noncash Charitable Contributions" to evidence the donation. Further, the Offer to Dedicate and Lease allows VHQ to record a memorandum of lease.

On September 2, 2008, a document intended to be an exhibit to the Second Amendment to Offer to Dedicate and Lease was erroneously executed as the Developer Lease. The correct Developer Lease currently before the Board will operate to terminate the prior lease and to set the correct effective date for the Developer Lease concurrent with the transfer of the Historic Site to the County.

Pursuant to the California Environmental Quality Act (CEQA), the Developer Lease was reviewed and determined to be categorically exempt from CEQA, under State CEQA 15301, Class 1, Existing Facilities Exemption; and Section 15061 (b)(3), common sense, general rule exemption, as it will not result in direct impacts to the physical environment or reasonably foreseeable indirect effects.

BACKGROUND:

Summary (Continued)

Impact on Residents and Businesses

This historic preservation reuse project will allow for enjoyment of a key and historic site of the County. The residents and businesses will benefit from this historic project, which has the potential to increase tourism and business in this region through events, festivals and community activities. The historic educational value of the site will be a draw to students, residents, teachers and families who will come to enjoy and learn.

Contract History and Price Reasonableness

On May 13, 2003, Redhawk Towne Center LLC (Redhawk) and County entered into that certain Offer to Dedicate & Lease Agreement, as amended by that certain letter agreement dated November 14, 2003, (Original Offer to Dedicate), wherein Redhawk agreed, among other things, to complete certain Restoration Improvements to a 4 acre historic site that is part of the commercial center owned by Redhawk.

On January 23, 2007, the County, VHQ and Redhawk entered into a first amendment to the Original Offer to Dedicate, which provided a new schedule for completion of the Restoration Improvements and further provided for Redhawk to convey the Historic Site to VHQ.

On September 2, 2008, the County and VHQ entered into a second amendment to the Original Offer to Dedicate, which provided a new schedule for completion of the Restoration Improvements. Concurrently, the County erroneously executed the Developer Lease with an effective date that did not coincide with the transfer of the Historic Site to the County.

On September 1, 2009, the County and VHQ entered into a third amendment to the Original Offer to Dedicate which provided an updated schedule for the Restoration Improvements.

On July 29, 2014, the County and VHQ entered into a fourth amendment to Offer to Dedicate and Lease, which provided for an updated site plan, an amended schedule for the Restoration Improvements, and updated payment provisions that recognize and accommodate the fact that conditions in the original Offer to Dedicate and Lease Agreement necessary to sequester sales and use tax from the site into escrow have already been fulfilled.

On January 26, 2016, the County and VHQ entered into a fifth amendment to Offer to Dedicate and Lease.

SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Page 5
SUPPLEMENTAL:
Additional Fiscal Information

While the payment to VHQ of the principal balance and accumulated interest in the STSA escrow was anticipated and budgeted this fiscal year, there was no funding source identified in the Offer to Dedicate and Lease for the County's administration of this project. However, the Real Estate Division of the Economic Development Agency seeks to be reimbursed for any and all past, current, and future costs associated with this transaction from the proceeds of the sale of other County properties.

Real Estate Labor Costs	$	35,000
County Counsel Costs	$	35,000
Environmental Costs	$	1,000
Total Estimated Net Costs	$	71,000

Attachments:
Schedule A – Budget Adjustments
Developer Lease
IRS Form 8283
Memorandum of Lease

RF:JVW:VC:VY:JR:ra 205FM 18.443 13360
MinuteTrak 2481

Schedule A

Increase appropriations:		
10000-1103800000-551100	Contribution to other funds	$71,000
Use of Unassigned Fund Balance:		
11183-1103800000-370100	Unassigned fund balance	71,000
Increase Estimated Revenue:		
47220-7200400000-790600	Contribution from other county funds	71,000
Use of Unrestricted Net Assets Fund Balance:		
47220-7200400000-380100	Unrestricted net assets	71,000

VAIL RANCH HISTORIC SITE LEASE AGREEMENT ("DEVELOPER LEASE")

THIS DEVELOPER LEASE (the "LEASE") is made and entered into this 1st day of November, 2016 by and between Vail Headquarters, LLC, a California limited liability company (hereinafter sometimes referred to as "VHQ"), and the County of Riverside, a political subdivision of the state of California (hereinafter sometimes referred to as "County" or "Landlord").

RECITALS

A. On May 13, 2003, Redhawk Towne Center LLC ("Redhawk"), and County entered into that certain Offer to Dedicate and Lease Agreement ("Offer to Dedicate") wherein Redhawk agreed, among other things, to complete certain Restoration Improvements to a 4 +/- acre historic site (the "Historic Site") that is part of the commercial center owned by Redhawk as of the date of the Offer to Dedicate (the "Property") as shown on Exhibit "A" attached hereto.

B. The Offer to Dedicate has been amended by the following:

1. That certain First Amendment to Offer to Dedicate and Lease dated January 23, 2006, whereby VHQ succeeded Redhawk Towne Center, LLC as Developer;

2. That certain Second Amendment to Offer to Dedicate and Lease dated September 2, 2008, whereby mortgagee protection was added to the Agreement;

3. That certain Third Amendment to Offer to Dedicate and Lease dated September 1, 2009, whereby the project schedule was amended; and

4. The certain Fourth Amendment to Offer to Dedicate and Lease dated July 29, 2014 whereby the Restoration Improvements were redefined, the project schedule was amended, the County Sublease was amended, Exhibit "J" was supplemented, and the Notice provisions were amended.

5. The certain Fifth Amendment to Offer to Dedicate and Lease dated January 26, 2016 whereby the project schedule was amended and Exhibit "J" was supplemented. The Offer to Dedicate and all subsequent Amendments are attached hereto as Exhibit "B."

C. Upon acceptance of the offer to dedicate from VHQ, the County will be the owner of that certain real property identified as the Historic Site and as more particularly described in Exhibit "C" attached hereto, excluding the buildings and improvements thereon which shall automatically revert to the County at the expiration of this Lease, such exhibit being incorporated herein by this reference, (hereinafter sometimes referred to as the "Premises");

D. Pursuant to the Offer to Dedicate, VHQ and County entered into a prior developer lease (the "2008 Lease") which was executed by the Board of Supervisors on September 2, 2008. The 2008 Lease erroneously stated that the effective date was the date of execution by the Board of Supervisors rather than the date that the Premises were transferred from VHQ to the County.

NOV 01 2016 3-8

E. The parties desire to terminate the 2008 Lease and to prepare and execute a lease by which the Premises will be leased from the County to VHQ.

F. VHQ desires to lease from County, and County desires to lease to VHQ, the Premises.

NOW, THEREFORE, the parties hereby agree as follows:

1. LEASE OF PREMISES

1.01. Subject to the provisions of the recital paragraphs outlined above, such paragraphs being incorporated herein by this reference, subject to the other terms and provisions contained herein, and subject to satisfaction or written waiver of the provisions set forth in Section 4 of the First Amendment, County hereby leases to VHQ, and VHQ hereby leases from County, the Premises. VHQ shall accept the Premises in their "as-is", except as otherwise provided herein.

1.02. Termination of 2008 Lease. The 2008 Lease erroneously stated the effective date as September 2, 2008 rather than the date that the Premises were transferred from VHQ to the County. It is understood and agreed by County and VHQ that the 2008 Lease had no legal effect, that it shall terminate on the effective date of this Lease and that this Lease shall then replace the 2008 Lease.

2. TERM

2.01. The term of this Lease shall commence on the Effective Date and continue in effect for a period of sixty-five (65) years thereafter ("Initial Term"). Upon the termination or expiration of this Lease in accordance with its terms, VHQ agrees to surrender to County the Premises, including all buildings and improvements thereon, in at least as good repair and condition as exists on the date possession of the same is delivered to VHQ, ordinary wear and tear excepted. Notwithstanding the foregoing, in the event the Historic Site ceases to be operated as a historic site for a period of five (5) years for reasons other than force majeure, either party may terminate this Lease by giving the other party thirty (30) days prior written notice thereof at any time prior to the recommencement of such operation.

3. RENTAL

3.01. VHQ shall pay to County an annual payment of One Dollar ($1.00) ("Base Rental").

3.02. Upon full execution hereof, VHQ will tender to County its first check for the annual rent payment in the amount of One Dollar ($1.00), and thereafter, rent shall be payable annually.

3.03. All payments of Base Rental and other sums payable to County hereunder shall be paid to County at the following address:

Riverside County Economic Development Agency

3403 10th Street, Suite 400
Riverside, CA 92501
Attn: Deputy Director of Real Estate
Real Estate Division / EDA

4. PARKING AND ACCESS

4.01. Parking and Access to common areas on the Property ("Common Areas"), together with rights to use and enjoyment of the signage and utility easement and access rights granted thereunder, shall be provided to VHQ pursuant to the terms and provisions of the Nonexclusive Parking and Access Easement Agreement, Together with Covenants, Conditions and Restrictions recorded on the Property (the CC&R's), (attached hereto as Exhibit "D"). At all times during the term of this Lease, with the exception of reasonable repair or replacement, VHQ and VHQ's sub-lessees shall be entitled to reasonable, non-exclusive use of the Common Areas for ingress, egress and parking purposes to the extent reasonably needed for VHQ to use the Premises in the manner provided herein, provided however, that VHQ's use of the Common Areas shall not unreasonably interfere with the use of the Common Areas by County and others entitled to use the Common Areas. The parties hereto acknowledge and agree that VHQ's usage of the Common Areas for ingress, egress, and parking shall be non-exclusive under an irrevocable license granted hereby by County during the term of this Lease. All of the parking and use of the Common Areas provided to VHQ under this paragraph shall be without charge. VHQ shall comply with reasonable rules and regulations concerning the use of the Common Areas established from time to time by County. County shall have the sole and exclusive control over the Common Area and the right to make changes thereto as County determines appropriate from time to time, provided such changes do not materially impair the ingress, egress and parking rights granted hereby.

5. ALTERATIONS

5.01. VHQ shall not make any material structural or exterior alterations or changes to the Premises without the prior written consent of County, which consent shall not be unreasonably withheld, conditioned or delayed. VHQ shall be permitted to perform maintenance and effect alterations to the exterior or structure of the Premises which are not material without the prior written consent of County so long as any such alteration shall be consistent with the design and quality of the exterior finishes to the Premises improvements as exist upon the completion of the Premises improvements.

VHQ shall give County a 10-day written notice prior to the commencement of any improvements on the Premises, so as to afford County the opportunity to post a notice of non-responsibility to protect against any mechanic's liens which might be recorded against the Premises and/or the Property. VHQ hereby agrees to indemnify, defend and hold the County and its members, partners, affiliates, agents, servants and employees harmless from and against any mechanic's liens and from any and all costs, expenses, claims, causes of action, attorneys' fees and title costs in respect to damage to property or injury to persons which might arise by virtue of any work on the Premises and/or the Property authorized or required to be performed by or at the expense of VHQ.

6. USE, MAINTENANCE AND REPAIR OF THE PREMISES

6.01. The Premises are to be used by VHQ for the operation and conduct of commercial business approved by the County as set forth in the Offer to Dedicate. VHQ agrees to restrict its use of the Premises to such purposes and not to use or permit the use of the Premises for any other purpose whatsoever without the prior written consent of the County, which consent may be withheld in County's sole and absolute discretion.

6.02. During the term of this Lease and any extensions thereof, VHQ shall keep the Premises, and mechanical systems contained therein or otherwise exclusively serving the Premises, including but not limited to, plumbing, electrical, heating, air conditioning systems, building structures and landscaping in first class commercial repair at VHQ's own expense, and shall not permit the Premises or such systems to deteriorate or depreciate in value by any act or omission of VHQ or its employees or agents, normal wear and tear excepted. All repairs and maintenance required of VHQ shall be done in a good workmanlike manner. VHQ shall be responsible for all exterior or structural repairs and/or maintenance of the Premises.

6.03. VHQ shall not permit the Premises to be occupied for any business or purpose deemed hazardous on account of fire or any other account, nor commit any act which will invalidate any policy of insurance on said Premises. VHQ shall use no equipment unapproved by insurance underwriters and shall not use the Premises in any way which will cause an increase in the usual insurance rates.

VHQ shall, at VHQ's sole cost and expense, keep the Premises in as clean, sanitary and presentable condition and not allow refuse or debris to accumulate therein.

7. GRAPHICS AND EXTERIOR DISPLAYS

7.01. VHQ shall have the right to install exterior signs and exterior historic displays on the Premises provided such signs and displays, and the location thereof, are in compliance with the applicable Sign Program of the County then in effect for the Premises, or otherwise shall be approved by County in the exercise of its reasonable discretion. All VHQ's signage and/or displays shall be paid for by VHQ, and County shall not be responsible for loss or damage of signs or historic displays placed on the Premises. County may require historic displays located on the Premises to be secured by fencing if County believes that such displays may constitute an attractive nuisance. All such displays shall be deemed to constitute a portion of the Premises for purposes of VHQ's indemnity obligations under Section 11.05.

8. UTILITIES

8.01. VHQ agrees that it shall pay all utility, maintenance and miscellaneous costs for the Premises, including but not limited to electricity, gas, water, sewer, trash removal, and common area maintenance charges.

9. ASSIGNMENT AND SUBLETTING

9.01. VHQ shall have the right to sublease the Premises for uses consistent with the Land Use Approvals obtained from the County and the City of Temecula and consistent with

the Offer to Dedicate with Landlord's consent, which consent shall not unreasonably be withheld, and which consent shall be subject to the provisions of Section 9.02, below. Any such use shall not materially interfere with or diminish the historical significance of the Historic Site or the Restoration Improvements, and shall be approved in advance by the County, in the exercise of its reasonable discretion.

9.02. County shall approve or disapprove a proposed sublease within ten (10) Business Days after receipt by County of the written request of VHQ for such approval (the "Outside Approval Date"), and if County fails to respond to the request in writing delivered to VHQ on or before the Outside Approval Date, the proposed sublease shall be deemed approved by County. So long as the written request from County for additional information is delivered to VHQ no later than ten (10) Business Days after delivery by VHQ to County of the request for consent to a sublease, so long as County in its reasonable discretion determines that such additional information regarding the proposed subtenant reasonably is required for the consideration of the proposed sublease, County may request that additional information be provided with respect to the proposed subtenant, in which event the Outside Approval Date shall be extended to the date which is the later of (i) ten (10) Business Days following the date of delivery to County of the requested information or (ii) twenty (20) Business Days after the initial delivery by VHQ to County of the request for approval of the sublease.

9.03. County hereby covenants and warrants that the authority to approve or disapprove a proposed sublease has been delegated by County to the Economic Development Agency of the County of Riverside (the "EDA"), and that the Assistant County Executive Officer of the EDA has the authority, on behalf of the EDA as the authorized agent of the County, to approve or disapprove a request by VHQ to enter into a sublease of all or any portion of the Premises. VHQ shall have the right to appeal to the Board of Supervisors of the County any disapproval of a proposed sublease, or any requirements which are conditions to approval of a proposed sublease.

10. MECHANIC'S LIENS

10.01. VHQ will not cause any mechanic's liens or material men's liens to be placed on the Premises and will cause any lien placed thereon by VHQ or any party claiming by, through or under VHQ, to be promptly removed. If VHQ fails to remove any such lien within thirty (30) days following written demand therefore, County may remove the same and VHQ will reimburse County for the costs incurred in connection with such removal within fifteen (15) days of VHQ's receipt of an invoice therefore showing in reasonable detail such costs incurred.

10.02. Notwithstanding anything to the contrary set forth above, if VHQ shall have commenced activity on the Premises pursuant to this Lease, and, in connection therewith any lien, claim or demand is filed against the Premises, and VHQ, in good faith, contests the validity of any such lien, claim or demand, then VHQ may, at its expense, defend itself and County against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before any enforcement thereof against the Premises or County. VHQ's right to contest such liens, claims or demands pursuant to the terms of this Section is expressly conditioned upon VHQ causing such lien to be released of record, within the time period required in Section 10.01, by bonding over such lien in the manner provided by applicable law

and indemnifying County against liability for the same, and holding the Premises free from the effect of any such lien, claim or demand.

11. INSURANCE

11.01. (a) Without limiting or diminishing the VHQ'S obligation to indemnify or hold the County harmless, VHQ shall carry and maintain, at VHQ's expense, at all times during the term of this Lease, not less than the following coverage and limits of insurance.

(i) Commercial General Liability: Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of VHQ'S performance of its obligations hereunder. Policy shall name the County, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds. Policy's limit of liability shall not be less than $2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Lease or be no less than two (2) times the occurrence limit.

(ii) Vehicle Liability: If vehicles or mobile equipment are used in the performance of the obligations under this Lease, then VHQ shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than $2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Lease or be no less than two (2) times the occurrence limit. Policy shall name the County, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

(iii) Worker's Compensation and Employer's Liability. If VHQ has employees as defined by the State of California, VHQ shall maintain:

(A) State Worker's Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. P

(B) Employers' Liability (Coverage B) including Occupational Disease with limits not less than $2,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

(b) General Insurance Provisions – All lines:

(i) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in

writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

(ii) VHQ'S insurance carrier(s) must declare its insurance self-insured retentions. If such self-insured retentions exceed $500,000 per occurrence such retentions shall have the prior written consent of the County Risk Manager before the commencement of operations under this Lease. Upon notification of self insured retention unacceptable to the County, and at the election of the Country's Risk Manager, VHQ'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Lease with the County, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

(iii) VHQ shall cause VHQ'S insurance carrier(s) to furnish the County with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Lease shall terminate forthwith, unless the County receives, prior to the later to occur of (i) such effective date or (ii) two (2) Business Days following receipt by VHQ of written notice of such material modification, cancellation, expiration or reduction in coverage, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *VHQ shall not commence operations until the County has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*

(iv) It is understood and agreed to by the parties hereto that the VHQ'S insurance shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

(v) If, during the term of this Lease or any extension thereof, there is a material change in the Lease or, the term of this Lease, including any extensions thereof, exceeds five (5) years the County reserves the right to adjust the types of insurance required under this Lease and the monetary limits of

liability for the insurance coverage's currently required herein, if; in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by VHQ has become inadequate.

(vi) VHQ shall pass down the insurance obligations contained herein to all tenants occupying the Premises.

(vii) The insurance requirements contained in this Lease may be met with a program(s) of self-insurance acceptable to the County.

(viii) VHQ agrees to notify County of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Lease.

11.02. Anything in this Lease to the contrary notwithstanding, County and VHQ each hereby waives any and all rights of recovery, claim, action or cause of action, against the other, its agents, servants, partners, shareholders, officers or employees, for any loss or damage that may occur to the Premises, the Building or the Property or any improvements thereto or thereon, or any personal property of such party therein or thereon, by reason of fire, the elements, or any other cause to the extent that such loss is covered by an insurance policy maintained, or required to be maintained pursuant to the terms hereof, by the releasing party, **REGARDLESS OF CAUSE OR ORIGIN, INCLUDING NEGLIGENCE OF THE OTHER PARTY HERETO**, its agents, officers, partners, shareholders, servants or employees, and covenants that no insurer shall hold any right of subrogation against such other party. Each party shall cause the issuer of its property damage insurance to waive such issuer's right of subrogation against the other party.

11.03. VHQ shall indemnify and hold harmless the County, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (County and the foregoing being referred to as "County Parties") from any liability whatsoever, based or asserted upon any services of VHQ, its officers, agents or employees arising out of or in any way relating to this Lease, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of VHQ, its officers, agents, or employees of this LEASE. VHQ shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the County Parties in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by VHQ, VHQ shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes VHQ's indemnification to County as set forth herein.

VHQ'S obligation hereunder shall be satisfied when VHQ has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim

involved, or other evidence, reasonably satisfactory to County, evidencing the satisfaction or other resolution of such action or claim.

The specified insurance limits required in this Lease shall in no way limit or circumscribe VHQ'S obligations to indemnify and hold harmless the County herein from third party claims set forth in this Section 11.03.

11.04. County shall indemnify and hold harmless the VHQ Parties from any liability whatsoever arising out of or in any way relating to this Lease, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the use and occupancy of the Property by County.

With respect to any action or claim subject to indemnification herein by County, County shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of VHQ; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes County's indemnification to VHQ as set forth herein.

County's obligation hereunder shall be satisfied when County has provided to VHQ the appropriate form of dismissal relieving VHQ from any liability for the action or claim involved, or other evidence, reasonably satisfactory to VHQ, evidencing the satisfaction or other resolution of such action or claim.

12. PROPERTY TAXES

12.01. VHQ agrees to pay all ad valorem taxes, levies, assessments, including any possessory interest taxes, applicable to the Premises.

13. HAZARDOUS MATERIALS

13.01. VHQ shall not cause or permit its agents, contractors or employees to cause the Premises to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to environmental conditions on, under or about the Premises including, but not limited to, soil and ground water conditions. VHQ shall not use, generate, manufacture, store or dispose of on, under or about the Premises and/or the Property or transport to or from the Premises and/or the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") including without limitation, California Health & Safety Code Section 25316, as well as any amended or successor statute as may exist from time to time during the term of this Lease and any renewals thereto, as well as any petroleum or petroleum-derived product, natural gas, liquefied natural gas, synthetic fuel gas, radioactive materials or waste and/or "medical waste" as defined in California Health & Safety Code Section 25023.2, as well as any amended or successor statute as may exist from time to time during the term of this Lease and any renewals thereto.

14. DEFAULT AND REMEDIES

14.01. This Lease shall be deemed in default and breached by VHQ if, during the term of this Lease:

(a) VHQ defaults in the payment of any money agreed to be paid by VHQ to County for rent, or for any other purpose under this Lease, and if such default continues for thirty (30) days after written notice to VHQ by County;

(b) VHQ defaults in the performance of any of its non-monetary agreements, conditions or covenants under this Lease and such default continues for thirty (30) days, plus such reasonable period of delay as VHQ may encounter in the performance of its agreements, conditions, and/or covenants by reason of matters beyond the control of VHQ.

14.02. In the event of VHQ's default hereunder, County may, at its option and without limiting County in the exercise of any other right or remedy it may have on account of a default or breach by VHQ, exercise any and all rights and remedies available at law or in equity. In addition, if VHQ is in default hereunder, County may, but shall not be obligated to, take any action necessary to cure VHQ's default without waiving any other right County may have as a result of such default, in which event VHQ shall reimburse County for the costs incurred by County in connection with curing such default within fifteen (15) days following receipt of an invoice therefore showing in reasonable detail such costs incurred.

14.03. This Lease shall be deemed in default and breached by County if, during the term of this Lease County defaults in the performance of any of its obligations hereunder and such default continues for thirty (30) days after written notice to County by VHQ, plus such reasonable period of delay as County may encounter in the performance of its agreements, conditions, and/or covenants by reason of matters beyond the control of County.

14.04. In the event of County's breach of this Lease, VHQ shall be entitled to withhold any payment of Base Rental which may become due until such time as County has cured its default. In addition to the foregoing remedy, in the event of County's breach of this Lease VHQ shall also be entitled to any and all other remedies available at law or in equity, including but not limited to specific performance.

15. TRANSFERS BY COUNTY

15.01. County shall have the right to assign or transfer, in whole or in part, all its rights hereunder and in the Premises provided that the transferee agrees in writing to be bound by the terms of this Lease arising from and after such transfer. Upon such transfer and assumption, County shall be released from its obligations under the terms of this Lease arising from and after such transfer.

16. MORTGAGEE PROTECTION PROVISIONS

16.01. Right to Encumber. VHQ and every successor and assign of VHQ (including, but not limited to, any sublessee of VHQ) is hereby given the express right, in addition to any other rights herein granted, with Landlord's consent, to mortgage its interests in this Lease, and its leasehold estate in the Premises, or any part of parts thereof, and any sublease of the Premises, under one or more Leasehold Mortgage(s) and to assign this Lease or VHQ's leasehold estate in the Premises, or any part or parts thereof, and any sublease, as collateral security for such mortgage(s), upon the condition that (i) such mortgage and/or assignment is made to secure indebtedness incurred for the purpose of fulfilling the obligations of VHQ under the Offer to Dedicate or otherwise for the purpose of improvement of the Premises or costs related to maintenance and operation of the Premises, and (ii) all rights acquired under such mortgage(s) shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights and interests of Landlord herein, none of which covenants, conditions or restrictions is or shall be waived by Landlord by reason of the foregoing, except as expressly provided herein. In the event of any conflict between the provisions of this Lease and the provisions of any mortgage, the provisions of this Lease shall control, except as herein specifically provided. In addition to the foregoing, Landlord shall not be obligated to subordinate its fee interest in the Premises or its residual interest in the Improvements thereon to any Leasehold Mortgage. Landlord hereby expressly consents to the Leasehold Mortgage by VHQ of the Premises to secure a permanent or take-out loan not to exceed Seven Million Dollars ($7,000,000.00) to repay the construction loan for completion of the Restoration Improvements made by VHQ pursuant to the Offer to Dedicate.

16.02. Definition of Leasehold Mortgage. For purposes of this Lease, the term "Leasehold Mortgage" means a conveyance of a security interest in this Lease and all of VHQ's interests in the Premises (collectively referred to as "VHQ's Leasehold Interests") to a lender (a "Leasehold Mortgagee") encumbering VHQ's Leasehold Interest, or the conveyance of VHQ's Leasehold Interests to the Leasehold Mortgagee or its assignee in connection with a foreclosure or a deed in lieu of foreclosure of such loan. Landlord agrees to permit VHQ to pledge VHQ's Leasehold Interests to a Leasehold Mortgagee as security under a Leasehold Mortgage with Landlord's consent, not to be unreasonably withheld. In the event of a default or breach by VHQ of any security instrument securing a Leasehold Mortgage, Landlord shall have the right to cure the default provided such cure is completed at least five (5) business days before the date of foreclosure. In such event, Landlord shall be entitled to reimbursement by VHQ of all costs and expenses incurred by Landlord in curing the default, with interest at the highest rate permitted by law, as Additional Rent (collectively, "Landlord's Cure Payments"), provided in the event of a subsequent foreclosure of a permitted Leasehold Mortgage the party acquiring VHQ's Leasehold Interests shall not be obligated to pay Landlord any of Landlord's Cure Payments.

16.03. Rights of Lender. If VHQ and/or VHQ's successors and assigns (including, but not limited to, any sublessee of VHQ) shall mortgage its interest in this Lease and its leasehold estate in the Premises, or any part or parts thereof as permitted by Section 16.01 above, the following provisions shall apply:

(a) No Amendment. There shall be no amendment, cancellation, termination, surrender or modification of this Lease by joint action of Landlord and VHQ without the prior

consent in writing of each holder of a lien against or an assignment of this Lease, notice of which has been served upon Landlord.

(b) Right to Notice of Default. Landlord shall, upon serving VHQ with any notice of default, simultaneously serve a copy of the notice upon any Leasehold Mortgagee(s).

(c) Right to Cure. Any Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of VHQ hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. Any Leasehold Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Leasehold Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by VHQ.

(d) Additional Cure Period. Anything contained in this Lease notwithstanding, if any default shall occur which, pursuant to any provision of this Lease, purportedly entitles Landlord to terminate this Lease, Landlord shall not be entitled to terminate this Lease as to any Leasehold Mortgagee, nor to disturb the right of possession of any subtenant of VHQ, and the notice shall be rendered void as to such parties, if the Leasehold Mortgagee, within sixty (60) days after expiration of the period within which VHQ was permitted to cure the default (or within ninety (90) days after receipt of the notice by the Leasehold Mortgagee if the default is not curable by VHQ), shall both:

(i) either (aa) cure the default if the same can be cured by the expenditure of money, or (bb) if the default or breach is not so curable, commence, or cause any trustee under the mortgage to commence, and thereafter to diligently pursue to completion steps and proceedings to foreclose on the interests covered by the mortgage to the satisfaction of Landlord; and

(ii) perform or cause the performance of all of the covenants and conditions of this Lease requiring the expenditure of money by VHQ (including all unpaid monetary obligations of VHQ under this Lease) until such time as the leasehold shall be sold upon foreclosure pursuant to the mortgage, or shall be released or reconveyed thereunder, or shall be transferred upon judicial foreclosure or by deed or assignment in lieu of foreclosure.

(e) Condition of Termination. All right of Landlord to terminate this Lease as the result of the occurrence of any default shall be subject to, and conditioned upon, Landlord having first given to each Leasehold Mortgagee written notice of the default as required under Section 16.03(b), above, and all Leasehold Mortgagees having failed to remedy such default or acquire VHQ's leasehold estate hereunder or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in Section 16.03(d), above.

(f) Loss Payable Endorsement. Landlord and VHQ agree that the name(s) of the Leasehold Mortgagee(s) shall, at such Leasehold Mortgagee's request, be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by VHQ under this Lease on condition that the insurance proceeds are to be applied in the manner specified in this Lease.

(g) No Consent to Foreclosure. Foreclosure of any Leasehold Mortgage, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate hereunder from VHQ to any Leasehold Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord and upon such foreclosure, Landlord shall recognize the transferee referred to in the preceding sentence in connection therewith as tenant hereunder. Following such foreclosure, any assignment, sale or subleasing by the transferee shall require the written consent of Landlord, not to be unreasonably withheld.

(h) Proceeds of Insurance and Condemnation. The proceeds from any insurance policies or arising from a condemnation award to VHQ shall be paid to and held by the Leasehold Mortgagee of highest priority and distributed pursuant to the provisions of this Lease (provided, such Leasehold Mortgagee shall disburse proceeds to be used for restoration as the restoration progresses and in a manner consistent with an institutional lender's procedures for disbursement of construction loan funds), except that the Leasehold Mortgagee(s) shall apply to the mortgage debt (in the order of priority) all of the proceeds not used to repair or restore the Premises and the improvements located thereon. The balance of any proceeds after such application shall be paid directly to VHQ.

(i) Notice of Proceedings. The parties hereto shall give all Leasehold Mortgagee(s) notice of any arbitration proceedings or condemnation proceedings involving VHQ's interest in the Premises, or of any pending adjustment of insurance claims, and any Leasehold Mortgagee shall have the right to intervene therein and shall be made a party to such proceedings. The parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to the proceedings, that Leasehold Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

(j) Further Protections. Landlord and VHQ shall cooperate in including in this Lease, by suitable amendment from time to time, any provision which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Section 16 and allowing that Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease. Landlord and VHQ each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that no such amendment shall in any way affect the term or rent under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease, and VHQ shall pay Landlord's reasonable costs in connection with such amendment.

16.04. Notice. If VHQ shall mortgage its interest in this Lease or its leasehold estate in the Premises, or any part or parts thereof, VHQ shall send to Landlord a true copy thereof, together with written notice specifying the name and address of the mortgagee(s) and the pertinent recording data with respect to such mortgage(s).

16.05. New Lease.

(a) Landlord agrees that in the event of termination of this Lease pursuant to any bankruptcy or other similar proceeding causing the termination of executory contracts or other similar agreements, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for VHQ or its property, Landlord if requested by any Leasehold Mortgagee will enter into a new lease of the Premises, with the most senior Leasehold Mortgagee requesting a new lease or its designee, for the remainder of the term, effective as of the date of such termination, at the rent and additional rent and upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Premises, provided:

(i) The Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty (60) days after such Leasehold Mortgagee receives written notice of such termination;

(ii) Within thirty (30) days after receipt of the new lease from Landlord complying with the terms of this Section 16.05, the Leasehold Mortgagee shall execute and deliver the new lease to Landlord and shall pay any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to this Lease but for its termination;

(iii) The Leasehold Mortgagee shall perform and observe all covenants herein contained on VHQ's part to be performed, and shall further remedy any other conditions which VHQ under the terminated Lease was obligated to perform under its terms, in each instance as and to the extent the same are curable or may be performed by the Leasehold Mortgagee;

(iv) The tenant under the new lease shall have the same right, title and interest in and to the buildings and improvements on the Premises as VHQ had under the terminated Lease immediately prior to its termination; and

(v) Notwithstanding anything to the contrary expressed or implied elsewhere in this Lease, any new lease made pursuant to this Section 16.05(a) shall enjoy the same priority in time as the Lease over any mortgage, deed of trust, or other lien, charge, or encumbrance on the Premises.

(b) Any new lease made pursuant to Section 16.05 (a) shall be accompanied by a conveyance from Landlord to the new tenant of title to the improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Landlord) for a term of years equal to the term of the new lease, subject to the reversion in favor of Landlord upon expiration or sooner termination of the new lease.

(c) Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to Section 16.05 (a), above, nor to cure any default of VHQ referred to above.

(d) If a Leasehold Mortgagee shall elect to demand a new lease, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove VHQ (or its successor) from the Premises, but not any subtenants of VHQ (or its successor) actually occupying the Premises, or any part thereof. Leasehold Mortgagee, as a condition of executing the new lease, shall pay all reasonable costs and expenses, including attorneys' fees and court costs, incurred by Landlord in terminating this Lease, recovering possession of the Premises and the Improvements from the representative of VHQ, and preparing the new lease.

(e) Unless and until Landlord has received notice from all Leasehold Mortgagees that the Leasehold Mortgagee elects not to demand a new lease as provided in Section 16.05 (a), above, or until the period therefor has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new subleases hereunder without the prior written consent of the Leasehold Mortgagee(s).

16.06. Assumption of Lease. Landlord agrees that in the event of termination of this Lease by reason of any default by VHQ, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for VHQ or its property, Leasehold Mortgagee may assume the Lease with VHQ pursuant to the terms and conditions set forth herein

16.07. Lender's Liability. In the event any Leasehold Mortgagee or any designee of it becomes the tenant under this Lease or under any new lease obtained pursuant to Section 16.05(a), above, the Leasehold Mortgagee or its designee shall be personally liable for the obligations of VHQ under this Lease only for the period of time that the Leasehold Mortgagee or its designee remains the actual beneficial holder of the leasehold estate hereunder. The Leasehold Mortgagee may sublease all or portions of the Premises or to assign the new lease with the consent of Landlord, not to be unreasonably withheld.

16.08. Definitions. The term "mortgage," whenever used herein, shall include whatever security instruments are used in the locale of the Premises, such as, without limitation, deeds of trust, security deeds, and conditional deeds. The term "mortgage," whenever used herein, shall also include any instruments required in connection with a sale-leaseback transaction. The term "mortgagee" shall include the holder of the secured position under each of the foregoing types of instruments, including but not limited to the beneficiary under a deed of trust, the secured party under a security agreement and the lessor in a sale-leaseback transaction.

16.09. Restriction on Easements and Encumbrances by Landlord. Without VHQ's consent (which may be withheld in its reasonable discretion), Landlord shall not (i) grant any easement, license or access rights over the Premises, or (ii) mortgage or otherwise encumber its interest in the Premises.

16.10. Quiet Enjoyment. Absent an uncured default by VHQ, Landlord agrees not to disturb the possession, interest or quiet enjoyment of VHQ in the Premises for any reason, or in a manner which would materially adversely affect any leasehold mortgage(s).

16.11. Notice to Leasehold Mortgagee. Whenever Landlord shall deliver any notice or demand to VHQ with respect to any breach or default by the tenant, Landlord shall at the same time deliver to each Leasehold Mortgagee of record (as defined in Section 2.2) a copy of such notice or demand, which shall describe the default(s) with reasonable detail.

17. DAMAGE TO PREMISES

17.01. In the event of damage to the Premises, VHQ shall promptly rebuild or repair the Premises, provided however that the Base Rental due hereunder shall be abated in proportion to the reduction in usable area contained within the Premises as the result of such damage.

18. CONDEMNATION OF THE PREMISES

In the event that all of the Premises is taken by eminent domain by any governmental entity (hereinafter referred to as a "Taking"), then this Lease automatically shall terminate on the effective date of the completion of such Taking, or on such earlier date as tenant determines that it is not commercially practicable to continue business operations in the Premises by written notice to the County delivered not more than thirty (30) days after the date of VHQ's receipt of written notice of the final order of such Taking, and upon delivery of such notice, this Lease shall be deemed terminated as of the earlier of (i) the date set forth in VHQ's notice or (ii) the date of the Taking. In the event that a portion of the Premise the subject of a Taking, so long as the remaining portion of the Premises is reasonably suitable, in the reasonable discretion of VHQ, for the continued operation of VHQ's (or any subtenant's) business therein, then this Lease shall remain in full force and effect notwithstanding the Taking, provided however that the Base Rental due hereunder shall be abated in proportion to the reduction in usable area contained within the Premises as the result of such a Taking. In the event of a partial Taking of the Premises, County shall repair or rebuild the Premises to the extent necessary for VHQ's reasonable use of the Premises (but County shall not be obligated to spend more than the amount of the condemnation award received by County attributable to the taken portion of the Premises), and Base Rental due hereunder shall be abated in proportion to the reduction in availability of the Premises during such repair. In the event that, upon a Taking of a portion of the Premises the remaining portion of the Premises shall not be reasonably suitable, in the reasonable discretion of VHQ, for the continued operation of VHQ's (or any subtenant's) business therein, VHQ may give written notice to County delivered not more than thirty (30) days after the date of VHQ's receipt of written notice of the final order of such Taking, and upon delivery of such notice, this Lease shall be deemed terminated as of the earlier of (i) the date set forth in VHQ's notice or (ii) the date of the Taking

The condemnation awards or compensation attributable to a Taking of the Premises or any portion thereof (with the exception of relocation benefits that are due and payable to VHQ as a tenant of the Premises or any sub-lessee of VHQ, which relocation benefits shall be paid to the party subject to such relocation) shall be payable as follows:

First – to the Leasehold Mortgagee, in payment of any indebtedness secured by the Premises, up to the amount of such indebtedness; and

Second – the remaining balance shall be payable to the County.

19. GENERAL PROVISIONS

19.01. All of the provisions of this Lease shall be deemed as running with the land, and construed to be "conditions" as well as the "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

19.02. Whenever County's approval is required under any provision of this Lease, it shall be defined that County's approval shall not be unreasonably withheld, unless specifically stated otherwise herein.

19.03. No delay or failure by either County or VHQ to insist upon the strict performance by the other of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such covenant, agreement, term or condition. To be effective, any waiver must be in writing and signed by the waiving party. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement, and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach. The subsequent acceptance of rent hereunder by County shall not be deemed to be a waiver of any preceding breach by VHQ of any term, covenant or condition of this Lease, other than the failure of VHQ to pay the particular rental so accepted, regardless of County's knowledge of such pre-existing breach at the time of acceptance of such rent.

19.04. Time is of the essence of this Lease, and of each provision.

19.05. The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday, and then it is also excluded. The term "holiday" shall mean all holidays specified in Sections 6700 and 6701 of the Government Code.

19.06. Each and all of the covenants, conditions, and restrictions in this Lease shall inure to the benefit of and shall be binding upon the successors in interest of County, and subject to the restrictions against assignment contained herein, the authorized encumbrances, assignees, transferees, subtenants, licensees, and other successors in interest of VHQ.

19.07. This Lease contains the entire agreement of the parties with respect to the matters covered, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Lease shall be binding or valid.

19.08. If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

19.09. Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of association between County and VHQ, and neither the method of computation of rent nor any other provisions contained in this Lease nor any acts of the parties shall be deemed to create any relationship between County and VHQ, other than the relationship of landlord and tenant.

19.10. The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not strictly for or against County or VHQ. Unless otherwise provided in this Lease, or unless the context otherwise requires, the following definitions and rules of construction shall apply.

(a) In this Lease the neuter gender includes the feminine and masculine, and the singular number includes the plural, and the word "person" includes corporation, partnership, limited liability company, firm, or association wherever the context so requires.

(b) "Shall", "will", and "agrees" are mandatory, "may" is permissive.

(c) Captions of the articles, sections, and paragraphs of this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning to the provisions of this Lease.

(d) All references to the term of this Lease or the Lease term shall include any extensions of such term.

19.11. Should either party commence any legal action or proceeding against the other based on this Lease, the prevailing party shall be entitled to an award of attorneys' fees.

19.12. This Lease is not subject to modification except in writing, signed by all parties hereto.

19.13. All notices, demands, or requests from one party to another may be personally delivered or sent by mail, certified, registered, postage, prepaid, to the addresses stated in paragraph 19.14 and shall be deemed to have given at the time of personal delivery or at the time of mailing.

19.14. All notices, demands, or requests from VHQ to County shall be given to County at:

Riverside County Economic Development Agency
3403 10th Street, Suite 400
Riverside, CA 92501
951) 955-9011
951) 955-6686 (Fax)
Attn: Real Estate Division

All notices, demands, requests from County to VHQ shall be given to VHQ at:

Vail Headquarters, LLC
281 S Thomas St, St 504
Pomona, CA 91766
Attn: Gerald B. Tessier, Manager

Each party shall have the right, from time to time, to designate a different address by notice given in conformity with this section.

19.15. VHQ shall, within fifteen (15) days following request therefore, execute and deliver to County (or any prospective lender or purchaser) an estoppel certificate containing such information and certifications as County (or such lender or purchaser) may reasonably request in writing. County shall provide a sample form of such certificate at the time such request is made.

19.16. County reserves the right at all reasonable times and upon reasonable notice to VHQ to enter the Premises to inspect the Premises, post notices of nonresponsibility and to otherwise exercise its rights hereunder (however, no notice shall be required in an emergency).

19.17. County and VHQ, promptly following the mutual execution and delivery of this Lease, shall cause a memorandum of this Lease in such form as is mutually acceptable to County and VHQ to be recorded in the official records of the County.

19.18. Notwithstanding anything in this Lease to the contrary, County's liability to the tenant under this Lease shall be limited solely and exclusively to County's interest in the Premises and no other property of County.All attachments and exhibits to this Lease, as now existing and as the same may from time to time be modified with the mutual approval of the parties hereto, are incorporated herein by this reference. EFFECTIVE DATE

19.19. The effective date of this Lease is the date of recordation of the Grant Deed transferring the property to the County.

SIGNATURES ON FOLLOWING PAGE

This Lease has been executed by the parties in multiple original counterparts on this 1st day of November, 2016.

COUNTY OF RIVERSIDE,
a political subdivision of the State of California

By: ______________________
John J. Benoit, Chairman
Board of Supervisors

VAIL HEADQUARTERS, LLC,
a California limited liability company

By: ______________________
Gerald B. Tessier
Its: Manager

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: ______________________
Deputy

APPROVED AS TO FORM:
Gregory P. Priamos
County Counsel

By: ______________________
R. Todd Frahm
Deputy County Counsel

CAO:tg/101816/205FM/18.481

Exhibit A

EXHIBIT "B"

Offer to Dedicate Agreement and all subsequent Amendments

OFFER TO DEDICATE AND LEASE AGREEMENT

By and Between

THE COUNTY OF RIVERSIDE,

"County"

and

REDHAWK TOWNE CENTER, LLC,

"Developer"

OFFER TO DEDICATE AND LEASE AGREEMENT

THIS OFFER TO DEDICATE AND LEASE AGREEMENT (the "Agreement") is entered into as of this __ day of ______, 2003, by and between the County of Riverside (the "County"), a political subdivision of the State of California, and Redhawk Towne Center, LLC, a Delaware limited liability company (the "Developer"), with reference to the following:

RECITALS

A. **WHEREAS**, the County, MDC Vail, a California general partnership ("Vail"), and Explorer Insurance Company entered into that certain Settlement Agreement (the "January Settlement Agreement"), dated as of January 27, 1998, which settlement agreement is attached hereto as Exhibit "A" and incorporated herein by this reference.

B. **WHEREAS**, the County, Vail, and others entered into that certain Settlement Agreement (the "June Settlement Agreement"), dated as of June 23, 1998, which settlement agreement is attached hereto as Exhibit "B" and incorporated herein by this reference.

C. **WHEREAS**, Vail has completed, and the County has accepted, Vail's Restoration Activities as that term is defined in Section 2.1 of the June Settlement Agreement.

D. **WHEREAS**, the Developer, as successor in interest to Vail, is the owner of record of certain real property (the "Developer Site") consisting of 43.5 +/- acres located in Riverside County, which Developer Site is described on Exhibit "C" attached hereto and incorporated by this reference.

E. **WHEREAS**, the Developer, as successor in interest to Vail, is also the owner of certain real property (the "Historic Site") consisting of 4 acres contiguous to the Developer Site, which Historic Site is described on Exhibit "D" attached hereto and incorporated herein by this reference.

F. **WHEREAS**, the Developer desires to offer to dedicate and convey the Historic Site to the County and the County desires to accept the Developer's offer to dedicate and convey the Historic Site, pursuant to the terms and conditions set forth herein.

G. **WHEREAS**, the County desires to lease the Historic Site to the Developer and the Developer desires to lease the Historic Site from the County, pursuant to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

Section 1. **Incorporation of Recitals**. The Recitals are incorporated herein by this reference and the parties agree that the facts recited above are true and correct.

Section 2. **Definitions**.

Unless the context otherwise requires, the terms defined in this Section 2 shall, for all purposes of this Agreement, have the meanings herein specified.

(a) "Agreement" shall mean this Offer to Dedicate and Lease Agreement.

(b) "Commencement Date" shall mean the date that the Developer records the grant deed conveying fee title to the Historic Site to the County.

(c) "County" shall mean the County of Riverside, California, a political subdivision of the State of California, and its successors and assigns.

(d) "Developer" shall mean Redhawk Towne Center, LLC, a Delaware limited liability company, and its successors and assigns.

(e) "Developer Lease" shall mean the lease agreement described in Section 5 hereof.

(f) "Developer Site Project" shall mean the development of the regional shopping facility and related improvements to be located on the Developer Site.

(g) "Historic Site Project" shall mean the design and construction of the Restoration Improvements to be located on the Historic Site.

(h) "Land Use Approvals" shall mean Specific Plan No. 223 and other land use approvals applicable to the Developer Site Project and the Historic Site Project.

(i) "Project Sites" shall mean the Historic Site and the Developer Site.

(j) "Restoration Improvements" shall mean the development of the Historic Site for commercial uses within the parameters of the Land Use Approvals.

(k) "Sales and Use Tax" shall mean the sales and use tax imposed and received by the County under authority granted to the County pursuant to Section 7201 of the California Revenue and Taxation Code. In the event that the Project Sites or any portion thereof are annexed into any city, then "Sales and Use Tax" for purposes of this Agreement shall also include any sales and use tax imposed by such annexing city

under authority granted to such city pursuant to Section 7202(h) of the California Revenue and Taxation Code.

(l) "Sales and Use Tax Revenues" shall mean any revenues collected by the County, or any annexing city that has or shall have entered into a sales tax sharing agreement with the County in a form reasonably satisfactory to the County, pursuant to Sales and Use Tax, as described above, from all or any portion of the Project Sites.

Section 3. **Offer to Dedicate Historic Site.**

The Developer shall submit to the County, no later than thirty (30) days after the full execution of this Agreement (the "Effective Date"), an application for approval of a plot plan (the "Plot Plan") for the Historic Site. Upon receipt of said application, the County agrees to complete its processing of same within ninety (90) days of the Effective Date of this Agreement. Immediately upon the County's approval of the Plot Plan for the Historic Site, Developer shall make an irrevocable offer of dedication to the County of the Historic Site. The Developer hereby agrees to offer to dedicate and convey to the County, and the County hereby agrees to accept the Developer's offer of dedication and conveyance of, the Historic Site "as is, where is" and subject to the terms and conditions of this Agreement. The County acknowledges and agrees that the dedication and conveyance of the Historic Site shall constitute a gift by the Developer to the County. Conveyance to the County of fee title to the Historic Site shall be free and clear of all liens, easements, and encumbrances except those approved in writing by the County, and all taxes and assessments shall be paid current as of the date of dedication.

Section 4. **Conditions Precedent.** The County's acceptance of the offer of dedication and the Developer's obligation to convey the Historic Site pursuant to said offer of dedication are expressly contingent upon the satisfaction or waiver of each of the following conditions:

(a) **County Approvals of Historic Site Project.** The Developer shall have obtained any and all required and discretionary approvals for design and construction of the Historic Site Project, including, without limitation, the Plot Plan, which approvals shall be to the reasonable satisfaction of the Developer, and all such approvals shall have become final and shall not be subject to any appeal or litigation of any kind or description.

(b) **Approval and Execution of the Agreement.** The Developer and the County shall have entered into this Agreement, and the County's approval and execution of this Agreement shall have become final and shall not be subject to any appeal or litigation of any kind or description.

(c) **Acceptance of Restoration Improvements.** The County shall have approved the completed Restoration Improvements; provided, however, that the County shall not unreasonably withhold such approval.

(d) **County Sublease**. The Developer and the County shall have entered into the County Sublease (as defined herein), and the County's approval and execution of the County Sublease shall have become final and shall not be subject to any appeal or litigation of any kind or description.

In the event each of the foregoing conditions precedent is not satisfied or waived by the fifth (5th) anniversary of the Effective Date of this Agreement, this Agreement shall terminate and shall have no further force or effect.

Section 5. Developer Lease. Immediately upon the County accepting the conveyance of the Historic Site, the County hereby agrees to lease to the Developer, and the Developer hereby agrees to lease from the County, the Historic Site (the "Developer Lease") on the following terms and conditions:

(a) Rent. Rent shall be the sum of $1.00 per year, paid in advance by the Developer to the County on the first day of each lease year of the Developer Lease.

(b) Term. The term of the Developer Lease shall commence on the Commencement Date and shall continue for a term of thirty (30) years (the "Initial Term"), unless earlier terminated in accordance with the terms and conditions of this Agreement. Upon the expiration of the Initial Term and provided that the Developer is not then in default under the terms of this Agreement or the terms of the Developer Lease, the term of the Developer Lease shall be extended automatically for one additional ten (10) year term (the "First Extension"). Upon the expiration of the First Extension and provided that the Developer is not then in default under the terms of this Agreement or the terms of the Developer Lease, the term of the Developer Lease shall be extended automatically for one additional nine (9) year term (the "Second Extension"). All extensions of the Developer Lease shall be on the same terms and conditions as set forth herein for the Developer Lease. The Initial Term, the First Extension, and the Second Extension shall sometimes be referred to herein collectively as the "Term."

To the extent the Term of the Developer Lease is extended automatically pursuant to this Section 5(b), the term of the County Sublease shall also be extended automatically and for the same periods of extension.

(c) Use. The Developer shall use the Historic Site for commercial purposes consistent with the Land Use Approvals and the terms of this Agreement. Any such use shall not materially interfere with or diminish the historical significance of the Historic Site, and shall be approved in advance by the County, in the exercise of its reasonable discretion. The Developer may also sublease all or any portion of the Historic Site so long as such subleases do not materially interfere with or detract from the Historic Site or the Restoration Improvements.

(d) Restoration, Maintenance, and Repair of Historic Site. As material consideration for the Developer Lease, the Developer shall, at its sole cost and expense, complete or cause to be completed the Restoration Improvements. The

Developer shall own all right, title, and interest in and to the Restoration Improvements during the Term of the Developer Lease.

(e) **Off-Site Improvements**. As material consideration for the Developer Lease, Developer shall, at its sole cost and expense, construct or cause to be constructed those certain off-site improvements (the "Off-Site Improvements") described on Exhibit "E" attached hereto and incorporated herein by this reference. Upon the Developer's completion of such construction, the County agrees to reimburse the Developer in an amount equal to the actual cost of designing and constructing the Off-Site Improvements; provided, however, that such reimbursement shall not exceed a maximum of Three Hundred Thousand Dollars ($300,000.00) (the "Off-Site Reimbursement"). The County shall pay the Off-Site Reimbursement to the Developer within thirty (30) days of the County's receipt of all of the following:

(1) Summary of all costs incurred and paid by Developer for the design and installation of the Off-Site Improvements along with supporting documentation for such costs including but not limited to: contracts and subcontracts for work performed, invoices from contractors and subcontractors, and proof of payment of such invoices.

(2) Waivers of lien from all contractors, subcontractors and or materialmen furnishing labor or materials used in the design and/or construction of the Off-Site Improvements.

(3) A certificate of completion issued by all appropriate agencies of Riverside County and/or any applicable utility providers with jurisdiction over the Off-Site Improvements.

(f) **Maintenance and Repair**. Throughout the Term of the Developer Lease, the Developer shall keep the Historic Site or cause the Historic Site to be kept in good repair at the Developer's sole cost and expense, and shall not permit the Historic Site to deteriorate or depreciate in value or historical significance by any act or omission of the Developer or its employees or agents, normal wear and tear excepted. The Developer shall keep the Historic Site in a clean, sanitary and presentable condition and not allow refuse or debris to accumulate thereon, nor shall the Developer cause or permit waste on the Historic Site throughout the Term of the Developer Lease. All repairs and maintenance required on the Historic Site during the Term of the Developer Lease shall be done by the Developer in a good workmanlike manner. No changes or alterations in the Historic Site shall be made by the Developer without the County's prior written consent, which consent shall not be unreasonably withheld; provided, however, that the County's disapproval shall be deemed reasonable with regard to any such modifications which, in the reasonable judgment of the County, would materially interfere with or diminish the historical significance of the Historic Site.

If, during the Term of the Developer Lease, any additions, alterations or improvements in or to the Historic Site, as distinguished from repairs, are required by any governmental authority or any law, ordinance, or governmental regulation because of the use to which the Historic Site is put by the Developer, they shall be made and

paid for by the Developer. Any other such additions, alterations or improvements shall be made and paid for by the County.

Notwithstanding any of the foregoing to the contrary, the Developer's obligations hereunder with respect to the maintenance and repair of the Historic Site shall not apply to the County Sublease Property (as defined herein). The obligations of the Developer and the County with respect to the maintenance and repair of the County Sublease Property shall be as set forth in the terms and conditions of the County Sublease.

(g) **Taxes and Liens.** The Developer agrees to and shall pay when due, throughout the Term of the Developer Lease, all property taxes, possessory interest taxes, assessments and levies of any type attributable to the Historic Site and any and all improvements located thereon.

Notwithstanding any of the foregoing to the contrary, the Developer's obligations hereunder with respect to the payment of taxes, liens, and assessments attributable to the Historic Site shall not apply to the County Sublease Property. The obligations of the Developer and the County with respect to the payment of taxes, liens, and assessments attributable to the County Sublease Property shall be as set forth in the terms and conditions of the County Sublease.

(h) **Insurance.** Throughout the Term of the Developer Lease, the Developer shall provide, at its sole cost and expense, comprehensive public liability insurance in an amount not less than Two Million Dollars ($2,000,000) single limit bodily injury and property damage, each occurrence to cover all situations where any person claims personal injury, death, property damage, or commercial loss, occurring on or about the Historic Site or arising from the Developer's use, occupancy or operation of thereof; and Workers' Compensation in at least the statutory amounts with respect to any work on or about the Historic Site. With respect to all insurance carried by the Developer, the County shall be named as an additional insured, and all such policies of insurance shall provide that they may not be canceled or amended except after not less than thirty (30) days prior written notice thereof to the County. The liability insurance policy shall contain endorsements (i) waiving rights of subrogation against each named insured and (ii) cancellation or reduction in the amount of coverage. The Developer shall deliver, as a condition precedent to its taking occupancy of the Historic Site under the terms of the Developer Lease, certificates evidencing such insurance, and upon renewal of said policy each year, the Developer shall provide to the County a renewal certificate evidencing the continuous coverage required under this paragraph.

(i) **Hazardous Materials.** The Developer shall keep and maintain the Historic Site in compliance with, and shall not cause or permit the Historic Site to be in violation of, any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Historic Site including, but not limited to, soil and ground water conditions.

(j) **County License of Historic Site**. The Developer hereby grants a non-exclusive license to the County to permit the outside areas within the Historic Site (the "Outside Areas") to be available for use, free of charge, to the Vail Ranch Historical Society, the Riverside County Historical Society, the Riverside County Parks and Recreation Department and other non-profit organizations involved in historic preservation or education and approved by the County; provided, however, that the County or any such organization shall deliver to the Developer a request for such a license not less than sixty (60) days before the date of the requested use of the Outside Areas; and provided further that the Developer shall have no obligation to grant any request for a license if the Developer determines, in its reasonable discretion, that such request would materially interfere with the operations of the businesses located on the Historic Site. Not later than twenty (20) days after the Developer's receipt of a written request for use of the Outside Areas under the license provided for herein, the Developer shall provide in writing its approval or rejection of the requested use and shall concurrently provide the County with a copy of such approval or rejection. The license shall be in substantially the same form as the license attached hereto as Exhibit "F" and incorporated herein by this reference. The Outside Areas shall be in the location depicted on the map attached hereto as Exhibit "G" and incorporated herein by this reference.

(k) **Liability.**

(1) The County shall not be liable to the Developer, or to the Developer's employees, invitees, agents, servants, or visitors, for any injury to persons or damage to property except for such injuries or damages which result directly or indirectly from any act or omission on the part of the County. Further, the Developer shall indemnify and hold the County, its agents, servants, employees, and officials harmless from and against all demands, suits, actions, fines, liabilities, losses, damages, costs and expenses (including legal expenses) which the County may incur or become liable for as a result of (i) any breach of the Developer Lease by the Developer, its agents, employees or officers, contractors, invitees or licensees; or (ii) any act or omission of the Developer, its agents, employees, officers, contractors, invitees of licensees, including, but not limited to, any uncured breach of the Developer's representations herein; or (iii) any injury to property or persons occurring on the Historic Site that arises from any act or omission of the Developer.

(2) The Developer shall not be liable to the County, or to the County's employees, invitees, agents, servants, or visitors, for any injury to persons or damage to property except for such injuries or damages which result directly or indirectly from any act or omission on the part of the Developer. Further, the County shall indemnify and hold the Developer, its agents, servants, employees, and officials harmless from and against all demands, suits, actions, fines, liabilities, losses, damages, costs and expenses (including legal expenses) which the Developer may incur or become liable for as a result of (i) any breach of this Developer Lease by the County, its agents, employees or officers, contractors, invitees or licensees; or (ii) any act or omission of the County, its agents, employees, officers, contractors, invitees of licensees, including, but not limited to, any uncured breach of the County's representations herein, or (iii) any

injury to property or persons occurring on the Historic Site that arises from any act or omission of the County.

(l) Title to Improvements. Upon expiration or termination of the Developer Lease, title to all improvements located in or on any part of the Historic Site, including the Restoration Improvements, shall be conveyed to the County. Notwithstanding the foregoing any modifications or improvements installed by the Developer or its sublessees which constitute trade fixtures may be removed by the Developer or such sublessees prior to the expiration or termination of the Developer Lease; and provided further that the Developer and/or its sublessees shall repair any damage caused to the Historic Site as the result of such removal. Any trade fixtures not so removed prior to the expiration or termination of the Developer Lease shall thereafter be the sole property of the County, or the County, at its option, may require removal of such trade fixtures, and to the extent that the Developer fails to so remove such trade fixtures upon the County's demand, the County may remove such trade fixtures from the Historic Site and store such fixtures, all at the sole cost and expense of the Developer. Upon expiration of the Developer Lease, Developer shall execute any and all documents reasonably necessary to effect the conveyance of such improvements, including the Restoration Improvements, to the County.

Section 6. Encumbrances. Throughout the Term of the Developer Lease, the Developer shall not encumber or permit the encumbrance of the County's underlying fee simple interest in the Historic Site. The Developer shall not, during the Term of the Developer Lease, encumber the Historic Site, the Restoration Improvements or its interests in this Agreement or the County Sublease except with the prior written consent of the County, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the County shall not be required to approve any encumbrance on the Historic Site, the Restoration Improvements or on Developer's interest in this Agreement or the County Sublease if such encumbrance secures an obligation, the amount of which exceeds the total cost of constructing the Restoration Improvements. In the event that the Developer defaults under any loan secured by the Historic Site, the Restoration Improvements or the Developer's interest in this Agreement or the County Sublease, the County shall have the right, but not the obligation, to cure said default, and the cost of such cure shall be deemed a credit against the Maximum Rent payable under the County Sublease.

Section 7. Implementation of Restoration Improvements.

(a) Developer's Obligations. As a material part of its obligations under the terms of the Developer Lease, the Developer shall finance and construct on the Historic Site all of the Restoration Improvements as described in Section 2(j) above. The Developer shall commence construction of the Restoration Improvements no later than one hundred eighty (180) days after the County approves the Plot Plan described in Section 3 hereof. Construction of the Restoration Improvements and the Off-Site Improvements shall be completed no later than two (2) years from the commencement of such construction. In connection with the financing and construction of the Restoration Improvements, the Developer shall do the following:

(1) Prepare detailed plans and specifications for the Restoration Improvements in accordance with the County standards and submit such plans and specifications to the appropriate County departments and the County designated agencies for review, including, but not limited to, the Riverside County Historical Society, the Riverside County Historical Commission and the Riverside County Department of Parks and Recreation. No modifications shall occur to the Historic Site which have not been approved in advance by the County or which would detract from the historical significance of the Historic Site.

(2) Provide the County with twenty (20) days written notice prior to the commencement of construction of the Restoration Improvements in order to permit the County to post notices of non-responsibility.

(3) Secure all necessary licenses, permits, rights of way, and rights of entry as may be reasonably necessary for construction of the Restoration Improvements.

(4) Provide workers' compensation insurance for all of the Developer's employees working on construction, in amounts as required by California law.

(5) Provide and maintain comprehensive liability insurance which shall name both the Developer and the County as insureds, and which shall provide coverage from personal injury claims, including accidental and/or wrongful death, and claims for property damage which may arise directly or indirectly from the Developer's construction work, or the performance of the Developer's obligations hereunder, whether such construction and performance is done by the Developer, or any contractor, subcontractor or other party employed directly or indirectly by any of them; such insurance shall provide for limits of not less than $2,000,000 per occurrence and shall further provide that the issuing company may not cancel, modify or terminate coverage unless it shall have given the County thirty (30) days' prior written notice of such cancellation, termination or modification. The Developer shall assure that the insurance required by this section shall remain in full force and effect throughout the construction of the Restoration Improvements, and the Developer's failure to do so shall be deemed a material breach of this Agreement and the Developer Lease.

(6) As soon as possible after the Commencement Date, the Developer shall work cooperatively with the County to modify Assessment District No. 159 such that the assessment applicable to the Historic Site immediately prior to the County acquisition of said site shall be removed from the Historic Site, and instead be proportionately spread over the Developer Site. The Developer agrees, for itself and its heirs, successors and assigns, that it shall support such modification to Assessment District No. 159 and shall pay all applicable assessments coming due thereunder during the term of this Agreement and/or the Developer Lease to the extent that such assessments are related to the Historic Site either before or after any modification to said assessment district.

(b) **County's Obligations**. In connection with the Developer's construction of the Restoration Improvements, the County shall do the following:

(1) Review and approve the plans and specifications for the Restoration Improvements prepared by the Developer in a timely manner prior to the commencement of construction.

(2) Inspect the construction of the Restoration Improvements as required.

(3) Cooperate with the Developer, at no cost to the County, to complete all actions necessary to obtain a redistribution of Assessment District No. 159 such that the portion of assessments under said Assessment District applicable to the Historic Site shall be removed and redistributed to the Developer Site.

Section 8. County Sublease.

(a) **Sublease.** Upon completion of the Restoration Improvements and acceptance thereof by the County, the term of the sublease agreement between the Developer and the County (the "County Sublease") shall commence. The property subject to the County Sublease shall be approximately 1,136 of the Implement Barn located on the Developer Site and approximately 730 square feet of space within the Restoration Improvements, as depicted on Exhibit "H" attached hereto and incorporated herein by this reference, along with reciprocal access easements over public access areas and public parking areas on and surrounding the Restoration Improvements to permit the County the full use and enjoyment of the subleased property (collectively, the "County Sublease Property"). The form of the County Sublease shall be approved by the Developer and the County within thirty (30) days of the Effective Date of this Agreement. The terms and conditions of the County Sublease shall be consistent with the terms therefor set forth herein.

(b) **Rent**. As rent for the County Sublease, the County shall pay to the Developer an amount equal to fifty percent (50%) of the Sales and Use Tax actually received by the County from business done on the Developer Site during the term of the County Sublease. . In the event that the Developer Site is annexed into any City during the term of the County Sublease, then the amount due from the County, as rent hereunder, after the effective date of such annexation shall not exceed the greater of: (a) the amount of Sales and Use Tax actually received by the County from the Developer Site Project after the date of such annexation, or (b) fifty (50%) of the Sales and Use Tax generated by the Developer Site Project. The foregoing notwithstanding in no event shall the total amount of rent due under the County Sublease, including any extended term thereof, exceed the total of the Principal Component and the Interest Component, as those terms are defined in this Section 8(b). The term "Principal Component" shall mean the lesser of: (i) Three Million Two Hundred Thousand Dollars ($3,200,000.00), plus the costs of any processing, building permit, plan check or other fees charged by the County in connection with the Restoration Improvements, and less the amount of the actual Off-Sites Reimbursement, or (ii) the actual amount of

expenditures incurred by the Developer in connection with the construction of the Restoration Improvements. The "Interest Component" shall be interest on the Principal Component, calculated at the rate of five percent (5%) per annum simple interest, with interest calculated from the Commencement Date of this Agreement or the date(s) such amounts are expended by the Developer for the purpose of constructing the Restoration Improvements, whichever is later. In each calendar month that the Developer actually pays the expenditures, or portions thereof, representing the Principal Component, the Developer shall aggregate such payments as of the end of such month, and the interest provided for in this Section 8(b) shall begin to accrue on such aggregated expenditures on the first day of the immediately following month.

(c) <u>Limit on Total Rent Payments</u>. Notwithstanding anything to the contrary herein, the aggregate rent payments payable by the County to the Developer during the term of the County Sublease, including any and all extensions thereof, shall not exceed the full amount of the Principal Component and the applicable Interest Component, as such terms are defined in Section 8(b) hereof (The Principal Component and Interest Component as defined herein are collectively referred to hereinafter as the "Maximum Sublease Rent"). In the event that the Maximum Sublease Rent under the County Sublease is paid before expiration or termination of the County Sublease, then the County Sublease shall remain in effect in accordance with its terms; provided, however, that no further rent shall be due thereunder. The parties hereto have determined that the Maximum Sublease Rent constitutes the fair rental value of the County Sublease Property, giving consideration to the costs of acquisition, construction and financing of the Historic Site and the Restoration Improvements and the benefits therefrom which will accrue to the parties to this Agreement and to the general public in Riverside County by reason of the construction of the Restoration Improvements.

The obligation of the County to pay rent under the County Sublease is a special and not a general obligation of the County, and such rent shall be payable solely from the Sales and Use Tax Revenues actually received by the County from businesses and activities on the Project Sites. Notwithstanding anything contained herein to the contrary, if the State of California's allocation of Sales and Use Tax Revenues to the County is changed from the formula used as of the date of this Agreement, the parties each agree to meet in good faith to revise this Agreement to reflect as closely as possible the original intent of the parties hereto.

(d) <u>Escrow of Sales and Use Tax Revenues</u>. The parties acknowledge and agree that under and subject to the terms and conditions of the County Sublease, the County will pay as the rent an amount equal to fifty percent (50%) of all Sales and Use Tax Revenues generated by the Developer Site as described in subparagraph (b) above, up to the Maximum Sublease Rent. The parties further acknowledge and agree that it is anticipated that all or a portion of the Developer Site Project will be completed and will begin generating Sales and Use Tax Revenues before the Historic Site Project is completed. The parties therefore agree that to the extent the Developer Site Project begins generating Sales and Use Tax Revenues before the County Sublease goes into effect, the County shall deposit into a County trust fund account (the "Escrow Account"), all of the Sales and Use Tax Revenues that would be payable to the Developer as rent

as if the County Sublease were in effect. The parties further agree that on the date the term of the County Sublease commences, the County shall disburse to the Developer all of the funds in the Escrow Account, including all accrued interest. The Developer shall apply the funds so disbursed against the Maximum Sublease Rent.

(e) Term of County Sublease. The initial term of the County Sublease shall coincide with the then remaining Initial Term of the Developer Lease. Upon expiration of the initial term of the County Sublease and provided the Developer is not then in default under the terms of the Developer Lease or the County Sublease, the County Sublease shall automatically renew for one additional ten (10) year term on the same terms and conditions ("First Sublease Extended Term"). Upon the expiration of the First Sublease Extended Term and provided the Developer is not then in default under the terms of the Developer Lease or the County Sublease, the County Sublease will be extended for one additional nine (9) year term ("Second Sublease Extended Term") under the same terms and conditions. The foregoing notwithstanding, upon Developer's receipt from the County of the Maximum Sublease Rent, whether that receipt occurs during the initial term of the County Sublease, the First Sublease Extended Term or the Second Sublease Extended Term, then although the County Sublease remains in effect, no further rent shall be due thereafter under the County Sublease. If the County believes that the Developer is in default under either the Developer Lease or the County Sublease, then the County shall give written notice to the Developer specifying the nature of the default, which notice shall be given to the Developer no later than six (6) months prior to the expiration of the then applicable term of the Developer Lease and the County Sublease. If, during the six months after such a notice, the Developer cures, or if such default cannot be cured with the six-month period, the Developer commences and diligently continues its efforts to cure, the stated default to the County's reasonable satisfaction, then the Developer shall be entitled to the automatic extensions of the term of the County Sublease and the Developer Lease as described in this Agreement. If, on the other hand, the Developer fails to cure or to commence its efforts to cure the noticed default within six months of receipt of said notice, then the Developer Lease and the County Sublease shall both terminate, the Historic Site and the Restoration Improvements shall become the property of the County, and the County shall have no further obligation to the Developer under the terms of either the Developer Lease or the County Sublease.

(f) Required Records. Until the County has paid the Developer the Maximum Sublease Rent, the Developer shall provide, or shall use its reasonable best efforts to cause each business or activity located on the Project Sites to provide, to the County all of the information required by the "Information Sheet on Sales and Use Tax Reporting and Information Required by the County of Riverside," a copy of which is attached hereto as Exhibit "I" and incorporated herein by this reference. It shall be an obligation of the Developer to so provide the information to the County in a timely manner and to use its reasonable best efforts to keep the information accurate. Failure to provide the required information in a timely manner may, at the reasonable discretion of the County, result in a delay of that portion of Maximum Sublease Rent applicable to any such business or activity that has failed to provide the required information. The County shall maintain sufficient records and accounts to identify separately all Sales

and Use Tax Revenues paid to it from the businesses and activities located on the Project Sites, and shall provide to the Developer, at the time of making each payment of the rent for the County Sublease, a written accounting with respect to each such payment.

(g) **Maintenance, Repairs and Taxes for the County Sublease Property**. Throughout the term of the County Sublease, Developer shall, at its sole cost and expense, maintain and keep in good repair all exterior and structural portions of the County Sublease Property in accordance with the standards set forth in Section 5(e) of this Agreement. During the term of the County Sublease, Developer further agrees that it shall pay all taxes and assessments on the County Sublease Property in accordance with the provisions of Section 5(g) hereof. During the term of the County Sublease, the County shall be responsible for all interior maintenance, including plumbing and electrical repairs for those systems wholly contained within the County Sublease Property, and non-structural repairs on the interior of the County Sublease Property. County shall pay for or cause to be paid, all utility charges for the County's use of the County Sublease Property, including but not limited to electric, gas, phone and trash removal. In the event that such utilities are not separately metered, then the County agrees to pay to Developer, its proportionate share of such costs based on the amount of square feet of leasable space within each area covered by such utility billings. Any such payments shall be due to Developer within fifteen (15) days of the County's receipt of billing for same, showing the allocation of utility costs.

Section 9. Representations, Warranties and Covenants of the County. The County represents, warrants, and covenants as follows:

(a) **Due Organization and Authority.** The County is a duly organized and validly existing political subdivision of the State of California, and has all necessary power and authority to carry on its business as it is now being conducted. The County has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, and no approvals or consents of any person or entity other than the County is necessary in connection with it. The execution and delivery of this Agreement and the documents related hereto by the County have been duly authorized by all necessary governmental action of the County, and the persons executing this Agreement on behalf of the County have the authority to do so. This Agreement and the documents related hereto, when executed and delivered, shall constitute a legal, valid and binding obligation of the County enforceable against it in accordance with their terms.

(b) **No Consents or Notices.** The County is not required to submit any notice, report or other filing to any governmental or regulatory authority required to be obtained by any of the foregoing in connection with the execution or delivery by the County of this Agreement or the documents related hereto, or in connection with the consummation of the transactions contemplated hereby.

(c) **No Litigation**. There are no actions, suits, proceedings, arbitrations, investigations or claims pending or, to the knowledge of the County after due inquiry,

threatened against or affecting the County, at law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign which would have a materially adverse effect on the County's ability to enter into this Agreement or to perform its obligations hereunder, and the County knows of no basis of or grounds for any such investigation, action, suit, proceeding, or claim against any of them nor is there any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator outstanding against or in respect of the County.

(d) **Absence of Breaches.** The execution, delivery and performance by the County of this Agreement and the documents related hereto, and the consummation of the transactions contemplated by this Agreement will not result in or constitute any of the following:

(1) A breach of any term or provision of any agreement or obligation binding on the County.

(2) A default or an event that, with notice or lapse of time or both, would be a default, breach or violation of any lease, license, promissory note, conditional sales contracts, commitment, franchise, permit or indenture or other agreement, instrument or arrangement to which the County is a party or by which the County is bound or affected.

(3) An event that would permit any party to terminate any agreement or to accelerate the maturity of any indebtedness or other obligation of the County.

(4) Any breach or violation of any law, rule or regulation of any governmental authority, or any order, injunction or decree.

(e) **Absence of Changes.** None of the representations and warranties made by the County contains, or will contain as of the Commencement Date, any untrue statements of a material fact or omit to state a material fact, necessary to make the statements made, in the light of the circumstances under which they were made, not misleading. All representations made to the knowledge of the County in this Agreement shall be to the best of the County's knowledge, after due inquiry.

Section 10. Representations, Warranties and Covenants of the Developer. The Developer represents, warrants, and covenants as follows:

(a) **Due Organization and Authority.** The Developer is a duly organized and validly existing limited liability company under the laws of the State of Delaware, is registered to do business in the State of California, is in good standing in both Delaware and California, and has all necessary power and authority to carry on its business as it is now being conducted. The Developer has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, and no approvals or consents of any person or entity other than the Developer is necessary in connection with it. The execution and delivery of this Agreement and the documents related hereto by the Developer have been duly authorized by all necessary corporate

action of the Developer, and the persons executing this Agreement on behalf of the Developer have the authority to do so. This Agreement and the documents related hereto, when executed and delivered, shall constitute a legal, valid and binding obligation of the Developer enforceable against it in accordance with their terms.

(b) **No Consents or Notices.** The Developer is not required to submit any notice, report or other filing to any governmental or regulatory authority required to be obtained by any of the foregoing in connection with the execution or delivery by the Developer of this Agreement or the documents related hereto, or in connection with the consummation of the transactions contemplated hereby.

(c) **No Litigation.** There are no actions, suits, proceedings, arbitrations, investigations or claims pending or, to the knowledge of the Developer after due inquiry, threatened against or affecting the Developer, at law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign which would have a materially adverse effect on the Developer's ability to enter into this Agreement or to perform its obligations hereunder, and the Developer knows of no basis of or grounds for any such investigation, action, suit, proceeding, or claim against any of them nor is there any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator outstanding against or in respect of the Developer.

(d) **Absence of Breaches.** The execution, delivery and performance by the Developer of this Agreement and the documents related hereto, and the consummation of the transactions contemplated by this Agreement will not result in or constitute any of the following:

(1) A breach of any term or provision of any agreement or obligation binding on the Developer.

(2) A default or an event that, with notice or lapse of time or both, would be a default, breach or violation of any lease, license, promissory note, conditional sales contracts, commitment, franchise, permit or indenture or other agreement, instrument or arrangement to which the Developer is a party or by which the Developer is bound or affected.

(3) An event that would permit any party to terminate any agreement or to accelerate the maturity of any indebtedness or other obligation of the Developer.

(4) Any breach or violation of any law, rule or regulation of any governmental authority, or any order, injunction or decree.

(e) **Hazardous Materials.** To the best of the Developer's knowledge, the Historic Site is not in violation of any currently existing federal, state or local hazardous materials laws. The Developer further agrees that it shall indemnify, protect, defend and hold harmless the County from and against any and all claims, liabilities, suits, losses, costs, expenses and damages arising from any breach of the above representation, including but not limited to attorneys' fees arising from any claim for loss

or damage arising directly or indirectly from the presence of hazardous materials which existed on the Historic Site prior to the date of this Agreement.

(f) Absence of Changes. None of the representations and warranties made by the Developer contains, or will contain as of the Commencement Date, any untrue statements of a material fact or omit to state a material fact, necessary to make the statements made, in the light of the circumstances under which they were made, not misleading. All representations made to the knowledge of the Developer in this Agreement shall be to the best of the Developer's knowledge, after due inquiry.

Prevailing Wage Requirements. The Developer acknowledges that the County has advised it that the construction of the Restoration Improvements appears to be subject to the requirements for paying prevailing wages pursuant to California Labor Code Section 1720 and related sections ("Prevailing Wage Requirements"). In the event that Developer fails to comply with the Prevailing Wage Requirements, and it is found that said requirements were applicable to any portion of the Project, then Developer shall indemnify, defend and hold harmless the County, its agents, officials, servants, attorneys and employees, from any and all liability of any type related to the Prevailing Wage Requirements and Developer's failure to comply therewith. In the event that it is found that the Prevailing Wage Requirements apply to this Agreement or any action taken in furtherance hereof, Developer agrees to comply with said Prevailing Wage Requirements. If requested in writing by the Developer, the County agrees to cooperate in seeking a determination from the California Department of Industrial Relations as to the applicability of the Prevailing Wage Requirements to this Agreement and any actions taken in furtherance hereof.

Section 11. Survival of Representations, Warranties and Covenants. Each of covenants, representations, and warranties by the County and the Developer shall survive the execution of this Agreement and conveyance of the Historic Site to the County.

Section 12. Default.

(a) County Default. Except as otherwise provided herein, if the County fails to pay any rental payments due under the County Sublease within ten (10) days from the date that such payment is due and payable, or if the County fails to keep any other terms, covenants or conditions herein for a period of thirty (30) days after written notice thereof from Developer to the County, then in such events the County shall be deemed to be in default under the terms of this Agreement. If the County should, after written notice from Developer, fail to remedy any default within thirty (30) days from the date of such notice, or, if such default cannot be remedied within the 30-day period, the County shall fail to commence and to diligently continue to remedy such default, then Developer shall have the right, at its option, without further demand or notice, to take an action or legal proceeding to recover rental payments as they become due pursuant to the County Sublease, or to cause the County to keep any other terms or covenants required of it, without terminating this Agreement or the County's right to possession of the County Sublease Property, and Developer shall further have the right to recover all

costs and fees incurred by it in collecting said rents and/or enforcing the terms of this Agreement, including without limitation, attorneys' fees and costs.

(b) Developer's Default. Except as otherwise provided herein, if Developer shall fail to keep any terms, conditions or covenants contained in this Agreement for a period of thirty (30) days after written notice thereof from the County to Developer, or if Developer shall file any petition or institute any proceedings wherein Developer asks or seeks to be adjudicated a bankrupt, or to be discharged from any or all of its debts or obligations, or offers to its creditors to effect a composition or extension of time to pay Developer's debts, or Developer seeks a reorganization or seeks to effect a plan of reorganization or readjustment of Developer's debts, or if any such petition or proceeding of a same or similar nature shall be filed, or instituted against Developer, and Developer shall fail to have such petition or proceeding dismissed within sixty (60) days of its filing, then and in such event Developer shall be deemed to be in default hereunder. If Developer should, after written notice from the County, fail to remedy any such default within thirty (30) days of said notice, or, if such default cannot be remedied within the 30-day period, the Developer shall fail to commence and to diligently continue to remedy such default, then the County shall have the right, in addition to any and all other remedies available at law or in equity, at its option, to terminate this Agreement, the Developer Lease and the County Sublease by delivering written notice of such intent to terminate to Developer not less than thirty (30) days prior to the effective date of such termination, and after the effective date of such termination, the County shall be relieved of all obligations hereunder. Upon such termination, the Restoration Improvements shall thereafter be the sole property of the County.

Section 13. Indemnification.

(a) Indemnity. The representing party under Sections 9 and 10 hereof (the "Indemnifying Party") shall indemnify, save and hold harmless the other party (the "Indemnified Party"), and its officers, employees, representatives, agents, successors and assigns, from and against any and all costs, losses (including, without limitation, diminutions in value), liabilities, damages, lawsuits, deficiencies, claims and expenses (whether or not arising out of third party claims), including, without limitation, interest, penalties, reasonable attorneys' fees and all amounts paid in investigation, defense or settlement of any of the foregoing (collectively referred to herein as the "Losses"), incurred in connection with or arising out of or resulting from or incident to: (i) any breach of any covenant or warranty, or the inaccuracy of any representation, made by the Indemnifying Party in or pursuant to this Agreement or in any schedule, certificate, exhibit or other instrument furnished or to be furnished by the Indemnifying Party under or pursuant to this Agreement; and (ii) any liability, obligation or commitment of any nature (absolute, accrued, contingent or otherwise) of the Indemnifying Party or its business.

(b) Notice of Claim. The Indemnified Party shall promptly notify the Indemnifying Party in writing of the existence of any claim, demand or other matter which could give rise to a right of indemnification pursuant to this Section 13 or Section 5(k) hereof. The Indemnifying Party shall have the right, at its option, and with the

consent of the Indemnified Party as referred to herein below, to compromise or defend, at its own expense and by its own counsel, any such matter involving the Indemnified Party. If the Indemnifying Party undertakes to compromise or defend any such asserted liability, it shall promptly notify the Indemnified Party of its intention to do so, and the Indemnified Party agrees to cooperate fully, but at no cost to the Indemnified Party, with the Indemnifying Party and its counsel in the compromise of, or defense against, any such asserted liability. All costs and expenses incurred in connection with such cooperation shall be borne by the Indemnifying Party. If the Indemnifying Party elects not to compromise or defend the asserted liability, fails to notify the Indemnified Party of this election as herein provided or contests its obligations to indemnify under this Agreement, the Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment), the claim or other matter on behalf, for the account, and at the risk, of the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party may not settle or compromise any claim over the objection of the Indemnified Party; provided, however, that consent to settlement or compromise shall not unreasonably be withheld. Nothing contained in this Section 13 shall limit the Indemnified Party's right to participate, at its own expense, in the defense of such asserted liability.

Section 14. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, or designations hereunder by either party to the other shall be in writing and shall be served upon the other party by registered mail, personal service, or facsimile, at the addresses set forth below:

If to the County:

County Administrative Office
County of Riverside
4080 Lemon Street, 12th Floor
Riverside, CA 92501
Fax: (909) ________________

With a Copy to:

County Counsel
Riverside County
____
Riverside, CA 92501
Fax: (909) 955-______

And a Copy to:

Selzer Ealy Hemphill & Blasdel, LLP
777 E. Tahquitz Canyon Way, Suite 328
Palm Springs, CA 92262
Fax: (760) 320-9507
Attn: Emily Perri Hemphill, Esq.

If to the Developer:

Redhawk Towne Center, LLC
Excel Centre
17140 Bernardo Center Drive, #300
San Diego, CA 92128
Attention: S. Eric Ottesen, Esq.

Fax: (858) 675-9405

With a Copy to: Alhadeff & Solar, LLP
_____________________, Suite 270
Temecula, CA 92590
Attn: Samuel C. Alhadeff, Esq.
Fax: (909) ______________

Section 15. **Attorneys' Fees**. In any action or arbitration arising directly or indirectly out of the terms of this Agreement, the prevailing party shall be entitled to all costs and expenses, including without limitation, actual attorneys' fees and costs of suit whether in equity or in an action at law as may be necessary to enforce the terms and conditions of this Agreement.

Section 16. **Entire Agreement**. This Agreement contains the entire Agreement of the parties hereto with reference to the subject matter hereof, and supersedes all negotiations or previous agreements between the parties with respect to all or any portion of the subject matter hereof.

Section 17. **Validity and Severability.** If any one or more of the terms, provisions, promises, covenants or conditions contained in this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a final decision of a court of competent jurisdiction, then each of the remaining terms, provisions, promises, covenants and conditions contained herein shall remain unaffected thereby and shall be valid and enforceable to the fullest extent permitted by law.

Section 18. **Headings**. Any headings contained in this Agreement are solely for the purposes of convenience of reference and shall not constitute a part hereof nor shall they be utilized to interpret any term or condition contained in this Agreement.

Section 19. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which when taken together shall be deemed a single original.

Section 20. **Governing Law**. This Agreement shall be governed by the laws of the State of California.

Section 21. **Time of the Essence**. Time is of the essence with respect to this Agreement.

Section 22. **Amendments**. This Agreement may be amended at any time, and from time to time provided, however, that no amendment of this Agreement shall be effective unless such amendment is in writing and signed by all parties hereto.

Section 23. **Sale, Transfer or Assignment**. Except as otherwise provided herein, the Developer shall not assign all or any portion of its rights and obligations hereunder with respect to the Historic Site, or any portion thereof, to any successors-in-interest, except

with the prior written consent of the County, which consent shall not be unreasonably withheld. Any such assignment shall not relieve Developer of its obligations under the terms of this Agreement, except upon an express written novation by the County, the granting or withholding of which shall be in the sole and absolute discretion of the County. For purposes of this Agreement, if 50% or more of the equity ownership in Developer is transferred, such transfer shall constitute an "assignment" under this Section 23.

Section 24. Further Assurances. Each party shall execute, deliver and acknowledge all such further instruments of transfer and conveyance or otherwise and to perform all such other acts as any other party may reasonably request to more effectively carry out the terms and conditions of this Agreement and the transaction contemplated herein.

Section 25. Successors. Subject to the provisions contained herein, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

Section 26. Recordation. Upon full execution of this Agreement, the Developer shall record this Agreement, in the Official Records of the County Recorder for the County of Riverside, California.

Section 27. Effect on Settlement Agreement. The parties hereto agree that upon full execution of this Agreement, this Agreement shall be deemed to have replaced and superceded the terms and conditions of the January and June Settlement Agreements in their entirety.

Section 28. No Waiver of Police Powers. The parties hereto agree that nothing contained herein shall be interpreted or deemed to be a waiver or assignment by the County of its police powers under the laws of the State of California. Nothing contained herein shall be interpreted as granting to the Developer approval of plans, entitlements, specifications or permits of any kind. The Developer agrees that it will process all entitlements, building plans and the like through the appropriate County departments, and nothing contained in this Agreement shall be deemed to be a pre-approval of any applications so submitted by the Developer.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested to by the proper officers for each of the parties and the official seals of the parties to be hereto affixed, all as of the day and year first written above.

COUNTY OF RIVERSIDE, CALIFORNIA, a political subdivision

By: ______________________
Name: JOHN TAVAGLIONE
Title: Chairman, Board of Supervisors

Attest:
______________________ Deputy
CLERK OF THE BOARD

Dated: __________

APPROVED AS TO FORM:

By: ______________________
County Counsel

REDHAWK TOWNE CENTER, LLC, a Delaware limited liability company

By: ______________________
Name: Robert Siordia
Title: Chief Operating Officer

By: ______________________
Name: Susan Wilson
Title: Sr. V.P.

[Signature Page to Offer to Dedicate and Lease Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested to by the proper officers for each of the parties and the official seals of the parties to be hereto affixed, all as of the day and year first written above.

COUNTY OF RIVERSIDE, CALIFORNIA, a political subdivision

By: ______________________
Name: JOHN TAVAGLIONE
Title: Chairman, Board of Supervisors

Attest:

Deputy
CLERK OF THE BOARD

Dated: _________

APPROVED AS TO FORM:

By: ______________________
County Counsel

REDHAWK TOWNE CENTER, LLC, a Delaware limited liability company

By: ______________________
Name: Robert Shimoda
Title: COO

By: ______________________
Name: Susan Wilson
Title: Sr. V.P.

[Signature Page to Offer to Dedicate and Lease Agreement]

191480/S
9359.001

SW

EXHIBIT "A"
TO OFFER TO DEDICATE AND LEASE AGREEMENT

(January Settlement Agreement)

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into by and between MDC Vail, a California general partnership ("Vail"), Explorer Insurance Company, an Arizona corporation ("Explorer"), and the County of Riverside, a political subdivision of the State of California (the "County") for itself and as a nominal plaintiff on behalf of the bondholders in the Foreclosure Actions described below, with reference to the following facts:

RECITALS

A. Vail owns approximately 120 acres of undeveloped land located in the County, within Assessment District No. 159 ("AD 159"), known as Riverside Assessor's Parcel Numbers ("APN"):

950770005-9
950770006-0
950770007-1
950770008-2
950780001-6
950780003-8
950780004-9
950780005-0
950780006-1
950780007-2
950780008-3
950780009-4
950780010-4
950780011-5
950780012-6
950770003-7
950770004-8
950770009-3
950770010-3
950770011-4
950770012-5
950780013-7
950780014-8
950780015-9
950780016-0
950780018-2
950780019-3
950780020-3
950780021-4
950780022-5
950780023-6
950790011-6
950770013-6
950770014-7
950780017-1
950790012-7
950790013-8
950790014-9
950790015-0
950790016-1
950780002-7

(collectively, the "Vail Property"). The Vail Property contains seven structures which were identified in the Environmental Impact Report ("EIR") for Specific Plan No. 223 (the "Specific Plan") and in the Specific Plan itself as having historical significance (the "Historic Structures"). The EIR recommends, and the Specific Plan requires that potential impacts to

the Historic Structures be mitigated to a level of insignificance as a condition to development.

B. The Board of Supervisors of the County of Riverside (the "Board") has adopted, established and confirmed assessments for properties within AD 159, including the Vail Property, to be paid in annual installments plus interest, according to the debt service schedule of the bonds issued for AD 159. The Vail Property assessment represents funds which were allocated for the construction of various infrastructure and improvements benefitting properties within AD 159.

C. Vail is delinquent in the amount of $449,215.54 in AD 159 assessment installments for the 1995-96 fiscal year, excluding penalties, attorneys' fees and statutory costs. Vail is also delinquent in the amount of $644,763.96 in AD 159 assessment installments for the 1996-97 fiscal year, excluding penalties, attorneys' fees and statutory costs. As of the Effective Date of this Agreement (defined below in Section 13) penalties and costs in the amount of approximately $310,000 have accrued on these delinquent AD 159 assessment installments.

D. Explorer maintains a recorded deed of trust on the Vail Property, dated April 18, 1994, which is subordinate to the County's secured assessment lien on the Vail Property. Explorer's deed of trust secures bonds which Explorer issued on behalf of Vail to secure the performance by Vail of certain obligations.

E. The County, on behalf of the holders of bonds sold and issued on behalf of AD 159 (the "AD 159 Bondholders"), has filed two separate foreclosure actions as to the Vail Property styled County of Riverside v. MDC Vail, Riverside County Superior Court Case No. 286967 and County of Riverside v. MDC Vail, Riverside County Superior Court

Case No. 298145 (collectively, the "Foreclosure Actions"), in which the County seeks a judgment of foreclosure and order of sale for the amount of the delinquent AD 159 assessment installments and all recoverable costs and penalties and interest as provided by applicable law for the 1995-96 and 1996-97 fiscal years.

F. The County believes a resolution of the AD 159 delinquencies associated with the Vail Property, together with development of the Vail Property, will help restore AD 159 to financial health and spare the County and the AD 159 Bondholders the expense and uncertainty of further litigation and a potentially unsuccessful judicial foreclosure sale to satisfy the delinquencies associated with the Vail Property. The County, Vail and Explorer therefore wish to enter into this Agreement to fully resolve all disputes regarding the delinquencies associated with the Vail Property, including all disputes reflected in the Foreclosure Actions.

G. The Specific Plan, which consists of both Specific Plan Text and Specific Plan Conditions of Approval, governs development of the Vail Property. The Board adopted the Specific Plan by Resolution No. 88-472 (the "Resolution") on October 6, 1988. As a condition to development, the Specific Plan requires, inter alia, that Vail rehabilitate and continuously maintain, repair and administer the exterior of each of the Historic Structures in a good and sound state of repair in conformity with the Secretary of the Interior's Standards for Rehabilitation, presently codified at 36 Code of Federal Regulations Part 67.7, as the same may be revised from time to time, and in conformity with any state or local statutes, ordinances, regulations or other laws, policies or guidelines that may be enacted by federal, state or local governments from time to time governing the maintenance and preservation of historic properties (the "Specific Plan Rehabilitation Standards").

H. In addition to resolving the AD 159 delinquencies associated with the Vail Property, the County and Vail wish to enter into this Agreement to provide greater certainty regarding Vail's obligation to rehabilitate the Historic Structures according to the Specific Plan Rehabilitation Standards. In particular, the County and Vail believe this Agreement will provide for the rehabilitation of the Historic Structures in a manner which will enhance the historic significance of these structures, providing value and benefit to the properties within AD 159, and in a manner fully consistent with the Specific Plan Rehabilitation Standards.

Therefore, the parties enter into this Agreement without admitting any liability, or acknowledging the claims of the other, to avoid the uncertainties, costs, and expenses associated with litigation.

OPERATIVE PROVISIONS

1. Foreclosure Action

The County, Vail and Explorer shall concurrently with the execution of this Agreement, execute a Stipulation for Entry of Judgment in each of the respective Foreclosure Actions in the form attached hereto as Exhibits A1 and A2 (the "Stipulations") entitling the County to entry of Judgment of Foreclosure and Order of Sale in each Foreclosure Action in the form attached to each Stipulation as its Exhibit 1 (singularly, "Judgment;" collectively, "Judgments"). Counsel for the County, Vail and Explorer shall approve the Stipulations as to form and content. The amount of the Judgment shall be the total of the following: (i) all delinquent AD 159 assessment installments associated with the Vail Property through the date of entry of Judgment; (ii) all accrued statutory penalties and costs through the date of entry of Judgment, including removal costs; and (iii) all accrued foreclosure counsel fees through

the date of entry of Judgment (all amounts due under the Judgments collectively referred to herein as the "Judgment Amounts").

The parties agree to inform the Court of the substance of this Agreement, to mutually request that the Court stay all proceedings in the Foreclosure Actions unless and until the occurrence of an act of Default under Section 6 of this Agreement or until the Foreclosure Actions are dismissed pursuant to Section 7 of this Agreement, and to take any other necessary procedural steps to implement the terms of this Agreement. The parties also agree to enter into a Stipulation, and/or request an order, if necessary, tolling the application of Code of Civil Procedure Section 583.310.

2. The Vail Property Delinquent Assessments

Vail acknowledges and agrees that, as of the Effective Date of this Agreement (defined below in Section 13), it is currently delinquent in the payment of AD 159 assessment installments associated with the Vail Property for fiscal year 1995-96 in the amount of $449,215.54, excluding penalties, statutory costs and attorneys' fees, and in the payment of AD 159 assessment installments for fiscal year 1996-97 in the amount of $644,763.96, excluding penalties, statutory costs and attorneys' fees, for a total delinquency amount of $1,093,979.50, excluding penalties, statutory costs and attorneys' fees (the "Delinquency Amount"). Vail also acknowledges and agrees that as of January 31, 1998, penalties and costs in the amount of $310,156.61 have accrued on the Delinquency Amount ("Pre-Agreement Penalties and Costs").

3. <u>Payment of the Delinquency Amount</u>

Vail shall pay: (i) to the County, the sum of $475,000.00 toward the Delinquency Amount within 10 days of the Effective Date of this Agreement (defined below in Section 13), (ii) to the County, the balance of $618,974.50 of the Delinquency Amount within 120 days of the Effective Date of this Agreement (defined below in Section 13), and (iii) to the law firm of Sherman & Feller, counsel to the County in the Foreclosure Actions, the sum of $27,940.00 in attorneys' fees incurred in pursuing the Foreclosure Actions within 120 days of the Effective Date of this Agreement (defined below in Section 13) (all such payments are collectively referred to herein as the "Delinquency Payment(s)"). The Delinquency Payments to be made by Vail to the County (and not Sherman & Feller) under this Section shall be first applied to the delinquent assessment installments due on the following parcels in the following order:

950790016-1	950780007-2
950780001-6	950780008-3
950780002-7	950770006-0
950770014-7	950770007-1

The remainder of the Delinquency Payments to be made by Vail to the County (and not Sherman & Feller), shall be applied on a pro rata basis by APN to delinquent assessment installments on the following parcels:

950770005-9	950780012-6	950780015-9	950770013-6
950770008-2	950770003-7	950780016-0	950780017-1
950780003-8	950770004-8	950780018-2	950790012-7
950780004-9	950770009-3	950780020-3	950790013-8
950780005-0	950770010-3	950780021-4	950790014-9
950780006-1	950770011-4	950780022-5	950790015-0
950780009-4	950770012-5	950780023-6	
950780010-4	950780013-7	950790011-6	
950780011-5	950780014-8		

The County and Vail agree that any payments made by Vail towards the Delinquency Amount and/or accrued penalties, statutory costs or attorneys' fees prior to the Effective Date of this Agreement (defined below in Section 13) will be credited against the amounts it is required to pay under this Section 3 according to the allocation scheme set forth above.

4. Payment of Approved Rehabilitation Costs

Vail shall expend, within one year of the Effective Date of this Agreement, not less than $325,000 towards the cost of rehabilitation of the Historic Structures according to the Specific Plan Rehabilitation Standards, the scope of work attached hereto as Exhibit B (the "Scope of Work"), and the Site Plan set forth in Section 9 below (the "Rehabilitation Payment"). Vail shall provide documentation of the Rehabilitation Payment as the County may reasonably request. The Rehabilitation Payment shall be incurred under the supervision of, and must be approved by, the County Designee (defined below in Section 9) and must be incurred in conformity with the Specific Plan Rehabilitation Standards, the Scope of Work and the Site Plan to satisfy Vail's obligation under this Section.

5. Penalties and Costs

Vail acknowledges and agrees that penalties and statutory costs shall continue to accrue after the Effective Date of this Agreement (defined below in Section 13) on any unpaid portion of the Delinquency Amount as provided by law ("Post-Agreement Penalties and Costs") unless and until that portion of the Delinquency Amount is paid in full. Notwithstanding, upon the Effective Date of this Agreement, the County agrees to forbear in exercising its right to enforce and collect Pre-Agreement Penalties and Costs and Post-Agreement Penalties and Costs (collectively, "Accrued Penalties and Costs") unless and

until the occurrence of an act of Default under Section 6 of this Agreement (the "Forbearance Period").

6. Default

Any of the following events, together or in isolation, shall constitute an act of "Default" under this Agreement by Vail:

(i) Vail's failure to make a Delinquency Payment when due under Section 3 of this Agreement;

(ii) Vail's failure to make the Rehabilitation Payment when due under Section 4 of this Agreement; or

(iii) Vail's failure to pay, prior to the time required under California law, any AD 159 assessment installment secured by any portion of the Vail Property through the 1997-98 fiscal year and any subsequent fiscal year until Vail satisfies its obligations as set forth in Sections 3 and 4 of this Agreement.

Notwithstanding, Vail's failure to make the Rehabilitation Payment when due under Section 4 of this Agreement will not constitute an act of Default if, and for such time as, a court order precludes Vail from rehabilitating the Historic Structures pursuant to the Scope of Work and Site Plan set forth in this Agreement.

If Vail commits an act of Default, Vail shall have thirty (30) days to cure such act of Default after written notice of same is given by the County to Vail and Explorer. If Vail fails to cure an act of Default within thirty (30) days after notice of its occurrence, Vail and Explorer agree that, without further notice: (i) the Forbearance Period shall cease; (ii) the County shall be entitled to file the Stipulations; (iii) the County shall be entitled to

immediately foreclose on the Vail Property as provided by applicable law and the Judgments; (iv) the County shall be entitled to enforce and collect any due or delinquent AD 159 assessment installment, Accrued Penalties and Costs, or accrued foreclosure counsel fees associated with the Vail Property as provided under the Judgments; (v) the County shall be entitled to collect, in connection with the sale of the Vail Property, all attorneys' fees and costs incurred by the County in connection with the County's enforcement of and execution upon the Judgments, including those fees and costs associated with the sale of the Vail Property ("Post-Judgment Fees and Costs"); and (vi) the County shall be entitled to include any due or delinquent assessment installments secured by any portion of the Vail Property for the 1997-98 and/or subsequent fiscal years as part of the amount to be enforced and collected through the sale of the Vail Property, and not already included in the Judgments. If the County is entitled to file the Stipulations pursuant to this Section 6, Vail and Explorer agree to waive the 120-day post-levy redemption otherwise provided by law.

Failure of the County to immediately act on any act of Default shall not be construed as a waiver of such Default or as a waiver of any of the County's rights under this Agreement, nor shall any purported waiver by the County of an act of Default be effective unless approved in writing by the Board of Supervisors for the County. Waiver by the County of any act of Default under this Section shall not constitute a waiver of the County's right to enforce this Agreement as to any other or subsequent act of Default.

7. Satisfaction

If, and only if, Vail makes the Delinquency Payments on or before the dates such payments are due under Section 3 of this Agreement, makes the Rehabilitation Payment on or before the date such payment is due under Section 4 of this Agreement and pays, prior to the time required under California law, any AD 159 assessment installment secured by any portion of the Vail Property through the 1997-98 fiscal year and any subsequent fiscal year until Vail satisfies its obligations as set forth in Sections 3 and 4 of this Agreement, the County will, within ten (10) days after the last payment check by Vail clears: (i) waive the right to collect all Accrued Penalties and Costs; (ii) file with the Court the appropriate documents to dismiss and conclude the respective Foreclosure Actions with prejudice; (iii) delete notations, if any, on the County-secured roll referring to the AD 159 assessment installments levied on the Vail Property for the 1995-96, 1996-97 and 1997-98 fiscal years (if such assessment installments have been paid in full by Vail); (iv) record a notice of withdrawal of pendency of action concerning the Foreclosure Actions on title to the Vail Property in a form described in Section 405.50 of the California Code of Civil Procedure; and (v) serve on counsel for Vail conformed copies of the documents prepared pursuant to subparagraphs (ii) and (iv) above within four (4) days of their receipt. Vail acknowledges and agrees that any action taken by the County pursuant to this Section 7 shall be without prejudice to the County's ability to enforce the collection of unpaid assessment installments levied against the Vail Property for any fiscal year subsequent to the 1997-98 fiscal year.

8. Removal of Individual Parcels from Foreclosure Actions

Notwithstanding the provisions of Section 7 above, if Vail pays the entire amount due for a particular parcel of the Vail Property, including all due or delinquent assessment installments, Accrued Penalties and Statutory Costs, and accrued foreclosure counsel fees allocable to such parcel (an "Accelerated Payment"), and provides the County with clear written notice of the nature of its payment, the County will, within four (4) days after Vail's payment check clears: (i) delete notations, if any, on the County-secured roll referring to the AD 159 assessment installments levied on such parcel for the 1995-96 and 1996-97 fiscal years; (ii) record a notice of partial withdrawal of pendency of action concerning the Foreclosure Actions on title to such parcel in a form described in Section 405.50 of the California Code of Civil Procedure; (iii) deposit that portion of the Accelerated Payment allocated to the Accrued Penalties and Costs for such parcel into an interest-bearing account to be established and administered by the County Executive Office ("Refund Account"); and (iv) execute and record a Notice of Partial Cancellation of Forbearance and Inducement Agreement for such parcel in the form attached hereto as Exhibit D-1. In the alternative, if a particular parcel of the Vail Property is being sold, and if the County is satisfied that the escrow agreement for the sale provides for payment of the entire amount due for the parcel, including all due or delinquent AD 159 assessment installments, Accrued Penalties and Costs, and accrued foreclosure counsel fees allocable to such parcel, the County will, concurrent with the closing date of the sale: (i) delete notations, if any, on the County-secured roll referring to the AD 159 assessment installments levied on such parcel for the 1995-96 and 1996-97 fiscal years; (ii) record a notice of partial withdrawal of pendency of action concerning the Foreclosure Actions on title to such parcel in a form

described in Section 405.50 of the California Code of Civil Procedure; (iii) deposit that portion of the Accelerated Payment allocated for the Accrued Penalties and Costs for such parcel into the Refund Account; and (iv) execute and record a Notice of Partial Cancellation of Forbearance and Inducement Agreement for such parcel in the form attached hereto as Exhibit D-1. For purposes of calculating due or delinquent assessment installments paid by Vail pursuant to this Section 8, the County shall recognize as paid any Delinquency Payment made by Vail to the County under Section 3 of this Agreement if such payment is allocable to the parcel in question under the terms of Section 3 of the Agreement.

If and only if Vail makes the Delinquency Payments on or before the dates such payments are due under Section 3 of this Agreement, makes the Rehabilitation Payment on or before the date such payment is due under Section 4 of this Agreement and pays, prior to the time required under California law, any AD 159 assessment installment secured by any portion of the Vail Property through the 1997-98 fiscal year and any subsequent fiscal year until Vail satisfies its obligations as set forth in Sections 3 and 4 of this Agreement, the County will refund to Vail or its assignee the amounts held by the County in the Refund Account. Otherwise, the amounts held in the Refund Account, including any interest thereon, shall not be refunded to Vail.

9. Historic Structures

a. Site Plan

The County agrees that, in discharging its obligation to cause the rehabilitation of the Historic Structures according to the Specific Plan and the Specific Plan Rehabilitation Standards, Vail may rehabilitate the Historic Structures within a 2.5 acre parcel according to the conceptual site plan configuration attached hereto as Exhibit C (the "Site Plan") and the

Scope of Work attached hereto as Exhibit B. As an alternative to the rehabilitation of all seven Historic Structures in situ, the County agrees that Vail may

(i) rehabilitate the exterior of "Wolf's Store" in its present location;

(ii) rehabilitate the exterior of the "Ranch House" in its present location;

(iii) dismantle the "Implement Barn" and incorporate usable materials into the exterior of another building within, or adjacent to, the Site Plan;

(iv) reconstruct the "Gate House" or "R.C.W.D. Office" to the southwest corner of the Site Plan and adjacent to the "Bunkhouse" and rehabilitate the exterior of this building at that location with usable materials, if any, and to the extent possible, from the original construction and, where necessary, materials of a similar appearance;

(v) dismantle and relocate the "Office & Barn" to the northeast area of the Site Plan and adjacent to the (relocated) "Caretaker's House" and rehabilitate the exterior of this building at that location with all usable materials from the original construction and, where necessary, materials of a like nature;

(vi) rehabilitate the exterior of the "Bunk House" in its present location; and

(vii) relocate the wood portion of the "Caretaker's House," if reasonably possible, or otherwise reconstruct a similar replacement between the "Bunk House" and the (relocated) "Office & Barn" and rehabilitate the exterior of this building at that location with usable materials, if any, and to the extent possible, from the original construction and, where necessary, materials of similar appearance.

The County has determined that the Site Plan and Scope of Work are consistent with, and, with greater clarity, implement, the Specific Plan and Specific Plan Rehabilitation Standards as applied to the Vail Property and the Historic Structures and that implementation of the Site Plan and Scope of Work will not create any significant new environmental impacts not already studied in the EIR pertaining to the Vail Property. The County has reached this determination after reviewing, among other evidence, the Historic Resources Analysis of The Vail Ranch Headquarters prepared by Jean A. Keller, a Cultural Resources Consultant, in August 1996 and the Historic Rehabilitation Feasibility Study for Vail Ranch prepared by Paul W. Johnson, A.I.A. in May 1997. Specifically, the County notes that:

(i) the Site Plan and Scope of Work will create no significant new environmental impacts not already studied in the EIR pertaining to the "Wolf's Store," "Ranch House" and "Bunk House" because all three buildings will be rehabilitated in their present location in conformity with the Specific Plan Rehabilitation Standards;

(ii) the Site Plan and Scope of Work will create no significant new environmental impacts not already studied in the EIR pertaining to the "Implement Barn" because, given the extremely poor condition of the structural support of the building, the building cannot be feasibly rehabilitated in its current location to a state which would not pose a safety hazard to the public while maintaining the historic nature and character of the building. The County has therefore determined that incorporation of usable materials from the Implement Barn into the facade of another building within the 2.5 acre parcel containing the Historic Structures is the only feasible means of rehabilitating and preserving the building.

(iii) the Site Plan and Scope of Work will create no significant new environmental impacts not already studied in the EIR pertaining to the "Gate House" or "R.C.W.D. Office" because it is the architectural style of the building which makes it significant as an historical resource, as opposed to the date of construction, building materials and/or use of the building, as documented by the administrative record pertaining to the Historic Structures. Reconstruction of the "Gate House/R.C.W.D. Office," whether or not it is feasible to utilize some or all of the existing building materials, will therefore preserve the historic quality of the building. Further, given the deteriorated state of the building, it would not be feasible to rehabilitate the building without extensive effort and widespread use of new building materials different in nature from the original building materials. Finally, reconstruction of the "Gate House/R.C.W.D. Office" in a different location is necessary because the building currently sits in the path of a scheduled access road to the Historic Structures.

(iv) the Site Plan and Scope of Work will create no significant new environmental impacts not already studied in the EIR pertaining to the "Office & Barn" because, although the building will be relocated, the building will be relocated very near its present location and rehabilitated in essentially the same manner, utilizing original or similar building materials where feasible, than if the building were to remain in its present location.

(v) the Site Plan and Scope of Work will create no significant new environmental impacts not already studied in the EIR pertaining to the "Caretaker's House" because, although the building will be relocated, the wood portion of the building will be relocated very near its present location and rehabilitated in essentially the same manner, utilizing original or similar building materials where feasible, than if the building were to

remain in its present location. It is unlikely that the adobe portion of the building will be preserved as part of the rehabilitation effort, however, the adobe portion of the building was not constructed until the 1950's as the administrative record documents, long after the wood portion of the building was constructed, and is not considered to be of historic quality.

Vail shall erect a tent over the Wolf's Store within fourteen (14) days from the Effective Date of this Agreement (as defined below in Section 13), to protect the structure from inclement weather. Vail may remove the tent during the rehabilitation of the Wolf's Store only to the extent such removal is necessary to complete the rehabilitation.

The County agrees that, once rehabilitated, Vail may utilize the Historic Structures for a commercial use consistent with the Specific Plan and the Historic Commercial zoning designation overlying the property provided the exteriors of the Historic Structures are maintained as required under the Specific Plan, or, alternatively, that the Historic Structures may be kept at a passive use once the exteriors are rehabilitated. In either case, Vail agrees to grant a public easement ensuring public access to the Historic Structures, whether utilized for a commercial or passive use, through a greenbelt/walkway area between and among the buildings in consideration for the County's contribution of funds towards the rehabilitation of the Historic Structures as set forth below. The final configuration of the Historic Structures and the greenbelt/walkway area, consistent with the Site Plan, the Specific Plan, and the Scope of Work shall be determined on an expedited basis by the processing of preliminary and final design plans for the Site Plan to be reviewed by the County of Riverside Parks Department, and by a County designee within the County Executive Office (the "County Designee"). The County hereby designates Tony Carstens as the County Designee for purposes of this Agreement. Vail understands and agrees that the

County of Riverside Planning Department will assist the County Designee with all matters the County Designee undertakes pursuant to or in connection with this Agreement.

b. Development of the Site Plan

The rehabilitation of the Historic Structures according to the Site Plan shall be performed in conformity with: (i) the Specific Plan, including the Conditions of Approval incorporated therein, (ii) the Specific Plan Rehabilitation Standards, and (iii) the Scope of Work. The rehabilitation of the Historic Structures shall be conducted under the supervision of the County of Riverside Parks Department and the County Designee. No finding of compliance with the Conditions of Approval pertaining to the rehabilitation of the Historic Structures will be made unless and until Vail has caused the rehabilitation of the Historic Structures according to the Site Plan, the Specific Plan Rehabilitation Standards, and the Scope of Work, and the rehabilitation has been approved by the County Designee, after review and recommendation by the County of Riverside Parks Department.

The County and Vail shall select a mutually acceptable AIA architect, to be compensated solely by Vail, for the purpose of directing and administering the rehabilitation of the Historic Structures as provided herein. The AIA architect selected by the parties shall submit to the County Designee status reports regarding the progress of the rehabilitation of the Historic Structures every month. The parties hereby designate Milford Wayne Donaldson, A.I.A. as the AIA architect for purposes of this Agreement.

The development of the Site Plan by Vail shall be processed by the County on an expedited basis, including the review of preliminary and final design documents for the Site Plan and the procurement of necessary permits. The County acknowledges and agrees in particular that lot-line adjustments will be necessary to effectuate the Site Plan and agrees

to expeditiously process such adjustments. The Parks Department and the County Designee will also work with Vail to determine the final configuration of the Historic Structures consistent with the Site Plan and to ensure that the Site Plan is otherwise in compliance and conformity with all applicable state and local law.

Nothing in this Agreement shall be construed as altering in any way the requirements imposed by the Specific Plan or other federal, state or local law concerning the development of the Vail Property, including the obligation to rehabilitate the Historic Structures as a Condition of Approval to development of the Vail Property, and all obligations and requirements of the Specific Plan and other applicable federal, state and local law shall continue in full force and effect. Rather, this Agreement is intended to further clarify Vail's obligation to rehabilitate the Historic Structures under the Specific Plan, taking into account the current condition of these structures and the County's desire that they be rehabilitated as soon as possible. If a court determines that implementation of the Site Plan would violate any federal, state or local law, or would violate any land-use approval for the Vail Property, the parties understand and agree that: (i) Vail may be enjoined from implementing the Site Plan under such a judicial interpretation; (ii) except as otherwise provided in Section 10 herein, neither the County nor Vail shall be liable to each other for any damage, injury or liability claimed to have been suffered as a result of such determination and (iii) Vail and the County shall in good faith amend or modify the Site Plan, if possible, to comply with the court's determination.

c. Conservation Easement

Once the Historic Structures are rehabilitated according to the Site Plan. Specific Plan, the Specific Plan Rehabilitation Standards,. and the Scope of Work, Vail will have the obligation under the Specific Plan and Conditions of Approval to continuously maintain, repair and administer the exterior of the Historic Structures in a sound state of repair in strict conformity with the Specific Plan and Specific Plan Rehabilitation Standards. Vail therefore agrees that the County may create, and Vail hereby agrees to grant, a conservation easement over the exterior of each Historic Structure once each exterior has been rehabilitated to preserve the historic quality and character of these structures and to ensure that these exteriors are continuously maintained, repaired and administered as required under the Specific Plan. Vail and the County will, in good faith, agree upon the form of the conservation easement once the Historic Structures' exteriors have been rehabilitated.

d. County Contribution Towards Rehabilitation

The County agrees to reimburse Vail for $150,000.00 of the cost of rehabilitation of the Historic Structures consistent with the Site Plan, the Specific Plan Rehabilitation Standards, and the Scope of Work once the rehabilitation has been completed. Invoices of such costs shall be sent to the attention of the County Designee for review and approval prior to reimbursement. The County shall have no obligation to reimburse Vail for any of the cost of rehabilitating the Historic Structures in the event of a Default by Vail under this Agreement.

e. Historical Maintenance District

The County and Vail agree to use best efforts to explore the feasibility of forming a special district, bounded by the property zoned for commercial, industrial (if any), and historic commercial use within the Specific Plan, to fund the continued maintenance of the exterior of the Historic Structures and/or to reimburse Vail for the cost of rehabilitating the Historic Structures, (not including the County's contribution towards such cost) (the "Historical Maintenance District"). Vail acknowledges and agrees that the Historical Maintenance District, if formed, will be required to comply with, and cannot be formed without compliance with, all applicable ordinances, policies and procedures of the County then in effect, including, without limitation, procedures governing the payment of the County's administrative fees related to the formation and continuing administration of such a district, and, if bonds are issued, the financial provisions of the County's "Land Secured and Conduit Financing Policy" as amended (or amended thereafter).

If the County creates an Historical Maintenance District which issues bonds, or issues bonds under an existing district, Vail agrees that it will fully cooperate with the County and or such district in the preparation of both primary and continuing disclosure as reasonably required by County. Vail acknowledges that the County, or such financing district, may determine that Vail is an "obligated person" within the meaning of Rule 15c2-12 of the Securities and Exchange Commission ("Rule") and require Vail to enter into binding and assignable commitments to provide continuing disclosure for the benefit of bondholders. Vail acknowledges and agrees that the scope of primary and continuing disclosure shall be determined in accordance with the Rule, guidelines adopted by the California Debt Advisory Commission (or its successor) from time to time, and then

applicable industry standards. Vail further acknowledges and agrees that its commitment to provide such continuing disclosure may be recorded as a covenant running with the land to help ensure compliance by its successors in interest.

f. Possible Conveyance of Vail Property to the County

If Vail wishes to discuss a possible conveyance of that portion of the Vail Property bounded by the Site Plan, Vail agrees to solicit bids for the development of the Site Plan based on two scenarios: (i) commercial use of the Historic Structures within the parameters of the Specific Plan and other applicable land use approvals, with a greenbelt/walkway area established between the buildings to provide access to the public, and (ii) rehabilitation and maintenance of the exterior of the Historic Structures only, with no commercial use, and with a greenbelt/walkway area established between the buildings to provide access to the public. Once such bids are received by Vail, by contractors and in a form acceptable to the County, the County and Vail agree to discuss in good faith the possible conveyance of that portion of the Vail Property bounded by the Site Plan from Vail to the County on mutually agreeable terms. Vail acknowledges and agrees that nothing in this Agreement shall be construed to obligate the County to accept a conveyance of the Vail Property.

If Vail conveys any portion of the Vail Property to the County, Vail understands and agrees that, prior to such conveyance, Vail will be required to satisfy in full the AD 159 assessment lien secured by such property, unless both Vail and the County agree that the assessment lien can be legally respread to the remainder of the Vail Property within AD 159.

g. Monument

The parties agree that the County may, at its option, construct and erect a monument sign on State Highway 79 to mark the site of the Historic Structures.

h. Other Necessary Documents

The parties agree to execute such other further documents as may be necessary and mutually agreed upon to assist in the rehabilitation of the Historic Structures as provided herein.

10. Indemnification

Vail hereby agrees to indemnify, defend, save and hold the County harmless from and against any and all losses, liabilities, obligations, damages, lawsuits, claims, demands, costs and expenses, including without limitation reasonable attorneys' fees and all amounts paid in investigation, defense or settlement of any of the foregoing ("Damages"), incurred in connection with, arising out of, resulting from or incident to this Agreement, including any lawsuit or claim challenging or contesting the rehabilitation of the Historic Structures pursuant to the Site Plan and/or Scope of Work.

If any lawsuit is filed against the County which falls within the scope of Vail's obligations hereunder, written notice thereof shall be given to Vail within fifteen (15) days. Any failure on the part of the County to provide notice within fifteen (15) days of such a lawsuit shall not relieve Vail of its duties hereunder, except to the extent Vail can establish that it was prejudiced by receiving notice of such a lawsuit more than fifteen (15) days after it was filed. After such notice, Vail shall acknowledge in writing to the County that Vail shall be obligated under the terms of its indemnity hereunder in connection with such lawsuit or claim, and that it will assume the County's defense against such lawsuit or claim. If Vail

assumes the defense of the County within ten (10) days of written notice of a lawsuit or claim against the County, Vail shall (i) have the ability to control the defense and investigation of such lawsuit or claim, subject to the County's consent to major decisions regarding such defense, such consent not to be unreasonably withheld, (ii) employ and engage attorneys mutually agreed upon by Vail and the County to defend the County at Vail's expense, and (iii) have the ability to compromise or settle such lawsuit or claim, which compromise or settlement shall be made only with the written consent of the County, such consent not to be unreasonably withheld. If Vail fails to assume the defense of such lawsuit or claim against the County within ten (10) calendar days after receipt of notice thereof, the County (upon delivering notice to such effect to Vail) shall be entitled (i) to take control of the defense and investigation of such lawsuit or claim, (ii) to employ and engage attorneys of its own choice to handle and defend the same at Vail's expense, and (iii) to compromise or settle such lawsuit or claim at Vail's expense.

11. No Interference

Vail acknowledges and agrees that its obligation to make the Delinquency Payments pursuant to Section 3 of this Agreement, its obligation to pay, prior to delinquency, all AD 159 assessment installments for the Vail Property for the 1997-98 and subsequent fiscal years, and its obligation to make the Rehabilitation Payment pursuant to Section 4 of this Agreement is in no way contingent upon the occurrence of any future circumstances or events or upon the performance by the County of any future act, and that the failure or alleged failure of the County to perform any future act, or the nonoccurrence of any future circumstance or event, shall not constitute a defense to the filing of the Stipulations and Judgments in the Foreclosure Actions or to the foreclosure sale of the Vail

Property, or constitute grounds for Vail obtaining an injunction or taking any other action to enjoin the filing of the Stipulations, the execution of the Judgments or a foreclosure sale of the Vail Property.

12. Releases By and Between Vail and County

a. If, and only if, Vail makes the Delinquency Payments in full as provided in Section 3 of this Agreement; pays, prior to the time required under California law, all AD 159 assessment installments secured by any portion of the Vail Property for the 1997-98 fiscal year and any subsequent fiscal year until Vail satisfies its obligations as set forth in Sections 3 and 4 of this Agreement, together with any penalties and interest due thereon; and makes, within one year of the Effective Date of this Agreement (defined below in Section 13), the Rehabilitation Payment, the County agrees to release Vail and each of its partners, attorneys, agents, employees, predecessors, successors, assigns, whether of parent, subsidiary, or affiliate corporations or partnerships, including claims against the Vail Property, from any and all claims, demands, causes of action in law and equity, suits, proceedings, debts, liens, contracts, obligations, agreements, promises, liabilities, losses, costs, or expenses of any nature whatsoever (including attorney' fees), past, present or future, known or unknown, fixed or contingent, arising out of or in any way connected with or related to the AD 159 assessment installments levied on the Vail Property for fiscal years 1995-96 and 1996-97, including any financial obligation arising from these assessment installments and the County's claim for collection of assessment installments for the 1995-96 and 1996-97 fiscal years asserted in the Foreclosure Actions. Expressly excepted from this release is any claim by the County for AD 159 assessment installments on the Vail Property for any fiscal year after 1996-97 and for nonpayment of ad valorem taxes. Vail also

expressly acknowledges that this release shall be of no force and effect unless and until Vail makes the Delinquency Payments in full as provided in Section 3 of this Agreement, pays, prior to the time required under California law, all AD 159 assessment installments secured by any portion of the Vail Property for the 1997-98 fiscal year and any subsequent fiscal year until Vail satisfies its obligations as set forth in Sections 3 and 4 of this Agreement, together with any penalties and interest due thereon, and makes, within one year of the Effective Date of this Agreement, the Rehabilitation Payment.

b. Vail hereby releases County and each of its officers, attorneys, elected or appointed representatives, agents, employees, consultants, advisors, successors, and assigns from any and all claims, demands, causes of action, in law and in equity, suits proceedings, debts, liens, contracts, obligations, agreements, promises, liabilities, losses, costs or expenses, of any nature whatsoever (including attorneys' fees), past or present, known or unknown, fixed or contingent, arising out of or in any way related to the Foreclosure Actions, the creation, past administration, past maintenance or past management of AD 159, the Vail Property, including any claims that the County has inversely condemned any portion of the Vail Property or has committed any act constituting a "taking" of any portion of the Vail Property, the Specific Plan or Specific Plan Rehabilitation Standards, claims for lost profits or lost economic opportunity or consequential damages associated with the development of the Vail Property, or acts undertaken by the County subsequent to the Effective Date which are necessary to carry out the terms of this Agreement, including any acts undertaken by the County subsequent to the Effective Date in filing the Stipulations, enforcing the Judgments or pursuing a foreclosure sale of the Vail Property in the event of a Default hereunder, but excluding any claims Vail may have concerning general conditions of

approval related to the County Flood Control District ("District") and/or District actions relating to such conditions and/or the permitting process as such actions and conditions apply to the Vail property.

Both the County and Vail acknowledge that there is a risk that, subsequent to the execution of this Agreement, either party may incur, suffer or sustain injury, loss, damage, costs, attorneys' fees, expenses or any of these, which are in some way caused by or connected with the persons, entities, matters and/or issues referred to in this Section 12, or which are unknown and unanticipated at the time this Agreement is executed, or which are not presently capable of being ascertained. Both the County and Vail further acknowledge that there is a risk that such damages as are presently known may hereafter become more serious than either the County or Vail now expects or anticipates. Nevertheless, both the County and Vail acknowledge that this Agreement has been negotiated and agreed upon in light of that realization and both parties hereby expressly waive all rights they may have in such unsuspected claims falling within the subject matter of the releases hereunder. In so doing, the County and Vail have both had the benefit and advice of counsel and hereby knowingly and specifically waive their respective rights under California Civil Code Section 1542. Section 1542 provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO THE CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

13. Effective Date

This Agreement shall become effective only upon the occurrence of each of the following (the "Effective Date"):

a. Execution of this Agreement by the County;

b. Execution of this Agreement by Vail;

c. Execution of this Agreement by Explorer; and

d. Execution of the Stipulations by the County, Vail and Explorer.

14. Successors and Assigns

This Settlement Agreement shall inure to the benefit of and likewise be binding upon the parties' successors and/or assigns. In order to ensure compliance by Vail's successors and assigns, the County may execute and record a Notice of Agreement, substantially in the form attached hereto as Exhibit D.

15. No Admission of Wrongdoing

This Agreement affects the compromise and settlement of all claims, including those which are denied and contested, and nothing herein shall be deemed or construed as an admission by any party hereto of any liability of any kind to any other party.

16. Representation of Non-Assignment

Each party to this Agreement represents and warrants that no claim or right released or dismissed under this Agreement has been transferred, hypothecated, assigned or given away by that party prior to the Effective Date of this Agreement to any person or entity that would not be bound hereby. Each party shall indemnify, defend and hold harmless every other person or entity entitled to a release hereunder from and against any

and all claims (including, without limitation, attorneys' fees) resulting from its own actual or alleged breach of this representation and warranty.

17. Interpretation or Enforcement: Litigation Costs

In the event of any legal action on a dispute arising between the parties out of this Agreement, the prevailing party shall be entitled to recover reasonable litigation expenses and costs (including reasonable attorneys' fees).

18. Authority re Settlement Agreement

Each of the persons executing this Agreement hereby represent and warrant that he or she is authorized to represent the party for whom such person is executing this Agreement, and to enter into this Agreement on behalf of such party. Moreover, the County signatories represent and warrant this Agreement was validly authorized and approved by the County.

19. Choice of Law

This Agreement shall in all respects by interpreted, enforced and governed exclusively by and under the laws of the State of California.

20. Advice of Counsel

Each party hereto has had the opportunity to seek the advice of independent counsel of its choosing concerning this Agreement. This Agreement is deemed to have been jointly prepared by all the parties hereto, and any uncertainty or ambiguity existing herein shall not be interpreted against any party on the ground that it was the drafter.

21. Integrated Writing/Amendments

Except as otherwise provided herein, this Agreement and the Exhibits hereto contain the entire understanding of the parties with respect to the subject matter herein. There are no representations, covenants or understandings other than those expressed or referred to herein. Each party to this Agreement acknowledges that no other party or agent or attorney of any other party has made any promise, representation or warranty, expressed, implied or statutory, not contained or referred to herein concerning the subject matter of the Agreement, to induce that party to execute this Agreement; and each party acknowledges that it has not executed this Agreement in reliance upon any promise, representation or warranty not specifically contained or referred to herein. No amendment or addition to this Agreement shall be valid unless such amendment or addition is in writing and signed by all parties hereto.

22. Counterparts/Further Acts

This Agreement may be signed in counterparts and may be signed in multiple originals so that each of the parties hereto shall have an original signed document and each shall be deemed an original. The parties hereto warrant that they will and do hereby agree to sign any and all further documents or instruments necessary to implement the terms of this Agreement.

23. No Third-Party Beneficiaries

This Agreement is intended to confer rights and benefits only upon the parties and their successors and assigns and is not intended to confer any rights or benefits upon any other person or entity. No person or entity other than the parties and their successors and assigns shall have any legally enforceable rights hereunder. All rights of action for any breach of this Agreement are hereby reserved to the parties and their successors and assigns.

24. Unenforceable Provisions

In the event that one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, void, illegal or unenforceable in any respect, such invalidity, voidness, illegality or unenforceability shall not affect any other provision of this Agreement, and the remaining portions shall remain in full force and effect. In particular, the parties agree and acknowledge that, if an action is filed challenging the legality of the Site Plan and/or Scope of Work hereunder, Vail shall continue to be obligated to make the Delinquency Payments by the deadlines set forth in Section 3 herein, regardless of whether such an action is successful.

25. Notices

Notices under this Agreement shall be provided to the County at 4080 Lemon Street, 12th Floor, Riverside, CA 92501-3851, Attention: Mr. Tony Carstens; to Vail at 9474 Kearny Villa Road, Suite 203, San Diego, California 92126, Attention: Mr. Jerry Swanger, Sr.; and to Explorer at Insurance Company of the West, 11455 El Camino Real, San Diego, California 92130-2045, Attention: Eric Fedors. Such notices will be considered

received when delivered by courier, messenger service, Federal Express or other hand-delivered service process.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the dates set forth below.

DATE: ____________________

MDC-VAIL, a California general partnership

BY: TEMECULA, L.L.C., a Delaware limited liability company
BY: MONARCH HAWAII, L.L.C., its Managing Member
BY: ONE KEAHOLE PARTNERS, its Managing Member
BY: NATIONAL HOUSING CORPORATION OF HAWAII INC., Its General Partner

BY: ____________________
Kevin M. Showe, Vice President

BY: VAIL PROPERTIES, a California limited partnership
BY: VAIL ASSOCIATES, INC., its General Partner

BY: ____________________
Jerry Morris, President

BY: ____________________
Jerry D. Swanger, Secretary

Explorer Insurance Company,
an Arizona corporation

By: ____________________
its ____________________

APPROVED AS TO FORM:

By: Samuel C. Alhadeff
Lorenz Alhadeff Cannon & Rose

DATE: 2/18/98

APPROVED AS TO FORM:

By: Lee Buthod Trahan
Lorenz Alhadeff Cannon & Rose

JAN 27 FIN

received when delivered by courier, messenger service, Federal Express or other hand-delivered service process.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the dates set forth below.

MDC-VAIL, a California general partnership

DATE: ____________________

BY: TEMECULA, L.L.C., a Delaware limited liability company
BY: MONARCH HAWAII, L.L.C., its Managing Member
BY: ONE KEAHOLE PARTNERS, its Managing Member
BY: NATIONAL HOUSING CORPORATION OF HAWAII, INC., Its General Partner

BY: ____________________
Kevin M. Showe, Vice President

APPROVED AS TO FORM:

____

By: ____________________
Lorenz Alhadeff Cannon & Rose

DATE: ____________________

BY: VAIL PROPERTIES, a California limited partnership
BY: VAIL ASSOCIATES, INC., its General Partner

BY: ____________________
Jerry Morris, President

BY: ____________________
Jerry D. Swanger, Secretary

Explorer Insurance Company,
an Arizona corporation

By: ____________________
its ____________________

APPROVED AS TO FORM:

____

By: ____________________
Lorenz Alhadeff Cannon & Rose

JAN 27 FIN

DATE: 7

Executed by Board Approval on January 27, 1998. Signed by Chairman Tavaglione on March 4, 1998. [initials]

THE COUNTY OF RIVERSIDE, a political subdivision of the State of California

By: [signature]
Chairperson of the Board of Supervisors

ATTEST:

Gerald A. Maloney
Clerk of the Board of Supervisors

[signature: Nancy Romero]
Deputy

APPROVED AS TO FORM:

~~RIVERSIDE COUNTY COUNSEL~~ Latham & Watkins, Special Counsel to the County of Riverside for this matter

By: [signature]

JAN 27 FIN

EXHIBIT "B"
TO OFFER TO DEDICATE AND LEASE AGREEMENT

(June Settlement Agreement)

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "agreement") is made and entered into as of June 23, 1998, by and between Dick Diamond, Darell Farnbach, MDC Vail, and the County of Riverside. Dick Diamond, Darell Farnbach, MDC Vail, and the County of Riverside are hereafter referred to singularly as the "party" and collectively as the "parties."

RECITALS

A. Dick Diamond and Darell Farnbach (collectively, "Petitioners") are individuals residing in Riverside County, California.

B. MDC Vail ("Vail") is a California general partnership, which owns undeveloped property in the County. Approximately 120 acres of that undeveloped property is known as Riverside Assessor's Parcel Numbers ("APN"):

950770005-9
950770006-0
950770007-1
950770008-2
950780001-6
950780003-8
950780004-9
950780005-0
950780006-1
950780007-2
950780008-3
950780009-4
950780010-4
950780011-5
950780012-6
950770003-7
950770004-8
950770009-3
950770010-3
950770011-4
950770012-5
950780013-7
950780014-8
950780015-9
950780016-0
950780018-2
950780019-3
950780020-3
950780021-4
950780022-5
950780023-6
950790011-6
950770013-6
950770014-7
950780017-1
950790012-7
950790013-8
950790014-9
950790015-0
950790016-1
950780002-7

(collectively, the "Vail Property"). A map showing the approximate location of the Vail Property is attached at Exhibit A to this agreement. Exhibit A is incorporated herein by reference.

C. The County of Riverside ("County") is a political subdivision of the State of California. The Board of Supervisors ("Board") is the body of elected officials that represents the

County. The County and the Board (collectively, the "County") have land-use jurisdiction over the Vail Property.

D. In 1988, the County certified an environmental impact report ("EIR") and approved Specific Plan No. 223 (the "Specific Plan"). The Specific Plan encompassed the Vail Property. In approving the Specific Plan, the County adopted conditions of approval requiring rehabilitation of an historic complex (the "Historic Site") containing a group of seven structures located on the Vail Property (the "Historic Structures").

E. On January 27, 1998, Vail, Explorer Insurance Company, an Arizona Corporation, and the County entered into a settlement agreement pertaining to the Vail Property. (the "January 1998 Settlement Agreement"). The January 1998 Settlement Agreement resolved certain litigation involving delinquencies and foreclosure actions concerning the Vail Property.

F. The January 1998 Settlement Agreement also specified the terms under which Vail would preserve, restore and rehabilitate the Historic Site and the Historic Structures, as required by the Specific Plan. (See January 1998 Settlement Agreement, § 9.)

G. On February 25, 1998, Petitioners filed a petition for writ of mandate in Riverside County Superior Court (Diamond, *et al.* v. County of Riverside, *et al.*, Riverside County Sup. Ct. No. 308891). On February 26, 1998, Petitioners filed a first amended petition for writ of mandate in Riverside County Superior Court (Diamond, *et al.* v. County of Riverside, *et al.*, Riverside County Sup. Ct. No. 308891) (collectively, the "CEQA Petition").

H. On June 15, 1998, the County prepared an Addendum to the EIR for the Vail Ranch Specific Plan (the "Addendum"). The Addendum analyzed the impacts to the Historic Site and the Historic Structures associated with entering into this agreement.

I. Through this agreement, the parties wish and desire to resolve and settle, with

finality, any and all claims they have, or may have, arising out of or related to the allegations in the CEQA Petition. Any existing or potential challenges or claims related to or arising out of the matters alleged in the CEQA Petition shall hereafter be referred to as the "Claims."

J. Each of the foregoing recitals is incorporated by reference in the following provisions of this agreement as if set forth in full therein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants set forth in this agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1.0 COMMITMENTS BY PETITIONERS

1.1 **Dismissal of CEQA Petition.** Concurrent with execution of this agreement, Petitioners shall execute and deliver to counsel for the County, with a copy to counsel for Vail, an executed request for dismissal with prejudice of the entire CEQA Petition in accordance with California Rule of Court 19 against all respondents and real parties in interest, including the County and Vail. A copy of the request for dismissal is attached at Exhibit B to this agreement. Exhibit B is incorporated herein by reference.

1.2 **Duty to Cooperate.** Counsel for Petitioners is hereby authorized and directed to execute the request for dismissal, and to take such action as may be necessary or appropriate to have the dismissal entered pursuant to the terms of this agreement.

1.3 **Restoration.** Under section 2.2 of this agreement, Vail grants to Petitioners a limited right of access to perform certain restoration activities at the Historic Site, conditioned and contingent upon the terms and conditions of this agreement. Such restoration activities shall consist of, and be limited to, reconstruction of the Implement Barn (Building G on Exhibit C) in

the approximate location shown on Exhibit C ("Petitioners' Restoration Activities"). Petitioners may, at their sole discretion, perform Petitioners' Restoration Activities. If Petitioners exercise their right to perform Petitioners' Restoration Activities, then:

1.3.1 Not less than 48 hours before Petitioners commence Petitioners' Restoration Activities:

1.3.1.1 Petitioners shall provide Vail with notice that Petitioners intend to commence Petitioners' Restoration Activities,

1.3.1.2 Petitioners shall obtain a comprehensive general liability insurance policy in the amount of $2.0 million for personal injuries or for property damage occurring during the performance of Petitioners' Restoration Activities, naming Vail and the County as additional insureds ("Petitioners' Insurance Policy"), and

1.3.1.3 Petitioners shall provide written proof to Vail and to the County that Petitioners have obtained Petitioners' Insurance Policy;

1.3.2 Petitioners shall maintain Petitioners' Insurance Policy until Petitioners' Restoration Activities have been completed;

1.3.3 Petitioners shall obtain, at Petitioners' sole cost and expense, all governmental permits and authorizations of whatever nature required by any and all governmental agencies for Petitioners' Restoration Activities. While on the Historic Site, Petitioners shall comply and shall cause all other persons on the Historic Site to comply with all applicable governmental laws and regulations.

1.3.4 Petitioners shall reasonably cooperate with Vail to schedule Petitioners' Restoration Activities so as to avoid, to the maximum extent practicable, disrupting Vail's activities on the Vail Property;

1.3.5 Petitioners shall perform Petitioners' Restoration Activities at no cost to Vail or the County;

1.3.6 Petitioners shall, to the extent feasible, use the salvageable materials stockpiled by Vail pursuant to section 2.1.5 of this agreement in performing Petitioners' Restoration Activities;

1.3.7 Petitioners shall keep the Vail Property free of any and all claims, liens and demands related to Petitioners' Restoration Activities, and notify immediately Vail in the event any such liens are known or anticipated. Petitioners shall also save, indemnify, and hold harmless the Vail Property, the Historic Site, and Vail from any claim of lien and/or any demand;

1.3.8 Petitioners shall, at the conclusion of performing Petitioners' Restoration Activities, leave the affected Historic Structures in broom-clean condition acceptable to Vail;

1.3.9 Petitioners shall, not more than six months after the Effective Date, or not later than Vail's completion of restoration of the Office Barn, whichever later occurs, commence Petitioners' Restoration Activities. If Petitioners fail to commence Petitioners' Restoration Activities on or before that date, then Petitioners' right to perform such activities shall be deemed waived; and

1.3.10 Petitioners shall, not more than two years after the Effective Date, complete Petitioners' Restoration Activities.

1.4 Indemnification/Waiver/Release. Petitioners shall indemnify, defend, hold harmless, and release Vail and the County, and each of their partners, attorneys, agents, employees, predecessors, assigns, whether of parent, subsidiary or affiliate corporations or partnerships, from and against all claims (including third party claims), demands, liabilities, damages, costs and expenses, including without limitation civil penalties, attorney fees and costs,

damages of whatever kind or nature, on account of or in any way associated with (a) any challenge to this agreement, including but not limited to claims by non-parties seeking to set aside this agreement under the California Environmental Quality Act ("CEQA") or the State Planning and Zoning Law or any other legal authority, and (b) Petitioners' Restoration Activities. Petitioners waive any and all rights they have, or may have, against the County or Vail with respect to or arising out of the Claims. Petitioners' obligation to indemnify the County and Vail for claims by non-parties seeking to set aside this agreement shall not apply to any action commenced 181 or more days after the Effective Date.

1.5 Acknowledgment of Agreements Between County and Vail. Petitioners acknowledge that, except as specifically revised by this agreement, the January 1998 Settlement Agreement shall remain in full force and effect. Petitioners further acknowledge that Vail and the County may enter into a separate agreement setting forth those parties' understandings regarding the January 1998 Settlement Agreement or this agreement. Provided the County and Vail fulfill their commitments as set forth in this agreement, Petitioners shall not object to, seek input into, or challenge such agreement, if any.

1.6 Acknowledgment of No Significant Impacts. Petitioners acknowledge that the restoration and rehabilitation activities set forth in the January 1998 Settlement Agreement, as revised by this agreement, shall have no significant impact on any and all historic resources at the Vail Property. Petitioners have reviewed, and concur with, the analysis and conclusions set forth in the Addendum.

1.7 Acknowledgment of Commercial Uses. Petitioners acknowledge and accept that, once rehabilitated, and subject to Vail's commitment to provide Petitioners with an option and a right of first refusal under section 2.3 of this agreement, Vail may use the Historic Structures for

one or more commercial uses consistent with the zoning and the Specific Plan.

1.8 Attorneys' Fees and Costs. Petitioners waive and relinquish any and all claims for attorneys fees and costs they have, or may have, against Vail or the County in connection with the CEQA Petition.

1.9 Acknowledgment of Conditionality. Petitioners acknowledge and accept that this agreement becomes valid and binding on the County only upon approval by the Board.

2.0 COMMITMENTS BY VAIL

2.1 Restoration of Historic Site and Historic Structures. Except as specifically revised by this agreement, Vail shall carry out those activities with respect to Historic Structures set forth in section 9 of the January 1998 Settlement Agreement. Vail shall modify its restoration activities at the Historic Site and of the Historic Structures as follows (the reconstruction and rehabilitation activities at the Historic Site and of the Historic Structures, as modified by this agreement, shall hereafter be referred to as "Vail's Restoration Activities"):

2.1.1 The January 1998 Settlement Agreement required Vail to rehabilitate the Historic Structures within a 2.5-acre parcel. Vail shall set aside an additional 1.5 acres directly east of the existing 2.5-acre parcel for reconstruction and rehabilitation of the Historic Structures. The Historic Site, as modified under this agreement, shall consist of 4.0+/- acres. The location of the Historic Site, as modified under this agreement, is depicted on Exhibit C to this Agreement. Exhibit C is hereby incorporated by reference and agreed to by all parties herein.

2.1.2 Vail shall reconfigure the site plan for the Historic Structures to conform substantially to the conceptual site plan depicted in Exhibit C.

2.1.3 Vail shall rehabilitate (exterior only) the following buildings, which shall remain in their current locations (key is to buildings shown on Exhibit C):

2.1.3.1 Wolf's Store (Building A);

2.1.3.2 Cook House (Ranch House) (Building B); and

2.1.3.3 Bunkhouse (Building C).

2.1.4 Vail shall dismantle, relocate and reconstruct (exterior only) the following buildings, which shall be relocated to the approximate positions shown on Exhibit C:

2.1.4.1 Water District Office (Gate House) (Building E);

2.1.4.2 Caretaker's House (frame only) (Building D); and

2.1.4.3 Office/Barn (Building F).

2.1.5 To the extent feasible, and as reasonably practicable, Vail shall use salvageable materials from the Office/Barn in the reconstruction of that structure. Vail shall also, to the extent possible, use salvageable materials from the Implement Barn in reconstruction of the Office/Barn. Vail shall stockpile all salvageable materials from the Implement Barn remaining after completion of reconstruction of the Office/Barn. Vail shall make these materials available to Petitioners for use in performing Petitioners' Restoration Activities.

2.1.6 In performing Vail's Restoration Activities, Vail reiterates its commitment under section 9(b) of the January 1998 Settlement Agreement that the parking lot will be located within the Historic Site near Wolf's Store Road, as shown on Exhibit C to the January 1998 Settlement Agreement.

2.1.7 Not more than one (1) year after the Effective Date, Vail shall complete Vail's Restoration Activities.

2.2 Access. Vail shall allow Petitioners reasonable access to the Historic Site to perform Petitioners' Restoration Activities. Vail's obligation to provide such access shall be subject to, and conditioned on, Petitioners meeting their obligations under section 1.3 of this

agreement. Nothing in this agreement shall be construed in a manner to impose costs on Vail in connection with Petitioners' Restoration Activities. Petitioners agree with Vail that a Notice of Nonresponsibility may be posted on the Historic Site concerning Petitioners' Restoration Activities.

2.3 Option to Purchase -- Right of First Refusal.

2.3.1 Option to Purchase. Vail shall grant Petitioners a six-month option (the "Option") to purchase the 1.7+/- acre parcel adjacent to the east of the 4.0+/- acre Historic Site restoration area (the "Option Property"). The Option shall become effective on the Effective Date. The Option price shall be $6.00 per square foot. The Option shall be in the form attached hereto as Exhibit D. Exhibit D is incorporated herein by reference.

2.3.2 Right of First Refusal.

2.3.2.1 Upon expiration of the Option, Vail shall provide Petitioners with a one-time right of first refusal regarding purchase of the Option Property ("Right of First Refusal"). The Right of First Refusal shall exist for eighteen (18) months immediately after the expiration of the Option or until it is terminated by acceptance or rejection as described in sections 2.3.2.3 and 2.3.2.4 of this agreement.

2.3.2.2 If Vail receives an offer ("Offer") to purchase the Option Property that is acceptable to Vail, then Vail shall send written notice (the "First Refusal Notice") to Petitioners via certified mail of the terms and conditions of that Offer. The First Refusal Notice shall be deemed to be an offer by Vail to transfer the Option Property to Petitioners strictly upon the terms and conditions of the Offer, except as otherwise provided in this agreement.

2.3.2.3 Petitioners may accept transfer of the Option Property by delivering a written notice of acceptance ("Acceptance Notice") to Vail not more than ten (10) days after

receipt of the First Refusal Notice ("Response Period"). The Acceptance Notice shall express Petitioners' willingness to agree to purchase the Option Property on the same terms and conditions as contained in the First Refusal Notice.

2.3.2.4 Petitioners may reject transfer of the Option Property by either: (1) delivering a notice of rejection ("Rejection Notice") to Vail during the Response Period, or (2) failing to deliver either a Notice of Acceptance or Notice of Rejection to Vail during the Response Period. Upon rejection by Petitioners, the right of first refusal set forth in section 2.3.2 expires, and shall be null and void, and have no further force or effect as to the Offer or any other offer to acquire the Option Property.

2.3.3 Non-Assignability. Petitioners shall not assign the Option or the Right of First Refusal, except in accordance with this section. In the event Petitioners attempt to assign the Option or the Right of First Refusal in a manner inconsistent with this section, Petitioners' rights under this section 2.3 shall be null and void, and shall terminate without further notice. Petitioners may assign the Option or the Right of First Refusal provided: (a) the assignee is a non-profit corporation, association, or other formal entity (the "Non-Profit Entity"), (b) the Non-Profit Entity is organized and exists for the express purpose of conservation or preservation of historic sites or open space, (c) the further assignment of the Option or the Right of First Refusal by the Non-Profit Entity is subject to this section 2.3.3, and (d) Vail consents to and approves the assignment, such consent and approval not to be unreasonably withheld.

2.4 National Register of Historic Places. Vail shall consider whether to seek listing of the Historic Site on the "National Register of Historic Places" as a "Historic District."

2.5 Indemnification/Waiver/Release. Except as stated herein, as between Vail and the County, Vail's obligations under sections 10 and 12 of the January 1998 Settlement Agreement

shall remain in full force and effect, and shall extend to the subject matter of this agreement.

2.6 Relationship to January 1998 Settlement Agreement. Section 9 of the January 1998 Settlement Agreement shall, as to those matters not specifically addressed by this agreement, remain in full force and effect. To the extent possible, Vail's obligations under this agreement shall be harmonized with Vail's obligations under section 9 of the January 1998 Settlement Agreement. If Vail's obligations under this agreement conflict with Vail's obligations under section 9 of the January 1998 Settlement Agreement, then this agreement shall prevail. Nothing in this agreement shall be construed as altering in any way the requirements imposed by the Specific Plan or by the Specific Plan Rehabilitation Standards concerning the development of the Vail Property. All obligations and requirements of the Specific Plan, the Specific Plan Rehabilitation Standards, and other applicable federal, state and local law shall continue in full force and effect. Vail's Restoration Activities, as required by the January 1998 Settlement Agreement and by this agreement, are intended to further clarify Vail's obligation to rehabilitate the Historic Structures, taking into account the current condition of those structures, additional information regarding the historic significance of those structures, and the County's desire to facilitate their rehabilitation. As to all matters not specifically addressed by this agreement, Vail's obligations under the January 1998 Settlement Agreement shall remain in full force and effect.

2.7 Effect of Legal Challenge. If, within 31 days after the Effective Date, Petitioners or one or more non-parties file a petition for writ of mandate or other type of legal challenge seeking to set aside or enjoin this agreement under CEQA or the State Planning and Zoning Law or any other legal authority, then Vail's obligations under this agreement shall be null and void, and shall have no force or effect.

2.8 Attorneys' Fees and Costs. Vail waives and relinquishes any and all claims for

attorneys fees and costs it has, or may have, against Petitioners or the County in connection with the CEQA Petition.

2.9 **Acknowledgment of Conditionality.** Vail acknowledges and accepts that this agreement becomes valid and binding on the County only upon approval by the Board.

3.0 COMMITMENTS BY THE COUNTY

3.1 **Duty to Cooperate.** The County shall cooperate with Petitioners and Vail with respect to reviewing or processing approvals required to carry out this agreement.

3.2 **Site Plan.** The County agrees that, in performing Vail's Restoration Activities, Vail may rehabilitate the Historic Structures within the 4.0+/- acre parcel according to the conceptual site plan set forth in Exhibit C. The County further agrees that the parking lot may be located within the Historic Site near Wolf's Store Road as shown on Exhibit C to the January 1998 Settlement Agreement.

3.3 **Findings.** The County finds that Vail's Restoration Activities are consistent with and implement (a) the Specific Plan, and (b) the Secretary of the Interior's Standards of Rehabilitation, presently codified at 36 Code of Federal Regulations Part 67.7, and in conformity with state and local statutes, ordinances, regulations or other laws, polices or guidelines that have been enacted by federal, state or local governments governing the maintenance and rehabilitation of historic properties (the "Specific Plan Rehabilitation Standards"). The County finds that Vail's Restoration Activities will not create any significant new environmental impacts not already studied in the Vail Ranch Specific Plan EIR. The County bases these findings on, among other evidence, the Historic Resources Analysis of the Vail Ranch Headquarters prepared by Jean A. Keller, a Cultural Resources Consultant, in August 1996, the Historic Rehabilitation Feasibility Study for Vail Ranch prepared by Paul W. Johnson, A.I.A., in May 1997, and the Addendum.

The County makes the following, further findings:

3.3.1 Vail's Restoration Activities with respect to Wolf's Store, the Cook House, and the Bunkhouse will create no significant new environmental impacts not already analyzed in the EIR because all three buildings will be rehabilitated in their present locations in conformity with the Specific Plan Rehabilitation Standards.

3.3.2 Vail's reconstruction activities with respect to the Water District Office (Gate House) will create no significant new environmental impacts not already analyzed in the EIR because this building is historically significant due to its architectural style, as opposed to its date of construction, building materials and/or use of the building, or location on the Vail Property. Reconstruction of the Water District Office, whether or not it is feasible to use some or all of the existing building materials, will therefore preserve the historic quality of the building. Further, given the deteriorated state of the building, it would not be feasible to rehabilitate the building without extensive effort and widespread use of new building materials different in nature from the original building materials. Finally, reconstruction of the Water District Office in a different location is necessary because the building currently sits outside of the agreed-upon Historic Site plan.

3.3.3 Vail's reconstruction activities with respect to the Office/Barn will create no significant new environmental impacts not already analyzed in the EIR because this building will be relocated to a site close to its present location and rehabilitated in essentially the same manner, utilizing original or similar building materials where feasible.

3.3.4 Vail's reconstruction activities with respect to the Caretaker's House will create no significant new environmental impacts not already analyzed in the EIR because the wood portion of the building will be relocated to a site close to its present location and rehabilitated in

essentially the same manner, utilizing original or similar building materials where feasible. Although the adobe portion of the building will not be preserved as part of Vail's reconstruction activities, the adobe portion of the building was not constructed until the 1950s, long after the wood portion of the building was constructed. Thus, the adobe portion of the building is not considered historically significant.

3.4 **Indemnification/Waiver/Release.** As between Vail and the County, the County's obligations under sections 10 and 12 of the January 1998 Settlement Agreement shall remain in full force and effect, and shall extend to the subject matter of this agreement.

3.5 **Relationship to January 1998 Settlement Agreement.** Section 9 of the January 1998 Settlement Agreement shall, as to those matters not specifically addressed by this agreement, remain in full force and effect. To the extent possible, the County's obligations under this agreement shall be harmonized with the County's obligations under section 9 of the January 1998 Settlement Agreement. If the County's obligations under this agreement conflict with the County's obligations under section 9 of the January 1998 Settlement Agreement, then this agreement shall prevail. As to all matters not specifically addressed by this agreement, the County's obligations under the January 1998 Settlement Agreement shall remain in full force and effect.

3.6 **Attorneys' Fees and Costs.** The County waives and relinquishes any and all claims for attorneys fees and costs it has, or may have, against Petitioners in connection with the CEQA Petition.

4.0 GENERAL PROVISIONS

4.1 **Representations and Warranties of Authority.** Each party represents to all other parties that such party has the full power and authority to enter into this agreement, that the

execution and delivery thereof will not violate any agreement to which such party is a party or by which such party is bound, and that this agreement, as executed and delivered, constitutes a valid and binding obligation of such party, enforceable in accordance with its terms. The corporate, partnership, and association signatories to this agreement expressly warrant that they have been authorized by their respective company, partnership, or association entities to execute this agreement and to bind them to the terms and provisions hereof.

4.2 **General Mutual Release.** Except as otherwise expressly set forth in this agreement, each party, on behalf of itself and its respective officers, directors, agents, insurers and subrogees, predecessors, successors, affiliated and related entities, and assignors and assignees, and each of them, hereby releases and forever discharges all other parties and their respective officers, directors, agents, insurers and subrogees, predecessors, successors, affiliated and related entities, assignors and assignees, and each of them, from any and all past, present and future claims, demands, causes of action, obligations, damages, costs and expenses of any nature whatsoever, relating to or arising out of, directly or indirectly, the Claims. The parties intend this agreement to be a full and general release as to subject matters set forth in the Claims, and they hereby mutually waive all claims or benefits which they now have, or in the future may have, under the provisions of Section 1542 of the California Civil Code, which reads as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Each party acknowledges that its attorney-at-law has explained to it the meaning and effect of this statute. Each party understands fully the statutory language of Civil Code Section 1542 and, with the understanding, each party nevertheless elects to, and does, assume all risk for claims released

under this agreement heretofore and hereafter arising, known or unknown, and each party specifically waives any rights it may have under Civil Code Section 1542. Each party fully understands that if the facts with respect to this agreement are found hereafter to be other than or different from the facts now believed by it to be true, it expressly accepts and assumes the risk of such possible difference in facts and agrees that this agreement shall be and remain effective notwithstanding such difference in facts.

(Initials)	(Initials)
(Initials)	(Initials)
(Initials)	(Initials)
(Initials)	(Initials)
(Initials)	(Initials)

4.3 **No Future Actions.** Each party hereby agrees never to commence, aid, prosecute or cause to be prosecuted against the other party any action or any other proceeding based in whole or in part upon any rights, liens, claims, demands or causes of action of any nature whatsoever waived, released or discharged by this agreement.

4.4 **Complete Defense.** This agreement may be pled as a full and complete defense to any subsequent action or other proceeding involving any person or party which arises out of, relates to, or has anything to do with, the rights, liens, claims, demands or causes of action waived, released and discharged by this agreement.

4.5 **No Admission of Liability.** The parties acknowledge that this agreement is being entered into in settlement and to avoid further dispute, expense or litigation. The parties agree

under this agreement heretofore and hereafter arising, known or unknown, and each party specifically waives any rights it may have under Civil Code Section 1542. Each party fully understands that if the facts with respect to this agreement are found hereafter to be other than or different from the facts now believed by it to be true, it expressly accepts and assumes the risk of such possible difference in facts and agrees that this agreement shall be and remain effective notwithstanding such difference in facts.

____________ (Initials)	____________ (Initials)
____________ (Initials)	____________ (Initials)
____________ (Initials)	____________ (Initials)
____________ (Initials)	____________ (Initials)
____________ (Initials)	____________ (Initials)

4.3 No Future Actions. Each party hereby agrees never to commence, aid, prosecute or cause to be prosecuted against the other party any action or any other proceeding based in whole or in part upon any rights, liens, claims, demands or causes of action of any nature whatsoever waived, released or discharged by this agreement.

4.4 Complete Defense. This agreement may be pled as a full and complete defense to any subsequent action or other proceeding involving any person or party which arises out of, relates to, or has anything to do with, the rights, liens, claims, demands or causes of action waived, released and discharged by this agreement.

4.5 No Admission of Liability. The parties acknowledge that this agreement is being entered into in settlement and to avoid further dispute, expense or litigation. The parties agree