

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.

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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.

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**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

that neither execution hereof nor performance of any of the provisions of this agreement shall constitute or be construed as an admission on the part of any party of any liability regarding the Claims, and nothing herein shall be admissible in any proceeding as an admission of any factual matter against any party.

**4.6 Indemnity for False Representations.** Each party agrees to indemnify and save harmless the other parties from any loss incurred directly or indirectly by reason of the falsity or inaccuracy of any representation made herein by that entity.

**4.7 Entire Agreement.** This agreement constitutes the entire agreement between the parties, and it is expressly understood and agreed that the agreement has been freely and voluntarily entered into by the parties with the advice of counsel, who have explained the legal effect of this agreement. The terms of this agreement are contractual and not mere recitals. The parties further acknowledge that no warranties, representations or inducements not contained in this agreement have been made on any subject in connection with this agreement, and that they have not been induced to execute this agreement by reason of non-disclosure or suppression of any fact. This agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by the parties or their authorized representatives. This agreement is fully integrated.

**4.8 Construction.** The parties acknowledge that each party and its counsel have reviewed and revised this agreement and that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this agreement.

**4.9 Severability.** In the event any of the terms, conditions or covenants contained in this agreement are held to be invalid, any such invalidity shall not affect any other terms,

conditions or covenants contained herein which shall remain in full force and effect.

**4.10 Governing Law.** California law shall govern the interpretation and enforcement of this agreement.

**4.11 Successors and Assigns.** This agreement shall be binding upon and inure to the benefit of the respective heirs, successors, assigns and representatives of the parties. Without limiting the foregoing, the obligations of this agreement shall apply to any party to whom Vail transfers, sells or leases the Historic Site.

**4.12 Counterparts.** This agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

**4.13 Remedies.** The parties retain the full range of legal and equitable remedies to enforce the terms of this agreement, including injunctive relief and specific performance, to ensure the parties comply with their commitments under this agreement. In any action to enforce this agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs. The parties shall meet and confer and attempt to resolve their differences informally before commencing any action to enforce this agreement.

**4.14 Further Assurances.** In addition to the documents and instruments to be delivered as herein provided, each of the parties shall, from time to time at the request of the other parties, execute and deliver to the other parties such other instruments of transfer, conveyance and assignment and shall take such other action as may be required to more effectively carry out the terms of this agreement.

**4.15 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 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.

**4.16 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 solely to the parties and their successors and assigns.

**4.17 Time of the Essence.** Time is expressly declared to be of the essence of this agreement and of every provision hereof in which time is an element.

**4.18 Captions.** Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this agreement or any provision thereof.

**4.19 Number and Gender.** Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others, and the word "person" shall include corporation, firm, partnership, joint venture, trust, estate, or public or governmental agency.

**4.20 Notices.** Notices under this agreement shall be provided in writing as follows:

To the County:

///

County of Riverside  
4080 Lemon Street, 12th Floor  
Riverside, California 92501-3851  
Attention: Mr. Tony Carstens

with a copy to:

County of Riverside  
Office of the County Counsel  
3535 Tenth Street, Suite 300  
Riverside, California 92501  
Attention: Katherine A. Lind, Esq.

To Vail:

MDC-Vail  
9474 Kearny Villa Road  
Suite 203  
San Diego, California 92126  
Attention: Mr. Jerry Swanger

with copies to:

MDC-Vail  
Temecula, L.L.C.  
1225 Dublin Road  
Columbus, Ohio 43215  
Attention: Mr. Kevin Showe

Samuel C. Alhadeff  
Lorenz Alhadeff Cannon & Rose  
Suite 203, The Tower Plaza  
27555 Ynez Road  
Temecula, California 92590

To Petitioners:

Dick Diamond  
33263 Corte Yaca  
Temecula, California 92592

Darell Farnbach  
40250 Paseo del Cielo  
Temecula, California 92591

with a copy to:

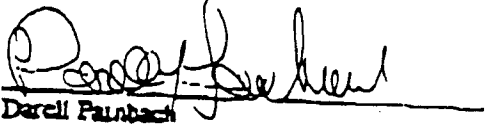
Raymond W. Johnson  
Attorney at Law  
26785 Camino Saco  
Temecula, California 92590

Such notices shall be considered received when delivered by courier, messenger service, Federal Express or other hand-delivered service process.

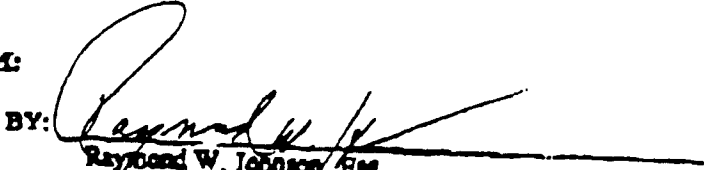
4.21 **Effective Date.** The effective date of this agreement shall be the date the Board approves this agreement (the "Effective Date"). The Board shall not approve this agreement unless and until Vail and Petitioners execute fully this agreement.

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

Date: June 12, 1998  
  
Dick Diamond

Date: June 12, 1998  
  
Darrell Farnbach

**APPROVED AS TO FORM:**

Date: June 12, 1998  
BY:   
Raymond W. Johnson, Esq.  
Counsel to Dick Diamond and Darrell Farnbach

Date: June \_\_, 1998  
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 KEAHOE PARTNERS, its Managing Member  
BY: NATIONAL HOUSING CORPORATION OF HAWAII, INC., its General Partner

BY: \_\_\_\_\_  
Kevin M. Shows, Vice President

BY: VAIL PROPERTIES, a California Limited Partnership  
BY: VAIL ASSOCIATES, INC. its General Partner

BY: \_\_\_\_\_  
Jerry D. Sawyer, Secretary

Ray: d W. Johnson  
Attorney at Law  
26785 Camino Seco  
Temecula, California 92590

Such notices shall be considered received when delivered by courier, messenger service, Federal Express or other hand-delivered service process.

4.21 Effective Date. The effective date of this agreement shall be the date the Board approves this agreement (the "Effective Date"). The Board shall not approve this agreement unless and until Vail and Petitioners execute fully this agreement.

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

Date: June \_\_, 1998

\_\_\_\_\_  
Dick Diamond

Date: June \_\_, 1998

\_\_\_\_\_  
Darell Farnbach

**APPROVED AS TO FORM:**

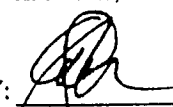
Date: June \_\_, 1998

BY: \_\_\_\_\_  
Raymond W. Johnson, Esq.  
Counsel to Dick Diamond and Darell Farnbach

Date: June \_\_, 1998

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 D. Swanger, Secretary



Raymond W. Johnson  
Attorney at Law  
26785 Camino Seco  
Temecula, California 92590

Such notices shall be considered received when delivered by courier, messenger service, Federal Express or other hand-delivered service process.

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

Date: June \_\_, 1998

\_\_\_\_\_  
Dick Diamond

Date: June \_\_, 1998

\_\_\_\_\_  
Darell Farnbach

APPROVED AS TO FORM:

Date: June \_\_, 1998

BY: \_\_\_\_\_  
Raymond W. Johnson, Esq.  
Counsel to Dick Diamond and Darell Farnbach

Date: June 15, 1998

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 D. Swanger, Secretary

**APPROVED AS TO FORM:**

Date: June 15, 1998

BY: Samuel C. Alhadef  
Samuel C. Alhadef  
Lorenz Alhadef Cannon & Rose, L.L.P.  
Counsel to MDC Vail

Date: June 23, 1998

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

BY: \_\_\_\_\_  
John F. Tavaglione  
Chairperson  
Riverside County Board of Supervisors

**ATTEST:**

Gerald A. Maloney  
Clerk of the Board of Supervisors

Date: June 23, 1998

\_\_\_\_\_  
Deputy Clerk to the Board of Supervisors

**APPROVED AS TO FORM:**

Date: June 23, 1998

BY: \_\_\_\_\_  
William C. Katzenstein  
County Counsel  
Katherine A. Lind  
Deputy County Counsel

8060124.006

**APPROVED AS TO FORM:**

Date: June \_\_, 1998

BY: \_\_\_\_\_  
Samuel C. Alhadeff  
Lorenz Alhadeff Cannon & Rose, L.L.P.  
Counsel to MDC Vail

Date: June 23, 1998

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

BY: \_\_\_\_\_  
John F. Tavaglione  
Chairperson  
Riverside County Board of Supervisors

**ATTEST:**

Gerald A. Maloney  
Clerk of the Board of Supervisors

Date: June 23, 1998

\_\_\_\_\_  
Deputy Clerk to the Board of Supervisors

**APPROVED AS TO FORM:**

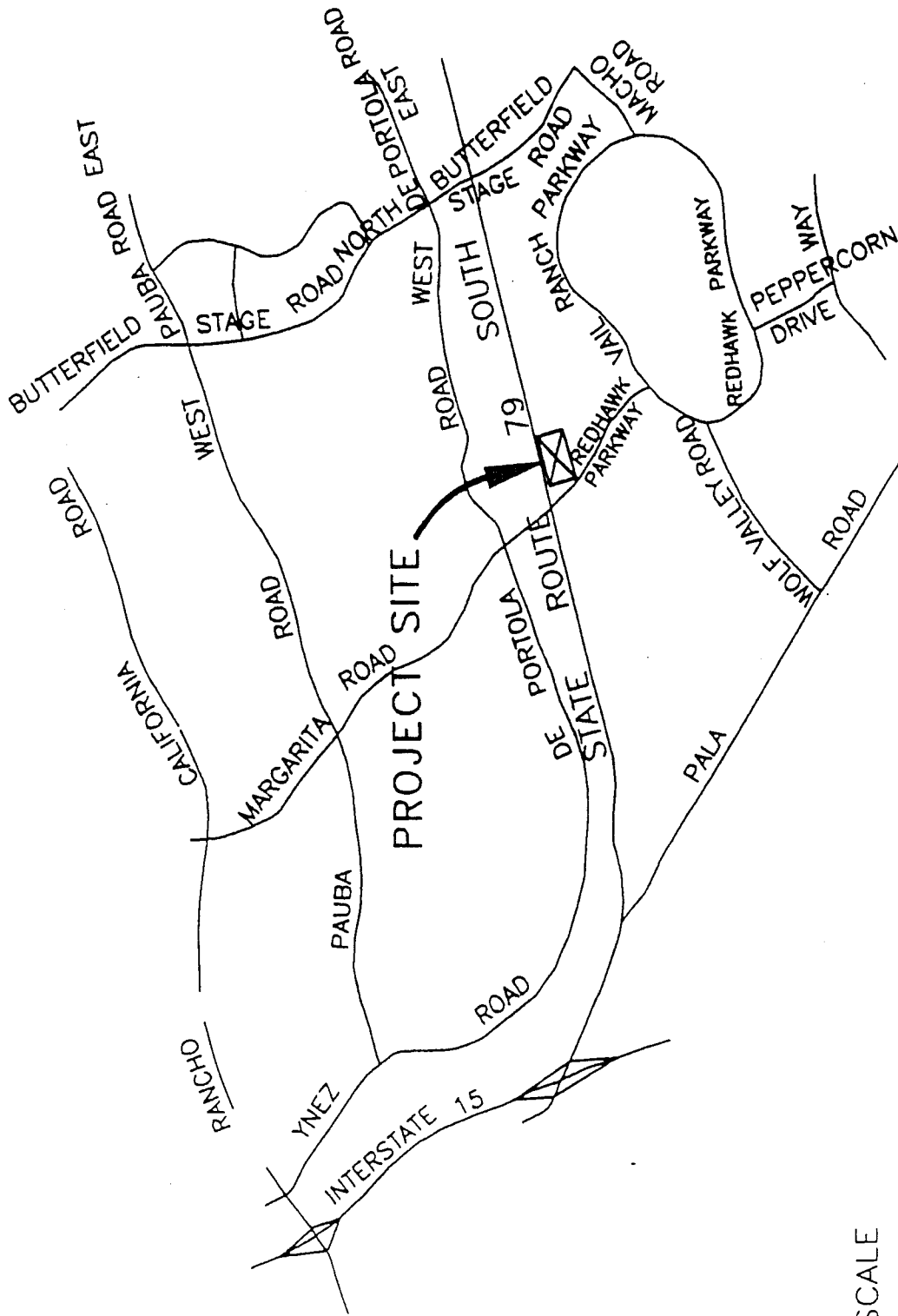
Date: June 23, 1998

BY: Katherine A. Lind  
William C. Katzenstein  
County Counsel  
Katherine A. Lind  
Deputy County Counsel

EXHIBITS TO SETTLEMENT AGREEMENT

- A Map showing location of Vail Property
- B Request for dismissal -- CEQA Petition
- C Site Plan -- Historic Site
- D Option

8060884.002



NOT TO SCALE

*brf* enterprises  
ajr

CONSULTING ENGINEERS  
PHONE: (909) 245-2127  
FAX: (909) 245-7927

311 MISSION TRAIL  
KE EL SINORE, CA 92530

**EXHIBIT "A"**

26785 CAMINO SECO  
TEMECULA, CALIFORNIA 925

ATTORNEY FOR (Name): PETITIONERS DICK DIAMOND AND DARELL FARNBACH

Insert name of court and name of judicial district and branch court, if any.

RIVERSIDE COUNTY SUPERIOR COURT

PLAINTIFF/PETITIONER: DICK DIAMOND AND DARELL FARNBACH

DEFENDANT/RESPONDENT: COUNTY OF RIVERSIDE and BOARD OF SUPERVISORS OF RIVERSIDE COUNTY

REQUEST FOR DISMISSAL

Personal Injury, Property Damage, or Wrongful Death

Motor Vehicle  Other

Family Law

Eminent Domain

Other (specify): PETITION FOR WRIT OF MANDATE

CASE NUMBER:

308891

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. TO THE CLERK: Please dismiss this action as follows:

a. (1)  With prejudice (2)  Without prejudice

b. (1)  Complaint (2)  Petition

(3)  Cross-complaint filed by (name):

on (date):

(4)  Cross-complaint filed by (name):

on (date):

(5)  Entire action of all parties and all causes of action

(6)  Other (specify):\*

Date:

RAYMOND W. JOHNSON  
(TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

\* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

(SIGNATURE)

Attorney or party without attorney for:

Plaintiff/Petitioner

Defendant/Respondent

Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*

Date:

(TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

\*\* If a cross-complaint—or Response (Family Law) seeking affirmative relief—is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(SIGNATURE)

Attorney or party without attorney for:

Plaintiff/Petitioner

Defendant/Respondent

Cross-complainant

(To be completed by clerk)

3.  Dismissal entered as requested on (date):

4.  Dismissal entered on (date): as to only (name):

5.  Dismissal not entered as requested for the following reasons (specify):

6.  a. Attorney or party without attorney notified on (date):

b. Attorney or party without attorney not notified. Filing party failed to provide

a copy to conform  means to return conformed copy

Date: Clerk, by Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name or address): <b>RAYMOND W. JOHNSON</b> ATTORNEY AT LAW 3785 CAMINO SECO TEMECULA, CALIFORNIA 92590	TELEPHONE NO.: (909) 506-9925	FOR COURT USE ONLY
ATTORNEY FOR (Name): <b>PETITIONERS DICK DIAMOND AND DARELL FARNBACH</b> <small>Next name of court and name of judicial district and branch court, if any:</small> <b>RIVERSIDE COUNTY SUPERIOR COURT</b>		
PLAINTIFF/PETITIONER: <b>DICK DIAMOND AND DARELL FARNBACH</b> DEFENDANT/RESPONDENT: <b>COUNTY OF RIVERSIDE and BOARD OF SUPERVISORS OF RIVERSIDE COUNTY</b>		
<b>NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE</b> <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): <b>PETITION FOR WRIT OF MANDATE</b>		CASE NUMBER:  <div style="text-align: center; font-size: 1.2em;">308891</div>

TO ATTORNEYS AND PARTIES WITHOUT ATTORNEYS: A dismissal was entered in this action by the clerk as shown on the Request for Dismissal. (Attach a copy completed by the clerk.)

Date:

..... **RAYMOND W. JOHNSON** .....  
 (TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)



(SIGNATURE)

### PROOF OF SERVICE

I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is:

2.  I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by mailing them, in a sealed envelope with postage fully prepaid, as follows:
- a.  I deposited the envelope with the United States Postal Service.
  - b.  I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
  - c. Date of deposit:
  - d. Place of deposit (city and state):
  - e. Addressed as follows (name and address):

3.  I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by personally delivering copies to the person served as shown below:
- |       |       |       |          |
|-------|-------|-------|----------|
| Name: | Date: | Time: | Address: |
|-------|-------|-------|----------|

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:



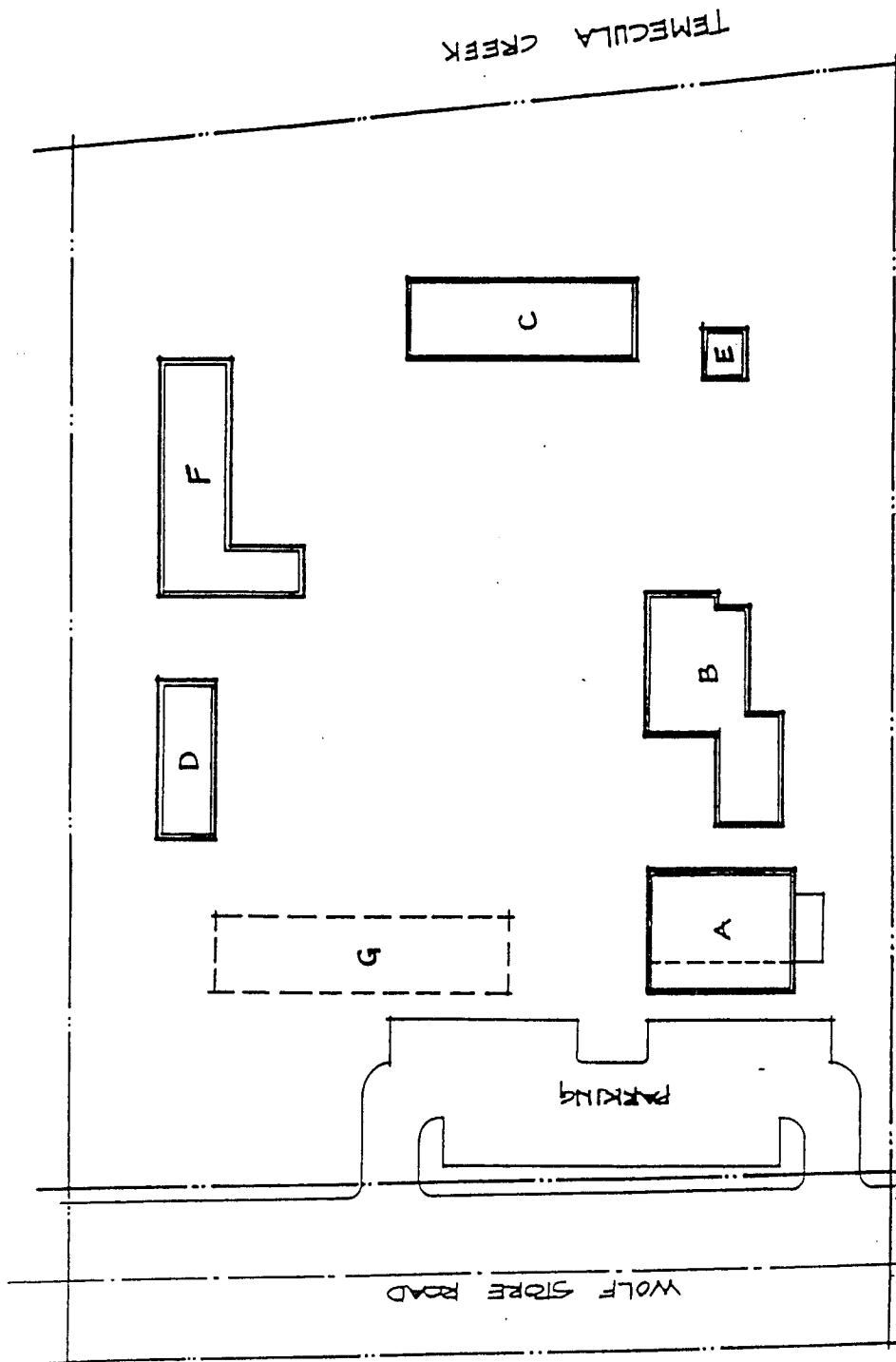
.....  
 (TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

**LEGEND**

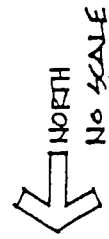
- A WOLF STORE
- B RANCH HOUSE
- C BUNK HOUSE
- D CARETAKERS HOUSE
- E R.C.W.D. OFFICE
- F OFFICE/ BARN
- G IMPLEMENT BARN (FUTURE)

SITE AREA = 4.0 ACRES



**VAIL RANCH HISTORIC COMPLEX**  
 TEMECULA, CALIFORNIA

**EXHIBIT 'C'**  
 MDC VAIL



*orf enterprises*  
 CONSULTING ENGINEERS  
 1 MISSION TRAIL PHONE: (909) 245-2127  
 ELSINORE, CA 92530 FAX: (909) 245-7927



**OPTION AGREEMENT  
TO PURCHASE REAL PROPERTY**

---

THIS OPTION AGREEMENT TO PURCHASE REAL PROPERTY ("Option Agreement"), dated for reference purposes June \_\_, 1998, is between MDC-VAIL, a California general partnership ("Optionor"), and DICK DIAMOND and DARELL FARNBACH ("Optionee"), with reference to the following:

**RECITALS:**

1. Optionor and Optionee are parties to that certain litigation styled Diamond, et al. v. County of Riverside, et al., Riverside County Superior Court Case No. 308891 (the "Lawsuit"). This Option Agreement is an agreed-upon term and condition of the Settlement Agreement resolving the Lawsuit.
2. Optionor holds fee title to certain real property in the County of Riverside, California, consisting of approximately 1.7 acres ("Subject Property"). The Subject Property will be contiguous and adjacent to the east of the approximately 4.0-acre Historic Site restoration area at Vail Ranch. Optionor is presently obtaining a boundary adjustment relating to the Historic Site. The Subject Property will be created upon the County's approval of the boundary adjustment creating the Historic Site. The Subject Property is more particularly described and depicted on Exhibit "A" hereto.
3. The Subject Property is a portion of Optionor's commercial project located adjacent to and on the south of State Highway 79 ("Project"). The Project is the subject of Vail Ranch Specific Plan No. 223 ("Specific Plan"), authorizing certain uses of the Project as specified therein.
4. Optionee wishes to acquire from Optionor the right to purchase the Subject Property, on the terms and subject to the conditions of this Option Agreement.

**THE PARTIES AGREE:**

**ARTICLE 1**

**Option to Purchase**

1.1 Grant of Option. Optionor hereby grants to Optionee the exclusive right and option to acquire fee title to the Subject Property (the "Option"), subject to the matters set forth in Section 7.1.2 of the Purchase Agreement and Escrow Instructions attached hereto as Exhibit 2 ("Purchase Agreement"), for a base purchase price of Six Dollars (\$6.00) per gross square foot ("Base Purchase Price"), for a total purchase price of Four Hundred Forty Four Thousand Three Hundred Twelve Dollars (\$444,312) ("Purchase Price"), all on the terms and conditions of this Option Agreement.

1.2 Option Consideration. Concurrently with delivery of this Option Agreement and as consideration for the grant of the Option, Optionee shall execute the Settlement Agreement in the

Lawsuit, as to which this Option Agreement is an Exhibit thereto ("Option Consideration"). The Option Consideration shall be fully earned upon Optionor's granting of the Option. The Option Consideration shall not be applicable to the Purchase Price.

### 1.3 Term of Option.

1.3.1 The Term. The Option granted hereunder shall remain in force for a six (6) month term ("Term"). The Option may be exercised by Optionee in the manner provided herein at any time prior to 2:00 p.m. on December 23, 1998 ("Expiration Date"). The parties expressly agree that time is of the essence of this Option Agreement, and that in no event may this Option be exercised after the Expiration Date without a writing signed by both Optionor and Optionee extending the Term.

1.3.2 Effect of Termination. Upon termination of this Option at the Expiration Date, this Option Agreement and all rights of Optionee hereunder shall automatically, and without further action of the parties, be void and of no further force or effect.

1.3.3 Quitclaim. Concurrently with execution and delivery of this Option Agreement, Optionee shall execute and deliver to Escrow Holder (as defined below) a Quitclaim Deed in the form attached hereto as Exhibit 1 and made a part hereof, relinquishing all interest in and to the Subject Property and the Project. As a material inducement without which Optionor would not have entered into this Option Agreement, Optionee irrevocably agrees that upon expiration or earlier termination of this Option Agreement, Optionor, at its sole election, may instruct Escrow Holder to record Optionee's quitclaim deed with the County Recorder of Riverside County.

### 1.4 Exercise of Option.

1.4.1 Method of Exercise. Subject to satisfaction of the conditions described in Section 1.4.2, Optionee may exercise the Option by delivery, at any time prior to the Expiration Date, to First American Title Insurance Company, 3625 14th Street, Riverside, California 92502, Attention: Escrow Department ("Escrow Holder"), of three counterparts of the Purchase Agreement executed by Optionee as Buyer, together with all funds and documents required to be delivered by Buyer under the Purchase Agreement. The time of exercise shall be the time of delivery by Optionee to Escrow Holder of the three signed counterparts of the Purchase Agreement and all funds and documents referred to therein.

1.4.2 Conditions to Exercise. Optionee may exercise this Option during the Term only upon compliance with each of the following terms and conditions:

(a) Optionee shall not be in default of any of its obligations under this Option Agreement; and

(b) Optionee shall have provided Optionor and Escrow Holder one (1) week's prior written notice of Optionee's intention to exercise this Option, to permit Escrow Holder and Optionor to prepare for the close of escrow immediately following Optionee's exercise of the Option.

1.4.3 Effect of Exercise. Upon proper exercise of this Option within the time and in the manner set forth in this Option Agreement, Optionor shall convey the Subject Property to Optionee on the terms and subject to the conditions of the Purchase Agreement. Upon recordation of Seller's Grant Deed (as defined in the Purchase Agreement), all rights and obligations of the parties shall be governed by the Purchase Agreement, and this Option Agreement shall have no further force or effect.

1.5 No Recordation. Neither this Option Agreement nor any memorandum or short-form version thereof shall under any circumstances be recorded. Recordation shall automatically terminate this Option Agreement.

## ARTICLE 2

### Entry by Optionee During Option Term

2.1 License to Enter. Optionor hereby grants to Optionee and its employees, agents and contractors, a non-exclusive license to enter upon the Subject Property during the term of this Option Agreement for purposes reasonably necessary or incidental to the investigation of the suitability of the Subject Property for Optionee's use. Optionee shall undertake no subsurface soil investigation on the Subject Property without having first provided notice to and obtained the consent of Optionor. Optionor's use of the Subject Property shall be subject to the provisions of this Article. If Optionee does not acquire the Subject Property, Optionee shall, at its sole cost, return the Subject Property to its present physical condition or as close thereto as reasonably possible. Optionee's obligations under this Article shall survive the termination of this Option Agreement.

2.2 Permits and Authorizations. Optionee shall obtain, at its sole cost and expense, all governmental permits and authorizations of whatever nature required by any and all governmental agencies. While on the Subject Property, Optionee shall comply and shall cause all other persons on the Subject Property to comply with all applicable governmental laws and regulations.

2.3 Reports and Studies. Copies of all reports and studies generated in the course of Optionee's investigation of the Subject Property shall be provided to Optionor during the week following their receipt by Optionee. Except as required by law or as approved in writing by Optionor in advance, Optionee shall not disclose the contents of any such reports or studies to any private or governmental entities or individuals, except to Optionee's lenders and prospective partners.

2.4 No Liens. Optionee shall not suffer or permit to be enforced against the Subject Property, or any part thereof, any mechanic's, materialman's, contractor's or subcontractor's lien arising from, or any claim for damage growing out of the work of any construction, repair, restoration, replacement or improvement, or any other claim or demand against the Subject Property of Optionor arising out of or related to Optionee's entry upon or use of the Subject Property. Optionee agrees to indemnify and hold Optionor and the Subject Property free and harmless from all liabilities for any and all liens, liabilities, claims and demands, together with reasonable attorneys' fees and all costs and expenses in connection therewith. Optionor reserves the right at any time and from time to time to post and maintain on said Subject Property such notices of nonresponsibility as may be necessary to protect Optionor against liability for all such liens and claims.

2.5 Loss or Damage. Optionor shall not be liable for any loss, damage or injury of any kind and character to any person, including, but not limited to, agents and employees of Optionee, caused by or arising from any act or omission on the Subject Property of Optionee or any of its agents, employees, licensees or invitees. Optionee agrees to indemnify and hold Optionor free and harmless from all liability for any such loss, damage or injury, and from all costs and expenses arising therefrom, including reasonable attorneys' fees.

2.6 Insurance Requirements. Prior to entry upon the Subject Property or performing any work thereon, Optionee shall secure and maintain, at Optionee's sole cost, the following policies of insurance, which are to include coverage of Optionee's activities on the Subject Property: (a) comprehensive public liability and property damage insurance, including direct contractual and contingent liability, with combined limits of \$2,000,000 for personal injury or death, \$1,000,000 for property damage, and \$1,000,000 policy limit for aggregate operations on an occurrence basis; (b) comprehensive automobile liability insurance with limits of \$1,000,000 for personal injury to, or death of, any one person, \$1,000,000 for personal injury to, or death of, more than one person in any one accident, and \$1,000,000 for property damage in any one accident; and (c) workers' compensation and employer's liability insurance in accordance with the provisions of California law. The policies of insurance described in clauses (a) and (b) above shall each name Optionor as an additional insured and contain a provision that such policy may not be terminated until thirty (30) days' written notice of the proposed termination has been delivered to Optionor. Certificates of

insurance evidencing the insurance policies described in this Paragraph and copies of such insurance policies shall be delivered by Optionee to Optionor before entry onto the Subject Property by Optionee.

### ARTICLE 3

#### Acknowledgments, Representations and Obligations

3.1 **FIRPTA Warranty.** Optionor warrants that no individual or entity which, under the terms of this Option Agreement, will transfer United States Real Property Interests (as defined in §897(c) of the Internal Revenue Code), is a "foreign person" within the meaning of §1445(f) of the Internal Revenue Code. Optionor agrees to execute and deliver through escrow prior to closing any affidavit required by Optionee verifying the warranty specified in this Section.

3.2 **No Other Representations or Warranties.** OPTIONEE ACKNOWLEDGES AND AGREES THAT OPTIONOR IS NOT MAKING AND HAS NOT MADE ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER WITH RESPECT TO THE SUBJECT PROPERTY. OPTIONEE WARRANTS AND REPRESENTS THAT IT HAS NOT RELIED UPON AND SHALL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY WARRANTY OR REPRESENTATION OF OPTIONOR NOT EXPLICITLY SET FORTH IN THIS OPTION AGREEMENT. OPTIONEE AGREES TO ASSUME, EFFECTIVE UPON THE EXERCISE OF THIS OPTION AND CLOSE OF ESCROW, ANY AND ALL RISK THAT ANY ADVERSE MATTERS (INCLUDING, WITHOUT LIMITATION, PHYSICAL AND ENVIRONMENTAL CONDITIONS) RELATING TO THE SUBJECT PROPERTY THAT MAY NOT HAVE BEEN REVEALED BY OPTIONEE'S INSPECTIONS AND INVESTIGATIONS OF THE SUBJECT PROPERTY.

3.3 **Basis of Optionee's Entry into Option Agreement.** Optionee acknowledges that it has entered into this Option Agreement, and that it contemplates purchasing the Subject Property, in reliance solely on (i) Optionee's inspection of the Subject Property, (ii) Optionee's independent verification of the truth of any documents delivered by Optionor to Optionee and any statements made by Optionor to Optionee concerning the Subject Property and its development not set forth herein, and (iii) the opinions and advice concerning the Subject Property and its development of consultants engaged by Optionee.

3.4 **"As-Is" Transaction.** Following exercise of the Option, Optionee shall accept the Subject Property, and all matters relating to the Subject Property, in their "as is" condition or status as the same is in on the date Optionee acquires the Subject Property. The matters relating to the Subject Property include, but are not limited to, the following: the soils and geological condition, topography, area and configuration of the Subject Property; the availability of utilities, public access and fire and police protection; applicable planning, zoning and subdivision statutes, ordinances, regulations and permits; the character and amount of park fees, school fees, inspection fees and any other fee or charge which must be paid to develop the Subject Property; the existence of any easement, license or encroachment which is not a matter of public record, whether or not visible upon inspection of the Subject Property; the presence, use, generation, storage, transportation, release or discharge of hazardous materials on, beneath, above or in the vicinity of the Subject Property; and any other matters relating to the Subject Property or to the development thereof, including, but not limited to, value, feasibility, cost, governmental permissions, marketing and investment return.

3.5 **Plans For Buyer Improvements.** During the Term, Optionee may prepare detailed plans and specifications for all aspects of the Buyer Improvements (defined in the Purchase Agreement) and submit them for Optionor's review and approval. All such plans and specifications shall be submitted to Optionor at least thirty (30) days prior to their submission to County. Following Optionor's approval, which shall not be unreasonably withheld or delayed, Optionee shall apply for and thereafter process with County all permits and approvals needed for the construction or

operation of the Buyer Improvements; provided, however, that in no event shall any such County approval be a condition precedent to the exercise of the Option or to the Close of Escrow (defined in the Purchase Agreement).

3.6 **Broker's Commissions.** Each party warrants to the other that the warranting party has incurred no obligation by reason of this Option Agreement or the transaction contemplated by this Option Agreement, for any real estate brokerage commission or finder's fee. Each party shall hold the other party free and harmless from and against any damage or expense the other party may incur by reason of the untruth as to the warranting party of the foregoing warranty, including expenses for attorneys' fees and court costs.

#### ARTICLE 4

##### Assignment By Optionee

4.1 **Assignment.** Optionee may assign any or all of Optionee's rights in this Option Agreement to a non-profit corporation organized for the purpose of conservation or preservation of historic sites or open spaces, subject to the prior written consent and approval of MDC Vail, which shall not be unreasonably withheld. Any assignment may be exercised only by written assignment executed by Optionee and accepted in writing by the assignee (which must, in such written acceptance, obligate itself to perform the assignor's obligations under this Option Agreement), and delivered to Optionor prior to the expiration of the Term. Any assignment of Optionee's rights made or attempted without such written assignment and acceptance shall be void.

4.2 **Effect of Approved Assignment.** In the event of any approved assignment, the assignee will be and become the person having the right or obligation to (i) deliver statements, (ii) deliver documents, (iii) give approvals, (iv) waive conditions, or (v) make demands, all as may be permitted or required by this Option Agreement and not then already accomplished by Optionee or another approved assignee. If Optionee does assign its rights to this Option Agreement in accordance with the provisions of this Article, the assignment will release Optionee from any further liability under this Option Agreement, and the assignee shall be solely responsible for the obligations of Optionee set forth in this Option Agreement.

#### ARTICLE 5

##### Eminent Domain

5.1 **Eminent Domain.** In the event that at any time during the Term all or any material portion of the Subject Property should be taken or appropriated by any public authority under the power of eminent domain, then Optionor or Optionee may at its option terminate this Option Agreement without further liability by delivering written notice of termination within three (3) days after receiving notice of the taking or appropriation.

#### ARTICLE 6

##### Other Provisions

6.1 **Notices.** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery, or by Federal Express (or similar reputable express delivery service), or by telecopier transmission with back-up copy mailed the same day, or as of the second business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Optionor: MDC-Vail  
9474 Kearny Villa Road, Suite 203  
San Diego, California 92126  
Telephone: (619) 695-1109  
Telecopier: (619) 695-8608  
Attention: Mr. Jerry Swanger, Sr.

With a copy to:

MDC-Vail  
Temecula, L.L.C.  
1225 Dublin Road  
Columbus, Ohio 43215  
Telephone: (614) 481-8106  
Telecopier: (614) 481-3416  
Attention: Mr. Kevin Showe

Lorenz, Alhadeff, Cannon & Rose  
550 West "C" Street, 19th Floor  
San Diego, California 92101-3540  
Telephone: (619) 231-8700  
Telecopier: (619) 231-8323  
Attention Sam C. Alhadeff, Esq.

If to Optionee: Dick Diamond  
33263 Corte Yaca  
Temecula, California 92592  
Telephone: (909) 693-2929

Darell Farnbach  
40250 Paseo del Cielo  
Temecula, California 92596  
Telephone: (909) 699-5148

With a copy to:

Raymond W. Johnson, Esq., AICP  
26785 Camino Seco  
Temecula, California 92590  
Telephone: (909) 506-9925  
Telecopier: (909) 506-9725

If to Escrow Holder: First American Title Insurance Company  
3625 14th Street  
Riverside, California 92502  
Telephone: (909) 787-1700  
Telecopier: (909) 784-7956  
Attention: Escrow Department

6.2 Manner of Payments. Except as otherwise expressly provided herein, all payments required to be made by any party hereto to any other party hereto shall be made by means of cash, a bank cashier's check drawn on a California bank or by wire transfer of immediately available funds.

6.3 Gender, Number. Whenever the context requires, the use herein of (i) the neuter gender

6.4 **Business Days.** If the last day for performance of an act falls upon a day that is not a Business Day, such last day shall be the next following regular Business Day.

6.5 **Survival of Provisions.** The representations, warranties, agreements and indemnities set forth in this Option Agreement shall remain operative, shall be deemed made at the date of exercise of any and all Successive Options, and shall survive the exercise of a Successive Option and shall not be merged in any grant deed given pursuant to a Phase Purchase Agreement.

6.6 **Authority of Signatories.** Each individual signing this Option Agreement on behalf of a corporation warrants that he or she is duly authorized to sign and deliver this Option Agreement on behalf of the corporation, in accordance with a duly adopted resolution of the board of directors of the corporation or in accordance with the bylaws of the corporation, and that this Option Agreement is binding upon the corporation in accordance with its terms. Each individual signing this Option Agreement on behalf of a partnership warrants that he or she is duly authorized to sign and deliver this Option Agreement on behalf of the partnership, either as a general partner with authority under the partnership agreement so to sign, or as the partnership's duly authorized agent with authority to bind the partnership. Each individual signing this Option Agreement as a trustee warrants that he or she is duly authorized to sign and deliver this Option Agreement under the terms of the trust indenture or agreement which established the individual as trustee.

6.7 **Joint and Several Liability.** If a party or an assignee of a party consists of more than one person, the liability of each person signing this Option Agreement on behalf of such party or assignee shall be joint and several.

6.8 **Captions.** Captions in this Option Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Option Agreement.

6.9 **Applicable Law.** This Option Agreement shall be construed and enforced in accordance with the laws of the State of California.

6.10 **Attorneys' Fees.** If either party commences litigation for the judicial interpretation, reformation, enforcement or rescission of this Option Agreement, the prevailing party will be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court and other costs incurred.

6.11 **Entire Agreement.** This Option Agreement contains the entire agreement between the parties relating to the transaction contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

6.12 **Modifications.** No modification, waiver or discharge of this Option Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver or discharge is or may be sought.

6.13 **Successors.** All terms of this Option Agreement shall be binding upon and inure to the benefit of the parties and their respective administrators or executors, successors and assigns; nothing contained in this Paragraph shall affect the Article of this Option Agreement entitled "Non-Assignable by Optionee."

6.14 **Invalidity of Material Provision.** If any material covenant, condition or provision herein contained is held to be invalid, void or unenforceable by a final judgment of any court of competent jurisdiction, this Option Agreement shall become rescinded unless the party benefited by such covenant, condition or provision delivers to the other party, within five (5) days after the judgment becomes final, a written waiver of the covenant, condition or provision, in which case the remainder of this Option Agreement shall be enforceable.

6.15 Further Assurances. Each party to this Option Agreement, for itself and its successors and assigns, agrees to take such additional actions and execute such additional instruments as may be reasonably requested by the other party in order to give effect to the transaction contemplated hereby.

6.16 Counterparts. This Option Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument.

6.17 Time. Time is strictly of the essence for this Option Agreement and for each and every act to be performed hereunder.

OPTIONOR:

MDC-VAIL, a California general partnership

BY: TEMECULA, L.L.C., a Delaware Limited Liability Company, General Partner

BY: MONARCH HAWAII, L.L.C., its Managing Partner

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, its General Partner

BY: VAIL ASSOCIATES, INC., a California corporation, its sole General Partner

BY:

\_\_\_\_\_  
Jerry Swanger, Secretary

OPTIONEE:

DICK DIAMOND

BY:

\_\_\_\_\_  
Dick Diamond



DARELL FARNBACH

BY:

---

Darell Farnbach

EXHIBIT 1

Form of Optionee's Quitclaim Deed

Recording Requested By  
And  
When Recorded Mail To:

MDC-Vail  
9474 Kearny Villa Road, Suite 203  
San Diego, California 92126  
Attention: Mr. Jerry Swanger, Sr.

Above Space For Recorder's Use Only

Mail Tax Statement To: MDC-Vail  
9474 Kearny Villa Road, Suite 203  
San Diego, California 92126  
Attention: Mr. Jerry Swanger, Sr.

**QUITCLAIM DEED**

The undersigned transferor declares:

Documentary Transfer Tax is NONE: Given in release of any interest in the property.

- computed on full value of property conveyed; or
- computed on full value less value of liens and encumbrances remaining at time of sale.
- Unincorporated area;  City of Temecula

A.P.N. \_\_\_\_\_

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, DICK DIAMOND and DARELL FARNBACH ("Releasors"), hereby REMISES, RELEASES AND QUITCLAIMS to MDC-VAIL, a California general partnership ("Transferee"), the following described real property in the County of Riverside, State of California:

[Property Description]

IN WITNESS WHEREOF, Releasors have caused this instrument to be executed.

DATED: \_\_\_\_\_, 1998

DICK DIAMOND

\_\_\_\_\_  
Dick Diamond

DATED: \_\_\_\_\_, 1998

DARELL FARNBACH

---

Darell Farnbach

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_, known to me (or proved to me  
on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

EXHIBIT 2

PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

THIS PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS ("Agreement"), dated for reference purposes \_\_\_\_\_, 1998, is between MDC-VAIL, a California general partnership ("Seller"), and DICK DIAMOND and DARELL FARNBACH ("Buyer"). This Agreement is entered into with reference to the recitals set forth in ARTICLE 1 and constitutes (i) a contract of purchase-and-sale between the parties, and (ii) escrow instructions to FIRST AMERICAN TITLE INSURANCE COMPANY ("Escrow Holder"), the consent of which appears at the end of this Agreement. Buyer shall hand to Escrow Holder the Purchase Price in the amount and in the manner hereinafter provided, and any additional funds and instruments required from Buyer, to enable Escrow Holder to comply with these instructions which Escrow Holder is to use on the Closing Date, when Escrow Holder can perform pursuant to ARTICLES 7, 8 and 9.

ARTICLE 1. RECITALS

- 1.1. The Subject Property. Optionor holds fee title to certain real property in the County of Riverside, California, consisting of approximately 1.7 acres ("Subject Property"). The Subject Property will be contiguous and adjacent to the east of the approximately 4.0-acre Historic Site restoration area at Vail Ranch. Optionor is presently obtaining a boundary adjustment relating to the Historic Site. The Subject Property will be created upon the County's approval of the boundary adjustment creating the Historic Site. The Subject Property is more particularly described and depicted on Exhibit "A" hereto.
- 1.2. The Option Agreement. Seller as Optionor and Buyer as Optionee are the parties to that certain Option Agreement to Purchase Real Property dated June \_\_\_\_, 1998 ("Option Agreement"), pursuant to which Buyer acquired the right and option ("Option"), subject to satisfaction of the conditions described therein, to acquire the Subject Property. Buyer is entitled to exercise the Option by delivering to Escrow Holder three counterparts of this Agreement, concurrently with all funds and documents required to be delivered by Buyer hereunder, so that the escrow established hereby will be opened and closed within a period of no more than seven (7) days.
- 1.3. Intention of the Parties. Buyer wishes to exercise the Option and purchase the Subject Property from Seller, and after determining that the Option was validly exercised, Seller is willing to sell the Subject Property to Buyer, all on the terms and subject to the conditions of this Agreement.

ARTICLE 2. DEFINITIONS

- 2.1. Definitions. Unless the context otherwise indicates, whenever used in this Agreement:

2.1.1. "AD 159" means County of Riverside Assessment District No. 159, which includes the Subject Property and other real property, and which was formed to finance the cost of infrastructure improvements in the general vicinity of the Subject Property.

2.1.2. "Adjacent Parcel Easements" means non-exclusive easements over the Subject Property for purposes of sewer, water and pedestrian and vehicular access, as granted by Seller prior to the Close of Escrow or reserved in Seller's Grant Deed.

2.1.3. "Base Purchase Price" means the sum of Six Dollars (\$6.00) per Gross Square Foot.

2.1.4. "Buyer Improvements" means all related improvements to the Subject Property that are not performed by Seller as Seller Improvements, including without limitation loading and trash areas, paving, hardscape, landscape and lighting for the on-site improvements, all constructed to plans and specifications approved by Seller.

2.1.5. "Cash" means (i) currency, or (ii) a check(s), currently dated, payable to Escrow Holder and honored upon presentation for payment, or (iii) if Escrow Holder requires or if Buyer so desires, funds wire-transferred into Escrow Holder's general escrow account(s).

2.1.6. "Close of Escrow" or "the closing of this escrow" means the date the Seller's Grant Deed and other documents are filed for record with the County Recorder of Riverside County.

2.1.7. "Closing Date" means seven (7) calendar days after the Escrow Opening Date.

2.1.8. "County" means the County of Riverside, State of California.

2.1.9. "Declaration" means that certain Declaration of Covenants, Conditions and Restrictions dated June 20, 1994, which was recorded in the Office of the Riverside County Recorder on July 5, 1994 as Document No. 269466, as amended by an instrument dated October 2, 1995, which was recorded in the Office of the Riverside County Recorder on October 6, 1995, as Document No. 335011, as amended by instrument dated April 15, 1997, which was recorded in the Office of the Riverside County Recorder on June 18, 1997, as Instrument No. 213916, and as amended by an instrument dated April 20, 1998, which was recorded in the Office of the Riverside County Recorder on May 13, 1998, as Instrument No. 190436.

2.1.10. "Escrow Opening Date" means the date Buyer delivers three counterparts of this Agreement to Escrow Holder, together with all funds and documents required to be delivered by Buyer hereunder.

2.1.11. "General and Special Real Estate Taxes" means all charges against the Subject Property evidenced by the secured tax bill issued by the Tax Collector of the County, including, but not limited to, amounts allocated to (i) County general governmental purposes, (ii) bonded indebtedness of County, (iii) bonded or other indebtedness and operating expenses of any school, college, sewer, water, irrigation, hospital, library, utility, County service or other district, (iv) assessments and supplemental assessments related to AD 159, and (v) any other lawful purpose.

2.1.12. "Subject Property" means the real property more particularly described in Paragraph 1.1 above.

2.1.13. "Option Agreement" means the Option Agreement described in Paragraph 1.2 above.

2.1.14. "Option Consideration" means the consideration from Buyer to Seller in connection with the Option Agreement, which is not applicable to the Purchase Price.

2.1.15. "Permitted Exceptions" means the Declaration, the Adjacent Parcel Easements, and all other covenants, conditions, reservations, restrictions, easements, encumbrances, bonded indebtedness of AD 159 or any other assessment district, and other matters (excepting deeds of trust or other monetary liens voluntarily imposed by Seller) that are determined by Title Insurer to affect the Subject Property as of the Closing Date.

2.1.16. "Purchase Price" means the sum of Four Hundred Forty Four Thousand Three Hundred Twelve Dollars (\$444,312), derived from the Base Purchase Price.

2.1.17. "Seller's Grant Deed" means a grant deed in the form of Exhibit B.

2.1.18. "Specific Plan" means Vail Ranch Specific Plan No. 223, authorizing and restricting the development of the Subject Property as specified therein.

2.1.19. "This escrow" means the escrow created hereby.

2.1.20. "Title Insurer" means First American Title Insurance Company.

2.1.21. "Title Policy" means a CLTA standard coverage policy of title insurance, with (i) liability in the amount of the Purchase Price, insuring that the fee title to the Subject Property vests in Buyer subject only to the matters described in Paragraph 7.1.2, and (ii) liability in the amount of the Additional Purchase Price Note, insuring the validity and first priority of the lien of the Additional Purchase Price Trust Deed, subject only to the matters described in Paragraph 7.1.2.

### ARTICLE 3. AGREEMENT OF SALE

3.1. Summary of Agreement. In consideration of the covenants contained in this Agreement, Seller shall sell, and Buyer shall purchase, the Subject Property for the Purchase Price, all upon the terms and conditions set forth in this Agreement.

### ARTICLE 4. BUYER'S DELIVERIES TO ESCROW HOLDER

4.1. Deliveries Upon Exercise of Option. Buyer shall, concurrently with Buyer's exercise of the Option on the Escrow Opening Date, deliver to Escrow Holder each of the following:

4.1.1. Cash for Purchase Price. In Cash, the Purchase Price sum of \$444,312.

4.1.2. Buyer's Charges. In Cash, the charges to Buyer under the Article of this Agreement entitled "Prorations, Fees and Costs."

4.2. Breach. The failure of Buyer to make any delivery described above by the date, or within the time, set forth above shall be a material breach of this Agreement by Buyer.

4.3. Time of the Essence. Time is of the essence of each covenant of this Article for which a date of performance is specified.

### ARTICLE 5. SELLER'S DELIVERIES TO ESCROW HOLDER

5.1. Deliveries Before Closing Date. Seller shall on the Closing Date deliver to Escrow Holder:

5.1.1. Seller's Grant Deed. Seller's Grant Deed, conveying the Subject Property to Buyer, signed and acknowledged by Seller and such person(s) as Title Insurer requires in order to issue the Title Policy.

5.2. Breach. The failure of Seller to make any delivery described above by the date, or within the time, set forth above shall be a material breach of this Agreement by Seller.

5.3. Time of the Essence. Time is of the essence of each covenant of this Article for which a date of performance is specified.

## ARTICLE 6. ACKNOWLEDGMENTS, REPRESENTATIONS AND WARRANTIES

6.1. Basis of Purchase. Buyer acknowledges that it is purchasing the Subject Property in reliance solely on (i) Buyer's inspection of the Subject Property, (ii) Buyer's independent verification of the truth of any documents delivered by Seller to Buyer and any statements made by Seller to Buyer concerning the Subject Property and its development and the Project not set forth herein, (iii) Seller's representations, warranties and covenants as expressly set forth herein, and (iv) the opinions and advice concerning the Subject Property and its development of consultants engaged by Buyer. Buyer specifically acknowledges and warrants that it has received and reviewed copies of the Specific Plan and that it has reviewed the status of AD 159 and is aware that in the future, additional assessments not now of record may encumber the Subject Property, as the cost of additional improvements to be constructed by AD 159 are spread over the various properties included within AD 159's boundaries.

6.2. "As Is" Purchase. Except as set forth elsewhere in this Agreement, Buyer shall accept the Subject Property, and the matters relating to the Subject Property listed below, in their "as is" condition or status as the same is in on the date of this Agreement. The matters relating to the Subject Property include, but are not limited to, the following: the soils and geological condition, topography, area and configuration of the Subject Property; the availability of utilities, public access and fire and police protection; applicable planning, zoning and subdivision statutes, ordinances, regulations and permits; the character and amount of park fees, school fees, traffic mitigation fees, Kangaroo rat mitigation fees, inspection fees and any other fee or charge which must be paid to develop the Subject Property; the amount of any bonded indebtedness, from AD 159 or any other assessment district, that may now or in the future encumber the Subject Property; the existence of any easement, license or encroachment which is not a matter of public record, whether or not visible upon inspection of the Subject Property; the presence, use, generation, storage, transportation, release or discharge of hazardous materials on, beneath, above or in the vicinity of the Subject Property; and any other matters relating to the Subject Property or to the development thereof, including, but not limited to, value, feasibility, cost, governmental permissions, marketing and investment return.

6.3. No Warranties by Seller. BUYER ACKNOWLEDGES AND AGREES THAT EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN THE OPTION AGREEMENT, SELLER HAS NOT MADE AND IS NOT MAKING ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER WITH RESPECT TO THE SUBJECT PROPERTY. BUYER WARRANTS AND REPRESENTS THAT IT HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY WARRANTY OR REPRESENTATION OF SELLER NOT EXPLICITLY SET FORTH IN THIS AGREEMENT, THE OPTION AGREEMENT OR SELLER'S GRANT DEED. BUYER AGREES TO ASSUME, EFFECTIVE UPON THE CLOSE OF THIS ESCROW, ANY AND ALL RISK THAT ANY ADVERSE MATTERS (INCLUDING, WITHOUT LIMITATION, PHYSICAL AND ENVIRONMENTAL CONDITIONS) RELATING TO THE SUBJECT PROPERTY MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND INVESTIGATIONS OF THE SUBJECT PROPERTY.

6.4. Seller Not a Foreign Person. Seller warrants that no individual or entity which, under the terms of this Agreement, will transfer United States Real Property Interests, as defined in §897(c) of the INTERNAL REVENUE CODE, is a "foreign person" within the meaning of §1445(f) of the INTERNAL REVENUE CODE. Seller agrees to execute and deliver through escrow prior to closing any affidavit required by Buyer verifying the warranty specified in this Paragraph.

6.5. No Brokerage Commission or Finder's Fee for Which Other Party Liable. Each party warrants to the other that the warranting party has incurred no obligation by reason of this Agreement or the transaction contemplated by this Agreement, for any other real estate brokerage commission or finder's fee. Each party shall hold the other party free and harmless from and against



any damage or expense the other party may incur by reason of the untruth as to the warranting party of the foregoing warranty, including expenses for attorneys' fees and court costs.

## ARTICLE 7. THE CLOSING

7.1. Conditions to Closing. Escrow Holder shall close this escrow on the Closing Date by (i) filing for record Seller's Grant Deed (and such other documents as may be necessary to procure the Title Policy), and (ii) delivering funds and documents to the parties (as set forth in the Article of this Agreement entitled "Distribution of Funds and Documents") **WHEN AND ONLY WHEN** each of the following conditions has been satisfied:

7.1.1. Deliveries. All funds and documents described in Articles 4 and 5 have been delivered to Escrow Holder; and

7.1.2. The Title Policy. Title Insurer is irrevocably committed to issue the Title Policy, with liability in the amount of the Purchase Price, insuring (i) the lien and priority of the Additional Purchase Price Trust Deed in Seller (unless the Additional Purchase Price was paid in Cash) subject only to items (a) through (d) below, and (ii) insuring that fee title to the Subject Property vests in Buyer subject only to each of the following matters:

- (a) The matters referred to in Part I, Schedule B of the Title Policy;
- (b) General and special real estate taxes which are, as of the close of this escrow, not delinquent;
- (c) The Permitted Exceptions; and
- (d) Any liens voluntarily imposed by Buyer.

7.2. ALTA Extended Coverage Policy. Buyer may, at Buyer's option and expense, provided there is no requirement to extend the Escrow Closing date, direct Escrow Holder to procure an ALTA extended coverage owner's policy of title insurance ("ALTA Extended Coverage Policy") from Title Insurer, with liability in the amount of the Purchase Price. If Buyer does so elect an ALTA Extended Coverage Policy, then each of the following provisions shall apply:

7.2.1. Exceptions to Title. The ALTA Extended Coverage Policy shall insure that fee title to the Subject Property vests in Buyer subject only to (i) the exclusions listed in the standard "Schedule of Exclusions from Coverage" of the ALTA policy, (ii) the exceptions in Paragraphs 7.1.2(b) through (e) above, and (iii) any off-record encumbrances determined by Title Insurer to affect the Subject Property that are reasonably approved by Buyer in writing;

7.2.2. ALTA Survey. Buyer shall be solely responsible to timely supply to Title Insurer, at Buyer's sole cost, any ALTA survey required by Title Insurer as a condition to the issuance of the ALTA Extended Coverage Policy;

7.2.3. References to the Title Policy. All references in this Agreement to the "Title Policy" shall be deemed to refer to the ALTA Extended Coverage Policy.

7.3. Failure to Close. If Escrow Holder cannot close this escrow on the Closing Date, it shall automatically and without further action by either party promptly terminate this escrow and return all funds and documents held by it to the party depositing same, except that Escrow Holder may retain such funds and documents usually retained by escrow agents in accordance with standard escrow termination procedures. Escrow Holder may (i) retain any passbooks or certificates on

deposit with Escrow Holder until such time as its escrow fees are paid in full, and/or (ii) deduct from any funds held by Escrow Holder a sufficient amount to pay its escrow fees in full.

## ARTICLE 8. PRORATIONS, FEES AND COSTS

8.1. Charges to be Prorated. Escrow Holder shall prorate (i.e., apportion) between the parties, in cash, to the close of this escrow, General and Special Real Estate Taxes, based on the latest information available to Escrow Holder from the appropriate city or County office; provided, however, that the prorations shall not involve the payoff of the lien of AD 159 or any other bonded indebtedness affecting the Subject Property. If any tax bill affects the Subject Property (or any part of the Subject Property) and additional Subject Property, the parties shall, before the Closing Date, (i) determine the portion of the taxes attributable to the Subject Property by applying the following equation:

$$T_1 = \frac{T_2 \times P_1}{P_2}$$

where  $T_1$  equals the tax, in dollars, to be attributable to the Subject Property,  $T_2$  equals the total tax, in dollars, as shown on such tax bill,  $P_1$  equals the area, in square feet, of the Subject Property affected by the tax bill and  $P_2$  equals the area, in square feet, of the total Subject Property affected by the tax bill, and (ii) notify Escrow Holder in writing of the amount of tax determined by application of the equation.

8.2. Basis of Proration. All prorations called for in this Agreement shall be made on the basis of a thirty (30) day month.

8.3. Seller's Charges. Seller shall pay (i) all Documentary Transfer Tax, (ii) the Title Policy premium, (iii) one-half of Escrow Holder's fee or termination charge, (iv) fees for beneficiaries' statements, and (v) usual seller's document-drafting and recording charges.

8.4. Buyer's Charges. Buyer shall pay (i) one-half of Escrow Holder's fee or termination charge, (ii) the extra premium for the ALTA Extended Coverage Policy (if ordered by Buyer in the manner permitted by the terms of this Agreement) over and above that of the premium for the Title Policy, and (iii) usual buyer's document-drafting and recording charges.

## ARTICLE 9. DISTRIBUTION OF FUNDS AND DOCUMENTS

9.1. Interest. Any sums delivered by Buyer to Escrow Holder pursuant to this Agreement shall, unless immediately released to Seller, be invested by Escrow Holder in a daily money market account with such bank as Buyer may designate to Escrow Holder. Interest earned on Buyer's deposits shall belong to Buyer and shall be credited upon receipt to Buyer's account with Escrow Holder.

9.2. Disbursements. All disbursements by Escrow Holder shall be made by checks of Escrow Holder or, at the request of the party to whom disbursement is made, by wire transfer.

9.3. Payment of Encumbrances. Escrow Holder shall, at the close of this escrow, pay, from funds to which Seller will be entitled and from funds, if any, deposited by Seller with Escrow Holder, to the appropriate obligees, all encumbrances other than those permitted by Paragraph 7.1.2.

9.4. Return After Recording. Escrow Holder shall cause the County Recorder of Riverside County to mail Seller's Grant Deed (and each other instrument which is herein expressed to be, or by general usage is, recorded) after recordation, to the grantee, beneficiary or person (i) acquiring rights under said document, or (ii) for whose benefit the instrument was acquired.

9.5. Delivery of Cash. Escrow Holder shall, at the close of this escrow, deliver by United States mail or wire transfer (or shall hold for personal pickup, if requested) (i) to Seller, or order, the balance of the cash portion of the Purchase Price to which Seller will be entitled, and (ii) to Buyer, or order, any excess funds delivered to Escrow Holder by Buyer.

#### ARTICLE 10. POSSESSION

10.1. Limit on Escrow Holder's Responsibilities. Escrow Holder shall have no concern with, nor liability nor responsibility for, this Article.

10.2. Possession. Possession of the Subject Property, free and clear of all tenants and occupants and interests of third parties, shall pass to Buyer at the Close of Escrow.

#### ARTICLE 11. OTHER OBLIGATIONS

11.1. Limit on Escrow Holder's Responsibilities. Escrow Holder shall have no concern with, nor liability nor responsibility for, this Article.

11.2. Refunds and Reimbursements. Each party shall be entitled to and shall receive all refunds, reimbursements, credits or contributions of funds paid by that party for plan checking, utility deposits and the like to Pacific Bell, any school districts, public utility companies, or governmental agencies or subdivisions. If by inadvertence or otherwise the other party receives any of said refunds, reimbursements, credits or contributions, it shall immediately pay and deliver the same to the party entitled thereto. For purposes of this provision, all funds paid by Seller's predecessors in interest shall be deemed to have been paid by Seller.

11.3. Adjacent Parcel Easements. Buyer acknowledges that sewer and water utilities and pedestrian and vehicular access to other portions of the Project may require the grant or reservation of Adjacent Parcel Easements over the Subject Property. Buyer consents to the pre-Closing grant of any Adjacent Parcel Easements by Seller, to the reservation of Adjacent Parcel Easements in Seller's Grant Deed, and to the post-Closing grant of any additional Adjacent Parcel Easements that are reasonably necessary to provide access or utilities to other portions of the Project. Buyer further agrees to cooperate in granting any such post-Closing Adjacent Parcel Easements; provided, however, that no such Adjacent Parcel Easements shall interfere with Buyer's reasonable development and use of the Subject Property.

#### ARTICLE 12. DELIVERY OF DOCUMENTS; LIQUIDATED DAMAGES

12.1. Limit on Escrow Holder's Responsibilities. Escrow Holder shall have no concern with, nor liability nor responsibility for, this Article.

12.2. Delivery of Documents. If this escrow is terminated for any reason (other than the default of Seller), Buyer shall, within five (5) days following the termination, deliver to Seller, at no cost or expense to Seller, all documents and materials relating to the Subject Property previously delivered to Buyer by Seller or otherwise generated by or in the possession of Buyer.

12.3. Liquidated Damages for Buyer's Default. THE PARTIES AGREE THAT THE ESSENCE OF THIS TRANSACTION IS BUYER'S INDEPENDENT VERIFICATION OF THE SUITABILITY FOR BUYER'S USE OF THE SUBJECT PROPERTY, IN ITS AS-IS CONDITION AS OF THE CLOSING DATE.

THE PARTIES INTEND THAT SELLER'S SOLE OBLIGATION HEREUNDER IS TO DELIVER GOOD AND MARKETABLE TITLE TO THE SUBJECT PROPERTY TO BUYER, SUBJECT ONLY TO THE MATTERS DESCRIBED IN PARAGRAPH 7.1.2. THE PARTIES HAVE DISCUSSED AND NEGOTIATED IN GOOD FAITH UPON THE QUESTION OF THE DAMAGES TO BE SUFFERED BY SELLER IN THE EVENT BUYER BREACHES THIS AGREEMENT AND IS UNABLE TO CONSUMMATE THIS TRANSACTION, HAVE ENDEAVORED TO REASONABLY ESTIMATE SUCH DAMAGES AND HEREBY AGREE THAT, BY REASON OF THE AFORESAID CONSIDERATIONS, (I) SUCH DAMAGES ARE AND WILL BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX, (II) LIQUIDATED DAMAGES IN THE AMOUNT OF \$25,000 IS AND WILL BE REASONABLE.

\_\_\_\_\_  
Seller's Initials

\_\_\_\_\_  
Buyer's Initials

### ARTICLE 13. ASSIGNMENT BY BUYER

13.1. Assignment. Buyer shall not assign to any person(s) any or all of its rights in this Agreement without the prior written consent of Seller, which may be withheld by Seller for any reason or no reason at all, in Seller's sole and absolute discretion. Any assignment may be exercised only by written assignment executed by Buyer and accepted in writing by the assignee (which must, in such written acceptance, obligate itself to perform the assignor's obligations under this Agreement), and delivered to Escrow Holder and Seller prior to the close of this escrow. Any assignment of Buyer's rights made or attempted without such written assignment and acceptance will be void.

### ARTICLE 14. EXCULPATORY PROVISIONS

14.1. Neglect, Misconduct. Escrow Holder shall not be liable for any of its acts or omissions unless the same constitutes negligence or willful misconduct.

14.2. Information. Escrow Holder shall have no obligation to inform any party of any other transaction or of facts within Escrow Holder's knowledge, even though the same concerns the Subject Property, provided such matters do not prevent Escrow Holder's compliance with this Agreement.

14.3. Form, Validity and Authority. Escrow Holder shall not be responsible for (i) the sufficiency or correctness as to form or the validity of any document deposited with Escrow Holder, (ii) the manner of execution of any such deposited document, unless such execution occurs in Escrow Holder's premises and under its supervision, or (iii) the identity, authority or rights of any person executing any document deposited with Escrow Holder.

14.4. Conflicting Instructions. Upon receipt of any conflicting instructions, Escrow Holder shall have the right to take no further action until otherwise directed, either by the parties' mutual written instructions or a final order or judgment of a court of competent jurisdiction.

14.5. Miscellaneous. Recordation of any instruments delivered through this escrow, if necessary or proper in the issuance of the Title Policy, is authorized. No examination or insurance as to the amount or payment of real or personal property taxes is required unless the real property tax is payable on or before the date of the Title Policy. If any party is seeking to obtain a loan secured by the Subject Property, then, during the pendency of this escrow, Escrow Holder is authorized to furnish the lender, or anyone acting on its behalf, any information concerning this escrow, including, but not limited to, a certified copy of this Agreement and any amendments thereto. Escrow Holder is authorized to furnish a copy of this Agreement, as well as any amendments thereto, and any

notices of termination and closing statements pertaining to this escrow, to any real estate broker named in this Agreement or in a separate commission order.

#### ARTICLE 15. GENERAL PROVISIONS

15.1. Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery, or by Federal Express (or similar reputable express delivery service), or by telecopier transmission with back-up copy mailed the same day, or as of the second business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Seller:                   MDC-Vail  
9474 Kearny Villa Road, Suite 203  
San Diego, California 92126  
Telephone: (619) 695-1109  
Telecopier: (619) 695-8608  
Attention: Mr. Jerry Swanger, Sr.

With a copy to:

MDC-Vail  
Temecula, L.L.C.  
1225 Dublin Road  
Columbus, Ohio 43215  
Telephone: (614) 481-8106  
Telecopier: (614) 481-3416  
Attention: Mr. Kevin Showe

Lorenz, Alhadeff, Cannon & Rose  
550 West "C" Street, 19th Floor  
San Diego, California 92101-3540  
Telephone: (619) 231-8700  
Telecopier: (619) 231-8323  
Attention Sam C. Alhadeff, Esq.

If to Buyer: Dick Diamond  
33263 Corte Yaca  
Temecula, California 92592  
Telephone: (909) 693-2929

Darell Farnbach  
40250 Paseo del Cielo  
Temecula, California 92596  
Telephone: (909) 699-5148

With a copy to:

Raymond W. Johnson, Esq., AICP  
26785 Camino Seco  
Temecula, California 92590  
Telephone: (909) 506-9925  
Telecopier: (909) 506-9725

If to Escrow Holder: First American Title Insurance Company  
3625 14th Street  
Riverside, California 92502  
Telephone: (909) 787-1700  
Telecopier: (909) 784-7956  
Attention: Escrow Department

15.2. Gender, Number. Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine, and (ii) the singular number includes the plural.

15.3. Business Days. If the (i) stated Closing Date (as extended, if applicable), or (ii) last day for performance of an act falls upon a day during which Escrow Holder is not open for business, the Closing Date (as extended, if applicable) or such last day, as the case may be, shall be the next following regular business day of Escrow Holder.

15.4. Survival of Provisions. The representations, warranties, agreements and indemnities set forth in this Agreement shall remain operative, shall be deemed made at the close of this escrow, and shall survive the closing and the execution and delivery of Seller's Grant Deed and shall not be merged in Seller's Grant Deed.

15.5. Attorneys' Fees. If either party commences litigation for the judicial interpretation, reformation, enforcement or rescission of this Agreement, the prevailing party will be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court and other costs incurred.

15.6. Authority of Signatories. Each individual signing this Agreement on behalf of a corporation warrants that he or she is duly authorized to sign and deliver this Agreement on behalf of the corporation, in accordance with a duly adopted resolution of the board of directors of the corporation or in accordance with the bylaws of the corporation, and that this Agreement is binding upon the corporation in accordance with its terms. Each individual signing this Agreement on behalf of a partnership warrants that he or she is duly authorized to sign and deliver this Agreement on behalf of the partnership, either as a general partner with authority under the partnership agreement so to sign, or as the partnership's duly authorized agent with authority to bind the partnership.

This Agreement has been executed at Temecula, California, as of the date set forth at the beginning hereof.

**SELLER:** MDC-VAIL, a California general partnership

BY: \_\_\_\_\_  
TEMECULA, L.L.C., a Delaware Limited Liability  
Company, General Partner

BY: \_\_\_\_\_  
MONARCH HAWAII, L.L.C., its Managing Partner

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, its  
General Partner

BY: \_\_\_\_\_  
VAIL ASSOCIATES, INC., a California corporation, its sole  
General Partner

BY: \_\_\_\_\_  
Jerry Swanger, Secretary

**BUYER:** DICK DIAMOND

\_\_\_\_\_  
Dick Diamond

DARELL FARNBACH

---

Darell Farnbach



CONSENT OF ESCROW HOLDER

The undersigned Escrow Holder hereby agrees to (i) accept the foregoing Agreement, (ii) be escrow holder under said Agreement for the fees therein specified, and (iii) be bound by said Agreement in the performance of its duties as escrow holder; provided, however, the undersigned shall have no obligations, liability or responsibility under (a) this Consent or otherwise, unless and until said Agreement, fully signed by the parties, has been delivered to the undersigned, or (b) any amendment to said Agreement unless and until the same is accepted by the undersigned in writing.

Dated \_\_\_\_\_.

FIRST AMERICAN TITLE INSURANCE COMPANY

By \_\_\_\_\_

- Escrow Officer

**brf enterprises**  
 a/jr  
**CONSULTING ENGINEERS**  
 31811 MISSION TRAIL  
 EL SIMONRE, CA 92530  
 PHONE: (909) 245-2127  
 FAX: (909) 245-7927

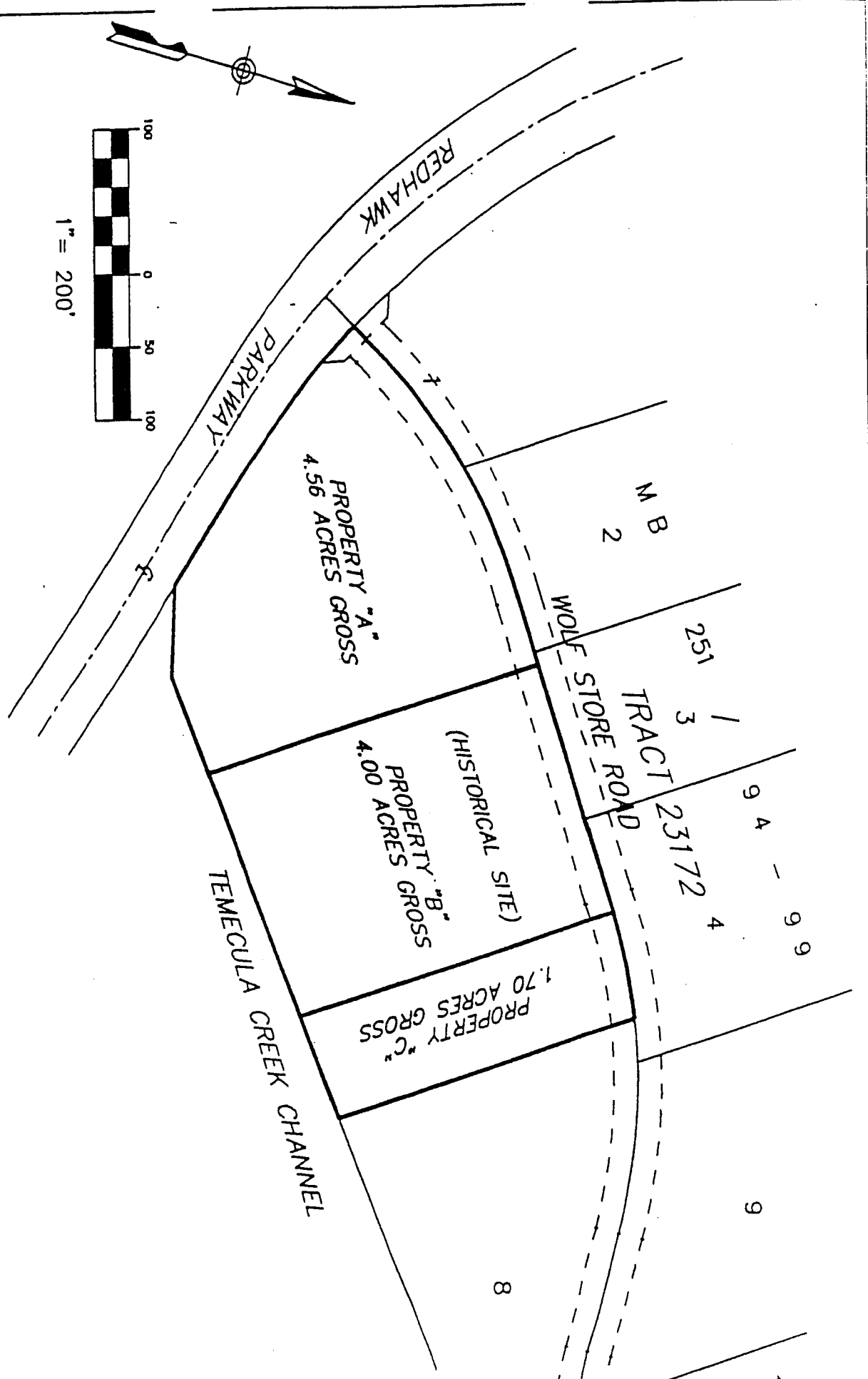
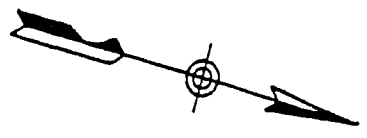
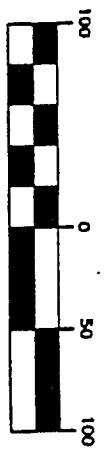


EXHIBIT "A"

EXHIBIT B

Form of Seller's Grant Deed

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

Dick Diamond  
33263 Corte Yaca  
Temecula, California 92592

Darell Farnbach  
40250 Paseo del Cielo  
Temecula, California 92596

MAIL TAX BILLS TO:

Dick Diamond  
33263 Corte Yaca  
Temecula, California 92592

Darell Farnbach  
40250 Paseo del Cielo  
Temecula, California 92596  
Dick Diamond

Space Above For Recorder's Use

**GRANT DEED**

The undersigned grantor declares:

Documentary Transfer Tax is \$ \_\_\_\_\_.  
(x) computed on full value of property conveyed; or  
( ) computed on full value less value of liens and  
encumbrances remaining at time of sale.  
(x) Unincorporated area; ( ) City of Temecula.

A.P.N. \_\_\_\_\_

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, MDC-VAIL, a California general partnership ("Grantor"), hereby GRANTS to \_\_\_\_\_ ("Grantee"), the real property in the County of Riverside, State of California, more particularly described on Exhibit "A" attached hereto ("Subject Property").

This grant is made subject to all covenants, conditions, restrictions and easements of record, including without limitation that certain Declaration of Covenants, Servitudes, Conditions, Restrictions and Easements dated June 20, 1994, which was recorded in the Office of the Riverside County Recorder on July 5, 1994, as Instrument No. 269466, as amended.

MDC-VAIL, a California general partnership

BY: \_\_\_\_\_

TEMECULA, L.L.C., a Delaware Limited Liability Company, General Partner

BY: \_\_\_\_\_

MONARCH HAWAII, L.L.C., its Managing Partner

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, its  
General Partner

BY: \_\_\_\_\_

VAIL ASSOCIATES, INC., a California corporation, its sole  
General Partner

By \_\_\_\_\_

Jerry Morris, President

By \_\_\_\_\_

Jerry Swanger, Secretary

**EXHIBIT "C"**  
**TO OFFER TO DEDICATE AND LEASE AGREEMENT**

(Legal Description of the Developer Site)

Legal: 40.39 ACRES M/L IN POR LOTS 1, 5, 6, 7, 11, 12, 13  
and LOTS 2, 3, 4, 8, 9, 10 MB 251/094 TR 23172

**EXHIBIT "D"**  
**TO OFFER TO DEDICATE AND LEASE AGREEMENT**

(Legal Description of the Historic Site)

Legal: 3.99 ACRES M/L IN POR LOTS 5, 6 & 7 MB 251/094 TR 23172

**EXHIBIT "E"**  
**TO OFFER TO DEDICATE AND LEASE AGREEMENT**

(Off-Site Improvements)

List to be compiled within 30 days of execution  
of the Agreement.

**EXHIBIT "F"**  
**TO OFFER TO DEDICATE AND LEASE AGREEMENT**

(License)

License Document will be completed within 30  
days of execution of this Agreement.



**EXHIBIT "G"**  
**TO OFFER TO DEDICATE AND LEASE AGREEMENT**

(Outside Areas)

Outside Areas to be determined within 30 days  
of executing this Agreement.

**EXHIBIT "H"**  
**TO OFFER TO DEDICATE AND LEASE AGREEMENT**

(County Sublease Property)

County Sublease Property to be determined  
within 30 days of execution of this Agreement.

**EXHIBIT "I"**  
**TO OFFER TO DEDICATE AND LEASE AGREEMENT**

(Sales Tax Reporting Information Sheet)

Sales Tax Reporting Information Sheet will be completed  
within 30 days of execution of this Agreement.

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



**FROM:** EXECUTIVE OFFICE

**SUBMITTAL DATE:** June 19, 2001

**SUBJECT:** Revenue Agreements between the County of Riverside and the City of Temecula Resulting from LAFCo No. 2000-10-1 Annexation of Vail Ranch

**RECOMMENDED MOTION:** 1) Approve the three revenue agreements between the County of Riverside and the City of Temecula: Vail Ranch Agreement No. 1 (Median/Parkway Maintenance), Vail Ranch Annexation Agreement No. 2 (Tax Reimbursement) and Sales Tax Revenue Sharing Agreement. 2) Authorize the Chair to execute said agreements.

**BACKGROUND:** On November 16, 2000, the Local Agency Formation Commission (LAFCo) approved No. 2000-10-1 Annexation of Vail Ranch to the City of Temecula. It was determined that prior to the annexation being finalized, various agreements would have to be entered into between the County and the City. At several meetings between the County and City, it was determined that three formal agreements requiring approval of the Board of Supervisors and the City Council would have to be established. These agreements address median maintenance issues, reimbursements of property taxes between the period from when the annexation is finalized to the end of 2000, and sales tax revenue sharing from the commercial areas removed from the annexation area. It was conceptually agreed upon as part of the LAFCo approval. On June 12, 2001, the Council of the City of Temecula approved said agreements adding in Section 3 of the Sales Tax Revenue Sharing Agreement, which was removed from an earlier draft. Therefore, it is recommended that the Board approve the three agreements with Section 3 added into the Sales Tax Revenue Sharing Agreement per agreement with the City. The City will forward to the County executed copies of said agreements for its execution. (See Attachments).

JOHN JOHNSON, Senior Management Analyst

**FINANCIAL DATA:**  
CURRENT YEAR COST \$0  
NET COUNTY COST \$0

**ANNUAL COST:** \$ 0  
**IN CURRENT YEAR BUDGET:** Yes/ No/ )  
**BUDGET ADJUSTMENT FY:** Yes/ No/ )

**SOURCE OF FUNDS:** N/A

**C.E.O. RECOMMENDATION:** APPROVE

County Executive Officer Sign

**MINUTES OF THE BOARD OF SUPERVISORS**

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

**Ayes:** Buster, Tavaglione, Venable and Wilson

**Noes:** None

**Absent:** Mullen

**Date:** June 19, 2001

**xc:** E/O., Co.Co., Auditor

Gerald A. Maloney  
Clerk of the Board

**By:**   
Deputy

Prev. Agn. ref.

Dist. 1

AGENDA NO. 7

Consent  Policy  
 Consent  Policy

Department Recommendation:  
Per Executive Office:

CLERK'S COPY  
336 6/19/2001

VAIL RANCH ANNEXATION AGREEMENT NO. 1  
(MEDIAN/PARKWAY MAINTENANCE  
AGREEMENT) BETWEEN THE TEMECULA  
COMMUNITY SERVICES DISTRICT AND THE  
COUNTY OF RIVERSIDE

THIS AGREEMENT is dated as of June 19, 2001 by and between the Temecula Community Services District ("District") and the County of Riverside. In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **Recitals.** This Agreement is made with respect to the following facts and purposes, which each party hereto acknowledges as true and correct:

a. The Local Agency Formation Commission of the County of Riverside adopted its Resolution No. 35-00 on November 16, 2000, making determinations and approving the proposed reorganization designated as LAFCO No. 2000-10-1, including concurrent annexations to the City of Temecula and the Temecula Community Services District and concurrent detachments from the Riverside County Waste Resources Management District, County Service Area 143 and County Service Areas 152 of territory generally known as the Vail Ranch Specific Plan Area and more specifically described in Exhibit A attached to LAFCO Resolution No. 35-00.

b. The City Council of the City of Temecula, as the designated conducting authority, adopted its Resolution No. 2001- 17 on February 13, 2001 ordering the reorganization of the Vail Ranch Specific Plan Area, LAFCO No. 2000-10-1 to the City of Temecula and the Temecula Community Services Area and the detachment of those areas from the Riverside County Waste Resources Management District, County Service Area 143, and County Service Area 152 ("Annexation").

c. Currently, the County, through County Service Area 143, provides for the maintenance of the landscaped medians and parkways in the Vail Ranch Area and the surrounding areas.

d. Upon the effective date of the Annexation, some median and parkway areas will straddle the new boundary line and will be partially in the jurisdiction of the District and partially within the jurisdiction of the County. In order to most efficiently provide the maintenance of these median and parkway areas, the parties have agreed to divide the maintenance responsibilities for these areas.

e. For the purposes of this Agreement, "Maintenance Area A" is defined as both sides of the landscaped median on Redhawk Parkway between Temecula Creek and Vail Ranch Parkway, as more particularly described and depicted on Exhibit A. The easterly portion of the median will be within the jurisdiction of the District and the westerly portion will be within the jurisdiction of the County upon the effective date of the Annexation.

f. For the purposes of this Agreement, "Maintenance Area B" is defined as the Vail Ranch monument sign area consisting of approximately 3.69 acres of land adjacent to Vail Ranch Parkway southeasterly of the intersection of Vail Ranch Parkway and Redhawk Parkway, as more particularly described and depicted on Exhibit B. All of Maintenance Area B will be within the jurisdiction of the District upon the effective date of the Annexation.

g. For the purposes of this Agreement, "Maintenance Area C" is defined as both sides of the landscaped median on Vail Ranch Parkway between Nighthawk Pass and Tehachapi Pass, as more particularly described and depicted on Exhibit C. The northwesterly portion of the median will be within the jurisdiction of the District and the southeasterly portion will be within the jurisdiction of the County upon the effective date of the Annexation.

h. With respect to Maintenance Area A, the District warrants and represents to the County that, as of the effective date of the Annexation, it is authorized to go onto Maintenance Area A within the jurisdiction of the District for the purposes of maintenance and that it has the authority to allow the County to maintain the District's portion of Maintenance Area A on behalf of the District.

i. With respect to Maintenance Area C, the County warrants and represents to the District that it is authorized to go onto Maintenance Area C for the purposes of maintenance and that it has the authority to allow the District to maintain its portion of Maintenance Area C on behalf of the County.

j. This Agreement benefits both the District and the County by allowing for uniform and efficient maintenance of the medians and parkways.

2. **Maintenance Responsibilities.** County shall maintain, at its sole cost and expense, Maintenance Area A. District shall maintain, at its sole cost and expense, Maintenance Area B and Maintenance Area C.

a. For the purposes of this Agreement, the terms "maintain" shall mean (i) mowing, trimming, pruning, preserving, irrigating, fertilizing and otherwise preserving the vegetation and trees within the Maintenance Area; (ii) cleaning, servicing, repairing and replacing the irrigation equipment, monuments or other hardscape features installed within the Maintenance Area; (iii) removing trash and debris from the Maintenance Area; and (iv) payment of all utilities, including, but not limited to, water and electricity, for the Maintenance Area.

b. Each party shall maintain the Maintenance Areas for which it is responsible in a manner consistent with the maintenance of other medians and parkway areas maintained by the jurisdiction.

c. District hereby grants to the County a non-exclusive license to go onto that portion of Maintenance Area A in the possession of the District for the purposes of performing County's obligations under this Agreement.

d. County hereby grants to the District a non-exclusive license to go onto that portion of Maintenance Area C in the possession of the County for the purposes of performing District's obligations under this Agreement.

**3. Transfer of CSA 143 Fund Balance for Vail Ranch Area.**

Currently, the County, through County Service Area 143 imposes rates and charges to fund the maintenance of the landscaped medians and parkways in the Vail Ranch Area and the surrounding areas. Upon the effective date of the Annexation the parties anticipate that CSA 143 will have funds which have been collected from properties within the Annexation Area for the maintenance of the landscaped medians and parkways in the Vail Ranch Area. The parties also understand and acknowledge that following the effective date of the Annexation, CSA 143 will need to pay for the expenses incurred prior to the Annexation for maintenance of the medians and parkways within the Vail Ranch Area. The parties agree that following the payment of all expenses incurred by CSA 143 for the Vail Ranch Area, the County will pay to the District the funds remaining in CSA 143, which sum is estimated by the parties to be one hundred ninety thousand dollars (\$190,000.00). District agrees to use such funds only for the maintenance of landscaped medians and parkways within the Annexation Area.

**4. Term.** The term of this Agreement shall be twenty (20) years from the effective date of the Annexation, unless sooner terminated as provided in this Agreement.

**5. Indemnification.**

a. County agrees to defend, indemnify, protect and hold harmless the District, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the District, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of the County's negligent or wrongful acts or omissions in performing or failing to perform under the terms of this Agreement, excepting only liability arising out of the negligence of the District.

b. District agrees to defend, indemnify, protect and hold harmless the County, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the County, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of the District's negligent or wrongful acts or omissions in performing or failing to perform under the terms of this Agreement, or which may arise from the ownership of the Property, excepting only liability arising out of the negligence of the County.

**6. Defaults and Remedies**

a. Subject to the extensions of time set approved in writing by a party, failure or delay by either party to perform any term or provision of this Agreement

constitutes a default under this Agreement. A party claiming a default (claimant) shall give written notice of default to the other party, specifying the default complained of.

b. The claimant shall not institute proceedings against the other party nor be entitled to damages if the other party within fourteen (14) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within thirty (30) days from the date of receipt of such notice. Such cure, correction and remedy shall include payment of any costs, expenses (including attorney fees) or damages incurred by the non-defaulting party resulting from the default or during the period of default.

c. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

d. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

e. If a default is not fully cured by the defaulting party as provided in this Paragraph, the defaulting party shall be liable to the other party for any damages caused by such default, and the nondefaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

f. If a default under this Agreement is not fully cured by the defaulting party as provided in this Paragraph, the nondefaulting party at its option may thereafter (but not before) commence an action for specific performance of terms of this Agreement.

g. In the event litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses incurred in the action.

7. **Termination of Agreement.** Either party may terminate this Agreement, for any reason, as provided in this section. Termination shall be initiated by written notice to the other party delivered on or before March 1 with the termination to take effect on June 30 of that year.

8. **Force Majeure.** Except as otherwise expressly provided in this Agreement, if the performance of any act required by this Agreement to be performed by either District or County is prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or



regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. However, nothing contained in this Section shall excuse the prompt payment by a party as required by this Agreement or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

9. **Notices to Parties** Written notices, demands and communications among the District and County, shall be sufficiently given by either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice:

District:  
Temecula Community Services District  
43200 Business Park Drive  
Post Office Box 9033  
Temecula, California 92589-9033  
Attention: Director of Community Services

County  
4080 Lemon Street, 12<sup>th</sup> Floor  
Riverside, Ca. 92501  
Attention: Chief Administrative Officer

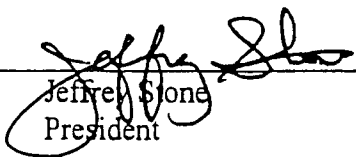
10. **Agreement Binding on Successors.** This Agreement shall be binding on and shall inure to the benefit of the successors and lawful assigns of the parties hereto.

11. **Assignment.** Neither Party shall assign or transfer this Agreement or any portion thereof without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided however that either party may assign this Agreement to a related public entity without the consent of the other.

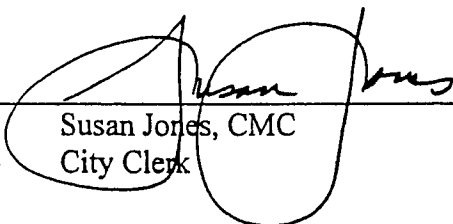
12. **Sole and Only Agreement.** This Agreement constitutes the sole and only agreement between District and County respecting the matters contained herein, except that the parties acknowledge and agree the City of Temecula, the Temecula Community Services District and the County have entered into other agreements concerning the Annexation, which are designated "Vail Ranch Annexation Agreement No. 2 (Tax Reimbursement) Between the City of Temecula and the County of Riverside," dated as of June 19, 2001, "Sales Tax Revenue Sharing Agreement Between the County of Riverside and the City of Temecula (First District)," dated as of June 19, 2001, and the Master Property Tax Agreement between the City and the County. Any agreements or representations, either oral or written, respecting the matters discussed in this Agreement not expressly set forth in this Agreement are null and void.

IN WITNESS WHEREOF this Agreement has been executed by the authorized representatives of the parties hereto.

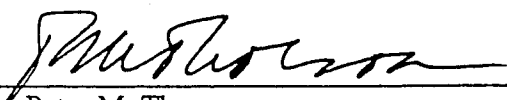
TEMECULA COMMUNITY SERVICES DISTRICT

  
\_\_\_\_\_  
Jeffrey Stone  
President

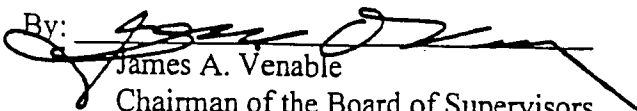
Attest:

  
\_\_\_\_\_  
Susan Jones, CMC  
City Clerk

Approved as to form:

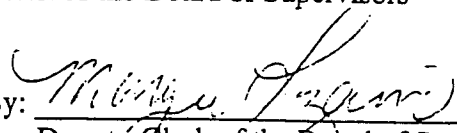
  
\_\_\_\_\_  
Peter M. Thorson  
City Attorney

COUNTY OF RIVERSIDE

By:   
James A. Venable  
Chairman of the Board of Supervisors  
James A. Venable


Attest: 6/17/2001

Gerald A. Maloney  
Clerk of the Board of Supervisors

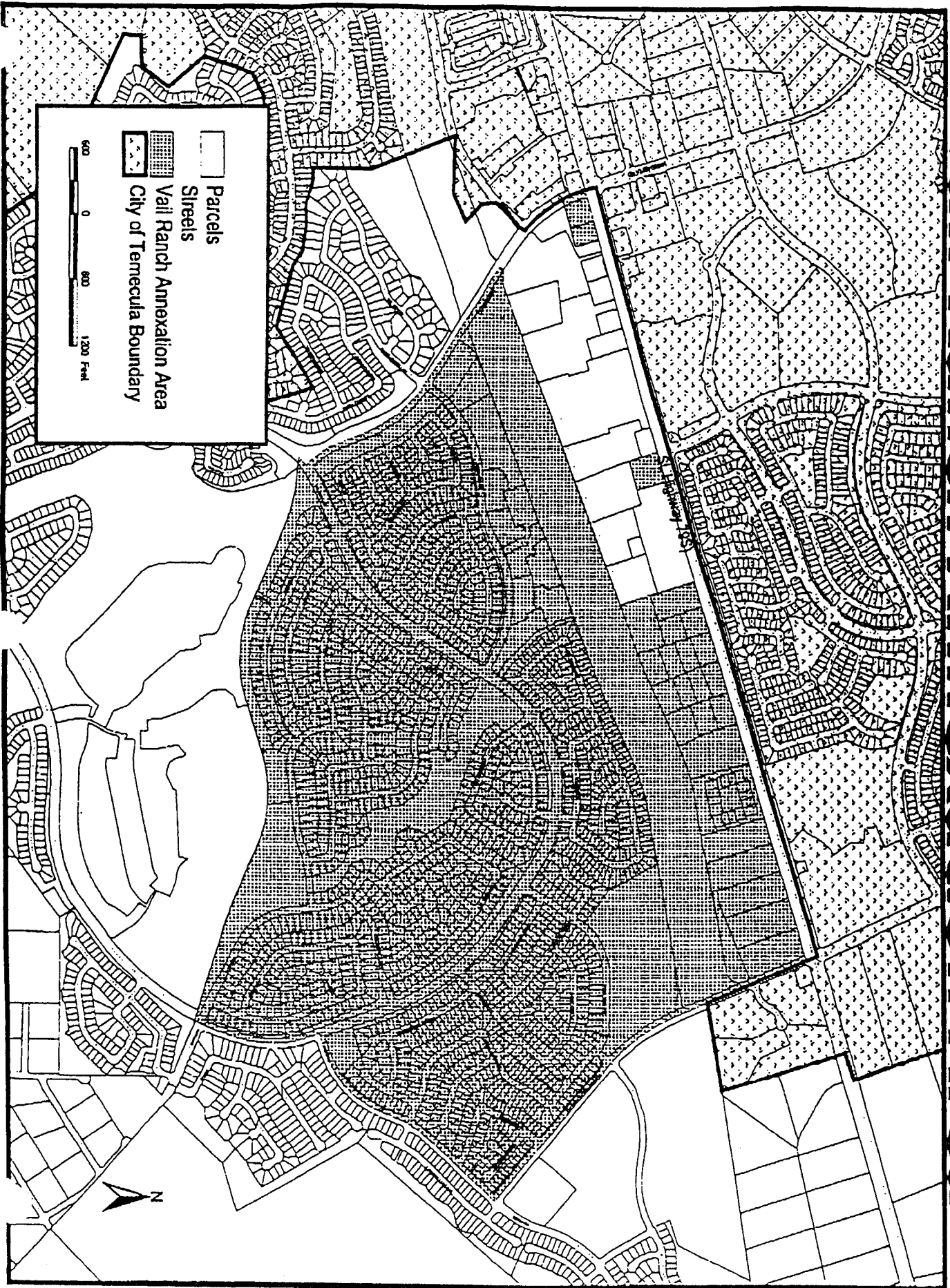
By:   
Deputy Clerk of the Board of Supervisors

Approved as to Form:

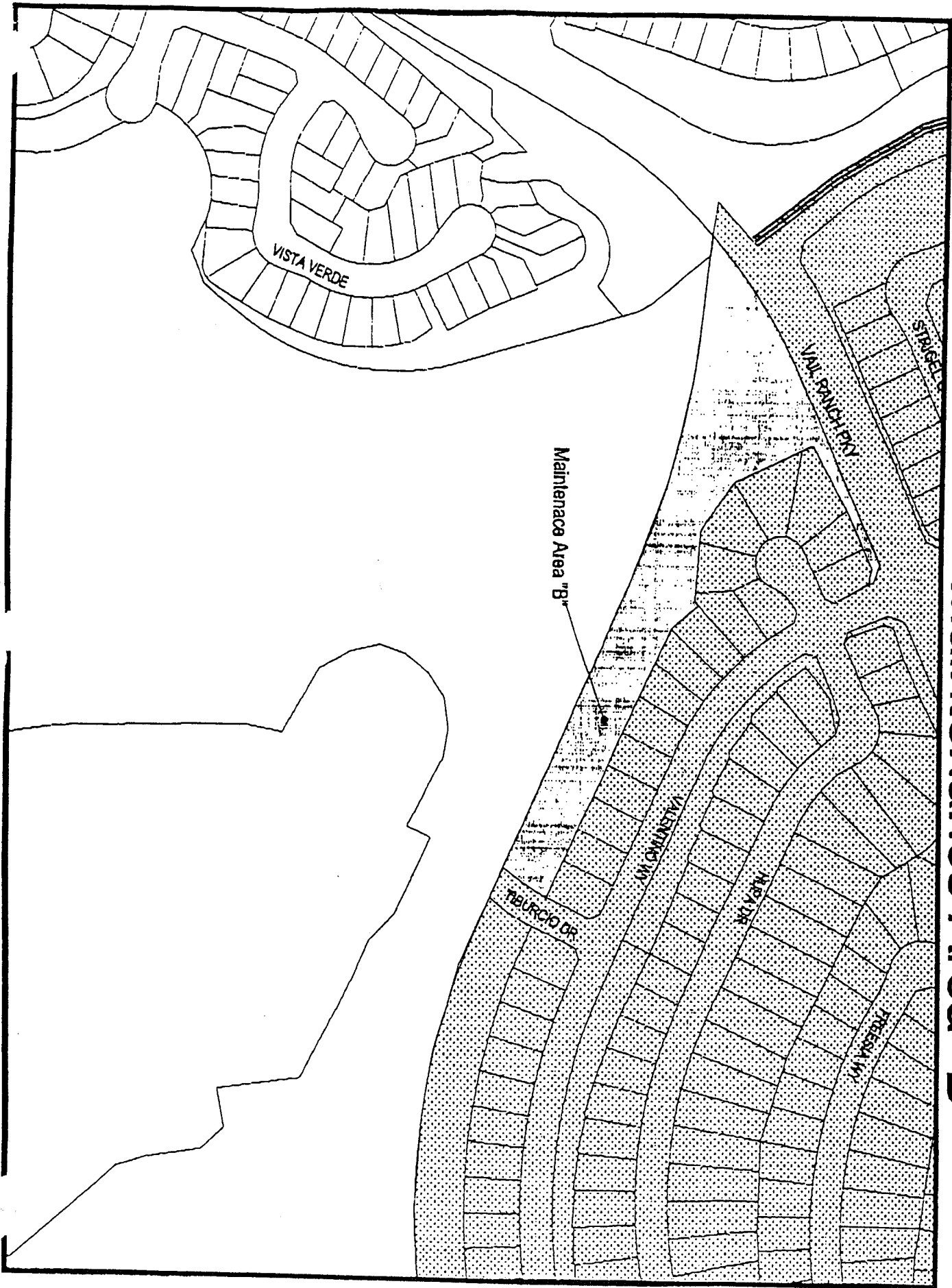
William Katzenstein  
County Counsel

By:   
Joe S. Rank  
Assistant County Counsel

# Vail Ranch Annexation Area







# EXHIBIT "B" - Maintenance Area "B"



# EXHIBIT "C" - Maintenance Area "C"

CLERK'S COPY  
4/19/2001 3.56

VAIL RANCH ANNEXATION AGREEMENT NO. 2  
(TAX REIMBURSEMENT) BETWEEN THE CITY  
OF TEMECULA AND THE COUNTY OF  
RIVERSIDE

THIS ANNEXATION AGREEMENT NO. 2 is dated as of June 19, 2001 by and between the City of Temecula, a municipal corporation ("City") and the County of Riverside. In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. Recitals. This Agreement is made with respect to the following facts and purposes, which each party hereto acknowledges as true and correct:

a. The Local Agency Formation Commission of the County of Riverside ("LAFCo") adopted its Resolution No. 35-00 on November 16, 2000, making determinations and approving the proposed reorganization designated as LAFCO No. 2000-10-1, including concurrent annexations to the City of Temecula and the Temecula Community Services District and concurrent detachments from the Riverside County Waste Resources Management District, County Service Area 143 and County Service Areas 152 of territory generally known as the Vail Ranch Specific Plan Area and more specifically described in Exhibit A attached to LAFCO Resolution No. 35-00.

b. The City Council of the City of Temecula, as the designated conducting authority, adopted its Resolution No. 2001-17 on February 13, 2001 ordering the reorganization of the Vail Ranch Specific Plan Area, LAFCO No. 2000-10-1 to the City of Temecula and the Temecula Community Services Area and the detachment of those areas from the Riverside County Waste Resources Management District, County Service Area 143, and County Service Area 152 ("Annexation").

c. The Vail Ranch Specific Plan Area to be annexed to the City of Temecula and the Temecula Community Services District is described and depicted on Exhibit A, "Annexation Area." Each of these exhibits is attached hereto and incorporated herein by this reference as though set forth in full.

d. As part of the hearing process for the LAFCo approval of the reorganization, the County objected to the reorganization as originally proposed because of the financial impacts of the original proposal on certain County obligations within the Commercial Areas. The County has been engaged in a significant effort to preserve the historical buildings on portions of the Commercial Areas and assist in the development of the commercial properties surrounding the historical buildings as a means of funding the preservation efforts. While supportive of the County's efforts, the City was concerned that a modification of the boundaries of the proposed area to be annexed to the City would impair its ability to provide an appropriate level of municipal services to the area. The proceedings before LAFCo were delayed for several months in order to enable the City and the County to develop some creative solutions to their respective concerns. City and the County have negotiated the terms of this Agreement in an effort to accommodate



the needs of the County to reduce these impacts and the need of the City to obtain sufficient revenue from the annexation area to provide appropriate municipal services to the area. This Agreement sets forth the agreement of the City and County with respect to these issues.

e. The delay in the LAFCo proceedings in order to resolve the important issues concerning the Annexation prevented the City from filing the necessary documents with the State Board of Equalization and the County Auditor-Controller in order to transfer certain tax revenues from the County to the City upon the effective date of the Annexation. Accordingly, the City and County have agreed to allow the County to continue to collect these taxes from the Annexation Area and to transfer the tax monies to the City until such time as the State Board of Equalization and the County Auditor can make the appropriate transfers from the County to the City.

f. This Agreement benefits both the City and the County and furthers the public health, safety and general welfare of the City, the County and the persons served by each governmental entity.

## 2. Tax Revenue Reimbursements from Annexation Area.

a. The County currently receives from properties and transactions within the Annexation Area certain tax and state revenues based on the city or unincorporated county area in which certain events occur. These revenues include the following ("Tax Revenues"):

- (1) Ninety two thousand two hundred eighty one dollars (\$92,281.00) which amount represents, which amount represents the City's share, pursuant to the Master Property Tax Agreement between the County and the City, of the ad valorem property tax revenue from all parcels within the Annexation Area pursuant to Division 1 of the Revenue and Taxation Code.
- (2) One percent (1%) of the sales and use taxes collected by retail businesses within the Annexation Area on taxable retail sales pursuant to The Bradley-Burns Uniform Local Sales Tax Law (Part 1.5 of Division 2 of the Revenue and Taxation Code) (Section 7200 *et. seq.*);
- (3) The City's Share of funds allocated from the Highway Users Tax Account ("gas tax") pursuant to Chapter 3 of Division 3 of the Streets and Highways Code (Section 2100 *et. seq.*);
- (4) The City's Share of the Motor Vehicle License Fee pursuant to Chapter 5 of Part 5 of Division 2 of the Revenue and Taxation Code (Section 11000 *et. seq.*);

- (5) Motor Vehicle Licensing Fees In-Lieu Tax;
- (6) The City's share of the Documentary Transfer Tax pursuant to Part 6.7 of Division 2 of the Revenue and Taxation Code (Section 1901 *et. seq.*);
- (7) Vehicle Code fines;
- (8) Riverside County Measure "A" funds;
- (9) The City's share of funds allocated from the Supplemental Law Enforcement Services Fund (the "COPS" fund) pursuant to Chapter 6.7 of Division 3 of Title 3 of the Government Code (Section 30061 *et. seq.*);
- (10) California Law Enforcement Equipment Program funds ("CLEEP")
- (11) ERAF Relief under AB 1326;
- (12) The City's Share of Booking Fees Reimbursements made pursuant to Section 29550.4 of the Government Code;
- (13) Off-Highway Licensing Fees;
- (14) The City's Share of funds allocated from the Traffic Congestion Relief Fund pursuant to Section 2182 of the Streets and Highways Code;
- (15) The City's Share of funds allocated from the Transportation Investment Fund pursuant to Section 2182 of the Streets and Highways Code; and
- (16) One hundred seventy five thousand dollars (\$175,000.00) which amount represents development impact fees collected by the County from development within the Vail Ranch for park and recreation purposes.

b. The City, County and LAFCo are cooperating in the preparation and filing of the necessary documents to transfer the appropriate property tax revenue payments, sales tax revenue, and the other Tax Revenues from the County to the City. Such transfers will not become effective until some time after the effective date of the Annexation.

c. Until such time as the transfer of a tax applicable to the Annexation Area from the County to the City is complete, County agrees to pay to the City the Tax Revenues collected from the Annexation Area had the appropriate documents for payment of the taxes to the City been completed prior

to the effective date of the Annexation. The Tax Revenues shall be paid on a quarterly basis. No later than January 31, April 30, July 30 and October 31 County shall pay to the City the Tax Revenues received by the County during the prior calendar quarter. Along with such payment, County shall provide City with documentation of the tax revenue received for each applicable tax.

**5. Indemnification**

a. County agrees to defend, indemnify, protect and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the City, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of the County's negligent or wrongful acts or omissions in performing or failing to perform under the terms of this Agreement, excepting only liability arising out of the negligence of the City.

b. City agrees to defend, indemnify, protect and hold harmless the County, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the County, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of the City's negligent or wrongful acts or omissions in performing or failing to perform under the terms of this Agreement, or which may arise from the ownership of the Property, excepting only liability arising out of the negligence of the County.

**6. Defaults and Remedies**

a. Subject to the extensions of time set approved in writing by a party, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. A party claiming a default (claimant) shall give written notice of default to the other party, specifying the default complained of.

b. The claimant shall not institute proceedings against the other party nor be entitled to damages if the other party within fourteen (14) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within thirty (30) days from the date of receipt of such notice. Such cure, correction and remedy shall include payment of any costs, expenses (including attorney fees) or damages incurred by the non-defaulting party resulting from the default or during the period of default.

c. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at

the same or different times, of any other rights or remedies for the same default or any other default by the other party.

d. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

e. If a default is not fully cured by the defaulting party as provided in this Paragraph, the defaulting party shall be liable to the other party for any damages caused by such default, and the nondefaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

f. If a default under this Agreement is not fully cured by the defaulting party as provided in this Paragraph, the nondefaulting party at its option may thereafter (but not before) commence an action for specific performance of terms of this Agreement.

g. In the event litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses incurred in the action.

7. **Force Majeure.** Except as otherwise expressly provided in this Agreement, if the performance of any act required by this Agreement to be performed by either City or County is prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. However, nothing contained in this Section shall excuse the prompt payment by a party as required by this Agreement or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

8. **Notices to Parties** Written notices, demands and communications among the City and County, shall be sufficiently given by either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice:

City:  
City of Temecula  
43200 Business Park Drive  
Post Office Box 9033  
Temecula, California 92589-9033  
Attention: Genie Roberts, Director of Finance

County  
County Executive Officer  
County of Riverside  
4080 Lemon Street  
Riverside, Ca. 92501

9. Agreement Binding on Successors. This Agreement shall be binding on and shall inure to the benefit of the successors and lawful assigns of the parties hereto.

10. Assignment. Neither Party shall assign or transfer this Agreement or any portion thereof without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided however that either party may assign this Agreement to a related public entity without the consent of the other.

11. Sole and Only Agreement. This Agreement constitutes the sole and only agreement between City and County respecting the matters contained herein, except that the parties acknowledge and agree the City of Temecula, the Temecula Community Services District and the County have entered into other agreements concerning the Annexation, which are designated "Vail Ranch Annexation Agreement No. 1 (Median/Parkway Maintenance Agreement) Between the City of Temecula and the County of Riverside," dated as of June 19, 2001, "Sales Tax Revenue Sharing Agreement Between the County of Riverside and the City of Temecula (First District)," dated as of June 19, 2001, and the Master Property Tax Agreement between the City and the County. Any agreements or representations, either oral or written, respecting the matters discussed in this Agreement not expressly set forth in this Agreement are null and void.

12. Time of Essence. Time is expressly declared to be of the essence of this Agreement.

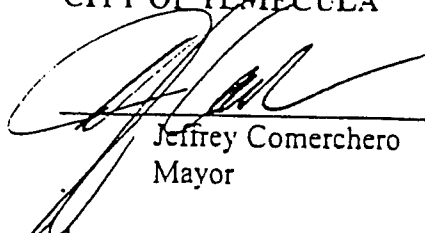
13. Authority to Execute. Each party hereto expressly warrants and represents that he or she has the authority to execute this Agreement on behalf of his or her governmental entity and warrants and represents that he or she has the authority to bind his or her entity to the performance of its obligations hereunder.

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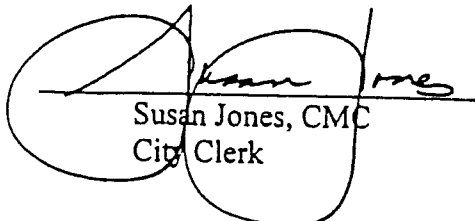
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IN WITNESS WHEREOF this Agreement has been executed by the authorized representatives of the parties hereto.

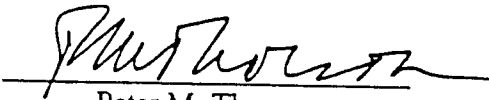
CITY OF TEMECULA

  
\_\_\_\_\_  
Jeffrey Comerchero  
Mayor

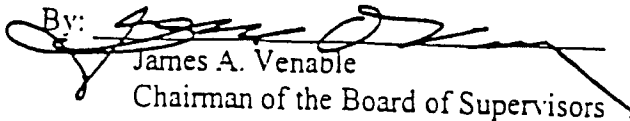
Attest:

  
\_\_\_\_\_  
Susan Jones, CMC  
City Clerk

Approved as to form:

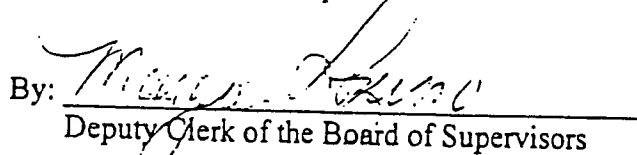
  
\_\_\_\_\_  
Peter M. Thorson  
City Attorney

COUNTY OF RIVERSIDE

By:   
James A. Venable  
Chairman of the Board of Supervisors

Attest: 6/19/2001

Gerald A. Maloney  
Clerk of the Board of Supervisors

By:   
Deputy Clerk of the Board of Supervisors

Approved as to Form:

William Katzenstein  
County Counsel


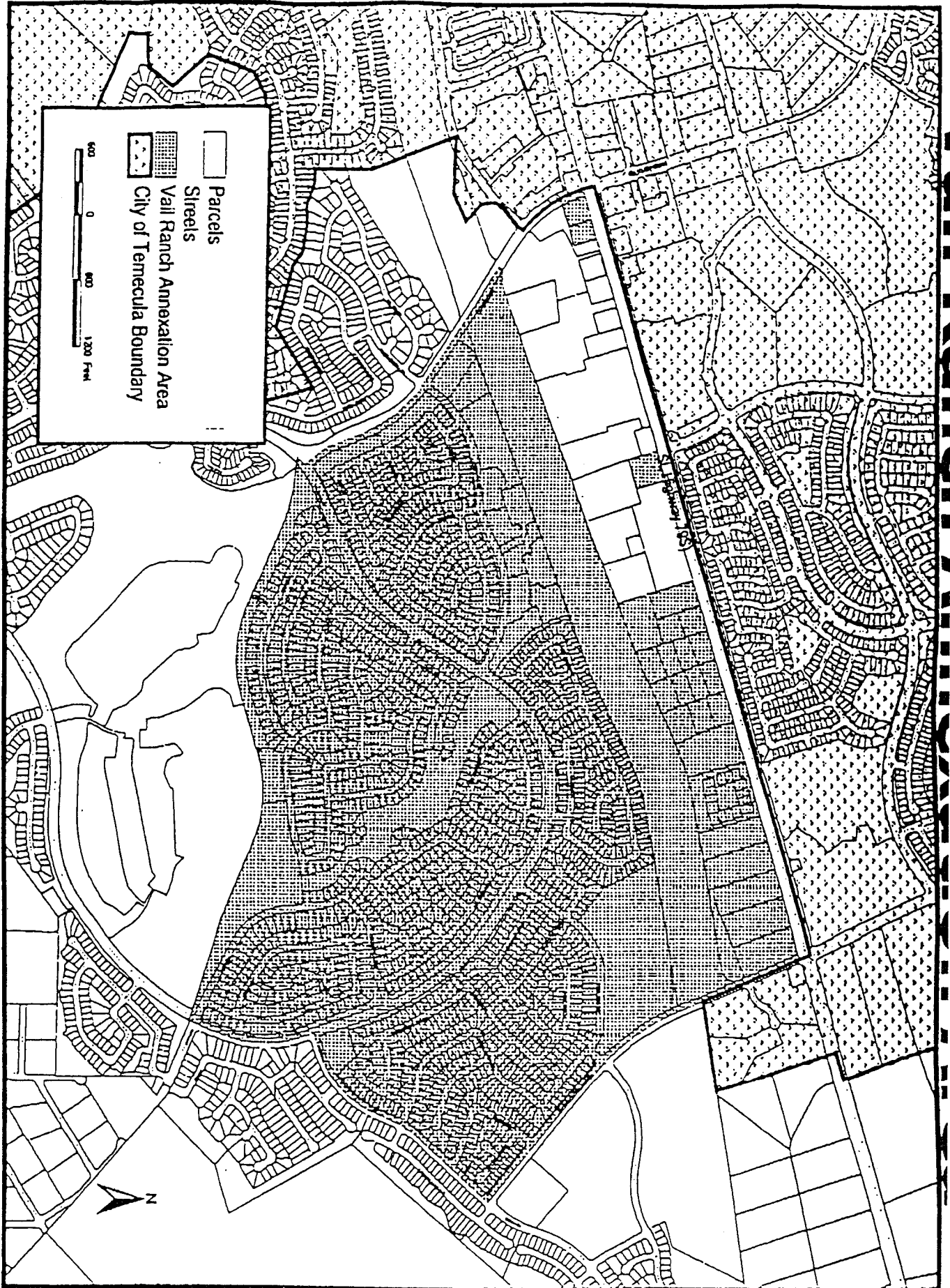
By:   
Joe S. Rank  
Assistant County Counsel

EXHIBIT "A"





CLERK'S COPY

350 6/14/01

SALES TAX REVENUE SHARING AGREEMENT BETWEEN  
THE COUNTY OF RIVERSIDE AND  
THE CITY OF TEMECULA (FIRST DISTRICT)

THIS AGREEMENT is entered into as of this 14<sup>th</sup> day of June, 2001, by and between the County of Riverside (hereafter the "County") and the City of Temecula (hereafter the "City"), hereafter collectively referred to as the "Parties."

**WHEREAS**, the Local Agency Formation Commission (LAFCO), adopted its Resolution No. 35-00 on November 16, 2000, approving the proposed reorganization designated as LAFCO No. 2000-10-1 which included annexation to the City of Temecula of the area generally known as Vail Ranch; and

**WHEREAS**, the City of Temecula, as the designated conducting authority, adopted its Resolution No. 2001-17 on February 13, 2001, ordering the annexation; and

**WHEREAS**, County objected to the reorganization as originally proposed because of the exclusion of the Red Hawk development from the proposed annexation, the inclusion of commercial areas adjacent to Red Hawk and potential impacts to the County's effort to preserve the historic Vail Ranch; and

**WHEREAS**, City and County agreed to resolve these differences through negotiation for the benefit of all residents of the County and to allow City's annexation to proceed; and

**WHEREAS**, City agreed to remove the disputed commercial areas from within the boundaries of the annexation and to, at some future time, provide Red Hawk residents an opportunity to consider annexing to City; and

**WHEREAS**, County agreed to provide financial assistance to City to ensure the appropriate level of municipal services to the residents of the annexation area; and

**WHEREAS**, the voters of California on November 3, 1998, approved Proposition No. 11 which amended Article XIII, Section 29, of the California Constitution to allow cities and counties to enter into agreements to share sales and use tax revenues with the approval by the legislative bodies of both parties by a two-thirds vote; and

WHEREAS, the State Legislature amended Governmental Code Section 55700 *et seq.*, to provide the option for approval of sales tax revenue sharing agreements; and

WHEREAS, the Agreement furthers the public health, safety and general welfare of the residents of Riverside County.

NOW, THEREFORE, BE IT RESOLVED, in consideration of the promises and mutual covenants and conditions contained herein, the Parties hereto do hereby agree as follows:

**Section 1. DEFINITIONS.**

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

Agreement

"Agreement" means this Sales Tax Revenue Sharing Agreement.

Fiscal Year

"Fiscal Year" is defined as July 1 through June 30.

Net Sales Tax

"Net Sales Tax" is defined as the amount of gross sales tax disbursed to the County imposed and received by the County under authority granted to the County pursuant to Section 7201 of the Revenue and Taxation Code of the State of California, less any amounts which must be disbursed to any other public entity, including but not limited to the State Board of Equalization.

Site

"Site" shall mean that certain real property located in the County of Riverside, State of California, more particularly described in Exhibit "A" and depicted in Exhibit "B".

Historic Site

"Historic Site" shall mean that certain real property located in State of California County, County of Riverside more particularly described in Exhibit C and depicted in Exhibit D.

Sales and Uses Taxes

"Sales and Use Taxes" means the one percent (1%) sales tax currently imposed and received by the County under authority granted to the County pursuant to Section 7201 of the Revenue and Taxation Code of the State of California.

**Section 2. PAYMENTS TO THE CITY.**

(A) From July 1, 2001, County shall pay City an amount equal to fifty percent (50%) of the Net Sales Tax revenue that the County receives from taxable sales occurring on the Site. Such payments shall continue until such time as the County's share of the Net Sales Tax revenue it retains from the Site pursuant to this Agreement equals one million nine hundred thousand dollars (\$1,900,000.00) or such other amount as is necessary to fulfill County's obligation under the Development Agreement between the County and the owner of the Site. In the event the County's obligation under the Development Agreement exceeds \$1.9 million, County shall notify City of the amount of its obligation as soon as practicable following the date of this Agreement and upon such notice the amount of the obligation shall be used in place of the \$1.9 million figure.

(B) Within twelve (12) months from the date the County's obligation to developer under the Development Agreement for the site is fulfilled, City shall use its best efforts to take such action as are required by law to apply for the annexation of the Redhawk Area, as described in Exhibit A, to the City of Temecula and to set an election date for the residents of the Redhawk Area to vote on the City's special park tax and rates and charges imposed by the Temecula Community Services District for funding certain municipal services.

(C) If the Redhawk Area is annexed to the City, the City shall retain one hundred percent (100%) of the sales and use tax revenues generated on the Site pursuant to Section 7201 of the Revenue and Taxation Code. If the Redhawk Area is not annexed to the City, the County shall retain one hundred percent of the sales and use tax revenues generated on the Site pursuant to Section 7201 of the Revenue and Taxation Code.

**Section 3. PAYMENTS TO COUNTY.** If upon the effective date of the annexation of the Site to the City, the aggregate amount of Net Sales Tax revenue received from taxable sales occurring on the Site by County, less payments to City pursuant to Section 2 above, is less than \$1.9 million, City shall pay to County an amount equal to 50% of Net Sales Tax revenue until such time that the total revenue from the Site retained by County equals \$1.9 million. In computing County's total revenue the sum of the following shall apply:

1. Aggregate of Net Sales Tax received by the County, less payment to City pursuant to Section 2 above, from the Site prior to annexation.
2. Aggregate of payments to County pursuant to this Section 3.

Section 4. TAX SHARING FROM THE HISTORIC SITE. County shall retain one hundred percent (100%) of the Net Sales Tax revenue that the County receives from taxable sales occurring on the Historic Site. Upon annexation of the Historic Site, City shall pay to County, one hundred 100% of the Net Sales Tax revenue that the City receives from taxable sales occurring on the Historic Site.

Section 5. TIME OF PAYMENT. Payments required hereunder by either City or County shall be paid within thirty (30) days of receipt of Applicable Sales and Use Taxes from the State Board of Equalization.

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**Section 6. STATEMENT OF ACCOUNT.** The County shall provide the City with a Statement of Account upon request of City staff. The Statement of Account shall include, but not be limited to, the following: <sup>①</sup> sales tax revenue collected by the County to date for the Fiscal Year, <sup>②</sup> sales tax revenue collected by the County during the preceding Fiscal Year, <sup>③</sup> sales tax revenue disbursed to the City during the preceding Fiscal Year, and <sup>④</sup> the total of all sales tax revenues disbursed to the City from the date of execution of this Agreement. If annexation of the Historic Site should occur, City shall provide the same information to County with respect to the Historic Site upon request of County staff.

**Section 7. ASSIGNMENT.** Neither this Agreement nor any clause or provision contained herein may be assigned, transferred or released without the express written consent of the Parties hereto.

**Section 8. NOTIFICATION.** All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either Party to the other shall be in writing and shall be sufficiently given and served upon the other Party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

County: County Executive Officer  
County of Riverside  
4080 Lemon Street  
Riverside, CA 92501

City: City Manager  
City of Temecula  
43200 Business Park Drive  
Temecula, CA 92589

With a copy to: Executive Director  
County of Riverside Economic Development Agency  
3525 Fourteenth Street  
Riverside, CA 92501-3813

**Section 9. AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on the behalf of the City warrants and represents that they have the authority to execute this Agreement on behalf of the City.

**Section 10. CHANGES OR MODIFICATIONS.** No part of this Agreement may be modified, altered, amended, waived, or changed without the express written consent of both of the Parties.

**Section 11. TERMINATION.** County or City may terminate this Agreement if the other party commits any material breach of this Agreement and has not cured, or where such cure cannot be completed within thirty (30) days, commenced efforts to cure such breach within thirty (30) days of the date of receipt of written demand to cure.

**Section 12. ATTORNEY FEES.** If any action is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney fees, costs, and necessary disbursements.

**Section 13. WAIVER.** Any waiver by the County of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other term thereof. Failure on the part of the County to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms of this Agreement, or stopping the County from enforcement hereof.

**Section 14. SEVERABILITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

**Section 15. GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State of California.

**Section 16. NOTICES OF TERMINATION.** Notice of termination by the County to the City shall be deemed delivered if sent by certified mail, return receipt requested, to the individual representing the City at the address set forth in Section 9 hereof. Notice by the City to the County shall be deemed delivered if sent by certified mail, return receipt requested, to the individual representing the County at the address set forth in Section 9 hereof.

## Section 17. INDEMNIFICATION.

17.1 The City agrees to and shall defend, indemnify and hold the County free and harmless from all claims, actions, damages, liabilities of whatsoever kind, nature or sort, arising from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, and/or injury to persons or property which the County may suffer as a result of any negligent act or omission of the City, its elected officials, officers, employees, and agents relating to or in any way connected with the accomplishment of work or performance of services pursuant to this Agreement, regardless of the existence or degree of fault or negligence on the part of the County or any elected official, officer, employee, or agent of the County, other than the sole active negligence of the County, its elected officials, officers, employees, or agents. This indemnification includes, without limitation, the payment of all judgments, awards, attorneys' fees, and related costs or expenses, and the reimbursement of the County, its elected officials, officers, employees, and agents for all legal expenses and costs incurred by each of them. The City's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its officers, employees, agents, contractors, or subcontractors.

17.2 The County agrees to and shall defend, indemnify, and hold free and harmless the City free and harmless from all claims, actions, damages, liabilities of whatsoever kind, nature or sort, arising from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, and/or injury to persons or property which the City may suffer as a result of any negligent act or omission of the County, its elected officials, officers, employees, and agents relating to or in any way connected with the accomplishment of work or performance of services pursuant to this Agreement, regardless of the existence or degree of fault or negligence on the part of the City or any elected official, officer, employee, or agent of the City, other than the sole active negligence of the City, its elected officials, officers, employees, or agents. This indemnification includes, without limitation, the payment of all judgments, awards, attorneys' fees, and related costs or expenses, and the

reimbursement of the City, its elected officials, officers, employees, and agents for all legal expenses and costs incurred by each of them. The County's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the County, its officers, employees, agents, contractors, or subcontractors.

**Section 18. INDEPENDENT CAPACITY.** The City, its officers, employees, and agents shall act in an independent capacity during the term of this Agreement and not as officers, employees, or agents of the County, nor shall they have authority to contract for or on behalf of, or incur obligations on behalf of, the County.

**Section 19. DISPUTES.** The parties may mutually agree to non-binding mediation services conducted by the Judicial Arbitration and Mediation Services, Inc./Endispute, or its successor, or any other neutral, impartial arbitration service that the parties mutually agree upon in accordance with its rules for such mediation.

**Section 20. MISCELLANEOUS PROCEDURAL MATTERS.**

20.1 Exhibits. All exhibits attached to this Agreement are incorporated herein by reference.

20.2 Incorporation of Recitals. The Recitals are specifically incorporated into this Agreement.

20.3 Counterparts. Separate counterparts of this Agreement may be separately signed by each party, all with the same effect as though the same counterpart had been signed simultaneously by the Parties signing each such counterpart.

20.4 Gender. In this Agreement, the masculine gender includes the feminine and neuter, and the singular number includes the plural, and vice versa, where the context so indicates.

20.5 Effective Date. This Agreement shall be effective and binding upon the Parties on the date this Agreement is signed by the Parties hereto (Effective Date).



20.6 Sections and Captions. All references to Sections refer to Sections in this Agreement unless otherwise stated. Captions are for convenience of reference only and do not constitute a portion of this Agreement.

20.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

20.8 Time. Time is of the essence in each provision of this Agreement.

20.9 Further Assurances. Each party hereto shall, upon the request of the other party hereto, take such other actions and sign such other documents (in recordable form, if required) as may be reasonably required to carry the provisions of this Agreement into effect.

**Section 21. ENTIRE AGREEMENT**. This Agreement contains the entire agreement and understanding between the Parties. There are no oral understandings, terms, conditions or promises, and no party has relied upon any representation, express or implied, not contained in this Agreement. This Agreement may only be modified or amended in writing and must be signed by the party, identified in Section 10 of this Agreement, to be charged.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date first above written.

COUNTY OF RIVERSIDE

By: 

James A. Venable, Chairman  
Board of Supervisors

Facsimile Signature  
affixed by Clerk per  
Sec. 25103 Gov Code

ATTEST: 6/14/2001

GERALD A MALONEY  
Clerk of the Board

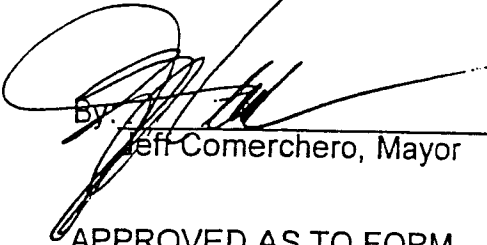
By: 

Deputy Clerk of the Board

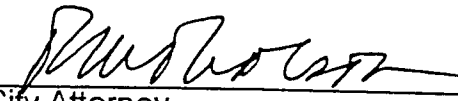
APPROVED AS TO FORM:

By:   
Joe S. Rank, Assistant County Counsel

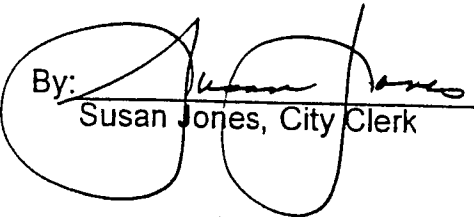
CITY OF TEMECULA

By:   
Jeff Comerchero, Mayor

APPROVED AS TO FORM

By:   
City Attorney  
Peter M. Thorson

ATTEST

By:   
Susan Jones, City Clerk

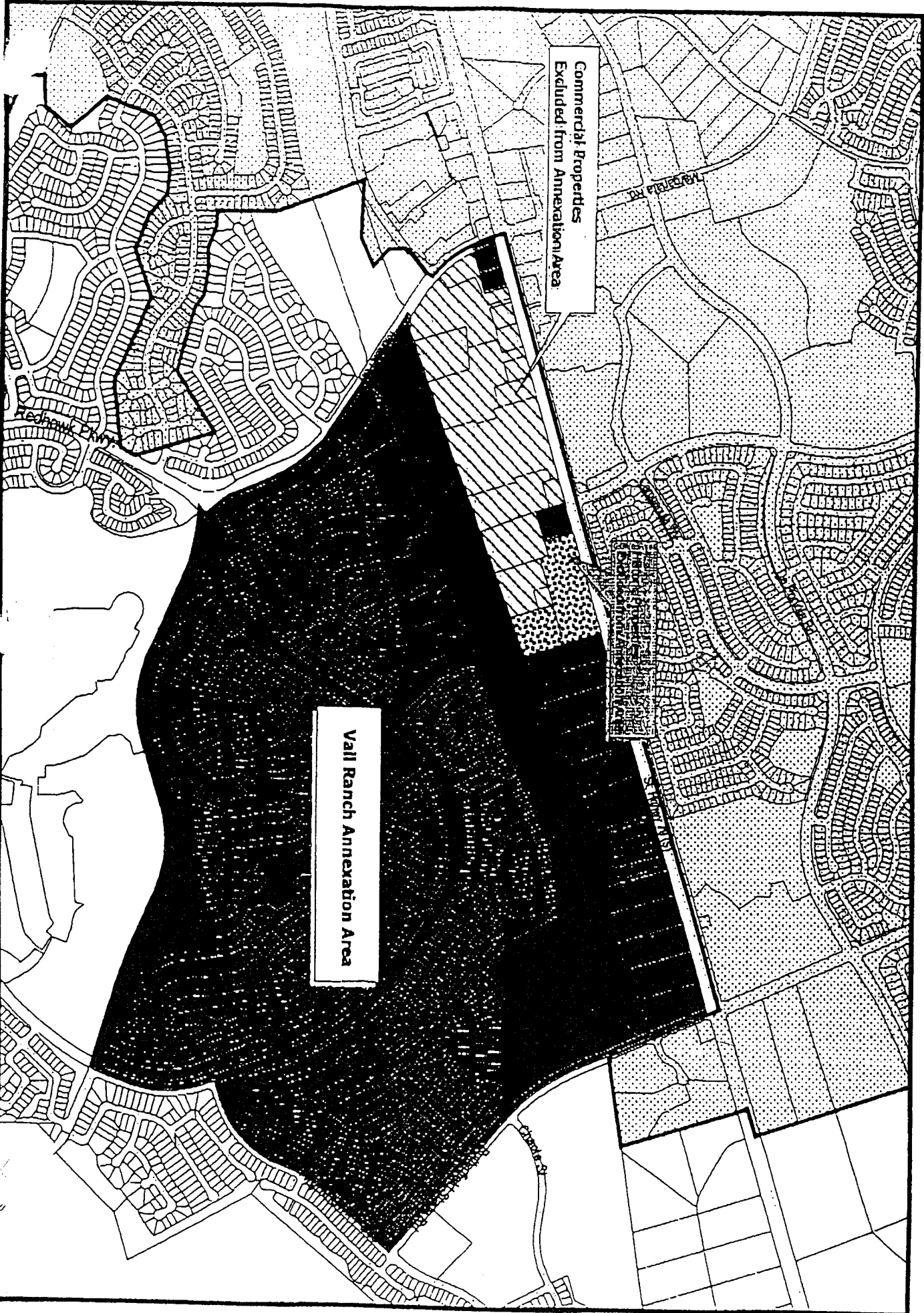
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EXHIBIT A

COMMERCIAL AND HISTORIC PROPERTIES EXCLUDED FROM  
VAIL RANCH ANNEXATION AREA

**Commercial and Historic Properties Excluded from the Vail Ranch Annexation Area**



**AMENDMENT TO  
OFFER TO DEDICATE AND LEASE**

This AMENDMENT TO OFFER TO DEDICATE AND LEASE ("Amendment") is entered into this 23<sup>rd</sup> day of JAN 2007 by and among the County of Riverside ("County"), a political subdivision of the State of California, REDHAWK TOWNE CENTER, LLC, a Delaware limited liability company ("Redhawk"), and Vail Headquarters, LLC, a California limited liability company ("VHQ"), with reference to the following:

**RECITALS**

A. WHEREAS, on or about May 13, 2003, the County and Redhawk entered into that certain Offer to Dedicate and Lease Agreement, as amended by that certain letter agreement dated November 14, 2003 ("Agreement"); and

B. WHEREAS, the Agreement required Redhawk, as the "Developer", to complete certain Restoration Improvements on a 4 acre Historic Site owned by Redhawk, all as described in the Agreement; and

C. WHEREAS, the Agreement further required that upon the County's approval of the plot plan for the Restoration Improvements on the Historic Site ("Plot Plan"), Redhawk was to make an irrevocable offer of dedication to the County of the Historic Site; and

D. WHEREAS, the Agreement further provided, among other things, that upon Developer's completion of the Restoration Improvements and the County's acceptance of the offer of dedication of the Historic Site, the County would lease the Historic Site to the Developer, and Developer would thereafter sublease a portion of the Historic Site back to the County; and

F. WHEREAS, VHQ has significant experience and expertise in restoration and operation of historic properties; and

G. WHEREAS, VHQ and Redhawk have entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated \_\_\_\_\_ (the "Purchase Agreement"), a copy of which is attached hereto as Exhibit A, whereby Redhawk has agreed to convey the Historic Site to VHQ in exchange for VHQ's agreement to redevelop the Historic Site; and

H. WHEREAS, the parties hereto now desire to amend the Agreement in the following particulars:

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged the parties hereto agree as follows:

1. Solely in consideration for VHQ's assumption of the obligations to rebuild, restore, develop and lease the Historic Site in accordance with the Agreement, as modified hereby, Redhawk has agreed to convey the Historic Site to VHQ in accordance with the Purchase Agreement. The Historic Site shall be conveyed to VHQ free and clear of any and all encumbrances except the lien for taxes not yet due, the obligations set forth in the Agreement, as

modified hereby, and the Permitted Exceptions under the Purchase Agreement. Concurrently with the conveyance of the Historic Site from Redhawk to VHQ, Redhawk shall assign all of its rights and obligations as the "Developer" under the terms of the Agreement, as modified hereby, to VHQ, and VHQ shall assume all of said rights and obligations. To effectuate said assignment, VHQ and Redhawk shall enter into an "Assignment and Assumption Agreement", the form of which is attached as Exhibit C to the Purchase Agreement. The Assignment and Assumption Agreement shall provide that it is effective upon VHQ's acquisition of the Historic Site. Upon completion of the conveyance of the Historic Site to VHQ and the execution of the Assignment and Assumption Agreement (the "Closing"), Redhawk shall be released from liability for all of the "Developer's" obligations as set forth in the Agreement, as modified hereby, it being the intent that this Amendment and the Assignment and Assumption Agreement shall be deemed a novation and a release in favor of Redhawk with respect to the obligations under the Agreement, as modified hereby. The foregoing novation and release shall be self-effectuating; however, at the request of Redhawk, County will deliver a separate novation and release to Developer at the Closing.

The Agreement, at paragraph 5(e) provides for Off-Site Reimbursement to the Developer for certain costs for construction of Off-Site Improvements. As set forth in paragraph 6 of the letter agreement dated November 14, 2003, referenced in Recital A above, the Offsite Improvements were completed. Notwithstanding the Assignment and Assumption Agreement, Redhawk shall remain the party entitled to receive the Off-Site Reimbursement. In the event the Closing does not occur in accordance with the terms of the Purchase Agreement, this Amendment shall become null and void.

2. Effective upon the Closing, the definition of "Developer" as set forth in Section 2(d) of the Agreement shall be modified to mean VHQ.

3. Section 2(j) of the Agreement is hereby modified in its entirety to read as follows:

"Restoration Improvements" shall mean the development of the Historic Site for commercial uses within the parameters of the Land Use Approvals. The scope of the improvements will be generally described as follows:

(a) The Caretaker building will be rehabilitated for commercial purposes. The Caretaker building may be relocated to a location on the property according to the approved plot plan.

b) The pump house building will receive exterior rehabilitation only, and will remain passive in use and not be habitable. Developer may relocate this building to another location on site according to the approved plot plan.

c) The Machinery Barn shall be rehabilitated (interior and exterior) for commercial purposes and may include an expansion of approximately 1,100 square feet.

d) The Wolf Store building will be rehabilitated for commercial purposes.

- e) The Cook House building will be rehabilitated for commercial purposes and may include an expansion of approximately 1,700 square feet.
- f) The Bunk House building will be rehabilitated for commercial purposes and may include an expansion of approximately 2,000 square feet.
- g) The Developer may construct a new two-story retail building for commercial uses consisting of approximately 7,600 square feet. The location shall be according to the approved plot plan."

4. Section 3 of the Agreement is hereby modified in its entirety to read as follows:

"Upon the later of full execution of this Amendment or the conveyance of the Historic Site to VHQ, VHQ shall make an irrevocable offer of dedication to the County of the Historic Site. The County agrees to accept the offer of dedication and the conveyance of the Historic Site upon the satisfaction or waiver of each of the following conditions:

(a) The conveyance of the Historic Site to the County shall be free and clear of any and all encumbrances, liens, and easements except the Permitted Exceptions under the Purchase Agreement and such other matters approved in writing by the County. Upon making the offer of dedication, VHQ shall concurrently provide County with a preliminary title report ("PTR") showing the condition of title to the Historic Site. All monetary encumbrances shown on said PTR shall be deemed disapproved, and County shall have forty-five (45) days to object to any other easements or encumbrances shown on said PTR, other than the Permitted Exceptions under the Purchase Agreement, which the County hereby approves. Any non-monetary easements/encumbrances to which County does not object shall be deemed "Permitted Exceptions". Upon the conveyance of the Historic Site to County, VHQ shall provide County with a policy of title insurance subject only to the Permitted Exceptions. The parties acknowledge that VHQ may have recorded a construction or other loan trust deed against the Historic Site, provided that at the conveyance of the Historic Site to County the deed of trust shall be converted a leasehold mortgage.

(b) VHQ shall have completed the Restoration Improvements in accordance with the terms of this Agreement, and County shall have approved said completed Restoration Improvements, which approval shall not be unreasonably withheld.

(c) VHQ and the County shall have approved the form of and executed the Developer Lease, as described in Section 5 of the Agreement, to be effective upon the conveyance of the Historic Site to the County. A memorandum of lease in form reasonably requested by VHQ shall be executed acknowledged by the County and VHQ and recorded against the Historic Site at the time of conveyance to County.

(d) VHQ and the County shall have approved the form of and executed the County Sublease, as described in Section 7 of this Amendment, to be effective concurrently with the Developer Lease.

(e) All warranties and representations of the Developer made in this Agreement shall be true and correct as of the date of the acceptance of the offer of dedication and conveyance of the Historic Site to the County.

The foregoing conditions precedent are for the benefit of the County and may be waived only by a writing, executed by an authorized representative of the County."

The County acknowledges that the dedication of the Historic Site to the County shall constitute a gift by VHQ to the County.

5. Section 4 of the Agreement is hereby deleted in its entirety.

6. Section 5 shall be modified as follows:

(a) Section 5(b) of the Agreement is hereby modified to provide that the Initial Term of the Developer Lease shall be sixty-five (65) years.

(b) Section 5(c) of the Agreement is hereby modified to provide that in the event of the failure of the County to respond to any request for approval of a use within ten (10) days, Developer may give a written notice to County stating that failure to respond within five (5) days after such second notice shall be deemed approval.

(c) Section 5(f) of the Agreement is hereby modified to provide that in the event of the failure of the County to respond to any request for approval of a change or modification within ten (10) days, Developer may give a written notice to County stating that failure to respond within five (5) days after such second notice shall be deemed approval, unless within such initial ten-day period the County gives Developer written notice that such approval requires a meeting of the County's Historic Committee, in which case the County shall diligently schedule such meeting.

7. The Section 7(a) of the Agreement is hereby modified in its entirety to read as follows:

**"(a) VHO's Obligations as Developer.** As a material part of its obligations under the terms of the Developer Lease, Developer shall finance, design and construct on the Historic Site all of the Restoration Improvements as described in Section 2(j) of the Agreement. Subject to force majeure and other delays beyond the control of Developer, Developer shall design and implement the Restoration Improvements in accordance with the schedule set forth on Exhibit "B" attached to this Amendment and incorporated herein by this reference ("Schedule"). Subject to force majeure and other delays beyond the control of Developer, time is of the essence of each and every date within said Schedule. Developer shall provide equity of not less than 15% of the total project costs. In connection with the financing and construction of the Restoration Improvements, Developer shall do the following:"

1. Perform each of the obligations set forth in Section 7(a), subparagraphs (1) through (6), inclusive, of the Agreement as originally written and within the time specified on Exhibit "B" attached hereto, subject to force majeure and other delays beyond the control of Developer, ;



2. Concurrently with VHQ's acquisition of the Historic Site, furnish to County either (i) a guarantee of lien free completion in commercially reasonable form from a guarantor reasonably acceptable to County relating to the Restoration Improvements or (ii) a surety bond ("Bond") in such form and substance as shall be approved by the County, in an amount equal to Three Million Dollars (\$3,000,000.00). The Bond shall be issued by a responsible surety company, admitted to do business in California and shall remain in effect until the Restoration Improvements are completed, the entire cost of the Restoration Improvements are paid in full and the time for filing mechanics liens has expired and any liens, claims of contractors, subcontractors, laborers, mechanics or materialmen or assessments have been fully released. The Bond shall provide that up to the entire amount of the Bond shall be paid to County, or its designee, in the event the construction of the Restoration Improvements is not commenced and completed in accordance with the terms of the Agreement, as amended hereby. The Bond shall further provide as follows:

- a. The Bond is intended to secure the commencement and completion of the Restoration Improvements, free from all liens and claims of contractors, subcontractors, mechanics, laborers, and materialmen;
- b. That the Restoration Improvements will be completed by VHQ, VHQ's contractors or on their default, the surety; and
- c. The surety will defend and indemnify the County against all loss, cost, damage, expense and liability arising out of or connected with the completion of the Restoration Improvements.

8. Section 8(a) is hereby modified in its entirety to read as follows:

**"Section 8. County Subleases.** Concurrently with the execution of this Amendment, Redhawk agrees to cause Redhawk Towne Center II, LLC ("Redhawk II") to lease to County and County agrees to lease from Redhawk II, the premises containing approximately 1,136 square feet of space located within the Implement Barn on the Developer Site ("Redhawk II Premises") described on Exhibit "C" attached hereto and incorporated herein by this reference. The lease ("Redhawk II Lease") of the Redhawk II Premises from Redhawk II to County shall be substantially in the form of Exhibit "D" attached hereto and incorporated herein by this reference.

Concurrently with the County's execution of the Developer Lease, VHQ (in its role as "Developer") agrees to enter into the County Sublease as described in Section 8 of the Agreement, provided however that the property which shall be the subject of the County Sublease shall be approximately 730 square feet of space within the Restoration Improvements, as depicted on Exhibit "E" attached hereto and incorporated herein by this reference.

9. The following sentence is hereby added at the end of Section 8 (b): "Developer shall submit monthly reports, within 15 days of each month, showing the expenditures, or

portions thereof, representing the Principal Component, made by Developer during the previous calendar month."

10. VHQ hereby warrants and represents that it is a California limited liability company, duly organized, in good standing and qualified to do business in California, and that it has the necessary power and authority to carry on its business as it is now being conducted and it has the necessary power and authority to perform each of the obligations set forth herein. VHQ further warrants and represents that the execution and delivery of this Amendment have been duly authorized by all necessary entity actions and the individual executing this Amendment on behalf of VHQ is authorized to do so, and upon such execution, this Amendment shall constitute a valid and binding obligation of VHQ, enforceable against VHQ according to its terms.

11. The paragraph at the end of Section 10 of the Agreement entitled "Prevailing Wage Requirements" is hereby deleted in its entirety and the following substituted in its place:

**Prevailing Wage Requirements.** The County makes no representation as to the compliance with or applicability of any prevailing wage requirements such as California Labor Code Section 1720 ("Prevailing Wage Requirements"), to the construction of the Restoration Improvements. It is the sole responsibility of the Developer to comply with such law if it is deemed applicable. In the event that Developer does not comply with such 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."

12. Section 12(b) of the Agreement is hereby modified in its entirety to read as follows:

**(b) Developer's Default.** Except as otherwise provided herein, if Developer shall fail to keep any terms, conditions or covenants contained in this Agreement, including without limitation, if Developer fails to meet any scheduled milestone set forth on the Schedule for reasons other than force majeure or other delays beyond the control of 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 compromise 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 it filing, then and in any such event, Developer will be deemed to have committed an "Event of Default." Upon the happening of an Event of Default, the County shall give Developer written notice thereof, and Developer shall have thirty (30) days from the date of receipt of said notice to cure the specified Event of Default, or if the Event of Default is of a nature that it cannot reasonably be cured in thirty (30) days, then Developer shall, within the above referenced thirty (30) day period, commence to cure the specified Event of Default and thereafter diligently prosecute such cure to completion.

In the event that Developer fails to cure the specified Event of Default within the applicable period as provided above, then Developer shall be deemed to be in breach hereunder, and the County shall, in addition to any and all other remedies available at law or in equity, be entitled to accept or reject the offer of dedication of the Historic Site, in its sole discretion, and thereafter terminate this Agreement. Upon termination of this Agreement, the Developer Lease and the County Sublease, shall also terminate if they are then in effect, and the County shall be relieved of all obligations hereunder, including but not limited to the obligation to pay the Off Site Reimbursement or the Maximum Sublease Rent or any component thereof. Upon termination of this Agreement as provided in this paragraph, if the County elects to accept the dedication of the Historic Site, upon such acceptance County shall likewise be the sole owner of the Restoration Improvements by then installed on the Historic Site. The County's remedies hereunder shall be cumulative and no remedy described herein shall be deemed to preclude the County seeking any other remedy available at law or in equity.

13. Section 14 of the Agreement shall be supplemented to provide the following addresses and amended addresses for the parties indicated:

IF NOTICE IS TO VHQ:

Vail Headquarters, LLC  
c/o Arteco Partners  
281 S. Thomas Street, Suite 504  
Pomona, CA 91766  
Fax: (909) 623-2082  
Attn: Jerry Tessier, President

IF NOTICE IS TO REDHAWK:

Redhawk Towne Center, LLC  
c/o Redhawk Realty Corporation  
23 Mauchly, Suite 100  
Irvine, CA 92618  
Fax: (949) 252-3881  
Attn: John Visconsi

IF NOTICE IS TO THE COUNTY

Economic Development Agency  
PO Box 1180  
Riverside, CA 92502  
Fax: 951-955-8916  
Attn: Assistant County Executive Officer/EDA

Copy to:

County Executive Office  
County of Riverside

4080 Lemon Street, 12<sup>th</sup> Floor  
Riverside, CA 92501

Copy to:

County Counsel  
Riverside County  
3535 10<sup>th</sup> Street, Ste 300  
Riverside, CA 92501  
Fax: 951-955-6322

14. This Amendment shall be governed by the laws of the State of California. This Amendment may be signed in counterparts, with all such counterparts taken together constituting a single original.

15. Except to the extent modified by this Amendment, the Agreement remains in full force and effect as originally written. All defined terms used herein shall have the same meaning as in the Agreement, as originally written. In the event of a conflict between the terms of this Amendment and the Agreement, as originally written, this Amendment shall control.

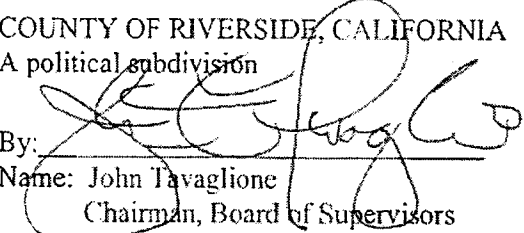
16. Each Party hereby covenants that within ten (10) business days after a written request of any other Party, it will issue to such other Party, or to any mortgagee, or to any prospective purchaser or prospective mortgagee specified by such requesting Party, an estoppel certificate stating: (i) whether the Party to whom the request has been directed knows of any default under this Agreement, and if there are known defaults specifying the nature thereof; and (ii) whether the Agreement has been modified or amended in any way (or if it has, then stating the date of such modification or amendment and attaching a copy thereof to such estoppel). A sample form of the estoppel certificate shall be provided by the requesting party. The Assistant County Executive Officer of the Economic Development Agency shall be authorized to approve and execute any such document on behalf of the County.

17. Unless expressly provided that the giving of consent or approval is in the sole and absolute discretion of a party, no party given the right to approve or consent to a matter shall unreasonably withhold, condition or delay its approval or consent. Failure to respond in writing within any specified period shall be deemed unconditioned approval of or consent to the applicable matter, provided the party requesting such approval or consent gives a second written notice requesting response at least ten business days before the expiration of the specified response period.

18. In the event a lender providing financing requires modifications to this Agreement or related documents, the parties agree to make any such modifications provided such modifications do not materially and adversely affect the rights or obligations of the party making such modifications.

WHEREFOR, the parties hereto have executed this Amendment on the date first written above.

COUNTY OF RIVERSIDE, CALIFORNIA  
A political subdivision

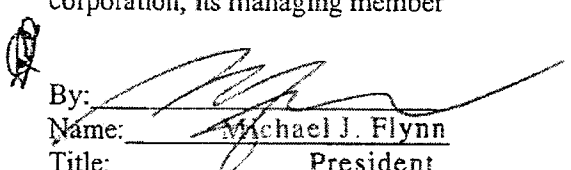
By:   
Name: John Tavaglione  
Chairman, Board of Supervisors

Attest:

  
Clerk of the Board DEPUTY

REDHAWK TOWNE CENTER, LLC, a Delaware  
limited liability company

By: PLC Redhawk, Inc., a Delaware  
corporation, its managing member

By:   
Name: Michael J. Flynn  
Title: President

Vail Headquarters, LLC  
a California limited liability company

By: \_\_\_\_\_  
Name: Gerald V. Tessier  
Its: Manager

WHEREFOR, the parties hereto have executed this Amendment on the date first written above.

COUNTY OF RIVERSIDE, CALIFORNIA  
A political subdivision

By: \_\_\_\_\_  
Name: John Tavaglione  
Chairman, Board of Supervisors

Attest:

\_\_\_\_\_  
Clerk of the Board

REDHAWK TOWNE CENTER, LLC, a Delaware  
limited liability company

By: PLC Redhawk, Inc., a Delaware  
corporation, its managing member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Vail Headquarters, LLC  
a California limited liability company

By: \_\_\_\_\_  
Name: Gerald V. Tessier  
Its: Manager

EXHIBIT "A"

AGREEMENT BETWEEN VHQ AND REDHAWK

[To be attached.]

**EXHIBIT "B"**

**SCHEDULE**

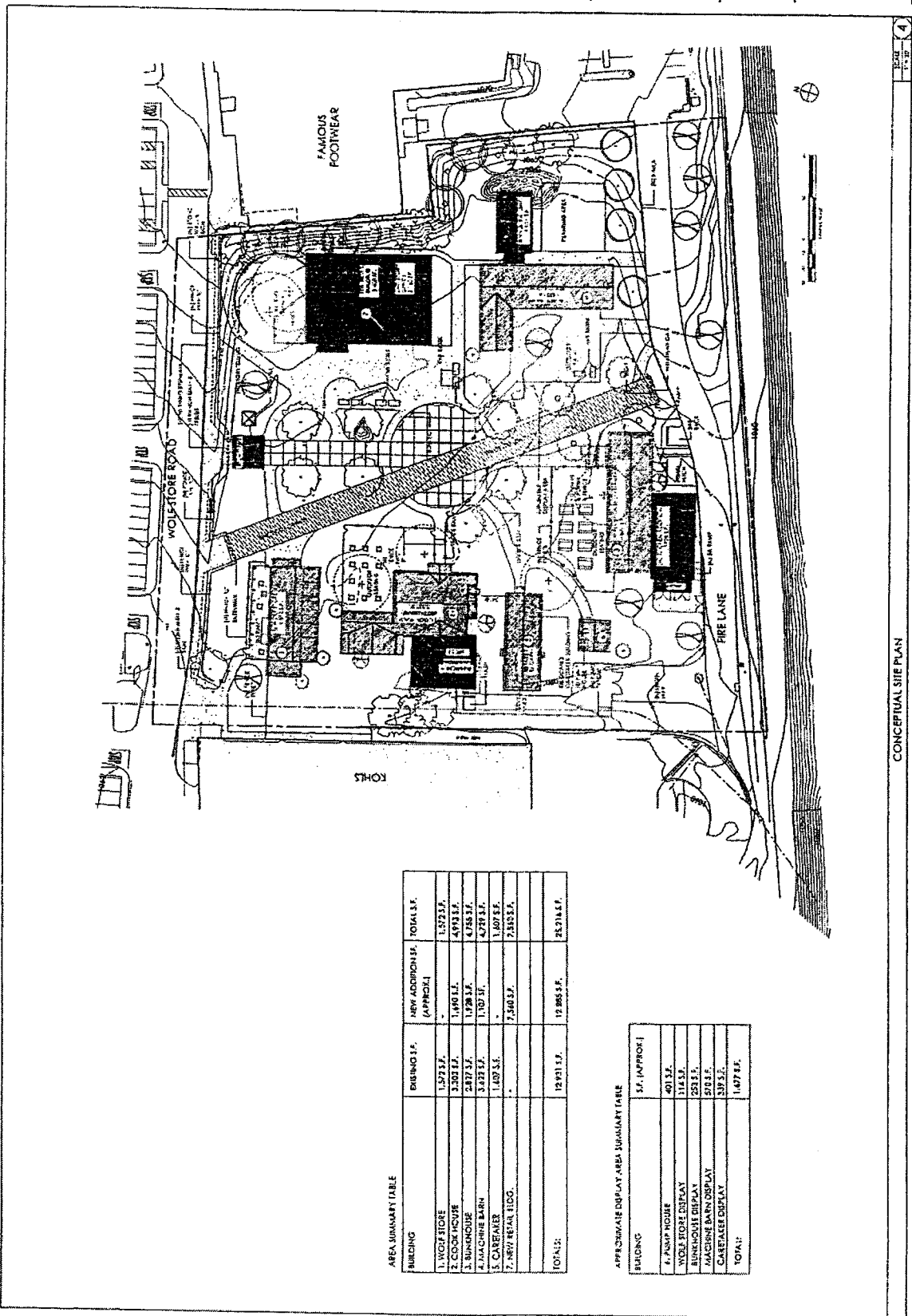
[Subject to Revision]

<u>TASK</u>	<u>TIME FOR COMPLETION</u>
Offer of dedication to the County for Historic Site	Upon Amendment execution
Site Plan Study and completion of conceptual design	Jan 10, 2007 – Feb 28, 2007
Submit conceptual design and draft plot plan to County	March 1, 2007
Community, City & County Meetings to present Conceptual site and floor plans	March 1 –March 31, 2007
County Approval of Plot Plan and conceptual design	May 31, 2007
Development Review Application submitted to City	June 30, 2007
Submit Construction Documents to City for 1st plan check	Dec 1, 2007
Start of Construction of Restoration Improvements	March 1, 2008
Complete Construction (Certificate of Occupancy) for All Restoration Improvements	March 1, 2009



EXHIBIT "C"

DESCRIPTION/DEPICTION OF REDHAWK II PREMISES



AREA SUMMARY TABLE

BUILDING	BUILDING SF.	NEW ADDITION SF. (APPROX.)	TOTAL SF.
1. WOLF STORE	1,572 S.F.	-	1,572 S.F.
2. COOK HOUSE	3,281 S.F.	1,490 S.F.	4,771 S.F.
3. BUNGALOW	2,477 S.F.	1,728 S.F.	4,205 S.F.
4. MACHINE BARN	3,427 S.F.	1,707 S.F.	5,134 S.F.
5. CAREAKER	1,407 S.F.	-	1,407 S.F.
7. NEW RETAIL BLDG.	-	7,563 S.F.	7,563 S.F.
TOTAL:	12,911 S.F.	12,885 S.F.	25,796 S.F.

APPROXIMATE DISPLAY AREA SUMMARY TABLE

BUILDING	SF. (APPROX.)
1. SHOP HOUSE	401 S.F.
WOLF STORE DISPLAY	114 S.F.
BUNGALOW DISPLAY	251 S.F.
MACHINE BARN DISPLAY	270 S.F.
CAREAKER DISPLAY	319 S.F.
TOTAL:	1,407 S.F.

EXHIBIT "D"

FORM OF REDHAWK II LEASE

(to be attached)

**EXHIBIT "E"**  
**DESCRIPTION/DEPICTION OF COUNTY SUBLEASE PROPERTY**

(to be attached)