

AREA SUMMARY TABLE

BUILDING	EXISTING S.F.	NEW ADDITION S.F. (APPROX.)	TOTAL S.F.
1. WOLF STORE	1,572 S.F.	1,572 S.F.	3,144 S.F.
2. COOK HOUSE	3,700 S.F.	1,400 S.F.	5,100 S.F.
3. BARNHOUSE	2,877 S.F.	1,400 S.F.	4,277 S.F.
4. MACHINERY BARN	3,472 S.F.	1,100 S.F.	4,572 S.F.
5. CARPENTER	1,400 S.F.	7,400 S.F.	8,800 S.F.
7. NEW REAR BLDG.	-	7,200 S.F.	7,200 S.F.
TOTAL:	12,921 S.F.	17,272 S.F.	30,193 S.F.

APPROXIMATE DISPLAY AREA SUMMARY TABLE

BUILDING	S.F. (APPROX.)
4. PUMP HOUSE	40 S.F.
WOLF STORE DISPLAY	114 S.F.
BARNHOUSE DISPLAY	253 S.F.
MACHINERY BARN DISPLAY	570 S.F.
CARPENTER DISPLAY	537 S.F.
TOTAL:	1,497 S.F.

County 5-to-lease property (730 sq. ft. approx) to be selected from above & display area summary table.

**SECOND AMENDMENT TO
OFFER TO DEDICATE AND LEASE**

This SECOND AMENDMENT TO OFFER TO DEDICATE AND LEASE ("Second Amendment") is entered into this 2 day of Sept., 2008 by and between the County of Riverside ("County"), a political subdivision of the State of California, 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 Towne Center, LLC, a Delaware limited liability company ("Redhawk") entered into that certain Offer to Dedicate and Lease Agreement, as amended by that certain letter agreement dated November 14, 2003, and that certain Amendment to Offer to Dedicate and Lease dated January 23, 2007, by and among the County, Redhawk and VHQ (the "First Amendment") (as so amended to date, the "Agreement"); and

B. WHEREAS, the First Amendment provides, among other things, that VHQ has succeeded Redhawk as the "Developer" under the Agreement, and, in connection therewith and pursuant to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of January 8, 2007, Redhawk has agreed to sell and VHQ has agreed to purchase a historical site of approximately 4 acres located in Riverside County, California (the "Property"), the development, use and operation of which Property are the subject, among other things, of the Agreement; and

C. WHEREAS, under the Agreement, Developer is to construct certain improvements to the Property (the "Restoration Improvements"), and upon the completion thereof, pursuant to the terms of the Agreement, the Developer shall transfer fee title of the Property to the County, and the County shall simultaneously lease the Property back to Developer under terms and conditions set forth in a lease then to be entered into, entitled, "Vail Ranch Historic Site Lease Agreement" (the "Site Lease," also referred to as the "Developer Lease" in the Agreement), and, accordingly, the Agreement contemplates, at paragraph 18 thereof, financing of the Restoration Improvements, and modifying the Agreement so as to enable and facilitate such financing by an institutional lender (whether one or more, the "Mortgagee").

D. WHEREAS, once the conditions specified in Section 3 of the Agreement have been satisfied, including the entering into of the Site Lease and recordation of a memorandum thereof, culminating in the conveyance of the Property to the County (the date on which such conveyance is accomplished of record being referred to hereinafter as the "Conveyance Date"), the mortgagee protections contained in the Site Lease shall govern. Prior to the Conveyance Date, it is contemplated that financing of the Restoration Improvements and costs related thereto, shall be accomplished by a loan from the Mortgagee which shall be secured by a deed of trust or mortgage lien (whether one or more, referred to as the "Mortgage") encumbering the fee interest in the Property, which Mortgage shall either be converted, amended or replaced such that the Mortgage (or its replacement) shall no longer encumber the fee interest (which shall have passed to the County), but shall thereafter encumber VHQ's lessee's interest in the Site Lease (as contemplated by Section 3(a) of the Agreement). The following provisions are intended to

afford the Mortgagee similar protections prior to the Conveyance Date to those included in the Site Lease and governing subsequent to the Conveyance Date.

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

1. The Agreement is hereby amended to add the following as a new Section 30 of the Agreement (certain of the capitalized terms below shall have the meaning as set forth in the Recitals above):

30. Mortgagee Protection

30.01 Right to Encumber. VHQ and every successor and assign of VHQ (including, but not limited to, any sublessee of VHQ) is hereby given the express right, in addition to any other rights herein granted, with the County's consent not to be unreasonably withheld, to mortgage its fee interest in the Property and to assign its interest in this Agreement as collateral security for the financing of the Restoration Improvements, upon the condition that all rights acquired under any Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Agreement, and to all rights and interests of the County herein, none of which covenants, conditions or restrictions is or shall be waived by the County by reason of the foregoing, except as expressly provided herein. In the event of any conflict between the provisions of this Agreement, and the provisions of any Mortgage, the provisions of this Agreement shall control, except as herein specifically provided. County hereby expressly consents to the Mortgage by VHQ of its fee interest in the Property to secure a construction loan not to exceed Seven Million Dollars (\$7,000,000.00) for completion of the Restoration Improvements to be made by VHQ pursuant to this Agreement.

30.02 County's Right to Cure. In the event of a default or breach by VHQ of any security instrument securing a Mortgage, the County shall have the right to cure the default provided such cure is completed at least five (5) business days before the date of foreclosure. In such event, the County shall be entitled to reimbursement by VHQ of all costs and expenses incurred by the County in curing the default, with interest at the highest rate permitted by law (collectively, "County's Cure Payments"), provided in the event of a subsequent foreclosure of a Mortgage the party acquiring VHQ's interests shall not be obligated to pay the County any of the County's Cure Payments.

30.03 Rights of Mortgagee. If VHQ and/or VHQ's successors and assigns shall mortgage its fee interest in the Property, the following provisions shall apply:

(a) No Amendment. There shall be no amendment, cancellation, termination, surrender or modification of this Agreement by joint action of the County and VHQ without the prior consent in writing of each holder of a Mortgage.

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

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

(d) Additional Cure Period. Anything contained in this Agreement notwithstanding, if any default shall occur which, pursuant to any provision of this Agreement, purportedly entitles the County to terminate this Agreement, the County shall not be entitled to terminate this Agreement as to any Mortgagee, and the notice shall be rendered void as to such parties, if the Mortgagee, within sixty (60) days after expiration of the period within which VHQ was permitted to cure the default (or within ninety (90) days after receipt of the notice by the Mortgagee if the default is not curable by VHQ), shall both:

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

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

(e) Condition of Termination. All right of the County to terminate this Agreement as the result of the occurrence of any default shall be subject to, and conditioned upon, the County having first given to each Mortgagee written notice of the default as required under Section 30.03(b), above, and all Mortgagees having failed to remedy such default or acquire VHQ's fee estate in the Property or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in Section 30.03(d), above.

(f) Loss Payable Endorsement. The County and VHQ agree that the name(s) of the Mortgagees shall, at such Mortgagee's request, be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by VHQ under this Agreement on condition that the insurance proceeds are to be applied in the manner specified in this Agreement, subject to Mortgagee's right to hold such proceeds and disburse same as restoration progresses.

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

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

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

(j) Further Protections. The County and VHQ shall cooperate in considering for inclusion in this Agreement, by acceptable amendment from time to time, any provision which may be reasonably requested by any proposed Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Section 30 and allowing that Mortgagee reasonable means to protect or preserve the lien of its Mortgage upon the occurrence of a default under the terms of this Agreement. The County and VHQ each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement approved by the authorized bodies to effect any such amendment; provided, however, that no such amendment shall in any way affect the term or material obligations under this Agreement, nor otherwise in any material respect adversely affect any rights of the County under this Agreement, and VHQ shall pay the County's reasonable costs in connection with such amendment.

30.04 Notice. If VHQ shall mortgage its interest in the Property, or any part or parts thereof, VHQ shall send to the County a true copy thereof, together with written notice specifying the name and address of the Mortgagee and the pertinent recording data with respect to such Mortgage.

30.05 New Agreement.

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

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

(ii) Within thirty (30) days after receipt of the new agreement from the County complying with the terms of this Section 30.05, the Mortgagee shall execute and deliver the new agreement to the County and shall pay any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to this Agreement but for its termination;

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

(iv) The Developer under the new agreement shall have the same right, title and interest in and to the buildings and improvements on the Property as VHQ had under the terminated Agreement immediately prior to its termination; and

(v) Notwithstanding anything to the contrary expressed or implied elsewhere in this Agreement, any new agreement made pursuant to this Section 30.05(a) shall enjoy the same priority in time as the Agreement over any mortgage, deed of trust, or other lien, charge, or encumbrance on the Property.

(b) Nothing herein contained shall require any Mortgagee to enter into a new agreement pursuant to Section 30.05(a), above, nor to cure any default of VHQ referred to above.

(c) If a Mortgagee shall elect to demand a new agreement, Mortgagee, as a condition of executing the new agreement, shall pay all reasonable costs and expenses, including attorneys' fees, incurred by the County in preparing the new agreement.

30.06 Mortgagee's Liability. In the event any Mortgagee or any designee of it becomes the Developer under this Agreement or under any new agreement obtained pursuant to Section 30.05(a), above, the Mortgagee or its designee shall be personally liable for the obligations of VHQ under this Agreement only for the period of time that the Mortgagee or its designee remains the actual beneficial holder of the fee estate of the Property.

Mortgagee may assign the Agreement or the new agreement with the consent of the County, not to be unreasonably withheld.

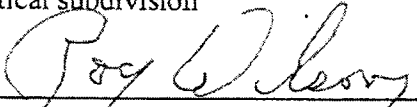
30.07 Restriction on Easements and Encumbrances by the County. Without VHQ's consent (which may be withheld in its reasonable discretion), the County shall not grant or agree to grant any easement, license or access rights over the Property.

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

[Balance of page intentionally left blank.]

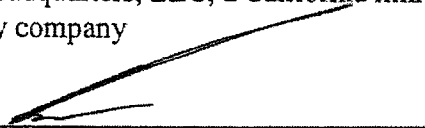
WHEREFOR, the parties hereto have executed this Second Amendment on the date first written above.

COUNTY OF RIVERSIDE, CALIFORNIA
A political subdivision

By: 
Name: Roy Wilson
Chairman, Board of Supervisors

Attest: **NANCY ROMERO**
 **DEPUTY**
Clerk of the Board

Vail Headquarters, LLC, a California limited liability company

By: 
Name: Gerald V. Tessier
Its: Manager

FORM APPROVED COUNTY COUNSEL
BY:  9/25/08
MICHELLE CLACK DATE

1
2 **THIRD AMENDMENT TO OFFER TO DEDICATE AND LEASE**

3
4 This Third Amendment to Offer to Dedicate and Lease ("Third Amendment") is entered into
5 this 1 day of September 2009, by and between the County of Riverside ("County") a
6 political subdivision of the State of California, and Vail Headquarters, LLC, a California limited
7 liability company ("VHQ" or "Developer") with reference to the following:

8 **RECITALS**

9 **WHEREAS**, on or about May 13, 2003, the County and Redhawk Towne Center, LLC, a
10 Delaware limited liability Company entered into that certain Offer to Dedicate and Lease Agreement,
11 as amended by that certain letter agreement dated November 14, 2003, that certain Amendment to
12 Offer to Dedicate and Lease dated January 23, 2007 by and among the County, Redhawk and VHQ
13 ("First Amendment"), that certain Second Amendment to Offer to Dedicate and Lease dated
14 September 2, 2008 by and among the County and VHQ ("Second Amendment")(as so amended to
15 date, the "Agreement"); and

16 **WHEREAS**, the First Amendment provides, among other things, that VHQ has succeeded
17 Redhawk as the "Developer" under the Agreement, and, in connection therewith and pursuant to
18 that certain Purchase and Sale Agreement and Joint Escrow Instructions dates as of January 8,
19 2007, and

20 **WHEREAS**, under the Agreement, the Developer is to construct certain improvements
21 ("Restoration Improvements") on the subject property within the specified schedule set forth in the
22 Agreement's Exhibit "B"; and

23 **WHEREAS**, the current economy has made it difficult for the Developer to obtain
24 construction financing or tenant commitments; and

25 **WHEREAS**, the Developer has requested that the Agreement's Exhibit "B" be amended to
26 allow the Developer sufficient time to obtain construction financing for the Restoration
27 Improvements; and

28 **WHEREAS**, any amendment to the Agreement shall be consented to in writing by each
29 mortgage holder prior to any action by County or VHQ; and

WHEREAS, if a mortgage holder is in place prior to this Third Amendment being approved
by the County and VHQ, said mortgage holder's consent shall be obtained prior to approval of the
Third Amendment.

1 **NOW, THEREFORE**, in consideration of the mutual understanding provided herein, the
2 parties hereto do hereby agree to the following:

- 3 1. The Exhibit "B" referenced in Section 7(a) of the Agreement is hereby replaced with the
4 attached Amended Exhibit "B", which is incorporated herein by this reference.
5 2. This Third Amendment shall be governed by the laws of the State of California.
6 3. This Third Amendment may be signed in counterparts, with all such counterpart taken
7 together constituting a single original.
8 4. Except to the extent modified by this Third Amendment, the Agreement remains in full
9 force an effect as originally written. All defined terms used herein shall have the same
10 meaning as in the Agreement, as originally written.
11 5. This Third Amendment shall not be binding or consummated until its approval by the
12 County's Board of Supervisors.

13 **IN WITNESS WHEREOF, COUNTY AND VHQ have executed this Third Amendment on**
14 **the date written below.**

15 Dated: 8/12/09 VHQ: [Signature]
16 Gerald V. Tessier, Manager
17 Vail Headquarters, LLC

18 Dated: SEP 01 2009 COUNTY: [Signature]
19 Jeff Stone, Chairman
20 Board of Supervisors

21 If applicable, Consent of Mortgage Holder:

22 Dated: _____ MORTGAGE HOLDER: _____
23 Name:
24 Title:

25 **ATTEST:**
26 Kecia Harper-Ihem
27 Clerk of the Board

28 By: [Signature]
29 Deputy

[SEAL]

30 **APPROVED AS TO FORM:**
31 PAMELA J. WALLS
32 County Counsel

33 By: [Signature] 8/18/09
34 Deputy Michele Clark

1
2 AMENDED EXHIBIT "B"

3 SCHEDULE

4 [Amended September 1, 2009]

5

6 <u>TASK</u>	7 <u>TIME FOR COMPLETION</u>
8 Offer of dedication to the County for 9 Historic Site	10 Upon Amendment execution
11 Site Plan Study and completion of 12 conceptual design	13 Jan 10, 2007- Feb 28, 2007
14 Submit conceptual design and draft plot 15 plan to County	16 March 1, 2007
17 Community, City & County Meetings to 18 present Conceptual site and floor plans	19 March 1 – March 31, 2007
20 County Approval of Plot Plan and 21 conceptual designs	22 May 31, 2007
23 Development Review Application 24 submitted to City	25 June 30, 2007
26	
27 Submit Construction Documents to City 28 for 1st plan check	29 Dec 1, 2007
30 Start of Construction of Restoration 31 Improvements	September 1, 2010
32 Complete Construction (Certificate of 33 Occupancy) for All Restoration 34 Improvements	September 1, 2011

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**FOURTH AMENDMENT
TO OFFER TO DEDICATE AND LEASE**

This AMENDMENT TO OFFER TO DEDICATE LEASE ("Fourth Amendment") is entered into as of this 29th day of July, 2014 by and between the County of Riverside, a political subdivision of the State of California, and Vail Headquarters, LLC, a California limited liability company ("Developer" or "VHQ"). The parties desire to amend the Offer to Dedicate and Lease Agreement dated May 13, 2003.

RECITALS

A. WHEREAS, the County and Developer entered into the Offer to Dedicate and Lease Agreement dated May 13, 2003 (the "Agreement"), pursuant to which Developer was to complete certain restoration improvements on a historic site, as more particularly described in the Agreement (the "Project");

B. WHEREAS, the Agreement has been amended by the following documents:

- (1) Amendment to Offer to Dedicate and Lease dated January 23, 2006, whereas VHQ succeeded Redhawk Towne Center, LLC as Developer ("First Amendment");
- (2) Second Amendment to Offer to Dedicate and Lease dated September 2, 2008, whereas mortgagee protection was added to the Agreement ("Second Amendment"); and,
- (3) Third Amendment to Offer to Dedicate and Lease dated September 1, 2009. Whereas the project schedule was amended ("Third Amendment");

C. WHEREAS, \$3.2 million have been set aside in a trust account specifically for sublease payments from County to Developer from Sales and Use Tax generated on the adjacent development site in Temecula;

D. WHEREAS, the economy continued to be difficult for Developer to secure funding to finance the construction, but has now been able to secure funding for the Project, and has completed the entitlement process and has begun construction;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County and Developer agree as follows:

1. RESTORATION IMPROVEMENTS. 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.

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- (b) The pump house building will receive interior and exterior rehabilitation, and will be used for commercial purposes and/or historical display usages.
- (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.”

2. **DELIVERY SCHEDULE.** In the First Amendment, section 7 modifying section 7(a) of the Agreement is deleted in its entirety and the original language of the Agreement shall be in effect as of the date of this Fourth Amendment. The Third Amendment’s Exhibit “B” shall be deleted and replaced with an amended schedule, labeled Exhibit “J,” attached hereto and incorporated by this reference into the Agreement. Notwithstanding, the first paragraph of Section 7(a) of the Agreement is modified to read as follows:

“(a) **Developer’s Obligations.** 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 this 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 (“Schedule”) set forth in Exhibit “J,” attached and incorporated herein. Subject to force majeure and other delays beyond the control of the Developer, time is of the essence of each and every date and item listed within the Schedule. In connection with the financing and construction of the Restoration Improvements, Developer shall do the following:”

3. **COUNTY SUBLEASE SECTION 8(b).** Section 8(b) of the Agreement shall be deleted in its entirety and replaced as follows:

“(b) **Rent.** As rent for the County Sublease, the County shall pay to the Developer the sum of Three Million Two Hundred Thousand Dollars (\$3,200,000), the “Principal Component,” plus Accrued Interest earned on the Principal Component and the interest accumulated on it while it is on deposit in escrow pursuant to Section 8(d) (the “Interest Component”). The sum total of principal and interest accumulated in such escrow through May 31, 2014, was Three Million Four Hundred Fourteen Thousand Five Hundred Ninety-eight Dollars and Sixteen Cents (\$3,414,598.16). “Accrued Interest” shall be defined as the interest allocated quarterly by the County Treasurer at the rate achieved by the County Treasury’s investment pool.”

4. **COUNTY SUBLEASE SECTION 8(d).** Section 8(d) of the Agreement shall be deleted in its entirety and replaced as follows:

“(d) Escrow of Sales and Use Tax Revenues. The parties acknowledge and agree that under and subject to the terms and conditions of the County Sublease, the County will pay as rent the amount specified in Section 8(b), as amended herein, the Principal Component of which was derived primarily from fifty percent (50%) of the Sales and Use Tax Revenues previously generated by the Developer Site, and other sources as necessary to achieve the amount of the Principal Component specified in Section 8(b). The parties further acknowledge and agree that as portions of this Principal Component were received by the County they were deposited to and will continue to be held in a separate, specially designated interest bearing sub-fund of the County General Fund (the “STSA Escrow”), and that once deposited by the County all Accrued Interest earned on the Principal Component has been and will be accumulated in the STSA Escrow. The parties further agree that on the date the term of the County Sublease commences, the County shall disburse to the Developer all of the principal and interest on deposit in the STSA Escrow as of the last day of the month preceding the County Sublease rent payment, as reported by the County Auditor-Controller in the official monthly statements of the County; and any residual interest allocated by the County Treasurer subsequent to that payment of the County Sublease rent shall revert to the County General Fund.”

5. COUNTY SUBLEASE SECTION 8(f). Section 8(f) of the Agreement shall be deleted in its entirety and replaced as follows:

“Required Records. The County shall maintain sufficient records to provide an accounting of the Sales and Use Tax Revenues received pursuant to the Agreement and all deposits made to the STSA Escrow; and shall, at or about the time of payment of the County Sublease rent, provide to the Developer a written accounting of the accumulated principal and interest amounts held in the STSA Escrow through the time of payment.”

6. EXHIBIT C. Exhibit C of the Agreement, Legal Description of Developer Site, is supplemented with the attached Site Plan, attached to this Fourth Amendment as Exhibit “C-1” and incorporated into the Agreement.

7. NOTICES. Section 14 of the Agreement is amended to delete and replace the following addresses for the County:

“If to the County: Economic Development Agency
3535 10th Street, 4th Floor
Riverside, CA 92501

With a copy to: County Counsel
3960 Orange Street, Ste. 500
Riverside, CA 92501

With a copy to: Attn: STSA Escrow Administrator
County Executive Office
4080 Lemon Street, 4th Floor, Mail Stop #1020
Riverside, CA 92501”

8. **FOURTH AMENDMENT TO PREVAIL.** The provisions of this Fourth Amendment shall prevail over any inconsistency or conflicting provisions of the Agreement or its amendments. Any capitalized terms shall have the meaning defined in the Agreement, unless defined herein or context requires otherwise.

9. **MISCELLANEOUS.** Except as amended or modified herein, all terms of the Agreement shall remain in full force and effect. If any provisions of this Fourth Amendment shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of the Agreement.

10. **EFFECTIVE DATE.** This Fourth Amendment shall not be binding or consummated until approved by the County of Riverside Board of Supervisors (the "Board").

IN WITNESS WHEREOF, the Parties have executed this Fourth Amendment as of the date first approved by the Board.

COUNTY OF RIVERSIDE
a political subdivision of the State of
California

VAIL HEADQUARTERS, LLC,
a California limited liability company

By: Jeff Stone
Title: Chairman
Board of Supervisors

By: Gerald B. Tessier
Title: Manager

ATTEST:
KECIA HARPER-HEM, Clerk
By: [Signature]
DEPUTY

APPROVED AS TO FORM:
Pamela J. Walls, County Counsel

By: [Signature]
Patricia Munroe
Deputy County Counsel

EXHIBIT J

SCHEDULE

[Amended Dated _____, 2014]

<u>TASK</u>	<u>TIME FOR COMPLETION</u>
Offer of dedication to the County for Historic Site	COMPLETE
Site Plan Study and completion of conceptual design	COMPLETE
Submit conceptual design and draft plot plan to County	COMPLETE
Community, City & County Meetings to present and discuss Conceptual site and floor plans	COMPLETE
County Written Approval of Conceptual Plans	COMPLETE
Development Review/Major Alteration Applications submitted to City	COMPLETE
Development Review/Major Alteration Applications approved by City	COMPLETE
Submit Construction Documents to City for 1st plan check	COMPLETE
Start of Construction of Restoration Improvements	August 1, 2014
Complete Construction for All Restoration Improvements	December 31, 2015

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you.

FIFTH AMENDMENT TO OFFER TO DEDICATE AND LEASE AGREEMENT

THIS FIFTH AMENDMENT TO OFFER TO DEDICATE AND LEASE AGREEMENT ("Fifth Amendment"), dated as of 1/26/2016, is entered into by and between the County of Riverside, a political subdivision of the State of California ("County"), and Vail Headquarters, LLC, a California limited liability company ("Developer" or "VHQ"), sometimes collectively referred to as the "Parties". The Parties desire to amend the Offer to Dedicate and Lease Agreement dated May 13, 2003.

RECITALS

A. County and VHQ, successor in interest to Redhawk Towne Center, LLC, a Delaware limited liability company, have entered into that certain Offer to Dedicate and Lease Agreement dated May 13, 2003 (the "Agreement"), pursuant to which Developer is obligated to complete certain restoration improvements on a historic site, as more particularly described in the Agreement and all subsequent amendments thereto.

B. The Original Agreement has been amended by the following:

1. That certain First Amendment to Offer to Dedicate and Lease dated January 23, 2006, whereby VHQ succeeded Redhawk Towne Center, LLC as Developer;
2. That certain Second Amendment to Offer to Dedicate and Lease dated September 2, 2008, whereby mortgagee protection was added to the Agreement;
3. That certain Third Amendment to Offer to Dedicate and Lease dated September 1, 2000, whereby the project schedule was amended; and
4. That certain Fourth Amendment to Offer to Dedicate and Lease dated July 29, 2014 whereby the Restoration Improvements were redefined, the project schedule was amended, the County Sublease was amended, Exhibit "C" was supplemented, and the Notice provisions were amended.

C. The Parties now desire to amend the Agreement to extend the time for completion of the project and update Exhibit "J".

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. DELIVERY SCHEDULE. Exhibit "J" shall be deleted and replaced with an amended Exhibit "J," attached hereto and by this reference be incorporated herein.
2. CAPITALIZED TERMS. Fifth Amendment to Offer to Dedicate and Lease to Prevail. Unless defined herein or the context requires otherwise, all capitalized terms herein shall have the meaning defined in the Agreement, as heretofore amended. The provisions of this Fifth Amendment to Offer to Dedicate and Lease shall prevail over any

JAN 26 2016 39

inconsistency or conflicting provisions of the Agreement, as heretofore amended, and shall supplement the remaining provisions thereof.

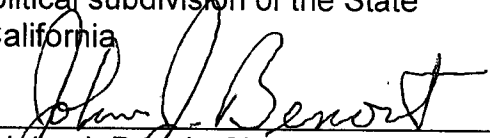
3. MISCELLANEOUS. Except as amended or modified herein, all the terms of the Agreement shall remain in full force and effect and shall apply with the same force and effect. Subject to the provisions of the Agreement as to assignment, the agreements, conditions and provisions herein contained shall apply to and bind the heirs, executors, administrators, successors and assigns of the Parties hereto. If any provisions of this Fifth Amendment to Offer to Dedicate and Lease or the Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of the Agreement and all such other provisions shall remain in full force and effect. The language in all parts of the Agreement shall be construed according to its normal and usual meaning and not strictly for or against either County or Developer.

4. EFFECTIVE DATE. This Fifth Amendment to Offer to Dedicate and Lease shall not be binding or consummated until its approval by the Board of Supervisors for the County of Riverside and fully executed by the Parties.


SIGNATURE PROVISIONS ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Fifth Amendment to Offer to Dedicate and Lease Agreement as of the date first written above.

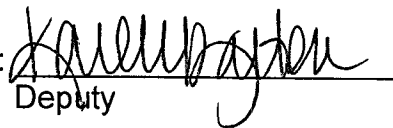
COUNTY OF RIVERSIDE,
a political subdivision of the State
of California

By: 
John J. Benoit, Chairman
Board of Supervisors

VAIL HEADQUARTERS, LLC,
a California limited liability company

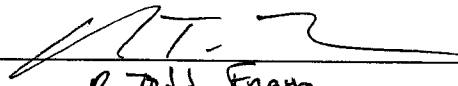
By: 
Gerald B. Tessier
Its: Manager

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: 
Deputy

(SEAL)

APPROVED AS TO FORM:
Gregory P. Priamos
County Counsel

By: 
R. Todd From
Deputy County Counsel

1
2
3 AMENDED EXHIBIT "J"

4 SCHEDULE

5 [Amended Jan 26, 2016]
6

7 <u>TASK</u>	<u>TIME FOR COMPLETION</u>
8 Offer of dedication to the County for 9 Historic Site	Completed
10 Site Plan Study and completion of 11 conceptual design	Completed
12 Submit conceptual design and draft plot 13 plan to County	Completed
14 Community, City & County Meetings to 15 present Conceptual site and floor plans	Completed
16 County Approval of Plot Plan and 17 conceptual designs	Completed
18 Development Review Application 19 submitted to City	Completed
20 Submit Construction Documents to City 21 for 1st plan check	Completed
22 Start of Construction of Restoration 23 Improvements	Commenced
24 Complete Construction (Certificate of 25 Occupancy) for All Restoration 26 Improvements	December 31, 2016
27	
28	
29	

CONSENT

Pursuant to Section 30 of the Offer to Dedicate and Lease Agreement dated March 13, 2003, together with any and all amendments thereto or modifications thereof (the "Agreement"), between the County of Riverside, a political subdivision of the State of California (the "County"), and Vail Headquarters, LLC, a California limited liability company ("VHQ"), the County consents to VHQ exercising its right to amend certain obligations and indebtedness of VHQ to Preferred Bank, a California banking corporation ("Lender") by an Extension Agreement pursuant to the terms of that certain Deed of Trust dated September 5, 2014, together with any and all amendments thereto or modifications thereof (the "Deed of Trust"), executed by VHQ in favor of the Lender, which was recorded on September 26, 2014, as Instrument No. 2014-0366572 in the County of Riverside, California, encumbering the real property more particularly described in Exhibit "A" attached hereto, consistent with the terms and conditions of the Agreement.

COUNTY:

County of Riverside, a
political subdivision of the State of
California

By: 

John J. Benoit, Chairman
Board of Supervisors

ATTEST:

Kecia Harper-Ihem
Clerk of the Board

By: 

Deputy

APPROVED AS TO FORM:

Gregory P. Priamos
County Counsel

By: 

R. Todd Fourn
Deputy County Counsel

JF:tg/122915/205FM/18.025 S:\Real Property\TYPING\Docs-18.000 to 18.499\18.025.doc

JAN 26 2016 3-9

EXHIBIT "A"
LEGAL DESCRIPTION

All that certain real property situated in the County of Riverside, State of California, described as follows:

Parcel 1:

Parcel G as shown on Lot Line Adjustment No. 4512, as evidenced by document recorded September 16, 2002 as Instrument No. 02-513211 of Official Records, being more particularly described as follows:

Being a portion of Lots 5, 6 and 7 of Tract No. 23172, in the City of Temecula, County of Riverside, State of California, as recorded in Book 251 of Maps, at Pages 94 through 99, inclusive, Records of Riverside County, Ca.

Also being a portion of Property "G" and "H" as shown on Lot Line Adjustment No. 4265, recorded September 6, 2000 as Instrument No. 00-350018, Records of Riverside County, California, described as follows:

Commencing at the Southeasterly corner of Property "G" as shown on Lot Line Adjustment No. 4265, recorded as September 6, 2000 as Instrument No. 00-350018, records of Riverside County, Ca., said point also being on Southerly line of said Tract 23172;

Thence Northeasterly along said Southerly line, North 68°58'51" East, a distance of 86.51 feet to the true point of beginning;

Thence North 22°08'00" West, a distance of 225.65 feet

Thence South 67°52'00" West, a distance of 50.80 feet;

Thence North 22°08'00" West, a distance of 193.64 feet;

Thence South 76°11'38" West, a distance of 349.91 feet;

Thence South 16°37'49" East, a distance of 463.52 feet;

Thence North 68°58'51" East, a distance of 441.55 feet, to the true point of beginning.

Parcel 2:

A perpetual, appurtenant and nonexclusive easement for pedestrian and vehicular ingress and egress and parking over Parcels D, E and H as shown on Notice of Lot Line Adjustment 4265, recorded September 6, 2000 as Instrument No. 2000-350018 of Official Records.

Assessor's Parcel No: 960-010-044-8

EXHIBIT "C"

Premises

Legal Description

All that certain real property situated in the County of Riverside, State of California, excepting therefrom all buildings and improvements now or hereafter located on said land, described as follows:

Parcel 1:

Parcel G as shown on Lot Line Adjustment No. 4512, as evidenced by document recorded September 16, 2002 as Instrument No. 02-513211 of Official Records, being more particularly described as follows:

Being a portion of Lots 5, 6 and 7 of Tract No. 23172, in the City of Temecula, County of Riverside, State of California, as recorded in Book 251 of Maps, at Pages 94 through 99, inclusive, Records of Riverside County, Ca.

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Thence South 16°37'49" East, a distance of 463.52 feet;

Thence North 68°58'51" East, a distance of 441.55 feet, to the true point of beginning.

Parcel 2:

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Assessor's Parcel No: 960-010-044-8

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into as of the 1st day of November, 2016, by and between Vail Headquarters, LLC, a California limited liability company, having an address at 281 S. Thomas St., Suite 504, Pomona, California 91766 (hereinafter sometimes referred to as "VHQ" or "Tenant"), and the County of Riverside, a political subdivision of the state of California, having an address at 3403 10th Street, Suite 400, Riverside, California 92501 (hereinafter sometimes referred to as "County" or "Landlord").

RECITALS:

A. Landlord and Tenant are parties to that certain Vail Ranch Historic Site Lease Agreement dated as of the 1st day of November, 2016 (the "Lease"), in respect of certain premises situated in the City of Temecula, County of Riverside and State of California, and more particularly described on Exhibit A attached hereto and made a part hereof, and commonly known and numbered as the Vail Ranch Headquarters, 32115 through 32127 Temecula Parkway, Temecula, California (the "Premises").

B. Landlord and Tenant desire to enter into this Memorandum of Lease for the purpose of establishing a record of Tenant's leasehold interest and estate in and to the Premises.

AGREEMENTS:

In consideration of the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby confirm the Lease and acknowledge as follows:

1. NAMES AND ADDRESSES OF LANDLORD AND TENANT. The names and addresses of Landlord and Tenant are as set forth in the preamble to this Memorandum of Lease.

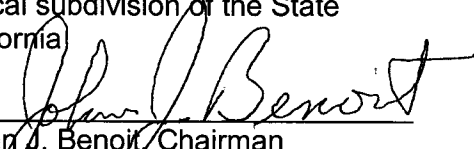
2. TERM OF LEASE. The term of the Lease is for a period of sixty-five (65) years commencing the ____ day of _____, 2016.

3. EFFECT OF THIS MEMORANDUM. This Memorandum of Lease is intended solely to establish the Lease and the rights of Tenant in respect of the Premises as matters of public record. Reference is hereby made to the Lease for a complete description of all of the rights, duties, and obligations of the parties in respect of the Premises and the use and the occupancy thereof. In the event of any inconsistency between the terms of the Lease and any provision of this Memorandum of Lease, the provisions of the Lease shall control.

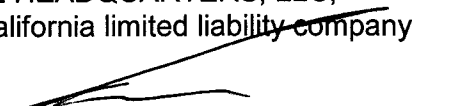
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Signature Page Follows.]

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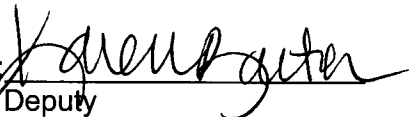
COUNTY OF RIVERSIDE,
a political subdivision of the State
of California

By: 
John J. Benoit, Chairman
Board of Supervisors

VAIL HEADQUARTERS, LLC,
a California limited liability company

By: 
Gerald V. Tessier
Its: Manager

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: 
Deputy

(SEAL)

APPROVED AS TO FORM:
Gregory P. Priamos
County Counsel

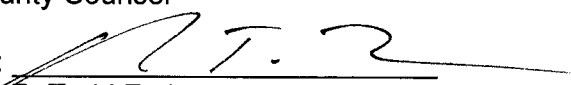
By: 
R. Todd Frahm
Deputy County Counsel

EXHIBIT "A"

Premises

Legal Description

All that certain real property situated in the County of Riverside, State of California, excepting therefrom all buildings and improvements now or hereafter located on said land, described as follows:

Parcel 1:

Parcel G as shown on Lot Line Adjustment No. 4512, as evidenced by document recorded September 16, 2002 as Instrument No. 02-513211 of Official Records, being more particularly described as follows:

Being a portion of Lots 5, 6 and 7 of Tract No. 23172, in the City of Temecula, County of Riverside, State of California, as recorded in Book 251 of Maps, at Pages 94 through 99, inclusive, Records of Riverside County, Ca.

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Thence Northeasterly along said Southerly line, North 68°58'51" East, a distance of 86.51 feet to the true point of beginning;

Thence North 22°08'00" West, a distance of 225.65 feet

Thence South 67°52'00" West, a distance of 50.80 feet;

Thence North 22°08'00" West, a distance of 193.64 feet;

Thence South 76°11'38" West, a distance of 349.91 feet;

Thence South 16°37'49" East, a distance of 463.52 feet;

Thence North 68°58'51" East, a distance of 441.55 feet, to the true point of beginning.

Parcel 2:

A perpetual, appurtenant and nonexclusive easement for pedestrian and vehicular ingress and egress and parking over Parcels D, E and H as shown on Notice of Lot Line Adjustment 4265, recorded September 6, 2000 as Instrument No. 2000-350018 of Official Records.

Assessor's Parcel No: 960-010-044-8

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Economic Development Agency
Real Property Division
3403 10th Street, Suite 400
Riverside, CA 92501

FREE RECORDING

This instrument is for the benefit of
the County of Riverside and is
entitled to be recorded without fee.
(Govt. Code 6103)

CAO:ra/102016/205FM/18.485

Documentary Transfer Tax: \$ _____
Based on full value of property conveyed

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged,

VAIL HEADQUARTERS, LLC, A California Limited Liability Corporation ("Grantor") does hereby grant to the COUNTY OF RIVERSIDE, a political subdivision of the State of California ("Grantee"), all that certain real property located in the City of Temecula, County of Riverside, as described in Exhibit "A" attached hereto and incorporated herein, excepting therefrom all buildings and improvements now or hereafter located on said land, which buildings and improvements are and shall remain real property.

Within the time limits referenced in the existing "Developer Lease" between the parties, a Memorandum of which Developer Lease is recording concurrently herewith, but not later than sixty-five (65) years from the recordation of this Grant Deed, the buildings and improvements herein retained by the Grantor shall be quitclaimed by Grantor to Grantee, without expense to Grantee. All such buildings and improvements shall become the property of Grantee at no cost to Grantee upon recordation of such quitclaim deed.

Notwithstanding the foregoing, in the event the property ceases to be operated by Grantor as Lessee under the Developer Lease as a historic site for a period of five (5) years for reasons other than force majeure, either party may terminate the Developer Lease by giving the other party thirty (30) days prior written notice thereof at any time prior to the recommencement of such operation. At the time of such termination, the buildings and improvements shall be quitclaimed by Grantor to Grantee, without expense to Grantee. All such buildings and improvements shall become the property of Grantee at no cost to Grantee upon recordation of such quitclaim deed.

SIGNATURE PROVISIONS FOLLOW

RECORDED

NOV 01 2016

3-8

Dated: _____

Grantor:

VAIL HEADQUARTERS, LLC,
a California limited liability company

By: _____

Gerald V. Tessier
Its: Manager

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Riverside)

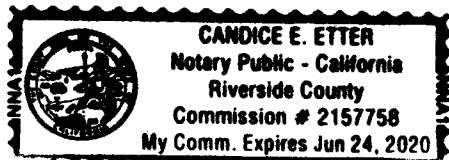
On Oct. 20, 2016 before me, Candice E. Etter, Notary Public
Date Here, Insert Name and Title of the Officer

personally appeared Gerald V. Tessier
Name(s) of Signer(s)

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Candice E. Etter
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Grant Deed Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

EXHIBIT A

Legal Description

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Thence North 22°08'00" West, a distance of 225.65 feet

Thence South 67°52'00" West, a distance of 50.80 feet;

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Thence South 16°37'49" East, a distance of 463.52 feet;

Thence North 68°58'51" East, a distance of 441.55 feet, to the true point of beginning.

Parcel 2:

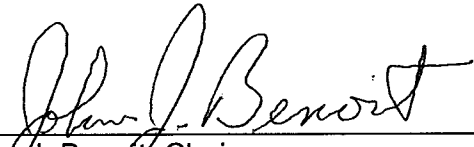
A perpetual, appurtenant and nonexclusive easement for pedestrian and vehicular ingress and egress and parking over Parcels D, E and H as shown on Notice of Lot Line Adjustment 4265, recorded September 6, 2000 as Instrument No. 2000-350018 of Official Records.


Assessor's Parcel No: 960-010-044-8

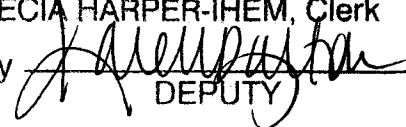
CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the grant deed dated November 1, 2016 from VAIL HEADQUARTERS, LLC, a California limited liability company to the COUNTY OF RIVERSIDE, a political subdivision of the State of California, is hereby accepted by order of the Board of Supervisors on the date below and the grantee consents to the recordation thereof by its duly authorized officer.

Date November 1, 2016

By: 
John J. Benoit, Chairman
Board of Supervisors

FORM APPROVED COUNTY COUNSEL
BY:  10/19/16
R. TODD FRAHM DATE

ATTEST:
KECIA HARPER-IHEM, Clerk
By: 
DEPUTY

Noncash Charitable Contributions

OMB No. 1545-0908

▶ Attach to your tax return if you claimed a total deduction of over \$500 for all contributed property.

Attachment Sequence No. **155**

▶ Information about Form 8283 and its separate instructions is at www.irs.gov/form8283.

Name(s) shown on your income tax return

Identifying number

Vail Headquarters LLC

83-0472038

Note. Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities—List in this section **only** items (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities even if the deduction is more than \$5,000 (see instructions).

Part I Information on Donated Property—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).	(c) Description of donated property (For a vehicle, enter the year, make, model, and mileage. For securities, enter the company name and the number of shares.)
A	County of Riverside, 3403 10th Street, Suite 400, Riverside, California 92501	<input type="checkbox"/>	4-acre land parcel
B		<input type="checkbox"/>	
C		<input type="checkbox"/>	
D		<input type="checkbox"/>	
E		<input type="checkbox"/>	

Note. If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (e), (f), and (g).

	(d) Date of the contribution	(e) Date acquired by donor (mo., yr.)	(f) How acquired by donor	(g) Donor's cost or adjusted basis	(h) Fair market value (see instructions)	(i) Method used to determine the fair market value
A		DEC 2008	PURCHASE		3,300,000.00	Appraisal 9/23/16
B						
C						
D						
E						

8-23-2016
 ↑ Transmittal Date
 Date of Value

Part II Partial Interests and Restricted Use Property—Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

2a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶ _____
 If Part II applies to more than one property, attach a separate statement.

b Total amount claimed as a deduction for the property listed in Part I: (1) For this tax year ▶ _____
 (2) For any prior tax years ▶ _____

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):
 Name of charitable organization (donee) _____
 Address (number, street, and room or suite no.) _____
 City or town, state, and ZIP code _____

d For tangible property, enter the place where the property is located or kept ▶ _____

e Name of any person, other than the donee organization, having actual possession of the property ▶ _____

3a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property? Yes No

b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire? Yes No

c Is there a restriction limiting the donated property for a particular use? Yes No

1/3

Name(s) shown on your income tax return

Vail Headquarters LLC

Identifying number

83-0472038

Section B. Donated Property Over \$5,000 (Except Publicly Traded Securities) - Complete this section for one item (or one group of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions of publicly traded securities reported in Section A). Provide a separate form for each property donated unless it is part of a group of similar items. An appraisal is generally required for property listed in Section B. See instructions.

Part I Information on Donated Property - To be completed by the taxpayer and/or the appraiser.

- 4 Check the box that describes the type of property donated:
a Art* (contribution of \$20,000 or more)
b Qualified Conservation Contribution
c Equipment
d Art* (contribution of less than \$20,000)
e Other Real Estate
f Securities
g Collectibles**
h Intellectual Property
i Vehicles
j Other

*Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

**Collectibles include coins, stamps, books, gems, jewelry, sports memorabilia, dolls, etc., but not art as defined above.

Note. In certain cases, you must attach a qualified appraisal of the property. See instructions.

Table with 3 columns: (a) Description of donated property, (b) If tangible property was donated, give a brief summary of the overall physical condition, (c) Appraised fair market value. Row A: 4-ACRE LAND - See Attached Appraisal, 3,300,000.00

Table with 7 columns: (d) Date acquired by donor, (e) How acquired by donor, (f) Donor's cost or adjusted basis, (g) For bargain sales, enter amount received, (h) Amount claimed as a deduction, (i) Date of contribution. Row A: Dec 2008, Purchase

Part II Taxpayer (Donor) Statement - List each item included in Part I above that the appraisal identifies as having a value of \$500 or less. See instructions.

I declare that the following item(s) included in Part I above has to the best of my knowledge and belief an appraised value of not more than \$500 (per item). Enter identifying letter from Part I and describe the specific item. See instructions.

Signature of taxpayer (donor)

Date

Part III Declaration of Appraiser

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.

Also, I declare that I perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal on this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). In addition, I understand that I may be subject to a penalty under section 6695A if I know or reasonably should know, that my appraisal is to be used in connection with a return or claim for refund and a substantial or gross valuation misstatement results from my appraisal. I affirm that I have not been barred from presenting evidence or testimony by the Office of Professional Responsibility.

Sign

Here Signature

Title EVP/CVO

Date 10-20-16

Business address (including room or suite no.)

4 Venture #235 Irvine CA 92618

Identifying number

City or town, state, and ZIP code

* See attached Appraisal (116 pages) *

Part IV Donee Acknowledgment - To be completed by the charitable organization.

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file Form 8282, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use?

Yes No

Name of charitable organization (donee)

Employer identification number

County of Riverside

Address (number, street, and room or suite no.)

City or town, state, and ZIP code

3403 10th Street, Suite 400

Riverside, California 92501

Authorized signature

Title

Date

Handwritten signature of John J. Bennett

11/1/16

2/3

CURRICULUM VITAE

Steven Charles (Steve) Kerhart CPA, ASA, MAI, CCIM, MRICS, MCR

www.cravaluation.com

Mr. Kerhart is Managing Partner of Continental Realty Advisors (CRA), a full service, multi-office, West Coast consulting valuation firm. Mr. Kerhart is one of less than 100 individuals in the United States that has held (CPA) and presently maintains the ASA, MAI, MRICS (FRICS in process), CCIM, MCR designations. Mr. Kerhart was formerly the Real Estate Chair for the California Society of CPA's (1996/1997), on the Real Estate Advisory Board for California State University at Fullerton (97/98), and on Wachovia's National Valuation Advisory Panel between 1999 and 2002. Prior to forming CRA he was President of CKQ Inc. (1991-1995) and a Senior Analyst in The Real Estate Services Group with a Big 8 Accounting Firm (1986-1990). Mr. Kerhart has prepared and supervised consulting assignments involving most major categories of real estate, going concern, machinery and equipment, and personal property. Mr. Kerhart has appraised and reviewed over \$60+ Billion of real property and other assets since 1986. The firm typically completes 600+ appraisals, evaluations, and market studies per year throughout California, Nevada, Arizona and Washington. Most involve valuations and/or consulting for financing, workouts, sale and purchase, litigation support and investment analyses.

Business Philosophy:

Client focused and centered service - providing impartial 'timely, professional, well supported' valuations - and consulting services. The firm's key clients include bankers, insurance companies, attorneys, CPA's, property owners, managers, and developers of real and personal properties and operating concerns.

Areas of Appraisal / Valuation specialization include:

- Apartments / Subdivisions / Master-planned Communities / Facilities Districts (SID's)
- Hotels / Marinas / Resorts / Theaters
- Automotive Dealership / Automalls / Full and Limited Service Carwashes
- Commercial Retail, Office, Medical Office -- Industrial, Industrial Parks,
- Land, all types (residential, commercial, industrial, rural)
- Litigation Support / Expert Witness / Testimony
- Tax and Estate Planning Valuations / Fractional / Marketability and Minority Interests
- Market Studies / Feasibility Analysis / Highest and Best Use Studies

Professional Designations (Current / Past) / State Licensing -- Market Coverage:

CCIM	Certified Commercial Investment Member-Current
MAI	Member of the Appraisal Institute-Current
CPA	Certified Public Accountant, State of California (1996-2006)
ASA	Accredited Senior Member Urban Real Property-Current
MCR	Masters in Corporate Real Estate, CoreNet Global
MRICS	Accredited Member Royal Institute of Chartered Surveyors-Current
SCREA	Certified General Appraiser -- California
SCREA	Certified General Appraiser -- Arizona
SCREA	Certified General Appraiser -- Nevada
SCREA	Certified General Appraiser -- Washington

Professional Organizations:

- Member, National and California Association of Realtors
- Candidate for Senior Member/Business Valuation, ASA
- Candidate for CAE designation from the IAAO
- Member of the Institute of Property Taxation (IPT)
- Member Urban Land Institute (ULI)
- Member of the Society of Auditors and Appraisers (SAA)
- Member, American Institute of Certified Public Accountants (AICPA)
- Member, California Society of Certified Public Accountants (CSCPA)

Education / Continuing Education:

- Bachelors of Science: Accounting and Economics, Loyola Marymount University, 1982-1986, Los Angeles, CA
- Massachusetts Institute of Technology (MIT) - Center for Real Estate, Exec. Dev. Program, 2006-2009, Cambridge, MA. - Typically 150-200 hours per year on CE classes, conferences, seminars.

Personal:

Very happily married to my first love, three wonderful children, enjoy auto racing, skiing, and tennis, 2nd degree black belt, avid reader of technology, futurist, spirituality, business and real estate related books and periodicals.

3/3 LAST

EXHIBIT "D"

Covenants, Conditions and Restrictions

DOC # 2008-0673029

12/26/2008 08:00A Fee:84.00

Page 1 of 23

Recorded in Official Records
County of Riverside

Larry W. Ward
Assessor, County Clerk & Recorder



**RECORDING REQUESTED BY:
AND WHEN RECORDED RETURN TO:**

Redhawk Towne Center II, LLC
c/o Kimco Realty Corporation
1621-B Melrose Drive
Vista, CA 92081
Attention: Regional General Counsel

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(Space Above For Recorder's Use Only)

**AMENDED AND RESTATED NONEXCLUSIVE PARKING AND
ACCESS EASEMENT AGREEMENT, TOGETHER WITH COVENANTS,
CONDITIONS AND RESTRICTIONS**

T
012

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This AMENDED AND RESTATED NONEXCLUSIVE PARKING AND ACCESS EASEMENT AGREEMENT, TOGETHER WITH COVENANTS, CONDITIONS AND RESTRICTIONS ("Agreement") is made as of the 26th day of DECEMBER, 2008, by and between Redhawk Towne Center II, LLC, a Delaware limited liability company ("Grantor"), and Vail Headquarters, LLC, a California limited liability company ("Grantee").

RECITALS:

A. Grantor is the owner of that certain real property located in the City of Temecula, County of Riverside, State of California, as more particularly described on Exhibit "A" attached hereto (the "Shopping Center Site") and depicted on Exhibit "C" attached hereto.

B. Grantee is the owner of that certain real property located in the City of Temecula, County of Riverside, State of California, as more particularly described on Exhibit "B" attached hereto (the "Historic Site") and depicted on Exhibit "C" attached hereto.

C. The Shopping Center Site and the Historic Site are collectively referred to herein as the "Property."

D. In order to provide vehicular and pedestrian ingress and egress to and from the Historic Site and the roadway presently known as "Highway 79," Grantor and Grantee desire to establish a perpetual and nonexclusive easement for such purpose over those portions of the Shopping Center Site that are, from time to time, improved for vehicular and pedestrian ingress and egress to and from the Historic Site and "Highway 79" (the "Access Easement Area").

E. In order to provide additional parking areas for the Historic Site, Grantor and Grantee desire to establish a perpetual and nonexclusive easement for such purpose over those

portions of the Shopping Center Site identified as Parcel H on Exhibits "A" and "C" that are, from time to time, improved for parking purposes (the "**Parking Easement Area**").

F. The Access Easement Area and the Parking Easement Area are collectively referred to herein as the "**Easement Area**".

G. Grantor and Grantee desire to establish certain covenants, conditions, restrictions and other easements concerning the Property as set forth herein.

H. Grantor and Grantee will hereafter hold and convey title to all and every portion of the Property subject to the easements and the covenants, conditions and restrictions set forth herein in accordance with California Civil Code § 1468, it being the intention of Grantor and Grantee that the provisions of this Agreement shall run with the land and bind and benefit the Property, Grantor and Grantee, as the current owners of the Property, and each and every successor owner of the Property, and every portion thereof (each such owner, including Grantor and Grantee, being referred to herein as an "**Owner**"), and each person having an interest in the Property and every portion thereof, derived through any such Owner. If the Owner of the Shopping Center Site or the Historic Site leases all or substantially all of such Site pursuant to a single lease, then the tenant under such lease shall also constitute an "Owner" hereunder as to such Site so long as such lease is in effect, and such tenant shall be jointly and severally liable for all obligations of that Owner hereunder.

I. This Agreement amends and restates in its entirety that certain Nonexclusive Parking and Access Easement Agreement dated April 13, 2004, by and between Grantor and Grantee's predecessor-in-interest, Redhawk Towne Center LLC, recorded in the Riverside County Recorder's Office on April 13, 2004, as Instrument No. 266147.

TERMS:

NOW, THEREFORE, Grantor and Grantee hereby covenant and agree that the Property is now held and shall hereafter be held, transferred, sold, leased, conveyed and occupied subject to the easements and the covenants, conditions and restrictions set forth herein.

1. Grant of Access Easement. Grantor hereby grants to Grantee, for the benefit of the Historic Site, a perpetual, appurtenant and nonexclusive surface easement over the **Access Easement Area** for pedestrian and vehicular ingress and egress to and from the Historic Site and the roadway presently known as "Highway 79." The foregoing easement shall be for use by the Owners, occupants and invitees of the Historic Site. Grantor will not alter the location of the ingress and egress routes within the Easement Area in any manner that would have a material, adverse effect on access to and from the Historic Site and Highway 79.

2. Grant of Parking Easement. Grantor hereby grants to Grantee, for the benefit of the Historic Site, a perpetual, appurtenant and nonexclusive surface easement, over the **Parking Easement Area** for the parking of that number of vehicles necessary to satisfy the minimum governmental parking requirements for the gross leasable area constructed from time to time upon the Historic Site (but in no event more than the maximum gross leasable area permitted in

Section 10 below), after taking into account all parking spaces located upon the Historic Site, but in no event shall the number of parking spaces permitted to be used by the Historic Site cause the Shopping Center Site to be in violation of any governmental parking requirements or any other agreement, including any lease, to which Grantor is bound. The foregoing easement shall be for use by the Owners, occupants and invitees of the Historic Site.

3. Grant of Utility Easement. Grantor hereby grants to Grantee, for the benefit of the Historic Site, a perpetual, appurtenant and non-exclusive easement over the Easement Area to install, maintain, repair and replace underground utility lines servicing the Historic Site. The location of all utility lines installed by or for Grantee within the Easement Area shall be subject to the prior written approval of Grantor. Grantee shall give Grantor at least thirty (30) days prior written notice of any installation, maintenance, repair or replacement of any utility lines. Grantee shall perform all work in such a manner as to cause as little disturbance with Grantor's and others' use of the Easement Area as practicable and in accordance with a schedule approved by Grantor. All such work shall be undertaken at Grantee's sole cost and expense, and Grantee shall promptly repair, replace or rebuild any part of the Easement Area which may be destroyed or become damaged, worn or dilapidated in the process of such installation, maintenance, repair or replacement. Grantor shall have the right, at Grantor's sole cost and expense, to relocate any utility line installed within the Easement Area by or for Grantee upon giving Grantee at least thirty (30) days prior written notice thereof, provided that such relocation does not interfere with or diminish the utility services to Grantee (however, temporary interferences with or diminutions in services may be permitted if they occur during Grantee's non-business hours and are coordinated in advance with Grantee).

4. Sign Easement. Subject to Grantor's receipt of the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) (the "Sign Easement Consideration"), Grantor hereby grants to Grantee, for the benefit of the Historic Site, a perpetual, appurtenant and exclusive easement over that portion of Parcel A of Lot Line Adjustment No. 4265, recorded September 6, 2000 as Instrument No. 2000-350018 in the Riverside County Recorder's Office ("Parcel A") upon which the Historic Monument Sign (as depicted on Exhibit "E" attached hereto) is located, together with the non-exclusive right of ingress and egress thereto over the common areas of Parcel A. If Grantor has not received the Sign Easement Consideration by the date Grantee completes its improvements to the Historic Site, Grantor may at any time thereafter and prior to receiving the Sign Easement Consideration, give Grantee written notice thereof, and if Grantee fails to pay the Sign Easement Consideration to Grantor within thirty (30) days following Grantee's receipt of such notice, Grantor may terminate the easement established under this Section 4 by recording a supplement to this Agreement at any time thereafter and prior to receiving the Sign Easement Consideration. The Historic Monument Sign may only be used by Grantee to identify the name of the Historic Site and the names of up to three (3) occupants of the Historic Site. All alterations to the Historic Monument Sign, and the design and content of all signage thereon, shall be subject to Grantor's approval in accordance with the provisions of Section 11 below, as if the Historic Monument Sign were a portion of the Historic Site. All work to the Historic Monument Sign shall be at Grantee's sole cost and expense, and Grantee shall promptly repair any part of Parcel A which may be destroyed or become damaged, worn or dilapidated in the process of such work. Grantee shall maintain the Historic Monument Sign and all signage thereon in good condition and repair. Grantor shall have the right, at Grantor's sole

cost and expense, to relocate the Historic Monument Sign and the easement therefor from time to time provided that the new location provides comparable visibility from Highway 79.

5. Maintenance of Easement Area. Grantor shall operate and maintain the Easement Area in a good and clean state of condition and repair, including, without limitation, insuring, lighting and resurfacing as and when necessary. The Easement Area shall at all times be subject to the exclusive control and management of Grantor. Grantor shall have the right to close all or any portion of the Easement Area to such extent as may, in the opinion of Grantor's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; and to do and perform such other acts in and to the Easement Area and improvements, and/or revise and develop the same, as Grantor shall determine to be advisable, with a view to the improvement of the convenience and use thereof by the tenants of the Shopping Center Site and their customers, provided adequate access to and parking for the Historic Site, as required by Sections 1 and 2 above, are maintained. Grantee shall, within thirty (30) days following receipt of an invoice therefor, reimburse Grantor for the Prorata Share of CAM, commencing upon the date the first occupant of the Historic Site opens for business to the public. Grantor may elect to bill Grantee quarterly estimates of CAM, with an annual reconciliation of actual CAM. In such case, Grantee shall pay such quarterly estimated payments on the first day of each calendar quarter. The "Prorata Share" means a fraction, the numerator of which is the gross leasable area on the Historic Site, and the denominator of which is the total gross leasable area on the Historic Site and the Shopping Center Site. "CAM" means the total cost and expense incurred in operating, managing, maintaining, repairing, modifying, renovating and replacing the Easement Area, including, without limitation, the sprinkler system, utility lines (other than those referred to in Section 3 above), resurfacing or patching parking areas, line painting, sidewalks and curbs, security and traffic control, gardening, watering and landscaping, lighting (including lighting repairs), utilities, drainage, rubbish and other refuse, including any required recycling costs, costs to remedy and/or comply with governmental matters, repair or installation of equipment for energy-saving or safety purposes, cost of maintenance personnel, capital expenditures, insurance (which shall include public liability and umbrella insurance, All Risk coverage, including terrorism, flood, earthquake and any other coverage deemed necessary by Grantor provided such other coverage is typically maintained by institutional owners of similar shopping centers in Southern California), and such other items of cost and expense which relate to the proper maintenance and operation of the Easement Area, real property taxes and assessments on the Easement Area, plus ten percent (10%) of all of the foregoing costs to cover Grantor's administrative costs. Notwithstanding the foregoing, capital expenditures may only be included in CAM with respect to expenditures that are (a) intended as labor-saving devices or to effect other economies in the operation or maintenance of the Easement Area, (b) required by governmental law or regulation or (c) for the refurbishment or replacement of Easement Area improvements where repair is no longer feasible or practical; provided, however, costs of replacing the parking lots and driveways may not be included within CAM more frequently than once every fifteen (15) years and shall be amortized over three (3) years to the extent such costs exceed Fifty Thousand Dollars (\$50,000.00) (in 2006 Dollars). Real property taxes and assessments on the Easement Area shall be based on the land value of the Easement Area. Accordingly, if the tax parcel(s) within which the Easement Area is located contain(s) any buildings, then the value of the buildings and the value of the land underlying the Buildings shall be excluded from CAM. All sums payable pursuant to this Section 5 or Section 21 that are not paid by the due date thereof shall bear interest at the lesser of (i) the prime or reference rate

announced from time to time by Bank of America (or its successor) plus three (3) percentage points or (ii) the maximum rate allowed by law. Reference herein to "2006 Dollars" means an amount equal to the stated sum multiplied by a fraction, the numerator of which is the Consumer Price Index, All Urban Consumers, U.S. Cities Average (1982-84=100) ("Index") for the month that is two months prior to the month for which the determination is made, and the denominator of which is the Index for the month of October 2006.

6. Use of Easement Area. Grantee, for itself and on behalf of its occupants and invitees, agrees to abide by the reasonable rules and regulations adopted from time to time by Grantor for the use of the Easement Area, which may include, without limitation, the designation of the location of the parking spaces to which Grantee is entitled pursuant to Section 2 above, provided that said locations provide reasonably convenient access for the customers or invitees of Grantee or Grantee's tenants. Grantee shall cause its employees and the employees of the occupants of the Historic Parcel to park in the area identified on Exhibit "C" as "Employee Parking." Grantee acknowledges that if Grantor provides security officers for the Easement Area, Grantor does not represent, guarantee or assume responsibility that Grantee or its occupants or invitees will be secure from any claims relating to such security officers or the tortious or criminal acts of any other person. Grantor shall have no obligation to hire, maintain or provide such services, which may be withdrawn or changed at any time with or without notice to Grantee or any other person and without liability to Grantor.

7. Insurance. Grantee shall keep or cause to be kept in full force and effect a policy of commercial general liability insurance with a combined single limit of not less than \$2,000,000 (or such additional amount as Grantor may from time to time reasonably designate) insuring against any and all liability related to the use of the Easement Area by Grantee and its occupants and invitees. Such insurance shall include a contractual liability endorsement insuring Grantee's indemnity obligations under Section 8 below and shall name Grantor and Grantor's lender as additional insureds. Grantee shall, annually or within ten (10) days following any written request therefor by Grantor, deliver to Grantor, a certificate evidencing the existence of such insurance and evidence that the premiums therefor have been paid. Each such policy shall contain a provision requiring that at least thirty (30) days' written notice will be given to Grantor prior to any cancellation or reduction in such coverage. Grantor and Grantee agree to have their respective insurance companies issuing property damage insurance waive any rights of subrogation that such companies may have against Grantor or Grantee, as the case may be, and Grantor and Grantee hereby waive any right that either may have against the other on account of any loss or damage if such loss or damage is insurable under an "all risks" or "special form" property insurance policy; provided, however, this waiver shall not apply to deductible amounts not exceeding \$10,000.00 (in 2006 Dollars).

8. Indemnity. Grantee shall indemnify, defend, protect and hold Grantor harmless from and against any and all claims, damages, losses, costs, expenses and liabilities (including reasonable attorneys' fees) arising from or related to the use of the Easement Area or the easements granted in Sections 3 and 4 above by Grantee, except to the extent arising from the negligence or willful misconduct of Grantor. Grantor shall indemnify, defend, protect and hold Grantee harmless from and against any and all claims, damages, losses, costs, expenses and liabilities (including reasonable attorneys' fees) arising from or related to occurrences in the Easement Area to the extent caused by the negligence or willful misconduct of Grantor.

9. Use Restrictions on Historic Site. The Historic Site shall be subject to, and Grantee shall not permit the Historic Site to be in violation of, the following use restrictions:

(a) General Use Restrictions. The Historic Site shall only be used for a historic site museum, historic society offices and uses ancillary thereto, and for such other commercial purposes of the type normally found in a first-class retail shopping center. No part of the Historic Site shall be used for residential purposes or as a theater, auditorium, meeting hall, school, church or other place of public assembly (with the exception of those outdoor events sponsored by or affiliated with local historic groups to which the County of Riverside requires Grantee to permit on the Historic Site), "flea market," gymnasium, health club, dance hall, billiard or pool hall, massage parlor, video game arcade, bowling alley, skating rink, car wash, night club or other place of recreation or amusement (with the exception of those outdoor events sponsored by or affiliated with local historic groups to which the County of Riverside requires Grantee to permit on the Historic Site), facility for the sale, display, leasing or repair of motor vehicles, adult products, adult books or adult audio/video products (which are defined as stores in which at least ten percent (10%) of the inventory is not for sale or rental to children under seventeen (17) years old because such inventory explicitly deals with or depicts human sexuality), or any business which derives fifty percent (50%) or more of its gross sales volume serving or selling alcoholic beverages, with the exception of a wine tasting parlor. Further, no High Intensity Parking User shall be permitted in the Historic Site, except as otherwise permitted under Sections 9(b) and 9(d) below, and offices shall not exceed twenty five percent (25%) of the gross leasable area in the Historic Site. A "High Intensity Parking User" is an occupant whose use requires more than five (5) parking spaces per one thousand (1,000) square feet of leasable area in accordance with either customary shopping center practices or governmental regulations, whichever has a higher parking requirement.

Pursuant to that certain Lease between Grantor and Ross Stores, Inc. ("Ross"), any office use at the Property is limited to "retail offices" which are defined as offices open for walk-in customers (i.e., customers without appointments), such as real estate brokerage offices, banks, and consumer loan finance and/or credit offices. Accordingly, office use at the Historic Site shall be limited to retail offices unless otherwise permitted by Ross. If Grantee desires to have non-retail offices at the Historic Site, Grantor agrees to reasonably cooperate with Grantee in seeking to obtain Ross's consent thereto.

(b) Restaurant Restrictions. There shall be no more than two (2) restaurants on the Historic Site, and any restaurant on the Historic Site shall be located on the west half of the Historic Site and shall not exceed five thousand (5,000) square feet of interior space.

(c) Specific Use Restrictions. The Historic Site may not be used for any use identified on Exhibit "D" attached hereto.

(d) Conditional Use Permits. Grantor agrees not to object to the issuance of any conditional use permit or license necessary for the operation of up to two (2) sit-down restaurants and a wine tasting parlor at the Historic Site provided such restaurants and wine parlor comply with all requirements under this Agreement and such conditional use permits

and licenses do not impose any unacceptable restrictions, limitations or obligations upon Grantor or the Shopping Center Site, as determined in Grantor's good faith business judgment.

10. Limitation on Height and Leasable Area at the Historic Site. In no event shall (i) the gross leasable area located on the Historic Site exceed 30,000 square feet, not including outdoor spaces, or (ii) the height of any improvement at the Historic Site exceed thirty five (35) feet above the finished grade existing as of the date hereof.

11. Alterations to Historic Site. Grantee shall not construct or install (or permit the construction or installation of) any improvements on the Historic Site or any landscaping within the "Landscape Control Zone" identified on Exhibit "C" attached hereto, or any alterations to such improvements or landscaping, without obtaining Grantor's prior written approval, which shall not be unreasonably denied; provided, however, Grantor's consent shall not be required for interior improvements or alterations that are not visible from the exterior of the buildings located upon the Historic Site, or alterations required in order to comply with legal requirements, including ADA or subsequently enacted ordinances or laws. In addition, and without limiting Grantor's approval rights pursuant to the preceding sentence, Grantee shall not install (or permit the installation of) any tree on the Historic Site that is located within twenty (20) feet of any concrete or asphalt on the Shopping Center Site or the Existing Driveways (as defined in Section 22 below) that is of a type susceptible to causing damage to concrete or asphalt, as determined in Grantor's reasonable judgment. Upon receipt of plans and drawings from Grantee, Grantor shall have fifteen (15) business days to approve said plans and drawings. If Grantee does not receive written confirmation within those fifteen (15) business days, Grantee may give Grantor an additional written notice requesting Grantor's approval of said plans and drawings. If such additional notice informs Grantor that the failure of Grantor to respond to Grantee's request within five (5) business days following receipt of such additional notice will constitute Grantor's approval of said plans and drawings, then the failure of Grantor to respond within such five (5) business day period shall constitute Grantor's approval of said plans and drawings. Grantee shall submit plans and drawings to Grantor prior to submission of plans and drawings to the County of Riverside and the City of Temecula for entitlement approvals, and shall be given the same period of time as provided above to review said plans and drawings. Grantee shall make its reasonable effort to incorporate Grantor's requested changes, if any, to the plans and drawings. However, if the County and/or City governing agencies place requirements upon Grantee for certain design or construction alterations, and a conflict exists between said requirements and the requests or requirements made by Grantor, then the design or construction alterations requested or required by the governmental agencies shall supercede any design or construction alterations requested by Grantee. All construction staging and storage areas shall be located on the south side of the Historic Site, and all such staging and storage areas, as well as the improvements under construction or alteration, shall be enclosed by barricades acceptable to Grantor.

12. Right of First Offer

If Grantee intends to sell the Historic Site or intends to accept an offer to purchase the Historic Site made by a third party unaffiliated with Grantee and other than a foreclosure or deed in lieu of foreclosure, Grantee shall first provide Grantor a statement of the economic terms (if Grantee has not yet received an offer to purchase the Historic Site) or a copy of the offer from a third party it intends to accept (such statement or offer hereinafter referred to as the "Sale

Offer"), together with a preliminary title report regarding the Historic Site prepared by a title company reasonably selected by Grantee and dated no earlier than thirty (30) days prior to the date of submission (the "PTR"). If Grantee ground leases the Historic Site, then all references in this Section 12 to "purchase" or "sell" shall include an assignment of the leasehold estate or a subletting of all or substantially all of the Historic Site. The Sale Offer need not be a binding agreement or offer, but may be a term sheet or letter of intent which specifies a purchase price, payment terms and amount of deposit. Notwithstanding the preceding sentence, this Section 12 shall not be construed as a prohibition against or limitation on the Grantee's right to make a collateral or actual assignment of the rents in connection with any financing arrangement with any lender, nor shall it limit any lender's right to foreclose judicially or non-judicially (or by deed in lieu of foreclosure) on any trust deed encumbering the Historic Site or any part thereof. By giving Grantee unqualified written acceptance (the "ROFO Acceptance Notice") within ten (10) business days after the date Grantee has provided Grantor with a copy of the Sale Offer (the "ROFO Notice Date"), Grantor shall have the right to purchase the Historic Site for the purchase price specified in the Sale Offer (the "ROFO Price") and on the same payment terms specified in the Sale Offer, subject to the following provisions:

(i) The Historic Site shall be sold "AS-IS, WHERE IS" without representation or warranty, except that Grantee shall within fifteen (15) days after the ROFO Acceptance Notice is given (i) disclose (to the best of its actual knowledge without duty to investigate) in writing the existence of any Hazardous Substance in, on or under the Historic Site and construction defects in the Historic Site, (ii) provide Grantor with a list of all known leases in effect with respect to the Historic Site, and (iii) provide Grantor with a list of all contracts (other than those described in the PTR) which will bind the Historic Site after the close of escrow and which are not cancelable on thirty (30) days' written notice.

(ii) Grantor shall have thirty (30) days from the ROFO Acceptance Notice (the "Contingency Period") to inspect all information regarding the Historic Site on reasonable prior notice to Grantee, provided Grantor shall indemnify Grantee from and against any and all costs, liabilities, expenses (including court costs and attorneys' fees), claims and damages arising out of Grantor's inspection and shall repair all damages caused by Grantor's inspection.

(iii) Rents, taxes and utilities will be prorated. The parties will reasonably cooperate to collect and pay Grantee rents attributable to time periods prior to close of escrow.

(iv) The sale shall be closed through an escrow at Old Republic Title Company or other escrow company reasonably selected by Grantee ("Escrow Holder").

(v) GRANTOR SHALL MAKE A DEPOSIT (the "DEPOSIT") WITH THE ESCROW HOLDER IN THE AMOUNT SPECIFIED IN THE OFFER WITHIN FIVE (5) BUSINESS DAYS AFTER GIVING THE ROFO ACCEPTANCE NOTICE. THE DEPOSIT SHALL BE REFUNDABLE DURING THE CONTINGENCY PERIOD, BUT SHALL THEREAFTER CONSTITUTE LIQUIDATED DAMAGES FOR THE BREACH OF GRANTOR'S COMMITMENT TO PURCHASE THE HISTORIC SITE, WITHOUT, HOWEVER, LIQUIDATING ANY INDEMNITY OBLIGATION OF GRANTOR. THE PARTIES SHALL EXECUTE REASONABLE SUPPLEMENTARY ESCROW INSTRUCTIONS WHICH DO NOT CONFLICT WITH THIS SECTION 12.

GVT

Grantee's Initials

JV

Grantor's Initials

(vi) During the Contingency Period, Grantor may elect to terminate its right and obligation to purchase the Historic Site by giving Grantee and Escrow Holder written notice prior to the end of the Contingency Period, and in such event Grantor shall be entitled to a return of the Deposit after Escrow Holder has subtracted all its fees. If Grantor terminates its right or defaults after the Contingency Period, Grantor's rights under this Section 12 shall expire.

(vii) Close of escrow shall take place within sixty (60) days after the ROFO Acceptance Notice is given. At closing, Grantee shall deposit into escrow an executed and acknowledged grant deed conveying the Historic Site and an executed and acknowledged assignment and assumption of leases and contracts assigning all leases and contracts affecting the Historic Site to Grantor, and Grantor shall deposit an executed and acknowledged counterpart of such assignment and assumption.

(viii) At closing, Grantee shall pay the documentary transfer tax and the cost of a CLTA owner's title insurance policy to be issued to Grantor at close of escrow, unless the Sale Offer specifies a different tax and title policy premium responsibility. Grantee and Grantor shall each pay one-half of the Escrow Holder's fees and costs. Grantor shall pay all other fees and costs.

(ix) The title policy to be issued at close of escrow may show on Schedule B all exceptions shown on the PTR, except loans secured by trust deeds not to be assumed pursuant to the terms of the Sale Offer.

(x) All risk of loss shall be Grantee's until the closing; thereafter, the risk of loss shall be Grantor's.

(xi) Failure to Exercise. If Grantor fails to timely give an unqualified ROFO Acceptance Notice, Grantee may proceed with the sale of the Historic Site based upon the ROFO Price and the payment terms specified in the Sale Offer. In the event the sale of the Historic Site is completed within one year after the ROFO Notice Date, then Grantor's rights under this Section 12 shall expire. If the Sale Offer is not completed within one year after the ROFO Notice Date, then before consummating a sale on the terms contained in the Sale Offer, Grantee shall give Grantor a new Sale Offer notice, and the terms of this Section 12 shall apply. If Grantee desires to sell the Historic Site for a purchase price less than 95% of the ROFO Price or for payment terms significantly less advantageous to Grantee, Grantee shall give Grantor a new notice with the revised Sale Offer, and the terms of this Section 12 shall apply.

(xii) Grantor's Nominee. Grantor may assign its rights under this Section 12 to a nominee.

13. Notices. Any notice, request, demand, approval, consent or offer (collectively or individually, "Notices") given under this Agreement shall, except as otherwise expressly

provided herein, be in writing and shall be given (i) by delivery in hand to the addressee, (ii) by facsimile transmission to the other party (so long as a copy is sent on the same date in the manner provided in subpart (iv) following), (iii) by United States Registered or Certified Mail, postage prepaid, or (iv) by nationally recognized overnight carrier, to the other party as follows:

Grantor: Redhawk Towne Center II, LLC
c/o Kimco Realty Corporation
1621-B Melrose Drive
Vista, CA 92081
Attn: Regional General Counsel

Copy: Kimco Realty Corporation
3333 New Hyde Park Road
New Hyde Park, NY 11042
Attn: Legal Department

Grantee: Arteco Partners
281 S Thomas St., Ste. 504
Pomona, CA 91766
Attn: Gerald Tessier
Fax: (909) 623-2082

Copy: Fagner Seifert Pace & Winograd, LLP
300 South Grand Ave., 14th Floor
Los Angeles, CA 90071
Telephone number: (213) 687-2320
Facsimile transmission number: (310) 496-2887

or at such other address as the party to be notified may have designated hereafter by notice in writing to the other parties to this Agreement. Notices given pursuant to clauses (i) and (iv) shall be deemed given when received, if received on business days during normal business hours; otherwise on the next business day. Notices given pursuant to clause (ii) shall be deemed given at the time of sending and receipt of a confirmation of receipt by the sender, if the same are sent and received on a business day during normal business hours; and otherwise on the next business day. Notices given pursuant to clause (iii) shall be deemed given the earlier of when received or three (3) business days after being deposited in the United States Mails, postage prepaid, return receipt requested.

14. No Dedication. The provisions of this Agreement shall not be deemed to constitute a dedication for public use nor create any rights in the general public.

15. Covenants Running With The Land. This Agreement shall bind and inure to the benefit of each present and successor Owner of the Property, or any portion thereof; provided, however, each Owner of a portion of the Property shall only be bound by the terms of this Agreement during such Owner's period of ownership, except that each such Owner shall continue to be bound by obligations pertaining to matters occurring or arising during such Owner's period of ownership.

16. Governing Law. This Agreement shall be governed by and interpreted in accordance with California law.

17. Severability. If any one or more of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid, illegal and unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired in any way.

18. Attorneys' Fees. If any Owner of the Property brings any action or proceeding against another Owner for the adjudication of any rights under this Agreement, the prevailing owner shall be entitled to recover from the other Owner all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing Owner as determined by the court.

19. Termination; Amendment. This Agreement may be amended or terminated only by a written instrument signed and acknowledged by all of the Owners.

20. Estoppel Certificates. 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).

21. Assessment District No. 159. The Historic Site is currently subject to assessments (the "Historic Site Assessments") pursuant to Assessment District No. 159 ("AD 159"). If AD 159 is released from the Historic Site and the Historic Site Assessments are thereafter allocated to the Shopping Center Site, Grantee agrees to reimburse Grantor for all Historic Site Assessments that are so allocated to the Shopping Center Site within thirty (30) days following receipt of evidence of Grantor's payment of the same.

22. Existing Driveways. Grantee acknowledges that the driveways along the northside of the Historic Site and the southside of the Historic Site identified on Exhibit C attached hereto as the "Access Driveway" and the "Fire Driveway" (the "Existing Driveways") are "Common Areas" under that certain Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements recorded on July 30, 2002, in the Riverside County Recorder's Office as Instrument No. 2002-414853, as amended. Except as provided below, Grantee shall not alter or obstruct the Existing Driveways. Grantor shall maintain the Existing Driveways in accordance with the provisions of Section 5 above and the cost thereof (subject to the limitations set forth in Section 5 above) shall be included within CAM. Subject to approval from the applicable governing authorities, Grantor or Grantee shall have the right to place barriers at each entrance point of the Fire Driveway onto the Historic Site in order to prohibit its use by persons other than fire department personnel and personnel authorized by Grantor or Grantee. Grantor and Grantee shall cooperate with each other in connection with the installation and operation of any such barrier in order to permit fire department personnel and each party's authorized personnel to have access to the Fire Driveway.

IN WITNESS WHEREOF, Grantee and Grantor have executed this Agreement as of the date first above written.

Grantor: REDHAWK TOWNE CENTER II, LLC, a Delaware limited liability company

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

By: John Visconsi
Name: John Visconsi
Title: Vice President

Grantee: VAIL HEADQUARTERS, LLC, a California limited liability company

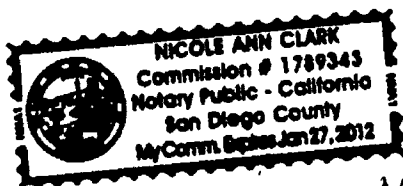
By: Gerald Tessier
Name: Gerald Tessier
Title: Manager

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On Dec. 15 2008, before me, Nicole Ann Clark, a Notary Public in and for said state, personally appeared John Viscorsi, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



N Clark

Notary Public in and for said State

Nicole Ann Clark
#1789343
Exp. Jan 27, 2012

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

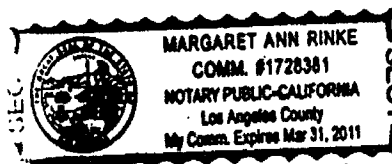
On December 17, 2008, before me, Margaret Ann Rinke, a Notary Public in and for said state, personally appeared Gerald V. Tessier, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Margaret Ann Rinke

Notary Public in and for said State



Margaret Ann Rinke
#1728381
Exp. Mar 31, 2011
Los Angeles County


LENDER'S CONSENT AND SUBORDINATION

The undersigned, as the beneficiary under that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated April 13, 2004, recorded on April 13, 2004, in the Official Records of Riverside County as Instrument No. 2004-0266148 (the "Deed of Trust"), hereby consents and subordinates the lien of the Deed of Trust to the Amended and Restated Nonexclusive Parking and Access Easement Agreement, together with Covenants, Conditions and Restrictions, to which this Lender's Consent and Subordination is attached.

Executed as of December 16, 2008

BANK OF AMERICA, NATIONAL ASSOCIATION, AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, as Trustee for Bear Stearns Commercial Mortgage Securities Inc., Commercial Mortgage Pass-Through Certificates Series 2004-PWR4

By: WELLS FARGO BANK, NATIONAL ASSOCIATION, as Master Servicer under the Pooling and Servicing Agreement dated June 1, 2004, by and between Bear Stearns Commercial Mortgage Securities Inc., Prudential Asset Resources, Inc., Wells Fargo Bank, National Association, Centerline Servicing Inc. (f/k/a Arcap Servicing, Inc.), Bank of America, National Association, as successor by merger to LaSalle Bank National Association, ABN AMRO Bank N.V. and The Prudential Insurance Company of America

By: 
Name: Paula S. Norris
Its: Assistant Vice President

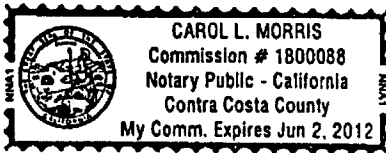
CALIFORNIA NOTARY ACKNOWLEDGEMENT

State of California)
)ss
County of Contra Costa)

On December 16, 2008 before me, Carol L. Morris, Notary Public, personally appeared Paula S. Norris, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



cg

1800088
Exp. Jun 2, 2012

EXHIBIT "A"

Legal Description of Shopping Center Site

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL D: (960-010-025)

PARCEL "D" OF LOT LINE ADJUSTMENT NO. 4265, RECORDED SEPTEMBER 6, 2000 AS INSTRUMENT NO. 2000-350018 OF OFFICIAL RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOT 4 OF TRACT 23172, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 251, PAGES 94 THROUGH 99, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF PROPERTY "A" AS SHOWN ON LOT LINE ADJUSTMENT NO. 3942, RECORDED JULY 29, 1997, AS INSTRUMENT NO. 352794, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE NORTHEASTERLY ALONG THE NORTHERLY LINE OF TRACT 23172, SAID LINE BEING ALSO THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 79 (142.00 FEET WIDE), NORTH 73° 22' 11" EAST, A DISTANCE OF 646.54 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHERLY LINE OF TRACT 23172 NORTH 73° 22' 11" EAST, A DISTANCE OF 186.17 FEET;

THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 217.21 FEET;

THENCE SOUTH 73° 22' 11" WEST, A DISTANCE OF 186.17 FEET;

THENCE NORTH 16° 37' 49" WEST, A DISTANCE OF 217.21 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL E: (960-010-026)

PARCEL "E" OF LOT LINE ADJUSTMENT NO. 4265, RECORDED SEPTEMBER 6, 2000 AS INSTRUMENT NO. 2000-350018 OF OFFICIAL RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOT 9 OF TRACT 23172, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 251, PAGES 94 THROUGH 99, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BEGINNING AT THE NORTHEAST CORNER OF PROPERTY "A" AS SHOWN ON LOT LINE ADJUSTMENT NO. 3942, RECORDED JULY 29, 1997, AS INSTRUMENT NO. 352794, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE NORTHEASTERLY ALONG THE NORTHERLY LINE OF TRACT 23172, SAID LINE BEING THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 79 (142.00 FEET WIDE). NORTH 73° 22' 11" EAST, A DISTANCE OF 832.71 FEET; TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHERLY LINE OF TRACT 23172 NORTH 73° 22' 11" EAST, A DISTANCE OF 186.87 FEET;

THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 362.21 FEET;

THENCE SOUTH 73° 22' 11" WEST, A DISTANCE OF 186.87 FEET;

THENCE NORTH 16° 37' 49" WEST, A DISTANCE OF 362.21 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL H: (960-010-045)

PARCEL "H" OF LOT LINE ADJUSTMENT NO. 4512, RECORDED SEPTEMBER 16, 2002 AS INSTRUMENT NO. 2002-513211 OF OFFICIAL RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOTS 3, 4, 7, 8 AND 9 OF TRACT 23172, AS RECORDED IN BOOK 251 OF MAPS AT PAGES 94 THROUGH 99, RECORDS OF RIVERSIDE COUNTY, CA.

ALSO BEING A PORTION OF PROPERTY "F", "G", "H" AND "I" AS SHOWN ON LOT LINE ADJUSTMENT 4265 RECORDED SEPTEMBER 6, 2000, AS INSTRUMENT NO. 2000-350018, RECORDS OF RIVERSIDE COUNTY, CA., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PROPERTY "C" AS SHOWN ON LOT LINE ADJUSTMENT 4265 RECORDED SEPTEMBER 6, 2000, AS INSTRUMENT NO. 2000-350018, RECORDS OF RIVERSIDE COUNTY, CA.,

THENCE NORTHEASTERLY ALONG THE NORTHERLY LINE OF TRACT 23172, SAID LINE BEING THE SOUTHERLY RIGHT OF WAY OF STATE HIGHWAY 79 (142 FEET WIDE) NORTH 73° 22'11" EAST, A DISTANCE OF 88.50 FEET;

THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 217.21 FEET;

THENCE NORTH 73° 22' 11" EAST, A DISTANCE OF 186.17 FEET;

THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 145.00 FEET;

THENCE NORTH 73° 22' 11" EAST, A DISTANCE OF 186.87 FEET;

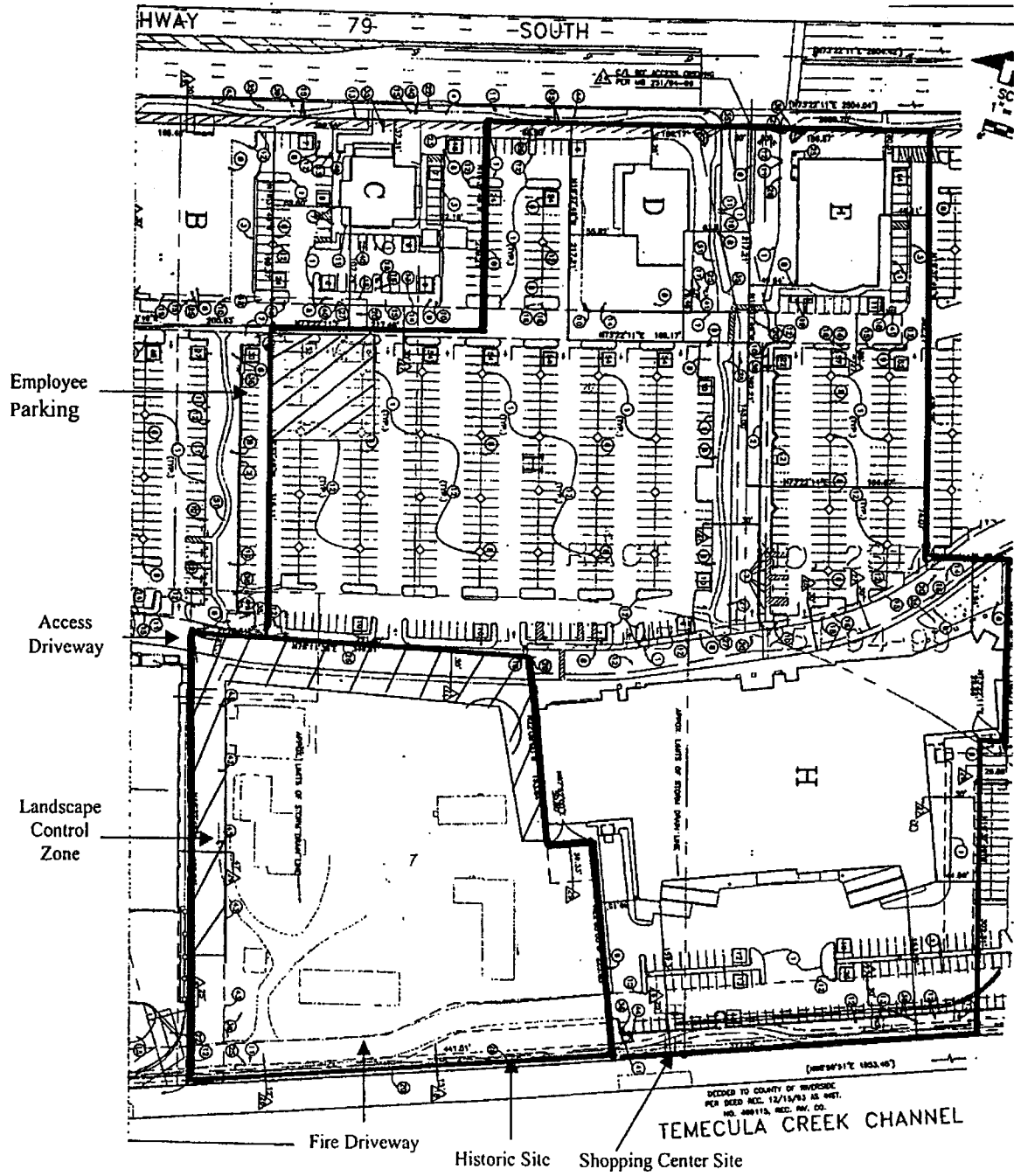
THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 74.07 FEET;
THENCE NORTH 73° 22' 11" EAST, A DISTANCE OF 85.89 FEET;
THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 183.73 FEET;
THENCE SOUTH 73° 22' 11" WEST, A DISTANCE OF 26.86 FEET;
THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 302.31 FEET TO THE SOUTHERLY
LINE OF SAID TRACT 23172;
THENCE ALONG SAID SOUTHERLY LINE, SOUTH 68° 58' 51" WEST, A DISTANCE OF
377.28 FEET;
THENCE NORTH 22° 08' 00" WEST, A DISTANCE OF 225.65 FEET;
THENCE SOUTH 67° 52' 00" WEST, A DISTANCE OF 50.80 FEET;
THENCE NORTH 22° 08' 00" WEST, A DISTANCE OF 193.64 FEET;
THENCE SOUTH 76° 11' 38" WEST, A DISTANCE OF 271.40 FEET;
THENCE NORTH 16° 37' 49" WEST, A DISTANCE OF 316.11 FEET;
THENCE NORTH 73° 22' 11" EAST, A DISTANCE OF 217.46 FEET;
THENCE NORTH 16° 37' 49" WEST, AS DISTANCE OF 209.21 FEET TO THE TRUE
POINT OF BEGINNING.

EXHIBIT "B"

Legal Description of Historic Site

Parcel "G" of Lot Line Adjustment No. 4512, recorded September 16, 2002, as Instrument No. 2002-513211 of Official Records of Riverside County, California.

EXHIBIT "C"
 Depiction of Property



671722.03/SD
 K5100-002/12-8-08/cds/ldf

EXHIBIT "C"
 -1-

EXHIBIT "D"

Specific Prohibited Uses

- Any business that sells, rents and/or distributes prerecorded audio and/or video products, audio and/or video software or any items which are a technological evolution of such audio and/or video products as its primary use.
- The operation of an automatic teller machine.
- Any business using, occupying or devoting more than fifteen thousand (15,000) square feet of floor area for the sale or display of wearing apparel (as defined by the trade from time to time), including in the computation of such floor area one-half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of wearing apparel.
- Any restaurant that offers full service (orders taken and served by wait personnel at the customer's table), full menu (breakfast, lunch and dinner items), and moderately priced menu items, such as, but not limited to The Village Inn, Bob's Big Boy, Shoney's, Denny's, Perkins', Waffle House, Baker's Square, Coco's, JB's, Allie's, Cracker Barrel, Marie Callender's, Friendly's or Bob Evans' Farms. The foregoing shall not be construed to prohibit the following restaurant uses: (v) dinner house or seafood restaurant, (w) oriental, French, Mexican, Italian or other ethnic restaurant, (x) any so-called "fast food" restaurant, such as, but not limited to, McDonald's, Burger King, Wendy's, Taco Bueno, Taco Bell, or Whataburger, (y) any so-called "casual dining" restaurant, such as but not limited to, Chili's or Black Eyed Pea, or (z) any food specialty shop, such as, but not limited to, ice cream, yogurt, submarine sandwich, pizza or similar single item shop.
- Any business that operates an open stock, branded, family shoe store as its primary business.
- Any business that devotes more than fifty percent (50%) of the sales floor area of its premises to the business of a discount unisex hair salon.
- Any business that devotes more than twenty percent (20%) of the sales floor area of its premises to the sale of beauty supplies.
- Any business whose primary use of its premises is the retail sale of wireless communication service and telephone equipment and accessories.
- Any full-service, casual dining restaurant similar to an Applebee's such as, but not limited to Chili's, TGI Fridays, Ruby Tuesday's, O'Charley's or Islands.

- Any restaurant that uses a wok or sells as its "primary" menu item (as defined below) any type of "Asian food," which shall include, but not be limited to, Chinese, Japanese, Vietnamese, Thai, Hawaiian, Mongolian, Cajun and Korean food. A "primary" menu shall be defined as any menu item which comprises ten percent (10%) or more of the total menu. The foregoing restriction shall not apply to the operation of a sit-down, (non-cafeteria style) or table service restaurant over three thousand (3,000) square feet.
- Any restaurant that sells pizza as its "primary" (15% or more) menu item. The foregoing restriction shall not apply to a restaurant that occupies 5,000 square feet or more.
- Any business whose primary use shall be the sale of non-branded family footwear.

EXHIBIT "E"

LOCATION OF HISTORIC MONUMENT SIGN

The Historic Monument Sign is located as shown below within Parcel A of Lot Line Adjustment No. 4265, recorded September 6, 2000, as Instrument No. 2000-350018 in the Riverside County Recorder's Office.

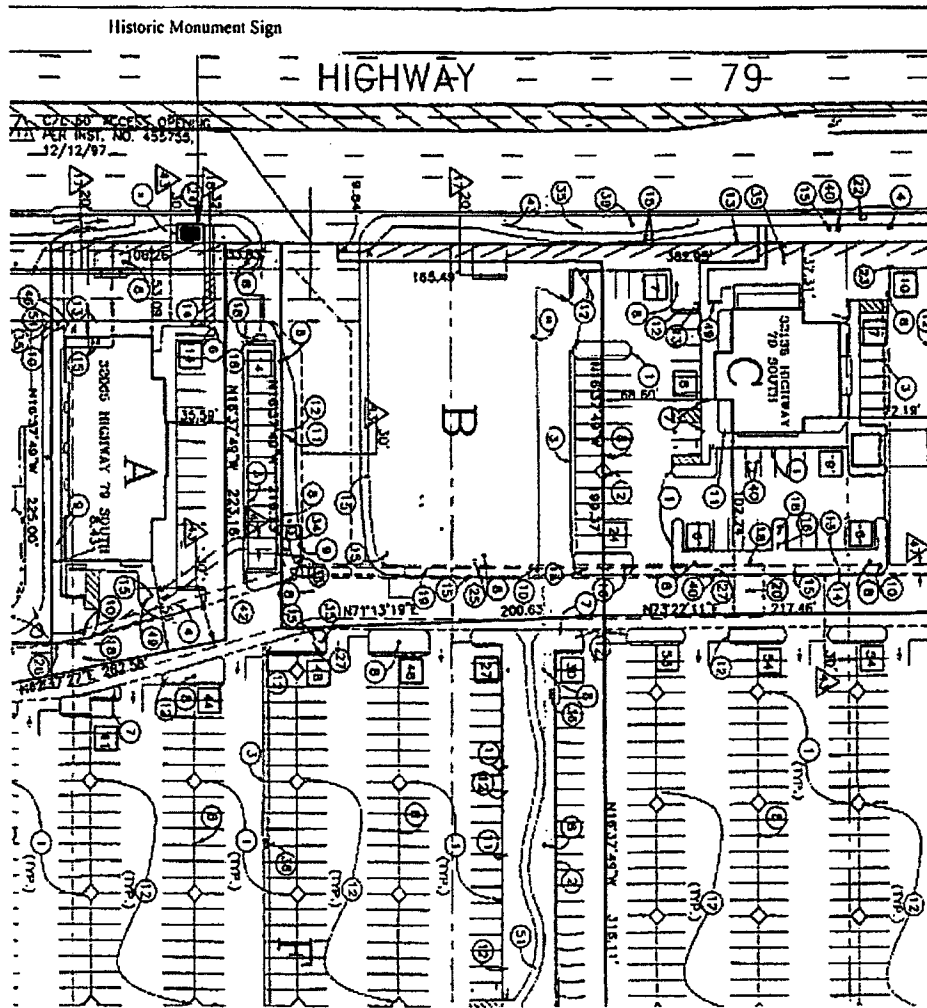


EXHIBIT "D"

Covenants, Conditions and Restrictions



**RECORDING REQUESTED BY:
 AND WHEN RECORDED RETURN TO:**
 Redhawk Towne Center II, LLC
 c/o Kimco Realty Corporation
 1621-B Melrose Drive
 Vista, CA 92081
 Attention: Regional General Counsel

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(Space Above For Recorder's Use Only)

**AMENDED AND RESTATED NONEXCLUSIVE PARKING AND
 ACCESS EASEMENT AGREEMENT, TOGETHER WITH COVENANTS,
 CONDITIONS AND RESTRICTIONS**

T
012

84

This AMENDED AND RESTATED NONEXCLUSIVE PARKING AND ACCESS EASEMENT AGREEMENT, TOGETHER WITH COVENANTS, CONDITIONS AND RESTRICTIONS ("Agreement") is made as of the 26th day of DECEMBER, 2008, by and between Redhawk Towne Center II, LLC, a Delaware limited liability company ("Grantor"), and Vail Headquarters, LLC, a California limited liability company ("Grantee").

RECITALS:

- A. Grantor is the owner of that certain real property located in the City of Temecula, County of Riverside, State of California, as more particularly described on Exhibit "A" attached hereto (the "Shopping Center Site") and depicted on Exhibit "C" attached hereto.
- B. Grantee is the owner of that certain real property located in the City of Temecula, County of Riverside, State of California, as more particularly described on Exhibit "B" attached hereto (the "Historic Site") and depicted on Exhibit "C" attached hereto.
- C. The Shopping Center Site and the Historic Site are collectively referred to herein as the "Property."
- D. In order to provide vehicular and pedestrian ingress and egress to and from the Historic Site and the roadway presently known as "Highway 79," Grantor and Grantee desire to establish a perpetual and nonexclusive easement for such purpose over those portions of the Shopping Center Site that are, from time to time, improved for vehicular and pedestrian ingress and egress to and from the Historic Site and "Highway 79" (the "Access Easement Area").
- E. In order to provide additional parking areas for the Historic Site, Grantor and Grantee desire to establish a perpetual and nonexclusive easement for such purpose over those

portions of the Shopping Center Site identified as Parcel H on Exhibits "A" and "C" that are, from time to time, improved for parking purposes (the "**Parking Easement Area**").

F. The Access Easement Area and the Parking Easement Area are collectively referred to herein as the "**Easement Area**".

G. Grantor and Grantee desire to establish certain covenants, conditions, restrictions and other easements concerning the Property as set forth herein.

H. Grantor and Grantee will hereafter hold and convey title to all and every portion of the Property subject to the easements and the covenants, conditions and restrictions set forth herein in accordance with California Civil Code § 1468, it being the intention of Grantor and Grantee that the provisions of this Agreement shall run with the land and bind and benefit the Property, Grantor and Grantee, as the current owners of the Property, and each and every successor owner of the Property, and every portion thereof (each such owner, including Grantor and Grantee, being referred to herein as an "**Owner**"), and each person having an interest in the Property and every portion thereof, derived through any such Owner. If the Owner of the Shopping Center Site or the Historic Site leases all or substantially all of such Site pursuant to a single lease, then the tenant under such lease shall also constitute an "Owner" hereunder as to such Site so long as such lease is in effect, and such tenant shall be jointly and severally liable for all obligations of that Owner hereunder.

I. This Agreement amends and restates in its entirety that certain Nonexclusive Parking and Access Easement Agreement dated April 13, 2004, by and between Grantor and Grantee's predecessor-in-interest, Redhawk Towne Center LLC, recorded in the Riverside County Recorder's Office on April 13, 2004, as Instrument No. 266147.

TERMS:

NOW, THEREFORE, Grantor and Grantee hereby covenant and agree that the Property is now held and shall hereafter be held, transferred, sold, leased, conveyed and occupied subject to the easements and the covenants, conditions and restrictions set forth herein.

1. Grant of Access Easement. Grantor hereby grants to Grantee, for the benefit of the Historic Site, a perpetual, appurtenant and nonexclusive surface easement over the **Access Easement Area** for pedestrian and vehicular ingress and egress to and from the Historic Site and the roadway presently known as "Highway 79." The foregoing easement shall be for use by the Owners, occupants and invitees of the Historic Site. Grantor will not alter the location of the ingress and egress routes within the Easement Area in any manner that would have a material, adverse effect on access to and from the Historic Site and Highway 79.

2. Grant of Parking Easement. Grantor hereby grants to Grantee, for the benefit of the Historic Site, a perpetual, appurtenant and nonexclusive surface easement, over the Parking Easement Area for the parking of that number of vehicles necessary to satisfy the minimum governmental parking requirements for the gross leasable area constructed from time to time upon the Historic Site (but in no event more than the maximum gross leasable area permitted in

Section 10 below), after taking into account all parking spaces located upon the Historic Site, but in no event shall the number of parking spaces permitted to be used by the Historic Site cause the Shopping Center Site to be in violation of any governmental parking requirements or any other agreement, including any lease, to which Grantor is bound. The foregoing easement shall be for use by the Owners, occupants and invitees of the Historic Site.

3. Grant of Utility Easement. Grantor hereby grants to Grantee, for the benefit of the Historic Site, a perpetual, appurtenant and non-exclusive easement over the Easement Area to install, maintain, repair and replace underground utility lines servicing the Historic Site. The location of all utility lines installed by or for Grantee within the Easement Area shall be subject to the prior written approval of Grantor. Grantee shall give Grantor at least thirty (30) days prior written notice of any installation, maintenance, repair or replacement of any utility lines. Grantee shall perform all work in such a manner as to cause as little disturbance with Grantor's and others' use of the Easement Area as practicable and in accordance with a schedule approved by Grantor. All such work shall be undertaken at Grantee's sole cost and expense, and Grantee shall promptly repair, replace or rebuild any part of the Easement Area which may be destroyed or become damaged, worn or dilapidated in the process of such installation, maintenance, repair or replacement. Grantor shall have the right, at Grantor's sole cost and expense, to relocate any utility line installed within the Easement Area by or for Grantee upon giving Grantee at least thirty (30) days prior written notice thereof, provided that such relocation does not interfere with or diminish the utility services to Grantee (however, temporary interferences with or diminutions in services may be permitted if they occur during Grantee's non-business hours and are coordinated in advance with Grantee).

4. Sign Easement. Subject to Grantor's receipt of the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) (the "Sign Easement Consideration"), Grantor hereby grants to Grantee, for the benefit of the Historic Site, a perpetual, appurtenant and exclusive easement over that portion of Parcel A of Lot Line Adjustment No. 4265, recorded September 6, 2000 as Instrument No. 2000-350018 in the Riverside County Recorder's Office ("Parcel A") upon which the Historic Monument Sign (as depicted on Exhibit "E" attached hereto) is located, together with the non-exclusive right of ingress and egress thereto over the common areas of Parcel A. If Grantor has not received the Sign Easement Consideration by the date Grantee completes its improvements to the Historic Site, Grantor may at any time thereafter and prior to receiving the Sign Easement Consideration, give Grantee written notice thereof, and if Grantee fails to pay the Sign Easement Consideration to Grantor within thirty (30) days following Grantee's receipt of such notice, Grantor may terminate the easement established under this Section 4 by recording a supplement to this Agreement at any time thereafter and prior to receiving the Sign Easement Consideration. The Historic Monument Sign may only be used by Grantee to identify the name of the Historic Site and the names of up to three (3) occupants of the Historic Site. All alterations to the Historic Monument Sign, and the design and content of all signage thereon, shall be subject to Grantor's approval in accordance with the provisions of Section 11 below, as if the Historic Monument Sign were a portion of the Historic Site. All work to the Historic Monument Sign shall be at Grantee's sole cost and expense, and Grantee shall promptly repair any part of Parcel A which may be destroyed or become damaged, worn or dilapidated in the process of such work. Grantee shall maintain the Historic Monument Sign and all signage thereon in good condition and repair. Grantor shall have the right, at Grantor's sole

cost and expense, to relocate the Historic Monument Sign and the easement therefor from time to time provided that the new location provides comparable visibility from Highway 79.

5. Maintenance of Easement Area. Grantor shall operate and maintain the Easement Area in a good and clean state of condition and repair, including, without limitation, insuring, lighting and resurfacing as and when necessary. The Easement Area shall at all times be subject to the exclusive control and management of Grantor. Grantor shall have the right to close all or any portion of the Easement Area to such extent as may, in the opinion of Grantor's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; and to do and perform such other acts in and to the Easement Area and improvements, and/or revise and develop the same, as Grantor shall determine to be advisable, with a view to the improvement of the convenience and use thereof by the tenants of the Shopping Center Site and their customers, provided adequate access to and parking for the Historic Site, as required by Sections 1 and 2 above, are maintained. Grantee shall, within thirty (30) days following receipt of an invoice therefor, reimburse Grantor for the Prorata Share of CAM, commencing upon the date the first occupant of the Historic Site opens for business to the public. Grantor may elect to bill Grantee quarterly estimates of CAM, with an annual reconciliation of actual CAM. In such case, Grantee shall pay such quarterly estimated payments on the first day of each calendar quarter. The "Prorata Share" means a fraction, the numerator of which is the gross leasable area on the Historic Site, and the denominator of which is the total gross leasable area on the Historic Site and the Shopping Center Site. "CAM" means the total cost and expense incurred in operating, managing, maintaining, repairing, modifying, renovating and replacing the Easement Area, including, without limitation, the sprinkler system, utility lines (other than those referred to in Section 3 above), resurfacing or patching parking areas, line painting, sidewalks and curbs, security and traffic control, gardening, watering and landscaping, lighting (including lighting repairs), utilities, drainage, rubbish and other refuse, including any required recycling costs, costs to remedy and/or comply with governmental matters, repair or installation of equipment for energy-saving or safety purposes, cost of maintenance personnel, capital expenditures, insurance (which shall include public liability and umbrella insurance, All Risk coverage, including terrorism, flood, earthquake and any other coverage deemed necessary by Grantor provided such other coverage is typically maintained by institutional owners of similar shopping centers in Southern California), and such other items of cost and expense which relate to the proper maintenance and operation of the Easement Area, real property taxes and assessments on the Easement Area, plus ten percent (10%) of all of the foregoing costs to cover Grantor's administrative costs. Notwithstanding the foregoing, capital expenditures may only be included in CAM with respect to expenditures that are (a) intended as labor-saving devices or to effect other economies in the operation or maintenance of the Easement Area, (b) required by governmental law or regulation or (c) for the refurbishment or replacement of Easement Area improvements where repair is no longer feasible or practical; provided, however, costs of replacing the parking lots and driveways may not be included within CAM more frequently than once every fifteen (15) years and shall be amortized over three (3) years to the extent such costs exceed Fifty Thousand Dollars (\$50,000.00) (in 2006 Dollars). Real property taxes and assessments on the Easement Area shall be based on the land value of the Easement Area. Accordingly, if the tax parcel(s) within which the Easement Area is located contain(s) any buildings, then the value of the buildings and the value of the land underlying the Buildings shall be excluded from CAM. All sums payable pursuant to this Section 5 or Section 21 that are not paid by the due date thereof shall bear interest at the lesser of (i) the prime or reference rate

announced from time to time by Bank of America (or its successor) plus three (3) percentage points or (ii) the maximum rate allowed by law. Reference herein to "2006 Dollars" means an amount equal to the stated sum multiplied by a fraction, the numerator of which is the Consumer Price Index, All Urban Consumers, U.S. Cities Average (1982-84=100) ("Index") for the month that is two months prior to the month for which the determination is made, and the denominator of which is the Index for the month of October 2006.

6. Use of Easement Area. Grantee, for itself and on behalf of its occupants and invitees, agrees to abide by the reasonable rules and regulations adopted from time to time by Grantor for the use of the Easement Area, which may include, without limitation, the designation of the location of the parking spaces to which Grantee is entitled pursuant to Section 2 above, provided that said locations provide reasonably convenient access for the customers or invitees of Grantee or Grantee's tenants. Grantee shall cause its employees and the employees of the occupants of the Historic Parcel to park in the area identified on Exhibit "C" as "Employee Parking." Grantee acknowledges that if Grantor provides security officers for the Easement Area, Grantor does not represent, guarantee or assume responsibility that Grantee or its occupants or invitees will be secure from any claims relating to such security officers or the tortious or criminal acts of any other person. Grantor shall have no obligation to hire, maintain or provide such services, which may be withdrawn or changed at any time with or without notice to Grantee or any other person and without liability to Grantor.

7. Insurance. Grantee shall keep or cause to be kept in full force and effect a policy of commercial general liability insurance with a combined single limit of not less than \$2,000,000 (or such additional amount as Grantor may from time to time reasonably designate) insuring against any and all liability related to the use of the Easement Area by Grantee and its occupants and invitees. Such insurance shall include a contractual liability endorsement insuring Grantee's indemnity obligations under Section 8 below and shall name Grantor and Grantor's lender as additional insureds. Grantee shall, annually or within ten (10) days following any written request therefor by Grantor, deliver to Grantor, a certificate evidencing the existence of such insurance and evidence that the premiums therefor have been paid. Each such policy shall contain a provision requiring that at least thirty (30) days' written notice will be given to Grantor prior to any cancellation or reduction in such coverage. Grantor and Grantee agree to have their respective insurance companies issuing property damage insurance waive any rights of subrogation that such companies may have against Grantor or Grantee, as the case may be, and Grantor and Grantee hereby waive any right that either may have against the other on account of any loss or damage if such loss or damage is insurable under an "all risks" or "special form" property insurance policy; provided, however, this waiver shall not apply to deductible amounts not exceeding \$10,000.00 (in 2006 Dollars).

8. Indemnity. Grantee shall indemnify, defend, protect and hold Grantor harmless from and against any and all claims, damages, losses, costs, expenses and liabilities (including reasonable attorneys' fees) arising from or related to the use of the Easement Area or the easements granted in Sections 3 and 4 above by Grantee, except to the extent arising from the negligence or willful misconduct of Grantor. Grantor shall indemnify, defend, protect and hold Grantee harmless from and against any and all claims, damages, losses, costs, expenses and liabilities (including reasonable attorneys' fees) arising from or related to occurrences in the Easement Area to the extent caused by the negligence or willful misconduct of Grantor.

9. Use Restrictions on Historic Site. The Historic Site shall be subject to, and Grantee shall not permit the Historic Site to be in violation of, the following use restrictions:

(a) General Use Restrictions. The Historic Site shall only be used for a historic site museum, historic society offices and uses ancillary thereto, and for such other commercial purposes of the type normally found in a first-class retail shopping center. No part of the Historic Site shall be used for residential purposes or as a theater, auditorium, meeting hall, school, church or other place of public assembly (with the exception of those outdoor events sponsored by or affiliated with local historic groups to which the County of Riverside requires Grantee to permit on the Historic Site), "flea market," gymnasium, health club, dance hall, billiard or pool hall, massage parlor, video game arcade, bowling alley, skating rink, car wash, night club or other place of recreation or amusement (with the exception of those outdoor events sponsored by or affiliated with local historic groups to which the County of Riverside requires Grantee to permit on the Historic Site), facility for the sale, display, leasing or repair of motor vehicles, adult products, adult books or adult audio/video products (which are defined as stores in which at least ten percent (10%) of the inventory is not for sale or rental to children under seventeen (17) years old because such inventory explicitly deals with or depicts human sexuality), or any business which derives fifty percent (50%) or more of its gross sales volume serving or selling alcoholic beverages, with the exception of a wine tasting parlor. Further, no High Intensity Parking User shall be permitted in the Historic Site, except as otherwise permitted under Sections 9(b) and 9(d) below, and offices shall not exceed twenty five percent (25%) of the gross leasable area in the Historic Site. A "High Intensity Parking User" is an occupant whose use requires more than five (5) parking spaces per one thousand (1,000) square feet of leasable area in accordance with either customary shopping center practices or governmental regulations, whichever has a higher parking requirement.

Pursuant to that certain Lease between Grantor and Ross Stores, Inc. ("Ross"), any office use at the Property is limited to "retail offices" which are defined as offices open for walk-in customers (i.e., customers without appointments), such as real estate brokerage offices, banks, and consumer loan finance and/or credit offices. Accordingly, office use at the Historic Site shall be limited to retail offices unless otherwise permitted by Ross. If Grantee desires to have non-retail offices at the Historic Site, Grantor agrees to reasonably cooperate with Grantee in seeking to obtain Ross's consent thereto.

(b) Restaurant Restrictions. There shall be no more than two (2) restaurants on the Historic Site, and any restaurant on the Historic Site shall be located on the west half of the Historic Site and shall not exceed five thousand (5,000) square feet of interior space.

(c) Specific Use Restrictions. The Historic Site may not be used for any use identified on Exhibit "D" attached hereto.

(d) Conditional Use Permits. Grantor agrees not to object to the issuance of any conditional use permit or license necessary for the operation of up to two (2) sit-down restaurants and a wine tasting parlor at the Historic Site provided such restaurants and wine parlor comply with all requirements under this Agreement and such conditional use permits

and licenses do not impose any unacceptable restrictions, limitations or obligations upon Grantor or the Shopping Center Site, as determined in Grantor's good faith business judgment.

10. Limitation on Height and Leasable Area at the Historic Site. In no event shall (i) the gross leasable area located on the Historic Site exceed 30,000 square feet, not including outdoor spaces, or (ii) the height of any improvement at the Historic Site exceed thirty five (35) feet above the finished grade existing as of the date hereof.

11. Alterations to Historic Site. Grantee shall not construct or install (or permit the construction or installation of) any improvements on the Historic Site or any landscaping within the "Landscape Control Zone" identified on Exhibit "C" attached hereto, or any alterations to such improvements or landscaping, without obtaining Grantor's prior written approval, which shall not be unreasonably denied; provided, however, Grantor's consent shall not be required for interior improvements or alterations that are not visible from the exterior of the buildings located upon the Historic Site, or alterations required in order to comply with legal requirements, including ADA or subsequently enacted ordinances or laws. In addition, and without limiting Grantor's approval rights pursuant to the preceding sentence, Grantee shall not install (or permit the installation of) any tree on the Historic Site that is located within twenty (20) feet of any concrete or asphalt on the Shopping Center Site or the Existing Driveways (as defined in Section 22 below) that is of a type susceptible to causing damage to concrete or asphalt, as determined in Grantor's reasonable judgment. Upon receipt of plans and drawings from Grantee, Grantor shall have fifteen (15) business days to approve said plans and drawings. If Grantee does not receive written confirmation within those fifteen (15) business days, Grantee may give Grantor an additional written notice requesting Grantor's approval of said plans and drawings. If such additional notice informs Grantor that the failure of Grantor to respond to Grantee's request within five (5) business days following receipt of such additional notice will constitute Grantor's approval of said plans and drawings, then the failure of Grantor to respond within such five (5) business day period shall constitute Grantor's approval of said plans and drawings. Grantee shall submit plans and drawings to Grantor prior to submission of plans and drawings to the County of Riverside and the City of Temecula for entitlement approvals, and shall be given the same period of time as provided above to review said plans and drawings. Grantee shall make its reasonable effort to incorporate Grantor's requested changes, if any, to the plans and drawings. However, if the County and/or City governing agencies place requirements upon Grantee for certain design or construction alterations, and a conflict exists between said requirements and the requests or requirements made by Grantor, than the design or construction alterations requested or required by the governmental agencies shall supercede any design or construction alterations requested by Grantee. All construction staging and storage areas shall be located on the south side of the Historic Site, and all such staging and storage areas, as well as the improvements under construction or alteration, shall be enclosed by barricades acceptable to Grantor.

12. Right of First Offer

If Grantee intends to sell the Historic Site or intends to accept an offer to purchase the Historic Site made by a third party unaffiliated with Grantee and other than a foreclosure or deed in lieu of foreclosure, Grantee shall first provide Grantor a statement of the economic terms (if Grantee has not yet received an offer to purchase the Historic Site) or a copy of the offer from a third party it intends to accept (such statement or offer hereinafter referred to as the "Sale

Offer"), together with a preliminary title report regarding the Historic Site prepared by a title company reasonably selected by Grantee and dated no earlier than thirty (30) days prior to the date of submission (the "PTR"). If Grantee ground leases the Historic Site, then all references in this Section 12 to "purchase" or "sell" shall include an assignment of the leasehold estate or a subletting of all or substantially all of the Historic Site. The Sale Offer need not be a binding agreement or offer, but may be a term sheet or letter of intent which specifies a purchase price, payment terms and amount of deposit. Notwithstanding the preceding sentence, this Section 12 shall not be construed as a prohibition against or limitation on the Grantee's right to make a collateral or actual assignment of the rents in connection with any financing arrangement with any lender, nor shall it limit any lender's right to foreclose judicially or non-judicially (or by deed in lieu of foreclosure) on any trust deed encumbering the Historic Site or any part thereof. By giving Grantee unqualified written acceptance (the "ROFO Acceptance Notice") within ten (10) business days after the date Grantee has provided Grantor with a copy of the Sale Offer (the "ROFO Notice Date"), Grantor shall have the right to purchase the Historic Site for the purchase price specified in the Sale Offer (the "ROFO Price") and on the same payment terms specified in the Sale Offer, subject to the following provisions:

(i) The Historic Site shall be sold "AS-IS, WHERE IS" without representation or warranty, except that Grantee shall within fifteen (15) days after the ROFO Acceptance Notice is given (i) disclose (to the best of its actual knowledge without duty to investigate) in writing the existence of any Hazardous Substance in, on or under the Historic Site and construction defects in the Historic Site, (ii) provide Grantor with a list of all known leases in effect with respect to the Historic Site, and (iii) provide Grantor with a list of all contracts (other than those described in the PTR) which will bind the Historic Site after the close of escrow and which are not cancelable on thirty (30) days' written notice.

(ii) Grantor shall have thirty (30) days from the ROFO Acceptance Notice (the "Contingency Period") to inspect all information regarding the Historic Site on reasonable prior notice to Grantee, provided Grantor shall indemnify Grantee from and against any and all costs, liabilities, expenses (including court costs and attorneys' fees), claims and damages arising out of Grantor's inspection and shall repair all damages caused by Grantor's inspection.

(iii) Rents, taxes and utilities will be prorated. The parties will reasonably cooperate to collect and pay Grantee rents attributable to time periods prior to close of escrow.

(iv) The sale shall be closed through an escrow at Old Republic Title Company or other escrow company reasonably selected by Grantee ("Escrow Holder").

(v) GRANTOR SHALL MAKE A DEPOSIT (the "DEPOSIT") WITH THE ESCROW HOLDER IN THE AMOUNT SPECIFIED IN THE OFFER WITHIN FIVE (5) BUSINESS DAYS AFTER GIVING THE ROFO ACCEPTANCE NOTICE. THE DEPOSIT SHALL BE REFUNDABLE DURING THE CONTINGENCY PERIOD, BUT SHALL THEREAFTER CONSTITUTE LIQUIDATED DAMAGES FOR THE BREACH OF GRANTOR'S COMMITMENT TO PURCHASE THE HISTORIC SITE, WITHOUT, HOWEVER, LIQUIDATING ANY INDEMNITY OBLIGATION OF GRANTOR. THE PARTIES SHALL EXECUTE REASONABLE SUPPLEMENTARY ESCROW INSTRUCTIONS WHICH DO NOT CONFLICT WITH THIS SECTION 12.

GVT

Grantee's Initials

JV

Grantor's Initials

(vi) During the Contingency Period, Grantor may elect to terminate its right and obligation to purchase the Historic Site by giving Grantee and Escrow Holder written notice prior to the end of the Contingency Period, and in such event Grantor shall be entitled to a return of the Deposit after Escrow Holder has subtracted all its fees. If Grantor terminates its right or defaults after the Contingency Period, Grantor's rights under this Section 12 shall expire.

(vii) Close of escrow shall take place within sixty (60) days after the ROFO Acceptance Notice is given. At closing, Grantee shall deposit into escrow an executed and acknowledged grant deed conveying the Historic Site and an executed and acknowledged assignment and assumption of leases and contracts assigning all leases and contracts affecting the Historic Site to Grantor, and Grantor shall deposit an executed and acknowledged counterpart of such assignment and assumption.

(viii) At closing, Grantee shall pay the documentary transfer tax and the cost of a CLTA owner's title insurance policy to be issued to Grantor at close of escrow, unless the Sale Offer specifies a different tax and title policy premium responsibility. Grantee and Grantor shall each pay one-half of the Escrow Holder's fees and costs. Grantor shall pay all other fees and costs.

(ix) The title policy to be issued at close of escrow may show on Schedule B all exceptions shown on the PTR, except loans secured by trust deeds not to be assumed pursuant to the terms of the Sale Offer.

(x) All risk of loss shall be Grantee's until the closing; thereafter, the risk of loss shall be Grantor's.

(xi) Failure to Exercise. If Grantor fails to timely give an unqualified ROFO Acceptance Notice, Grantee may proceed with the sale of the Historic Site based upon the ROFO Price and the payment terms specified in the Sale Offer. In the event the sale of the Historic Site is completed within one year after the ROFO Notice Date, then Grantor's rights under this Section 12 shall expire. If the Sale Offer is not completed within one year after the ROFO Notice Date, then before consummating a sale on the terms contained in the Sale Offer, Grantee shall give Grantor a new Sale Offer notice, and the terms of this Section 12 shall apply. If Grantee desires to sell the Historic Site for a purchase price less than 95% of the ROFO Price or for payment terms significantly less advantageous to Grantee, Grantee shall give Grantor a new notice with the revised Sale Offer, and the terms of this Section 12 shall apply.

(xii) Grantor's Nominee. Grantor may assign its rights under this Section 12 to a nominee.

13. Notices. Any notice, request, demand, approval, consent or offer (collectively or individually, "Notices") given under this Agreement shall, except as otherwise expressly

provided herein, be in writing and shall be given (i) by delivery in hand to the addressee, (ii) by facsimile transmission to the other party (so long as a copy is sent on the same date in the manner provided in subpart (iv) following), (iii) by United States Registered or Certified Mail, postage prepaid, or (iv) by nationally recognized overnight carrier, to the other party as follows:

Grantor:	Redhawk Towne Center II, LLC c/o Kimco Realty Corporation 1621-B Melrose Drive Vista, CA 92081 Attn: Regional General Counsel
Copy:	Kimco Realty Corporation 3333 New Hyde Park Road New Hyde Park, NY 11042 Attn: Legal Department
Grantee:	Arteco Partners 281 S Thomas St., Ste. 504 Pomona, CA 91766 Attn: Gerald Tessier Fax: (909) 623-2082
Copy:	Fragner Seifert Pace & Winograd, LLP 300 South Grand Ave., 14th Floor Los Angeles, CA 90071 Telephone number: (213) 687-2320 Facsimile transmission number: (310) 496-2887

or at such other address as the party to be notified may have designated hereafter by notice in writing to the other parties to this Agreement. Notices given pursuant to clauses (i) and (iv) shall be deemed given when received, if received on business days during normal business hours; otherwise on the next business day. Notices given pursuant to clause (ii) shall be deemed given at the time of sending and receipt of a confirmation of receipt by the sender, if the same are sent and received on a business day during normal business hours; and otherwise on the next business day. Notices given pursuant to clause (iii) shall be deemed given the earlier of when received or three (3) business days after being deposited in the United States Mails, postage prepaid, return receipt requested.

14. No Dedication. The provisions of this Agreement shall not be deemed to constitute a dedication for public use nor create any rights in the general public.

15. Covenants Running With The Land. This Agreement shall bind and inure to the benefit of each present and successor Owner of the Property, or any portion thereof; provided, however, each Owner of a portion of the Property shall only be bound by the terms of this Agreement during such Owner's period of ownership, except that each such Owner shall continue to be bound by obligations pertaining to matters occurring or arising during such Owner's period of ownership.

16. Governing Law. This Agreement shall be governed by and interpreted in accordance with California law.

17. Severability. If any one or more of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid, illegal and unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired in any way.

18. Attorneys' Fees. If any Owner of the Property brings any action or proceeding against another Owner for the adjudication of any rights under this Agreement, the prevailing owner shall be entitled to recover from the other Owner all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing Owner as determined by the court.

19. Termination; Amendment. This Agreement may be amended or terminated only by a written instrument signed and acknowledged by all of the Owners.

20. Estoppel Certificates. 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).

21. Assessment District No. 159. The Historic Site is currently subject to assessments (the "Historic Site Assessments") pursuant to Assessment District No. 159 ("AD 159"). If AD 159 is released from the Historic Site and the Historic Site Assessments are thereafter allocated to the Shopping Center Site, Grantee agrees to reimburse Grantor for all Historic Site Assessments that are so allocated to the Shopping Center Site within thirty (30) days following receipt of evidence of Grantor's payment of the same.

22. Existing Driveways. Grantee acknowledges that the driveways along the northside of the Historic Site and the southside of the Historic Site identified on Exhibit C attached hereto as the "Access Driveway" and the "Fire Driveway" (the "Existing Driveways") are "Common Areas" under that certain Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements recorded on July 30, 2002, in the Riverside County Recorder's Office as Instrument No. 2002-414853, as amended. Except as provided below, Grantee shall not alter or obstruct the Existing Driveways. Grantor shall maintain the Existing Driveways in accordance with the provisions of Section 5 above and the cost thereof (subject to the limitations set forth in Section 5 above) shall be included within CAM. Subject to approval from the applicable governing authorities, Grantor or Grantee shall have the right to place barriers at each entrance point of the Fire Driveway onto the Historic Site in order to prohibit its use by persons other than fire department personnel and personnel authorized by Grantor or Grantee. Grantor and Grantee shall cooperate with each other in connection with the installation and operation of any such barrier in order to permit fire department personnel and each party's authorized personnel to have access to the Fire Driveway.

IN WITNESS WHEREOF, Grantee and Grantor have executed this Agreement as of the date first above written.

Grantor: REDHAWK TOWNE CENTER II, LLC, a Delaware limited liability company

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

By: John Visconsi
Name: John Visconsi
Title: Vice President

Grantee: VAIL HEADQUARTERS, LLC, a California limited liability company

By: Gerald V Tessier
Name: Gerald V Tessier
Title: Manager

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On Dec. 15 2008, before me, Nicole Ann Clark, a Notary Public ~~in and for said state~~, personally appeared John Viscorsi, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



N Clark

Notary Public in and for said State

Nicole Ann Clark
#1789343
Exp. Jan 27, 2012

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On December 17, 2008, before me, Margaret Ann Rinke, a Notary Public ~~in and for said State~~, personally appeared Gerald V. Tessier, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Margaret Ann Rinke
Notary Public in and for said State



Margaret Ann Rinke
#1728381
Exp. Mar 31, 2011
Los Angeles County


LENDER'S CONSENT AND SUBORDINATION

The undersigned, as the beneficiary under that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated April 13, 2004, recorded on April 13, 2004, in the Official Records of Riverside County as Instrument No. 2004-0266148 (the "Deed of Trust"), hereby consents and subordinates the lien of the Deed of Trust to the Amended and Restated Nonexclusive Parking and Access Easement Agreement, together with Covenants, Conditions and Restrictions, to which this Lender's Consent and Subordination is attached.

Executed as of DECEMBER 16, 2008

BANK OF AMERICA, NATIONAL ASSOCIATION, AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, as Trustee for Bear Stearns Commercial Mortgage Securities Inc., Commercial Mortgage Pass-Through Certificates Series 2004-PWR4

By: WELLS FARGO BANK, NATIONAL ASSOCIATION, as Master Servicer under the Pooling and Servicing Agreement dated June 1, 2004, by and between Bear Stearns Commercial Mortgage Securities Inc., Prudential Asset Resources, Inc., Wells Fargo Bank, National Association, Centerline Servicing Inc. (f/k/a Arcap Servicing, Inc.), Bank of America, National Association, as successor by merger to LaSalle Bank National Association, ABN AMRO Bank N.V. and The Prudential Insurance Company of America

By: 
Name: Paula S. Norris
Its: Assistant Vice President

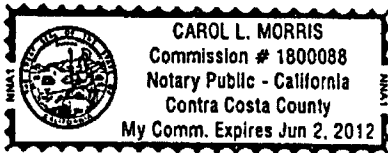
CALIFORNIA NOTARY ACKNOWLEDGEMENT

State of California)
)ss
County of Contra Costa)

On December 16, 2008 before me, Carol L. Morris, Notary Public, personally appeared Paula S. Norris, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



CLM

1800088
Exp. Jun 2, 2012

EXHIBIT "A"

Legal Description of Shopping Center Site

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL D: (960-010-025)

PARCEL "D" OF LOT LINE ADJUSTMENT NO. 4265, RECORDED SEPTEMBER 6, 2000
AS INSTRUMENT NO. 2000-350018 OF OFFICIAL RECORDS BEING MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOT 4 OF TRACT 23172, IN THE COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 251, PAGES 94
THROUGH 99, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID
COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF PROPERTY "A" AS SHOWN ON
LOT LINE ADJUSTMENT NO. 3942, RECORDED JULY 29, 1997, AS INSTRUMENT NO.
352794, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE NORTHEASTERLY ALONG THE NORTHERLY LINE OF TRACT 23172, SAID
LINE BEING ALSO THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 79
(142.00 FEET WIDE), NORTH 73° 22' 11" EAST, A DISTANCE OF 646.54 FEET TO THE
TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHERLY LINE OF TRACT 23172 NORTH 73°
22' 11" EAST, A DISTANCE OF 186.17 FEET;

THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 217.21 FEET;

THENCE SOUTH 73° 22' 11" WEST, A DISTANCE OF 186.17 FEET;

THENCE NORTH 16° 37' 49" WEST, A DISTANCE OF 217.21 FEET TO THE TRUE POINT
OF BEGINNING.

PARCEL E: (960-010-026)

PARCEL "E" OF LOT LINE ADJUSTMENT NO. 4265, RECORDED SEPTEMBER 6, 2000
AS INSTRUMENT NO. 2000-350018 OF OFFICIAL RECORDS BEING MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOT 9 OF TRACT 23172, IN THE COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 251, PAGES 94
THROUGH 99, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID
COUNTY.

BEGINNING AT THE NORTHEAST CORNER OF PROPERTY "A" AS SHOWN ON LOT LINE ADJUSTMENT NO. 3942, RECORDED JULY 29, 1997, AS INSTRUMENT NO. 352794, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE NORTHEASTERLY ALONG THE NORTHERLY LINE OF TRACT 23172, SAID LINE BEING THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 79 (142.00 FEET WIDE). NORTH 73° 22' 11" EAST, A DISTANCE OF 832.71 FEET; TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHERLY LINE OF TRACT 23172 NORTH 73° 22' 11" EAST, A DISTANCE OF 186.87 FEET;

THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 362.21 FEET;

THENCE SOUTH 73° 22' 11" WEST, A DISTANCE OF 186.87 FEET;

THENCE NORTH 16° 37' 49" WEST, A DISTANCE OF 362.21 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL H: (960-010-045)

PARCEL "H" OF LOT LINE ADJUSTMENT NO. 4512, RECORDED SEPTEMBER 16, 2002 AS INSTRUMENT NO. 2002-513211 OF OFFICIAL RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOTS 3, 4, 7, 8 AND 9 OF TRACT 23172, AS RECORDED IN BOOK 251 OF MAPS AT PAGES 94 THROUGH 99, RECORDS OF RIVERSIDE COUNTY, CA.

ALSO BEING A PORTION OF PROPERTY "F", "G", "H" AND "I" AS SHOWN ON LOT LINE ADJUSTMENT 4265 RECORDED SEPTEMBER 6, 2000, AS INSTRUMENT NO. 2000-350018, RECORDS OF RIVERSIDE COUNTY, CA., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PROPERTY "C" AS SHOWN ON LOT LINE ADJUSTMENT 4265 RECORDED SEPTEMBER 6, 2000, AS INSTRUMENT NO. 2000-350018, RECORDS OF RIVERSIDE COUNTY, CA.,

THENCE NORTHEASTERLY ALONG THE NORTHERLY LINE OF TRACT 23172, SAID LINE BEING THE SOUTHERLY RIGHT OF WAY OF STATE HIGHWAY 79 (142 FEET WIDE) NORTH 73° 22' 11" EAST, A DISTANCE OF 88.50 FEET;

THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 217.21 FEET;

THENCE NORTH 73° 22' 11" EAST, A DISTANCE OF 186.17 FEET;

THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 145.00 FEET;

THENCE NORTH 73° 22' 11" EAST, A DISTANCE OF 186.87 FEET;

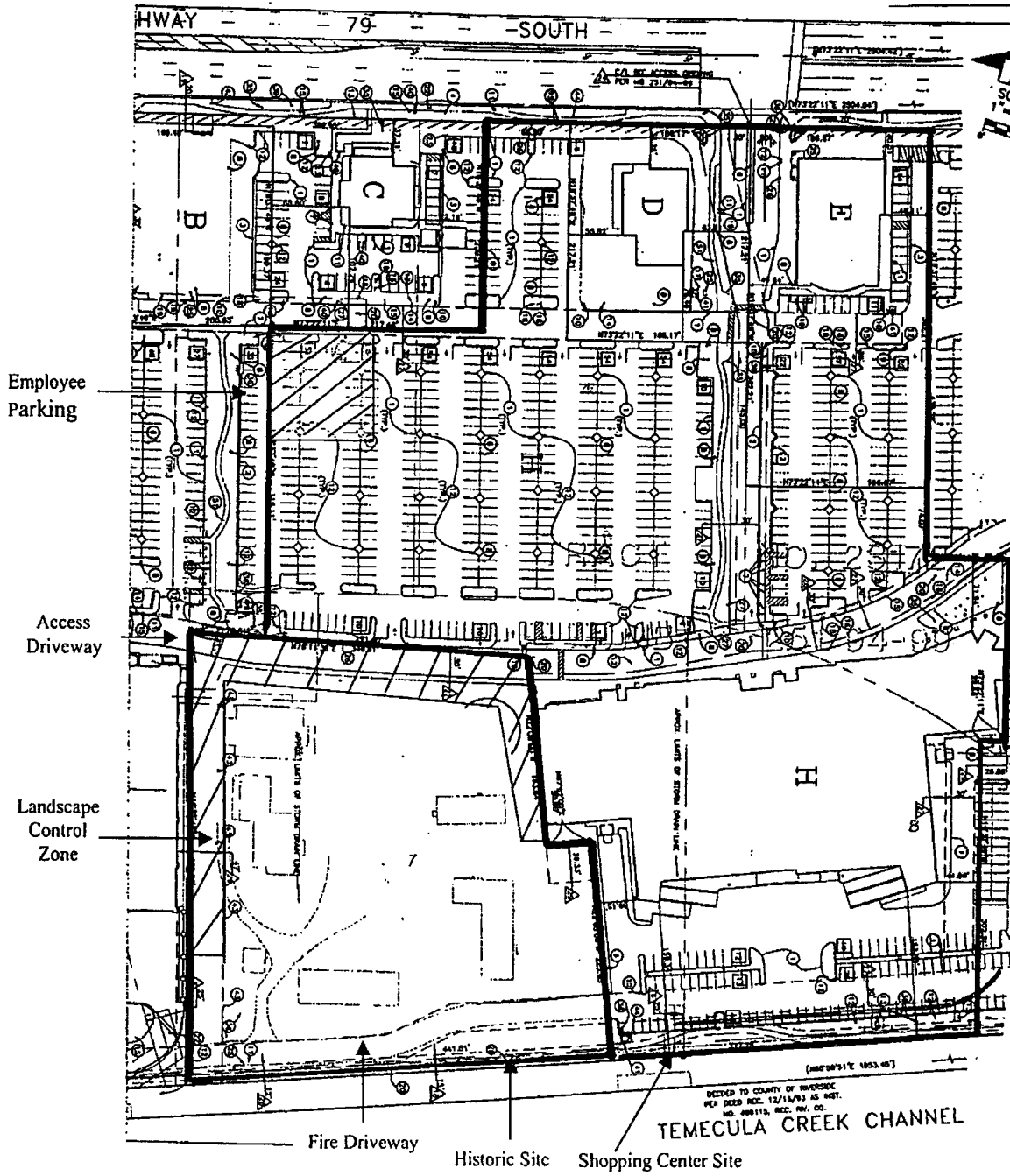
THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 74.07 FEET;
THENCE NORTH 73° 22' 11" EAST, A DISTANCE OF 85.89 FEET;
THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 183.73 FEET;
THENCE SOUTH 73° 22' 11" WEST, A DISTANCE OF 26.86 FEET;
THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 302.31 FEET TO THE SOUTHERLY
LINE OF SAID TRACT 23172;
THENCE ALONG SAID SOUTHERLY LINE, SOUTH 68° 58' 51" WEST, A DISTANCE OF
377.28 FEET;
THENCE NORTH 22° 08' 00" WEST, A DISTANCE OF 225.65 FEET;
THENCE SOUTH 67° 52' 00" WEST, A DISTANCE OF 50.80 FEET;
THENCE NORTH 22° 08' 00" WEST, A DISTANCE OF 193.64 FEET;
THENCE SOUTH 76° 11' 38" WEST, A DISTANCE OF 271.40 FEET;
THENCE NORTH 16° 37' 49" WEST, A DISTANCE OF 316.11 FEET;
THENCE NORTH 73° 22' 11" EAST, A DISTANCE OF 217.46 FEET;
THENCE NORTH 16° 37' 49" WEST, AS DISTANCE OF 209.21 FEET TO THE TRUE
POINT OF BEGINNING.

EXHIBIT "B"

Legal Description of Historic Site

Parcel "G" of Lot Line Adjustment No. 4512, recorded September 16, 2002, as Instrument No. 2002-513211 of Official Records of Riverside County, California.

EXHIBIT "C"
 Depiction of Property



671722.03/SD
 K5100-002/12-8-08/cds/ldf

EXHIBIT "C"
 -1-

EXHIBIT "D"

Specific Prohibited Uses

- Any business that sells, rents and/or distributes prerecorded audio and/or video products, audio and/or video software or any items which are a technological evolution of such audio and/or video products as its primary use.
- The operation of an automatic teller machine.
- Any business using, occupying or devoting more than fifteen thousand (15,000) square feet of floor area for the sale or display of wearing apparel (as defined by the trade from time to time), including in the computation of such floor area one-half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of wearing apparel.
- Any restaurant that offers full service (orders taken and served by wait personnel at the customer's table), full menu (breakfast, lunch and dinner items), and moderately priced menu items, such as, but not limited to The Village Inn, Bob's Big Boy, Shoney's, Denny's, Perkins', Waffle House, Baker's Square, Coco's, JB's, Allie's, Cracker Barrel, Marie Callender's, Friendly's or Bob Evans' Farms. The foregoing shall not be construed to prohibit the following restaurant uses: (v) dinner house or seafood restaurant, (w) oriental, French, Mexican, Italian or other ethnic restaurant, (x) any so-called "fast food" restaurant, such as, but not limited to, McDonald's, Burger King, Wendy's, Taco Bueno, Taco Bell, or Whataburger, (y) any so-called "casual dining" restaurant, such as but not limited to, Chili's or Black Eyed Pea, or (z) any food specialty shop, such as, but not limited to, ice cream, yogurt, submarine sandwich, pizza or similar single item shop.
- Any business that operates an open stock, branded, family shoe store as its primary business.
- Any business that devotes more than fifty percent (50%) of the sales floor area of its premises to the business of a discount unisex hair salon.
- Any business that devotes more than twenty percent (20%) of the sales floor area of its premises to the sale of beauty supplies.
- Any business whose primary use of its premises is the retail sale of wireless communication service and telephone equipment and accessories.
- Any full-service, casual dining restaurant similar to an Applebee's such as, but not limited to Chili's, TGI Fridays, Ruby Tuesday's, O'Charley's or Islands.

- Any restaurant that uses a wok or sells as its "primary" menu item (as defined below) any type of "Asian food," which shall include, but not be limited to, Chinese, Japanese, Vietnamese, Thai, Hawaiian, Mongolian, Cajun and Korean food. A "primary" menu shall be defined as any menu item which comprises ten percent (10%) or more of the total menu. The foregoing restriction shall not apply to the operation of a sit-down, (non-cafeteria style) or table service restaurant over three thousand (3,000) square feet.
- Any restaurant that sells pizza as its "primary" (15% or more) menu item. The foregoing restriction shall not apply to a restaurant that occupies 5,000 square feet or more.
- Any business whose primary use shall be the sale of non-branded family footwear.

EXHIBIT "E"

LOCATION OF HISTORIC MONUMENT SIGN

The Historic Monument Sign is located as shown below within Parcel A of Lot Line Adjustment No. 4265, recorded September 6, 2000, as Instrument No. 2000-350018 in the Riverside County Recorder's Office.

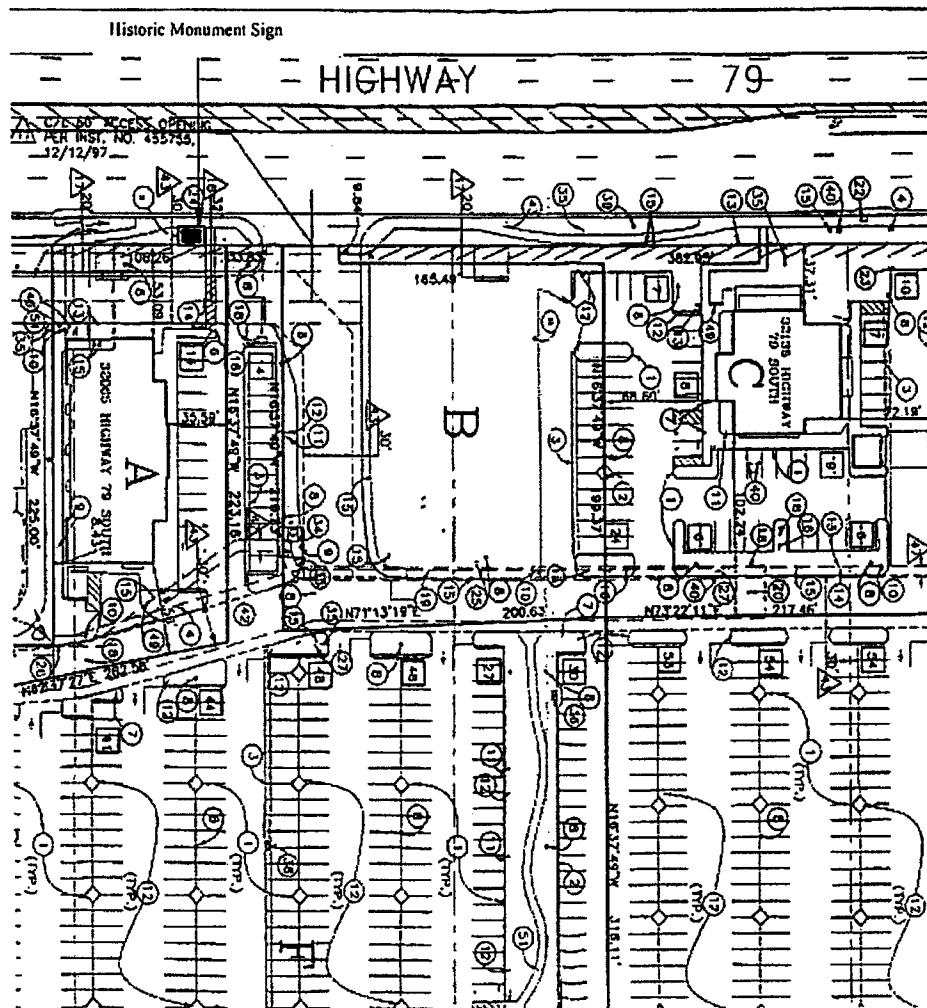


EXHIBIT "D"

Covenants, Conditions and Restrictions

DOC # 2008-0673029

12/26/2008 08:00A Fee:84.00

Page 1 of 23

Recorded in Official Records
County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



**RECORDING REQUESTED BY:
AND WHEN RECORDED RETURN TO:**

Redhawk Towne Center II, LLC

c/o Kimco Realty Corporation

1621-B Melrose Drive

Vista, CA 92081

Attention: Regional General Counsel

S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
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(Space Above For Recorder's Use Only)

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012

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**AMENDED AND RESTATED NONEXCLUSIVE PARKING AND
ACCESS EASEMENT AGREEMENT, TOGETHER WITH COVENANTS,
CONDITIONS AND RESTRICTIONS**

This AMENDED AND RESTATED NONEXCLUSIVE PARKING AND ACCESS EASEMENT AGREEMENT, TOGETHER WITH COVENANTS, CONDITIONS AND RESTRICTIONS ("Agreement") is made as of the 26th day of DECEMBER, 2008, by and between Redhawk Towne Center II, LLC, a Delaware limited liability company ("Grantor"), and Vail Headquarters, LLC, a California limited liability company ("Grantee").

RECITALS:

A. Grantor is the owner of that certain real property located in the City of Temecula, County of Riverside, State of California, as more particularly described on Exhibit "A" attached hereto (the "Shopping Center Site") and depicted on Exhibit "C" attached hereto.

B. Grantee is the owner of that certain real property located in the City of Temecula, County of Riverside, State of California, as more particularly described on Exhibit "B" attached hereto (the "Historic Site") and depicted on Exhibit "C" attached hereto.

C. The Shopping Center Site and the Historic Site are collectively referred to herein as the "Property."

D. In order to provide vehicular and pedestrian ingress and egress to and from the Historic Site and the roadway presently known as "Highway 79," Grantor and Grantee desire to establish a perpetual and nonexclusive easement for such purpose over those portions of the Shopping Center Site that are, from time to time, improved for vehicular and pedestrian ingress and egress to and from the Historic Site and "Highway 79" (the "Access Easement Area").

E. In order to provide additional parking areas for the Historic Site, Grantor and Grantee desire to establish a perpetual and nonexclusive easement for such purpose over those

portions of the Shopping Center Site identified as Parcel H on Exhibits "A" and "C" that are, from time to time, improved for parking purposes (the "**Parking Easement Area**").

F. The Access Easement Area and the Parking Easement Area are collectively referred to herein as the "**Easement Area**".

G. Grantor and Grantee desire to establish certain covenants, conditions, restrictions and other easements concerning the Property as set forth herein.

H. Grantor and Grantee will hereafter hold and convey title to all and every portion of the Property subject to the easements and the covenants, conditions and restrictions set forth herein in accordance with California Civil Code § 1468, it being the intention of Grantor and Grantee that the provisions of this Agreement shall run with the land and bind and benefit the Property, Grantor and Grantee, as the current owners of the Property, and each and every successor owner of the Property, and every portion thereof (each such owner, including Grantor and Grantee, being referred to herein as an "**Owner**"), and each person having an interest in the Property and every portion thereof, derived through any such Owner. If the Owner of the Shopping Center Site or the Historic Site leases all or substantially all of such Site pursuant to a single lease, then the tenant under such lease shall also constitute an "Owner" hereunder as to such Site so long as such lease is in effect, and such tenant shall be jointly and severally liable for all obligations of that Owner hereunder.

I. This Agreement amends and restates in its entirety that certain Nonexclusive Parking and Access Easement Agreement dated April 13, 2004, by and between Grantor and Grantee's predecessor-in-interest, Redhawk Towne Center LLC, recorded in the Riverside County Recorder's Office on April 13, 2004, as Instrument No. 266147.

TERMS:

NOW, THEREFORE, Grantor and Grantee hereby covenant and agree that the Property is now held and shall hereafter be held, transferred, sold, leased, conveyed and occupied subject to the easements and the covenants, conditions and restrictions set forth herein.

1. Grant of Access Easement. Grantor hereby grants to Grantee, for the benefit of the Historic Site, a perpetual, appurtenant and nonexclusive surface easement over the **Access Easement Area** for pedestrian and vehicular ingress and egress to and from the Historic Site and the roadway presently known as "Highway 79." The foregoing easement shall be for use by the Owners, occupants and invitees of the Historic Site. Grantor will not alter the location of the ingress and egress routes within the Easement Area in any manner that would have a material, adverse effect on access to and from the Historic Site and Highway 79.

2. Grant of Parking Easement. Grantor hereby grants to Grantee, for the benefit of the Historic Site, a perpetual, appurtenant and nonexclusive surface easement, over the Parking Easement Area for the parking of that number of vehicles necessary to satisfy the minimum governmental parking requirements for the gross leasable area constructed from time to time upon the Historic Site (but in no event more than the maximum gross leasable area permitted in

Section 10 below), after taking into account all parking spaces located upon the Historic Site, but in no event shall the number of parking spaces permitted to be used by the Historic Site cause the Shopping Center Site to be in violation of any governmental parking requirements or any other agreement, including any lease, to which Grantor is bound. The foregoing easement shall be for use by the Owners, occupants and invitees of the Historic Site.

3. Grant of Utility Easement. Grantor hereby grants to Grantee, for the benefit of the Historic Site, a perpetual, appurtenant and non-exclusive easement over the Easement Area to install, maintain, repair and replace underground utility lines servicing the Historic Site. The location of all utility lines installed by or for Grantee within the Easement Area shall be subject to the prior written approval of Grantor. Grantee shall give Grantor at least thirty (30) days prior written notice of any installation, maintenance, repair or replacement of any utility lines. Grantee shall perform all work in such a manner as to cause as little disturbance with Grantor's and others' use of the Easement Area as practicable and in accordance with a schedule approved by Grantor. All such work shall be undertaken at Grantee's sole cost and expense, and Grantee shall promptly repair, replace or rebuild any part of the Easement Area which may be destroyed or become damaged, worn or dilapidated in the process of such installation, maintenance, repair or replacement. Grantor shall have the right, at Grantor's sole cost and expense, to relocate any utility line installed within the Easement Area by or for Grantee upon giving Grantee at least thirty (30) days prior written notice thereof, provided that such relocation does not interfere with or diminish the utility services to Grantee (however, temporary interferences with or diminutions in services may be permitted if they occur during Grantee's non-business hours and are coordinated in advance with Grantee).

4. Sign Easement. Subject to Grantor's receipt of the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) (the "Sign Easement Consideration"), Grantor hereby grants to Grantee, for the benefit of the Historic Site, a perpetual, appurtenant and exclusive easement over that portion of Parcel A of Lot Line Adjustment No. 4265, recorded September 6, 2000 as Instrument No. 2000-350018 in the Riverside County Recorder's Office ("Parcel A") upon which the Historic Monument Sign (as depicted on Exhibit "E" attached hereto) is located, together with the non-exclusive right of ingress and egress thereto over the common areas of Parcel A. If Grantor has not received the Sign Easement Consideration by the date Grantee completes its improvements to the Historic Site, Grantor may at any time thereafter and prior to receiving the Sign Easement Consideration, give Grantee written notice thereof, and if Grantee fails to pay the Sign Easement Consideration to Grantor within thirty (30) days following Grantee's receipt of such notice, Grantor may terminate the easement established under this Section 4 by recording a supplement to this Agreement at any time thereafter and prior to receiving the Sign Easement Consideration. The Historic Monument Sign may only be used by Grantee to identify the name of the Historic Site and the names of up to three (3) occupants of the Historic Site. All alterations to the Historic Monument Sign, and the design and content of all signage thereon, shall be subject to Grantor's approval in accordance with the provisions of Section 11 below, as if the Historic Monument Sign were a portion of the Historic Site. All work to the Historic Monument Sign shall be at Grantee's sole cost and expense, and Grantee shall promptly repair any part of Parcel A which may be destroyed or become damaged, worn or dilapidated in the process of such work. Grantee shall maintain the Historic Monument Sign and all signage thereon in good condition and repair. Grantor shall have the right, at Grantor's sole

cost and expense, to relocate the Historic Monument Sign and the easement therefor from time to time provided that the new location provides comparable visibility from Highway 79.

5. Maintenance of Easement Area. Grantor shall operate and maintain the Easement Area in a good and clean state of condition and repair, including, without limitation, insuring, lighting and resurfacing as and when necessary. The Easement Area shall at all times be subject to the exclusive control and management of Grantor. Grantor shall have the right to close all or any portion of the Easement Area to such extent as may, in the opinion of Grantor's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; and to do and perform such other acts in and to the Easement Area and improvements, and/or revise and develop the same, as Grantor shall determine to be advisable, with a view to the improvement of the convenience and use thereof by the tenants of the Shopping Center Site and their customers, provided adequate access to and parking for the Historic Site, as required by Sections 1 and 2 above, are maintained. Grantee shall, within thirty (30) days following receipt of an invoice therefor, reimburse Grantor for the Prorata Share of CAM, commencing upon the date the first occupant of the Historic Site opens for business to the public. Grantor may elect to bill Grantee quarterly estimates of CAM, with an annual reconciliation of actual CAM. In such case, Grantee shall pay such quarterly estimated payments on the first day of each calendar quarter. The "Prorata Share" means a fraction, the numerator of which is the gross leasable area on the Historic Site, and the denominator of which is the total gross leasable area on the Historic Site and the Shopping Center Site. "CAM" means the total cost and expense incurred in operating, managing, maintaining, repairing, modifying, renovating and replacing the Easement Area, including, without limitation, the sprinkler system, utility lines (other than those referred to in Section 3 above), resurfacing or patching parking areas, line painting, sidewalks and curbs, security and traffic control, gardening, watering and landscaping, lighting (including lighting repairs), utilities, drainage, rubbish and other refuse, including any required recycling costs, costs to remedy and/or comply with governmental matters, repair or installation of equipment for energy-saving or safety purposes, cost of maintenance personnel, capital expenditures, insurance (which shall include public liability and umbrella insurance, All Risk coverage, including terrorism, flood, earthquake and any other coverage deemed necessary by Grantor provided such other coverage is typically maintained by institutional owners of similar shopping centers in Southern California), and such other items of cost and expense which relate to the proper maintenance and operation of the Easement Area, real property taxes and assessments on the Easement Area, plus ten percent (10%) of all of the foregoing costs to cover Grantor's administrative costs. Notwithstanding the foregoing, capital expenditures may only be included in CAM with respect to expenditures that are (a) intended as labor-saving devices or to effect other economies in the operation or maintenance of the Easement Area, (b) required by governmental law or regulation or (c) for the refurbishment or replacement of Easement Area improvements where repair is no longer feasible or practical; provided, however, costs of replacing the parking lots and driveways may not be included within CAM more frequently than once every fifteen (15) years and shall be amortized over three (3) years to the extent such costs exceed Fifty Thousand Dollars (\$50,000.00) (in 2006 Dollars). Real property taxes and assessments on the Easement Area shall be based on the land value of the Easement Area. Accordingly, if the tax parcel(s) within which the Easement Area is located contain(s) any buildings, then the value of the buildings and the value of the land underlying the Buildings shall be excluded from CAM. All sums payable pursuant to this Section 5 or Section 21 that are not paid by the due date thereof shall bear interest at the lesser of (i) the prime or reference rate

announced from time to time by Bank of America (or its successor) plus three (3) percentage points or (ii) the maximum rate allowed by law. Reference herein to "2006 Dollars" means an amount equal to the stated sum multiplied by a fraction, the numerator of which is the Consumer Price Index, All Urban Consumers, U.S. Cities Average (1982-84=100) ("Index") for the month that is two months prior to the month for which the determination is made, and the denominator of which is the Index for the month of October 2006.

6. Use of Easement Area. Grantee, for itself and on behalf of its occupants and invitees, agrees to abide by the reasonable rules and regulations adopted from time to time by Grantor for the use of the Easement Area, which may include, without limitation, the designation of the location of the parking spaces to which Grantee is entitled pursuant to Section 2 above, provided that said locations provide reasonably convenient access for the customers or invitees of Grantee or Grantee's tenants. Grantee shall cause its employees and the employees of the occupants of the Historic Parcel to park in the area identified on Exhibit "C" as "Employee Parking." Grantee acknowledges that if Grantor provides security officers for the Easement Area, Grantor does not represent, guarantee or assume responsibility that Grantee or its occupants or invitees will be secure from any claims relating to such security officers or the tortious or criminal acts of any other person. Grantor shall have no obligation to hire, maintain or provide such services, which may be withdrawn or changed at any time with or without notice to Grantee or any other person and without liability to Grantor.

7. Insurance. Grantee shall keep or cause to be kept in full force and effect a policy of commercial general liability insurance with a combined single limit of not less than \$2,000,000 (or such additional amount as Grantor may from time to time reasonably designate) insuring against any and all liability related to the use of the Easement Area by Grantee and its occupants and invitees. Such insurance shall include a contractual liability endorsement insuring Grantee's indemnity obligations under Section 8 below and shall name Grantor and Grantor's lender as additional insureds. Grantee shall, annually or within ten (10) days following any written request therefor by Grantor, deliver to Grantor, a certificate evidencing the existence of such insurance and evidence that the premiums therefor have been paid. Each such policy shall contain a provision requiring that at least thirty (30) days' written notice will be given to Grantor prior to any cancellation or reduction in such coverage. Grantor and Grantee agree to have their respective insurance companies issuing property damage insurance waive any rights of subrogation that such companies may have against Grantor or Grantee, as the case may be, and Grantor and Grantee hereby waive any right that either may have against the other on account of any loss or damage if such loss or damage is insurable under an "all risks" or "special form" property insurance policy; provided, however, this waiver shall not apply to deductible amounts not exceeding \$10,000.00 (in 2006 Dollars).

8. Indemnity. Grantee shall indemnify, defend, protect and hold Grantor harmless from and against any and all claims, damages, losses, costs, expenses and liabilities (including reasonable attorneys' fees) arising from or related to the use of the Easement Area or the easements granted in Sections 3 and 4 above by Grantee, except to the extent arising from the negligence or willful misconduct of Grantor. Grantor shall indemnify, defend, protect and hold Grantee harmless from and against any and all claims, damages, losses, costs, expenses and liabilities (including reasonable attorneys' fees) arising from or related to occurrences in the Easement Area to the extent caused by the negligence or willful misconduct of Grantor.

9. Use Restrictions on Historic Site. The Historic Site shall be subject to, and Grantee shall not permit the Historic Site to be in violation of, the following use restrictions:

(a) General Use Restrictions. The Historic Site shall only be used for a historic site museum, historic society offices and uses ancillary thereto, and for such other commercial purposes of the type normally found in a first-class retail shopping center. No part of the Historic Site shall be used for residential purposes or as a theater, auditorium, meeting hall, school, church or other place of public assembly (with the exception of those outdoor events sponsored by or affiliated with local historic groups to which the County of Riverside requires Grantee to permit on the Historic Site), "flea market," gymnasium, health club, dance hall, billiard or pool hall, massage parlor, video game arcade, bowling alley, skating rink, car wash, night club or other place of recreation or amusement (with the exception of those outdoor events sponsored by or affiliated with local historic groups to which the County of Riverside requires Grantee to permit on the Historic Site), facility for the sale, display, leasing or repair of motor vehicles, adult products, adult books or adult audio/video products (which are defined as stores in which at least ten percent (10%) of the inventory is not for sale or rental to children under seventeen (17) years old because such inventory explicitly deals with or depicts human sexuality), or any business which derives fifty percent (50%) or more of its gross sales volume serving or selling alcoholic beverages, with the exception of a wine tasting parlor. Further, no High Intensity Parking User shall be permitted in the Historic Site, except as otherwise permitted under Sections 9(b) and 9(d) below, and offices shall not exceed twenty five percent (25%) of the gross leasable area in the Historic Site. A "High Intensity Parking User" is an occupant whose use requires more than five (5) parking spaces per one thousand (1,000) square feet of leasable area in accordance with either customary shopping center practices or governmental regulations, whichever has a higher parking requirement.

Pursuant to that certain Lease between Grantor and Ross Stores, Inc. ("Ross"), any office use at the Property is limited to "retail offices" which are defined as offices open for walk-in customers (i.e., customers without appointments), such as real estate brokerage offices, banks, and consumer loan finance and/or credit offices. Accordingly, office use at the Historic Site shall be limited to retail offices unless otherwise permitted by Ross. If Grantee desires to have non-retail offices at the Historic Site, Grantor agrees to reasonably cooperate with Grantee in seeking to obtain Ross's consent thereto.

(b) Restaurant Restrictions. There shall be no more than two (2) restaurants on the Historic Site, and any restaurant on the Historic Site shall be located on the west half of the Historic Site and shall not exceed five thousand (5,000) square feet of interior space.

(c) Specific Use Restrictions. The Historic Site may not be used for any use identified on Exhibit "D" attached hereto.

(d) Conditional Use Permits. Grantor agrees not to object to the issuance of any conditional use permit or license necessary for the operation of up to two (2) sit-down restaurants and a wine tasting parlor at the Historic Site provided such restaurants and wine parlor comply with all requirements under this Agreement and such conditional use permits

and licenses do not impose any unacceptable restrictions, limitations or obligations upon Grantor or the Shopping Center Site, as determined in Grantor's good faith business judgment.

10. Limitation on Height and Leasable Area at the Historic Site. In no event shall (i) the gross leasable area located on the Historic Site exceed 30,000 square feet, not including outdoor spaces, or (ii) the height of any improvement at the Historic Site exceed thirty five (35) feet above the finished grade existing as of the date hereof.

11. Alterations to Historic Site. Grantee shall not construct or install (or permit the construction or installation of) any improvements on the Historic Site or any landscaping within the "Landscape Control Zone" identified on Exhibit "C" attached hereto, or any alterations to such improvements or landscaping, without obtaining Grantor's prior written approval, which shall not be unreasonably denied; provided, however, Grantor's consent shall not be required for interior improvements or alterations that are not visible from the exterior of the buildings located upon the Historic Site, or alterations required in order to comply with legal requirements, including ADA or subsequently enacted ordinances or laws. In addition, and without limiting Grantor's approval rights pursuant to the preceding sentence, Grantee shall not install (or permit the installation of) any tree on the Historic Site that is located within twenty (20) feet of any concrete or asphalt on the Shopping Center Site or the Existing Driveways (as defined in Section 22 below) that is of a type susceptible to causing damage to concrete or asphalt, as determined in Grantor's reasonable judgment. Upon receipt of plans and drawings from Grantee, Grantor shall have fifteen (15) business days to approve said plans and drawings. If Grantee does not receive written confirmation within those fifteen (15) business days, Grantee may give Grantor an additional written notice requesting Grantor's approval of said plans and drawings. If such additional notice informs Grantor that the failure of Grantor to respond to Grantee's request within five (5) business days following receipt of such additional notice will constitute Grantor's approval of said plans and drawings, then the failure of Grantor to respond within such five (5) business day period shall constitute Grantor's approval of said plans and drawings. Grantee shall submit plans and drawings to Grantor prior to submission of plans and drawings to the County of Riverside and the City of Temecula for entitlement approvals, and shall be given the same period of time as provided above to review said plans and drawings. Grantee shall make its reasonable effort to incorporate Grantor's requested changes, if any, to the plans and drawings. However, if the County and/or City governing agencies place requirements upon Grantee for certain design or construction alterations, and a conflict exists between said requirements and the requests or requirements made by Grantor, then the design or construction alterations requested or required by the governmental agencies shall supercede any design or construction alterations requested by Grantee. All construction staging and storage areas shall be located on the south side of the Historic Site, and all such staging and storage areas, as well as the improvements under construction or alteration, shall be enclosed by barricades acceptable to Grantor.

12. Right of First Offer

If Grantee intends to sell the Historic Site or intends to accept an offer to purchase the Historic Site made by a third party unaffiliated with Grantee and other than a foreclosure or deed in lieu of foreclosure, Grantee shall first provide Grantor a statement of the economic terms (if Grantee has not yet received an offer to purchase the Historic Site) or a copy of the offer from a third party it intends to accept (such statement or offer hereinafter referred to as the "Sale

Offer"), together with a preliminary title report regarding the Historic Site prepared by a title company reasonably selected by Grantee and dated no earlier than thirty (30) days prior to the date of submission (the "PTR"). If Grantee ground leases the Historic Site, then all references in this Section 12 to "purchase" or "sell" shall include an assignment of the leasehold estate or a subletting of all or substantially all of the Historic Site. The Sale Offer need not be a binding agreement or offer, but may be a term sheet or letter of intent which specifies a purchase price, payment terms and amount of deposit. Notwithstanding the preceding sentence, this Section 12 shall not be construed as a prohibition against or limitation on the Grantee's right to make a collateral or actual assignment of the rents in connection with any financing arrangement with any lender, nor shall it limit any lender's right to foreclose judicially or non-judicially (or by deed in lieu of foreclosure) on any trust deed encumbering the Historic Site or any part thereof. By giving Grantee unqualified written acceptance (the "ROFO Acceptance Notice") within ten (10) business days after the date Grantee has provided Grantor with a copy of the Sale Offer (the "ROFO Notice Date"), Grantor shall have the right to purchase the Historic Site for the purchase price specified in the Sale Offer (the "ROFO Price") and on the same payment terms specified in the Sale Offer, subject to the following provisions:

- (i) The Historic Site shall be sold "AS-IS, WHERE IS" without representation or warranty, except that Grantee shall within fifteen (15) days after the ROFO Acceptance Notice is given (i) disclose (to the best of its actual knowledge without duty to investigate) in writing the existence of any Hazardous Substance in, on or under the Historic Site and construction defects in the Historic Site, (ii) provide Grantor with a list of all known leases in effect with respect to the Historic Site, and (iii) provide Grantor with a list of all contracts (other than those described in the PTR) which will bind the Historic Site after the close of escrow and which are not cancelable on thirty (30) days' written notice.
- (ii) Grantor shall have thirty (30) days from the ROFO Acceptance Notice (the "Contingency Period") to inspect all information regarding the Historic Site on reasonable prior notice to Grantee, provided Grantor shall indemnify Grantee from and against any and all costs, liabilities, expenses (including court costs and attorneys' fees), claims and damages arising out of Grantor's inspection and shall repair all damages caused by Grantor's inspection.
- (iii) Rents, taxes and utilities will be prorated. The parties will reasonably cooperate to collect and pay Grantee rents attributable to time periods prior to close of escrow.
- (iv) The sale shall be closed through an escrow at Old Republic Title Company or other escrow company reasonably selected by Grantee ("Escrow Holder").
- (v) GRANTOR SHALL MAKE A DEPOSIT (the "DEPOSIT") WITH THE ESCROW HOLDER IN THE AMOUNT SPECIFIED IN THE OFFER WITHIN FIVE (5) BUSINESS DAYS AFTER GIVING THE ROFO ACCEPTANCE NOTICE. THE DEPOSIT SHALL BE REFUNDABLE DURING THE CONTINGENCY PERIOD, BUT SHALL THEREAFTER CONSTITUTE LIQUIDATED DAMAGES FOR THE BREACH OF GRANTOR'S COMMITMENT TO PURCHASE THE HISTORIC SITE, WITHOUT, HOWEVER, LIQUIDATING ANY INDEMNITY OBLIGATION OF GRANTOR. THE PARTIES SHALL EXECUTE REASONABLE SUPPLEMENTARY ESCROW INSTRUCTIONS WHICH DO NOT CONFLICT WITH THIS SECTION 12.

GVT

Grantee's Initials

JV

Grantor's Initials

(vi) During the Contingency Period, Grantor may elect to terminate its right and obligation to purchase the Historic Site by giving Grantee and Escrow Holder written notice prior to the end of the Contingency Period, and in such event Grantor shall be entitled to a return of the Deposit after Escrow Holder has subtracted all its fees. If Grantor terminates its right or defaults after the Contingency Period, Grantor's rights under this Section 12 shall expire.

(vii) Close of escrow shall take place within sixty (60) days after the ROFO Acceptance Notice is given. At closing, Grantee shall deposit into escrow an executed and acknowledged grant deed conveying the Historic Site and an executed and acknowledged assignment and assumption of leases and contracts assigning all leases and contracts affecting the Historic Site to Grantor, and Grantor shall deposit an executed and acknowledged counterpart of such assignment and assumption.

(viii) At closing, Grantee shall pay the documentary transfer tax and the cost of a CLTA owner's title insurance policy to be issued to Grantor at close of escrow, unless the Sale Offer specifies a different tax and title policy premium responsibility. Grantee and Grantor shall each pay one-half of the Escrow Holder's fees and costs. Grantor shall pay all other fees and costs.

(ix) The title policy to be issued at close of escrow may show on Schedule B all exceptions shown on the PTR, except loans secured by trust deeds not to be assumed pursuant to the terms of the Sale Offer.

(x) All risk of loss shall be Grantee's until the closing; thereafter, the risk of loss shall be Grantor's.

(xi) Failure to Exercise. If Grantor fails to timely give an unqualified ROFO Acceptance Notice, Grantee may proceed with the sale of the Historic Site based upon the ROFO Price and the payment terms specified in the Sale Offer. In the event the sale of the Historic Site is completed within one year after the ROFO Notice Date, then Grantor's rights under this Section 12 shall expire. If the Sale Offer is not completed within one year after the ROFO Notice Date, then before consummating a sale on the terms contained in the Sale Offer, Grantee shall give Grantor a new Sale Offer notice, and the terms of this Section 12 shall apply. If Grantee desires to sell the Historic Site for a purchase price less than 95% of the ROFO Price or for payment terms significantly less advantageous to Grantee, Grantee shall give Grantor a new notice with the revised Sale Offer, and the terms of this Section 12 shall apply.

(xii) Grantor's Nominee. Grantor may assign its rights under this Section 12 to a nominee.

13. Notices. Any notice, request, demand, approval, consent or offer (collectively or individually, "Notices") given under this Agreement shall, except as otherwise expressly

provided herein, be in writing and shall be given (i) by delivery in hand to the addressee, (ii) by facsimile transmission to the other party (so long as a copy is sent on the same date in the manner provided in subpart (iv) following), (iii) by United States Registered or Certified Mail, postage prepaid, or (iv) by nationally recognized overnight carrier, to the other party as follows:

Grantor: Redhawk Towne Center II, LLC
c/o Kimco Realty Corporation
1621-B Melrose Drive
Vista, CA 92081
Attn: Regional General Counsel

Copy: Kimco Realty Corporation
3333 New Hyde Park Road
New Hyde Park, NY 11042
Attn: Legal Department

Grantee: Arteco Partners
281 S Thomas St., Ste. 504
Pomona, CA 91766
Attn: Gerald Tessier
Fax: (909) 623-2082

Copy: Fragner Seifert Pace & Winograd, LLP
300 South Grand Ave., 14th Floor
Los Angeles, CA 90071
Telephone number: (213) 687-2320
Facsimile transmission number: (310) 496-2887

or at such other address as the party to be notified may have designated hereafter by notice in writing to the other parties to this Agreement. Notices given pursuant to clauses (i) and (iv) shall be deemed given when received, if received on business days during normal business hours; otherwise on the next business day. Notices given pursuant to clause (ii) shall be deemed given at the time of sending and receipt of a confirmation of receipt by the sender, if the same are sent and received on a business day during normal business hours; and otherwise on the next business day. Notices given pursuant to clause (iii) shall be deemed given the earlier of when received or three (3) business days after being deposited in the United States Mails, postage prepaid, return receipt requested.

14. No Dedication. The provisions of this Agreement shall not be deemed to constitute a dedication for public use nor create any rights in the general public.

15. Covenants Running With The Land. This Agreement shall bind and inure to the benefit of each present and successor Owner of the Property, or any portion thereof; provided, however, each Owner of a portion of the Property shall only be bound by the terms of this Agreement during such Owner's period of ownership, except that each such Owner shall continue to be bound by obligations pertaining to matters occurring or arising during such Owner's period of ownership.

16. Governing Law. This Agreement shall be governed by and interpreted in accordance with California law.

17. Severability. If any one or more of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid, illegal and unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired in any way.

18. Attorneys' Fees. If any Owner of the Property brings any action or proceeding against another Owner for the adjudication of any rights under this Agreement, the prevailing owner shall be entitled to recover from the other Owner all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing Owner as determined by the court.

19. Termination; Amendment. This Agreement may be amended or terminated only by a written instrument signed and acknowledged by all of the Owners.

20. Estoppel Certificates. 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).


21. Assessment District No. 159. The Historic Site is currently subject to assessments (the "Historic Site Assessments") pursuant to Assessment District No. 159 ("AD 159"). If AD 159 is released from the Historic Site and the Historic Site Assessments are thereafter allocated to the Shopping Center Site, Grantee agrees to reimburse Grantor for all Historic Site Assessments that are so allocated to the Shopping Center Site within thirty (30) days following receipt of evidence of Grantor's payment of the same.

22. Existing Driveways. Grantee acknowledges that the driveways along the northside of the Historic Site and the southside of the Historic Site identified on Exhibit C attached hereto as the "Access Driveway" and the "Fire Driveway" (the "Existing Driveways") are "Common Areas" under that certain Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements recorded on July 30, 2002, in the Riverside County Recorder's Office as Instrument No. 2002-414853, as amended. Except as provided below, Grantee shall not alter or obstruct the Existing Driveways. Grantor shall maintain the Existing Driveways in accordance with the provisions of Section 5 above and the cost thereof (subject to the limitations set forth in Section 5 above) shall be included within CAM. Subject to approval from the applicable governing authorities, Grantor or Grantee shall have the right to place barriers at each entrance point of the Fire Driveway onto the Historic Site in order to prohibit its use by persons other than fire department personnel and personnel authorized by Grantor or Grantee. Grantor and Grantee shall cooperate with each other in connection with the installation and operation of any such barrier in order to permit fire department personnel and each party's authorized personnel to have access to the Fire Driveway.


IN WITNESS WHEREOF, Grantee and Grantor have executed this Agreement as of the date first above written.

Grantor: REDHAWK TOWNE CENTER II, LLC, a Delaware limited liability company

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

By: 
Name: John Visconsi
Title: Vice President

Grantee: VAIL HEADQUARTERS, LLC, a California limited liability company

By: 
Name: Gerald V Tessier
Title: Manager

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

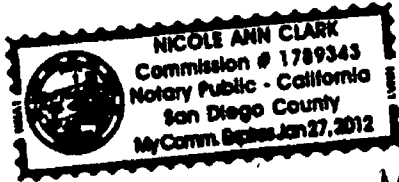
On Dec. 15 2008, before me, Nicole Ann Clark, a Notary Public in and for said state, personally appeared John Visconti, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

N Clark

Notary Public in and for said State



Nicole Ann Clark
#1789343
Exp. Jan 27, 2012

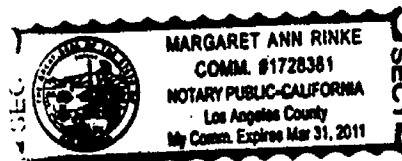
STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On December 17, 2008, before me, Margaret Ann Rinke, a Notary Public in and for said state, personally appeared Gerald V. Tessier, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Margaret Ann Rinke
Notary Public in and for said State



Margaret Ann Rinke
#1728381
Exp. Mar 31, 2011
Los Angeles County


LENDER'S CONSENT AND SUBORDINATION

The undersigned, as the beneficiary under that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated April 13, 2004, recorded on April 13, 2004, in the Official Records of Riverside County as Instrument No. 2004-0266148 (the "Deed of Trust"), hereby consents and subordinates the lien of the Deed of Trust to the Amended and Restated Nonexclusive Parking and Access Easement Agreement, together with Covenants, Conditions and Restrictions, to which this Lender's Consent and Subordination is attached.

Executed as of December 16, 2008

BANK OF AMERICA, NATIONAL ASSOCIATION, AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, as Trustee for Bear Stearns Commercial Mortgage Securities Inc., Commercial Mortgage Pass-Through Certificates Series 2004-PWR4

By: WELLS FARGO BANK, NATIONAL ASSOCIATION, as Master Servicer under the Pooling and Servicing Agreement dated June 1, 2004, by and between Bear Stearns Commercial Mortgage Securities Inc., Prudential Asset Resources, Inc., Wells Fargo Bank, National Association, Centerline Servicing Inc. (f/k/a Arcap Servicing, Inc.), Bank of America, National Association, as successor by merger to LaSalle Bank National Association, ABN AMRO Bank N.V. and The Prudential Insurance Company of America

By: 
Name: Paula S. Norris
Its: Assistant Vice President

CALIFORNIA NOTARY ACKNOWLEDGEMENT

State of California)
)ss
County of Contra Costa)

On December 16, 2008 before me, Carol L. Morris, Notary Public, personally appeared Paula S. Norris, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Handwritten signature]

1800088
Exp. Jun 2, 2012

EXHIBIT "A"

Legal Description of Shopping Center Site

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL D: (960-010-025)

PARCEL "D" OF LOT LINE ADJUSTMENT NO. 4265, RECORDED SEPTEMBER 6, 2000 AS INSTRUMENT NO. 2000-350018 OF OFFICIAL RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOT 4 OF TRACT 23172, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 251, PAGES 94 THROUGH 99, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF PROPERTY "A" AS SHOWN ON LOT LINE ADJUSTMENT NO. 3942, RECORDED JULY 29, 1997, AS INSTRUMENT NO. 352794, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE NORTHEASTERLY ALONG THE NORTHERLY LINE OF TRACT 23172, SAID LINE BEING ALSO THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 79 (142.00 FEET WIDE), NORTH 73° 22' 11" EAST, A DISTANCE OF 646.54 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHERLY LINE OF TRACT 23172 NORTH 73° 22' 11" EAST, A DISTANCE OF 186.17 FEET;

THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 217.21 FEET;

THENCE SOUTH 73° 22' 11" WEST, A DISTANCE OF 186.17 FEET;

THENCE NORTH 16° 37' 49" WEST, A DISTANCE OF 217.21 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL E: (960-010-026)

PARCEL "E" OF LOT LINE ADJUSTMENT NO. 4265, RECORDED SEPTEMBER 6, 2000 AS INSTRUMENT NO. 2000-350018 OF OFFICIAL RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOT 9 OF TRACT 23172, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 251, PAGES 94 THROUGH 99, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BEGINNING AT THE NORTHEAST CORNER OF PROPERTY "A" AS SHOWN ON LOT LINE ADJUSTMENT NO. 3942, RECORDED JULY 29, 1997, AS INSTRUMENT NO. 352794, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE NORTHEASTERLY ALONG THE NORTHERLY LINE OF TRACT 23172, SAID LINE BEING THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 79 (142.00 FEET WIDE). NORTH 73° 22' 11" EAST, A DISTANCE OF 832.71 FEET; TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHERLY LINE OF TRACT 23172 NORTH 73° 22' 11" EAST, A DISTANCE OF 186.87 FEET;

THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 362.21 FEET;

THENCE SOUTH 73° 22' 11" WEST, A DISTANCE OF 186.87 FEET;

THENCE NORTH 16° 37' 49" WEST, A DISTANCE OF 362.21 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL H: (960-010-045)

PARCEL "H" OF LOT LINE ADJUSTMENT NO. 4512, RECORDED SEPTEMBER 16, 2002 AS INSTRUMENT NO. 2002-513211 OF OFFICIAL RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOTS 3, 4, 7, 8 AND 9 OF TRACT 23172, AS RECORDED IN BOOK 251 OF MAPS AT PAGES 94 THROUGH 99, RECORDS OF RIVERSIDE COUNTY, CA.

ALSO BEING A PORTION OF PROPERTY "F", "G", "H" AND "I" AS SHOWN ON LOT LINE ADJUSTMENT 4265 RECORDED SEPTEMBER 6, 2000, AS INSTRUMENT NO. 2000-350018, RECORDS OF RIVERSIDE COUNTY, CA., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PROPERTY "C" AS SHOWN ON LOT LINE ADJUSTMENT 4265 RECORDED SEPTEMBER 6, 2000, AS INSTRUMENT NO. 2000-350018, RECORDS OF RIVERSIDE COUNTY, CA.,

THENCE NORTHEASTERLY ALONG THE NORTHERLY LINE OF TRACT 23172, SAID LINE BEING THE SOUTHERLY RIGHT OF WAY OF STATE HIGHWAY 79 (142 FEET WIDE) NORTH 73° 22'11" EAST, A DISTANCE OF 88.50 FEET;

THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 217.21 FEET;

THENCE NORTH 73° 22' 11" EAST, A DISTANCE OF 186.17 FEET;

THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 145.00 FEET;

THENCE NORTH 73° 22' 11" EAST, A DISTANCE OF 186.87 FEET;