

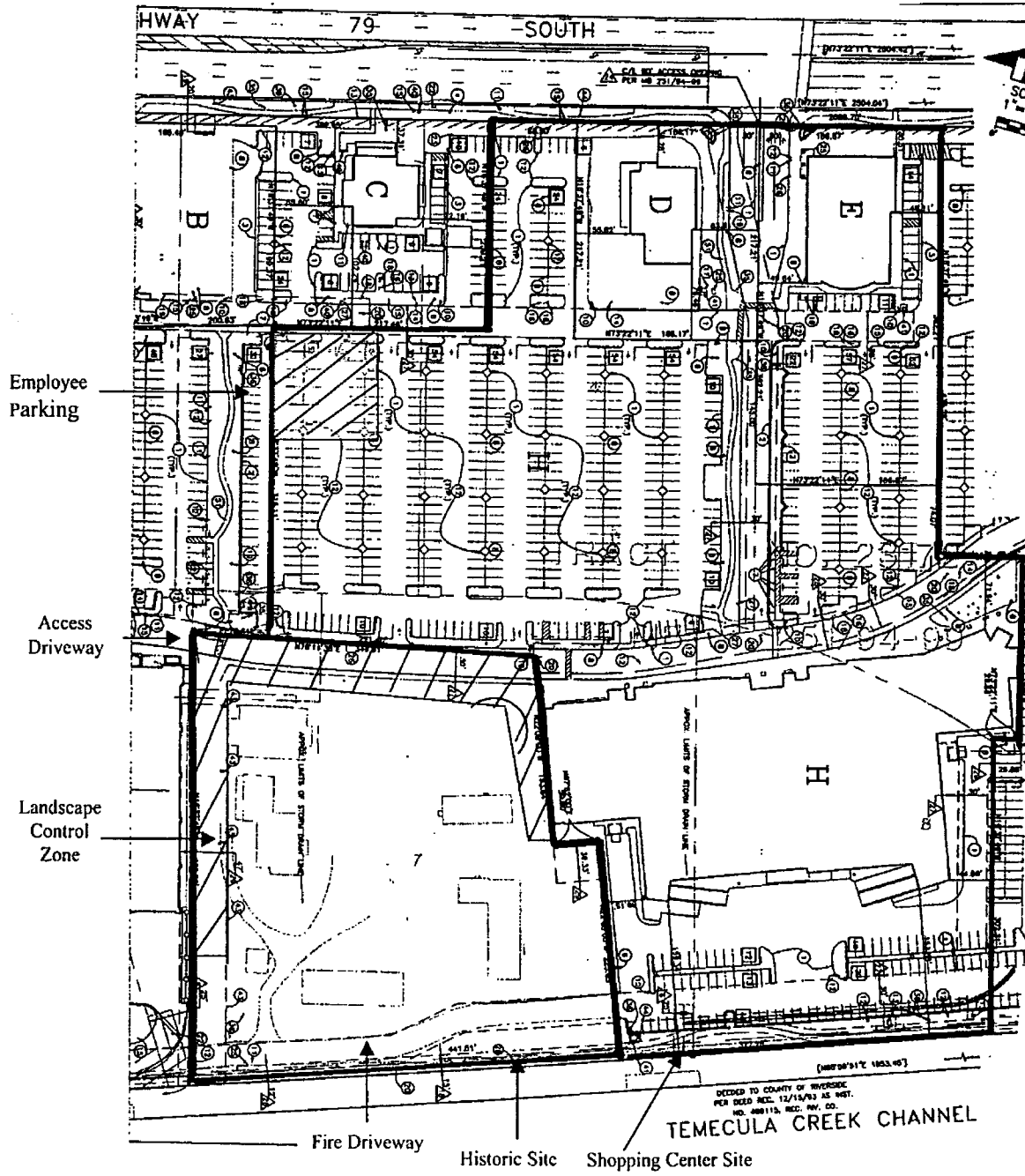
THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 74.07 FEET;
THENCE NORTH 73° 22' 11" EAST, A DISTANCE OF 85.89 FEET;
THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 183.73 FEET;
THENCE SOUTH 73° 22' 11" WEST, A DISTANCE OF 26.86 FEET;
THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 302.31 FEET TO THE SOUTHERLY
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.

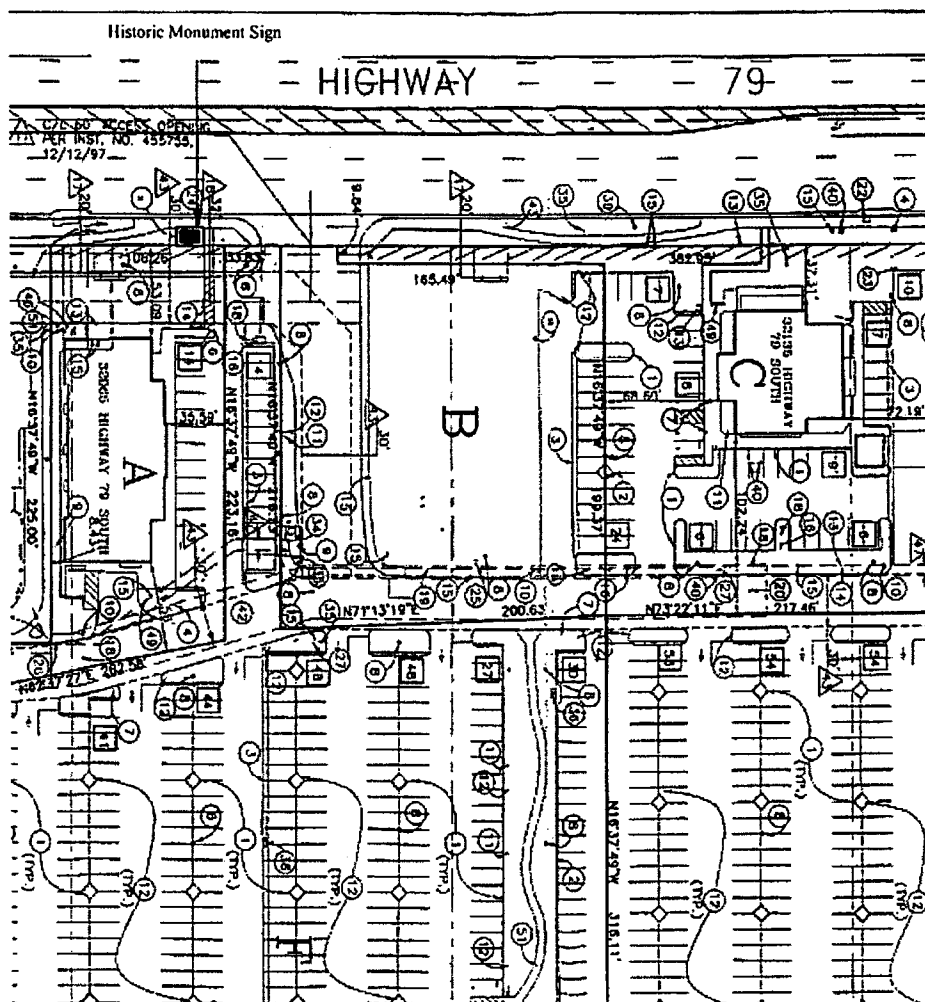


EXHIBIT "D"

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**

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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 or 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

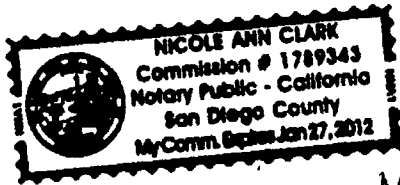
By: Gerald Tessier
Name: Gerald Tessier
Title: Manager

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

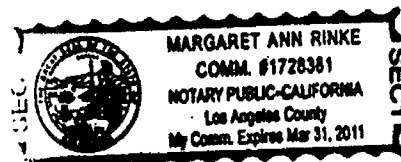
STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

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.



lg

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;

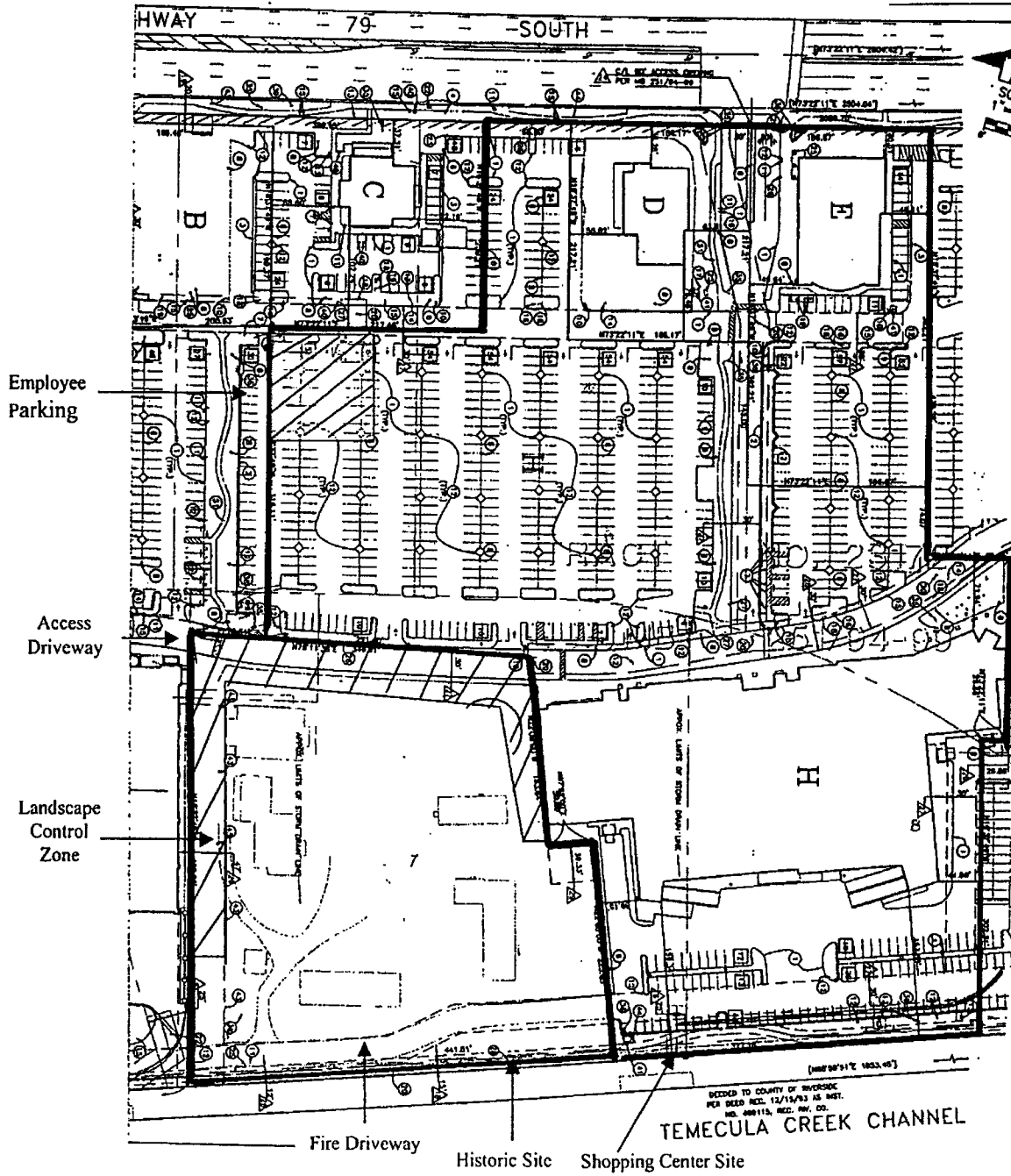
THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 74.07 FEET;
THENCE NORTH 73° 22' 11" EAST, A DISTANCE OF 85.89 FEET;
THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 183.73 FEET;
THENCE SOUTH 73° 22' 11" WEST, A DISTANCE OF 26.86 FEET;
THENCE SOUTH 16° 37' 49" EAST, A DISTANCE OF 302.31 FEET TO THE SOUTHERLY
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

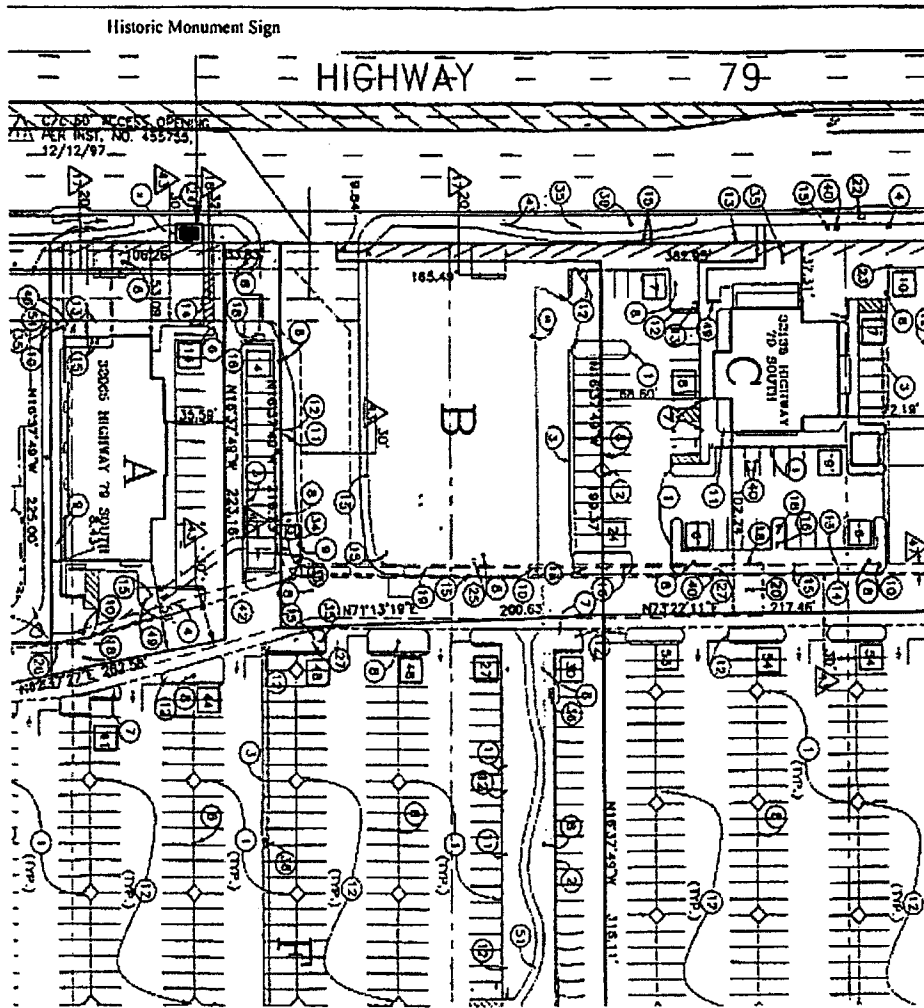
- Any business that sells, rents and/or distributes prerecorded audio and/or video products, audio and/or video software or any items which are a technological evolution of such audio and/or video products as its primary use.
- The operation of an automatic teller machine.
- Any business using, occupying 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.





Original Negative Declaration/Notice of Determination was routed to County Clerks for posting on.

11/7/16
Date

kb
Initial

NOTICE OF EXEMPTION

September 19, 2016

Project Name: Vail Ranch – Developer Lease

Project Number: FM04217200205

Project Location: south of Temecula Valley Parkway, west of Redhawk Parkway, Temecula, California; Assessor’s Parcel Number (APN) 960-010-044 (See attached exhibit)

Description of Project: The County of Riverside (County) previously approved and executed an Offer to Dedicate and Lease Agreement (May 13, 2003) between the County and Redhawk Towne Center, LLC (Lease Agreement) to restore, lease and maintain the Vail Ranch Historic Site. The Historic Site is comprised of six historic structures on approximately four acres of a larger site that was approved for 400,000 square feet of retail space that was subsequently developed. The development project was deemed by the City of Temecula Planning Commission to be categorically exempt from further environmental review in 2008.

Arteco Partners was selected to complete the restoration and re-use of the historic site, based on extensive experience on adaptive re-use for commercial and residential projects in the Inland Empire. Vail Headquarters, LLC (VHQ), a limited liability corporation formed by the members of Arteco Partners, assumed the terms and conditions agreed to in the original agreement and the subsequent amendments in 2007, 2008, and 2009. The Real Estate Division of the Economic Development Agency has confirmed that all required restoration improvements have been completed as agreed. Following the completion of those improvements, the Historic Site Lease requires that the County accept the dedication of the four-acre historic site from VHQ while VHQ is to retain title to the restored structures throughout the term of the Developer Lease. On September 2, 2008, a document intended to be an exhibit to the Second Amendment to Offer to Dedicate and Lease was erroneously executed as the Developer Lease. The correct Developer Lease currently before the Board will operate to terminate the prior lease and to set the correct effective date for the Developer Lease concurrent with the transfer of the Historic Site to the County. The termination of the prior lease and the execution of the current Developer Lease is identified as the proposed Project under the California Environmental Quality Act (CEQA). The proposed project is a contractual obligation that involves the transfer of land and a previously approved project; no expansion or change of use will occur with the execution of the Developer Lease. No additional direct or indirect physical environmental impacts are anticipated.

Name of Public Agency Approving Project: County of Riverside, Economic Development Agency

Name of Person or Agency Carrying Out Project: County of Riverside, Economic Development Agency; Vail Headquarters, LLC.

Exempt Status: State CEQA Guidelines, Section 15301, Class 1, Existing Facilities Exemption; Section 15061(b) (3), General Rule or “Common Sense” Exemption, Codified under Title 14, Articles 5 and 19, Sections 15061 and 15300 to 15301.

11.01.16 3-8

www.rivcoeda.org

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Environmental Planning
Fair & National Date Festival
Foreign Trade
Graffiti Abatement
Parking
Project Management
Purchasing Group
Real Property
Redevelopment Agency
Workforce Development

Reasons Why Project is Exempt: The Project is exempt from the provisions of CEQA specifically by the State CEQA Guidelines as identified below. The Project will not result in any specific or general exceptions to the use of the categorical exemption as detailed under State CEQA Guidelines Section 15300.2. The Project will not cause any impacts to scenic resources, historic resources, or unique sensitive biological environments. Further, no unusual circumstances or potential cumulative impacts would occur that may reasonably create an environmental impact. The Developer Lease is not anticipated to result in any direct or reasonably foreseeable indirect physical environmental impacts.

- **Section 15301 – Class 1 Existing Facilities Exemption:** This categorical exemption includes the operation, repair, maintenance, leasing, or minor alteration of existing public or private structures or facilities, provided the exemption only involves negligible or no expansion of the previous site's use. The Project, as proposed, is limited to the termination of an existing lease and execution of the current Developer Lease. The planned use of the site would continue in the same manner as under the current lease and would not require any expansion of service or facilities; therefore, the Project is exempt as the Project meets the scope and intent of the Class 1 Exemption identified in Section 15301, Article 19, Categorical Exemptions of the CEQA Guidelines.
- **Section 15061 (b) (3) – “Common Sense” Exemption:** In accordance with CEQA, the use of the Common Sense Exemption is based on the “general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.” State CEQA Guidelines, Section 15061(b) (3). The use of this exemption is appropriate if “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” *Ibid*. This determination is an issue of fact and if sufficient evidence exists in the record that the activity cannot have a significant effect on the environment, then the exemption applies and no further evaluation under CEQA is required. See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68. The ruling in this case stated that if a project falls within a category exempt by administrative regulation or 'it can be seen with certainty that the activity in question will not have a significant effect on the environment', no further agency evaluation is required. With certainty, there is no possibility that the Project may have a significant effect on the environment. The proposed Developer Lease will not result in any direct or indirect physical environmental impacts. The planned use and operation of the facility will not change from what was originally assumed for the site and will not create any new environmental impacts to the surrounding area. No alterations and no impacts beyond the planned use of the site would occur. Therefore, in no way, would the Project as proposed have the potential to cause a significant environmental impact and the Project is exempt from further CEQA analysis.

Based upon the identified exemptions above, the County of Riverside, Economic Development Agency hereby concludes that no physical environmental impacts are anticipated to occur and the Project as proposed is exempt under CEQA. No further environmental analysis is warranted.

Signed:  Date: 9/19/16

Mike Sullivan, Senior Environmental Planner
County of Riverside, Economic Development Agency

RIVERSIDE COUNTY CLERK & RECORDER

**AUTHORIZATION
TO BILL
BY JOURNAL VOUCHER**

Project Name: Vail Ranch – Developer Lease

Accounting String: **Fund: 524830-47220-7200400000- FM04217200205**

DATE: September 19, 2016

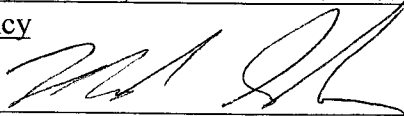
AGENCY: Riverside County Economic Development Agency

THIS AUTHORIZES THE COUNTY CLERK & RECORDER TO BILL FOR FILING AND HANDLING FEES FOR THE ACCOMPANYING DOCUMENT(S).

NUMBER OF DOCUMENTS INCLUDED: One (1)

AUTHORIZED BY: Mike Sullivan, Senior Environmental Planner, Economic Development Agency

Signature: _____



PRESENTED BY: Jose Ruiz, Real Property Agent, Economic Development Agency

-TO BE FILLED IN BY COUNTY CLERK-

ACCEPTED BY: _____

DATE: _____

RECEIPT # (S) _____



Date: September 19, 2016

To: Mary Ann Meyer, Office of the County Clerk

From: Mike Sullivan, Senior Environmental Planner, Project Management Office

Subject: **County of Riverside Economic Development Agency Project # FM04217200205**
Vail Ranch – Developer Lease Agreement

The Riverside County's Economic Development Agency's Project Management Office is requesting that you post the attached Notice of Exemption. Attached you will find an authorization to bill by journal voucher for your posting fee.

After posting, please return the document to:

Mail Stop #1330

Attention: Mike Sullivan, Senior Environmental Planner,

Economic Development Agency,

3403 10th Street, Suite 400, Riverside, CA 92501

If you have any questions, please contact Mike Sullivan at 955-8009.

Attachment

cc: file

Administration
Aviation
Business Intelligence
Cultural Services
Community Services
Custodial

Housing
Housing Authority
Information Technology
Maintenance
Marketing

Economic Development
Edward-Dean Museum
Environmental Planning
Fair & National Date Festival
Foreign Trade
Graffiti Abatement

Parking
Project Management
Purchasing Group
Real Property
Redevelopment Agency
Workforce Development