

RESOLUTION NO. 2012-129

**A RESOLUTION AUTHORIZING THE
ASSIGNMENT OF DEVELOPER BENEFITS
UNDER THE ECONOMIC INCENTIVE
AGREEMENT FOR PROPERTY COMMONLY
KNOWN AS HAWTHORN HILLS SQUARE
SHOPPING CENTER LOCATED AT THE
INTERSECTION OF ROUTE 60 AND
MILWAUKEE AVENUE**

WHEREAS, the Village of Vernon Hills entered into an Economic Incentive Agreement (“Agreement”) in 2009 with Hawthorn-Vernon Hills LLC for the property commonly known as Hawthorn Hills Square; and

WHEREAS, upon request of Hawthorn-Vernon Hills LLC the Village authorized the assignment of the Agreement to Hawthorn Hills LLC a Delaware limited liability company; and

WHEREAS, pursuant to the Agreement, Hawthorn Hills LLC has the right, pursuant to Paragraph 23 of the Agreement, to request and the Village is to reasonably consider the request to assign the Developer’s benefits to “any person or entity acquiring a landlord’s interest or an ownership interest in the DSG Store or the Additional Spaces;” and

WHEREAS, Hawthorn Hills LLC has requested that the Village approve the assignment of Developer’s benefits under the Agreement to Hawthorn Hills Square 1687, LLC, a Delaware limited liability company; and

WHEREAS, the proposed assignee shall execute an Assignment, Acceptance and Assumption Agreement agreeing to adhere to the terms and conditions of this Agreement, as they apply to said assignees, and shall submit such information, including financial information, as may be requested by the Village; and

WHEREAS, the terms and conditions of the Assignment, Acceptance and Assumption Agreement shall confirm that the assignee is acquiring a landlord’s interest or an ownership interest in the DSG Store or the Additional Spaces; and

WHEREAS, the terms and conditions of the Assignment, Acceptance and Assumption Agreement shall specify that Hawthorn-Vernon Hills, LLC and Hawthorn Hills LLC are not released of any duties under the Agreement; and

WHEREAS, the terms and conditions of the Assignment, Acceptance and Assumption Agreement shall further confirm that the Agreement provides for no benefits without proof of compliance with the Prevailing Wage Act requirements; and

WHEREAS, the terms and conditions of the Assignment, Acceptance and Assumption Agreement shall contain language regarding representations that the individual members

of all the LLCs are of a good reputation and character, and are in compliance with the Patriot Act requirements

NOW THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS, AS FOLLOWS:

That the Village President and Village Clerk are hereby authorized to execute an Assignment, Acceptance and Assumption Agreement (attached hereto as Exhibit "A") with Hawthorn Hills LLC to allow the assignment of Developer's benefits under the Agreement to Hawthorn Hills Square 1687, LLC, a Delaware limited liability company.

That the effective date of this approval of the Assignment shall be on the date that the Village provides a written letter to Hawthorn Hills Square 1687, LLC acknowledging that Hawthorn Hills Square 1687, LLC acquired a landlord's interest or an ownership interest in the DSG Store or the Additional Spaces. Such letter shall be delivered by the Village to Hawthorn Hills Square 1687 LLC within seven (7) days of receipt of proof of transfer of a landlord's interest or an ownership interest in the DSG Store or the Additional Spaces by Hawthorn Hills Square 1687 LLC.

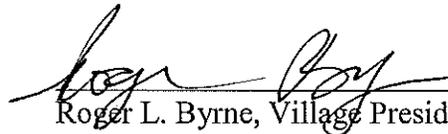
Dated the 7th day of August, 2012

Adopted by roll call vote as follows:

AYES: 5 - Koch, Williams, Hebda, Schultz, Marquardt

NAYS: 0 - None

ABSENT AND NOT VOTING: 1 - Schwartz


Roger L. Byrne, Village President

PASSED: 8/07/2012

APPROVED: 8/07/2012

ATTEST: 8/08/2012

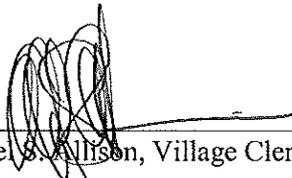

Michael S. Allison, Village Clerk

EXHIBIT A

Assignment, Acceptance and Assumption Agreement

ASSIGNMENT, ACCEPTANCE AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT, ACCEPTANCE AND ASSUMPTION AGREEMENT ("Assignment, Acceptance and Assumption Agreement") is made and entered into this 21st day of August, 2012 (the "Effective Date"), by and between the Village of Vernon Hills, an Illinois municipal corporation ("Village"), Hawthorn Hills LLC, a Delaware limited liability company ("HH"), Hawthorn Hills Square 1687, LLC, a Delaware limited liability company ("HHS") and KRCX Illinois Realty, LLC, a Delaware limited liability company ("KRCX"). HH, HHS, KRCX and the Village are collectively referred to as "Parties" and individually as a "Party".

RECITALS:

WHEREAS, on or about November 18, 2009, the Village and Hawthorn-Vernon Hills LLC ("HVH") entered into a document entitled Economic Incentive Agreement between the Village of Vernon Hills and Hawthorn-Vernon Hills LLC (the "Agreement") relating to sales tax sharing for a portion of the property formerly known as Hawthorn Hills Fashion Square Shopping Center and now known as Hawthorn Hills Square (the "Shopping Center") in the Village of Vernon Hills, Illinois. A true and correct copy of the Agreement is attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, pursuant to Assignment, Acceptance and Assumption Agreement dated April 5, 2011 HVH assigned all of its right, title and interest in, to and under the Agreement to HH; and

WHEREAS, HH now requests approval of the Village to assign all of its right, title and interest in and to the Agreement to HHS ("Assignment"); and

WHEREAS, HHS is a Delaware limited liability company whose sole member is KRCX and the sole member of KRCX is Kimco Realty Corporation, a publicly traded Maryland corporation; and

WHEREAS, the Agreement provides the Village has the prior right to approve, in writing, any assignment of the Agreement; and

WHEREAS, the Village is agreeable to approving the Assignment, subject to acceptance by HHS of the Assignment and agreement of HHS to assume any and all obligations of HH as the Developer under the Agreement;

WHEREAS, the Parties hereto hereby enter into this Assignment, Acceptance and Assumption Agreement pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the promises the Parties made each to the other and other good and valuable considerations, the receipt and sufficiency of each of which is hereby acknowledged, the Parties hereto agree as follows:

1. The Recitals set forth hereinabove are hereby incorporated into and made a part of this Assignment, Acceptance and Assumption Agreement. In the event any terms, covenants and/or conditions contained herein conflict with the terms, covenants and conditions of

the Agreement, the Parties hereto agree the terms, covenants and/or conditions of this Assignment, Acceptance and Assumption Agreement shall govern and control. Any terms not defined herein shall have the same meaning as ascribed to them in the Agreement.

2. HHS affirmatively represents, warrants and covenants to the Village that HHS currently has the experience, assets, qualifications, financial ability, reputation and character necessary, to fully, adequately and completely satisfy and fulfill any and all obligations of the Agreement. No petition in bankruptcy or any petition or answer seeking an assignment for the benefit of creditors, the appointment of a receiver, trustee, liquidation or dissolution or similar relief under the U.S. Bankruptcy Code or any state law has been filed by or against or, to the knowledge of HHS, is threatened to be filed by or against HHS. HHS hereby represents, warrants, covenants and states to the Village that the execution and delivery of this Assignment, Acceptance and Assumption Agreement is not subject to any requirement that HHS obtain any consent, approval or authorization of any governmental authority, court of law or third party, or make any declaration or filing with, any governmental authority, court of law or third party which has not been obtained. To the knowledge of HHS, there are no actions, suits, proceedings or investigations, at law or in equity, or before any governmental or quasi-governmental agency or other person, pending or threatened, against HHS, which would have a material, adverse effect on the ability of HHS to meet its obligations in connection with the Agreement, or, to the knowledge of HHS, would in any way constitute a lien, claim, security interest, encumbrance, mortgage, deed of trust or other obligation of any kind against the interest of HHS in the Agreement.

3. KRCX affirmatively represents, warrants and covenants to the Village that KRCX currently has the experience, assets, qualifications, financial ability, reputation and character necessary, as the sole member of HHS, to fully, adequately and completely satisfy and fulfill any and all applicable obligations of the Agreement as they may pertain to and apply to a member of HHS, if at all. No petition in bankruptcy or any petition or answer seeking an assignment for the benefit of creditors, the appointment of a receiver, trustee, liquidation or dissolution or similar relief under the U.S. Bankruptcy Code or any state law has been filed by or against or, to the knowledge of KRCX, is threatened to be filed by or against KRCX. KRCX hereby represents, warrants, covenants and states to the Village that the execution and delivery of this Assignment, Acceptance and Assumption Agreement is not subject to any requirement that KRCX obtain any consent, approval or authorization of any governmental authority, court of law or third party, or make any declaration or filing with, any governmental authority, court of law or third party which has not been obtained. To the knowledge of KRCX, there are no actions, suits, proceedings or investigations, at law or in equity, or before any governmental or quasi-governmental agency or other person, pending or threatened, against KRCX, which would have a material, adverse effect on the ability of KRCX to meet its obligations in connection with the Agreement, or, to the knowledge of KRCX, would in any way constitute a lien, claim, security interest, encumbrance, mortgage, deed of trust or other obligation of any kind against the interest of KRCX in the Agreement.

4. Kimco affirmatively represents, warrants and covenants to the Village that Kimco currently has the experience, assets, qualifications, financial ability, reputation and character necessary, as the sole member of KRCX, to fully, adequately and completely satisfy and fulfill any and all applicable obligations of the Agreement as they may pertain

to and apply to a member of HHS, if at all. No petition in bankruptcy or any petition or answer seeking an assignment for the benefit of creditors, the appointment of a receiver, trustee, liquidation or dissolution or similar relief under the U.S. Bankruptcy Code or any state law has been filed by or against or, to the knowledge of Kimco, is threatened to be filed by or against Kimco. Kimco hereby represents, warrants, covenants and states to the Village that the execution and delivery of this Assignment, Acceptance and Assumption Agreement is not subject to any requirement that Kimco obtain any consent, approval or authorization of any governmental authority, court of law or third party, or make any declaration or filing with, any governmental authority, court of law or third party which has not been obtained. To the knowledge of Kimco, there are no actions, suits, proceedings or investigations, at law or in equity, or before any governmental or quasi-governmental agency or other person, pending or threatened, against Kimco, which would have a material, adverse effect on the ability of Kimco to meet its obligations in connection with the Agreement, or, to the knowledge of Kimco, would in any way constitute a lien, claim, security interest, encumbrance, mortgage, deed of trust or other obligation of any kind against the interest of Kimco in the Agreement.

5. HHS affirmatively represents, warrants, covenants and states to the Village that neither HHS, nor any of its members and/or managers is, nor shall they during the Term become, a person or entity with whom the Village is restricted from doing business under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "USA Patriot Act") and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto (collectively, "Anti-Terrorism Laws"), including without limitation persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, "Prohibited Persons"). To the best of its knowledge, neither HHS nor any of its members are currently engaged in any transactions or dealings, or otherwise associated with, any Prohibited Persons. Neither HHS nor any of its members will in the future during the Term engage in any transactions or dealings, or be otherwise associated with, any Prohibited Persons. Breach of these representations constitutes an immediate default under this Assignment, Acceptance and Assumption Agreement and shall constitute a failure by Developer (as defined in the Agreement) to be in material compliance with a material covenant of the Agreement as provided in Section 11 of the Agreement.
6. KRCX affirmatively represents, warrants, covenants and states to the Village that neither KRCX, nor any of its members and/or managers is, nor shall they during the Term become, a person or entity with whom the Village is restricted from doing business under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "USA Patriot Act") and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto (collectively, "Anti-Terrorism Laws"), including without limitation persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, "Prohibited Persons"). To the best of its knowledge, neither KRCX nor any of its members are currently engaged in any transactions or dealings, or otherwise associated with, any Prohibited Persons. Neither KRCX nor any of its members will in the future during the Term engage in any transactions or dealings, or be otherwise associated with, any Prohibited Persons. Breach of these representations constitutes an immediate default under this Assignment, Acceptance and Assumption

Agreement and shall constitute a failure by Developer (as defined in the Agreement) to be in material compliance with a material covenant of the Agreement as provided in Section 11 of the Agreement.

7. Kimco affirmatively represents, warrants, covenants and states to the Village that Kimco is not, nor shall they during the Term become, a person or entity with whom the Village is restricted from doing business under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "USA Patriot Act") and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto (collectively, "Anti-Terrorism Laws"), including without limitation persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, "Prohibited Persons"). To the best of its knowledge, Kimco is not currently engaged in any transactions or dealings, or otherwise associated with, any Prohibited Persons. Kimco will not during the Term engage in any transactions or dealings, or be otherwise associated with, any Prohibited Persons. Breach of these representations constitutes an immediate default under this Assignment, Acceptance and Assumption Agreement and shall constitute a failure by Developer (as defined in the Agreement) to be in material compliance with a material covenant of the Agreement as provided in Section 11 of the Agreement.
8. Except for any security interest held by Wells Fargo Bank, National Association ("Wells Fargo") pursuant to that certain Loan Agreement between HH and Wells Fargo dated as of April 4, 2011, or pursuant to the Loan Documents defined therein ("Wells Fargo Interest"), and any contractual rights of HHS under the Purchase Agreement (Hawthorne Hills Square) dated May 10, 2012, as amended by that First Amendment to Purchase Agreement (Hawthorne Hills Square) dated June 11, 2012, upon assignment from KRC Acquisition Corp ("Buyer's Rights"), HH hereby represents, warrants, covenants and states that, the right, title and interest of HH in, to and under the Agreement is free of any lien, security interest, encumbrance, pledge, warrants, options, conversion rights, mortgage, deed of trust or charge and is not subject to any assignment, transfer or hypothecation and no petition in bankruptcy or any petition or answer seeking an assignment for the benefit of creditors, the appointment of a receiver, trustee, liquidation or dissolution or similar relief under the U.S. Bankruptcy Code or any state law has been filed by or against or, to the knowledge of HH, is threatened to be filed by or against HH. HH hereby represents, warrants, covenants and states to the Village that the execution and delivery of this Assignment, Acceptance and Assumption Agreement is not subject to any requirement that HH obtain any consent, approval or authorization of any governmental authority, court of law or third party, or make any declaration or filing with, any governmental authority, court of law or third party which has not been obtained. To the knowledge of HH, there are no actions, suits, proceedings or investigations, at law or in equity, or before any governmental or quasi-governmental agency or other person, pending or threatened, against HH, which would have a material, adverse affect on the ability of HH to meet its obligations in connection with the Agreement, or, to the knowledge of HH, would in any way constitute a lien, claim, security interest, encumbrance, mortgage, deed of trust or other obligation of any kind against the interest of HH in the Agreement except for the Wells Fargo Interest and the Buyer's Rights. HH hereby assigns, grants, transfers and sets over absolutely unto HHS, its successors and assigns, all of the right, title and interest of HH in, to and under the Agreement.

9. HHS hereby accepts the foregoing Assignment from HH of all of the right, title and interest of HH in, to and under the Agreement, subject to the terms of this Assignment, Acceptance and Assumption Agreement. HHS hereby agrees to and does assume any and all of the duties, liabilities and obligations of HH as Developer under the Agreement as of the later of (i) the Effective Date or (ii) the closing date for the sale and transfer of the Shopping Center by HH to HHS.
10. The Parties hereby understand, acknowledge and agree that this Assignment, Acceptance and Assumption Agreement shall not release, HVH, HH, or its successors and assigns, from any obligations or liabilities under the Agreement.
11. The Parties hereby understand, acknowledge and agree that this Assignment, Acceptance and Assumption Agreement may be held in escrow until the closing on the sale and transfer of the Shopping Center from HH, as seller, to HHS, as buyer (successor-in-interest to KRC Acquisition Corp). Should the closing on the sale and transfer of the Shopping Center not occur for any reason, HH and HHS reserve the right by agreement to terminate this Assignment, Acceptance and Assumption Agreement and leave HH and Village as the parties to this Assignment, Acceptance and Assumption Agreement after said termination. HH shall notify the Village in writing promptly upon the occurrence of any such termination.
12. From the Effective Date to the date that the Village receives notification from HH that the closing on the sale and transfer of the Shopping Center has occurred or that the sale and transfer of the Shopping Center has been terminated, no payments of sales taxes shall be made by the Village. Any payments otherwise earned during this time period shall be held by the Village and distributed according to a written direction from HH.
13. The Village affirmatively represents, warrants, covenants and states that, as of the notary date of its signature, to the best of the Village's knowledge, all obligations, conditions, and rights under the Agreement of HH to tax sharing payments from sales by Dick's Sporting Goods, Five Below, and Noodles at the Shopping Center are satisfied and the rights of HH to receive payments regarding same are not invalid, void, negated, or delayed by any default under the Agreement by HH or any other third-party and that, to the best of the Village's knowledge, HH is currently in good standing and full compliance with the terms, covenants and conditions of the Agreement.
14. The Parties hereto acknowledge that the Illinois Department of Labor has taken the position that the Illinois Prevailing Wage Act ("PWA") applies to the Economic Incentive Agreement, and as such, this Assignment, Acceptance and Assumption Agreement is subject to the PWA with regard to the Additional Spaces as defined in Section 6 of the Economic Incentive Agreement.
15. The Parties hereto also acknowledge that the State of Illinois has revised its policies regarding reporting of sales tax revenues to municipalities. As a result, HHS shall be required to deliver to the Village a State of Illinois Department of Revenue Form entitled "PTAX-1002-21 Authorization to Release Sales Tax Information to Local Governments" executed by tenants of the Additional Spaces. The Village shall also execute the PTAX-1002-21 form and submit it to the State of Illinois Department of Revenue, all of which is a prerequisite to receiving any reports from the State of Illinois regarding sales taxes generated from the Additional Spaces and

16. Subject to the terms, covenants, conditions, warranties and representations contained herein, the Village hereby approves of the aforesaid Assignment of all of the right, title and interest of HH in, to and under the Agreement to HHS and the assumption by HHS of any and all of the duties, liabilities and obligations of HH as Developer under the Agreement, pursuant to the terms of this Assignment, Acceptance and Assumption Agreement. The Parties acknowledge, understand and agree that this Assignment, Acceptance and Assumption Agreement does not release HVH or HH from any of the duties, liabilities, responsibilities or obligations of the Agreement, notwithstanding the assumption by HHS.
17. This Assignment, Acceptance and Assumption Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. This Assignment, Acceptance and Assumption Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.
18. This Assignment, Acceptance and Assumption Agreement, along with the attached exhibit(s), represents the entire agreement on these matters as among the parties. Any future amendment to this Agreement shall be valid and binding only if executed by the Village and HHS. HH signature to any future amendments shall not be required, and HH waives the right to be a signature party to same.

(SIGNATURES APPEAR ON THE FOLLOWING PAGES)

HAWTHORN HILLS SQUARE 1687, LLC, a Delaware limited liability company

By: KRCX Illinois Realty, LLC a Delaware limited liability company, its sole member

By: [Signature]
Print Name: Gary J. Bazydlo
Title: Vice President

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Mary J. Bazydlo personally known to me to be the Vice President of KRCX Illinois Realty LLC, a Delaware limited liability company, the sole member of HAWTHORN HILLS SQUARE 1687, LLC, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Vice President, he signed and delivered said instrument pursuant to the authority given by the respective by-laws and operating agreements of said companies, as his free and voluntary act, and as the free and voluntary act and deed of said companies, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of August, 2012.

[Signature]
Notary Public

My Commission Expires: Dec. 28, 2015



KRCX ILLINOIS REALTY, LLC, a Delaware limited liability company, its sole member

By: [Signature]

Print Name: Gary J. Bazydlo

Title: Vice President

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Gary J. Bazydlo, personally known to me to be the Vice President of KRCX ILLINOIS REALTY LLC, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Vice President, he signed and delivered said instrument pursuant to the authority given by the respective by-laws and operating agreement of said companies, as his free and voluntary act, and as the free and voluntary act and deed of said companies, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of August, 2012.

[Signature]
Notary Public

My Commission Expires: Dec. 28, 2015

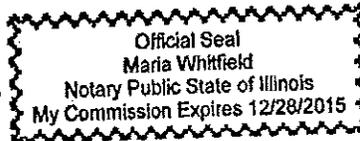


EXHIBIT "A"

The Economic Incentive Agreement

THIS INSTRUMENT PREPARED BY:

David A. Eli, Esq.
Chase Properties Ltd.
3333 Richmond Road, Suite 320
Beachwood, OH 44122

RETURN TO:

First American Title Insurance Company
30 N. LaSalle Street, Suite 2700
Chicago, IL 60602
Attention: _____

SPECIAL WARRANTY DEED

THIS INDENTURE, made as of the 29th day of August, 2012 by and between **Hawthorn Hills LLC**, a Delaware limited liability company, of the County of Cuyahoga and State of Ohio ("Grantor"), and **Hawthorn Hills Square 1687, LLC**, a Delaware limited liability Company ("Grantee"), WITNESSETH, that the Grantor, for and in consideration of the sum of Ten and No/100 Dollars in hand paid by the Grantee, the receipt whereof is hereby acknowledged, by these presents does GRANT, BARGAIN, SELL, REMISE, RELEASE AND CONVEY unto the Grantee, and to its successors and assigns, FOREVER, the following described real estate, situated in the County of Lake and State of Illinois known and described as follows, to wit:

See Exhibit A attached hereto and made a part hereof.

Together with all of the Grantor's right, title and interest in the improvements, hereditaments, easements and appurtenances thereunto belonging, or in anyway appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever, either in law or equity, of, in and to the above described premises, with the improvements, hereditaments, easements and appurtenances, collectively, the "Property"): TO HAVE AND TO HOLD the Property, unto the Grantee, its successors and assigns forever.

And the Grantor, for itself, and its successors, does covenant, promise and agree, to and with the Grantee, its successors and assigns, that it has not done or suffered to be done, anything whereby the said premises hereby granted are, or may be, in any manner encumbered or charged, and WILL WARRANT AND DEFEND against all persons lawfully claiming or to claim the same, by through or under it, subject to the Permitted Exceptions set forth on Exhibit B, attached hereto and made a part hereof.

Permanent Index No.: 15-04-201-051

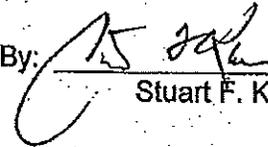
Address of Real Estate: Hawthorn Hills Square, Vernon Hills, IL

[Remainder of Page Intentionally Left Blank]

Executed and delivered by Grantor this 29th day of August, 2012.

HAWTHORN HILLS LLC,
a Delaware limited liability company

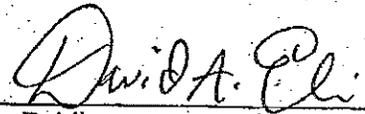
By: Hawthorn Chase LLC, Managing Member

By: 
Stuart F. Kline, Manager

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

I, DAVID A. ELI, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Stuart F. Kline, personally known to me to be the Manager of Hawthorn Chase LLC, an Ohio limited liability company, the Managing Member of Hawthorn Hills LLC, a Delaware limited liability company and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged that as such Manager, he signed and delivered the said instrument as Manager of said company, and pursuant to authority given by the members of said company, as his free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

Given under my hand and official seal, this 28th day of August, 2012.


Notary Public
My Commission Expires **DAVID A. ELI, Attorney at Law**
Notary Public for State of Ohio
My commission has no expiration date.
Sec. 147:03 R.C.

SEND SUBSEQUENT TAX BILLS TO:
Hawthorn Hills Square 1687, LLC
c/o Kimco Realty Corporation
3333 New Hyde Park Road, Suite 100
New Hyde Park, NY 11042

EXHIBIT A

LEGAL DESCRIPTION

All that certain real property located in the County of Lake, State of Illinois, described as follows:

PARCEL 1:

LOT 5, IN THE FINAL PLAT OF SUBDIVISION OF HAWTHORN HILLS FASHION SQUARE, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 3 AND THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 1, 1986 AS DOCUMENT NUMBER 2467230, IN THE VILLAGE OF VERNON HILLS, IN LAKE COUNTY, ILLINOIS.

PARCEL 2:

UTILITY EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR INSTALLING, USING AND MAINTAINING SANITARY AND STORM SEWER LINES FALLING WITHIN A FIVE FOOT STRIP OF LAND SOUTH OF AND ADJACENT TO THE FOLLOWING DESCRIBED LINE: COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SECTION 3; THENCE NORTH 89 DEGREES 57 MINUTES 06 SECONDS EAST ALONG THE NORTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 3 AND THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 34, 634.80 FEET; THENCE NORTH 00 DEGREES 02 MINUTES 54 SECONDS WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE 12.72 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 88 DEGREES 12 MINUTES 10 SECONDS WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF ROUTE 60 AS PER DOCUMENT NUMBER 339740, 386.01 FEET AND THERE TERMINATING; AND ALSO FALLING WITHIN A TEN FOOT STRIP OF LAND, FIVE FEET NORTH OF AND ADJACENT TO AND FIVE FEET SOUTH OF AND ADJACENT TO THE FOLLOWING DESCRIBED LINE: BEGINNING AT THE POINT OF BEGINNING OF THE PREVIOUSLY DESCRIBED LINE; THENCE SOUTH 89 DEGREES 40 MINUTES 56 SECONDS EAST 541.91 FEET TO THE WESTERLY LINE OF PROPERTY AS PER DOCUMENT NUMBER 2106025 AND THERE TERMINATING, AS GRANTED BY INSTRUMENT DATED FEBRUARY 20, 1986 AND RECORDED FEBRUARY 21, 1986 AS DOCUMENT NUMBER 2421844, IN LAKE COUNTY, IN THE VILLAGE OF VERNON HILLS, ILLINOIS.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1, AS CREATED BY FOUR INSTRUMENTS ENTITLED COVENANTS, CONDITIONS, AND RESTRICTIONS AND RECIPROCAL RIGHTS AGREEMENT RECORDED OCTOBER 20, 1986 AS DOCUMENT NUMBER 2495634, RECORDED APRIL 6, 1987 AS DOCUMENT NUMBER 2552632, AND RE-RECORDED JUNE 9, 1987 AS DOCUMENT NUMBER 2576583, RECORDED DECEMBER 29, 1987 AS DOCUMENT NUMBER 2644102, AND RECORDED NOVEMBER 12, 1986 AS DOCUMENT NUMBER 2504159, FOR INGRESS AND EGRESS, PARKING, RETENTION, DETENTION AND INSTALLATION, OPERATION, MAINTENANCE, REPAIRS AND REPLACEMENT OF TELEPHONE, ELECTRICAL, GAS, STORM WATER, SANITARY SEWER AND OTHER UTILITY LINES AND LANDSCAPING, IN AND OVER RING ROAD AND ENTRANCE MAGAZINES, AS SHOWN ON SITE PLAN ATTACHED TO SAID AGREEMENT AS EXHIBIT C.

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL 1, AS CREATED BY ACCESS EASEMENT AGREEMENT DATED DECEMBER 1, 1989 AND RECORDED DECEMBER 22, 1989, AS DOCUMENT NUMBER 2862957, FOR INGRESS AND EGRESS, OVER, UPON AND ACROSS A CERTAIN PORTION OF LAND SHOWN ON THE SITE PLAN ATTACHED TO SAID AGREEMENT AS EXHIBIT D.

EXHIBIT B

PERMITTED EXCEPTIONS

1. Real estate taxes and assessments, both general and special, not yet due and payable, including as Permitted Exceptions those real estate taxes and assessments for the years 2011, 2012 and subsequent years.
2. Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated April 4, 2011 and recorded April 6, 2011 as document 6722387 made by Hawthorn Hills LLC, a Delaware limited liability company to Wells Fargo Bank, National Association to secure indebtedness in the amount of \$22,200,000.00, and the terms and conditions therein.
3. Financing Statement evidencing indebtedness from Hawthorn Hills LLC, debtor, to Wells Fargo Bank, National Association, secured party, recorded April 6, 2011 as document 6722393.
4. This item has been intentionally deleted.
5. Subordination Agreement; Acknowledgement of Lease Assignment, Attornment and Non-Disturbance Agreement by and among Hawthorn Hills LLC, Owner, Subway Real Estate Corp., Lessee and Wells Fargo Bank, National Association, Lender, dated April 4, 2011 and recorded April 6, 2011 as document 6722388, and the terms and conditions therein.
6. Subordination, Non-Disturbance and Attornment Agreement by and among Hawthorn-Vernon Hills, LLC, Landlord, Wells Fargo Bank, National Association, Lender, and Dick's Sporting Goods, Inc., Tenant, dated April 4, 2011 and recorded April 6, 2011 as document 6722389, and the terms and conditions therein.
7. Subordination, Non-Disturbance and Attornment Agreement by and among Wells Fargo Bank, National Association, Lender, Hawthorn-Vernon Hills LLC, Landlord and PetsMart, Inc., Tenant, dated January 24, 2011 and recorded April 6, 2011 as document 6722390, and the terms and conditions therein.
8. Subordination Agreement; Acknowledgement of Lease Assignment, Estoppel; Attornment and Non-Disturbance Agreement by and among Hawthorn Hills LLC, Owner, CEC Entertainment, Inc., Lessee, and Wells Fargo Bank, National Association, Lender, dated February 15 2011 and recorded April 25, 2011 as document 6727032, and the terms and conditions therein.

9. Subordination Agreement; Acknowledgement of Lease Assignment, Estoppel, Affirmation and Non-Disturbance Agreement by and among Hawthorn Hills LLC, Owner, NK Donuts, Inc., Lessee, and Wells Fargo Bank, National Association, dated April 5, 2011 and recorded May 2, 2011 as document 6729234, and the terms and conditions therein.
10. Lease Option Agreement by and between Vantage Companies (Lessor) and Dunkin Donuts of America, Inc. (Tenant) dated June 12, 1986 and recorded August 6, 1987 as document 2598862, and the terms and conditions therein.
11. Lease made by and between Hawthorn-Vernon Hills LLC, Lessor, and CEC Entertainment, Inc., Lessee and the terms and conditions therein, as disclosed by memorandum dated August 8, 2003, and recorded November 25, 2003 as document 5441108.
12. Lease made by Hawthorn-Vernon Hills LLC, Lessor, to Subway Real Estate Corp., Lessee and the terms and conditions therein, as disclosed by memorandum dated November 16, 2004, and recorded October 29, 2005 as document 5885439.
13. Lease made by and between Hawthorn-Vernon Hills LLC, Lessor, and Dick's Sporting Goods, Inc., Lessee, dated January 13, 2010, and the terms and conditions therein, as disclosed by a memorandum recorded February 4, 2010 as document 6570557.
14. Lease made by and between Hawthorn-Vernon Hills LLC, Lessor, and Petsmart, Inc., Lessee, dated June 23, 2010, and the terms and conditions therein, as disclosed by memorandum recorded July 23, 2010 as document 6625227.
15. Illinois Environmental Protection Agency No Further Remediation Letter recorded November 7, 2002 as document 5045032 and the terms, provisions, limitations and conditions contained therein.
16. Easements for public utilities and drainage, water main, cable television and sidewalk as depicted on the Plat of Hawthorn Hills Fashion Square recorded August 1, 1986 as document 2467230, together with the easement provisions contained thereon, and as depicted on the P.U.D. Plat recorded January 30, 2003 as document 5112012.
17. Utility easement agreement made by and among Vernon Hills Development Corporation and American National Bank and Trust Company of Chicago, as trustee under trust number 64462 recorded February 21, 1986 as document 2421844, relating to the installation and maintenance of storm sewer system, and the terms, provisions and conditions contained therein.

18. Covenants, conditions, restrictions, easements and reciprocal rights agreement made by and between Endowment and Foundation Realty, Ltd., --JMB-III and Bond Drug Company of Illinois dated October 16, 1986 and recorded October 20, 1986 as document 2495634 and terms, provisions and conditions contained therein.
19. Water main easement agreement made by and between Endowment and Foundation Realty, Ltd., --JMB-III, Continental Illinois National Bank and Trust Company of Chicago, John F. Cuneo, Jr., Consuela Cuneo McAlister, Charles L. McEvoy and William G. Meyers, as successor co-trustees of declaration of trust dated August 12, 1935, recorded November 7, 1986 as document 2502642 and the terms, provisions and conditions contained therein.
20. Covenants, conditions, restrictions and reciprocal rights agreement dated October 22, 1986 and recorded November 12, 1986 as document 2504159 and the terms, provisions and conditions contained therein.
21. Covenants, conditions, restrictions and reciprocal rights agreement dated March 31, 1987 and recorded April 6, 1987 as document 2576583 and the terms, provisions and conditions contained therein.
22. Covenants, conditions, restrictions and reciprocal rights agreement dated December 21, 1987 and recorded December 29, 1986 as document 2644102 and the terms, provisions and conditions contained therein.
23. Access easement agreement dated December 1, 1989 and recorded December 22, 1989 as document 2862957 and the terms, provisions and conditions contained therein.
24. Ordinance granting approval of a special use permit for a planned unit development dated January 8, 2003 and recorded January 30, 2003 as document 5112011, and the terms, conditions and provisions contained therein.
25. Plat of Abrogation for a Storm Sewer Easement recorded October 12, 2011 as document 6775656, and the terms and provisions contained therein.
26. Utility Easement recorded November 1, 2011 as document 6782741 by and between Hawthorn Hills LLC and County of Lake, Illinois, and the terms and provisions contained therein.
27. Terms, conditions and provisions of the document creating the easement described in the foregoing Exhibit A, together with the rights of the adjoining owners in and to the concurrent use of said easement.

28. Matters as shown on ALTA/ACSM LAND TITLE SURVEY prepared by James L. Harpole, Illinois Professional Land Surveyor No. 3190 Network Project No. 201200930.001 dated _____, including, without limitation, the following:

A. One story shopping center building encroaches upon the 10 foot water main easement;

B. Steel retaining walls located within easement area;

C. Concrete walk and drive are within storm sewer easement area;

D. Concrete median crosses into easement areas;

E. Ring Road runs through easement areas; and

F. Transformers located outside of easement areas.

29. Rights of parties in possession, as tenants only, under leases referenced in Schedule 1 to this Exhibit B.

30. Zoning and building ordinances.

SCHEDULE 1 TO EXHIBIT B

SCHEDULE OF LEASES

Lease by and between Landlord and CEC Entertainment, Inc; d/b/a Chuck E. Cheese's, dated August 8, 2003, as amended by Consent Agreement dated August 31, 2011.

Lease by and between Landlord and David's Bridal, Inc, successor in interest to David's Bridal of Vernon Hills, Inc., dated October 28, 1999, as amended by Lease Amendment dated October 28, 1999 and Second Amendment to Lease dated May 12, 2010.

Lease by and between Landlord and Dick's Sporting Goods, Inc. dated January 13, 2010.

Lease by and between Landlord and NK Donuts, Inc., successor in interest to DDVH Partnership, d/b/a Dunkin Donuts, dated June 12, 1986, as assigned by Assignments dated April 17, 1987, June 15, 1987, April 10, 1989, April 26, 1994 and August 2, 1999 and as amended by Lease Extension Agreement dated February 25, 2002.

Lease by and between Landlord and Family Christian Stores, Inc. dated October 3, 2007.

Lease by and between Landlord and Fireplaces Plus, Inc. dated May 13, 1993, as amended by Lease Extension Agreements dated March 8, 1996, April 20, 2000, February 1, 2005, July 19, 2007 and January 10, 2011.

Lease by and between Landlord and Julie Vu and Thanh T. Phan, d/b/a 1st Spa Nails, dated August 30, 2002, as amended by Amendment to Lease dated September 20, 2007 and Second Amendment to Lease dated September 18, 2008.

Lease by and between Landlord and Five Below, Inc. dated October 6, 2010.

Lease by and between Landlord and Gamestop, Inc., successor in interest to Funco, Inc., dated April 12, 2000, as amended by First Amendment to Lease dated January 16, 2002, Second Amendment to Lease dated April 23, 2010 and Third Amendment to Lease dated May 31, 2012.

Lease by and between Landlord and EMP Exclusive, Inc., successor in interest to Bryn Corp. Concepts Ltd., d/b/a Great Clips, dated March 29, 2001, as amended by Assignment, Assumption and Consent Agreement and Amendment to Lease dated January 8, 2009 and Guaranty of Lease by Paula Salouras and Thomas Salouras dated January 8, 2009.

Lease by and between Landlord and Jamba Juice Company dated August 10, 2007, as supplemented by Sublease dated April 15, 2011 and Notice of Sublease dated August 31, 2011.

Lease by and between Landlord and The Men's Wearhouse, Inc. dated June 29, 1995, as amended by Lease Extension Agreement dated October 27, 1999, Lease Amendment dated August 3, 2000, Third Lease Amendment (With Extension) dated April 25, 2001 and Fourth Amendment to Lease dated March 10, 2010.

Unsubordinated Ground Lease by and between Landlord and Noodles & Company dated December 16, 2010, as amended by Lease Amendments dated May 13, 2011, September 13, 2011 and September 15, 2011 and by Fourth Lease Amendment dated September 16, 2011.

Lease by and between Landlord and OS Salesco, Inc., d/b/a Omaha Steaks, dated January 18, 1998, as amended by Amendment to Lease dated April 1, 2004, Second Amendment to Lease dated April 6, 2006 and Third Amendment to Lease dated October 29, 2007.

Lease by and between Landlord and Orfurn, Inc., d/b/a O'Reilly's Furniture, dated March 27, 2009, as amended by Option to Terminate Lease dated May 11, 2012.

Lease by and between Landlord and Kwan S. Ham and Sung Hee Ham, successor in interest to Palumbo Dry Cleaners, Inc., dated September 3, 1993, as amended by Lease Extension Agreement dated October 28, 1996, Assignment of Lease dated February 26, 1997, Second Lease Extension dated August 30, 2001 and Third Amendment to Lease dated August 18, 2006.

Lease by and between Landlord and Panera LLC, successor in interest to Saint Louis Bread Company, Inc., dated April 14, 1995, as amended by Amendment to Lease dated June 7, 2005 and Second Amendment to Lease dated January 27, 2010.

Lease by and between Landlord and Peacock, Inc., d/b/a Peacock Indian Restaurant, dated September 21, 2000, as amended by Amendment to Lease dated November 1, 2010.

Lease by and between Landlord and PetSmart, Inc. dated June 23, 2010.

Lease by and between Landlord and Potbelly Sandwich Works, LLC dated January 19, 2005.

Lease by and between Landlord and Sake & Samba Japanese & Brazilian Bistro, Inc. dated November 16, 2010.

Lease by and between Landlord and Subway Real Estate Corp. dated August 6, 1999, as amended by Letter Extension Agreement dated July 27, 2004 and Amendment to Lease dated September 30, 2004.

Lease by and between Landlord and Kamran Munawwar Khan and Uzma Kamran, d/b/a Uzma's Threading Place, dated August 6, 2009.

Lease by and between Landlord and AE Group LLC, d/b/a Batteries Plus, dated March 22, 2011, as amended by Amendment to Lease dated December 21, 2011.

Lease by and between Landlord and Cricket Communications, Inc. dated August 15, 2011, as amended by Consent to Assignment dated April 18, 2012 and Assignment and Assumption to MFK, LLC d/b/a Mobile Link dated May 1, 2012.

Lease by and between Landlord and Cambridge Educational Center, Inc. dated September 14, 2011.

Lease by and between Landlord and Ulta Salon, Cosmetics & Fragrance, Inc. dated August __, 2012.