

WHEN RECORDED, MAIL TO:
Steven D. Peterson, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
201 South Main Street, Suite 600
Salt Lake City, Utah 84111

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RUSSELL SHIRTS * WASHINGTON CO RECORDER
2004 NOV 16 09:27 AM FEE \$20.00 BY AHM
FOR: SOUTHERN UTAH TITLE CO

**CONSENT, NONDISTURBANCE AND PARTIAL RELEASE AGREEMENT
THE RESIDENCE CLUB AT RED MOUNTAIN
(The Residence Club at Red Mountain Buildings M, N, and X)**

THIS CONSENT, NONDISTURBANCE AND PARTIAL RELEASE AGREEMENT ("Agreement") is made effective as of October 19, 2004 by and between PIVOTAL DEBT FUND, L.L.C., an Arizona limited liability company with an address at 2555 East Camelback Road, Phoenix, Arizona 85016 ("Lender"), and PIVOTAL MARK II, L.L.C., an Arizona limited liability company with an address at 2555 East Camelback Road, Suite 700, Phoenix, Arizona 85016 ("Owner").

RECITALS

A. Owner is the owner of that certain parcel of real property located in Washington County, Utah, as more fully described in Exhibit A attached hereto and made a part hereof, together with the buildings and improvements located thereon (the "Property").

B. The Property is encumbered by that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated October 17, 2003, between Owner, as trustor, and Lawyers Title of Arizona, Inc., as trustee, for the benefit of Lender, as beneficiary, recorded in the official records of Washington County, Utah on October 17, 2003 in Book 1589, Page 2208, Entry No. 846146 ("Deed of Trust").

C. Owner has requested that Lender consent to the recording of the Declaration of Covenants, Conditions, Easements and Restrictions for The Residence Club at Red Mountain (the "Declaration") in the official records of Washington County, Utah, in order to create the ownership program known as The Residence Club at Red Mountain pursuant to the requirements of the Utah Timeshare and Camp Resort Act (Title 57, Chapter 19, U.C.A.).

D. Unless provided herein to the contrary, all capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Declaration.

NOW, THEREFORE, for the foregoing purposes, the parties declare, covenant and agree that each of the Recitals A through D is incorporated into and made a part of this Agreement for all purposes, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

1. Consent, Subordination and Nondisturbance. Lender hereby consents to the recording of the Declaration in the official records of Washington County, Utah and Lender hereby agrees that the Deed of Trust shall be subject and subordinate to the terms of the

Declaration and that any foreclosure of the Deed of Trust, whether judicially or through the exercise of the power of sale, or the exercise of any other rights and remedies thereunder shall not terminate or otherwise adversely affect the continuing validity and enforceability of any of the terms and provisions of the Declaration; provided, however, that this Agreement shall not be deemed to subordinate the lien of the Deed of Trust to any lien, mortgage or encumbrance against or affecting the Property that is otherwise junior to the Deed of Trust. The subordination of the lien of the Deed of Trust to the Declaration pursuant to this Section 1 shall have the same force and effect as though the Declaration had been executed, delivered and recorded in the official records of Washington County, Utah prior to the execution, delivery and recording of the Deed of Trust.

2. Partial Release. Lender hereby agrees to execute and deliver to Owner or its agent the documents necessary to partially release the Deed of Trust upon satisfaction of the following conditions:

2.1 Payment of a release price in the amount of \$75,000 for a Club Interest, shall have been paid to Lender or its agent, in good, collected funds;

2.2 Owner or its agent shall have executed and submitted to Lender a request for partial reconveyance not less than two (2) business days in advance of the date on which Owner or its agent desires to consummate such release; and

2.3 Along with the aforesaid request, Owner or its agent shall have submitted to Lender a partial reconveyance of deed of trust in a form reasonably satisfactory to Lender.

3. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties. For purposes of this Agreement the singular shall include the plural and the plural shall include the singular as the context may require.

4. Amendments. This Agreement may not be amended or modified except by written agreement of Lender and Owner. No amendment, modification, consent or waiver hereunder shall be valid unless in writing and signed by Lender and Owner and recorded in the official records of Washington County, Utah.

5. Counterparts. This Agreement may be executed in any number of identical counterparts each of which, when executed by one of the parties hereto, shall be considered to be an original.

6. Notices. All notices, consents and other communications required by or given under this Agreement shall be in writing and shall be to the other party given by either: (i) hand delivery; (ii) first class mail (postage prepaid); or (iii) reliable overnight commercial courier (charges prepaid) sent to the addresses set forth above.

7. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Utah.

8. Partial Invalidity. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, under seal, as of the day and year first above written.

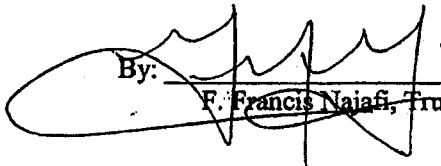
OWNER:

PIVOTAL MARK II, L.L.C.,
an Arizona limited liability company

By: Pivotal Spa I, L.L.C.
Its: Administrative Member

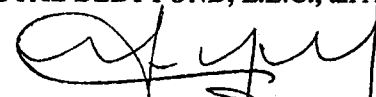
By: Pivotal Group X, L.L.C.
Its: Administrative Member

By: F. Francis Najafi, Trustee of the Najafi
Family Trust
Its: Administrative Member

By: 
F. Francis Najafi, Trustee

LENDER:

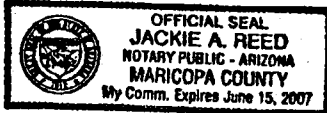
PIVOTAL DEBT FUND, L.L.C., an Arizona limited liability company

By: 
Name: F. FRANCIS NAJAFI
Its: Administrative Member

STATE OF ARIZONA)
) :ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 19 day of Oct., 2004, by F. Francis Najafi, Trustee of the Najafi Family Trust, the Administrative Member of Pivotal Group X, L.L.C., the Administrative Member of Pivotal Spa I, L.L.C., the Administrative Member of Pivotal Mark II, L.L.C., an Arizona limited liability company.

Jackie A. Reed

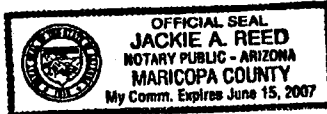


Print Name: JACKIE A. REED
NOTARY PUBLIC, State of ARIZONA
My Commission is Permanent.
(if not, state expiration date: 6-15-07)

STATE OF ARIZONA)
) :ss.
COUNTY OF MARICOPA)

On October 19, 2004, F. FRANCIS NAJAFI personally appeared before me as the signer of the foregoing instrument, who duly acknowledged to me that he or she is the Admin. Member of PIVOTAL DEBT FUND, L.L.C., an Arizona limited liability company and that the within and foregoing instrument was signed in behalf of said limited liability company and duly acknowledged to me that said limited liability company executed the same.

Jackie A. Reed



Print Name: JACKIE A. REED
NOTARY PUBLIC, State of ARIZONA
My Commission is Permanent.
(if not, state expiration date: 6-15-07)

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

All of Units M1, M2, M3 and M4, Building M as established and described in that certain Final Plat of The Villas at Red Mountain, Phase I, recorded January 2, 2003, in Book 1512, at Page 1910, Instrument No. 796847, in the office of the County Recorder for Washington County, State of Utah, as the same may be amended from time to time; and all of Units N1, N2, N3, N4, X1, X2, X3 and X4, Buildings N and X as established and described in that certain Final Plat of The Condominiums at Red Mountain, Phase II, Amended, recorded 11-16-, 2004, in Book 1688, at Page 183, Instrument No. 91124, in the office of the County Recorder for Washington County, State of Utah, as the same may be amended from time to time; and the accompanying Amended and Restated Declaration of Condominium for The Villas at Red Mountain, a Condominium Development (n/k/a The Condominiums at Red Mountain), recorded February 11, 2003, in Book 1521, at Page 2439, Instrument No. 803265, in the official records of Washington County, Utah, as amended by that certain First Amendment to Amended and Restated Declaration of Condominium for The Villas at Red Mountain, a Condominium Development (n/k/a The Condominiums at Red Mountain), recorded March 25, 2003, in Book 1532, at Page 514, Instrument No. 810382, in the official records of Washington County, Utah, as further amended by that certain Second Amendment to Amended and Restated Declaration of Condominium for The Condominiums at Red Mountain, a Condominium Development, recorded 11-16-, 2004, in Book 1688, at Page 184-217, Instrument No. 91124, in the official records of Washington County, Utah, which Second Amendment changed the name of the Project from "The Villas at Red Mountain" to "The Condominiums at Red Mountain", as such Declaration may be further amended from time to time, together with the undivided fee ownership interest in the Common Areas and Facilities appurtenant to said Units as set forth in said Condominium Declaration.