



Boulder County Clerk, CO AG

R 31.00 D 0.00

1839395
Page: 1 of 6
08/25/1998 12:23P

USE AGREEMENT
FOR LAND ROVER CENTRE

THIS AGREEMENT made as of this 9th day of ~~April~~ ^{February}, 1998 by and between the TOWN OF SUPERIOR, COLORADO, a Colorado municipal corporation ("Town") and RARE AIR MOUNTAIN PLANE AND EXPEDITIONS, INC., a Colorado corporation, d/b/a Land Rover Boulder, Superior, Colorado ("Land Rover").

R E C I T A L S

A. Land Rover desires to lease the property known as Lot 1, Block 1, Centennial Venture IV Subdivision, Rock Creek Ranch Filing No. 24, Town of Superior, Colorado (the "Property") for operation of a Land Rover dealership on the Property which is a use allowed under the Regional Activity Center ("RAC") zoning category of the Rock Creek Ranch Final Development Plan (the "FDP"); however the Property is currently zoned Commercial Activity Center ("CAC"). In consideration of the Town approving the rezoning to RAC to allow construction of a Land Rover Centre on the Property, Land Rover has offered to make several improvements to the Property that mitigate the impacts of the use on the adjoining properties.

B. The approvals of the rezoning and site plan for the Property by the Town are made in reliance upon the representations and commitments of Land Rover contained in this Agreement and of the property owner contained in an Agreement between the Town and Centennial Venture IV dated Feb. 27, 1998 which agreement is incorporated by reference herein.

C. Land Rover acknowledges that the terms and exactions set forth herein are reasonably attributable to the special impacts which will be generated by the proposed uses of the Property, and that the terms and conditions set forth in this Agreement are necessary, reasonable and appropriate.

A G R E E M E N T

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions upon the rezoning and development of the Property. All conditions contained herein are in addition to any and all requirements of the Town of Superior Land Use Code, any and all applicable state statutes, and any other provisions of the

ROB



Municipal Code of the Town of Superior and are not intended to supersede any requirements contained therein.

2. Rezoning of the Property May Revert. Land Rover hereby understands and agrees that the rezoning from CAC to RAC is approved by the Town based upon numerous representations and commitments of Land Rover that mitigate the impacts of the typical regional car dealership use so that the use is largely consistent with the goals and intent of a community activity within Rock Creek. Should the Land Rover Centre not be built and a Certificate of Occupancy issued as provided in the Final Plat Site Plan approved by the Town on February 9, 1998 (the "Land Rover Centre") within one year of the effective date of this Agreement, or should the Land Rover Centre, following the issuance of a Certificate of Occupancy cease to operate on the Property for a period of one month or longer, the zoning on the site shall revert to CAC as then defined in the FDP and the Land Rover Centre may not be operated on the Property thereafter unless determined otherwise by the Town.

3. Conditions of Agreement. Land Rover has made certain commitments to the Town in order to assure the Town that the Land Rover Centre is a use compatible with the surrounding uses and the FDP, and this Agreement is subject to the following conditions and requirements:

A. Land Rover shall offer a series of educational opportunities related to back-country recreation, cultural, OR general interest activities on approximately a monthly basis and no less than ten times per year, subject to third-party cancellations or events beyond Land Rover's control.

B. No more than 15 used vehicles for sale and no vehicles to be repaired shall be parked by Land Rover (excepting vehicles temporarily parked by customers dropping off same for service) on the north one-third of the Property.

C. No vehicle parts or disassembled vehicles shall be stored outside of the building on the Property.

D. There shall be no signs in the windows or on the vehicles displayed for sale, excepting signs required to be displayed by state or federal law or by manufacturer requirements.

E. The Covenants, Conditions, and Restrictions governing the use and operation of the Property dated November 20, 1997 and the applicable Land Rover North America



Boulder County Clerk, CO AG

R 31.00

1839395
Page: 3 of 6
08/25/1998 12:23P
D 0.00

Site Standards, Policies and Procedures governing a Land Rover Centre shall be fully enforced.

4. Fees. Land Rover agrees to pay to the Town all fees and costs of the Town reasonably incurred in enforcing this Agreement.

5. Breach by Developer; Town's Remedies. Should Developer become aware of any actual or anticipated breach of any of the terms and conditions of this Agreement by such Land Rover, it shall notify the Town Board of Trustees of such actual or anticipated breach immediately, and the Town may take such action as permitted or authorized by law, this Agreement or the Ordinances of the Town, as the Town deems necessary to protect the public health, safety and welfare; and to protect the citizens of the Town from hardship and undue risk. These remedies include, but are not limited to:

A. Closure of any use or operation of the Property inconsistent with this Agreement.

B. Any other remedy available at law or equity, including but not limited to, specific performance.

Unless necessary to protect the immediate health, safety and welfare, the Town shall provide Land Rover thirty (30) days written notice of its intent to take any action under this Agreement, during which thirty-day period Land Rover may cure the breach described in the notice and prevent further action by the Town; provided, however, if such breach cannot be reasonably cured within such thirty-day period, then the Town agrees to reasonably extend such thirty-day period so long as Land Rover has commenced such cure within such thirty-day period and is diligently pursuing the same to completion.

In the event that a breach is not cured as provided in the subparagraph above, Land Rover shall cease operation of the Land Rover Centre on the Property. Unless the discontinuance of operations of the Land Rover Centre is required to effectuate a cure, as provided in the subparagraph above, Land Rover understands that discontinuance of operations of the Land Rover Centre for more than 30 days, either because of the enforcement of this Agreement by the Town or because of a business decision of Land Rover, shall cause the zoning of the Property to revert to CAC and the Land Rover Centre will not be authorized to reopen on the Property as it is not a permissible use on a CAC-zoned property. In no event shall the Land Rover Centre, after closure in excess of 30 days be allowed to operate on the site as a non-conforming use. In the event of breach by Land Rover, whether cured or not, Land Rover



shall pay for all of the reasonable costs and attorney fees of the Town related to such breach and enforcement of this Agreement.

6. Breach by Town; Developer's Remedies. In the event of breach of this Agreement by the Town, Land Rover's remedies are limited to specific performance or mandamus.

7. Modifications. This Agreement shall not be amended except by subsequent written agreement of the parties.

8. Integration. It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Town's ordinances and the laws of the State of Colorado.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns as the case may be.

10. Invalid Provision. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which render the provision valid, then the provision shall have the meaning which renders it valid.

11. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Boulder County, Colorado.

12. Attorney Fees. Should this Agreement become the subject of litigation to resolve a claim of default of performance, the prevailing party shall be entitled to recover its reasonable attorney fees, expenses and court costs.

13. Notice. All notice required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address set forth below. Notice may also be given by telefax transmission, and shall be deemed received on the date of such transmission. Either party by



notice so given may change the address to which future notices shall be sent.

Notice to Town: Town Manager
Town of Superior
124 E. Coal Creek Drive
Superior, Colorado 80027
Fax No. (303) 499-3677

With copy to: Kathleen E. Haddock, Esq.
Dietze & Davis, P.C.
2060 Broadway, Suite 400
Boulder, Colorado 80302
Fax No. (303) 440-9036

Notice to Land Rover: Dan Ripley, President
1622 High Plains Drive
Superior, CO 80027
Fax No. (303) 554-0852

14. Assignment or Assignments. There shall be no transfer or assignment of any of the rights or obligations of Land Rover under this Agreement without the prior written approval of the Town, which approval shall not be unreasonably withheld if the transferee has qualifications to operate a Land Rover Centre and net worth acceptable to the Town in its sole discretion and which transferee has assumed the obligations of Land Rover under this Agreement in writing to the satisfaction of the Town. This provision shall not apply to a reorganization of Land Rover.

15. Recording or Agreement. This Agreement shall be recorded in the real estate records of Boulder County and shall be a covenant running with the Property in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

16. Title and Authority. Land Rover expressly warrants and represents to the Town that as of the date hereof it is the record tenant of the Property and franchise owner to operate a Land Rover Centre in Boulder County. All the parties represent and warrant, together with the undersigned individual(s), that the undersigned individual(s) have full power and authority to enter into this Agreement. Each party understands that the other parties are relying on such representations and warranties in entering into this Agreement.

17. Force Majeure. Whenever Land Rover is required to perform any task by an agreed deadline, Land Rover shall be



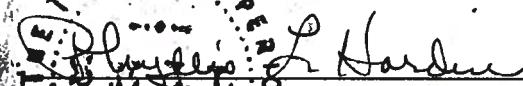
Boulder County Clerk, CO AG

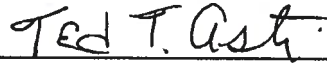
entitled to an extension of time equal to a delay in completing the foregoing, due to unforeseeable causes beyond the control and without the fault or negligence of such Developer, including but not restricted to, acts of God, weather, fires and strikes.

WHEREFORE, the parties hereto have executed this Agreement on the day and year first above written.

TOWN OF SUPERIOR, COLORADO

Attest:


By: 
Phyllis L. Hardin
Town Clerk

By: 
Ted Asti, Mayor

OPERATOR
RARE AIR MOUNTAIN AND PLANE
EXPEDITIONS, INC., a Colorado
corporation dba Land Rover
Boulder, Superior, Colorado

Attest:

By: _____
Its: _____

By: 
Its: 