

**AGENDA  
REGULAR MEETING  
CITY OF BANNING  
BANNING, CALIFORNIA**

October 28, 2014  
**5:00 p.m.**

Banning Civic Center  
Council Chambers  
99 E. Ramsey St.

*The following information comprises the agenda for a regular meeting of the City Council and a joint meeting of the City Council and the City Council Sitting in Its Capacity of a Successor Agency.*

*Per City Council Resolution No. 2010-38 matters taken up by the Council before 9:00 p.m. may be concluded, but no new matters shall be taken up after 9:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.*

**I. CALL TO ORDER**

- Invocation – Daniel Pedroza, First Hispanic Baptist Church
- Pledge of Allegiance
- Roll Call – Councilmembers Miller, Peterson, Welch, Westholder, Mayor Franklin

**II. REPORT ON CLOSED SESSION**

**III. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS**

**PUBLIC COMMENTS – *On Items Not on the Agenda***

A five-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public. (Usually, any items received under this heading are referred to staff for future study, research, and appropriate Council Action.) See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

**CORRESPONDENCE**: Items received under the category may be received and filed or referred to staff for future research or a future agenda.

*The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens.*

## PRESENTATIONS

1. Introduction of New Employees - *(ORAL)*
  - Brenton Bulrice, Police Officer

## **IV. CONSENT ITEMS**

*(The following items have been recommended for approval and will be acted upon simultaneously, unless a member of the City Council wishes to remove an item for separate consideration.)*

**Motion: That the City Council approve Consent Item 1 through 5**

**Items to be pulled \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ for discussion.**

*(Resolutions require a recorded majority vote of the total membership of the City Council)*

1.	Approval of Minutes – Special Meeting – 10/14/14 <i>(Closed Session)</i> .....	1
2.	Approval of Minutes – Regular Meeting – 10/14/14 .....	2
3.	Report of Investments for September 2014 .....	17
4.	Approval of Accounts Payable and Payroll Warrants for Month of September 2014 .....	24
5.	Approve Final Parcel Map No. 36285 .....	27

- **Open for Public Comments**
- **Make Motion**

## **RECESS REGULAR CITY COUNCIL MEETING AND CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING CITY COUNCIL SITTING IN ITS CAPACITY OF A SUCCESSOR AGENCY.**

## **V. REPORTS OF OFFICERS**

1. Banning Cultural Alliance: Outcome of Audit & Status Report .....

**Adjourn Joint Meeting and reconvene the regular City Council Meeting.**

## **VI. REPORTS OF OFFICERS**

1. Measure J Update  
Staff Report .....

**Recommendation: Receive and file report on status of Measure J. Take public comment on same.**

**VII. ANNOUNCEMENTS/REPORTS** *(Upcoming Events/Other Items if any)*

- City Council
- City Committee Reports
- Report by City Attorney
- Report by City Manager

**VIII. ITEMS FOR FUTURE AGENDAS**

New Items – None

**Pending Items – City Council**

1. Schedule Meetings with Our State and County Elected Officials *(Jan. 2015)*
2. Discussion on how to handle loans or distributions to charities. *(Midyear budget)*
3. Discussion on how the City Council handles donations to the City. *(Feb. 2015)*
4. Grocery Cart Policy *(In planning process.)*
5. Workshop to discuss the future of the airport. *(Nov. 2014)*
6. Discussion regarding Public Works Committee and Ad Hoc Committees *(Jan. 2015)*
7. Discussion regarding City's ordinance dealing with sex offenders and child offenders. *(Feb. 2015)*
8. Discussion to move "Announcements" (events) up on the agenda after Public Comments. *(Nov. 2014)*
9. Discussion regarding the discretionary limit of \$25,000 & review of all contracts by City Attorney. *(Oct. 28, 2014)*
10. Discussion regarding flex scheduling to keep city hall open five days a week.
11. Discussion regarding Animal Control Services *(Midyear Budget)*
12. Discussion regarding Police Staffing *(Midyear Budget)*
13. Prepare a staff report regarding delinquent utility fees owed by the Banning Chamber of Commerce. *(Nov. 2014)*
14. Golf Cart Lanes
15. Bond Workshop *(Midyear Budget)*

**IX. ADJOURNMENT**

*Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Thursday, 7 a.m. to 5 p.m.*

**NOTICE:** Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

**In compliance with the Americans with Disabilities Act**, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (951) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II]

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

10/14/14  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on October 14, 2014 at 3:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller  
Councilmember Peterson  
Councilmember Welch  
Councilmember Westholder  
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Homer Croy, Interim City Manager  
Lona N. Laymon, Assistant City Attorney  
June Overholt, Administrative Services Dir./Deputy City Manager  
Glen Tucker, Litigation Counsel, Aleshire & Wynder  
Melanie M. Porturica, Attorney, Liebert Cassidy Whitmore  
Joseph Hixson, Abernathy MacGregor  
Marie A. Calderon, City Clerk

**CLOSED SESSION**

City Attorney said the items on the closed session agenda are four cases of potential litigation pursuant to Government Code Section 54956.9 (d)(4); existing litigation pursuant Government Code Section 54956.9 (d)(1) – Andrew Takata, Duane Burk and Leonard Purvis v. City of Banning, Don Peterson – Case No. ROC 1408547; personal matter – recruitment of City Manager pursuant to Government Code Section 54957; existing litigation pursuant to Government Code Section 54956.9 (d)(1) regarding status of the Dureau/HCI matter; and Labor Negotiations pursuant to Government Code Section 54957.6 with International Brotherhood of Electrical Workers (IBEW) – Utility Unit, International Brotherhood of Electrical Works (IBEW) – General Unit, Banning Police Officers Association (BPOA), Banning Police Management Association (BPMA), and San Bernardino Public Employees Association (SBPEA).

Mayor Franklin opened the closed session items for public comments and seeing no one in the audience she closed public comments.

Meeting went into closed session at 3:02 p.m. and reconvened at 4:50 p.m.

## ADJOURNMENT

By common consent the meeting adjourned at 5:03 p.m.

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Marie A. Calderon, City Clerk

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

10/14/14  
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Franklin on October 14, 2014 at 5:01 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

**COUNCIL MEMBERS PRESENT:** Councilmember Miller  
Councilmember Peterson  
Councilmember Welch  
Councilmember Westholder  
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Homer Croy, Interim City Manager  
Lona N. Laymon, Assistant City Attorney  
June Overholt, Administrative Services Dir./Deputy City Manager  
Duane Burk, Public Works Director  
Brian Guillot, Acting Community Development Director  
Alex Diaz, Interim Chief of Police  
Heidi Meraz, Community Services Director  
Fred Mason, Electric Utility Director  
Tim Chavez, Battalion Chief  
Kahono Oei, City Engineer  
Marie A. Calderon, City Clerk

The invocation was given by Pastor Harv Hernandez, New Creation Church. Councilmember Peterson led the audience in the Pledge of Allegiance to the Flag.

## REPORT ON CLOSED SESSION

Assistant City Attorney said that the City Council returned from closed session at 4:55 p.m. and there was no reportable action on any of the items on the agenda for closed session.

## PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS

## **PUBLIC COMMENTS – *On Items Not on the Agenda***

Inge Schuler, resident of Banning addressed the Council stating that thanks to animal control they finally caught up after two weeks with a loose Pitbull that was in their neighborhood and he was very happy and safe. She mentioned that the speed indicator signs that flash the speed for the drivers are still not working. Are we paying a company for using these signs and if we are, can we stop payment please. She asked if there was a workshop or some investigation on

the shopping cart issue; maybe she missed something. In regards to the billing cycles on our utility bills it seems that in Banning and in several other cities in the region we have some interesting lengths of months. In the winter we go down to as low as 26 days per billing cycle but then in the summer when everybody needs a lot of water the billing cycle goes up to 34 days which kicks her comfortably into the most expensive tier. She thought the largest number of days that we have on this planet for a month is 31 days and she would like the Council to investigate that. It seems that there is some software available which she heard from the folks in Redlands that does this on purpose. Her water bill this summer has been over \$500 and the last one was \$616 and that is for water only. She cannot let her horses, her sheep, her geese and everything else on the place go without water and she cannot go without water. In regards to Measure J she would like to speak in support of this measure. It seems that those folks that are opposing some reasonable measures and she knows that because she has some very influential people on the opposing side, the Measure J people who are sending us these wonderful placards seem to have the money and the influence to organize its defeat and their methods are classical and she thinks it is important for people who watch this that they listen to this very carefully. They pick a name that conceals their purpose. They have this wonderful patriotic consumer-oriented we want your best type verbiage on these placards and people think, yeah, I they don't want to pay any more taxes. The taxes are not affecting any of us in town. It's the mining company that is paying a mining tax for the privilege of taking our dirt, selling it and ruining our streets in the process. She understands they have been allowed to negotiate their own repair work and they refuse to do that because they know it is incredibly expensive and so now they are paying for decades living just high on the hog in that that they pay some taxes to allow us to repair the streets for the residents and how people can be against that is beyond her. Their advertising is deceptive as it diverts attention away from the issue that it is a mining tax common in the majority of communities across the nation. Everybody has to pay taxes and because a product is taken out of the community by a private corporation for profit she doesn't think they should be getting off scot-free. They portray themselves as a friend of the consumer even though they are bankrolled by big business. They use the term "special interest" and there are always the other guys on there and for maximum flexibility they are very parsimonious with the information that they reveal. There is no such thing to them as elected officials or government administrators; they are what is called the new "politicians" and unelected bureaucrats.

Carolyn Johnson addressed the Council stating each time she has the privilege to step to this lectern and address the people that are in charge of a city that she dearly loves. She moved her children here in 1977 and has been in love with this community and the people that makeup this greater Banning area but she is heartsick for this upcoming election and maybe we have resorted back to the founding fathers way of doing things and throwing rocks and hiding our hands. She said she was privy to a conversation one morning on the weekend of some of our upstanding citizens and she almost missed it, she was listening so hard she almost missed what it was really about and almost missed seeing the real deal which was there was an absence of the body-covered sheets and hoods but the conversation was there and in this day and age this needs to stop. Even as we sit in this particular building its suspect and she is not the only one who can remember how it came about, this building, our gracious city hall and the property that surrounds it. She said he is just making statements however she is not the only one that is aware of these politics the way they have turned. She said she didn't hear a word when this little rustic community was living in just disarray when you couldn't look at what was going on

in the streets down Ramsey and feel proud of what you saw, feel proud of the homes and things that are kept up by the citizens that appreciate their properties; no one would mention anything about that. But just digging for dirt and just slinging mud; please don't do this. Please, whoever is in charge of the mud-slinging, it needs to stop. There are more serious things to think about than trying to belittle and downplay somebody or anybody.

Heather and Anna with Inland Behavioral and Health Services (IBHS) addressed the Council stating that IBHS is a non-profit, federally certified state-licensed community based agency serving the Inland Empire since 1978. They currently have 4 locations and of those locations are in San Bernardino with their newest one in Banning located at 1070 E. Ramsey Street and called Banning Family Community Health Center. They are open Monday through Friday, 8 a.m. to 5 p.m. and they have doctors in Monday through Friday. They have pediatricians, family practice doctors with dental and pharmacy opening up very soon. At their clinic they accept many different kinds of insurance which include IEHP, Molina, Medical and many PPOs. They also help the community by signing people up with Medical if needed or insurance through Covered California and help with other applications such as food stamps or unemployment SSI. Upcoming on October 29<sup>th</sup> from 1 to 3 p.m. they will be holding an event in honor of National Breast Cancer Awareness. They will be having free screenings (blood pressure, BMIs), presentations and free healthy snacks and refreshments. They also have multiple different languages to accommodate the community. They would love for the Council and the community to come and join them on October 29<sup>th</sup>. Their mission really is to reach out to the community and to provide whatever they can and if they don't have it, they will find the resource for it.

Michael DaVita resident and business owner here in Banning addressed the Council stating that there is a skateboard business at 67 W. Ramsey which seem to be doing pretty well but the issue he has with them is that there are skateboarders up and down the street all the time and his business is next door and he has many seniors that they cater to and they come in and out and don't move very fast and have trouble jumping out of the way when there is a skateboard speeding at them. He is not sure if there is any type of City ordinance in regards to skateboards on the city sidewalks and knows that there is a skateboard park here in town and with our very limited resources with the police department this isn't something that can be policed all the time but if there can be some type of sign saying no skateboards on the sidewalk; just something that would reduce the possibility of someone getting hurt or an ordinance or a committee to look into that problem. His other issue is door-to-door salesmen. He gets them about 20 times a week selling candy bars for their missionary church and most of the time they are not even from the church and have crossed out the \$1.00 price tag on the box and raised it to \$3.00 dollars. He said that he asks them if they have a business license from the City of Banning to be selling these things because every other business in town does have a business license and if they say no, he tells them to leave. He believes anybody selling or doing any business in our city should be required to have that business license even if it a temporary license or a one-day permit or whatever for as long as you are going to be in town and thinks they should be cited. If they are not being cited now or if there is not an ordinance in place for that that would generate some additional revenue for our City and it would cut down on the amount of solicitation. Also, in regards to the Chamber utility issue he doesn't have enough facts to really go off on this but for the average household it would cost about \$3.00 per household to pay that \$32,000 dollars which doesn't sound like much but he serves papers all

over this city and he sees people that couldn't come up with \$3 bucks if they had to. It is just quite a bit of money so whoever gave this Chamber the pass to go ahead and not pay this, those individuals that gave them that pass need to pay this money so he thinks the \$32,000 ought to come out of their pocket to pay it.

Valerie Westholder addressed the Council stating that she is a resident of Banning and she works in Banning and she would like to set the record straight on something. Apparently there is a lot of concern going around as to where her husband, a candidate for City Council re-election, has gotten his campaign funds. She said that neither herself, her husband, none of their children or even their dogs has ever met Lloyd Fields. They have never asked him for a donation, no promises were ever made, nor favors been given for money. That is not the way a family of honesty and integrity work. When they received his donation they sent him a thank you letter and he responded with a letter that she read (see Exhibit "A").

Dorothy Familetti-McLean addressed the Council stating that Banning Stagecoach Days did have a successful event this year and they have started already to plan for next year. They are having a Pancake Breakfast fundraiser on Saturday, November 1, 2014 from 7 to 11 a.m. at the Banning Community Center, 789 N. San Gorgonio Avenue. The cost is \$7.00 per person and children under 6 are free. They want to make next year's event better than ever and they need your support. Tickets are on sale at the site or from Stagecoach Days Association Members.

Maggie Scott resident of Banning for 40 plus years addressed the Council stating that she lives on east Nicolet near Hathaway where the mining trucks drive. She asked if there was any City ordinance on vacant lots because it seems like nothing is being done about those vacant lots where the weeds and tumbleweeds gather and it really looks bad and this has been going on for some time. Is there something that can be done for the landlord even in homes that are vacant and for the vacant lots that are being over-grown? Also, a lady spoke on shopping carts and on her street they have shopping carts with some all the way from Big Lots and they are just beside the street in front of vacant residences and she doesn't know if the City has anyone that can check on things like that but something should be done about it and something needs to be done about all these vacant residences that are boarded up with yards overgrown with weeds, have discarded furniture, etc. that is left when they move out; it's an eyesore and something needs to be done. In regards to the tumbleweeds when she goes down Nicolet and tries to make a make a turn she cannot even see from the left; she can see the big trucks but not the cars because the tumbleweeds are as tall as she is. She doesn't know if the City is supposed to take care of that or what but something needs to be done. The City Council needs to look at some of the things that are going on in the city as far as residents not taking care of their property and it needs to be taken care of now.

Mayor Franklin asked Ms. Scott to leave her contact information with the City Clerk so that staff can get back with her on specific addresses if she has any.

Councilmember Miller asked if she could give the cross streets on Nicolet.

Ms. Scott said she doesn't have the addresses right now but one area is on Nicolet and Almond Way, also all the way down Nicolet to the end of Hathaway there is a vacant house on the corner where people have moved out and left items behind. She said that there used to be a

time when we had Neighborhood Clean-Up Day and maybe we should start that again. Even coming into Banning on Ramsey is looking bad.

Jim Price addressed the Council stating that he lives in a gated community, Serrano Del Vista, and he has been asked by several of the homeowners exactly where these golf cart lanes are going to be built. Also, who is going to pay for these golf cart lanes and if he could get some kind of answer that would be great.

Diego Rose, Boondocks Tavern and longtime resident addressed the Council with a couple of concerns. He said he was listening to and wanted to address the Council about the same thing, city blight that we see around. His particular business is on Ramsey Street and he knows that they have had a couple of median fires through there and have been doing some work on the electrical but that median looks like hell and it has for a long time. He said that he spends quite a bit of time out there in the median doing his own weed-eating, his own cleaning and he cleans up his own curb because he has gotten tired and cannot wait on the City to do things and it is easier to ask for forgiveness after the fact. He said he is at a point where he thinks a majority of the Banning residents should just do it; just get it done. But ultimately he thinks the job of the City is to lead by example and he often hears the excuse that we don't have funds for it but there is also an attribute of working smart and not hard and he has watched the City go out there with their trucks to spray Round-up all over everything under the sun and at the same time pass up broken down trees, pass up trash, pass up weeds that they could have been pulling along the same time and so he watches this going on and thinks would he paid somebody to do that kind of work, absolutely not. He would not pay somebody to work so inefficiently and he watches it go on day, after day, after day and he thinks of course we don't have the money because look at how we work. He really hopes that we don't just take the excuse of not having money and say I am going to go after an easy target for some money and that way we can say that we did something. We have the money, we have the knowhow; we need to put it into action. He said he is going to continue to keep up his parkway in front of his business because he would be silly not to but he thinks that if every business in town did the same thing, we could spend the time and energy doing something else; at least the City employees can. Also, he has been to the schools several times such as Nicolet and Central and he is watching some of the City grounds as well especially late night and the biggest culprits for water waste are the school districts right now. Absolutely, it is horrific. He has told them time and time and time again and he doesn't understand why this is going on. Some of the City yards as well. He sees water coming down Alessandro, he sees water at all the schools; again we need to lead by example. As an institution, it is not the five City Council Members, it is everybody else that works underneath you but you are the figureheads and when you speak it, it will happen. You guys be the change that we need.

Stacy Jackson addressed the Council stating that he wishes that he could say that he has lived in Banning for a number of years but the true of the matter is that he has only lived in Banning for about 4 months and is originally from the state of Georgia. He knows that there are a lot of things that are brought before the Council that are of great concern for the citizens here and for himself but one of the things he can say since he has been here he has had an opportunity to walk the streets of Banning during the day and during the night and fell in love with this little town. Not because of the eyesores that were pointed out but just some of those practical things. Maybe those tumbleweeds, those very things that are eyesores drew him to this place. He said

he has a heart for this town, this is the reason he is here and this is the first time he has attended a Council Meeting but he has a love for this city and a concern for it. He said he looks at Banning with different eyes and what you say may be an atrocity, he happens to like. He has watched the police force patrol through the city and they do their job diligently and he has a sense of security. Maybe there are some things that need to get corrected, there are some issues that need to be brought before the Council and one in particular for him would be the number of loose animals. When he walks his animals those animals jump their fences or are on the verge of attack and that is a concern. But as far as he is concerned as far as the "proud history and prosperous tomorrow" he believes in the City of Banning and believes in what the Council is doing and he is here to support the Council 100% and like they say down South if there is anything that he can do, just use him like a broken down mule and let's change Banning for the better.

Ron Austin resident of Banning for 7 years addressed the Council stating that he lives off of Omar and Wilson and he has been calling the City every six months for them to come out and take care of the landscaping or trimming the bushes and they keep saying it is going to be taken care of. They do the part on Wilson but do not do the part on Omar and the bushes just get overgrown. Another item he wanted to touch base on is that he purchased an electric vehicle and he went to the City because most cities offer discounts on electric which someone talked about earlier how high the electric is here and he was told by the City that they don't do that because most people in Banning can't afford an electric car which doesn't make any sense because that was kind of the same thing he got when he looked into getting solar for his house. It doesn't look like the City wants to participate in anything. The last thing he wants to touch on is that when our police department was in that little, tiny building we actually had police officers out patrolling the city, writing speeding tickets, generating money for the City and then we built this \$18 million dollar police station and the other day when someone tried to break into their house it took 30 minutes for a police officer to arrive because we have hardly any police officers any more. Later that day when he went to the police station to file a complaint and find out what he could do what he got was a door bell at our \$18 million dollar police station where he had to wait for one of the three police officers that were patrolling our neighborhoods to drive to the police station to unlock the door to go in. So it doesn't make any sense why we built this huge police station with all the taxpayer's money so that we could not have any police officers to patrol our neighborhoods, write speeding tickets and generate money for the City. We really need to start looking at spending our money more wisely because to him that didn't make any sense because like he said he knows that our police officers probably have to work ten times harder than anywhere else because they have limited staff but yet we have a state-of-the art police department. He hopes the City could start looking at spending their money more wisely.

Marilyn Miller addressed the Council stating that she wanted to talk about something that she thinks all of us can agree upon especially after all the comments we have heard this evening. She said that she lives in Banning and believes in Banning. We could all believe more in Banning if the City had the money to hire more police, keep the parks in better condition, and clean the streets more often. Well we do have that opportunity to make that happen. The City Council has unanimously put on the ballot Measure J which would tax the mine operating on the east side of Banning. This tax could hopefully bring nearly \$1 million dollars a year into our city to help us make a better Banning. This tax is not on any individual and our taxes will

not be increased one penny. The mine in the past used to pay sales tax for the rock and sand they dug out of our city but cleverly they moved all the tax money to Corona and of course, Corona gave them a rebate for taking Banning's rightful income from the mine. This mining tax will bring back what we the citizens of Banning deserve. The mine has dug past the area that is permitted extending into other areas of Banning. It produces dust that residents in the area claim are making their children sick. Their heavy trucks are damaging our streets and we again, the residents of Banning, must pay for the repair. As usual there are politicians that do not live in Banning or who have never probably heard of Banning who state they are opposed to Measure J. In a telephone robo call Riverside County Supervisor Ashley said he is opposed to Measure J; does he live in Banning, does he breath our air, does he have to clean the dust on our table. Would anyone be surprised to know that the mine is one of his campaign contributors? Another telephone ad attempted to scare us that the mine might move to Cabazon if Measure J is passed. If we get no money from this mine and only get the street repair cost and dust, it would be better if they did move. We all have received an expensive, giant advertisement saying how our City Council waste money and our City employees are overpaid; what nonsense. Name one thing this Council spent money on except repairing and maintaining our city. For the last ten years most of our City employees has received no pay increase and in fact, had a pay cut when the retirement package was stopped. This mine doesn't want to pay its share of expenses and dares complain about our City employee's salaries. The mine has plenty of money to spend on these deceptive ads. The City cannot legally send out anything but that one single information letter we received. The only way we can fight for our share of the tax money from the mine is by word of mouth so please tell your friends and neighbors that we need a yes vote on Measure J to help our City pay for the services we all need.

Lynn Hammer addressed the Council stating that she was a property owner in the city of Banning and with her husband and his two brothers they hold the 5013c for Fire Memories Inc. and they operate as Fire Memories Museum. She would like you to imagine yourself running a foot race and you are doing really well and soon you can see the finish line and just as you almost reach that finish line they move the line back. Therefore, you run a little bit harder and when you almost get to the finish line they move it again. You never have the opportunity to finish this race because the finish line keeps moving and changing. That is how it feels to them at Fire Memories Museum; for them the rules keep changing. She has been silent and tried not to rock the boat but she can no longer be silent. Like you, she is a property owner in town and she has no say who her tenants invite into their home which is really her home. She has no say when or why their guests will be there and how they will entertain them. They do not need her permission as the property owner to have guests in their home yet, you are the property owner of the property they rent for Fire Memories Museum. You want to tell us who can come, why they can come, when they can come and how we will entertain them as guests at 5261 W. Wilson Street. In addition, not only do you want them to ask permission each and every single time they entertain, the rules keep changing every time they try to apply for a permit. For you five sitting there this is probably new news to you but you need to know what is happening. Now they are being told that they need to have a permit for all tour groups whether there is 8 guests, 15 guests, 30 guests, 75 guests; for all tour groups they need to apply for a permit. What is very interesting about them getting a permit for Fire Memories Museum all they are doing in telling you who is coming, why they are coming, when they are coming and when they will be leaving and what they will be doing there. They require nothing extra from the City. No extra trash service, no portable toilets, no City personnel; nothing. But they have to apply

for a permit. About 7 or 8 months ago for the very first time in two and a half years no parking signs were put up on the south side of Wilson Street two days prior to their pancake breakfast; that was suddenly a change in the rules after two and half years. The night before their breakfast, the wind howled, it poured rain and you can only imagine what happened to the cardboard no parking signs. Yet, they were accused of tearing down the signs and ignoring the law and encouraging people to park on the south side of Wilson Street. They took pictures at 5:30 in the morning of the rain and wind-torn signs because they knew they would be blamed for it. Five or six months ago here comes another change in the rules. They were told this permit process for every event was taking too much time and too many man hours and would be streamlined and therefore, the City was going to come up with a system that this permit getting process for every tour did not need to be done. At the City's request they provided a list of the average number of events and guessed who would attend these events in both a list form and a month by month form. They turned it in and then two weeks later another change in the rules. She said the most important thing is that most recently the permit they picked up two weeks ago they were told nobody could park in front of their museum and had to park in the back parking lot; there is legal street parking on Wilson Street.

Doug Hammer, CEO of Fire Memories Museum addressed the Council stating as you can see his wife gets a little more excited than he does. A couple of weeks ago he said he was 6 ft. 2 inches and today he is 5 ft. 7 inches and he doesn't know why and doesn't understand. He got this brick kicked out from underneath him but he chooses to take the high road. Fire Memories Museum has been at their location for three years and they really appreciate it. They are so successful you can't believe it. They have so many people come into and enjoy the museum. They have this smoke tunnel where they teach kids how to stay low and crawl through the tunnel and they absolutely love it and they just learned how to get out of a room if there is smoke in the room and it has filled up and the house is on fire, what a great opportunity and education for these kids. Last Friday they had a group from the Inland Empire Pre-School out of Calimesa and there were 15 kids and 6 adults and they all had a good time. They had such a good time that they asked to come back the next day with a different group of kids and parents and they learned and enjoyed the museum. It seems that Fire Memories Museum is under attack and they don't know why. Everybody that works there and all the volunteers that are there were firemen and some of them were volunteer firemen and were not paid firemen but they have been firemen except one who is a retired deputy sheriff. They have another volunteer who is a banker so they made him their treasurer. A couple of volunteers have been retired from a fire department with 40 years of service. He said that he has had 21 years of service with the fire department and five years with the police department in Palm Springs. His twin brother Brad is retired from the Cathedral City Fire Department after 38 years with a broken neck, on duty injury, broken neck. He did it on a call and two days later they did surgery and he was never able to go back to work. For somebody to stand up here and say that they were not firemen is unbelievable. They have never been in the museum and they don't know them. Mr. Hammer said that they have a great bunch of guys. They are open Thursday, Friday and Saturday and they have ice cream at 2:30 p.m. so come by and have some ice cream with them and sit down with them and look at the museum and see what they have brought to this city. There are only 300 fire museums in the United States and you have one in your city and that is a big deal and they don't take it lightly. They like Banning, they live in Banning and they are happy here.

Councilmember Miller asked when the children come is that considered one of the tours that you have to apply for a permit.

Mr. Hammer said no. On Thursday, Friday and Saturday during normal business hours they are not required to get a permit which is really strange because they could have more people there during that time. The only time the City wants them to get a permit is when they have tours or events or people who come in for instance, 10 boy scouts came in one night at 6 p.m. and they had to get a permit; there are 8 people and they have to get a permit. When they started this museum they said they would be open 3 days a week from 10 a.m. to 4:30 p.m. but would also do private tours if people would call in. They like to bring in kids and school groups on Monday, Tuesday and Wednesday because the museum is closed and then they don't have to worry about other people coming in that they don't know. If they have 20 kids there, they can keep an eye on those kids and don't have to worry about an individual that they may not want in the museum at that time so it is kind of a safety thing and that is one of the reasons they have tours by appointment.

Fred Sakurai resident of Banning addressed the Council stating that about three months ago after a bobblehead anonymous letter concerning Duane Burk and a great outpouring of enthusiasm and encouragement for Duane Burk, Mr. Miller gave a condescending little talk and said that he would make a complete investigation of that letter. He has not heard a report about his investigation if he found out anything about the charges in that letter or even where that letter came from. Do you have a timeline when we can expect a report or when Mr. Burk can receive an apology? Another point, if you notice a similarity in that bobblehead anonymous letter and the flyers that have gone out concerning our current Mayor Debbie Franklin or the two who are running for water commissioner Gail Paparian or Jim Smith, it does seem that the writing styles are very similar, the nastiness of the letter is very noticeable and the poor grammar is noticeable. Will you investigate the similarity of those two letters to see if there is a similarity and check that out and also report on that and at the same time give that apology to Mr. Burk. Another point, two years ago Mr. Lloyd Fields gave a \$15,000 dollar donation to the campaigning of Mr. Miller and also gave \$15,000 to Mr. Peterson for his campaign and they both won. Now we have \$20,000 going to Jerry Westholder and \$20,000 to a Banning citizens group who have put out these nasty letters specifically to get rid of our Mayor. There was another \$10,000, another \$10,000 and another \$10,000 that came in to the Banning citizens group and that makes \$100,000.00 dollars that Mr. Lloyd Fields has donated to the campaign or political action groups here in Banning. Mr. Fields has acquired that money by being smart and not by being stupid and throwing money away. He is expecting something for that \$100,000.00 that he has contributed to the campaign of these three individuals; what, we don't know as yet. He is sure that we will soon be notified what will come of it. Also we have been told by rumor that there is a class-action lawsuit against the Banning mis-informer and Philipp Goebels, the webmaster or the owner of that website and nobody seems to be able to confirm it. Goebels has been on that list and indirectly the City of Banning because of all the information that has leaked out or going to the website and how that information got to that website is conjecture. He has his own thoughts where the webmaster gets that information and he is sure it is in the court papers but he doesn't have access to that information.

Councilmember Miller asked the City Attorney if he could tell everyone here that he doesn't have the authority to investigate anyone and he has never performed an investigation of anyone and also, can he say specifically there is no class-action suit against the City now.

City Attorney said he may.

Fred Sakurai said if you are not permitted to make such an investigation why did you make that condescending speech and assure Duane Burk and his supports that you would make a complete and thorough investigation.

Mayor Franklin asked everyone to remember that this is public comment which means you are entitled to five-minutes of comment but according to the Brown Act we are not supposed to engage in any discussion regarding any of the items that are brought up. There are a lot of things that have been brought up tonight and she knows that staff has taken copious notes and a lot of things will be addressed. This is not a time for us to engage in dialogue.

Mr. Sakurai said he was sorry.

Gabriel Westholder said he lives in Banning but works out of Banning because there are no jobs in Banning. As far as the \$32,000 in regards to the Chamber of Commerce not paying their utility bills it would be nice if they would. He knows as citizens we have to pay for our bills and it would be nice if they did their part. He said on behalf of his dad, they have never met Lloyd Fields and he doesn't know who Lloyd Fields is. He said that he has given his dad lots of money and has never received any favors from him at any time. He is not a guy who just does favors just because he feels he owes it to anybody; he has principles and standards.

CORRESPONDENCE – None

CONSENT ITEMS

Mayor Franklin said that there was a request to remove Consent Item 7.

1. Approval of Minutes – Special Meeting – 09/23/14 (*Closed Session*)

Recommendation: That the minutes of the Special Meeting of September 23, 2014 be approved.

2. Approval of Minutes – Regular Meeting – 09/23/14

Recommendation: That the minutes of the Regular Meeting of September 23, 2014 be approved.

3. Approval of Minutes – Special Meeting – 09/30/14 (*Closed Session*)

Recommendation: That the minutes of the Special Meeting of September 30, 2014 be approved.

4. Report of Investments for August 2014

Recommendation: That the City Council receive and file the monthly Report of Investments.

5. Notice of Completion for Project No. 3-06-0018 AIP 12, Relocate Taxiway "A" Phase I, Relocate Fuel Facility

Recommendation: That the City Council accepts Project No. 3-06-0018 AIP 12, Relocate Taxiway "A" Phase I, Relocate Fuel Facility as complete and direct the City Clerk to Record the Notice of Completion.

6. Ordinance No. 1483 – 2<sup>nd</sup> Reading: An Ordinance of the Voters of the City of Banning, California, Amending Section 3.16.030 of Chapter 3.16 of the Banning Municipal Code Permanently Extending the Transient Occupancy Tax.

Recommendation: That Ordinance No. 1483 pass its second reading and be adopted.

**Motion Welch/Miller to approve Consent Items 1 through 6.** Mayor Franklin opened the item for public comments; there were none. **Motion carried, all in favor.**

7. Resolution No. 2014-68, Authorizing the Purchase of Two (2) 2014 Eldorado National Aero Elite Ford F550 CNG Powered Cutaway Buses from Creative Bus Sales Utilizing the California Association for Coordinated Transportation (CALACT) Competitive Bid Award for a Total of \$304,568.32.

Director Meraz gave the staff report stating that this is for the purchase of two buses which have seating capacity for 24 ambulatory and two wheelchairs or 30 ambulatory passengers. Our fleet is aging and as of July we also expanded our bus service and are in need of new busses. There is funding available through the State Transit Assistance Funds that are allocated for our capital purchases. The bidding process that was used assures us the absolute lowest price and also gives us an added benefit of receiving a shorter turnaround time. The funding comes from the State Transit Assistance Funds which is allocated through RCTC (Riverside County Transportation Commission) which funds our transit operations so there are no funds coming out of the City's General Fund at all for this purpose. The funds requested will completely pay for vehicles, as well as, decaling, camera and security systems, etc.

Councilmember Miller thanked Director Meraz for her report. He said that he pulled this item so that everyone could know about the improvement in our transit system.

Councilmember Welch thanked Heidi on behalf of the Council for her work. He said the bus service in the Pass Area has just improved tremendously especially the new routes for the Cabazon area and now people on Route 1 can go from the Casino/Outlets area all the way to the west side of Beaumont on Ramsey Street and frequency is every 30 minutes each direction and the buses are full.

Mayor Franklin opened the item for public comment; there were none.

**Motion Miller/Welch to approve Consent Item No. 7, adopting Resolution No. 2014-68. Motion carried, all in favor.**

**REPORTS OF OFFICERS**

1. Resolution No. 2014-74 Accepting Community Development Block Grant Funds for Fiscal Year 2014-2015.  
(Staff Report – Duane Burk, Public Works Director)

Director Burk gave the staff report as contained in the agenda packet. He said the Parks and Recreation Commission approved this last year and brought to Council for their acceptance in regards to the requests of the Boys and Girls Club for \$20,000.00 and the Ad Hoc recommendation was \$5,000; and Habitat for Humanity of the San Gorgonio Pass requested \$35,242.00 and the Ad Hoc recommended \$10,000.00 for a total of \$15,000.00. He said that money is 15% of the total amount allowed for non-profits. In regards to the City's request the Parks and Recreation Commission and the City Council wanted a certain amount of money go to each park for rehabilitation of the playground equipment in the parks themselves and the requested amount was \$118,000.00. The total amount received is \$169,000.00 from the Community Development Block Grant which gives each park around \$31,000 for rehabilitation. Director Burk said that he is asking for Council's approval on this item.

There was Council and staff discussion in regards to the applicants for the Block Grants, the availability for BPAL to apply next year, noticing/advertising outreach, and is there a requirement of award to non-profits.

Mayor Franklin opened the item for public comment; there was none.

**Motion Welch/Miller that the City Council adopt Resolution No. 2014-74, Accepting Community Development Block Grant Program Funds for Fiscal Year 2014-2015. Motion carried, all in favor.**

**ANNOUNCEMENTS/REPORTS *(Upcoming Events/Other Items if any)***

**City Council**

Mayor Franklin –

- She said that WRCOG (Western Riverside Council of Governments) had a visioning session that was held last Friday and several things were brought up in regards to how the Association of Governments can help all the entities that are members of the organization and one of the things that they did talk about was Proposition 1 which is the Water Bond and there was a majority vote for that Proposition. Also, Riverside County Transportation Commission had a review of the various bills that were signed by the Governor and one in particular impacts all of us and has to do with CEQA (California Environmental Quality Act). For CEQA right now we use "level of service" when we are talking about a project going in and what is being discussed now is going from "level of service" to "vehicle miles traveled". For instance, if we had a grocery store that wanted to come in and they are going through the CEQA process, somehow the developer has to figure out how many miles would be average

driven to get to the grocery store. So what we have been asked to do and if the Council is in concurrence, is to ask staff to be able to respond and they are looking for different governing bodies to respond to just how much that doesn't make sense and really ask them to look at it a little bit closer because this could have an impact every time we get ready to do a development. She said if the Council is in concurrence, she will ask staff to look into this a little bit further and there is a response deadline of November 21, 2014. **There was Council concurrence in regards to this matter.**

City Committee Reports – None

Report by City Attorney – None

Report by City Manager – Interim City Manager reported:

- On the Pending List of items Council asked for approximate dates of when these items will be brought back to the Council and he has talked with staff and has come up with a tentative plan for most of these items. One item that was brought up tonight was the grocery cart policy and that process is moving forward with the Planning Commission and staff at this time and when it is ready it will come to the Council in the future and that date is still uncertain but staff is working out the details for a policy on that item. In regards to the golf cart lanes a date has not been set on that because there are a lot of State laws and regulations they have to go through before they can even consider bringing this to the Council as to possible directions in the future and he doesn't see that coming to Council until after the first of the year.

## ITEMS FOR FUTURE AGENDAS

New Items – There were none.

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials (*Jan. 2015*)
2. Discussion on how to handle loans or distributions to charities. (*Midyear budget*)
3. Discussion on how the City Council handles donations to the City. (*Feb. 2015*)
4. Grocery Cart Policy (*In planning process.*)
5. Workshop to discuss the future of the airport. (*Nov. 2014*)
6. Discussion regarding Public Works Committee and Ad Hoc Committees (*Jan. 2015*)
7. Discussion regarding City's ordinance dealing with sex offenders and child offenders. (*Feb. 2015*)
8. Discussion to move "Announcements" (events) up on the agenda after Public Comments. (*Nov. 2014*)
9. Discussion regarding the discretionary limit of \$25,000 & review of all contracts by City Attorney. (*Oct. 28, 2014*)
10. Discussion regarding flex scheduling to keep city hall open five days a week.
11. Discussion regarding Animal Control Services (*Midyear Budget*)
12. Discussion regarding Police Staffing (*Midyear Budget*)
13. Prepare a staff report regarding delinquent utility fees owed by the Banning Chamber of Commerce. (*Nov. 2014*)
14. Golf Cart Lanes
15. Bond Workshop (*Midyear Budget*)

Mayor Franklin thanked everyone who came up and were courageous enough to speak tonight and there are a lot of things that we need to ask staff to work on.

ADJOURNMENT

By common consent the meeting adjourned at 6:18 p.m.

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Marie A. Calderon, City Clerk

THE ACTION MINUTES REFLECT ACTIONS TAKEN BY THE CITY COUNCIL. A COPY OF THE MEETING IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK'S OFFICE.

8-15-14

Received 10-14-14  
Public Comments  
City Council Mtg. min

DEAR MR. WESTHOLDER:

VERY BEST WISHES FOR A SUCCESSFUL CAMPAIGN OUTCOME. MY ONLY REQUEST IS THAT YOU ALWAYS PROMOTE THE BEST INTERESTS OF BANNING. I WILL TAKE MY CHANCES AS A LAND OWNER SUBJECT TO THE DECISIONS OF A BANNING GOVERNMENT THAT ACTS FOR THE BENEFIT OF BANNING RATHER THAN FOR THE BENEFIT OF THE MORONGO TRIBE AND CORRUPT DEVELOPERS, CONTRACTORS AND GRANT RECIPIENTS. I LOOK FORWARD TO MEETING YOU SOON.

CORDIALLY YOURS,  
*Lloyd L. Fields*

## CITY COUNCIL AGENDA

**Date:** October 28, 2014

**TO:** City Council

**FROM:** June Overholt, Administrative Services Director/Deputy City Manager

**SUBJECT:** Report of Investments for September 2014

**RECOMMENDATION:** The City Council receive and file the monthly *Report of Investments*.

**JUSTIFICATION:** State law requires that a monthly report of investments be submitted to the Governing Legislative Body.

**BACKGROUND/ANALYSIS:** This report includes investments on hand at the end of September 2014. As of September 30, 2014, the City's operating funds totaled \$73,187,860. Included in Successor Agency operating funds is \$759,171 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Summary Schedule.

As of September 30, 2014 approximately 39% of the City's unrestricted cash balances were invested in investments other than LAIF.

The September Investment Report includes the following documents:

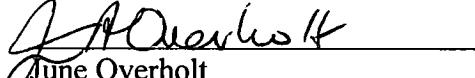
- Summary Schedule of Cash and Investments
- Operational Portfolio Individual Investments
- Individual Investments with Fiscal Agent
- Investment Report Supplemental Information

The attached Summary Schedule of Cash and Investments has been updated to show the rate of earnings allowance received from Wells Fargo Bank. The amount earned reduces the total amount of bank fees charged.

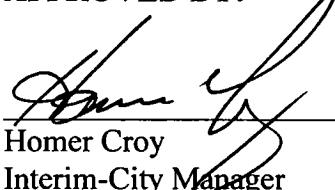
Staff has also enhanced the Investment Report Supplemental Information to provide additional information related to Wells Fargo that will further facilitate the understanding of the Investment Report.

**FISCAL DATA:** The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) was decreased to 0.246% in September. The average rate for all investments in September was 0.340%.

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Homer Croy  
Interim-City Manager

**Summary Schedule of Cash and Investments****Operating Funds**Petty Cash

	<u>Amount</u>
	3,705

Bank Accounts

Wells Fargo Bank	
Bank of America-Airport	
Bank of America-Parking Citations	
Bank of America-CNG Station	

Interest		
Rate		<u>Amount</u>
0.200% *		1,381,359
0.020%		3,733
0.020%		3,108
0.020%		<u>3,599</u>

<i>Money Market and Bank Account Sub-Total</i>	1,391,799
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Government Pools

Account #1 Operating Amount	42,323,102	
Account #1 CRA Bond Cash Bal.	759,171	
Local Agency Investment Fund: Account #1		0.246% 43,082,273
Account #2 Successor Agency Cash Bal	0	
Local Agency Investment Fund: Account #2		0.246% <u>0</u>

<i>Government Pool Sub-Total</i>	<u>43,082,273</u>
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<b>Operating Cash Balance</b>	<b>44,477,777</b>
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Restricted Operating Funds

Riverside Public Utilities- Highmark U.S. Government Money Market Fund	0.010%	957,945
California ISO Corp- Union Bank		100,179
Worker's Compensation Program- (PERMA)		1,843,589

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2	0.505%	25,808,369
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<i>Operating Funds Total</i>	<u>73,187,860</u>
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**Fiscal Agent**

	<u>Amount</u>
US Bank	<u>34,462,802</u>

<i>Fiscal Agent Total</i>	<u>34,462,802</u>
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\* Rate of earnings allowance received, offsets analyzed bank charges.

City of Banning Investment Report

September 30, 2014

Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Date	Discount or (Premium) Amortization	Market Value
<b><u>Bank Accounts</u></b>								
1,381,359	Wells Fargo Bank-Operating	n/a	0.20%	daily	varies	1,381,359	n/a	1,381,359
3,733	Bank of America-Airport	n/a	0.02%	daily	varies	3,733	n/a	3,733
3,108	Bank of America-Parking Citations	n/a	0.02%	daily	varies	3,108	n/a	3,108
3,599	Bank of America-Parking Citations	n/a	0.02%	daily	varies	3,599	n/a	3,599
Sub-total								1,391,799
<b><u>Government Pools</u></b>								
43,082,273	L.A.I.F. account #1	n/a	0.246%	daily	varies	43,082,273	n/a	43,082,273
0	L.A.I.F. account #2	n/a	0.246%	daily	varies	0	n/a	0
								43,082,273
<b><u>Investments-US Bank/Piper Jaffray</u></b>								
1,000,000	FHLMC Mtn	n/a	0.570%	6/20/2016	6/6/2013	1,000,000		999,360
1,000,000	FNMA	n/a	0.750%	12/19/2016	6/19/2013	1,000,000		996,940
2,000,000	FHLMC Mtn	n/a	0.375%	6/24/2016	12/24/2013	2,000,000		1,997,020
2,000,000	FHLMC Mtn	n/a	0.500%	6/27/2016	12/27/2013	2,000,000		1,991,900
2,000,000	FHLMC Mtn	n/a	0.750%	12/27/2016	12/27/2013	2,000,000		1,995,920
2,000,000	Federal Home Loan Bks	n/a	0.700%	12/27/2016	3/27/2014	2,000,000		1,996,680
2,000,000	Federal Home Loan Bks	n/a	0.900%	3/27/2017	3/27/2014	2,000,000		1,990,440
2,000,000	Federal Home Loan Bks	n/a	0.500%	7/15/2016	4/15/2014	2,000,000		1,996,800
1,000,000	Federal Home Loan Bks	n/a	1.050%	4/17/2017	4/17/2014	1,000,000		999,540
1,700,000	FHLMC Mtn	n/a	0.700%	12/30/2016	6/30/2014	1,700,000		1,694,985
3,000,000	Federal Home Loan Bks	n/a	0.660%	10/7/2016	7/14/2014	3,000,000		2,996,190
6,152,594	Money Market	n/a	0.010%	daily	varies	6,152,594	0	6,152,594
								25,808,369

Average Rate All= 0.340%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on September 24, 2013. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 209 days and does not include Bond Reserve Fund Investments.

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## City of Banning Investment Report

September 30, 2014

## Individual Investments with Fiscal Agent

TRUSTEE	Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Minimum Reserve Requirement	Sep-14	9/30/2014 Market Value
<b>COB IMPROVEMENT DISTRICT LIMITED OBLIGATION BONDS SERIES 2005A</b>							
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 5-Ct	0.030%	daily	188,943	5.93	188,035
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION, SERIES 2003</b>							
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill	4.61%	7/28/2011	971,763		991,940
		US Bank Mmkt 5-Ct	0.030%	daily		0.54	21,024
		US Bank Mmkt 5-Ct	0.060%	daily			18
Surplus Fund		US Bank Mmkt 5-Ct	0.000%	daily			12
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</b>							
Redevelop Fund	2037	US Bank Mmkt 5-Ct	0.030%	daily		212.30	8,332,457
Reserve Fund		US Bank Mmkt 5-Ct	0.030%	daily	1,880,751	47.78	1,875,242
Special Fund		US Bank Mmkt 5-Ct	0.030%	daily			32
Surplus Fund		US Bank Mmkt 5-Ct	0.000%	daily			11
<b>BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
Interest Account		US Bank Mmkt 5-Ct	0.000%	daily			2
Principal Account		US Bank Mmkt 5-Ct	0.030%	daily		1.97	77,508
		US Bank Mmkt 5-Ct	0.030%	daily		83.97	3,265,850
<b>BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
Interest Account		US Bank Mmkt 5-Ct	0.000%	daily			13
Principal Account		US Bank Mmkt 5-Ct	0.030%	daily		10.26	402,541
Reserve Fund		US Bank Mmkt 5-Ct	0.030%	daily	2,310,710	58.89	2,311,432
Project Fund		US Bank Mmkt 5-Ct	0.030%	daily		40.82	1,602,163
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>							
		US Bank Mmkt 5-Ct	0.040%	daily			25
		US Bank Mmkt 5-Ct	0.030%	daily	2,672,050	68.09	2,672,516
Acquisition & Construction		US Bank Mmkt 5-Ct	0.030%	daily		357.31	12,721,982
*Paid Semi-Annually-Deposited into Money Mkt Account				Total		887.86	34,462,802

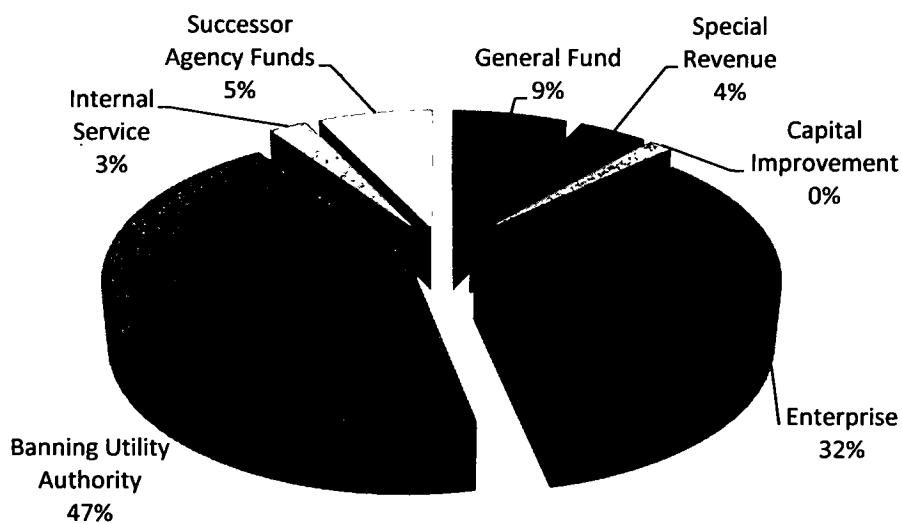
26

# City of Banning

## Investment Report Supplemental Information

### Pooled Cash Distribution

Investment reports for cities typically do not include the cash balance of the individual funds that make up the total pooled cash. This is primarily due to timing differences between when investment reports are prepared and when month end accounting entries are posted. Investment reports are usually prepared first. However, the pie chart below provides an understanding of the percentage distribution of the investments by fund type. The percentages were calculated using the average cash balances from the twelve month period of July 2013 to June 2014. *(The percentages will be updated quarterly.)*



The Table below describes the funds that are included within the Fund Types used for the pie chart.

Fund Type	Description of Funds
Governmental	General Fund
Special Revenue	Restricted Funds (i.e. CFDs, grants)
Capital Improvement	Development Impact Fee funds
Enterprise	Airport, Transit, Refuse, Electric
Banning Utility Authority	Water, Wastewater, Reclaimed water
Internal Service	Risk Management, Fleet, IT, Utility Services
Successor Agency Funds	Previously called Redevelopment Agency

## Summary Schedule – Line item descriptions

### **Petty Cash –**

The City maintains petty cash in various departments for incidental purchases. This line item includes the cash drawers for cashiering in utility billing.

### **Bank Accounts –**

When reviewing the *Report of Investments*, please keep in mind that the balances shown on the *Summary Schedule of Cash and Investments* for bank accounts are “statement” balances. They reflect what the financial institution has on hand as of particular date and lists on their statement. They are not “general ledger” balances. General ledger balances reflect all activity through a particular date (i.e. all checks that have been written and all deposits that have been made) and is what we show on our books (the general ledger). The general ledger balance more accurately reflects the amount of cash we have available.

It should be noted that statement balances and general ledger balances can differ significantly. For example – on June 30<sup>th</sup> the statement balance for Wells Fargo Bank could show \$1,000,000, however, staff may have prepared a check run in the amount of \$750,000 on the same day. Our general ledger balance would show \$250,000, as the Wells Fargo statement does not recognize the checks that have been issued until they clear the bank.

For investment decisions and cash handling purposes staff relies on the balance in the general ledger. Staff does not invest funds that are not available. Sufficient funds must be kept in the bank accounts to cover all checks issued.

- Wells Fargo Bank – This is the City checking account. All cash receipts, payroll and accounts payables checks are processed through this account. Balances fluctuate based on activity and cash flow needs. As excess funds accumulate, they are transferred to LAIF to increase earnings. The Summary Schedule of Cash and Investments shows the rate of earnings allowance received from the bank. The amount earned reduces the total amount of bank fees charged.
- Bank of America – Airport – The City maintains a Trust account for credit card purchases made at the airport. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.
- Bank of America – Parking Citations – The City maintains a Trust account for the processing of parking citations through Turbo Data. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.
- Bank of America – CNG – The City maintains a Trust account for credit card purchases of CNG fuel made at the City yards. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.

## Summary Schedule – Line item descriptions – Cont.

### ***Government Pools –***

- Local Agency investment Fund – Account #1
  - This account includes both City pooled funds and a restricted cash balance related to the CRA bonds. Investments in LAIF are limited to \$50M.
- Local Agency investment Fund – Account #2
  - There is currently no balance in this account.
  - Note: When the State established the cutoff date of January 31, 2012 for the elimination of the Redevelopment Agency, LAIF staff recommended a transfer of the available balance from the CRA account to the City account to protect the funds from a rumored State raid or freezing of the funds.

### ***Restricted Operating Funds at Riverside Public Utilities –***

The City Electric operation has an agreement with Riverside Public Utilities (RPU) to purchase power for the City. Part of the agreement requires that the City maintain a balance in the trust account used by RPU. The City does not control the investments or earnings of the trust account.

### ***Restricted Operating Funds at California ISO-***

The California ISO facilitates the purchase and sale of the City's electricity. The City participates in periodic Congestion Revenue Rights (CRR) auctions to acquire financial hedges for transmission congestion. In order to participate in the CRR auctions the City was required to have a secured form of financial security in the amount of \$100,000. A cash deposit was placed with Union Bank in March, 2012 to meet the requirements. The account is an interest bearing collateral account.

### ***Restricted Operating Funds at PERMA-***

The City participates in a JPA with the Public Entity Risk Management Authority (PERMA), who provides administration for the City's worker's compensation insurance program. PERMA requires the City to deposit funds into an account used by PERMA for the payment of worker's compensation claims. The City does not control the investments or earnings of this account.

### ***Other Investments –***

Currently the City works with a Piper Jaffray broker to make various investments per the City policy and in accordance with State guidelines. The Broker is not on retainer, nor do they receive a City paid fee with each investment. Funds in the Money Market fluctuate as securities mature or get called. Staff is in the process of investing the Money Market funds over several months. We will be adding an additional broker to provide more investment options.

### ***Fiscal Agent / US Bank –***

Unspent bond proceeds and required bond reserves are invested by the Fiscal Agent in accordance with the bond documents.

## CITY COUNCIL AGENDA

**Date:** **October 28, 2014**

**TO:** **City Council**

**FROM:** **June Overholt, Administrative Services Director**

**SUBJECT:** **Approval of Accounts Payable and Payroll Warrants for Month of September 2014**

**RECOMMENDATION:** The City Council review and ratify the following reports per the California Government Code.

**FISCAL DATA:** The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of September 2014.

The reports are:

<b>Expenditure approval lists</b>	
September 4, 2014	693,252.99
September 11, 2014	257,555.98
September 18, 2014	809,031.35
September 25, 2014	240,435.19
October 22, 2014	2,394,855.76 (September Month End)
<b>Payroll check registers</b>	
September 5, 2014	8,274.49
September 19, 2014	6,294.28
<b>Payroll direct deposits*</b>	
September 5, 2014	270,402.00
September 19, 2014	260,575.16

As you review the reports, if you have any questions please contact the Finance Department so that we can gather the information from the source documents and provide a response.

Report Prepared by: Jenna Harrell, Accounts Payable

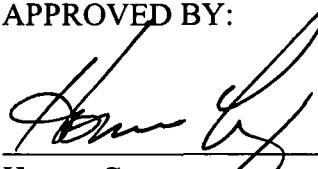
RECOMMENDED BY:



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June Overholt  
Administrative Services Director

APPROVED BY:



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Homer Croy  
Interim City Manager

# CITY of BANNING

## Fund/Department Legend

*Fund/Department Legend*

### **001 General Fund Departments**

0001 – General  
1000 – City Council  
1200 – City Manager  
1300 – Human Resources  
1400 – City Clerk  
1500 – Elections  
1800 – City Attorney  
1900 – Fiscal Services  
1910 – Purchasing & A/P  
2060 – TV Government Access  
2200 – Police  
2210 – Dispatch  
2279 – TASIN – SB621 (Police)  
2300 – Animal Control  
2400 – Fire  
2479 – TASIN – SB621 (Fire)  
2700 – Building Safety  
2740 – Code Enforcement  
2800 – Planning  
3000 – Engineering  
3200 – Building Maintenance  
3600 – Parks  
4000 – Recreation  
4010 – Aquatics  
4050 – Senior Center  
4060 – Sr. Center Advisory Board  
4500 – Central Services  
4800 – Debt Service  
5400 – Community Enhancement

204 – D.A.R.E. Donation Fund  
300 – City Administration COP Debt Service  
360 – Sun Lakes CFD #86-1  
365 – Wilson Street #91-1 Assessment Debt  
370 – Area Police Computer Fund  
375 – Fair Oaks #2004-01 Assessment Debt  
376 – Cameo Homes  
400 – Police Facilities Development  
410 – Fire Facilities Development  
420 – Traffic Control Facility Fund  
421 – Ramsey/HIGHLAND Home Road Signal  
430 – General Facilities Fund  
441 – Sunset Grade Separation Fund  
444 – Wilson Median Fund  
451 – Park Development Fund  
470 – Capital Improvement Fund  
475 – Fair Oaks #2004-01 Assessment District  
600 – Airport Fund  
610 – Transit Fund  
660 – Water Fund  
661 – Water Capital Facilities  
662 – Irrigation Water Fund  
663 – BUA Water Capital Project Fund  
669 – BUA Water Debt Service Fund  
670 – Electric Fund  
672 – Rate Stability Fund  
673 – Electric Improvement Fund  
674 – '07 Electric Revenue Bond Project Fund  
675 – Public Benefit Fund  
678 – '07 Electric Revenue Bond Debt Service Fund  
680 – Wastewater Fund

681 – Wastewater Capital Facility Fund  
682 – Wastewater Tertiary  
683 – BUA Wastewater Capital Project Fund  
685 – State Revolving Loan Fund  
689 – BUA Wastewater Debt Service Fund  
690 – Refuse Fund  
700 – Risk Management Fund  
702 – Fleet Maintenance  
703 – Information Systems Services  
761 – Utility Billing Administration  
805 – Redevelopment Obligation Retirement Fund  
810 – Successor Housing Agency  
830 – Debt Service Fund  
850 – Successor Agency  
855 – 2007 TABS Bond Proceeds  
856 – 2003 TABS Bond Proceeds  
857 – 2003 TABS Bond Proceeds Low/Mod  
860 – Project Fund

### **All Other Funds**

002 – Developer Deposit Fund  
003 – Riverside County MOU  
100 – Gas Tax Street Fund  
101 – Measure A Street Fund  
103 – SB 300 Street Fund  
104 – Article 3 Sidewalk Fund  
110 – CDBG Fund  
111 – Landscape Maintenance  
132 – Air Quality Improvement Fund  
140 – Asset Forfeiture/Police Fund  
148 – Supplemental Law Enforcement  
149 – Public Safety Sales Tax Fund  
150 – State Park Bond Fund  
190 – Housing Authority Fund  
200 – Special Donation Fund  
201 – Sr. Center Activities Fund  
202 – Animal Control Reserve Fund  
203 – Police Volunteer Fund

**CITY COUNCIL MEETING  
CONSENT ITEM**

**DATE:** **October 28, 2014**

**TO:** **City Council**

**FROM:** **Duane Burk, Director of Public Works**

**SUBJECT:** **Approve Final Parcel Map No. 36285**

**RECOMMENDATION:** Approve Final Parcel Map No. 36285 and related documents and authorize the City Clerk and the City Engineer to sign said map.

**JUSTIFICATION:** The final map, attached as Exhibit "A", has been examined and is found to be in substantial conformity with the tentative map and all conditions thereon have been met.

**BACKGROUND:** Parcel Map No. 36285 is generally bounded by Ramsey Street to the north, Livingston Street to the south, San Gorgonio Avenue to the west and Martin Street to the east and consists of thirteen (13) parcels, Assessor's Parcel Numbers 541-181-009, 541-181-010, 541-181-011, 541-181-012, 541-181-024, 541-181-025, 541-181-026, 541-181-027, 541-181-028, 541-183-001, 541-183-002, 541-183-003 and 541-183-004. The parcels make up Lots 19, 20, 21, 22, 23, 24 of Block 29, 30 and 31 of Amended Map of the Banning Land Company recorded on March 11, 1890 in what was San Bernardino County at the time of recordation. The developer has proposed approximately 68,955 square foot mixed-use commercial project on the site. The tentative map was approved by the Planning Commission on May 4, 2011, and all engineering plan checks fees have been paid.

Condition of Approval #111 required the formation of a Property Owners' Association and the preparation of the applicable Conditions, Covenants and Restrictions (CC&Rs). The CC&Rs for the Project have been submitted, reviewed and approved by the City Attorney's office and are attached as Exhibit "B". Although Condition of Approval #111 required a Property Owner's Association be created for the Project, the Developer requested that this requirement be modified due to the complexities of such arrangement for a four parcel commercial project. Accordingly, the CC&Rs currently provide for a single lot owner to act as the Manager for the Project with the authority to enforce the provisions. The City would deal with the Manager for the Project regarding violations. The City has enforcement rights to ensure that the Project is maintained in accordance with the requirements.

Because the Project is immediately adjacent to certain City owned properties, it is anticipated that visitors to both the Developer's Project as well as the City properties may use common driveways and parking on the adjacent properties. To permit such uses, the parties have agreed to enter into a Limited Reciprocal Easement Agreement (LREA), attached as Exhibit "C", for such cross use except that visitors to the Developer's Project are not permitted to park on the

City owned properties. The City can also cancel the LREA at any time in its discretion upon 90 days notice to Developer and recordation of such revocation. The LREA is separate from the CC&Rs (i) since it can be unilaterally cancelled by the City at any time (subject to notice), and (ii) trying to insert this concept into the CC&Rs made that document extremely complicated. Accordingly, the parties agreed to use a separate agreement which would be simpler and clearer.

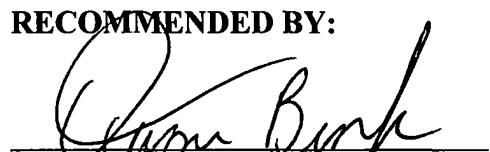
As part of the Conditions of Approval it is required that the City and Developer enter into an agreement to guarantee the construction of the public improvements. Attached as Exhibit "D" is an executed copy of the Agreement for the Construction of Improvements submitted by the developer.

Additionally, the Conditions of Approval require that securities for the construction of public improvements including off-site and on-site improvements be on file with the City Clerk prior to the approval of the final parcel map. At this point the developer has not submitted the required securities. The Subdivision Map Act allows for the approval of a parcel map without the filing of the required securities. The recordation of the parcel map with the Assessor-County Clerk Recorder will not occur until the following security bonds are on file with the City Clerk:

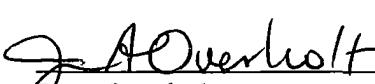
<u>Description</u>	<u>Amount</u>
Labor & Material	\$1,241,645.00
Performance Bond	\$1,241,645.00
Monumentation Bond	\$ 7,500.00

**FISCAL DATA:** Not applicable

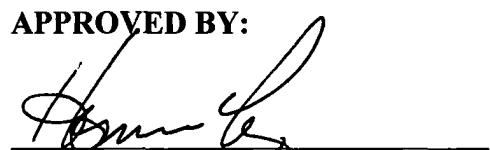
**RECOMMENDED BY:**

  
Duane Burk,  
Director of Public Works

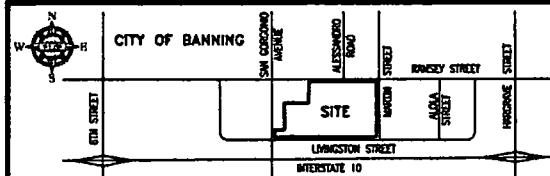
**REVIEWED BY:**

  
June Overholt,  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Homer Croy,  
Interim City Manager

**EXHIBIT "A"**  
**PARCEL MAP NO. 36285**



IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

# PARCEL MAP NO. 36285

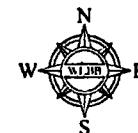
SHEET 2 OF 2 SHEETS

30

BEING A SUBDIVISION OF A PORTION OF LOTS 19 THROUGH 25, INCLUSIVE, IN BLOCK 28, LOT 51 IN BLOCK 30, BLOCK 31, ALESSANDRO ROAD (FORMERLY ELLA ST.) AND LIVINGSTON STREET AS PER AMENDED MAP OF BANNING LAND COMPANY ON FILE IN BOOK 9 PAGE 44 OF MAPS, SAN BERNARDINO COUNTY RECORDS AND A PORTION OF MURRAY STREET AND AN UNNAMED ALLEY VACATED BY RESOLUTION RECORDED SEPTEMBER 14, 1977 AS INSTRUMENT NO. 179884, OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, LYING WITHIN SECTION 10, TOWNSHIP 3 SOUTH, RANGE 1 EAST, S.B.M.

ALBERT A. WEBB ASSOCIATES - CIVIL ENGINEERS

MAY 2014



60 30 0 60 120 180  
SCALE: 1" = 60'

## VICINITY MAP NOT TO SCALE

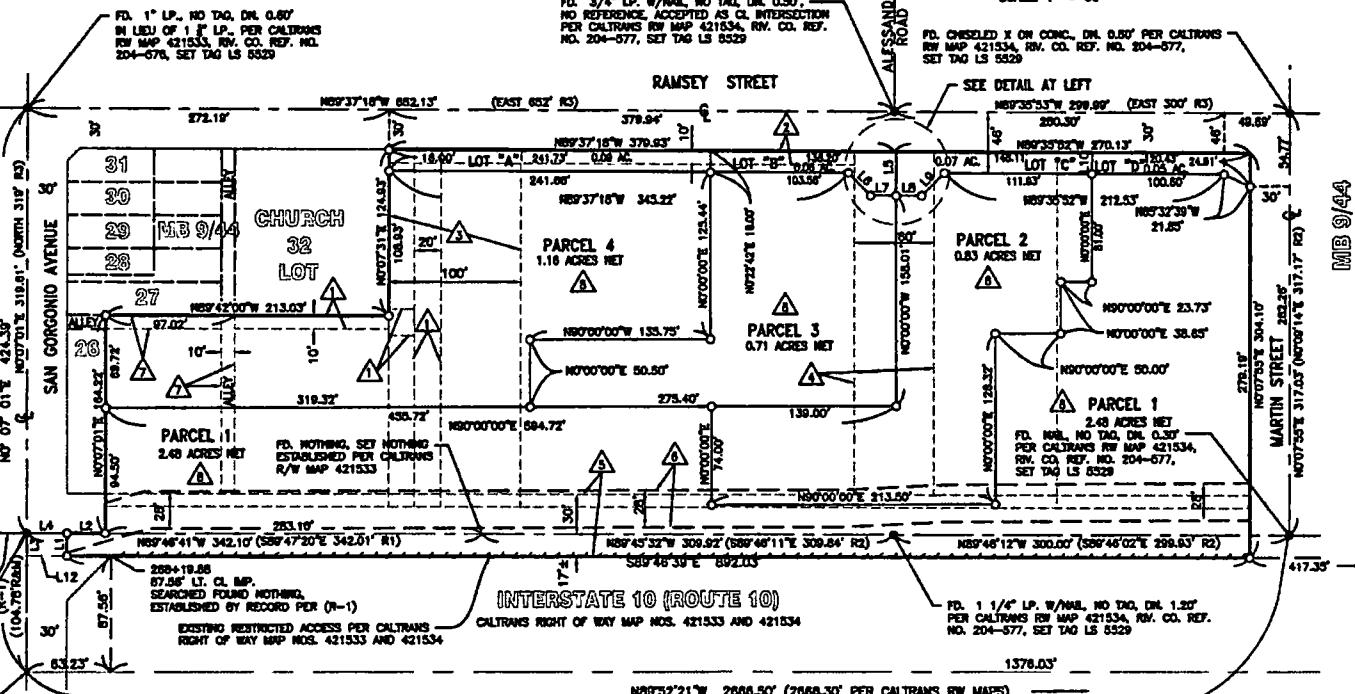
- ⚠ AN EASEMENT FOR PIPELINES AND MAINTENANCE WITH THE RIGHT OF INGRESS AND EGRESS, IN FAVOR OF SOUTHERN CALIFORNIA GAS COMPANY PER INSTRUMENT NO. 179884, RECORDED SEPTEMBER 14, 1977 O.R.
- ⚠ AN EASEMENT FOR LANDSCAPING, IN FAVOR OF THE CITY OF BANNING PER INSTRUMENT NO. 123492, RECORDED APRIL 3, 1963, O.R.
- ⚠ A PORTION OF MURRAY STREET VACATED BY INSTRUMENT NO. 179884, RECORDED 9/14/77, OFFICIAL RECORDS.
- ⚠ A PORTION OF ALESSANDRO ROAD VACATED BY CITY OF BANNING PER DOCUMENT NO. \_\_\_\_\_ RECORDED \_\_\_\_\_ OFFICIAL RECORDS.
- ⚠ A PORTION OF LIVINGSTON STREET VACATED BY CITY OF BANNING PER DOCUMENT NO. \_\_\_\_\_ RECORDED \_\_\_\_\_ OFFICIAL RECORDS.
- ⚠ A 28.00' WIDE EASEMENT FOR PUBLIC INGRESS, EGRESS AND UTILITIES, DEDICATED TO THE CITY OF BANNING, AS SHOWN HEREON.
- ⚠ A PORTION OF ALLEY VACATED BY CITY OF BANNING PER DOCUMENT NO. \_\_\_\_\_ RECORDED \_\_\_\_\_ OFFICIAL RECORDS.
- ⚠ A PRIVATE CROSS LOT DRAINAGE EASEMENT AS SHOWN HEREON.

DATA		
Line #	DISTANCE	BEARING
L1	17.12'	N07°51'1" E
L2	29.01'	N07°46'41" W
L3	17.12'	N07°45'42" E
L4	30.00'	N07°45'41" W
L5	33.00'	N07°45'32" E
L6	24.00'	N07°45'37" W
L7	17.50'	N07°45'18" W
L8	19.27'	N07°45'32" W
L9	23.89'	N07°45'40" E
L10	16.00'	N07°45'08" E

## SURVEYOR'S NOTES

1. BASIS OF BEARINGS IS THE CENTERLINE OF LIVINGSTON STREET TAKEN AS NORTH 05°58'17" EAST PER CALTRANS RW MAP NO. 421534, RW. CO. REF. NO. 204-577.
2. —— INDICATES FOUND MONUMENTS AS NOTED.
3. —○— INDICATES SET 1" IRON PIPE WITH TAG STAMPED L.S. 8529, FLUSH, OR MUL, AND TAG IN LEAD STAMPED L.S. 8529 SET IN CONCRETE AREAS AND TOP OF WALLS.
4. TOTAL AREA WITHIN THE DISTINCTIVE BORDER IS 0.47 ACRES GROSS.
5. (R-1) INDICATES RECORD PER CALTRANS RW MAP NO. 421533, RW. CO. REF. NO. 204-576, UNLESS OTHERWISE NOTED.
6. (R-2) INDICATES RECORD PER CALTRANS RW MAP NO. 421534, RW. CO. REF. NO. 204-577.
7. (R-3) INDICATES RECORD PER RW. CO. REF.
8. CON INDICATES "CALIFORNIA DIVISION OF HIGHWAYS".
9. ALL MONUMENTS SHOWN AS "SET" SHALL BE SET IN ACCORDANCE WITH THE MONUMENTATION AGREEMENT FOR THIS MAP, UNLESS OTHERWISE NOTED.
10. // INDICATES RESTRICTED ACCESS.

PM 103.97



DETAIL  
SCALE: 1"-40'

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**EXHIBIT “B”**  
**RECIPROCAL EASEMENT AGREEMENT WITH**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**

**RECORDING REQUESTED BY:** )  
**AND WHEN RECORDED MAIL TO:** )  
Scott L. Grossfeld, Esq. )  
COX, CASTLE & NICHOLSON LLP )  
2049 Century Park East, Suite 2800 )  
Los Angeles, California 90067-3284 )

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Space Above This Line Is For Recorder's Use Only

**RECIPROCAL EASEMENT AGREEMENT**  
**WITH COVENANTS, CONDITIONS AND RESTRICTIONS**

**RECIPROCAL EASEMENT AGREEMENT  
WITH COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS (this "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date") by JMA VILLAGE, LLC, a California limited liability company ("Developer"), and this Agreement shall be, among other things, made in favor of the CITY OF BANNING, a California general law municipality ("City"). City is also sometimes referred to herein as "Beneficiary".

**RECITALS**

A. Developer is the owner of certain parcels of real property located in the City of Banning, County of Riverside, State of California and generally bounded on the west by San Gorgonio Avenue, on the north by Ramsey Street, to the east by Martin Street and to the south by the Interstate 10 Freeway, which property is more particularly described on Exhibit "A" attached hereto (the "Developer Parcels"), upon which Developer currently intends to develop an integrated retail and/or commercial project (the "Project").

B. A site plan showing the Developer Parcels is attached hereto as Exhibit "B" and made a part hereof (the "Site Plan").

C. Developer, on behalf of itself and all of the future Owners (as hereinafter defined) under this Agreement desires to establish certain easements, covenants, conditions and restrictions, for the mutual and reciprocal benefit and complement of the Parcels (as hereinafter defined), and the present and future owners, tenants and lawful occupants and users thereof, on the terms and conditions hereinafter set forth. Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Agreement shall run with the land of each of the Parcels and every portion of each thereof, and shall apply to and bind the respective successors in interest to each of the Parcels and every portion of each thereof, for the benefit of each of the other Parcels and every portion of each thereof (except to the extent as may otherwise be stated herein). Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Agreement are imposed on each portion of and interest in each of the Parcels as mutual equitable servitudes in favor of each and all other portions of and interests in the Parcels and constitute covenants running with the land pursuant to applicable law, including, without limitation, Section 1468 of the Civil Code of the State of California.

D. Pursuant to the Project Purchase Agreement (as hereinafter defined), Developer has also agreed to hold, sell, transfer, encumber or convey all or any portion of the Project subject to the covenants, conditions, restrictions, and reservations set forth in this Agreement and that the Beneficiary shall have the right and power to enforce the covenants, conditions, restrictions, and reservations as provided herein. Beneficiary has fee or easement interests in various streets, sidewalks and other property within the City and is responsible for the planning and development of land within the City in such a manner so as to provide for the health, safety and welfare of the residents of the City. The portion of the Beneficiary's interests in real property most directly affected by this Agreement is depicted in Exhibit "C" attached

hereto and incorporated herein by reference (the “City Parcels”) which is the benefitted property under this Agreement. In the event that the City Parcels are transferred or cease to be owned by the Beneficiary, all of the subject covenants, easements and obligations under this Agreement shall be deemed held by the Beneficiary in gross.

## ARTICLE 1

### DEFINITIONS

1.1 “Agreement” shall mean this Reciprocal Easement Agreement with Covenants, Conditions and Restrictions.

1.2 “Assessment Lien” shall mean that lien created by reason of the delinquency described in and upon recordation of the “Notice of Assessment Lien” (as hereinafter defined).

1.3 “Beneficiary” shall mean the City of Banning, California, a California general law municipality.

1.4 “Building” shall mean any enclosed structure designated for the exclusive use of an occupant or limited occupant(s), as the case may be, placed, constructed or located on a Parcel, which for the purpose of this Agreement shall include any appurtenant supports, service areas and other outward extensions.

1.5 “Building Area” shall mean the limited areas of the Project within which Buildings may be constructed, placed or located. Building Areas are designated on the Site Plan.

1.6 “City” shall mean the City of Banning, California, a California general law municipality.

1.7 “City Parcels” shall mean those certain parcels of real estate currently owned by Beneficiary and more particularly described on Exhibit “C” attached hereto and incorporated herein by this reference.

1.8 “Common Area” shall mean all the areas within the boundaries of the Project which are made available for the general, non-exclusive use, convenience and benefit of all “Permittees” (as hereinafter defined). “Common Areas” shall mean the Common Areas located within the boundaries of the Parcels/Project (as more particularly described in Parcel Map No. 36285). Without limitation, Common Areas shall include the following areas within the boundaries of the Parcels: (i) all parking areas; (ii) all roadways and driveways; (iii) all sidewalks and walkways; (iv) all landscaped and planted areas; (v) all paseos and patio areas open for the general non-exclusive use of multiple Permittees, their employees, their tenants and their tenant's employees and customers (provided, however, patio areas and outdoor seating areas assigned to individual tenants may not be included in Common Area); and (vi) areas and items considered to be an area or item of “Public Art” and/or an “Historical Monument” as required by the Conditions of Approval (as hereinafter defined).

1.9    "Common Area Maintenance Expenses" shall mean and include all reasonable costs and expenses of every nature and kind as may be actually paid or incurred by the Manager (as hereinafter defined) (including appropriate reasonable reserves as approved by the Manager) in operating, managing, equipping, lighting, repairing, decorating, replacing, repairing and maintaining the Common Area and in providing such security and other protection for the Project as the Manager deems necessary. The Common Area Maintenance Expenses shall include, but shall not be limited to, general maintenance and repairs; resurfacing, repaving, striping and cleaning the Common Area; maintenance and repair of landscaping and irrigation systems; maintenance replacement and repair of Project signs, directional signs, lighting systems, vertical transportation systems (if any) and those items referred to in Section 4.2(e); janitorial services; maintenance and repair of fire protection systems located in the Common Area, storm drainage and sanitary sewer systems, trash disposal or other utility systems; the cost of water service, electricity and other utility costs incurred in connection with the Common Area; the wages and related payroll costs of personnel employed by the Manager to implement services furnished by the Manager; premiums for commercial general liability insurance and property damage insurance maintained by Manager in connection with the Common Area; fees for required licenses and permits; supplies; reasonable depreciation on maintenance and operating machinery and equipment (if owned by the Manager) and rental paid for such machinery and equipment (if rented), provided that no Owner has previously been assessed for the costs and expenses of acquiring such machinery and equipment and only to the extent such machinery and equipment is actually used on the Common Area, such depreciation and rentals to be allocated based upon the actual use of such equipment and machinery in the Project; and the costs and expenses incurred by the Manager in enforcing this Agreement and in preparing, recording and foreclosing assessment liens as to the extent not recovered by an Owner as provided in Article 7 below.

1.10    "Conditions of Approval" shall mean those certain City approved Project Conditions of Approval imposed by the City as a condition to City's approval of the Project, as amended, modified or supplemented.

1.11    "Default Rate" shall mean that annual rate of interest equal to the interest rate per annum published by the Wall Street Journal as the prime rate (or in the event the Wall Street Journal no longer publishes a prime rate, then the prime rate or reference rate announced by the then largest chartered bank in California in terms of deposits) from time to time plus two percentage (2%) points per annum, but in no event more than any maximum rate of interest permitted by law.

1.12    "Developer" shall mean JMA VILLAGE, LLC, a California limited liability company.

1.13    "First Year" shall mean the first full calendar year following the Partial Year.

1.14    "Floor Area" shall mean the actual number of square feet of space contained on each floor within each separately demised space within a Building, including any mezzanine or basement space (provided that such mezzanine or basement space is taken into account in determining the number of parking spaces required with respect to such Building

under applicable governmental laws, codes, ordinances and requirements), as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that the following areas shall not be included in such calculations (except to the extent the following areas are taken into account in determining the number of parking spaces required with respect to such Building under applicable governmental laws, codes, ordinances and requirements without benefit of variance or special exception): incidental office space used by a Permittee for administrative purposes and which is not open or accessible to the general public; space attributable to any multi-deck, platform or structural levels used for the storage of merchandise which is located vertically above ground floor; and any space used for Building utilities or mechanical equipment. Within thirty (30) days of a request, an Owner shall certify to another requesting Owner the amount of Floor Area applicable to each Building on its "Parcel" (as hereinafter defined). If any Owner causes an as-built survey to be prepared with respect to any portion of the Project, upon request, such Owner shall furnish a copy of the survey to the other Owner's for informational purposes only.

During any period of rebuilding, repairing, replacement or reconstruction of a Building (or any portion thereof), the Floor Area of that Building shall be deemed to be the same as existed immediately prior to that period. Upon completion of such rebuilding, repairing, replacement or reconstruction, the Owner upon whose Parcel such Building is located, shall cause a new determination of Floor Area for such Building to be made in the manner described above, and such determination shall be sent to any Owner requesting the same.

1.15 "Governmental Restrictions" shall mean any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, conditions of approval or authorization of any governmental entity, agency or political subdivision, whether now in force or which may hereafter be in force.

1.16 "Manager" shall mean JMA VILLAGE, LLC, a California limited liability company, so long as such entity holds title to any Parcel within the Project, and, thereafter, the holder of title to Parcel 1 of the Parcels. The Manager shall be the party responsible under this Agreement to operate, insure, maintain, repair and replace the Common Areas in accordance with this Agreement.

1.17 "Mortgage" shall mean an indenture of mortgage or deed of trust on a Parcel.

1.18 "Mortgagee" shall mean any mortgagee under a Mortgage, or trustee or beneficiary under a deed of trust constituting a lien on all or any portion of any of the Parcels or any leasehold interest in the Parcels, or on any master ground lessor under any master ground lease or master lessor under any master lease with respect to all or any portion of any of the Parcels. The interest held by any Mortgagee in any Parcel shall be subordinate to this Agreement.

1.19 "Notice" shall mean a written notice that the Manager is in default in performing its duties pursuant to this Agreement.

1.20 “Notice of Assessment Lien” shall mean a notice recorded in the office of the County Recorder, Riverside County, California, and such other place as may be required by law, by any person to whom any assessment or other sum of money payable by any “Owner” (as hereinafter defined) pursuant to any provision of this Agreement stating that said assessment or sum has not been paid and that the applicable grace period for such payment (if any) has expired.

1.21 “Owner” shall mean each person, who, at any given time, holds fee title to any full Parcel, or a ground lessee of any full Parcel (provided the Owner of such Parcel so designates such party, which designation must be set forth in a written statement recorded in the office of the County Recorder, Riverside County, California). An Owner shall not include tenants and sublessees of less than an entire Parcel.

1.22 “Parcel” or “Parcels” shall mean those several parcels which together comprise the Project as shown on the Site Plan and Parcel Map No. 36285 and such further subdivision of any such Parcel as approved by Developer.

1.23 “Partial Year” shall mean the initial fractional calendar year following the completion of the Common Area of the Project.

1.24 “Parties” shall mean the Owners.

1.25 “Permittees” shall mean the Owners of any and all portions of the Project and their respective heirs, successors, assigns, grantees, tenants and subtenants and all persons who now hold, or hereafter hold, portions of real property within the Project, or any leasehold estate, or building space thereon; and respective tenants or subtenants thereof; and the officers, directors, concessionaires, agents, employees, contractors, customers, visitors and licensees and invitees of any of them.

1.26 “Person” shall mean any natural person, partnership, trust, corporation, limited liability company or other legal entity.

1.27 “Prohibited Uses” shall mean any use or operation that is prohibited under City’s Zoning Code (to the extent applicable to the Project) and/or other governmental regulations or restrictions, and any use or operation which is clearly objectionable to the development or operation of the Project as a first class retail and/or commercial project (which may include hotel/motel use), as compared to comparable projects in Riverside County, California. Included among the uses or operations which are objectionable are the following uses or operations, or any uses or operations which produce, are accompanied by or involve the following characteristics, which list is not intended to be all-inclusive:

- a. Any use which constitutes a public or private nuisance;
- b. Any use which produces noise or sound which may be heard outside of any Building and is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- c. Any use which produces any noxious odor which may be smelled outside any Building other than such odors as are typically incidental to first class retail

operations, including odors typically incidental to beauty and nail salons, restaurants, fast food restaurants or other food service establishments;

d. Any use which produces any excessive quantity of dust, dirt or ash; provided, however, this prohibition shall not preclude the sale of items typically sold as an incident to the operation of a home improvement or other similar store (provided such items are sold in containers);

e. Any use involving unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks);

f. Any warehouse, assembly, manufacturing, distillation, refining, smelting, agriculture or mining operation;

g. Any mobile home or trailer court, mortuary, lot for the sale of new or used vehicles, labor camp, junkyard, stock yard or use involving animal raising; provided, however, first class pet stores shall be permitted within the Project;

h. Any operation for drilling for and/or removal of subsurface substances;

i. Any operation involving dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes;

j. Any commercial laundry or dry cleaning plant, laundromat, veterinary hospital or similar use;

k. Any use involving the display or distribution of pornographic materials, adult books and magazines or X-rated videos or similar productions; provided, however, the following shall be permitted within the Project: (i) the sale of such adult magazines and books as may be carried by a convenience, supermarket, drug, record or full-line book store, and (ii) the sale and/or rental of X-rated videos and similar productions from full-line record and/or video stores, provided such X-rated videos are not shown on screen in any such store, but are kept behind a counter or in a reserved area and are not advertised or placed on display to minors;

l. Any automobile body and fender repair shop operation; and

m. Any off-track betting facility.

1.28 “Project Purchase Agreement” means that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions dated January 24, 2012 between Developer (as Buyer) and City (as Seller) relating to the sale of the Project, as the same may have been amended, supplemented and/or modified, including by that certain First Amendment to Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions dated January 24, 2012, dated June 10, 2014.

1.29 **“Restrictions”** shall mean those easements, covenants, restrictions, liens and charges fixed and established upon the Project pursuant to this Agreement.

1.30 **“Senior REA”** shall mean that certain Limited Reciprocal Easement Agreement with Covenants, Conditions and Restrictions entered into between Developer and City concurrently herewith and recorded immediately prior to this Agreement, relating to the Project and City’s property located immediately adjacent thereto.

## ARTICLE 2

### USE IN GENERAL

2.1 **Lawful Use.** The Project may be used for any lawful retail or commercial purpose not specifically prohibited herein. No portion of the Project shall be used for a Prohibited Use or in violation of the Senior REA. Notwithstanding anything to the contrary contained herein, following the transfer of any Parcel to an Owner other than Developer, the use conducted on such Parcel shall not be changed without the prior written approval of Manager.

2.2 **Zoning.** This Agreement shall be subject to applicable zoning laws.

## ARTICLE 3

### CONSTRUCTION

Any and all construction under or pursuant to this Agreement shall, in addition to the terms and conditions specifically provided for in this Agreement, also be performed subject to and in accordance with any and all applicable provisions of the Project Purchase Agreement and the Conditions of Approval.

3.1 **Buildings Only in Building Area.** No Building or structure of any kind shall be erected, placed or maintained on any portion of the Project except upon those portions designated by Manager or identified as Building Area on the Site Plan.

3.2 **Initial Building Approval.** No Owner shall commence or permit the commencement of construction of any sign, Building or other structure within the Project unless the design, architecture, exterior elevations, configuration, height, dimensions, landscape design, location, exterior finishes, materials, colors and other attributes thereof shall have first been approved in writing by the Manager in its sole and absolute discretion. No Owner shall make any material alterations to any of the foregoing matters without first obtaining a similar approval from Manager as to such alteration.

3.3 **Alteration Approval.** In order to maintain the architectural and functional harmony of the Project, no Building or structure within the Project shall be reconstructed, altered, added to or maintained in such a fashion as to alter, in any material respect, the architectural appearance, character or motif or functional purpose of such item, unless such alteration is first approved in writing by the Manager in its sole and absolute discretion. Such

approval shall be given or withheld in writing within thirty (30) days after receipt of written request and receipt by Manager of detailed plans and specifications therefor. Failure to respond in writing to a written request for such approval within thirty (30) days of its receipt shall constitute disapproval of such construction, reconstruction or alteration. All alterations or improvements shall be constructed in strict accordance with the plans and specifications approved by Manager. No material deviation shall be made from such plans and specifications without Manager's prior written approval.

3.4 Construction Procedures.

a. All construction activities within the Project shall be performed in a good and workmanlike manner, using first class materials, and in compliance with all laws, rules, regulations, orders, and ordinances of the city, county, state, and federal governments, or any department or agency thereof, having jurisdiction over the Project.

b. All construction activities within the Parcels shall be performed in accordance with the following provisions:

(i) so as not to unreasonably interfere with any construction work being performed on the remainder of the Parcels, or part thereof; and

(ii) so as not to unreasonably interfere with the use, occupancy or enjoyment of the remainder of the Project or part thereof or the business conducted by any other Owner or Permittees.

c. When an Owner is constructing, reconstructing, repairing, maintaining, remodeling, or enlarging any improvements on its Parcel, such Owner may establish a temporary staging and storage area on its Parcel prior to commencing such work. Notwithstanding anything to the contrary contained herein, such staging and storage areas (i) shall not unreasonably interfere with access between the other areas of the Project, with the use of any other Parcel, or with the operation of any business on any other Parcel by the Permittees thereof (such Permittees to have free and unobstructed access to the loading docks, compactors, sidewalks and entrances and exits), and (ii) shall be subject to the approval of Manager. If substantial work is to be performed, such Owner, at the request of Manager or any other Owner of a Parcel which would be materially and adversely affected by such staging or storage area, shall fence off such staging and storage area. Upon completion of such work, such staging and storage area shall be restored to a condition at least equal to that existing prior to commencement of such work. Correspondingly, no staging and storage areas shall be established and maintained within the Project during such restricted months.

d. Each Owner shall diligently complete all construction activities within its Parcel as quickly as possible, shall regularly clean the roadways and driveways used by its construction vehicles of mud, dirt and construction debris, and upon completion of all construction activities shall promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

e. Each Owner shall indemnify, defend and hold harmless each other Owner (and Manager) from and against any and all claims, losses, damages, liabilities, injuries, costs and expenses, including, without limitation, reasonable attorneys' fees, because of personal injury or death of persons or destruction of property arising from or as a result of construction by such Owner on its Parcel, except for claims caused by the negligence or willful act or omission of the indemnified Owner, its licensees, concessionaires, agents, servants, or employees.

3.5 City Fire Department Requirements.

a. Two means of access for the City Fire Department shall be required when any portion of the first story of any Building or structure is more than one hundred fifty (150) feet from a fire department apparatus access.

b. A so-called "Knox" box shall be required for each Building for Fire Department access at a location approved by the City Fire Department.

c. All numbers and addresses shall be placed on all new and existing Buildings in such a position as to be plainly visible and legible from the street or road fronting the subject property. Display boards shall be required for all multi-unit Buildings.

d. Manager (as to the Common Areas) and each Owner (as to their respective Parcels, exclusive of Common Areas) shall, to the extent required by applicable governmental requirements, prepare and submit to the City Fire Department's office, for approval, a fire protection/vegetation management plan that should include but not be limited to the following:

- (i) Fuel modifications to reduce fire loading.
- (ii) Appropriate fire breaks according to fuel load, slope of terrain.
- (iii) Nonflammable walls along common boundaries between rear yards and open space.

e. There shall be no storage of hazardous materials (to the extent in contravention of recommended manufacturers' or safety levels) without written permission of the City Fire Department.

3.6 Roof-Mounted Equipment. All roof-mounted equipment or utility equipment on the side of a structure, or on the ground, shall be screened from adjacent properties, the public rights-of-way or the parking lot. Any architectural screening that is proposed to shield the roof-mounted equipment shall be compatible, in terms of colors and materials of the Building upon which it is located. Landscape screening for ground mounted equipment shall be of sufficient size and quantity to fully screen the equipment. The Manager shall provide power at the top of the parking lot light poles on the south side of the common area parking lot of the Project (along Livingston Street) to enable the City's Police Department to install and maintain a security system to a location of its choosing ("Security System"). Notwithstanding the above paragraph, it shall be within the discretion of the City's Police

Department to require the Security System be screened off from the adjacent properties, the public rights of way or the parking lot.

3.7 Community Events. Subject to compliance with applicable laws and regulations, Manager shall have the right to permit community events within portions of the Common Areas of the Project, subject to reasonable rules and regulations promulgated from time to time by Manager.

## ARTICLE 4

### PROJECT EASEMENTS

4.1 Grant of Easements. Each Owner, as to its respective Parcel, hereby grants, establishes and creates for the benefit of, and as appurtenances to, each other Parcel and for the benefit of the Owner of each of the other Parcels from time to time and their respective Permittees, with respect to, and as a burden upon, such granting Owner's Parcel, irrevocable, non-exclusive reciprocal easements over, across, upon and beneath the Common Area held by such Owner for the purposes set forth in Section 4.2. Nothing in this Section or elsewhere in this Agreement shall be deemed to be or constitute a gift or dedication of any portion of the Project to the general public or for any public use or purpose whatsoever.

4.2 Permitted Common Area Uses. The Common Area shall be used for the following purposes:

a. The parking of passenger vehicles and the pedestrian and vehicular traffic of all Permittees, subject to and in accordance with the reciprocal parking plan for the Parcels to be proposed by Manager and approved pursuant to Section 5.16 below.

b. The ingress and egress of any Permittees and the vehicles thereof to and from any portion of the Common Area and the public streets adjacent to the Common Area.

c. The installation, operation, maintenance, repair, replacement, relocation and removal of sanitary sewers, storm drains, water and gas mains, electric power lines and conduits, telephone lines and conduits, television cables, vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, and other related new and existing utility and service facilities serving any part of the Project, all of which (except hydrants and transformers and other installations as may be requested by the utility company) shall be even with or below the surface of the Common Area or within Common Area walls or as otherwise directed by Manager. All Owners shall cooperate in the granting of appropriate and proper easements to each other or to utility companies, and other governmental authorities for the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities set forth above. The original location of the facilities set forth above shall be subject to the approval of the Manager. Each Owner shall have the right to enter upon any portion of the Common Area as may be necessary or appropriate in order to accomplish the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities referred to above; provided, however, each Owner does not unreasonably interfere with the use of the Common Area by

Permittees and that no relocation or removal of any such facilities shall be made without the prior written consent of the Manager.

d. Pedestrian and vehicular movement by Permittees to and from adjacent streets and between businesses and occupants located or to be located within the Project.

e. The construction, replacement and reconstruction of parking sites or stalls, flag poles, sidewalks, ramps (excluding loading ramps), driveways, lanes, curbs, directional and other signs, gutters, traffic control areas, traffic islands, traffic and parking lighting facilities, perimeter walls, pedestrian walkway or landscaped areas, including planters, planting boxes, edgers, fountains, valves and customer conveniences, such as mail boxes, public telephones and benches for the comfort and convenience of Permittees; provided, however, that the Manager shall first approve of all such facilities and that such facilities do not materially affect the access, visibility or parking of the property or Building of any Owner.

f. The maintenance and repair of any of the items referred to in Section 4.2(e) above.

g. The ingress and egress of delivery and service trucks and vehicles to and from the Building Areas or any portion thereof and the public streets adjacent to the Project, for the delivery of goods, wares, merchandise and the rendering of services to all persons or other entities who may lease portions of the Building Areas. Each Owner, tenant or other occupant of the Project shall use commercially reasonable efforts to have deliveries made within the areas designated for such purposes by Manager. In the event it is necessary that deliveries be made other than in the areas designated by Manager, such deliveries shall be made so as to cause the least amount of interference with the use of adjacent portions of the Common Area.

h. Trash, refuse and garbage container storage areas if indicated as Common Area on the Site Plan and areas for the parking of the automobiles of employees of an Owner or occupant of any Building (subject to Section 4.5 below) and other incidental and related facilities. Items stored outside of any Building, such as trash, building or manufacturing materials and junk (which such manufacturing and junk-type items shall be permitted only on a temporary basis, and the subject Owner shall use reasonable efforts to minimize the presence of such items), shall be reasonably screened so as not to be visible from the Common Areas.

i. Subject to the prior written approval of Manager, which will not be unreasonably withheld, the temporary use (including erection of ladders, scaffolding and store front barricades) during periods of construction, remodeling or repair, and ingress and egress for vehicles transporting construction materials and equipment and use thereof by construction equipment, upon the condition, however, that all construction, remodeling or repair of buildings and building appurtenances is diligently performed and such ladders, scaffolding and barricades are promptly removed upon completion of such work.

j. As applicable, the construction, maintenance, repair, replacement and reconstruction of sign pylons and/or monument signs (with appropriate underground electrical connections in the initial locations set forth on the Site Plan); provided, however such

work shall be performed by or through Manager (on behalf of the Owner(s) of such sign(s)). The costs of replacing or reconstructing sign pylons which serve the Project shall be paid to Manager (on behalf of the Owner(s) of such sign(s)), pro rata by the Owners whose names or logos appear on such sign pylons or monuments in the ratio of their square footage usage of such sign pylons or monuments. No change shall be made in such locations without the prior written approval of the Manager. As applicable, monument signs located within the Project shall not constitute a portion of the Common Area but shall be deemed to be the property of the Owners to which such monument sign pertains and all costs and expenses in connection with the construction, maintenance, repair, replacement or reconstruction of such monument sign(s) shall be paid to Manager (on behalf of the Owner(s) of such sign(s)) pro rata by the Owners whose names or logos appear on such sign pylons or monuments in the ratio of their square footage usage of such sign pylons or monuments.

4.3 Common Area Alteration. No Owner shall alter any parking areas or other improvements located upon the Common Area, without the prior written consent of the Manager. Notwithstanding the foregoing: (i) an Owner (or the Manager) shall have the right to excavate or conduct construction activities upon the Common Area, if necessary, in connection with the installation, operation, maintenance, repair, replacement, relocation and removal of any utility or service facilities, subject, however, to the provisions of Section 4.2(c), so long as such excavation or construction activities shall be prosecuted diligently to completion; and further provided that the consent of the Owner on whose Parcel such activity is to take place shall also be obtained, which consent shall not be unreasonably withheld. The person causing such excavation or construction activities to be made shall forthwith, upon completion thereof, restore any portion of the Common Area affected thereby to the same condition as existed prior to the commencement of such installation or construction activities using the same type and quality of materials as previously used; and (ii) Manager may make alterations in the Common Area as it shall deem appropriate or necessary. Any work performed in the Project pursuant to this subparagraph shall be performed so as to minimize the disruption of business operations conducted anywhere within the Project. Notwithstanding the foregoing, however, no such activity shall occur during the months of August, November and December, except (i) in the event of an emergency, or (ii) necessary to prevent a breach or default under this Agreement.

4.4 Intentionally Omitted.

4.5 Parking Charges. Unless Manager otherwise requires in its sole and absolute discretion, or unless required by law, no charge of any type shall be made to or collected from any Permittees for parking or the right to park vehicles in the Common Area, except such Common Area Maintenance Expenses as may be provided for in any agreement with any occupant of the Project. Permittees shall not be prohibited or prevented from so parking so long as space is available in the parking area portions of the Common Area and so long as they do not violate the rules and regulations covering the use of such areas, promulgated from time to time by Manager. Manager shall prescribe certain sections within the Common Area for use as parking space by the occupants of the Project and the employees, tenants, agents, contractors, licensees and concessionaires of such occupants. Each Owner shall require its Permittees and the employees, agents, contractors, licensees and concessionaires of such parties and of such occupants to use only such sections as are so prescribed for parking. No Permittee shall use or permit the use of the parking area portions of the Common Area for any purpose other than

parking and passage of pedestrians and motor vehicles unless specifically provided otherwise in this Agreement. Each Owner agrees to use reasonable efforts to enforce the provisions hereof.

**4.6 Underground Supports.** In order to accommodate the construction, reconstruction or repair of any Building which may be constructed or reconstructed immediately adjacent to the common boundary lines of any of the Parcels, each Owner, as to its respective Parcel, hereby grants, establishes and creates for the benefit of, and as appurtenances to, each other Parcel and for the benefit of the Owner of each of the other Parcels from time to time and their respective Permittees, with respect to, and as a burden upon, such granting Owner's Parcel, non-exclusive easements for lateral support for improvements constructed on or near such common boundary lines, together with the right and easement to install, maintain, repair, and replace footings and underground supports for such improvements in space not theretofore occupied by any then existing structure, provided that the location of such footings shall be subject to the consent and approval of the Owner of the Parcel encumbered by such easement, such approval not to be unreasonably withheld, and provided that such footings shall in no event extend more than five (5) feet onto the servient Parcel from the applicable common boundary line. This easement shall continue in effect for the term of this Agreement and thereafter so long as the improvements utilizing the easement exists, including a reasonable period to permit reconstruction or replacement of such improvements or to permit the construction of new improvements, and shall include the reasonable right of access necessary to exercise and enjoy such grant, provided no damage is caused to the Buildings or other improvements located on the Parcel encumbered by such easement or the operation of business thereon. Each Owner of a Parcel using a common footing shall construct its wall upon its Parcel, and no load, force or pressure shall be exerted by the wall of one Owner upon the wall of the other Owner. When an Owner of a Parcel constructs its improvements along a common boundary line, it shall do so in a manner that does not result in damage or injury to the Buildings or other improvements previously placed by another Owner of a Parcel along such common boundary line. If a common footing is used by two (2) Owners, each shall assume and pay their reasonable share of the cost and expense of the initial construction and, so long as both Owners are benefiting therefrom, any subsequent maintenance, repair, and replacement thereof. In the event any Building utilizing a common subterranean element is destroyed and not replaced or is removed, the common subterranean construction element shall be left in place for the benefit of any improvements utilizing the same located on the adjoining Parcel. Nothing herein shall be deemed to require any Owner to use or to consent to the use of common subterranean construction elements, but if such consent is granted then the foregoing provisions of this Section shall apply.

**4.7 Outdoor Seating/Eating Areas.** The Project, as shown on the Site Plan, may include non-exclusive Common Areas that may be provided with art pieces, decorative items, monuments, chairs, tables and other items wherein pedestrians and Permittees within the Project, may have a non-exclusive use of said Common Areas. The Manager shall install and maintain Art in Public Places as required under the City's Zoning Code and the Conditions of Approval. All such art work and decorative items shall obtain Design Review approval from the Planning Commission regarding the requirements for the Art in Public Places as set forth in the Banning Municipal Code.

4.8 No Easement Over City or Flood Control Easements. Notwithstanding any contrary provision contained herein, Manager shall not grant any easements over any property subject to a requirement of dedication or irrevocable offer of dedication to the City or the Riverside County Flood Control and Water Conservation District ("RCFCD"), unless such easements are expressly granted or authorized by the subject offer of dedication (or more senior easement documents) and made subordinate to the easements to be offered for dedication to the City or RCFCD. Prior to granting any of said easements, the applicant shall furnish a copy of the proposed easement to the City Engineer for review and approval.

4.9 Senior REA. So long as the Senior REA is in force and effect, the Owners shall comply with the terms and conditions of the Senior REA.

## ARTICLE 5

### OPERATION AND MAINTENANCE OF BUILDING AREA AND COMMON AREA

5.1 Taxes and Assessments. All Owners shall pay, prior to delinquency, all taxes and assessments on the Parcel(s) within the Project owned by them. If any such Owner shall fail to pay such taxes and assessments prior to delinquency, any other Owner, the Manager or the tenant of any other Owner may pay such taxes and assessments and the curing Owner, Manager or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within thirty (30) days, the curing Owner, Manager or tenant shall have a lien on the property within the Project of the defaulting Owner for the amount of such bill, which amount shall bear interest at a rate equal to the Default Rate until paid. Such lien may be foreclosed by such Owner, Manager or tenant as provided in Article 7 below.

Notwithstanding the foregoing:

a. Until such time as separate tax bills are obtained for each of the Parcels, Manager shall pay or cause to be paid the real estate taxes levied against the Project, and each Owner shall pay its proportionate share of such real estate taxes to Manager, no less than thirty (30) days in advance, in accordance with the percentages determined pursuant to Section 5.9 below; and

b. With the consent of the Manager, which consent may be withheld in the Manager's sole and absolute discretion, an Owner shall have the right, in good faith, to contest the amount of taxes or assessments owing with respect to its property; provided that such Owner shall take all such action as may be necessary to prevent any assessment or tax lien from being foreclosed or enforced with respect to any property within the Project, including, immediately following the request of Manager, recording an adequate bond to remove such lien as a matter of record or to otherwise secure the payment of such lien.

5.2 Intentionally Omitted.

5.3 Building Maintenance. Each Owner shall maintain, or cause to be maintained, in a safe, clean, attractive and first-class, tenantable condition (subject to Manager's

cure rights set forth in Section 5.10 below), all Buildings located upon its Parcel or Parcels, including screening from view the garbage receptacle areas.

**5.4      Common Area Maintenance.** Except as otherwise provided herein, the Manager shall operate and maintain, or cause to be operated and maintained, the Common Area, including the following repairs or services with respect to the Common Areas, the costs and expenses for which shall be included in Common Area Maintenance Expenses:

- a.      Resurfacing of walks, drives and parking areas;
- b.      Keeping the surface of the Common Area in a smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall, in all respects, be equal in quality, use and durability;
- c.      Cleaning, painting, striping, disposal of rubbish and debris, removal of soil and stone washed into the Common Area drainage facilities and all other tasks necessary to maintain the Common Areas in a clean, safe and orderly condition;
- d.      Maintenance of all curbs, parking dividers, landscape enclosures, fences and retaining walls in good condition and repair;
- e.      Placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines and keeping in repair and replacing when necessary such artificial lighting facilities and lighting fixtures as shall be reasonably required;
- f.      In accordance with the approved landscape plan referenced in Section 11.9(c) of the Project Purchase Agreement, plant and maintain in a good healthy condition, trees, shrubs, ground covers placed in the slopes adjacent to the public rights of way bordering the Project, median islands around the Project, and all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping such landscaped areas at all times adequately weeded, fertilized, watered and free from debris;
- g.      Security service, to the extent Manager reasonably deems the same to be necessary or advisable;
- h.      Subject to the provisions of Section 5.15 below, illumination of the Common Area until such time as the Manager determines, but in no event earlier than 9:00 p.m.;
- i.      Maintenance of all utility lines within the Project that are not the responsibility of the utility company; and
- j.      Maintenance of pylon and monument signs, as set forth in Section 4.2(j) above.

**5.5      Common Area Liability Insurance.** As part of the operation of the Common Area, Manager shall obtain and maintain commercial general liability insurance insuring all Owners and such other persons who now or hereafter own portions of the Project, as their respective interests may appear, against claims for personal injury, death or property

damage occurring in, upon or about the Common Area. Such insurance shall be written with an insurer licensed to do business in the State of California. The limits of liability of all such insurance shall be at least Five Million Dollars (\$5,000,000.00) combined single limit, and may be increased by the Manager in its discretion from time to time. The Manager shall cause to be issued certificates of insurance to each of the Owners and have such certificates provide that such insurance shall not be canceled or amended without ten (10) days prior written notice to each of the Owners.

**5.6 Proportionate Share of Common Area Maintenance Expenses.** The Manager shall expend the monies reasonably necessary for the operation of the Common Area and for the maintenance thereof in order to keep the Common Area in first-class repair and clean condition, comparable to that of other comparable first-class projects in Riverside County, California. Each Owner shall pay to the Manager its proportionate share (determined pursuant to Section 5.9 below) of Common Area Maintenance Expenses. For the Partial Year and during the First Year, until the month following the delivery of the Statement referred to in Section 5.7 below, each Owner shall pay to the Manager, on or before the first day of each calendar month, its proportionate share of an estimate of the Common Area Maintenance Expenses for the Partial Year, which estimate shall be reasonably established by the Manager.

**5.7 Partial Year Expenses.** On or before April 15 of the First Year, the Manager shall furnish each Owner with a statement (the "Statement") showing in reasonable detail the total Common Area Maintenance Expenses for the Partial Year. Commencing with the first day of the calendar month in the First Year immediately following the calendar month in which the Statement is furnished, as provided above, each Owner shall pay to the Manager on or before the first day of each calendar month an amount equal to such Owner's proportionate share of the quotient obtained by dividing the total Common Area Maintenance Expenses paid by the Manager for the Partial Year by the number of calendar months (including as a fraction any initial fractional calendar month) in such Partial Year. On or before April 15 of each calendar year thereafter, the Manager shall furnish each Owner with the Statement showing in reasonable detail the total actual Common Area Maintenance Expenses for the preceding calendar year. Commencing with the first day of the calendar month immediately following the calendar month in which the Statement is furnished, each Owner shall pay to the Manager on or before the first day of each calendar month an amount equal to such Owner's proportionate share of the quotient obtained by dividing the actual Common Area Maintenance Expenses paid by the Manager for the preceding calendar year by twelve (12). The failure of the Manager to furnish a Statement setting forth Common Area Maintenance Expenses within the time periods set forth above shall not constitute a default hereunder by the Manager or a waiver of the Manager's right to receive payment of an Owner's proportionate share thereof, except that the Manager shall be deemed to have waived its right to receive payment as to any Common Area Maintenance Expenses that are not set forth in a Statement delivered to the Owners within three (3) years after the date upon which they were incurred.

**5.8 Full Year Expenses.** Following the end of the Partial Year and each subsequent full calendar year of the term hereof and each Owner's receipt of a Statement of the total Common Area Maintenance Expenses for such year, the amounts due from each Owner as its proportionate share of the Common Area Maintenance Expenses for the Partial Year or full calendar year shall be adjusted between the Manager and each Owner. If any Owner's

proportionate share of the total Common Area Maintenance Expenses for the Partial Year or full calendar year exceeds the amount prepaid by such Owner, such Owner shall pay to the Manager such excess within thirty (30) days following the Owner's receipt of the Manager's statement. If any Owner's proportionate share of the total Common Area Maintenance Expenses for the Partial Year or full calendar year is less than the amount prepaid by such Owner, the amount of excess prepayment by such Owner shall be credited against such Owner's future prepayment obligations, cumulative from month to month until such excess is exhausted.

5.9 Determination of Proportionate Share. Each Owner shall pay, as its proportionate share of Common Area Maintenance Expenses, that amount determined by multiplying the amount of such Common Area Maintenance Expenses by a percentage based on the ratio that the Building Floor Area within such Owner's Parcel bears to the total Building Floor Area within the Project from time to time. Manager may record supplements to this Agreement from time to time stating the actual Floor Areas and the percentages which are then applicable.

5.10 Right to Cure Owners' Breach. If any Owner shall fail to maintain its Parcel or satisfy its obligations in accordance with the terms of this Article or Agreement, then any other Owner, the Manager or tenant of an Owner shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of thirty (30) days in which to cure such default, or, if the nature of the default is such that it cannot be reasonably cured within such thirty (30) day period, the Owner shall commence to cure said default within such thirty (30) day period and diligently pursue the curing of such default to completion. If the defaulting Owner does not cure such default within said thirty (30) day period, or, if applicable, commence to cure such default within said thirty (30) day period and diligently pursue the curing of such default to completion, the Owner(s), Manager and/or tenant(s) giving the notice of default may do so and the curing Owner, Manager or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within fifteen (15) days, then the curing Owner, Manager or tenant shall have a lien on the property of the defaulting Owner for the amount of such bill, which amount shall bear interest at the Default Rate and which lien may be foreclosed as provided in Article 7.

5.11 Rules and Regulations. The Manager may promulgate (pursuant to written notice to all Owners) reasonable rules and regulations of general application for the supervision, control and use of the Common Area, in which event, the Manager shall make and use its reasonable efforts to enforce the same or cause the same to be enforced uniformly.

5.12 Agents. In performing the duties of the Manager hereunder, the Manager may utilize such agents and independent contractors (including management companies) as the Manager may designate.

5.13 Common Area Maintenance Fee. Each Owner shall pay to the Manager a fee for each calendar year equal to fifteen percent (15%) of the total dollar amount of such Owner's proportionate share of Common Area Maintenance Expenses for such calendar year (so that, as an example, in the event an Owner's proportionate share of Common Area Maintenance Expenses for a calendar year is Fifteen Thousand Dollars (\$15,000.00), the fee payable by such

Owner to the Manager for such calendar year shall be Two Thousand Two Hundred Fifty Dollars (\$2,250.00)).

**5.14 Maintenance of Unimproved Parcels.** Until such time as improvements are constructed on any Building Area, the Manager shall take such measures as may be necessary to maintain same in a clean, sightly condition and shall bill the Owner of such undeveloped portion for its expenses in connection therewith. The Owner of such property shall pay the amount thereof within thirty (30) days after delivery of such bill and, in the event such Owner shall fail to do so, the amount thereof shall bear interest thereafter at the Default Rate.

**5.15 Parking Lot Lighting.**

a. Any provision contained herein to the contrary notwithstanding, in the event that any occupant of the Project remains open for business after 9:00 p.m., the Owner of the Parcel so occupied shall pay to the Manager the cost of illuminating the portion of the Common Area required by such occupant to be illuminated after 9:00 p.m. until such lights are turned off (unless such charges are separately metered to such Owner or occupant), and in the event that the occupants of more than one Parcel remain open for business after 9:00 p.m., to determine the costs of illumination of the Common Area after 9:00 p.m. for which the Owners of such Parcels shall be required to pay the Manager, such costs shall be multiplied by a fraction, the numerator of which shall be the number of hours the occupant of such Parcel shall be open for business beyond 9:00 p.m. until such lights are turned off and the denominator of which shall be the total number of hours all occupants of the Project shall be open for business after 9:00 p.m. until such lights are turned off. In all events, Manager shall keep the Common Area lit, as required by applicable Governmental Restrictions.

b. Manager and Owners shall prevent light spillover from one Parcel onto another Parcel (to the extent such Parcels are owned by different and/or unaffiliated Parties) or from the parking lot lighting and/or exterior Building lighting, including outdoor security lighting to the Parcel of another Owner. In accordance with the foregoing, parking lot lighting fixtures shall be shielded and directed downward and away from adjoining properties and public rights of way.

**5.16 Reciprocal Parking.** Manager shall provide a reciprocal parking plan for the proposed Parcels based on the required parking for the Project. The reciprocal parking plan shall be subject to the approval of the City.

**5.17 Trip Reduction Plans.** To the extent required by, or imposed pursuant to, the Conditions of Approval enacted or passed by the City in connection with entitling the Project, the Owners shall use reasonable, good faith efforts to endeavor to comply with Trip Reduction Plans approved by the City (or other applicable governmental authorities) in connection with the Conditionals for Approval for the Project. In connection therewith, the Owners shall use reasonable, good faith efforts to comply with the Trip Reduction Plan attached hereto as Exhibit "D."

**5.18 Parking and Driveways.** Subject to the other terms and conditions of this Agreement, the driveways and traffic aisles on the Project shall be kept clear and unobstructed at

all times. No vehicles or other obstruction shall permanently project into any of such driveways or traffic aisles. Furthermore, no Owner shall violate the Senior REA, so long as the Senior REA remains in effect.

## ARTICLE 6

### INSURANCE

6.1 Liability Insurance. Each Owner shall, during the term of this Agreement, except as otherwise expressly set forth herein, maintain, or cause to be maintained, at its sole expense, in full force and effect, with good and solvent insurance companies authorized to do business in the State of California and having a rating by Best's Insurance Reports of not less than A-/X, on all property within the Project owned or leased by such Owner and all Buildings and other improvements owned or leased by such Owner, a policy or policies of bodily injury and property damage liability insurance with combined single limits of at least Five Million Dollars (\$5,000,000.00), in which all other Owners, the Developer, any Mortgagee of Developer and Manager shall be named as additional insureds, insuring against any and all liability arising out of the maintenance, use and occupancy of the Building(s) and other improvements located on the property within the Project owned or leased by such Owner. Each Owner shall also maintain all-risk (special form – cause of loss) insurance coverage on all Buildings and improvements (including Common Areas) located upon that portion of the Project leased or owned by such Owner including loss or damage by fire and such other risks as are from time to time included in the all-risk coverage insurance policies customarily issued in California in an amount not less than one hundred percent (100%) of the full replacement cost of such buildings and improvements. Such all-risk insurance policies shall be maintained with good and solvent insurance companies authorized to do business in the State of California and having a rating by Best's Insurance Reports of not less than A-/X. Manager shall be named as a loss payee on all such all-risk insurance policies.

6.2 Certificates. Each Owner shall, upon request thereof from the Manager or any other Owner, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Article. To the extent that the same shall not invalidate any insurance coverage obtained by an Owner, each Owner hereby waives any claim that it might have against any other Owner for damages which would be covered by any of the insurance required to be carried under this Article. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or any damage to the said property of any Owner. Inasmuch as the said mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation) each Owner shall give to each insurance company which has issued to it policies of all-risk insurance, written notice of the terms of said mutual waivers, and shall have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waiver. All such insurance maintained pursuant to this Article shall provide that such insurance shall not be canceled or amended without ten (10) days prior written notice to Manager.

If any such Owner shall fail to maintain any of the insurance required to be maintained by such Owner pursuant to this Agreement, then any other Owner, Manager or tenant of an Owner shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of ten (10) days in which to cure such default. If the defaulting Owner does not cure such default within said ten (10) day period, the Owner(s), Manager and/or tenant(s) giving the notice of default may do so and the curing Owner, Manager or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within ten (10) days, then the curing Owner, Manager or tenant shall have a lien on the property of the defaulting Owner for the amount of such bill, which amount shall bear interest at the Default Rate and which lien may be foreclosed as provided in Article 7.

6.3 Indemnification. Each Owner ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each other Owner and Manager ("Indemnitee") from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees actually incurred and cost of suit) arising from or as a result of the injury to or death of any person, or damage to the property of any Person located on the Parcel owned or leased by each Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitees, its agents, servants, partners or employees.

## ARTICLE 7

### ASSESSMENT LIEN

7.1 Assessment Lien Procedure. In the event any assessment or other sum of money payable by any Owner pursuant to any provision of this Agreement to Manager or any Owner is not paid when due and after expiration of any applicable grace period set forth herein, then the party to whom such sums are owing shall have the right to record, in the office of the County Recorder, Riverside County, California, a Notice of Assessment Lien which shall set forth the then delinquent amount owed by such Owner (including default interest, if applicable) and a legal description of the property within the Project owned or leased by such defaulting Owner. Upon recordation of such Notice of Assessment Lien, the then delinquent amount owing by such Owner, together with interest thereon, shall constitute an Assessment Lien upon the property within the Project described in the Notice of Assessment Lien. In the event the amount secured by such Assessment Lien is not paid in full within thirty (30) days after such Notice of Assessment Lien has been recorded, the person to whom such amounts are owing may enforce payment of the assessment or other amount due, or enforce the Assessment Lien against the property and interest of the delinquent Owner by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies set forth below, such person shall not prejudice or waive its right to exercise the other remedy or such additional remedies as may be available under its lease or under applicable law):

- a. Bringing an action at law against the Owner personally obligated to pay the assessment or other sum of money;

b. Foreclosing the Assessment Lien against the property of the Owner in accordance with the then prevailing California law relating to the foreclosure of Mortgages (including the right to recover any deficiency); or

c. Pursuing any other remedy at law or in equity.

**7.2 Personal Obligation.** Each assessment or amount due pursuant to any provision of this Agreement by an Owner, together with interest at the Default Rate, costs and attorneys' fees, shall be the personal obligation of such defaulting Owner, and such personal obligation of such Owner shall not be deemed to discharge or limit the charge on the land of any Assessment Lien encumbering the Parcel of such Owner within the Project, regardless of a subsequent conveyance of that property (including by foreclosure). No Owner shall escape liability for payment of any amount due hereunder which fell due while he was the Owner by nonuse of the Common Area or by transfer or abandonment of such Owner's property. In the event any property within the Project as to which a Notice of Assessment Lien has been recorded, pursuant to Section 7.1 above, is sold, conveyed or otherwise transferred, in whole or in part, by the Owner thereof, such property shall remain subject and subordinate to the Assessment Lien created by reason of the delinquency described in the Notice of Assessment Lien.

**7.3 Priority.** The Assessment Lien provided for above shall be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon a Parcel; provided, however, that such Assessment Lien shall be subject and subordinate to:

a. Liens for taxes and other public charges which by applicable law are expressly made superior; and

b. Any Mortgages recorded in the office of the County Recorder, Riverside County, California (and such other place as may be required or permitted by law), prior to the date of recordation of a Notice of Assessment Lien. All liens recorded subsequent to the recordation of a Notice of Assessment Liens shall be junior and subordinate to the Assessment Lien created by reason of the delinquency described in the recorded Notice of Assessment Lien.

In the event an Owner shall be delinquent in paying any amounts due hereunder and, as a result thereof, a Notice of Assessment Lien shall be recorded as provided herein, the person recording such Notice of Assessment Lien may record subsequent Notices of Assessment Lien as to any amounts owing by such Owner to such person which become delinquent after the recordation of the first such Notice of Assessment Lien, and the priority of the Assessment Lien as to any such amounts thereafter becoming delinquent shall be fixed as of the date of recordation of the first such Notice of Assessment Lien. A person may prosecute a single Assessment Lien foreclosure action as to amounts delinquent at the time a Notice of Assessment Lien is recorded and as to amounts thereafter becoming delinquent, up to and including the time a final judgment is rendered in such action.

7.4 Cure. Upon the curing of any default for which a Notice of Assessment Lien was recorded, the person recording such Notice of Assessment Lien shall record an appropriate release of any Notice of Assessment Lien upon payment by the defaulting Owner of a reasonable fee, to be determined by such person, to cover the costs of preparing and recording such release, together with the payment of such other costs, including, without limitation, legal fees and court costs, interest or fees, as such person shall have incurred.

7.5 Contest. Any provision contained herein to the contrary notwithstanding, any Owner shall have the right to contest, in a court of competent jurisdiction, the recordation of any Notice of Assessment Lien against the Parcel owned or leased by such Owner on the basis that the recordation of such Notice of Assessment Lien or the amounts claimed to be delinquent therein is or are incorrect or improper under the provisions of this Agreement. The prevailing party in such action shall be entitled to recover from the other party or parties its reasonable attorneys' fees incurred in connection with such action.

## ARTICLE 8

### CASUALTY

8.1 Damage to Buildings. In the event any Building or appurtenant improvement on a Parcel is damaged or destroyed by any casualty, the Owner upon whose Parcel such Building and/or improvement is/was located shall promptly (i) repair and/or reconstruct such Building or improvement in accordance with the applicable provisions of this Agreement (including Section 8.2 below and Article 3) and the applicable provisions of the Project Purchase Agreement and the Conditions of Approval, or (ii) level such Building or improvement, remove the debris from the Parcel and keep the affected portions of the Parcel neat, orderly, and well maintained, and covered with planted grass, one inch (1") of asphaltic concrete, a dust cap, decomposed granite or other appropriate ground cover approved by Manager (in Manager's sole discretion), until subsequently improved or constructed upon, provided that no such protective covering shall increase the drainage burden on any other Parcel.

8.2 Damage to Common Areas. Upon any damage or destruction to the Common Area on a Parcel during the term of this Agreement (i) from any cause insurable under an all-risk insurance policy of the type then customarily issued in the State of California for similar property, or (ii) if not so insurable, the cost of repair of which (including applicable governmental fees and exactions) does not exceed ten percent (10%) of the then full replacement cost of all of the Common Area on such Parcel, the Owner upon whose Parcel such damage or destruction occurred, at its sole cost and expense, shall promptly after the occurrence of the event of damage or destruction, restore, repair or rebuild such damaged or destroyed Common Area. If the cost of repair under clause (ii) above exceeds ten percent (10%) of the then full replacement cost of all of the Common Area on the subject Parcel and the Owner of the affected Parcel elects (which such election shall be made, if at all, within thirty (30) days following such damage or destruction) not to restore, repair or rebuild the damaged or destroyed Common Area, and if the damaged or destroyed Common Area includes or affects any entrances to the Project, access drives or drive aisles within the Project, or common utilities or signs, then any other Owner shall have the right, by written notice to the Owner upon whose Parcel such damage or destruction

occurred, to elect to effect restoration, repair or rebuilding of all or any part of such damaged or destroyed Common Area, in which event the electing Owner or Owners shall effect such restoration, repair or rebuilding in accordance with the applicable provisions of this Agreement (including this Section 8.2 and Article 3) and the applicable provisions of the Project Purchase Agreement and the Conditions of Approval, and the Owner of the Parcel upon which such damage and destruction occurred shall bear the first of the costs incurred to restore, repair and rebuild the affected Common Area to the extent not in excess of ten percent (10%) of the then full replacement cost of all of the Common Area on the subject Parcel and the electing Owner or Owners shall bear all such costs exceeding ten percent (10%) of the then full replacement cost of such Common Area. If an affected Owner is not obligated to repair damaged or destroyed Common Area pursuant to clause (ii) above, and no other Owner elects to effect such repair within thirty (30) days after the date the affected Owner determines not to proceed with such repairs, then the affected Owner shall promptly remove any debris from its Parcel and keep the affected portions of the Parcel neat, orderly, and well maintained, and covered with planted grass, one inch (1") of asphaltic concrete, a dust cap, decomposed granite or other appropriate ground cover approved by Manager (in Manager's sole discretion), until subsequently improved or constructed upon, provided that no such protective covering shall increase the drainage burden on any other Parcel. Unless the work of restoration, repair, rebuilding or improvement is carried out pursuant to the original plans and specifications for the construction of the Common Area, the plans or specifications for such work shall be subject to the prior written approval of Manager as otherwise required pursuant to this Agreement. Each affected Owner shall use all due diligence to complete such restoration and repair of the Common Area as expeditiously as possible so that the same may be available for use as part of the Project with as little delay and as little disruption as circumstances permit.

## ARTICLE 9

### RIGHT OF FIRST REFUSAL

In the event, at any time during the term of this Agreement, an Owner of any Parcel receives or makes a bonafide offer to purchase or sell its Parcel, and such Owner desires to accept such offer, such Owner shall give Developer ninety (90) days' written notice (the "Offer Notice") of such offer, setting forth the name and address of the proposed purchaser, the amount of the purchase price and all other terms and conditions of such offer, and Developer shall have the first right to purchase such Parcel by giving written notice to such Owner of Developer's intention to purchase on the same terms of any such offer within such ninety (90) day period. Failure by Developer to provide such notice to such Owner within such ninety (90) day period shall be deemed an election by Developer not to exercise such right and, in the event of such failure, the Owner of the subject Parcel shall be free to sell its Parcel to the purchaser identified in the Offer Notice upon the same terms and conditions given to Developer. It is understood that in the event Developer does not exercise such right, the provisions of this Article 9 shall nevertheless be applicable to any further or future sale of the subject Parcel by the subject Owner or any subsequent Owner, and/or in the event the terms and conditions of the subject offer change, such Parcel shall be immediately re-offered to Developer pursuant to the terms and provisions of this Article above relating to the offering of the subject Parcel. Notwithstanding anything to the contrary contained herein, the first refusal rights set forth in this Article shall

only be available to Developer. In no event shall this Article apply with respect to a sale or transfer of a Parcel by Developer to another party.

## ARTICLE 10

### GENERAL PROVISIONS

**10.1 Successors and Assigns.** Each easement, restriction and covenant contained herein shall be appurtenant to and for the benefit of all portions of the Project and shall be a burden thereon, for the benefit of all portions of the Project, and shall run with the land. This Agreement and the restrictions, easements, covenants, benefits and obligations created hereby shall inure to the benefit of and be binding upon Developer, Owners and their successors, transferees and assigns; provided, however, that, if any Owner transfers all of its interest in the Project, the transferee thereof shall automatically be deemed to have assumed and agreed to be bound by the covenants and agreements herein contained, and the transferor shall thereupon be released and discharged from any and all obligations under this Agreement accruing after the date of sale.

**10.2 Run With the Land.** The covenants, conditions and restrictions contained in this Agreement shall run with the land and be binding upon each and all of the parties (and upon all persons claiming under them) for a period of ninety-nine (99) years, and shall thereafter renew automatically for successive ten (10) year periods, unless Manager otherwise elects in a writing recorded with the County Recorder, Riverside County, California, or Owner's owning at least fifty-one percent (51%) of the land area within the Project otherwise elect in a writing recorded with the County Recorder, Riverside County, California.

**10.3 Modification.** This Agreement may be modified in any respect whatsoever with the consent of the Manager and without the necessity of obtaining the consent of any other Owner; provided, however if such a modification:

- a. directly and materially affects the access to, visibility of or parking on a Parcel; or
- b. would result in an increase in Common Area Maintenance Expenses for an Owner;

then the Owner of any such affected Parcel must also consent to such modification. In addition, City's consent shall be required to any amendment or modification to this Agreement. If this Agreement is rescinded, all Owners of any portion of the Project must consent to such rescission. Such modification or rescission may only be accomplished by a written instrument duly executed and acknowledged by the requisite parties, and duly recorded in the office of the County Recorder of Riverside County, California and at such other place as may be necessary.

**10.4 No Dedication to Public.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purposes whatsoever, it being the intention of Developer that this Agreement shall be strictly limited to and for the purposes herein expressed.

10.5 No Cancellation. No breach of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement.

10.6 Survival. If any clause, sentence or other portion of this Agreement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions hereof shall remain in full force and effect.

10.7 No Merger. The ownership of the entire Project by the same party shall not affect the termination of this Agreement.

10.8 Mortgagee Protection. Breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to the Project or any part thereof, but all of the foregoing provisions, restrictions and covenants shall be binding upon and effective against any Owner whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, subject to the terms of the Project Purchase Agreement.

10.9 Remedies. Any Owner and/or the Manager may prosecute any proceedings at law or in equity against any person or entity violating or attempting to violate any of the agreements, covenants, conditions and restrictions herein, to prevent it, him or them from so doing and/or to recover damages from or on account of such violation. All costs and expenses of any such suit or proceedings, including reasonable attorneys' fees, as well as any judgment thereof, shall be assessed against the losing party and shall constitute a lien against the real property or the interest therein in the Project belonging to such party as provided in Article 7 above, which the prevailing party may foreclose in the manner provided in such Article 7. All remedies set forth herein or otherwise available at law or equity shall be cumulative.

10.10 No Third Party Beneficiary. Except as herein specifically provided, no rights, privileges or immunities set forth herein shall inure to the benefit of any customer, employee, guest, licensee or invitee of any Owner, tenant or occupant of any portion of the Project, nor shall any customer, employee, guest, licensee or invitee of such Owner, tenant or occupant be deemed to be a third party beneficiary of any of the provisions contained herein.

10.11 Condemnation. In the event of condemnation (or sale under threat of condemnation) by any duly constituted authority for a public or quasi-public use of all or any part of the Project, that portion of the award attributable to the value of the interest in the Parcel so taken shall be payable to the Owner of such Parcel and no claim thereon shall be made by any other Owner of any part of the Project; provided, however, that the other Owners may file collateral claims with the condemning authority over and above the value of the interest to be taken, provided no such collateral claim shall reduce the award to the Owner of the condemned Parcel. The Owner of any portion of the Common Areas on a Parcel so condemned shall promptly repair and restore the remaining portion of the Common Areas located on such Owner's Parcel (including reestablishing any common utility facilities) as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent

that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Owner.

10.12 Captions. The captions heading the various Articles of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

10.13 Consent. Unless otherwise set forth herein, any approval or consent required or requested of the Developer or Manager may be withheld in its sole and absolute discretion. Unless otherwise specified herein, any approval or consent required to be obtained hereunder by any Owner, other than the Developer or Manager, shall not be unreasonably withheld and shall be given or withheld within thirty (30) days after delivery of the request therefor. In the event an Owner whose approval or consent is sought pursuant to the immediately preceding sentence fails to respond within the applicable time period, such Owner shall be deemed to have approved of, or consented to, the matter in question.

10.14 Assignment. Except as otherwise expressly set forth herein, no Owner shall have the right to assign all or any portion of its rights, benefits, duties or obligations under this Agreement except in connection with a transfer or conveyance by such Owner of its Parcel (and any conveyance made by Mortgage or other security instrument as security for any obligation or indebtedness shall not be deemed to be a transfer or conveyance within the meaning of the foregoing). In the event, at any time, that an interest in the same portion of property within the Project shall be vested in more than one person, such persons shall designate one of them to act on behalf of all such persons in the performance of the provisions of this Agreement. Any such designation shall be in writing, duly executed and acknowledged by each such person and a copy of such designation shall be given to all other Owners in accordance with the notice provisions of this Agreement. An original of such designation shall be recorded in the office of the County Recorder, Riverside County, California. A majority of such persons shall have the right, from time to time, to change the designation made by executing, acknowledging, delivering and recording a new notice of designation in the same manner set forth above.

10.15 Notices. Any notice, demand, request or other communication required or permitted to be given by an Owner, occupant or tenant of the Project to another Owner, occupant or tenant hereunder shall be in writing, signed by the party giving the notice, and shall be given by delivering the same in person, by a recognized overnight courier service which maintains delivery records (such as Federal Express) or by depositing the same in the United States mail, registered or certified, return receipt requested, first class postage, and postage prepaid. All notices shall be sent to the respective mailing addresses of the parties hereto at the following addresses, until such addresses are changed as hereinafter provided:

Developer: JMA Village, LLC  
1137 Second Street, Suite 100  
Santa Monica, California 90403  
Attn: Mr. Arthur Pearlman or Mr. Mark Frost

with a copy to:

The Frost Company  
30001 Golden Lantern  
Laguna Niguel, California 92677  
Attn: Mr. Mark Frost

City: City of Banning  
99 E. Ramsey Street  
Banning, California 92220  
Attn: City Manager

with a copy to:

City of Banning  
99 E. Ramsey Street  
Banning, California 92220  
Attn: City Attorney

To any other Owner: At such address as such Owner shall designate in writing to the Manager, or at such Owner's address in the Project if such Owner shall fail to designate in writing another address to the Manager.

The Manager shall make all addresses furnished by any Owner pursuant to this Section 10.15 available to any Owner, occupant or tenant of the Project who shall so request such addresses. Any Owner may change its mailing address at any time by giving written notice of such change to the Manager in the manner provided herein at least ten (10) days prior to the date such change is effective. Personal service and service by recognized overnight courier service will be deemed to be complete upon receipt and service by mail will be deemed complete on deposit of said notice in the United States mail.

**10.16 Estoppel Certificates.** Each Owner shall deliver to any other Owner, without charge, within fifteen (15) days after request therefor, a written statement setting forth that, to the best of such Owner's knowledge, the requesting Owner is not in default in the performance of any of its obligations under this Agreement (or, if in default, setting forth the nature of such default), and that, to such Owner's actual knowledge and belief, there are no outstanding Assessment Liens against the requesting Owner's Parcel or stating the amount of any such Assessment Lien(s).

**10.17 Intentionally Omitted.**

10.18 Jurisdiction. Any matter arising under this Agreement shall be governed by and determined in accordance with the laws of the State of California.

10.19 Intentionally Omitted.

10.20 Other Agreements. Nothing contained in this Agreement shall be construed as a limitation on an Owner's right to enter into any supplemental agreement with the grantee or lessee of any Parcel (or portion thereof) on terms and conditions more favorable to such Owner or otherwise different than those contained herein; provided, however, in all events, any such agreement shall be subordinate to this Agreement.

10.21 Non-Discrimination. There shall be no discrimination against or segregation of any person, or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land of the Parcels, nor shall the transferee of any interest in the Parcels or any person claiming under or through such transferee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land of the Parcels.

10.22 Exhibits. The following Exhibits are attached to this Agreement and are hereby incorporated herein by this reference as if set forth herein in full:

- (i) Exhibit A – Legal Description of Developer Parcels
- (ii) Exhibit B – Site Plan of Project
- (iii) Exhibit C – Legal Description of City Parcels
- (iv) Exhibit D – City-Approved Trip Reduction Plan

## ARTICLE 11

### RIGHTS OF THE CITY AND BENEFICIARY

Notwithstanding anything to the contrary, the following rights pertaining to the City hereunder shall in no way constitute or imply a waiver or limitation of any kind of City's municipal rights and obligations (including City's rights to review and approve applications for permits and approvals, if applicable) relating to the Project. In addition to all other rights granted to the City pursuant to the provisions of this Agreement, the Project Purchase Agreement, the Conditions of Approval and otherwise (none of which have been waived), the City shall have the following additional rights:

11.1 Compliance with Law. Manager and each Owner shall comply with all ordinances, regulations and laws of the City applicable to the Project, and all applicable provisions of the Project Purchase Agreement and the Conditions of Approval. Manager and each Owner shall obtain at its sole cost and expense such licenses, permits and approvals as may

be required by law for the performance of the work required or authorized by this Agreement. Manager and each Owner shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Manager's or each Owner's performance of the work required or authorized by this Agreement. Manager and each Owner shall comply with all rules and regulations of any assessment district of the City that the Project is subject to. In addition, Manager and each Owner shall comply with the following special conditions:

a. Manager and each Owner shall be responsible (as such responsibilities are divided pursuant to this Agreement) for the maintenance of all improvements that may exist on a Parcel or the Common Area from time to time, including, without limitation, Buildings, sidewalks, parking lots, lighting, signs, planters, irrigation and drainage facilities, walls and facades, at all times in first class condition or repair (comparable to that of comparable projects in Riverside County, California), and in good working order, and shall keep the Project neat, clean and sanitary, free from accumulation of debris or waste materials, in accordance with a first-class project. Each Owner and Manager, as the case may be, shall promptly make all necessary replacements, repairs and alterations. All sidewalks and parking areas shall be promptly swept and cleaned. All asphalt and concrete paved areas shall be repaired, replaced, and re-striped, as necessary, to maintain said pavement at all times in a level and smooth condition.

b. All landscaping, including vegetation, irrigation systems and earth mounding, shall be installed as provided in the approved plans for development approved by the City (or other governmental authorities) and shall be permanently maintained in good, first class condition (comparable to that of comparable projects in Riverside County, California), healthy, without deterioration, and free of waste and debris. Dead or diseased plants shall be promptly replaced with landscaping similar in type, size and quality. The automatic irrigation systems shall be properly maintained and other reasonable and adequate landscape maintenance facilities shall be provided to fill the foregoing requirements.

c. The Project shall be maintained in such manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to public health, safety or general welfare, or that such condition or deterioration or disrepair causes appreciable harm or has been truly detrimental to the Project or improvements within one thousand (1000) feet of such portion of the Project.

#### 11.2 Intentionally Omitted.

11.3 Enforcement by the City. City shall have the right, in both of its capacities (as Beneficiary hereunder, and as a governmental authority with jurisdiction), to deal directly with Manager in enforcing its rights under this Agreement. By virtue of the applicable provisions of the Project Purchase Agreement and the Conditions of Approval, Developer and each Owner acknowledge that all covenants, conditions and restrictions set forth in this Agreement shall be enforceable by the City by proceedings at law or in equity or by any method available to any Owner as provided elsewhere in this Agreement. No failure to enforce any provision of this Agreement shall be deemed a waiver by City, Manager or any Owner unless

such waiver is in writing signed by the waiving party. In addition, nothing contained herein shall constitute a waiver by City under the Project Purchase Agreement of any of its rights and remedies, including without limitation any rights and remedies it may have under the Project Purchase Agreement with respect to construction of the Project before the Project is completed.

In furtherance thereof, the City shall have the same rights and remedies to enforce a breach of a provision of this Agreement that is enforceable by the City that the Developer, Manager and Owners or any of them may have to enforce a breach of this Agreement, including the right, following applicable notice and opportunity to cure, to enter upon all or any portion of a Parcel to remedy said breach at the expense of the violating Owner and to charge an assessment against such Owner for a breach of the applicable provision of this Agreement upon providing the Owner with such notices and hearing opportunities as required by law and the provisions of this Agreement. Assessment Liens would then be subject to enforcement pursuant to Article 7 of this Agreement and applicable law. In addition, following a material breach by an Owner under this Agreement and applicable written notice and opportunity to cure, the City shall have the right to withhold, after giving additional written notice of said material breach and cure rights, future building permits, occupancy permits, certificates of occupancy, business licenses and similar matters on the Parcel of the breach Owner, until such breaches are materially cured.

**11.4 Other Rights of City.** In the event of any violation or threatened violation of any of the provisions of this Agreement, then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions hereof, the City shall have the right to bring an action for anticipatory breach or an equitable action for declaratory relief or injunction.

**11.5 No City Liability.** The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of this Agreement. The failure of the City to enforce this Agreement shall not constitute a waiver or give rise to a cause of action on the part of any person. No officer or employee of the City shall be personally liable to the Developer or any Owner, for any default or breach by the City under this Agreement.

**11.6 Amendments.** Any amendment to this Agreement shall require the prior written consent of the City.

**11.7 Covenants Running with the Land.** Developer hereby declares that all of the Project shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the restrictions, covenants, conditions and equitable servitudes set forth in this Agreement, all of which are for the purpose of uniformly enhancing or protecting the value, attractiveness and desirability of the Project. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein shall run with the Project and shall be binding upon all persons having any right, title or interest in the Project, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of every portion of the City Parcel and any interest therein; and shall inure to the benefit of and be binding upon Developer, the City and their successors and assigns and successors in interest; and may be enforced by the City. In consideration for the sale of the Project by City to Developer and Beneficiary's granting of the approval of the Project, Developer hereby agrees to hold, sell, and convey the Parcels subject to the covenants, conditions, restrictions and reservations of this

Agreement. This Agreement is designed to create equitable servitudes and covenants running with the Project. Developer agrees that all of the Project shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to these covenants, conditions, restrictions and equitable servitudes, all of which are for the purposes of uniformly enhancing or protecting the value, attractiveness and desirability of the Project. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein shall: (i) run with the Parcels, (ii) be binding upon all persons having any right, title or interest in the Parcels, or any part thereof, their heirs, successive owners and assigns, and (iii) shall be binding upon Developer, its successors and assigns and successors in interest in the Project or any portion thereof. This Agreement burdens the Project for the benefit of the City Parcels which are also benefitted property under this Agreement. In the event that the City Parcels are transferred or cease to be owned by Beneficiary, all Developer's covenants, easements and obligations under this Agreement shall be deemed held by Beneficiary in gross. Beneficiary shall have the separate right to enforce the covenants, conditions and restrictions in the Agreement, as set forth above.

11.8 Touch and Concern. Developer hereby declares and acknowledges its understanding and intent that the burden of the covenants set forth herein touch and concern the land in that Developer's legal interest in the Project may be rendered less valuable thereby. Developer hereby further declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by the citizens of the City and by furthering the health, safety and welfare of the residents of the City.

IN WITNESS WHEREOF, Developer has executed this Agreement the day and  
year first above written.

DEVELOPER:

JMA VILLAGE, LLC, a California limited liability  
company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**CERTIFICATE OF ACCEPTANCE**  
(California Government Code Section 27281)

This is to certify that the rights in real property granted by JMA VILLAGE, LLC to the CITY OF BANNING, a California general law municipality ("City") pursuant to this Reciprocal Easement Agreement with Covenants, Conditions and Restrictions dated \_\_\_\_\_, 2014, is hereby accepted by the undersigned officer on behalf of the City as Beneficiary thereof, pursuant to the authority conferred.

Dated: \_\_\_\_\_, 2014

**CITY OF BANNING,**  
a California general law municipality

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**[ADD JURATS]**

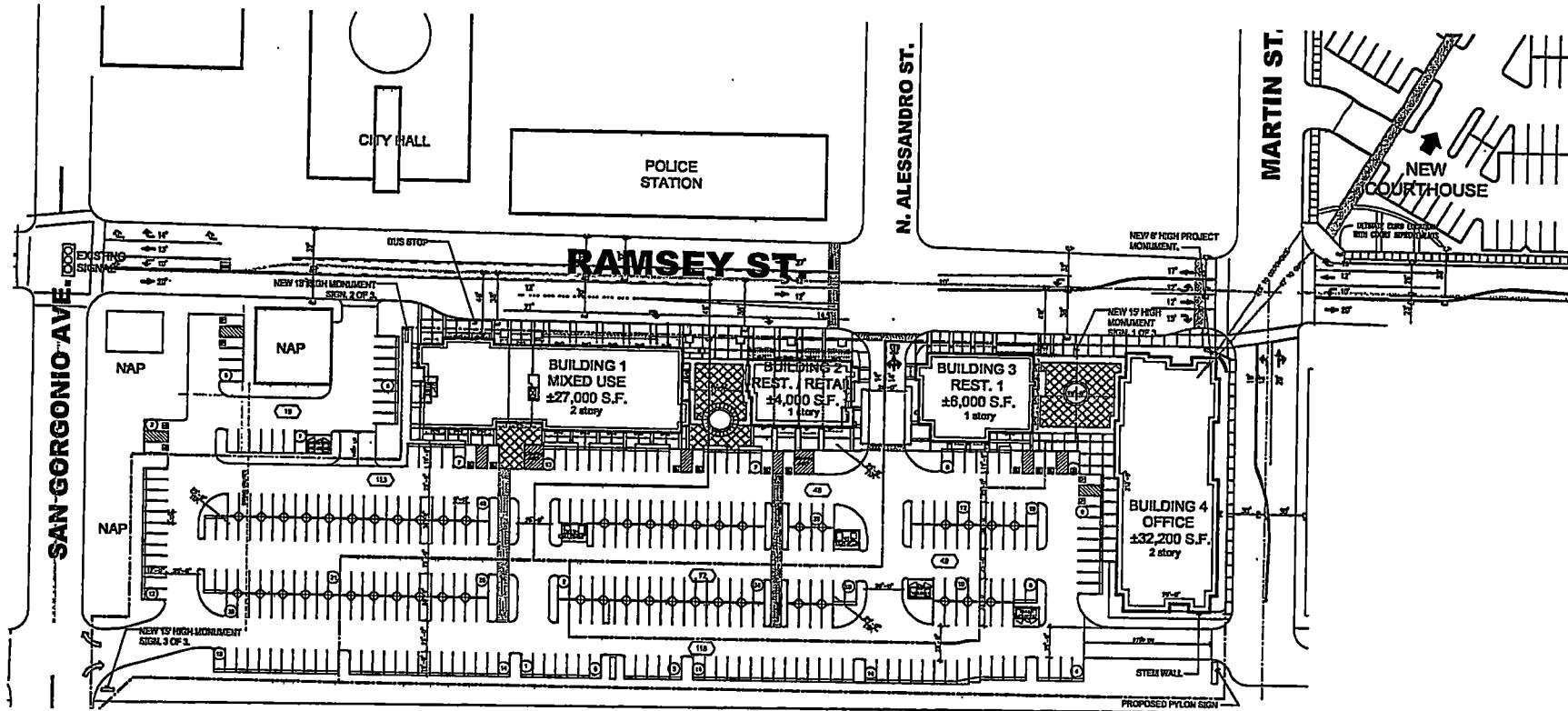
**EXHIBIT A**

**LEGAL DESCRIPTION OF DEVELOPER PARCELS**

PARCELS 1, 2, 3 AND 4 OF PARCEL MAP NO. 36285 IN THE CITY OF BANNING,  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

**EXHIBIT B**

**SITE PLAN OF PROJECT**



# THE VILLAGE AT PASEO SAN GORGONIO

Banning, CA

**THE FROST  
COMPANY** **Arthur Perlman  
CORPORATION**  
3021 Golden Larch  
Locust Mtns., CA 92077  
800-448-2222

DLR Group

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**EXHIBIT C**

**LEGAL DESCRIPTION OF CITY PARCELS**

Real property located in the City of Banning, County of Riverside, State of California, legally described as:

**APN #541-143-010**

LOTS 1 THROUGH 9, INCLUSIVE, LOTS 23 THROUGH 26, INCLUSIVE, LOTS 34 THROUGH 36 INCLUSIVE, AND THE NORTH 12.00 FEET OF LOT 37, OF HATHAWAY'S ADDITION TO BANNING, AS PER MAP, RECORDED IN MAP BOOK 5, PAGE 14, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA.

**APN #541-143-011**

LOTS 42, 41, 40, 39, 38 AND THE SOUTH 15.00 FEET OF LOT 37, OF HATHAWAY'S ADDITION TO BANNING, AS PER MAP, RECORDED IN MAP BOOK 5, PAGE 14, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA.

**APN #541-145-006**

THE SOUTH 75.00 FEET OF THAT PORTION OF LOT 5 IN BLOCK 5, AS SHOWN ON AMENDED MAP OF THE BANNING LAND COMPANY, RECORDED IN MAP BOOK 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF ALESSANDRO ROAD (FORMERLY ELLA STREET) AND THE NORTH LINE OF SAID LOT 5; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 5; A DISTANCE OF 100.00 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF ALESSANDRO ROAD, A DISTANCE OF 135.00 FEET; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID LOT 5, A DISTANCE OF 100.00 FEET TO THE EAST LINE OF ALESSANDRO ROAD THENCE NORTH ALONG THE EAST LINE OF ALESSANDRO ROAD, A DISTANCE OF 135.00 FEET TO THE POINT OF BEGINNING.

**APN #541-145-008**

THAT PORTION OF LOT 5 IN BLOCK 5, AS SHOWN ON AMENDED MAP OF THE BANNING LAND COMPANY, RECORDED IN MAP BOOK 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 5, A DISTANCE OF 90.00 FEET NORTH OF THE SOUTHWEST CORNER THEREOF, THENCE NORTH ALONG SAID WEST LINE, A DISTANCE OF 45.00 FEET MORE OR LESS, TO A POINT 135.00 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 5; THENCE EAST PARALLEL WITH THE NORTH LINE OF SAID LOT 5, A DISTANCE OF 100.00 FEET;

THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID LOT 5, A DISTANCE OF 45.00 FEET MORE OR LESS TO A POINT 90.00 FEET NORTH OF THE SOUTH LINE OF SAID LOT 5; THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID LOT 5, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

**APN #541-145-010**

THE NORTH 60.00 FEET OF THAT PORTION OF LOT 5 IN BLOCK 5, AS SHOWN ON AMENDED MAP OF THE BANNING LAND COMPANY, RECORDED IN MAP BOOK 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF ALESSANDRO ROAD (FORMERLY ELLA STREET) AND THE NORTH LINE OF SAID LOT 5; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 5, A DISTANCE OF 100.00 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF ALESSANDRO ROAD, A DISTANCE OF 135.00 FEET; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID LOT 5, A DISTANCE OF 100.00 FEET TO THE EAST LINE OF ALESSANDRO ROAD; THENCE NORTH ALONG THE EAST LINE OF ALESSANDRO ROAD, A DISTANCE OF 135.00 FEET TO THE POINT OF BEGINNING.

**APN #541-141-002**

LOT 7 IN BLOCK 2, AS SHOWN ON AMENDED MAP OF THE BANNING LAND COMPANY, RECORDED IN MAP BOOK 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA.

**APN #541-141-003**

THE SOUTH 20.00 FEET OF LOT 8 IN BLOCK 2, AS SHOWN ON AMENDED MAP OF THE BANNING LAND COMPANY, RECORDED IN MAP BOOK 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA.

**APN #541-141-004**

THE NORTH 30.00 FEET OF LOT 8 IN BLOCK 2, AS SHOWN ON AMENDED MAP OF THE BANNING LAND COMPANY, RECORDED IN MAP BOOK 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA.

**EXHIBIT D**

**CITY-APPROVED TRIP REDUCTION PLAN**



WEBB

## Memorandum

To: Mark Frost  
The Frost Company

From: Genevieve Cross, Senior Environmental Planner  
Albert A. Webb Associates

Date: June 20, 2014

Re: Trip Reduction Program for The Village at Paseo San Gorgonio

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In compliance with the City of Banning's Municipal Code Section 8.60.040, a Trip Reduction Plan is provided below which will reduce the estimated employee trips by the required 12 percent. Below is a summary of the methodology and assumptions used to achieve the reduction.

### Number of Employees

Building #	Land Use Category	Gross SF per Employee*	Total Employees
1	13,500 SF Office	300	45
	13,500 SF Retail	500	27
2	4,000 SF Retail	500	8
3	6,000 SF Retail	500	12
4	32,000 SF Office	300	107
<b>Total Employees</b>			<b>199</b>

\* Methodology from code 8.60.040

### Methods for Reduction

The *Quantifying Greenhouse Gas Mitigation Measures: A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures*<sup>1</sup> report prepared by the California Air Pollution Control Officers Association provides quantification of project-level mitigation of greenhouse gas emissions associated with land use, transportation, energy use and other related project areas. This report was utilized in identifying mitigation that could be used to reduce employee trips, and provide calculations to ensure the 12% reduction requirement was met. The following two measures from the report are used:

---

<sup>1</sup> <http://capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>

**1. Land Use/Location (LUT-9). 3.1.9 Improve Design of Development.**

This measure assumes the project will include improved design elements to enhance walkability and connectivity, including the following:

- a. The project has been designed with mixed uses: Retail/restaurant/office
  - i. The mix of uses reduces trips of employees by not needing to drive to adjacent restaurant and retail uses
- b. The project has been situated in the downtown city of Banning.
- c. The project will include bike racks adjacent to office uses
- d. A bus stop is being provided

Improved street network characteristics within a neighborhood include street accessibility, usually measured in terms of number of intersections per square mile. There are 87 intersections within square mile of the project site. The following calculation was used to determine the reduction:

= (intersections per square mile of project – intersections per square mile of typical ITE suburban development) / Intersections per square mile of typical ITE suburban development  
\*0.12

Project calculation:  $(87-36)/36 * 0.12 = 11.8\% \text{ reduction}$

**2. Transportation (TRT-3). 3.4.3 Provide Ride-Sharing Program.**

The measure assumes a ride-sharing program will be implemented at all office locations, as well as a transportation management association. The following calculation was used to determine the reduction in vehicle miles traveled (VMT):

% VMT reduction = Commute (10% for suburban locations) \* % employees eligible (office)

Project calculation:  $10\% * 76\% = 7.6\% \text{ reduction}$

**Total VMT reductions: 19.4%**

**Implementation Measures**

- 1. The project applicant/developer shall ensure bike racks are installed at all office locations
- 2. The project applicant/developer/future tenant shall coordinate with the local bus provider to ensure bus service is provided during business hours on a regular schedule, to the extent feasible
- 3. Each office tenant shall develop a transportation management association which will provide the employees the following:
  - a. A ride-sharing program
    - 1) Incentive program to encourage rideshares
      - i. Incentives can include but are not limited to money, raffles, gift cards and/or
      - ii. Designated priority parking spaces for ride-share vehicles
  - b. Development of a website or message board for coordinating rides

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**EXHIBIT "C"**  
**LIMITED RECIPROCAL EASEMENT AGREEMENT WITH**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**

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

Scott L. Grossfeld, Esq.  
COX, CASTLE & NICHOLSON LLP  
2049 Century Park East, Suite 2800  
Los Angeles, California 90067-3284

Space Above This Line Is For Recorder's Use Only

**LIMITED RECIPROCAL EASEMENT AGREEMENT  
WITH COVENANTS, CONDITIONS AND RESTRICTIONS**

**LIMITED RECIPROCAL EASEMENT AGREEMENT  
WITH COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS LIMITED RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS (this "Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date") by and between JMA VILLAGE, LLC, a California limited liability company ("Developer") and THE CITY OF BANNING, a California general law municipality ("City").

**RECITALS**

A. Developer is the owner of certain parcels of real property located in the City of Banning, County of Riverside, State of California and generally bounded on the west by San Gorgonio Avenue, on the north by Ramsey Street, to the east by Martin Street and to the south by the Interstate 10 Freeway, which property is more particularly described on Exhibit "A" attached hereto (the "Developer Parcels"), upon which Developer currently intends to develop an integrated retail and/or commercial project.

B. City is the owner of certain parcels of real property located in the City of Banning, County of Riverside, State of California, generally located at the intersection of San Gorgonio Avenue and Ramsey Street, which property is more particularly described on Exhibit "B" attached hereto (the "City Parcels"). The City Parcels are located adjacent to the Developer Parcels.

C. A site plan showing the Developer Parcels and the City Parcels is attached hereto as Exhibit "C" and made a part hereof (the "Site Plan").

D. The parties to this Agreement desire to establish certain easements, covenants, conditions and restrictions, for the mutual and reciprocal benefit and complement of the Developer Parcels and the City Parcels (collectively, the "Parcels"), and the present and future owners, tenants and lawful occupants and users thereof, on the terms and conditions hereinafter set forth. Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Agreement shall run with the land of each of the Parcels and every portion of each thereof, and shall apply to and bind the respective successors in interest to each of the Parcels and every portion of each thereof, for the benefit of each of the other Parcels and every portion of each thereof (except to the extent as may otherwise be stated herein). Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Agreement are imposed on each portion of and interest in each of the Parcels as mutual equitable servitudes in favor of each and all other portions of and interests in the Parcels and constitute covenants running with the land pursuant to applicable law, including, without limitation, Section 1468 of the Civil Code of the State of California.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, intending that the Parcels and all present and future owners and occupants of the Parcels be subjected to the terms, easements, covenants, conditions and restrictions set forth in this Agreement, and that the Parcels be maintained, kept, sold and used in

full compliance with and subject to this Agreement, the parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

## ARTICLE 1

### DEFINITIONS

1.1     “Governmental Restrictions” shall mean any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, conditions of approval or authorization of any applicable governmental entity, agency or political subdivision, whether now in force or which may hereafter be in force.

1.2     “Joint Use Areas” shall mean those roadways, driveways, walkways and sidewalks from time to time located on the Parcels that are outside of exterior walls of buildings, surfaced with pavement or concrete, and intended by the Owner (as hereinafter defined) thereof for general vehicular or pedestrian traffic and/or made available for the general use, convenience and benefit of all “Permittees” (as hereinafter defined). However, Joint Use Areas do not include areas of a Parcel that are not intended by the Owner thereof for general vehicular or pedestrian traffic (as, for example, drive-through lanes and facilities, and parking, loading and service areas).

1.3     “Owner” or “Owners” shall mean Developer (as to the Developer Parcels) and City (as to the City Parcels) and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real property covered by this Agreement, whether by sale, assignment, inheritance, operation of law, trustee’s sale, foreclosure or otherwise, but not including the holder of any lien or encumbrance on such real property or the tenant(s) of such real property (prior to acquisition of fee title thereto).

1.4     “Parcel” or “Parcels” shall mean each separately identified parcel of real property now constituting a part of the real property subjected to this Agreement as described herein, that is, the Developer Parcels and the City Parcels, and any future lawful subdivision(s) thereof. However, any portion of any such Parcels now or hereafter dedicated (whether in fee or by easement) to applicable governmental authority for purposes of public right-of-way is excluded from the definition of “Parcel” and the application of this Agreement.

1.5     “Permittees” shall mean the Owners, tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s), and/or (iii) the respective successors, assigns or grantees of any of them.

1.6     “Person” shall mean any natural person, partnership, trust, corporation, limited liability company or other legal entity.

1.7     “Restrictions” shall mean those easements, covenants, restrictions, liens and charges fixed and established pursuant to this Agreement.

## ARTICLE 2

### EASEMENTS

2.1 Grant of Easements. Subject to any express conditions, limitations or reservations contained in this Agreement, each Owner of a Parcel grants to each other Owner with respect to their Parcel, for the use and benefit of such other Owner, its successors and assigns, its Permittees and its Parcel, the following non-exclusive, perpetual and reciprocal easements, which are imposed upon and benefit and burden the Parcels and all present and future Owners thereof and their respective Permittees (except as noted). Notwithstanding the foregoing, nothing in this Section or elsewhere in this Agreement grants or creates any easement over the City Parcels for the purpose of parking of passenger vehicles on the City Parcels by Permittees of the Developer Parcels:

a. an easement for reasonable access, ingress and egress by all Owners and their Permittees over and across the Joint Use Areas as presently or hereafter configured, so as to provide for the passage of motor vehicles and pedestrians between all portions of the Joint Use Areas to and from all abutting public streets and rights-of-way furnishing access to the Parcels;

b. an easement for the parking of passenger vehicles of Permittees in the Joint Use Areas of the Developer Parcels. As set forth above, this Agreement does not grant an easement for the parking of passenger vehicles of Permittees of the Developer Parcels in the Joint Use Areas of the City Parcels; it being understood that in the event any such Permittees park on the City Parcels in violation of this Agreement, the Owner of the City Parcel(s) shall, after having posted signs clearly setting forth the subject parking restrictions, have the right to enforce such parking restrictions in accordance with applicable Governmental Restrictions (it being understood that the Owner of the Developer Parcels shall use reasonable efforts to cooperate with such enforcement against Permittees of the Developer Parcels (provided, however, the Owner of the Developer Parcels shall not be required to incur any costs or expenses in connection with such cooperation)); and

c. an easement for the incidental drainage of storm water runoff from one Parcel onto another Parcel across and within the Joint Use Areas, in minimal volumes, consistent with the original design of the Joint Use Areas; provided, however, such drainage and runoff shall not include hazardous materials and pollutants (as defined and regulated by Governmental Restrictions).

2.2 Easement Reservations. The easements granted in Section 2.1 are subject to the following reservations:

a. Each Owner of a Parcel reserves the right to close-off any portion of its Parcel for such reasonable period of time as may be legally necessary, in the opinion of such Owner's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing-off any portion of its Parcel, such Owner shall give written notice to each other Parcel Owner of its intention to do so, and shall attempt to coordinate such closing-

off with each other Owner so that no unreasonable interference with the passage of pedestrians or vehicles shall occur.

b. Each Owner of a Parcel reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using its Parcel.

c. Each Owner of a Parcel reserves the right to temporarily erect or place barriers in and around areas on its Parcel which are being constructed and/or repaired in order to insure either safety of Persons or protection of property.

2.3 Reasonable Use of Easements. The easements granted herein must be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its Parcel, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith.

2.4 Work on Easement Areas. Once commenced, any construction undertaken upon an easement granted herein shall be diligently prosecuted to completion, so as to minimize interference with the business of any other Owner and its Permittees.

2.5 No Parking Charges. Unless required by applicable law, no charge of any type shall be made to or collected from any Permittees for parking or the right to park vehicles in the Joint Use Areas of the Developer Parcels and/or City Parcels.

2.6 Termination of Easements. Notwithstanding anything herein to the contrary, in the event City, or any successor-in-interest to the City Parcel(s), requires the revocation of any such easements in connection with the redevelopment of the City Parcel(s), then, upon no less than ninety (90) days prior written notice to the Owners of the Developer Parcels, the easements to and by the City pursuant hereto shall be rescinded and revoked upon the recordation of a document setting forth such rescission and revocation of all easements pursuant to this Agreement, and this Agreement shall be deemed terminated.

## ARTICLE 3

### TAXES

3.1 Taxes and Assessments. All Owners shall pay, prior to delinquency, any and all taxes and assessments on the Parcel(s) owned or leased by them.

## ARTICLE 4

### GENERAL PROVISIONS

4.1 Successors and Assigns. Each easement, restriction and covenant contained herein shall be appurtenant to and for the benefit of all the Parcels and shall be a burden thereon, for the benefit of all the Parcels, and shall run with the land. This Agreement

and the restrictions, easements, covenants, benefits and obligations created hereby shall inure to the benefit of and be binding upon the Owners and their successors, transferees and assigns; provided, however, that, if any Owner transfers all of its interest in any Parcel, the transferee thereof shall automatically be deemed to have assumed and agreed to be bound by the covenants and agreements herein contained, and the transferor shall thereupon be released and discharged from any and all obligations under this Agreement accruing after the date of sale as to the particular Parcel.

4.2 Run With the Land. Subject to Section 2.6 above, the covenants, conditions and restrictions contained in this Agreement shall run with the land and be binding upon each and all of the Owners (and upon all persons claiming under them) for a period of fifty (50) years, and shall thereafter renew automatically for successive ten (10) year periods, unless a majority of the Owners (in number) otherwise elect in a writing recorded with the County Recorder, Riverside County, California.

4.3 Modification. This Agreement may not be modified in any respect whatsoever without the consent of all of the Owners in writing.

4.4 No Dedication to Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of any Parcel to the general public or for the general public or for any public purposes whatsoever, it being the intention of the Owners that this Agreement shall be strictly limited to and for the purposes herein expressed.

4.5 No Cancellation. No breach of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement.

4.6 No Waiver. No waiver of any default of any obligation by any party hereto may be implied from any omission by any other party to take any action with respect to such default.

4.7 No Agency. Nothing contained in this Agreement creates the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties or Owners.

4.8 Survival. If any clause, sentence or other portion of this Agreement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions hereof shall remain in full force and effect.

4.9 No Merger. The ownership of all of the Parcels by the same party shall not affect the termination of this Agreement.

4.10 Mortgagee Protection. Breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to any Parcel or any part thereof, but all of the foregoing provisions, restrictions and covenants shall be binding upon and effective against any Owner whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

4.11 Remedies. Any Owner may prosecute any proceedings at law or in equity against any person or entity violating or attempting to violate any of the agreements, covenants, conditions and restrictions herein, to prevent it, him or them from so doing and/or to recover damages from or on account of such violation. All costs and expenses of any such suit or proceedings, including reasonable attorneys' fees, as well as any judgment thereof, shall be assessed against the losing party. All remedies set forth herein or otherwise available at law or equity shall be cumulative.

4.12 No Third Party Beneficiary. Except as herein specifically provided, no rights, privileges or immunities set forth herein shall inure to the benefit of any customer, employee, guest, licensee or invitee of any Owner, tenant or occupant of any portion of the Parcels, nor shall any customer, employee, guest, licensee or invitee of such Owner, tenant or occupant be deemed to be a third party beneficiary of any of the provisions contained herein.

4.13 Condemnation. In the event of condemnation (or sale under threat of condemnation) by any duly constituted authority for a public or quasi-public use of all or any part of any Parcel, that portion of the award attributable to the value of the interest in the Parcel so taken shall be payable to the Owner of such Parcel and no claim thereon shall be made by any other Owner. The Owner of any portion of the Joint Use Areas on a Parcel so condemned shall promptly repair and restore the remaining portion of the Joint Use Areas located on such Owner's Parcel as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Owner.

4.14 Captions. The captions heading the various Articles of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

4.15 Consent. Unless otherwise specified herein, any approval or consent required to be obtained hereunder by any Owner shall not be unreasonably withheld and shall be given or withheld within thirty (30) days after delivery of the request therefor. In the event an Owner whose approval or consent is sought pursuant to the immediately preceding sentence fails to respond within the applicable time period, such Owner shall be deemed to have approved of, or consented to, the matter in question.

4.16 Assignment. Except as otherwise expressly set forth herein, no Owner shall have the right to assign all or any portion of its rights, benefits, duties or obligations under this Agreement except in connection with a transfer or conveyance by such Owner of its ownership interest in a Parcel (and any conveyance made by deed of trust, mortgage or other security instrument as security for any obligation or indebtedness shall not be deemed to be a transfer or conveyance within the meaning of the foregoing). In the event, at any time, that an interest in the same portion of Parcel shall be vested in more than one Person, such Persons shall designate one of them to act on behalf of all such Persons in the performance of the provisions of this Agreement. Any such designation shall be in writing, duly executed and acknowledged by each such Person and a copy of such designation shall be given to all other Owners in accordance with the notice provisions of this Agreement. An original of such designation shall be recorded in the office of the County Recorder, Riverside County, California. A majority of

such Persons shall have the right, from time to time, to change the designation made by executing, acknowledging, delivering and recording a new notice of designation in the same manner set forth above.

4.17 Notices. Any notice, demand, request or other communication required or permitted to be given by an Owner hereunder shall be in writing, signed by the party giving the notice, and shall be given by delivering the same in person, by a recognized overnight courier service which maintains delivery records (such as Federal Express) or by depositing the same in the United States mail, registered or certified, return receipt requested, first class postage, and postage prepaid. All notices shall be sent to the respective mailing addresses of the parties hereto at the following addresses, until such addresses are changed as hereinafter provided:

Developer: JMA Village, LLC  
1137 Second Street, Suite 100  
Santa Monica, California 90403  
Attn: Mr. Arthur Pearlman or Mr. Mark Frost

with a copy to:

The Frost Company  
30001 Golden Lantern  
Laguna Niguel, California 92677  
Attn: Mr. Mark Frost

City: City of Banning  
99 E. Ramsey Street  
Banning, California 92220  
Attn: City Manager

with a copy to:

City of Banning  
99 E. Ramsey Street  
Banning, California 92220  
Attn: City Attorney

To any other Owner: At such address as such Owner shall designate in writing to the other Owners, or at such Owner's address at its Parcel if such Owner shall fail to designate in writing another address to the other Owners.

Any Owner may change its mailing address at any time by giving written notice of such change to the other Owners in the manner provided herein at least ten (10) days prior to the date such change is effective. Personal service and service by recognized overnight courier service will be deemed to be complete upon receipt and service by mail will be deemed complete on deposit of said notice in the United States mail.

4.18 Estoppel Certificates. Each Owner shall deliver to any other Owner, without charge, within fifteen (15) days after request therefor, a written statement setting forth that, to the best of such Owner's knowledge, the requesting Owner is not in default in the performance of any of its obligations under this Agreement (or, if in default, setting forth the nature of such default).

4.19 Jurisdiction. Any matter arising between the Owners shall be governed by and determined in accordance with the laws of the State of California, with any action brought in Superior Court in Riverside County, California.

4.20 Matters or Record and Leases. The Owners acknowledge that the terms and conditions of this Agreement are subject to all matters or record and leases encumbering the Developer Parcels and the City Parcels as of the Effective Date.

IN WITNESS WHEREOF, Developer and City have executed this Agreement the day and year first above written.

DEVELOPER:

JMA VILLAGE, LLC, a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

CITY:

ATTEST: CITY OF BANNING,  
a California general law municipality

\_\_\_\_\_  
City Clerk \_\_\_\_\_ Deborah Franklin, Mayor

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Dave Aleshire, City Attorney

On \_\_\_\_\_, 2014 before me, \_\_\_\_\_ (here insert name of the officer), Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

**Signature of Notary Public**

[Seal]

On \_\_\_\_\_, 2014 before me, \_\_\_\_\_ (here insert name of the officer), Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

**Signature of Notary Public**

[Seal]

**EXHIBIT A**

**LEGAL DESCRIPTION OF DEVELOPER PARCELS**

PARCELS 1, 2, 3 AND 4 OF PARCEL MAP NO. 36285 IN THE CITY OF BANNING,  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

**EXHIBIT B**

**LEGAL DESCRIPTION OF CITY PARCELS**

## LEGAL DESCRIPTION OF CITY PARCELS

Real property located in the City of Banning, County of Riverside, State of California, legally described as:

### **APN #541-143-010**

LOTS 1 THROUGH 9, INCLUSIVE, LOTS 23 THROUGH 26, INCLUSIVE, LOTS 34 THROUGH 36 INCLUSIVE, AND THE NORTH 12.00 FEET OF LOT 37, OF HATHAWAY'S ADDITION TO BANNING, AS PER MAP, RECORDED IN MAP BOOK 5, PAGE 14, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA.

### **APN #541-143-011**

LOTS 42, 41, 40, 39, 38 AND THE SOUTH 15.00 FEET OF LOT 37, OF HATHAWAY'S ADDITION TO BANNING, AS PER MAP, RECORDED IN MAP BOOK 5, PAGE 14, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA.

### **APN #541-145-006**

THE SOUTH 75.00 FEET OF THAT PORTION OF LOT 5 IN BLOCK 5, AS SHOWN ON AMENDED MAP OF THE BANNING LAND COMPANY, RECORDED IN MAP BOOK 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF ALESSANDRO ROAD (FORMERLY ELLA STREET) AND THE NORTH LINE OF SAID LOT 5; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 5; A DISTANCE OF 100.00 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF ALESSANDRO ROAD, A DISTANCE OF 135.00 FEET; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID LOT 5, A DISTANCE OF 100.00 FEET TO THE EAST LINE OF ALESSANDRO ROAD THENCE NORTH ALONG THE EAST LINE OF ALESSANDRO ROAD, A DISTANCE OF 135.00 FEET TO THE POINT OF BEGINNING.

### **APN #541-145-008**

THAT PORTION OF LOT 5 IN BLOCK 5, AS SHOWN ON AMENDED MAP OF THE BANNING LAND COMPANY, RECORDED IN MAP BOOK 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 5, A DISTANCE OF 90.00 FEET NORTH OF THE SOUTHWEST CORNER THEREOF, THENCE NORTH ALONG SAID WEST LINE, A DISTANCE OF 45.00 FEET MORE OR LESS, TO A POINT 135.00 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 5; THENCE EAST PARALLEL WITH THE NORTH LINE OF SAID LOT 5, A DISTANCE OF 100.00 FEET;

THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID LOT 5, A DISTANCE OF 45.00 FEET MORE OR LESS TO A POINT 90.00 FEET NORTH OF THE SOUTH LINE OF SAID LOT 5; THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID LOT 5, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

**APN #541-145-010**

THE NORTH 60.00 FEET OF THAT PORTION OF LOT 5 IN BLOCK 5, AS SHOWN ON AMENDED MAP OF THE BANNING LAND COMPANY, RECORDED IN MAP BOOK 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF ALESSANDRO ROAD (FORMERLY ELLA STREET) AND THE NORTH LINE OF SAID LOT 5; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 5, A DISTANCE OF 100.00 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF ALESSANDRO ROAD, A DISTANCE OF 135.00 FEET; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID LOT 5, A DISTANCE OF 100.00 FEET TO THE EAST LINE OF ALESSANDRO ROAD; THENCE NORTH ALONG THE EAST LINE OF ALESSANDRO ROAD, A DISTANCE OF 135.00 FEET TO THE POINT OF BEGINNING.

**APN #541-141-002**

LOT 7 IN BLOCK 2, AS SHOWN ON AMENDED MAP OF THE BANNING LAND COMPANY, RECORDED IN MAP BOOK 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA.

**APN #541-141-003**

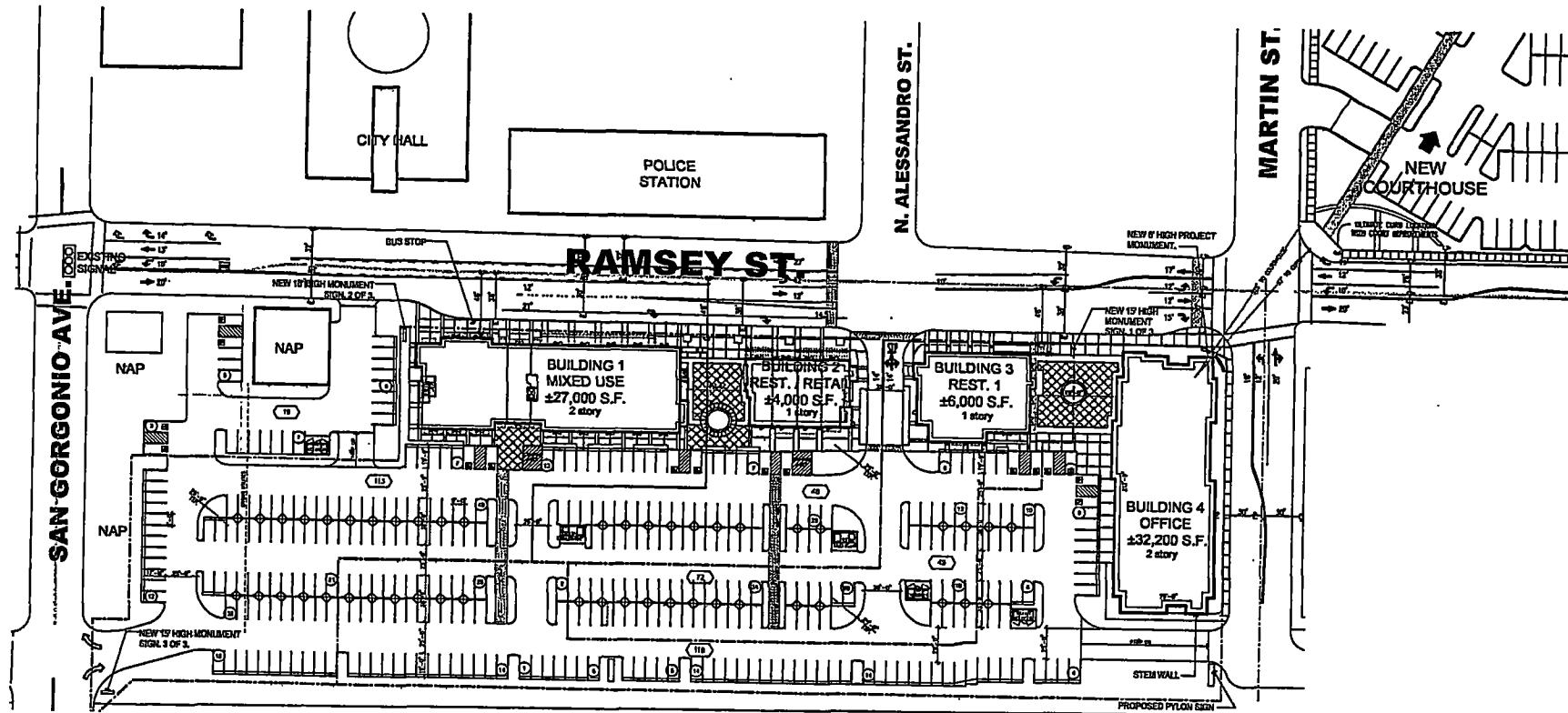
THE SOUTH 20.00 FEET OF LOT 8 IN BLOCK 2, AS SHOWN ON AMENDED MAP OF THE BANNING LAND COMPANY, RECORDED IN MAP BOOK 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA.

**APN #541-141-004**

THE NORTH 30.00 FEET OF LOT 8 IN BLOCK 2, AS SHOWN ON AMENDED MAP OF THE BANNING LAND COMPANY, RECORDED IN MAP BOOK 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA.

**EXHIBIT C**

**SITE PLAN**



# THE VILLAGE AT PASEO SAN GORGONIO

Banning, CA

**THE FROST  
COMPANY** 3001 Golden Lantern  
Laguna Niguel, CA 92657  
(714) 250-7000

**Arthur Pearlman  
CORPORATION**  
1137 Second Street  
Santa Monica, CA 90403  
(310) 280-3225  
(310) 280-3214

REF ID: A6520  
THIS INFORMATION IS CONFIDENTIAL IN NATURE AND IS BORROWED FROM GOVERNMENT REPORTS, REPORTS FROM GOVERNMENT AGENCIES, GOVERNMENT CONTRACTORS, GOVERNMENT CONSULTANTS OR GOVERNMENT EMPLOYEES. NO INFORMATION OR DOCUMENTS OF ANY KIND ARE TO BE COPIED OR REPRODUCED.

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SEPTEMBER 13, 2013 75-09711-00

## LR Group

<u>Project Summary</u>	
Site Area	15.25 AC
	(4228,690 s.f.)
<u>Building Area</u>	
Office	±32,200 s.f.
Office above Retail	±13,500 s.f.
Retail	±13,500 s.f.
Retail/Restaurant	±8,000 s.f.
Restaurant	±4,000 s.f.
<b>Total Building Area</b>	<b>±60,200 s.f.</b>

<b>Parking Summary</b>	
<b>Parking Required</b>	
<b>Building 1:</b>	
Retail - 13,500 sf.	54 stalls
Office - 13,500 sf.	64 stalls
<b>Building 2:</b>	
Retail - 2,000 sf.	8 stalls
Restaurant - 2,000 sf.	30 stalls
<b>Building 3:</b>	
Restaurant - 4,000 sf.	50 stalls
<b>Building 4:</b>	
Office - 32,200 sf.	116 stalls
<b>Total Parking Required:</b>	<b>352 stalls</b>
<b>Parking Provided:</b>	
On Site:	350 stalls
Off Site:	18 stalls
<b>Total Parking Provided:</b>	<b>368 stalls</b>
<b>Overall Parking Ratio:</b>	<b>6.39/1000</b>



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**EXHIBIT "D"**  
**AGREEMENT FOR CONSTRUCTION OF IMPROVEMENTS**

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**CITY OF BANNING  
AGREEMENT  
FOR  
CONSTRUCTION OF IMPROVEMENTS**

**TRACT NO. 36285**

**WHEREAS**, the undersigned, JMA VILLAGE, LLC, whose business address is 30001 GOLDEN LANTERN, LAGUNA NIGUEL, CA herein referred to as "Subdivider/Developer," has submitted to the City of Banning for its approval a Final Map of subdivision designated as 36285 which map was prepared by ALBERTA, WEBB ASSOC and

**WHEREAS**, the Subdivider/Developer has not completed all of the work, or made all of the improvements required by Section 22 of the Banning Municipal code or such other ordinances of the City of Banning requiring construction of improvements in conjunction with land division, subdivisions, and the like, hereinafter collectively referred to as said ordinance, and

**WHEREAS**, Subdivider/Developer desires to enter into an agreement providing for the completion of the work and the making of the improvements and to furnish security for the performance of this agreement in accordance with the provisions of said ordinance;

**NOW, THEREFORE**, in consideration of the approval of said Final Map by the City, and as a condition of such approval, the Subdivider/Developer promises and agrees at his own expense to do all of the work and improvements, without limitation by enumeration, consists of:

- Street improvement plans
- Sewer improvement plans
- Landscape plans
- Water improvement plans
- Electric improvement plans
- Grading plans
- Storm Drain Plans

The above enumeration of items is understood to be only a general designation of the work and improvements, and not a binding description thereof. All of said work shall be done and improvements made and completed which are shown on and in strict compliance with applicable plans and specifications, and any subsequent alterations thereto, which alterations in said plans and specifications and the work to be performed may be accomplished without first giving prior notice thereof to the surety; provided, however, in the event the estimate cost of any changes or alterations in said work exceeds 10% of the surety shall be obtained, and absent such consent, the surety's obligations shall not then exceed the cost of improvements to be constructed under the said originally approved plans prior to said alteration; provided, further, in no event shall such charge result in exonerating the surety's obligations.

Such work shall be completed and improvements made within one year from the date of this agreement, unless such time be extended by the City upon written application of the Subdivider/Developer. Such application shall be made substantially in the form attached hereto. It is understood that by providing security for this agreement the surety consents in advance to

any extension of time as may be given by the City to the Subdivider/Developer and waives notices of such extension. The making of an application for an extension of time by the Subdivider/Developer shall, upon the granting of the application by the City, constitute a waiver by the Subdivider/Developer and by the surety of all defenses of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by the City within the period of four years immediately following the date to which the time of performance was extended.

The Subdivider/Developer further agrees that any and all grading done or to be done in conjunction with the development in the herein described Final Map shall conform to the requirements of the Banning Municipal Code and any other applicable ordinances regulating excavations and fills (e.g., grading regulations) and shall be completed within the period of time described above and prior to the acceptance by or on behalf of the City of the work and improvements and prior to the release by the City of the surety guaranteeing performance of this agreement, in order that said improvements will not be endangered by improper drainage or other hazards.

The Subdivider/Developer promises and agrees to maintain all of the improvements to be constructed under this contract in a state of good repair, until all of the work and improvements are completed and accepted by or on behalf of the City and until the security for the performance of this agreement is released. Said maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, parkways, sewers, and removal of debris from sewers and storm drains; said maintenance shall also include, but not be limited to by this enumeration, sweeping, repairing and maintaining in good and safe condition all streets and street improvements. It shall be the Subdivider/Developer's responsibility to initiate this work, but if he should fail to do so, he shall promptly perform such maintenance when notified to do so by the Public Works Director or his designee of the City. Upon failure of the Subdivider/Developer to properly maintain, the City may do all necessary work required by this paragraph, the cost hereof being chargeable to the Subdivider/Developer and his surety under this agreement. The Subdivider/Developer and his surety further agree under this agreement to hold the city and its officers and employees free and harmless from any claim, demand or action for damages, injury or death, and to indemnify the City for any loss, arising out of or incurred as the result of or in connection with improper maintenance or dangerous conditions or any act or omission in connection with any of the maintenance activities required under this paragraph, existing or occurring or arising out of any act or omission occurring prior to final acceptance by the City of all the work and improvements constructed under this contract.

The Subdivider/Developer shall be responsible for maintaining all improvements for a period of one year following completion of the work and acceptance by the City against any defective work or labor done, or defective materials furnished in the performance of the contract, and it is further agreed that upon completion and acceptance of the improvements by the City of Banning the liability of the surety for no less than ten percent (10%) of the face amount thereof or \$300.00, whichever is greater, will continue for the purpose of guaranteeing maintenance of the improvements for a period of one year following the completion and acceptance by the City against any defective work or labor done, or defective materials furnished in the performance of this contract with the City of Banning.

If the Subdivider/Developer and the surety fail to install all or any part of the improvements required by this agreement within the time set forth herein, or fail to comply with any other obligation contained herein, they shall be jointly and severally liable to the City for any administrative expenses and attorney's fees incurred in obtaining compliance with this agreement and any such expenses and fees incurred in processing any action for damages or for any other remedies permitted by law.

It is further understood and agreed upon default of any obligation hereunder, and at any time after any such default, the City may make written demand upon the Subdivider/Developer or surety or both to immediately remedy the default or complete the work. If said remedial activities or completion of work are not commenced within seven days after such demand is made and are not hereafter diligently prosecuted to completion and fully completed within thirty days after the making of such demand (or such other time as may be contained in said demand), the City may then complete or arrange for completion of all remaining work or conduct such remedial activity as in the sole judgment of the City may be required, all at the expense and obligation of the Subdivider/Developer and surety and all without the necessity of giving any further notice to the Subdivider/Developer or surety before the City performs or arranges for performance of any remaining work or improvements, and whether or not the Subdivider/Developer or surety have constructed any of the required improvements at the time. In the event the City elects to complete or arrange for completion of remaining work and improvements, the Public Works Director, upon such election, may require all work by the Subdivider/Developer or surety to cease in order to permit adequate coordination by the City for completing any remaining work and improvements not yet completed.

It is agreed that all work and improvements done pursuant to this agreement shall conform to the standards applicable at the time work is actually commenced.

The Subdivider/Developer shall provide security in the amount of \$ 1,327,767.00 Dollars to guarantee the performance of this agreement. In addition, the Subdivider/Developer shall provide security in the amount of \$ 1,327,767.00 Dollars to guarantee payment to any contractors, sub-contractors, and persons furnishing labor, materials, and equipment to them for the performance of the work herein described. Said security shall be in the form of Corporate surety bonds or cash deposits, etc. The surety company that guarantees said improvement/labor shall be an admitted carrier in the State of California.

The Subdivider/Developer further acknowledges and agrees that , if at the time the Final Map is approved by the City Council, the plans for the improvements required herein have not been approved by the City, then the Subdivider/Developer agrees to install all such improvements in accordance with the plans and specifications as they are finally approved, including all changes, modifications and corrections as may be required by the City, and any other agency having jurisdiction, and shown thereon.

The Subdivider/Developer further agrees to install all such improvements in accordance with any

and all changes that may be required by field conditions that may arise during construction.

The Subdivider/Developer also agrees to make certain that each and every contractor and sub-contractor intending to work on the construction of the improvements required herein, (a) is properly licensed, (b) obtain a business license from the City, (c) has proper and sufficient liability insurance, (d) has the approved plans, (e) has the approved cut sheet, when they are required, (f) has all necessary and required public works, excavation or other permits as issued by the City and required to be obtained by the contractor or sub-contractor.

The Subdivider/Developer shall also provide a Monument Bond to insure installation of all monuments in the amount of \$ 7,500.00 Dollars. If any of the foregoing documents are missing or not in proper order, the contractor or sub-contractor shall not start work until such time as the documents are obtained and/or brought into proper order. The determination of whether or not the foregoing documents meet the City's requirements shall be made exclusively by the City, and the Subdivider/Developer, his contractors and sub-contractors collectively and individually agree to abide by that determination.

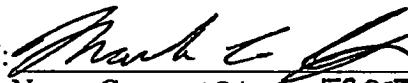
The Subdivider/Developer acknowledges and agrees to City regulations governing signs and advertising structures. Subdivider/Developer agrees and consents to removal by the City of all signs erected, placed, or situated in violation of any City ordinance governing size, location, or required permits. Removal shall be at the expense of the Subdivider/Developer and Subdivider/Developer shall indemnify and hold the City free and harmless from any claim or demand arising out of or incurred as a result of such removal, excepting negligent acts or omissions by the City, its agents or employees. Subdivider/Developer agrees that said signs may be erected only pursuant to a permit issued by the City upon payment of necessary fees or deposits.

For purposes of enforcing this agreement, the term "City" includes the City Council, the City Manager, the City Attorney, Public Works Director, or any of them, or any of their authorized representatives.

**IN WITNESS WHEREOF**, the Subdivider/Developer has caused this agreement to be executed this 8<sup>th</sup> day of OCTOBER.

(Signatures must be the same on Surety)

**SUBDIVIDER/DEVELOPER**

BY:   
Name, Co. **MARK C. FROST, MANAGER**  
**JMA VILLAGE, LLC**  
**CITY OF BANNING**

BY: \_\_\_\_\_  
Duane Burk, Director of Public Works

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**CITY COUNCIL  
REPORTS OF OFFICERS**

**DATE:** **October 28, 2014**

**TO:** **Chair and Board of the Banning Successor Agency  
Homer Croy, Interim Director**

**FROM:** **David J. Aleshire, Agency Counsel**

**SUBJECT:** **Banning Cultural Alliance: Outcome of Audit & Status Report**

**I. SUMMARY OF DISCUSSION:**

That the City Council review the results of the audit of the Banning Cultural Alliance (“BCA”), which audit is attached hereto as Attachment “A” and provide direction to staff for any further actions. Alternatives requiring further Council direction include the following:

1. Pursuant to the audit recommendations in Attachment “A” the Board might authorize the City Manager and City Attorney to initiate formal action against BCA to collect a refund of \$72,677.
  - a. However, the Successor Agency has no funding available for such litigation, and in order to receive tax increment funding to support the litigation the Agency would need to get Oversight Board (“OB”) and Department of Finance (“DOF”) approval to fund the litigation. It is possible that either the OB or DOF may reject litigation costs from the ROPS where, as here, litigation costs are likely to exceed the value of any recovery (as discussed further under Summary Item No. 2 below).
  - b. Finally, even if the Agency did succeed in litigation against BCA, it would very likely be required to remit any monetary remedies to other taxing entities.
2. Or, the Agency could simply withdraw from its business relationships with BCA without litigation or further dispute. Staff and the City Attorney offer this alternative because there is a substantial possibility that litigation against BCA would cost more money than could be recovered from BCA.

**II. FACTUAL BACKGROUND:**

Beginning in August 2005, the former Banning Redevelopment Agency (“RDA”) began recommending grants to the BCA to support certain BCA programs and services. Grant recommendations approved by the RDA and monies paid to the BCA totaled \$997,243.28 from fiscal year 2005-06 through fiscal year 2011-12.

## A. Facts.

The BCA was founded in 2005 and obtained tax-exempt status under Section 501c(3) of the Internal Revenue Code. According to the BCA website, the BCA is the “only comprehensive arts organization in the San Gorgonio Pass Area introducing arts in many disciplines, including visual arts and many forms of performance arts.”

The former RDA owned the mixed apartment/commercial space building at 128-130 North San Gorgonio Avenue, Banning, California, 92220 in the County of Riverside, State of California (the “Premises”). The RDA entered into a “Lease Agreement” dated August 1, 2009, by which the RDA leased to the BCA the entire Premises in order to (i) permit BCA to sublease the two existing apartment units located on the Premises to residential tenants, and (ii) operate the one commercial space on the Premises as a non-profit “art gallery” operation, and (iii) pay regular rent to the RDA for such uses of the Premises (the “2009 Lease”).

In 2011 it became apparent that the BCA was unable to pay the rent due under the 2009 Lease terms. To date, no rent has been paid by BCA pursuant to the 2009 Lease and the Premises remain vacant and are not in a habitable condition. BCA has represented that in any event it would be unable to pay the rent for which it contracted in the 2009 Lease.

There have also been allegations that BCA irregularly handled former RDA grant funds that were paid to BCA for specified purposes. In August 2005, the Banning RDA began recommending Agency grants to the BCA to support certain BCA programs and services. Grant recommendations approved by the RDA and monies paid to the BCA totaled \$997,243.28 from fiscal year 2005-06 through fiscal year 2011-12.

Due to irregularities in grant expenditures alleged against the BCA, the Agency requested performance of an independent audit of grants paid to and expenditures made by the BCA under the terms of the grant agreements.

Further facts and history leading to this report can be found in the audit discussion provided by Willdan Financial (“Willdan”), attached hereto as Attachment “A”.

## B. The Audit.

Willdan was retained by the Agency to conduct the BCA audit, and specifically to perform a review of the grants paid by the RDA to the BCA for the period July 1, 2010 through June 30, 2012. As seen from Attachment “A” Willdan concluded As follows:

1. In general, the grant related expenses appear to be for the benefit of the programs identified by the scope of service for the grants.
2. There were no transactions that would indicate any significant irregularities or misappropriation of public funds. *However, without a complete review of the vendor contracts and cancelled checks relating to the payments, which were not available for this review, there can be no certainty that significant irregularities and misappropriations did not occur during the Review Period.*

In light of Willdan's conclusion that more records were needed to fully exonerate BCA, the City Attorney corresponded to BCA on July 2, 2014, to make a further demand for records to supplement the audit. On July 15, 2014, the BCA responded with a letter indicating that BCA did not understand the need for the requested documents and/or had already provided the Agency with all available records. (See, Attachment "B" hereto.) Therefore, it appears that the Agency is very unlikely to obtain further records from BCA.

### **III. ANALYSIS**

#### **A. Audit Recommendation: Initiate Formal Action Against BCA to Collect a Refund of \$72,677.**

Given the lack of further documents from BCA, Willdan recommends the following: "It is recommended that the Agency request a refund of \$72,677 from the BCA representing the questionable or unsupported payments relating to the \$111,500 and 74,923. . ." (Attachment "A".) Formal judicial action could certainly be brought against BCA based on the Willdan recommendation.

#### **B. Costs of Suit May Exceed Recovery.**

The City Attorney observes that it may cost the Agency more money to collect the unsupported payments from BCA than they are worth. If fully litigated, a case against BCA would likely cost at least \$50,000 in attorneys' fee alone, plus other potential costs such as lost staff time, further consultant charges (including more work by Willdan), and the costs of actual collection.

Further, BCA is a non-profit entity with limited financial resources. In fact, a very basic search of public records revealed only one asset held by the BCA: the Banning Women's Club property at 175 W. Hays. Street. That property is subject to a covenant requiring the site to be used solely for purposes serving the Women's Club (thus making the land of very limited value) and, in any case, the cost of actually foreclosing on land would only add (possibly substantially) to the costs of monetary collection. In sum, even if the Agency determined to demand "a refund of \$72,677" as recommended by Willdan, the costs of actually collecting such demand, if disputed by BCA, would very likely exceed available BCA assets.

#### **C. While the RDA Dissolution Laws May Provide a Mechanism Whereby the Agency Might be Reimbursed Its Costs of Suit by the State (Subject to OB/DOF Approval), the Dissolution Law Also Likely Prevents the Agency From Keeping Any Monetary Award.**

As the Board is aware, AB 1x26 dissolved redevelopment agencies throughout the State. The Supreme Court upheld the validity of AB 1x26 and reformed the statute, adjusting the effective date of the dissolution of redevelopment agencies to February 1, 2012 in light of the delay in the effectiveness of the legislation due to the pendency of the litigation challenging its validity. (*California Redevelopment Assn. v. Cohen* (2011) 53 Cal.4th 231.) AB 1x26 created successor agencies and oversight boards to accomplish and oversee the winding-down of the former redevelopment agencies' activities and to satisfy the redevelopment agencies' outstanding obligations. AB 1x26 was revised somewhat by the legislative clean-up Assembly Bill 1484,

effective June 28, 2012. AB 1x26 and AB 1484 are collectively referred to as the “RDA Dissolution Laws”.

The RDA Dissolution Laws created successor agencies and oversight boards to accomplish and oversee the winding-down of the former redevelopment agencies’ activities and to satisfy the redevelopment agencies’ existing outstanding obligations. Actions approved by the Successor Agency are generally subject to review/approval by the OB, which is in turn subject to review/approval by DOF.

(1) Possible Reimbursement of Litigation Costs Against BCA on the ROPS.

The RDA Dissolution Laws mandate that every successor agency prepare a ROPS for each six month period of a fiscal year beginning January 1, 2012, and continuing until all enforceable obligations of the former redevelopment agency have been satisfied. The purpose of the ROPS is to itemize those enforceable obligations that the successor agency must pay or perform during the wind-down period so that the appropriate county auditor-controller may allocate to the successor agency sufficient tax increment to cover such obligations and the successor agency’s administrative costs.

The term “enforceable obligations” include the costs of litigation related to former RDA assets and obligations, such as the BCA grant monies:

“Enforceable obligation” means any of the following . . .  
(F) Contracts or agreements necessary for the administration or operation of the successor agency, in accordance with this part, including, but not limited to, *agreements concerning litigation expenses related to assets or obligations, settlements and judgments*, and the costs of maintaining assets prior to disposition.

(H&S Code 34171(d)(1)(F).) Therefore, arguably, the Agency could seek to recover the costs of any litigation or collection efforts made against BCA on the ROPS.

However, placement of litigation/collection costs on the ROPS will require both OB and DOF review and approval. It is possible that either the OB or DOF may reject litigation costs from the ROPS where, as here, litigation costs are likely to exceed the value of any recovery.

(2) RDA Dissolution Laws Likely Prohibit Agency or City From Keeping Any Money That Might Be Recovered From BCA.

The purpose of a successor agency is to preserve all assets of the former redevelopment agency for ultimate distribution to affected taxing entities. The State’s intent was to take control of the redevelopment agency assets not needed to satisfy enforceable obligations and to redistribute such assets to local taxing entities and thereby reduce the State’s own funding obligations. The Agency is specifically charged with an ongoing duty to “Remit unencumbered balances of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities. . .” (H&S Code 34177(d).)

Once paid back to the Agency, former RDA grant monies (which were paid from the RDA's unrestricted tax increment fund) are not encumbered by any other enforceable obligations. They would be "unencumbered balances" subject to distribution to the taxing entities. Thus, even if the Agency does succeed in getting a monetary recovery from BCA, the Agency probably could not keep it.

**Attachments:**

1. Willdan Audit, Final Report
2. Letter from BCA

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# Final Review Report

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**TO:** Bill Manis, Director of Economic Development, City of Banning  
**FROM:** Bob Quaid, Principal Consultant, Willdan Financial Services  
**DATE:** June 24, 2014  
**SUBJECT:** Banning Cultural Alliance Grant and Cost Review-July 1, 2010 through June 30, 2012

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Willdan Financial Services ("Willdan") was retained by the City of Banning ("City") to perform a review of the grants paid by the Banning Community Redevelopment Agency ("CRA") to the Banning Cultural Alliance ("BCA") for the period July 1, 2010 through June 30, 2012 ("Review Period") and to prepare this report ("Review Report") with our findings. This Review Report follows a similar grand jury review of CRA grants to the BCA paid during the period July 1, 2005 through June 30, 2010, as reported in the *2009-2010 Grand Jury Report* ("Grand Jury Report") shown in Attachment 1. This Review Report serves to supplement the Grand Jury Report that found the BCA had failed to meet certain contractual obligations under the CRA grants.

## Background

The BCA was founded in 2005 and obtained tax-exempt status under Section 501c (3) of the Internal Revenue Code. According to the BCA website, the BCA is the "only comprehensive arts organization in the San Gorgonio Pass Area introducing arts in many disciplines, including visual arts and many forms of performance arts. The BCA also supports and advocates for single individual arts programs and artists." Its mission is to "Cultivate an artistic community and to stimulate public appreciation, patronage, and participation in the arts."

The BCA programs and services include:

- ***The Banning Art Gallery*** – the only private fine-arts gallery in Banning featuring local and world famous art.
- ***An Artists Co-op*** – The first and only artists co-op as part of the Banning Art Gallery with the sole purpose of giving visual artists opportunities to display and sell their work
- ***The Young Artists Workshop*** – An art class taught for students in second through sixth grades taught by volunteers.
- ***The Pass Area Performing Artists (PAPA)*** – the first community theater in Banning featuring local talent in affordable high-quality stage productions.
- ***Children's Theater in the Pass*** – The first and only children's theater group in the area discovering and cultivating talent of local children from five years of age and up.
- ***The Spring Festival and Art Show*** – an annual festival introduced the first time nine years ago to bring a sense and celebration to a diverse community needing ways to connect and enjoy themselves.



- ***The Phineas Festival*** – an annual holiday festival, begun eight years ago, for all ages of all communities to come together for a festive event. This festival provides a chance for local artists and crafters to present their affordable and unique wares for holiday shopping to many with very limited resources.
- ***Annual Black History Celebration***... Celebrating the contributions African Americans have made to Banning as an addition to the list of celebrations of the Hispanic and Hmong contributions to the richness of the area.
- ***Valentines Luncheon for the art of Women's Heart Health*** - In recognition of seriousness of heart disease among the women we serve and who volunteer, a heart healthy luncheon is held annually to encourage improved heart health among women throughout our communities.
- ***Original Art Murals and Banners*** throughout downtown Banning that have put Banning in the book of Banner cities in the United States.

Beginning in August 2005, the Banning CRA began recommending City grants to the BCA to support certain BCA programs and services. Grant recommendations approved by the City council and monies paid to the BCA totaled \$997,243.28 from fiscal year 2005-06 through fiscal year 2011-12. Specifically for period of this Review Report, CRA grants totaled \$211,443.28 and were designated primarily for specific BCA projects and programs as shown on Attachment 2.

Because of irregularities alleged against both the CRA and the BCA, a Riverside Grand jury was called in 2009 to investigate both entities. The Grand Jury Report and its findings are provided in Attachment 1. Willdan has performed a review of CRA grants paid to and expenditures made by the BCA under the terms of the grant agreements with the CRA for July 1, 2010 through June 30, 2012, the period subsequent to the grand jury investigation.

During 2013, the City Manager's office formally requested the BCA to provide copies of documentation provided to the CRA at the time the grants under this review were submitted for payment. This request included copies of all supporting payments requests, approved vendor contracts, approved vendor invoices, cancelled checks, payroll records, bank statements, financial statements and any other relevant correspondence supporting the grant payments for the Review Period. Most, but not all, of the documentation requested by the City Manager's office was provided by the BCA and made available for this review. The limitations created by the lack of certain documentation are discussed in the Findings of this Review Report.

## **Review Procedures**

### **1. Grants Awards:**

A. **Background:** During the Review Period, the CRA awarded and paid the BCA grants totalling \$211,443.28 for the purposes listed below. The specific grant details are shown in Attachment 2.

- i) October 2010 - \$25,000 for architectural services for Downtown revitalization
- ii) October 2010 - \$111,500 for promotional and community program development
- iii) December 2011 - \$74,935.28 for promotional and community program development

**B. Review Procedures Performed :** The following review procedures were performed with regard to the CRA grants to the BCA during the Review Period.

- i) Reviewed CRA resolution approving each BCA grant request and budget.
- ii) Reviewed the documents supporting each grant payment verifying approvals.
- iii) Traced the CRA grant payment through to timely posting to the BCA general ledger.
- iv) Traced the grant to timely deposit to the BCA operating bank account.

**C. Results:** All grant payments to the BCA appear to have been properly approved by the CRA board. All CRA grants were accounted for and deposited on a timely basis by the BCA. Note: The BCA combined the CRA grant receipts with other non-grant deposits to its bank account and used multiple revenue accounts for recording the grants. This made it more difficult to trace the full amount of the grant receipts through the accounting records.

**2. Grant Related Expenses:**

**A. Background:** The CRA grant awards approved by CRA Board were based on proposed BCA programs for the fiscal year with supporting budgets. These grant budgets and the related BCA program accounts are shown in Attachment 3.

**B. Review Procedures Performed:** The following review procedures were established with regard to the documentation submitted by the BCA in support of the grant related payments. The scope of this review was limited to payments totaling \$1,000 or more to a single vendor or individual.

- i) Review the vendor contract for the payment and verify that the contract was properly approved in accordance with the BCA procurement policy.
- ii) Reviewed vendor invoice to verify
  - (1) approval by BCA management. In most instances, this was the acting Executive Director
  - (2) the invoice amount was within the contract budget
- iii) Reviewed cancelled check to verify
  - (1) Check signed by authorized BCA personnel. In most instances, this was the acting Executive Director
  - (2) Check was endorsed by vendor and cleared the BCA bank.

**C. Results:** Completion of the procedures described in II. B. 1. And B. 3. were restricted by the inability of the BCA to produce approved vendor contracts and copies of cancelled checks. The impact of these restrictions are further discussed in the Findings.

## Findings

### 1. \$25,000 CRA Grant (dated 10/12/2010)-Architecural Services for Downtown Revitalization

The \$25,000 grant payment was made as a single lump sum payment and appears to have been properly approved by the CRA board and accounted for and deposited on a timely basis by the BCA. Because the BCA did not provide a copy of the vendor contract or copies of cancelled checks in support of payments to the vendor, review verification procedures listed above in 2.B.i). and 2.B.ii). could not be

performed. However, the vendor invoices did make reference to the contract and the art gallery architectural design.

Attachment 4 shows a recap of the invoice review in support of the released grant expenses. Invoices paid on contract totaled \$24,000, 96% of the grant amount. Since it appeared that no further expenditures were to be made relating to this BCA project, the City notified the BCA of the unused portion of the grant and a \$1,000 refund was made by the BCA to the City in December 2013.

## **2. \$111,500 CRA Grant (dated 10/27/2010)- promotional and community program development**

The \$111,500 grant and payments appear to have been properly approved by the CRA. This grant was made in multiple payments between November 2010 and September 2011 as the BCA submitted reimbursement requests supported by paid invoice to the CRA. The BCA accounted for and deposited the grant payments on a timely basis. Because the BCA did not provide a copy of the vendor contracts or copies of cancelled checks in support of payments to the vendors, review verification procedures listed above in 2.B.i). and 2.B.ii). could not be performed.

Attachment 5 shows a recap of the invoice review in support of the released grant expenses. Invoices reviewed totaled only \$47,865, or 43% of the total grant amount. This low review percentage is partly because invoices supporting \$44,382 in grants were not made available for review and partly because of the limitation of the review to payments totalling \$1,000 or more to a single vendor. In general, the expenses appear to be for the benefit of the programs identified by the grant. The findings highlighted on Attachment 5 include \$55,306 in questionable or unsupported payments categorized as follows:

- No Invoices provided supporting payments – total of \$46,332.13, including the \$44,382 referenced above.
- Payments not specific to grant – total of \$8,724.00, including \$7,500 paid to Carol Newkirk, BCA Executive Director
- Advance payments with no receipts - total of \$250.00

## **3. \$74,923 CRA Grant (dated 12/01/2011)- promotional and community program development**

The \$74,923 grant and payments appear to have been properly approved by the CRA. This grant was made in multiple payments between December 2011 and August 2012 as the BCA submitted reimbursement requests supported by paid invoice to the CRA. The BCA accounted for and deposited the grant payments on a timely basis. Because the BCA did not provide a copy of the vendor contracts or copies of cancelled checks in support of payments to the vendors, review verification procedures listed above in 2.B.i). and 2.B.ii). could not be performed.

Attachment 6 shows a recap of the invoice review in support of the releated grant expenses. Invoices reviewed totaled only \$44,819, or 60% of the total grant amount. This low percentage is partly because invoices supporting \$12,120 in grants were not made available for this review and partly because of the limitation of the review to payments totalling \$1,000 or more to a single vendor. In general, the expenses appear to be for the benefit of the programs identified by the grant. This findings highlighted on Attachment 6 include \$17,371 in questionable or unsupported payments catagorized as follows:

- No Invoices provided supporting payments - total of \$17,321, including the \$12,120 referenced above
- Payment of late fees not grant related - total of \$50

## Conclusion & Recommendations

Based on the review of available documentation and selected invoices submitted by the BCA for grants reviewed during the Review Period, the following conclusions and recommendations are submitted for consideration by City Council.

1. In general, the grant related expenses appear to be for the benefit of the programs identified by the scope of service for the grants.
2. There were no transactions that would indicate any significant irregularities or misspporation of of public funds. However, without a complete review of the vendor contracts and cancelled checks relating to the payments, which were not avaialbe for this review, there can be no certainty that significant irregularities and missappropriations did not occur during the Review Period.
3. It is recommended that the City request a refund of \$72,677 from the BCA representing the questionable or unsupported payments relating to the \$111,500 and 74,923 grants as noted above. This amount may be reduced if and when the missing invoices are submitted and determined to be valid. Attachment 7 provides a recap of BCA grant revenues and expenses during the Review Period and shows that the BCA incurred grant program related costs of \$35,295 in excess of CRA grants received. The BCA may also be able to identify and submit invoices from these excess amounts to reduce the proposed refund.

## 2009-2010 GRAND JURY REPORT

### Community Redevelopment Agency of the City of Banning

#### Background

Banning, California is located midway between Riverside and Palm Springs. Incorporated in 1913, the city has a population of fewer than 30,000 residents. The city is governed by a five-member city council that also sits as the board for the Community Redevelopment Agency of the City of Banning (the "Redevelopment Agency"). The redevelopment agency is charged with eliminating blight in designated areas of the city.

Economic activity in Banning is concentrated among the motels, gasoline stations and restaurants that service Interstate 10 motorists and truckers. In 1978 the city council created the Downtown Project Area in order to begin a redevelopment process for the city. A second project area (the Midway Project Area) was formed six years later. In February 2002, the two areas, along with some new territory, were merged to form the present boundaries of the redevelopment area.

Authority for formation and operation of a redevelopment agency is found in the California Community Redevelopment Law, contained in the California Health and Safety Code, beginning with Section 33000. Article XVI, Section 16 of the California Constitution, adopted in 1952 by the voters, provides for tax increment financing.

Banning's redevelopment agency is financed through tax increment revenue and tax allocation bonds. The tax increment revenue is calculated using this formula: when a redevelopment project area is formed, the assessed values of all of the properties within the area are frozen; the total assessed value becomes the base-year valuation; real estate taxes associated with any growth in the base-year valuation are considered tax increment revenue. Most of the revenue is allocated to the redevelopment agency.

The redevelopment agency is required to spend the tax increment revenue only on redevelopment purposes, including a 20 percent set-aside restricted to low-income housing.

The redevelopment agency supported a non-profit organization called the Banning Cultural Alliance (the "Alliance"). Formed in 2005, the Alliance obtained tax-exempt status under Section 501c(3) of the Internal Revenue Code. According to the Alliance website, its mission is to provide education about and support for arts and culture in Banning.

## Findings

1. In 2007 the redevelopment agency floated a bond issue that netted approximately \$24 million to fund projects in the redevelopment area. The official statement listed three general categories of planned expenditures: revitalization of downtown, economic incentives and public improvements. Little specificity was included in the official statement. Investigation revealed that the redevelopment agency board had not formulated detailed, prioritized plans for the use of the proceeds.
2. Testimony revealed that the city's and the redevelopment agency's planning and project implementation have been hampered by key employee turnover. Since 2008, three city managers have left, and a fourth is scheduled to begin work in February 2010. Since 2004 five community development directors/consultants have come and gone, and the sixth is now in place. Since 2004, four redevelopment managers have left, and the fifth is now in place. Additional investigation revealed that allegations of micro-managing have been leveled against members of the city council/redevelopment agency board.
3. One of the programs of the redevelopment agency is called Façade Improvement. Property owners are given grants or forgivable loans to improve the exteriors of their buildings in the project area. It was found that the redevelopment agency board has committed funds for improving the appearance of vacant, unrented property while ongoing businesses are made to wait for assistance.
4. Onsite visits and sworn testimony revealed East Banning to be a blighted area in need of priority attention from the redevelopment agency. There is a paucity of sidewalks, streetlights and parks. Old furniture is strewn about the neighborhood; trash and weeds are plentiful. Aside from some low-income housing expenditures, the redevelopment agency has neglected this blighted area of the city.
5. Redevelopment agencies are required by law to prepare five-year plans. The 2004-2009 Banning plan notes the need for an additional staff person to assist the one agency employee devoted exclusively to redevelopment. Deadlines have been missed, and programs and contracts have not been monitored and administered adequately. Without the additional person or the hiring of outside consultants, the plan notes, "it is not probable that the agency will be able to implement the programs and projects in the time periods identified herein."

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6. In July 2009, the redevelopment agency bought property in the western side of the city without acquiring its own independent certified appraisal. Witnesses testified that the price paid, \$1,200,000, was above market value. Since the purchase, the redevelopment agency board has budgeted an additional \$800,000 to make the property more desirable.
7. On August 4, 2005 the city council voted to give the Alliance \$10,000. In the course of the next four years, the city council and the same people acting as the redevelopment agency board voted to give the Alliance a total of \$806,503.08 in public funds for a variety of uses (see appendix for a breakdown on the funds). On August 21, 2006, the first and largest contract between the redevelopment agency and the Alliance was approved for \$343,000 over a two-year period. While this contract called for the Alliance to stage arts and cultural events, it also required the Alliance to perform specific redevelopment activities. The following redevelopment activities were never performed: development of a downtown Property-Based Improvement District (PBID) and a campaign to market Banning with advertising on billboards, radio, television and infomercials.
8. The first two contracts, covering the period between 2006 and 2009, followed the same format. The Alliance was given a check for the total at the beginning of each contract year. The agreements contained no means to measure success or failure of the efforts by the Alliance, and they contained no criteria to determine whether the obligations were indeed fulfilled.
9. An examination of the relationship between the Alliance and the redevelopment agency revealed a willingness by the board to fund the group without any measure of accountability, without measures of success or failure and without demands for return of funds not spent on contractual obligations. No other outside organization in Banning has been treated this way by the board of the redevelopment agency.

## Recommendations

### **City Council, City of Banning Community Redevelopment Agency, City of Banning**

1. The redevelopment agency should develop a prioritized list of redevelopment projects to justify any future funding through the bonding process. Further, projects and their prioritization should be widely publicized and then reviewed by members of the community for their input prior to the issuance of future bonds.
2. The Banning City Council and the redevelopment agency should consider retaining an outside consultant to ascertain from employees their attitudes toward their work environment and their relationship with policymakers. Further, the leaders in Banning should take the initiative to establish ongoing workshops on the role of policymakers and employees and how to improve relations.
3. The redevelopment agency board should prioritize how façade improvement money is spent. First priority should be given to owners of buildings where businesses are operating; second priority should go to building owners who have a commitment to rent a vacant structure; and lowest priority should be instances where a building owner seeks redevelopment money for a vacant building.
4. The redevelopment agency should commit now to a major improvement program over the next 10 years to reduce the blight in East Banning.
5. The redevelopment agency board should consider the hiring of an additional staff person to help in monitoring current projects and administering programs.
6. All future development property purchases by the redevelopment agency must include an independent certified appraisal ordered by the redevelopment agency staff.
7. The redevelopment agency board should enforce the immediate return of \$162,000 of public money from the Banning Cultural Alliance in accordance with the terms of the contracts. The amount arises from the Alliance failing to meet its contractual requirement to use \$34,000 to develop a PBID; to use \$110,000 for a marketing program between 2006 and 2008; and \$18,000 to develop a PBID between 2008 and 2009. A reasonable rate of interest on the amount should also be included.

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8. The redevelopment agency board should include in all of its contracts with personal services suppliers and outside organizations provisions for measurement of success or failure and of fulfillment or nonfulfillment of the obligations assumed. Penalties and/or termination provisions for nonperformance should be included.
9. The redevelopment agency board should immediately cease and desist awarding any redevelopment funds to the Cultural Alliance.

## Appendix

Breakdown of city or redevelopment money paid to the  
Banning Cultural Alliance

Date	Amount	Description
8/4/05	\$10,000	This is a Community Development Block grant from the city council to provide access to cultural activities for underprivileged children and their families.
9/13/05	\$5,000	This is a city council donation to help the Alliance stage a fundraiser on behalf of the victims of Hurricane Katrina in the Gulf Coast.
3/30/06	\$10,000	This is for a two-month agreement between the redevelopment agency and the Alliance. The money is used to stage an "Art Hop" along North San Gorgonio Avenue.
6/1/06	\$19,800	This is for a three-month agreement for Phase II of the Arts District planning proposal, begun with the previous contract.
8/21/06	\$343,000	<p>This is the original two-year contract with the redevelopment agency. The Alliance is paid:</p> <ol style="list-style-type: none"> <li>1. \$48,000 to stage Art Hops in 2007 and 2008.</li> <li>2. \$42,000 for a Western art show during the city's annual Stage Coach Days celebration in 2007 and 2008.</li> <li>3. \$68,000 for a marketing and promotional campaign called Brush with Banning.</li> <li>4. \$11,000 to facilitate a Youth Arts Council.</li> <li>5. \$30,000 to develop a five-year downtown revitalization implementation plan.</li> <li>6. \$34,000 to organize a downtown property-based improvement district.</li> <li>7. \$110,000 to buy billboards, radio, television advertising, and infomercials promoting Banning.</li> </ol>
1/27/07	\$100,000	This is a redevelopment agency façade improvement grant that was used for the Alliance headquarters building at 175 West Hays Street. Other businesses in Banning received similar amounts.
3/29/07	\$1,000	This is a Community Development Block Grant from the city council to the Alliance for its Youth Arts Council.
8/5/08	\$171,500	<p>This is a one-year contract between the redevelopment agency and the Alliance. The group is paid:</p> <ol style="list-style-type: none"> <li>1. \$50,400 to stage special events.</li> <li>2. \$41,500 for marketing.</li> <li>3. \$16,500 for operating the Center for the Arts at 128 North San Gorgonio Avenue.</li> <li>4. \$30,100 to operate a youth program.</li> <li>5. \$18,000 to organize a downtown property-based improvement district.</li> <li>6. \$15,000 for "overhead" expenses.</li> </ol>

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Date	Amount	Description
2/5/09	\$14,678.08	This is a Community Development Block Grant from the city council to make the restrooms at the group's headquarters on Hays Street compliant with the federal Americans with Disabilities Act.
5/14/09	\$25	This is a fee for a city council member to attend the dedication ceremony for the group's sculpture garden at its Hays Street headquarters.
6/23/09	\$131,500	<p>This is the third contract between the redevelopment agency and the group. The Alliance has proposed that it should be paid:</p> <ol style="list-style-type: none"> <li>1. \$63,550 for downtown promotion events. About 60 percent of the amount is for the salary of a coordinator.</li> <li>2. \$14,500 for the Center for the Arts operations. About half of the amount is for the salary of a manager.</li> <li>3. \$32,550 for the operation of the Youth Council. About 80 percent of the amount is for the salary of a program director.</li> <li>4. \$9,000 to organize the Banning Business Association, which will be an entity "active in all aspects of downtown planning and activities." The entire amount of money will be spent on the salary of an executive director.</li> <li>5. \$11,900 for "overhead."</li> </ol>
<b>Total</b>		\$180,6513.08

ATTACHMENT 2- BCA GRANTS  
July 1, 2010-June 30, 2012

CONTRACT/ PO PAYMENTS MADE TO BANNING CULTURAL ALLIANCE

PO#	PO Date	Amount	Description
25045	12/1/2011	\$74,943.28	Promo Events Production, Marketing of Downtown, Gallery Operations, Youth Programs, Coordination with Mural Council and Pass Area Performing Artists, and detailed quarterly and year end reports, and comprehensive budget per the contract dated August 23, 2011 and approved by the City Council and CRA - August 23, 2011.
24364	10/27/2010	\$111,500.00	Promo Events Production, Marketing of Downtown, Gallery Operations, Youth Programs, Coordination with Mural Council and Pass Area Performing Artists, and detailed quarterly and year end reports, and comprehensive budget per the contract dated July 1, 2010 approved on June 22, 2010 via CRA Resolution No. 2010-16.
24338	10/12/2010	\$25,000.00	Renovation work (Architecture fees) in support of downtown revitalization per CRA Resolution No. 2010-14 approved June 22, 2010.

## ATTACHMENT 3 - GRANT BUDGETS

City of Banning  
 Review of Banning Cultural Alliance (BCA)  
 Grants from City to BCA

Date of Grant:	10/12/2010		
Amount of Grant:	\$ 25,000.00		
City P.O. No.:	24338		
Purpose of Grant:	Architectural Fees in support of downtown revitalization per CRA Resolution No. 2010-14 approved June 22, 2010		
<u>Contract Descriptions</u>	<u>2010-2011 Budget (1)</u>	<u>BCA Descriptions</u>	<u>BCA Acct</u>
Jonathan L. Zane Architecture Design & Architectural Work for Banning Art Gallery	\$ 25,000	Professional Services Allowance	76296 0.00%
Total	<u>\$ 25,000</u>		
<u>(1) Per Scope of Service Budget (Per Exhibit A of Contract)</u>			
Date of Grant:	10/27/2010		
Amount of Grant:	\$ 111,500.00		
City P.O. No.:	24364		
Purpose of Grant:	Promotional and Cultural program development CRA Resolution No. 2010-16 approved June 22, 2010 (approving BCA budget for FY 2010-11) Contract dated July 1, 2010 Close out report required by August 15, 2011		
<u>Contract Descriptions</u>	<u>2010-2011 Budget (1)</u>	<u>BCA Descriptions</u>	<u>BCA Acct</u>
1. Events Production		Spring Festival/BCA/Cool Summer Nights/PAPA	761X, 7629, 76296, 76297, 76298, 7630, 7660
a. Coordination&Licenses/fees	\$ 31,000	Event program costs	7624 7627, 7628, 7669c,
b. Supplies & rentals	\$ 4,150	Repairs & Maintenance	7625,
c. Communication Equipment	\$ 4,000		
2. Marketing Downtown		Advertising/Staff	7669d, 7669f
a. Advertising & Coordination	\$ 25,000	Downtown Program Costs	7669a, 7669b, 7669h
b. Entertainment	\$ 5,000		
3. Gallery		Utilities/Telephone Gallery Management	7623, 7669e 76295
a. Utilities/Security	\$ 3,000		
b. Manager	\$ 9,000		
c. Insurance	\$ 2,000		
4. Youth		Youth Staff/PR expenses Youth Program Costs	7675, 7676 7671, 7672, 7674
Total	<u>\$ 111,500</u>		
<u>(1) Per Scope of Service Budget</u>			
Date of Grant:	12/1/2011		
Amount of Grant:	\$ 74,943.28		
City P.O. No.:	25045		
Purpose of Grant:	Promotional and Cultural program development CRA Resolution No. 2011-25 approved June 28, 2011 (approving BCA budget for FY 2011-12) Contract dated August 23, 2011		
<u>Contract Descriptions</u>	<u>2011-12 Budget (1)</u>	<u>BCA Descriptions</u>	<u>BCA Acct</u>
Downtown Promotional Events			
Events		No specific events budget	
Coordination	\$ 20,000		
Communication & Equip	\$ 1,200		
Art Hop		Spring Festival	761X
Downtown Expenses		Downtown Expenses	7669x
Phineas Festival			
Pass Has Talent			
Pass Area Performing Arts (PAPA)		PAPA	766X
Marketing	\$ 18,000	Marketing/Advertising	7613/7631
Banning Center for the Arts Gallery	\$ 16,400	BCA Gallery	762X
Youth	\$ 19,400	Youth & Arts	767X
Total	<u>\$ 75,000</u>		
<u>(1) Per Scope of Service Budget</u>			

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## ATTACHMENT 4 - \$25,000 GRANT EXPENSES

City of Banning

Review of Banning Cultural Alliance (BCA)

Review of Payments of \$1,000 or more to single vendor

Date of Grant: 10/12/2010

Amount of Grant: \$ 25,000.00

Grant Payment	Vendor	Invoice	Amount	Purpose	Copy of Approved Invoice	WFS Comments
<u>\$ 25,000.00</u>	Jonathan Zane	4/24/2009	\$ 2,500	Architecural Design-Art Gallery	Y	
	Jonathan Zane	5/20/2009	\$ 2,500	Architecural Design-Art Gallery	Y	
	Jonathan Zane	6/30/2009	\$ 2,500	Architecural Design-Art Gallery	Y	
	Jonathan Zane	8/14/2009	\$ 1,000	Architecural Design-Art Gallery	Y	
	Jonathan Zane	10/26/2010	\$ 5,500	Architecural Design-Art Gallery	Y	
	Jonathan Zane	12/15/2010	\$ 7,000	Architecural Design-Art Gallery	Y	
	Jonathan Zane	3/17/2011	\$ 3,000	Architecural Design-Art Gallery	Y	
<u>\$ 25,000.00</u>	Total Grants		<u>\$ 24,000.00</u>			Contract payments \$1,000 less than grant
				96% of Grant Amount		

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## ATTACHMENT 5 - \$111,500 GRANT EXPENSES

City of Banning

Review of Banning Cultural Alliance (BCA)

Review of Payments of \$1,000 or more to single vendor

Date of Grant: 10/27/2010  
 Amount of Grant: \$ 111,500.00

Grant Payment	Vendor	Invoice	Amount	Purpose	Copy of Approved Invoice	WFS Comments
\$ 10,060.16	Zeeweb	8031006	\$ 1,224.00	Annual BCA web hosting	Y	Not specific to grant
	Clindine Roper		\$ 750.00	Gallery Management	N	No invoice supporting payment
	Carol Newkirk	Aug 2010	\$ 1,000.00	Executive Director Services	Y	Not specific to grant
	Bob Naus	108	\$ 100.00	CSN sound system	Y	Vendor invoice provided. No cancelled
	Bob Naus	109	\$ 100.00	CSN sound system	Y	Vendor invoice provided. No cancelled
	Cynthia Watson	8/15/2010	\$ 975.00	Youth Staff Salary	Y	PR stub provided
	Cynthia Watson	8/31/2010	\$ 975.00	Youth Staff Salary	Y	PR stub provided
\$ 7,544.90	Carol Newkirk	Jul 2010	\$ 1,000.00	Executive Director Services	Y	Not specific to grant
	Cindy Watson	7/31/2010	\$ 975.00	Youth Staff Salary	Y	PR stub provided
	Cindy Watson	7/15/2010	\$ 975.00	Youth Staff Salary	Y	PR check provided
	Bob Naus	107	\$ 100.00	CSN sound system	Y	Vendor invoice provided. No cancelled
	Bob Naus	106	\$ 100.00	CSN sound system	Y	Vendor invoice provided. No cancelled
	Bob Naus	105	\$ 100.00	CSN sound system	Y	Vendor invoice provided. No cancelled
	Bob Naus	104	\$ 100.00	CSN sound system	Y	Vendor invoice provided. No cancelled
	Michelle Williams	7/15/2010	\$ 1,260.00	Marketing	Y	Time Sheets provided but no PR records or PR checks
	Michelle Williams	7/30/2010	\$ 1,260.00	Marketing	Y	Time Sheets provided but no PR records or PR checks
\$ 8,889.83					N	No invoices or check backup provided
\$ 9,173.55	Marlin Leasing	9801288	\$ 230.11	Copier lease payment	Y	
	Carol Newkirk	Oct-2010	\$ 1,000.00	Executive Director Services	Y	Not specific to grant
	Michelle Williams	10/15/2010	\$ 1,600.00	Marketing	Y	Time Sheets provided but no PR records or PR checks
	Michelle Williams	10/30/2010	\$ 1,600.00	Marketing	Y	Time Sheets provided but no PR records or PR checks
	Cindy Watson	10/1/2010	\$ 975.00	Youth Staff Salary	Y	PR stub provided
	Cindy Watson	10/31/2010	\$ 975.00	Youth Staff Salary	Y	PR check provided
\$ 12,556.37	Cindy Watson	11/15/2010	\$ 975.00	Youth Staff Salary	Y	PR stub provided
	Cindy Watson	11/30/2010	\$ 975.00	Youth Staff Salary	Y	PR check provided
	Cindy Watson	???	\$ 1,200.00	???	N	No invoices or check backup provided
	Michelle Williams	11/15/2010	\$ 1,770.00	Marketing	Y	Time Sheets provided but no PR records or PR checks
	Carol Newkirk	Nov-2010	\$ 500.00	Executive Director Services	Y	Not specific to grant
	Carol Newkirk	Nov-2010	\$ 1,000.00	Executive Director Services	Y	Not specific to grant
	Michelle Williams	11/30/2010	\$ 1,860.00	Marketing	Y	Time Sheets provided but no PR records or PR checks
	State Farm	11/12/2010	\$ 1,500.00	Gallery insurance	Y	
\$ 6,769.80	C.V. Ice Company	41278	\$ 1,218.50	Phineus Festival snow	Y	Invoice charged to 8160-Insurance
	Michelle Williams	12/30/2010	\$ 120.00	Marketing	Y	Vendor invoice provided. No cancelled
	Michelle Williams	12/15/2010	\$ 120.00	Marketing	Y	Time Sheets provided but no PR records or PR checks
	Cindy Watson	12/15/2010	\$ 975.00	Youth Staff Salary	Y	Time Sheets provided but no PR records or PR checks
	Cindy Watson	12/31/2010	\$ 975.00	Youth Staff Salary	Y	PR stub provided
					Y	PR check provided
\$ 6,495.36	Carol Newkirk	Jan-2011	\$ 1,000.00	Executive Director Services	Y	Not specific to grant
	Michelle Williams	1/15/2011	\$ 1,140.00	Marketing	Y	Time Sheets provided but no PR records or PR checks
	Michelle Williams	1/31/2011	\$ 1,190.00	Marketing	Y	Time Sheets provided but no PR records or PR checks
	Clindine Roper	1/31/2011	\$ 750.00	Gallery management	Y	
\$ 8,338.15	Michelle Williams	2/15/2011	\$ 1,250.00	Marketing	Y	Time Sheets provided but no PR records or PR checks
	Michelle Williams	2/28/2011	\$ 1,130.00	Marketing	Y	Time Sheets provided but no PR records or PR checks
	Carol Newkirk	Feb-2011	\$ 1,000.00	Executive Director Services	Y	Not specific to grant
	Clindine Roper	2/11/2011	\$ 750.00	Gallery management	Y	
	State Farm	11/12/2010	\$ 500.00	Gallery insurance	Y	
					Y	Invoice charged to 8160-Insurance
	Cindy Watson	2/28/2011	\$ 975.00	Youth Staff Salary	Y	PR stub provided
	Cindy Watson	2/28/2011	\$ 250.00	Black Heritage Event Décor	Y	Check request. Advance payment. No receipts
	Cindy Watson	2/15/2011	\$ 975.00	Youth Staff Salary	Y	PR stub provided
\$ 6,179.59	Michelle Williams	3/15/2011	\$ 1,330.00	Marketing	Y	Time Sheets provided but no PR records or PR checks
	Michelle Williams	3/31/2011	\$ 1,450.00	Marketing	Y	Time Sheets provided but no PR records or PR checks
	Cindy Watson	3/15/2011	\$ 975.00	Youth Staff Salary	Y	PR stub provided
	Cindy Watson	3/31/2011	\$ 975.00	Youth Staff Salary	Y	PR check provided

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## ATTACHMENT 5 - \$111,500 GRANT EXPENSES

City of Banning

Review of Banning Cultural Alliance (BCA)

Review of Payments of \$1,000 or more to single vendor

Date of Grant: 10/27/2010  
 Amount of Grant: \$ 111,500.00

Grant Payment	Vendor	Invoice	Amount	Purpose	Copy of Approved Invoice	WFS Comments
	Cindy Watson	2/28/2011	\$ 12.34	Black Heritage Event Décor		Check request, net of advance. Receipts provided
	Carol Newkirk	Mar-2011	\$ 1,000.00	Executive Director Services	Y	Not specific to grant
	Clindine Roper	3/8/2011	\$ 750.00	Gallery management	Y	
\$ 16,872.45					N	No invoices or check backup provided
\$ 8,194.90					N	No invoices or check backup provided.
\$ 10,424.95					N	No invoices or check backup provided
<b>\$ 111,500.01</b>	<b>Total Grants</b>		<b>\$ 47,864.95</b>			
				43% of Grant Amount		

ATTACHMENT 6 - \$74,923 GRANT EXPENSES

City of Banning

Review of Banning Cultural Alliance (BCA)

Review of Payments of \$1,000 or more to single vendor

Date of Grant: FY 2012&2013  
Amount of Grant: \$ 74,953.28

Grant Payment	Vendor	Invoice	Amount	Purpose	Approved Invoice	WFS Comments
\$ 5,785.28					N	No invoices to support total payment
\$ 3,274.43	Various	Various	\$ 1,100.00	Pass Hass/Advertising/ Website/Equip leasing	N	No invoices to support total payment No cancelled checks No GM approvals on most invoices GM approvals missing on most invoices
	Marlin Leasing	7/25/2011	\$ 228.15	Marketing-Copier	Y	
\$ 6,088.46	Cindy Watson	9/15/2011	\$ 150.00	Youth Staff Salary	Y	PR stub provided
	Cindy Watson	9/30/2011	\$ 136.07	Cell Phone	Y	Questionable program expense
	Cindy Watson	9/30/2011	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Clindine Roper	9/13/2011	\$ 750.00	Gallery management	Y	
	Michelle Williams	9/15/2011	\$ 1,200.00	Marketing	Y	PR stub provided
	Michelle Williams	9/30/2011	\$ 583.33	Marketing	Y	PR stub provided
	Michelle Williams	9/30/2011	\$ 500.00	Marketing	Y	PR stub provided
	Marlin Leasing	9/23/2011	\$ 228.15	Marketing-Copier	Y	
\$ 6,335.24					N	No invoices to support total payment
\$ 6,223.36	Cindy Watson	11/15/2011	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Cindy Watson	11/30/2011	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Monitronics	10/21/2011	\$ 40.94	Gallery utilities	Y	Duplicate payment for October
	Clindine Roper	11/15/2011	\$ 750.00	Gallery management	N	No invoices to support total payment
	Michelle Williams	11/15/2011	\$ 1,083.33	Marketing	Y	PR stub provided
	Michelle Williams	11/30/2011	\$ 1,083.33	Marketing	Y	PR stub provided
	Carol Newkirk	November 2011	\$ 1,000.00	Marketing	N	No invoices to support total payment
	Marlin Leasing	11/23/2011	\$ 456.30	Marketing-Copier	Y	Two months + late fee of \$29.40
\$ 6,551.91	Cindy Watson	1/15/2012	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Cindy Watson	1/30/2012	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Clindine Roper	7/13/2012	\$ 750.00	Gallery management	Y	
	Carol Newkirk	January 2012	\$ 500.00	Executive Director	Y	
	Michelle Williams	1/15/2012	\$ 1,083.33	Marketing	Y	PR stub provided
	Michelle Williams	1/30/2012	\$ 1,083.33	Marketing	Y	PR stub provided
\$ 8,092.71	Carol Newkirk	December 2011	\$ 500.00	Executive Director	Y	
	Michelle Williams	12/15/2011	\$ 500.00	Marketing	Y	PR stub provided
	Michelle Williams	12/15/2011	\$ 583.33	Events	Y	PR stub provided
	Clindine Roper	12/14/2011	\$ 750.00	Gallery management	Y	
	Cindy Watson	12/15/2011	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Cindy Watson	12/31/2011	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Marlin Leasing	12/27/2011	\$ 32.15	Marketing-Copier	Y	
\$ 5,629.95	Clindine Roper	2/13/2012	\$ 750.00	Gallery management	N	No invoices or check backup provided
	Michelle Williams	2/15/2012	\$ 1,083.33	Marketing	Y	PR stub provided
	Michelle Williams	2/29/2012	\$ 1,083.33	Marketing	Y	PR stub provided
	Cindy Watson	2/15/2012	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Cindy Watson	2/29/2012	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Marlin Leasing	1/24/2012	\$ 169.39	Marketing-Copier	Y	
\$ 6,417.68						

ATTACHMENT 6 - \$74,923 GRANT EXPENSES

City of Banning

Review of Banning Cultural Alliance (BCA)

Review of Payments of \$1,000 or more to single vendor

Date of Grant: FY 2012&2013  
 Amount of Grant: \$ 74,953.28

Grant Payment	Vendor	Invoice	Amount	Purpose	Approved	
					Invoice	WFS Comments
	Cindy Watson	3/15/2012	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Cindy Watson	3/26/2012	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Clindine Roper	3/8/2012	\$ 750.00	Gallery management	Y	
	Michelle Williams	3/15/2012	\$ 1,083.33	Marketing	Y	PR stub provided
	Michelle Williams	3/26/2012	\$ 1,083.33	Marketing	Y	PR stub provided
	Marlin Leasing	2/22/2012	\$ 248.74	Marketing-Copier	Y	Lease payment Increased from \$137.27 to \$196.00. Includes late fee of \$20.59
\$ 8,196.66						
	Cindy Watson	4/15/2012	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Cindy Watson	4/30/2012	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Marlin Leasing	3/27/2012	\$ 228.15	Marketing-Copier	Y	
	Constance Jiroh	4/30/2012	\$ 1,083.33	Marketing	Y	PR stub provided
	La Poderosa	4/24/2012	\$ 1,000.00	Marketing	Y	
	Michelle Williams	4/15/2012	\$ 1,083.33	Marketing	Y	PR stub provided
	Michelle Williams	4/30/2012	\$ 1,083.33	Marketing	Y	PR stub provided
	Clindine Roper	4/4/2012	\$ 800.00	Gallery management	Y	
\$ 6,648.84						
	Michelle Williams	5/15/2012	\$ 1,083.33	Youth Staff Salary	Y	PR stub provided
	Michelle Williams	5/31/2012	\$ 1,083.33	Youth Staff Salary	Y	PR stub provided
	Clindine Roper	5/12/2012	\$ 800.00	Gallery management	N	No invoices or check backup provided
	Cindy Watson	5/15/2012	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Cindy Watson	5/31/2012	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Constance Jiroh	5/15/2012	\$ 1,083.33	Marketing	Y	PR stub provided
	Marlin Leasing	4/23/2012	\$ 228.15	Marketing-Copier	Y	
\$ 5,698.76						
	Michelle Williams	6/15/2012	\$ 1,083.33	Events	Y	PR stub provided
	Constance Jiroh	6/30/2012	\$ 1,007.02	Events	Y	PR stub provided
	Clindine Roper	6/15/2012	\$ 800.00	Gallery management	N	No invoices or check backup provided
	Cindy Watson	6/15/2012	\$ 650.00	Youth Staff Salary	Y	PR stub provided
	Cindy Watson	6/30/2012	\$ 650.00	Youth Staff Salary	Y	PR stub provided
<b>\$ 74,943.28</b>	<b>Total Grants</b>		<b>\$ 44,819.82</b>			
				60% of Grant Amount		

**City of Banning**  
**BCA Grant Revenue & Expense Recap**  
**FY 2010 through FY 2012**

	BCA FINANCIALS FY 2010-2012 TOTAL	GRANT				
		ELIGIBLE REVENUE TOTAL	EXPENSE TOTAL (1)			
<b>Ordinary Income/Expense</b>						
<b>Income</b>						
<b>5520 - Banning Center for the Arts</b>						
<b>5621 - Grants</b>						
	49,771.24	49,771.24				
<b>Expense</b>						
<b>Total 7610 - Spring Festival Expense</b>						
	24,030.54		17,444.40			
<b>7620 - Banning Center for the Arts Exp</b>						
<b>7623 - Utilities</b>						
	17,349.64		11,465.56			
<b>7624 - Supplies</b>						
	3,119.16		1,874.83			
<b>7625 - Repairs and maintenance</b>						
	5,495.42		4,554.51			
<b>7627 - Merchandise</b>						
	1,801.23		1,520.23			
<b>7628 - Consignments</b>						
	13,252.66		8,893.26			
<b>7629 - Taxes and Licenses</b>						
	2,086.19		1,274.19			
<b>76290 - Maintenance wages</b>						
	321.67		321.67			
<b>76295 - Gallery Management</b>						
	26,900.00		18,300.00			
<b>76296 - Professional services</b>						
	24,699.85		24,000.00			
<b>76297 - Bank and credit card charges</b>						
	1,050.13		722.33			
<b>76298 - Youth Classes</b>						
	158.98		158.98			
<b>Total 7620 - Banning Center for the Arts Exp</b>						
	88,734.93		73,085.55			
<b>7630 - Cool Summer Nites</b>						
<b>Total 7630 - Cool Summer Nites</b>						
	18,836.27		3,595.85			
<b>7660 - PAPA</b>						
<b>Total 7660 - PAPA</b>						
	29,753.82		18,828.24			
<b>7669 - Downtown expenses</b>						
<b>Total 7669 - Downtown expenses</b>						
	117,055.73		86,078.81			
<b>7670 - Youth and the Arts Expense</b>						
<b>Total 7670 - Youth and the Arts Expense</b>						
	67,898.22		47,705.68			
<b>6800 - Income</b>						
<b>6820 - Grants - City of Banning</b>						
	293,172.04	161,672.04				
		<u>211,443.28</u>	<u>246,738.53</u>			
<b>Eligible Program Expenses In Excess of Grants</b>						
			<b>35,295.25</b>			
<b>Grants by Fiscal Year</b>						
<b>FY 2009-2010 City Grant</b>						
		25,000.00				
<b>FY 2010-2011 City Grant</b>						
		111,500.00				
<b>FY 2011-2012 City Grant</b>						
		74,943.28				
<b>Total Grants</b>						
		<b>211,443.28</b>				

(1) Includes only expenses eligible for the grant year Scope of Service budget

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Board of Directors

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Vice President  
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Don Smith  
Treasurer

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Merle Nazareth  
Zelyne Rudolph  
Courtney Fox Taylor

Executive Director

Carol Newkirk

July 15, 2014

Dear Ms. Laymon:

The Cultural Alliance is in receipt of your letter dated 6/30/14, which was postmarked 7/2/14 and with the holiday delivered on 7/7/14. Your letter requested a response in 15 days so we are responding by email.

I do not understand the request for cancelled checks. While it is true that for some of the early years, we did not have copies of the check, the front of each check was copied by the bank and is attached to the Bank statements you were provided for the Bank of Hemet accounts for the periods 7/1/10-6/30/11 and 7/1/11-6/30/12. Are you saying you did not receive the bank statements and attached copies of the check? If you are asking for the original checks then we do not have them and the banks no longer return them. If you are saying you want copies of the front and backs of the checks, then that is also something that the bank does not provide us.

If you need us to copy the statements again which includes a copy of the front of each cashed check, please let us know and we can provide. If you are asking for the originals, then I'm sure they no longer exist. If you are asking for copies of the front and back that is probably something that the bank can provide for a fee. If the City wants to pay that fee, then we will cooperate in processing the request.

As we have told you in the past, for each of those 2 years, we provided the city with a monthly spread sheet with receipts showing the completion of the projects outlined in the contracts. For each month the city has the spreadsheet and receipts. This method was developed in coordination with the city and we provided the City with every document they requested. We then had meetings reviewing the request with City Staff, the requests and documents were approved by City Staff, the city Manager and the City Finance Dept. After said approval, the reimbursement checks were issued. The City has its possession all the documents showing how 100% of the contract was met, so I don't understand the percentages listed in your letter.

Finally, I think we have discussed the contracts and they simply don't exist. We did not enter into contracts with every vendor but paid them based on our agreements with them and their invoices for services.

Please let me know how you would like us to proceed.

Carol Newkirk  
Executive Director

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## CITY COUNCIL AGENDA

**DATE:** **October 28, 2014**

**TO:** **Honorable Mayor and City Council**

**FROM:** **David J. Aleshire, City Attorney**

**SUBJECT:** **Measure J Update & Related Budget Update**

**RECOMMENDATION:** Receive and file report on status of Measure J and related City Budget issues. Take public comment on same.

**KEY FACTS:** On July 22, 2014, the City Council unanimously voted to place a proposed tax upon rock, sand and gravel mining operations on the voter ballot for November 4, 2014. This report is intended to update the Council on the status of that proposed measure, which has since been denominated as "Measure J". To summarize, the key components of Measure J are as follows:

- The tax proposed by Measure J would only impact rock, sand and gravel operations. No other businesses or citizens would be subject to the tax.
- The mining tax is proposed at a rate not-to-exceed eighty cents (80¢) per ton of mined rock, sand and gravel. However, the Banning City Council could set the tax at a lower per-ton rate if deemed prudent.
- Measure J is proposed as a general tax to help the City fund basic public services like fire, police, recreation, planning, code enforcement, street repair and other services that benefit the City's residents and businesses.
- Other key elements of Measure J are explained in the City Attorney's Impartial Analysis. This Analysis was never disputed and it constitutes the official ballot statement on the facts and impacts of Measure J. A copy of the City Attorney's Impartial Analysis is attached hereto as Exhibit "A".

**MEASURE J BALLOT MATERIALS ARE NOW COMPLETE:** The City Council's placement of Measure J on the ballot triggered a number of deadlines and ballot procedures. The status of that process is as follows:

- As noted above, the City Attorney's Impartial Analysis of Measure J (Exhibit "A") was timely submitted and is included as an official statement in the November ballot materials. No person or group timely challenged the objectivity or accuracy of the City Attorney's Impartial Analysis of Measure J.

- The City Council also authorized and submitted an “Argument in Favor” of Measure J. No person or group timely challenged that Argument and it is also included in the ballot materials.
- The deadlines for filing further statements to be included in the ballot have passed.
- Vote-by-mail ballots were mailed to voters starting on October 6, 2014, and the vote-by-mail voting process has commenced. However, at this time, we can provide no further prediction on Measure J success or failure.

Furthermore, on September 23, 2014, the City Council authorized City staff to undertake educational public outreach. As an update to that public outreach program, we report that staff did the following: (i) create a “Measure J” page on the City website, and (ii) drafted two educational mailers that were included in the City’s regular utility bills. No outside consulting or political services were utilized. To date, the City’s non-staff time costs for Measure J educational outreach are no more than \$7,900. This amount represents the costs of printing and mailing the two educational outreach mailers. While the Council had authorized up to \$50,000, staff does not expect educational outreach for Measure J to reach even close to that limit.

**BUDGETARY GROUNDS FOR MEASURE J REMAIN:** Staff reports that budgetary constraints upon the City remain unchanged. As noted at the time Measure J was placed on the ballot, the proposed tax was not adopted to cover prior expenditures by the City, but instead was a response to existing and ongoing economic conditions that are outside the City’s control. This purpose was stated in the proposed Ordinance that was unanimously placed on the ballot by the City Council:

“[T]he Great Recession beginning in 2008 has had a dramatic impact on the City’s general fund budget that was evident when City revenues dropped by approximately 33%, requiring a reduction in budgeted personnel of 36%, which included a reduction in police personnel of 33%, cuts in public recreation services and other City services. The end result is that there is a serious need for additional revenue to fund general city services.”

Other examples of actions taken by the City to address the impacts of the Great Recession include the following:

- In 2009, voters passed an increase in the Transient Occupancy Tax (TOT) from 6% to 12%. In 2014, through Measure E voters overwhelmingly voted yes to remove the TOT sunset. This action by the voters allowed the City to maintain approximately \$300,000 in General Fund revenues. The loss of this revenue represents the equivalent of two officers or most of the recreation functions in the City.
- In addition, maintenance of facilities, parks, and streets and the replacement of equipment have been severely cut back. The cuts to these programs are ongoing in order to maintain

a balanced General Fund budget. The impact has been commented on by the community and staff throughout the years and at recent Council meetings. The City has relied on grants or funding sources from other government agencies to make some progress in these areas.

- Employees have seen their income erode during this period. Since 2004, Banning employees have not received any COLA's (cost of living adjustments) but rather have experienced loss in compensation similar to that experienced by so many individuals in the community. The cost of living impacts to the community have also impacted City employees. These include fuel costs, food costs, health insurance costs and more.
- Another way employees have seen their compensation erode is through the temporary pay cuts of 5% during the period of time that furloughs were in place. This impacted all employees except public safety. Since 2013, all employees received a permanent net pay cut of 3% when they were required to pay the employee portion of the pension costs.

Finally, throughout the years, the City has taken difficult actions to reduce expenditures to live within the revenues available. As recently as the FY 2013-14 budget, four additional vacant police officer positions were eliminated as part of the actions necessary to balance the budget. The actions taken have been documented at Council meetings and workshops. Budget information is available on the City website that documents many of these actions. Also included in the budget document is information that highlights future areas of concern that may negatively impact the City's budget.

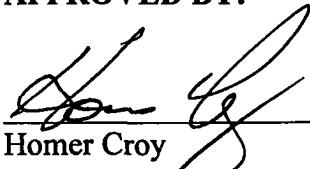
**RECOMMENDED BY:**

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David J. Aleshire  
City Attorney

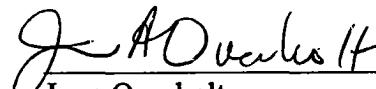
**APPROVED BY:**

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Homer Croy  
Interim City Manager

**REVIEWED BY:**

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June Overholt  
Administrative Services Director/  
Deputy City Manager

*Attachments:*  
Exhibit "A": Impartial Analysis

# **Exhibit "A"**

227727.2 LNL

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## IMPARTIAL ANALYSIS

### (General Tax)

This Measure was placed on the ballot by the Banning City Council and asks whether the voters of the City of Banning desire to approve an ordinance establishing a general tax upon rock, sand and gravel mining operations in the City. The proposed tax would apply to the excavation and processing of rock, sand and gravel materials at a rate not-to-exceed eighty cents per ton. The Banning City Council could, in its discretion, set the tax at a lower per-ton rate. The proposed mining tax includes a provision for annual automatic cost of living changes.

As a general tax, proceeds from the proposed tax would be deposited into the City's general fund to be spent for general governmental purposes, such as police, fire, and maintaining streets and public areas. However, the Measure also gives the Banning City Council the option, without any obligation, of creating a "Mining Impact Fund". This fund, if established, would be a separate account into which General Fund proceeds may be deposited to pay for the monitoring, mitigation and remediation of mining impacts upon the environment. Under the ordinance, the following are examples of proper expenditures for remediating mining impacts:

- Remediation of deteriorated streets and other public infrastructure facilities;
- Remediation of toxic or contaminated property resulting from mining and processing activities;
- Abatement of public health and safety hazards, including health and safety hazards caused by access routes, traffic volumes, and usage conflicts;
- Remediation of slope instability and slope erosion problems, including potentially unsafe damage to levees, flood infrastructure and protective berms along the San Gorgonio River;
- Remediation of problems with sand and particulate matter and sand, gravel and particulate matter on public rights-of-way and properties;
- Providing loans or grants to owners of property impacted by mining operations for purposes of constructing improvements to alleviate mining impacts; and
- Abatement of air quality, noise, water quality and other health and safety impacts;

The proposed ordinance also specifically reserves to the City the right to enter into a development agreement that may waive or relinquish some of the established mining tax requirements in exchange for land-use or environmental concessions from a mine operator.

Under Proposition 218, a statewide initiative adopted in November of 1996, the mining tax could only be increased beyond the 80 cents per ton by a vote of the people, but the ordinance gives the Council the ability to make changes to the ordinance other than increasing the rate.

Under Proposition 218, any general tax must be approved by a majority of the voters. Your "Yes" vote means that you want the City to enact the proposed mining tax. Your "No" vote means that you do not want the City to enact the proposed mining tax.

**NOTE: If the whole text of the ordinance is printed in the ballot materials, the bolded language below is not necessary. (In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows:**

**"The above statement is an impartial analysis of an Ordinance to be adopted. If you desire a copy of the ordinance, please call the elections official's office at 951-922-3102 and a copy will be mailed at no cost to you."**