

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

November 14, 2008
1:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

Per City Council Resolution No. 1997-33 matters taken up by the Council before 10:00 p.m. may be concluded, but no new matters shall be taken up after 10:00 p.m. except upon a unanimous vote of the council members present and voting.

I. CALL TO ORDER

- Pledge of Allegiance
- Invocation
- Roll Call – Council Members Botts, Franklin, Hanna, Machisic, Mayor Salas

**II. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS
ANNOUNCEMENTS/APPOINTMENTS**

Report by City Attorney

Report by City Manager

PUBLIC COMMENTS – *On Items Not on the Agenda*

A three-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. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to "share" his/her three minutes with any other member of the public. (Usually, any items received under this heading are referred to staff or future study, research, completion and/or future Council Action.) (See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

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

PRESENTATIONS:

1. Presentation of Proclamation to Jerome Robinson (ORAL)

*Our Mission as a City is to provide a safe, pleasant and prosperous
community in which to live, work and play. We will achieve
this in a cost effective, citizen friendly and open manner.*

ANNOUNCEMENTS/COUNCIL REPORTS:

(Upcoming Events/Other Items and Report if any) (ORAL)

III. A. CONSENT ITEMS

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

**Motion: That the City Council approve Consent Items 1 through 7
Items to be pulled _____, _____, _____ for discussion.**

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

1.	Approval of Minutes – Regular Meeting – 10-28-08	1
2.	Resolution No. 2008-110, Adopting a Disaster and Emergency Mutual Aid Agreement between the City of Banning and the Morongo Band of Mission Indians	33
3.	Resolution No. 2008-120, Rescinding Resolution No. 2008-61 to Amend Amend the Classification & Compensation Plan for the City of Banning . .	41
4.	Resolution No. 2008-121, Approving an Agreement with CA Kabir, Inc. For the Deferral of Development Impact fees in the Amount of \$447,006.12 Associated with the Development of the Holiday Inn Express Hotel Located at 3020 W. Ramsey St. (APN: 538-340-005).	50
5.	Resolution No. 2008-123, Authorizing an Amendment of the Fiscal Year 2008-09 budget to Include Certain Necessary Adjustments as Presented at the October 20, 2008 Budget Workshop	101
6.	Accept the Right-of-Way Dedication from Jim H. Wilson for Street Improvements at Assessor’s Parcel Number 543-160-017 (123 East Wesley Street)	105
7.	Report of Investments for June and July 2008.	110

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

IV. PUBLIC HEARINGS

(The Mayor will ask for the staff report from the appropriate staff member. The City Council will comment, if necessary on the item. The Mayor will open the public hearing for comments from the public. The Mayor will close the public hearing. The matter will then be discussed by members of the City Council prior to taking action on the item.)

1.	Resolution No. 2008-119, A Resolution of the City Council of the City of Banning Authorizing an Adjustment in the Banning Municipal Transit System Fixed Route and Dial-a-Ride Fare Structure.	
Staff Report		119
Recommendation: That the City Council adopt Resolution No. 2008-119, Authorizing an Adjustment in the Banning Municipal Transit System Fixed Route and Dial-a-Rite Fare Structure.		

V. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items –

1. Schedule Meeting with the Beaumont City Council *(Pending) (City Mgr.)*
2. Schedule Special Jt. Meetings with the City's Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) *(Pending) (City Manager)*
3. Review of Development Fees *(Hanna – 12/11/07) (Johnson) (ETA 12/10/08)*
4. Review of Ordinance regarding the selling of cars in shopping center parking lots *(Salas – 9/9/08) (Hansen) (ETA 12/10/08)*
5. Report on "One Stop Shop" *(Franklin – 8/12/08) (Hansen/Nakamura) (ETA 11/14/08)*
6. Development of Bridge & Thoroughfare District to fund grade separation at Hargrave *(Hanna – 8/12/08) (Burk/Nakamura) (ETA 1/09)*
7. Consideration of City Town Hall Meeting to hear what departments the City has and what kind of services the City offers. *(Franklin – 9/9/08) (Nakamura) (ETA 1/09)*
8. Policy on Summer/Winter Breaks for Council Meetings *(Franklin – 9/23/08) (Nakamura) (ETA 1/09)*

FUTURE MEETINGS

1. December 4th (Thurs.) – State of the City at Casino Morongo Spa & Resort at Noon (Conference Center)
2. December 5th (Fri.) – 6:00 p.m. Special Jt. Council/CRA Meeting *(Swearing In of Council Members and Reorganization of Council and CRA)*
3. December 10th (Wed.) – 6:30 p.m. – Special Council Meeting) (Special CRA Meeting at 5:30 (if needed) *(this would take the place of the meeting to be held on Tuesday, Dec. 9th)*

VI. CLOSED SESSION

1. The City Council will meet in Closed Session pursuant to Government Code Section 54957 with regard to City Manager evaluation.
 - A. Opportunity for Public to address closed session items.
 - B. Convene to Closed Session

VII. 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 Friday, 8 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 and Council. 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 three-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to “share” his/her three 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 (909) 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

10/28/08
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Salas on October 28, 2008 at 6:30 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Franklin
Councilmember Hanna
Councilmember Machisic
Mayor Salas

COUNCIL MEMBERS ABSENT: Councilmember Botts (*excused*)

OTHERS PRESENT: Brian Nakamura, City Manager
David Aleshire, City Attorney
Bonnie Johnson, Finance Director
Duane Burk, Public Works Director
Jim Earhart, Public Utility Director
Hoyl Belt, Human Resources Director
Leonard Purvis, Police Chief
Matt Bassi, Consultant
Jeff Stowells, Battalion Chief
Heidi Meraz, Recreation Director
Marie A. Calderon, City Clerk

Mayor Salas invited the audience to join her in the Pledge of Allegiance to the Flag. The invocation was given by Pastor Carlo Alce.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS
ANNOUNCEMENTS/APPOINTMENTS

Report by City Attorney - There were none.

Report by City Manager

- Follow-up on the mid-block pedestrian crossing – this was brought up at the last meeting and ask you know a lot of renovations are happening in the downtown and our parking lot is torn up. Hopefully the parking lot will be ready in a month or so for public parking. The unfortunate reality with the mid-block crossing because of the controlled intersection that is nearby it would not behoove us to do that for safety purposes and so we will not be able to put a mid-block crossing there.
- Safety of children walking to and from school around construction areas – this issue was brought up at a couple of Council meetings and it is clearly an important issue. Sidewalk

closed signs were put up and it was tried to redirect the students around the construction areas. Unfortunately most of the signs were taken and staff with continue to put them out there and try to redirect the traffic. Staff would encourage First Street as a use and staff is still working with the project manager of the Oddfellows Building to try to get that building accomplished and opened as soon as possible.

- Neighborhood Stabilization Program – we have a couple of workshops by the State of California that will be coming up on Housing Community Development. There is a WRCOG meeting that City Manager will be attending that will give an update. The City intends to fully participate in that program to help stabilize our neighborhoods. Information will be brought back as soon as possible.
- Introduction of John Jansons, Redevelopment Manager

PUBLIC COMMENTS – *On Items Not on the Agenda*

George Nordquist, 4133 W. Wilson addressed Council stating that on October 10th he mailed the following letter to the Council as well as the City Manager, Duane Burk and Kahono Oei. and he read from the letter. He stated that there is a serious existing problem and impending disaster probability involving the drainage on and under Mountain Avenue. This is the result of the inlet design failure and a failure to maintain. The City is well aware of this situation and they have made repeated contacts with City staff and personnel regarding this drainage problem. He said they put the City on notice with a letter dated December 5, 2007 providing pictures showing the results of the rainstorm. They again wrote to the City on June 30, 2008 that there is a problem with drainage on Mountain Avenue and it is very frustrating as \$1.675 million dollars has been spent to construct a five-foot underground drainage system and yet drainage is not solved. They also enclosed pictures of the semi-plugged, uncared for condition of the inlet. They are at present taking steps to re-do, at great cost, their rear entry to provide their mobile home park with more protection with overflow coming down Mountain Avenue. Even though they are reconstructing the elevation on the rear entry, this will not solve the impending drainage danger with the City taking the necessary action to remedy the impending disaster. They want to know what is the City's plan to remedy this situation. He said that in December their 6 acre subdivision development on Mountain Ave. suffered severe flooding, as well as, other properties in the area. They have begged City personnel to clean this catch basin out and have had no written response from City officials for the Council with the exception of Barbara Hanna who was willing to listen to their problem. He asked how they can get the City to clean out the catch basin. How can they get the City to make a plan to permanently remedy this dangerous drainage problem?

Mayor Salas asked that the appropriate staff member speak with Mr. Nordquist right now and take down the information.

Councilmember Hanna said she brought this up at the last Council meeting as a future agenda item and she didn't notice it on the future agenda items list. She said that they need a report on how to prevent the flooding before the winter comes on.

City Manager said that they are actually working on a response now and apologized. They have in fact, as recent as today, been working towards a solution.

Dora Nordquist, 4133 W. Wilson addressed the Council stating that at the last Council meeting of October 14, 2008 after all five of the Council Members, as well as, Mr. Nakamura, Mr. Oei and Mr. Burk had all received the letter that George just read allowed Councilmember Barbara Hanna brought this letter to the floor and to everyone's attention and she asked the following question, "What can be done to prevent this flooding problem on Mountain Avenue?" Each of the Council remained totally silent apparently unwilling to address or discuss the issue. This has been their experience for the past eleven months when they made their first written appeal to the City in December, 2007 and the City also has a copy of their June 30th letter. They have made repeated appeals verbally to City staff going into City Hall again and again and again. She is again posing the same question which she hopes the City will take their rightful responsibility to respond to, "What can be done to prevent this flooding problem on Mountain Avenue?" The City is saying that they are in the midst of making a response to them. She said that Brian Guillot had reported it and something would be done but aside from that nothing has been done. They have appealed to every City staff person that they know how to appeal to. She said that this is a foreign setting for them to come and make public something that should have been handled appropriately by City staff. Or why in eleven months has City work people never even cleaned out the culvert that is more than half plugged. She can't believe the City is making no response. They appreciate Councilmember Hanna trying to bring it to the floor at the last Council meeting.

Councilmember Machisic asked that this be put on some type of a timeline where staff can respond to the concerns that the Nordquist's have on this drainage problem. He asked staff what would be a reasonable time to expect a response from a staff member concerning this problem.

City Manager said that the drainage issue is not just a City of Banning issue it also has to deal with the Morongo Tribe and the properties they own off of Mountain Avenue. The issue that staff is working on is trying to work with Morongo to get a solution to the drainage problem. There is also some private development that occurs in that area. He can have a summary report to the Council within a week or two but a solution may take longer than that.

There was some further discussion regarding this issue of drainage and a timeline to get this information to Mr. Nordquist.

Ben Goldstein, 428 Sandpiper Street addressed the Council stating he is an attorney at law in the state of California and he represents an organization called Citizens Against Toxic Sludge otherwise known as CATS. He read a brief letter (see Exhibit A).

Edward Miller, 5088 Breckenridge addressed the Council stating that he is responding to several comments in the newspapers that those people who are against the Liberty project don't have the scientific facts (see Exhibit B).

Carlo Alce, Common Impact Group addressed the Council thanking them for all that they had done last year for their celebration of Unity in our community. This year they are excited again to present Unity in our community with a purpose of eradicating poverty in our community in collaboration with Unity Action Partnership in Riverside County. They wanted to ask for the help of the Council and City staff that participated last year with Dr. Bernice King and they believe that at this time in our Country we are in need of unity more than ever. He asked that the City continue to help with the event and they are asking in advance for a financial contribution to the event. He showed the poster of Unity Day to take place on December 6th that has gone out and an exciting thing this year is that our students in the schools have taken up the project of "Local and Global Community Efforts" and they are collection food items and clothing for the hurricane victims in the islands of Haiti.

Helen Barnes, 2102 W. Lincoln addressed the Council stating that she is concerned over next year in that they have heard from a number of people that our budget is going to be a little shy a couple of million dollars next year. As a taxpayer in the city she is a little concerned about where we spend our money. Her question is that Councilmember Hanna has stated that she is opposed to Liberty Energy and is she willing to pay for any legal action that may arise from her biased opinion or is she expecting the city residents to pay this tab. Or if she has stated that she can be unbiased will she change her mind after the City election. Ms. Barnes said she is a taxpaying resident and wanted to know where her tax dollars will be going next year.

Chris McCallum, 757 W. Westward addressed the Council stating he is here to present something that he would like to do for the community and he would like to get as much positive support for it in the future as possible. It is a Holiday Prize Package Fundraiser. He said that Eagle Angel Construction, Normal and Joanna Ruiz, Ronald and Virginia Lyons, Dreamakers Limousine – Chris and Jennie McCallum in Memory of Steven Duran are giving a prize package to the Pass area organizations that want to help families in need this holiday season to be raffled out the first part of December. They will provide your group with raffle tickets and your group decides what is needed, if you need money, you will decide how much each ticket will be sold for or if it needs unwrapped toys, food or whatever your group needs to make this holiday season a little nicer for the Pass residents in need. 100% of what your group collects stays in your group to be disbursed however you need. All they want back are the ticket stubs by the first part of December for the drawing. All collected raffle tickets will go into a barrel and the winner's name will be announced by the Record Gazette, The Press Enterprise and by phone. The package includes four tickets to the Lakers, Clippers, Kings or any live performance in Los Angeles, dinner and limousine transportation. This package is worth approximately \$2,000. They know how hard times are for the people who give and for those who find themselves in need. It is their intention to help supply organizations who give to others so they can reach as many people as possible. The only thing they ask is that gifts, money, toys and food are collected to be used for the purpose of helping families in need at this holiday season. For information call Chris McCallum at 951-922-3599.

Galina Dwyer, 864 Wesley addressed the Council stating that this is her opinion as a resident of Banning for the last three years she feels protected, safe and cared by her local government. She addressed Mayor Brenda Salas stating that at the last City Council meeting she said that she wouldn't do anything to hurt the City and it is in this spirit that she would like to examine

her resume as a candidate for the San Gorgonio Water Board for District No. 1. Mrs. Dwyer said she doesn't understand as a Councilmember and Mayor of Banning that she allowed the expansion of jail facilities and extension of these boundaries in the residential area of the city in closed proximity to our high school. She also doesn't understand how she could invite a toxic sludge plant to Banning that is planning to use tremendous amounts of our precious fresh water supply and would pollute our neighborhoods. She doesn't understand how she could allow as the Mayor of Banning your Council colleagues to verbally attack Councilwoman Barbara Hanna just because Barbara Hanna opposed the toxic sludge plant and had every legal right to do so. Also how could Brenda Salas allow Black Bench housing development that will now cost the taxpayers of the city approximately \$650,000 in legal fees because you voted to accept flawed environmental impact report. Ms. Dwyer said given all these failures to protect the health and safety of the residents of Banning in her opinion it would be foolish to put Mayor Salas in the position where she will be responsible for the preservation and quality of the water provided to all Pass area families.

Alex Diaz, Banning Police Department addressed the Council stating that on behalf of the Banning Police Department he is making an invitation to the citizens of Banning for the need of volunteers to help staff the front office at the police department. They would be assisting the records personnel with filing, answering phone calls and dealing with the public. You can call 951-840-8563 or 951-922-3170 or walk into the police department and get an application.

Fred Sakurai, 43000 Dillon Road addressed the Council stating that we are in the middle of a very contentious election and zealous campaign workers have placed posters all over the city letting us know what their choices are on private land and public land. He would like to have somebody in the City knowledgeable in the City ordinance review the ordinance concerning removal of these signs, when they have to be removed, what the fine is for not removing it and if that applies to private land as well as public land.

Katherine Robinson, 1474 N. San Gorgonio addressed the Council stating that November 1st is the grand opening of our first Pass Area Dog Park at Noble Creek Park with the Ribbon Cutting at 10:00 a.m. She went over the many events that will be happening that day from 10 a.m. to 1 p.m. which include Halloween pet dress up contest and prizes for the first 500 people that come to the event.

Jerry Bailey, 1424 Wyte Way addressed the Council stating that tonight is the third time that he has been here discussing an issue that is a tremendous hazard and threat to the children of our city. He wanted to bring some clarity to the issue. He said that earlier this evening it was pointed out of some of the things that have been done in regards to this issue and it has nothing to do with that. It has to do with is that the Manual of Uniform Traffic Control Devices and the City of Banning is in the State of California and California is a State in the United States of America and we operate on the basis of law. We have codes and we follow those codes rigorously and there is no exception. He said that 220 kids are walking everyday within 3 inches of 236 cars. He said that Part 6 of the Manual talks about temporary traffic control and apparently Banning doesn't own this Manual and inside are specific endless details that City management and all the inspectors should know. He wanted to bring clarity to this because the City has allowed it to happen on the corner of San Gorgonio and Ramsey. If you do the

mathematical statistics of just when are you going to have an accident and the idea of this is to protect the citizens and not make it easier for the contractor; make it correct. Those kids deserve to be protected. He gave Part 6 – Temporary Control of this Manual to the City Manager.

Don Smith resident of Banning addressed the Council stating that he has been here the last three meetings and has heard this speech the last three times. He said in 1993 when the new high school opened for some unknown reason they had no sidewalks on San Gorgonio. It wasn't part of the planning so the kids were walking down the street once they passed the railroad tracks down to the high school. Somebody pointed out that it was probably dangerous and the City couldn't possibly do anything because that portion of the street is controlled by Caltrans and they wouldn't approve putting in some sort of temporary sidewalks. A couple of weeks into the school year a girl got hit. Strange enough the next day Caltrans gave permission to put in those temporary asphalt sidewalks that are still there to this day so that the kids could walk down a sidewalk rather than the street. He said he looked the other day to see why that fence was in the middle of San Gorgonio and he came to one conclusion that the guy doing the work wants to save that spot to park his work truck each day so he comes and pulls behind that truck so that he can park his work truck there each day and nobody else can park there. There is not reason to have the fence in the middle of the street. Even if you just move the fence that was on the sidewalk at least then when the kids are walking down the road instead of walking in the middle of the road they would be on the gutter. This would be his suggestion.

PRESENTATIONS

1. Presentations and Request for Assistance

Bill Dickson and Al Lopez addressed the Council regarding the Hispanic Chamber of Commerce Christmas giveaway. This is their 5th annual event and will be held on Dec. 14th at Repplier Park at 1:00 p.m. They are asking for financial support from the Council in the amount of \$2,500. They also presented certificates of appreciation to the City Manager and Mayor and Council Members for their continued support of their event.

Councilmember Machisic said that this is open to any child in the city of Banning.

APPOINTEMENTS

1. Appointment of an Ad Hoc Committee to Review and Recommend FY 2009/10 Community Development Block Grant Applications.

City Manager said that staff is asking for the appointment of two Council Members to serve on this Ad Hoc Committee. **Council Members Hanna and Machisic volunteered to be on this Ad Hoc Committee.**

CORRESPONDENCE

Mayor Salas asked for correspondence. City Clerk said that she was not sure if she could read the letters since there was an investigation going on at this time. City Attorney said that the

Mayor can submit them and have them not read or she could ask the City Clerk to read them. Mayor Salas asked the City Clerk to read the letters.

City Clerk read two letters: 1) from Charlie Strang (Exhibit C); and 2) from Michael Hanna, and Caroline Sheldon & Judy Sheldon (Exhibit D).

ANNOUNCEMENTS/COUNCIL REPORTS:

Councilman Machisic –

- The Mt. San Jacinto College has purchased some property down on Sunset and we are having meetings and he attended the last meeting with Mayor Pro Tem Franklin and they are working hard on it. There is some enrollment at Banning High School and he cannot express how important a college is to the Pass Area. He said he served on a school board for four years and one of the things we must have is higher education closer to home because people will not travel generally to go to school. He would hope that more publicity will be put out and they now have an office behind Wells Fargo on Ramsey.
- He said that tonight two requests were made for monetary donations from the City by Pastor Alce and from the Hispanic Chamber and one of the things we talked about back several meetings ago was that people come to us spontaneously and ask for money. One of the things that he is especially concerned about is that this past year they had to cut a lot of money out of the budget and the anticipation is that we may have to cut a lot more based on the earlier conversation. He would like to see the Council along with the City Manager and staff come up with a proposal because one of the things that concerns him is that we need to set a fixed amount on how much we are going to give in civic donations and it has to be agreed on by the Council. The other thing is that people who would like to have donated money from the City need to come in when we are developing our budget. They are all good and worthy projects but at the same time it is not good budgeting.

Councilmember Hanna –

- Said in regards to the campaign and to voting this has been the nastiest campaign in local history and she wanted to publicly say it is an affront to her and to our community that surly we can disagree and agree on public policy issues and that is the way of the world and we should be doing that. But anyone who is kind of rabblousing taking things out of context, people's historic background and then making accretions that can't be proven or dis-proven but malign that person's character and so forth is reprehensible and she personally will have nothing to do with it and do have nothing to do with it and she would hope that in future elections maybe we need to have a meeting of all candidates once they all individually sign the papers, etc. to have a discussion for all the candidates together to say this is what we are talking about and this is not what is acceptable so hopefully in the future that won't occur.
- She said that she read in the paper today that 30,000 people registered in Riverside County in the last week and the end of registration was October 20th. Everyone expects a tremendous amount of turnout on Election Day, November 4th. We certainly want to encourage everyone who can vote early to do so. If you are going to mail those back in, they need to be sent in by Friday, October 31st. If they are to be delivered, they must be delivered either at a polling place or the County Registrars Office by 8 p.m. on Nov. 4th. If

it is mailed on November 4th, it will not be counted and we want everyone's vote to count. There are 11 polling places in Banning for those who intend to vote on Election Day. If anyone has any questions about where they need to vote, she will be happy to take phone calls and help them. If anyone needs a ride to the polls there are volunteers available to take people to vote. We want every resident who is qualified to vote on or before Election Day.

Mayor Pro Tem Franklin –

- She said that her supporters have asked her to actively pursue the position of Mayor for the next term and as Mayor Pro Tem for the last two years she had diligently been preparing for this position. She has also had experience as a prior Chairperson for the Planning Commission in leading a group of people who are partly responsible for our city's wellbeing. She said she has strong leadership skills and can lead our Council in a professional and courteous manner that should keep us away from any unnecessary thousands of dollar expenditures in legal fees.

Mayor Salas –

- She said to the defense of Mayor Pro Tem Franklin she has done a tremendous job and over the last two years while she has been serving as Mayor she has worked side by side with her. She said she didn't expect to say anything but felt it was necessary. She said it has been a joy working with the City Council in particular, Councilmember Franklin and Councilmember Machisic. Anytime she needed support in anything they were there. We also have a great City Manager who is ready to assist when needed and have a good staff and team. She said that she has no doubt that our department heads will continue moving forward in getting all the projects accomplished that the City Council has put forward. She can't echo it enough how supportive Debbie has been and they have worked in partnership and that is how it should be. She hopes that the future City Council will continue that same partnership that they have had. If there is every anything she can do although she didn't run for reelection, she will continue to be involved in Banning and will continue to help and maybe in some ways they can partner in other opportunities.
- She reaffirmed that the Dog Park Opening will be on November 1st at Noble Creek Park at 10:00 a.m. with the Ribbon Cutting and other events.

CONSENT ITEMS

1. Approval of Minutes – Regular Meeting – 10-14-08

Recommendation: That the minutes of the Regular Meeting of October 14, 2008 be approved.

2. Ordinance No. 1399 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Adopting the "Fire Hazard Severity Zone Map" for the City of Banning as Prepared by the Fire Department.

Recommendation: That Ordinance No. 1399 pass its second reading and be adopted.

3. Resolution No. 2008-113, Approving a Parking Easement Agreement Between Super

Subs Owners, Mr. and Mrs. Benhar, and the City of Banning for Public Parking Use.

Recommendation: That Resolution No. 2008-113 be adopted.

4. Resolution No. 2008-117, Accepting and Authorizing an Amendment to the Riverside County Transportation Commission Transportation Expenditure Plan and Retail Transaction and Use Tax Ordinance (Ordinance No. 88-1 – Measure “A”).

Recommendation: That Resolution No. 2008-117 be adopted.

5. Notice of Completion for Project No. 2008-02, A. C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets.

Recommendation: That the City Council accept Project No. 2008-02, A. C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets, as complete and direct the City Clerk to record the Notice of Completion.

Motion Machisic/Franklin to approve Consent Items 1 through 5. Mayor Salas opened the item for public comments. There were none. **Motion carried, all in favor.**

ORDINANCES - INTRODUCTION

1. Ordinance No. 1400 – Regulations for Smoking in Public Parks
(Staff Report – Matt Bassi, Consultant)

Mr. Bassi gave the staff report as contained in the agenda packet.

Mayor Pro Tem Franklin said she knows that we are talking about adding no smoking to our parks but she knows that a lot of families do participate in family events at parks where they are there all day and have we considered the possibility of doing restricted areas as opposed to saying the whole parks are non-smoking.

Mr. Bassi said he believes the direction from Council was to include the entire public park and he doesn't remember any direction that would set off sites for smoking but if that is the Council's desire they can amend the ordinance to include that.

Mayor Pro Tem Franklin said she has some concerns because she does go to some of the parks and she does see family affairs and there are people who do smoke. She knows that there is a concern about our children but if we were to say certain areas were not allowable for smoking such as around the playground areas or anytime there is a group event like the concerts in the park and there are only certain areas where people could smoke. She said that parks are one of the few places where people can go free and they can enjoy family events and community events there and she would hate to say you cannot smoke there especially because a lot of the events are for a long time. Also she asked how do you police or monitor such a thing.

Mr. Bassi said there is an enforcement section and penalty section that currently exists for everything within that chapter about smoking and so that would still be the case. There is a subsection that talks about an employee or City Manager or designee could do enforcement. He would imagine that the police department would be involved in enforcement if they see it or even the code enforcement team may see something as they are driving by and make a call to address that.

Mayor Pro Tem Franklin said she would hate to think that we are having our police worried about people smoking as opposed to some of the other things we need them to focus on.

Councilmember Hanna said it is not listed in this report but many cities in Riverside County and certainly many, many cities in Southern California have a similar kind of concern and have an ordinance to this effect. She thinks that our top priority should be our children and that parks are places for children and smoking shall not be allowed in the parks. She would point out however, on page 55 of the Council packet under Section 2. Chapter 8.56..030 A, second sentence says "This prohibition shall not ban smoking or tobacco produce use in or upon public streets or alleys adjacent to any City facility or public park, but shall prohibit such acts on sidewalks and in off-street parking areas within the City public parks." It seems to her that once people understand there are some possibilities to smoke but not in the parks themselves. In terms of enforcement that is always a serious issue. All of this is education and we are saying to people that this is not what we should be allowing our children do have to suffer through. Of course second hand smoke affects everyone and not just children but she thinks that our priority should be for children.

Councilmember Machisic said his only concern was enforcement because he has some very serious things to enforce and smoking certainly is a problem for health but at the same time it is going to be hard for them to patrol through the park unless it is spot checking.

Mayor Pro Tem Franklin said she also looked on-line to see what was happening in other cities and there is a lot of information out there about what a lot of different cities are doing and they are doing different things but one of the things that most of them refer to is how hard it is to enforce. She would hate to see us put an ordinance out there that we are not really going to enforce.

Councilmember Hanna said actually there are a lot of ordinances that are not enforced on a stringent basis. Again, this is kind of an education of our community that smoking is bad and we don't want our children to be affected by it. For example, if you were allergic to smoking and somebody is smoking in the park, you can say excuse me it is against the law to smoke in the park. You have some means to say something; right now you just have to leave.

Councilmember Machisic said he believes that this is an ordinance that is going to mature over a number of years and it is not going to happen immediately. People have to become acclimated to this because they have always smoked in the park, the picnic table and family gatherings.

Mayor Salas said while we shouldn't adopt any ordinance or continue to allow ordinances that are on the books that we are not enforcing we need to take a good look at how we can do that. Having smoking in the park when children are around is definitely not a healthy means and she knows that the County of Riverside is not allowing within a particular amount of feet smoking near the

building entrances and exits. But at the same time these employees or people visiting the County facilities have designated areas where they can smoke. She asked Chief Purvis his thoughts on this ordinance in terms of enforcement.

Chief Purvis said as far as the enforcement aspect he thinks that there would be a time of public education period where we inform anybody that is in violation of that new ordinance and he thinks primarily it would be complaint driven at first if we do have some folks in the park who are offended by the smoke, they could call the police department and they could have an officer dispatched to that location. They could either inform them of the new ordinance or actually take enforcement action immediately. But what they would want to do is to at least give the public a time period to get acclimated to the new ordinance and then start enforcement after maybe a 90 to 120 day period. It is also a great tool that they can deal with people in a park setting. Say they are doing other things such as loitering or whatever else the case may be and they are smoking as well that gives the police officer an extra way to deal with something or a problem in a park. They can enforce it if they have to but he believes it would probably be more complaint driven where they actually receive complaints from citizens.

Mayor Salas asked Chief Purvis about designated areas in the park. He said that it would probably muddy the water a little bit. And if there are designated areas smoke can still dissipate pretty easily into other areas where people are going to be offended by it.

Mayor Salas opened the item for public comments.

Bill Dickson, 5700 W. Wilson said being a reformed smoker for over thirty years and being married to a smoker he thinks the Council ought to sit back and really think long and hard before we drive another wedge into the community. There are enough things going on that is dividing the community and you need to be extremely careful before you drive another wedge in there. Our parks are there for everybody and if you are going to put something together you ought to put something together maybe where we do have designated areas. He hates second hand smoke but you need to be careful.

Charlene Sakurai, 43000 Dillon Road said her background is oncology nursing so she has spent 40 years dealing with lung cancer among other things and smoking, etc. and education. She thinks it is laudable to think about a no smoking ordinance for parks. But she thinks the Council also ought to consider some type of no smoking programs offered within the city that we can do something to remedy the problem because it is not a city problem, it becomes a personal health problem. So if you cannot smoke here, you are going to go smoke there. She worked in a cancer facility where it became a conflict of interest to smoke on the property but everybody who did smoke and patients included were going out onto the sidewalk on the street to smoke and they still are. She thinks it is incumbent upon us as a City if we decide to have an ordinance to prevent them from smoking where they can smoke now, to also help them to overcome this habit if they choose to do that. She has never seen anything in the paper about no smoking programs. There is a wonderful opportunity to partner with the hospital with the American Cancer Society, the American Lung Association and numerous other organizations who would jump at the chance to come and offer programs if we would help to publicize that

and support it. She would encourage the Council to think in terms of something like that and not just to take away but also to provide.

Dorothy McLean, 916 Linda Vista Dr. addressed the Council stating that it has been her good fortune to be able to sub at Nicolet Middle School two weeks in an American History class and she learned that she is not smarter than a 8th grader when it comes to history classes which she had many moons ago but she came across the following and she thinks it applies. She said that Alexander Hamilton wrote, "Government implies the power of making laws. It is essential to the idea of a law that it be intended with a penalty or punishment for disobedience. If there be no penalty, the resolutions or commands that pretend to be law will in fact amount to nothing more than advice." She said we have an ordinance on the books that states that campaign signs are not to be up before 30 days before the election. Many candidates put their signs up when they felt like it and nothing was done. Obviously nobody wanted to uphold the ordinance and in doing so made the Council look weak; she doesn't want a weak Council. Also signs have been put up on private property and on public land without permission and nothing has been done. It is disturbing when candidates do not follow the law. Now you are thinking about prohibiting smoking in public places. Who will be the ones to enforce the law? The police have enough to do responding to real crimes. It seems unnecessary to put such an ordinance in their hands. In an ideal situation we would hope that if children are playing at the playground and somebody is smoking, that they could be asked to move away so the children don't have to breathe the second hand smoke or what you usually do is pick up your kids and move somewhere else. She doesn't believe that this ordinance is necessary or it will be properly enforced and if that is the case, it will again be the sign of a weak Council of which she does not want.

Helen Barnes, 2102 W. Lincoln Street addressed the Council stating that she is a smoker and smokers on the most part are very considerate of those who choose not to smoke. In her home no one smokes. What will this ordinance provide the citizens of the community; laws that cannot be enforced. Being a City employee herself previously she knows that when police officers or City employees are seen hanging around the park we get labeled as lazy, nothing to do, and why are we sitting around at the park. Do we have the man power in the police force or the code enforcement departments to enforce this ordinance; she doesn't think so. Smokers are already discriminated against because they cannot smoke in restaurants, bars or any public buildings. The taxes on cigarettes are unbelievable. And the reason for that is because someone stepped up to the plate and complained about second hand smoke. We are talking about a City park. We are not talking about inside of a building. The smoke is not going to hang around anybody. She feels that this ordinance is unnecessary and she would hope that this Council has far more important issues to discuss than whether or not someone is smoking a cigarette in the park.

Dr. James Jo, County Public Heath Department, Tobacco Control Project addressed the Council stating that going back to the issue about enforcement it is a very tough issue. As a local lead agency he is working with many other governmental agencies on this issue of smoke free parks and they told him that the way they are enforcing it is to use self enforcement. What that means is having the proper signage at the parks. Make sure that people are seeing the signage that "this park is smoke free" and as people read those and are educated about that they

will tell their friends and relatives and whoever visits the parks. If anyone lights up a cigarette, then they will just kindly remind them that this park is indeed smoke free and the word will get out and hopefully this will be self-enforcement. And hopefully no help will be needed by the police department. This is what he has heard from the other lead agencies who are working on this issue in terms of enforcement. He also mentioned that there are more than 120 communities here in California as of November 2007 that adopted smoke free outdoor places such as parks. He wanted to let the Council know that this was not something new but definitely there are many other communities that have adopted the ordinance and he believes they are doing very well. One of the reasons they are so adamant about supporting this ordinance is because when people come to places such as parks which is considered a very family place and when young kids see adults who light up in places like that he believes it is giving a negative message to these young kids. They are getting the message that it is okay to smoke. There have been numerous studies done that show that kids who grow up seeing adults smoking are more prone to smoke and become a smoker when they grow up as a teenager. One statistic showed that everyday in California there is 6,000 high school kids who start up smoking or at least try smoking. He said that they have done a couple of park clean-ups in the city of Banning back in August and they had many high school kids and youth help them and they visited a couple of the parks and they found a lot of cigarette butts even on the areas around the tot lots which should be smoke free. Obviously people are not adhering to the ordinance. He showed the cigarette butts that they collected and it is very unsightly and he knows that cleaning up is not an easy task so they believe with the passage of the ordinance it will definitely solve that issue. They also did a public opinion poll here in the city of Banning and visited the parks and according to the survey it was found that more than 70% of the people who were polled agreed that public places such as parks should be smoke free. A total of 43 people were polled at two different parks in Banning and at a community health center.

A young lady name Sherry, Cal State San Bernardino student, addressed the Council stating that she had a relative who died of a smoking related illness. She knows personally that smoking kills innocent people and it makes her very sad to know that her uncle passed away when he didn't have to. When a smoker lights up at a park it sends the wrong message to young children that it is okay to smoke when in fact smoking is never a positive thing. Children who are exposed to second hand smoke are two times likely to die of sudden infant death syndrome known as SIDS. Children exposed to second hand smoke are also likely to suffer from increase asthma attacks. She is asking the Council members to please consider the negative affects of smoking and adopt an ordinance to prohibit smoking in our community parks. We believe that smoke free parks will help protect our families, young children and the environment.

Mayor Salas seeing no one else come forward closed the item for public comments.

There was some further Council discussion in regards to this issue in regards to encouraging a healthy Banning, weighing in honestly on future agenda items, self-education on smoking, willingness to listen to information before making a decision, taking away people's rights, coming back with pros and cons on an issue to the Council before going forward with a formal ordinance for adoption, review reports from other cities on this issue, possibly trying this program at one or two parks in the city and educating the community.

Councilmember Machisic recommended that this item be tabled and that the Council get more information and additional options regarding this program. **There was Council consensus to this recommendation.**

REPORTS OF OFFICERS

1. Status Report on the One Stop Shop

City Manager said that this will be deferred to November 14th so that staff can give the Council something in writing prior to the meeting so that the Council can have some thoughts to be able to come to the meeting with after the Council sees it in writing.

ITEMS FOR FUTURE AGENDAS

New Items –

Councilmember Machisic said he spoke about this donation thing to various groups and he would like to see something organized based on some of the comments he made in regards to total amount of money, announcement in advance, budget development, and maximum amount. He said that also Councilmember Franklin at one time talked about the groups being composed of citizens of Banning as opposed to other groups outside the city.

Mayor Pro Tem Franklin would like something back regarding our visioning and mission for the City. She would like this to come back on the agenda for Council to review.

Mayor Salas said she wanted to clarify for the public and for the viewers at home that the discussion item that we just had in regards to smoking in the parks the Council tabled it because the Council wants to hear the feedback from the community. It is important that the Council listen and hear the concerns and what the people feel out in the community so they are not going to try to push anything. But that doesn't mean that they are not hearing the concerns or definitely not concerned about the public's health and safety because that is important.

Pending Items –

1. Schedule Meeting with the Beaumont City Council (*Salas – 11/27/07*) (*City Mgr.*)
2. Schedule Special Jt. Meetings with the City's Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) (*Franklin – 11/27/07*)
3. Review of Development Fees (*Hanna – 12/11/07*) (*Johnson*) (*ETA 12/10/08*)
4. Review of Ordinance regarding the selling of cars in shopping center parking lots (*Salas – 9/9/08*) (*Hansen*) (*ETA 11/14/08*)
5. Ordinance regarding smoke free parks (*Hanna – 8/12/08*) (*Nakamura*) (*ETA 10/28/08*)
6. Report on "One Stop Shop" (*Franklin – 8/12/08*) (*Hansen/Nakamura*) (*ETA 10/28/08*)
7. Bring back Riverside County Policy regarding animal rescue groups (*Salas*) (*Nakamura*) (*ETA 1/09*)
8. Report on "Request Partner" (*Hanna – 8/12/08*) (*Johnson/Nakamura*) (*ETA 11/14/08*)
9. Development of Bridge & Thoroughfare District to fund grade separation at Hargrave

- (Hanna – 8/12/08) (Burk/Nakamura) (ETA 1/09)*
10. Consideration of City Town Hall Meeting to hear what departments the City has and what kind of services the City offers. *(Franklin – 9/9/08) (Nakamura) (ETA 1/09)*
 11. Update on Naming of Streets for Community Members *(Franklin – 9/23/08) (Hansen/Nakamura) (ETA 1/09)*
 12. Discussion regarding contingency fee percentages *(Franklin – 9/23/08) (Johnson/Burk) (ETA 11/14/08)*
 13. Policy on Summer/Winter Breaks for Council Meetings *(Franklin – 9/23/08) (Nakamura) (ETA 11/14/08)*

FUTURE MEETINGS

1. November 14th (Fri.) – Special Council Meeting at 1:00 p.m.
(this is to replace the Nov. 11th and Nov. 25th Council Meetings)
2. December 4th (Thurs.) – State of the City at Casino Morongo Spa & Resort at Noon (Conference Center) *(Call 922-3100 to RSVP.)*
3. December 5th (Fri.) – 6:00 p.m. Special Jt. Council/CRA Meeting
(Swearing In of Council Members and Reorganization of Council and CRA)
4. December 10th (Wed.) – 6:30 p.m. – Special Council Meeting) (Special CRA Meeting at 5:30 (if needed) *(this would take the place of the meeting to be held on Tuesday, Dec. 9th)*

Councilmember Machisic would like these dates posted on Channel 10 because of all the changes in dates and times from our regular Tuesday date.

Mayor Salas announced the Signing Ceremony for the I-10 By Pass Road to be held on Friday, October 31st at 9 a.m. at the steps of City Hall. This signing will be done by the Morongo Band of Mission Indians, County of Riverside and City of Banning for the grant for \$1.7 million to take a look at an alternate route.

CLOSED SESSION

1. The City Council will meet in Closed Session pursuant to the provisions of Government Code Section 54956.9 to confer with legal counsel with regard to one matter of pending litigation – Schoen v. City of Banning.

City Attorney said that this matter will be deferred to the next City Council Meeting.

ADJOURNMENT

By common consent the meeting adjourned at 8:26 p.m.

Marie A. Calderon, City Clerk

THE ACTION MINUTES ARE A SUMMARY OF 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.

*Received 10/28/08
Council mtg.*

**LAW OFFICES OF
BENSON J. GOLDSTEIN**
Attorney at Law

5850 Canoga Avenue, Suite # 400
Woodland Hills, California 91367-6554
Bus: (818) 710-3860 Fax: (951) 769-6760

428 Sandpiper Street
Banning , California, 92220
(951) 769-6760

October 28, 2008

To : City Council
City of Banning, Ca.
99 East Ramsey Street
Banning, Ca., 92220

Att : Mayor Brenda Salas

re : Informal Petition with signatures against
Liberty Energy's Sewage Sludge Plant

Dear Council Members:

This office and the undersigned represent the interests of the entity known as Citizens Against Toxic Sludge.

Attached hereto is a Petition, albeit informal , signed by a small portion of the registered voters who reside in Banning, and in particular who live just on the north side of Sun Lakes (the smaller side) . The south side of Sun Lakes has approximately 10 times the number of registered voters as does the north side .

As you can see it consists of 10 pages of signatures, which predominantly represents residences who have not yet appeared before you to voice their opposition to the Liberty Energy Sewage Sludge Plant, and the burning of sewage sludge in the City of Banning. Thus would you kindly allow this letter and the copy of the 10 pages of signatures to symbolize the marching of each and every one of these registered voters in here today, to individually and independently voice such an opinion.

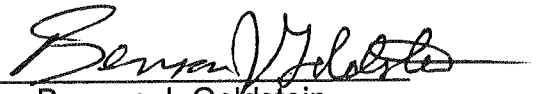
I have the original of all such signatures if any of the city council members would like to view them.

Meanwhile, we are moving forward with the formal Measure and Petition against the burning of sewage sludge in Banning, California.

This letter is just to let you know how truly opposed the people of Banning are, to what the City Council members of Banning have been entertaining now for over 2 years.

Banning City Council
October 28, 2008
Page 2

Very Truly Your,
Law Office of Benson Goldstein

By : 
Benson J. Goldstein
Attorney At Law for
Citizens Against Toxic
Sludge

LRG: t

PETITION

That we are duly registered voters , who reside in Banning, California, and do hereby sign this petition to advise the Banning City Counsel that we are against the construction of a Sewage Sludge Plant in the city of Banning, and that we are also against the burning of sewage sludge by incineration, or any other means, in the city of Banning, California.:

SIGNATURE

PRINTED NAME

BANNING ADDRESS

- 1) Paul A Goldstein PAUL A GOLDSTEIN 4767 SALEM CIR
- 2) Paul W. Gluchski PAUL W. GLUCHESKI 4831 SALEM CIR.
- 3) Carol Gluchski CAROL GLUCHESKI 4831 SALEM CIR.
- 4) Gerda Bauersfeld GERDA BAUERSFELD 554 NORTHWOOD AVE
- 5) Alfred Roehler ALFRED ROEHLER 627 BROOKLAWN DRIVE
- 6) Frank Morgan FRANK MORGAN 4773 SKYVIEW CIR
- 7) Leon Brock LEON BROCK 54725 SKYVIEW CA
- 8) Bonnie Schultz BONNIE SCHULTZ 4748 SKYVIEW CIR
- 9) Gary Napp GARY NAPP 612 Brooklawn Dr.
- 10) Joni Rhodes JONI RHODES 1510 Cellin Lane
- 11) Adriane Broughton ADRIANE BROUGHTON 4953 Rallery Hills
- 12) Mary Jacewicz MARY JACEWICZ 375 NORTHWOOD
- 13) Suzi Westphal SUZI WESTPHAL 6168 Solana Way
- 14) Barbara Shova BARBARA SHOVA 405 BROOKLAWN DR.
- 15) Joann Thoresen JOANN THORESEN 4988 Rio Bravo Dr.
- 16) Jan Gerling JAN GERLING 4848 Oakhurst Ave.
- 17) Pauline Florina PAULINE FLORINA 1806 Pine Valley Rd

Exhibit "A"

18

reg.mtg.-10/28/08

PETITION

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SIGNATURE	PRINTED NAME	BANNING ADDRESS
1) <u>Nancy A. Hohn</u>	Nancy A. Hohn	429 Indian Shule Rd. 897 OAKLAND HILLS, BANNING
2) <u>Laura Sagge</u>	Laura Sagge	6022 N. 1st St. Banning
3) <u>Jody Vitek</u>	Jody Vitek	6101 Spanish Trail Banning
4) <u>Evelyn D Foster</u>	EVELYN D FOSTER	5062 RIVIERA AVE BANNING
5) <u>Jack Davis</u>	Jack Davis	5038 RIVIERA -
6) <u>Margaret Wagner</u>	MARGARET WAGNER	5099 Riviera
7) <u>Joann Walters</u>	Joann Walters	567 Northwood Ave
8) <u>Treacy</u>	TREACY	482 NORTHWOOD
9) <u>Victor J. Barich</u>	VICTOR J. BARICH	4920 OAKHURST AVE BANNING
10) <u>Helen M. Barich</u>	Helen M. Barich	4920 Oakhurst Ave Banning
11) <u>Leroy Waugaman & Dorothy Waugaman</u>	Leroy Waugaman & Dorothy Waugaman	1333 Allin Lane Banning
12) <u>Bill Ottaviano</u>	Bill Ottaviano	1625 Fairway Oaks Ave
13) <u>Barbara Wills</u>	Barbara Wills	4896 Oakhurst Banning
14) <u>Joe Emma</u>	Joe Emma	519 Brookview Ave
15) <u>Margaret Ottaviano</u>	Margaret Ottaviano	1625 Fairway Oaks
16) <u>Margaret A. Lynbrook</u>	Margaret A. Lynbrook	1080 Oakland Hills
17) <u>Susan Arnold</u>	Susan Arnold	5062 Rolling Hills Ave.
18) <u>Edward Miller</u>	Edward Miller	5088 Brookview Ave

PETITION

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<u>SIGNATURE</u>	<u>PRINTED NAME</u>	<u>BANNING ADDRESS</u>
1) <u>Julia Davis</u>	Jessica Davis	5088 Riviera
2) <u>June Brannen</u>	June Brannen	440 Brooklawn Dr.
3) <u>Ernest E. Triplett</u>	ERNEST E. TRIPLETT	4794 SALEM CIR.
4) <u>Gaynell Matzaganian</u>	GYNEW MATZAGANIAN	1805 Fairway Oaks Ave.
5) <u>Patricia E. Malberg</u>	PATRICIA E. MALBERG	5972 INDIAN CANYON DR
6) <u>Kenneth E. Malberg</u>	Kenneth E. Malberg	5972 Indian Canyon Dr.
7) <u>Charles A. Magg</u>	CHARLES MAGG	1071 S. RIVIERA AVE.
8) <u>Theresa M. Brown</u>	Theresa M. Brown	1586 Altin Ln
9) <u>Brenda Sorenson</u>	BRENDA SOREXSON	4987 SINGING HILLS DR.
10) <u>Donald G. Maraska</u>	DONALD G. MARASKA	5922 GULLANE CT
11) <u>Irene E. Doyle</u>	IRENE E. DOYLE	1192 S. BAY HILL RD
12) <u>Mary Maraska</u>	Marsena Maraska	5922 Gullane Ct.
13) <u>Raymond H. Hite</u>	Raymond H. Hite	2408 Wai Lea Beach Dr.
14) <u>Kenneth E. H. Richards</u>	KENNETH E. H. RICHARDS	1439 HAIG POINT CIRCLE
15) <u>Jackie Richards</u>	Jackie Richards	1439 Naig Pt. Cir. S.E.
16) <u>Laurel Hickok</u>	LAUREL HICOK	5220 SAVANNAH DR.
17) <u>Charles B. Katz</u>	CHARLES B. KATZ	1101 N. FIRST ST.
18) <u>Sherman B. Gallas</u>	Sherman B. Gallas	1308 Riviera Ave.

PETITION

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<u>SIGNATURE</u>	<u>PRINTED NAME</u>	<u>BANNING ADDRESS</u>
1) <u>E. Allred</u>	<u>E. Allred</u>	<u>384 Brooklawn</u>
2) <u>P. Laundreaux</u>	<u>P. Laundreaux</u>	<u>4975 Bermuda Lane</u>
3) <u>Karen Hill</u>	<u>Karen Hill</u>	<u>4944 Rolling Hills</u>
4) <u>Pat Chesnut</u>	<u>PAT CHESNUT</u>	<u>448 BROOKLAWN DR</u>
5) <u>Ron Chesnut</u>	<u>Ron Chesnut</u>	<u>448 Brooklawn Dr</u>
6) <u>Richard Daniels</u>	<u>RICHARD DANIELS</u>	<u>656 BROOKLAWN DR.</u>
7) <u>Nancy Troyer</u>	<u>Nancy Troyer</u>	<u>393 Brooklawn Dr</u>
8) <u>Mary Thielfeldt</u>	<u>Mary Thielfeldt</u>	<u>356 Brooklawn Dr</u>
9) <u>Karla Mason</u>	<u>KARLA MASON</u>	<u>299 Brooklawn Dr.</u>
10) <u>Mary Olson</u>	<u>MARY OLSON</u>	<u>4815 Salem Cir</u>
11) <u>Ronald Varieur</u>	<u>RONALD VARIOUR</u>	<u>404 SANDPIPER ST.</u>
12) <u>Doug Miser</u>	<u>DOUG MISER</u>	<u>445 Sandpiper</u>
13) <u>Linda Miser</u>	<u>LINDA MISER</u>	<u>445 Sandpiper</u>
14) <u>Robert L. Turgon</u>	<u>ROBERT L. TURGEON</u>	<u>453 SANDPIPER</u>
15) <u>Jean Swethand</u>	<u>Jean A. Swethand</u>	<u>453 Sandpiper</u>
16) <u>Elwood Catalano</u>	<u>ELWOOD CATALANO</u>	<u>4896 SILVERADO AVE</u>
17) <u>Patrick Moran</u>	<u>PATRICK MORAN</u>	<u>650 BROOKLAWN DR.</u>
18) <u>Terry Bailey</u>	<u>Terry Bailey</u>	<u>1424 Wye Way</u>

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	<u>SIGNATURE</u>	<u>PRINTED NAME</u>	<u>BANNING ADDRESS</u>
1)	<u>[Signature]</u>	<u>GARY NEER</u>	<u>612 Brookland Dr</u>
2)	<u>[Signature]</u>	<u>Patsy Bartley</u>	<u>3705 W Ramsey St #36</u>
3)	<u>[Signature]</u>	<u>DARLENE KENDOLPH</u>	<u>4884 Oakhurst Banning</u>
4)	<u>[Signature]</u>	<u>JOHN P. NETTEL</u>	<u>5643 TREVINO WY BANNING</u>
5)	<u>[Signature]</u>	<u>SALLY A NETTEL</u>	<u>5643 Trevino Dr. Banning</u>
6)	<u>[Signature]</u>	<u>DOANA BOING</u>	<u>784 Twin Hills Dr,</u>
7)	<u>[Signature]</u>	<u>Robert Bohon</u>	<u>784 + Twin Hills Bann</u>
8)	<u>[Signature]</u>	<u>JACK R. SNOW JR</u>	<u>5836 Happy Hollow Rd</u>
9)	<u>[Signature]</u>	<u>BETTY STARR</u>	<u>322 BROOKLAND DR.</u>
10)	<u>[Signature]</u>	<u>ELIZABETH L. MESSERER</u>	<u>2316 BIRDIE DR</u>
11)	<u>[Signature]</u>	<u>FLOYE RUTH PHILLIPS</u>	<u>495 NORTHWOOD AVE. 92226</u>
12)	<u>[Signature]</u>	<u>MARGUERITE PARMER</u>	<u>4956 ROLLING HILLS</u>
13)	<u>[Signature]</u>	<u>G.B. ALBERA</u>	<u>5004 ROLLING HILLS</u>
14)	<u>[Signature]</u>	<u>ERICK ALBERA</u>	<u>5004 ROLLING HILLS</u>
15)	<u>[Signature]</u>	<u>Jorge E. Antillon</u>	<u>681 Essex Dr</u>
16)	<u>[Signature]</u>	<u>Yvonne Adams</u>	<u>4896 Rolling Hills</u>
17)	<u>[Signature]</u>	<u>GARY L. PALMER</u>	<u>1084 Hoegen Ave</u>

Exhibit "A"

22

reg.mtg.-10/28/08

PETITION

That we are duly registered voters, who reside in Banning, California, and do hereby sign this petition to advise the Banning City Counsel that we are against the construction of a Sewage Sludge Plant in the city of Banning, and that we are also against the burning of sewage sludge by incineration, or any other means, in the city of Banning, California.:

<u>SIGNATURE</u>	<u>PRINTED NAME</u>	<u>BANNING ADDRESS</u>
1) <u>Ted Achrem</u>	<u>TED ACHREM</u>	<u>5801 SUN LAKES BLVD</u>
2) <u>Denise Abbott</u>	<u>DENISE ABBOTT</u>	<u>677 TWIN HILLS DR</u>
3) <u>John Rawle</u>	<u>JOHN RAWLE</u>	<u>614 NORTHWOOD AVE</u>
4) <u>Kay Rawle</u>	<u>Kay Rawle</u>	<u>614 Northwood Ave</u>
5) <u>Jim Abbott</u>	<u>JIM ABBOTT</u>	<u>677 TWIN HILLS DR</u>
6) <u>Joe Marenko</u>	<u>JOE MARENKO</u>	<u>1003 Magnolia Ave</u>
7) <u>Lisa Koebel</u>	<u>LISA KOEBEL</u>	<u>2389 BIRDIE BROWNE</u>
8) <u>Kathryn Farris</u>	<u>KATHRYN FARRIS</u>	<u>3800 W WILSON AVE</u>
9) <u>Linda Goldstein</u>	<u>LINDA GOLDSTEIN</u>	<u>428 SANDPIPER TRAIL</u>
10) <u>Benson J. Golosovoi</u>	<u>BENSON J. GOLOSOVOI</u>	<u>428 Sandpiper Street</u>
11) <u>Allen L. Hill</u>	<u>Allen L. Hill</u>	<u>4944 Rolling Hills Banning</u>
12) <u>Barbara Strona</u>	<u>BARBARA STRONA</u>	<u>340 BROOKLAWN DR</u>
13) <u>Mary Gardner</u>	<u>MARY GARDNER</u>	<u>5408 Pinehurst Dr</u>
14) <u>Janice L. Cave</u>	<u>JANICE L CAVE</u>	<u>519 Northwood Ave</u>
15) <u>Fran Kramarski</u>	<u>FRAN KRAMARSKI</u>	<u>1516 BOCA WEST AVE</u>
16) <u>Joe Kramarski</u>	<u>JOE KRAMARSKI</u>	<u>1516 BOCA WEST AVE</u>
17) <u>Al Natter</u>	<u>Al Natter</u>	<u>1501 Boca West</u>

PETITION

That we are duly registered voters , who reside in Banning, California, and do hereby sign this petition to advise the Banning City Counsel that we are against the construction of a Sewage Sludge Plant in the city of Banning, and that we are also against the burning of sewage sludge by incineration, or any other means, in the city of Banning, California.:

<u>SIGNATURE</u>	<u>PRINTED NAME</u>	<u>BANNING ADDRESS</u>
1) <u>[Signature]</u>	<u>SUSAN CROSBY</u>	<u>429 SANDPIPER</u>
2) <u>[Signature]</u>	<u>Carol Spinden</u>	<u>298 Brooklawn</u>
3) <u>[Signature]</u>	<u>CK. PAPPADATO</u>	<u>434 NORTHWOOD AVE</u>
4) <u>[Signature]</u>	<u>EVA Pappadato</u>	<u>434 NORTHWOOD AVE.</u>
5) <u>[Signature]</u>	<u>RITA HOUSER</u>	<u>446 Northwood Ave.</u>
6) <u>[Signature]</u>	<u>Bob Houser</u>	<u>446 NORTHWOOD AVE</u>
7) <u>[Signature]</u>	<u>Linda S. SPaulding</u>	<u>286 Brooklawn Dr</u>
8) <u>[Signature]</u>	<u>Diane Vecchiione</u>	<u>422 Northwood Ave.</u>
9) <u>[Signature]</u>	<u>Patricia A Donatini</u>	<u>4908 Rolling Hills Ave</u>
10) <u>[Signature]</u>	<u>Timothy H Donatini</u>	<u>4908 Rolling Hills Ave</u>
11) <u>[Signature]</u>	<u>Richard Spaulding</u>	<u>286 Brooklawn Ave.</u>
12) <u>[Signature]</u>	<u>MAUREEN File</u>	<u>4824 Rolling Hills Ave.</u>
13) <u>[Signature]</u>	<u>JANE M. DANIELS</u>	<u>4893 Rolling Hills Ave</u>
14) <u>[Signature]</u>	<u>EVAN A. DANIELS</u>	<u>4893 Rolling Hills Ave</u>
15) <u>[Signature]</u>	<u>Lyla Wolden</u>	<u>398 Northwood</u>
16) <u>[Signature]</u>	<u>Dave Wolden</u>	<u>"</u>
17) <u>[Signature]</u>	<u>Shirley Majors</u>	<u>4767 Skyview Cr</u>

PETITION

That we are duly registered voters , who reside in Banning, California, and do hereby sign this petition to advise the Banning City Counsel that we are against the construction of a Sewage Sludge Plant in the city of Banning, and that we are also against the burning of sewage sludge by incineration, or any other means, in the city of Banning, California.:

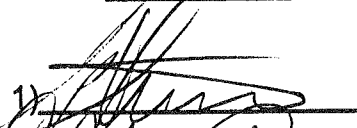
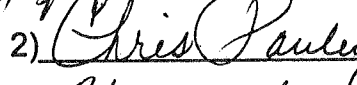
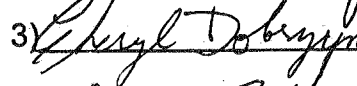
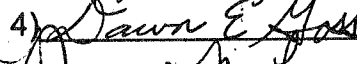
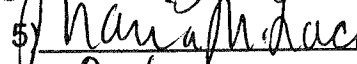
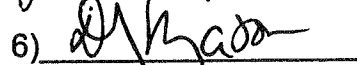







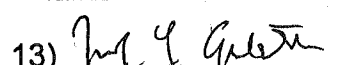



<u>SIGNATURE</u>	<u>PRINTED NAME</u>	<u>BANNING ADDRESS</u>
1) 	GEORGE STRAIN	440 SANDPIPER ST
2) 	CHRIS PAULEY	5016 Rolling Hills
3) 	CHERYL DOBZYNSKI	452 Sandpiper St.
4) 	DAWN E CROSS	543 Northwood
5) 	MARIA M. LUCICH	413 Sandpiper St.
6) 	DOLores MASON	299 Brookland Dr
7) 	ARLENE D. VELLA	281 BROOKHAWN DR
8) 	Ernie Manalo	481 Sandpiper Street
9) 	VIRGINIA MANALO	481 Sandpiper
10) 	ERIC MANALO	481 Sandpiper St
11) 	GINA MANALO	481 SANDPIPER ST.
12) 	Norma Gastello	512 Sandpiper St.
13) 	FRANK GASTELLO	512 SANDPIPER ST.
14) 	EDWARD J. GORDON	4869 ROLLING HILLS Ave
15) 	LYNN L. CLARKE	4869 ROLLING HILLS
16) 	MARGARET RUMPH	392 Sandpiper St
17) 	GEORGE RUMPH	392 SANDPIPER ST

Exhibit "A"

25

reg.mtg.-10/28/08

PETITION

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<u>SIGNATURE</u>	<u>PRINTED NAME</u>	<u>BANNING ADDRESS</u>
1) <u>Carol Sherman</u>	<u>CAROL SHERMAN</u>	<u>505 SANDPIPER ST</u>
2) <u>Robert Fabrizio</u>	<u>ROBERT FABRIZIO</u>	<u>529 SANDPIPER ST</u>
3) <u>Trudy Fabrizio</u>	<u>TRUDY FABRIZIO</u>	<u>529 Sandpiper</u>
4) <u>Ronald A. Janu</u>	<u>RONALD A. JANU</u>	<u>524 Sandpiper ST</u>
5) <u>Sarah A. Janu</u>	<u>SARAH A. JANU</u>	<u>524 Sandpiper St.</u>
6) <u>Effie</u>	<u>EFFIE</u>	<u>662 Torrey Pines Rd</u>
7) <u>Carol White</u>	<u>CAROL WHITE</u>	<u>663 Torrey Pines</u>
8) <u>Carol White</u>	<u>CAROL WHITE</u>	<u>4598 Forest Oaks</u>
9) <u>Ron Kroch</u>	<u>RON KROCH</u>	<u>553 SANDPIPER</u>
10) <u>Bev Kroch</u>	<u>BEV KROCH</u>	<u>553 SANDPIPER</u>
11) <u>Ken Kropf</u>	<u>KEN KROPSAK</u>	<u>505 SANDPIPER ST</u>
12) <u>Shirley Jones</u>	<u>SHIRLEY JONES</u>	<u>4809 MEHLHORN CIR</u>
13) <u>Nancy Pollack</u>	<u>NANCY POLLACEK</u>	<u>241 SANDPIPER ST.</u>
14) <u>Maria Petrie</u>	<u>MARIA PETRIE</u>	<u>405 Sandpiper St.</u>
15) <u>Jon L. Petrie</u>	<u>JON L. PETRIE</u>	<u>405 Sandpiper St.</u>
16) <u>Joyce Sanden</u>	<u>4357 Joyce Sanden</u>	<u>437 Sandpiper St.</u>
17) <u>Lynda Hattell Perry</u>	<u>5443 Chrissy Way</u>	<u>Lynda Hattell Perry</u>

Exhibit "A"

26

reg.mtg.-10/28/08

PETITION

That we are duly registered voters , who reside in Banning, California, and do hereby sign this petition to advise the Banning City Counsel that we are against the construction of a Sewage Sludge Plant in the city of Banning, and that we are also against the burning of sewage sludge by incineration, or any other means, in the city of Banning, California.:

<u>SIGNATURE</u>	<u>PRINTED NAME</u>	<u>BANNING ADDRESS</u>
1) <u>Iva Berge</u>	<u>IVA BERGE</u>	<u>304 BROOKLAWN DR.</u>
2) <u>Deborah Webster</u>	<u>Deborah Webster</u>	<u>304 Brooklawn Dr.</u>
3) <u>Carolyn Peck</u>	<u>CAROLYN PECK</u>	<u>590 NORTHWOOD, BANNING</u>
4) <u>Richard Peck</u>	<u>RICHARD PECK</u>	<u>590 NORTHWOOD, BANNING</u>
5) <u>Virginia Murky</u>	<u>VIRGINIA MURKY</u>	<u>471 BROOKLAWN, BANNING</u>
6) <u>Leonard Murky</u>	<u>LEONARD MURKY</u>	<u>471 BROOKLAWN, BANNING</u>
7) <u>Jim Joswick</u>	<u>JIM JOSWICK</u>	<u>434 Brooklawn Dr.</u>
8) <u>Richard Joswick</u>	<u>RICHARD JOSWICK</u>	<u>434 Brooklawn Dr. Banning</u>
9) <u>Ruth Burge</u>	<u>RUTH BURGE</u>	<u>4920 ROLLING HILLS BANNING</u>
10) <u>Pamela Norton</u>	<u>Pamela J. Norton</u>	<u>5037 Rolling Hills Ave, Banning</u>
11) <u>Elloise Blackwell</u>	<u>ELLOISE BLACKWELL</u>	<u>3446 BROOKLAWN Banning</u>
12) <u>Adele Hathaway</u>	<u>ADELE HATHAWAY</u>	<u>1862 FAIRWAY OAKS AVE.</u>
13) <u>Connie Heredia</u>	<u>CONNIE HEREDIA</u>	<u>1943 FAIRWAY OAKS AVE Banning</u>
14) _____	_____	_____
15) _____	_____	_____
16) _____	_____	_____
17) _____	_____	_____

*Received 10/28/08
Council mtg.*

I am Edward Miller, and as I have said at previous Council meetings, I have a Doctorate in Engineering Science, and have over 30 years experience in consulting, research and teaching in the areas of power plant design, pollution analysis and alternate energy sources. have over 50 refereed publications in technical journals. My natural inclination is to be receptive to proposals for electrical energy generation. However, as I have said before, I have read the EIR prepared for the Liberty project carefully, and the data in that report clearly indicates that this proposed plant has multiple dangerous consequences for Banning.

It should be obvious that if the balance between undesirable pollution and income were in favor of the plant, then L.A. and Orange County would build such plants, instead of paying to have their sludge transported out.

~~All the data I refer to is in the EIR.~~ The EIR for the Liberty energy plant states that the plant will import 1 3/4 billion pounds of sludge and other waste into Banning each year, will

produce 600,000 lb of pollutants per year, will require 1 1/2 million gallons of well water per day, will require 4 million pounds of dangerous ammonia to be brought into this city per year , will produce pollution so great that 165 surrounding acres would need be rezoned to forbid residential development.

We have attempted to discuss these and other dangers to the city with the city council, and have been limited to 3 minute sound bites. Council member Franklin has told me that the council has been advised by the city attorney not to attend any of our presentations of these dangers.

I have three questions:

1.As a resident of Banning, I beleive I am entitled to know why the City council has been advised by the City attorney hat it is allowed to, and chooses to discuss at length this project with Liberty Energy, and should not attend presentations by Banning residents.

2. The letter of intent states "It is understood this letter will not form a binding contract or lease agreement between the parties."

Therefore no contract exists. The negotiations have been claimed to be placed on hold by Liberty energy, with the statement in the newspaper that "they hope to be back later" certainly indicating that the negotiations can be terminated at will, and that no legal binding contract exists. Since no contract exists, I wish to know why the City Attorney indicated at a previous meeting that the negotiations could not be stopped by the Council at this time if it so chooses.

3. I would like to know why the City Council has not taken greater efforts to inform the residents of Banning as to the details of this plan, considering its tremendous impact on the city. The statement that this project is on hold does not remove it from its importance to the future of this city.

City Council Mtg
10-28-08

From: Charlie Strang [thebravestgreek@earthlink.net]
Sent: Monday, October 13, 2008 8:59 PM
To: Marie Calderon
Subject: City Council correspondence

Dear Marie, will you please read the following message to the council tonight? Thank you,
Charlie

Dear Mayor and City Council members,

I am unable to attend your meeting tonight, so I am sending this correspondence in place
of a verbal statement.

I have closely observed the workings of our city government over the past 30 years and
have come to know many members of the council.

I would like to state very clearly for the record that Debbie Franklin has numerous fine
qualities which I admire.

First among them is honesty. Simply put, if Debbie says something happened, it did. I
have no doubt the events she described recently in her September 29, 2008 letter to the
City Manager occurred as stated by her.

I hope all members of our community will voice their support for this fine lady who has
served our community in many ways, always with dedication and integrity.

Thank you,

Charlie Strang

*City Council mtg
10-28-08*

To Whom It May Concern:

We are writing this email on behalf of our mom, Barbara Hanna. In a Sept. 29 letter to City Manager Brian Nakamura and the city's attorney, Debbie Franklin made some outrageous and outright false claims about our mom's character. This is an obvious low political tactic with aims to take away focus and discussion about the true matter at hand, the Liberty Energy plant.

There is a great disparity between feeling "threatened in a very aggressive manner" and racist behavior. Barbara in fact is not aggressive--she is clear, direct, and honest as thousands of residents of Banning who have met her can attest to. Our mom raised us to be active, caring people. So Ms. Franklin was not only shameful in her false statements about our mother but we believe she was thoughtless about their impact on the people who care about Barbara, and for that matter all people who care about Banning. We call upon Debbie Franklin to publicly revise her recent acrimonious statements--this is not how to build community spirit in Banning! We can disagree about policy without descending to rank manipulative comments.

We three children are all Banning High School graduates and we are proud of the multicultural ethos we learned from our parents and from growing up in Banning--it is not an opportunity that surrounding communities necessarily benefit from. Our mother has engaged in the wonderful, diverse life of Banning via helping form the Pass Area Boys and Girls Club, organizing Spanish language issues forums, supporting more activities for Youth, and working to bring more jobs to Banning. It would be a mistake for people to give any credence to Debbie Franklin's mean spirited and mistaken comments. Our mom is an open book. Find out for yourself by contacting her personally (and politely please!)

We couldn't be prouder of our mom's public spirit. She loves Banning and is working her utmost to make a better and better place for residents to live. We urge all who know her to support her publicly now.

Sincerely,
Michael Hanna
Caroline Sheldon
Judy Sheldon

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: October 14, 2008
TO: City Council
FROM: Ted Yarbrough, Fire Marshal/Emergency Services Coordinator
SUBJECT: Resolution 2008-110 Adopting a Disaster and Emergency Mutual Aid Agreement
between the City of Banning and the Morongo Band of Mission Indians

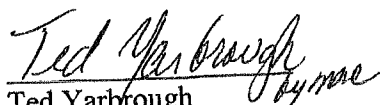
RECOMMENDATION: The City Council adopts Resolution No. 2008-110, "A Resolution of the City Council of Banning Adopting a Disaster and Emergency Mutual Aid Agreement between the City of Banning and The Morongo Band of Mission Indians."

JUSTIFICATION: During emergency situations, it may become necessary for neighboring communities to support one another to the extent possible. This agreement lays the foundation for the sharing of resources with the Morongo Band of Mission Indians (the Tribe) during such times. The federal government, through the National Incident Management System (NIMS), has mandated communities to establish mutual aid agreements with neighboring communities and local entities to help expedite the mitigation of damage caused by large or small events. Support for fire and law enforcement activities are supported through the "Master Mutual Aid Agreement" but nothing has been established to provide support for other City functions.

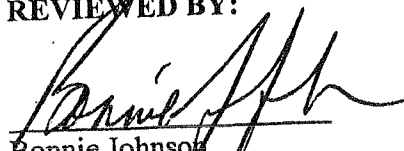
BACKGROUND: Early in 2007 the City's Emergency Services Coordinator (ESC) was asked by the Director of Emergency Services (DES) for the Tribe if the City would consider entering into a mutual aid agreement for the sharing of resources during emergency situations. The City's ESC then met with the City Manager and numerous department heads to discuss the agreement. Everyone agreed that this would be a positive step for the City. The draft agreement was reviewed and modified numerous times by City and Tribal staff before being finalized.

FISCAL DATA: Through this agreement, should the City require assistance from the Tribe, that assistance would be provided free of charge for the first 24 hours. After that period the Tribe would be reimbursed for their assistance as outlined in the agreement. Conversely, should the Tribe require assistance; the City would provide that assistance for the first 24 hours and would have to pay its employees for that period of time. The cost for assistance provided after the first 24 hours would be reimbursed to the City.

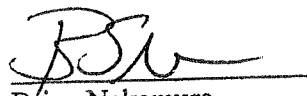
RECOMMENDED BY:


Ted Yarbrough
Fire Marshal/
Emergency Services Coor.

REVIEWED BY:


Bonnie Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

RESOLUTION NO. 2008-110

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, ADOPTING A DISASTER AND EMERGENCY MUTUAL AID
AGREEMENT BETWEEN THE CITY OF BANNING AND THE MORONGO
BAND OF MISSION INDIANS**

This Joint Resolution and Agreement (“Agreement”) is made and entered into by and between the City of Banning (“City”) and the Morongo Band of Mission Indians (“Tribe”) hereinafter collectively referred to as the “Parties”.

WHEREAS, the City is a municipal corporation incorporated in the State of California and located in the County of Riverside; and

WHEREAS, the Tribe is an Indian tribe recognized by the Secretary of the Interior as maintaining government-to-government relations with the United States and exercising governmental authority over the lands of the Morongo Indian Reservation (“Reservation”) in Riverside County, California; and

WHEREAS, the Parties respectively are responsible for the safety and health of their communities, continuity of government, public safety, and community recovery after disasters; and

WHEREAS, the Parties are subject to natural and man-made disasters, which could overwhelm their resources; and

WHEREAS, the Parties value the intergovernmental relationships and continuously seek to improve response and recovery capabilities following a disaster; and

WHEREAS, an informed, cooperative, coordinated response by all governments provides the most safe and immediate response and recovery to disasters and emergencies; and

WHEREAS, it is lawful and in the public interest that a mutual aid Agreement providing a method whereby the City and Tribe agree to voluntarily furnish available resources, equipment, and manpower, on an emergency basis, to each other should a natural or other disaster occur.

NOW, THEREFORE, based on the foregoing and for good and valuable consideration, the Parties agree to the following:

DEFINITIONS:

The following terms shall have the following meaning:

1. **Disaster:** shall mean any happening that causes great harm or damage likely to be beyond the control of the services, personnel, equipment, and facilities of either of

the Parties, requiring the combined forces of other levels of government or political subdivisions to combat.

2. **Emergency Situation:** shall mean the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within the jurisdiction of either of the Parties caused by such conditions as air pollution, fire, flood, storms, epidemic, riot, earthquake, or other conditions, including conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the Parties, requiring the combined forces of other political subdivisions to combat.
3. **Lending Entity:** shall mean the governmental agency (either the City of Banning or the Morongo Band of Mission Indians) that sends equipment, materials and/or personnel to assist the Requesting Entity during a Disaster or Emergency Situation.
4. **Requesting Entity:** shall mean the governmental agency (either the City of Banning or the Morongo Band of Mission Indians) that requests and receives equipment, materials, and/or personnel from the Lending Entity to assist during a Disaster or Emergency Situation.

PURPOSE:

The purpose of this Agreement is to provide a formal mechanism for intergovernmental cooperation and coordination between the City and the Tribe during disasters and emergency situations.

No provision of this Agreement shall be construed as relieving any Party hereto of any duty to respond to emergency situations in ways required by applicable laws of the United States, the State of California, and the constitution and bylaws of the Tribe.

SERVICES:

Whenever any Party to this Agreement suffers a Disaster or Emergency Situation which requires additional aid beyond that which either Party is able to provide for itself, it shall request help from the other Party to this Agreement through the City of Banning's Police Department Dispatch Center, Emergency Services Coordinator or the City Manager and the Tribe's Office of Emergency Services (OES). Each Party to this Agreement shall consider the request for aid and shall in its sole discretion determine what equipment, resources and manpower it can make available to the entity making the request.

The services that a Lending Entity may provide include, but are not necessarily limited to, trained and equipped emergency management, law enforcement, public works, and other City or Tribal resources, with the intent of making all resources available.

Nothing in this Agreement shall require a Lending Entity to commit or supply personnel, equipment and/or other resources the Lending Entity determines in its sole discretion to be necessary for the protection of its own community.

JOINT EMERGENCY OPERATION PLAN:

Upon Execution of this Agreement, the City's Emergency Coordinator and the Tribe's Office of Emergency Services (OES) shall prepare a Joint Emergency Operation Plan ("JEOP"). The JEOP shall state the particular personnel, equipment and/or services each Party can provide under this Agreement and shall provide a management and command structure, which will incorporate the National Incident Management System (NIMS) as recommended by the United States Department of Homeland Security (DHS) and the California Standardized Emergency Management System (SEMS). The JEOP shall also provide all current emergency contact information of both Parties as necessary for the execution of this Agreement. The Parties agree that the JEOP will be updated as necessary to maintain an effective emergency plan.

WORKERS COMPENSATION:

It is understood and agreed that any workers furnished to the Requesting Entity will be covered under Worker's Compensation by the Lending Entity and shall receive benefits for any injury or death that may occur under applicable Worker's Compensation Law.

LIABILITY:

Each of the Parties to this Agreement do hereby expressly waive all claims against every other Party for compensation for any loss, damage, personal injury, or death arising from the performance of this Agreement.

The City shall, with respect to all actions covered by or incidental to this Agreement, indemnify and hold harmless the Tribe from and against any and all claims, losses, liabilities, demands, damages or costs (including reasonable attorneys' fees and costs) made against the Tribe but only to the extent any such claim arises from the negligence or willful misconduct of the City or an individual or entity for which the City is legally liable including, but not limited to, officers, agents, employees, consultants or sub-contractors of the City. The Tribe shall, with respect to all actions covered by or incidental to this Agreement, indemnify and hold harmless the City from and against any and all claims, losses, liabilities, demands, damages or costs (including reasonable attorneys' fees and costs) made against the City but only to the extent any such claim arises from the negligence or willful misconduct of the Tribe or an individual or entity for which the Tribe is legally liable including, but not limited to, officers, agents, employees, consultants or sub-contractors of the Tribe.

INSURANCE:

(A) Each Party shall procure and maintain, at its own cost and expense during the period of this Agreement, comprehensive general liability insurance coverage, for its acts or omissions described herein in the following minimum amounts:

Bodily Injury (including death)	\$2,000,000.00
---------------------------------	----------------

Each person, each occurrence	\$2,000,000.00
Property Damage	\$2,000,000.00

- (B) Policies and certificates evidencing each Party's coverage shall be filed with the other Party, shall name the other Party as an additional insured, and shall be primary. Said policies or certificates shall provide thirty (30) days' written notice to the other Party prior to any material change, termination or cancellation.
- (C) The policy for same shall insure against all liability of the Party procuring insurance, its representatives, employees, invitee and agents arising from, or in connection with, each Party's acts or omissions in connection with this Agreement and shall insure performance by such Party of any of the hold-harmless provisions set forth herein.
- (D) The insurance required under this section shall be issued by either a reputable insurance company admitted to do business in California, in a form reasonably acceptable to the other Party, or through a joint powers agency, or similar entity, formed for the purpose of providing insurance to public entities.
- (E) The Parties recognize that insurance practices and requirements of a municipality may differ from that of private parties and may change from time to time. During any period of time in which the Parties, as regular practice do not maintain insurance but rather self-insure or participate in a Joint Powers Agreement with other governmental entities, the Parties may meet their insurance requirements under this Section in the same manner.

REQUEST FOR ASSISTANCE:

The City and Tribe will detail mutual aid requesting procedures in emergency operations plans that are approved from time to time by appropriate legislative authorities.

A Lending Entity shall be responsible for providing equipment that is properly inspected and maintained. A Lending Agency will provide operators for equipment as required. Operators shall have current licenses and/or certifications as required for the equipment they are operating.

COSTS AND PAYMENT:

A Lending Entity rendering aid to a Requesting Entity pursuant to this Agreement agrees to provide such aid at no charge for the first twenty-four (24) hours starting from the time personnel and/or equipment reports to a Requesting Entity.

The Parties agree that a Lending Entity shall receive payment for all services rendered under this Agreement beyond the first twenty-four (24) hours as follows:

1. For any employee provided by a Lending Entity, a Receiving Entity shall reimburse a Lending Entity at the employee's regular pay rate including employee benefits, plus overtime where applicable.
2. For any equipment provided by a Lending Entity, a Receiving Entity shall reimburse a Lending Entity per the current Federal Emergency Management

Association's Schedule of Equipment Rates plus twenty-five percent to account for cost of resources in California.

In addition to any charges a Lending Entity is entitled for services rendered under this Agreement, a Lending Entity shall be reimbursed by the Requesting Entity for any loss of, or damage to, any equipment incurred while rendering services under this Agreement in an amount not to exceed the cost of repair or replacement cost, whichever is the lesser amount. A Lending Agency shall also be entitled to reimbursement for the replacement of materials used while rendering services in the first twenty-four (24) hours under this Agreement in an amount not to exceed the actual cost of replacement.

A Lending Entity shall provide an invoice or billing statement to a Requesting Entity within forty-five (45) days of rendering any services under this Agreement. A Requesting Entity shall pay a Lending Entity the amount stated on an invoice or billing statement within thirty (30) days of its receipt, provided that no charges or costs are disputed. The Parties agree that a Requesting Entity shall be charged a penalty equal to the current interest rate of the Local Agency Investment Fund (LAIF) for failure to pay the amount stated on any invoice or billing statement within the thirty (30) day time period.

It is understood that both the City and the Tribe are responsible for their own submittal of claims for reimbursement of costs incurred under this Agreement for Stafford Act and other declared disasters. Reimbursement from the federal or other levels of government has no bearing on payments under this Agreement.

MISCELLANEOUS:

Agreement Review. The City (Emergency Services Coordinator) and Tribe (Director of Emergency Services) will meet at least once a year to review this Agreement.

Agreement Modification. Changes within the scope of this Agreement shall be made by the approval of the City and the Tribe.

EFFECT AND TERMINATION:

Effect. This Agreement shall remain in effect for five years from 30 days after the latest original signature.

Termination. Any Party to this Agreement may withdraw from the Agreement at any time and for any reason before the date of expiration by providing a ninety (90) day written notice to the other Party, as follows:

City Manager City of Banning Post Office Box 998 Banning, CA 92220	Finance Director City of Banning Post Office Box 998 Banning, CA 92220	Emergency Services Coordinator City of Banning Post Office Box 998 Banning, CA 92220
---	---	---

Chief Administrative Officer Morongo Band of Mission Indians 11581 Potrero Road Banning, CA 92220	Director, Office of Emergency Services Morongo Band of Mission Indians 11581 Potrero Road Banning, CA 92220
--	--

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning does hereby adopt the Mutual Aid agreement between the City of Banning and the Morongo Band of Mission Indians.

PASSED, APPROVED, AND ADOPTED this 28th day of October 2008.

Brenda Salas, Mayor
City of Banning

**APPROVED AS TO FORM
AND LEGAL CONTENT:**

Aleshire & Wyndler, LLP
City Attorney

ATTEST:

Marie A Calderon, City Clerk
City of Banning

CERTIFICATION

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2007-110 as duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 28th day of October 2008, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

**City Council Agenda
Consent Calendar**

DATE: November 14, 2008

TO: Honorable Mayor and City Council

FROM: Hoyl E. Belt, Human Resources Director

SUBJECT: Classification Plan Amendment


Recommendation: Adopt Resolution No. 2008-120 amending the City's Classification Plan to reflect the Addition of the classification of Community Services Director range 82 salary in accordance with a reorganization plan to move the Transit Department from Finance to Community Services.

Justification: The City approved the City of Banning Classification and Compensation Plan on January 25, 2005. The plan has since been amended. Most recently on May 27, 2008. Maintenance of this plan is a dynamic process in which Human Resources works with operating departments to develop classifications which reflect the current needs of the department in their departments in their efforts to deliver quality services to residents. City Personnel Rules require that the City Council approve all changes to the City's Classification Plan. Council approval of this Recommendation will meet the City's goal to provide top quality and reliable service to both internal and external Customers.


Background: Currently the Transit Manager reports to the Finance Director. However the Office of the Transit Manager is located at the Community Center. After consulting with all parties it is a consensus that the Transit Department be moved from the Finance Department to that of the Community Center. Prior to September 2006, Transit was under the Community Services Director.

Fiscal Data: The above classification change result in the following budgetary impacts: Total increase of approximately \$11,500.00 (\$8833 salary plus benefits). The increase wages will be covered by the transit grant and may next year (in 2010) result in a General Fund savings.


Recommended By:


Hoyl E. Belt
Human Resources Director

Reviewed By:


Bonnie J. Johnson
Finance Director

Approved By:


Brian S. Nakamura
City Manager

RESOLUTION 2008-120

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
RESCINDING RESOLUTION NO. 2008 - 61 TO AMEND THE CLASSIFICATION &
COMPENSATION PLAN FOR THE CITY OF BANNING

WHEREAS, it is necessary to amend the City's Classification Plan from time to time to maintain a current plan which reflects the nature of work, organizational structure, or otherwise;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1:

The City Council adopts as its official Classification Plan the attached Schedule "A" setting forth all classifications of the City and their corresponding salary ranges.

PASSED, APPROVED, AND ADOPTED this 14th day of November, 2008.

Brenda Salas, Mayor
City of Banning, California

APPROVED AS TO FORM AND
LEGAL CONTENT

David Aleshire, Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon,
City Clerk of the City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2008-120 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of November, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

CITY OF BANNING
CLASSIFICATION & COMPENSATION PLAN
 REVISED NOVEMBER 14, 2008
 RESOLUTION NO. 2008-120
 (AMENDING RESOLUTION NO. 2008-61)

MATRIX BY CLASS SERIES/JOB CODE

Class Series/Occupational Job Group	Job Code	Classification/Position	Salary Range	Bargaining Unit
1000 – CITY ADMINISTRATION SERIES				
City Administration Group	1010	City Manager	109	Council Contract
	1005	Assistant City Manager	97	Contract
Financial Services Group	1020	City Clerk/City Manager Secretary	55	Elected
	1110	Finance Director/Assistant City Manager	97	Contract
	1130	Financial Services Specialist	45	IBEW-G
	1150	Accounting Manager	73	Mgmt/Conf
	1140	Accountant	52	General
	1160	Purchasing Manager	73	CBAM
	1165	Buyer	52	General
Human Resources Group	1210	Human Resources Director	88	Contract
	1220	Human Resources Analyst	60	Mgmt/Conf
	1225	Senior Human Resources Analyst (Recruitment & Benefit Manager)	68	Mgmt/Conf
	1240	Risk Management Analyst	60	CBAM
	1230	Human Resources Technician	52	Conf/Gen
Utility Billing Group	1310	Customer Services Manager	67	CBAM
	1340	Sr. Utility Billing Rep	46	IBEW-G
Information/Cable Systems Group	1350	Utility Billing Representative	41	IBEW-G
	1405	Information Technology Manager	73	CBAM
	1410	Information Technology Coordinator	57	IBEW-G
	1416	Police Information Technology Technician	57	IBEW-G
	1415	Info Technology/Media Technician	55	IBEW-G
	1510	Cable Services Specialist	42	IBEW-G
Office Support Group	1610	Executive Secretary	51	IBEW-G
	1620	Office Specialist	42	IBEW-G
	1630	Receptionist	29	IBEW-G

2000 – POLICE SERIES

Police Group	2010	Police Chief	96	Contract
	2015	Deputy Police Chief	86	Police Mgmt/Conf
	2025	Police Lieutenant	82	Police Mgmt/Conf
	2030A	Police Staff/Master Sergeant	75	POA
	2030	Police Sergeant	68	POA
	2050	Police Officer	64	POA
	2060	Police Recruit/Trainee	N/A	At-Will
Police Support Group	2143	Lead Public Safety Dispatcher	54	IBEW-G
	2110	Public Safety Dispatcher	50	IBEW-G
	2120	Property & Evidence Specialist	48	POA
	2130	Community Services Officer	42	POA
	2140	Lead Police Records Specialist	43	IBEW-G
	2141	Police Records Assistant	31	IBEW-G

3000-COMMUNITY DEVELOPMENT SERIES

Community Development Group	3010	Community Development Director	88	Contract
	3021	Planning Engineer	72	CBAM
	3050	Senior Planner	75	CBAM
	3020	Associate Planner	64	CBAM
	3015	Assistant Planner	59	CBAM
	3026	Development Project Coordinator	56	IBEW-G
	3025	Planning Technician	54	IBEW-G
Economic/Redevelopment Group	3116	Redevelopment Manager	81	CBAM
	3103	Economic/Redevelopment Project Coordinator	56	IBEW-G
Development Services Group	3210	Development Services Manager (Building Official)	80	CBAM
	3215	Senior Building Inspector	65	IBEW-G
	3220	Building Inspector	60	IBEW-G
	3235	Senior Code Compliance Officer	59	IBEW-G
	3230	Code Compliance Officer	56	IBEW-G
	3240	Building Permit Specialist	53	IBEW-G

3300-COMMUNITY SERVICES GROUP

Community Services Group	3310	Community Services Director	82	Contract
	3325	Recreation Coordinator	49	IBEW-G
	3350	Lead Bus Driver/Trainer	53	IBEW-G
	3340	Bus Driver	45	IBEW-G

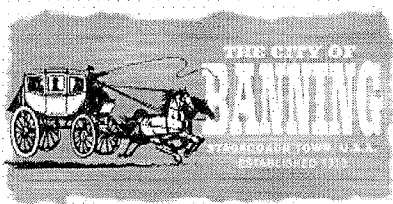
4000-PUBLIC WORKS SERIES

Public Works Management Group	4010	Public Works Director	88	Contract
Streets/Parks Group	4210	Public Works Superintendent	77	CBAM
	4220	Streets/Parks Maintenance Manager	64	CBAM
	4230	Work Release Crew Leader	45	IBEW-G
	4240	Sr. Maintenance Worker	48	IBEW-G
	4250	Maintenance Worker	43	IBEW-G
	4260	Motor Sweeper Operator	48	IBEW-G
Engineering Group	4300	City Engineer	81	CBAM
	4350	Senior Civil Engineer (Water/Wastewater)	78	CBAM
	4320	Associate Civil Engineer	72	CBAM
	4325	Assistant Civil Engineer	64	CBAM
	4330	Public Works Inspector	60	IBEW-G
	4340	Engineering Services Assistant	46	IBEW-G
General Maintenance and Support Group	4410	Fleet Maintenance Manager	71	CBAM
	4425	Lead Fleet Maintenance Mechanic	54	IBEW-G
	4420	Fleet Maintenance Mechanic	51	IBEW-G
	4430	Building Maintenance Specialist	47	IBEW-G
	4440	Custodian	32	IBEW-G
	4450	Warehouse Services Specialist	50	IBEW-G

4100 PUBLIC UTILITIES SERIES

	4109	Director of Public Utilities	96	Contract
Water/Wastewater Group	4110	Assistant Water/Wastewater Director	81	CBAM
	4115	Water/Wastewater Superintendent	77	CBAM
	4120	Assistant Water Superintendent	65	IBEW-U
	4130	Water Crew Supervisor (Distribution Specialist)	58	IBEW-U
	4140	Water Services Worker	50	IBEW-U
	4145	Wastewater Collection System Technician	50	IBEW-U
	4150	Wastewater Collection System Specialist	52	IBEW-U
	4160	Water Crew Supervisor (Production Specialist)	58	IBEW-U
	4132	Water Valve Flushing Crew Lead	54	IBEW-U
	4133	Water Construction Crew Lead	54	IBEW-U
	4131	Water Meter Crew Lead	54	IBEW-U
	4155	Wastewater Collection System Supervisor	58	IBEW-U

Electric Services & Operations Group	5015	Electrical Systems Engineer	86	CBAM
	5021	Power Contracts & Revenue Administrator	81	CBAM
	5031	Sr. Electric Service Planner	77	IBEW-U
	5030	Electric Service Planner	75	IBEW-U
	5045	AutoCAD/GIS Technician	66	IBEW-U
	5050	Public Benefits Coordinator	53	IBEW-U
	5055	Utility Services Assistant	46	IBEW-U
	5110	Electric Operations & Maintenance Manager	81	CBAM
	5120	Powerline Crew Supervisor	77	IBEW-U
	5130	Powerline Technician	73	IBEW-U
	5140	Powerline Apprentice	65 / 71	IBEW-U
	5150	Electric Services Worker	50	IBEW-U
	1325	Field Service Representative	49	IBEW-U
	5160	Electric Meter Test Technician	73	IBEW-U
	5170	Apprentice Electric Meter Test Technician	65 / 71	IBEW-U



CITY OF BANNING, CALIFORNIA

Community Services Director

Job Code: 3310

FLSA ☒ Exempt ☐ Non-Exempt

JOB DEFINITION: Under policy direction, directs, oversees, plans, organizes and administers the transit, park development and recreation community services functions for the City.

ESSENTIAL FUNCTIONS: *The following duties ARE NOT intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Directs and manages transit, park development and recreation and the senior citizen community center services. Ensures the City offers a wide variety of activities to citizens. Develops budget and monitors expenditures. Administers City park bond funds. Works with contractors to develop parks and facilities for community services.

Manages the transit operations including Dial-A-Ride services. Coordinates necessary service plans for City buses and vans used for public transit. Responsible for City-wide special event application process. Works with other community organizations to offer special events.

Oversees, monitors and directs office operations of assigned staff. Priorities and assigns special projects. Interviews prospective employees. Hires and/or recommends hiring. Develops, identifies and implements new employee and on-going staff training. Assigns, tracks and reviews work assignments and progress. Reviews and approves the formal performance evaluation of assigned department staff. Develops and implements disciplinary actions for assigned staff.

Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

- Knowledge of applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of management and/or supervision principles.
- Knowledge of special needs and social issues related to senior populations.
- Knowledge of park development principles.
- Knowledge of recreation planning concepts.
- Skill in reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in assessing, analyzing, identifying and implementing solutions to complex problems.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.
- Skill in operating a personal computer utilizing a variety of software applications.

(continued on reverse side)

CITY OF BANNING, CALIFORNIA

Community Services Director

Job Code: 3310

MINIMUM QUALIFICATIONS: A Bachelor's degree in Recreation, Social Services or related field **AND** ten (10) years of community services experience that includes three (3) years of management and/or supervision.

ADDITIONAL REQUIREMENTS: Must have at the time of application and must maintain certification as a Certified Pool Operator (CPO) and Certified Playground Safety Inspector. Must have at the time of application and must maintain a California driver license. May be required to work outside the traditional work schedule.

**CITY COUNCIL
CONSENT ITEM**

DATE: November 14, 2008

TO: Honorable Mayor and City Council

FROM:  Matthew Bassi, Interim Community Development Director

Subject: City Council Resolution No. 2008-121:
City Council Review of an Agreement for the Deferral of Development Impact Fees between the City of Banning and CA KABIR, INC., for the Holiday Inn Express Hotel Located at 3020 W. Ramsey Street.

RECOMMENDATION:

That the City Council adopt Resolution No. 2008-121 (Attachment 1) authorizing an Agreement between the City of Banning and CA KABIR, Inc. for the deferral of Development Impact Fees for the Holiday Inn Express hotel project.

BACKGROUND:

On February 20, 2007, the Planning Commission approved Conditional Use Permit No. 06-807 and Design Review No. 06-7016 for the development of a 39,250 square-foot (3 stories), 70-unit Holiday Inn Express hotel in the Highway Serving Commercial (HSC) zone district.

On June 3, 2008, the Community Development Department issued building permits for the project, and over the past five (5) months regular site/building inspections have been taking place. Construction of the hotel is nearly complete and the applicant is estimating that by the end of December 2008 the hotel will be ready for occupancy.

ANALYSIS:

In accordance with Council Resolution No. 2008-58 (approved May 27, 2008), the Development Impact Fees for the Holiday Inn Express hotel project were automatically deferred until the issuance of a Certificate of Occupancy. However, in a letter dated October 30, 2008 (Attachment 2), the applicant (Raj Bhakta – Holiday Inn Express) requested deferral of the Development Impact Fees beyond the issuance of a Certificate of Occupancy. The letter indicates that the applicant is facing many hardships and incurring overwhelming construction costs.

In evaluating the applicant's request, staff believes that it would be to the city's benefit to defer payment of the Development Impact Fees beyond the issuance of a Certificate of Occupancy permit provided there is adequate security to ensure future payment of the fees. The City

Council approved a similar request a few months ago for the La Quinta Inn & Suites hotel (May 13, 2008). Where a project involves significant capital investment, is located in a redevelopment area and will serve to either encourage further development of an area where development has been stagnant or where the project will provide a needed service, the City Council may find that the project qualifies to have payment of the Development Impact Fees deferred beyond a Certificate of Occupancy.

Staff has prepared a draft deferral agreement for Council consideration (Exhibit 1 of Attachment 1). The agreement will basically defer payment of the Development Impact Fees for a two (2) year period, at which time interest will begin to accrue for the remaining six (6) year period. As further evidence of CA KABIR, INC., obligation to pay the Development Impact Fees, they will execute a Promissory Note which will be secured by a Deed of Trust recorded against the property.

Staff believes the project is considered eligible for participation in the deferral of Development Impact Fees because it is located in a redevelopment area, provides a need to local and area residents and will serve to encourage further development in an area where development has been stagnant or slow in improving.

FISCAL DATA:

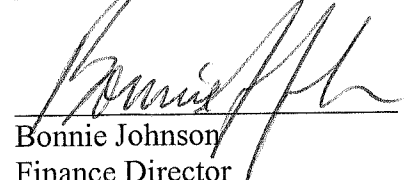
The total Development Impact Fees required for the Holiday Inn Express hotel project is **\$447,006.12**. This will be the total amount subject to deferral under the provision of the Agreement.

RECOMMENDED BY:



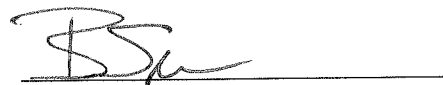
Matthew C. Bassi
Interim Community Development Director

REVIEWED BY



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

ATTACHMENTS:

1. City Council Resolution No. 2008-121
Exhibit 1 - Draft Deferral Agreement with CA Kabir, Inc.
 - Attachment 1 - Legal Description
 - Attachment 2 - Deed of Trust
 - Attachment 3 - Promissory Note
2. Correspondence Letter from Raj Bhakta (dated October 30, 2008)

G:\538-340-005 Holiday Inn Express\CC Staff Report 11-14-08.doc

ATTACHMENT 1
COUNCIL RESOLUTION 2008-121

RESOLUTION NO. 2008-121

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AN AGREEMENT WITH CA KABIR, INC. FOR THE DEFERRAL OF DEVELOPMENT IMPACT FEES IN THE AMOUNT OF \$447,006.12 ASSOCIATED WITH THE DEVELOPMENT OF THE HOLIDAY INN EXPRESS HOTEL LOCATED AT 3020 WEST RAMSEY STREET (APN: 538-340-005)

WHEREAS, CA KABIR, INC., has proposed the development of the Holiday Inn Express hotel comprised of a 70-unit hotel that is 39,250 square feet in size (3 story building) in the Highway Serving Commercial (HSC) zone district within the City's Redevelopment Project Area located at 3020 West Ramsey Street (APN 538-340-005); and

WHEREAS, development of such a facility is consistent with the mission of the City of Banning Strategies for Economic Development to strengthen and expand the City's overall economic base; and

WHEREAS, CA KABIR, INC., will construct the referenced hotel facility in compliance with the approved development plans.

NOW THEREFORE, the City Council of the City of Banning does hereby resolve, determine and order as follows:

SECTION 1. The City of Banning and CA KABIR, INC., enter into a Deferral Agreement for the deferral of Development Impact Fees in the amount of \$447,006.12 per the terms and conditions of the Deferral Agreement incorporated herein as Exhibit 1.

SECTION 2. Authorizes the City Manager to execute the Deferral Agreement with CA KABIR, INC., substantially in the form attached hereby and included as Exhibit 1 by this reference made part hereto.

SECTION 3. If such agreement is not executed by both parties and recorded by January 14, 2009, such authorization shall become void and of no effect.

PASSED, APPROVED AND ADOPTED this 14th day of November, 2008.

Brenda Salas, Mayor
City of Banning

**APPROVED AS TO FORM AND
LEGAL CONTENT:**

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP
City of Banning, California

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-121, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of November, 2008 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

EXHIBIT 1

DRAFT DEFERRAL AGREEMENT WITH CA KABIR, INC.

**AGREEMENT FOR THE DEFERRAL OF THE
PAYMENT OF DEVELOPMENT IMPACT
FEES FOR THE HOLIDAY INN EXPRESS
HOTEL LOCATED AT
3020 W. RAMSEY STREET, BANNING
(APN NO. 538-340-005)**

By and Between

CITY OF BANNING

and

CA KABIR, INC.

DATED: NOVEMBER 14, 2008

**AGREEMENT FOR PAYMENT OF
DEVELOPMENT IMPACT FEES**

This Agreement for Development Impact Fees ("Agreement"), dated for reference purposes as first indicated on the cover page, is entered into by and between the **CITY OF BANNING**, a California general law municipal corporation ("City") and **CA KABIR, INC.**, a California sole proprietorship ("Developer") on the following terms and conditions:

RECITALS

A. Developer is presently developing a Project on the Property located within the City of Banning, California. The Developer will need to obtain permits and approvals for the Project. A standard condition on the issuance of these permits will be the payment of City imposed Development Impact Fees. These Development Impact Fees are generally payable to the City at the time of the issuance of building permits for the project.

B. The City has established a regular program of the payment of specified Development Impact Fees to offset impacts on public services and infrastructure from new development within the City. These fees (defined on page 3 of said agreement) are typically payable to the City at the time of the issuance of building permits for the project.

C. In certain instances the City acknowledges that it may be to the public's benefit to defer the payment of Development Impact Fees until a specified time after the issuance of building permits provided adequate security for the future payment of the fees is provided. Generally where the project involves a significant capital investment by the developer, is located in a redevelopment project area, and will serve to either encourage further development of an area where development has been stagnant or where the project will provide a needed service, convenience, or accommodations to residents or visitors the City Council may find that the project qualifies to have the payment of Development Impact Fees deferred.

D. Developer has requested that the Project be considered eligible for deferral of Development Impact Fees. The City Council has, based on the nature and location of the Project and the convenience it will provide to residents of the City that the Project qualifies for a deferral under the terms and conditions of this Agreement. Developer acknowledges and agrees that absent this Agreement it would be required to pay all Development Impact Fees at the time of the issuance of building permits for the project.

E. Developer and City acknowledge that the California Prevailing Wage law normally applies to projects where public funds are used for construction or for the payment of fees that are mandatory conditions of construction. In this case, City is not paying fees but is instead deferring payment of them. Developer is absolutely bound to pay all required Development Impact fees, but will be allowed to pay them over time, with interest. Notwithstanding the foregoing, City will waive certain amounts of interest for the first two years of the payment period. Developer and City acknowledge that they have each and separately investigated California Prevailing Wage Law and have each and separately determined that the City's assistance through waiver of interest constitutes a *de minimis* contribution of public funds, as defined by California Labor Code Section 1720(c)(3) and precedential decisions issued by the

Department of Industrial Relations interpreting that Section. Notwithstanding the analysis and determination of the parties, Developer acknowledges that if the Department of Industrial Relations determines that the payment of public funds for the Project is not *de minimis*, then the construction and construction-related activities for the Project would be subject to the California Prevailing Wage Law and Developer would be required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720, *et seq.*, of the California Labor Code for all covered work performed on the Project.

DEFINED TERMS

“Action” shall mean any suit (whether legal, equitable, or declaratory in nature), proceeding or hearing (where administrative or judicial), arbitration or mediation (whether voluntary, court-ordered, binding, or non-binding), or other alternative dispute resolution process, and the filing, recording, or service of any process, notice, claim, demand, lien, or other instrument.

“City” shall mean the City of Banning, a general law, Municipal Corporation formed and existing under the laws of the State of California and any successor-in-interest to the rights, obligations, and powers of the City.

“Developer” shall mean CA KABIR, INC, a California sole proprietorship. The term “Developer” shall also include all assignees, to the extent permitted under this Agreement, of the rights and obligations of Developer under this Agreement, and any successor-in-interest to Developer having a legal and/or equitable interest in the Property.

“Development Impact Fees” shall mean those development impact fees imposed and levied by the City to recover the cost of planned public facilities and to mitigate impacts of development on the City as are listed below. The Development Impact Fees include:

- Administrative Program Processing Fee
- Development Impact Fee
- Fire Protection Facilities & Equipment Fee (Fire Facilities Fee)
- General Facility & Equipment Fee
- General Plan
- Park Land Fee
- Police Facilities Fee
- Solid Waste Facility & Equipment Fee
- Traffic Control Facility Fee (Transportation-Signals Fee)
- Water Capital Facilities Fee

“Effective Date” shall mean the date the Agreement has been formally approved by the City Council and executed by the appropriate authorities of the City and Developer.

“Local Agency Investment Fund (LAIF) Rate” shall mean a variable rate equal to the most recently published Quarterly Apportionment Rate for the Local Agency Investment Fund (established and maintained pursuant to Government Code § 16429.1 *et seq.*) as published quarterly by the California State Treasurer’s Office. During the Term of the Note, the Rate shall

be adjusted quarterly to reflect the most recent rate published by the State Treasurer's Office for the LAIF.

"Litigation Expenses" shall mean all costs and expenses, to the extent such are reasonable in amount, that are actually and necessarily incurred in good faith by the Prevailing Party directly related to the Action, including, but not related to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys' fees, consultant fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs, and any other cost or expense reasonably and necessarily incurred by the prevailing party in good faith and directly related to the Action. Where attorneys' fees are to be paid by Developer to the City's law firm on behalf of, or in defense of, City, the rate to be paid shall be the full litigation rate charged by the City's law firm to the City in accord with the City's contract with that law firm.

"Multiple Species Habitat Conservation Plan Fee" shall mean the impact fee imposed and levied under City of Banning Ordinance No. 1367 adopting the "Multiple Species Habitat Conservation Plan" ("MSHCP"). The MSHCP establishes a fee known as the "MSHCP-Fee, the purpose of which is to mitigate the incidental take of listed, threatened, and protected species and their habitats within areas of Western Riverside County, including the City of Banning. The City has decided to participate in the MSHCP through the adoption of Ordinance No. 1367.

"No-Payment Period" shall mean a period of two (2) years from and after the Effective Date of the Agreement.

"Payment Period" shall mean a period of Eight (8) years from and after the Effective Date of the Agreement for which Developer will have to pay the Deferral Amount, plus accrued interest, to the City as provided in section 3 [Terms of Payment].

"Permit and Processing Fees" shall mean those fees imposed and levied by the City with respect to the connection to City utility services as well as inspection, processing and granting of permits by various City departments. The Permit & Processing fees include:

- Block Wall Permit Fee
- Block Wall Plan Fee
- Building Permit Fee
- Computer Storage Fee
- Electrical Meter Installation Fee
- Electrical Permit Fee
- Energy Conservation Fee
- Engineering Plan Check Fee
- Fire Inspection Fee
- Fire Plan Check Fee
- Grading Fee
- Mechanical Permit
- Miscellaneous Fees
- Multi Specifies Habitat Conservation Plan Fee (MSHCP)
- New Construction Fee

Plan Check Fees
Plumbing/Gas Permit
Plan/Computer Storage Fee
Public Works Permit Fee
Public Works Inspection Fee
Retaining Wall Permit Fee
Retaining Wall Plan Check Fee
Sewer Lateral Permit Fee
Sewer Lateral Plan Check Fee
Strong Motion Implementation Plan (SMIP) Fee
Transportation Uniform Mitigation Fee (TUMF)
Traffic Control Facility Fee
Utility Connection Fee

“Project” shall mean the construction of a 3-story, 70-unit hotel building (Holiday Inn Express) of approximately 39,250 square feet in size on property that is suitable for occupancy and use under the Highway Serving Commercial (HSC) zone district.

“Property” shall mean that certain parcel of real property commonly known as Assessor’s Parcel Number 538-340-022 located at 3020 West Ramsey Street in the City of Banning, County of Riverside, State of California, as more particularly described in the legal description attached hereto and incorporated herein by reference as Exhibit 1 of this Agreement.

“School Fee” shall mean any fee levied by the local school district as provided by law.

“Transportation Uniform Mitigation Fee” shall mean the development impact fee imposed and levied under City of Banning Ordinance No. 1344 adopting the “Transportation Uniform Mitigation Fee Program”. This program establishes a fee known as the Transportation Uniform Mitigation Fee (“TUMF”). The purpose of the TUMF is to mitigate the traffic impacts of local development on, and to provide funds for the improvement and expansion of, existing and planned regional transportation and circulation facilities (including, but not limited to, regionally significant state, county, and local, arterials, highways, and freeways) within Riverside County or such other sub-region of Riverside County, the boundaries of which exceed the boundaries of the City of Banning as they exist on the Effective Date of this Agreement and as they may hereafter be expanded by approved annexation. The City has decided to participate in this regional program through the adoption of Ordinance No. 1344.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Deferral And Payment.

1.1 City's Deferral. The City agrees that Developer may defer payment of the Development Impact Fees in the amount of \$447,006.12 imposed on the Project by City for the Payment Period provided Developer remains in compliance with the terms, conditions, and covenants of this Agreement. The parties acknowledge that City normally requires the payment of all Development Impact Fees at the time the project applicant submits an application to the City for these permits and approvals. In this case, by virtue of this Agreement, the City will issue permits and approvals for the Project, provided all other requirements for the issuance of such permits have been met, even though the Developer will not have paid the Development Impact Fees.

1.2 Developer's Payment. Developer covenants and agrees to timely pay during the Payment Period the Development Impact Fees, together with all interest accrued thereon, as provided in this Agreement. Developer acknowledges that Developer's Property will be encumbered by a lien created by the recording of a Deed of Trust securing Developer's payment of the Development Impact Fees.

1.3 Prevailing Wage Law. California Prevailing Wage law applies to projects where public funds are used for construction or for the payment of fees that are mandatory conditions of construction. Pursuant to Section 1.1 [City's Deferral], City will defer payment of and Development Impact Fees, but will not itself pay any fees otherwise required to be paid by Developer. Where public assistance constitutes a *de minimis* contribution of public funds, as defined by California Labor Code Section 1720(c)(3) and precedential decisions issued by the Department of Industrial Relations interpreting that Section, an exception to Prevailing Wage Law applies. As agreed in Recital G, the parties understand that the amount of City assistance to the Project is *de minimis* as defined by the Department of Industrial Relations.

1.3.1 Deferral is not Payment of Public Funds. Developer is absolutely bound to pay all required fees, but pursuant to Section 3 [Terms of Payment] will be allowed to pay some of them over time, with interest pursuant to Section 3.2 [Payment Over Time]. The parties, having each researched California Prevailing Wage Law, agree that this deferral is not a payment of public funds pursuant to California Labor Code Section 1720(b). The deferral is instead a market transaction with the Developer paying market rate interest for the opportunity to pay the Development Impact Fees over time.

1.3.2 Basis for *de minimis* Contribution. In determining that City's contribution is *de minimis*, the parties took into account first the total City assistance by way of waiver of interest pursuant to Section 3.2.1 [No Payment Period]. The total assistance is thirty-two thousand six hundred fifty nine (\$39,659.00). The City then took into account the total cost of constructing the Project, which is approximately four million, seven hundred thirty three thousand dollars (\$4,733,000.00). The anticipated City assistance by way of waiver of interest constitutes .0069% of the total Project costs (\$39,659.00/\$4,733,000.00). Based upon Department of Industrial Relations precedent, a public agency contribution of 1.64% would be deemed to be *de minimis* (See DIR Public Works Decision No. 2004-024) and so the City's contribution to the Project should also be deemed *de minimis*.

1.3.3 Developer's Agreement to Comply With Prevailing Wage Law. Notwithstanding this understanding, Developer acknowledges that if the Department of Industrial Relations determines either that the deferral of Permit and Processing Fees and Development Impact Fees constitutes the payment of public funds for the Project or that the payment of public funds for the Project by way of waiver of interest is not *de minimis*, then the construction and construction-related activities for the Project would be subject to the Prevailing Wage Law and Developer would be required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720, *et seq.*, of the California Labor Code for all covered work performed on the Project.

2. Development Impact Fees

2.1 Total Development Impact Fees. The total amount of Development Impact Fees to be paid for the Project is **\$447,006.12**. Developer agrees to timely pay the Development Impact Fees as provided in this Agreement.

3. Terms of Payment

3.1 Absolute Payment Obligation. Developer has the absolute obligation to pay the entire outstanding balance of the Development Impact Fees. Notwithstanding the provisions of this Agreement granting Developer permission to pay the Development Impact Fees over time, such payment over time shall not be deemed to waive all or any portion of Developer's obligation to pay the entire outstanding balance of the Development Impact Fees. Failure to fully pay the Development Impact Fees as required shall be deemed a Default of this Agreement.

3.2 Payment Over Time. Developer shall pay the entire outstanding balance of the Development Impact Fees, plus accrued interest, by no later than the last business day of the Eighth (8th) year from and after the Effective Date of this Agreement. Developer shall make payment of regular monthly installments of principal and interest due on the first (1st) day of each month (and delinquent on the tenth (10th) day of each month) commencing with the 1st day of the 3rd year after the execution of this Agreement. The installments shall be calculated in such a manner as to amortize the Development Impact Fees, plus accrued and capitalized interest over the remaining portion of the Repayment Period.

3.2.1 No-Payment Period. Developer shall commence payments of regular monthly installments of principal and interest on the first (1st) day of the third (3rd) year from and after the Effective Date. The period from the Effective Date through the first (1st) day of the third (3rd) year from and after the Effective Date shall be known as the "No-Payment Period" for purposes of this Agreement. No installment payments shall be due during the No-Payment Period, and no interest will accrue during that period.

3.2.2 Pre-Payment Option. At any time during the Payment Period, including but not limited to the No-Payment Period (i.e., first two (2) years), Developer may pay the entire outstanding principal balance of the Development Impact Fees. Pre-payment shall include all

principal amounts owed and all interest accrued (interest beginning with the 3rd year) as of that date. There shall be no penalty for pre-payment.

3.2.3 Interest Accrual and Payment. From and after the Effective Date until the outstanding principal balance on the Note has been repaid in full, the outstanding balance under this Agreement and the Promissory Note shall bear interest at a variable rate equal to Local Agency Investment Fund (LAIF) quarterly apportionment rate. Developer understands that the interest rate specified herein will fluctuate over the Repayment Period and that changes in such rate will not occur more often than on a quarterly basis, at the City's discretion. In no event shall the amount of interest paid or agreed to be paid to City exceed the maximum amount permissible under applicable laws.

3.3 Security. As further evidence of Developer's obligation to pay the Development Impact Fees, Developer shall execute and provide to the City a Promissory Note that is the same in all material respects to that attached hereto and incorporated herein by reference as Exhibit 3 of this Agreement. Developer's payment obligation under the Promissory Note and this Agreement shall be secured by a Deed of Trust recorded against the Property. The Deed of Trust shall be the same in all material responses as that attached hereto and incorporated herein by reference as Exhibit 2 of this Agreement.

3.4 Recordation of Agreement. Recordation of this Agreement is tied to the property in the form of the lien and it shall be recorded no later than January 14, 2009.

4. General Indemnity.

4.1 General Indemnity. Except as to the sole negligence, active negligence or willful misconduct of the City, Developer expressly agrees to, and shall, indemnify, defend, release, and hold the City, and its respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, and lien, which arises out of, or are in any way related to, any act or omission of Developer, or its officers, directors, employees, agents, or contractors, connected with the performance under this Agreement, the construction, use, or operation of the Project, notwithstanding that the City may have benefited therefrom, or any challenge to this Agreement. This Section shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Developer's officers, directors, employees, agents and contractors. The City shall not be responsible for any acts, errors or omissions of any person or entity except the City and its officers, agents, servants, employees or contractors. The Parties expressly agree that the obligations of Developer under this Section shall survive the expiration or early termination of the Agreement.

5. Default And Remedies.

5.1 Default. Either party's failure or unreasonable delay to perform any term or provision of this Agreement constitutes a Default of this Agreement. In the event of a Default, the injured party shall give written "Notice of Default" to the defaulting party, specifying the Default. Delay in giving such notice shall not constitute a waiver of the Default. If the defaulting party fails to cure the Default within thirty (30) days after receipt of a notice

specifying the Default, or, if the Default is of a nature that cannot be cured within thirty (30) days, the defaulting party fails to commence to cure the Default within said thirty (30) days and thereafter diligently prosecute such cure to completion, then the defaulting party shall be liable to the injured party for any and all damages caused by such Default, unless otherwise provided for by this Agreement.

5.2 No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

5.3 Legal Actions. In addition to any other rights and remedies any party may institute a legal action to require the cure of any default and to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. The following provisions shall apply to any such legal action:

5.3.1 Jurisdiction and Venue. Legal actions must be instituted and maintained in the Superior Court of the County of Riverside, State of California, Central Branch, Civil Division, or if appropriate, in the United States District Court for the Central District of California, Eastern Division. Participant specifically waives any rights provided to it pursuant to California Code of Civil Procedure §394 and any federal statute or rule of similar effect.

5.3.2 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

5.3.3 Attorney's Fees. In the event either party commences an Action against the other party which arises out of a Default of, breach of, failure to perform, or that is otherwise related to, this Agreement, then the Prevailing Party (as defined here) in the Action shall be entitled to recover its Litigation Expenses from the other party in addition to whatever relief to which the prevailing party may be entitled. For the purpose of this section, "Prevailing Party" shall have the meaning ascribed in §1032(a) (4) of the California Code of Civil Procedure.

5.4 Rights and Remedies are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same Default or any other Default by another Party.

6. General Provisions.

6.1 No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the City, and Developer. No other parties or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the parties' obligations under this Agreement.

6.2 Recitals and Definitions. The Recitals and Definitions set forth at the beginning of this Agreement are a substantive and integral part of this Agreement and are incorporated by reference in the Operative Provisions of this Agreement.

6.3 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of its terms. References to section numbers are to sections in this Agreement unless expressly stated otherwise.

6.4 Interpretation. The City and Developer acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and each represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides the ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to such extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the parties hereto.

6.5 Severability. Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant, and/or restriction, of this Agreement and the remainder of the Agreement shall continue in full force and effect.

6.6 Amendments to Agreement. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of the City and Developer.

6.7 Administration. Following approval of this Agreement by the City's Council, the City shall exercise its rights, perform its obligations, and otherwise administer this Agreement through the City Manager. The City Manager shall have the authority to issue interpretations and to make minor amendments to this Agreement on behalf of the City, provided such actions do not materially increase the obligations of the City, make a commitment of additional funds to be paid by, or costs to be incurred by, the City, or result in a discretionary extension of time in excess of thirty (30) days. All other changes, modifications, and amendments shall require the prior approval of the City Council.

6.8 Notices, Demands and Communications Between the Parties. Formal notices, demands and communications between the parties shall be given in writing and personally served or dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the parties, as designated in this Section, or telefaxed to the facsimile number listed below followed by dispatch as above described. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section. Any such notice shall be deemed to have been received (i) upon the date personal service is effected, if given by personal service, (ii) upon the expiration of one (1) business day, if telefaxed, or (iii) upon the expiration of three (3) business days after mailing, if given by certified mail, return receipt requested, postage prepaid.

If notice is to be made to the City:

City Manager
City of Banning
99 East Ramsey Street
Banning, California 92220
Facsimile transmission may be made to: (951) 922-3174

If notice is to be made to Developer:

CA KABIR, INC
Attn: Raj Bhakta
2863 E. Colorado Boulevard
Pasadena, CA 91107

6.9 Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Government Code § 6700 and § 6701. If any act is to be done by a particular time during a day, that time shall be Pacific Standard Zone time.

6.10 Authority. The individuals executing this Agreement on behalf of Developer and the instruments referenced on behalf of Developer represent and warrant that they have the legal power, right and actual authority to bind Participant to the terms and conditions hereof and thereof.

6.11 Counterpart Originals. This Agreement may be executed in duplicate originals, each of which is deemed to be an original.

6.12 Effective date of Agreement. This Agreement shall not become effective until the date it has been formally approved by the City Council and executed by the appropriate authorities of the City and Developer.

6.13 Waiver of Actions. Developer, for itself and its contractors, hereby expressly agrees that City has satisfied its obligations under the Prevailing Wage Laws to identify projects as being subject to the Prevailing Wage Laws and any other obligations imposed upon the City under Labor Code Sections 1726 and/or 1781 that are owed to or may be actionable by Developer and its contractors. Furthermore, Developer, for itself and its contractors hereby expressly waives any right of action against the City created under Labor Code Sections 1726 and/or 1781, whether known, or unknown, foreseen or unforeseen relating to the Project and/or this Agreement.

7. SEVERABILITY

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____)

On _____, _____ before me, _____, notary public,

personally appeared _____, who

proved to me on the basis of satisfactory evidence to be the person(s) whose names(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)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐

INDIVIDUAL

☐

CORPORATE OFFICER

TITLE(S)

☐

PARTNER(S)

☐

LIMITED

☐

GENERAL

☐

ATTORNEY-IN-FACT

☐

TRUSTEE(S)

☐

GUARDIAN/CONSERVATOR

☐

OTHER _____

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

IN WITNESS WHEREOFF, the parties hereto have executed this Agreement on the _____ day of _____, 2008.

CITY:
CITY OF BANNING

By: _____
Brian Nakamura
City Manager

ATTEST:

By: _____
Marie Calderon
City Clerk, City of Banning

APPROVED AS TO FORM:

By: _____
David J. Aleshire, City Attorney
Aleshire & Wynder, LLP
City of Banning, California

DEVELOPER:
CA KABIR, INC.

Raj Bhakta, CA KABIR, INC
2863 E. Colorado Boulevard
Pasadena, CA 91107

ATTACHMENT 1
LEGAL DESCRIPTION

PRELIMINARY REPORT

YOUR REFERENCE: CA KABIR INC

Ticor Title Company
ORDER NO.: 9767911-09**LEGAL DESCRIPTION****EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THE EAST 2 1/2 ACRES OF THE WEST 10 ACRES, TOGETHER WITH THE WEST 47.36 FEET OF THE WEST 2 1/2 ACRES OF THE EAST 5 ACRES OF THE WEST 15 ACRES OF THAT PORTION OF THE WEST HALF OF SECTION 8, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY, DESCRIBED:

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF SAID SECTION, WITH THE SOUTH LINE OF RAMSEY STREET;

THENCE SOUTH ALONG THE WEST LINE OF SAID SECTION, 601.15 FEET, TO ITS INTERSECTION WITH THE NORTHERLY LINE OF THE 200 FOOT RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD;

THENCE EASTERLY ALONG THE NORTHERLY LINE OF SAID RIGHT OF WAY, TO A POINT 275 FEET WESTERLY FROM THE SOUTHWEST CORNER OF LOT 7 OF C.O. BARKER'S SUBDIVISION AS PER MAP RECORDED IN BOOK 6, PAGE 14, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID LOT, TO ITS INTERSECTION WITH THE SOUTH LINE OF RAMSEY STREET;

THENCE WESTERLY ALONG THE SOUTH LINE OF RAMSEY STREET, 2361.8 FEET, TO THE POINT OF BEGINNING.

EXCEPTING THAT PORTION THEREOF DEEDED TO THE STATE OF CALIFORNIA BY DEED RECORDED MARCH 24, 1959 IN BOOK 2437 PAGE 197, OFFICIAL RECORDS AND BY DEED RECORDED MARCH 19, 1959 AS INSTRUMENT NO. 22910, IN BOOK 2434 PAGE 417, OFFICIAL RECORDS.

SAID LEGAL DESCRIPTION IS BASED UPON LOT LINE ADJUSTMENT RECORDED APRIL 7, 2006 AS INSTRUMENT NO. 2006-0249893, OFFICIAL RECORDS.

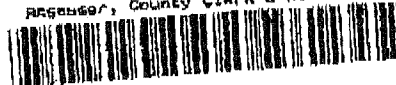
ATTACHMENT 2
DEED OF TRUST

09/28/2008 13:15 FAX.

RECORDING REQUESTED BY
Commonwealth Land Title Co.
WHEN RECORDED MAIL THIS DOCUMENT
AND TAX STATEMENTS TO:

CA Kabir, Inc.
2863 E. Colorado Blvd
Pasadena, CA 91107

DOC # 2006-0249895
04/07/2006 08:00A Fee:10.00
Page 1 of 2
Recorded in Official Records
County of Riverside
Larry W. Ward
Register, County Clerk & Recorder



APN: 538-340-005-8 & 004
Escrow No: 02962056-804-RW
Title No: 2962056-7

M	S	U	PAGE	SIZE	DA	PCOR	NQOR	SMF	MCC
A	R	L			COPY	LONG	REFUND	NONE	EXAM

GRANT

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$
computed on full value of property conveyed,
City of Banning, AND

DEED
paid on previous deed

T
W

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
Cedar Foothills Partners, a California Limited Partnership

hereby GRANT(S) to

CA Kabir, Inc., a California Corporation

the following described real property in the County of Riverside, State of California:

See Exhibit A attached hereto and made a part hereof.

This document is being recorded to correct the legal description
Document recorded on 3-31-06 as Instrument #2006-0034705

Commonly known as: vacant land, Banning, CA

Dated: April 3, 2006

Cedar Foothills Partners

Dennis R. Vlassing

STATE OF CALIFORNIA

COUNTY OF

Los Angeles

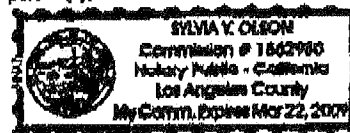
SS:

On April 3, 2006, before me, Sylvia Y. Olson, a Notary Public,
personally appeared Dennis R. Vlassing, Partner,
personally known to me (or 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.

WITNESS my hand and official seal.

Signature

Sylvia Y. Olson



FOR NOTARY SEAL OR STAMP

MAIL TAX STATEMENTS AS DIRECTED ABOVE

COPY

RECORDATION REQUESTED BY:

METRO UNITED BANK
ALHAMBRA OFFICE
1101 WEST VALLEY BOULEVARD
ALHAMBRA, CA 91803

WHEN RECORDED MAIL TO:

METRO UNITED BANK
NOTE DEPARTMENT
17870 CASTLETON ST., SUITE 100
CITY OF INDUSTRY, CA 91748

SEND TAX NOTICES TO:

CA KABIR, INC., A CALIFORNIA CORPORATION
3020 West Ramsey St.
Banning, CA 92220

FOR RECORDER'S USE ONLY

CONSTRUCTION DEED OF TRUST

THIS DEED OF TRUST is dated March 17, 2008, among CA KABIR, INC., A CALIFORNIA CORPORATION, whose address is 2863 E. Colorado Blvd., Pasadena, CA 91107 ("Trustor"); METRO UNITED BANK, whose address is ALHAMBRA OFFICE, 1101 WEST VALLEY BOULEVARD, ALHAMBRA, CA 91803 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Ticor Title Company, whose address is 500 N. Central Avenue, # 500, Glendale, CA 91203 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Trustor Irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Riverside County, State of California:

See Exhibit "A", which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as 3020 West Ramsey St., Banning, CA 92220. The Assessor's Parcel Number for the Real Property is 538-340-022-1.

Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. This is an absolute assignment of Rents made in connection with an obligation secured by real property pursuant to California Civil Code Section 2938. In addition, Trustor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF THE TRUSTOR UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OF TRUSTOR'S OBLIGATIONS UNDER THAT CERTAIN CONSTRUCTION LOAN AGREEMENT BETWEEN TRUSTOR AND LENDER OF EVEN DATE HEREWITH. ANY EVENT OF DEFAULT UNDER THE CONSTRUCTION LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Trustor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Trustor's obligations under the Note, this Deed of Trust, and the Related Documents.

CONSTRUCTION MORTGAGE. This Deed of Trust is a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of California.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Trustor agrees that Trustor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Trustor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Trustor represents and warrants to Lender that: (1) During the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any

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Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Trustor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Trustor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Trustor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The representations and warranties contained herein are based on Trustor's due diligence in investigating the Property for Hazardous Substances. Trustor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Trustor's ownership or interest in the Property, whether or not the same was or should have been known to Trustor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Trustor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Trustor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Trustor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Trustor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Trustor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Trustor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Trustor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Trustor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Trustor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Trustor agrees neither to abandon or leave unattended the Property. Trustor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

Construction Loan. If some or all of the proceeds of the loan creating the Indebtedness are to be used to construct or complete construction of any Improvements on the Property, the Improvements shall be completed no later than the maturity date of the Note (or such earlier date as Lender may reasonably establish) and Trustor shall pay in full all costs and expenses in connection with the work. Lender will disburse loan proceeds under such terms and conditions as Lender may deem reasonably necessary to insure that the interest created by this Deed of Trust shall have priority over all possible liens, including those of material suppliers and workmen. Lender may require, among other things, that disbursement requests be supported by receipted bills, expense affidavits, waivers of liens, construction progress reports, and such other documentation as Lender may reasonably request.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Trustor. However, this option shall not be exercised by Lender if such exercise is prohibited by applicable law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Trustor shall pay when due (and in all events at least ten (10) days prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Trustor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Trustor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Trustor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Trustor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Trustor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Trustor shall name Lender as an additional obligee under any

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surety bond furnished in the contest proceedings.

Evidence of Payment. Trustor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Trustor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$500.00. Trustor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Trustor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Trustor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Trustor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Trustor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Notwithstanding the foregoing, in no event shall Trustor be required to provide hazard insurance in excess of the replacement value of the improvements on the Real Property. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Trustor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least fifteen (15) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Trustor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Trustor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Trustor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$500.00. Lender may make proof of loss if Trustor fails to do so within fifteen (15) days of the casualty. If in Lender's sole judgment Lender's security interest in the Property has been impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If the proceeds are to be applied to restoration and repair, Trustor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Trustor from the proceeds for the reasonable cost of repair or restoration if Trustor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Trustor as Trustor's interests may appear.

Trustor's Report on Insurance. Upon request of Lender, however not more than once a year, Trustor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Trustor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Trustor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Trustor's failure to discharge or pay when due any amounts Trustor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Trustor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Trustor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Trustor warrants that: (a) Trustor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Trustor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Trustor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Trustor's title or the interest of Trustee or Lender under this Deed of Trust, Trustor shall defend the action at Trustor's expense. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Trustor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

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Compliance With Laws. Trustor warrants that the Property and Trustor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Trustor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Trustor's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to eminent domain and inverse condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any eminent domain or inverse condemnation proceeding is commenced affecting the Property, Trustor shall promptly notify Lender in writing, and Trustor shall promptly take such steps as may be necessary to pursue or defend the action and obtain the award. Trustor may be the nominal party in any such proceeding, but Lender shall be entitled, at its election, to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Trustor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If any award is made or settlement entered into in any condemnation proceedings affecting all or any part of the Property or by any proceeding or purchase in lieu of condemnation, Lender may at its election, and to the extent permitted by law, require that all or any portion of the award or settlement be applied to the indebtedness and to the repayment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation proceedings.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Trustor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Trustor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Trustor which Trustor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Trustor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Trustor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Trustor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. Trustor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Trustor shall not remove, sever or detach the Personal Property from the Property. Upon default, Trustor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Trustor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Trustor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Trustor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refilled, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Trustor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Trustor. Unless prohibited by law or Lender agrees to the contrary in writing, Trustor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Trustor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Trustor and at Trustor's expense. For such purposes, Trustor hereby irrevocably appoints Lender as Trustor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Trustor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Trustor under this Deed of Trust, Lender shall execute and deliver to Trustor a request for full reconveyance and shall execute and deliver to Trustor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the

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Personal Property. Lender may charge Trustor a reasonable reconveyance fee at the time of reconveyance.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Trustor fails to make any payment when due under the Indebtedness.

Other Defaults. Trustor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Trustor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Trustor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

Default in Favor of Third Parties. Should Trustor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Trustor's property or Trustor's ability to repay the Indebtedness or perform their respective obligations under this Deed of Trust or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Trustor or on Trustor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Insolvency. The dissolution or termination of Trustor's existence as a going business, the insolvency of Trustor, the appointment of a receiver for any part of Trustor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Trustor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Trustor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Trustor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Trustor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Trustor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Trustor under the terms of any other agreement between Trustor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Trustor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Trustor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Right to Cure. If any default, other than a default in payment is curable and if Trustor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Trustor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Trustor under this Deed of Trust, after Trustor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Foreclosure by Sale. Upon an Event of Default under this Deed of Trust, Beneficiary may declare the entire Indebtedness secured by this Deed of Trust immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the Property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note, other documents requested by Trustee, and all documents evidencing expenditures secured hereby. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement in accordance with applicable law. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or

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warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary may purchase at such sale. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

Judicial Foreclosure. With respect to all or any part of the Real Property, Lender shall have the right in lieu of foreclosure by power of sale to foreclose by judicial foreclosure in accordance with and to the full extent provided by California law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code, including without limitation the right to recover any deficiency in the manner and to the full extent provided by California law.

Collect Rents. Lender shall have the right, without notice to Trustor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Trustor irrevocably designates Lender as Trustor's attorney-in-fact to endorse instruments received in payment thereof in the name of Trustor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Trustor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Trustor, Trustor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

Notice of Sale. Lender shall give Trustor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Trustor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Trustor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Trustor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Trustor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

DEED OF TRUST (Continued)

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Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of Riverside County, State of California. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Trustor, the book and page where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

NOTICES. Any notice required to be given under this Deed of Trust shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. Trustor requests that copies of any notices of default and sale be directed to Trustor's address shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Trustor agrees to keep Lender informed at all times of Trustor's current address. Unless otherwise provided or required by law, if there is more than one Trustor, any notice given by Lender to any Trustor is deemed to be notice given to all Trustors.

STATEMENT OF OBLIGATION FEE. Lender may collect a fee, not to exceed the maximum amount permitted by law, for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Trustor's residence, Trustor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Trustor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Arbitration. Trustor and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Deed of Trust or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Code of Procedure of the National Arbitration Forum in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Trustor and Lender agree that in the event of an action for judicial foreclosure pursuant to California Code of Civil Procedure Section 726, or any similar provision in any other state, the commencement of such an action will not constitute a waiver of the right to arbitrate and the court shall refer to arbitration as much of such action, including counterclaims, as lawfully may be referred to arbitration. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Deed of Trust shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of California.

Choice of Venue. If there is a lawsuit, Trustor agrees upon Lender's request to submit to the jurisdiction of the courts of LOS ANGELES County, State of California.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Trustor, shall constitute a waiver of any of Lender's rights or of any of Trustor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is

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required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Trustor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Trustor, Lender, without notice to Trustor, may deal with Trustor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Trustor from the obligations of this Deed of Trust or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means METRO UNITED BANK, and its successors and assigns.

Borrower. The word "Borrower" means CA KABIR, INC., A CALIFORNIA CORPORATION and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Trustor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., Chapters 6.5 through 7.7 of Division 20 of the California Health and Safety Code, Section 25100, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Trustor's obligations or expenses incurred by Trustee or Lender to enforce Trustor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lender. The word "Lender" means METRO UNITED BANK, its successors and assigns.

Note. The word "Note" means the promissory note dated March 17, 2008, in the original principal amount of \$5,635,000.00 from Trustor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO TRUSTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Trustor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property. The words "Personal Property" also include all tangible and intangible items obtained or owned by, or in the possession of Trustor that are directly or indirectly related to the acquisition, development, design, construction, permitting, marketing, or habitation of the Real Property or the Improvements to be constructed on the Real Property, whether heretofore or hereafter issued, prepared, or executed, including without limitation all permits, licenses, authorizations and approvals, trademarks and tradenames, and any and all land use entitlements, development rights, sewer capacity, approvals, density allocations and other rights or approvals relating to or authorizing

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**DEED OF TRUST
(Continued)**

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the development or occupancy of the Property, plus all utility or other deposits, reimbursement rights, studies, tests, contracts, plans and specifications, relating to the Property and Improvements.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness; except that the words do not mean any guaranty or environmental agreement, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future leases, rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property together with the cash proceeds of the Rents.

Trustee. The word "Trustee" means Ticor Title Company, whose address is 500 N. Central Avenue, # 500, Glendale, CA 91203 and any substitute or successor trustees.

Trustor. The word "Trustor" means CA KABIR, INC., A CALIFORNIA CORPORATION.

TRUSTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND TRUSTOR AGREES TO ITS TERMS, INCLUDING THE VARIABLE RATE PROVISIONS OF THE NOTE SECURED BY THIS DEED OF TRUST.

TRUSTOR:

CA KABIR, INC., A CALIFORNIA CORPORATION

By: Rajendra K. Bhakta, President of CA KABIR, INC., A CALIFORNIA CORPORATION

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

On _____, 20____ before me, _____
(here insert name and title of the officer)

personally appeared Rajendra K. Bhakta, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____

(Seal)

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(DO NOT RECORD)

REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

Date: _____

Beneficiary: _____

By: _____

Its: _____

CONSTRUCTION LOAN AGREEMENT

COPY

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$5,635,000.00	03-17-2008	09-20-2009	0370253786	110-166	0370253700	AY	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "****" has been omitted due to text length limitations.

Borrower: CA KABIR, INC., A CALIFORNIA CORPORATION
3020 West Ramsey St.
Banning, CA 92220

Lender: METRO UNITED BANK
ALHAMBRA OFFICE
1101 WEST VALLEY BOULEVARD
ALHAMBRA, CA 91803
(626) 943-1138

THIS CONSTRUCTION LOAN AGREEMENT dated March 17, 2008, is made and executed between CA KABIR, INC., A CALIFORNIA CORPORATION ("Borrower") and METRO UNITED BANK ("Lender") on the following terms and conditions. Borrower has applied to Lender for one or more loans for purposes of constructing the Improvements on the Real Property described below. Lender is willing to lend the loan amount to Borrower solely under the terms and conditions specified in this Agreement and in the Related Documents, to each of which Borrower agrees. Borrower understands and agrees that: (A) in granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement, and (B) all such Loans shall be and remain subject to the terms and conditions of this Agreement.

TERM. This Agreement shall be effective as of March 17, 2008, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until September 20, 2009.

ADVANCE AUTHORITY. The following person or persons are authorized to request advances and authorize payments under the line of credit until Lender receives from Borrower, at Lender's address shown above, written notice of revocation of such authority: Rajendra K. Bhakta, President of CA KABIR, INC., A CALIFORNIA CORPORATION.

LOAN. The Loan shall be in an amount not to exceed the principal sum of U.S. \$5,635,000.00 and shall bear interest on so much of the principal sum as shall be advanced pursuant to the terms of this Agreement and the Related Documents. The Loan shall bear interest on each Advance from the date of the Advance in accordance with the terms of the Note. Borrower shall use the Loan Funds solely for the payment of: (A) the costs of constructing the Improvements and equipping the Project in accordance with the Construction Contract; (B) other costs and expenses incurred or to be incurred in connection with the construction of the Improvements as Lender in its sole discretion shall approve; and (C) if permitted by Lender, interest due under the Note, including all expenses and all loan and commitment fees described in this Agreement. The Loan amount shall be subject at all times to all maximum limits and conditions set forth in this Agreement or in any of the Related Documents, including without limitation, any limits relating to loan to value ratios and acquisition and Project costs.

PROJECT DESCRIPTION. The word "Project" as used in this Agreement means the construction and completion of all Improvements contemplated by this Agreement, including without limitation the erection of the building or structure on the Real Property identified to this Agreement by Borrower and Lender, installation of equipment and fixtures, landscaping, and all other work necessary to make the Project usable and complete for the intended purposes. The Project includes the following work:

To construct a 70-room franchise motel (Holiday Inn Express).

The word "Property" as used in this Agreement means the Real Property together with all Improvements, all equipment, fixtures, and other articles of personal property now or subsequently attached or affixed to the Real Property, together with all accessions, parts, and additions to, all replacements of, and all substitutions for any of such property, and all proceeds (including insurance proceeds and refunds of premiums) from any sale or other disposition of such property. The real estate described below constitutes the Real Property as used in this Agreement.

The real estate or its address is commonly known as:

Real Property located at 3020 West Ramsey St., Banning, CA 92220.

FEES AND EXPENSES. Whether or not the Project shall be consummated, Borrower shall assume and pay upon demand all out-of-pocket expenses incurred by Lender in connection with the preparation of loan documents and the making of the Loan, including without limitation the following: (A) all closing costs, loan fees, and disbursements; (B) all expenses of Lender's legal counsel; and (C) all title examination fees, title insurance premiums, appraisal fees, survey costs, required fees, and filing and recording fees.

NO CONSTRUCTION PRIOR TO RECORDING OF SECURITY DOCUMENT. Borrower will not permit any work or materials to be furnished in connection with the Project until (A) Borrower has signed the Related Documents; (B) Lender's mortgage or deed of trust and other Security Interests in the Property have been duly recorded and perfected; (C) Lender has been provided evidence, satisfactory to Lender, that Borrower has obtained all insurance required under this Agreement or any Related Documents and that Lender's liens on the Property and Improvements are valid perfected first liens, subject only to such exceptions, if any, acceptable to Lender.

REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any indebtedness exists:

Organization. Borrower is a corporation for profit which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of California. Borrower is duly authorized to transact business in all other states in which Borrower is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Borrower is doing business. Specifically, Borrower is, and at all times shall be, duly qualified as a foreign corporation in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains an office at 3020 West Ramsey St., Banning, CA 92220. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning the Collateral. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

Assumed Business Names. Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: None.

Authorization. Borrower's execution, delivery, and performance of this Agreement and all the Related Documents have been duly authorized by all necessary action by Borrower and do not conflict with, result in a violation of, or constitute a default under (1) any provision of (a) Borrower's articles of incorporation or organization, or bylaws, or (b) any agreement or other instrument binding upon

**CONSTRUCTION LOAN AGREEMENT
(Continued)**

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Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties.

Financial Information. Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

Legal Effect. This Agreement constitutes, and any instrument or agreement Borrower is required to give under this Agreement when delivered will constitute legal, valid, and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

Properties. Except as contemplated by this Agreement or as previously disclosed in Borrower's financial statements or in writing to Lender and as accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used or filed a financing statement under any other name for at least the last five (5) years.

Hazardous Substances. Except as disclosed to and acknowledged by Lender in writing, Borrower represents and warrants that: (1) During the period of Borrower's ownership of the Collateral, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from any of the Collateral; (2) Borrower has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws; (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Collateral by any prior owners or occupants of any of the Collateral; or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; (3) Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from any of the Collateral; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all Environmental Laws. Borrower authorizes Lender and its agents to enter upon the Collateral to make such inspections and tests as Lender may deem appropriate to determine compliance of the Collateral with this section of the Agreement. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Collateral for hazardous waste and Hazardous Substances. Borrower hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this section of the Agreement, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the termination, expiration or satisfaction of this Agreement and shall not be affected by Lender's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

Litigation and Claims. No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

Taxes. To the best of Borrower's knowledge, all of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

Lien Priority. Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

Binding Effect. This Agreement, the Note, all Security Agreements (if any), and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

Title to Property. Borrower has, or on the date of first disbursement of Loan proceeds will have, good and marketable title to the Collateral free and clear of all defects, liens, and encumbrances, excepting only liens for taxes, assessments, or governmental charges or levies not yet delinquent or payable without penalty or interest, and such liens and encumbrances as may be approved in writing by the Lender. The Collateral is contiguous to publicly dedicated streets, roads, or highways providing access to the Collateral.

Project Costs. The total cost for the Project shall not exceed \$7,410,257.00. The Project costs are true and accurate estimates of the costs necessary to complete the improvements in a good and workmanlike manner according to the Plans and Specifications presented by Borrower to Lender, and Borrower shall take all steps necessary to prevent the actual cost of the improvements from exceeding the Project costs.

Utility Services. All utility services appropriate to the use of the Project after completion of construction are available at the boundaries of the Collateral.

Assessment of Property. The Collateral is and will continue to be assessed and taxed as an independent parcel by all governmental authorities.

Compliance with Governing Authorities. Borrower has examined and is familiar with all the easements, covenants, conditions, restrictions, reservations, building laws, regulations, zoning ordinances, and federal, state, and local requirements affecting the Project. The Project will at all times and in all respects conform to and comply with the requirements of such easements, covenants, conditions, restrictions, reservations, building laws, regulations, zoning ordinances, and federal, state, and local requirements.

Survival of Representations and Warranties. Borrower understands and agrees that in extending Loan Advances, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the extension of Loan Advances and delivery to Lender of the Related Documents, shall be continuing in nature, shall be deemed made and redated by Borrower at the time each Loan Advance is made, and shall remain in full force and effect until such time as Borrower's indebtedness shall be paid in full, or until this Agreement shall be

terminated in the manner provided above, whichever is the last to occur.

CONDITIONS PRECEDENT TO EACH ADVANCE. Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

Equity Funds. Borrower shall provide evidence of equity funds totaling \$1,775,807.00 prior to the initial advance from the Loan Fund. Lender may, at Lender's option, require that the equity funds be deposited with Lender as a portion of the Loan Fund, which funds shall be disbursed prior to any Loan proceeds.

Approval of Contractors, Subcontractors, and Materialmen. Lender shall have approved a list of all contractors employed in connection with the construction of the Improvements, showing the name, address, and telephone number of each contractor, a general description of the nature of the work to be done, the labor and materials to be supplied, the names of materialmen, if known, and the approximate dollar value of the labor, work, or materials with respect to each contractor or materialman. Lender shall have the right to communicate with any person to verify the facts disclosed by the list or by any application for any Advance, or for any other purpose.

Plans, Specifications, and Permits. Lender shall have received and accepted a complete set of written Plans and Specifications setting forth all Improvements for the Project, and Borrower shall have furnished to Lender copies of all permits and requisite approvals of any governmental body necessary for the construction and use of the Project.

Architect's and Construction Contracts. Borrower shall have furnished in form and substance satisfactory to Lender an executed copy of the Architect's Contract and an executed copy of the Construction Contract.

Related and Support Documents. Borrower shall provide to Lender in form satisfactory to Lender the following support documents for the Loan: Assignment of Architect's Contract, Assignment of Construction Contract and Completion Guaranty.

Budget and Schedule of Estimated Advances. Lender shall have approved detailed budget and cash flow projections of total Project costs and a schedule of the estimated amount and time of disbursements of each Advance.

Borrower's Authorization. Borrower shall have provided in form and substance satisfactory to Lender properly certified resolutions, duly authorizing the consummation of the Project and duly authorizing the execution and delivery of this Agreement, the Note and the Related Documents. In addition, Borrower shall have provided such other resolutions, authorizations, documents and instruments as Lender or its counsel, in their sole discretion, may require.

Bond. If requested by Lender, Borrower shall have furnished a performance and payment bond in an amount equal to 100% of the amount of the Construction Contract, as well as a materialmen's and mechanics' payment bond, with such riders and supplements as Lender may require, each in form and substance satisfactory to Lender, naming the General Contractor as principal and Lender as an additional obligee. Any required bonds and the contracts which they cover must be duly recorded or filed in accordance with California Civil Code Section 3235, if required by Lender.

Appraisal. If required by Lender, an appraisal shall be prepared for the Property, at Borrower's expense, which in form and substance shall be satisfactory to Lender, in Lender's sole discretion, including applicable regulatory requirements.

Plans and Specifications. If requested by Lender, Borrower shall have assigned to Lender on Lender's forms the Plans and Specifications for the Project.

Environmental Report. If requested by Lender, Borrower shall have furnished to Lender, at Borrower's expense, an environmental report and certificate on the Property in form and substance satisfactory to Lender, prepared by an engineer or other expert satisfactory to Lender stating that the Property complies with all applicable provisions and requirements of the "Hazardous Substances" paragraph set forth in this Agreement.

Soil Report. If requested by Lender, Borrower shall have furnished to Lender, at Borrower's expenses, a soil report for the Property in form and substance satisfactory to Lender, prepared by a registered engineer satisfactory to Lender stating that the Property is free from soil or other geological conditions that would preclude its use or development as contemplated without extra expense for precautionary, corrective or remedial measures.

Survey. If requested by Lender, Borrower shall have furnished to Lender a survey of recent date, prepared and certified by a qualified surveyor and providing that the Improvements, if constructed in accordance with the Plans and Specifications, shall lie wholly within the boundaries of the Collateral without encroachment or violation of any zoning ordinances, building codes or regulations, or setback requirements, together with such other information as Lender in its sole discretion may require.

Zoning. Borrower shall have furnished evidence satisfactory to Lender that the Collateral is duly and validly zoned for the construction, maintenance, and operation of the Project.

Title Insurance. Borrower shall have provided to Lender an ALTA Lender's extended coverage policy of title insurance with such endorsements as Lender may require, issued by a title insurance company acceptable to Lender and in a form, amount, and content satisfactory to Lender, insuring or agreeing to insure that Lender's security agreement or other security document on the Property is or will be upon recordation a valid first lien on the Property free and clear of all defects, liens, encumbrances, and exceptions except those as specifically accepted by Lender in writing. If requested by Lender, Borrower shall provide to Lender, at Borrower's expense, a foundation endorsement (CLTA 102.5 or its equivalent) to the title policy upon the completion of each foundation for the Improvements, showing no encroachments, and upon completion an endorsement which insures the lien-free completion of the Improvements (CLTA 101 series, as required by Lender).

Insurance. Unless waived by Lender in writing, Borrower shall have delivered to Lender the following insurance policies or evidence thereof: (a) an all risks course of construction insurance policy (builder's risk), with extended coverage covering the Improvements issued in an amount and by a company acceptable to Lender, containing a loss payable or other endorsement satisfactory to Lender insuring Lender as mortgagee, together with such other endorsements as may be required by Lender, including stipulations that coverages will not be cancelled or diminished without at least fifteen (15) days prior written notice to Lender; (b) owners and General Contractor general liability insurance, public liability and workmen's compensation insurance; (c) flood insurance if required by Lender or applicable law; and (d) all other insurance required by this Agreement or by the Related Documents.

Workers' Compensation Coverage. Provide to Lender proof of the General Contractor's compliance with all applicable workers' compensation laws and regulations with regard to all work performed on the Project.

Payment of Fees and Expenses. Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Agreement or any Related Document.

Satisfactory Construction. All work usually done at the stage of construction for which disbursement is requested shall have been done in

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a good and workmanlike manner and all materials and fixtures usually furnished and installed at that stage of construction shall have been furnished and installed, all in compliance with the Plans and Specifications. Borrower shall also have furnished to Lender such proofs as Lender may require to establish the progress of the work, compliance with applicable laws, freedom of the Property from liens, and the basis for the requested disbursement.

Certification. Borrower shall have furnished to Lender a certification by an engineer, architect, or other qualified inspector acceptable to Lender that the construction of the Improvements has complied and will continue to comply with all applicable statutes, ordinances, codes, regulations, and similar requirements.

Lien Waivers. Borrower shall have obtained and attached to each application for an Advance, including the Advance to cover final payment to the General Contractor, executed acknowledgments of payments of all sums due and releases of mechanic's and materialmen's liens, satisfactory to Lender, from any party having lien rights, which acknowledgments of payment and releases of liens shall cover all work, labor, equipment, materials done, supplied, performed, or furnished prior to such application for an Advance.

No Event of Default. There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

DISBURSEMENT OF LOAN FUNDS. The following provisions relate to the disbursement of funds from the Loan Fund.

Application for Advances. Each application shall be stated on a standard AIA payment request form or other form approved by Lender, executed by Borrower, and supported by such evidence as Lender shall reasonably require. Borrower shall apply only for disbursement with respect to work actually done by the General Contractor and for materials and equipment actually incorporated into the Project. Each application for an Advance shall be deemed a certification of Borrower that as of the date of such application, all representations and warranties contained in the Agreement are true and correct, and that Borrower is in compliance with all of the provisions of this Agreement.

Loan to Value. Unless waived by Lender in writing, the ratio of the amount of the Loan to the Value of the Property as completed shall not exceed 70.000%.

Payments. At the sole option of Lender, Advances may be paid in the joint names of Borrower and the General Contractor, subcontractor(s), or supplier(s) in payment of sums due under the Construction Contract. At its sole option, Lender may directly pay the General Contractor and any subcontractors or other parties the sums due under the Construction Contract. Borrower appoints Lender as its attorney-in-fact to make such payments. This power shall be deemed coupled with an interest, shall be irrevocable, and shall survive an Event of Default under this Agreement.

Projected Cost Overruns. If Lender at any time determines in its sole discretion that the amount in the Loan Fund is insufficient, or will be insufficient, to complete fully and to pay for the Project, then within ten (10) days after receipt of a written request from Lender, Borrower shall deposit in the Loan Fund an amount equal to the deficiency as determined by Lender. The judgment and determination of Lender under this section shall be final and conclusive. Any such amounts deposited by Borrower shall be disbursed prior to any Loan proceeds.

Final Payment to General Contractor. Upon completion of the Project and fulfillment of the Construction Contract to the satisfaction of Lender and provided sufficient Loan Funds are available, Lender shall make an Advance to cover the final payment due to the General Contractor upon delivery to Lender of endorsements to the ALTA title insurance policy following the posting of the completion notice, as provided under applicable law. Construction shall not be deemed complete for purposes of final disbursement unless and until Lender shall have received all of the following:

- (1) Evidence satisfactory to Lender that all work under the Construction Contract requiring inspection by any governmental authority with jurisdiction has been duly inspected and approved by such authority, that a certificate of occupancy has been issued, and that all parties performing work have been paid, or will be paid, for such work;
- (2) A certification by an engineer, architect, or other qualified inspector acceptable to Lender that the Improvements have been completed substantially in accordance with the Plans and Specifications and the Construction Contract, that direct connection has been made to all utilities set forth in the Plans and Specifications, and that the Project is ready for occupancy; and
- (3) Acceptance of the completed Improvements by Lender and Borrower.

Construction Default. If Borrower fails in any respect to comply with the provisions of this Agreement or if construction ceases before completion regardless of the reason, Lender, at its option, may refuse to make further Advances, may accelerate the indebtedness under the terms of the Note, and without thereby impairing any of its rights, powers, or privileges, may enter into possession of the construction site and perform or cause to be performed any and all work and labor necessary to complete the improvements, substantially in accordance with the Plans and Specifications.

Damage or Destruction. If any of the Collateral or Improvements is damaged or destroyed by casualty of any nature, within sixty (60) days thereafter Borrower shall restore the Collateral and Improvements to the condition in which they were before such damage or destruction with funds other than those in the Loan Fund. Lender shall not be obligated to make disbursements under this Agreement until such restoration has been accomplished.

Adequate Security. When any event occurs that Lender determines may endanger completion of the Project or the fulfillment of any condition or covenant in this Agreement, Lender may require Borrower to furnish, within ten (10) days after delivery of a written request, adequate security to eliminate, reduce, or indemnify Lender against, such danger. In addition, upon such occurrence, Lender in its sole discretion may advance funds or agree to undertake to advance funds to any party to eliminate, reduce, or indemnify Lender against, such danger or to complete the Project. All sums paid by Lender pursuant to such agreements or undertakings shall be for Borrower's account and shall be without prejudice to Borrower's rights, if any, to receive such funds from the party to whom paid. All sums expended by Lender in the exercise of its option to complete the Project or protect Lender's interests shall be payable to Lender on demand together with interest from the date of the Advance at the rate applicable to the Loan. In addition, any Advance of funds under this Agreement, including without limitation direct disbursements to the General Contractor or other parties in payment of sums due under the Construction Contract, shall be deemed to have been expended by or on behalf of Borrower and to have been secured by Lender's Deed of Trust, if any, on the Collateral.

CESSATION OF ADVANCES. If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (A) Borrower or any Guarantor is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower or any Guarantor has with Lender; (B) Borrower or any Guarantor dies, becomes incompetent or becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (C) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any Guarantor, or in the value of any Collateral securing any Loan; or (D) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of the Loan or any other loan with Lender.

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LIMITATION OF RESPONSIBILITY. The making of any Advance by Lender shall not constitute or be interpreted as either (A) an approval or acceptance by Lender of the work done through the date of the Advance, or (B) a representation or indemnity by Lender to any party against any deficiency or defect in the work or against any breach of any contract. Inspections and approvals of the Plans and Specifications, the Improvements, the workmanship and materials used in the Improvements, and the exercise of any other right of inspection, approval, or inquiry granted to Lender in this Agreement are acknowledged to be solely for the protection of Lender's interests, and under no circumstances shall they be construed to impose any responsibility or liability of any nature whatsoever on Lender to any party. Neither Borrower nor any contractor, subcontractor, materialman, laborer, or any other person shall rely, or have any right to rely, upon Lender's determination of the appropriateness of any Advance. No disbursement or approval by Lender shall constitute a representation by Lender as to the nature of the Project, its construction, or its intended use for Borrower or for any other person, nor shall it constitute an indemnity by Lender to Borrower or to any other person against any deficiency or defects in the Project or against any breach of any contract.

AFFIRMATIVE COVENANTS. Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

Notices of Claims and Litigation. Promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

Financial Records. Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

Financial Statements. Furnish Lender with the following:

Additional Requirements. Borrower understands and agrees that while this Agreement is in effect, Borrower will maintain a financial condition indicated by the following statements at all times, unless otherwise noted:

Guarantor Annual Statements. Annually, Borrower shall provide Lender with the financial statement of each Guarantor certified by such Guarantor to be true and correct no later than April 25th.

Tax Returns. Within ten (10) days of filing, a signed copy of the Federal Income Tax Return of Borrower together with K-1's and all other schedules pertaining to the Tax Return, or a signed copy of each of the Request for Tax Return Extensions. Tax returns are to be provided no later than nine (9) months after the fiscal year end.

Guarantor Tax Returns. Within ten (10) days of filing, a signed copy of the Federal Income Tax Return of each Guarantor together with K-1's and all other schedules pertaining to the Tax Return, or a signed copy of each of the Request for tax Return Extensions. Tax Returns are to be provided no later than October 31st.

All financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Borrower as being true and correct.

Additional Information. Furnish such additional information and statements, lists of assets and liabilities, agings of receivables and payables, inventory schedules, budgets, forecasts, tax returns, and other reports with respect to Borrower's financial condition and business operations as Lender may request from time to time.

Other Agreements. Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

Insurance. Maintain fire and other risk insurance, hail, federal crop insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least fifteen (15) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will provide Lender with such lender's loss payable or other endorsements as Lender may require.

Insurance Reports. Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower.

Guaranties. Prior to disbursement of any Loan proceeds, furnish executed guaranties of the Loans in favor of Lender, executed by the guarantors named below, on Lender's forms, and in the amounts and under the conditions set forth in those guaranties.

<u>Names of Guarantors</u>	<u>Amounts</u>
Rajendra K. Bhakta	Unlimited
Kantilal K. Bhakta	Unlimited
Baldevbhai Bhakta	Unlimited

Loan Fees, Charges and Expenses. In addition to all other agreed upon fees, charges, and expenses, pay the following: \$42,263.00 Loan fee and \$1,000.00 Documentation Fee. Whether or not the Project is completed, Borrower also shall pay upon demand all out-of-pocket expenses incurred by Lender in connection with the preparation of loan documents and the making of the Loan, including, without limitation, all closing costs, fees, and disbursements, all expenses of Lender's legal counsel, and all title examination fees, title insurance premiums, appraisal fees, survey costs, required fees, and filing and recording fees.

Loan Proceeds. Use the Loan Funds solely for payment of bills and expenses directly related to the Project.

Taxes, Charges and Liens. Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits.

Performance. Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

Inspection. Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and

Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

Compliance Certificates. Unless waived in writing by Lender, provide Lender at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

Construction of the Project. Commence construction of the Project no later than April 20, 2008, and cause the Improvements to be constructed and equipped in a diligent and orderly manner and in strict accordance with the Plans and Specifications approved by Lender, the Construction Contract, and all applicable laws, ordinances, codes, regulations, and rights of adjoining or concurrent property owners. Borrower agrees to complete the Project for purposes of final payment to the General Contractor on or before December 1, 2009, regardless of the reason for any delay.

Defects. Upon demand of Lender, promptly correct any defect in the Improvements or any departure from the Plans and Specifications not approved by Lender in writing before further work shall be done upon the portion of the Improvements affected.

Project Claims and Litigation. Promptly inform Lender of (1) all material adverse changes in the financial condition of the General Contractor; (2) any litigation and claims, actual or threatened, affecting the Project or the General Contractor, which could materially affect the successful completion of the Project or the ability of the General Contractor to complete the Project as agreed; and (3) any condition or event which constitutes a breach or default under any of the Related Documents or any contract related to the Project.

Payment of Claims and Removal of Liens. (1) Cause all claims for labor done and materials and services furnished in connection with the Improvements to be fully paid and discharged in a timely manner, (2) diligently file or procure the filing of a valid notice of completion of the Improvements, or such comparable document as may be permitted under applicable lien laws, (3) diligently file or procure the filing of a notice of cessation, or such comparable document as may be permitted under applicable lien laws, upon the happening of cessation of labor on the Improvements for a continuous period of thirty (30) days or more, and (4) take all reasonable steps necessary to remove all claims of liens against the Collateral, the Improvements or any part of the Collateral or Improvements, or any rights or interests appurtenant to the Collateral or Improvements. Upon Lender's request, Borrower shall make such demands or claims upon or against laborers, materialmen, subcontractors, or other persons who have furnished or claim to have furnished labor, services, or materials in connection with the Improvements, which demands or claims shall under the laws of the State of California require diligent assertions of lien claims upon penalty of loss or waiver thereof. Borrower shall, within ten (10) days after the filing of any claim of lien that is disputed or contested by Borrower, record or cause the General Contractor for the construction of the Improvements to record in the appropriate governmental office, a surety bond pursuant to California law sufficient to release the claim of lien and, within five (5) days of Lender's demand, make suitable provision by deposit of funds with Lender in an amount satisfactory to Lender or by bond satisfactory to Lender for the possibility that the contest will be unsuccessful. If Borrower fails to remove any lien on the Collateral or Improvements or provide a bond or deposit pursuant to this provision, Lender may pay such lien, or may contest the validity of the lien, and Borrower shall pay all costs and expenses of such contest, including Lender's reasonable attorneys' fees.

Taxes and Claims. Pay and discharge when due all of Borrower's indebtedness, obligations, and claims that, if unpaid, might become a lien or charge upon the Collateral or Improvements; provided, however, that Borrower shall not be required to pay and discharge any such indebtedness, obligation, or claim so long as (1) its legality shall be contested in good faith by appropriate proceedings, (2) the indebtedness, obligation, or claim does not become a lien or charge upon the Collateral or Improvements, and (3) Borrower shall have established on its books adequate reserves with respect to the amount contested in accordance with GAAP. If the indebtedness, obligation, or claim does become a lien or charge upon the Collateral or Improvements, Borrower shall remove the lien or charge as provided in the preceding paragraph.

Environmental Studies. Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testings as may be requested by Lender or any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or a hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

Additional Assurances. Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security Interests in the Collateral and Improvements.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on any Collateral and paying all costs for insuring, maintaining and preserving any Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Borrower. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity.

NEGATIVE COVENANTS. Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

Indebtedness and Liens. (1) Except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Agreement, create, incur or assume indebtedness for borrowed money, including capital leases, (2) sell, transfer, mortgage, assign, pledge, lease, grant a security interest in, or encumber any of Borrower's assets (except as allowed as Permitted Liens), or (3) sell with recourse any of Borrower's accounts, except to Lender.

Continuity of Operations. (1) Engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change its name, dissolve or transfer or sell Collateral out of the ordinary course of business, or (3) pay any dividends on Borrower's stock (other than dividends payable in its stock), provided, however that notwithstanding the foregoing, but only so long as no Event of Default has occurred and is continuing or would result from the payment of dividends, if Borrower is a "Subchapter S Corporation" (as defined in the Internal Revenue Code of 1986, as amended), Borrower may pay cash dividends on its stock to its shareholders from time to time in amounts necessary to enable the

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shareholders to pay income taxes and make estimated income tax payments to satisfy their liabilities under federal and state law which arise solely from their status as Shareholders of a Subchapter S Corporation because of their ownership of shares of Borrower's stock, or purchase or retire any of Borrower's outstanding shares or alter or amend Borrower's capital structure.

Loans, Acquisitions and Guaranties. (1) Loan, invest in or advance money or assets to any other person, enterprise or entity. (2) purchase, create or acquire any interest in any other enterprise or entity, or (3) incur any obligation as surety or guarantor other than in the ordinary course of business.

Modification of Contract. Make or permit to be made any modification of the Construction Contract.

Liens. Create or allow to be created any lien or charge upon the Collateral or the Improvements.

Agreements. Borrower will not enter into any agreement containing any provisions which would be violated or breached by the performance of Borrower's obligations under this Agreement or in connection herewith.

GENERAL PROJECT PROVISIONS. The following provisions relate to the construction and completion of the Project:

Change Orders. All requests for changes in the Plans and Specifications, other than minor changes involving no extra cost, must be in writing, signed by Borrower and the architect, and delivered to Lender for its approval. Borrower will not permit the performance of any work pursuant to any change order or modification of the Construction Contract or any subcontract without the written approval of Lender. Borrower will obtain any required permits or authorizations from governmental authorities having jurisdiction before approving or requesting a new change order.

Purchase of Materials; Conditional Sales Contracts. No materials, equipment, fixtures, or articles of personal property placed in or incorporated into the Project shall be purchased or installed under any Security Agreement or other agreement whereby the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider such items as personal property after their incorporation into the Project, unless otherwise authorized by Lender in writing.

Lender's Right of Entry and Inspection. Lender and its agents shall have at all times the right of entry and free access to the Property and the right to inspect all work done, labor performed, and materials furnished with respect to the Project. Lender shall have unrestricted access to and the right to copy all records, accounting books, contracts, subcontracts, bills, statements, vouchers, and supporting documents of Borrower relating in any way to the Project.

Lender's Right to Stop Work. If Lender in good faith determines that any work or materials do not conform to the approved Plans and Specifications or sound building practices, or otherwise depart from any of the requirements of this Agreement, Lender may require the work to be stopped and withhold disbursements until the matter is corrected. In such event, Borrower will promptly correct the work to Lender's satisfaction. No such action by Lender will affect Borrower's obligation to complete the Improvements on or before the Completion Date. Lender is under no duty to supervise or inspect the construction or examine any books and records. Any inspection or examination by Lender is for the sole purpose of protecting Lender's security and preserving Lender's rights under this Agreement. No default of Borrower will be waived by any inspection by Lender. In no event will any inspection by Lender be a representation that there has been or will be compliance with the Plans and Specifications or that the construction is free from defective materials or workmanship.

Indemnity. Borrower shall indemnify, defend, and hold Lender harmless from any and all claims asserted against Lender or the Property by any person, entity, or governmental body, or arising out of or in connection with the Property, Improvements, or Project. Lender shall be entitled to appear in any proceedings to defend itself against such claims, and all costs and expenses attorneys' fees incurred by Lender in connection with such defense shall be paid by Borrower to Lender. Lender shall, in its sole discretion, be entitled to settle or compromise any asserted claims against it, and such settlement shall be binding upon Borrower for purposes of this indemnification. All amounts paid by Lender under this paragraph shall be secured by Lender's security agreement or Deed of Trust, if any, on the Property, shall be deemed an additional principal Advance under the Loan, payable upon demand, and shall bear interest at the rate applicable to the Loan.

Publicity. Lender may display a sign at the construction site informing the public that Lender is the construction lender for the Project. Lender may obtain other publicity in connection with the Project through press releases and participation in ground-breaking and opening ceremonies and similar events.

Actions. Lender shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties to this Agreement, or the disbursement of funds from the Loan Fund. In connection with this right, Lender may incur and pay reasonable costs, expenses and attorneys' fees. Borrower covenants to pay to Lender on demand all such expenses, together with interest from the date Lender incurs the expense at the rate specified in the Note, and Lender is authorized to disburse funds from the Loan Fund for such purposes.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the Loan.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any Loan.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or any Grantor's property or Borrower's or any Grantor's ability to repay the Loans or perform their respective obligations under this Agreement or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Loan.

**CONSTRUCTION LOAN AGREEMENT
(Continued)**

Loan No: 0370253786

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This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Construction Contract. The Improvements are not constructed in accordance with the Plans and Specifications or in accordance with the terms of the Construction Contract.

Cessation of Construction. Prior to the completion of construction of the Improvements and equipping of the Project, the construction of the Improvements or the equipping of the Project is abandoned or work thereon ceases for a period of more than ten (10) days for any reason, or the Improvements are not completed for purposes of final payment to the General Contractor prior to December 1, 2009, regardless of the reason for the delay.

Transfer of Property. Sale, transfer, hypothecation, assignment, or conveyance of the Property or the Improvements or any portion thereof or interest therein by Borrower or any Borrower without Lender's prior written consent.

Condemnation. All or any material portion of the Collateral is condemned, seized, or appropriated without compensation, and Borrower does not within thirty (30) days after such condemnation, seizure, or appropriation, initiate and diligently prosecute appropriate action to contest in good faith the validity of such condemnation, seizure, or appropriation.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Change in Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Loan is impaired.

Right to Cure. If any default, other than a default on Indebtedness, is curable and if Borrower or Grantor, as the case may be, has not been given a notice of a similar default within the preceding twelve (12) months, it may be cured if Borrower or Grantor, as the case may be, after receiving written notice from Lender demanding cure of such default: (1) cure the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiate steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continue and complete all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

EFFECT OF AN EVENT OF DEFAULT; REMEDIES. Upon the occurrence of any Event of Default and at any time thereafter, Lender may, at its option, but without any obligation to do so, and in addition to any other right Lender without notice to Borrower may have, do any one or more of the following without notice to Borrower: (a) Cancel this Agreement; (b) Institute appropriate proceedings to enforce the performance of this Agreement; (c) Withhold further disbursement of Loan Funds; (d) Expend funds necessary to remedy the default; (e) Take possession of the Property and continue construction of the Project; (f) Accelerate maturity of the Note and/or Indebtedness and demand payment of all sums due under the Note and/or Indebtedness; (g) Bring an action on the Note and/or Indebtedness; (h) Foreclose Lender's security agreement or Deed of Trust, if any, on the Property in any manner available under law; and (i) Exercise any other right or remedy which it has under the Note or Related Documents, or which is otherwise available at law or in equity or by statute.

COMPLETION OF IMPROVEMENTS BY LENDER. If Lender takes possession of the Collateral, it may take any and all actions necessary in its judgment to complete construction of the Improvements, including but not limited to making changes in the Plans and Specifications, work, or materials and entering into, modifying or terminating any contractual arrangements, subject to Lender's right at any time to discontinue any work without liability. If Lender elects to complete the Improvements, it will not assume any liability to Borrower or to any other person for completing the Improvements or for the manner or quality of construction of the Improvements, and Borrower expressly waives any such liability. Borrower irrevocably appoints Lender as its attorney-in-fact, with full power of substitution, to complete the Improvements, at Lender's option, either in Borrower's name or in its own name. In any event, all sums expended by Lender in completing the construction of the Improvements will be considered to have been disbursed to Borrower and will be secured by the Collateral for the Loan. Any such sums that cause the principal amount of the Loan to exceed the face amount of the Note will be considered to be an additional Loan to Borrower, bearing interest at the Note rate and being secured by the Collateral. For these purposes, Borrower assigns to Lender all of its right, title and interest in and to the Project Documents; however Lender will not have any obligation under the Project Documents unless Lender expressly hereafter agrees to assume such obligations in writing. Lender will have the right to exercise any rights of Borrower under the Project Documents upon the occurrence of an Event of Default. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently.

ADDITIONAL DOCUMENTS. Borrower shall provide Lender with the following additional documents:

Corporate Resolution. Borrower has provided or will provide Lender with a certified copy of resolutions properly adopted by Borrower's Board of Directors, and certified by Borrower's corporate secretary, assistant secretary, or other authorized officer, under which Borrower's Board of Directors authorized one or more designated officers or employees to execute this Agreement, the Note and any and all Security Agreements directly or indirectly securing repayment of the same, and to consummate the borrowings and other transactions as contemplated under this Agreement, and to consent to the remedies following any default by Borrower as provided in this Agreement and in any Security Agreements.

Opinion of Counsel. When required by Lender, Borrower has provided or will provide Lender with an opinion of Borrower's counsel certifying to and that: (1) Borrower's Note, any Security Agreements and this Agreement constitute valid and binding obligations on Borrower's part that are enforceable in accordance with their respective terms; (2) Borrower is validly existing and in good standing; (3) Borrower has authority to enter into this Agreement and to consummate the transactions contemplated under this Agreement; and (4) such other matters as may have been requested by Lender or by Lender's counsel.

INTEREST RESERVE. As part of the total Loan Fund, Lender and Borrower have agreed to set aside an Interest Reserve Fund in the amount of \$384,588.00 for payment of interest. Pursuant to the interest payment schedule outlined in the Loan Documents, Lender will advance funds from this Interest Reserve Fund to keep interest payments current. Should the funds aside in the Interest Reserve Fund be completely disbursed, Borrower agrees to maintain the interest payments current or to replenish the Interest Reserve Fund with sufficient funds as required by Lender. Notwithstanding the above, Borrower may, with notice to Lender, make interest payments directly to Lender pursuant to the interest payment schedule outlined in the Loan Documents.

DISBURSEMENT OF FUNDS. The Loan Fund shall include Borrower's funds required by Lender at the closing of the loan and such funds shall be under the sole control of California Fund Control Inc.

**CONSTRUCTION LOAN AGREEMENT
(Continued)**

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Initial Here _____.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

Authority to File Notices. Borrower appoints and designates Lender as its attorney-in-fact to file for the record any notice that Lender deems necessary to protect its interest under this Agreement. This power shall be deemed coupled with an interest and shall be irrevocable while any sum or performance remains due and owing under any of the Related Documents.

Arbitration. Borrower and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Agreement or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Code of Procedure of the National Arbitration Forum in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Collateral shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Collateral, including any claim to rescind, reform, or otherwise modify any agreement relating to the Collateral, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Borrower and Lender agree that in the event of an action for judicial foreclosure pursuant to California Code of Civil Procedure Section 726, or any similar provision in any other state, the commencement of such an action will not constitute a waiver of the right to arbitrate and the court shall refer to arbitration as much of such action, including counterclaims, as lawfully may be referred to arbitration. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Agreement shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of California.

Choice of Venue. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of LOS ANGELES County, State of California.

Indemnification of Lender. Borrower agrees to indemnify, to defend and to save and hold Lender harmless from any and all claims, suits, obligations, damages, losses, costs and expenses (including, without limitation, Lender's attorneys' fees, as well as Lender's architect's and engineering fees), demands, liabilities, penalties, fines and forfeitures of any nature whatsoever that may be asserted against or incurred by Lender, its officers, directors, employees, and agents arising out of, relating to, or in any manner occasioned by this Agreement and the exercise of the rights and remedies granted Lender under this. The foregoing indemnity provisions shall survive the cancellation of this Agreement as to all matters arising or accruing prior to such cancellation and the foregoing indemnity shall survive in the event that Lender elects to exercise any of the remedies as provided under this Agreement following default hereunder.

Consent to Loan Participation. Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to the Loan, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loan and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loan irrespective of the failure or insolvency of any holder of any interest in the Loan. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any of Borrower's or any Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**CONSTRUCTION LOAN AGREEMENT
(Continued)**

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Successors and Assigns. All covenants and agreements by or on behalf of Borrower contained in this Agreement or any Related Documents shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns. Borrower shall not, however, have the right to assign Borrower's rights under this Agreement or any interest therein, without the prior written consent of Lender.

Survival of Representations and Warranties. Borrower understands and agrees that in extending Loan Advances, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the extension of Loan Advances and delivery to Lender of the Related Documents, shall be continuing in nature, shall be deemed made and redated by Borrower at the time each Loan Advance is made, and shall remain in full force and effect until such time as Borrower's indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement:

Advance. The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf on a line of credit or multiple advance basis under the terms and conditions of this Agreement.

Agreement. The word "Agreement" means this Construction Loan Agreement, as this Construction Loan Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Construction Loan Agreement from time to time.

Architect's Contract. The words "Architect's Contract" mean the architect's contract dated June 2, 2006 between Borrower and Huamin Chang, A.I.A. & Architects, the architect for the Project.

Borrower. The word "Borrower" means CA KADIN, INC., A CALIFORNIA CORPORATION and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

Completion Date. The words "Completion Date" mean December 1, 2009.

Construction Contract. The words "Construction Contract" mean the contract dated March 14, 2008 between Borrower and DS Construction, Inc., the general contractor for the Project, and any subcontracts with subcontractors, materialmen, laborers, or any other person or entity for performance of work on the Project or the delivery of materials to the Project.

Contractor. The word "Contractor" means DS Construction, Inc., the general contractor for the Project.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., Chapters 6.5 through 7.7 of Division 20 of the California Health and Safety Code, Section 25100, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

GAAP. The word "GAAP" means generally accepted accounting principles.

Grantor. The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Loan and any guarantor under a completion guaranty agreement.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future buildings, structures, facilities, fixtures, additions, and similar construction on the Collateral.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means METRO UNITED BANK, its successors and assigns.

Loan. The word "Loan" means the loan or loans made to Borrower under this Agreement and the Related Documents as described.

Loan Fund. The words "Loan Fund" mean the undisbursed proceeds of the Loan under this Agreement together with any equity funds or other deposits required from Borrower under this Agreement.

**CONSTRUCTION LOAN AGREEMENT
(Continued)**

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Note. The word "Note" means the promissory note dated March 17, 2008, in the original principal amount of \$5,635,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Permitted Liens. The words "Permitted Liens" mean (1) liens and security interests securing indebtedness owed by Borrower to Lender; (2) liens for taxes, assessments, or similar charges either not yet due or being contested in good faith; (3) liens of materialmen, mechanics, warehousemen, or carriers, or other like liens arising in the ordinary course of business and securing obligations which are not yet delinquent; (4) purchase money liens or purchase money security interests upon or in any property acquired or held by Borrower in the ordinary course of business to secure indebtedness outstanding on the date of this Agreement or permitted to be incurred under the paragraph of this Agreement titled "Indebtedness and Liens"; (5) liens and security interests which, as of the date of this Agreement, have been disclosed to and approved by the Lender in writing; and (6) those liens and security interests which in the aggregate constitute an immaterial and insignificant monetary amount with respect to the net value of Borrower's assets.

Plans and Specifications. The words "Plans and Specifications" mean the plans and specifications for the Project which have been submitted to and initialed by Lender, together with such changes and additions as may be approved by Lender in writing.

Project. The word "Project" means the construction project as described in the "Project Description" section of this Agreement.

Project Documents. The words "Project Documents" mean the Plans and Specifications, all studies, data and drawings relating to the Project, whether prepared by or for Borrower, the Construction Contract, the Architect's Contract, and all other contracts and agreements relating to the Project or the construction of the Improvements.

Property. The word "Property" means the property as described in the "Project Description" section of this Agreement.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in the "Project Description" section of this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

Security Agreement. The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

Value. The word "Value" means such amount or worth as defined and determined by Lender in its sole discretion unless agreed to the contrary by Lender in writing.

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS CONSTRUCTION LOAN AGREEMENT AND BORROWER AGREES TO ITS TERMS. THIS CONSTRUCTION LOAN AGREEMENT IS DATED MARCH 17, 2008.

BORROWER:

CA KABIR, INC., A CALIFORNIA CORPORATION

By: Rajendra K. Bhakta, President of CA KABIR, INC., A
CALIFORNIA CORPORATION

LENDER:

METRO UNITED BANK

By: Authorized Officer

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ATTACHMENT 3
PROMISSORY NOTE

PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$5,635,000.00	03-17-2008	09-20-2009	0370253786	110 / 186	0370253700	AY	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "****" has been omitted due to text length limitations.

Borrower: CA KABIR, INC., A CALIFORNIA CORPORATION
3020 West Ramsey St.
Banning, CA 92220

Lender: METRO UNITED BANK
ALHAMBRA OFFICE
1101 WEST VALLEY BOULEVARD
ALHAMBRA, CA 91803
(626) 943-1138

Principal Amount: \$5,635,000.00

Initial Rate: 6.500%

Date of Note: March 17, 2008

PROMISE TO PAY. CA KABIR, INC., A CALIFORNIA CORPORATION ("Borrower") promises to pay to METRO UNITED BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of Five Million Six Hundred Thirty-five Thousand & 00/100 Dollars (\$5,635,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance, interest shall be calculated from the date of each advance until repayment of each advance.

PAYMENT. Borrower will pay this loan in full immediately upon Lender's demand. If no demand is made, Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on September 20, 2009. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning April 20, 2008, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any unpaid collection costs; then to any late charges; then to any accrued unpaid interest; and then to principal. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the Wall Street Journal Prime Rate (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 6.000%. The interest rate to be applied to the unpaid principal balance during this Note will be at a rate of 0.500 percentage points over the Index, resulting in an initial rate of 6.500%. **NOTICE:** Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law.

PREPAYMENT; MINIMUM INTEREST CHARGE. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. In any event, even upon full prepayment of this Note, Borrower understands that Lender is entitled to a minimum interest charge of \$100.00. Other than Borrower's obligation to pay any minimum interest charge, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: METRO UNITED BANK, ALHAMBRA OFFICE, 1101 WEST VALLEY BOULEVARD, ALHAMBRA, CA 91803.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, the interest rate on this Note shall, if permitted under applicable law, immediately increase by adding a 5.000 percentage point margin ("Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change that would have applied had there been no default.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any loan.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate

COPY

PROMISSORY NOTE
(Continued)

Loan No: 0370253786

Page 2

Events Affecting Guarantor. Any of the preceding events occur with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Change In Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. Borrower also will pay any court costs, in addition to all other sums provided by law.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of California.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of LOS ANGELES County, State of California.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$15.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instruments listed herein:

(A) a Construction Deed of Trust dated March 17, 2008, to a trustee in favor of Lender on real property located in Riverside County, State of California. That agreement contains the following due on sale provision: Lender may, at Lender's option, declare immediately due and payable all sums secured by the Construction Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Borrower is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Borrower. However, this option shall not be exercised by Lender if such exercise is prohibited by applicable law.

(B) inventory, chattel paper, accounts and general intangibles described in a Commercial Security Agreement dated March 17, 2008.

LINE OF CREDIT. This Note evidences a straight line of credit. Once the total amount of principal has been advanced, Borrower is not entitled to further loan advances. The following person or persons are authorized to request advances and authorize payments under the line of credit until Lender receives from Borrower, at Lender's address shown above, written notice of revocation of such authority: Rajendra K. Bhakta, President of CA KABIR, INC., A CALIFORNIA CORPORATION. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs.

ARBITRATION. Borrower and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Note or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Code of Procedure of the National Arbitration Forum in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any collateral securing this Note shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any collateral securing this Note, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral securing this Note, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Borrower and Lender agree that in the event of an action for judicial foreclosure pursuant to California Code of Civil Procedure Section 726, or any similar provision in any other state, the commencement of such an action will not constitute a waiver of the right to arbitrate and the court shall refer to arbitration as much of such action, including counterclaims, as lawfully may be referred to arbitration. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Note shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

INTEREST RESERVE. As part of the total Loan Fund, Lender and Borrower have agreed to set aside an Interest Reserve Fund in the amount of \$384,588.00 for payment of interest. Pursuant to the interest payment schedule outlined in the Loan Documents, Lender will advance funds from this Interest Reserve Fund to keep interest payments current. Should the funds aside in the Interest Reserve Fund be completely disbursed, Borrower agrees to maintain the interest payments current or to replenish the Interest Reserve Fund with sufficient funds as required by Lender. Notwithstanding the above, Borrower may, with notice to Lender, make interest payments directly to Lender pursuant to the interest payment schedule outlined in the Loan Documents.

**PROMISSORY NOTE
(Continued)**

Loan No: 0370253786

Page 3

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: METRO UNITED BANK 17870 CASTLETON ST, STE 100 CITY OF INDUSTRY, CA 91748.

GENERAL PROVISIONS. ~~This Note is payable on demand. The inclusion of specific default provisions or rights of Lender shall not preclude Lender's right to declare payment of this Note on its demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.~~

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

CA KABIR, INC., A CALIFORNIA CORPORATION

By: Rajendra K. Bhakta, President of CA KABIR, INC., A
CALIFORNIA CORPORATION

LASER PRO Lending, Ver. 8.28.10.001 Copyright, Holland Financial Solutions, Inc. 1997, 2006. All Rights Reserved. - CA 11/27/10/10/20/PC TR-244 PR-45

ATTACHMENT 2

CORRESPONDENCE LETTER
FROM RAJ BHAKTA

CA KABIR INC.

D.B.A. HOLIDAY INN EXPRESS BANNING CA

October 30, 2008

City Of Banning
99 E. Ramsey St.
P.O. Box 998
Banning CA 92220

To City Council:

We are aware of the Development Impact Fees we must pay during the submission of the project-related applications. I am requesting that the Holiday Inn Express project we are implementing become eligible for deferral of these Development Impact Fees. We realized that it is required for us to pay these fees, but we are requesting to pay these fees in installments over time, with interest. I am seeking out a similar agreement to that of the La Quinta Inn project. We are dealing with many hardships and incurring overwhelming construction costs due to the fast pace of the project during our economic crisis and hope that we can work out an agreement to satisfy both sides.

Sincerely,



Raj Bhakta

President

**CITY COUNCIL AGENDA
CONSENT CALENDAR**

Date: November 14, 2008

TO: City Council

FROM: Bonnie J. Johnson, Finance Director

SUBJECT: Resolution Authorizing the Amendment of the Fiscal Year 2008-09 Budget to Include Certain Necessary Adjustments as Presented at the October 20, 2008 Budget Workshop

RECOMMENDATION: “The City Council of The City of Banning adopt Resolution 2008-123 Authorizing the Amendment of the Fiscal Year 2008-09 Budget to Include Certain Necessary Adjustments as Presented at the October 20, 2008 Budget Workshop.”

JUSTIFICATION: The recommended adjustments are needed to properly reflect current estimated revenues and expenditures for fiscal year 2008-09.

BACKGROUND & ANALYSIS: The adjustments below were presented at the recent October 20, 2008 budget workshop. The formal amendment of the fiscal year 2008-09 budget is necessary to properly reflect current estimated revenues and expenditures. The details of the adjustments are as follows:

General Fund Adjustments:

- | | |
|--|------------------|
| 1. Sales Tax: decrease revenue projection | \$207,938 |
| 2. Sales Tax backfill: decrease revenue projection | \$155,062 |
| 3. Booking Fees: decrease expenditure projection | (\$ 20,000) |
| 4. Legal fees: increase expenditure projection | <u>\$599,581</u> |
| Total Anticipated General Fund Impact | \$942,581 |

Electric Utility Adjustment:

- | | |
|--|----------|
| 5. Interfund transfers: Increase transfers between
Electric Operations and Electric Debt Service
Funds to cover interest expense | \$12,110 |
|--|----------|

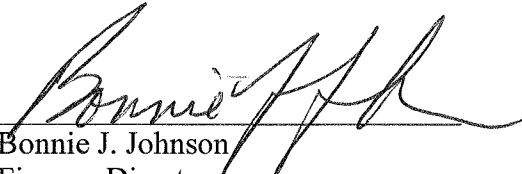
1. and 2. Sales tax for 2007-08 came in \$229,780 below projected levels. The 2008 1st and 2nd quarter sales tax receipts were below the same 2007 quarters by \$131,793 and \$114,534, respectively. In addition, in 2008-09 the City's sales tax backfill allocation under the triple flip will be adjusted downward by \$105,094 due to the decline in sales tax levels. The above recommended adjustment of \$363,000 would adjust current projections for the above impacts.
3. Based on the State's level of funding to Counties related to booking fees, the City is anticipating a reduction in its current budget for booking fees expenses of \$20,000.

4. The above amount represents the settlement of litigation of which the impact was not known at the time the budget was adopted. This is reflected in the City Attorney department of the General Fund.
5. The above amount represents a timing issue on the recognition and payment of accrued interest on the bonds. This is a housekeeping issue.

FISCAL DATA:


The impact of the recommended budget adjustments is described in detail above. The applicable revised fund balances were presented at the October 20, 2008 workshop.

RECOMMENDED BY:



Bonnie J. Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

RESOLUTION NO. 2008-123

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
AUTHORIZING THE AMENDMENT OF THE FISCAL YEAR 2008-09 BUDGET TO
INCLUDE CERTAIN NECESSARY ADJUSTMENTS AS PRESENTED AT THE
OCTOBER 20, 2008 BUDGET WORKSHOP**

WHEREAS, the City Council held a budget workshop on October 20, 2008; and

WHEREAS, the status of all City funds was presented and discussed, and

WHEREAS, City staff recommended that certain estimates in the budget be adjusted in order to more accurately reflect current expected revenues and expenditures in certain City Funds;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning, California that the budget for the fiscal year ended June 30, 2009 is amended to include the following adjustments and the Finance Director is authorized to make the budget adjustments:

General Fund Adjustments:

- | | |
|--|-------------|
| 1. Sales Tax: decrease revenue projection | \$207,938 |
| 2. Sales Tax backfill: decrease revenue projection | \$155,062 |
| 3. Booking Fees: decrease appropriation | (\$ 20,000) |
| 4. Legal fees: increase appropriation | \$599,581 |

Electric Utility Adjustment:

- | | |
|--|----------|
| 5. Interfund transfers: Increase transfers between
Electric Operations and Electric Debt Service
Funds to cover interest expense | \$12,110 |
|--|----------|

PASSED, APPROVED AND ADOPTED this 14th day of November 2008.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:

David Aleshire, City Attorney

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-123 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 14th day of November, 2008, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

**CITY COUNCIL MEETING
CONSENT ITEM**

DATE: November 14, 2008

TO: Honorable Mayor and City Council

FROM: Kahono Oei, City Engineer

SUBJECT: Accept the Right-of-Way dedication from Jim H. Wilson for Street Improvements at Assessor's Parcel Number 543-160-017

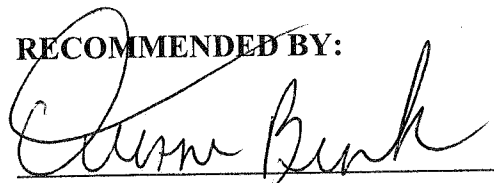
RECOMMENDATION: Accept the Right-of-Way dedication from Jim H. Wilson for Street Improvements at Assessor's Parcel Number 543-160-017, as described in Exhibit "A" and Exhibit "B", and direct the City Clerk to accept and record said dedication.

JUSTIFICATION: It is essential to obtain the right-of-way in order to construct the street improvements and meet the proposed right-of-way width requirement set forth by the adopted Circulation Element.

BACKGROUND: The property owner has submitted an application to build a new single family dwelling at Assessor's Parcel Number 543-160-017, also known as 132 E. Wesley Street. As part of the Conditions of Approval, the owner is required to dedicate the necessary right-of-way fronting his property in order to be able to build the street improvements at the proper location, per the City's general plan

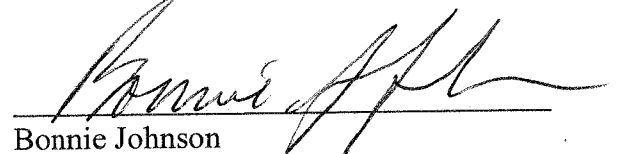
FISCAL DATA: Not applicable.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

EXEMPT RECORDING
REQUESTED BY
City of Banning
PER GOV'T CODE 6103
AND WHEN RECORDED
MAIL TO:

City of Banning – City Clerk
P.O. Box 998
Banning, CA 92220

MAIL TAX STATEMENTS
TO:

City of Banning – City Clerk
P.O. Box 998
Banning, CA 92220

OFFER OF DEDICATION – ROAD PURPOSES

The undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns, for public road, street, highway and utility purposes, the real property situated in the City of Banning, County of Riverside, State of California, described in Exhibit "A" (legal description) and shown on Exhibit "B" (plat map) attached hereto and incorporated herein by this reference as though set forth in full.

It is understood and agreed that the City of Banning and its successors or assigns shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council, or of the local governing bodies or its successors or assigns.

The provisions hereof shall inure to the benefit of and be binding upon heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS THEREOF, these presents have executed this instrument this 29 day of AUGUST, 2007.

Corporation (Type Name)

Corporation (Type Name)

Signature

Signature

Name and Title (Type)

Jim H. Wilson
Name and Title (Type)

STATE OF CA) SS.
COUNTY OF San Bernardino

On Aug 29, 2007, before me, GURPAL BAWA, a Notary Public in and for the State of CA, personally appeared JIM HARRISON WILSON, personally known to me (or 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.

WITNESS my hand and official seal.

Signature

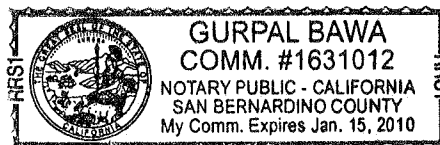


EXHIBIT A

RIGHT OF WAY DEDICATION (FOR STREET AND HIGHWAY PURPOSES)

APN 543-160-017
WESLEY STREET E/O STATE HIGHWAY 243

THAT PORTION OF LOT 81 OF BANNING COLONY LANDS, AS SHOWN BY MAP ON FILE IN BOOK 3 PAGE 149 OF MAPS, RECORDS OF THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND BY MAP ON FILE IN BOOK 5 PAGE 186 OF MAPS, RECORDS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 81, SAID CORNER BEING A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF WESLEY STREET, AS SHOWN ON THE ABOVE REFERENCED MAPS, SAID SOUTHERLY RIGHT OF WAY LINE BEING A LINE PARALLEL AND 30.00 FEET SOUTHERLY OF THE CENTERLINE OF SAID WESLEY STREET;

THENCE NORTH 89°40'10" WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 607.60 FEET, TO A LINE PARALLEL WITH AND 55.00 FEET EASTERLY OF THE CENTERLINE OF SAN GORGONIO AVENUE, AS SHOWN ON THE ABOVE REFERENCED MAPS;

THENCE SOUTH 00°10'48" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 27.21 FEET;

THENCE NORTH 43°52'02" EAST, A DISTANCE OF 33.39 FEET, TO A LINE PARALLEL WITH AND 33.00 FEET SOUTHERLY OF THE CENTERLINE OF SAID WESLEY STREET;

THENCE SOUTH 89°40'10" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 584.38 FEET, TO THE EASTERLY LINE OF SAID LOT 81;

THENCE NORTH 00°12'39" WEST ALONG SAID EASTERLY LINE, A DISTANCE OF 3.00 FEET, TO THE **POINT OF BEGINNING**.

SUBJECT TO EASEMENTS, COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, RIGHTS, RIGHTS-OF-WAY, AND OTHER MATTERS OF RECORD, IF ANY.

SAID PARCEL OF LAND CONTAINS 2,104 SQUARE FEET, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "B", ATTACHED HERETO AND MADE A PART
HEREOF.

HILLWIG-GOODROW, LLC
PREPARED UNDER THE SUPERVISION OF:

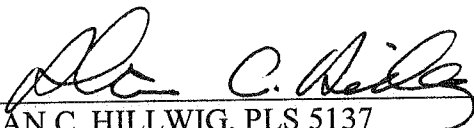
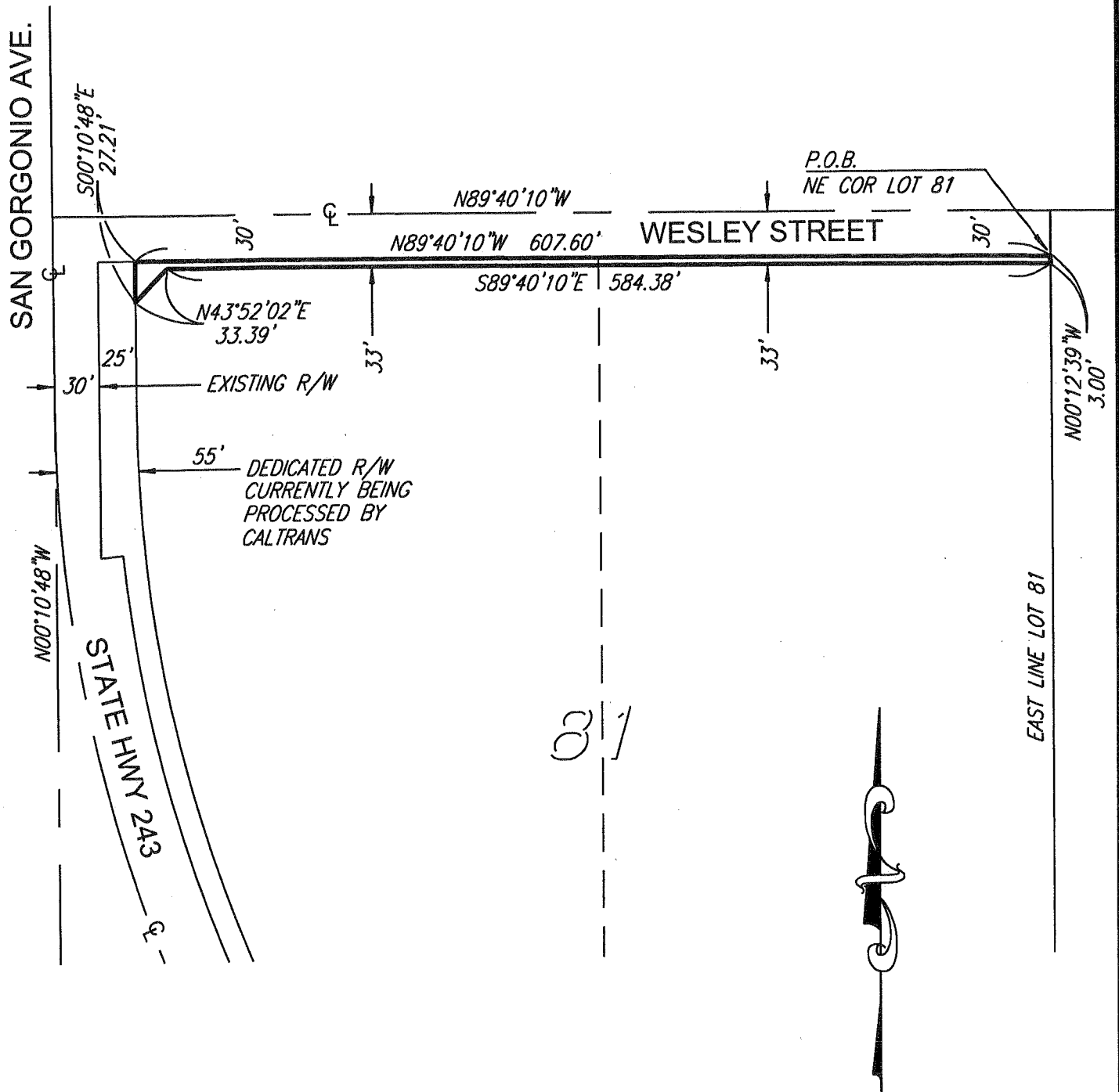

ALAN C. HILLWIG, PLS 5137
DATE: Aug 29, 2007



EXHIBIT "B"

FOR STREET AND HIGHWAY PURPOSES



Prepared by HILLWIG-GOODROW, LLC:
31604 Yucaipa Blvd., Yucaipa, CA 92399 (888) 626-5137

Alan C. Hillwig *Aug 29, 2007*
ALAN C. HILLWIG, PLS 5137 DATE
LICENSE EXPIRES: 6-30-09

SCALE: 1" = 100'
FILE NO.: 433-001
DATE: JUNE, 2007
SHEET 1 OF 1

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: November 14, 2008

TO: City Council

FROM: Bonnie J. Johnson, Finance Director

SUBJECT: Report of Investments for June and July 2008

RECOMMENDATION: "The City Council receive and place these required monthly *Report of Investments* on file."

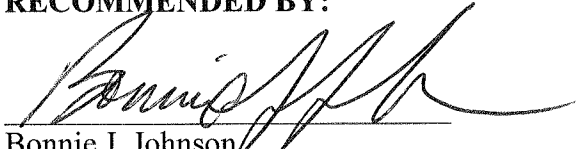
JUSTIFICATION: State law requires that a monthly report of investments be submitted to the Chief Executive Officer and the Legislative Body.

BACKGROUND: The attached reports include investments on hand at the end of June 2008 and July 2008. As of July 31, 2008, the City's operating funds totaled \$73,809,632. Included in operating funds is \$5,824,939 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Treasurer's Report. As of July 31, 2008 approximately 33% of the City's unrestricted cash balances were invested in investments other than LAIF.


Due to Finance Department staffing levels, submission of these monthly reports has fallen behind. The August and September reports will be submitted in December. That action will bring all reporting requirements current.

FISCAL DATA: The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) decreased to 2.787 % in July. The average rate for all investments in July was 2.683%.

RECOMMENDED BY:


Bonnie J. Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

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

Amount

2,275

Bank Accounts

Interest

Rate Amount

Wells Fargo Bank

0.000% 133,842

Wells Fargo Bank-Investment Account

0.625% 1,415,940

Bank of America-Airport

0.300% 8,291

Bank of America-Parking Citations

0.300% 3,444

Bank of America-CNG Station

0.300% 3,977

Money Market and Bank Account Sub-Total

1,565,494

Government Pools

Local Agency Investment Fund: Account #1

2.894% 37,868,620

Account #2 Operating Amount 6,744,128

Account #2 CRA Bond Cash Bal 6,087,025

Local Agency Investment Fund: Account #2

2.894% 12,831,153

Government Pool Sub-Total

50,699,773

Operating Cash Balance**52,267,542**Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund

2.700%

1,364,583

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2

3.082%

24,104,806

Operating Funds Total**77,736,931****Fiscal Agent**

Amount

BNY Western Trust Company

539,059

US Bank

93,672,021

Fiscal Agent Total**94,211,080****Deferred Compensation**

City Employee Trust Accounts

4,044,055

Deferred Compensation Total**4,044,055**

City of Banning Investment Report Operational Portfolio Individual Investments

June 30, 2008

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
133,842	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	133,842	n/a	133,842
1,415,940	Wells Fargo Bank-Investment Acct	n/a	0.63%	daily	varies	1,415,940	n/a	1,415,940
8,291	Bank of America-Airport	n/a	0.30%	daily	varies	8,291	n/a	8,291
3,444	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,444	n/a	3,444
3,977	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,977	n/a	3,977
Sub-total								
1,565,494								
<u>Government Pools</u>								
37,868,620	L.A.I.F. account #1	n/a	2.894%	daily	varies	37,868,620	n/a	37,868,620
12,831,153	L.A.I.F. account #2	n/a	2.894%	daily	varies	12,831,153	n/a	12,831,153
50,699,773								
<u>Investments-US Bank/Piper Jaffray</u>								
925,000	Fedl Home Loan Bank	n/a	5.000%	2/13/2009	12/14/2006	924,873	127	937,432
1,000,000	Fedl Natl Mtg Assn	n/a	5.100%	9/10/2009	9/14/2007	1,003,001	(3,001)	1,004,060
6,000,000	Fedl Natl Mtg Assn	n/a	4.500%	12/24/2009	12/24/2007	6,000,000	0	5,925,000
5,000,000	Fedl Home Loan Bank-Disc Note	n/a	3.250%	7/16/2008	1/16/2008	4,919,111	80,889	4,995,500
2,000,000	Fedl Home Loan Bank	n/a	3.100%	10/29/2010	4/29/2008	2,000,000	0	1,987,500
2,000,000	Fedl Home Loan Bank	n/a	3.280%	12/9/2010	6/9/2008	2,000,000	0	1,991,880
7,263,434								
Money Market								
n/a		n/a	1.180%	daily	varies	7,263,434	0	7,263,434
US Bank/Piper Jaffray Average Rate=								
3.082%								
24,104,806								

Average Rate All= 2.906%

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 August 14, 2007. 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 99 days and does not include Bond Reserve Fund Investments.

City of Banning Investment Report

June 30, 2008

Individual Investments with Fiscal Agent

TRUSTEE		Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Minimum Reserve Requirement	Interest Jun-08	6/30/2008 Market Value
BNY WESTERN TRUST COMPANY								
1997 Admin Building COPs Refunding		2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 1.490%	11/1/2020 daily	522,375	0.00 * 17.69	522,562 16,497
US BANK								
1991 Wilson St. Assessment District		2012	AIM U.S. Treasury Money Market First Amer Treas Oblig Fd CL D	1.805% 1.520%	daily daily	330,620	517.09 0.05	333,053 32
2005 Fair Oaks Ranch Estates		2035	First Amer Treas Oblig Fd CL D	1.520%	daily	190,323	277.93	216,449
2003 CRA Tax Allocation Bonds		2028	Forward Delivery Agreement - B of A First Amer Treas Oblig Fd CL D	4.330% 1.520%	daily daily	971,763	0.00 * 29.11	970,420 22,676
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007								
Redevelop Fund		2037	First Amer Treas Oblig Fd CL D	1.520%	daily		807.20	19,288,913
Redevelop Fund			MBIA Inc GIC	5.140%	daily		459,846.49	0
Cost of Issuance Fund			First Amer Treas Oblig Fd CL D	1.520%	daily		9.80	7,629
Reserve Fund			First Amer Treas Oblig Fd CL D	1.520%	daily	1,880,751	0.15	920,881
Reserve Fund			MBIA Inc GIC	5.140%	daily		40,010.89	0
Capital Interest Fund			First Amer Treas Oblig Fd CL D	1.520%	daily		141.23	690,845
Capital Interest Fund			MBIA Inc GIC	5.140%	daily		12,099.58	0
BUA - WASTE WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund			First Amer Treas Oblig Fd CL D	1.420%	daily		0.18	141
Principal Account			First Amer Treas Oblig Fd CL D	1.520%	daily		157.50	122,660
Project Fund		12/1/2008	Transamerica Occidental Life Ins Co	4.240%			14,025.81	3,691,460
C/O Aegon Institutional Markets Inc Investment Agreement #MN01749N								
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund			First Amer Treas Oblig Fd CL D	1.470%	daily		0.77	614
Interest Account			First Amer Treas Oblig Fd CL D	1.580%	daily		0.00	0
Principal Account			First Amer Treas Oblig Fd CL D	1.520%	daily		411.44	320,417
Reserve Fund			First Amer Treas Oblig Fd CL D	1.520%	daily		2,972.96	2,315,316
Project Fund			First Amer Treas Oblig Fd CL D	1.520%	daily		0.90	2,779,655
Project Fund		6/15/2008	F H L M C MTN-US Treas/Agency Obli	3.875%	daily		66,262.50 *	0
		7/25/2008	F N M A MTN	4.000%	daily		0.00	5,004,700
		5/7/2009	Federal Home Loan Banks	2.780%	daily		0.00	1,178,159
Project Fund		12/1/2008	Transamerica Occidental Life Ins Co Investment Agreement #MN01748N	4.536%	daily		73,563.03	19,534,683

June 30, 2008

First Amer Treas Oblig Fd CLD

Account	Date	Instrument	Yield	Frequency	Balance
Bond Fund	6/1/2008	First Amer Treas Oblig Fd CL D	1.520%	daily	141.41
		AIGMFC GIC	5.225%		31,612.46
Reserve Fund	6/1/2013	First Amer Treas Oblig Fd CL D	1.520%	daily	7.15
		AIGMFC GIC	5.300%		78,479.75
Acquisition & Construction	12/1/2010	First Amer Treas Oblig Fd CL D	1.520%	daily	86.79
		AIGMFC GIC	5.225%		963,653.08
					226,560

*Paid Semi-Annually-Deposited into Money Mkt Account

Deferred Compensation

	Balance	4/1/08 to 6/30/08 Quarterly Activity			6/30/2008
	4/1/2008	<u>Contributions</u>	<u>Withdrawals</u>	<u>Gain/Loss</u>	
ICMA Retirement Corporation	856,080	varies	varies	(6,471)	874,979
CALPERS 457 Program	2,056,147	varies	varies	(12,058)	2,238,185
NATION WIDE-PEBSO	929,934	varies	varies	7,696	930,891
					<u>4,044,055</u>

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

Amount

2,275

Bank Accounts

Interest

Rate

Amount

Wells Fargo Bank

0.000%

37,520

Wells Fargo Bank-Investment Account

0.563%

1,613,077

Bank of America-Airport

0.300%

11,894

Bank of America-Parking Citations

0.300%

3,290

Bank of America-CNG Station

0.300%

4,414

Money Market and Bank Account Sub-Total

1,670,195

Government Pools

Local Agency Investment Fund: Account #1

2.787%

33,923,409

Account #2 Operating Amount

7,067,234

Account #2 CRA Bond Cash Bal

5,824,939

Local Agency Investment Fund: Account #2

2.787%

12,892,173

Government Pool Sub-Total

46,815,582

Operating Cash Balance**48,488,052**Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund

2.810%

1,197,039

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2

2.628%

24,124,541

Operating Funds Total**73,809,632****Fiscal Agent**

Amount

BNY Western Trust Company

539,077

US Bank

95,524,355

*Fiscal Agent Total***96,063,432****Deferred Compensation**

City Employee Trust Accounts

4,073,453

*Deferred Compensation Total***4,073,453**

City of Banning Investment Report Operational Portfolio Individual Investments

July 31, 2008

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
37,520	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	37,520	n/a	37,520
1,613,077	Wells Fargo Bank-Investment Acct	n/a	0.56%	daily	varies	1,613,077	n/a	1,613,077
11,894	Bank of America-Airport	n/a	0.30%	daily	varies	11,894	n/a	11,894
3,290	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,290	n/a	3,290
4,414	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,414	n/a	4,414
Sub-total								
1,670,195								
<u>Government Pools</u>								
33,923,409	L.A.I.F. account #1	n/a	2.787%	daily	varies	33,923,409	n/a	33,923,409
12,892,173	L.A.I.F. account #2	n/a	2.787%	daily	varies	12,892,173	n/a	12,892,173
46,815,582								
<u>Investments-US Bank/Piper Jaffray</u>								
925,000	Fedl Home Loan Bank	n/a	5.000%	2/13/2009	12/14/2006	924,873	127	935,989
1,000,000	Fedl Natl Mtg Assn	n/a	5.100%	9/10/2009	9/14/2007	1,003,001	(3,001)	1,002,500
6,000,000	Fedl Natl Mtg Assn	n/a	4.500%	12/24/2009	12/24/2007	6,000,000	0	5,932,500
2,000,000	Fedl Home Loan Bank	n/a	3.100%	10/29/2010	4/29/2008	2,000,000	0	1,989,380
2,000,000	Fedl Home Loan Bank	n/a	3.280%	12/9/2010	6/9/2008	2,000,000	0	1,993,120
12,271,052 Money Market								
12,271,052								
US Bank/Piper Jaffray Average Rate= 2.628%								
24,124,541								

Average Rate All= 2.683%

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 July 8, 2008. 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 98 days and does not include Bond Reserve Fund Investments.

City of Banning Investment Report

July 31, 2008

Individual Investments with Fiscal Agent

TRUSTEE		Bond Maturity Date	Investment Description	Current Yield	Bond Reserve	Minimum Reserve Requirement	Interest Jul-08	7/31/2008 Market Value
Bond Issue Description					Maturity Date			
BNY WESTERN TRUST COMPANY								
1997 Admin Building COPs Refunding		2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 1.640%	11/1/2020 daily	522,375	0.00 * 17.07	522,562 16,515
US BANK								
1991 Wilson St. Assessment District		2012	AIM U.S. Treasury Money Market First Amer Treas Oblig Fd CL D	1.800% 3.620%	daily daily	265,580	494.02 0.04	333,047 32
2005 Fair Oaks Ranch Estates		2035	First Amer Treas Oblig Fd CL D	1.490%	daily	190,323	271.19	216,721
2003 CRA Tax Allocation Bonds		2028	Forward Delivery Agreement - B of A First Amer Treas Oblig Fd CL D	4.330% 1.490%	daily daily	971,763	24,200.00 * 28.36	992,240 660,174
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARTY BONDS, SERIES 2007								
Redevelop Fund		2037	First Amer Treas Oblig Fd CL D	1.490%	daily		993.74	19,297,095
Redevelop Fund			MBIA Inc GIC	5.140%	daily		0.00	0
Cost of Issuance Fund			First Amer Treas Oblig Fd CL D	1.490%	daily		9.56	0
Reserve Fund			First Amer Treas Oblig Fd CL D	1.490%	daily	1,880,751	55.36	1,920,936
Reserve Fund			MBIA Inc GIC	5.140%	daily		0.00	0
Capital Interest Fund			First Amer Treas Oblig Fd CL D	1.490%	daily		154.50	690,999
Capital Interest Fund			MBIA Inc GIC	5.140%	daily		0.00	0
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund			First Amer Treas Oblig Fd CL D	1.420%	daily		0.18	141
Principal Account			First Amer Treas Oblig Fd CL D	1.490%	daily		153.68	122,813
Project Fund		12/1/2008	Transamerica Occidental Life Ins Co C/O Aegon Institutional Markets Inc	4.240%			14,544.54	3,706,005
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund			First Amer Treas Oblig Fd CL D	1.460%	daily		0.77	615
Principal Account			First Amer Treas Oblig Fd CL D	1.490%	daily		401.45	320,818
Reserve Fund			First Amer Treas Oblig Fd CL D	1.490%	daily		2,900.83	2,318,217
Project Fund			First Amer Treas Oblig Fd CL D	1.490%	daily		1,793.97	7,881,449
		7/25/2008	F N M A MTN	4.000%	daily		107,500.00	0
		5/7/2009	Federal Home Loan Banks	2.780%	daily		0.00	1,177,793
Project Fund		12/1/2008	Transamerica Occidental Life Ins Co Investment Agreement #MN01748N	4.536%	daily		76,302.47	19,610,985

City of Banning Investment Report

July 31, 2008

BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES

Reserve Fund	First Amer Treas Oblig Fd CL D	1.490%	daily	324.77	226,885
	First Amer Treas Oblig Fd CL D	1.490%	daily	3.55	11
	6/1/2013 AIGMFC GIC	5.300%		0.00	2,961,500
Acquisition & Construction	First Amer Treas Oblig Fd CL D	1.430%	daily	628.39	628
	12/1/2010 AIGMFC GIC	5.225%		0.00	33,085,251
*Paid Semi-Annually-Deposited into Money Mkt Account				230,778.44	96,063,432

Deferred Compensation

ICMA Retirement Corporation	Various Employee Selected Mutual Funds	varies			<u>7/31/2008</u>
CALPERS 457 Program	Various Employee Selected Mutual Funds	varies			878,167
NATION WIDE-PEBSO	Various Employee Selected Mutual Funds	varies			2,277,140
					<u>918,146</u>
					<u><u>4,073,453</u></u>

**CITY COUNCIL AGENDA
PUBLIC HEARING**

Date: November 14, 2008

TO: City Council

FROM: Bonnie J. Johnson, Finance Director

SUBJECT: Resolution No. 2008-119 A Resolution of the City Council of the City of Banning Authorizing an Adjustment in the Banning Municipal Transit System Fixed Route and Dial-A-Ride Fare Structure

RECOMMENDATION: “That the City Council adopt Resolution No. 2008-119, A Resolution of the City of Banning, California, authorizing an adjustment in the Banning Municipal Transit System fixed route and dial-a-ride fare structure.”

JUSTIFICATION: Section 99268.4 of the Public Utilities Code (PUC) requires that rural transit operators maintain a farebox recovery ratio of 10% of the transit system’s annual operating costs. If the Banning Municipal Transit System fare structure is not adjusted, staff projects the transit system will be out of compliance with the PUC farebox recovery requirement.

BACKGROUND & ANALYSIS: The Transportation Development Act (TDA) requires that transit operators comply with farebox ratio requirements. In urban areas the requirement is 20%; in rural areas it is 10%. The balance of the funding for the transit system is TDA grant money that is allocated through Riverside County Transportation Commission (RCTC). If the City does not meet its required farebox ratio, it may become ineligible for future TDA allocations. The loss of TDA funding would adversely impact the City’s ability to provide transit services to its residents.

Since the last fare increase in August of 2005, operating costs have increase approximately 25%, while passenger revenue declined in both 2007 and 2008 by 10% and an additional 7%, respectively. All areas of operating costs have increased including employee services, fuel and other support costs. These factors along with declining ridership make a change in fare structure necessary in order to maintain compliance with applicable requirements.

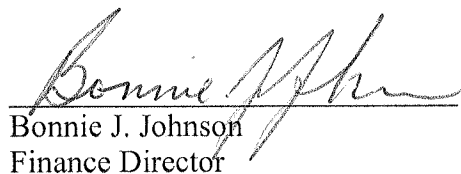
The proposed fare adjustment, as detailed on Exhibit A to Resolution 2008-119, is a phased approach wherein the initial adjustment would be effective on January 1, 2009 and would be followed by a second adjustment effective July 1, 2009. In addition, the proposed fare structure would be modified to include the introduction of daily and monthly passes. The pricing structure for these new passes is consistent with Riverside Transit Agency’s (RTA) pass pricing structure.

As you are aware, the cities of Banning and Beaumont currently operate in the Pass area under the name of Pass Transit. Although separate transit entities, the fees charged by both transit operators are identical. As such, the City of Beaumont will also be considering the same fare adjustments. In addition, the proposed fare adjustment was presented by staff from both cities to the Pass Transit Technical Advisory Committee (TAC). The TAC is currently chaired by Mayor Pro Tem Franklin and includes 2 Beaumont Councilmembers as well as representatives from RTA, RCTC and Sunline Transit Agency. The TAC recommended moving forward with the fare adjustments. The City of Beaumont will hold a public hearing on this topic on November 18th, 2008.


This public hearing was advertised as required. In addition, an announcement was run on Channel 10 as well as flyers made available on the buses.

FISCAL DATA: It is difficult to project revenue increases based on the recommended fare adjustments in as much as the ultimate revenue generation is based upon ridership, which typically declines after a fare increase. In addition, the utilization of the new passes is difficult to project as well, but will certainly impact revenues. Staff will continue to monitor revenue, expenses and ridership as required for TDA compliance.

RECOMMENDED BY:


Bonnie J. Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

RESOLUTION NO. 2008-119

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
AUTHORIZING AN ADJUSTMENT IN THE BANNING MUNICIPAL TRANSIT
SYSTEM FIXED ROUTE AND DIAL-A-RIDE FARE STRUCTURE**

WHEREAS, Section 99268.4 of the Public Utilities Code requires that a rural transit operator in the State of California maintain a farebox recovery ratio of no less than 10% of its annual operating costs; and

WHEREAS, the Banning Municipal Transit operates in a rural area and is subject to the 10% farebox recovery ratio requirement; and

WHEREAS, increased operating costs and declining revenues makes a fare increase necessary in order for Banning Municipal Transit to maintain the Public Utilities Code mandated 10% farebox recovery;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning, California as follows:

Section 1: The transit fare structure as specified in Exhibit "A" is hereby adopted.

Section 2: The adopted fare structure shall take effect on January 1, 2009 and July 1, 2009, respectively as described in detail on Exhibit "A".

PASSED, APPROVED AND ADOPTED this 14th day of November 2008.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:

David Aleshire, City Attorney

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-119 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 14th day of November, 2008, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

PASS TRANSIT AGENCY RECOMMENDED FARE ADJUSTMENT

Dial - A Ride	15%	17.39%
Current Fares:	Proposed Fares - January 2009	Proposed Fares - July 2009
\$1.00/one-way trip	\$1.15/one-way trip	\$1.35/one-way trip
\$1.00/no show	\$1.15/no show	\$1.35/no show
\$9.00/10 one-ride tickets	\$10.35/10 one-ride tickets	\$12.15/10 one-ride tickets
Fixed Route	13.33%	17.65%
Current Fares:	Proposed Fares - January 2009	Proposed Fares - July 2009
\$.75/one-way trip	\$.85/per one-way trip	\$1.00/per one-way trip
\$.50/one-way trip (sr./dis.)	\$.55/per one-way trip (sr./dis.)	\$.60/per one-way trip (sr./dis.)
Current Passes:	Proposed passes - January 2009	Proposed passes - July 2009
\$6.75/10 one-ride tickets	\$7.65/10 one-ride tickets	\$9.00/10 one-ride tickets
\$4.50/10 one-ride tickets (sr./dis)	\$4.95/10 one-ride tickets (sr./dis)	\$5.40/10 one-ride tickets (sr./dis)
	Day pass (general) - \$2.55 (1)	Daily pass (general) - \$3.00 (1)
	Day pass(sr./dis.) - \$1.65 (2)	Daily pass(sr./dis.) - \$1.80 (2)
	Monthly pass (general) - \$29.00 (3)	Monthly pass (general) - \$34.00 (3)
	Monthly pass(sr./dis.) - \$19.00 (4)	Monthly pass(sr./dis.) - \$20.50 (4)

- (1) This represents a 25% discount on proposed fare; assumes 4 trips per day (consistent with RTA rate structure)
- (2) This represents a 25% discount on proposed fare; assumes 4 trips per day (consistent with RTA rate structure)
- (3) This represents a 72.3% discount on proposed fare; assumes 4 trips per day (consistent with RTA rate structure)
- (4) This represents a 72.3% discount on proposed fare; assumes 4 trips per day (consistent with RTA rate structure)

NOTICE OF PUBLIC HEARING

PURSUANT TO LAW, notice is hereby given of a Public Hearing before the City Council of the City of Banning to be heard November 14th at 1:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California, to consider Resolution No. 2008-119, A Resolution of the City of Banning, California, , authorizing an adjustment in the Banning Municipal Transit System fixed route and dial-a-ride fare structure.

ALL INTERESTED PARTIES are invited to attend said hearing and present oral or written testimony on the matter or send their written comments to the City Clerk, P.O. Box 998, Banning Ca. 92220. Data relevant to the proposed fare structure is available for public review at the office of the City Clerk for the period of 10 days prior to the Public Hearing.

BY ORDER OF THE CITY CLERK of the City of Banning, California.

Marie Calderon, City Clerk