

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

January 10, 2012
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

The following information comprises the agenda for a regular meeting of the City Council and a Joint Meeting of the City Council and the Banning Utility Authority and a Joint Meeting of the City Council Sitting in Its Capacity of a Successor Agency and the Banning Housing Authority.

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

I. CALL TO ORDER

- Invocation
- Pledge of Allegiance
- Roll Call – Councilmembers Botts, Franklin, Hanna, Machisic, Mayor Robinson

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONDENCE

IV. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS

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.)

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

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

PRESENTATIONS:

1. Riverside County Fair & National Date Festival Queen & Court (ORAL)
2. Proclamation – Human Trafficking Awareness and Prevention Month. 1
(Note: proclamation will be presented at their event to be held on 1-19-12)
3. Promotion of Rick Diaz to Electric Operations Manager (ORAL)

APPOINTMENTS:

1. City Council Committee Assignments 2

V. 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 Item 1 through 2
Items to be pulled _____, _____, _____, _____ for discussion.**

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

1. Resolution No. 2012-01, Authorizing the Destruction of City Records as Provided by Section 34090 of the California Government Code and Resolution No. 2003-26 of the City of Banning. 5
2. Accept the Right of Way Dedication from Mr. and Mrs. Carlton for Assessor's Parcel Numbers: 541-161-025, 541-161-023, 541-161-031, 541-161-024, 541-161-006 and 541-161-007 43

- Open for Public Comments
- Make Motion

RECESS REGULAR CITY COUNCIL MEETING AND CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING UTILITY AUTHORITY.

VI. CONSENT ITEM

1. Resolution No. 2012-01 UA, Authorizing the Submittal of an Application for Long-Term Easement from the City as "Applicant" to the San Bernardino National Forest for the Repair, Operation and Maintenance of the Existing Water Diversion and Conveyance Facilities, also known as the Whitewater Flume 60

Adjourn Joint Meeting of the Banning City Council and the Banning Utility Authority and reconvene regular City Council Meeting.

VII. ORDINANCES-INTRODUCTION

1. Ordinance No. 1440, Amending Banning Municipal Code to Permit the City Manager to Sign Conveyances and Other Instruments 68
Recommendation: That the City Council adopt Ordinance No. 1440.

Mayor asks the City Clerk to read the title of Ordinance No. 1440:

"An Ordinance of the City Council of the City of Banning, California, Amending Chapter 3.24 of the Banning Municipal Code to Permit the City Manager to Sign Conveyances and Other Instruments."

Motion: I move to waive further reading of Ordinance No. 1440.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1440 pass its first reading.

VIII. 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. Ordinance No. 1443, Re-establishing and Declaring Prima Facie Speed Limits Within Specified Speed Zones Throughout the City of Banning. Staff Report 70
Recommendation: That the City Council adopt Ordinance No. 1443, Re-establishing and Declaring Prima Facie Speed Limits within Specified Speed Zones throughout the City of Banning, amending Ordinance No. 1362.

Mayor asks the City Clerk to read the title of Ordinance No. 1443:

"An Ordinance of the City Council of the City of Banning, California, Re-establishing and Declaring Prima Facie Speed Limits Within Specified Speed Zones Throughout the City of Banning."

Motion: I move to waive further reading of Ordinance No. 1443.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1443 pass its first reading.

2. A Report Prepared Pursuant to California Health and Safety Code Section 33433 Regarding the Conveyance of Real Property by the City of Banning to JMA Village, LLC, A California Limited Liability Company and the Development of said Property Pursuant to the Provisions of a Purchase and Sale Agreement.

Staff Report 76

Recommendations: (1) That the City Council adopt Resolution No. 2012-03, Making and Approving Certain Findings and Approvals under Section 33433 of the California Health and Safety Code, and Approving a Purchase and Sale Agreement between the City of Banning; and (2) JMA Village, LLC; and Authorize the City Manager, on behalf of the City, to execute the Purchase and Sale Agreement with the Developer.

IX. REPORTS OF OFFICERS

1. Water & Wastewater Rate Revenue Update *(ORAL)*

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

X. REPORTS OF OFFICERS

1. California Supreme Court Decision Concerning Redevelopment Staff Report 209

Recommendation: That the City Council and the Banning Housing Authority take the following actions:

- a) Adopt Resolution No. 2012-04, Determining that the City of Banning elects to, and shall retain the housing assets and functions of the dissolved Community Redevelopment Agency of the City of Banning pursuant to California Health and Safety Code Section 34176 and hereby transfers such housing functions and assets to the Banning Housing Authority; and
- b) Adopt Resolution No. 2012-01 HA of the Banning Housing Authority accepting from the City of Banning the retained housing assets and functions of the dissolved Community Redevelopment Agency of the City of Banning.

Adjourn Joint Meeting of the Banning City Council Sitting in Its Capacity of a Successor Agency and the Banning Housing Authority and reconvene regular City Council Meeting.

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

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

XII. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Review of Sign, CUP & Design Review Fees & Rates (*Feb. 14th*)
3. Polices & Procedures for Applicant re. Projects and Applicants for Commissions & Committees (*Commissions & Committees*)
4. Water Resources Report (*Workshop*) (*Feb.*)

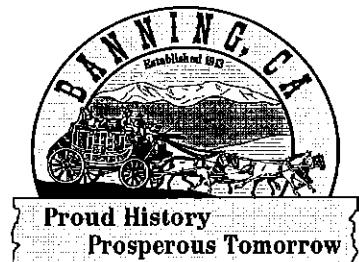
XIII. ADJOURNMENT

Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Thursday, 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 (951) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II].



PROCLAMATION

WHEREAS, children, women, and men are born with an unalienable right to freedom -- an ideal that has driven the engine of American progress throughout our history; and

WHEREAS, we will continue our fight to deliver on the promise of freedom, we commemorate the 13th Amendment, and the Emancipation Proclamation; and

WHEREAS, the people of Banning are committed to the protection of individual freedom, which necessitates the elimination of human trafficking in all its forms including commercial sexual exploitation, debt bondage, involuntary servitude, forced marriage, forced labor, and all forms of slavery; and

WHEREAS, the efforts by individuals, businesses, organizations, school districts, and governing bodies to promote the observance of "National Human Trafficking Awareness and Prevention Day" on January 11th of each year represents the ongoing commitment in the United States to raise awareness of and to actively combat human trafficking; and

WHEREAS, through the continued work of volunteers, parents, community partners, policy makers and professionals, the issue of human trafficking may be eradicated, giving all people a bright, successful future; and

WHEREAS, Riverside County Anti-Human Trafficking task force co-chaired by the Riverside County Sheriff's Department and Operation SafeHouse will continue to work in collaboration to protect, prevent, and prosecute on behalf of victims of human trafficking; and

WHEREAS, Riverside County Anti-Human Trafficking task force joins in partnership with the **City of Banning** to devote resources and efforts throughout the year on the rescue and restoration of victims and the investigation and prosecution of traffickers to ensure that the health and safety of individual and communities reigns.

NOW THEREFORE, BE IT RESOLVED, that I, Don Robinson, Mayor of the City of Banning along with the City Council do hereby proclaim the month of January 2012 as "**HUMAN TRAFFICKING AWARENESS and PREVENTION MONTH**" and urges all its residents to become more aware of this countywide problem, and do what they can to prevent, protect and prosecute on behalf of victims in their communities.

IN WITNESS WHEREOF, I have set my hand and caused the seal of the City of Banning, California to be affixed this 10th day of January, 2012.

ATTEST:

Marie A. Calderon, City Clerk

Don Robinson, Mayor

COMMITTEE ASSIGNMENTS - 2011

CITY COUNCIL CITY OF BANNING

NAME OF COMMITTEE	DAY & TIME OF MEETING	ASSIGNMENT	ALTERNATE	STAFF MEMBER
Western Riverside Council of Governments (WRCOG)	1 st Monday of each month.	Machisic	Hanna	City Manager
Riverside Transit Agency (RTA)	4 th Thurs. of each month – 2:00 p.m. (Nov. & Dec. 3 rd . Thursday)	Robinson	Botts	Heidi Meraz Community Services Dir.
Riverside County Transportation Commission (RCTC)	2 nd Wednesday of each month - 10:00 a.m.	Botts	Robinson	Duane Burk, Public Works Director and Heidi Meraz, Community Services Dir.
Pass Area Transportation NOW Committee	1 st Friday of each month at Noon	Franklin	Robinson	Duane Burk, Public Works Director.

(02/08/11)

2

Assignments - 2011 (Continued)

Regional Conservation Authority	Tribal Distribution Fund Committee <i>(County Appt.)</i>	ECONOMIC DEVELOPMENT COMMITTEE LIAISONS	GOVERNMENT ACCESS CHANNEL COMMITTEE (as needed)	PUBLIC UTILITY ADVISORY COMMITTEE FOR CITY OF BANNNG (as needed)
Machisic Hanna, Alt.	Machisic	Robinson, CRA Chairman	Robinson Botts	Hanna

TUMF ZONE COMMITTEE	SOUTHERN CALIF. ASSOC. OF GOVERNMENTS (SCAG)	LEAGUE OF CALIF. CITIES – Contact and Executive Board Representative		
Machisic Franklin, Alt.	Robinson	Hanna (Mayor)		

CHAMBER OF COMMERCE <i>(External Group)</i>	LEAGUE OF CALIFORNIA CITIES <i>(External Group)</i>	SAN GORGONIO PASS WATER AGENCY <i>(External Group)</i>	COMMUNITY ACTION AGENCY <i>(External Group)</i>	
Robinson Botts, Alt.	City Council	Franklin Robinson, Alt.	Franklin City Staff, Alt.	

(02/08/11)

Assignments - 2011 (Continued)

2 x 2 COUNCIL WORKING GROUPS

BANNING UNIFIED SCHOOL DIST.	MORONGO BAND OF MISSION INDIANS	MT. SAN JACINTO COLLEGE	AIRPORT	
Franklin Hanna	Hanna Machisic	Hanna Robinson	Franklin Robinson	

HIGHLAND SPRINGS TASK FORCE	BANNING HEIGHTS COMMITTEE	FIRE DEPT. COMMITTEE		
Robinson Franklin	Hanna Machisic	Robinson Machisic		

(02/08/11)

CITY COUNCIL AGENDA

Date: January 10th, 2012

TO: Mayor and City Council Members

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

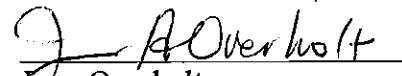
SUBJECT: Resolution No. 2012-01 Authorizing The Destruction Of City Records As Provided By Section 34090 Of The California Government Code And Resolution No. 2003-26 Of The City Of Banning.

RECOMMENDATION: The City Council adopt Resolution No 2012-01, "Authorizing the Destruction of City Records as provided by section 34090 of the California Government Code and Resolution No. 2003-26 of the City of Banning."

DISCUSSION: On April 8, 2003, the City Council adopted Resolution No. 2003-26 that sets forth the schedule for destruction of City Records. The adopted schedule complies with the State of California guidelines for record retention and destruction. Periodically, staff reviews its inventory of records to determine what can be destroyed per the adopted schedule. The record destruction guidelines require that the Department Head, City Clerk and City Attorney certify that the records are no longer required to be kept by the City.

FISCAL DATA: No financial impact occurs to the City as a result of authorizing the destruction of the City's records listed in Exhibit A of Resolution No. 2012-01

RECOMMENDED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

Attachment: City Council Resolution 2003-26
Attachment: City Council Resolution 2012-01

ATTACHMENT:

RESOLUTION NO. 2003-26

RESOLUTION NO. 2003-26

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
AUTHORIZING RETENTION PERIOD FOR CERTAIN CITY RECORDS AND
RESCINDING RESOLUTION NO. 1996-7-A**

WHEREAS, Section 34090 of the California Government Code authorizes the period of retention for certain city records upon adoption of a resolution of the legislative body of the City and the written consent of the City Attorney; and

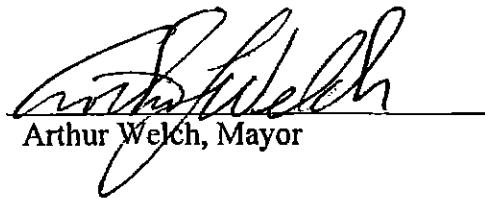
WHEREAS, Section 34090.6 of the California Government Code authorizes the destruction of certain public safety communications upon approval of the legislative body of the City and written consent of the City Attorney; and

WHEREAS, Section 12236 of the California Government Code directs the Secretary of State to "establish, publish, update, and maintain on a permanent basis guidelines for local government records retention."

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BANNING, AS FOLLOWS:

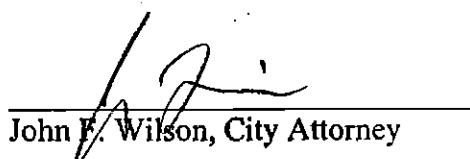
Section 1: All City records be maintained in accordance with the attached guidelines and any subsequent amendments published by the Secretary of State.

PASSED, APPROVED, AND ADOPTED this 8th day of April, 2003.



Arthur Welch, Mayor

APPROVED AS TO FORM
AND LEGAL CONTENT:



John F. Wilson, City Attorney

ATTEST:



Marie A. Calderon, City Clerk

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2003-26 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of April, 2003 by the following vote, to wit:

AYES: Councilmembers Machisic, Palmer, Salas, Mayor Welch

NOES: None

ABSTAIN: None

ABSENT: Councilmember Jenkins



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

Reso. No. 2003-26

LEGEND

Records Retention

AC = Active
AU = Audit
CU = Current Year
E = Election
P = Permanent
T = Termination

AD = Adoption
CL = Closed/Completion
DOB = Date of Birth
L = Life
S = Supersede

CITATIONS

B&P – Business and Professions	H&S – Health & Safety
CAC – California Administrative Code	HUD – Housing and Urban Development
CCP – Code of Civil Procedure	OSHA – Occupational Safety & Health Act
CCR – Code of California Regulations	PC – Penal Code
CEQA – California Environmental Quality Act	POST – Police Officers Standards Training
CFR – Code of Federal Regulations	UFC – Uniform Fire Code
EC – Election Code	USC – United States Code
FMLA – Family & Medical Leave Act, 1993	WIC – Welfare & Institutions Code
GC – Government Code	

ADMINISTRATION (CONTINUED)

Record Series	Retention	Citation	Descriptor
<i>HUMAN RESOURCES</i>			
Non-Safety Employees	T + 3	Reference: 29 CFR 1627.3; CCR Sec 1174; 29 CFR 1602.30.32; GC6250 et seq; 29 CFR; GC 12946, 34090*	Non-safety employees may include: Release Authorizations; Certifications; Reassignments; outside employment; commendations disciplinary actions; terminations; Oaths of Office; evaluations-pre-employee medical; fingerprints; identification cards (ID=s) *1607.4; 29 CFR 655.202; 29 CFR 516.6 et seq; 45 CFR 1068.6(a)
Personnel Records (copies)	CU + 2	GC34090; GC6250	Attendance; evaluations; drafts; worksheets; postings
PERS, Social Security, SSI	P	29 CFR 1627.3(2); GC 12946, 34090	EEOC/ADEA
Recruitment	CL + 3	Reference: GC12946; GC6250 et seq; 29 CFR 1602 et seq 29 CFR 1607; 29CFR 1627.3	Applications, resumes, alternate lists/logs, indices; ethnicity disclosures; examination materials; examination answer sheets, job bulletins; eligibility; electronic database
Reports	CU + 2	GC34090	Employee statistics, benefit activity; liability loss
Safety Employees	T + 5	Reference: 29 CFR 16273; CCR Sec 1174; 29 CFR 1607.4; *	Police, fire, emergency employees may include; Release Authorizations; Certifications Reassignments; outside employment; commendations disciplinary actions; terminations; Oaths of Office; evaluations-pre employee medical *29 CFR 1602.30.32; 29 CFR 655.202; 29 CFR 516.6 et seq; 45 CFR 1068.6(a)
Surveys and Studies	CU + 2	GC 12946, 34090; 29 CFR 516.6(2); 29 CFR 1602.14	Includes classification, wage rates
Training Records Non-Safety	CU + 7	GC6250 et seq	Employee applications, volunteer program training, class training materials, internships;
Personnel (by name)	T + 7	GC34090	Paperwork documenting officers internal and external training
Safety	CU + 2	GC34090	Certifications/designations
Vehicle Mileage Reimbursement Rates	S + 2	GC 34090	Annual mileage reimbursement rates

ADMINISTRATION (CONTINUED)

Record Series	Retention	Citation	Descriptor
Financial Records	P	GC 34090, 40802, 53901	
Management Reports	2	GC 34090	
PUBLIC INFORMATION			
Brochures, publications, newsletter, bulletins	S + 2	GC 34090	
Calendar, City	CU + 2	GC 34090	
Media Relations	CU + 2	GC 34090	Includes cable, newspaper, radio, message boards, presentations.
RISK MANAGEMENT			
Accident Reports - City Assets	CL + 7	29 CFR 1904.2; 29;*	Reports and related records * CFR 1904.6
Bonds, Insurance	P	CCP 337.2; 343	Bonds and insurance policies insuring city property and other assets
Claims, Damage	CL + 5	GC34090; GC25105.5	Paid/Denied
Incident Reports	CL + 7	29 CFR 1904.2; 29 CFR 1904.6	Theft, arson, vandalism, property damage or similar occurrence (excluding fire/law enforcement)
Insurance, ACCEL JT Powers Agreement	P	GC34090	(Authority California Cities Excess Liability Insurance) - Accreditation/ MOU=s/agreement/agendas
Insurance, Certificates	P	GC34090	Insurance certificates filed separately from contracts, includes insurance filed by licensees
Insurance, Liability/Property	P	GC34090	May include liability, property, Certificates of Participation, deferred, use of facilities
Insurance, Workers Compensation	P	GC6410; 29 CFR 1910.20	Indemnity; PERS - working files - originals with Administrator
Photographs, Negatives, Film	CL + 2	GC34090	
Risk Management Reports	CL + 5	OMB 1220-0029; 29 CFR1904.4; GC 34090	Federal OSHA Forms; Loss Analysis Report; Safety Reports ; Actuarial Studies
Workers Compensation	P	CCR 14311; 15400.2; CA Labor Code 110-139.6	Claim Files, Reports, Incidents (working files) originals filed with Administrator

FINANCE

Record Series	Retention	Citation	Descriptor
ACCOUNTING			
Accounts Payable	AU + 4	GC34090	Invoices, check copies, supporting documents
Accounts Receivable	AU + 4	GC 34090	
Applications	CL + 2	GC34090	Utility connections, disconnects, registers, service
Assessment Districts	P	GC 34090	Collection information; Original documentation files with municipal clerk
Bank Reconciliation	AU + 5	GC34090; 26 CFR 16001-1	Statements, summaries for receipts, disbursements & reconciliation
Billing Records	AU + 2	GC34090	Customer name, service address, meter reading, usage, payments, applications/cancellations
Budget	AU + 2	GC 34090	
Budget adjustments, journal entries	AU + 2	GC34090	Account transfers
Checks	AU + 5	GC34090; CCP 337	Includes payroll, canceled & voided checks
Deposits, Receipts	AU + 4	GC 34090; CCP 337	Checks, coins, currency
Invoices	AU + 2	GC34090	Copies sent for fees owed, billing, related documents
Journals			
Utility Billing	CU + 2	GC34090	Billing including monthly activity
Ledger, General	P	GC34090; *	* CCP 337
Voucher	AU + 4	GC34090; CCP 337	Account postings with supporting documents
Taxes, Receivable	AU + 3	CCP338	
Warrant Register	AU + 2	GC 34090.7	
ADMINISTRATIVE SERVICES			
Budget Operating (copies)	S	GC34090	Departmental Reference
Budget, Proposed	CU + 2	GC34090	Presented to Council
Adopted	P	GC 34090	
FIXED ASSETS			
Inventory	AU + 4	GC34090; 26 CFR 301 65-1(F)	Reflects purchase date, cost, account number
Surplus Property			
Auction	AU + 2	GC34090	Listing of property
Disposal	AU + 4	GC34090; CCP 337	Sealed bid sales of equipment
Vehicle Ownership & Title	L	VC 9900 et seq.	Title transfers when vehicle sold
LICENSE			
Business	T + 4	GC34090; CCP 337	Paid & reports

FINANCE (CONTINUED)

Record Series	Retention	Citation	Descriptor
PAYROLL			
Adjustments	AU + 4	GC 34090 29 CFR 516.5 – 516.6	Audit purposes
Employee Time Sheets	AU + 6	GC34090; 29 CFR 516.2*	Signed by employee for audit & FEMA Reports *20 CFR 516.6(1); IRS Reg. 31.6001-1(e)(z); R&T 19530; LC 1174(d)
PERS Employee Deduction Reports	T + 4	GC34090; CAC 22- 1085-2	Record of deductions (PERS Public Employee Retirement System) *26CFR 31.6001-1;29 CFR 516.5, 516.6, LC 1174(d)
Register	P	GC34090; GC37207	Labor costs by employee & program
Salary Records	T + 3	GC34090; 29 CFR 516.2	Deduction authorization, beneficiary designations, unemployment claims, garnishments
PURCHASING			
Bids, RFQ's, RFP's Successful Unsuccessful	AU + 4 AU + 5 CU + 2	GC34090; CCP 337; *	Requests for Qualifications; Requests for Proposals regarding goods and services * GC 25105-1; GC 34090
Requisitions			
Purchase Orders	AU + 4	GC34090; CCP 337	Original documents
Stores	CU + 2	GC34090	Completed forms for ordering
Vendor Register	P	GC34090	Alpha vendor listing of purchase orders, invoices, account numbers and check date
REPORTS			
Audits	P	GC 34090	
Deferred Compensation	T + 5	GC34090; 26 CFR 16001- 1*	Records of employee contributions and city payments *29 CFR 1627.3(2)
Federal and State Tax	AU + 4	GC34090; 29USC 436 *	Forms 1096, 1099, W-4's and W-2's *26 CFR 31.6001.1-4; IRS REG 31.6001-1(e)(2);R&T 19530;29 CFR 516.5-516.6
Financial, Annual	AU + 7	GC 34090.7	
Investment Transactions	P	GC34090; CCP 337; GC 53607	Summary of transactions, inventory & earnings report
Labor Distribution	AU + 2	GC34090	Costs by employee & program
Meter Reading	CU + 2	GC34090	
State Controller	P	GC34090	Controller may destroy after 5 years
Utility Rebates	CU + 2	GC34090	
TREASURER			
Bank Statements	AU + 2	FC 3368, 30210; GC 43900 et seq.	Financing authority

ATTACHMENT:
RESOLUTION NO. 2012-01

RESOLUTION NO. 2012-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE DESTRUCTION OF CITY RECORDS AS PROVIDED BY SECTION 34090 OF THE CALIFORNIA GOVERNMENT CODE AND RESOLUTION NO. 2003-26 OF THE CITY OF BANNING.

WHEREAS, the City Council has adopted Resolution No. 2003-26 setting forth the schedule for the destruction of records; and

WHEREAS, Section 34090 of the California Government Code provides a procedure whereby any City record that has served its purpose and is no longer required may be destroyed; and

WHEREAS, the City Clerk has endorsed on Exhibit A to this resolution her determination that the Records set forth in Exhibit A are not required to be kept by the City; and

WHEREAS, the City Attorney has endorsed on Exhibit A to this resolution his determination that the Records set forth on Exhibit A are not required to be kept by the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning, California that the Records described in Exhibit A may be destroyed.

PASSED, APPROVED, AND ADOPTED this 10th day of January, 2012.

Don Robinson, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk

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

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2012-01, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of January, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

RESOLUTION NO. 2012-01

EXHIBIT "A"

REQUEST FOR DESTRUCTION OF RECORDS

Date: Jan. 10, 2012
Department: Finance, Human Resources

We are requesting destruction of the attached records due to:

A copy has been made in accordance with Administrative Policy #A-28.
 The retention period on the following records has elapsed.

Approvals:

Department Head J. A. O'Neil Date 1/4/12

City Clerk Mari A. Callahan Date 1-4-12

City Attorney _____ Date _____

Destruction Date:	Destroyed By:	Remarks:

Return signed original to City Clerk when completed.

RESOLUTION 2011-01 EXHIBIT A

DEPARTMENT:		BUILDING:			
Finance		City Hall			
INVENTORY TAKEN BY: James Travick		DEPARTMENT HEAD: June Overmolt			
(Signature/Date)					
(Signature/Date)					
RECORDS INVENTORY					
(1)	(2)	(3)	(4)		
RECORDS SERIES	DESCRIPTION	FILE LOCATION	MEDIA TYPE		
Accounting					
	Journal Entries	Varies	Paper		
	Sales Tax Revenue Received	Varies	Paper		
	Receipts	Varies	Paper		
	Cash Postings	Varies	Paper		
	Bank Reconciliation	Varies	Paper		
	Return Checks	Varies	Paper		
Accounts Payable					
	Checks & Invoices	Varies	Paper		
	Reports: Bank Transfers & Disbursement Journals	Varies	Paper		
	Edit Lists	Varies	Paper		
Business Licensing					
	Applications (Closed Licences)	Varies	Paper		
	Listings	Varies	Paper		
Payroll					
	Timecards	Varies	Paper		
	W-2s	Varies	Paper		
Purchasing					
	Purchase Orders	Varies	Paper		
Utility Billing					
	Account Receivables	Varies	Paper		
	City Utility Billing	Varies	Paper		
	Bank Drafts	Varies	Paper		
	Budget Billing Reports	Varies	Paper		
	Cycle Billing Registers	Varies	Paper		
	Re-Reads & Misc. Work Orders	Varies	Paper		
	Water Meter Exchange Reports	Varies	Paper		
	Disconnects	Varies	Paper		
	Applied Deposits	Varies	Paper		
	Utility Billing Updates	Varies	Paper		
	Adjustment Vouchers	Varies	Paper		

*Most recent audit completed is FY2010

DEPARTMENT

INVENTORY TAKEN BY: Hannum Resources

INVENTORY TAKEN BY:

**BUILDING
PROGRAM**

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John
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RECORDS INVENTORY

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DEPARTMENT Human Resources

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INVENTORY TAKEN BY:

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BUILDING CRA Building

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RECORDS INVENTORY WORKSHEET

PAGE 1 OF 1

RECORDS INVENTORY WORKSHEET

PAGE 1 OF 1

RECORDS INVENTORY WORKSHEET

PAGE 1 OF 1

DEPARTMENT HUMAN RESOURCES
INVENTORY TAKEN BY:

BUILDING
AIRPORT
PROGRAM MANAGER:

(Signature/Date)

(Signature/Date)

RECORDS INVENTORY								
(1) RECORDS SERIES	(2) DESCRIPTION	(3) FILE LOCATION	(4) MEDIA TYPE	(5) YEARS COVERED	(6) REFER STATUS	(7) DOCUMENT ORIG COPY	(8) VOLUME CUBIC FEET	(9) REMARKS
RECRUITING	DIAL A RIDE DRIVER	AIRPORT P	2008	1	X			CONFIDENTIAL
RECRUITING	ENGINEERING SERVICES ASST.	AIRPORT P	2008	1	X			CONFIDENTIAL
RECRUITING	FIELD SERVICES REP (FEB)	AIRPORT P	2008	1	X			CONFIDENTIAL
RECRUITING	FIELD SERVICES REP (NOV) #1	AIRPORT P	2008	1	X			CONFIDENTIAL
RECRUITING	FIELD SERVICES REP (NOV) #2	AIRPORT P	2008	1	X			CONFIDENTIAL

DEPARTMENT

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INVENTORY TAKEN BY:

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RECORDS INVENTORY

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RECORDS INVENTORY WORKSHEET

DEPARTMENT HUMAN RESOURCES
INVENTORY TAKEN BY:

INVENTORY TAKEN BY:

BUILDING AIRPORT

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DEPARTMENT Human Resources

BUILDING Airport

INVENTORY TAKEN BY:

PROGRAM MANAGER:

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RECORDS INVENTORY

(1) RECORDS SERIES	(2) DESCRIPTION	(3) FILE LOCATION	(4) MEDIA TYPE	(5) YEARS COVERED	(6) REFER STATUS	(7) DOCUMENT ORIG COPY	(8) VOLUME CUBIC FEET	(9) REMARKS
Personnel Files-Non-Safety	Graydon, Kellie	Airport	P	2008	1 X			Confidential
Personnel Files-Non-Safety	Martin, James	Airport	P	2008	1 X			Confidential
Personnel Files-Non-Safety	Mellon, Robert	Airport	P	2008	1 X			Confidential
Personnel Files-Non-Safety	Mota, Irma	Airport	P	2008	1 X			Confidential
Personnel Files-Non-Safety	Negrette, Kristi	Airport	P	2008	1 X			Confidential
Personnel Files-Non-Safety	Orci, Oscar	Airport	P	2008	1 X			Confidential
Personnel Files-Non-Safety	Paxton, Chris	Airport	P	2008	1 X			Confidential
Personnel Files-Non-Safety	Riesgo, Dan	Airport	P	2008	1 X			Confidential
Personnel Files-Non-Safety	Rocha, Kathleen	Airport	P	2008	1 X			Confidential
Personnel Files-Non-Safety	Rohrbach, Robert	Airport	P	2008	1 X			Confidential
Personnel Files-Non-Safety	Salas, Brenda	Airport	P	2008	1 X			Confidential
Personnel Files-Non-Safety	Smith, Khaotrunda	Airport	P	2008	1 X			Confidential
Personnel Files-Non-Safety	Toor, Virpal	Airport	P	2008	1 X			Confidential
Personnel Files-Non-Safety	Wood, Allen	Airport	P	2008	1 X			Confidential

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DEPARTMENT

INVENTORY TAKEN BY:

DEPARTMENT
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BUILDING PROGRAM

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RECORDS INVENTORY

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DEPARTMENT

Human Resources/Risk Management

INVENTORY TAKEN BY:

Human Resources/Risk Management

PROGRAM MANAGER: CRA Buildr

4/14/15
(Signature/Date)

RECORDS INVENTORY

(1)		(2)		(3)		(4)		(5)		(6)		(7)		(8)			
RECORDS SERIES		DESCRIPTION		FILE LOCATION		MEDIA TYPE		YEARS COVERED		REFER STATUS		DOCUMENT		VOLUME		REMARKS	
Personnel Files		Faxon, Frank		CRA		P		12/20/2005		I X		ORIG COPY		CUBIC FEET			
		Palmer, Marshall		CRA	P			1/10/2005		I	X			1	Confidential		

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RECORDS INVENTORY WORKSHEET

DEPARTMENT

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INVENTORY TAKEN BY:

HR

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RECORDS INVENTORY WORKSHEET

PAGE 1 OF 1

DEPARTMENT	Human Resources/Risk Management
INVENTORY TAKEN BY:	21/21
BUILDING	CRA Building
PROGRAM MANAGER:	20/20

7
(Signature/Date) C-407
John C. 1/4/12
(Signature/Date)

DEPARTMENT

INVENTORY TAKEN BY:

Human Resources

(Signature/Date)

BUILDING

BUILDING: Airport
PROGRAM MANAGER:

(Signature/Date)

RECORDS INVENTORY

34

DEPARTMENT

Human Resources/Risk Management

INVENTORY TAKEN BY:

L. May 6-4-07
(Signature/Date)

(ଅଧିକାରୀଙ୍କ ପରିଚୟ)

BUILDING
CRA Building
PROGRAM MANAGER:

(2) (b) (5) (A) (i), (2) (b) (5) (B)

DEPARTMENT

Human Resources

INVENTORY TAKEN BY:

BUILDING
CRA

Dr. May

(Signature/Date) 6/25/06

(Signature/Date)

RECORDS INVENTORY

36

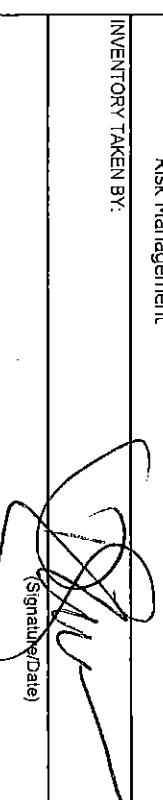
RECORDS INVENTORY WORKSHEET

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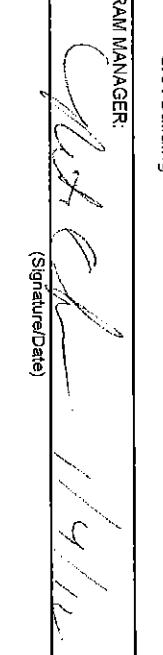
PAGE 1 OF 4

DEPARTMENT
Risk ManagementBUILDING
CRA Building

INVENTORY TAKEN BY:


 06/02/07
 (Signature/Date)

PROGRAM MANAGER:


 06/02/07
 (Signature/Date)

RECORDS INVENTORY								
(1)	(2)	(3) FILE LOCATION	(4) MEDIA TYPE	(5) YEARS COVERED	(6) REFER STATUS	(7) DOCUMENT ORIG	(8) VOLUME COPY	(9) CUBIC FEET REMARKS
RECORDS SERIES	DESCRIPTION							
Liability Claims	SUBRO - Freedom Ger'l Ins. (DOI: 02/21/06)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. AAA Ins. (William Tomeck)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Explorer Ins. (DOI: 10/12/04)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Farmers Ins. (Yee Yang)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Hawaiian Ins. (Fred A. Moreno)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Leader Ins. & Infinite Ins.	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Levezu, Sandra (DOI: 12/17/04)	CRA	P	2005	1	X		Confidential
Liability Claims	SUBRO - MISC (Light Pole Knocked over)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Marcella Carillo (Comm. Ctr.)	CRA	P	2005	1	X		Confidential
Liability Claims	SUBRO - COB v. Mercury Ins. (Tanya a Shelby)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - Golo, Robert John (DOI: 10/31/04)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Marcella Carillo (Comm. Ctr.)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Mercury Ins. (Tanya a Shelby)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - Break in at City Yards (DOI: 12/06/05)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - SW Corner Hargrave & Ramsey (DOI: 10/4/05)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Joseph Frederico (DOI: 01/10/05)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Allianz Malone (DOI: 12/13/04)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - SW Corner Hargrave & Ramsey (DOI: 10/4/05)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Joseph Frederico (DOI: 01/10/05)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Allianz Malone (DOI: 12/13/04)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Allstate Ins. (Wilson - DOI: 6/21/06)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - 1016 N. San Gorgonio (DOI: 09/14/06)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Coast Nat'l. Ins. (Coleman, R.)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - COB v. Allstate Ins. (Wilson - DOI: 6/21/06)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - Newton, Robert (DOI: 08/07/05)	CRA	P	2006	1	X		Confidential
Liability Claims	Water Dept. Theft of vehicles and tools (DOI: 06/25/06)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - Unit # 439 - Code Enforcement (DOI: 11/01/06)	CRA	P	2006	1	X		Confidential
Liability Claims	SUBRO - Unit # 40 (DOI: 05/26/06), Collision	CRA	P	2006	1	X		Confidential
Liability Claims	Wastewater Plant (DOI: 02/13/06), Damaged Fence	CRA	P	2006	1	X		Confidential
Liability Claims	Unit # 23 - Police (DOI: 01/21/06), Vehicle Accident (Fuller)	CRA	P	2006	1	X		Confidential

RECORDS INVENTORY WORKSHEET

DEPARTMENT
Risk Management

BUILDING
CRA Building

INVENTORY TAKEN BY:

John
06/02/07
(Signature/Date)

PROGRAM MANAGER:
John
(Signature/Date)

RECORDS INVENTORY								
(1) RECORDS SERIES	(2) DESCRIPTION	(3) FILE LOCATION	(4) MEDIA TYPE	(5) YEARS COVERED	(6) REFER STATUS	(7) DOCUMENT ORIG COPY	(8) VOLUME CUBIC FEET	(9) REMARKS
Liability Claims	Water Dept. Theft - Stolen/Vandalized truck & tools (10/1/05)	CRA	P	2006	1	X		Confidential
Liability Claims	Alonso, Judith (DOI: 12/15/06), City Electric Vehicle #833	CRA	P	2007	1	X		Confidential
Liability Claims	Briones v. City of Banning	CRA	P	2005	1	X		Confidential
Liability Claims	Fowler, Toni - Power Outage (DOI: 06 or 07/2006)	CRA	P	2006	1	X		Confidential
Liability Claims	Fuss, David - Vehicle damaged debris in roadway (DOI: unknown)	CRA	P	2006	1	X		Confidential
Liability Claims	Isham, Lillian - Hit from Behind (DOI: 10/26/06), Unit # 225	CRA	P	2006	1	X		Confidential
Liability Claims	Jaep, Paul - Sewer Backup (DOI: 11/30/06)	CRA	P	2006	1	X		Confidential
Liability Claims	Johnson, Hugh & Evangeline - Power Surges	CRA	P	2006	1	X		Confidential
Liability Claims	Macias, Tamara - Collision, 300 Highland Spgs. (DOI: 07/11/06)	CRA	P	2006	1	X		Confidential
Liability Claims	Margolis, Lloyd - Tripped, torn quadricep (DOI: 09/01/04)	CRA	P	2006	1	X		Confidential
Liability Claims	Martin, Grace - Partial Power Outage (DOI: 10/26/06)	CRA	P	2006	1	X		Confidential
Liability Claims	Salazar, Liz - PD Kicked in Door (DOI: 12/15/06)	CRA	P	2006	1	X		Confidential
Liability Claims	Scrivens, Robert - Fell out of wheelchair while riding bus (DOI: 2/9/06)	CRA	P	2006	1	X		Confidential
Liability Claims	Soriano, Rudy (DOI: 09/23/03)	CRA	P	2006	1	X		Confidential
Liability Claims	Valenzuela, Margarita - Vehicle Accident (DOI: 08/11/06)	CRA	P	2006	1	X		Confidential
Liability Claims	Wooten-Thomas, Clara - Property Damage (DOI: 08/2006)	CRA	P	2006	1	X		Confidential
Liability Claims	Zakariah, Pnyillis - Overcharged on utility bill (DOI: 09/46/06)	CRA	P	2006	1	X		Confidential
Liability Claims	2004 Incident / Police Reports - SUSPENSE	CRA	P	2006	1	X		Confidential
Liability Claims	2005 Incident / Police Reports - SUSPENSE	CRA	P	2006	1	X		Confidential
Liability Claims	2006 Incident / Police Reports - SUSPENSE	CRA	P	2006	1	X		Confidential
Liability Claims	2002 City Vehicle Damage File	CRA	P	2006	1	X		Confidential
Liability Claims	Restitution / James Edward Judson (Damaged Tree)	CRA	P	2006	1	X		Confidential

RECORDS INVENTORY WORKSHEET

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DEPARTMENT Risk Management

INVENTORY TAKEN BY:

PROGRAM MANAGER:


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1/4/12

RECORDS INVENTORY

(1) RECORDS SERIES	(2) DESCRIPTION	(3) FILE LOCATION	(4) MEDIA TYPE	(5) YEARS COVERED	(6) REFER STATUS	(7) DOCUMENT ORIG	(8) VOLUME COPY	(9) CUBIC FEET	REMARKS
Liability Claims	Holland, Vivian	CRA	P	2006	1	X			Confidential
Liability Claims	Ibarra, Luis & Maria	CRA	P	2006	1	X			Confidential
Liability Claims	Jones, Melissa	CRA	P	2006	1	X			Confidential
Liability Claims	Juhas, Andrew & Mahalia	CRA	P	2006	1	X			Confidential
Liability Claims	Kirchner, Rose	CRA	P	2006	1	X			Confidential
Liability Claims	Lawrence, Jim	CRA	P	2006	1	X			Confidential
Liability Claims	Hui, Lee Yon	CRA	P	2006	1	X			Confidential
Liability Claims	Linda Vista MHP	CRA	P	2006	1	X			Confidential
Liability Claims	Loera, Ignacio	CRA	P	2006	1	X			Confidential
Liability Claims	Manning, Camron	CRA	P	2006	1	X			Confidential
Liability Claims	McGuire, Maura	CRA	P	2006	1	X			Confidential
Liability Claims	McLaughlin, Thomas & Carnelle	CRA	P	2006	1	X			Confidential
Liability Claims	Medina, Alfred	CRA	P	2006	1	X			Confidential
Liability Claims	Mendez, Jr., Jose	CRA	P	2006	1	X			Confidential
Liability Claims	Mescher, Ethel	CRA	P	2006	1	X			Confidential
Liability Claims	Meza, Ernest	CRA	P	2006	1	X			Confidential
Liability Claims	Munoz, Miguel & Maria	CRA	P	2006	1	X			Confidential
Liability Claims	Negrete, Isabel	CRA	P	2006	1	X			Confidential
Liability Claims	Noordman, Anona	CRA	P	2006	1	X			Confidential

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Michael Smith

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RECORDS INVENTORY WORKSHEET

PAGE 1 OF 2

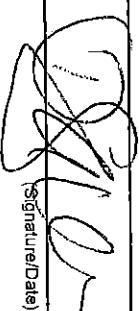
DEPARTMENT

Risk Management

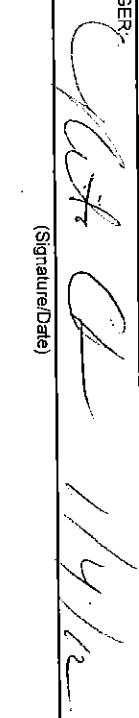
BUILDING

CRA Building

INVENTORY TAKEN BY:


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PROGRAM MANAGER

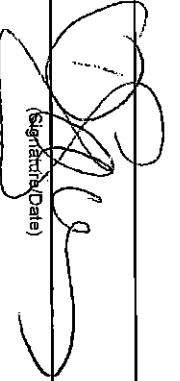

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RECORDS INVENTORY								
(1) RECORDS SERIES	(2) DESCRIPTION	(3) FILE LOCATION	(4) MEDIA TYPE	(5) YEARS COVERED	(6) REFER STATUS	(7) DOCUMENT ORIG	(8) VOLUME CUBIC FEET	(9) REMARKS
Liability Claims	Afana, Lawrence	CRA	P	2006	I	X		Confidential
Liability Claims	Aguilar, Trinidad	CRA	P	2006	I	X		Confidential
Liability Claims	Anderson, Kathy	CRA	P	2006	I	X		Confidential
Liability Claims	Archer, Ofelia	CRA	P	2006	I	X		Confidential
Liability Claims	Avrie, Sylvia	CRA	P	2006	I	X		Confidential
Liability Claims	Bailey, Michael	CRA	P	2006	I	X		Confidential
Liability Claims	Beasley, Clara	CRA	P	2006	I	X		Confidential
Liability Claims	Bowman, Darlene	CRA	P	2006	I	X		Confidential
Liability Claims	Bush, Patricia	CRA	P	2006	I	X		Confidential
Liability Claims	Calvillo, Maria	CRA	P	2006	I	X		Confidential
Liability Claims	Cassidy, Christine	CRA	P	2006	I	X		Confidential
Liability Claims	Castro, Evelyn	CRA	P	2006	I	X		Confidential
Liability Claims	Cog in Christ	CRA	P	2006	I	X		Confidential
Liability Claims	Cordle, Darryl	CRA	P	2006	I	X		Confidential
Liability Claims	Cortez, Maria Elena	CRA	P	2006	I	X		Confidential
Liability Claims	Cottage, Gregory	CRA	P	2006	I	X		Confidential
Liability Claims	Cunningham, Lisa (08/19/2004)	CRA	P	2006	I	X		Confidential
Liability Claims	Cunningham, Lisa (DOI: Ongoing)	CRA	P	2006	I	X		Confidential
Liability Claims	Dowell, Patrick	CRA	P	2006	I	X		Confidential
Liability Claims	Duran, Martha & Luis	CRA	P	2006	I	X		Confidential
Liability Claims	Duro, Lorina	CRA	P	2006	I	X		Confidential
Liability Claims	Fino, Tammy	CRA	P	2006	I	X		Confidential
Liability Claims	Foster, Melvin	CRA	P	2006	I	X		Confidential
Liability Claims	Garcia, Cecilia	CRA	P	2006	I	X		Confidential
Liability Claims	Global Aerospace	CRA	P	2006	I	X		Confidential
Liability Claims	Golo, Robert	CRA	P	2006	I	X		Confidential
Liability Claims	Hildreth, Joe & Elisabeth Blevins	CRA	P	2006	I	X		Confidential

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RECORDS INVENTORY WORKSHEET

PAGE 1 OF 1

DEPARTMENT	Risk Management	BUILDING	CRA Building
INVENTORY TAKEN BY:		 (Signature/Date)	
		 01/19/07 (Signature/Date)	
PROGRAM MANAGER:			

RECORDS INVENTORY								
(1) RECORDS SERIES	(2) DESCRIPTION	(3) LOCATION	(4) MEDIA TYPE	(5) YEARS COVERED	(6) REFER STATUS	(7) DOCUMENT ORIG COPY	(8) VOLUME CUBIC FEET	(9) REMARKS
Liability Claims	1/10/05 Flood Claim	CRA	P	2006	1	X		Confidential
Liability Claims	Ott, Randall & Carolyn	CRA	P	2006	1	X		Confidential
Liability Claims	Posey, Everett	CRA	P	2006	1	X		Confidential
Liability Claims	Reagor, Theatias	CRA	P	2006	1	X		Confidential
Liability Claims	Robles, David	CRA	P	2006	1	X		Confidential
Liability Claims	Ruiz, Eliza	CRA	P	2006	1	X		Confidential
Liability Claims	Sackmann, Elisabeth	CRA	P	2006	1	X		Confidential
Liability Claims	Salazar, Alfred & Leticia	CRA	P	2006	1	X		Confidential
Liability Claims	Salazar, Carol	CRA	P	2006	1	X		Confidential
Liability Claims	Schafara	CRA	P	2006	1	X		Confidential
Liability Claims	Sciortino, Charles	CRA	P	2006	1	X		Confidential
Liability Claims	Smith, Anna	CRA	P	2006	1	X		Confidential
Liability Claims	Smith, Sandra	CRA	P	2006	1	X		Confidential
Liability Claims	Steward, Marilyn & Precious	CRA	P	2006	1	X		Confidential
Liability Claims	Stokes, Bettye	CRA	P	2006	1	X		Confidential
Liability Claims	Turner, Ida	CRA	P	2006	1	X		Confidential
Liability Claims	Trujillo, Angel	CRA	P	2006	1	X		Confidential
Liability Claims	Walsh, Frank	CRA	P	2006	1	X		Confidential

RECORDS INVENTORY WORKSHEET

DEPARTMENT
Risk Management

BUILDING
CRA Building
PROGRAM MANAGER:
John H. O.

INVENTORY TAKEN BY:

John H. O.
(Signature/Date)

(Signature/Date)

(Signature/Date)

RECORDS INVENTORY

(1) RECORDS SERIES	(2) DESCRIPTION	(3) FILE LOCATION	(4) MEDIA TYPE	(5) YEARS COVERED	(6) REFER STATUS	(7) DOCUMENT ORIG	(8) VOLUME COPY	(9) CUBIC FEET	REMARKS
Liability Claims	Liberty Acres, LTD	CRA	P	2006	-	X			Confidential
Liability Claims	Linda Vista Park	CRA	P	2006	-	X			Confidential
Liability Claims	Morongo	CRA	P	2006	-	X			Confidential
Liability Claims	Southern CA Edison	CRA	P	2006	-	X			Confidential
Liability Claims	Reliant Energy Services	CRA	P	2006	-	X			Confidential
Liability Claims	Smith, Dwight	CRA	P	2006	-	X			Confidential
Liability Claims	South Coast Air Quality Mgmt.	CRA	P	2006	-	X			Confidential
Liability Claims	Garcia, Cecilia	CRA	P	2006	-	X			Confidential
Liability Claims	Dickens, Cody	CRA	P	2006	-	X			Confidential
Liability Claims	Davenport	CRA	P	2006	-	X			Confidential
Liability Claims	City of Huntington Beach	CRA	P	2006	-	X			Confidential
Liability Claims	Caldwell, Noah	CRA	P	2006	-	X			Confidential
Liability Claims	Water Treatment Plant	CRA	P	2006	-	X			Confidential
Liability Claims	Ward, Derrick	CRA	P	2006	-	X			Confidential
Liability Claims	Turner, Eugene	CRA	P	2006	-	X			Confidential

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CITY COUNCIL MEETING

DATE: January 10, 2011

TO: City Council

FROM: Kahono Oei, City Engineer 

SUBJECT: Accept the Right-of-Way Dedication from Mr. and Mrs. Carlton for Assessor's Parcel Numbers: 541-161-025, 541-161-023, 541-161-031, 541-161-024, 541-161-006 and 541-161-007

RECOMMENDATION: Accept the Right-of-Way dedication from Mr. and Mrs. Carlton for Assessor's Parcel Numbers: 541-161-025, 541-161-023, 541-161-031, 541-161-024, 541-161-006 and 541-161-007 and direct the City Clerk to accept and record said dedication. The legal descriptions of the dedication are listed in Exhibit "A" and Exhibit "B".

JUSTIFICATION: It is essential to obtain the right-of-way so that construction of street improvements can meet the requirements of the General Plan.

BACKGROUND: The owners for the parcels in question have constructed improvements on the properties. As part of the conditions of approval of the project right-of-way dedications were required in order to meet the ultimate width requirements of the City's General Plan. The legal descriptions and plat maps for said right-of-way dedications have been reviewed and meet the necessary engineering requirements.

FISCAL DATA: Not applicable.

RECOMMENDED BY:


Duane Burk
Director of Public Works

APPROVED BY:


Andy Takata
City Manager

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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

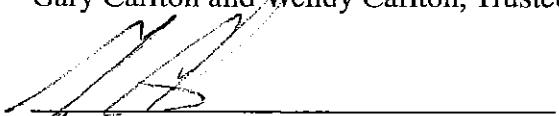
The undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns for public road, street, highway, and utility 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.

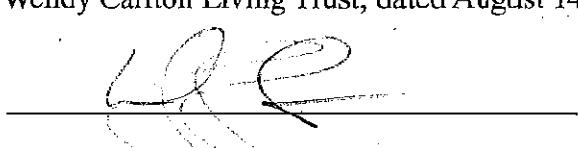
The provisions hereof shall inure to the benefit of and be binding upon heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS THEREOF, these presents have executed this 5th day of December, 2011.

Gary Carlton and Wendy Carlton, Trustees of the Gary and Wendy Carlton Living Trust, dated August 14, 2001



Gary Carlton, Trustee



Wendy Carlton, Trustee

See acknowledgements attached to this document.



ACKNOWLEDGMENT

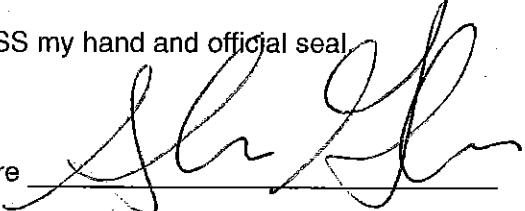
State of California
County of Orange

On December 5, 2011 before me, Shane Gilani
(insert name and title of the officer)

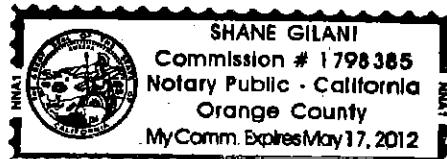
personally appeared GARY CARLTON, WENDY CARLTON,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal,

Signature 

(Seal)



45

When recorded Mail To:

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

SPACE FOR RECORDER'S USE

**NO RECORDING FEE PER SECTION
6103 OF THE GOVERNMENT CODE.**

CERTIFICATE OF ACCEPTANCE

This is to certify that the Offer of Dedication – Road Purposes from Gary Carlton and Wendy Carlton, Trustees of the Gary and Wendy Carlton Living Trust, dated August 14, 2001, is hereby accepted by the CITY OF BANNING pursuant to authority conferred by the City Council this 10th day of January, 2012, and the grantees consent to recordation thereof by its duly authorized agent.

Dated: _____

CITY OF BANNING

By _____
Marie A. Calderon, City Clerk

46

EXHIBIT "A"

LEGAL DESCRIPTION

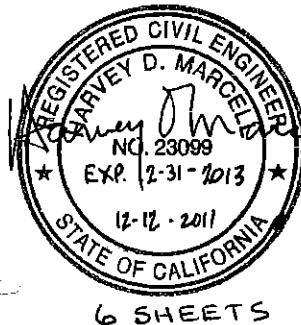
ADDITIONAL DEDICATION OF HARGRAVE STREET

APN 541-161-025

THAT PORTION OF BLOCK 169 OF BANNING COLONY LANDS, AS SHOWN BY MAP ON FILE IN BOOK 3, PAGE 149 OF MAPS, SAN DIEGO COUNTY RECORDS, AND A COPY THEREOF ON FILE IN BOOK 5, PAGE 186 OF MAPS, RIVERSIDE COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF HARGRAVE STREET AND THE SOUTHERLY LINE OF WILLIAMS STREET;
THENCE SOUTH 00°02'56" WEST ALONG THE EASTERLY LINE OF HARGRAVE STREET 170.00 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL CONVEYED TO CLARENCE F. SANDERS AND WIFE AND PAUL KNOEDLER AND WIFE BY DEED FILED FOR RECORDED MAY 12, 1959 AS INSTRUMENT NO. 40725, SAID POINT BEING THE TRUE POINT OF BEGINNING;
THENCE SOUTH 89°15'26" EAST ALONG THE SOUTHERLY LINE OF SAID PARCEL CONVEYED TO CLARENCE F. SANDERS, ET AL A DISTANCE OF 14.00 FEET;
THENCE SOUTH 00°02'56" WEST A DISTANCE OF 164.00 FEET;
THENCE NORTH 89°15'26" WEST A DISTANCE OF 14.00 FEET;
THENCE NORTH 00°02'56" EAST A DISTANCE OF 164.00 FEET TO THE TRUE POINT OF BEGINNING.

THIS DESCRIPTION CONTAINS 2,296 S.F. MORE OR LESS



Sheet 1 of 6

47

LEGAL DESCRIPTION
ADDITIONAL DEDICATION OF HARGRAVE STREET
APN 541-161-023

THAT PORTION OF BLOCK 169 OF BANNING COLONY LANDS, AS SHOWN BY MAP ON FILE IN BOOK 3, PAGE 149 OF MAPS, SAN DIEGO COUNTY RECORDS, AND A COPY THEREOF ON FILE IN BOOK 5, PAGE 186 OF MAPS, RIVERSIDE COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF HARGRAVE STREET AND THE SOUTHERLY LINE OF WILLIAMS STREET;
THENCE SOUTH $00^{\circ}02'56''$ WEST ALONG THE EASTERLY LINE OF HARGRAVE STREET 73.448 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL CONVEYED TO RALPH A. BOGEAR AND WIFE BY DEED FILED FOR RECORDED MAY 31, 1955 AS INSTRUMENT NO. 21012, SAID POINT BEING **THE TRUE POINT OF BEGINNING**;
THENCE SOUTH $89^{\circ}15'26''$ EAST ALONG THE SOUTHERLY LINE OF SAID PARCEL CONVEYED TO RALPH A. BOGEAR AND WIFE A DISTANCE OF 14.00 FEET;
THENCE SOUTH $00^{\circ}02'56''$ WEST 96.552 FEET MORE OR LESS TO THE SOUTHERLY LINE OF THAT PARCEL CONVEYED TO CLARENCE F. SANDERS AND WIFE AND PAUL KNOEDLER AND WIFE BY DEED FILED FOR RECORDED MAY 12, 1959 AS INSTRUMENT NO. 40725;
THENCE NORTH $89^{\circ}15'26''$ WEST ALONG SOUTHERLY LINE OF SAID PARCEL A DISTANCE OF 14.00 FEET;
THENCE NORTH $00^{\circ}02'56''$ EAST A DISTANCE OF 96.552 FEET MORE OR LESS TO **THE TRUE POINT OF BEGINNING**.

THIS DESCRIPTION CONTAINS 1352 S.F. MORE OR LESS.

LEGAL DESCRIPTION

ADDITIONAL DEDICATIONS OF HARGRAVE STREET AND WILLIAMS STREET

APN 541-161-031

THAT PORTION OF BLOCK 169 OF BANNING COLONY LANDS, AS SHOWN BY MAP ON FILE IN BOOK 3, PAGE 149 OF MAPS, SAN DIEGO COUNTY RECORDS, AND A COPY THEREOF ON FILE IN BOOK 5, PAGE 186 OF MAPS, RIVERSIDE COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EASTERLY LINE OF HARGRAVE STREET AND THE SOUTHERLY LINE OF WILLIAMS STREET;
THENCE SOUTH 89°15'26" EAST ALONG THE SOUTHERLY LINE OF WILLIAMS STREET A DISTANCE OF 135.45 FEET;
THENCE SOUTH 00°02'56" WEST A DISTANCE OF 3.00 FEET;
THENCE NORTH 89°15'26" WEST A DISTANCE OF 98.16 FEET;
THENCE SOUTH 41°11'30" WEST A DISTANCE OF 33.44 FEET;
THENCE SOUTH 00°02'56" WEST A DISTANCE OF 46.17 FEET;
THENCE NORTH 89°15'26" WEST A DISTANCE OF 14.00 FEET;
THENCE NORTH 00°02'56" EAST A DISTANCE OF 73.448 FEET TO THE POINT OF BEGINNING.

THIS DESCRIPTION CONTAINS 1,675 S.F. MORE OR LESS

LEGAL DESCRIPTION
ADDITIONAL DEDICATION OF WILLIAMS STREET
APN 541-161-024

THOSE PORTIONS OF BLOCK 169 OF BANNING COLONY LANDS, AS SHOWN BY MAP ON FILE IN BOOK 3, PAGE 149 OF MAPS, SAN DIEGO COUNTY RECORDS, AND A COPY THEREOF ON FILE IN BOOK 5, PAGE 186 OF MAPS, RIVERSIDE COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF HARGRAVE STREET AND THE SOUTHERLY LINE OF WILLIAMS STREET;
THENCE SOUTH 89°15'26" EAST ALONG THE SOUTHERLY LINE OF WILLIAMS STREET A DISTANCE OF 135.45 FEET TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 89°15'26" EAST A DISTANCE OF 154.57FEET;
THENCE SOUTH 00°02'56" WEST A DISTANCE OF 3.00 FEET;
THENCE NORTH 89°15'26" WEST A DISTANCE OF 154.57FEET;
THENCE NORTH 00°02'56" EAST A DISTANCE OF 3.00 FEET TO THE TRUE POINT OF BEGINNING.

THIS DESCRIPTION CONTAINS 464 S.F. MORE OR LESS.

LEGAL DESCRIPTION
ADDITIONAL DEDICATION OF WILLIAMS STREET
APN 541-161-006

THAT PORTION OF BLOCK 169 OF BANNING COLONY LANDS, AS SHOWN BY MAP ON FILE IN BOOK 3, PAGE 149 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, AND A COPY THEREOF ON FILE IN BOOK 5, PAGE 186 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 169, SAID NORTHEAST CORNER BEING THE CENTERLINE OF WILLIAMS STREET, AS SHOWN ON SAID MAP; **THENCE** NORTH 89°15'26" W ON THE CENTERLINE OF SAID WILLIAMS STREET 15.00 FEET;

THENCE SOUTH 00°06'50" WEST, PARALLEL WITH EASTERLY LINE OF SAID BLOCK 169 30.00 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF WILLIAMS STREET; **THENCE** NORTH 89°15'26" WEST ALONG THE RIGHT OF WILLIAMS STREET 130.60 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE SOUTH 00°02'56" WEST 3.00 FEET;

THENCE NORTH 89°15'26" WEST 196.01 FEET;

THENCE NORTH 00°02'56" EAST 3.00 FEET;

THENCE SOUTH 89°15'26" EAST 196.01 FEET TO THE **TRUE POINT OF BEGINNING**.

THIS PARCEL CONTAINS 588 S.F. / 0.01 ACRES MORE OR LESS

LEGAL DESCRIPTION
ADDITIONAL DEDICATION OF WILLIAMS STREET
APN 541-161-007

THAT PORTION OF BLOCK 169 OF BANNING COLONY LANDS, AS SHOWN BY MAP ON FILE IN BOOK 3, PAGE 149 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, AND A COPY THEREOF ON FILE IN BOOK 5, PAGE 186 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 169, SAID NORTHEAST CORNER BEING THE CENTERLINE OF WILLIAMS STREET, AS SHOWN ON SAID MAP;

THENCE NORTH 89°15'26" W ON THE CENTERLINE OF SAID WILLIAMS STREET 15.00 FEET;

THENCE SOUTH 00°06'50" WEST, PARALLEL WITH EASTERLY LINE OF SAID BLOCK 169 30.00 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF WILLIAMS STREET TO **THE TRUE POINT OF BEGINNING**;

THENCE SOUTH 00°06'50" WEST 3.00 FEET;

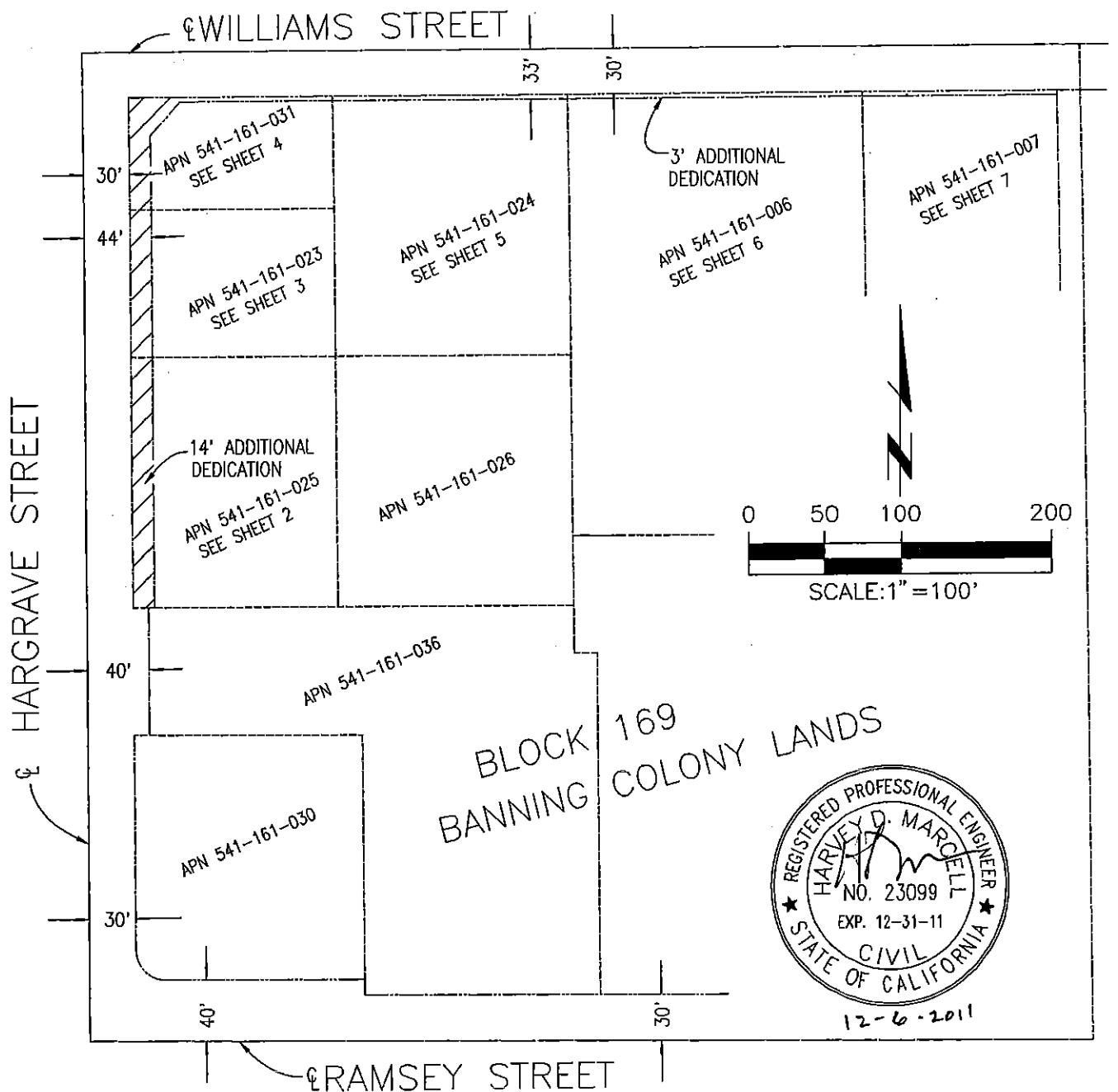
THENCE NORTH 89°15'26" WEST 130.59 FEET;

THENCE NORTH 00°02'56" EAST 3.00 FEET;

THENCE SOUTH 89°15'26" EAST 130.60 FEET TO **THE TRUE POINT OF BEGINNING**.

THIS PARCEL CONTAINS 392 S.F. / 0.01 ACRES MORE OR LESS

OFFER OF DEDICATION



IN THE CITY OF BANNING

LEGAL DESCRIPTION PLAT

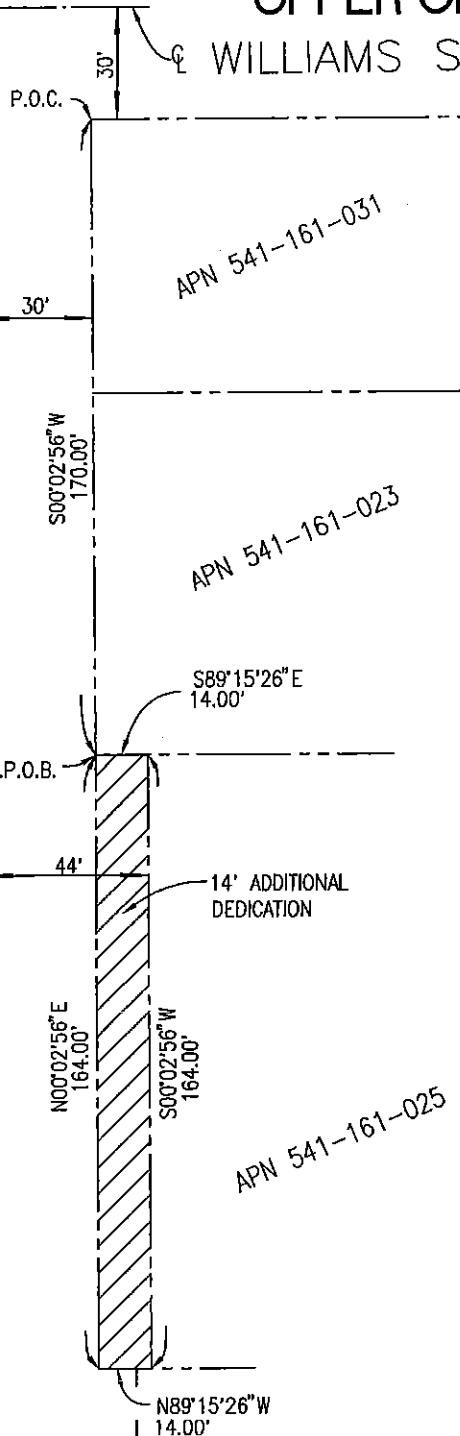
EXHIBIT "B"

MARCELL ASSOCIATES P.O. Box 371 Banning, CA 92220 (951) 662-7460	GARY CARLTON & WENDY CARLTON TRUSTEES OF THE GARY AND WENDY CARLTON LIVING TRUST, DATED AUGUST 14, 2001 901 E. RAMSEY ST BANNING, CA 92220	DEC. 6, 2011 FOR: CP JOB NO. 1493	SHT. 1 OF 7 SHTS.
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53

OFFER OF DEDICATION

© HARGRAVE STREET



IN THE CITY OF BANNING

LEGAL DESCRIPTION PLAT

EXHIBIT "B"

MARCELL ASSOCIATES
P.O. Box 371
Banning, CA 92220
(951) 662-7460

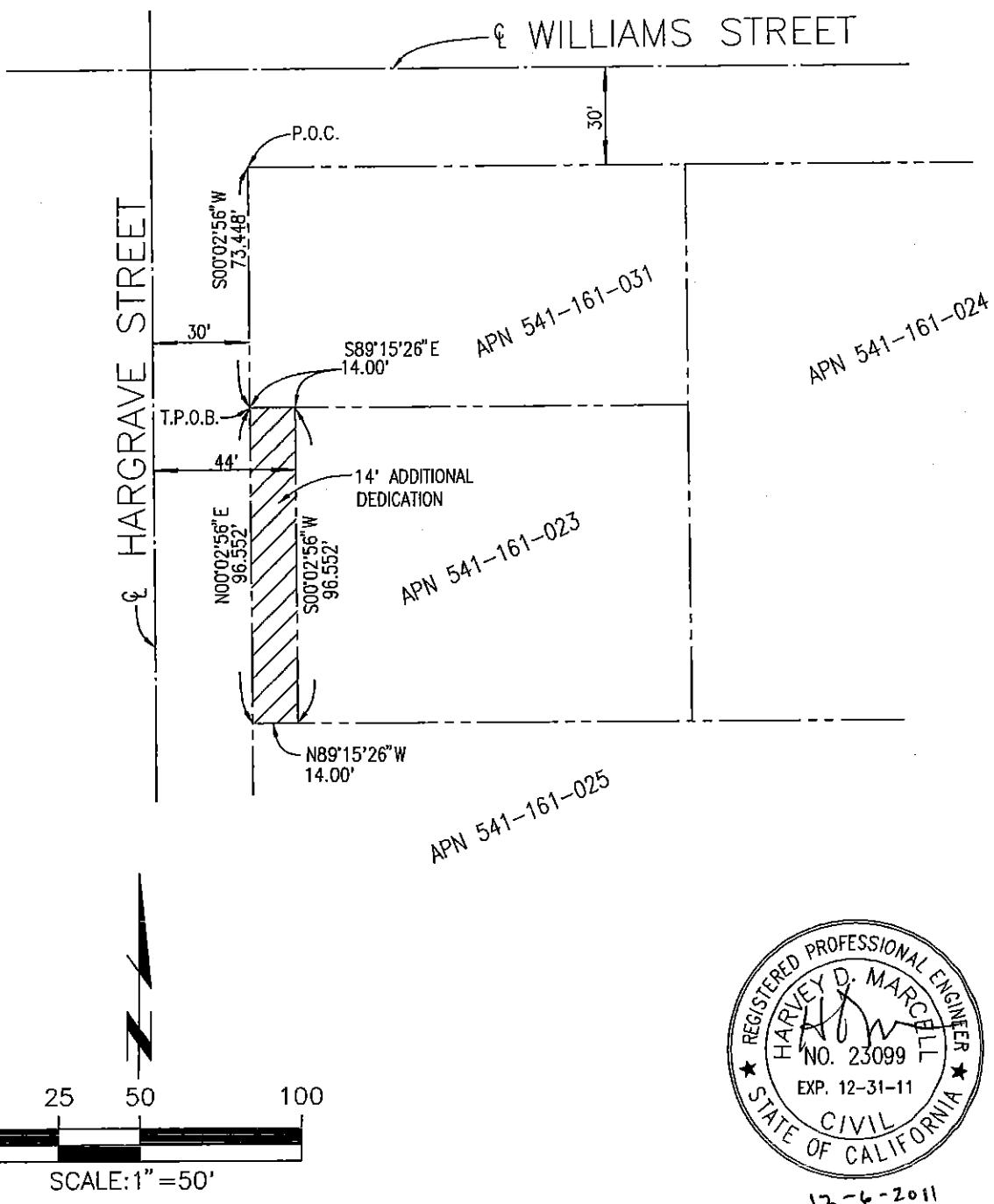
GARY CARLTON & WENDY CARLTON
TRUSTEES OF THE GARY AND WENDY
CARLTON LIVING TRUST,
DATED AUGUST 14, 2001
901 E. RAMSEY ST
BANNING, CA 92220

DEC. 6, 2011
FOR: CP
JOB NO. 1493

SHT. 2
OF 7
SHTS.

54

OFFER OF DEDICATION



IN THE CITY OF BANNING

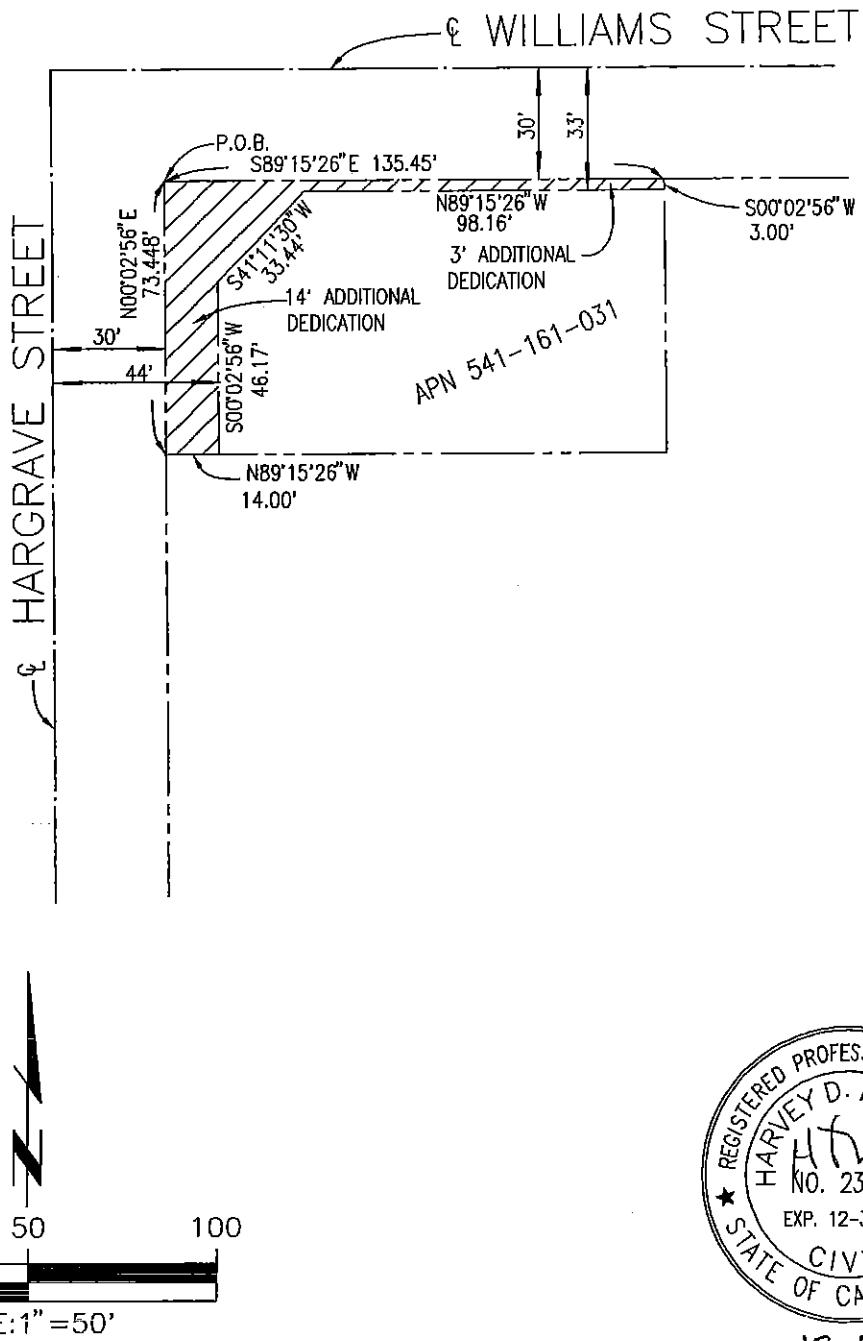
LEGAL DESCRIPTION PLAT

EXHIBIT "B"

MARCELL ASSOCIATES P.O. Box 371 Banning, CA 92220 (951) 662-7460	GARY CARLTON & WENDY CARLTON TRUSTEES OF THE GARY AND WENDY CARLTON LIVING TRUST, DATED AUGUST 14, 2001 901 E. RAMSEY ST BANNING, CA 92220	DEC. 6, 2011	SHT. 3
		FOR: CP	OF 7
		JOB NO. 1493	SHTS.

55

OFFER OF DEDICATION



12-6-2011

IN THE CITY OF BANNING

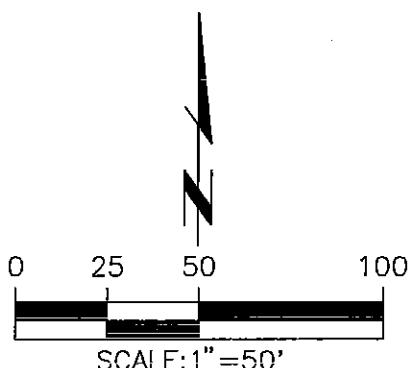
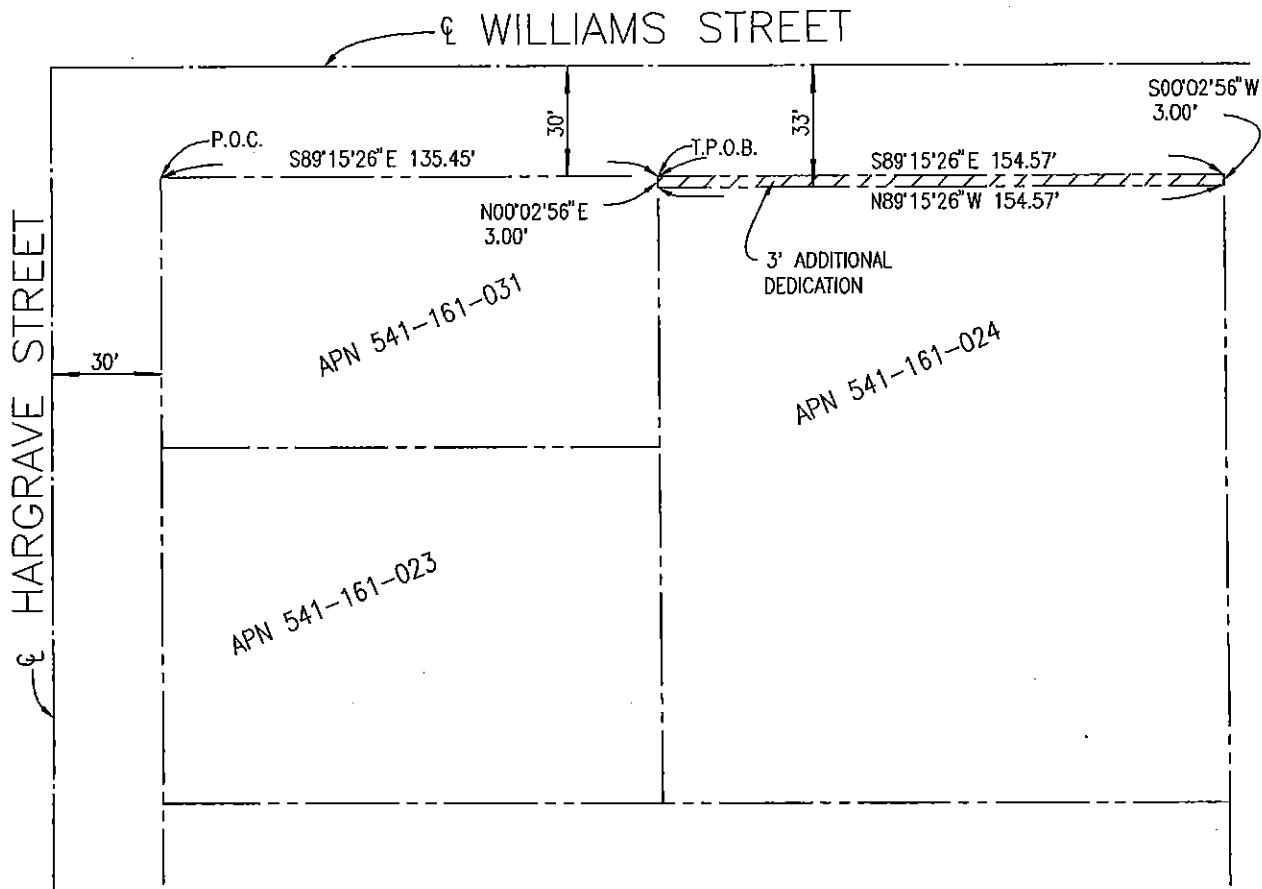
LEGAL DESCRIPTION PLAT

EXHIBIT "B"

MARCELL ASSOCIATES P.O. Box 371 Banning, CA 92220 (951) 662-7460	GARY CARLTON & WENDY CARLTON TRUSTEES OF THE GARY AND WENDY CARLTON LIVING TRUST, DATED AUGUST 14, 2001 901 E. RAMSEY ST BANNING, CA 92220	DEC 6, 2011 FOR: CP JOB NO. 1493	SHT. 4 OF 7 SHTS.
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OFFER OF DEDICATION



12-6-2011

IN THE CITY OF BANNING

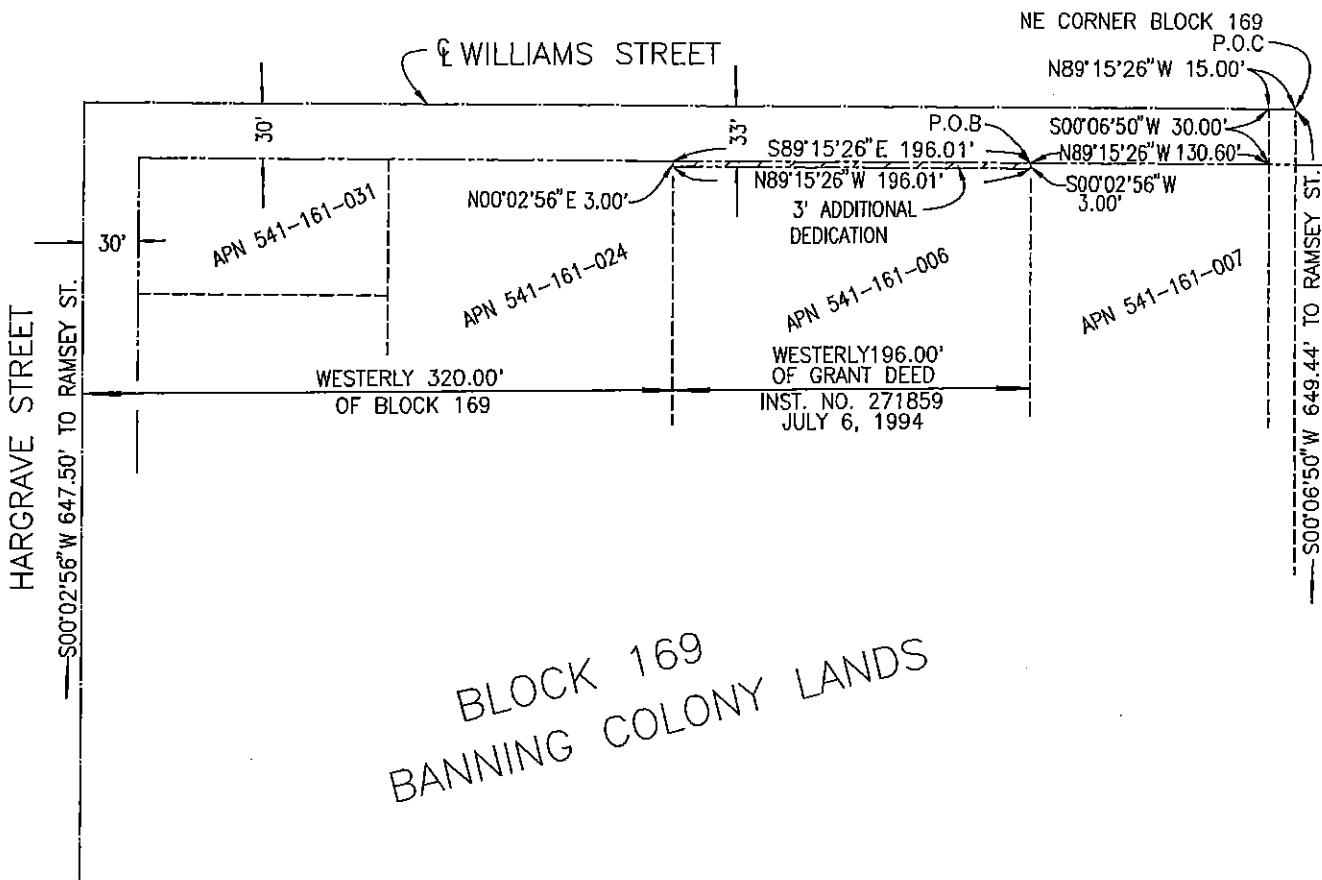
LEGAL DESCRIPTION PLAT

EXHIBIT "B"

MARCELL ASSOCIATES P.O. Box 371 Banning, CA 92220 (951) 662-7460	GARY CARLTON & WENDY CARLTON TRUSTEES OF THE GARY AND WENDY CARLTON LIVING TRUST, DATED AUGUST 14, 2001 901 E. RAMSEY ST BANNING, CA 92220	DEC. 6, 2011	SHT. 5
		FOR: CP	OF 7
		JOB NO. 1493	SHTS.
			57

57

OFFER OF DEDICATION



12-6-2011

IN THE CITY OF BANNING

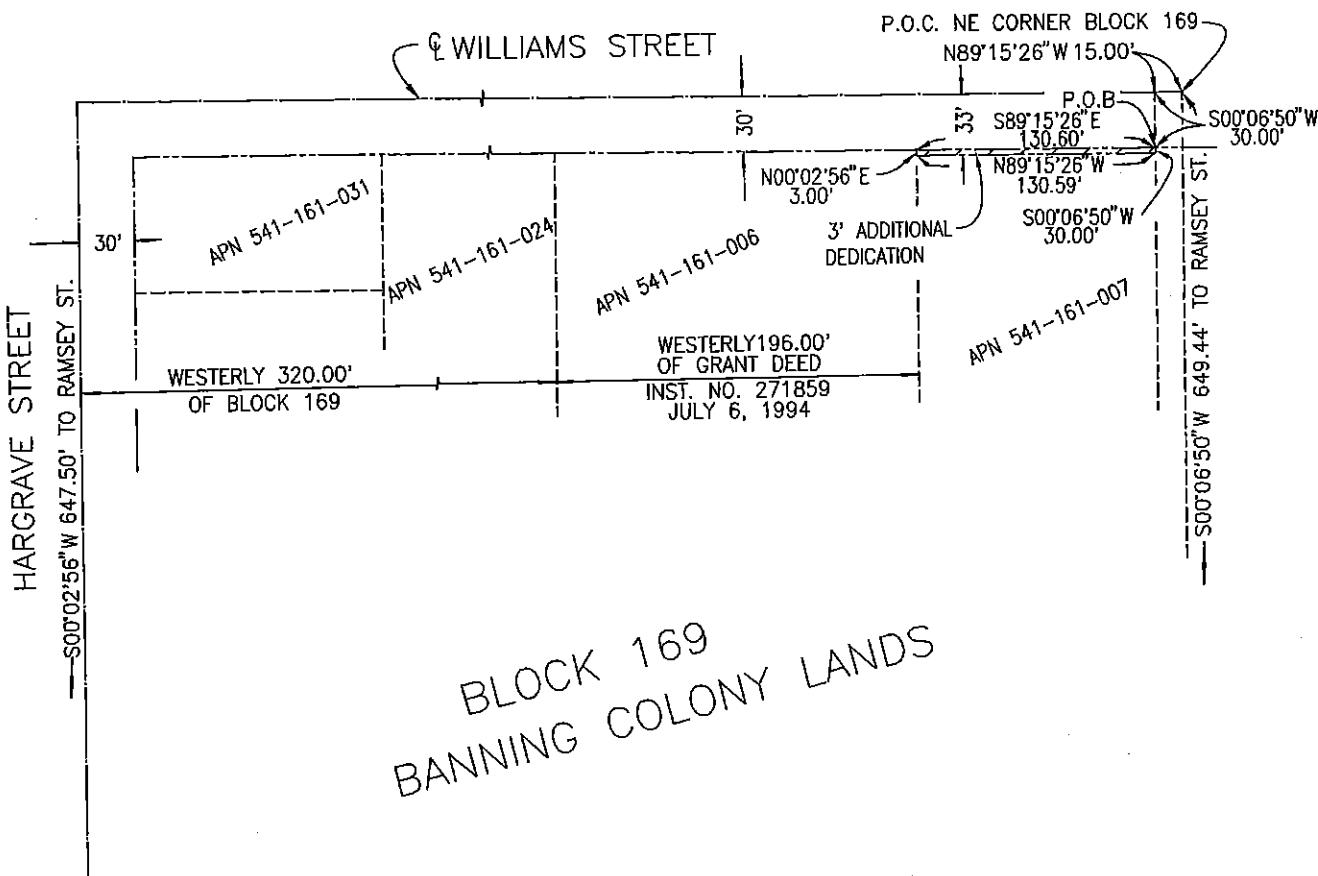
LEGAL DESCRIPTION PLAT

EXHIBIT "B"

MARCELL ASSOCIATES P.O. Box 371 Banning, CA 92220 (951) 662-7460	GARY CARLTON & WENDY CARLTON TRUSTEES OF THE GARY AND WENDY CARLTON LIVING TRUST, DATED AUGUST 14, 2001 901 E. RAMSEY ST BANNING, CA 92220	DEC. 6, 2011 FOR: CP JOB NO. 1493	SHT. 6 OF 7 SHTS.
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58

OFFER OF DEDICATION



17-6-2011

IN THE CITY OF BANNING

LEGAL DESCRIPTION PLAT

EXHIBIT "B"

LEGAL DESCRIPTION PLAT		EXHIBIT "B"	
MARCELL ASSOCIATES P.O. Box 371 Banning, CA 92220 (951) 662-7460	GARY CARLTON & WENDY CARLTON TRUSTEES OF THE GARY AND WENDY CARLTON LIVING TRUST, DATED AUGUST 14, 2001 901 E. RAMSEY ST BANNING, CA 92220	DEC. 6, 2011 FOR: CP JOB NO. 1493	SHT. 7 OF 7 SHTS.

59

CITY COUNCIL/BANNING UTILITY AUTHORITY AGENDA

DATE: **January 10, 2012**

TO: **City Council & Banning Utility Authority**

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

SUBJECT: **Resolution No. 2012-01 UA, “Authorizing the Submittal of an Application for Long-Term Easement from the City as ‘Applicant’ to the San Bernardino National Forest for the Repair, Operation and Maintenance of the Existing Water Diversion and Conveyance Facilities, also known as the Whitewater Flume”**

RECOMMENDATION: The Utility Authority adopt Resolution No. 2012-01 UA, “Authorizing the Submittal of an Application for Long-Term Easement from the City as ‘Applicant’ to the San Bernardino National Forest for the Repair, Operation and Maintenance of the Existing Water Diversion and Conveyance Facilities, also known as the Whitewater Flume.”

JUSTIFICATION: San Bernardino National Forest (SBNF) policies require that a Long-Term Easement for the Whitewater Flume must be applied for by a single Applicant rather than by both the City and Banning Heights Mutual Water Company (Banning Heights). Banning Heights has agreed to the City being the Applicant. This Long-Term Easement is necessary for the City and Banning Heights to operate and maintain the Whitewater Flume for water supply after the Federal Energy Regulatory Commission (FERC) approves Southern California Edison Company’s (SCE) Application for Surrender of License. Submittal of the Application for Long-Term Easement will implement Section 4(b) of the City’s June 30, 2010, Agreement with SCE, Banning Heights, and the San Gorgonio Pass Water Agency (Pass Water Agency).

BACKGROUND: Much of the Whitewater Flume system (aka San Gorgonio Nos. 1 and 2 Project or FERC 344) is located within the SBNF and as such is subject to federal regulation. Most Forest land uses are regulated by the SBNF under terms and conditions contained in either SBNF Use Permits or Long-Term Easements. The exception is power generation. Due to a provision in the Federal Power Act, non-federal projects on Forest lands that generate electric power are regulated instead by the FERC. This is why, historically, SCE has operated and maintained the Whitewater Flume under a power license from the FERC and why no SBNF Use Permit or Long-Term Easement exists for the project. Once SCE surrenders the FERC license, however, the jurisdictional responsibility for the project will transfer to the SBNF and the project will not be able to be operated or maintained without a valid SBNF Use Permit or Long-Term Easement in place. A Long-Term Easement, which may have a 30-year term, is an appropriate kind of SBNF permit for the Whitewater Flume since it has a long operational history. Use Permits generally must be renewed every few years.

The Whitewater Flume was originally a water supply project only. Hydroelectric power and new conveyance facilities were added in 1923 under agreements with a power company that was later acquired by SCE. The agreements covered responsibilities for operation and maintenance and also eventually for the transfer of ownership of the facilities to the City and Banning Heights (the water rights holders) in the event the company stopped generating power. In fact, power

generation was curtailed by SCE in 1998 after storms destroyed one of the powerhouse forebay tanks. After several years of deliberation, SCE decided to not restore the power generation components of the project and to surrender the FERC power license. Discussions then began between SCE, the City, Banning Heights, and Pass Water Agency on the transfer of ownership, which involves several complex regulatory processes and requirements.

On June 30, 2010, the City, SCE, Banning Heights, and Pass Water Agency entered into an Agreement to repair damaged and deteriorated water supply facilities and to transfer project ownership to the City and Banning Heights. As required in the Agreement, SCE filed an Application for Surrender of License with the FERC on September 27, 2010. The Agreement also requires the City and Banning Heights to submit a use permit or easement application with the SBNF. Once the FERC approves the surrender of the power license, the SBNF Long-Term Easement must be in place as it will set the terms and conditions under which the City and Banning Heights will continue to operate and maintain the project. The Long-Term Easement will also include a repair plan approved by the SBNF and that will be implemented in accordance with the June 30, 2010, Agreement.

The water supply for the Whitewater Flume comes from the South Fork and East Fork of the Whitewater River and is discharged into Banning Heights' water system as well as the Banning Water Canyon. The project is a locally important source of high-quality, gravity-fed water. The City and Banning Heights are the holders of historic (pre-1914) consumptive rights to this water and both have used the water for municipal and agricultural purposes for more than 90 years. Approximately 300 households in the community of Banning Heights depend on the Whitewater Flume as their primary source of potable water. Banning Heights does have backup wells that are used on a temporary basis when the project is offline, but these wells must then be recharged using the project water. If water from the Whitewater Flume were not available, the City would likely be called upon to provide replacement water to Banning Heights. The City is the secondary water rights holder, and therefore is entitled to use water bypassed by Banning Heights for groundwater recharge. It is prudent for the City to ensure continuous replenishment of the underlying groundwater subbasins in the Banning Water Canyon.

The water supply from the Whitewater Flume is very valuable to the Banning Canyon watershed area. Demand for water is growing in the region and water shortages can have serious negative effects on public health and safety. Replacing local supplies of potable water such as the Whitewater Flume involves building and operating major new infrastructure for long-distance transfer of lower quality water from northern California. Such long-distance transfers are becoming prohibitively costly and environmentally infeasible as demand for water grows in California and ecological stress in the Sacramento/San Joaquin Delta becomes more apparent.

As the Applicant, the City will be the point of contact with the SBNF and will continue to work closely with Banning Heights in our joint efforts to secure a Long-Term Easement. The determination as to whether the City would take the lead was the subject of Ad-Hoc committee meetings with the City and Banning Heights held on November 16, 2011 and December 1, 2011. It was agreed upon that the City would take the lead and file as the single applicant. On December 5, 2011 Banning Height Mutual Water Company Board of Directors approved their Resolution No. 2011-03 as shown in Exhibit "A" supporting this agreement.

As a result, staff respectfully requests the approval to file as Applicant for a SBNF Long-Term Easement for the operation, maintenance, and repair of existing water diversion and conveyance facilities that are located on Forest Lands and currently operated and maintained by SCE under license from FERC. SCE has applied to FERC to surrender its license and to convey selected facilities to the City of Banning, including three diversion structures and approximately six miles of canal and pipeline. The City proposes to operate the diversion structures and water with the City's existing water right entitlement of up to 13.26 cubic feet per second (cfs). Staff will be seeking an easement term of not less than 30 years.

STRATEGIC PLAN INTEGRATION: Approval of this recommendation will meet the City's goal of providing a more reliable delivery of the water supply to the present and future customers of the Water Utility.

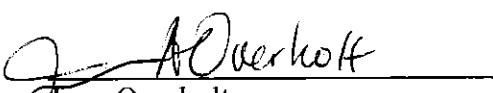
FISCAL DATA: Approval of this recommendation will implement Section 4(b) of the City's June 30, 2010, Agreement with SCE, Banning Heights, and Pass Water Agency to transfer the project facilities to the City and Banning Heights. There will be no additional fiscal impact beyond those associated with the June 30, 2010, Agreement, which are expected to include reimbursing SBNF for their costs in evaluating the application and in establishing the terms and conditions to be contained in the Long-Term Easement.

RECOMMENDED BY:



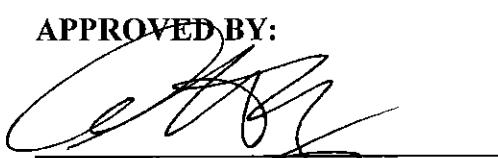
Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2012-01 UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING THE SUBMITTAL OF AN APPLICATION FOR LONG-TERM EASEMENT FROM THE CITY AS “APPLICANT” TO THE SAN BERNARDINO NATIONAL FOREST FOR THE REPAIR, OPERATION AND MAINTENANCE OF THE EXISTING WATER DIVERSION AND CONVEYANCE FACILITIES, ALSO KNOWN AS THE WHITEWATER FLUME

WHEREAS, Southern California Edison (SCE) decided to cease power generation and surrender its Federal Energy Regulatory Commission (FERC) power license for hydroelectric power facilities consisting of two small power plants in which the water supply for the power plants comes from the Whitewater River and is discharged into the Banning Heights Mutual Water Company’s (Banning Heights) water system and the Banning Water Canyon; and

WHEREAS, the City and Banning Heights determined that ownership of the water supply components of the facilities, known as the Whitewater Flume, must be acquired to assure continued delivery of high quality project water to the communities that have depended on such water deliveries for more than 90 years; and

WHEREAS, the City entered into a June 30, 2010, Agreement with SCE and Banning Heights to acquire ownership of the Whitewater Flume and to work cooperatively in securing the necessary regulatory approvals; and

WHEREAS, the necessary regulatory approvals include SBNF issuance of a Long-Term Easement that would enable the City and Banning Heights to continue to operate and maintain the Whitewater Flume for water supply after the FERC approves SCE’s Application for Surrender of License; and

WHEREAS, San Bernardino National Forest (SBNF) policies require that an Application for Long-Term Easement for the Whitewater Flume must be submitted by a single Applicant rather than by both the City and Banning Heights; and

WHEREAS, in order to determine what agency would take the lead and file the application, Ad-Hoc committee meetings with the City of Banning and Banning Heights were held on November 16, 2011 and December 1, 2011 at which time it was agreed upon that the City would take the lead and file as “Applicant;” and

WHEREAS, Submittal of the Application for a SBNF Long-Term Easement will implement Section 4(b) of the City’s June 30, 2010, Agreement with SCE, Banning Heights, and the San Gorgonio Pass Water Agency (Pass Water Agency); and

WHEREAS, There will be no additional fiscal impact beyond those associated with the June 30, 2010, Agreement, which are expected to include reimbursing SBNF for their costs in evaluating our application and in establishing the terms and conditions to be contained in the Long-Term Easement;

NOW, THEREFORE, BE IT RESOLVED by the Banning Utility Authority of the City of Banning as follows:

SECTION 1. The Banning Utility Authority adopts Resolution No. 2012-01 UA, "Authorizing the Submittal of an Application for Long-Term Easement from the City as 'Applicant' to the San Bernardino National Forest for the Repair, Operation and Maintenance of the Existing Water Diversion and Conveyance Facilities, also known as the Whitewater Flume".

SECTION 2. The City Manager is authorized to execute any documents required to apply for and accept the Long-Term Easement Application on behalf of the City of Banning.

PASSED, ADOPTED AND APPROVED this 10th day January, 2012.

Don Robinson, Chairman
Banning Utility Authority

ATTEST:

Marie A. Calderon, Secretary

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

David J. Aleshire, Authority Counsel
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, Secretary to the Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-01 UA was adopted by the Banning Utility Authority of the City of Banning at its Joint Meeting thereof held on the 10th day of January, 2012.

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, Secretary
Banning Utility Authority

EXHIBIT "A"

**BANNING HEIGHTS MUTUAL WATER COMPANY
RESOLUTION NO. 2011-03**

Banning Height Mutual Water Company
December 5, 2011
General Business Meeting

Resolution 2011-03

A Resolution of the Board of Directors for the Banning Heights Mutual Water Company in Support of the City of Banning being the applicant for a use permit from the United States Forest Service for the continued Operation and Maintenance of the Whitewater River Diversion and Flume conveyance facilities.

Whereas, Southern California Edison (SCE) is currently in the process of surrendering its Federal Energy Regulatory Commission (FERC) license for operating the Whitewater River Diversions and Flume conveyance facilities (collectively, the "Flume"); and

Whereas, Banning Heights Mutual Water Company and the City of Banning (City) are mutually interested in the full restoration and continued operation of the Flume, and for this purpose previously entered into a four-party agreement with SCE and the San Gorgonio Pass Water Agency (the four parties to the agreement were referred to therein as the "Participating Entities"); and

Whereas, Banning Heights Mutual Water Company and the City's Ad Hoc Committee have engaged in lengthy negotiations and have both verbally agreed in concept with key elements of a mutually beneficial flume operation and maintenance agreement; and

Whereas, Banning Heights Mutual Water Company, and the City have been working with SCE, FERC and the United States Forest Service (USFS) to agree upon the scope of the restoration of the facilities and the permitting of the reconstruction, operation and maintenance of the facilities; and

Whereas the USFS has made it known that only a single applicant may apply for the use permit facilitating the continued operation and maintenance of the Flume upon SCE's surrender of the FERC license,

NOW, THEREFORE, BE IT RESOLVED, that Banning Heights Mutual Water Company concurs that the City should be the single applicant for a USFS use permit facilitating the restoration and continued operation and maintenance of the Flume.

PASSED, APPROVED, AND ADOPTED this 5th day of December, 2011.


Richard "Red" Simmons, President
Banning Heights Mutual Water Company

ATTEST


Eugene A. Hamdorf, Secretary
Banning Heights Mutual Water Company

66

CERTIFICATION

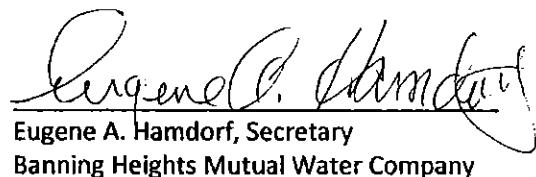
I, Eugene A. Hamdorf, Secretary of the Banning Heights Mutual Water Company, do hereby certify that the foregoing Resolution Number 2011-03 as duly adopted by the Board of Directors of the Banning Heights Mutual Water Company at the general business meeting thereof held on the 5th day of December, 2011, by the following vote, to wit:

AYES: 4

NOES: 0

ABSTAIN: 0

ABSENT: 1



Eugene A. Hamdorf, Secretary
Banning Heights Mutual Water Company

ORDINANCE NO. 1440

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF BANNING, CALIFORNIA, AMENDING
CHAPTER 3.24 OF THE BANNING MUNICIPAL
CODE TO PERMIT THE CITY MANAGER TO
SIGN CONVEYANCES AND OTHER
INSTRUMENTS**

WHEREAS, the City Council of the City of Banning ("City Council") has adopted regulations pertaining to the purchases of supplies and equipment; and

WHEREAS, Banning Municipal Code Chapter 3.24, among other items, sets forth the appropriate signatories on contracts for the city; and

WHEREAS, Government Code Section 40602 permits the City Council to designate the City Manager and other officers as appropriate signatories to contracts, conveyances and instruments requiring the city seal;

WHEREAS, the City Council desires to amend the Section 3.24.050 of the Municipal Code to permit the City Manager to sign all written contracts, conveyances and instruments requiring the city seal; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. Recitals. The above recitals are true and correct.

SECTION 2. Amendment to Section 3.24.050 of the Municipal Code. Section 3.24.050 of the Municipal Code is hereby deleted in its entirety and replaced as set for the below.

"3.24.050 – City manager authorization to execute contracts, conveyances and instruments.

Pursuant to California Government Code Section 40602, the mayor must execute all contracts, conveyances, and instruments requiring the city seal on behalf of the city, unless another city officer or employee is authorized to do so. The city manager and/or his or her designee(s) are authorized to execute contracts, conveyances, and instruments requiring the city seal on behalf of the city."

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Banning hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. Publication; Effective Date. The City Clerk shall certify to the passage and adoption of this ordinance, and shall make a minute of the passage and adoption thereof in the records of and the proceedings of the City Council at which the same is passed and adopted. This ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and shall be published in accordance with the law.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2011.

Barbara Hanna, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk

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

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1440 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the _____ day of _____, 2011, and was duly adopted at a regular meeting of said City Council on the _____ day of _____, 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL MEETING
ORDINANCE**

DATE: **January 10, 2012**

TO: **City Council**

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

SUBJECT: **Ordinance No. 1443, “Re-establishing and Declaring Prima Facie Speed Limits within Specified Speed Zones throughout the City of Banning”**

RECOMMENDATION: Adopt Ordinance No. 1443, “Re-establishing and Declaring Prima Facie Speed Limits within Specified Speed Zones throughout the City of Banning,” amending Ordinance No. 1362.

JUSTIFICATION: The California Vehicle Code (C.V.C.) requires that an Engineering and Traffic Survey shall be performed every five (5) years in order to utilize radar enforcement of speed limits on other than local/residential streets.

BACKGROUND: As defined in the California Vehicle Code (C.V.C.), an Engineering and Traffic Survey is a “survey of highway and traffic conditions in accordance with methods determined by the Department of Transportation for use by state and local authorities.” The C.V.C. requires that speed limits are posted on the streets of a community and therefore, the survey shall include (but not be limited to) a consideration of the following:

- **Measurements of Prevailing Speeds** – Speeds are observed and recorded in an unbiased manner in order to determine the prevailing speed and pace speed of free flowing traffic under normal conditions.
- **Review of the Street’s Accident History** – An analysis of past accident history of collision records pinpoints trouble spots and the probably contributing factors in accidents. This process is crucial in the selection of effective countermeasures most likely to correct deficiencies and improve traffic regulations and control.
- **Evaluation of Roadway, Invisible Highway, Traffic and Roadside Conditions** – A visual inventory of existing roadside conditions (traffic counts, adjacent land use, number of dwellings, businesses, driveways and pedestrian facilities). This is useful in identifying any maintenance deficiency, missing improvements or conditions not readily apparent to the driver, that may conceal hazards.

Experience has shown that a realistic posted speed limit set at the five (5) miles per hour increment below the Prevailing Speed will achieve the objective of voluntary compliance by the public. The Prevailing Speed or Critical Speed is the speed at, or below, which 85 percent of the vehicles were observed to be traveling. Generally speaking, traffic laws that reflect the behavior of the majority of motorists are found to be successful. Laws that arbitrarily restrict the majority of drivers encourage wholesale and intentional violations, lack public support and usually fail to bring about desirable changes in driving behavior. This is especially true of speed limits. All too often, speed zoning is considered a cure-all for a community’s traffic ills. Citizens frequently call for speed limits in an effort to develop a quick solution to complicated traffic problems.

Some common misconceptions regarding speed limit signs are that they will slow down the speed of traffic or that raising the posted speed limit will cause a corresponding increase in the speed of traffic. It is interesting to note that before-and-after studies consistently demonstrate that there are no significant changes in traffic speeds following the posting of new or revised speed limits. Furthermore, no published research findings have established any direct relationship between posted speed limits and accident frequency. However, short-term reductions in accidents have resulted from a saturation of police enforcement efforts directed at speed and other traffic law violations. Police agencies necessarily rely on reasonable and well recognized speed laws to control the unreasonable violator whose behavior is clearly out of line with the normal traffic flow.

In consideration of the above, the report entitled "Engineering and Traffic Surveys for the City of Banning," was prepared by the City's traffic engineering consultant, Mr. Peter H. Liu, T.E., and reviewed by the Engineering Division of the Public Works Department.

The report is available at the City Clerk's Office and the Engineering counter for public review and comment. The Notice of Public Hearing was advertised in the local newspaper and a copy is attached herein as Exhibit "A". The listing of recommended speed limit changes are shown in Exhibit "B".

Please note, Highland Springs Avenue is shared between the cities of Beaumont and Banning. Based on the current traffic survey, new speed limits have been established on the east side (Banning) which is different from the west side (Beaumont). Based on discussions with Beaumont's traffic engineer, the City of Beaumont has agreed to make necessary adjustments to their speed limits to match the City of Banning once this Ordinance is approved.

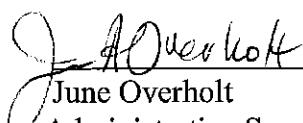
FISCAL DATA: The costs associated with the recertification of the forty-two previously approved zones and the addition of three zones including re-signing, adding signs, markings and striping are estimated to amount to \$10,000.00. An appropriation in the amount of \$10,000.00 from the Gas Tax funds to Account No. 100-4900-431.36-00 (Departmental Supplies) is necessary to incorporate recommended changes. The estimated fund balance for the Gas Tax Fund is \$129,000.00 prior to the approval of this Ordinance.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

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ORDINANCE NO. 1443

**AN ORDINANCE OF THE CITY OF BANNING, CALIFORNIA, RE-
ESTABLISHING AND DECLARING PRIMA FACIE SPEED LIMITS WITHIN
SPECIFIED SPEED ZONES THROUGHOUT THE CITY OF BANNING**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
BANNING AS FOLLOWS:**

SECTION 1. The prima facie speed limits within the specified speed zone limits of the following specified streets are determined and declared to be as shown herewith as Exhibit "B".

SECTION 2. The Mayor shall sign this ordinance and the City Clerk shall attest thereto and shall publish it or a summary of it in a newspaper printed and published within the City, and thereafter this ordinance shall be in force and effect according to law.

PASSED, APPROVED AND ADOPTED this 10th day of January, 2012.

Don Robinson, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk

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

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1443 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 10th day of January, 2012, and was duly adopted at a regular meeting of said City Council on the _____ day of _____, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"

PUBLIC HEARING NOTICE RECORD GAZETTE, DECEMBER 23, 2011

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Record Gazette

Friday, December 23, 2011

NOTICE OF
PUBLIC HEARING
PURSUANT TO LAW, no-
tice is hereby given of a
Public Hearing before the
City Council of the City of
Banning, to be heard Janu-
ary 10, 2012 at 5:00 p.m. at
Banning City Hall, Council
Chambers, 99 E. Ramsey
St., Banning, California, to
consider the following: The
City Council will consider
adopting Ordinance No.
1443, which amends Ordin-
ance No. 1362, to re-es-
tablish speed limits within
specified speed zones
throughout the City of Ban-
ning, as required by the
California Vehicle Code. A
report of the "Engineering
and Traffic Surveys for the
City of Banning," dated No-
vember, 2011, was prepared
by engineering consultant Peter H. Liu, P.E. In-
formation regarding the
foregoing can be obtained
by contacting the City's En-
gineering Division at (951)
922-3130 or by visiting City
Hall at 99 E. Ramsey St.,
Banning, California, be-
tween the hours of 8 a.m.
and 5 p.m., Monday
through Thursday. ALL IN-

TERESTED PARTIES are
invited to attend said hear-
ing and present oral or writ-
ten testimony on the matter
or to send written com-
ments to the City Clerk,
P.O. Box 998, Banning, CA
92220. Data relevant to Or-
dinance No. 1443 is avail-
able for public review at the
office of the City Clerk or at
the Engineering Division of
the Public Works Depart-
ment, at 99 E. Ramsey St.,
for the period of 10 days
prior to the Public Hearing.
If you challenge any deci-
sion regarding the above
proposal in court, you may
be limited to raising only
those issues you or some-
one else raised at the pub-
lic hearing described in this
notice or in written corre-
spondence delivered to the
City prior to or at the public
hearing. BY ORDER OF
THE CITY CLERK of the
City of Banning, California.
Publish: Record Gazette
December 23, 2011
Marie A. Calderon
City Clerk
Publish The Record
Gazette
No. 61659
12/23/2011

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EXHIBIT "B"

RECOMMENDATION OF SPEED LIMIT CHANGES

RECOMMENDATION OF SPEED LIMIT CHANGES December 2011

ZONE	Street Name	From	To	EXISTING POSTED SPEED		PROPOSED SPEED	
				NB	SB	NB	SB
6	Mountain Ave	Mockingbird Lane	Wilson St	40	40	35	35
7	Highland Springs Ave (Northbound)	N. City Limit	Oak Valley Pkwy	50	55 (Beaumont)	50	50* (Beaumont)
8	Highland Springs Ave (Northbound)	Oak Valley Pkwy	Wilson St	50	55 (Beaumont)	50	50* (Beaumont)
9	Highland Springs Ave (Northbound)	Wilson St	Sun Lakes Bl	30	30 (Beaumont)	35	35* (Beaumont)
10	Highland Spring Ave (Northbound)	Sun Lakes Bl	S. City Limit	35	30 (Beaumont)	35	35* (Beaumont)
11	San Gorgonio Ave	Lombardy Lane	Wilson St	35	35	30	30
12	San Gorgonio Ave	Wilson St	Ramsey St	25	25	30	30
13	San Gorgonio Ave	Ramsey St	Lincoln St	25	25	30	30
19	Alessandro St	Repplier Rd	Wilson St	35	35	30	30
20	Alessandro St	Wilson St	Ramsey St	30	25	30	30
				EB	WB	EB	WB
27	Ramsey St	Sunset Ave	22nd St	35	35	40	40
28	Ramsey St	22nd St	8th St	35	35	40	40
37	Wilson St	Sunset Ave	8th St	35	35	45	45
46	Sun Lakes Blvd	Highland Springs Ave	Country Club Dr	35	35	25	25

(*) – City of Beaumont has agreed to keep speed limits consistent with City of Banning

**CITY COUNCIL
PUBLIC HEARING**

DATE: **January 10, 2012**

TO: **City Council**

FROM: **Bill R. Manis, Economic Development/Redevelopment Director**

SUBJECT: **A Report Prepared Pursuant to California Health and Safety Code Section 33433
Regarding the Conveyance of Real Property by the City of Banning to JMA
Village, LLC, A California Limited Liability Company and the Development of
said Property Pursuant to the Provisions of a Purchase and Sale Agreement**

RECOMMENDATION:

Pursuant to the information contained in this report, and Attachments, staff affirms that the negotiations between the Developer and the City have led to a financially viable project for the Developer and the transfer of ownership of the 5.25 acres to the Developer is justified.

Thus, staff is recommending the following:

1. Adopt City Council Resolution No. 2012-3 making and approving certain findings and approvals under Section 33433 of the California Health and Safety Code, and approving a Purchase and Sale Agreement between the City of Banning and JMA Village, LLC; and
2. Authorize the City Manager, on behalf of the City, to execute the attached Purchase and Sale Agreement with the Developer.

OVERVIEW:

Before a Redevelopment Agency may convey its interest in property acquired in whole or in part, directly or indirectly, with tax increment monies, a public hearing must be held by the City Council/Redevelopment Agency. The law requires that an information report (“Information Summary”) and a public hearing notice be prepared, and that report be made available to the general public for review and copying. The Information Summary is attached as Attachment 1 to this report and as Exhibit A to the City Council Resolution.

The Information Summary has been filed with the City Clerk of the City of Banning/Community Redevelopment Agency of the City of Banning and was made available to the general public on Friday, December 23, 2011. The Information Summary was noticed on Friday, December 23, 2011, and then again on Friday, December 30, 2011, as required by California Health and Safety Code Section 33433 of the California Redevelopment Law. The Information Summary discusses the background of the 5.25 acre site and the proposed conveyance of the properties to JMA Village, LLC, a California Limited Liability Company (the “Developer”), an entity formed by Arthur Pearlman Corporation and The Frost Company, to implement the development of this project. The Developer is proposing to develop this parcel with approximately 13,500 sq. ft. of multi-tenant office space, approximately 13,500 sq. ft. of multi-tenant mixed retail space, an approximately 29,955 sq. ft. office or hotel building, and approximately 12,000 sq. ft. of multi-tenant restaurant building with a mix of food types (the “Project”).

BACKGROUND:

In response to the Governor's proposal to eliminate redevelopment agencies in California, the Community Redevelopment Agency for the City of Banning (Agency") entered into an agreement ("Transfer Agreement") to transfer certain Agency-owned parcels to the City of Banning ("City") on March 8, 2011, where the City would undertake the redevelopment activities to implement the Agency's projects. Among other matters, pursuant to the Transfer Agreement the City is required to conform with the requirements of Section 33433 of the California Community Redevelopment Law ("CCRL") prior to the approval of the disposition of any land that was transferred to the City pursuant to the Transfer Agreement. The Purchase and Sale Agreement ("PSA") concerns the disposition and development of the Site (as hereinafter defined) for which some of the parcels that constitute the Site were transferred to the City by the Agency pursuant to the Transfer Agreement. The PSA is attached as Attachment 2 to this report and as Exhibit B to the City Council Resolution. The City Council Resolution is attached as Attachment 3 to this report.

This report, and its attachments, provides an analysis of the costs associated with the conveyance and development of the proposed 5.25 acre Project. The 5.25 acre Project is bounded by the southern boundary of East Ramsey Street on the north, the southern boundary of Livingston Street on the south, the western boundary of Martin Street on the east and several "not a part" parcels on the west. The Project specifically includes all of Assessor Parcel Numbers 541-181-009 thru 012, 541-181-024 thru 028, 541-183-001 thru 004 and vacated rights-of-way as depicted on Tentative Parcel Map No. 36285. The Project site is located within the Downtown Redevelopment Project component area of the Merged Redevelopment Project Area. The Project is more particularly described in City Council Resolution No. 2011-44, Community Redevelopment Agency Resolution No. 2011-20, Planning Commission Resolution No. 2011-02, Design Review No. 10-702, Tentative Parcel Map No. 36285 and the Conditions of Approval (collectively, the "Land Use Entitlements").

The intent of this project is to effectuate the redevelopment of the Site, with subsequent benefit of providing a high quality 68,955 sq. ft. mixed-use multi-tenant commercial/retail development. As outlined in the attached Information Summary, the Agreement is part of a greater program effort designed to eliminate blight in the Downtown Redevelopment Project component area of the Merged Redevelopment Project Area. When the Agency acquired the parcels that make up the Project, the structures located on the site were considered economically obsolete and exhibited severe conditions of physical degradation and dilapidation.

The proposed Project is consistent with the adopted Redevelopment Plan and the 2010-2014 Five-Year Implementation Plan. One of the primary goals of the Redevelopment Plan is to eliminate physical and fiscal blight in the redevelopment project area. One of the primary goals in the Implementation Plan is to *"facilitate the development of Agency-owned, controlled or recently sold property within the Redevelopment Area inclusive of, but not limited to, the Village at Paseo San Gorgonio Project site ("VPSG"), the Justice Center site, industrial property near the airport, 2301 W. Ramsey Street and other sites that have been or may be acquired by the Agency."* The proposed Project will implement the goal of the redevelopment plan in that it will eliminate conditions that would lead to physical and fiscal blight in the community. The proposed Project would help complement existing businesses in the area by providing jobs, property tax, and sales tax.

ANALYSIS:

Attachments 1 and 2 of this report provide the terms and conditions related to the City and Developer responsibilities regarding the following:

- The transfer of the properties
- The development of the properties
- Plan review and permitting
- City/Agency assistance
- Financing provisions
- Use covenants
- Remedies in case of default

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

An Initial Study/Mitigated Negative Declaration (“IS/MND”) and Mitigation Monitoring Program (“MMP”) were completed for the Project and were made available for public review between March 25 - April 25, 2011, or for a period of 30 days. The Land Use Entitlement Process also included Design Review (DR #10-702), Tentative Parcel Map #36285, Conditions of Approval, and consistency with the General Plan regarding property acquisition at 220 E. Ramsey Street. The IS/MND and MMP were submitted to the State Clearinghouse for their distribution to other public agencies. Comment letters were received from the Public Utilities Commission (“PUC”), Caltrans District 8, and Morongo Band of Mission Indians and comments received were addressed during project review.

On May 4, 2011, the Planning Commission reviewed the IS/MND and MMP for the VPSG Project and recommended approval to the City Council and the Community Redevelopment Agency of Design Review (DR) #10-702, Tentative Parcel Map (TPM) #36285, and finding of consistency with the General Plan related to property acquisition at 220 E. Ramsey Street subject to conditions of approval. On May 24, 2011, the City Council and the Community Redevelopment Agency adopted the IS/MND and MMP and approved the VPSG Project.

CRL SECTION 33433 FINDINGS:

The CCRL requires that the Agency provide certain findings when purchasing or conveying property with tax increment financing. Health and Safety Code Section 33433 findings are referenced in this report and have been provided in Attachments 1 and 2, and also attached as Exhibits A and B to the City Council Resolution.

PUBLIC HEARING NOTICE:

The Public Hearing Notice for this project was published in the Record Gazette on Friday, December 23, 2011 and Friday, December 30, 2011.

FISCAL IMPACT:

The summary of Agency costs and the net cost to Agency are disclosed in Attachment 1 as part of the 33433 report. The Agency incurred expenses in the amount of approximately \$3,976,623. This amount will be offset by approximately \$1,101,600 of land sale proceeds and purchase money loan interest resulting in a net cost to the Agency of approximately \$2,875,023.

RECOMMENDED BY:



Andrew J. Takata
City Manager

PREPARED BY:



Bill R. Manis
Economic Development/Redevelopment Director

REVIEWED BY:

June Overholt
Deputy City Manager/Administrative Services Director

Staff Report Attachments:

1. Information Summary
2. Purchase and Sale Agreement
3. Resolution No. 2012-3

City Council Resolution Exhibits

- A. Information Summary
- B. Purchase and Sale Agreement

ATTACHMENT 1

Information Summary

UFI URBAN FUTURES | Incorporated

INFORMATION SUMMARY FOR PROPOSED PURCHASE AND SALE AGREEMENT WITH JMA VILLAGE, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (For the disposition and development of certain real property) "33433 REPORT"

This summary was prepared for the City of Banning (the "City") pursuant to Section 33433 of the California Community Redevelopment Law (Part 1 of Division 24 of the Health and Safety Code, the "CCRL") with respect to that certain Purchase and Sale Agreement (the "PSA") between the City and JMA Village, LLC, a California Limited Liability Company (the "Developer"). On March 8, 2011, the City and the Community Redevelopment Agency of the City of Banning (the "Agency") entered into an agreement to transfer certain Agency-owned parcels to the City, subject to certain conditions (the "Transfer Agreement"). Among other matters, pursuant to the Transfer Agreement the City is required to conform with the requirements of Section 33433 of the CCRL prior to the approval of the disposition of any land that was transferred to the City pursuant to the Transfer Agreement. The PSA concerns the disposition and development of the Site (as hereinafter defined) for which some of the parcels that constitute the Site were transferred to the City by the Agency pursuant to the Transfer Agreement.

The PSA pertains to the development of an approximately 68,955 sq. ft. mixed-use multi-tenant commercial/retail project (the "Project") on an approximately 5.25-acre site bounded by the southern boundary of East Ramsey Street on the north, the southern boundary of Livingston Street on the south, the western boundary of Martin Street on the east and several "not a part" parcels on the west, which specifically includes all of APNs 541-181-009 thru 012, 541-181-024 through 028, 541-183-001 through 004 and vacated public rights-of-way as depicted on TPM # 36285 (the "Site"). The Site is located within the Downtown Redevelopment Project component area of the Merged Redevelopment Project Area. The Project is more particularly described in City Council Resolution No. 2011-44, CRA Resolution No. 2011-20, Planning Commission Resolution No. 2011-02, Design Review (DR) #10-702, TPM # 36285 and the Conditions of Approval (collectively, the "Land Use Entitlements").

1. **Cost of Project to Agency:** Over a period of several years the Agency has incurred expenses or is obligated to expend funds in the amount of approximately \$3,976,623 for property acquisition, tenant relocation, demolition and/or removal of structures and improvements, soil remediation and professional studies/analyses that are directly related to Site. This amount will be offset by approximately \$1,101,600 of land sale proceeds and purchase money loan interest resulting in a net cost to the Agency of approximately \$2,875,023. This conclusion is based upon the following data:

a. **Land Acquisition Cost:** The Agency's records reflect the following land acquisition costs with respect to the Site:

<u>Address</u>	<u>Cost</u>	<u>Status</u>
150 E. Ramsey	\$1,820,544	Closed
220 E. Ramsey	75,000	Pending
280 E. Ramsey	660,000	Closed
50 S. Alessandro	<u>601,018</u>	Closed
TOTAL:	\$3,156,562	

It is important to note that:

- 150 E. Ramsey consists of APNs 541-181-009 through 012 and 541-181-024 through 028;
- 220 E. Ramsey is APN 541-183-001;
- 280 E. Ramsey is APN 541-183-004; and
- 50 S. Alessandro consists of APNs 541-183-002 and 003.

Further, the ultimate cost of 220 E. Ramsey is subject to a superior court determination.

b. **Clearance Costs:** The Agency's records reflect the following clearance costs with respect to the Site:

<u>Address</u>	<u>Cost</u>	<u>Status</u>
150 E. Ramsey	\$99,900	Completed
280 E. Ramsey	114,770	Completed
150, 220 & 280 E. Ramsey	<u>210,000</u>	Pending
TOTAL:	\$424,670	

The pending costs associated with 150, 220 and 280 E. Ramsey are related to the removal of underground storage tanks and other subterranean structures. The amount shown is an estimate prepared by the City's Department of Public Works.

c. **Relocation Costs:** The Agency's records reflect the following relocation and loss of goodwill costs with respect to the Site:

<u>Address</u>	<u>Cost</u>	<u>Status</u>
280 E. Ramsey (L & R Auto Body)	\$150,000	Moved
280 E. Ramsey (Los Bros. Tires)	<u>53,115</u>	Moved
TOTAL:	\$203,115	

d. **Improvement Costs:** The Agency has not incurred any improvement costs.



e. **Finance Costs:** None.

f. **Other Costs:** In addition to the foregoing, the Agency has incurred the following indirect costs associated with the acquisition of the Site:

- \$12,500 for professional services related to acquisition and relocation services performed by Overland Pacific Cutler (i.e., for 220 & 280 E. Ramsey Street);
- \$7,500 for appraisal services performed by Saddleback Realty Analysis, Inc., DBA Integra Realty Resources – Orange and Riverside Counties (i.e., for 220 & 280 E. Ramsey Street);
- \$10,000 for appraisal services performed by Villegas Appraisal Company (i.e., for 150 E. Ramsey Street and 50 Alessandro Street);
- \$26,766 for Phase I and Phase II environmental analyses prepared by Geo Tek, Inc. (i.e., for 220 and 280 E. Ramsey Street);
- \$2,200 for Phase I environmental analyses prepared by Terra Nova Environmental Services, LLC (i.e., for 150 E. Ramsey Street and 50 Alessandro Street);
- \$7,515 for Phase II environmental analyses prepared by Geo Tek, Inc. (i.e., for 150 E. Ramsey Street and 50 Alessandro Street);
- \$39,600 for real estate brokerage fees paid to NAI Capital Commercial Real Estate Services (i.e., for 280 E. Ramsey Street);
- \$58,350 for an Environmental Impact Report for the demolition of the former San Gorgonio Inn building prepared by Romo Planning Group, Inc. (i.e., for the structure previously located at 150 E. Ramsey Street);
- \$14,105 for an Historical Resource Evaluation Report prepared by Romo Planning Group, Inc. (i.e., for the structure previously located at 150 E. Ramsey Street);
- \$2,740 for an Historical Building Research Analysis prepared by CRM TECH, Inc. (i.e., for the structure previously located at 280 E. Ramsey Street); and
- \$11,000 for miscellaneous closing costs attributable to the Site (rounded).

On a combined basis, the Agency has incurred approximately \$192,276-worth of indirect costs associated with the acquisition of the Site.

g. **Offsetting Revenue:** The sum of the above costs (i.e., items "a" through "f") is \$3,976,623, which represents the Agency's current total investment in the Site. These costs are offset by the \$1,020,000 in land sales proceeds. It is also important to note that the PSA calls for the purchase price to be financed with a purchase money loan. The maximum term on the loan is 24 months from the date escrow closes. The parties have negotiated a fair market simple interest rate of 4.00%. By way of comparison and as of the date of this report, the interest rate proposed for the Agency Loan is .75% above the Prime Rate and is equal to the SBA 504 Program rate. Given these parameters, Urban Futures, Inc. concurs that the interest rate proposed for the purchase money loan is fair and reasonable.



Pursuant to the note, any remaining principal and interest due shall be paid in a lump-sum on a date that is subsequent to the accomplishment of all the conditions precedent thereto, as defined in the PSA, or not later than 24 months from the date that escrow closes. The note allows the Developer to pre-pay any amount prior to completion of the term of the note and to receive offsetting credit (as described in Section 2, below), without penalty. Based on the proposed rate and assuming the full principal amount is outstanding, the purchase money loan will generate \$3,400 of interest earnings per month during the term of the loan. If the entire purchase money loan remains outstanding for its full 24-month term, the loan will generate a total of up to \$81,600 of interest earnings (assumes no partial repayment or offsetting credit).

Notwithstanding the foregoing, the PSA includes certain City-related performance responsibilities pertaining to the completion of the assembly of the Site that are prerequisite to the Developer obtaining a commercial policy of title insurance for the Site that is acceptable to its first lender. In the event that the City is unable to meet its obligations with respect to this matter within 24 months of the close of escrow on the Site, the Developer has the option of terminating the PSA, transferring the Site to the City and extinguishing the note without any obligation to pay either the principal or interest that would have otherwise been due. In addition, to the extent that the Developer has received any offsetting credit (as described in Section 2, below), the City will be required to reimburse the Developer for such expenses.

Assuming the Project proceeds in the matter contemplated in the PSA and is consistent with the assumptions noted above, the sum of the above noted sources is \$1,101,600 (i.e., \$1,020,000 + \$81,600 = \$1,101,600). Therefore, Urban Futures, Inc. projects on a net basis that the Agency's overall costs for the project will be approximately \$2,875,023 (i.e., \$3,976,623 - \$1,101,600 = \$2,875,023).

2. Estimated value of interest to be conveyed or leased, determined at highest and best use permitted by the Redevelopment Plan:

In order to determine the estimated value of the interest to be conveyed, staff engaged the services of Saddleback Realty Analysis, Inc., DBA Integra Realty Resources – Orange and Riverside Counties ("Integra"). Larry Webb, MAI and Diane Lawler, both Certified General Real Estate Appraisers, prepared the Appraisal for the Site. The Appraisal was prepared in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute and the appraisal regulations issued in connection with the Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA").

It was requested that Integra determine the most probable price for which the Site should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. The appraisal for the site is dated May 12, 2011. The date of value is May 6, 2011. The appraisal is on file with the City. Based upon the value analysis included within the appraisal and subject to the definitions,

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assumptions and limiting conditions expressed therein, Integra concluded that the "Fair Market" value of the Site at its highest and best use as of May 6, 2011 is \$1,020,000.

It is important to state that in determining this value, the appraiser assumed that the improvements on the Site (including all structures, underground storage tanks ["UST"] and paving on APNs 541-183-001 through 004) were demolished or removed. As of the date of this report, all of the structures on the site have been removed and the paving on APNs 541-183-002 through 004 has been removed. However, due to the August 11, 2011 California Supreme Court stay on certain redevelopment agency operations, the Agency has not been able to remove the paving on APN 541-183-001 and USTs on the Site. The costs associated with the removal of these improvements are included in the amount indicated in Section 1 b., above, and are considered an Agency obligation. In order to account for these costs, the PSA includes provisions that transfers the Agency's obligation to cause the removal of these items to the Developer in exchange for the Developer receiving a dollar for dollar credit against the above described note.

The Appraiser also assumed that the Site is free from environmental contamination. With respect to this issue, Agency staff engaged the services of Geo Tek, Inc., an environmental engineer. In their Phase II Environmental Site Assessment, Geo Tek, Inc. indicated that their examination of the property did not reveal evidence of subsurface contamination resulting from the underground storage tanks, oil/water separator, or hydraulic lifts at the Site. Consequently, they did not recommend any additional investigation at this time. However, due to the numerous anomalies they detected below the surface of the Site, they recommended that their personnel be present during excavation of the USTs and Site grading activities in the event that an unforeseen environmental condition is discovered.

Therefore, pursuant to the PSA, the Developer will purchase the Site for \$1,020,000 which is equal to its full fair market value.

3. Estimated value of the interest to be conveyed or leased, determined at the use and with the conditions, covenants and development costs required by the sale or lease:

The Project will be developed in full accordance with the Land Use Entitlements, which do not affect or cause any unusual conditions, covenants and/or development costs. Therefore, pursuant to the PSA the Developer will purchase the Site for \$1,020,000 which is equal to its full fair market value.

4. The purchase price or sum of the lease payments which the lessor will be required to pay during the term of the lease:

Pursuant to the PSA, the Developer will purchase the Site for \$1,020,000 which is equal to its full fair market value.

5. Explanation of the reason (if applicable) why the sales price or lease rate paid to the Agency may be less than market value of the property as determined at its highest and best use:

Not applicable. The sale price of the Agency parcels is at fair market value.

6. Explanation of why the sale or lease of the property will assist in the elimination of blight:

This PSA is part of a greater program effort designed in part to eliminate blight in the Downtown Redevelopment Project component area of the Merged Redevelopment Project Area. For multiple decades the Site has been used for a variety of multi-tenant small-scale commercial purposes. As noted in Section 1 b. funding has been allocated for clearance costs. At the time that the Agency or City acquired the parcels that make up the Site, the structures located on the Site were considered economically obsolete and exhibited severe conditions of physical degradation and dilapidation. As noted above, all of the structures previously located on the Site have been removed, which has specifically eliminated blighting conditions. Pursuant to the PSA, the Developer is obligated to remove the USTs and certain obsolete paving which will also specifically eliminate existing blighting conditions.

Section 33031 (b) of the CCRL describes economic conditions that cause blight as follows:

- a. Depreciated or stagnant property values.
- b. Impaired property values, due in significant part, to hazardous wastes on property where the agency may be eligible to use its authority as specified in Article 12.5 (commencing with Section 33459).
- c. Abnormally high business vacancies, abnormally low lease rates, or an abnormally high number of abandoned buildings.
- d. A serious lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drug stores, and banks and other lending institutions.
- e. Serious residential overcrowding that has resulted in significant public health or safety problems. As used in this paragraph, "overcrowding" means exceeding the standard referenced in Article 5 (commencing with Section 32) of Chapter 1 of Title 25 of the California Code of Regulations.
- f. An excess of bars, liquor stores, or adult-oriented businesses that has resulted in significant public health, safety, or welfare problems.
- g. A high crime rate that constitutes a serious threat to the public safety and welfare.

Based on the above, the following describes the types of outcomes that could occur as a result of commercial vacancies:

- i. Property values may depreciate or stagnate;



- ii. Additional vacancies, degradation of lease rates and increase in abandoned buildings may occur.
- iii. A serious lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drug stores, and banks and other lending institutions may occur.
- iv. Crime rates may increase to the point of becoming a serious threat to the public safety and welfare.

Among other reasons, the Agency acquired the Site to: i) enhance the economic vitality of the commercial core of the Downtown Redevelopment Project component area of the Merged Redevelopment Project Area; ii) remove existing conditions of blight present on the Site; and iii) prevent the further spread of economic blight. The proposed PSA will facilitate these objectives through the development of an approximately 68,955 sq. ft. mixed-use multi-tenant commercial/retail project. The Project will bring new commercial buildings and tenants into the City thereby increasing the community's economic vitality and activity in general and in the downtown core area in particular. The increased level of economic activity in the Downtown Redevelopment Project component area of the Merged Redevelopment Project Area will assist in the avoidance of future commercial vacancies that may have otherwise contributed to possible conditions that would have caused blight, as described above. Further, not only will the physical aspects of the Project contribute to revitalizing the downtown core area and thus aid in reversing possible conditions that would have caused blight in the Downtown Redevelopment Project component area of the Merged Redevelopment Project Area, the Project will also add a significant number of employment opportunities to the City. As noted in the June 24, 2011 study prepared by economist Evans, Carroll & Associates, Inc., the Project has a job creation capability of approximately 480 direct, indirect and induced jobs.

7. Economic benefits of the Project:

The Project will consist of approximately 13,500 sq. ft. of multi-tenant office space, approximately 13,500 sq. ft. of multi-tenant mixed retail space, an approximately 29,955 sq. ft. office or hotel building, and an approximately 12,000 sq. ft. multi-tenant restaurant building with a mix of food types. For the purposes of this analysis, 10 years is used as the performance measurement period because it approximates the period of time that the Redevelopment Agency may collect tax increment from the original Downtown Redevelopment Project area after the Project is completed.

ANALYSIS OF ESTIMATED SALES TAX GENERATING POTENTIAL

Miscellaneous Retail

The latest information available for estimating retail store taxable sales potential (published by the HdI Companies [FY 2009-10]) indicates that the taxable sales potential for miscellaneous retail ranges between \$100 and \$900 per square foot per year. The average taxable sales potential for miscellaneous retail ranges between approximately \$160 and \$320 per square foot per year. Since the retail users are currently unknown as of the date of this report, the average taxable sales potential is used in this analysis.

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Based on this, it is possible that the taxable sales potential for the 13,500 square foot Multi-tenant mixed retail component of the Project could be between \$2,160,000 and \$4,320,000 per year, if fully occupied. If these sales levels are achieved, the potential sales tax revenue attributable to the City could be between \$21,600 and \$43,200 per year.

Restaurants

The Project will include 12,000 square feet of multi-tenant restaurant space in the fast casual and/or family dining category. The latest information available for estimating fast casual and/or family dining restaurant taxable sales potential (published by the HdI Companies [FY 2009-10]) indicates that the taxable sales potential for fast casual and/or family dining restaurant ranges between \$250 and \$700 per square foot per year. The average taxable sales potential for fast casual and/or family dining restaurant ranges between approximately \$375 and \$600 per square foot per year. Since the fast casual and/or family dining restaurant users are currently unknown at this time, the average taxable sales potential is used in this analysis. Based on this, it is possible that the taxable sales potential for the fast casual and/or family dining restaurant component of the Project could be between \$4,500,000 and \$7,200,000 per year. If these sales levels are achieved, the potential sales tax revenue attributable to the City could be between \$45,000 and \$72,000 per year.

Combined Basis

Based on the above, on a combined basis it is estimated that the retail/restaurant component of the Project could generate potential sales tax revenue attributable to the City during its first full year of operation (i.e., FY 2012-13) in the range of \$66,600 and \$115,200. During the first 10 years of full operations (i.e., post FY 2012-13) and assuming a 2% growth rate beginning during FY 2014-15, the Project is estimated to generate between \$729,000 and \$1,261,000 in total sales tax revenue (rounded). Of this amount, at least 50% is estimated to be new revenue to the City.

ANALYSIS OF ESTIMATED BUSINESS LICENSE REVENUE POTENTIAL

Based on the City's current schedule of business license fees, it is estimated that beginning during FY 2012-13 the Project will generate between \$2,610 and \$3,350 per year of business license fee revenue. This is estimated based on the following number of businesses and their employment levels:

<u>Employment Range</u>	<u>No. of Businesses</u>	<u>Applicable Tax</u>
21 to 25	2	\$275.00
6 to 10	16 to 20	\$110.00
0 to 5	6 to 8	\$50.00

During the first 10 years of full operations (i.e., post FY 2012-13) and assuming a 2% growth rate in business license fees beginning during FY 2013-14, the Project is estimated to generate between \$29,000 and \$37,000 in total business license fees (rounded).



ANALYSIS OF ESTIMATED TAX INCREMENT REVENUE POTENTIAL

The Project site consists of approximately 5.25 acres of land divided among 15 separate parcels. The City and Agency do not have complete records with respect to the combined base value of the 15 parcels that comprise the Site. Consequently, it was necessary to estimate the applicable base value. Therefore, based on the data available and on information provided by City staff, UFI has estimated that the combined base value of the 15 parcels that comprise the Site is approximately \$1 million. Based on UFI's experience, the assumed \$1 million-worth of assessed base value is, therefore, a reasonable starting point.

The Developer has estimated that the Project's all-in development value (theoretically, the new assessed value) will be \$20.5 million. The differential between the two values is \$19.5 million, which represents the growth in assessed value directly attributable to the Project. The Project is anticipated to be completed during spring of 2013. However, for property tax roll purposes, the incremental value will not fully appear on the tax rolls until FY 2013-14. Therefore, for the purposes of this analysis, \$9.5 million in incremental value is reflected during FY 2012-13 and \$9.5 million in additional incremental value is reflected during FY 2013-14.

The combination of the LMI Housing set-aside and the tax increment pass through payments are projected to be approximately 36% of the total. Based on the foregoing, during FY 2012-13, the Project is estimated to generate approximately \$62,400 in net new non-housing tax increment revenue. Beginning during FY 2013-14, the Project is estimated to generate approximately \$124,800 in net new non-housing tax increment revenue. During the remaining period during which the Agency may collect tax increment from the original Downtown Redevelopment Project area (i.e., 10 years) and assuming a 2% growth rate beginning during FY 2012-13, the Project is estimated to generate a total of approximately \$1.4 million of net new non-housing tax increment revenue (rounded).

SUMMARY OF ESTIMATED ECONOMIC BENEFITS:

Jobs:	480 direct, indirect and induced jobs
Sales Tax:	\$66,600 to \$115,200 first year \$729,000 to \$1,261,000 over 10 years
Business License:	\$2,610 to \$3,350 first year \$29,000 to \$37,000 over 10 years
Tax Increment:	\$124,800 first year after completion \$1.4 million over 10 years
Building Permit:	\$1,633,000-worth of permit fees are projected for the Project by the Developer (does not include TUMF)

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These additional jobs, tax revenues and permit fees will assist the City and Agency in removing blight within Downtown Redevelopment Project component area of the Merged Redevelopment Project Area as well as promoting economic development, job creation and affordable housing projects and programs.

Certification: I certify that this report complies with the reporting requirements of Section 33433 of the CCRL. Further, I do not have a present or perspective interest in the Site, the PSA or the parties to the PSA. My engagement to prepare this report was not contingent upon developing or reporting predetermined results. The statements of fact contained herein and the substance of this report are based on public records, data provided by the City or Agency, reports provided by its consultants or as otherwise noted herein. This report reflects my personal, unbiased professional analyses, opinions and conclusions. If any of the underlying assumptions related to the PSA change after the date provided below, then the undersigned reserves the professional privilege to modify the contents and/or conclusions of this report.

Respectfully Submitted,
URBAN FUTURES, INC.



STEVEN H. DUKETT
Managing Principal

Dated: December 23, 2011

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ATTACHMENT 2

Purchase and Sale Agreement

**AGREEMENT FOR PURCHASE AND SALE
OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS**

Escrow No. _____

Date of Opening of Escrow: _____, 2012

To: Escrow Holder
Chicago Title Company
560 E. Hospitality Lane
San Bernardino, CA 92408

Attn: Sandra L. Olson, Escrow Officer
Phone: (909)381-6722; Email: Sandra.olson@ctt.com

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made this _____ day of January, 2012, by and between THE CITY OF BANNING, a California general law municipality ("Seller" and occasionally herein "City"), and JMA Village, LLC, a California limited liability company ("Buyer").

R E C I T A L S

A. This Agreement pertains to the conveyance to Buyer of those certain parcels of vacant real property consisting of a total of 5.25 acres, or 228,690 square feet, in the City of Banning bounded on the west by San Gorgonio Avenue, on the north by Ramsey Street, to the east by Martin Street and to the south by Livingston Street, which property is more particularly described on **Exhibit "A"** attached hereto (the "Site").

B. A portion of the Site is under ownership of a third-party, although such third-party parcel is currently the subject of eminent domain proceedings pursuant to which the Seller expects to obtain title to said parcel. Accordingly, the Site consists of two distinct sub-parcels representing different ownership interests:

1. *City-Owned:* All those portions of the Site owned in fee by Seller are legally described at **Exhibit "B"** hereto (the "City Property").
2. *Third-Party Owned:* Seller owns in fee title all portions of the Site except for one parcel approximating 15,374 square feet, which is legally described in **Exhibit "C"** attached hereto (the "Third-Party Parcel"). The Third-Party Parcel is currently the subject of an eminent domain proceeding by which the Seller seeks to obtain title to such Parcel. Buyer's acquisition of fee title to the Third-Party Parcel under this Agreement is conditioned upon the ability of Seller to first acquire title to such Parcel in the name of the City of Banning.

C. City's predecessor on interest on the Site was the Banning Redevelopment Agency ("Agency") which is a community redevelopment agency existing and formed pursuant to the Community Redevelopment Law (H&S §§ 33400 *et seq.* ("CRL"). On March 8, 2011, the Agency transferred much of its property to the City of Banning pursuant to a transfer agreement (the "Transfer Agreement"), which Transfer Agreement permitted the City to transfer parcel of property to third parties provided that the City complied with aspects of the CRL to the greatest extent possible. Accordingly, the City has prepared and approved a 33433 report to accompany this Agreement, the hearing on which report was held on January 10, 2012, .

D. Buyer proposes to purchase the Site for purposes of developing the Site as a mixed-use, downtown commercial hub consisting of approximately 13,500 sq. ft. of multi-tenant office space, approximately 13,500 sq. ft. of multi-tenant mixed retail space, an approximately 29,955 sq. ft. hotel building, and an approximately 12,000 sq. ft. multi-tenant restaurant building with a mix of food types (the "**Project**"). Buyer's site plans and preliminary designs for the Project are attached hereto as **Exhibit "D"**. The Project will be further reflected in a Final Map to be recorded on the Site pursuant to California Government Code Section 66466 (the "**Final Map**"). The design of the Project shall be consistent with the City's design guidelines. Buyer shall also obtain architectural review and approval for the Project from the City's Planning Commission. Buyer will be solely responsible for obtaining all approvals and entitlements for the Project, arranging the financing for the Project, and constructing all improvements upon the Site, subject to the terms and conditions of this Agreement.

E. It is anticipated that the Final Map will divide the Site into four (4) parcels reflecting four distinct Project phases, substantially as follows:

1. **The "Restaurant Parcel":** That portion of the Site consisting of approximately .77 acres to be dedicated to the construction and operation of a single restaurant tenant. The restaurant tenant occupying the Restaurant Parcel shall be subject to the reasonable approval of Seller.
2. **The "Hotel Parcel":** That portion of the Site consisting of approximately 1.85 acres to be dedicated to the construction and operation of a single hotel tenant. The hotel tenant occupying the Hotel Parcel shall be subject to the reasonable approval of Seller.
3. **The "General Retail Parcel":** That portion of the Site consisting of approximately .78 acres to be dedicated to the construction and operation of a mixed retail and small restaurant complex.
4. **The "Retail/Office Parcel":** That portion of the Site consisting of approximately 1.85 acres to be dedicated to the construction and operation of a mixed retail and small offices complex.

F. The above-listed parcels are occasionally herein referred to herein individually as a "**Parcel**" and collectively as "**Parcels**". A tentative tract map showing the proposed boundaries of the four Project Parcels is attached hereto as **Exhibit "E"**. Project improvements to each of the Parcels are referred to herein as a "**Phase**" and these Phases are more specifically

named respective to each Parcel to as the “**Restaurant Phase**”, “**Hotel Phase**”, “**General Retail Phase**”, or “**Retail/Office Phase**”. The boundaries for each Parcel are based on Buyer’s preliminary designs and may be amended prior to approval of the Final Map by the City of Banning, excepting that Buyer shall first comply with any additional planning review or other City procedures necessary should a change to Project designs or parcel configurations be substantial enough to require Buyer to acquire new Project approvals or permits.

G. As a material condition of Seller’s conveyance of the Site to Buyer, Buyer shall adhere to the following general Project construction schedule (subject to mutually-agreed written amendment by the parties):

1. Vertical construction on at least one Phase shall commence no later than February 1, 2014.
2. Vertical Construction on at least a second Phase shall commence no later than February 1, 2015.
3. Vertical Construction on at least a third Phase shall commence no later than February 1, 2016.
4. Vertical Construction on at least a fourth Phase shall commence no later than February 1, 2017.
5. Completion of all Project improvements by February 1, 2018.

H. The fair market value of the Site was appraised at \$1,020,000.00 (or \$4.46/sq. ft.) on May 6, 2011, which fair market value shall constitute Buyer’s “**Purchase Price**” for the entire Site. Buyer shall purchase all Seller’s right, title and interests to the Site pursuant to a “**Promissory Note**” in favor of the Buyer for the full Purchase Price, which note shall become immediately due and payable upon the earlier of either (i) Buyer’s commencement of construction of vertical Project improvements, or (ii) Two (2) years from the close of escrow hereunder. The Promissory Note shall be secured through a “**Deed of Trust**” recorded upon the Site, which Deed of Trust shall be released on a Parcel-by-Parcel basis as Buyer completes each Project Phase.

NOW, THEREFORE, based on the above recitals, which are deemed true and correct and which are incorporated into the terms of this Agreement, and in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. PURCHASE AND SALE OF PROPERTY.

1.1 Generally. Buyer hereby agrees to purchase from Seller, and Seller agrees to sell to Buyer all Buyer’s rights, title and interests to the Site upon the terms and conditions hereinafter set forth.

1.2 As to Third-Party Parcel. From and after the date of this Agreement, Seller, or one of its affiliate agencies, shall attempt to acquire the Third-Party Parcel from the current owners of the Third-Party Parcel by negotiated purchase; provided, however, that nothing in this Agreement shall obligate Sellers or their related agencies to (i) pay more than the amount Seller has determined to be the fair market value of the Third-Party Parcel, nor (ii) to agree to any other non-standard terms or conditions except as may be acceptable to Seller in its sole and absolute discretion.

2. OPENING OF ESCROW; CLOSING DATE.

2.1 Opening of Escrow. Within three (3) business days after the execution of this Agreement by Buyer and Seller and approval by the Banning City Council, the Parties shall open an escrow ("Escrow") with the Escrow Holder identified above, (herein the "Escrow Holder") by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder ("Opening of Escrow"). Escrow Holder shall fax written notice of the Opening of Escrow date to Buyer and Seller.

2.2 Closing Date. With the exception of the Third-Party Parcel, Escrow shall close *no later than* thirty (30) days following opening ("Closing Date"), unless extended by mutual written agreement of the parties. The terms the "Close of Escrow" and/or the "Closing" are used herein to mean the time the Grant Deed (as hereinafter defined) is recorded in the Office of the County Recorder of Riverside County, California. Close of Escrow on the Third-Party Parcel may close later than thirty (30) days following opening and shall not occur until all the Conditions of Closing stated in Section 5.2 have occurred.

3. CONSIDERATION; PROMISSORY NOTE AND DEED(S) OF TRUST.

3.1 Purchase Price. The Purchase Price for Buyer's acquisition of all interests Seller holds in the Site is ONE MILLION, TWENTY-THOUSAND EVEN DOLLARS, (\$1,020,000.00) or \$4.46 per square foot. The Purchase Price is the total compensation to be paid by Buyer to Seller and all-inclusive of (i) Seller's fee interest in the City Property and (ii) any rights, title or interests the Seller may obtain over the Third-Party Parcel.

3.2 Payment of Purchase Price. The Purchase Price shall be paid by a Promissory Note secured by Deed of Trust.

3.3 Promissory Note. The Promissory Note shall be substantially in the form of that attached hereto as **Exhibit "F"** and reasonably acceptable to Buyer and Seller. The Promissory Note shall contain the following provisions: the Note shall be payable to the order of Seller; the principal balance shall accrue simple interest at the rate of four percent (4%) per annum; and the principal balance plus accrued interest shall be paid in one lump sum due no later than two (2) years from the Close of Escrow upon the City Property. The Promissory Note shall be prepayable at any time without premium or penalty but with interest prorated to the date of prepayment; and the principal balance of the Promissory Note, plus accrued interest, shall be due and payable in full upon the sale, transfer or other conveyance by Buyer of the Site, or any portion thereof, securing the Promissory Note.

3.4 Deed(s) of Trust. The Deed of Trust, attached hereto as **Exhibit “G”**, is in a format typically used in the State of California and reasonably acceptable to Buyer and Seller. The Deed of Trust shall secure (i) the Seller’s right of reverter in case of a Buyer default, and (ii) repayment of the Promissory Note in whole or part. The rights under the Deed of Trust will be released with respect to each Parcel, as each Parcel is developed. At the time a Subsequent Deed of Trust is recorded on a Parcel, if the Parcel is not thereafter completed with Project improvements pursuant to this Agreement, then the Seller may exercise its right of reverter. The Subsequent Deed of Trust may be subordinated for purposes of financing and Seller will not unreasonably withhold its consent to subordinating a Subsequent Deed of Trust for the purposes of financing the development of the Parcel(s) as described herein. The Escrow Officer shall record the Deed of Trust as follows:

(a) *Upon Close of Escrow & Prior to Final Map Recordation.* Concurrent with the Close of Escrow on the City Property, the Escrow Officer shall record upon the City Property the Deed of Trust, in the form attached hereto as Exhibit “G”. If the Third-Party Parcel is acquired by Seller before the recordation of the Final Map, the Deed of Trust in the form attached hereto as Exhibit “G” may, upon transfer of the Third-Party Parcel to Buyer and upon Seller’s discretion, also be recorded upon the Third-Party Parcel, such that the Promissory Note and Seller’s rights of reverter will be secured by the entire Site.

(b) *After Final Map Recordation; Deed of Trust to be Recorded on Each Parcel.* Once Buyer has obtained City approval of its Final Map for the Project, Seller shall release the single Deed of Trust recorded upon the City Property pursuant to subpart (a), above, and re-secure the Seller’s Promissory Note and rights of reverter by recording four new, separate deeds of trust (the **“Subsequent Deeds of Trust”**) with one deed of trust recorded upon each Parcel. This shall be accomplished within forty-five (45) days of Final Map approval, subject to the requirement that Buyer hereby agrees to execute said Subsequent Deeds of Trust in a timely manner. So long as the Subsequent Deeds of Trust are presented in a form substantially similar to that of Exhibit “G” (subject to Parcel-specific particulars that will necessarily be added to the Subsequent Deeds of Trust), Seller’s failure to promptly execute the Subsequent Deeds of Trust shall constitute a default of this Agreement. The Subsequent Deeds of Trust shall be recorded to reflect the Site’s parcelization into the four Project Parcels and securing each Parcel’s proportional value to the Purchase Price, substantially as follows:

(i) One Subsequent Deed of Trust shall be recorded upon the Restaurant Parcel; such Subsequent Deed of Trust shall secure the proportionate share of the Purchase Price attributable to the value of the Restaurant Parcel. For example, under current estimates, the Restaurant Parcel will account for approximately 33,541 square feet. Given the Purchase Price was based on a per square foot value of \$4.46, the Subsequent Deed of Trust for the Restaurant Parcel would secure \$149,594.

(ii) One Subsequent Deed of Trust shall be recorded upon the Hotel Parcel; such Subsequent Deed of Trust shall secure the proportionate share of the Purchase Price attributable to the value of the Hotel Parcel. For example, under current estimates, the Hotel Parcel will account for approximately 80,586 square

feet. Given the Purchase Price was based on a per square foot value of \$4.46, the Subsequent Deed of Trust for the Hotel Parcel would secure \$359,414.

(iii) One Subsequent Deed of Trust shall be recorded upon the General Retail Parcel; such Subsequent Deed of Trust shall secure the proportionate share of the Purchase Price attributable to the value of the General Retail Parcel. For example, under current estimates, the General Retail Parcel will account for approximately 33,976 square feet. Given the Purchase Price was based on a per square foot value of \$4.46, the Subsequent Deed of Trust for the General Retail Parcel would secure \$151,537.

(iv) One Subsequent Deed of Trust shall be recorded upon the Retail/Office Parcel; such Subsequent Deed of Trust shall secure the proportionate share of the Purchase Price attributable to the value of the Retail/Office Parcel. For example, under current estimates, the Retail/Office Parcel will account for approximately 80,586 square feet. Given the Purchase Price was based on a per square foot value of \$4.46, the Subsequent Deed of Trust for the Retail/Office Parcel would secure \$359,414.

(c) *Form of Subsequent Deeds of Trust.* Each Subsequent Deed of Trust shall be substantially in the same form as attached hereto at Exhibit "G" (subject to Parcel-specific particulars that will necessarily be added to the Subsequent Deeds of Trust). The boundaries for each Parcel are based on Buyer's preliminary designs and, therefore, both the legal descriptions and Subsequent Deed amounts secured by each Parcel may, at the time of recording the Final Map, be different from those identified in the foregoing subpart (b).

(d) *Release of Subsequent Deeds of Trust.* Each Subsequent Deed of Trust shall be released from its Parcel upon both (i) Buyer's payment of the full Purchase Price and (ii) Buyer's satisfaction of all conditions precedent to the release of Seller's rights of reverter for the Parcel, as described in Sections 12.8(b) hereof.

4. ADDITIONAL FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.

4.1 Buyer. Buyer agrees that on or before 1:00 p.m. on the business day preceding the Closing Date, Buyer will deposit with Escrow Holder all additional funds and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including, without limitation, the following:

(a) A Preliminary Change of Ownership Statement completed in the manner required in Riverside County, if any; and

(b) Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.2 Seller. Seller agrees that on or before 1:00 p.m. on the business day preceding the Closing Date, Seller will deposit with Escrow Holder such funds and other items and

instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including, without limitation, the following:

- (a) A grant deed conveying the City Property to Buyer, or if Seller has secured title to the Third-Party Parcel before the Closing then conveying the whole Site to Buyer, in the form attached hereto as **Exhibit "H"** ("Grant Deed").
- (b) Two duplicate originals of California Form 590 Real Estate Withholding Exemption Certificates in the form required by the California Franchise Tax Board ("California Residency Affidavit"); and
- (c) An executed copy of the "CC&Rs" to be recorded upon the Site, in accordance with Section 11.9 hereof, in substantially the form attached hereto as **Exhibit "I"**.
- (d) Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.3 Recordation, Completion and Distribution of Documents. Escrow Holder will cause the Grant Deed and Deed of Trust to be recorded when (but in no event after the date specified in Section 2.2 above) it can issue the Title Policy in the form described in Section 5.2 below, and holds for the account of Seller the items described above to be delivered to Seller through Escrow, less costs, expenses and disbursements chargeable to Seller pursuant to the terms hereof.

4.4 Escrow Holder Responsibilities. Escrow Holder will not have any responsibilities for the parties' performance of the terms of the Agreement which are to be performed after the 30-day Closing. The parties may execute supplemental escrow terms and instructions into Escrow Holder's general form and consistent with the terms hereof.

5. TITLE MATTERS.

5.1 Approval of Title. Buyer acknowledges that it has received copies of that preliminary title report for the entire Site (both City Property and Third-Party Parcel) dated December 19, 2011, as Order No. 930016309-U50 (the "Preliminary Title Report"). By executing this Agreement, Buyer approves all matters contained in the Preliminary Title Report and waives any objections Buyer may have to title exceptions or other matters contained in the Preliminary Title Report. Buyer hereby approves title in the form specified in Section 5.2.

5.2 Title Policy. When Escrow Holder holds for Buyer the Grant Deed in favor of Buyer executed and acknowledged by Seller covering the Site, Escrow Holder shall cause to be issued and delivered to Buyer and Seller as of the Close of Escrow a CLTA standard coverage owner's policy of title insurance ("Title Policy"), or, upon Buyer's request therefore, an ALTA extended coverage owner's policy of title insurance, issued by Title Company, with liability in the amount of the Purchase Price, covering the Site and showing title vested in Buyer free of encumbrances, *except*:

- (a) All non-delinquent general and special real property taxes and assessments for the current fiscal year;
- (b) Those easements, encumbrances, covenants, conditions, restrictions, reservations, rights-of-way and other matters of record shown on the Preliminary Title Report;
- (c) The standard printed exceptions and exclusions contained in the CLTA or ALTA form policy;
- (d) The following interests in the Third-Party Parcel, which Seller and/or one of its affiliate agency/bodies shall acquire through eminent domain: Frederick H. L. Huang and Audie P. H. Huang, husband and wife, as community property, as to an undivided one-half interest; and Jen H. Huang, a single man, as to an undivided one-half interest, as tenants in common as to the Third-Party Parcel.

(e) Any exceptions created or consented to by Buyer, including, without limitation, any exceptions arising by reason of Buyer's possession of or entry on the Site.

6. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.

6.1 Conditions to Closing on City Property.

(a) *Conditions to Buyer's Obligations.* The obligations of Buyer under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent:

- (i) Title Company will issue the Title Policy as required by Section 5.2 of this Agreement.
- (ii) Seller has deposited an executed Grant Deed into Escrow.
- (iii) An executed Deed of Trust to be recorded upon the City Property has been deposited into escrow.
- (iv) Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement.
- (v) All representations and warranties specified in Section 8.1 are true and correct.
- (vi) Buyer's approval of any other conditions specified in this Agreement.
- (vii) Seller shall not be in default of any term or condition of this Agreement.

Buyer's approval shall be based upon Buyer's sole and absolute discretion; provided, however, if Buyer has not delivered written notice of approval of the above conditions to Seller and Escrow Holder by the times provided above, or if no time is provided, on or before the Close of Escrow, each such condition shall automatically and conclusively be deemed to have been disapproved by Buyer.

(b) *Conditions to Seller's Obligations.* The obligations of Seller under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Seller of each of the following conditions precedent:

- (i) Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.
- (ii) An executed Deed of Trust to be recorded upon the City Property has been deposited into escrow.
- (iii) An executed copy of the CC&Rs (Exhibit "T") to be recorded upon the City Property has been deposited into escrow.
- (iv) Buyer shall not be in default of any term or condition of this Agreement.

If requested by Escrow Holder or Buyer, Seller shall deliver to Escrow Holder and Buyer written notice of satisfaction of the conditions set forth in this Section 6.1.

6.2 Conditions to Closing on Third-Party Parcel if Seller Does Not Hold Title to the Third-Party Parcel Before Closing on the City Property. Conveyance of title to the Third-Party Parcel to Buyer is strictly conditioned upon the Seller obtaining title to the Third-Party Parcel, as further detailed hereafter. If Seller obtains title to the Third-Party Parcel prior to the deadline for Closing on the City Property, then the Third-Party Parcel shall be conveyed to the Buyer in the same manner as the City Property, subject to Section 6.1, and pursuant to a single Deed of Trust (in the form of Exhibit "G"). If however, Seller cannot obtain title to the Third-Party Parcel until after the 30-day Closing deadline for the City Property, Seller shall convey the Third-Party Parcel to Buyer as provided in this Section 6.2.

Seller's failure to obtain title to the Third-Party Parcel, after exercising reasonable efforts to do so, shall not constitute a default of this Agreement or waiver of any of Buyer's obligations hereunder. Notwithstanding the foregoing, if Seller is unable to acquire all or any portion of the Third-Party Parcel, Buyer may elect either (i) to terminate this Agreement, or (ii) to amend the Project plans and to proceed with the development of the Site without the Third-Party Parcel, if and only if the City approves such amended Project plans. If such amended Project plans are not approved by the City, Buyer shall not proceed with the development of the Site and this Agreement shall terminate.

(a) *Possession/Title to Third-Party Parcel to be Assigned to Buyer.* Seller, or its affiliate agency, is currently in the process of seeking possession and title to the Third-Party Parcel pursuant to an eminent domain action pending in the Riverside County Superior Court as *The City of Banning Redevelopment Agency v. Frank H.L. Huang*,

Audie P.H. Huang, et al., Case No. RIC 1109186. Seller shall pursue such acquisition of the Third-Party Parcel with reasonable diligence and, upon acquisition of an order of pre-judgment possession and title to the Third-Party Parcel, commit to assign such rights of possession and title to the Buyer. To this end, Seller shall deposit a copy of the Order of Prejudgment Possession for the Third-Party Parcel into Escrow as soon as such Order is issued. Upon Seller acquiring a right of Prejudgment Possession to the Third-Party Parcel pursuant to the pending eminent domain action, Seller shall assign its rights of possession to Buyer. If Seller shall actually obtain title pursuant to some earlier settlement or a final judgment prior to the 30-day Closing, Seller shall also deposit into escrow a grant deed to the Third-Party Parcel to convey to Buyer all rights, title and interests in the Third-Party Parcel. If title is not obtained until after the 30-day Closing deadline stated in Section 2.2, then there shall be either (i) a simple Closing including the Third-Party Parcel so long as title insurance can be obtained, with the City handling the obligation to deliver title separately outside of escrow when obtained, or (ii) separate closings for the City Property and the Third-Party Parcel.

(b) *Close of Escrow for Third-Party Parcel.* Notwithstanding any other provision of this Agreement to the contrary, if at any time prior to Seller's acquisition to title of the Third-Party Parcel, (i) Seller deposits the Grant Deed and a copy of the Order of Prejudgment Possession for the Third-Party Parcel into Escrow, (ii) Seller tenders possession of the whole Site, including the Third-Party Parcel, to Buyer, and (iii) Seller is diligently proceeding with the eminent domain action seeking the rendering of a final judgment authorizing the taking, (iv) Seller provides such indemnification(s) as Title Company may require to the end of assuring that Seller will obtain a final judgment authorizing the taking of the Third-Party Parcel such that Title Company will issue title insurance on the Third-Party Parcel, and (v) the Title Company commits to issuing title insurance as provided herein; then, subject to the satisfaction or waiver of all the conditions specified in Section 6.1, Buyer shall accept such right of possession and proceed with development of the Site. The date of such transfer of possession from Seller to Buyer shall be treated as the "Close of Escrow" for all purposes of the Third-Party Parcel. In such event, Seller shall exercise reasonable diligence to conclude the eminent domain proceedings and obtain a final order of condemnation terminating all third-party interests in the Site; Seller's title to the Third-Party Parcel shall thereupon be conveyed to Buyer via grant deed.

6.3 Covenant of Seller and Buyer. Buyer and Seller agree to cooperate with one another, at no cost or expense to the cooperating party, in satisfying the conditions precedent to Close of Escrow. Buyer shall be responsible for proceeding with diligence and in good faith to satisfy the conditions to Buyer's performance set forth in Section 6.1(a) and Seller shall be responsible for proceeding with diligence and in good faith to satisfy the conditions to Seller's performance set forth in Section 5.1(b). Additionally, both parties will have cooperated to execute and file a Stipulation for Entry of Judgment in the eminent domain action of *The City of Banning Redevelopment Agency v. Frank H.L. Huang, Audie P.H. Huang, et al.*, Case No. RIC 1109186.

6.4 Termination for Failure of Condition. In the event Buyer fails to approve or disapprove any condition precedent specified in Section 5.1(a) or elsewhere in this

Agreement on or before the date for approval set forth therein, Seller shall notify Buyer of such failure and Buyer shall have a period of five (5) days from receipt of such notice to elect to approve such matter or to disapprove such matter and terminate this Agreement. The failure of Buyer to approve such matter within said five (5) days shall be deemed to constitute disapproval thereof and Buyer's election to terminate. In the event Seller fails to approve or disapprove any condition precedent specified in Section 5.1(b) or elsewhere in this Agreement on or before the date for approval set forth therein, Buyer shall notify Seller of such failure and Seller shall have a period of five (5) days from receipt of such notice to elect to approve such matter or to disapprove such matter and terminate this Agreement. The failure of Seller to approve such matter within said five (5) days shall be deemed to constitute disapproval thereof and Seller's election to terminate.

7. **CONDITION OF SITE; RELEASES/INDEMNITY SITE CONDITION.**

7.1 Environmental Laws. For purposes of this Agreement, "Environmental Laws" shall mean all federal, state or local statutes, regulations, ordinances, codes or rules as such have been or may hereafter be enacted, adopted, amended or supplemented and all common law causes of action relating to the protection of human health or the environment, including without limitations the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 7401, et seq.), the Toxic Substance Control Act, as amended (15 U.S.C. 2601, et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.), the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. Section 136, et seq.) and the Clean Air Act, as amended (42 U.S.C. 7401, et seq.), and private rights of action for nuisance, trespass, or damages to property or persons.

7.2 Hazardous Materials. For the purposes of this Agreement, Hazardous Materials shall be deemed to mean asbestos, polychlorinated biphenyls, petroleum or by-products thereof, radioactive materials, or any chemical, material or substance included in the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "toxic substances" and/or words of similar import under any federal, state and local laws, ordinances, rules and regulations whether present or future, relating to and/or dealing with the protection of the environment and/or human health and safety and/or applicable to the generation, handling, manufacture, installation, treatment, storage, use, transportation, discharge, disposal, presence and/or release into the air, soil, water at, above or below ground level (whether accidental or intentional) of such substances or materials.

7.3 As-Is Purchase; Disclaimer of Warranties. Notwithstanding any contrary provisions of this Agreement or otherwise, upon the execution of this Agreement by Buyer, Buyer shall and does agree to take the Site in its current condition AS-IS, WITH ALL FAULTS, all defects and conditions whatsoever then existing on the Site, including any Hazardous Materials (as defined herein above), vaults, debris, pipelines, wells, or other structures that are or may be located in, on, under, or around the Site, whether known or unknown. Buyer assumes all responsibility for any and all such defects, faults, and conditions and shall be responsible for any and all defects in the Site, whether patent or

latent, including, without limitation, the physical, environmental and geotechnical condition of the Site, and the existence of any contamination, Hazardous Materials, within the Site.

Seller makes no representation or warranty concerning the physical, environmental, geotechnical or other condition of the Site. Buyer acknowledges that, once Buyer obtains title to the Site, any liability of Seller for the environmental condition of the Site shall be extinguished, that Seller shall have no liability for remediating any environmental condition of the Site and that Buyer shall indemnify Seller against any claim or liability relating to the condition of the Site.

7.4 Buyer's Release of Seller. Notwithstanding any contrary provisions of this Agreement or otherwise, upon the execution of this Agreement by Buyer, Buyer shall and does hereby release Seller, its officers, directors, shareholders, affiliates, subsidiaries, heirs, and successors from any and all claims, liabilities, expenses, costs, or damages that Buyer may incur arising from the presence of any Hazardous Materials (as defined herein above) which are or may be located in, on, under, or around the Site, whether or not caused by Seller or any predecessor-in-interest of Seller, and whether or not known to Seller or Buyer at or before the Close of Escrow. Buyer expressly preserves its rights against other parties and does not release, or waive its rights to contribution against, any other party.

7.5 Buyer's Indemnification of Seller. Notwithstanding any contrary provisions of this Agreement or otherwise, upon the execution of this Agreement by Buyer, Buyer hereby agrees to indemnify, defend (by Seller's choice of counsel), and hold harmless Seller, its directors, officers, employees, agents, representatives, heirs, and successors from and against any and all costs, expenses, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly arising from any violation of the Environmental Laws (as defined herein above) including, without limitation, any release, treatment, use, generation, storage, or disposal of Hazardous Materials in, on, under, around, or from the Site at any time before or after close of escrow including, without limitation, the cost of any required or necessary remediation or removal of any such Hazardous Materials, any costs of repair of improvements on the Site or surrounding properties necessitated by such remediation or removal and costs of any testing, sampling, or other investigation or preparation of remediation or other required plans undertaken prior to such remediation or removal. Buyer expressly preserves its rights against other parties and does not release, or waive its rights to contribution against, any other party.

7.6 Indemnification and Release from Liabilities Relating to New Legislation. Buyer acknowledges that it is aware of, and has received advice from legal counsel on, the matter of new legislation effective June 1, 2011, purporting to limit or disenfranchise the authority of local governments to transfer or control assets that are, or once were, owned by a local redevelopment agency. Specifically, the 2011 Assembly Bills ABx1 26 and ABx1 27 became effective on June 29, 2011. ABx1 26 purports to eliminate redevelopment agencies while ABx1 27 allows agencies to continue to exist if they agree to pay to the State a proportional share of \$1.7 billion this year and \$400 million annually in perpetuity. The bills are both the subject of litigation before the California Supreme Court, in which the constitutionality of the bills is being challenged. At this time, it is unknown whether the bills will be upheld in whole or in part or how otherwise the Supreme Court may rule on the

bills. Buyer hereby acknowledges the possibility that ABx1 26 and/or ABx1 27 might be upheld, interpreted or applied in such a manner as to undermine or invalidate (i) Buyer's rights to the Site, and/or (ii) Seller's authority to convey the Site to Buyer. Notwithstanding such risk, Buyer hereby agrees to indemnify, defend (by Seller's choice of counsel), and hold harmless Seller, its directors, officers, employees, agents, representatives, heirs, and successors from and against any and all costs, expenses, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly arising from any application or impact of ABx1 26 and/or ABx1 27 upon (i) Seller's existing rights to the Site, (ii) this Agreement, (iii) Seller's authority to convey the Site to Buyer, (iv) Buyer's authority to acquire the Site, (v) delivery of the Project, or (vi) any other costs or expenses whatsoever that may result to Buyer as a result of ABx1 26 and/or ABx1 27.

7.7 Buyer Assumes All Liabilities Arising After Closing. Buyer assumes ALL liabilities that arise from post-closing events.

7.8 Survival. Notwithstanding any other provision of this Agreement, the provisions of this Article 8 shall survive the Close of Escrow and the delivery of the Grant Deed(s).

8. REPRESENTATIONS AND WARRANTIES BY SELLER.

8.1 Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer, each of which (i) is material and relied upon by Buyer in making its determination to enter into this Agreement; (ii) to the best of Seller's knowledge, is true in all respects as of the date hereof and shall be true in all respects on the date of Close of Escrow on the Site; and (iii) shall survive the Close of Escrow of the purchase and sale of the Site as well as any future transfer of the Site to Buyer or any transferee, successor or assignee of Buyer:

(a) With the exception of the condemnation action on the Third-Party Parcel or the matters stated in 7.6, as disclosed hereinabove, to the best of Seller's knowledge there are no contracts, leases, claims or rights affecting the Site and no agreements entered into by or under Seller shall survive the Close of Escrow that would adversely affect Buyer's rights with respect to the Property, except as heretofore disclosed through the Preliminary Title Report.

(b) Seller has delivered or, within the period required in Section 6.1(a) and Article 4, will have delivered true, correct and complete copies of all the documents and other information specified in Section 6.1(a) and Article 4 in Seller's possession or control (or has reasonable access thereto). To the best of Seller's knowledge, the information contained in the said documents is true and accurate.

(c) With the exception of the condemnation action on the Third-Party Parcel, as disclosed hereinabove, and any items disclosed in the Preliminary Title Report, there are no executory contracts, options or agreements existing (other than this Agreement) relating to the purchase of all or any portion of the Site or any interest therein.

(d) All federal, state, municipal, county and local taxes, which are actually a direct monetary obligation of the owner of the Site, the nonpayment of which might become a lien on or affect all or part of the Site, which are due and payable prior to the Closing have been paid, or on the Closing Date will have been paid in full.

(e) With the exception of the condemnation action on the Third-Party Parcel, as disclosed hereinabove, since the time of issuance of the Preliminary Title Report, Seller has taken no action to create, nor otherwise caused, any additional encumbrances to title other than those shown on the Preliminary Title Report.

(f) Seller is not a foreign person as defined in Internal Revenue Code Section 1445(f)(3).

8.2 Changed Circumstances. If Seller becomes aware of any fact or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by Seller under this Agreement, whether as of the date given or any time thereafter through the Close of Escrow and whether or not such representation or warranty was based upon Seller's knowledge and/or belief as of a certain date, Seller will give immediate written notice of such changed fact or circumstance to Buyer, but such notice shall not release Seller of its liabilities or obligations with respect thereto. Seller shall issue a certificate as of the Close of Escrow stating that all the representations and warranties contained in Section 8.1 are true and correct as of said date, or setting forth in detail which of such matters are not true and correct. Buyer shall have five (5) days from the receipt of any notice by Seller of the material change of any representation or warranty made by Seller hereunder to terminate this Agreement by providing written notice to Seller and Escrow Holder, and receive return of its Deposit and any other sums deposited in the Escrow.

8.3 No Other Representations or Warranties by Seller. Other than those express representations and warranties contained in this Agreement, Seller makes no other representations or warranties, either express or implied.

9. REPRESENTATIONS AND WARRANTIES BY BUYER.

9.1 “AS-IS” Condition of Site. Buyer represents, acknowledges, and agrees that Buyer is electing to purchase the Site in its “AS-IS, WHERE IS” physical condition pursuant to Article 7.0.

9.2 Buyer Assumes All Liability. Buyer represents and acknowledges that Seller has not agreed to perform any environmental remediation work nor to any offset to the Purchase Price as a result of any physical or environmental condition Buyer discovers on the Site, whether before or after the Close of Escrow.

9.3 Sole Reliance. Buyer represents and acknowledges that it is relying solely upon Buyer's own inspections in purchasing the Site.

9.4 Legislation. Buyer represents that as for the matters disclosed in Section 7.6, Buyer has received advice through its own legal counsel and is not relying on any legal analysis of Seller or Seller's legal counsel.

10. ESCROW PROVISIONS.

10.1 Escrow Instructions. This Agreement, when signed by Buyer and Seller, shall also constitute escrow instructions to Escrow Holder.

10.2 General Escrow Provisions. Escrow Holder shall deliver the Title Policy to the Buyer and instruct the Riverside County Recorder to mail the Grant Deed to Buyer at the address set forth in Section 12.16 after recordation. All funds, if any, received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in Riverside County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be made by Escrow Holder's check.

10.3 Prorations of Real Property Taxes. Buyer acknowledges that Seller is a governmental agency, not subject to payment of taxes. Accordingly, Buyer shall be solely responsible for payment of taxes accruing after Close of Escrow and/or seeking a refund of any overpayment of taxes from the appropriate taxing agencies. Utilities and other expenses of the Site which are payable by or to the owner of the Site shall be prorated to the Close of Escrow on the basis of a thirty (30) day month and a three hundred sixty (360) day year. Any party who is obligated to pay net amounts based on said final proration shall reimburse the other party said amount within five (5) business days after completion of the final proration. Seller shall receive a credit for any refundable utility or governmental deposits made by Seller with respect to the Site, if any, and shall assign Buyer all rights to refund of same.

10.4 Payment of Costs. Buyer shall pay one hundred percent (100%) of the documentary transfer taxes, escrow fees, recording fees, Title Policy premiums, and the charges for recording the Grant Deed, and the additional portion of the Title Policy premium which is attributable to the additional cost of obtaining any additional coverage requested by Buyer, including the difference between CLTA and ALTA coverage. Seller and Buyer shall each be responsible for their respective attorneys' fees and costs. All other costs of escrow not otherwise specifically allocated by this Agreement shall be apportioned between the parties in a manner consistent with the custom and usage of Escrow Holder.

10.5 Termination and Cancellation of Escrow. If Escrow fails to close as provided above, Escrow shall terminate automatically without further action by Escrow Holder or any party, and Escrow Holder is instructed to return all funds and documents then in Escrow to the respective depositor of the same with Escrow Holder; provided that any document which has been signed by a party who is not to receive the return of such document, shall be marked "void and of no force or effect" by Escrow Holder before it is delivered. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

10.6 Information Report. The "Reporting Person" within the meaning of Treasury Regulation Section 1.6045-4(e)(5) with respect to the transactions contemplated by this Agreement shall be Escrow Holder. The name and address of Escrow Holder is set

forth on the first page of this Agreement. It is agreed that Escrow Holder is an eligible person under Section 1.6045-4(e)(5)(ii) of said Regulations. Escrow Holder hereby agrees to be responsible for complying with the reporting and other requirements of Internal Revenue Code Section 6045(e) and the income tax regulations promulgated thereunder. Pursuant to said regulations, the address for the transferor and transferee are as set forth for Seller and Buyer respectively in Section 12.16 below, and the identifying information regarding the real estate transferred is the legal description for the Site or portion thereof being transferred. Escrow Holder agrees to file the form required by said regulations between the end of the calendar year in which the Close of Escrow occurs and February 28 of the following calendar year. Buyer and Seller agree (i) to cooperate with Escrow Holder and with each other in completing any report and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-S as such may be hereafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereafter promulgated by the Treasury Department with respect thereto; (ii) that Buyer and Seller, their respective employees and attorneys, and Escrow Holder and its employees may disclose to the Internal Revenue Service, this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e); (iii) that neither Buyer nor Seller shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information; and (iv) to retain this Agreement for at least four (4) years following the close of the calendar year in which the Close of Escrow occurs.

10.7 Possession. Possession of the Property shall be delivered to Buyer as of Close of Escrow. In the event any personal property remains on the Property following the Close of Escrow, it shall automatically become the property of Buyer.

11. COVENANTS RELATING TO THE PROJECT.

11.1 Restrictions On Transfer. The qualifications and identity of Buyer are of particular concern to the Seller, and it is because of such qualifications and identity that Seller has entered into this Agreement with Buyer. Seller has undertaken an extensive marketing program to identify appropriate users for the Site. The Seller has considered the experience, financial capability, and product being marketed by Buyer and its affiliates, the Site location and characteristics, the public costs of acquiring and developing the Site and return on investment, and the product mix necessary to produce a successful Project. Based upon these considerations, the Seller has imposed the restrictions on transfer set forth in this Agreement.

(a) *Transfer Defined.* As used in this section, the term “**Transfer**” shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the improvements thereon. A Transfer shall also include the Transfer to any person or group of persons acting in concert of more than fifty percent (50%) of the present ownership and/or control of Buyer in the aggregate taking all Transfers into account on a cumulative basis. In the event Buyer or its successor is a

corporation or trust, such Transfer shall refer to the Transfer of the issued and outstanding capital stock of Buyer, or of beneficial interests of such trust; in the event that Buyer is a limited or general partnership, such Transfer shall refer to the Transfer of more than fifty percent (50%) of the limited or general partnership interest; in the event that Buyer is a joint venture, such Transfer shall refer to the Transfer of more than fifty percent (50%) of the ownership and/or control of any such joint venture partner, taking all Transfers into account on a cumulative basis.

(b) *Transfers Require Approval.* Buyer shall not Transfer this Agreement or any of Buyer's rights hereunder, or any interest in the Site or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of Seller, and if so purported to be transferred, the same shall be null and void. In considering whether it will grant written approval to any assignment by Buyer of its interests in the Site, which assignment requires Seller approval, Seller shall consider factors such as (i) whether the completion of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform Buyer's obligations hereunder; (iii) the proposed assignee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects; and (iv) how the proposed assignee will complement the other users and uses in the City of Banning downtown area, whether commercial users or otherwise.

In the absence of a specific written agreement with the Seller, prior to the issuance of a Certificate of Completion for the entire Project or any portion thereof, no assignment or transfer by of all or any portion of its interest in the Site or this Agreement (including without limitation an assignment or transfer not requiring Seller approval hereunder) shall be deemed to relieve Buyer or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Site which is so transferred. In addition, no attempted assignment of any of Buyer's obligations hereunder shall be effective unless and until the successor party executes and delivers to Seller an assumption agreement in a form reasonably approved by the Seller assuming such obligations.

(c) *Exceptions.* The foregoing prohibition shall not apply to any of the following:

(i) Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 11.3, but Buyer shall notify Seller in advance of any such mortgage, deed of trust, or other form of conveyance (but only for purposes of financing the Project).

(ii) Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the Project, including any additional costs of construction, whether direct or indirect.

(iii) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of any easements or permits needed to facilitate the Site's development.

(iv) A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(v) A conveyance of the Site to any entity Buyer Affiliate. **"Buyer Affiliate"** shall mean any entity which owns or controls Buyer, to any entity owned or controlled by Buyer, to any entity owned or controlled by or affiliated with any entity which owns or controls Buyer, or to any entity resulting from a consolidation, or to the surviving entity in case of a merger, to which consolidation or merger Buyer shall be a party, or to an entity to which all or substantially all of the assets of Buyer have been sold.

(vi) Transfers of ownership or control interest between members of Buyer's immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the Buyer's immediate family, or among the entities constituting Buyer.

(d) *Release Of Buyer.* Seller's consent to a Transfer shall not be deemed to release Buyer of liability for performance under this Agreement unless such release is specific and in writing executed by Seller, which release shall not be unreasonably withheld. Upon the written consent of Seller to the complete assignment of this Agreement and the express written assumption of the assigned obligations of Buyer under this Agreement by the assignee, Buyer shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Buyer is in default under the terms of this Agreement prior to said Transfer.

(e) *Buyer To Pay Transfer Costs.* Buyer will pay Seller its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any Transfer.

(f) *Termination; Lease Provisions.* The Transfer restriction in this Section 11.1 terminates upon the recordation of the Notice of Completion for the entire Project.

11.2 Scope Of Development & Schedule Of Performance. The Site shall be developed by Buyer as provided in the Buyer's Scope of Development and Conceptual Plans (Exhibit "D") and the plans and permits approved by the City pursuant to Section 11.4. Notwithstanding any other provision set forth in this Agreement to the contrary, in the event of any conflict between the narrative description of the Project in this Agreement (including

Exhibit "D") and the approved plans and permits, the approved plans and permits shall govern.

(a) *Critical Construction Deadlines.* Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay (Section 13.9 hereof). Buyer shall keep the Seller informed of the progress of construction and submit to the Seller written reports of the progress of the construction when and in the form requested by the Seller. Critical Project construction deadlines are as follows:

- (i) Vertical construction on at least one Phase shall commence no later than February 1, 2014.
- (ii) Vertical Construction on at least a second Phase shall commence no later than February 1, 2015.
- (iii) Vertical Construction on at least a third Phase shall commence no later than February 1, 2016.
- (iv) Vertical Construction on at least a fourth Phase shall commence no later than February 1, 2017.
- (v) Completion of all Project improvements by February 1, 2018.

(b) *Extensions of Time.* In addition to delays in the Project deadlines as may be permitted due to Enforced Delays, it is understood that the foregoing critical deadlines are subject to all other terms and conditions set forth in this Agreement, and as will be more thoroughly set forth in the future. The critical construction deadlines may be altered or amended by written agreement signed by both Buyer and Seller. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager of Seller shall have the authority to approve extensions of time without City Council action if such extension does not exceed a cumulative total of 180 days.

(c) *Delays Due to City Vacations of Rights-of-Way.* Notwithstanding the foregoing, and in addition to the events of Enforced Delay (Section 13.9), the parties acknowledge that certain rights-of-way must be vacated by the City of Banning prior to Buyer commencing construction of certain Project improvements. If Buyer is unable to commence construction or progress with Project construction in accordance with this Section because of delays in City vacations of rights-of-way (at no fault of Buyer), such resultant delay to Project construction shall not constitute a breach or default of this Agreement by Buyer. Buyer's deadlines for Project construction shall be extended by the time period that Project continuation is delayed as a result of the City's failure to vacate a particular right-of-way so long as (i) such right-of-way vacation is actually necessary to Project continuation, and (ii) provided notice by the Buyer claiming such extension is sent to the Seller within ten (10) days of the commencement of the cause.

11.3 Project Financing.

(a) *Buyer Responsible for Project Costs.* Buyer is responsible for paying all costs for the Project unless otherwise provided herein. Project costs include the total Project construction costs, all Site preparation costs, all infrastructure costs, building permits and development fees, all design and consultant costs, all financing costs, all fixtures and equipment for the facility, and all other costs related to the Project of any nature whatsoever.

Although the parties hereto believe that the Site is being conveyed to the Buyer at fair market value and that no financial assistance or public monies are being provided to Buyer with respect to the Project, Buyer fully accepts the risk that construction or development of the Site may qualify as a “public work” “paid for in whole or in part out of public funds,” as described in California Labor Code Section 1720 *et seq.*, (“Prevailing Wage Law”), such that it would cause Buyer to be required to pay prevailing wages for any aspect of the development. Buyer hereby represents and warrants that the Project is not subject to Prevailing Wage Law because no funding sources for the Project will trigger the application of Prevailing Wage Laws. Notwithstanding the foregoing, the Buyer fully bears any and all risk that Prevailing Wage Laws may be found to apply to the Project. To this end, Buyer acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations (“DIR”), require Buyer or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law for all or any of the assistance provided hereunder, then Buyer shall indemnify, defend, and hold Seller harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. The Seller makes no representation that any construction completed by Buyer is or is not subject to Prevailing Wage Law.

(b) *Buyer's Financial Statements.* Buyer agrees to provide the Seller with documentation and financial statements to the end of demonstrating that Buyer can fund the total projected/estimated Project costs through, cumulatively, the following sources: (i) Buyer equity, (ii) private financing from financial institutions, and/or (iii) financing provided through foreign investment via the USCIS-administered Immigrant Investor Program, also known as the “EB-5” program. To this end, no later than the Close of Escrow on the City Parcel, Buyer agrees to deliver to Seller, for Seller's approval, financial statements which, in the opinion of Seller, demonstrate that Buyer has the financial capability to undertake the development provided herein. Such financial statements shall include statements from financial institutions with whom Buyer conducts business evidencing their willingness to provide the financing required hereunder. If Buyer elects to self-fund the construction of the Project, Buyer may satisfy this obligation by providing Seller with a letter evidencing approval of the Project by the relevant parties on behalf of Buyer along with an explanation of facts demonstrating Buyer's ability to self-fund the Project.

(c) *Obtaining Construction & Permanent Loans.* Should Buyer choose to utilize any financing towards Project completion (“**Buyer Financing**”), Buyer agrees to deliver to Seller and obtain the approval of Seller of irrevocable written commitments from financial institutions licensed to do business in California and acceptable to the Seller (“**Lender**”) agreeing to make a construction loan and a permanent loan to Buyer and secured by a First Deed of Trust (said commitment and loan are sometimes referred to collectively as the “**Loan**”). The amount of the commitment shall include all consultant and loan fees, “points,” commissions, charges, furnishings, fixtures, taxes, interest start-up and other costs and expenses in an amount not less than the total Project construction contract and costs, less the amount of financing provided through foreign investment via the USCIS-administered Immigrant Investor “EB-5” Program.

Buyer covenants and agrees to take all action, furnish all information, give all consents and pay all sums required to keep said commitment and Loan in full force and effect and shall comply with all conditions thereof, and shall promptly execute, acknowledge and deliver all loan applications, credit applications and data, financial statements, and loan documents in connection therewith, and shall actually draw upon and utilize the full amount of said Loan only for financing the cost of the Project.

(d) *Seller Approval Of Lender.* Buyer shall not enter into any conveyance for financing without the prior written approval of Seller. Seller’s written approval or disapproval shall not be unreasonably withheld or delayed. Seller’s review of the Lender shall be limited to the question of whether or not said Lender is a qualified and responsible financial or lending institution or other acceptable entity or person capable of performing its obligations under the Loan.

(e) *EB-5 Financing.* The parties anticipate that Buyer will finance the project, in part, via foreign investments administered pursuant to the USCIS-administered Immigrant Investor “EB-5” Program. Buyer covenants and agrees to abide by all EB-5 regulations and requirements, 8 U.S.C.S. §§ 1153 (b)(5), 1186b; 8 C.F.R. §§ 204.6, 216.6.

11.4 Project Plans, Final Building Plans.

(a) *Proposed Project’s Consistency With Plans and Codes.* Seller warrants and represents that the City of Banning General Plan, Zoning Ordinance, and Redevelopment Plan permit Seller’s proposed development, and construction, operation, and use of the Site as provided in this Agreement, including without limitation the Project as described in Exhibit “D”, subject only to (i) approval of this Agreement and the proposed Project pursuant to Health and Safety Code Section 33433, and (ii) those development approvals yet to be obtained, including site plan review, and (iii) City of Banning review and approval of the Final Map for the Project. It is expressly understood by the parties hereto that Seller makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City. The City and any other governmental body with jurisdiction over the Project reserve full police power authority over the Project. However, Seller shall reasonably cooperate with Buyer in procuring the foregoing approvals. Nothing in this Agreement shall be deemed

to be a prejudgment or commitment with respect to such items or a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

(b) *Evolution Of Development Plan.* Prior to the Effective Date of this Agreement, the Seller approved the Buyer's Conceptual Plans (Exhibit "D"). On or before commencement of any Project construction, Buyer must submit to the Seller preliminary, and thereafter final, drawings and specifications for development of the Project in accordance with the City's requirements. The term preliminary and final drawings shall be deemed to include site plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, material pallets, a description of structural, mechanical, and electrical systems, the Final Map and all other plans, drawings and specifications. Final drawings will be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Concept Plans (Exhibit "D") and the various development approvals referenced hereinabove, except as such items may be amended by Seller and Buyer in writing. Plan submissions shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved.

(c) *Buyer Efforts To Obtain Approvals.* Buyer shall exercise its commercially reasonable efforts to timely submit all documents and information necessary to obtain all development and building approvals from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Buyer shall comply with all applicable development standards in the City of Banning Municipal Code and shall comply with all building codes, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

(d) *Disapproval.* The Seller shall reasonably approve or disapprove any submittal made by Buyer pursuant to this Section within sixty (60) business days after such submittal. All submittals made by Buyer shall note the 60-business day time limit, and specifically reference this Agreement and this Section. Any disapproval shall state in writing in reasonable detail the reason for the disapproval and the changes which the Seller requests be made. Buyer shall make the required changes and revisions and resubmit for approval as soon as is reasonably practicable but no more than thirty (30) business days of the date of disapproval. Thereafter, Seller shall have an additional ten (10) business days for review of the re-submittal, but if the Seller disapproves the re-submittal, then the cycle shall repeat, until the Seller's approval has been obtained. If Buyer desires to make any substantial change to approved working drawings, Buyer shall submit the proposed change to Seller for approval. If the drawings as modified by the proposed change conform to this Agreement and the Concept Plans (Exhibit "D"), City of Banning design criteria for the downtown region, and all other applicable City of Banning regulations, Seller shall approve the change and Seller shall notify Buyer of its approval or disapproval in writing within thirty (30) business days after submission of such proposed change.

Seller's Community Development Director or designee shall have authority to determine on behalf of Seller if a proposed revision or change to any plans, drawings, or other

documents previously approved by Seller is a substantial change requiring further City approval. If the Community Development Director or his/her designee determines that the proposed revision or change is not substantial, no approval by City of such revision or change will be necessary. Seller shall reasonably approve or disapprove the plans, drawings and related documents referred to in this Section 11.4 within the times stated in foregoing paragraph of this subpart (d). However, to the extent that Buyer proposes substantial revisions or changes to any plan, drawing, or other document previously approved by Seller, Buyer acknowledges that such substantial revision will require review by the City Council or such other legislative body(ies) as may be applicable and, in such circumstance, Buyer agrees to waive the time frames set forth herein if necessary. City's review is intended to insure that the plans, drawings and related documents are consistent with the Project Concept (Exhibit "D"). Any disapproval shall state in writing the reasons for disapproval and the changes which Seller requests to be made. Such reasons and such changes must be consistent with the Project Concept (Exhibit "D") and any items previously approved or deemed approved hereunder. Buyer, upon receipt of a disapproval based upon powers reserved to Seller hereunder, shall revise the plans, drawings and related documents, and shall resubmit to Seller as soon as possible after receipt of the notice of disapproval; provided that in no case shall Seller be entitled to require changes which are inconsistent with the Project Concept (Exhibit "D"), the most recently-applicable, previously-approved or deemed-approved items.

During the preparation of all drawings and plans, the parties shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by Seller. If any substantial revisions or corrections of plans approved by Seller shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, the parties shall cooperate in efforts to develop a mutually acceptable alternative.

11.5 Applicable Laws. Buyer shall carry out the construction of the Project improvements in conformity with all applicable laws, including all applicable federal and state labor laws.

11.6 Anti-Discrimination During Construction. Buyer, for himself and his successors and assigns, agrees that in the construction of the improvements to be constructed by Buyer, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

11.7 Rights Of Holders Of Approved Security Interests In Site.

(a) *Definitions.* As used in this Section, the term "mortgage" shall mean a leasehold mortgage and include any mortgage, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term "holder" shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

(b) No Encumbrances Except Mortgages To Finance The Project.

Notwithstanding the restrictions on transfer in Section 11.1, mortgages required for any reasonable method of financing of the construction of the Project improvements are permitted before issuance of a Certificate of Completion but only for the construction of Project improvements thereon, and for any other expenditures necessary and appropriate to develop the Site under this Agreement, or for restructuring or refinancing any of same, so long as the refinancing does not exceed the then-outstanding balance of the existing financing. The Buyer (or any entity permitted to acquire title under this Section) shall notify the Seller in advance of any mortgage, if the Buyer or such entity proposes to enter into the same before issuance of the Certificate of Completion. The Buyer or such entity shall not enter into any such conveyance for financing without the prior written approval of the Seller as provided in Section 11.1. Any lender approved by the Seller pursuant to Section 11.1 shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, the Buyer shall promptly notify the Seller of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Certificate of Completion, whether by voluntary act of the Buyer or otherwise.

(c) Buyer's Breach Shall Not Defeat Mortgage Lien. Buyer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Site, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage of the Site whose interest is acquired by foreclosure, trustee's sale or otherwise.

(d) Holder Not Obligated To Construct Or Complete Improvements. The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the Project improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

(e) Notice Of Default To Mortgagee, Deed Of Trust Or Other Security Interest Holders. Whenever Seller shall deliver any notice or demand to Buyer with respect to any breach or default by Buyer hereunder, Seller shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to Seller therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

(f) Right To Cure. Each holder (insofar as the rights of Seller are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

(i) Obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and

(ii) Add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of Buyer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Buyer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed Buyer's obligations to Seller by written agreement satisfactory to Seller with respect to the Site or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the Seller that it has the qualifications and financial responsibility necessary to perform such obligations. Any holder properly completing such improvements shall be entitled, upon written request made to Seller, to a Certificate of Completion from Seller.

(g) *Seller's Rights Upon Failure Of Holder To Complete Improvements.* In any case where one hundred eighty (180) days after default by Buyer in completion of construction of Project improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Site or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, Seller may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

(i) The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

(ii) All expenses, incurred by the holder with respect to foreclosure, if any;

(iii) The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Site, such as insurance premiums or real estate taxes, if any;

(iv) The costs of any improvements made by such holder, if any; and

(v) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the Seller.

In the event that the holder does not exercise its option to construct afforded in this Section, and Seller elects not to purchase the mortgage of holder, upon written request by the holder to Seller, Seller agrees to use reasonable efforts to assist the holder selling the holder's interest to a qualified and responsible party or parties (as determined by Seller), who shall assume the obligations of making or completing the improvements required to be constructed by Buyer, or such other improvements in their stead as shall be satisfactory to Seller. The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs (i) through (v) listed hereinabove, and any balance remaining thereafter shall be applied as follows:

(i) First, to reimburse Seller for all costs and expenses actually and reasonably incurred by Seller, including but not limited to payroll expenses, management expenses, legal expenses, and others.

(ii) Second, to reimburse Seller for all payments made by Seller to discharge any other encumbrances or liens on the Site or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due, to obligations, defaults, or acts of Buyer, its successors or transferees.

(iii) Third, any balance remaining thereafter shall be paid to Buyer.

(h) *Right Of Seller To Cure Mortgage, Deed Of Trust Or Other Security Interest Default.* In the event of a default or breach by Buyer (or entity permitted to acquire title under this Section) of a mortgage prior to the issuance by Seller of a Certificate of Completion for the Site or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, Seller may cure the default prior to completion of any foreclosure. In such event, Seller shall be entitled to reimbursement from Buyer or other entity of all costs and expenses incurred by Buyer in curing the default, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to:

(i) Any mortgage for financing permitted by this Agreement; and

(ii) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided that nothing herein shall be deemed to impose upon Seller any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Site in the event of its enforcement of its lien.

(i) *Right Of The Seller To Satisfy Other Liens On The Site After Conveyance Of Title.* After the conveyance of title and prior to the recordation of a Certificate of

Completion for construction and development of the Project, and after the Buyer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion thereof, the Seller shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Buyer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Buyer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site or any portion thereof to forfeiture or sale.

(j) *Minor Amendments.* Seller's City Manager shall be authorized to approve and execute minor non-substantive amendments to this Agreement as may be requested by Buyer's lender in relation to the protection of such lender's security interest in the Site, without formal approval of Seller's legislative body.

11.8 Certificate(s) Of Occupancy & Certificate Of Completion.

(a) *Certificate(s) Of Occupancy.* It is anticipated that each Parcel may be suitable for occupation and the carrying-on of business prior to actual completion of all Project improvements. When a Project Phase has been constructed to such a point that the commercial improvements on a particular Parcel can be safely opened for business (in compliance with all applicable codes, permit requirements and local agency regulation) without any interference by further Project activities, the Buyer shall request from the City a Certificate of Occupancy for all the improvements on that Parcel. The issuance of such Certificate of Occupancy shall be in the sole discretion of the City and based on its review of the existing Project improvements versus those improvements that will be required for Project completion, determination of whether further Project activities will unreasonably or harmfully interfere with the ongoing business activities upon a particular Parcel opened for business, and whether the issuance of a Certificate of Occupancy will comply with all codes, permit conditions and local agency regulations. Seller shall not unreasonably withhold a Certificate of Occupancy.

Upon issuance of a Certificate of Occupancy, Buyer shall promptly open the Business for business to the public. The Buyer shall exert all reasonable efforts to keep the Business open for business to the public during regular and customary business hours despite any ongoing Project activities. Buyer shall reasonably coordinate any ongoing Project activities with business hours in order to minimize any interference between the Project and the business. Such efforts to be undertaken by Buyer shall include, without limitation, the undertaking of Project activity during hours other than regular and customary business hours and the phasing of the Project such that Project activities continuing after the issuance of the Certificate of Occupancy will be in locations other than areas open to the public.

(b) *Certificate(s) Of Project Completion.* Upon the completion of all Project construction required to be completed by Buyer on the Site or any Parcel thereof pursuant to the terms of this Agreement, Seller shall furnish Buyer with the Certificate of Completion for the Site or Parcel thereof, to be in a form acceptable to Seller, upon written request therefore by Buyer. The Certificate(s) of Completion shall be executed

and notarized so as to permit it to be recorded in the Office of the Recorder of Riverside County.

(i) A Certificate of Completion shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Site or Parcel thereof and of full compliance with the terms of this Agreement with respect thereto. A partial Certificate may be issued for any Parcel as defined in Section 3.4 and shall constitute a Certificate as defined herein for any such Parcel, but not for any other Parcel not included in the Certificate.

(ii) After the issuance of a Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site or Parcel for which the Certificate is issued shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Deed and the CC&Rs. In the event of issuances of a Certificate for a Parcel only, Buyer shall continue to be bound by the provisions of this Agreement with respect to the other Parcels for which a Certificate has not been issued.

(iii) Seller shall not unreasonably withhold a Certificate of Completion. If Seller refuses or fails to furnish a Certificate of Completion within thirty (30) days after written request from Buyer or any entity entitled thereto, Seller shall provide a written statement of the reasons Seller refused or failed to furnish a Certificate of Completion. The statement shall also contain Seller's opinion of any further action Buyer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, Seller will issue its Certificate of Completion upon the posting of a bond or other security reasonably acceptable to Seller by Buyer with Seller in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed.

(iv) A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Buyer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Certificate of Completion is not notice of completion as referred to in the California Civil Code § 3093. Nothing herein shall prevent or affect Buyer's right to obtain a Certificate of Occupancy from the Seller before the Certificate of Completion is issued.

11.9 Use of the Site & Project; CC&Rs.

(a) *Use For Mixed Retail/Office/Hotel/Restaurant Businesses.* The Buyer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, that the Buyer and such successors and such

assigns shall devote the Site to the uses specified therefore in the Project Concept Plan (Exhibit "D"). Buyer further agrees to use, devote, and maintain the Site and each part thereof only for the following business uses:

- The approximate .77 acre Restaurant Parcel to be dedicated to the construction and operation of a single restaurant tenant.
- The approximate 1.85 acre Hotel Parcel to be dedicated to the construction and operation of a single hotel tenant.
- The approximate .78 acre General Retail Parcel to be dedicated to the construction and operation of a mixed retail and small restaurant complex.
- The approximate 1.85 acre Retail/Office Parcel to be dedicated to the construction and operation of a mixed retail and small offices complex.

In order to maintain these Site uses, Covenants, Conditions & Restrictions ("CC&Rs") substantially in the form attached hereto as **Exhibit "I"**, shall be recorded upon the Property by Seller on or before the Close of Escrow. Buyer acknowledges that the Site shall become subject to the CC&Rs upon Seller's execution and recordation of the CC&Rs and Buyer will comply with all of the terms and conditions contained in the CC&Rs.

(b) *Seller's Rights of Tenant Approval as to Restaurant Parcel & Hotel Parcel.* Of particular concern to Seller's conveyance of the Site to Buyer pursuant to the Agreement is the identity and quality of the commercial tenants to occupy the Hotel Parcel and Restaurant Parcel. The Site is situated in the City of Banning's central, downtown commercial area, and the major Hotel/Restaurant tenants on the Site shall represent high quality goods and services commensurate with one of the most centralized commercial locations in Banning. To this end, the initial and subsequent tenants for the Hotel Parcel and the Restaurant Parcel shall be subject to Seller's prior written approval (to be obtained from Seller prior to any occupancy by a Hotel or Restaurant tenant). For purposes of such tenant approval the following tenants are hereby approved as "**Pre-Qualified Tenants**" and are exemplars of the tenants sought for the Restaurant and Hotel Parcels:

- *For the Restaurant Parcel:* Applebee's, Red Lobster, Guys Italian Dinner House, Olive Garden, Hickory BBQ, B.J. Chicago Pizza, Buca de Beppo, Brinker International (Chillis, Macaroni Grill, etc.), California Pizza Kitchen, Chevys Mexican Restaurant, Elephant Bar, Hickory BBQ, Islands, Johnny Russo, Louise's Trattoria, P.F. Changs, Pat and Oscars, Marie Calendars, Red Robin, Roadhouse Grill, Rubios, Texas Roadhouse, or Wood Ranch BBQ.

- *For the Hotel Parcel:* Hampton Inn, Wyndham, Ayres, Doubletree, Embassy Suites, Hilton and its related brands, Holiday Inn, Marriott and its related brands, Radisson Inns, and Starwood.

In the event Buyer desires to lease the Hotel Parcel or Restaurant Parcel to a tenant that is not on the aforementioned pre-approved list, Buyer shall first obtain the approval of Seller's legislative body. Seller shall approve tenants for the Hotel or Restaurant Parcel who (i) operate a chain of stores on a nationwide basis, (ii) are comparable to the pre-approved, exemplar tenants listed above, and (iii) do significant marketing within the general market area. In its reasonable discretion, Seller may also approve other tenants, including tenants who operate a regional chain of business.

(i) **Processing Requests for Tenant Approval of Tenants Not Pre-Qualified.** Any request by Buyer to the Seller for approval of a particular tenant that is not Pre-Qualified to the Restaurant or Hotel Parcel shall be in writing and shall include such supporting information as may be reasonably required in order to enable the Seller to determine whether to approve or disapprove the identity of the tenant. The Seller's City Manager shall initially indicate within twenty (20) days after receipt of Seller's request for approval whether City Manager believes that the proposed tenant is equivalent to a Pre-Qualified Tenant and the reasons therefore. If the City Manager deems the tenant not equivalent, the Buyer may provide additional information and request reconsideration or find a new acceptable tenant. In any event, where City Manager has approved a tenant as equivalent, or on request by Buyer for determination by the City Council, the City Manager shall schedule the matter as an open public hearing item before the next possible regularly-scheduled City Council meeting, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. Based upon substantial evidence presented at said hearing, the Council shall determine by resolution, whether to approve or disapprove the proposed Hotel or Restaurant tenant. The Council shall state its factual and policy bases for such holding.

(ii) **Expiration of Seller Tenant Approval Rights.** Seller's right to approve tenants for the Hotel Parcel shall expire after a total of 5 years, consecutive or non-consecutive, of occupancy of the Hotel Parcel. Similarly, Seller's right to approve tenants for the Restaurant Parcel shall expire after a total of 7 years, consecutive or non-consecutive, of occupancy of the Restaurant Parcel. After such period of consecutive or non-consecutive occupancy by a qualified tenant, subsequent tenancies or occupancies of such space shall be exempt from such approval. The period of Seller Tenant Approval for the Hotel and Restaurant Parcels by a qualified tenant shall not commence to run until actual occupancy of such Parcel by an approved tenant, and shall be tolled for any period where the Parcel or is not occupied by an approved tenant.

(a) *Maintenance Of Improvements.* Buyer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Site or any part thereof, that, after Seller's issuance of (i) the Certificate of Occupancy for a particular Parcel, and

(ii) the Certificate of Completion for the Site or any Parcel thereof, the Buyer shall be responsible for maintenance of all improvements that may exist on the Site or Parcel, as the case may be, from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in first class condition and repair, and shall keep the Site free from any accumulation of debris or waste materials. The Seller shall also maintain all landscaping required pursuant to Seller's approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land and thereby become the obligations of any transferee of the Site or any portion thereof, and such obligations are set forth in the CC&Rs. Buyer hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City of Banning that would otherwise apply, except as specified in said CC&Rs.

(b) *Covenants Run With Land; Effect Of CC&Rs.* All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Site, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Each covenant to do or refrain from doing some act on the Site hereunder (i) is for the mutual benefit of and is a mutual burden upon each Parcel within the Site, (ii) runs with such lands, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.

Seller is deemed a beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land, including the CC&Rs, for and in their own right for the purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of Seller shall run without regard to whether Seller has been, remains or is an owner of any land or interests therein in the Site. Seller, and any of its related government entities or subdivisions, shall have the right, if any of the covenants set forth in this Agreement or the CC&Rs are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. With the exception of a government entity related to, or designated by the City, no other person or entity shall have any right to enforce the terms of this Agreement or the CC&Rs under a theory of third-party beneficiary or otherwise.

12. DEFAULTS; ENFORCEMENT.

12.1 Defaults & Right To Cure. A “**Non-Defaulting Party**” in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other party (“**Defaulting Party**”) to perform any material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in “Default” under this Agreement, if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within sixty (60) days after the date of such notice (“**Cure Period**”). However, if such non-monetary breach or failure cannot be cured within such Cure Period, and if and, as long as the Defaulting Party does each of the following:

- a. Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the sixty (60) day period;
- b. Notifies the Non-Defaulting Party of the Defaulting Party’s proposed course of action to cure the Default;
- c. Promptly commences to cure the Default within the sixty (60) day period;
- d. Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and
- e. Diligently prosecutes such cure to completion.

Then the Defaulting Party shall not be deemed in breach of this Agreement.

12.2 Legal Actions.

(a) *Institution Of Legal Actions.* In addition to any other rights or remedies, and subject to the requirements of Section 12.1, either party may institute legal action to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement, including the remedy of specific performance. Legal actions must be instituted and maintained in the Superior Court of the County of Riverside, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

(b) *Applicable Law & Forum.* The laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

(c) *Acceptance Of Service of Process.* In the event that any legal action is commenced by Buyer against Seller, service of process on Seller shall be made by personal service upon the City Manager, or in such other manner as may be provided by law. In the event that any legal action is commenced by Seller against Buyer, service of

process on Buyer shall be made in such manner as may be provided by law and shall be valid whether made within or without the State of California.

12.3 Rights & Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

12.4 Waiver. Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

12.5 Right of Reverter. The Seller shall have the right, at its option, to reenter and take possession of the Site or any Parcel thereof with all improvements thereon and to terminate and revest in the Seller the estate conveyed to the Buyer, if after conveyance of the estate and prior to the release of all Subsequent Deeds of Trust pursuant to Section 12.8, the Buyer (or his successors in interest) shall:

- (a) Fail to timely process a Final Map for the Project pursuant to California Government Code Section 66466 and/or timely and reasonably execute the Subsequent Deeds of Trust. Seller City shall not unreasonably delay or withhold approval of the Final Map.
- (b) Fail to timely commence construction of the improvements on a Parcel as required by this Agreement and in violation of Section 11.2, after exhausting the notice/cure procedures of Section 12.1, provided that the Buyer shall not have obtained an extension or postponement to which the Buyer may be entitled pursuant to this Agreement; or
- (c) Abandon or substantially suspend construction of the improvements for a period of thirty (30) days, except when due to an Enforced Delay (Section 12.8 hereof) and subject to the notice/cure procedures of Section 12.1, provided that the Buyer shall not have obtained an extension of time to which the Buyer may be entitled pursuant to this Agreement; or
- (d) Assign or attempt to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer, of the Site or any Parcel, or any part thereof, in violation of Section 11.1 of this Agreement, subject to the notice/cure procedures of Section 12.1.

Seller's right to re-enter, repossess, terminate, and revest shall be subordinate to and subject to and be limited by, and shall not defeat, render invalid, or limit: (i) Mortgage, deed of trust, or other security interests permitted by this Agreement; or (ii) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deeds of trust, or other security interests; or (iii) Any rights or interests which have vested with respect to any Parcel for which a partial Certificate of Completion has been recorded.

Upon the revesting in the Seller of possession to the Site or any Parcel, as the case may be, as provided in this Section 12.5, the Seller shall, pursuant to its responsibilities under State law, use its best efforts to release, or resell the Site and/or Parcel, as the case may be, as soon and in such manner as the Seller shall find feasible and consistent with the objectives of applicable law and/or of the Redevelopment Plan to a qualified and responsible party or parties who will assume the obligation of making or completing the Project improvements, or such other improvements in their stead, as shall be satisfactory to the Seller and in accordance with the uses specified for the Site and all its Parcels, or any part thereof.

In the event of a resale, the proceeds thereof shall be applied as follows:

- a. As may be required by State law at the time of resale; or
- b. First, to reimburse the Seller for all costs and expenses incurred by the Seller, including but not limited to, salaries to personnel, legal costs and attorneys' fees, and all other contractual expenses in connection with the recapture, management, and resale of the Site or Parcel, as the case may be (but less any income derived by the Seller from the Site or Parcel in connection with such management); all taxes, assessments and water and sewer charges with respect to the Site or Parcel (or, in the event that Site or Parcel is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments, or charges, as determined by the Seller City, as would have been payable if the Parcel were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Site or Parcel, as the case may be; and amounts otherwise owing the Seller by the Buyer, its successors, or transferees; and
- c. Second, to reimburse the Buyer, its successor or transferee, up to the amount equal to (i) the sum paid by the Buyer to the Seller under this Agreement for the Site or Parcel, as the case may be, subject to the resale, which sum shall be calculated at \$4.46 per square foot, (ii) the costs incurred for the development of the Project and for the agreed improvements existing on the Site or Parcel subject to resale at the time of the re-entry and repossession, less (iii) any gains or income withdrawn or made by the Buyer from the Site or Parcel, as the case may be, or the improvements thereon.

- d. Any balance remaining after such reimbursements shall be retained by the Buyer as its property.
- e. Notwithstanding the foregoing, any default as described above shall constitute a default as to any portion of the Site for which a Certificate of Occupancy has not been issued. Accordingly, a default with respect to any one Parcel shall constitute a default as to all other Parcels, except as to any Parcel where a Certificate of Occupancy has been issued for all Project improvements planned for that Parcel.. The reverter provisions of this Section 12.5 would therefore apply to the Parcels not covered by duly-issued Certificates of Occupancy for all improvements on the Parcel, as further described in Section 12.7.

12.6 Construction Against Forfeitures. To the extent that the right established in Section 12.5 involves a forfeiture, it must be strictly interpreted against the Seller, the party for whose benefit it is created. The rights established in Section 12.5 are to be interpreted in light of the fact that the Seller will convey the Site and its Parcels to the Buyer for development, and not for speculation in undeveloped land.

12.7 Enforcement of Note & Rights of Reverter Through Deed of Trust & Subsequent Deeds of Trust. All deed of trust required by the this Agreement shall contain the rights of reverter for the benefit of Seller specified in Section 12.5.

(a) *Default Prior to Final Map Approval.* Prior to the recordation of the four Subsequent Deeds of Trust, the Promissory Note and Seller's rights of reverter shall be secured in accordance with Section 3.4(a) above. Any uncured default of this Agreement by Buyer prior to the recordation of the four Subsequent Deeds of Trust shall result in Seller's right to, in Seller's sole discretion, immediately enforce the Deed of Trust to either demand the Purchase Price, which shall be immediately due and payable, or to exercise the right of reverter as to all portions of the Site that have been conveyed to Buyer to date and where no Certificate of Occupancy has been issued.

(b) *Default After Recordation of Parcelized Deeds of Trust.* After the recordation of the Subsequent Deeds of Trust pursuant to Section 3.4(b) above, the following acts of default by Seller shall, subject to the cure periods set forth in Section 12.1, result in enforcement of one or more of the Subsequent Deeds of Trust as follows:

1. Buyer's failure to pay for any portion of the Purchase Price within the time stated in Section 3.3 shall render *all* Subsequent Deeds of Trust immediately due and payable and/or the Seller's rights of reverter immediately exercisable on any and all Parcel(s) that have not received an issued Certificate of Occupancy for all Project improvements to be built on that Parcel.
2. If Buyer pays the full Purchase Price in accordance with Section 3.3, but thereafter either (1) fails to proceed with Project construction in accordance with the timeframes set forth in Section 11.2, or (2) commits

any of the actions giving rise to Seller's right of reverter pursuant to Section 12.5, then the Seller may immediately enforce any and all Deeds of Trust that have not been released pursuant to Section 12.8.

12.8 Release of Subsequent Deeds of Trust. Upon any payments of the Purchase Price pursuant to Section 3.3, the Seller shall amend or revise the Promissory Note and/or any recorded Deed(s) of Trust (as applicable) as needed to reflect the actual balance of Purchase Price plus interest due from Buyer. Even upon full payment of the Purchase Price, however, Buyer acknowledges that the Deed(s) of Trust secure not only the repayment of money, but also the performance of certain covenants, promises, agreements, obligations and responsibilities created in Seller under this Agreement with respect to performing the Project. To this end, the Deed(s) of Trust shall be released only as follows:

(a) *Initial Deed of Trust at Exhibit "G".* The initial Deed of Trust, to be recorded pursuant to Section 3.4(a), may be released partially upon recordation of the Subsequent Deeds of Trust.

(b) *Release of Subsequent Deeds of Trust Commensurate with Project Schedule.* Each Subsequent Deed of Trust shall be released from the underlying Parcel only after all the following events have occurred: (i) payment of the full Purchase Price for the whole Site or for the pro-rata share of the Purchase Price attributable to the Parcel (at \$4.46 per square foot), and (ii) Buyer's timely commencement of construction of Project improvements upon the Parcel underlying the Subsequent Deed of Trust, plus (iii) diligent, uninterrupted prosecution of such Project improvements to completion on that Parcel. For example, the Subsequent Deed of Trust recorded upon the Restaurant Parcel shall only be released upon Buyer's payment of the value of the Restaurant Parcel (at \$4.46 per square foot) and completion of Project improvements upon that Parcel (as demonstrated by issuance of a Certificate of Occupancy for all planned Restaurant Parcel Project improvements pursuant to Section 11.8(a)). The City shall release the Subsequent Deed of Trust recorded upon each Parcel no later than thirty (30) days after issuance of a Certificate of Occupancy (Section 11.8(a)) for all Project improvements on a Parcel.

12.9 Enforced Delays; Extension Of Times of Performance. Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; subsurface conditions on the Site and unknown soils conditions; governmental restrictions or priority litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of Seller shall not excuse performance by Seller); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "**Enforced Delay**"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the enforced delay, and shall commence to

run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause. Failure to provide such notice shall constitute a waiver of the claim. The following shall not be considered as events or causes beyond the control of Buyer, and shall not entitle Buyer to an extension of time to perform: (i) Buyer's failure to obtain financing for the Project, and (ii) Buyer's failure to negotiate agreements with prospective users for the Project or the alleged absence of favorable market conditions for such uses.

Times of performance under this Agreement may also be extended by mutual written agreement by Seller and Buyer. The City Manager of Seller shall have the authority on behalf of Seller to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the Site.

13. MISCELLANEOUS.

13.1 Brokerage Commissions. Buyer and Seller each represent and warrant to the other that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. Buyer and Seller each agree to indemnify and hold the other party harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

13.2 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective heirs, representatives, transferees, successors and assigns. The transfer of all or any part of the interest of any party hereunder in the Property shall not release Seller of its obligations under this Agreement.

13.3 Time of Essence. Time is of the essence in this Agreement and with respect to each covenant and condition hereof. Buyer and Seller each specifically agrees to strictly comply and perform its obligations herein in the time and manner specified and waives any and all rights to claim such compliance by mere substantial compliance with the terms of this Agreement.

13.4 Time Period Computations. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and California state or national holidays unless the reference is to business days, in which event such weekends and holidays shall be excluded in the computation of time and provide that if the last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or California state or national holiday, such act or notice shall be deemed to have been timely performed or given on the next succeeding day which is not a Saturday, Sunday or California state or national holiday.

13.5 Qualification; Authority. Each individual executing this Agreement on behalf of a partnership or corporation represents and warrants that such entity is duly formed and authorized to do business in the State of California and that he or she is duly authorized to execute and deliver this Agreement on behalf of such partnership or corporation in

accordance with authority granted under the formation documents of such entity, and, if a corporation, by a duly passed resolution of its Board of Directors, that all conditions to the exercise of such authority have been satisfied, and that this Agreement is binding upon such entity in accordance with their respective terms. Upon request of either party, Escrow Holder or Title Company, Buyer and Seller agree to deliver such documents reasonably necessary to evidence the foregoing.

13.6 Attorneys' Fees. In the event of any dispute between the parties hereto arising out of the subject matter of this Agreement or the Escrow, or in connection with the Property, the prevailing party in such action shall be entitled to have and to recover from the other party its actual attorneys' fees and other expenses and costs in connection with such action or proceeding (including expert witness fees) in addition to its recoverable court costs.

13.7 Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

13.8 No Waiver. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

13.9 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

13.10 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13.11 Merger of Prior Agreements and Understandings. This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

13.12 Covenants to Survive Escrow. The covenants and agreements contained herein shall survive the Close of Escrow and, subject to the limitations on assignment contained in Section 11.1 above, shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors and assigns.

13.13 Consent of Parties. Whenever by the terms of this Agreement the consent or approval of Buyer or Seller is to be given, such consent or approval shall be evidenced by the signature of one person designated for such purpose. Such designated persons may be changed by the party so designating at any time by the delivery of a written notice to the other party.

13.14 No Withholding Because Non-Foreign Seller. Seller represents and warrants to Buyer that Seller is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or any out-of-state seller under California Revenue and Tax Code Section 18862 and that is will deliver to Buyer on or before the Close of Escrow (i) a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulation promulgated thereunder and (ii) a California Form 590.

13.15 Execution in Counterpart. This Agreement and any modifications, amendments or supplements thereto may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

13.16 Notices. Any notice which either party may desire to give to the other party or to the Escrow Holder must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

To Buyer: JMA Village, LLC 1137 Second Street
Santa Monica, CA 90403
Attention: Mr. Arthur Pearlman or Mr. Mark Frost
Telephone: (310) 280-2425
Facsimile: (310) 260-6334

Copy to: Cox, Castle & Nicholson LLP
Attn: Ed. Dygert
2049 Century Park East, Suite 2800
Los Angeles, California 90067
Telephone: (310) 284-2256
Facsimile: (310) 277-7889

To Seller: The City of Banning
99 E. Ramsey St.
Banning, CA 92220
Attention: City Manager
Telephone: (951) 922-3171
Facsimile: (951) 922-3174

Copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave., Ste. 1700
Irvine, CA 92612
Attn: David J. Aleshire, Esq.
Facsimile: 949-223-1180

Escrow Holder: At the above stated address.

13.17 Exhibits. Exhibits "A" through "I", inclusive are attached hereto and incorporated herein by this reference. The Exhibits are as follows:

Exhibit	Description
A.	Legal Description of Site
B.	Legal Description of City Property
C.	Legal Description of Third-Party Parcel
D.	Project Concept Plans
E.	Map Showing Restaurant, Hotel, General Retail and Retail/Office Parcels
F.	Promissory Note
G.	Deed of Trust to be Recorded upon Closing on City Property and/or Site
H.	Grant Deed Form
I.	CC&Rs

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Purchase and Sale of Real Property and Escrow Instructions as of the date set forth above.

“BUYER”
JMA VILLAGE, LLC,
A California limited liability company

By: _____
Arthur Pearlman

By: _____
Mark Frost

ATTEST:

“SELLER”
CITY OF BANNING,
A California General Law Municipality

Secretary

By: _____
Barbara Hanna, Mayor

APPROVED AS TO FORM
ALESHIRE & WYNDER, LLP

Dave Aleshire, City Attorney

AGREED AND ACCEPTED AS OF THIS
____ DAY OF _____, 2012

CHICAGO TITLE COMPANY

By: _____
Sandra Olson, Escrow Officer

EXHIBIT A

Legal Description of Site

107542

EXHIBIT NO. A
To Banning and JMA Agreement
Page 1 of 2

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EXHIBIT B

Legal Description of City Property

107542

EXHIBIT NO. B
To Banning and JMA Agreement
Page 1 of X

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EXHIBIT C

Legal Description of Third-Party Parcel

EXHIBIT D

Project Concept Plans

EXHIBIT E

Tentative Tract Map Showing Approximate Parcel Boundaries

EXHIBIT F
Promissory Note

EXHIBIT G

Form Deed of Trust

EXHIBIT H

Form Grant Deed

EXHIBIT I

CC&Rs

ATTACHMENT 3

Resolution No. 2012-03

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RESOLUTION NO. 2012-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, MAKING AND APPROVING CERTAIN FINDINGS AND APPROVALS UNDER SECTION 33433 OF THE CALIFORNIA HEALTH AND SAFETY CODE, AND APPROVING A PURCHASE & SALE AGREEMENT BETWEEN THE CITY OF BANNING AND JMA VILLAGE, LLC

WHEREAS, The proposed Purchase and Sale Agreement (“Agreement”) pertains to the City’s conveyance to “Buyer,” JMA Village, LLC, of those certain parcels of vacant real property consisting of a total of 5.25 acres, or 228,690 square feet, in the City of Banning bounded on the west by San Gorgonio Avenue, on the north by Ramsey Street, to the east by Martin Street and to the south by Livingston Street (the “Site”).

WHEREAS, City’s predecessor in interest on the Site was the Community Redevelopment Agency of the City of Banning (“Agency”) which is a community redevelopment agency existing and formed pursuant to the Community Redevelopment Law (H&S §§ 33400 *et seq.* (the “CRL”)). On March 8, 2011, the Agency transferred much of its property to the City of Banning pursuant to a transfer agreement (the “Transfer Agreement”), which Transfer Agreement permitted the City to transfer parcels of property to third parties provided that the City complied with aspects of the CRL to the greatest extent possible. Accordingly, the City has prepared the 33433 Information Summary Report accompanying this Resolution.

WHEREAS, Although the Transfer Agreement requires the City to follow the public hearing procedures under Health & Safety Code § 33433, the Agency is not a party to the Site’s conveyance and thus is not taking action on the proposed Agreement. Accordingly, the City is acting as both grantor of the Site and the consenting legislative body thereto for purposes of Health & Safety Code § 33433 *et seq.*

WHEREAS, the City has prepared the required 33433 Information Summary Report and a notice of public hearing of the City Council concerning the proposed Agreement has been given in accordance with applicable law.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning, California, as follows:

SECTION 1. The above Recitals and facts therein are true and correct and are incorporated into the terms of this Resolution in their entirety by this reference. Also, all terms, findings and conclusions stated in the accompanying Information Summary pursuant to Section 33433 are true and correct and incorporated into the terms hereof in their entirety by this reference.

SECTION 2. The value of the interest being conveyed at the allowable highest and best use is \$1,020,000.00. The fair market value of the Site was appraised at \$1,020,000.00 (or \$4.46/sq. ft.) on May 6, 2011, which fair market value shall constitute Buyer’s “Purchase Price” for the entire Site. Buyer shall purchase all Seller’s right, title and interests to the Site pursuant to a

“Promissory Note” in favor of the Buyer for the full Purchase Price, which note shall become immediately due and payable upon the earlier of either (i) Buyer’s commencement of construction of vertical Project improvements, or (ii) Two (2) years from the close of escrow hereunder. The Promissory Note shall be secured through at least one “Deed of Trust” recorded upon the Site,

SECTION 3. The Agreement will assist in the elimination of blight and the development of a vital, centralized downtown region in the City. Specifically, the Agreement proposes that buyer will purchase the Site for purposes of developing the Site as a mixed-use, downtown commercial hub consisting of approximately 13,500 sq. ft. of multi-tenant office space, approximately 13,500 sq. ft. of multi-tenant mixed retail space, an approximately 29,955 sq. ft. hotel building, and an approximately 12,000 sq. ft. multi-tenant restaurant building with a mix of food types (the “Project”). In accordance with Health & Safety Code § 33433, and based on the Information Summary, the City has determined:

A. That the Agreement and correspondent conveyance of the Site will assist in the elimination of blight and are consistent with the City’s redevelopment goals and policies, to wit:

- i. For multiple decades the Site has been used for a variety of multi-tenant small-scale commercial purposes. At the time that the City acquired the parcels that make up the Site, the structures located on the Site were considered economically obsolete and exhibited severe conditions of physical degradation and dilapidation. All of the structures previously located on the Site have been removed, leaving the Site vacant.
- ii. High business vacancies and vacant or underutilized land or buildings are conditions that fall within the ambit of adverse economic conditions associated with blight. The Agreement proposed allows Buyer to occupy otherwise vacant premises, thus helping to prevent the spread of blight via commercial vacancies.

B. The consideration to be paid by Buyer for the Site pursuant to the Agreement is not less than the fair reuse value of the use and with the covenants and conditions and development costs authorized by the Agreement; to wit:

- i. The Buyer is purchasing the Site at the estimated fair market value, based on the highest and best use, of \$1,020,000.00. No public agency assistance is being provided. Moreover, the Project’s mixed-commercial use is consistent with the highest and best use of the Site and therefore the Purchase Price is not less than the fair reuse value.

SECTION 4. The City has already and through prior action complied with CEQA for this Project, to wit:

- i. An Initial Study/Mitigated Negative Declaration (“IS/MND”) and Mitigation Monitoring Program (“MMP”) were completed for the Project and were made available for public review between March 25 - April 25, 2011, or for a period of

30 days. The Land Use Entitlement Process also included Design Review (DR #10-702), Tentative Parcel Map #36285, Conditions of Approval, and consistency with the General Plan regarding property acquisition at 220 E. Ramsey Street. The IS/MND and MMP were submitted to the State Clearinghouse for their distribution to other public agencies. Comment letters were received from the Public Utilities Commission (“PUC”), Caltrans District 8, and Morongo Band of Mission Indians and comments received were addressed during project review.

- ii. On May 4, 2011, the Planning Commission reviewed the IS/MND and MMP for the VPSG Project and recommended approval to the City Council of Design Review (DR) #10-702, Tentative Parcel Map (TPM) #36285, and finding of consistency with the General Plan related to property acquisition at 220 E. Ramsey Street subject to conditions of approval. On May 24, 2011, the City Council and the Community Redevelopment Agency adopted the IS/MND and MMP and approved the VPSG Project pursuant to CEQA.

SECTION 5. Pursuant to Health & Safety Code § 33433(a)(1), the City Council approves the Agreement and consents to the execution of the Agreement.

SECTION 6. The Mayor and City Manager are authorized and directed to take such actions and execute such documents as may be necessary to implement and effect this Resolution and the Agreement on behalf of the City.

SECTION 7. City Clerk shall certify to the passage and adoption hereof.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Banning City Council this ____ day of January 2012.

Don R. Robinson, Mayor
City of Banning

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

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, hereby certify that Resolution No. 2012-03 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of January 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL
RESOLUTION EXHIBIT A**

Information Summary

UFI URBAN FUTURES | Incorporated

INFORMATION SUMMARY FOR PROPOSED PURCHASE AND SALE AGREEMENT WITH JMA VILLAGE, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (For the disposition and development of certain real property) "33433 REPORT"

This summary was prepared for the City of Banning (the "City") pursuant to Section 33433 of the California Community Redevelopment Law (Part 1 of Division 24 of the Health and Safety Code, the "CCRL") with respect to that certain Purchase and Sale Agreement (the "PSA") between the City and JMA Village, LLC, a California Limited Liability Company (the "Developer"). On March 8, 2011, the City and the Community Redevelopment Agency of the City of Banning (the "Agency") entered into an agreement to transfer certain Agency-owned parcels to the City, subject to certain conditions (the "Transfer Agreement"). Among other matters, pursuant to the Transfer Agreement the City is required to conform with the requirements of Section 33433 of the CCRL prior to the approval of the disposition of any land that was transferred to the City pursuant to the Transfer Agreement. The PSA concerns the disposition and development of the Site (as hereinafter defined) for which some of the parcels that constitute the Site were transferred to the City by the Agency pursuant to the Transfer Agreement.

The PSA pertains to the development of an approximately 68,955 sq. ft. mixed-use multi-tenant commercial/retail project (the "Project") on an approximately 5.25-acre site bounded by the southern boundary of East Ramsey Street on the north, the southern boundary of Livingston Street on the south, the western boundary of Martin Street on the east and several "not a part" parcels on the west, which specifically includes all of APNs 541-181-009 thru 012, 541-181-024 through 028, 541-183-001 through 004 and vacated public rights-of-way as depicted on TPM # 36285 (the "Site"). The Site is located within the Downtown Redevelopment Project component area of the Merged Redevelopment Project Area. The Project is more particularly described in City Council Resolution No. 2011-44, CRA Resolution No. 2011-20, Planning Commission Resolution No. 2011-02, Design Review (DR) #10-702, TPM # 36285 and the Conditions of Approval (collectively, the "Land Use Entitlements").

1. **Cost of Project to Agency:** Over a period of several years the Agency has incurred expenses or is obligated to expend funds in the amount of approximately \$3,976,623 for property acquisition, tenant relocation, demolition and/or removal of structures and improvements, soil remediation and professional studies/analyses that are directly related to Site. This amount will be offset by approximately \$1,101,600 of land sale proceeds and purchase money loan interest resulting in a net cost to the Agency of approximately \$2,875,023. This conclusion is based upon the following data:

a. **Land Acquisition Cost:** The Agency's records reflect the following land acquisition costs with respect to the Site:

<u>Address</u>	<u>Cost</u>	<u>Status</u>
150 E. Ramsey	\$1,820,544	Closed
220 E. Ramsey	75,000	Pending
280 E. Ramsey	660,000	Closed
50 S. Alessandro	601,018	Closed
TOTAL:	\$3,156,562	

It is important to note that:

- 150 E. Ramsey consists of APNs 541-181-009 through 012 and 541-181-024 through 028;
- 220 E. Ramsey is APN 541-183-001;
- 280 E. Ramsey is APN 541-183-004; and
- 50 S. Alessandro consists of APNs 541-183-002 and 003.

Further, the ultimate cost of 220 E. Ramsey is subject to a superior court determination.

b. **Clearance Costs:** The Agency's records reflect the following clearance costs with respect to the Site:

<u>Address</u>	<u>Cost</u>	<u>Status</u>
150 E. Ramsey	\$99,900	Completed
280 E. Ramsey	114,770	Completed
150, 220 & 280 E. Ramsey	<u>210,000</u>	Pending
TOTAL:	\$424,670	

The pending costs associated with 150, 220 and 280 E. Ramsey are related to the removal of underground storage tanks and other subterranean structures. The amount shown is an estimate prepared by the City's Department of Public Works.

c. **Relocation Costs:** The Agency's records reflect the following relocation and loss of goodwill costs with respect to the Site:

<u>Address</u>	<u>Cost</u>	<u>Status</u>
280 E. Ramsey (L & R Auto Body)	\$150,000	Moved
280 E. Ramsey (Los Bros. Tires)	<u>53,115</u>	Moved
TOTAL:	\$203,115	

d. **Improvement Costs:** The Agency has not incurred any improvement costs.

e. **Finance Costs:** None.

f. **Other Costs:** In addition to the foregoing, the Agency has incurred the following indirect costs associated with the acquisition of the Site:

- \$12,500 for professional services related to acquisition and relocation services performed by Overland Pacific Cutler (i.e., for 220 & 280 E. Ramsey Street);
- \$7,500 for appraisal services performed by Saddleback Realty Analysis, Inc., DBA Integra Realty Resources – Orange and Riverside Counties (i.e., for 220 & 280 E. Ramsey Street);
- \$10,000 for appraisal services performed by Villegas Appraisal Company (i.e., for 150 E. Ramsey Street and 50 Alessandro Street);
- \$26,766 for Phase I and Phase II environmental analyses prepared by Geo Tek, Inc. (i.e., for 220 and 280 E. Ramsey Street);
- \$2,200 for Phase I environmental analyses prepared by Terra Nova Environmental Services, LLC (i.e., for 150 E. Ramsey Street and 50 Alessandro Street);
- \$7,515 for Phase II environmental analyses prepared by Geo Tek, Inc. (i.e., for 150 E. Ramsey Street and 50 Alessandro Street);
- \$39,600 for real estate brokerage fees paid to NAI Capital Commercial Real Estate Services (i.e., for 280 E. Ramsey Street);
- \$58,350 for an Environmental Impact Report for the demolition of the former San Gorgonio Inn building prepared by Romo Planning Group, Inc. (i.e., for the structure previously located at 150 E. Ramsey Street);
- \$14,105 for an Historical Resource Evaluation Report prepared by Romo Planning Group, Inc. (i.e., for the structure previously located at 150 E. Ramsey Street);
- \$2,740 for an Historical Building Research Analysis prepared by CRM TECH, Inc. (i.e., for the structure previously located at 280 E. Ramsey Street); and
- \$11,000 for miscellaneous closing costs attributable to the Site (rounded).

On a combined basis, the Agency has incurred approximately \$192,276-worth of indirect costs associated with the acquisition of the Site.

g. **Offsetting Revenue:** The sum of the above costs (i.e., items "a" through "f") is \$3,976,623, which represents the Agency's current total investment in the Site. These costs are offset by the \$1,020,000 in land sales proceeds. It is also important to note that the PSA calls for the purchase price to be financed with a purchase money loan. The maximum term on the loan is 24 months from the date escrow closes. The parties have negotiated a fair market simple interest rate of 4.00%. By way of comparison and as of the date of this report, the interest rate proposed for the Agency Loan is .75% above the Prime Rate and is equal to the SBA 504 Program rate. Given these parameters, Urban Futures, Inc. concurs that the interest rate proposed for the purchase money loan is fair and reasonable.

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Pursuant to the note, any remaining principal and interest due shall be paid in a lump-sum on a date that is subsequent to the accomplishment of all the conditions precedent thereto, as defined in the PSA, or not later than 24 months from the date that escrow closes. The note allows the Developer to pre-pay any amount prior to completion of the term of the note and to receive offsetting credit (as described in Section 2, below), without penalty. Based on the proposed rate and assuming the full principal amount is outstanding, the purchase money loan will generate \$3,400 of interest earnings per month during the term of the loan. If the entire purchase money loan remains outstanding for its full 24-month term, the loan will generate a total of up to \$81,600 of interest earnings (assumes no partial repayment or offsetting credit).

Notwithstanding the foregoing, the PSA includes certain City-related performance responsibilities pertaining to the completion of the assembly of the Site that are prerequisite to the Developer obtaining a commercial policy of title insurance for the Site that is acceptable to its first lender. In the event that the City is unable to meet its obligations with respect to this matter within 24 months of the close of escrow on the Site, the Developer has the option of terminating the PSA, transferring the Site to the City and extinguishing the note without any obligation to pay either the principal or interest that would have otherwise been due. In addition, to the extent that the Developer has received any offsetting credit (as described in Section 2, below), the City will be required to reimburse the Developer for such expenses.

Assuming the Project proceeds in the matter contemplated in the PSA and is consistent with the assumptions noted above, the sum of the above noted sources is \$1,101,600 (i.e., \$1,020,000 + \$81,600 = \$1,101,600). Therefore, Urban Futures, Inc. projects on a net basis that the Agency's overall costs for the project will be approximately \$2,875,023 (i.e., \$3,976,623 - \$1,101,600 = \$2,875,023).

2. Estimated value of interest to be conveyed or leased, determined at highest and best use permitted by the Redevelopment Plan:

In order to determine the estimated value of the interest to be conveyed, staff engaged the services of Saddleback Realty Analysis, Inc., DBA Integra Realty Resources – Orange and Riverside Counties ("Integra"). Larry Webb, MAI and Diane Lawler, both Certified General Real Estate Appraisers, prepared the Appraisal for the Site. The Appraisal was prepared in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute and the appraisal regulations issued in connection with the Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA").

It was requested that Integra determine the most probable price for which the Site should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. The appraisal for the site is dated May 12, 2011. The date of value is May 6, 2011. The appraisal is on file with the City. Based upon the value analysis included within the appraisal and subject to the definitions,

assumptions and limiting conditions expressed therein, Integra concluded that the "Fair Market" value of the Site at its highest and best use as of May 6, 2011 is \$1,020,000.

It is important to state that in determining this value, the appraiser assumed that the improvements on the Site (including all structures, underground storage tanks ["UST"] and paving on APNs 541-183-001 through 004) were demolished or removed. As of the date of this report, all of the structures on the site have been removed and the paving on APNs 541-183-002 through 004 has been removed. However, due to the August 11, 2011 California Supreme Court stay on certain redevelopment agency operations, the Agency has not been able to remove the paving on APN 541-183-001 and USTs on the Site. The costs associated with the removal of these improvements are included in the amount indicated in Section 1 b., above, and are considered an Agency obligation. In order to account for these costs, the PSA includes provisions that transfers the Agency's obligation to cause the removal of these items to the Developer in exchange for the Developer receiving a dollar for dollar credit against the above described note.

The Appraiser also assumed that the Site is free from environmental contamination. With respect to this issue, Agency staff engaged the services of Geo Tek, Inc., an environmental engineer. In their Phase II Environmental Site Assessment, Geo Tek, Inc. indicated that their examination of the property did not reveal evidence of subsurface contamination resulting from the underground storage tanks, oil/water separator, or hydraulic lifts at the Site. Consequently, they did not recommend any additional investigation at this time. However, due to the numerous anomalies they detected below the surface of the Site, they recommended that their personnel be present during excavation of the USTs and Site grading activities in the event that an unforeseen environmental condition is discovered.

Therefore, pursuant to the PSA, the Developer will purchase the Site for \$1,020,000 which is equal to its full fair market value.

3. Estimated value of the interest to be conveyed or leased, determined at the use and with the conditions, covenants and development costs required by the sale or lease:

The Project will be developed in full accordance with the Land Use Entitlements, which do not affect or cause any unusual conditions, covenants and/or development costs. Therefore, pursuant to the PSA the Developer will purchase the Site for \$1,020,000 which is equal to its full fair market value.

4. The purchase price or sum of the lease payments which the lessor will be required to pay during the term of the lease:

Pursuant to the PSA, the Developer will purchase the Site for \$1,020,000 which is equal to its full fair market value.

5. Explanation of the reason (if applicable) why the sales price or lease rate paid to the Agency may be less than market value of the property as determined at its highest and best use:

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Not applicable. The sale price of the Agency parcels is at fair market value.

6. Explanation of why the sale or lease of the property will assist in the elimination of blight:

This PSA is part of a greater program effort designed in part to eliminate blight in the Downtown Redevelopment Project component area of the Merged Redevelopment Project Area. For multiple decades the Site has been used for a variety of multi-tenant small-scale commercial purposes. As noted in Section 1 b. funding has been allocated for clearance costs. At the time that the Agency or City acquired the parcels that make up the Site, the structures located on the Site were considered economically obsolete and exhibited severe conditions of physical degradation and dilapidation. As noted above, all of the structures previously located on the Site have been removed, which has specifically eliminated blighting conditions. Pursuant to the PSA, the Developer is obligated to remove the USTs and certain obsolete paving which will also specifically eliminate existing blighting conditions.

Section 33031 (b) of the CCRL describes economic conditions that cause blight as follows:

- a. Depreciated or stagnant property values.
- b. Impaired property values, due in significant part, to hazardous wastes on property where the agency may be eligible to use its authority as specified in Article 12.5 (commencing with Section 33459).
- c. Abnormally high business vacancies, abnormally low lease rates, or an abnormally high number of abandoned buildings.
- d. A serious lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drug stores, and banks and other lending institutions.
- e. Serious residential overcrowding that has resulted in significant public health or safety problems. As used in this paragraph, "overcrowding" means exceeding the standard referenced in Article 5 (commencing with Section 32) of Chapter 1 of Title 25 of the California Code of Regulations.
- f. An excess of bars, liquor stores, or adult-oriented businesses that has resulted in significant public health, safety, or welfare problems.
- g. A high crime rate that constitutes a serious threat to the public safety and welfare.

Based on the above, the following describes the types of outcomes that could occur as a result of commercial vacancies:

- i. Property values may depreciate or stagnate;

- ii. Additional vacancies, degradation of lease rates and increase in abandoned buildings may occur.
- iii. A serious lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drug stores, and banks and other lending institutions may occur.
- iv. Crime rates may increase to the point of becoming a serious threat to the public safety and welfare.

Among other reasons, the Agency acquired the Site to: i) enhance the economic vitality of the commercial core of the Downtown Redevelopment Project component area of the Merged Redevelopment Project Area; ii) remove existing conditions of blight present on the Site; and iii) prevent the further spread of economic blight. The proposed PSA will facilitate these objectives through the development of an approximately 68,955 sq. ft. mixed-use multi-tenant commercial/retail project. The Project will bring new commercial buildings and tenants into the City thereby increasing the community's economic vitality and activity in general and in the downtown core area in particular. The increased level of economic activity in the Downtown Redevelopment Project component area of the Merged Redevelopment Project Area will assist in the avoidance of future commercial vacancies that may have otherwise contributed to possible conditions that would have caused blight, as described above. Further, not only will the physical aspects of the Project contribute to revitalizing the downtown core area and thus aid in reversing possible conditions that would have caused blight in the Downtown Redevelopment Project component area of the Merged Redevelopment Project Area, the Project will also add a significant number of employment opportunities to the City. As noted in the June 24, 2011 study prepared by economist Evans, Carroll & Associates, Inc., the Project has a job creation capability of approximately 480 direct, indirect and induced jobs.

7. Economic benefits of the Project:

The Project will consist of approximately 13,500 sq. ft. of multi-tenant office space, approximately 13,500 sq. ft. of multi-tenant mixed retail space, an approximately 29,955 sq. ft. office or hotel building, and an approximately 12,000 sq. ft. multi-tenant restaurant building with a mix of food types. For the purposes of this analysis, 10 years is used as the performance measurement period because it approximates the period of time that the Redevelopment Agency may collect tax increment from the original Downtown Redevelopment Project area after the Project is completed.

ANALYSIS OF ESTIMATED SALES TAX GENERATING POTENTIAL

Miscellaneous Retail

The latest information available for estimating retail store taxable sales potential (published by the Hdl Companies [FY 2009-10]) indicates that the taxable sales potential for miscellaneous retail ranges between \$100 and \$900 per square foot per year. The average taxable sales potential for miscellaneous retail ranges between approximately \$160 and \$320 per square foot per year. Since the retail users are currently unknown as of the date of this report, the average taxable sales potential is used in this analysis.

Based on this, it is possible that the taxable sales potential for the 13,500 square foot Multi-tenant mixed retail component of the Project could be between \$2,160,000 and \$4,320,000 per year, if fully occupied. If these sales levels are achieved, the potential sales tax revenue attributable to the City could be between \$21,600 and \$43,200 per year.

Restaurants

The Project will include 12,000 square feet of multi-tenant restaurant space in the fast casual and/or family dining category. The latest information available for estimating fast casual and/or family dining restaurant taxable sales potential (published by the HdL Companies [FY 2009-10]) indicates that the taxable sales potential for fast casual and/or family dining restaurant ranges between \$250 and \$700 per square foot per year. The average taxable sales potential for fast casual and/or family dining restaurant ranges between approximately \$375 and \$600 per square foot per year. Since the fast casual and/or family dining restaurant users are currently unknown at this time, the average taxable sales potential is used in this analysis. Based on this, it is possible that the taxable sales potential for the fast casual and/or family dining restaurant component of the Project could be between \$4,500,000 and \$7,200,000 per year. If these sales levels are achieved, the potential sales tax revenue attributable to the City could be between \$45,000 and \$72,000 per year.

Combined Basis

Based on the above, on a combined basis it is estimated that the retail/restaurant component of the Project could generate potential sales tax revenue attributable to the City during its first full year of operation (i.e., FY 2012-13) in the range of \$66,600 and \$115,200. During the first 10 years of full operations (i.e., post FY 2012-13) and assuming a 2% growth rate beginning during FY 2014-15, the Project is estimated to generate between \$729,000 and \$1,261,000 in total sales tax revenue (rounded). Of this amount, at least 50% is estimated to be new revenue to the City.

ANALYSIS OF ESTIMATED BUSINESS LICENSE REVENUE POTENTIAL

Based on the City's current schedule of business license fees, it is estimated that beginning during FY 2012-13 the Project will generate between \$2,610 and \$3,350 per year of business license fee revenue. This is estimated based on the following number of businesses and their employment levels:

<u>Employment Range</u>	<u>No. of Businesses</u>	<u>Applicable Tax</u>
21 to 25	2	\$275.00
6 to 10	16 to 20	\$110.00
0 to 5	6 to 8	\$50.00

During the first 10 years of full operations (i.e., post FY 2012-13) and assuming a 2% growth rate in business license fees beginning during FY 2013-14, the Project is estimated to generate between \$29,000 and \$37,000 in total business license fees (rounded).

ANALYSIS OF ESTIMATED TAX INCREMENT REVENUE POTENTIAL

The Project site consists of approximately 5.25 acres of land divided among 15 separate parcels. The City and Agency do not have complete records with respect to the combined base value of the 15 parcels that comprise the Site. Consequently, it was necessary to estimate the applicable base value. Therefore, based on the data available and on information provided by City staff, UFI has estimated that the combined base value of the 15 parcels that comprise the Site is approximately \$1 million. Based on UFI's experience, the assumed \$1 million-worth of assessed base value is, therefore, a reasonable starting point.

The Developer has estimated that the Project's all-in development value (theoretically, the new assessed value) will be \$20.5 million. The differential between the two values is \$19.5 million, which represents the growth in assessed value directly attributable to the Project. The Project is anticipated to be completed during spring of 2013. However, for property tax roll purposes, the incremental value will not fully appear on the tax rolls until FY 2013-14. Therefore, for the purposes of this analysis, \$9.5 million in incremental value is reflected during FY 2012-13 and \$9.5 million in additional incremental value is reflected during FY 2013-14.

The combination of the LMI Housing set-aside and the tax increment pass through payments are projected to be approximately 36% of the total. Based on the foregoing, during FY 2012-13, the Project is estimated to generate approximately \$62,400 in net new non-housing tax increment revenue. Beginning during FY 2013-14, the Project is estimated to generate approximately \$124,800 in net new non-housing tax increment revenue. During the remaining period during which the Agency may collect tax increment from the original Downtown Redevelopment Project area (i.e., 10 years) and assuming a 2% growth rate beginning during FY 2012-13, the Project is estimated to generate a total of approximately \$1.4 million of net new non-housing tax increment revenue (rounded).

SUMMARY OF ESTIMATED ECONOMIC BENEFITS:

Jobs:	480 direct, indirect and induced jobs
Sales Tax:	\$66,600 to \$115,200 first year \$729,000 to \$1,261,000 over 10 years
Business License:	\$2,610 to \$3,350 first year \$29,000 to \$37,000 over 10 years
Tax Increment:	\$124,800 first year after completion \$1.4 million over 10 years
Building Permit:	\$1,633,000-worth of permit fees are projected for the Project by the Developer (does not include TUMF)

These additional jobs, tax revenues and permit fees will assist the City and Agency in removing blight within Downtown Redevelopment Project component area of the Merged Redevelopment Project Area as well as promoting economic development, job creation and affordable housing projects and programs.

Certification: I certify that this report complies with the reporting requirements of Section 33433 of the CCRL. Further, I do not have a present or perspective interest in the Site, the PSA or the parties to the PSA. My engagement to prepare this report was not contingent upon developing or reporting predetermined results. The statements of fact contained herein and the substance of this report are based on public records, data provided by the City or Agency, reports provided by its consultants or as otherwise noted herein. This report reflects my personal, unbiased professional analyses, opinions and conclusions. If any of the underlying assumptions related to the PSA change after the date provided below, then the undersigned reserves the professional privilege to modify the contents and/or conclusions of this report.

Respectfully Submitted,
URBAN FUTURES, INC.



STEVEN H. DUKETT
Managing Principal

Dated: December 23, 2011

**CITY COUNCIL
RESOLUTION EXHIBIT B**

Purchase and Sale Agreement

**AGREEMENT FOR PURCHASE AND SALE
OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS**

Escrow No. _____

Date of Opening of Escrow: _____, 2012

To: Escrow Holder
Chicago Title Company
560 E. Hospitality Lane
San Bernardino, CA 92408

Attn: Sandra L. Olson, Escrow Officer
Phone: (909)381-6722; Email: Sandra.olson@ctt.com

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made this _____ day of January, 2012, by and between THE CITY OF BANNING, a California general law municipality ("Seller" and occasionally herein "City"), and JMA Village, LLC, a California limited liability company ("Buyer").

RECITALS

A. This Agreement pertains to the conveyance to Buyer of those certain parcels of vacant real property consisting of a total of 5.25 acres, or 228,690 square feet, in the City of Banning bounded on the west by San Gorgonio Avenue, on the north by Ramsey Street, to the east by Martin Street and to the south by Livingston Street, which property is more particularly described on **Exhibit "A"** attached hereto (the "Site").

B. A portion of the Site is under ownership of a third-party, although such third-party parcel is currently the subject of eminent domain proceedings pursuant to which the Seller expects to obtain title to said parcel. Accordingly, the Site consists of two distinct sub-parcels representing different ownership interests:

1. *City-Owned:* All those portions of the Site owned in fee by Seller are legally described at **Exhibit "B"** hereto (the "City Property").
2. *Third-Party Owned:* Seller owns in fee title all portions of the Site except for one parcel approximating 15,374 square feet, which is legally described in **Exhibit "C"** attached hereto (the "Third-Party Parcel"). The Third-Party Parcel is currently the subject of an eminent domain proceeding by which the Seller seeks to obtain title to such Parcel. Buyer's acquisition of fee title to the Third-Party Parcel under this Agreement is conditioned upon the ability of Seller to first acquire title to such Parcel in the name of the City of Banning.

C. City's predecessor on interest on the Site was the Banning Redevelopment Agency ("Agency") which is a community redevelopment agency existing and formed pursuant to the Community Redevelopment Law (H&S §§ 33400 *et seq.* ("CRL"). On March 8, 2011, the Agency transferred much of its property to the City of Banning pursuant to a transfer agreement (the "Transfer Agreement"), which Transfer Agreement permitted the City to transfer parcel of property to third parties provided that the City complied with aspects of the CRL to the greatest extent possible. Accordingly, the City has prepared and approved a 33433 report to accompany this Agreement, the hearing on which report was held on January 10, 2012, .

D. Buyer proposes to purchase the Site for purposes of developing the Site as a mixed-use, downtown commercial hub consisting of approximately 13,500 sq. ft. of multi-tenant office space, approximately 13,500 sq. ft. of multi-tenant mixed retail space, an approximately 29,955 sq. ft. hotel building, and an approximately 12,000 sq. ft. multi-tenant restaurant building with a mix of food types (the "Project"). Buyer's site plans and preliminary designs for the Project are attached hereto as **Exhibit "D"**. The Project will be further reflected in a Final Map to be recorded on the Site pursuant to California Government Code Section 66466 (the "Final Map"). The design of the Project shall be consistent with the City's design guidelines. Buyer shall also obtain architectural review and approval for the Project from the City's Planning Commission. Buyer will be solely responsible for obtaining all approvals and entitlements for the Project, arranging the financing for the Project, and constructing all improvements upon the Site, subject to the terms and conditions of this Agreement.

E. It is anticipated that the Final Map will divide the Site into four (4) parcels reflecting four distinct Project phases, substantially as follows:

1. **The "Restaurant Parcel":** That portion of the Site consisting of approximately .77 acres to be dedicated to the construction and operation of a single restaurant tenant. The restaurant tenant occupying the Restaurant Parcel shall be subject to the reasonable approval of Seller.
2. **The "Hotel Parcel":** That portion of the Site consisting of approximately 1.85 acres to be dedicated to the construction and operation of a single hotel tenant. The hotel tenant occupying the Hotel Parcel shall be subject to the reasonable approval of Seller.
3. **The "General Retail Parcel":** That portion of the Site consisting of approximately .78 acres to be dedicated to the construction and operation of a mixed retail and small restaurant complex.
4. **The "Retail/Office Parcel":** That portion of the Site consisting of approximately 1.85 acres to be dedicated to the construction and operation of a mixed retail and small offices complex.

F. The above-listed parcels are occasionally herein referred to herein individually as a **"Parcel"** and collectively as **"Parcels"**. A tentative tract map showing the proposed boundaries of the four Project Parcels is attached hereto as **Exhibit "E"**. Project improvements to each of the Parcels are referred to herein as a **"Phase"** and these Phases are more specifically

named respective to each Parcel to as the “**Restaurant Phase**”, “**Hotel Phase**”, “**General Retail Phase**”, or “**Retail/Office Phase**”. The boundaries for each Parcel are based on Buyer’s preliminary designs and may be amended prior to approval of the Final Map by the City of Banning, excepting that Buyer shall first comply with any additional planning review or other City procedures necessary should a change to Project designs or parcel configurations be substantial enough to require Buyer to acquire new Project approvals or permits.

G. As a material condition of Seller’s conveyance of the Site to Buyer, Buyer shall adhere to the following general Project construction schedule (subject to mutually-agreed written amendment by the parties):

1. Vertical construction on at least one Phase shall commence no later than February 1, 2014.
2. Vertical Construction on at least a second Phase shall commence no later than February 1, 2015.
3. Vertical Construction on at least a third Phase shall commence no later than February 1, 2016.
4. Vertical Construction on at least a fourth Phase shall commence no later than February 1, 2017.
5. Completion of all Project improvements by February 1, 2018.

H. The fair market value of the Site was appraised at \$1,020,000.00 (or \$4.46/sq. ft.) on May 6, 2011, which fair market value shall constitute Buyer’s “**Purchase Price**” for the entire Site. Buyer shall purchase all Seller’s right, title and interests to the Site pursuant to a “**Promissory Note**” in favor of the Buyer for the full Purchase Price, which note shall become immediately due and payable upon the earlier of either (i) Buyer’s commencement of construction of vertical Project improvements, or (ii) Two (2) years from the close of escrow hereunder. The Promissory Note shall be secured through a “**Deed of Trust**” recorded upon the Site, which Deed of Trust shall be released on a Parcel-by-Parcel basis as Buyer completes each Project Phase.

NOW, THEREFORE, based on the above recitals, which are deemed true and correct and which are incorporated into the terms of this Agreement, and in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. PURCHASE AND SALE OF PROPERTY.

1.1 Generally. Buyer hereby agrees to purchase from Seller, and Seller agrees to sell to Buyer all Buyer’s rights, title and interests to the Site upon the terms and conditions hereinafter set forth.

1.2 As to Third-Party Parcel. From and after the date of this Agreement, Seller, or one of its affiliate agencies, shall attempt to acquire the Third-Party Parcel from the current owners of the Third-Party Parcel by negotiated purchase; provided, however, that nothing in this Agreement shall obligate Sellers or their related agencies to (i) pay more than the amount Seller has determined to be the fair market value of the Third-Party Parcel, nor (ii) to agree to any other non-standard terms or conditions except as may be acceptable to Seller in its sole and absolute discretion.

2. OPENING OF ESCROW; CLOSING DATE.

2.1 Opening of Escrow. Within three (3) business days after the execution of this Agreement by Buyer and Seller and approval by the Banning City Council, the Parties shall open an escrow ("Escrow") with the Escrow Holder identified above, (herein the "Escrow Holder") by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder ("Opening of Escrow"). Escrow Holder shall fax written notice of the Opening of Escrow date to Buyer and Seller.

2.2 Closing Date. With the exception of the Third-Party Parcel, Escrow shall close *no later than* thirty (30) days following opening ("Closing Date"), unless extended by mutual written agreement of the parties. The terms the "Close of Escrow" and/or the "Closing" are used herein to mean the time the Grant Deed (as hereinafter defined) is recorded in the Office of the County Recorder of Riverside County, California. Close of Escrow on the Third-Party Parcel may close later than thirty (30) days following opening and shall not occur until all the Conditions of Closing stated in Section 5.2 have occurred.

3. CONSIDERATION; PROMISSORY NOTE AND DEED(S) OF TRUST.

3.1 Purchase Price. The Purchase Price for Buyer's acquisition of all interests Seller holds in the Site is ONE MILLION, TWENTY-THOUSAND EVEN DOLLARS, (\$1,020,000.00) or \$4.46 per square foot. The Purchase Price is the total compensation to be paid by Buyer to Seller and all-inclusive of (i) Seller's fee interest in the City Property and (ii) any rights, title or interests the Seller may obtain over the Third-Party Parcel.

3.2 Payment of Purchase Price. The Purchase Price shall be paid by a Promissory Note secured by Deed of Trust.

3.3 Promissory Note. The Promissory Note shall be substantially in the form of that attached hereto as **Exhibit "F"** and reasonably acceptable to Buyer and Seller. The Promissory Note shall contain the following provisions: the Note shall be payable to the order of Seller; the principal balance shall accrue simple interest at the rate of four percent (4%) per annum; and the principal balance plus accrued interest shall be paid in one lump sum due no later than two (2) years from the Close of Escrow upon the City Property. The Promissory Note shall be prepayable at any time without premium or penalty but with interest prorated to the date of prepayment; and the principal balance of the Promissory Note, plus accrued interest, shall be due and payable in full upon the sale, transfer or other conveyance by Buyer of the Site, or any portion thereof, securing the Promissory Note.

3.4 Deed(s) of Trust. The Deed of Trust, attached hereto as **Exhibit "G"**, is in a format typically used in the State of California and reasonably acceptable to Buyer and Seller. The Deed of Trust shall secure (i) the Seller's right of reverter in case of a Buyer default, and (ii) repayment of the Promissory Note in whole or part. The rights under the Deed of Trust will be released with respect to each Parcel, as each Parcel is developed. At the time a Subsequent Deed of Trust is recorded on a Parcel, if the Parcel is not thereafter completed with Project improvements pursuant to this Agreement, then the Seller may exercise its right of reverter. The Subsequent Deed of Trust may be subordinated for purposes of financing and Seller will not unreasonably withhold its consent to subordinating a Subsequent Deed of Trust for the purposes of financing the development of the Parcel(s) as described herein. The Escrow Officer shall record the Deed of Trust as follows:

(a) *Upon Close of Escrow & Prior to Final Map Recordation.* Concurrent with the Close of Escrow on the City Property, the Escrow Officer shall record upon the City Property the Deed of Trust, in the form attached hereto as Exhibit "G". If the Third-Party Parcel is acquired by Seller before the recordation of the Final Map, the Deed of Trust in the form attached hereto as Exhibit "G" may, upon transfer of the Third-Party Parcel to Buyer and upon Seller's discretion, also be recorded upon the Third-Party Parcel, such that the Promissory Note and Seller's rights of reverter will be secured by the entire Site.

(b) *After Final Map Recordation; Deed of Trust to be Recorded on Each Parcel.* Once Buyer has obtained City approval of its Final Map for the Project, Seller shall release the single Deed of Trust recorded upon the City Property pursuant to subpart (a), above, and re-secure the Seller's Promissory Note and rights of reverter by recording four new, separate deeds of trust (the "**Subsequent Deeds of Trust**") with one deed of trust recorded upon each Parcel. This shall be accomplished within forty-five (45) days of Final Map approval, subject to the requirement that Buyer hereby agrees to execute said Subsequent Deeds of Trust in a timely manner. So long as the Subsequent Deeds of Trust are presented in a form substantially similar to that of Exhibit "G" (subject to Parcel-specific particulars that will necessarily be added to the Subsequent Deeds of Trust), Seller's failure to promptly execute the Subsequent Deeds of Trust shall constitute a default of this Agreement. The Subsequent Deeds of Trust shall be recorded to reflect the Site's parcelization into the four Project Parcels and securing each Parcel's proportional value to the Purchase Price, substantially as follows:

(i) One Subsequent Deed of Trust shall be recorded upon the Restaurant Parcel; such Subsequent Deed of Trust shall secure the proportionate share of the Purchase Price attributable to the value of the Restaurant Parcel. For example, under current estimates, the Restaurant Parcel will account for approximately 33,541 square feet. Given the Purchase Price was based on a per square foot value of \$4.46, the Subsequent Deed of Trust for the Restaurant Parcel would secure \$149,594.

(ii) One Subsequent Deed of Trust shall be recorded upon the Hotel Parcel; such Subsequent Deed of Trust shall secure the proportionate share of the Purchase Price attributable to the value of the Hotel Parcel. For example, under current estimates, the Hotel Parcel will account for approximately 80,586 square

feet. Given the Purchase Price was based on a per square foot value of \$4.46, the Subsequent Deed of Trust for the Hotel Parcel would secure \$359,414.

(iii) One Subsequent Deed of Trust shall be recorded upon the General Retail Parcel; such Subsequent Deed of Trust shall secure the proportionate share of the Purchase Price attributable to the value of the General Retail Parcel. For example, under current estimates, the General Retail Parcel will account for approximately 33,976 square feet. Given the Purchase Price was based on a per square foot value of \$4.46, the Subsequent Deed of Trust for the General Retail Parcel would secure \$151,537.

(iv) One Subsequent Deed of Trust shall be recorded upon the Retail/Office Parcel; such Subsequent Deed of Trust shall secure the proportionate share of the Purchase Price attributable to the value of the Retail/Office Parcel. For example, under current estimates, the Retail/Office Parcel will account for approximately 80,586 square feet. Given the Purchase Price was based on a per square foot value of \$4.46, the Subsequent Deed of Trust for the Retail/Office Parcel would secure \$359,414.

(c) *Form of Subsequent Deeds of Trust.* Each Subsequent Deed of Trust shall be substantially in the same form as attached hereto at Exhibit "G" (subject to Parcel-specific particulars that will necessarily be added to the Subsequent Deeds of Trust). The boundaries for each Parcel are based on Buyer's preliminary designs and, therefore, both the legal descriptions and Subsequent Deed amounts secured by each Parcel may, at the time of recording the Final Map, be different from those identified in the foregoing subpart (b).

(d) *Release of Subsequent Deeds of Trust.* Each Subsequent Deed of Trust shall be released from its Parcel upon both (i) Buyer's payment of the full Purchase Price and (ii) Buyer's satisfaction of all conditions precedent to the release of Seller's rights of reverter for the Parcel, as described in Sections 12.8(b) hereof.

4. ADDITIONAL FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.

4.1 Buyer. Buyer agrees that on or before 1:00 p.m. on the business day preceding the Closing Date, Buyer will deposit with Escrow Holder all additional funds and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including, without limitation, the following:

(a) A Preliminary Change of Ownership Statement completed in the manner required in Riverside County, if any; and

(b) Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.2 Seller. Seller agrees that on or before 1:00 p.m. on the business day preceding the Closing Date, Seller will deposit with Escrow Holder such funds and other items and

instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including, without limitation, the following:

- (a) A grant deed conveying the City Property to Buyer, or if Seller has secured title to the Third-Party Parcel before the Closing then conveying the whole Site to Buyer, in the form attached hereto as **Exhibit "H"** ("Grant Deed").
- (b) Two duplicate originals of California Form 590 Real Estate Withholding Exemption Certificates in the form required by the California Franchise Tax Board ("California Residency Affidavit"); and
- (c) An executed copy of the "CC&Rs" to be recorded upon the Site, in accordance with Section 11.9 hereof, in substantially the form attached hereto as **Exhibit "I"**.
- (d) Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.3 Recordation, Completion and Distribution of Documents. Escrow Holder will cause the Grant Deed and Deed of Trust to be recorded when (but in no event after the date specified in Section 2.2 above) it can issue the Title Policy in the form described in Section 5.2 below, and holds for the account of Seller the items described above to be delivered to Seller through Escrow, less costs, expenses and disbursements chargeable to Seller pursuant to the terms hereof.

4.4 Escrow Holder Responsibilities. Escrow Holder will not have any responsibilities for the parties' performance of the terms of the Agreement which are to be performed after the 30-day Closing. The parties may execute supplemental escrow terms and instructions into Escrow Holder's general form and consistent with the terms hereof.

5. TITLE MATTERS.

5.1 Approval of Title. Buyer acknowledges that it has received copies of that preliminary title report for the entire Site (both City Property and Third-Party Parcel) dated December 19, 2011, as Order No. 930016309-U50 (the "Preliminary Title Report"). By executing this Agreement, Buyer approves all matters contained in the Preliminary Title Report and waives any objections Buyer may have to title exceptions or other matters contained in the Preliminary Title Report. Buyer hereby approves title in the form specified in Section 5.2.

5.2 Title Policy. When Escrow Holder holds for Buyer the Grant Deed in favor of Buyer executed and acknowledged by Seller covering the Site, Escrow Holder shall cause to be issued and delivered to Buyer and Seller as of the Close of Escrow a CLTA standard coverage owner's policy of title insurance ("Title Policy"), or, upon Buyer's request therefore, an ALTA extended coverage owner's policy of title insurance, issued by Title Company, with liability in the amount of the Purchase Price, covering the Site and showing title vested in Buyer free of encumbrances, *except*:

- (a) All non-delinquent general and special real property taxes and assessments for the current fiscal year;
- (b) Those easements, encumbrances, covenants, conditions, restrictions, reservations, rights-of-way and other matters of record shown on the Preliminary Title Report;
- (c) The standard printed exceptions and exclusions contained in the CLTA or ALTA form policy;
- (d) The following interests in the Third-Party Parcel, which Seller and/or one of its affiliate agency/bodies shall acquire through eminent domain: Frederick H. L. Huang and Audie P. H. Huang, husband and wife, as community property, as to an undivided one-half interest; and Jen H. Huang, a single man, as to an undivided one-half interest, as tenants in common as to the Third-Party Parcel.
- (e) Any exceptions created or consented to by Buyer, including, without limitation, any exceptions arising by reason of Buyer's possession of or entry on the Site.

6. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.

6.1 Conditions to Closing on City Property.

(a) *Conditions to Buyer's Obligations.* The obligations of Buyer under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent:

- (i) Title Company will issue the Title Policy as required by Section 5.2 of this Agreement.
- (ii) Seller has deposited an executed Grant Deed into Escrow.
- (iii) An executed Deed of Trust to be recorded upon the City Property has been deposited into escrow.
- (iv) Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement.
- (v) All representations and warranties specified in Section 8.1 are true and correct.
- (vi) Buyer's approval of any other conditions specified in this Agreement.
- (vii) Seller shall not be in default of any term or condition of this Agreement.

Buyer's approval shall be based upon Buyer's sole and absolute discretion; provided, however, if Buyer has not delivered written notice of approval of the above conditions to Seller and Escrow Holder by the times provided above, or if no time is provided, on or before the Close of Escrow, each such condition shall automatically and conclusively be deemed to have been disapproved by Buyer.

(b) *Conditions to Seller's Obligations.* The obligations of Seller under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Seller of each of the following conditions precedent:

- (i) Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.
- (ii) An executed Deed of Trust to be recorded upon the City Property has been deposited into escrow.
- (iii) An executed copy of the CC&Rs (Exhibit "I") to be recorded upon the City Property has been deposited into escrow.
- (iv) Buyer shall not be in default of any term or condition of this Agreement.

If requested by Escrow Holder or Buyer, Seller shall deliver to Escrow Holder and Buyer written notice of satisfaction of the conditions set forth in this Section 6.1.

6.2 Conditions to Closing on Third-Party Parcel if Seller Does Not Hold Title to the Third-Party Parcel Before Closing on the City Property. Conveyance of title to the Third-Party Parcel to Buyer is strictly conditioned upon the Seller obtaining title to the Third-Party Parcel, as further detailed hereafter. If Seller obtains title to the Third-Party Parcel prior to the deadline for Closing on the City Property, then the Third-Party Parcel shall be conveyed to the Buyer in the same manner as the City Property, subject to Section 6.1, and pursuant to a single Deed of Trust (in the form of Exhibit "G"). If however, Seller cannot obtain title to the Third-Party Parcel until after the 30-day Closing deadline for the City Property, Seller shall convey the Third-Party Parcel to Buyer as provided in this Section 6.2.

Seller's failure to obtain title to the Third-Party Parcel, after exercising reasonable efforts to do so, shall not constitute a default of this Agreement or waiver of any of Buyer's obligations hereunder. Notwithstanding the foregoing, if Seller is unable to acquire all or any portion of the Third-Party Parcel, Buyer may elect either (i) to terminate this Agreement, or (ii) to amend the Project plans and to proceed with the development of the Site without the Third-Party Parcel, if and only if the City approves such amended Project plans. If such amended Project plans are not approved by the City, Buyer shall not proceed with the development of the Site and this Agreement shall terminate.

(a) *Possession/Title to Third-Party Parcel to be Assigned to Buyer.* Seller, or its affiliate agency, is currently in the process of seeking possession and title to the Third-Party Parcel pursuant to an eminent domain action pending in the Riverside County Superior Court as *The City of Banning Redevelopment Agency v. Frank H.L. Huang*.

Audie P.H. Huang, et al., Case No. RIC 1109186. Seller shall pursue such acquisition of the Third-Party Parcel with reasonable diligence and, upon acquisition of an order of pre-judgment possession and title to the Third-Party Parcel, commit to assign such rights of possession and title to the Buyer. To this end, Seller shall deposit a copy of the Order of Prejudgment Possession for the Third-Party Parcel into Escrow as soon as such Order is issued. Upon Seller acquiring a right of Prejudgment Possession to the Third-Party Parcel pursuant to the pending eminent domain action, Seller shall assign its rights of possession to Buyer. If Seller shall actually obtain title pursuant to some earlier settlement or a final judgment prior to the 30-day Closing, Seller shall also deposit into escrow a grant deed to the Third-Party Parcel to convey to Buyer all rights, title and interests in the Third-Party Parcel. If title is not obtained until after the 30-day Closing deadline stated in Section 2.2, then there shall be either (i) a simple Closing including the Third-Party Parcel so long as title insurance can be obtained, with the City handling the obligation to deliver title separately outside of escrow when obtained, or (ii) separate closings for the City Property and the Third-Party Parcel.

(b) *Close of Escrow for Third-Party Parcel.* Notwithstanding any other provision of this Agreement to the contrary, if at any time prior to Seller's acquisition to title of the Third-Party Parcel, (i) Seller deposits the Grant Deed and a copy of the Order of Prejudgment Possession for the Third-Party Parcel into Escrow, (ii) Seller tenders possession of the whole Site, including the Third-Party Parcel, to Buyer, and (iii) Seller is diligently proceeding with the eminent domain action seeking the rendering of a final judgment authorizing the taking, (iv) Seller provides such indemnification(s) as Title Company may require to the end of assuring that Seller will obtain a final judgment authorizing the taking of the Third-Party Parcel such that Title Company will issue title insurance on the Third-Party Parcel, and (v) the Title Company commits to issuing title insurance as provided herein; then, subject to the satisfaction or waiver of all the conditions specified in Section 6.1, Buyer shall accept such right of possession and proceed with development of the Site. The date of such transfer of possession from Seller to Buyer shall be treated as the "Close of Escrow" for all purposes of the Third-Party Parcel. In such event, Seller shall exercise reasonable diligence to conclude the eminent domain proceedings and obtain a final order of condemnation terminating all third-party interests in the Site; Seller's title to the Third-Party Parcel shall thereupon be conveyed to Buyer via grant deed.

6.3 Covenant of Seller and Buyer. Buyer and Seller agree to cooperate with one another, at no cost or expense to the cooperating party, in satisfying the conditions precedent to Close of Escrow. Buyer shall be responsible for proceeding with diligence and in good faith to satisfy the conditions to Buyer's performance set forth in Section 6.1(a) and Seller shall be responsible for proceeding with diligence and in good faith to satisfy the conditions to Seller's performance set forth in Section 5.1(b). Additionally, both parties will have cooperated to execute and file a Stipulation for Entry of Judgment in the eminent domain action of *The City of Banning Redevelopment Agency v. Frank H.L. Huang, Audie P.H. Huang, et al.*, Case No. RIC 1109186.

6.4 Termination for Failure of Condition. In the event Buyer fails to approve or disapprove any condition precedent specified in Section 5.1(a) or elsewhere in this

Agreement on or before the date for approval set forth therein, Seller shall notify Buyer of such failure and Buyer shall have a period of five (5) days from receipt of such notice to elect to approve such matter or to disapprove such matter and terminate this Agreement. The failure of Buyer to approve such matter within said five (5) days shall be deemed to constitute disapproval thereof and Buyer's election to terminate. In the event Seller fails to approve or disapprove any condition precedent specified in Section 5.1(b) or elsewhere in this Agreement on or before the date for approval set forth therein, Buyer shall notify Seller of such failure and Seller shall have a period of five (5) days from receipt of such notice to elect to approve such matter or to disapprove such matter and terminate this Agreement. The failure of Seller to approve such matter within said five (5) days shall be deemed to constitute disapproval thereof and Seller's election to terminate.

7. CONDITION OF SITE; RELEASES/INDEMNITY SITE CONDITION.

7.1 Environmental Laws. For purposes of this Agreement, "Environmental Laws" shall mean all federal, state or local statutes, regulations, ordinances, codes or rules as such have been or may hereafter be enacted, adopted, amended or supplemented and all common law causes of action relating to the protection of human health or the environment, including without limitations the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 7401, et seq.), the Toxic Substance Control Act, as amended (15 U.S.C. 2601, et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.), the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. Section 136, et seq.) and the Clean Air Act, as amended (42 U.S.C. 7401, et seq.), and private rights of action for nuisance, trespass, or damages to property or persons.

7.2 Hazardous Materials. For the purposes of this Agreement, Hazardous Materials shall be deemed to mean asbestos, polychlorinated biphenyls, petroleum or by-products thereof, radioactive materials, or any chemical, material or substance included in the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "toxic substances" and/or words of similar import under any federal, state and local laws, ordinances, rules and regulations whether present or future, relating to and/or dealing with the protection of the environment and/or human health and safety and/or applicable to the generation, handling, manufacture, installation, treatment, storage, use, transportation, discharge, disposal, presence and/or release into the air, soil, water at, above or below ground level (whether accidental or intentional) of such substances or materials.

7.3 As-Is Purchase; Disclaimer of Warranties. Notwithstanding any contrary provisions of this Agreement or otherwise, upon the execution of this Agreement by Buyer, Buyer shall and does agree to take the Site in its current condition AS-IS, WITH ALL FAULTS, all defects and conditions whatsoever then existing on the Site, including any Hazardous Materials (as defined herein above), vaults, debris, pipelines, wells, or other structures that are or may be located in, on, under, or around the Site, whether known or unknown. Buyer assumes all responsibility for any and all such defects, faults, and conditions and shall be responsible for any and all defects in the Site, whether patent or

latent, including, without limitation, the physical, environmental and geotechnical condition of the Site, and the existence of any contamination, Hazardous Materials, within the Site.

Seller makes no representation or warranty concerning the physical, environmental, geotechnical or other condition of the Site. Buyer acknowledges that, once Buyer obtains title to the Site, any liability of Seller for the environmental condition of the Site shall be extinguished, that Seller shall have no liability for remediating any environmental condition of the Site and that Buyer shall indemnify Seller against any claim or liability relating to the condition of the Site.

7.4 Buyer's Release of Seller. Notwithstanding any contrary provisions of this Agreement or otherwise, upon the execution of this Agreement by Buyer, Buyer shall and does hereby release Seller, its officers, directors, shareholders, affiliates, subsidiaries, heirs, and successors from any and all claims, liabilities, expenses, costs, or damages that Buyer may incur arising from the presence of any Hazardous Materials (as defined herein above) which are or may be located in, on, under, or around the Site, whether or not caused by Seller or any predecessor-in-interest of Seller, and whether or not known to Seller or Buyer at or before the Close of Escrow. Buyer expressly preserves its rights against other parties and does not release, or waive its rights to contribution against, any other party.

7.5 Buyer's Indemnification of Seller. Notwithstanding any contrary provisions of this Agreement or otherwise, upon the execution of this Agreement by Buyer, Buyer hereby agrees to indemnify, defend (by Seller's choice of counsel), and hold harmless Seller, its directors, officers, employees, agents, representatives, heirs, and successors from and against any and all costs, expenses, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly arising from any violation of the Environmental Laws (as defined herein above) including, without limitation, any release, treatment, use, generation, storage, or disposal of Hazardous Materials in, on, under, around, or from the Site at any time before or after close of escrow including, without limitation, the cost of any required or necessary remediation or removal of any such Hazardous Materials, any costs of repair of improvements on the Site or surrounding properties necessitated by such remediation or removal and costs of any testing, sampling, or other investigation or preparation of remediation or other required plans undertaken prior to such remediation or removal. Buyer expressly preserves its rights against other parties and does not release, or waive its rights to contribution against, any other party.

7.6 Indemnification and Release from Liabilities Relating to New Legislation. Buyer acknowledges that it is aware of, and has received advice from legal counsel on, the matter of new legislation effective June 1, 2011, purporting to limit or disenfranchise the authority of local governments to transfer or control assets that are, or once were, owned by a local redevelopment agency. Specifically, the 2011 Assembly Bills ABx1 26 and ABx1 27 became effective on June 29, 2011. ABx1 26 purports to eliminate redevelopment agencies while ABx1 27 allows agencies to continue to exist if they agree to pay to the State a proportional share of \$1.7 billion this year and \$400 million annually in perpetuity. The bills are both the subject of litigation before the California Supreme Court, in which the constitutionality of the bills is being challenged. At this time, it is unknown whether the bills will be upheld in whole or in part or how otherwise the Supreme Court may rule on the

bills. Buyer hereby acknowledges the possibility that ABx1 26 and/or ABx1 27 might be upheld, interpreted or applied in such a manner as to undermine or invalidate (i) Buyer's rights to the Site, and/or (ii) Seller's authority to convey the Site to Buyer. Notwithstanding such risk, Buyer hereby agrees to indemnify, defend (by Seller's choice of counsel), and hold harmless Seller, its directors, officers, employees, agents, representatives, heirs, and successors from and against any and all costs, expenses, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly arising from any application or impact of ABx1 26 and/or ABx1 27 upon (i) Seller's existing rights to the Site, (ii) this Agreement, (iii) Seller's authority to convey the Site to Buyer, (iv) Buyer's authority to acquire the Site, (v) delivery of the Project, or (vi) any other costs or expenses whatsoever that may result to Buyer as a result of ABx1 26 and/or ABx1 27.

7.7 Buyer Assumes All Liabilities Arising After Closing. Buyer assumes ALL liabilities that arise from post-closing events.

7.8 Survival. Notwithstanding any other provision of this Agreement, the provisions of this Article 8 shall survive the Close of Escrow and the delivery of the Grant Deed(s).

8. REPRESENTATIONS AND WARRANTIES BY SELLER.

8.1 Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer, each of which (i) is material and relied upon by Buyer in making its determination to enter into this Agreement; (ii) to the best of Seller's knowledge, is true in all respects as of the date hereof and shall be true in all respects on the date of Close of Escrow on the Site; and (iii) shall survive the Close of Escrow of the purchase and sale of the Site as well as any future transfer of the Site to Buyer or any transferee, successor or assignee of Buyer:

(a) With the exception of the condemnation action on the Third-Party Parcel or the matters stated in 7.6, as disclosed hereinabove, to the best of Seller's knowledge there are no contracts, leases, claims or rights affecting the Site and no agreements entered into by or under Seller shall survive the Close of Escrow that would adversely affect Buyer's rights with respect to the Property, except as heretofore disclosed through the Preliminary Title Report.

(b) Seller has delivered or, within the period required in Section 6.1(a) and Article 4, will have delivered true, correct and complete copies of all the documents and other information specified in Section 6.1(a) and Article 4 in Seller's possession or control (or has reasonable access thereto). To the best of Seller's knowledge, the information contained in the said documents is true and accurate.

(c) With the exception of the condemnation action on the Third-Party Parcel, as disclosed hereinabove, and any items disclosed in the Preliminary Title Report, there are no executory contracts, options or agreements existing (other than this Agreement) relating to the purchase of all or any portion of the Site or any interest therein.

(d) All federal, state, municipal, county and local taxes, which are actually a direct monetary obligation of the owner of the Site, the nonpayment of which might become a lien on or affect all or part of the Site, which are due and payable prior to the Closing have been paid, or on the Closing Date will have been paid in full.

(e) With the exception of the condemnation action on the Third-Party Parcel, as disclosed hereinabove, since the time of issuance of the Preliminary Title Report, Seller has taken no action to create, nor otherwise caused, any additional encumbrances to title other than those shown on the Preliminary Title Report.

(f) Seller is not a foreign person as defined in Internal Revenue Code Section 1445(f)(3).

8.2 Changed Circumstances. If Seller becomes aware of any fact or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by Seller under this Agreement, whether as of the date given or any time thereafter through the Close of Escrow and whether or not such representation or warranty was based upon Seller's knowledge and/or belief as of a certain date, Seller will give immediate written notice of such changed fact or circumstance to Buyer, but such notice shall not release Seller of its liabilities or obligations with respect thereto. Seller shall issue a certificate as of the Close of Escrow stating that all the representations and warranties contained in Section 8.1 are true and correct as of said date, or setting forth in detail which of such matters are not true and correct. Buyer shall have five (5) days from the receipt of any notice by Seller of the material change of any representation or warranty made by Seller hereunder to terminate this Agreement by providing written notice to Seller and Escrow Holder, and receive return of its Deposit and any other sums deposited in the Escrow.

8.3 No Other Representations or Warranties by Seller. Other than those express representations and warranties contained in this Agreement, Seller makes no other representations or warranties, either express or implied.

9. REPRESENTATIONS AND WARRANTIES BY BUYER.

9.1 “AS-IS” Condition of Site. Buyer represents, acknowledges, and agrees that Buyer is electing to purchase the Site in its “AS-IS, WHERE IS” physical condition pursuant to Article 7.0.

9.2 Buyer Assumes All Liability. Buyer represents and acknowledges that Seller has not agreed to perform any environmental remediation work nor to any offset to the Purchase Price as a result of any physical or environmental condition Buyer discovers on the Site, whether before or after the Close of Escrow.

9.3 Sole Reliance. Buyer represents and acknowledges that it is relying solely upon Buyer's own inspections in purchasing the Site.

9.4 Legislation. Buyer represents that as for the matters disclosed in Section 7.6, Buyer has received advice through its own legal counsel and is not relying on any legal analysis of Seller or Seller's legal counsel.

10. ESCROW PROVISIONS.

10.1 Escrow Instructions. This Agreement, when signed by Buyer and Seller, shall also constitute escrow instructions to Escrow Holder.

10.2 General Escrow Provisions. Escrow Holder shall deliver the Title Policy to the Buyer and instruct the Riverside County Recorder to mail the Grant Deed to Buyer at the address set forth in Section 12:16 after recordation. All funds, if any, received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in Riverside County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be made by Escrow Holder's check.

10.3 Prorations of Real Property Taxes. Buyer acknowledges that Seller is a governmental agency, not subject to payment of taxes. Accordingly, Buyer shall be solely responsible for payment of taxes accruing after Close of Escrow and/or seeking a refund of any overpayment of taxes from the appropriate taxing agencies. Utilities and other expenses of the Site which are payable by or to the owner of the Site shall be prorated to the Close of Escrow on the basis of a thirty (30) day month and a three hundred sixty (360) day year. Any party who is obligated to pay net amounts based on said final proration shall reimburse the other party said amount within five (5) business days after completion of the final proration. Seller shall receive a credit for any refundable utility or governmental deposits made by Seller with respect to the Site, if any, and shall assign Buyer all rights to refund of same.

10.4 Payment of Costs. Buyer shall pay one hundred percent (100%) of the documentary transfer taxes, escrow fees, recording fees, Title Policy premiums, and the charges for recording the Grant Deed, and the additional portion of the Title Policy premium which is attributable to the additional cost of obtaining any additional coverage requested by Buyer, including the difference between CLTA and ALTA coverage. Seller and Buyer shall each be responsible for their respective attorneys' fees and costs. All other costs of escrow not otherwise specifically allocated by this Agreement shall be apportioned between the parties in a manner consistent with the custom and usage of Escrow Holder.

10.5 Termination and Cancellation of Escrow. If Escrow fails to close as provided above, Escrow shall terminate automatically without further action by Escrow Holder or any party, and Escrow Holder is instructed to return all funds and documents then in Escrow to the respective depositor of the same with Escrow Holder; provided that any document which has been signed by a party who is not to receive the return of such document, shall be marked "void and of no force or effect" by Escrow Holder before it is delivered. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

10.6 Information Report. The "Reporting Person" within the meaning of Treasury Regulation Section 1.6045-4(e)(5) with respect to the transactions contemplated by this Agreement shall be Escrow Holder. The name and address of Escrow Holder is set

forth on the first page of this Agreement. It is agreed that Escrow Holder is an eligible person under Section 1.6045-4(e)(5)(ii) of said Regulations. Escrow Holder hereby agrees to be responsible for complying with the reporting and other requirements of Internal Revenue Code Section 6045(e) and the income tax regulations promulgated thereunder. Pursuant to said regulations, the address for the transferor and transferee are as set forth for Seller and Buyer respectively in Section ~~12-16~~ below, and the identifying information regarding the real estate transferred is the legal description for the Site or portion thereof being transferred. Escrow Holder agrees to file the form required by said regulations between the end of the calendar year in which the Close of Escrow occurs and February 28 of the following calendar year. Buyer and Seller agree (i) to cooperate with Escrow Holder and with each other in completing any report and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-S as such may be hereafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereafter promulgated by the Treasury Department with respect thereto; (ii) that Buyer and Seller, their respective employees and attorneys, and Escrow Holder and its employees may disclose to the Internal Revenue Service, this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e); (iii) that neither Buyer nor Seller shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information; and (iv) to retain this Agreement for at least four (4) years following the close of the calendar year in which the Close of Escrow occurs.

10.7 Possession. Possession of the Property shall be delivered to Buyer as of Close of Escrow. In the event any personal property remains on the Property following the Close of Escrow, it shall automatically become the property of Buyer.

11. COVENANTS RELATING TO THE PROJECT.

11.1 Restrictions On Transfer. The qualifications and identity of Buyer are of particular concern to the Seller, and it is because of such qualifications and identity that Seller has entered into this Agreement with Buyer. Seller has undertaken an extensive marketing program to identify appropriate users for the Site. The Seller has considered the experience, financial capability, and product being marketed by Buyer and its affiliates, the Site location and characteristics, the public costs of acquiring and developing the Site and return on investment, and the product mix necessary to produce a successful Project. Based upon these considerations, the Seller has imposed the restrictions on transfer set forth in this Agreement.

(a) *Transfer Defined.* As used in this section, the term "Transfer" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the improvements thereon. A Transfer shall also include the Transfer to any person or group of persons acting in concert of more than fifty percent (50%) of the present ownership and/or control of Buyer in the aggregate taking all Transfers into account on a cumulative basis. In the event Buyer or its successor is a

corporation or trust, such Transfer shall refer to the Transfer of the issued and outstanding capital stock of Buyer, or of beneficial interests of such trust; in the event that Buyer is a limited or general partnership, such Transfer shall refer to the Transfer of more than fifty percent (50%) of the limited or general partnership interest; in the event that Buyer is a joint venture, such Transfer shall refer to the Transfer of more than fifty percent (50%) of the ownership and/or control of any such joint venture partner, taking all Transfers into account on a cumulative basis.

(b) *Transfers Require Approval.* Buyer shall not Transfer this Agreement or any of Buyer's rights hereunder, or any interest in the Site or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of Seller, and if so purported to be transferred, the same shall be null and void. In considering whether it will grant written approval to any assignment by Buyer of its interests in the Site, which assignment requires Seller approval, Seller shall consider factors such as (i) whether the completion of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform Buyer's obligations hereunder; (iii) the proposed assignee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects; and (iv) how the proposed assignee will complement the other users and uses in the City of Banning downtown area, whether commercial users or otherwise.

In the absence of a specific written agreement with the Seller, prior to the issuance of a Certificate of Completion for the entire Project or any portion thereof, no assignment or transfer by of all or any portion of its interest in the Site or this Agreement (including without limitation an assignment or transfer not requiring Seller approval hereunder) shall be deemed to relieve Buyer or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Site which is so transferred. In addition, no attempted assignment of any of Buyer's obligations hereunder shall be effective unless and until the successor party executes and delivers to Seller an assumption agreement in a form reasonably approved by the Seller assuming such obligations.

(c) *Exceptions.* The foregoing prohibition shall not apply to any of the following:

(i) Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 11.3, but Buyer shall notify Seller in advance of any such mortgage, deed of trust, or other form of conveyance (but only for purposes of financing the Project).

(ii) Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the Project, including any additional costs of construction, whether direct or indirect.

(iii) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of any easements or permits needed to facilitate the Site's development.

(iv) A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(v) A conveyance of the Site to any entity Buyer Affiliate. **"Buyer Affiliate"** shall mean any entity which owns or controls Buyer, to any entity owned or controlled by Buyer, to any entity owned or controlled by or affiliated with any entity which owns or controls Buyer, or to any entity resulting from a consolidation, or to the surviving entity in case of a merger, to which consolidation or merger Buyer shall be a party, or to an entity to which all or substantially all of the assets of Buyer have been sold.

(vi) Transfers of ownership or control interest between members of Buyer's immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the Buyer's immediate family, or among the entities constituting Buyer.

(d) *Release Of Buyer.* Seller's consent to a Transfer shall not be deemed to release Buyer of liability for performance under this Agreement unless such release is specific and in writing executed by Seller, which release shall not be unreasonably withheld. Upon the written consent of Seller to the complete assignment of this Agreement and the express written assumption of the assigned obligations of Buyer under this Agreement by the assignee, Buyer shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Buyer is in default under the terms of this Agreement prior to said Transfer.

(e) *Buyer To Pay Transfer Costs.* Buyer will pay Seller its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any Transfer.

(f) *Termination; Lease Provisions.* The Transfer restriction in this Section 11.1 terminates upon the recordation of the Notice of Completion for the entire Project.

11.2 Scope Of Development & Schedule Of Performance. The Site shall be developed by Buyer as provided in the Buyer's Scope of Development and Conceptual Plans (Exhibit "D") and the plans and permits approved by the City pursuant to Section 11.4. Notwithstanding any other provision set forth in this Agreement to the contrary, in the event of any conflict between the narrative description of the Project in this Agreement (including

Exhibit "D") and the approved plans and permits, the approved plans and permits shall govern.

(a) *Critical Construction Deadlines.* Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay (Section 13.9 hereof). Buyer shall keep the Seller informed of the progress of construction and submit to the Seller written reports of the progress of the construction when and in the form requested by the Seller. Critical Project construction deadlines are as follows:

- (i) Vertical construction on at least one Phase shall commence no later than February 1, 2014.
- (ii) Vertical Construction on at least a second Phase shall commence no later than February 1, 2015.
- (iii) Vertical Construction on at least a third Phase shall commence no later than February 1, 2016.
- (iv) Vertical Construction on at least a fourth Phase shall commence no later than February 1, 2017.
- (v) Completion of all Project improvements by February 1, 2018.

(b) *Extensions of Time.* In addition to delays in the Project deadlines as may be permitted due to Enforced Delays, it is understood that the foregoing critical deadlines are subject to all other terms and conditions set forth in this Agreement, and as will be more thoroughly set forth in the future. The critical construction deadlines may be altered or amended by written agreement signed by both Buyer and Seller. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager of Seller shall have the authority to approve extensions of time without City Council action if such extension does not exceed a cumulative total of 180 days.

(c) *Delays Due to City Vacations of Rights-of-Way.* Notwithstanding the foregoing, and in addition to the events of Enforced Delay (Section 13.9), the parties acknowledge that certain rights-of-way must be vacated by the City of Banning prior to Buyer commencing construction of certain Project improvements. If Buyer is unable to commence construction or progress with Project construction in accordance with this Section because of delays in City vacations of rights-of-way (at no fault of Buyer), such resultant delay to Project construction shall not constitute a breach or default of this Agreement by Buyer. Buyer's deadlines for Project construction shall be extended by the time period that Project continuation is delayed as a result of the City's failure to vacate a particular right-of-way so long as (i) such right-of-way vacation is actually necessary to Project continuation, and (ii) provided notice by the Buyer claiming such extension is sent to the Seller within ten (10) days of the commencement of the cause.

11.3 Project Financing.

(a) *Buyer Responsible for Project Costs.* Buyer is responsible for paying all costs for the Project unless otherwise provided herein. Project costs include the total Project construction costs, all Site preparation costs, all infrastructure costs, building permits and development fees, all design and consultant costs, all financing costs, all fixtures and equipment for the facility, and all other costs related to the Project of any nature whatsoever.

Although the parties hereto believe that the Site is being conveyed to the Buyer at fair market value and that no financial assistance or public monies are being provided to Buyer with respect to the Project, Buyer fully accepts the risk that construction or development of the Site may qualify as a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720 *et seq.*, ("Prevailing Wage Law"), such that it would cause Buyer to be required to pay prevailing wages for any aspect of the development. Buyer hereby represents and warrants that the Project is not subject to Prevailing Wage Law because no funding sources for the Project will trigger the application of Prevailing Wage Laws. Notwithstanding the foregoing, the Buyer fully bears any and all risk that Prevailing Wage Laws may be found to apply to the Project. To this end, Buyer acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("DIR"), require Buyer or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law for all or any of the assistance provided hereunder, then Buyer shall indemnify, defend, and hold Seller harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. The Seller makes no representation that any construction completed by Buyer is or is not subject to Prevailing Wage Law.

(b) *Buyer's Financial Statements.* Buyer agrees to provide the Seller with documentation and financial statements to the end of demonstrating that Buyer can fund the total projected/estimated Project costs through, cumulatively, the following sources: (i) Buyer equity, (ii) private financing from financial institutions, and/or (iii) financing provided through foreign investment via the USCIS-administered Immigrant Investor Program, also known as the "EB-5" program. To this end, no later than the Close of Escrow on the City Parcel, Buyer agrees to deliver to Seller, for Seller's approval, financial statements which, in the opinion of Seller, demonstrate that Buyer has the financial capability to undertake the development provided herein. Such financial statements shall include statements from financial institutions with whom Buyer conducts business evidencing their willingness to provide the financing required hereunder. If Buyer elects to self-fund the construction of the Project, Buyer may satisfy this obligation by providing Seller with a letter evidencing approval of the Project by the relevant parties on behalf of Buyer along with an explanation of facts demonstrating Buyer's ability to self-fund the Project.

(c) *Obtaining Construction & Permanent Loans.* Should Buyer choose to utilize any financing towards Project completion ("Buyer Financing"), Buyer agrees to deliver to Seller and obtain the approval of Seller of irrevocable written commitments from financial institutions licensed to do business in California and acceptable to the Seller ("Lender") agreeing to make a construction loan and a permanent loan to Buyer and secured by a First Deed of Trust (said commitment and loan are sometimes referred to collectively as the "Loan"). The amount of the commitment shall include all consultant and loan fees, "points," commissions, charges, furnishings, fixtures, taxes, interest start-up and other costs and expenses in an amount not less than the total Project construction contract and costs, less the amount of financing provided through foreign investment via the USCIS-administered Immigrant Investor "EB-5" Program.

Buyer covenants and agrees to take all action, furnish all information, give all consents and pay all sums required to keep said commitment and Loan in full force and effect and shall comply with all conditions thereof, and shall promptly execute, acknowledge and deliver all loan applications, credit applications and data, financial statements, and loan documents in connection therewith, and shall actually draw upon and utilize the full amount of said Loan only for financing the cost of the Project.

(d) *Seller Approval Of Lender.* Buyer shall not enter into any conveyance for financing without the prior written approval of Seller. Seller's written approval or disapproval shall not be unreasonably withheld or delayed. Seller's review of the Lender shall be limited to the question of whether or not said Lender is a qualified and responsible financial or lending institution or other acceptable entity or person capable of performing its obligations under the Loan.

(e) *EB-5 Financing.* The parties anticipate that Buyer will finance the project, in part, via foreign investments administered pursuant to the USCIS-administered Immigrant Investor "EB-5" Program. Buyer covenants and agrees to abide by all EB-5 regulations and requirements, 8 U.S.C.S. §§ 1153 (b)(5), 1186b; 8 C.F.R. §§ 204.6, 216.6.

11.4 Project Plans, Final Building Plans.

(a) *Proposed Project's Consistency With Plans and Codes.* Seller warrants and represents that the City of Banning General Plan, Zoning Ordinance, and Redevelopment Plan permit Seller's proposed development, and construction, operation, and use of the Site as provided in this Agreement, including without limitation the Project as described in Exhibit "D", subject only to (i) approval of this Agreement and the proposed Project pursuant to Health and Safety Code Section 33433, and (ii) those development approvals yet to be obtained, including site plan review, and (iii) City of Banning review and approval of the Final Map for the Project. It is expressly understood by the parties hereto that Seller makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City. The City and any other governmental body with jurisdiction over the Project reserve full police power authority over the Project. However, Seller shall reasonably cooperate with Buyer in procuring the foregoing approvals. Nothing in this Agreement shall be deemed

to be a prejudgment or commitment with respect to such items or a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

(b) *Evolution Of Development Plan.* Prior to the Effective Date of this Agreement, the Seller approved the Buyer's Conceptual Plans (Exhibit "D"). On or before commencement of any Project construction, Buyer must submit to the Seller preliminary, and thereafter final, drawings and specifications for development of the Project in accordance with the City's requirements. The term preliminary and final drawings shall be deemed to include site plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, material pallets, a description of structural, mechanical, and electrical systems, the Final Map and all other plans, drawings and specifications. Final drawings will be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Concept Plans (Exhibit "D") and the various development approvals referenced hereinabove, except as such items may be amended by Seller and Buyer in writing. Plan submissions shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved.

(c) *Buyer Efforts To Obtain Approvals.* Buyer shall exercise its commercially reasonable efforts to timely submit all documents and information necessary to obtain all development and building approvals from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Buyer shall comply with all applicable development standards in the City of Banning Municipal Code and shall comply with all building codes, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

(d) *Disapproval.* The Seller shall reasonably approve or disapprove any submittal made by Buyer pursuant to this Section within sixty (60) business days after such submittal. All submittals made by Buyer shall note the 60-business day time limit, and specifically reference this Agreement and this Section. Any disapproval shall state in writing in reasonable detail the reason for the disapproval and the changes which the Seller requests be made. Buyer shall make the required changes and revisions and resubmit for approval as soon as is reasonably practicable but no more than thirty (30) business days of the date of disapproval. Thereafter, Seller shall have an additional ten (10) business days for review of the re-submittal, but if the Seller disapproves the re-submittal, then the cycle shall repeat, until the Seller's approval has been obtained. If Buyer desires to make any substantial change to approved working drawings, Buyer shall submit the proposed change to Seller for approval. If the drawings as modified by the proposed change conform to this Agreement and the Concept Plans (Exhibit "D"), City of Banning design criteria for the downtown region, and all other applicable City of Banning regulations, Seller shall approve the change and Seller shall notify Buyer of its approval or disapproval in writing within thirty (30) business days after submission of such proposed change.

Seller's Community Development Director or designee shall have authority to determine on behalf of Seller if a proposed revision or change to any plans, drawings, or other

documents previously approved by Seller is a substantial change requiring further City approval. If the Community Development Director or his/her designee determines that the proposed revision or change is not substantial, no approval by City of such revision or change will be necessary. Seller shall reasonably approve or disapprove the plans, drawings and related documents referred to in this Section 11.4 within the times stated in foregoing paragraph of this subpart (d). However, to the extent that Buyer proposes substantial revisions or changes to any plan, drawing, or other document previously approved by Seller, Buyer acknowledges that such substantial revision will require review by the City Council or such other legislative body(ies) as may be applicable and, in such circumstance, Buyer agrees to waive the time frames set forth herein if necessary. City's review is intended to insure that the plans, drawings and related documents are consistent with the Project Concept (Exhibit "D"). Any disapproval shall state in writing the reasons for disapproval and the changes which Seller requests to be made. Such reasons and such changes must be consistent with the Project Concept (Exhibit "D") and any items previously approved or deemed approved hereunder. Buyer, upon receipt of a disapproval based upon powers reserved to Seller hereunder, shall revise the plans, drawings and related documents, and shall resubmit to Seller as soon as possible after receipt of the notice of disapproval; provided that in no case shall Seller be entitled to require changes which are inconsistent with the Project Concept (Exhibit "D"), the most recently-applicable, previously-approved or deemed-approved items.

During the preparation of all drawings and plans, the parties shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by Seller. If any substantial revisions or corrections of plans approved by Seller shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, the parties shall cooperate in efforts to develop a mutually acceptable alternative.

11.5 Applicable Laws. Buyer shall carry out the construction of the Project improvements in conformity with all applicable laws, including all applicable federal and state labor laws.

11.6 Anti-Discrimination During Construction. Buyer, for himself and his successors and assigns, agrees that in the construction of the improvements to be constructed by Buyer, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

11.7 Rights Of Holders Of Approved Security Interests In Site.

(a) *Definitions.* As used in this Section, the term "mortgage" shall mean a leasehold mortgage and include any mortgage, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term "holder" shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

(b) No Encumbrances Except Mortgages To Finance The Project.

Notwithstanding the restrictions on transfer in Section 11.1, mortgages required for any reasonable method of financing of the construction of the Project improvements are permitted before issuance of a Certificate of Completion but only for the construction of Project improvements thereon, and for any other expenditures necessary and appropriate to develop the Site under this Agreement, or for restructuring or refinancing any of same, so long as the refinancing does not exceed the then-outstanding balance of the existing financing. The Buyer (or any entity permitted to acquire title under this Section) shall notify the Seller in advance of any mortgage, if the Buyer or such entity proposes to enter into the same before issuance of the Certificate of Completion. The Buyer or such entity shall not enter into any such conveyance for financing without the prior written approval of the Seller as provided in Section 11.1. Any lender approved by the Seller pursuant to Section 11.1 shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, the Buyer shall promptly notify the Seller of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Certificate of Completion, whether by voluntary act of the Buyer or otherwise.

(c) Buyer's Breach Shall Not Defeat Mortgage Lien. Buyer's breach of any of

the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Site, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage of the Site whose interest is acquired by foreclosure, trustee's sale or otherwise.

(d) Holder Not Obligated To Construct Or Complete Improvements. The holder

of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the Project improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

(e) Notice Of Default To Mortgagee, Deed Of Trust Or Other Security Interest Holders.

Whenever Seller shall deliver any notice or demand to Buyer with respect to any breach or default by Buyer hereunder, Seller shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to Seller therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

(f) Right To Cure. Each holder (insofar as the rights of Seller are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

(i) Obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and

(ii) Add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of Buyer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Buyer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed Buyer's obligations to Seller by written agreement satisfactory to Seller with respect to the Site or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the Seller that it has the qualifications and financial responsibility necessary to perform such obligations. Any holder properly completing such improvements shall be entitled, upon written request made to Seller, to a Certificate of Completion from Seller.

(g) *Seller's Rights Upon Failure Of Holder To Complete Improvements.* In any case where one hundred eighty (180) days after default by Buyer in completion of construction of Project improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Site or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, Seller may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

(i) The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

(ii) All expenses, incurred by the holder with respect to foreclosure, if any;

(iii) The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Site, such as insurance premiums or real estate taxes, if any;

(iv) The costs of any improvements made by such holder, if any; and

(v) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the Seller.

In the event that the holder does not exercise its option to construct afforded in this Section, and Seller elects not to purchase the mortgage of holder, upon written request by the holder to Seller, Seller agrees to use reasonable efforts to assist the holder selling the holder's interest to a qualified and responsible party or parties (as determined by Seller), who shall assume the obligations of making or completing the improvements required to be constructed by Buyer, or such other improvements in their stead as shall be satisfactory to Seller. The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs (i) through (v) listed hereinabove, and any balance remaining thereafter shall be applied as follows:

(i) First, to reimburse Seller for all costs and expenses actually and reasonably incurred by Seller, including but not limited to payroll expenses, management expenses, legal expenses, and others.

(ii) Second, to reimburse Seller for all payments made by Seller to discharge any other encumbrances or liens on the Site or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due, to obligations, defaults, or acts of Buyer, its successors or transferees.

(iii) Third, any balance remaining thereafter shall be paid to Buyer.

(h) *Right Of Seller To Cure Mortgage, Deed Of Trust Or Other Security Interest Default.* In the event of a default or breach by Buyer (or entity permitted to acquire title under this Section) of a mortgage prior to the issuance by Seller of a Certificate of Completion for the Site or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, Seller may cure the default prior to completion of any foreclosure. In such event, Seller shall be entitled to reimbursement from Buyer or other entity of all costs and expenses incurred by Buyer in curing the default, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to:

(i) Any mortgage for financing permitted by this Agreement; and

(ii) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided that nothing herein shall be deemed to impose upon Seller any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Site in the event of its enforcement of its lien.

(i) *Right Of The Seller To Satisfy Other Liens On The Site After Conveyance Of Title.* After the conveyance of title and prior to the recordation of a Certificate of

Completion for construction and development of the Project, and after the Buyer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion thereof, the Seller shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Buyer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Buyer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site or any portion thereof to forfeiture or sale.

(j) *Minor Amendments.* Seller's City Manager shall be authorized to approve and execute minor non-substantive amendments to this Agreement as may be requested by Buyer's lender in relation to the protection of such lender's security interest in the Site, without formal approval of Seller's legislative body.

11.8 Certificate(s) Of Occupancy & Certificate Of Completion.

(a) *Certificate(s) Of Occupancy.* It is anticipated that each Parcel may be suitable for occupation and the carrying-on of business prior to actual completion of all Project improvements. When a Project Phase has been constructed to such a point that the commercial improvements on a particular Parcel can be safely opened for business (in compliance with all applicable codes, permit requirements and local agency regulation) without any interference by further Project activities, the Buyer shall request from the City a Certificate of Occupancy for all the improvements on that Parcel. The issuance of such Certificate of Occupancy shall be in the sole discretion of the City and based on its review of the existing Project improvements versus those improvements that will be required for Project completion, determination of whether further Project activities will unreasonably or harmfully interfere with the ongoing business activities upon a particular Parcel opened for business, and whether the issuance of a Certificate of Occupancy will comply with all codes, permit conditions and local agency regulations. Seller shall not unreasonably withhold a Certificate of Occupancy.

Upon issuance of a Certificate of Occupancy, Buyer shall promptly open the Business for business to the public. The Buyer shall exert all reasonable efforts to keep the Business open for business to the public during regular and customary business hours despite any ongoing Project activities. Buyer shall reasonably coordinate any ongoing Project activities with business hours in order to minimize any interference between the Project and the business. Such efforts to be undertaken by Buyer shall include, without limitation, the undertaking of Project activity during hours other than regular and customary business hours and the phasing of the Project such that Project activities continuing after the issuance of the Certificate of Occupancy will be in locations other than areas open to the public.

(b) *Certificate(s) Of Project Completion.* Upon the completion of all Project construction required to be completed by Buyer on the Site or any Parcel thereof pursuant to the terms of this Agreement, Seller shall furnish Buyer with the Certificate of Completion for the Site or Parcel thereof, to be in a form acceptable to Seller, upon written request therefore by Buyer. The Certificate(s) of Completion shall be executed

and notarized so as to permit it to be recorded in the Office of the Recorder of Riverside County.

(i) A Certificate of Completion shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Site or Parcel thereof and of full compliance with the terms of this Agreement with respect thereto. A partial Certificate may be issued for any Parcel as defined in Section 3.4 and shall constitute a Certificate as defined herein for any such Parcel, but not for any other Parcel not included in the Certificate.

(ii) After the issuance of a Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site or Parcel for which the Certificate is issued shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Deed and the CC&Rs. In the event of issuances of a Certificate for a Parcel only, Buyer shall continue to be bound by the provisions of this Agreement with respect to the other Parcels for which a Certificate has not been issued.

(iii) Seller shall not unreasonably withhold a Certificate of Completion. If Seller refuses or fails to furnish a Certificate of Completion within thirty (30) days after written request from Buyer or any entity entitled thereto, Seller shall provide a written statement of the reasons Seller refused or failed to furnish a Certificate of Completion. The statement shall also contain Seller's opinion of any further action Buyer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, Seller will issue its Certificate of Completion upon the posting of a bond or other security reasonably acceptable to Seller by Buyer with Seller in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed.

(iv) A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Buyer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Certificate of Completion is not notice of completion as referred to in the California Civil Code § 3093. Nothing herein shall prevent or affect Buyer's right to obtain a Certificate of Occupancy from the Seller before the Certificate of Completion is issued.

11.9 Use of the Site & Project; CC&Rs.

(a) *Use For Mixed Retail/Office/Hotel/Restaurant Businesses.* The Buyer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, that the Buyer and such successors and such

assigns shall devote the Site to the uses specified therefore in the Project Concept Plan (Exhibit "D"). Buyer further agrees to use, devote, and maintain the Site and each part thereof only for the following business uses:

- The approximate .77 acre Restaurant Parcel to be dedicated to the construction and operation of a single restaurant tenant.
- The approximate 1.85 acre Hotel Parcel to be dedicated to the construction and operation of a single hotel tenant.
- The approximate .78 acre General Retail Parcel to be dedicated to the construction and operation of a mixed retail and small restaurant complex.
- The approximate 1.85 acre Retail/Office Parcel to be dedicated to the construction and operation of a mixed retail and small offices complex.

In order to maintain these Site uses, Covenants, Conditions & Restrictions ("CC&Rs") substantially in the form attached hereto as **Exhibit "I"**, shall be recorded upon the Property by Seller on or before the Close of Escrow. Buyer acknowledges that the Site shall become subject to the CC&Rs upon Seller's execution and recordation of the CC&Rs and Buyer will comply with all of the terms and conditions contained in the CC&Rs.

(b) *Seller's Rights of Tenant Approval as to Restaurant Parcel & Hotel Parcel.* Of particular concern to Seller's conveyance of the Site to Buyer pursuant to the Agreement is the identity and quality of the commercial tenants to occupy the Hotel Parcel and Restaurant Parcel. The Site is situated in the City of Banning's central, downtown commercial area, and the major Hotel/Restaurant tenants on the Site shall represent high quality goods and services commensurate with one of the most centralized commercial locations in Banning. To this end, the initial and subsequent tenants for the Hotel Parcel and the Restaurant Parcel shall be subject to Seller's prior written approval (to be obtained from Seller prior to any occupancy by a Hotel or Restaurant tenant). For purposes of such tenant approval the following tenants are hereby approved as "**Pre-Qualified Tenants**" and are exemplars of the tenants sought for the Restaurant and Hotel Parcels:

- *For the Restaurant Parcel:* Applebee's, Red Lobster, Guys Italian Dinner House, Olive Garden, Hickory BBQ, B.J. Chicago Pizza, Buca de Beppo, Brinker International (Chillis, Macaroni Grill, etc.), California Pizza Kitchen, Chevys Mexican Restaurant, Elephant Bar, Hickory BBQ, Islands, Johnny Russo, Louise's Trattoria, P.F. Changs, Pat and Oscars, Marie Calendars, Red Robin, Roadhouse Grill, Rubios, Texas Roadhouse, or Wood Ranch BBQ.

- *For the Hotel Parcel:* Hampton Inn, Wyndham, Ayres, Doubletree, Embassy Suites, Hilton and its related brands, Holiday Inn, Marriott and its related brands, Radisson Inns, and Starwood.

In the event Buyer desires to lease the Hotel Parcel or Restaurant Parcel to a tenant that is not on the aforementioned pre-approved list, Buyer shall first obtain the approval of Seller's legislative body. Seller shall approve tenants for the Hotel or Restaurant Parcel who (i) operate a chain of stores on a nationwide basis, (ii) are comparable to the pre-approved, exemplar tenants listed above, and (iii) do significant marketing within the general market area. In its reasonable discretion, Seller may also approve other tenants, including tenants who operate a regional chain of business.

(i) **Processing Requests for Tenant Approval of Tenants Not Pre-Qualified.** Any request by Buyer to the Seller for approval of a particular tenant that is not Pre-Qualified to the Restaurant or Hotel Parcel shall be in writing and shall include such supporting information as may be reasonably required in order to enable the Seller to determine whether to approve or disapprove the identity of the tenant. The Seller's City Manager shall initially indicate within twenty (20) days after receipt of Seller's request for approval whether City Manager believes that the proposed tenant is equivalent to a Pre-Qualified Tenant and the reasons therefore. If the City Manager deems the tenant not equivalent, the Buyer may provide additional information and request reconsideration or find a new acceptable tenant. In any event, where City Manager has approved a tenant as equivalent, or on request by Buyer for determination by the City Council, the City Manager shall schedule the matter as an open public hearing item before the next possible regularly-scheduled City Council meeting, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. Based upon substantial evidence presented at said hearing, the Council shall determine by resolution, whether to approve or disapprove the proposed Hotel or Restaurant tenant. The Council shall state its factual and policy bases for such holding.

(ii) **Expiration of Seller Tenant Approval Rights.** Seller's right to approve tenants for the Hotel Parcel shall expire after a total of 5 years, consecutive or non-consecutive, of occupancy of the Hotel Parcel. Similarly, Seller's right to approve tenants for the Restaurant Parcel shall expire after a total of 7 years, consecutive or non-consecutive, of occupancy of the Restaurant Parcel. After such period of consecutive or non-consecutive occupancy by a qualified tenant, subsequent tenancies or occupancies of such space shall be exempt from such approval. The period of Seller Tenant Approval for the Hotel and Restaurant Parcels by a qualified tenant shall not commence to run until actual occupancy of such Parcel by an approved tenant, and shall be tolled for any period where the Parcel or is not occupied by an approved tenant.

(a) **Maintenance Of Improvements.** Buyer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Site or any part thereof, that, after Seller's issuance of (i) the Certificate of Occupancy for a particular Parcel, and

(ii) the Certificate of Completion for the Site or any Parcel thereof, the Buyer shall be responsible for maintenance of all improvements that may exist on the Site or Parcel, as the case may be, from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in first class condition and repair, and shall keep the Site free from any accumulation of debris or waste materials. The Seller shall also maintain all landscaping required pursuant to Seller's approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land and thereby become the obligations of any transferee of the Site or any portion thereof, and such obligations are set forth in the CC&Rs. Buyer hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City of Banning that would otherwise apply, except as specified in said CC&Rs.

(b) *Covenants Run With Land; Effect Of CC&Rs.* All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Site, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Each covenant to do or refrain from doing some act on the Site hereunder (i) is for the mutual benefit of and is a mutual burden upon each Parcel within the Site, (ii) runs with such lands, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.

Seller is deemed a beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land, including the CC&Rs, for and in their own right for the purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of Seller shall run without regard to whether Seller has been, remains or is an owner of any land or interests therein in the Site. Seller, and any of its related government entities or subdivisions, shall have the right, if any of the covenants set forth in this Agreement or the CC&Rs are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. With the exception of a government entity related to, or designated by the City, no other person or entity shall have any right to enforce the terms of this Agreement or the CC&Rs under a theory of third-party beneficiary or otherwise.

12. DEFAULTS; ENFORCEMENT.

12.1 Defaults & Right To Cure. A “Non-Defaulting Party” in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other party (“Defaulting Party”) to perform any material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in “Default” under this Agreement, if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within sixty (60) days after the date of such notice (“Cure Period”). However, if such non-monetary breach or failure cannot be cured within such Cure Period, and if and, as long as the Defaulting Party does each of the following:

- a. Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the sixty (60) day period;
- b. Notifies the Non-Defaulting Party of the Defaulting Party’s proposed course of action to cure the Default;
- c. Promptly commences to cure the Default within the sixty (60) day period;
- d. Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and
- e. Diligently prosecutes such cure to completion.

Then the Defaulting Party shall not be deemed in breach of this Agreement.

12.2 Legal Actions.

(a) *Institution Of Legal Actions.* In addition to any other rights or remedies, and subject to the requirements of Section 12.1, either party may institute legal action to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement, including the remedy of specific performance. Legal actions must be instituted and maintained in the Superior Court of the County of Riverside, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

(b) *Applicable Law & Forum.* The laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

(c) *Acceptance Of Service of Process.* In the event that any legal action is commenced by Buyer against Seller, service of process on Seller shall be made by personal service upon the City Manager, or in such other manner as may be provided by law. In the event that any legal action is commenced by Seller against Buyer, service of

process on Buyer shall be made in such manner as may be provided by law and shall be valid whether made within or without the State of California.

12.3 Rights & Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

12.4 Waiver. Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

12.5 Right of Reverter. The Seller shall have the right, at its option, to reenter and take possession of the Site or any Parcel thereof with all improvements thereon and to terminate and revest in the Seller the estate conveyed to the Buyer, if after conveyance of the estate and prior to the release of all Subsequent Deeds of Trust pursuant to Section 12.8, the Buyer (or his successors in interest) shall:

- (a) Fail to timely process a Final Map for the Project pursuant to California Government Code Section 66466 and/or timely and reasonably execute the Subsequent Deeds of Trust. Seller City shall not unreasonably delay or withhold approval of the Final Map.
- (b) Fail to timely commence construction of the improvements on a Parcel as required by this Agreement and in violation of Section 11.2, after exhausting the notice/cure procedures of Section 12.1, provided that the Buyer shall not have obtained an extension or postponement to which the Buyer may be entitled pursuant to this Agreement; or
- (c) Abandon or substantially suspend construction of the improvements for a period of thirty (30) days, except when due to an Enforced Delay (Section 12.8 hereof) and subject to the notice/cure procedures of Section 12.1, provided that the Buyer shall not have obtained an extension of time to which the Buyer may be entitled pursuant to this Agreement; or
- (d) Assign or attempt to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer, of the Site or any Parcel, or any part thereof, in violation of Section 11.1 of this Agreement, subject to the notice/cure procedures of Section 12.1.

Seller's right to re-enter, repossess, terminate, and revest shall be subordinate to and subject to and be limited by, and shall not defeat, render invalid, or limit: (i) Mortgage, deed of trust, or other security interests permitted by this Agreement; or (ii) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deeds of trust, or other security interests; or (iii) Any rights or interests which have vested with respect to any Parcel for which a partial Certificate of Completion has been recorded.

Upon the re vesting in the Seller of possession to the Site or any Parcel, as the case may be, as provided in this Section 12.5, the Seller shall, pursuant to its responsibilities under State law, use its best efforts to release, or resell the Site and/or Parcel, as the case may be, as soon and in such manner as the Seller shall find feasible and consistent with the objectives of applicable law and/or of the Redevelopment Plan to a qualified and responsible party or parties who will assume the obligation of making or completing the Project improvements, or such other improvements in their stead, as shall be satisfactory to the Seller and in accordance with the uses specified for the Site and all its Parcels, or any part thereof.

In the event of a resale, the proceeds thereof shall be applied as follows:

- a. As may be required by State law at the time of resale; or
- b. First, to reimburse the Seller for all costs and expenses incurred by the Seller, including but not limited to, salaries to personnel, legal costs and attorneys' fees, and all other contractual expenses in connection with the recapture, management, and resale of the Site or Parcel, as the case may be (but less any income derived by the Seller from the Site or Parcel in connection with such management); all taxes, assessments and water and sewer charges with respect to the Site or Parcel (or, in the event that Site or Parcel is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments, or charges, as determined by the Seller City, as would have been payable if the Parcel were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Site or Parcel, as the case may be; and amounts otherwise owing the Seller by the Buyer, its successors, or transferees; and
- c. Second, to reimburse the Buyer, its successor or transferee, up to the amount equal to (i) the sum paid by the Buyer to the Seller under this Agreement for the Site or Parcel, as the case may be, subject to the resale, which sum shall be calculated at \$4.46 per square foot, (ii) the costs incurred for the development of the Project and for the agreed improvements existing on the Site or Parcel subject to resale at the time of the re-entry and repossession, less (iii) any gains or income withdrawn or made by the Buyer from the Site or Parcel, as the case may be, or the improvements thereon.

- d. Any balance remaining after such reimbursements shall be retained by the Buyer as its property.
- e. Notwithstanding the foregoing, any default as described above shall constitute a default as to any portion of the Site for which a Certificate of Occupancy has not been issued. Accordingly, a default with respect to any one Parcel shall constitute a default as to all other Parcels, except as to any Parcel where a Certificate of Occupancy has been issued for all Project improvements planned for that Parcel.. The reverter provisions of this Section ~~12.5~~ would therefore apply to the Parcels not covered by duly-issued Certificates of Occupancy for all improvements on the Parcel, as further described in Section ~~12.7~~.

12.6 Construction Against Forfeitures. To the extent that the right established in Section ~~12.5~~ involves a forfeiture, it must be strictly interpreted against the Seller, the party for whose benefit it is created. The rights established in Section ~~12.5~~ are to be interpreted in light of the fact that the Seller will convey the Site and its Parcels to the Buyer for development, and not for speculation in undeveloped land.

12.7 Enforcement of Note & Rights of Reverter Through Deed of Trust & Subsequent Deeds of Trust. All deed of trust required by this Agreement shall contain the rights of reverter for the benefit of Seller specified in Section ~~12.5~~.

(a) *Default Prior to Final Map Approval.* Prior to the recordation of the four Subsequent Deeds of Trust, the Promissory Note and Seller's rights of reverter shall be secured in accordance with Section 3.4(a) above. Any uncured default of this Agreement by Buyer prior to the recordation of the four Subsequent Deeds of Trust shall result in Seller's right to, in Seller's sole discretion, immediately enforce the Deed of Trust to either demand the Purchase Price, which shall be immediately due and payable, or to exercise the right of reverter as to all portions of the Site that have been conveyed to Buyer to date and where no Certificate of Occupancy has been issued.

(b) *Default After Recordation of Parcelized Deeds of Trust.* After the recordation of the Subsequent Deeds of Trust pursuant to Section 3.4(b) above, the following acts of default by Seller shall, subject to the cure periods set forth in Section 12.1, result in enforcement of one or more of the Subsequent Deeds of Trust as follows:

1. Buyer's failure to pay for any portion of the Purchase Price within the time stated in Section ~~3.3~~ shall render *all* Subsequent Deeds of Trust immediately due and payable and/or the Seller's rights of reverter immediately exercisable on any and all Parcel(s) that have not received an issued Certificate of Occupancy for all Project improvements to be built on that Parcel.
2. If Buyer pays the full Purchase Price in accordance with Section ~~3.3~~, but thereafter either (1) fails to proceed with Project construction in accordance with the timeframes set forth in Section ~~11.2~~, or (2) commits

any of the actions giving rise to Seller's right of reverter pursuant to Section 12.5, then the Seller may immediately enforce any and all Deeds of Trust that have not been released pursuant to Section 12.8.

12.8 Release of Subsequent Deeds of Trust. Upon any payments of the Purchase Price pursuant to Section 3.3, the Seller shall amend or revise the Promissory Note and/or any recorded Deed(s) of Trust (as applicable) as needed to reflect the actual balance of Purchase Price plus interest due from Buyer. Even upon full payment of the Purchase Price, however, Buyer acknowledges that the Deed(s) of Trust secure not only the repayment of money, but also the performance of certain covenants, promises, agreements, obligations and responsibilities created in Seller under this Agreement with respect to performing the Project. To this end, the Deed(s) of Trust shall be released only as follows:

(a) *Initial Deed of Trust at Exhibit "G".* The initial Deed of Trust, to be recorded pursuant to Section 3.4(a), may be released partially upon recordation of the Subsequent Deeds of Trust.

(b) *Release of Subsequent Deeds of Trust Commensurate with Project Schedule.* Each Subsequent Deed of Trust shall be released from the underlying Parcel only after all the following events have occurred: (i) payment of the full Purchase Price for the whole Site or for the pro-rata share of the Purchase Price attributable to the Parcel (at \$4.46 per square foot), and (ii) Buyer's timely commencement of construction of Project improvements upon the Parcel underlying the Subsequent Deed of Trust, plus (iii) diligent, uninterrupted prosecution of such Project improvements to completion on that Parcel. For example, the Subsequent Deed of Trust recorded upon the Restaurant Parcel shall only be released upon Buyer's payment of the value of the Restaurant Parcel (at \$4.46 per square foot) and completion of Project improvements upon that Parcel (as demonstrated by issuance of a Certificate of Occupancy for all planned Restaurant Parcel Project improvements pursuant to Section 11.8(a)). The City shall release the Subsequent Deed of Trust recorded upon each Parcel no later than thirty (30) days after issuance of a Certificate of Occupancy (Section 11.8(a)) for all Project improvements on a Parcel.

12.9 Enforced Delays; Extension Of Times of Performance. Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; subsurface conditions on the Site and unknown soils conditions; governmental restrictions or priority litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of Seller shall not excuse performance by Seller); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "**Enforced Delay**"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the enforced delay, and shall commence to

run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause. Failure to provide such notice shall constitute a waiver of the claim. The following shall not be considered as events or causes beyond the control of Buyer, and shall not entitle Buyer to an extension of time to perform: (i) Buyer's failure to obtain financing for the Project, and (ii) Buyer's failure to negotiate agreements with prospective users for the Project or the alleged absence of favorable market conditions for such uses.

Times of performance under this Agreement may also be extended by mutual written agreement by Seller and Buyer. The City Manager of Seller shall have the authority on behalf of Seller to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the Site.

13. MISCELLANEOUS.

13.1 Brokerage Commissions. Buyer and Seller each represent and warrant to the other that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. Buyer and Seller each agree to indemnify and hold the other party harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

13.2 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective heirs, representatives, transferees, successors and assigns. The transfer of all or any part of the interest of any party hereunder in the Property shall not release Seller of its obligations under this Agreement.

13.3 Time of Essence. Time is of the essence in this Agreement and with respect to each covenant and condition hereof. Buyer and Seller each specifically agrees to strictly comply and perform its obligations herein in the time and manner specified and waives any and all rights to claim such compliance by mere substantial compliance with the terms of this Agreement.

13.4 Time Period Computations. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and California state or national holidays unless the reference is to business days, in which event such weekends and holidays shall be excluded in the computation of time and provide that if the last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or California state or national holiday, such act or notice shall be deemed to have been timely performed or given on the next succeeding day which is not a Saturday, Sunday or California state or national holiday.

13.5 Qualification; Authority. Each individual executing this Agreement on behalf of a partnership or corporation represents and warrants that such entity is duly formed and authorized to do business in the State of California and that he or she is duly authorized to execute and deliver this Agreement on behalf of such partnership or corporation in

accordance with authority granted under the formation documents of such entity, and, if a corporation, by a duly passed resolution of its Board of Directors, that all conditions to the exercise of such authority have been satisfied, and that this Agreement is binding upon such entity in accordance with their respective terms. Upon request of either party, Escrow Holder or Title Company, Buyer and Seller agree to deliver such documents reasonably necessary to evidence the foregoing.

13.6 Attorneys' Fees. In the event of any dispute between the parties hereto arising out of the subject matter of this Agreement or the Escrow, or in connection with the Property, the prevailing party in such action shall be entitled to have and to recover from the other party its actual attorneys' fees and other expenses and costs in connection with such action or proceeding (including expert witness fees) in addition to its recoverable court costs.

13.7 Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

13.8 No Waiver. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

13.9 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

13.10 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13.11 Merger of Prior Agreements and Understandings. This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

13.12 Covenants to Survive Escrow. The covenants and agreements contained herein shall survive the Close of Escrow and, subject to the limitations on assignment contained in Section 11.1 above, shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors and assigns.

13.13 Consent of Parties. Whenever by the terms of this Agreement the consent or approval of Buyer or Seller is to be given, such consent or approval shall be evidenced by the signature of one person designated for such purpose. Such designated persons may be changed by the party so designating at any time by the delivery of a written notice to the other party.

13.14 No Withholding Because Non-Foreign Seller. Seller represents and warrants to Buyer that Seller is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or any out-of-state seller under California Revenue and Tax Code Section 18862 and that is will deliver to Buyer on or before the Close of Escrow (i) a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulation promulgated thereunder and (ii) a California Form 590.

13.15 Execution in Counterpart. This Agreement and any modifications, amendments or supplements thereto may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

13.16 Notices. Any notice which either party may desire to give to the other party or to the Escrow Holder must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

To Buyer: JMA Village, LLC 1137 Second Street
Santa Monica, CA 90403
Attention: Mr. Arthur Pearlman or Mr. Mark Frost
Telephone: (310) 280-2425
Facsimile: (310) 260-6334

Copy to: Cox, Castle & Nicholson LLP
Attn: Ed. Dygert
2049 Century Park East, Suite 2800
Los Angeles, California 90067
Telephone: (310) 284-2256
Facsimile: (310) 277-7889

To Seller: The City of Banning
99 E. Ramsey St.
Banning, CA 92220
Attention: City Manager
Telephone: (951) 922-3171
Facsimile: (951) 922-3174

Copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave., Ste. 1700
Irvine, CA 92612
Attn: David J. Aleshire, Esq.
Facsimile: 949-223-1180

Escrow Holder: At the above stated address.

13.17 Exhibits. Exhibits "A" through "I", inclusive are attached hereto and incorporated herein by this reference. The Exhibits are as follows:

<u>Exhibit</u>	<u>Description</u>
A.	Legal Description of Site
B.	Legal Description of City Property
C.	Legal Description of Third-Party Parcel
D.	Project Concept Plans
E.	Map Showing Restaurant, Hotel, General Retail and Retail/Office Parcels
F.	Promissory Note
G.	Deed of Trust to be Recorded upon Closing on City Property and/or Site
H.	Grant Deed Form
I.	CC&Rs

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Purchase and Sale of Real Property and Escrow Instructions as of the date set forth above.

“BUYER”
JMA VILLAGE, LLC,
A California limited liability company

By: _____
Arthur Pearlman

By: _____
Mark Frost

ATTEST:

“SELLER”
CITY OF BANNING,
A California General Law Municipality

Secretary

By: _____
Barbara Hanna, Mayor

APPROVED AS TO FORM
ALESHIRE & WYNDER, LLP

Dave Aleshire, City Attorney

AGREED AND ACCEPTED AS OF THIS
____ DAY OF _____, 2012

CHICAGO TITLE COMPANY

By: _____
Sandra Olson, Escrow Officer

EXHIBIT A

Legal Description of Site

107542

EXHIBIT NO. A
To Banning and JMA Agreement
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EXHIBIT B

Legal Description of City Property

107542

EXHIBIT NO. B
To Banning and JMA Agreement
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EXHIBIT C

Legal Description of Third-Party Parcel

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EXHIBIT D

Project Concept Plans

EXHIBIT E

Tentative Tract Map Showing Approximate Parcel Boundaries

EXHIBIT F
Promissory Note

EXHIBIT G

Form Deed of Trust

EXHIBIT H

Form Grant Deed

EXHIBIT I

CC&Rs

**JOINT MEETING
CITY COUNCIL & HOUSING AUTHORITY BOARD
REPORT OF OFFICERS**

DATE: **January 10, 2012**

TO: **City Council**

FROM: **Bill R. Manis, Economic Development/Redevelopment Director**

SUBJECT: **California Supreme Court Decision Concerning Redevelopment**

RECOMMENDATION:

That the City Council ("City") and the Banning Housing Authority to take the following actions:

1. Adopt Resolution No. 2012-04 of the City Council of the City of Banning, California, determining that the City of Banning elects to, and shall retain the housing assets and functions of the dissolved Community Redevelopment Agency of the City of Banning pursuant to California Health and Safety Code Section 34176 and hereby transfers such housing functions and assets to the Banning Housing Authority; and
2. Adopt Resolution No. 2102-01 HA of the Banning Housing Authority accepting from the City of Banning the retained housing assets and functions of the dissolved Community Redevelopment Agency of the City of Banning.

BACKGROUND:

Earlier this year as part of its 2011-12 budget proposal, Governor Brown's Administration proposed permanently shutting-down 425 local redevelopment agencies throughout California. The proposal represented a continued effort on behalf of the Brown Administration to end redevelopment and/or raid local government funds. Two Assembly Bills were drafted, AB1X26 the Redevelopment Dissolution Act or "Opt Out" Bill, and AB1X27 the Alternative Redevelopment Program Act or "Opt In" Bill. These two bills were passed as part of the 2011-12 State budget and work together to eliminate redevelopment agencies ("AB1X26") unless the agencies agree to pay the State \$1.7 billion in the current fiscal year and \$400 million to schools and special districts in subsequent budget years ("AB1X27").

Agencies throughout California argued that the two Bills would bring little financial benefit to the State, but would permanently destroy hundreds of thousands of jobs which would result in the loss of billions in local economic activity. The elimination of redevelopment would also take away the most significant tool available to local governments to meet the States infill and land-use objectives. Just in fiscal year 2010-2011 the Community Redevelopment Agency of the City of Banning has paid the State \$2,298,433 in redevelopment funds.

In July 2011, California Redevelopment Association ("CRA") in conjunction with the League of California Cities ("League") and several individual cities filed a lawsuit in the California Supreme Court challenging the constitutionality of AB1X26 and AB1X27. The CRA/League legal team argued that these two budget bills directly violated Proposition 1A (2004), Proposition 22, and Article 16, of the California Constitution.

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THE DECISION:

On December 30, 2011, the State Supreme Court announced their opinion on the CRA/League challenge and ruled to uphold AB1X26 finding the Dissolution Act constitutional and striking down AB1X27 finding the Alternative Redevelopment Program Act unconstitutional. The Court's bifurcated decision means that all RDA's will be dissolved under the constitutional Dissolution Act, and none will have the opportunity to opt into continued existence under the now unconstitutional AB1X27. The Court also determined to push back the deadlines in the Dissolution Act arising prior to May 1, 2012, by a period of four months. This means, all RDA's will be dissolved and their Successor Agencies will begin to function on February 1, 2012.

MAJOR IMPLICATIONS FOR CITIES AND REDEVELOPMENT AGENCIES:

As of January 13, 2012, the City is deemed by operation of law to act as the Successor Agency to the Redevelopment Agency. In this capacity, the City must "wind-down" the Agency functions and assets under the guidance of an "Oversight Committee". The Supreme Court decision sets a number of new deadlines and critical time periods, the soonest of which are shown in the AB1X26 Timeline attached hereto as Attachments 4.

A. *Definitions:* AB1X26 contains some key definitions and concepts that are critical to understanding how the bill works:

- "Enforceable obligations" refers to actual obligations pre-existing the Bill's passage. These include existing bonds, existing loans, payments required by the federal government, and any other "legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy." "Enforceable Obligations" also include contracts for the continued administration of the Agency (while it still exists) and any required payments for judgments or settlements.
- "Successor Agency" means the agency charged with the responsibility of paying or performing enforceable obligations, disposing of redevelopment agency assets and winding up the business of the agency. Generally, this means the City--and the City becomes the Successor Agency by operation of law on January 13, 2012, per the Supreme Court's ruling. If the City does not want to be the Successor, it has to so inform the county auditor-controller by January 13, 2012, in which case another successor will be "assigned to" the Agency's assets by the County and/or State.
- "Oversight Board" refers to the local appointed board that will, in conjunction with the county auditor-controller and the Department of Finance, oversee Successor Agencies through the process of "winding up" each redevelopment agency. In general, "Oversight Boards" will consist of (i) a member appointed by the county board of supervisors, (ii) a member appointed by the largest special district in the territorial jurisdiction, (iii) a member appointed by the mayor of the city that formed the agency, (iv) a member appointed by the county superintendent of education to represent schools, (v) a representative from the Chancellor of California Community Colleges, (vi) a county-appointed member of the public, and (vii) a member representing employees of the former agency appointed by the mayor. Oversight boards are authorized to direct and approve certain actions of successor

Supreme Court Decision Concerning Redevelopment

January 10, 2012

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agencies. When all indebtedness of a redevelopment agency has been paid, the oversight board automatically dissolves.

- “Taxing agencies” refers to those agencies that receive pass-through payments and distributions of property taxes—primarily schools, the county and special districts.

A. *The "Big Freeze" is Ongoing:* There is currently in effect a “freeze” upon the ability of agencies to perform *new* business. This is unaffected by the Supreme Court decision. Since June 29, 2011, agencies *have been disallowed* from incurring new or expanding existing monetary or legal obligations; they cannot incur debt, provide financial assistance, amend or modify existing agreements, forgive loans, renew leases, dispose of or transfer assets, buy or sell real property, increase or transfer deposits in the Low and Moderate Income Housing Fund, approve or amend redevelopment or implementation plans, or increase compensation for agency employees, etc. Agencies also may not form a joint powers authority or become a member of one, commence a condemnation proceeding, accept financial assistance from state or federal sources, or prepare an environmental impact report. The only exception to this “freeze” is that agencies may continue to meet their enforceable obligations. “Enforceable obligations” are to be construed narrowly, so obligations that are anything less than a firm contract establishing fully-negotiated deal points may not qualify as enforceable obligations.

B. *A Number of Critical Actions Must be Complete Before February 1, 2012:* The Supreme Court decision sets a number of new deadlines and critical time periods, the soonest of which are shown in the AB1X26 Timeline attached hereto as Attachments 4.

- The Agency must adopt (or re-adopt) an “Enforceable Obligation Payment Schedule” by February 1, 2012. This Schedule is a list of *every* pre-existing, enforceable obligation that must be continued under the terms of a contract, judgment, settlement, bond, or other such binding obligation. The Schedule must list project details, payees and the amount of payments due, by month, through December 2011. Payment schedules for pre-existing bonds and for agency employee compensation may be aggregated. Although the Agency has previously adopted this schedule, the Supreme Court decision says it must be re-adopted, thus giving City staff an opportunity to re-review the schedule and ensure that it is complete.
- The State Department of Finance has the authority—apparently at any time—to review the Agency’s compilation of payment schedules and proposed actions through February 1, 2012. The agency must provide the Department of Finance with a contact person and the Department of Finance can delay or veto any payments or actions proposed by the agency under its payment schedule.
- Successor Agency must create Redevelopment Obligation Retirement Fund by February 1, 2012. This Fund is the fund into which the county auditor-controller shall transfer an amount of property tax revenues equal to that specified in the Recognized Obligation Payment Schedule so that the Agency can cover its enforceable obligations.
- By February 1, 2012, the Successor Agency must determine whether it will elect to retain the housing functions of the Redevelopment Agency. This is discussed further below.

C. *February 1, 2012, Will be the Date of Dissolution of All Redevelopment Agencies:*

Redevelopment agencies will cease to exist as of February 1, 2012. At that time, all Agency property and obligations would be transferred to the Successor Agency. The Successor Agency will be overseen by an Oversight Board, the county auditor-controller and the Department of Finance. Tax increment will no longer exist, but property taxes will continue to be allocated to pay previously-incurred enforceable obligations of the redevelopment agency. Also, as of that date:

- Unobligated Low and Moderate Income Housing Funds (i.e., those housing funds that are not required to meet “enforceable obligations”) will be transferred to the county auditor-controller for distribution to the taxing agencies.
- The Successor Agency will be required to repay existing indebtedness, complete existing contractual obligations and otherwise wind-up operations of the agency. As noted above, AB1X26 states a clear intent that successor agencies must preserve agency assets for the benefit of the taxing agencies. To this end, any fund or asset transfers made by the Successor Agency that are not clearly related to a pre-existing, enforceable obligation to a third party will be subject to scrutiny.
- By March 1, 2012, the Successor Agency must have adopted (or re-adopted) its Recognized Obligation Payment Schedule, which must be acceptable to the Oversight Board, State Controller and Department of Finance. The only Agency-related payments allowed will be those payments listed on the Recognized Schedule. The Recognized Obligation Payment Schedule replaces Statements of Indebtedness, which would no longer exist or have any effect. The Recognized Schedule must be prepared by the Successor Agency every six months, subject to the approval of the Oversight Board. Even though the Agency/City has already adopted a Recognized Obligation Payment Schedule pending the Supreme Court case, the new deadlines set by the Supreme Court allow City staff to review, revisit and revise the Schedule before re-adopting it.
- By April 1, 2012, the Successor Agency must report to the county auditor-controller whether the total amount of property tax available to the Agency will be sufficient to fund its obligations under the Recognized Obligation Payment Schedule over the next six-month fiscal period.
- The Department of Finance takes on a new oversight role with respect to the actions of redevelopment agencies, successor agencies and oversight boards. Any action of these entities does not become effective for three business days, during which the Department of Finance may give notice it wishes to review the action. If the Department of Finance gives such notice, it has ten days to approve the action or resubmit it for reconsideration.

POSSIBLE FUTURE LEGISLATION:

In light of the recent State Supreme Court decision, CRA and League representatives have vowed to work with State Legislators immediately to develop legislation to revive redevelopment in order to protect local communities, job creation and our economy. It is premature to speculate on the nature or likely outcome of such proposals, but staff will continue to monitor and provide timely information regarding the progress of any future legislative actions.

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As of January 5, 2012, the League of California Cities distributed a memorandum outlining their interpretation of the Supreme Court decision and an ABX126 Timeline, Attachments 3 and 4 respectively.

TRANSFER OF THE HOUSING FUNCTION:

AB1X26 does not eliminate a city or county's affordable housing needs or obligations or divest the city or county of authority over affordable housing. Instead, AB1X26 "authorizes" the city or county that established a redevelopment agency to "elect" to retain housing assets and functions. Importantly, even if the City retains such housing functions, it still must surrender all the former Agency's Low and Moderate Income Housing Funds to the county auditor-controller for distribution to the taxing agencies. In short, cities may retain their housing functions, but will lose their established funding to do so.

The City of Banning will become the Successor Housing Agency to the former Agency and it is recommended that the City will take over and assume the housing functions. The City of Banning will be able to use its inherent powers (not limited by AB1X26's restrictions on Successor Agencies) to fulfill housing obligations and will be able to exercise Redevelopment Law housing powers to fulfill such obligations. Ultimately, under the proposed action, the City will immediately transfer such functions to the Banning Housing Authority.

FISCAL DATA:

The Administrative Services Department will be working with our auditors and City Attorney to determine the financial impact the ruling will have on the City of Banning.

RECOMMENDED BY:

Bill R. Manis

Bill R. Manis
Economic Development/Redevelopment Director

APPROVED BY:



Andrew J. Takata
City Manager

REVIEWED BY:

June Overholt
Deputy City Manager/Administrative Services Director

Attachments:

1. Resolution No. 2012 -04
2. Resolution No. 2012-01 HA
3. League of California Cities – Memorandum Concerning Supreme Court Decision
4. League of California Cities – ABX126 Timeline

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ATTACHMENT 1

Resolution No. 2012-04

RESOLUTION NO. 2012-04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA DETERMINING THAT THE CITY OF BANNING ELECTS TO, AND SHALL RETAIN THE HOUSING ASSETS AND FUNCTIONS OF THE DISSOLVED BANNING COMMUNITY REDEVELOPMENT AGENCY PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE § 34176 AND HEREBY TRANSFER SUCH HOUSING FUNCTIONS AND ASSETS TO THE BANNING HOUSING AUTHORITY

WHEREAS, the Community Redevelopment Agency of the City of Banning (“Redevelopment Agency”) is a public body, corporate and politic, organized and existing under the California Community Redevelopment Law (Health & Safety Code §§ 33000 *et seq.*); and

WHEREAS, the City of Banning is a municipal corporation and a general law city organized and existing under the Constitution of the State of California (“City”); and

WHEREAS, on December 29, 2011, the California Supreme Court issued its opinion in the case *California Redevelopment Association, et al. v. Ana Matosantos, etc., et al.*, Case No. S196861, and upheld the validity of Assembly Bill 1x26 (“AB1x26”) and invalidated Assembly Bill 1x27; and

WHEREAS, the Court’s decision results in the implementation of AB1x26 which dissolves all the redevelopment agencies in the State of California as of February 1, 2012; and

WHEREAS, the City is, by operation of law, the Successor Agency to the Redevelopment Agency for purposes of winding-down the Redevelopment Agency under AB1x26; and

WHEREAS, pursuant to a provision of AB1x26, codified as Health and Safety Code Section 34176, the City as Successor Agency may elect to retain the housing assets and functions of the dissolved redevelopment agency; and

WHEREAS, the City Council, having considered the matter, has determined, in its legislative discretion, that it is in the best interests of the City for the City to retain the housing assets and functions of the dissolved Redevelopment Agency and assign such assets and functions over to the Banning Housing Authority.

NOW, THEREFORE, the City Council of the City of Banning, and Successor Agency to the Redevelopment Agency, resolves as follows:

SECTION 1. The foregoing Recitals are true and correct and are incorporated herein.

SECTION 2. The City Council hereby affirmatively determines that the City of Banning elects to, and shall, retain the housing assets and functions of the dissolved Community Redevelopment Agency of the City of Banning.

SECTION 3. The City Council hereby transfers and assigns such housing assets and functions of the dissolved Banning Redevelopment Agency to the Banning Housing Authority. By adopting this Resolution, the City, Redevelopment Agency and/or Banning Housing Authority do not in any way waive or relinquish any claims or legal challenges to the validity of AB1x26 either on its face or as-applied.

SECTION 4. The City Manager and his authorized designees are hereby authorized and directed to take such other and further actions and sign such other and further documents as is necessary and proper to implement this Resolution on behalf of the City.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Banning City Council this 10th day of January 2012.

Don R. Robinson, Mayor
City of Banning

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

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, hereby certify that Resolution No. 2012-04 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of January 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT 2

Resolution No. 2012-01 HA

RESOLUTION NO. - 01 HA

A RESOLUTION OF THE BOARD OF THE HOUSING AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, ACCEPTING FROM THE CITY THE RETAINED HOUSING ASSETS AND FUNCTIONS OF THE DISSOLVED BANNING COMMUNITY REDEVELOPMENT AGENCY

WHEREAS, on December 29, 2011, the California Supreme Court issued its opinion in the case *California Redevelopment Association, et al. v. Ana Matosantos, etc., et al.*, Case No. S196861, and upheld the validity of Assembly Bill 1x26 ("AB1x26") and invalidated Assembly Bill 1x27; and

WHEREAS, the Court's decision results in the implementation of AB 1x26 which dissolves all the redevelopment agencies in the State of California as of February 1, 2012; and

WHEREAS, pursuant to a provision of AB1x26, codified as Health and Safety Code Section 34176, as set forth by resolution adopted prior to or concurrent with this Resolution, the City Council of the City of Banning elected to retain the housing assets and functions of the dissolved Redevelopment Agency through the Housing Authority; and

WHEREAS, the Board of the Banning Housing Authority desire to memorialize the Authority's acceptance of the housing assets and functions of the dissolved Redevelopment Agency.

NOW, THEREFORE, the Board of the Housing Authority of the City of Banning resolves as follows:

SECTION 1. The foregoing Recitals are true and correct and are incorporated herein.

SECTION 2. The Board hereby affirmatively determines that the Authority agrees to, and shall, accept the housing assets and functions of the dissolved Community Redevelopment Agency of the City of Banning from the City of Banning.

SECTION 3. The Executive Director and his authorized designees are hereby authorized and directed to take such other and further actions and sign such other and further documents as is necessary and proper to implement this Resolution on behalf of the Authority.

PASSED, APPROVED, AND ADOPTED, this 10th day of January, 2012, by the following vote:

Barbara Hanna, Chairperson
Banning Housing Authority

ATTEST:

Marie A. Calderon
Authority Secretary

APPROVED AS TO FORM:

David J. Aleshire, Authority Counsel
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie, A. Calderon, Authority Secretary of the Banning Housing Authority, Banning, California, do hereby certify that the foregoing Resolution No. 2012-01 HA was duly adopted at a joint meeting of the Banning Housing Authority, Banning, California, on the 10th day of January, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, Authority Secretary
Banning Housing Authority
Banning, California

ATTACHMENT 3

**League of California Cities –
Memorandum Concerning Supreme Court Decision**



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TO: CALIFORNIA CITY OFFICIALS
FROM: Chris McKenzie, Executive Director
DATE: January 5, 2012
RE: Background on *CRA et al v. Matosantos*

The League and the California Redevelopment Association (CRA) are working actively with some deeply committed legislators and other partners on a legislative program to create jobs, build infrastructure and affordable housing, reclaim brownfields, reuse military bases, build infill projects and achieve other shared state-local goals in the wake of the recent California Supreme Court Decision. It will take a few weeks to develop the detailed proposal, and I explain at the end of this memo how you can help immediately. In the meantime, questions have understandably arisen over the decision last year to file the lawsuit that this memo answers. Proposition 22 was actually drafted initially to put an end to the threatened legislative raids of transportation (HUTA and Prop. 42 sales tax) and transit funding, but it also protects locally levied taxes, eliminates the borrowing of property taxes, and prevents the diversion of RDA funds. It should be noted that Prop. 22 actually prevented the loss of transportation funds in 2011.

The Supreme Court's Decision

In short, the Court's majority agreed that Prop. 22 prohibited the enactment of AB1x 27, the so-called RDA "ransom" bill, just as Prop. 22 was specifically designed to do. In contrast, however, the Court also concluded that Prop. 22 did not curtail the Legislature's discretionary power to establish or eliminate redevelopment agencies¹. The practical effect of the Court's decision was to reduce the financial benefit from the redevelopment legislation from \$1.7 billion to about \$1 billion, ironically about the same amount the CRA and League proposed last session that agencies provide on a voluntary basis. Moreover, the funds remaining after RDA successor agencies' enforceable obligations are paid will now flow through the regular property tax distribution process (including to cities) rather than through the special allocation mechanism in AB1x 27 to schools, transit agencies and fire districts only. The state general fund will receive an offsetting benefit from the amount of increased property taxes going to schools.

The Calculus Underlying the Decision to File the Lawsuit

A variety of factors went into the unanimous decisions by the CRA and League boards to file the lawsuit last July after the last-minute enactment of the two-bill legislative package that many legislators were told would not lead to the end of redevelopment agencies. They were:

¹ In drafting the redevelopment provisions of Prop. 22 CRA and the campaign team believed that for practical, legal and strategic reasons the legislature should retain its traditional authority over redevelopment agencies under Art. 16, Sec. 16 of the constitution and state statutes. On a practical basis, there would continue to be need for legislative oversight and reforms of redevelopment to address developing needs and criticisms. On a legal basis, proposing to lock redevelopment agencies permanently into the constitution could potentially be viewed later by the Court as an invalid "revision" of the constitution and outside the initiative power of the people. Finally, there was a practical concern that such a restriction on the legislature's power over RDAs would attract substantial and fatal opposition to the whole measure from the opponents of redevelopment.

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Future of Many Agencies at Risk. Shortly after the bills were passed in late June, the CRA asked its members about their practical impact on agencies. The CRA described the bills' impact in the July 18 news release that announced the filing of the lawsuit: "Many redevelopment agencies have notified us that they cannot afford the ransom payment and they will cease to exist. And those agencies that are planning on making the payment tell us that these payments will greatly diminish their ability to pursue vital local projects." Based on member feedback, the CRA believed as many as one-third (and possibly more) of the redevelopment agencies in the state could be forced out of existence by the legislation.

Risk of Increased Future Liability and Lost Litigation Opportunity. Moreover, since the legislation contained an ongoing required payment of \$400 million each year without any end, a failure to challenge the legislation at this time would have clearly opened the door in future years to increases in that amount. Moreover, agencies ran the clear risk of losing the future opportunity to challenge the legislation by failing to assert the claims when they first arose.

The Legal Assessment. There also was a careful legal assessment made of our chances of prevailing. Our legal counsel consulted extensively with a variety of redevelopment counsel. While there was an awareness of some risk of a split decision, our counsel strongly believed that the risk was minimal in light of the clear purpose of the people in recently enacting Prop. 22, the extensive evidence of clear violations of Prop. 22 in the legislation, other strong constitutional flaws of AB1x26, clear evidence the Legislature did not intend to eliminate agencies, and the Court's traditional deference to initiatives.

Defending Proposition 22. Prop. 22 passed with 61% of the popular vote. With this history and strong member support, the boards of both organizations believed the League and CRA had a duty to defend Prop. 22. As mentioned earlier, the Court actually concluded the legislature could not divert RDA funds because it would violate Prop. 22. While Prop. 22 was not drafted to guarantee the perpetual existence of RDAs, the two bills were so interconnected that it was anticipated that AB1x26 would be declared invalid under Prop. 22 as well.

Two-Part Legislative Strategy in the Works

The CRA and the League are working with key legislators and other groups to advance a two-part legislative strategy: (1) immediate passage of legislation to delay the effective date of the elimination of agencies on February 1 in order to provide time for a careful legislative debate about the second part of the strategy; and (2) comprehensive legislation that will help move the state and local governments forward together in creating jobs, building infrastructure and affordable housing, reclaiming brownfields, revitalizing truly blighted neighborhoods, reusing former military installations, etc.—the things that redevelopment has been used for so effectively. It is clear that doing so will require a united membership, strategic vision, willingness to compromise, and strong partnerships. The first priority is the extension.

We have accomplished a lot together in recent years to further local control and protect local revenue. We know this is a difficult time, but by working together we can achieve these goals. We will be calling on you to assist in the vital task of restructuring the next generation of redevelopment. We promise to keep you informed. Thank you for your continued leadership and support.

ATTACHMENT 4

**League of California Cities –
AB X1 26 Timeline**

By January 13	If city does not want to serve as the “successor agency” to its redevelopment agency, then it must submit a resolution to that effect to the County Auditor-Controller by this date. If a city wishes to serve as the “successor agency,” no action is required.
February 1	Redevelopment agencies are dissolved.
By February 1	Successor agency must create Redevelopment Obligation Retirement Fund.
By February 1	Successor agency must decide whether to retain affordable housing function of the redevelopment agency. If successor agency does not elect to retain this function, it is transferred to the housing authority or, if no housing authority exists, to the State Housing and Community Development Agency.
By February 1	Successor agency must review the enforceable obligation payment schedule (EOPS) adopted by the redevelopment agency last fall, modify it if necessary, and readopt. The EOPS is subject to review and approval by the Oversight Board once that board has been formed. The successor agency may only make payments for those obligations identified in the EOPS until a Recognized Obligation Payment Schedule (ROPS) is approved.
By March 1	Successor agency must adopt a Recognized Obligation Payment Schedule (ROPS). This is a permanent schedule of obligations that replaces the interim EOPS once the ROPS has been approved. The County Auditor-Controller will allocate property tax increment to successor agencies to pay debts listed on ROPS.
By April 1	Successor agency reports to the County Auditor-Controller whether the total amount of property tax available to the agency will be sufficient to fund its ROPS obligations over the next six month fiscal period.
By April 15	Successor agency must send the adopted ROPS to the State Controller and the State Department of Finance for approval. The ROPS is also subject to approval by the Oversight Board.
By May 1	Oversight Boards begin operations, files report of membership with State Department of Finance.
Starting May 1	Successor agency may only pay those obligations listed in the approved ROPS. The approved ROPS replaces the EOPS.
By May 16 and continuing thereafter	The County Auditor-Controller transfers property tax to the successor agency in an amount equal to the cost of the obligations specified in the ROPS. This amount is transferred into the successor agency’s Redevelopment Obligation Retirement Fund, and payments from this fund are used to satisfy the obligations identified in the ROPS.

* This timeline does not represent a complete list of deadlines imposed by AB x1 26 as modified, but rather, it is a list of the most relevant and time-sensitive deadlines and milestones for cities that will be opting to become the successor agency to their redevelopment agency. Please consult with your city attorney or your redevelopment agency counsel for more information.