

**AGENDA
COMMUNITY REDEVELOPMENT AGENCY
REGULAR MEETING
BANNING, CALIFORNIA**

May 27, 2008
5:30 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

I. CALL TO ORDER

Roll Call - Boardmembers Franklin, Hanna, Machisic, Salas, Chairman Botts

II. PUBLIC COMMENTS - *Items Not on the Agenda*

A three-minute limitation shall apply to each member of the public who wishes to address the Chairman and Boardmembers on a matter not on the agenda. 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 for further study, research, completion and/or future Agency action.) See last page.

III. A. CONSENT ITEMS

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

Motion: That the Agency Board approve Consent Item 3.

Items to be pulled _____, _____, _____ for discussion.

1. Approval of Minutes – Regular Meeting – 4/22/08 1
2. Approval of Minutes – Special Meeting – 5/13/08 14
3. Approve An Amendment to Original Agreement with Von Klug
and Associates Inc. for Redevelopment Consulting Services for
the Banning Redevelopment Agency 21

B. Open for Public Comments

C. Make Motion

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

IV. DIRECTOR'S REPORT

1. CRA Resolution No. 2008-05, Approving a Purchase and Sale Agreement with Joint Escrow Instructions with Paula Rae Glick for 128-130 San Gorgonio Avenue and Appropriating Funds for the Acquisition 22

Recommendation: That the Agency Board consider adopting CRA Resolution No. 2008-07, approving the Purchase and Sale Agreement with Joint Escrow Instructions for the purchase of APNs 541-141-002, 003, and 004.

V. ITEMS FOR FUTURE AGENDAS

New Items:

Pending Items:

FUTURE MEETINGS

1. Redevelopment Workshop on OPA and Façade Grant Programs – May 30, 2008 at 3:00 p.m. – Council Chambers

VI. ADJOURNMENT

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

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (909) 922-3102. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangement to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADA Title II].

MINUTES
COMMUNITY REDEVELOPMENT AGENCY
BANNING, CALIFORNIA

04/22/08
REGULAR MEETING

A regular meeting of the Community Redevelopment Agency of the City of Banning was called to order by Vice Chairman Machisic on April 22, 2008 at 5:30 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Boardmember Franklin
Boardmember Hanna
Boardmember Machisic
Boardmember Salas

COUNCIL MEMBERS ABSENT: Chairman Botts

OTHERS PRESENT: Brian Nakamura, Executive Director
Julie Hayward Biggs, Agency Counsel
Bonnie Johnson, Finance Director
Judith Von Klug, Redevelopment Consultant
Jim Earhart, Electric Utility Director
Duane Burk, Public Works Director
Chris Paxton, Human Resource Officer
Ted Yarbrough, Fire Marshal/
Diane Wirth, Economic Development Consultant
Marie A. Calderon, City Clerk

PUBLIC COMMENTS – Items Not on the Agenda

There were none.

CONSENT ITEMS

Boardmember Franklin pulled Consent Item No. 2 and Executive Director Nakamura pulled Consent Item No. 3 for discussion.

1. Approval of Minutes – Regular Meeting – 04/08/08

Recommendation: That the Agency Board approve the minutes of the Special Meeting of April 8, 2008.

Motion Franklin/Hanna to approve Consent Item No. 1. Motion carried, all in favor with Chairman Botts absent.

2. CRA Resolution No. 2008-05, Approving a Purchase and Sale Agreement with Joint Escrow Instructions with Paula Rae Glick for 128-130 San Geronio Avenue and Appropriating Funds for the Acquisition for \$450,000.
(Staff Report – Judith Von Klug, Redevelopment Consultant)

Judith Von Klug said that this item is a proposed purchase of a building at 128-130 San Geronio Ave. It is currently owned by Paula Glick Hill and it is the location for the Center for the Arts which is run by the Banning Cultural Alliance. The building also has two upstairs apartments and has some garage space. The owner Ms. Glick decided late last year that she wanted the property for personal reasons and she contacted a local realtor about putting the property for sale. However, she then talked to the Cultural Alliance, she is a strong supporter for the arts and has really encouraged their growth there, and talked to them about the pending sale of the property in case they wanted to pursue trying to acquiring it. The Alliance talked to staff about us putting money down on the property and they would then pay off the mortgage on it and they would have title to it. Ms. Von Klug said she was uncomfortable with us going into the position of providing financing for a non-profit to purchase the property she thinks that would be a bad precedent for us to set. But in discussing it she realized that many, many cities operate art centers for the arts as part of their operations and it would be a viable option for us to purchase the building for the same amount of money as the Cultural Alliance negotiated. It would be the same amount down that they asked us to fund. The rents on the property would pay for the mortgage payments over time and that it would be a viable option for us to pursue. We had some discussions about this and as a result of those discussions we did negotiate a purchase and sale agreement with Ms. Glick. The purchase price is \$450,000. It is \$250,000 in cash I believe because as we all know I made a huge mistake on this one, with a mortgage of \$200,000 at 7.5% interest over 15 years. That results in a monthly payment of about \$1,855.00. Then in addition, the building will need refurbishing. We would want to redo the exterior which we already had discussions about a façade grant for this project that would enhance the building and in addition we would want to go through the owner and make sure that the electrical and plumbing are up to code. The stairway up to the second floor apartments is a little shaky so we would want to make some repairs there. She said that in her staff report she said that work was \$500,000 and that is wrong and it should be \$250,000. \$500,000 is the total cash for the two together; the money to put down on the purchase and the money to rehab. If this gets approved, the appropriation would actually be \$530,000 rather than the \$780,000 that was noted in the staff report. This is consistent with the prior discussion that we have had on the property. We would enter into a 15 year master lease with the Cultural Alliance and they in turn would be responsible for overseeing the remodel and they would also rent out the apartments and be responsible for getting tenants and it is there intention to rent the apartments to artist to help make the entire property more of an art center.

Boardmember Hanna asked if there was an appraisal of the property. Mrs. Von Klug said yes and it substantiated the purchase price.

There was some discussion regarding the payments on this building, the rents, tenants and the façade work being incorporated in the remodel.

Vice Chairman Machisic opened the item for public comments.

Beverly Rashidd, 905 Twin Hills Dr. addressed the Board at this time.

Boardmember Franklin asked her in the event there is no tenant how will you secure funds to be able to pay the rent?

Ms. Rashidd said that is always a risk for a building owner. They have already started to increase revenues incredibly at that facility. Their expectation as they have done with any other buildings that they have owned is to put something in reserves so that there is money available to cover those kinds of contingencies. They don't expect that to be a contingency and she thinks that Paula has been successful in maintaining tenants in that facility. They would hope to have some that would be more in keeping with the intent of the area. They don't expect that there would be a problem getting tenants particularly in this market because it is a renter's market now because nobody can buy a house. She emphasized that they expect based on what is happening with them currently that they will have sufficient revenue with and without tenants and as a responsible building manager they expect to have reserves to cover those contingencies. She also said that she has lived in cities where the city has owned an incredible amount of real estate that they leased out to non-profits and were very successful.

Boardmember Hanna mentioned that there will be a graduated payment scheduled and accommodations for improvements so they will not pay full fair from the first month and asked if this was correct.

Mrs. Von Klug said that was correct because the building's income will obviously be decreased during the time of the renovation. The apartments may be empty or not but regardless there would be rent reductions. The business at the galley itself is expected to be lower than it has been running so we have discussed a graduated payment schedule so that in the end we will recoup all of the money.

Boardmember Franklin said that she had heard a lot of good things about the project but she has had many calls in the last couple of weeks of concern from residents about us spending this kind of money to buy more property and given the state of the budget for our City and not knowing what is going to be happening with dollars in the future sometime it gets to a point of there are things that you like but there are things that you must have. She knows that one of things they are working on is trying to build our infrastructure and it is something she has thought long and hard about because she has given support to this and she supports the arts but there comes a time when we have to look at what is nice and what is necessary and to her right now this is not a necessary because we do have other things that we do need to work on in our budget.

Boardmember Salas said that we as a Council and a Board completely support the arts and to a nice tune every year in the budget and she has every intention to continue to support the arts. This particular decision has nothing to do with her support for the art groups in the community but it is more or less of what's best for Banning and the city as a whole and when we assume that there is not going to be default we can't assume when we make certain decisions especially when they are to a hefty price tag. Everything has risk but the question is how we weigh it out and also when looking at non-profits. She has also received several phone calls from groups and residents in the community and she tries her best when she makes her decisions to be fair to all and is this fair to everyone in the community and will one say you are doing it for them and not for us. There are justifications and we use those when we make our budgeting decisions to give the art groups a little extra money each year for more than a small amount. But at the same time when talking about a building she doesn't see a lot of options and she needs to see that. She knows that previously this was mentioned but we still don't have it before us. If we are going to buy a building for the arts what are the options and this is the only one before us and she thinks the property owner has done a great job at maintaining this building and it is a great place for the arts but at the same time fiscally she wants to see do we have two or three other ideas. Also it was mentioned about the market and that is a valid point. Right now it may be a renters market but what is our plan if it changes. How are we going to maintain this building? Also, on the reserves we need to plan for a rainy day and we need to be sure and need exact numbers and that is the only thing that would make her comfortable supporting this but this evening she is not comfortable supporting it. She doesn't want it to reflect on our opinion of the arts community and as you know we definitely want to do everything we can to make it move forward but with what is before us tonight she is just not comfortable.

Boardmember Hanna said it is always confusing to the public when we talk about money because there are so many different categories of funds and these particular funds are bond proceeds that have to be spent on capital items and we have committed a portion of them to the downtown to revitalize the downtown so this is not taking away funds from any other operations. This is redevelopment; removal of blight, etc. We have a report in front of us from the Banning Cultural Alliance about attendance at the Banning Center for the Arts and one of the things that we are trying to do with the arts is not just because we love the arts and because culture is a good thing and so forth we are also supporting the arts because it economically makes good sense to help in our revitalization of the downtown. So for example they are projecting that attendance over twelve months both daily attendance and event attendance combined will be over 6,000 people to this center. We haven't had 6,000 people coming to the downtown for any one building that she can think of in a long time other than City Hall perhaps. This is not just a nice thing to do; it is a critical thing to do as part of the whole plan to revitalize the downtown. We have some wonderful components that are emerging and this is one of them. We have discussed this and gave direction to staff to do the appraisal and it has been discussed numerous times and this is nothing new and she feels that they are very fortunate to have the Banning Cultural Alliance to step up to the plate to manage this center for the arts. Without it it would be a real hole in our community and our whole strategy to revitalize

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the downtown. She will be very sorry if we don't have the support tonight to go forward. She certainly supports it.

Boardmember Franklin said she didn't want it to sound like she was saying this was taking money from another project as much as redevelopment dollars are to also work on our infrastructure and to prepare for our future. We have to prepare working on our infrastructure and that is one of the things she is calling a necessity. She does support the arts and she donates money and participates but there comes a time when we have to look at the overall picture and see how this thing is going to impact our downtown not only in the short run but the long run and we have not finalized our overall plan for Banning and that is something we really need to put in place before we spend money. She knows that it was said it is \$530,000 but when you add that to \$200,000 to her that is still closed to three quarters of a million dollars and she is not ready to say that is something that we necessarily need right now.

Boardmember Hanna said the bond funds are \$17,700,000. She asked Mrs. Von Klug if she recalled what we committed to the downtown revitalization. Mrs. Von Klug said about \$8.5 million, one-third of the total funds and when she presented various options she had this project in each time as a priority project to be funded out of the \$8.5 million. She also noted that perhaps it would be good to continue this item since Boardmember Salas had some questions that she could address in a staff report in terms of other properties and what else is out there and how it would compare to this one since she indicated that was important information to her.

Boardmember Salas said she doesn't think that is the question. She is not prepared to vote to support this item with that additional information because of other reasons she has stated as well. It would have been nice to see what the other options were but as of today a half a million is still a lot of money in comparison to the money we have set aside for the bonds it does not seem like a lot but again half a million whether it is our money or taxpayer money it is still quite a bit. She stands by her decision. Mrs. Von Klug said she was sorry and thought that was information she wanted.

Vice Chairman Machisic said you have probably heard him speak many times that this community needs a lot of things and redevelopment money is restricted to a lot of things and it cannot be spent on police or fire or any of those things that we would spend money on. He has heard this Agency Board talk about the downtown and one of things that he noted is that if there is one thing that has been throughout the whole process over the five years he has been on the Council you always look for a theme downtown and the only theme he can see that has occurred in the last five and half years has been the Cultural Alliance. What he sees in the Cultural Alliance activities is that they have continuously increased in size and variety of activities. They are now picking up young people which he has been very much in favor of because he thinks new ideas start with young people. This item has been discussed and has been on lists before and has been discussed by all members of this Council and at no time was anybody severely opposed to this proposal and his feeling is that when you get to a level when you discuss things one to five times and they are written and you don't express an opposition to it then when the final

decision comes and now you are expressing an opinion of how you feel about it he thinks that opinion should have been expressed initially when this project was initially proposed. He said that the Cultural Alliance's charge was to develop some kind of a theme downtown. We charged them with that and we haven't charged anybody else with that. He thinks that they are coming around and it takes time to develop the grassroots of this thing. He said that he has not always spoken in favor of the arts and there have been some things that he has been opposed to but he thinks when you talk about taking a chance sometimes you do take a chance and some of the chances we have taken with the Cultural Alliance and some of the money we have invested with them has turned out good for our community and it has progressed. His feeling is now is the time when we are thinking about expansion and this is an expansion that we need to support it. He would be in favor of this proposal. You need to seriously look at it based on what he said.

Beverly Rashidd said we look at the Center for the Arts and everything downtown as a tool. They started this entire project and said initially those bad words an "arts district" because they thought that would be an economic engine for downtown. What they were really saying with an arts district is that we wanted to revitalize downtown. They see the Center for the Arts as a cornerstone to that activity. People are coming from far and wide to experience that Center. It worries her when we confuse apples and oranges and dollars. Dollars for capital are brick and mortar. Dollars for infrastructure are concepts and soft things. The Agency set a side money for brick and mortar. They are asking that this be one of those bricks and mortar. Not that they interfere with the need for infrastructure for Banning; it has needed it forever. But brick and mortar will never pay for infrastructure under any circumstances. If you deny this project tonight you'll just have \$500,000 sitting here and will never be available for infrastructure. She also asked the Agency Board to postpone this until there was a full Agency Board to discuss it.

Karen Clavelot, 5449 W. Riviera addressed the Board stating that she was the President for the Alliance and wanted to make a plea to their heart and not just to their mind. She thinks that they are a young organization in town and the strides that they have made in downtown Banning have been wonderful. They have brought theater to downtown, they have a youth committee now and Saturday at the Art Hop the youth took up a whole block on Hays Street with BPAL. They are working with other organizations in town on a collaborative thing which is a good. They have gone to the hospital and are starting a Healing Arts Program and the people in the hospital are excited about this. They are doing good things and sometimes it isn't always the right time to give money but we have to look deeper than that. We are going to touch a lot of lives in Banning, so think about it very, very seriously.

Boardmember Franklin asked Mrs. Clavelot will not having this center, this particular building, impact your program that much.

Mrs. Clavelot said yes she thinks it will because the traffic that they generate at the gallery, the number of artists that they have, the co-op artists it gives them a place to come and work and to be docents and be active in the community. They generate sale of

art and it gives people in Banning who are artists a place to display their art. They are having people come into Banning that have never come into Banning before. The Plein Air Artist of Riverside have been here two to three times and have a show right now at the Gallery.

Boardmember Franklin said her question is a lot of the programs that you have will still be able to do whether you have this building or not. Mrs. Clavelot said yes.

Wendy Carlton, 940 E. Williams addressed the Board stating that she didn't know anything about this when she attended the meeting this evening on another item. One of the things that they have been against in the past are the murals and not the murals themselves but where they are being put on buildings that are already blighted. They have also seen people come in with redevelopment money and the City has helped them out and then they have to get rid of the murals so they think it would be appropriate to put murals on buildings that are already refurbished, remodeled and taken care of. Murals are a good idea as long as they are put somewhere where they can be seen and on a beautiful building. She said that she and Gary are for the arts and remodeling, etc. but her question right now is \$250,000 a feasible number for remodeling this building. \$450,000 is the number for the purchase price of it and if that is the case real estate, is real estate but maybe the price could be lowered for the remodeling. She said that her husband is working on his contractor's license right now and he gets stuff done and he could do it in a timely manner and at a reasonable price and this may be something to consider.

Paul Hill asked the Agency Board to wait for a full Board for a vote and thank you for your consideration.

Motion Hanna/Machisic to approve CRA Resolution No. 2008-05 Approving the Purchase and Sale Agreement with Joint Escrow Instructions for the purchase of APN's 541-141-002, 003, and 004 for \$450,000 and appropriating funds for same. Vote is 2/2.

Vice Chairman Machisic made a recommendation that this item be brought back to the next meeting when there is a full Agency Board in attendance.

Agency Counsel said the split means that there is no action taken on the matter. With regard to procedures for bringing it back on the agenda she is not sure what the policy is here as to who can put it back on the agenda.

Vice Chairman asked if a Boardmember could recommend putting it back on the agenda. Agency Counsel said that there would have to be a reconsideration vote and in order to get a reconsideration vote one of the people voting against the motion would have to request that.

Boardmember Salas said why don't we bring it back as a item for a future agenda when the entire Agency Board is here as we normally do with future items and then we could

bring it back and at the time we choose to do that she would ask that staff bring additional information like she requested to at least have that in our report as well.

Executive Director said that the item that they pulled Item No. 3 on the Consent Item probably deals with more of a broader policy question as well as kind of the direction of the Board which is very similar to what we have just discussed just now. If you recall the Board has a desire to have a workshop for the façade grants and for the OPA and what is our vision for the Redevelopment Agency and maybe that would be the forum to bring this matter up for discussion again. Because as he introduces the next item it is not specifically per say about the Hendon Project as much as it is about policy decisions that need to be made in the general scope.

Agency Board said that would be acceptable. Boardmember Hanna said she thinks also it would be useful to have some instruction because they are not experts on owner participation agreements and redevelopment and how they can be structured and those kinds of things and more education would be helpful to them. They may be legal kinds of issues that they may need instruction in and would appreciate that as part of the workshop.

Agency Counsel said that you have had a motion and a vote on the matter and at this point it is complete.

3. CRA Resolution No. 2008-06, Approving Owner Participation Agreement with DeMario Jackson dba Bottom Line Property Management LLC in the maximum amount of \$450,000 for the Redevelopment of the Hendon Building at 68 North First Street
(Staff Report – Brian Nakamura, Executive Director)

Executive Director said that essentially after listening to the Board and having discussions and also as listed on the back page, OPA and Façade Programs bring back for more information and clarification under a workshop and to kind of piggyback on what Boardmember Hanna is saying, a lot of these owner participation agreements are developed in that we would work with the property owner to redevelop the property to make it a viable business in the downtown and create the theme in the downtown which was presented primarily by Mr. Ogburn. What he was referring to in talking about big picture issues are in terms of what are the criteria we want to establish and further develop as a Board in order to make sure that if we have an OPA it is not just that we have a second on the property to insure that the project is being done or completed to the satisfaction of the City or the desired guidelines of the City but more importantly, how do we make sure that when we expend the \$18 million dollars that we end up with a product that clearly highlights Banning as a community and draws people to the downtown and to the area. The purpose of pulling Item No. 3 was not necessarily because of Mr. Jackson or the Hendon Project but more of a focus as to what does the Board really desire. How much information should you have in terms of working with the owner to come up with an owner participation agreement and what is the criteria. He said that since he has been here we have had several projects coming forward that they have been working with to

try to create a vibrant downtown. As you know, we all know that change is inevitable and that growth is optional and when we talk about what we want to be, how big do we want to be, what kind of downtown do we have. When we had this presentation at the last meeting about the three different styles of development in the downtown those are kind of design criteria and not specific to this is what you have to do. And so when we talk about these issues and OPA's he gets the sense that the Board is not really comfortable fully with how we are moving forward with the expending of the funds to insure that we do keep that vision for what Banning really wants. That's why he suggested that this is a bigger discussion for the workshop that will be forthcoming in May and as Boardmember Hanna said maybe we can provide better direction and more assurances to the Board that there are some definitives in place to insure to get what we hope and desire by offering either façade grants or owner participation agreements.

Boardmember Salas said that she is in agreement but at the same time she knows that they are in a hurry to get this project completed and move forward with redeveloping the building as the Council would like to see it done. So she would ask that we are clear on what our discussion points will be at the workshop so we don't have to continue it on after that day.

Vice Chairman Machisic wanted to clarify that this item would be removed and placed on the agenda of the workshop. City Manager said he would like to get a formal motion to table the item until the next RDA meeting subsequent to the workshop.

Motion Franklin to table this item.

Vice Chairman Machisic opened the item for public comments.

DeMario Jackson addressed the Agency Board stating that they have already expended a lot of money to actually get started on this project and at the last meeting he was commended for providing so much information on this project and he wasn't aware of anybody else being able to do that like of thing. He knows that this project has already been approved and he doesn't see a reason why it should be continued.

Boardmember Salas asked if the language in this agreement was any different than any other language that they have had for other facades. Also how many other owner participation agreements have been done in the last 6 months to a year.

Mrs. Von Klug said that this was not a façade. It is an Owner Participation Agreement and it mirrors other OPA's. There is for example, retention on the payments until the project is completed, there are liens on the property to insure compliance. They have done three other OPA's.

Boardmember Salas asked if there had been problems that have come up that lead us to think that we need to take a better look at the OPA. Mrs. Von Klug said not that she is aware of.

Executive Director clarified that his recommendation is not specifically to table this item but to have this consideration and discussion at this level was based on information he has been getting and feedback he has been getting not just from Boardmembers but from public members as to what are the criteria, what are we focused on and how are we getting there and so therefore it is a broad picture discussion not specifically related to Mr. Jackson's project or the Oddfellows project. If the Board is desiring to have clarification and specifics brought back, they can do that at the workshop.

Boardmember Franklin retracted her motion and said that just for clarification at the last meeting she thinks that they did approve this.

Boardmember Hanna said that it was in concept only. The agreement still had to come back. She said we need to say publicly that you don't have money until you have the signed agreement. That was just approval in concept only and is she mistaken.

Mrs. Von Klug said that she was correct. However, she would add that there were no concerns raised at that time about the adequacy of the information or about the project so that agreement reflects the project as it was presented.

Boardmember Franklin removed her previous motion. Motion Franklin/Salas to move forward as recommended by staff to adopt CRA Resolution No. 2008-06, Approving Owner Participation Agreement with DeMario Jackson doing business as Bottom Line Property Management LLC in the maximum amount of \$450,000 for the redevelopment of the Hendon Building at 68 North First Street in downtown Banning.

Vice Chairman Machisic said before moving forward he would like a staff presentation concerning the project.

Mrs. Von Klug addressed the Agency Board stating that the Hendon building is a two-story structure located at the southeast corner of Hays and First Street. It has about 10,000 square feet on each of two floors and it has been in a state of under use and disrepair for awhile. It sold literally on the verge of a wrecking ball taking it down because of health and safety concerns some time within the last year. The person that bought it did take care of the health and safety items. It has since transferred again to Mr. Jackson and he is proposing to bring it back into full use in support of our downtown objectives. He has a sit down restaurant tenant for the first floor specializing in barbeque and is looking at other compatible retail uses, etc. for the first floor area and put the second floor to use as professional office space. The total cost of the renovation is somewhere in the neighborhood of \$750,000 so he would be financing about \$300,000 himself in addition to the money he spent on acquiring the property. So we have a substantial owner contribution to this property. She presented the architecture at the last meeting but it is classic Mediterranean Mission style architecture of very high quality. David Adrian, one of our local architects, was instrumental in its design and the proposed contractor is Whitmore Construction who has successfully completed a number of our

projects in the downtown area. If the OPA is approved, she believes Mr. Jackson is prepared to start work within the next 45 days.

There was some further discussion regarding the project use of the building and financial security.

Vice Chairman Machisic opened the item for public comments.

Bill Dickson, 5700 W. Wilson addressed the Agency Board said that he was excited to see this project go forward.

Motion carried, all in favor with Chairman Botts absent.

DIRECTOR'S REPORT

1. The Fox Theatre (on-going request for funding assistance)
(Staff Report - Brian Nakamura, Executive Director)

Executive Director said that before the Agency Board is a item similar to what he presented at the last meeting with respect to the Wiefels Mortuary Project but in this sense it would be in what you would call the Tier 1 Zone for funding of either a façade or owner participation agreement depending on what the property owner wishes to do. In the past two months he has had several conversations with Mr. Frydrych about the Fox Theater and the possibility of redeveloping it in the downtown whether it be a façade grant or OPA. His conversations have been limited with Mr. Frydrych but his understanding is that he has had several conversations with staff as well as with the EDC Chairman about the downtown area. Essentially we are in a situation now where a significant investment has already been made on the owner's behalf and he wishes to pursue either an OPA and continue to rehabilitate the property or at least be considered for a façade grant to do so. The reason he is bringing forward is if you recall we had put a moratorium on façade grant applications until the workshop was to be completed. With that he is asking that we move forward and allow him to help design a new façade and also some new interior working. He believes there is a letter that he submitted to Mr. Anstine and himself during the transition period and there was proposed about \$740,000 worth of improvements to be made. He had a conversation with Mr. Frydrych who indicated that he has had some concerns about having to put more money in and that he would now be relying upon the possibility of an OPA or façade grant to finish any of the infrastructure improvements. He asked how far the Board wishes to proceed in working with Mr. Frydrych on this project. Maybe, this could be a discussion at the workshop.

Boardmember Salas said she is glad to see that the Fox Theater owner is moving on the project to rehabilitate the building. She knows that he recently went to a conference to talk with other theaters across the nation to find out what they have done in communities to restore the historical elements of their movie theater. She would definitely support this project. She asked if he had a budget or some kind of timeframe or is he going to come up with that in the near future?

Executive Director said that he would like to continue working with him on that. One of the biggest concerns is that we have a same situation that we were facing tonight with the other two projects discussed which is how do we start the project. His comment was is the commitment going to be made so that I can move forward. If I spend \$100,000 to do a design, will he be able to get that investment back and still be part of the downtown? At the same time, can the City help me fund the design for that? Executive Director said that in the past he thinks that we have had this situation where we've actually funded based on existing investment into the project and he thinks that is what Mr. Frydrych is asking. He has made some investments into the property and can there be some kind of match that would be made available to him so that he could move forward with additional improvements whether it be the full amount or the be meeting the \$740,000 or somewhere in between.

Boardmember Salas said that it was her understanding that he was looking for a ballpark number and it is almost the chicken and egg situation because when he went to the conference he had mentioned that they wanted to know more or less how much money he has to work with and then they can design what it is he is looking for. We know what he would like to do but the question is how much is the City going to give him so we can plan for it to tell you what it would look like and how much it will cost. But he needs to know how much money he has to work with. She asked how much is he planning to put in and has dollars been discussed as far as how much he would be willing to share the cost with the City.

Executive Director said his understanding in the conversations he has had at the EDC level and also with the former Community Development Director is that he believes he feels he put in a significant amount already approximately \$150,000.

Boardmember Salas said as we move forward we definitely have to take into account this is one of the few attractions that daily brings a good variety of people to our downtown along with the arts on the weekends. The movie theater and the arts she thinks are right now definitely keeping it alive especially on the weekends.

Boardmember Franklin said that she is interested in Mr. Frydrych talking a little bit more with staff to give us a little more concrete information. And even while we are working on the overall OPA program what we have is very general and she would like to see a little bit more concrete information about what he thinks he is able to put into it, what does the City get in terms of any kind of a second to secure the money if it doesn't go through but she would just like to see a little bit more information before we talk about how much we are going to be committed to.

Boardmember Hanna said that her personal recommendation is that we not make any kind of comment that would make him think that we are going to fund the whole project. She doesn't think that is reasonable given the extent of the project. It sounds like we are very interested in supporting him and working with him. We need to see more participation from him in the overall project that he is proposing.

Vice Chairman Machisic said he thinks that staff put in a very important statement in the transmittal that says staff does not recommend any funds be awarded at this time but rather seek direction in regard to continuing to work with Mr. Frydrych. He thinks that is important because in the previous project Mr. Jackson is very far along with specifics and he knows what he is invested already and has improved the project and he knows what he needs and we can help him. We need to work with the owner of the theater in the same way and simultaneously we are going to have this workshop so we will be able to sharpen our principle's from our end on an OPA simultaneously so we can come together and we won't hold him up but get more specifics as Boardmember Franklin indicated as far as how much funding, etc.

There was some further discussion in that they wanted more specifics.

Executive Director said that there could be possible phasing of the project or any project and this might be something that they could discuss at the workshop.

Vice Chairman Machisic opened the item for public comments. There were none.

Vice Chairman Machisic said that action would be to refer it back to staff.

ITEMS FOR FUTURE AGENDAS

New Items:

Pending Items:

1. OPA and Façade Programs come back for more information and Clarification. (Franklin -- 3/25/08)

ADJOURNMENT

By common consent the meeting adjourned at 6:36 p.m.

Marie A. Calderon, City Clerk

THE ACTION MINUTES ARE A SUMMARY OF ACTIONS TAKEN BY THE CITY COUNCIL. AUDIOTAPES OF THE ACTUAL MEETING ARE AVAILABLE FOR LISTENING IN THE OFFICE OF THE CITY CLERK OR A COPY OF THE MEETING CAN BE REQUESTED IN WRITING.

MINUTES
COMMUNITY REDEVELOPMENT AGENCY
BANNING, CALIFORNIA

05/13/08
SPECIAL MEETING

A special meeting of the Community Redevelopment Agency of the City of Banning was called to order by Chairman Botts on May 13, 2008 at 5:30 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Boardmember Franklin
Boardmember Hanna
Boardmember Machisic
Boardmember Salas
Chairman Botts

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Brian Nakamura, Executive Director
Julie Hayward Biggs, Agency Counsel
Bonnie Johnson, Finance Director
Jim Earhart, Electric Utility Director
Duane Burk, Public Works Director
Chris Paxton, Human Resource Officer
Matt Bassi, Interim Community Development Director
Marie A. Calderon, City Clerk

PUBLIC COMMENTS – Items Not on the Agenda

Michael Bracken addressed the Council stating as you know our team has been working for the last two years with you and the environmental consultants to build a 100% renewable power, 15 megawatt, \$180 million dollar project on the southeast side of town. When he last left the EIR was being prepared and there is an administrative draft EIR that is being reviewed by the City and by Liberty Energy. Aspen Environmental Group which is the company that the City hired to handle the EIR preparation itself will take those comments and it looks like they will have a public draft EIR on June 6th. From that time there will be a comment period of about 45 days which should close approximately July 1st and it looks like the project could be considered by the Planning Commission as soon as August and on the Council's desk in the middle of September. In terms of the EIR itself, each of the Council Members will get draft copy in June. They are very happy with how Aspen has done on the City's behalf in respect to traffic studies, air quality modeling, etc. There are no major red flags in any of the drafts and he feels that their engineering team and mitigation team has done a pretty good job in advance. How it affects the Redevelopment Agency is real simple math \$180 million dollar project inside your Redevelopment Agency project area will create 1.2 million dollars of tax increment

on an annual basis in a first year and that goes up by whatever the assessed value is each year capping under Prop 13 at 2%. This will be the largest single tax increment producer in the history of this community. They are excited and hope to have this project to the Council in the next couple of months.

CONSENT ITEMS

Chairman Botts said that there was an additional item to add to the agenda.

Executive Director said that this is a discussion item from the Public Works Director and is in regard to the Street Beautification Project that they are working with Caltrans on and it is a time sensitive issue of making a decision for the aerial mapping that Caltrans has now requested and Mr. Burk will make a brief presentation to the Board prior to a decision being made.

Chairman Botts said that would be put on after the Consent Item.

Motion Machisic/Hanna to add this item to the agenda. Motion carried, all in favor.

1. Quarterly Report from the Banning Cultural Alliance

Recommendation: That the Agency Board receive and file the attached quarterly report from the Banning Cultural Alliance.

2. Keeling Façade Grant Change Order

Recommendation: That the Agency Board approve a \$12,500 façade grant change order for the Keeling Façade Grant Application, taking the original grant award from \$87,500 to \$100,000 in total.

Motion Hanna/Machisic to approve Consent Items 1 and 2. Chairman Botts opened the item for public comments. There were none. Motion carried, all in favor.

Add Item:

1. Aerial Surveying and Mapping for City of Banning and Caltrans, Agreement for for Landscape Maintenance Within Sate Highway Right-of-Way on Interstate 10 within the city of Banning.
(Staff Report – Duane Burk, Public Works Director)

Mr. Burk said this project is the I-10 freeway and the on-ramps and off-ramps of Eighth Street. At one time the Agency hired David Evans and Associates to do a landscape design plan and since the departure of Jae Von Klug the Public Works Department has picked up this project and has had some meetings with Caltrans. One of the criteria for Caltrans is to do a topographical aerial photo and survey of the project and there are numerous reasons why they want that and one is that they want to be able to identify all the infrastructure that they currently have in place today. In Jae's original agreement with David Evans and Associates that was kind of a footnote that if Caltrans wanted us to

do that, that we would bring that later because they were not quite sure if Caltrans would have that information already. He went to a meeting with Caltrans and they did not have the information. He was told that to do this project in a permit phase would save about a year and half time and in a year and half time that is very instrumental to him in doing a project. But at the same time they require the aerial topographical survey. David Evans and Associates gave a proposal of \$22,735. He is asking the Agency Board to authorize David Evans and Associates the additional work. The project is estimated around \$3 million so it falls within the purview but because the project has fallen off the radar screen for a while, it was Executive Director Nakamura's idea to bring it back to the Agency Board and it is very time sensitive working with Caltrans so he could actually tell David Evans and Associates to move forward and authorize them to work and increase the current purchase order that we have with them. Mr. Burks showed a graphic of the area.

Boardmember Machisic said that we are now talking about water shortages and does he assume that those are drought resistant plants because his first suggestion was when it was first talked about was that in certain parts of the county they have outstanding interchanges that are made out of different color rocks and displays. It was indicated to him that part of this display would be in some kind of rock or gravel.

Mr. Burk said this is the exact plan that the Agency Board adopted. This design does include some distinct rock hardscapes and some other indigenous plants of the area. He said one of his arguments to Caltrans was that they currently maintain the current irrigation system and one of the ideas was that it would get an updated irrigation system called "point irrigation" so drought tolerant plants and drip irrigation is exactly what this plan shows.

Boardmember Machisic said when we talk about the water situation both now and in the future the City needs to be the prime example of exhibiting this conservation of water and we need to be the leader so he is concerned about this project being water conscious.

Mr. Burk said that this is going to be a very water smart, controlled area. It will be sensitive to the wind, the rain and the elements. This application would be kind of a model of what the rest of the on-ramps and off-ramps could look like. For example when they take the Sunset Grade Separation on-ramps and off-ramps this would be the model they would want to tell Caltrans that they would like to see happen in each and every one of these on-ramps and off-ramps. One of the footnotes where this came from has been the Highland Springs Grade Separation and those on-ramps and off-ramps were modified to a lower elevation and they never got landscaped and he can't explain how many complaints that they have had about that but it has been the forefront, forth thought and forward thinking of this Council to move forward with getting these fixed. This is kind of the model that of what they want to see them all look like. This is the idea that they would exactly like to do and move forward with some water conservation plant tolerant indigenous plants.

Boardmember Salas said that Boardmember Machisic makes a good point and it is a beautiful design but at the same time and taking it a step further and looking at maintenance she would like to know the difference in maintenance costs of having those types of plants versus increasing the rocks or cobblestone because if it were us maintaining it she thinks that they would have a better chance at keeping it the way it looks when it is first planted or the first several months.

Mr. Burk said this is a very good point and he thinks the idea behind the conversation that they had last Thursday is exactly the maintenance side of it. It is kind of a double-edged sword, you can keep the gateway or the on-ramps and off-ramps in their current condition and he can assure the Council that there is not going to be any more maintenance from Caltrans. For example, there is one Caltrans maintenance person for 100 acres of landscaped area on the I-10 corridor. They are very concerned when cities in general enhance those areas and they actually have a difficult time maintaining them to the criteria of what the elected paid for or what they want it to look like. We can only do so much work in their right-of-way. So you are absolutely right when you talk about the maintenance side of it.

Boardmember Salas said that it may cost us more up front if we were to add more cobblestone but long term it would look better and maintenance would be low and we would get more bang for our buck so to speak.

Mr. Burk said that if it is the desire of the Agency Board they can actually have David Evans add more cobblestone. He said that the maximum time that he committed the City to, if we did the project, would be three years of maintenance and then we would have to go back and address currently what they are doing. The problem is that they have a big issue about maintaining beautiful landscapes like this.

Boardmember Salas said or even taking a look at some of the desert cities or Arizona, they have gotten really creative with some of their freeway designs and it might be something to take a look at future as far as if we are looking at all the different on and off ramps.

Boardmember Hanna said that they actually look at a lot of this when they considered the original plan. She asked if he had any recall of what this design costs.

Mr. Burk said the estimated cost originally was around \$2 million dollars. The design cost was about \$58,000.

Boardmember Hanna said that they considered a lot of this and maybe it would be worthwhile because of the concerns expressed tonight that we have it reviewed for us so that we understand exactly what is involved. She said that the Highland Springs ramps were mentioned and she said that we would probably be interested about the ones on the east side of the ramps. Is that next on our agenda for on and off ramps?

Mr. Burk said he thinks the idea behind prioritizing on-ramps and off-ramps would come from the Council. He said that given an idea of what you want it to look like is important so he would say yes, that would be the next one we would want to do. The tough part about that is that we would have to engage the neighbors to the west to buy into the off-ramp with us but we would need to give them an idea of what it looks like also. So he believes that would be the next location however, that would be a priority that the Council would select.

Boardmember Hanna said although we are considering or there will be a plan in place at some point for a whole new on and off ramp design at Highland Springs and is that correct.

Chairman Botts said that he hopes that they are talking about a short number of years, There is a lot of work going into what do we do with the on and off ramps on Highland Springs and certainly traffic and how we move that traffic comes first so we haven't gotten to landscaping but it is an important issue that both cities have come together on. He said that he shares all the comments here and rather than saying we think cobblestone is cheaper he sees cobblestone as full of dirt and weeds so rather than us saying what's drought efficient you get the sense that all five of us want to see that as drought resistant as we can. Maybe we can say you go back and look at it and deal with it in a better way.

Mr. Burk said that he thinks the Agency Board needs to understand that this concept and the plan has already been approved conceptually by Caltrans. So he would caution the Board in the timeline and if we go and change it again, it may have to go to a different floor and so it would delay the project. He is not saying that we cannot modify the plans. This was conceptually drafted by David Evans and Associates and conceptually approved by Caltrans. We can take the plans after the topographic is done and increase more cobblestone and bring that forward to the Agency Board and bring you more indigenous plants. He is willing to do what the Agency Board wants but this is what Caltrans has approved and it does meet the new standard with Caltrans and they do have a new standard as it relates to hardscape, plants, and irrigation. He can bring the design back to the Board.

Boardmember Franklin asked what type of timeline are we looking at for them to go through all the other stuff they need to go through?

Mr. Burk said if the Board adopts the topography staff is asking is be adopted tonight and they get the engineering done they will be lucky to get a permit for them to do this by February of 2009.

Boardmember Franklin asked if Caltrans approves of all of the work being done or once it has been approved completely then the contractor can go out and just do it.

Mr. Burk said what they do in working with Caltrans is that conceptually this is what they are going to have approve to them and in the contract to give an example, the \$58,000 as mentioned, we have only spent about \$4,000 of that because we have the

conceptual plan. If we don't continue to take this forward, Caltrans will consider it a non-permitted project because of the time elapse. So it is very time sensitive. By doing what we are asking them to do we could actually speed up the process and hopefully get a permit from them if the dollar amount is less than \$3 million, then we can get a permit expeditiously. Anything greater than \$3 million with Caltrans goes into quality review and ends up going to Sacramento.

Chairman Botts asked at some point would we use irrigation water and often we talk about getting that water to Sun Lakes to put irrigation water on the golf course but he keeps hearing so much about the water that Caltrans uses on the freeway. Would we at some point use irrigation water for this kind of project?

Mr. Burk said that he would encourage the Agency Board to use the purple pipe indications so that when the recycled line goes through and if it is within a certain area of the State function they have to hook-up so it would be prudent upon us to do the design that way and technically it would take demand off the drinking water side and put it on the non-potable side. He would totally encourage that.

Boardmember Salas confirmed that she does like this idea in concept but again a small minor amendment if necessary to lower the maintenance costs and needs. She would definitely support that as well and hopefully that wouldn't take too long considering the type of money we put in to the design.

Chairman Botts opened the item for public comments. There were none.

Motion Machisic/Hanna to approve aerial mapping services be performed by David Evans and Associates and Digital Mapping, Inc. of Huntington Beach, California as an extension of the adopted CRA Resolution 2006-25, which awarded a contract to David Evans and Associates, to prepare construction plans for the 8th Street/Interstate 10 landscape project. . Motion carried, all in favor.

ITEMS FOR FUTURE AGENDAS

New Items:

Chairman Botts said that he would like to have the Banning Center for the Arts Building purchase put on the next agenda which would be May 27, 2008.

Boardmember Franklin asked why? Chairman Botts said that he wasn't here and he would like to have it discussed.

Motion Hanna/Machisic to have this item come back on May 27th Motion carried with Boardmember Franklin voting no.

Boardmember Salas asked that when the item comes back if all the information that they requested at the last meeting come forward as well. There was some missing information that they were asking for and hopefully staff can bring that back.

Pending Items:

1. OPA and Façade Programs come back for more information and Clarification. (Franklin – 3/25/08)

Boardmember Hanna asked if they could discuss a possible date regarding a possible date for the OPA and Façade Program and also the need for a joint workshop with the Planning Commission on the proposed housing element.

There was discussion and a date was set for May 30, 2008 starting at 3 p.m. to 5 p.m. regarding the OPA and Façade Programs and the Housing Element Joint Workshop with the Planning Commission starting at 5 p.m.

CLOSED SESSION

Agency Counsel said that the Agency Board will meet in closed session pursuant to the provisions of Government Code Section 54956.8 to confer with its real property negotiator Brian Nakamura on the price and terms of the acquisition of property for: A) APNs: 541-141-002, 003 & 004 (128-130 San Geronio Avenue); B) APN: 540-165-006 (321 W. Ramsey Street); C) APNs: 541-181-024, -026, -027 and -028. (150 E. Ramsey Street)' and 4) APN: 541-183-002 (50 S. Alessandro)

Meeting went into closed session at 6:08 p.m. and returned to regular session at 6:54 p.m.

Agency Counsel said that the Agency Board met in closed session pursuant to the provisions of Government Code Section 54956.8 with regards to the potential acquisition of several properties as listed on the agenda and was no reportable action taken on any of those.

ADJOURNMENT

By common consent the meeting adjourned at 6:54 p.m.

Marie A. Calderon, City Clerk

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**COMMUNITY REDEVELOPMENT AGENCY AGENDA
CONSENT ITEM**

Date: May 27, 2008

TO: City Council

FROM: Bonnie J. Johnson, Finance Director

SUBJECT: Approve Amendment to Original Agreement with Von Klug and Associates, Inc. for Redevelopment Consulting Services for the Banning Redevelopment Agency

RECOMMENDATION: "The Agency Board approve an amendment to the Original Agreement with Von Klug and Associates for Redevelopment Consulting Services for the Banning Redevelopment Agency."

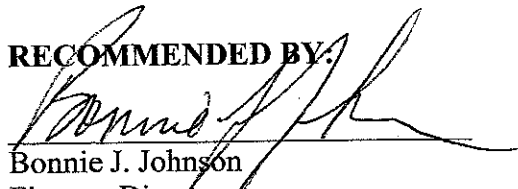
JUSTIFICATION: This contract provided for continuity and follow up on certain projects. Amendment of this contract allows the Agency to compensate consultant for services provided in accordance with the City's purchasing ordinance.

BACKGROUND & ANALYSIS: In November 2007, the City's Redevelopment Director resigned from the City of Banning. This vacancy left the Agency in need of professional services related to existing and ongoing projects.


On November 5, 2007 the Redevelopment Agency of the City of Banning entered into an agreement with Von Klug and Associates, Inc. to provide the desired consulting services. This agreement was billed hourly in an amount not to exceed \$24,000. The Agency has benefited by having this consultant to follow through on various projects that were in progress. The consultant services are now complete. However, the final billing exceeds the original \$24,000 by \$3,105. In accordance with the City's purchasing ordinance, any contract change order that exceeds 10% of the original contract amount must be approved by the City Council or Agency Board.

FISCAL DATA None. The funds are available in the budget savings from the unfilled Director position.

RECOMMENDED BY:


Bonnie J. Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

**COMMUNITY REDEVELOPMENT AGENCY MEETING
DIRECTOR'S REPORT**

DATE: May 27, 2008

TO: Community Redevelopment Agency Board

FROM: Brian S. Nakamura, Executive Director

SUBJECT: CRA Resolution No. 2008-07 Approving Purchase and Sale Agreement with Joint Escrow Instructions and Appropriating Funds for the Purchase of APNs 541-141-002, 003, and 004 (128-130 San Geronio Avenue).

RECOMMENDATION: That the Community Redevelopment Agency consider adopting CRA Resolution No. 2008-07 approving the Purchase and Sale Agreement with Joint Escrow Instructions for the purchase of APNs 541-141-002, 003, and 004.

JUSTIFICATION: The purchase of this property will allow the Agency to control its use, which is intended to be a location for the City's Center for the Arts.

BACKGROUND: The Community Redevelopment Agency was provided information regarding an Appraisal of the property, which was performed approximately 6 months ago. The property located at 128-130 San Geronio Avenue has housed the Center for the Arts since September of 2006. Since that time the Cultural Alliance has created a cooperative of artists who show at the gallery and volunteer their time to its operation. They have rotating shows by visiting artists and they sponsor special events. In just its 18 months of operation, the Center has gained a reputation for excellence in the region and is attracting customers from the Coachella Valley and from Riverside and points west.

Paula Glick (also known as Paula Hill) owns the property and rents the first floor to the Cultural Alliance. The building also has two apartments, garage space, and a surface parking lot. Ms. Glick notified the Cultural Alliance several months ago of her intention to sell the property. The Cultural Alliance approached staff about a possible joint venture to purchase the real estate, with the Agency putting about half of the proposed purchase of \$450,000 down and the Alliance making the payments on a note for the balance.

While staff was supportive of the goal of maintaining the property as the Center for the Arts so it continues to be a major anchor of the burgeoning arts and culture district downtown, we did not believe it would be appropriate to provide

mortgage financing for the Alliance. Instead, staff is proposing that the Agency purchase the building under the same terms negotiated by the Cultural Alliance and then lease the entire property to the Alliance for it to operate as the Center for the Arts. The apartments would eventually be rented to artists as well.

The proposed purchase price is \$450,000 with \$250,000 paid in cash at closing and \$200,000 paid over a 15-year period at 7.5 percent interest. The payments equal \$1,845.00 per month and the current rent received for the three rental spaces equals \$1,400.00. A recent appraisal of the property obtained by staff supports the purchase price and indicates that its current rental value is about \$2,100.00. The Cultural Alliance has agreed to rent the entire premises in an amount sufficient to cover the payments on the note, but they have asked for a graduated payment schedule whereby the payments start lower and then increase over time.

The graduated payment schedule is requested primarily because it would be the Alliance's desire and staff's recommendation that an additional \$500,000 be dedicated to renovating the property. The Agency would fund the renovation and the Alliance would oversee the work. The scope would include bringing all electrical and plumbing in the building to code, including merging two first-floor bathrooms into one handicapped-accessible bathroom; reconstructing the stairway to the apartments; and redoing the exterior of the building, including constructing a new entrance into the gallery and increasing visibility into the gallery from the street. This work will obviously affect the operations of the gallery and lower its income during the time of reconstruction.

Additional future work discussed with the Alliance includes demolition of the garages for the construction of classroom space. The Alliance will seek private donations for this phase of the project and for additional façade work.

Staff recommends acquisition of this property to ensure its continued operation as the Center for the Arts. A copy of the proposed purchase agreement is attached.

At this time the City Attorney is researching whether the tenants in the upstairs apartments will be eligible for relocation compensation. They are on month-to-month leases and the property was voluntarily offered for sale by the owner, so it is possible that compensation will not be required under the law. If it is, this obligation is estimated to cost no more than \$25,000 total.

FISCAL DATA: An appropriation of \$780,000 from the 2007 Tax Allocation Bond Proceeds will be utilized for the purchase of this property and for its renovation. The additional funds will cover closing costs and relocation compensation if applicable.

RECOMMENDED BY:

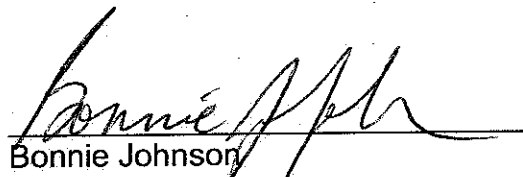
Judith Von Klug
Redevelopment Consultant

APPROVED BY:



Brian Nakamura
Executive Director

REVIEWED BY:



Bonnie Johnson
Finance Director

Attachment A – Proposed Purchase and Sale Agreement with Joint Escrow
Instructions

CRA RESOLUTION NO. 2008-07

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING APPROVING A PURCHASE AND SALE AGREEMENT WITH JOINT ESCROW INSTRUCTIONS WITH PAULA RAE GLICK FOR 128-130 SAN GORGONIO AVENUE AND APPROPRIATING FUNDS FOR THE ACQUISITION

WHEREAS, under Health & Safety Code Section 33000 *et seq.* and the Banning Community Redevelopment Plan, the Redevelopment Agency is authorized to acquire real property within the Project Area to further the goals of the Redevelopment Plan, which include the removal of blight and the stimulation of private investment; and

WHEREAS, the property located at 128-130 San Gorgonio Avenue, also known as APNs 541-141-002, 003, and 004, has been operated as the Center for the Arts since September of 2006 and has become an important component of the establishment of an arts, culture and entertainment district in the downtown, thereby stimulating the economy of the area and creating jobs and sales tax; and

WHEREAS, the owner of the real property, Paula Rae Glick, wishes to sell the property and the Redevelopment Agency wishes to purchase the property to maintain its use as the Center for the Arts;

NOW, THEREFORE, the Community Redevelopment Agency of the City of Banning resolves as follows:

Section 1: Finding.

The above recitals are true and correct and are incorporated herein by reference.

Section 2: Action.

The Executive Director of the Community Redevelopment Agency of the City of Banning is hereby authorized to execute a Purchase and Sale Agreement with Joint Escrow Instructions with Paula Rae Glick for the acquisition of 128-130 San Gorgonio Avenue (APNs 541-141-002, 003, and 004) in the amount of \$450,000; and

The Finance Director is hereby authorized to appropriate \$530,000.00 from the 2007 Tax Allocation Bond Proceeds for expenditure in the 2007-2008 Fiscal Year for this acquisition and associated expenses and for renovation of the property after purchase.

PASSED, APPROVED AND ADOPTED this 27th day of May, 2008.

John Machisic, Agency Vice Chairman

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

Burke, Williams & Sorensen, LLP
Agency Counsel

ATTEST:

Marie A. Calderon, Secretary

CERTIFICATION

I, Marie A. Calderon, Secretary of the Community Redevelopment Agency of the City of Banning, do hereby certify that the foregoing CRA Resolution 2008-07 was duly adopted by the Community Redevelopment Agency of the City of Banning, California, at a regular meeting thereof held on the 27th day of May, 2008, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, Secretary
Community Redevelopment Agency
City of Banning, California

**PURCHASE AND SALE AGREEMENT
WITH JOINT ESCROW INSTRUCTIONS**

[APNs 541-141-002, 003 & 004]

by and between

**COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF BANNING**

and

PAULA RAE GLICK

PURCHASE AND SALE AGREEMENT WITH JOINT ESCROW INSTRUCTIONS

This Purchase and Sale Agreement with Joint Escrow Instructions ("Agreement") is entered into as of _____, 2008, by and between PAULA RAE GLICK, an individual (the "Seller"), and the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, a public body, corporate and politic (the "Purchaser").

RECITALS

- A. Seller is the owner of the Real Property, as defined in full below.
- B. Purchaser is a redevelopment agency organized, existing, and exercising the powers are provided under the California Redevelopment Law (Health and Safety Code section 33000 et seq.). Purchaser's Board of Directors has determined that acquisition of the Real Property defined herein is consistent with its redevelopment plan and will benefit the project area.
- C. Purchaser desires to purchase the Real Property for a price equal to its fair market value as determined by a qualified appraiser licensed by the State of California.
- D. Seller desires to sell the Real Property to Purchaser and Purchaser desires to purchase the Real Property from Seller on the terms and conditions set forth in this Agreement. The parties desire by this Agreement to provide the terms and conditions for the purchase and sale of the Real Property.

DEFINITIONS

The following terms shall have the meaning ascribed in this Agreement. Terms not expressly defined in this section shall first have the meaning specifically ascribed in any other section of the Agreement, and if not so defined, then they shall have the meaning ascribed in applicable State or Federal law, regulations, or rules, and if no such special definition therein exists, then they shall have their general meaning as provided under a current dictionary of the English language from a recognized and reputable publisher:

"Action" shall mean any suit (whether legal, equitable, or declaratory in nature), proceeding or hearing (whether administrative or judicial), arbitration or mediation (whether voluntary, court ordered, binding, or non-binding), or other alternative dispute resolution process, and the filing, recording, or service of any process, notice, claim, demand, lien, or other instrument which is a prerequisite or prelude to commencement of the Action, and all causes of actions therein.

"Approved Exceptions" shall mean all exceptions shown in the Preliminary Report and all encroachments, overlaps, boundary line disputes, or any other matters that affect title to the Real Property or that, according to the Preliminary Report, violate any applicable law, rule, or

regulation, and are approved by Purchaser within 90 days following the receipt of the Preliminary Report and, if applicable, the survey referred to in Section 4.2 [ALTA Policy Option] and any amendments or updates of the Preliminary Report or the survey.

"City" shall mean the City of Banning, a California general law city and municipal corporation formed and existing under the laws of the State of California. The term "City" shall also include any assignee of, or successor to, its rights, powers, and responsibilities.

"Claims" shall mean all claims, Actions (as defined herein), demands, rights, damages, costs, expenses or compensation whatsoever (including without limitation attorneys' fees and costs), direct or indirect, known or unknown, foreseeable or unforeseeable, which Purchaser now has or which may arise in the future on account of or in any way relating to or connected with any title conditions, laws, rules or regulations of any governmental entities or instrumentalities applicable to the Real Property, the value, condition, status, or quality of the Real Property, and the presence in or on the Real Property, or any improvements, encumbrances, or appurtenances on or affecting the Real Property, or under the surface of the Real Property, of underground storage tanks, asbestos-containing materials, transformers, equipment or other items containing polychlorinated biphenyls, or any Hazardous Substances.

"Close of Escrow" shall mean the conveyance of title to the Real Property to Purchaser and the closing of this transaction.

"Costs and Expenses" shall mean court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys' fees, consultants' fees, witnesses' fees (both lay and expert), travel expenses, deposition and transcript costs, costs of preparing notices, Claims, and demands, investigation costs, and any other cost or expense reasonably and necessarily incurred by the party.

"Deed of Trust" shall mean a trust deed securing the Note and containing substantially the same terms as found in the deed of trust attached hereto as Attachment "D."

"Deemed Approved Exceptions" shall mean any lien of Real Property taxes or similar taxes not yet due or special assessments or other assessments not yet due, and the month-to-month leases of two apartment suites on the second floor of the building on the Real Property by Diana Willis and by Jeremy and Albert Carranza, provided Seller provides Purchasers with copies of any lease documents and an estoppel certificate for each tenancy.

"Deposit" shall mean the sum of Two Thousand Dollars and No Cents (\$2,000.00), representing the deposit required to be made by Purchaser pursuant to Section 3.2.1 of this Agreement.

"Down Payment" shall mean shall mean a sum of Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00), to consist of the Deposit and an additional Two Hundred Forty-Eight Thousand Dollars and No Cents (\$248,000.00) to be deposited by Purchaser prior to the Close of Escrow.

"Effective Date" shall mean the date on which the Seller and Purchaser have both approved and executed this Agreement, as detailed in Section 29 [Effective Date] of this Agreement.

"Escrow" shall mean the account in which and the time period during which the Escrow Agent maintains possession, custody, or control of the Purchaser's deposit and any legal documents appurtenant to this Agreement.

"Escrow Agent" shall mean the Title Company or an escrow company designated by the parties to hold and administer the escrow required under this Agreement. The selection of this agent shall be as provided for in the definition of "Title Company" herein.

"Estoppel Certificate" shall mean a tenant estoppel certificate executed in favor of Purchaser by any tenant having a right to possession of a unit in the building on the Real Property as of the Close of Escrow and containing substantially the same terms as found in the certificate attached hereto as Attachment "E."

"Exception" shall mean each exception shown in the Preliminary Report and each encroachment, overlap, boundary line dispute, or any other matter that affects title to the Real Property or that, according to the Preliminary Report, violates any applicable law, rule, or regulation.

"Feasibility Period" shall mean that period beginning with the opening of Escrow and continuing for fifteen (15) days thereafter. This period may be shortened upon express written consent of the parties should Seller be able to resolve the title issues such that clear title may pass to Purchaser.

"Hazardous Substances" shall mean any and all of the following:

(i) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability arises for misuse, pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901, *et seq.*; the Toxic Substances Control Act, 15 U.S.C.S. §2601, *et seq.*; the Clean Water Act, 33 U.S.C. §1251, *et seq.*; the Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. §136, *et seq.*; the Superfund Amendments and Reauthorization Act, 42 U.S.C. §6901, *et seq.*; the Clean Air Act, 42 U.S.C. §7401, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §300f, *et seq.*; the Solid Waste Disposal Act, 42 U.S.C. §6901, *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §1201, *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §§655 and 657; the Hazardous Waste Control Act, California Health and Safety Code ("H.&S.C.") §25100, *et seq.*; the Hazardous Substance Account Act, H.&S.C. §25330, *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, H.&S.C. §25249.5, *et seq.*; the Underground Storage of Hazardous Substances, H.&S.C. §25280, *et seq.*; the Carpenter-Presley-Tanner Hazardous Substance Account Act, H.&S.C. §25300, *et seq.*; the Hazardous Waste Management Act, H.&S.C.

§25170.1, *et seq.*; the Hazardous Materials Response Plans and Inventory, H.&S.C. §25001, *et seq.*; the Porter-Cologne Water Quality Control Act, Water Code §13000, *et seq.*, all as they may from time to time be amended;

(ii) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability for misuse arises pursuant to any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree due to its hazardous, toxic or dangerous nature;

(iii) any petroleum, crude oil or any substance, product, waste, or other material of any nature whatsoever which contains gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles; and

(iv) polychlorinated biphenyls (PCB), radon gas, urea formaldehyde, asbestos, and lead.

"Hazardous Substance Laws" shall mean all federal, state, or local laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority, as referred to in the definition of "Hazardous Substances" above.

"Informational Documents" shall mean any plans, surveys, analyses, studies, books, records, agreements, contracts, reports, and other documents pertaining to the physical, geological, environmental, or legal condition of the Real Property, or that will affect or be binding with respect to the Real Property beyond the Close of Escrow, that are in the possession or under the control of Seller.

"Inspection" shall mean any test, survey or study (including invasive tests, such as borings and soil testing) as Purchaser may require to satisfy its due diligence regarding acquisition of the Real Property.

"Loan Amount" shall mean shall mean a sum of Two Hundred Thousand Dollars and No Cents (\$200,000.00). Seller has agreed to allow Purchaser to pay the Loan Amount pursuant to the terms of the Note

"Note" shall mean that secured promissory note by and through which Purchaser is bound to pay the Loan Amount to Seller, the terms of which are more particularly set forth in Attachment "C."

"Real Property Conditions" shall mean all of the physical and economic conditions affecting the Real Property and its use, including, but not limited to, the physical configuration of the Real Property, any trees, stumps, brush, or other vegetation on the Real Property, the condition of its soils, the presence or impact of any geologic or hydrologic features and faults, the nature of its lateral and subjacent support, the presence of Hazardous Substances, waste, garbage, rubbish, or refuse on, in, under, or adjacent to the Real Property, the location of the Real Property within any flood plain or high risk fire area, the location of public utilities and public improvements on, in, under, or over the Real Property, the presence, soundness, and

habitability of any structures, fixtures, appurtenances, or improvements on or in the Real Property, the existence of any faults or defects (whether known or unknown, patent or latent), the economic and legal suitability of the Real Property for the intended use, all market conditions that may affect development and use of the Real Property, and all Actions, orders, and judgments affecting the Real Property.

"Purchase Price" shall mean a sum of Four Hundred Fifty Thousand Dollars and No Cents (\$450,000.00), an amount not less than the fair market value as determined by a qualified appraiser licensed by the State of California commissioned by Purchaser and delivered to Purchaser prior to the Effective Date. The Purchase Price shall consist of the Down Payment and the Loan Amount.

"Real Property" shall mean that improved real Real Property commonly known as 128-130 North San Gorgonio Avenue, located within the City of Banning, County of Riverside, California and more particularly known as Assessor's Parcel Nos. 541-141-002, 541-141-003, and 541-141-004 and described in the legal description attached hereto and incorporated herein by reference as Attachment "A." The Real Property shall include, but not be limited to, the following:

- (i) all of the Seller's rights, title, and interest in the Real Property;
- (ii) all appurtenances, rights (including reversionary rights), easements, and privileges belonging to, or running with, the Real Property, including, without limitation, all of Seller's rights, title, and interest in and to any and all land lying in the bed of any street, road, cul-de-sac, alley or access way, open or closed, existing, vacated or proposed, adjoining, adjacent to, or contiguous with the Real Property, and all water rights and other entitlements which Seller may own in conjunction with Seller's ownership of the Real Property;
- (iii) all improvements, fixtures, and trade fixtures on the Real Property, as well as the following items, if any, owned and/or leased by Seller and presently located in, on, or upon the Real Property: electrical distribution systems (power panels, buss ducting, conduits, disconnects, lighting fixtures), telephone distribution systems, carpets, window coverings, and wall coverings, as well as any and all rights of Seller by virtue of any shared parking agreements, recorded covenants, conditions, and restrictions, or other agreements, easements, or entitlements relating to the ownership or operation of the Real Property;
- (iv) all of Seller's rights, title, and interest in and to all leases, rental agreements, and other rights of occupancy for any portion of the Real Property; and
- (v) all of Seller's rights, title, and interest in and to any building plans, architectural and structural drawings and specifications, surveys, soils reports, permits, and warranties relating to the design or construction of the Real Property and the materials used therein

"Seller's Knowledge" shall mean the actual and constructive knowledge of Seller.

"Title Company" shall mean Chicago Title, 560 East Hospitality Lane, San Bernardino, California. Should the chosen title company be unable to perform the duties required of it, then the parties shall substitute a title company of Purchaser's choosing and reasonably acceptable to Seller.

"Title Policy" shall mean a standard CLTA coverage owner's policy of title insurance.

OPERATIVE PROVISIONS

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

1. **AGREEMENT TO SELL AND PURCHASE.** Seller agrees to sell and Purchaser agrees to purchase the Real Property on and subject to the terms and conditions contained in this Agreement.

1.1 **Purchaser's Status.** Purchaser is a public entity with the power to acquire real and personal Real Property for public uses and purposes. Purchaser is engaged in Real Property acquisition that shall be deemed to be for a public use and project for purposes of this Agreement.

1.2 **Incomplete Legal Description.** If the legal description of the Real Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of the title company to issue a title policy hereinafter described.

2. **PURCHASE PRICE AND PAYMENT.**

2.1 **Purchase Price.** The Purchase Price for the Real Property is a sum of Four Hundred Fifty Thousand Dollars and No Cents (\$450,000.00), an amount not less than the Fair Market Value of the Real Property pursuant to an appraisal by a licensed appraiser commissioned by the City and delivered to the City prior to the Effective Date. The purchase price shall be paid as follows:

2.1.1 Prior to the Close of Escrow and as a Down Payment against the Purchase Price, Purchaser shall deposit into the Escrow in cash or other good and sufficient funds the sum of Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00), which sum shall be inclusive of the Deposit and any interest earned on the Deposit.

2.1.2 At the Close of Escrow, Purchaser shall execute a Note in favor of Seller for Two Hundred Thousand Dollars and No Cents (\$200,000.00), bearing interest at seven and one-half per cent (7.5%) per year secured by a first Trust Deed on the Real Property.

2.2 **Deposit.**

2.2.1 Within ten (10) days following the opening of the Escrow (as defined in Section 4 [Escrow]), Purchaser shall deposit into Escrow the deposit amount of Two Thousand Dollars & No Cents (\$2,000.00).

2.2.2 Upon the Close of Escrow (as described in Section 8.4 [Timing of Close], the amount of the Deposit and any interest earned thereon shall be applied to the Purchase Price. At the termination of the Feasibility Period, the Escrow Agent shall release to Seller the entire Deposit and any interest earned thereon.

3. **ESCROW.**

3.1 **Opening of Escrow.** An Escrow is to be opened to consummate the sale of the Real Property at the office of the Escrow Agent. The Escrow is to be opened within fifteen (15) business days after the execution of this Agreement by both parties. A signed counterpart of this Agreement is to be delivered to the Escrow Agent and will serve as escrow instructions, subject to the provisions of the Escrow Agent's standard conditions for acceptance of escrow, but only to the extent that the standard conditions impose no additional obligations or liabilities on the parties, and further subject to the terms and conditions in this Agreement, the latter to control in the case of conflict.

3.2 **Term of Escrow.** Escrow shall be for a period of forty-five (45) days, which period may only be extended by mutual written consent of the Purchaser and Seller, which consent may be withheld in each party's sole discretion.

3.3 **Escrow Agent.** The Escrow Agent has previously been selected by the Purchaser and approved by the Seller. The Escrow Agent is hereby empowered to act under this Agreement, and upon indicating its acceptance of this Agreement in writing, delivered to the Seller and the Purchaser at the time Escrow is opened, shall carry out its duties as Escrow Agent hereunder.

3.4 **Authority of Agent.** Escrow Agent is authorized to and shall carry out the following:

3.4.1 Close Escrow pursuant to Section 7 [Close of Escrow] and in accordance with a closing statement approved in writing by Seller and Purchaser.

3.4.2 Pay and charge the Seller for any fees, charges, and costs required to be paid by Seller under this Agreement. Pay any monetary encumbrances, delinquent Real Property taxes and assessments, and prorated current Real Property taxes and assessments against the Real Property from the Down Payment Price. Before such payments are made, Escrow Agent shall notify the Seller and Purchaser of the fees, charges, and costs necessary to clear title and close the escrow and calculate the amount to be paid and each party's proportionate share.

3.4.3 Make disbursements of the Deposit, Down Payment, other deposits or other funds to the appropriate parties and deliver the deed and all documents appurtenant to this Agreement to the parties entitled thereto when the conditions of this Escrow have been fulfilled by the Seller and the Purchaser.

3.4.4 Record the deed, and prepare and record or file, as appropriate, any other documents, statements, or instruments delivered through this escrow, or that are necessary to consummate the transaction or proper to vest title to the Real Property in Purchaser.

3.4.5 The liability of Escrow Agent under this Agreement is limited to performance of the obligations imposed under this Agreement.

3.4.6 Seller and Purchaser shall promptly prepare, execute and deliver to the Escrow Agent such additional or supplemental Escrow instructions ("Supplement Escrow Instructions") consistent with the terms and conditions of this Agreement as shall be reasonably necessary.

3.4.7 In the event of a conflict between the Supplemental Escrow Instructions and the Agreement, the terms of the Agreement shall control. Any amendment of or supplement to the escrow instructions incorporated into this Agreement or to any Supplemental Escrow Instructions as defined above shall be in writing and signed by both Seller and Purchaser, and Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

4. TITLE.

4.1 **Preliminary Report.** Promptly following the opening of the Escrow, Escrow Agent shall cause the Title Company to issue to Purchaser (with a copy to Seller) a preliminary report (the "Preliminary Report") for a CLTA, or at Purchaser's election an ALTA, Owner's Policy of Title Insurance for the Real Property, together with copies of all documents relating to title exceptions referred to in the Preliminary Report. Purchaser will not have the right to object to, and will accept title subject to, the Deemed Approved Exceptions. Purchaser shall review the Preliminary Report and send to Seller, within fifteen (15) business days following the receipt of the Preliminary Report and, if applicable, the survey referred to in Section 4.2 [ALTA Policy Option] and any amendments or updates of the Preliminary Report or the survey, a notice of objection as to any Exception on the Real Property. Upon receipt of the notice of Exceptions, Seller shall have thirty (30) business days to review the objections and determine whether the objectionable Exceptions may be removed. On or before the fifteenth (15th) business day following receipt of the notice of Exceptions, Seller shall send a notice to Purchaser informing Purchaser which Exceptions, if any, cannot be removed. Upon receipt of that notice, to the extent any Exceptions shall not be removed, cured, or otherwise insured against, Purchaser shall have fifteen (15) business days to terminate the agreement or else be deemed to have accepted the Exceptions. Purchaser's failure to affirmatively terminate the Agreement on or prior to the expiration of the foregoing time period will be deemed to constitute Purchaser's election to proceed with this Agreement. If Purchaser terminates this Agreement as provided in this Section, the Deposit together with all interest is to be returned to Purchaser, and Seller and Purchaser will be released from all further liability and obligation under this

Agreement, except for those liabilities and obligations which have accrued prior to the date of termination. Upon any such termination, Seller and Purchaser will each pay one-half of the amount of any Escrow cancellation fees.

4.2 **ALTA Policy Option.** In connection with the issuance of the Preliminary Report, and if Purchaser elects to obtain an ALTA Owner's Policy, Purchaser shall obtain, at Purchaser's cost and expense, an ALTA survey reasonably satisfactory to Purchaser, prepared and expressly certified to Purchaser, Seller, and the Title Company by a licensed surveyor or civil engineer. If Purchaser makes such an election, then (i) Purchaser shall make such election in a timely manner so as not to interfere with or delay the Close of Escrow, and (ii) Purchaser shall obtain in a timely manner and pay all additional costs of obtaining the ALTA Owner's Title Policy, including without limitation, any survey cost and/or inspections, provided no delay in the Close of Escrow occurs. If Purchaser is unable to obtain the ALTA Owner's Title Policy by the Close of Escrow, Purchaser shall nonetheless proceed with the closing provided Purchaser receives a CLTA Owner's Policy of Title Insurance as required by this Agreement.

5. **INSPECTIONS/FEASIBILITY PERIOD.**

5.1 **Right of Entry.** During the Feasibility Period, Purchaser shall enjoy the right to enter onto the Real Property, during normal business hours and upon giving Seller at least one (1) business day's notice, for the purpose of performing, at Purchaser's sole cost and expense, any Inspections.

5.2 **Access to and Work on Real Property.** Access to the Real Property during the Feasibility Period shall be given to Purchaser at all times during normal business hours and at all other times upon one (1) day's prior notice to Seller. For the purposes of this Section 5.2 the term "Purchaser" shall mean and include Purchaser's employees, agents, consultants, contractors and other authorized representatives. Purchaser acknowledges that Seller may elect to have a representative of Seller present during any such entry. In connection with any such entry, Purchaser: (i) shall cause all work to be performed with due care; (ii) shall not permit any hazardous condition caused by Purchaser's Inspection to remain on the Real Property; (iii) shall repair any damage to the Real Property caused by Purchaser; (iv) shall provide self-insurance for any liability or Real Property damage which may be caused by Purchaser and shall require any contractor entering onto the Real Property to provide a commercial general liability policy with limits in the minimum amount of One Million Dollars (\$1,000,000) naming Seller as an additional insured, evidence of which shall be delivered to Seller prior to Purchaser's first entry; (v) shall obtain any required governmental approvals for all work performed; and (vi) may not perform any invasive testing on the Real Property without Seller's prior written consent, which consent will not be unreasonably withheld. Should Seller withhold consent, however, Purchaser may, in its sole discretion, terminate this Agreement. If Seller withholds consent for testing and Purchaser terminates this Agreement as provided in this Section, the Deposit together with all interest is to be returned to Purchaser, and Seller and Purchaser will be released from all further liability and obligation under this Agreement, except for those liabilities and obligations which have accrued prior to the date of termination. Upon any such termination, Seller and Purchaser will each pay one-half of the amount of any Escrow

cancellation fees. Purchaser agrees to indemnify and defend Seller against and hold Seller harmless from all Claims sustained by or asserted against Seller or the Real Property, including, without limitation, physical damage, physical injury to Seller's employees or agents or contractors and any mechanics' and materialmen's liens, caused as a result of Purchaser's access to the Real Property or the Inspections conducted by Purchaser. The foregoing indemnity shall survive the Close of Escrow or the earlier termination of this Agreement.

5.3 **Informational Documents.** Within ten (10) days following the Effective Date, Seller agrees to give to Purchaser copies of any Informational Documents. Such Informational Documents will be provided at no cost to the Purchaser and are for informational purposes only, it being agreed that Seller makes no representation or warranty of any kind whatsoever regarding the accuracy or completeness of the information contained within the Informational Documents. Within the same time period, Seller agrees to give to Purchaser true and complete copies of all documents and agreements that will affect or be binding with respect to the Real Property beyond the Close of Escrow.

5.4 **Purchaser's Inspection Reports.** In addition to any Information Documents exchanged between the parties as provided in Section 5.3 [Informational Documents] above, Purchaser agrees that it will provide Seller with copies of all reports and studies resulting from the Inspection, if any. Such reports and studies will be provided at no cost to Seller and for informational purposes only, it being agreed that Purchaser makes no representation or warranty of any kind whatsoever regarding such reports and studies, including, without limitation, the accuracy or completeness thereof. Seller shall keep the reports and studies confidential until after the Close of Escrow.

6. **CONDITIONS TO THE CLOSE OF ESCROW.**

6.1 **Conditions to Purchaser's Obligation.** Purchaser's obligation to close Escrow under this Agreement and to complete the purchase of the Real Property is subject to the satisfaction, or express written waiver by Purchaser, of the following conditions:

6.1.1 Seller's representations and warranties in this Agreement being correct as of the date of this Agreement and as of the Close of Escrow;

6.1.2 Seller's performance of all obligations to be performed by Seller under this Agreement; and

6.1.3 The Title Company (as described in Section 4.1 [Preliminary Report]) being prepared to issue the Title Policy on the Close of Escrow, subject only to the Approved Exceptions (as described in Section 4.1 [Preliminary Report]).

6.1.4 Seller having obtained executed Estoppel Certificates from any tenant having a right to possession of a unit in the building on the Real Property as of the Close of Escrow.

6.2 **Conditions to Seller's Obligation.** Seller's obligation to close Escrow under this Agreement and to complete the purchase and sale of the Real Property is subject to the satisfaction, or express written waiver by Seller, of the following matters:

6.2.1 Purchaser's representations and warranties in this Agreement being correct as of the date of this Agreement and as of the Close of Escrow; and

6.2.2 Purchaser's performance of all obligations to be performed by Purchaser under this Agreement.

7. **CLOSE OF ESCROW.**

7.1 **Title Policy.** Simultaneously with the Close of Escrow, Escrow Agent is to cause the Title Company to issue a CLTA, or if elected by Purchaser, an ALTA, Owner's Policy of Title Insurance (the "Title Policy") in the amount of the Purchase Price, subject only to the following matters ("Approved Exceptions"):

7.1.1 A lien for real Real Property taxes, bonds, and assessments not then due; and

7.1.2 The Approved Exceptions and the Deemed Approved Exceptions.

7.2 **Seller's Duties.** Seller is to deposit with Escrow Agent on or prior to the Close of Escrow the following:

7.2.1 A grant deed executed and acknowledged by Seller conveying to Purchaser fee simple title to the Real Property, subject to any Approved Exceptions, in the form attached hereto as Attachment "B" (the "Grant Deed");

7.2.2 An assignment of leases for any leases that will be effective as of the Close of Escrow;

7.2.3 An amount representing the pro-rated portion of monthly rent received by Seller from Diana Willis and from Jeremy and Albert Carranza for the month in which the Close of Escrow occurs and passing to Purchaser as part of Seller's interest in the Real Property;

7.2.4 Executed Estoppel Certificates from any tenant having a right to possession of a unit in the building on the Real Property as of the Close of Escrow;

7.2.5 All Informational Documents relevant to the Real Property;

7.2.6 Seller's affidavit of nonforeign status as contemplated by Section 1445 of the Internal Revenue Code of 1986, as amended ("FIRPTA Affidavit"); and

7.2.7 Seller's affidavit as contemplated by the Revenue and Taxation Code §§ 18805 and 26131 ("Withholding Affidavit").

7.3 **Purchaser's Duties.** Purchaser is to deposit with Escrow Agent, on or prior to the Close of Escrow, the following:

7.3.1 Any documents, statements, or instruments that are necessary to consummate the transaction, including but not limited to documents evincing the authority of Purchaser to complete the transaction and close Escrow;

7.3.2 An amount which, when combined with the Deposit and all interest earned thereon, equals the Down Payment Price, plus an amount equal to the closing and other costs payable by Purchaser hereunder; and

7.3.3 An executed copy of the Note and the Deed of Trust.

7.4 **Timing of Close.** The Close of Escrow shall occur thirty (30) days following the occurrence of the conclusion of the Feasibility Period and affirmative acceptance or deemed acceptance of the physical condition of the Real Property.

7.5 **Escrow Agent's Responsibilities at Close.** On the date of the Close of Escrow, Escrow Agent is to close Escrow as follows:

7.5.1 Record the Deed (marked for return to Purchaser) with the Riverside County Recorder (which will be deemed to be delivered to Purchaser);

7.5.2 Deliver to Purchaser the assignments of leases and tenant Estoppel Certificates;

7.5.3 Cause the Title Policy to be issued;

7.5.4 Prorate taxes, assessments, fees, and other charges as provided in Section 7.6 [Prorations];

7.5.5 Disburse to Seller the Down Payment Price less prorated amounts and charges to be paid by or on behalf of Seller;

7.5.6 Disburse to Purchaser the pro-rated portion of monthly rent deposited by Seller pursuant to Section 7.2.3;

7.5.7 Charge Purchaser and Seller for those costs and expenses to be paid by each, respectively, pursuant to this Agreement and disburse any net funds remaining after the preceding disbursements to Seller;

7.5.8 Prepare and deliver to both Purchaser and Seller one signed copy of Escrow Agent's closing statement showing all receipts and disbursements of the Escrow;

7.5.9 Deliver to Purchaser the FIRPTA Affidavit and the Withholding Affidavit; and

7.5.10 Deliver to Purchaser all Informational Documents.

If Escrow Agent is unable to simultaneously perform all of the instructions set forth above, Escrow Agent is to notify Purchaser and Seller and retain all funds and documents pending receipt of further instructions jointly issued by Purchaser and Seller.

7.6 **Prorations.** Escrow Agent is to prorate the following costs at the Close of Escrow:

7.6.1 Seller is to pay:

7.6.1.1 any outstanding governmental conveyance fees and taxes due and payable upon transfer of the Real Property.

7.6.2 Purchaser is to pay:

7.6.2.1 the recording charges, if any, in connection with recordation of the Deed;

7.6.2.2 all charges in connection with issuance of the Title Policy;

7.6.2.3 all of the escrow fee charged by Escrow Agent.

7.7 **Real Property Taxes.** Real Property taxes due as of the Close of Escrow are not to be prorated between Seller and Purchaser at the Close of Escrow and Seller will be required to pay all Real Property taxes then due and payable.

8. **POSSESSION.** On the Close of Escrow, Seller will deliver the Real Property to Purchaser, free from any Exceptions, other than the Deemed Approved Exceptions and those Exceptions which were approved or deemed to be approved by Purchaser pursuant to Section 5.1 [Preliminary Report].

9. **LIQUIDATED DAMAGES.**

IF PURCHASER FAILS TO COMPLETE THE PURCHASE AND SALE PROVIDED FOR IN THIS AGREEMENT BY REASON OF ANY DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATIONS HEREUNDER; HOWEVER, BY INITIALING THIS SECTION, PURCHASER AND SELLER AGREE THAT, IN THE EVENT OF SUCH A DEFAULT BY PURCHASER HEREUNDER, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES; THE DEPOSIT (\$2,000.00) SHALL CONSTITUTE THE AMOUNT OF LIQUIDATED DAMAGES PAYABLE TO SELLER; THE PAYMENT OF THE LIQUIDATED DAMAGES TO SELLER WILL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER; SELLER WILL BE ENTITLED TO THAT AMOUNT ON ACCOUNT OF THE LOSS OF ITS BARGAIN AS LIQUIDATED DAMAGES; AND

9.1 PAYMENT OF THAT AMOUNT TO SELLER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE.

Seller's Initials: _____

Purchaser's Initials: _____

10. **REPRESENTATIONS AND WARRANTIES; INDEMNITIES; "AS-IS" SALE.**

10.1 **Seller's Representations and Warranties.** Despite anything to the contrary in this Agreement, except as set forth in the Informational Documents or otherwise disclosed in writing by Seller to Purchaser, Seller warrants and represents as of the Effective Date that:

10.1.1 This Agreement and the performance of Seller's obligations under it and all documents executed by Seller that are to be delivered to Purchaser at the Close of Escrow shall be duly authorized, executed, and delivered by the Seller and are, or at the Close of Escrow shall be, legal, valid, and binding obligations of Seller, and do not, and on the Close of Escrow shall not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Real Property is subject. No consent of any party is required for Seller to enter into or to perform Seller's obligations under this Agreement and there exist no contractual or legal impediments to Seller's alienation or disposition of the Real Property.

10.1.2 Seller has received no written notice of any currently outstanding violations of any federal, state, county, or municipal law, ordinance, order, regulation, or requirement, including but not limited to, any Hazardous Substance Laws, affecting the Real Property.

10.1.3 Seller has not received any written notice of any existing or threatened Action involving the Real Property, other than those previously disclosed or disclosed pursuant to this Agreement.

10.1.4 Except as otherwise provided herein, the Informational Documents constitute all books, records, documents, agreements, contracts, reports, and other materials related to the Real Property that are in Seller's possession or control, and are true, correct, and complete copies of what they purport to be.

10.1.5 Seller knows of no physical, structural, or mechanical defects or violations of any laws or regulations applicable to the Real Property.

10.1.6 Seller has received no written notice of any presently pending or contemplated special taxes or assessments or proceedings to condemn or demolish the Real

Property or any part of it, or any proceedings to declare the Real Property or any part of it a nuisance.

10.2 **Purchaser's Representations and Warranties.** Despite anything to the contrary in this Agreement, Purchaser hereby warrants and represents that, as of the Effective Date, this Agreement and the performance of Purchaser's obligations under it and all the documents executed by Purchaser that are to be delivered to Seller at the Closing of Escrow are, or on the Closing of Escrow shall be, duly authorized, executed, and delivered by Purchaser and are, or at the Closing of Escrow shall be, legal, valid, and binding obligations of Purchaser, and do not, and on the Closing of Escrow shall not, violate any provisions of any agreement or judicial order to which Purchaser is a party or to which Purchaser or the Real Property is subject. No consent of any party is required for Purchaser to enter into or to perform Purchaser's obligations under this Agreement, except as has already been obtained.

10.3 **"As Is, Where Is" Sale.** Subject to the approval or waiver of any Exceptions in Section 4 [Title] of this Agreement and the closing conditions in Section 6 [Conditions to the Close of Escrow] of this Agreement, and as a material inducement to Seller's execution and delivery of this Agreement and performance of its duties under this Agreement: EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, PURCHASER HAS AGREED TO ACCEPT POSSESSION OF THE REAL PROPERTY ON THE CLOSING OF ESCROW ON AN "AS IS" BASIS. SELLER AND PURCHASER AGREE THAT THE REAL PROPERTY SHALL BE SOLD "AS IS, WHERE IS, WITH ALL FAULTS" WITH NO RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE, AND, EXCEPT AS SET FORTH IN SECTION 11.1 [SELLER'S REPRESENTATIONS AND WARRANTIES] OF THIS AGREEMENT, SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, (A) THE VALUE OF THE REAL PROPERTY; (B) THE SIZE OF THE REAL PROPERTY; (C) THE INCOME TO BE DERIVED FROM THE REAL PROPERTY; (D) THE SUITABILITY OF THE REAL PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WITH THE PURCHASER MAY CONDUCT THEREON, INCLUDING THE POSSIBILITIES FOR FUTURE DEVELOPMENT OF THE REAL PROPERTY; (E) THE HABITABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE REAL PROPERTY; (F) THE NATURE, QUALITY OR CONDITION OF THE REAL PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY AND ARCHEOLOGICAL RESOURCES ON THE REAL PROPERTY; (G) THE COMPLIANCE OF OR BY THE REAL PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCE, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (H) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE REAL PROPERTY; (I) COMPLIANCE WITH HAZARDOUS SUBSTANCE LAWS, ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, AND REGULATIONS PROMULGATED UNDER ANY AND ALL OF THE FOREGOING; (J) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER OR ADJACENT TO THE REAL PROPERTY; (K) THE CONTENT OR ACCURACY OF THE INFORMATIONAL DOCUMENTS; (L) THE

CONFORMITY OF IMPROVEMENTS ON THE REAL PROPERTY, IF ANY, TO ANY PLANS OR SPECIFICATIONS OF THE REAL PROPERTY, INCLUDING ANY PLANS AND SPECIFICATIONS THAT MAY HAVE BEEN OR MAY BE PROVIDED TO PURCHASER; (M) DEFICIENCY OF ANY DRAINAGE; (N) THE FACT THAT ALL OR A PORTION OF THE REAL PROPERTY MAY BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE; (O) THE APPLICABILITY OF FEDERAL OR STATE ENDANGERED SPECIES ACTS AND THE EXISTENCE OF ENDANGERED OR THREATENED SPECIES ON THE REAL PROPERTY; (P) THE AVAILABILITY OF WATER OR OTHER UTILITIES TO THE REAL PROPERTY; (Q) WITH RESPECT TO ANY OTHER MATTER; INCLUDING BUT NOT LIMITED TO SELLER'S PRIOR USE OF FERTILIZERS OR PESTICIDES; OR (R) THE REAL PROPERTY FALLS WITHIN A FLOOD PLAIN AND ALL DRAINAGE CHARACTERISTICS OF THE REAL PROPERTY, NATURAL OR MAN-MADE) AND SELLER DISCLAIMS AND RENOUNCES ANY SUCH REPRESENTATION OR WARRANTY.

10.4 Effective as of the Close of Escrow, Purchaser waives, releases, acquits and forever discharges Seller and its trustees, beneficiaries, officers, members, employees, agents, attorneys, and any other person acting on behalf of Seller, from and against any Claims not arising out of those representations and warranties made by Seller in Section 10.1 [Seller's Representations and Warranties] and not otherwise constituting a breach of Seller's duties pursuant to this Agreement. By initialing below, Purchaser acknowledges that it is aware of, has read, has had explained to it by its attorneys, and understands and expressly waives any and all rights it has or may have under the provisions of California Civil Code § 1542, which reads as follows:

10.5 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Purchaser's Initials: _____

11. **WAIVER OF CLAIMS.** Seller acknowledges and agrees that this Agreement and its terms and conditions have been the subject of negotiation between the parties and that the Purchase Price is fair and just compensation for all of Seller's interests in the Real Property and for any Claims which Seller may have relating to loss of business goodwill, relocation benefits pursuant to California Government Code Sections 7260 *et seq.* and 25 California Code of Regulations Section 6000 *et seq.*, severance damages and fixtures and equipment, and Seller hereby waives and releases any and all such Claims. This waiver includes, but is not limited to, Claims for just compensation for the Real Property interests acquired, severance damages, relocation assistance, precondemnation damages, loss of goodwill, loss or impairment of any "bonus value" attributable to any lease, damage to improvements pertaining to the realty, damage or loss to machinery, fixtures and/or equipment, any right to repurchase, leaseback from Grantor, or receive any financial gain from, the sale of any portion of the Real Property, or

challenge Grantor's adoption of a resolution of necessity, pursuant to Code of Civil Procedure sections 1245.245, any right to receive any notices pursuant to Code of Civil Procedure section 1245.245, any right to enforce any other obligation placed upon Grantor pursuant to Code of Civil Procedure sections 1245.245, 1263.025 and 1263.615, any other rights conferred upon Defendants pursuant to Code of Civil Procedure sections 1245.245 and 1263.615 and 1263.025, and attorney's fees and costs and any and all other Claims that Seller may have, whether or not specifically mentioned here, relating directly or indirectly to the acquisition by Purchaser of the Real Property. Seller, on behalf of itself and its agents, representatives, principals, predecessors, successors, assigns, administrators, executors, heirs, and beneficiaries, hereby releases Purchaser from any and all Claims, whether known or unknown, which any of them now have, have ever had, or might hereafter have by reason of any matters or things waived or released herein or arising out of or in any way relating to the Real Property, provided, however, that the foregoing release does not apply to any of the Purchaser's obligations under this Agreement. By initialing below, Seller acknowledges that it has read and understands, and hereby expressly waives, the benefits of California Civil Code § 1542, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Seller's Initials: _____

The parties have caused this Agreement to be duly executed by their respective duly authorized officers or representatives as of the date first written above.

12. **SELLER'S COVENANT.** Commencing with the execution of this Agreement and until the Close of Escrow, Seller will not knowingly permit any liens, encumbrances, or easements to be placed on the Real Property, nor will Seller enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Real Property that would be binding on Purchaser or the Real Property after the Close of Escrow, without the prior written consent of Purchaser, which will not be unreasonably withheld.

13. **RISK OF LOSS.** If, before the Close of Escrow, any damage or destruction of the Real Property, or any portion of it, shall have occurred that results in a loss of Fifty Thousand Dollars (\$50,000) or less, then at the Close of Escrow, Seller must give Purchaser a credit against the Purchase Price for the entire amount of the loss. If such damage or destruction results in a loss of more than Fifty Thousand Dollars (\$50,000), then within thirty (30) days after determination of the amount of loss Purchaser shall elect either (a) to receive a credit against the Purchase Price for the entire amount of the loss or (b) to terminate this Agreement. Despite any such damage or destruction, the Purchase Price for the Real Property shall not be reduced except by the credits referred to above. If any damage to or destruction of the Real Property occurs, the

Close of Escrow may be extended by mutual consent of the parties until the amount of the loss is determined and Purchaser has made any election permitted under this Section.

14. **FURTHER ACTS.** In addition to the acts and deeds recited herein and contemplated, performed, executed, and/or delivered by Seller and Purchaser, Seller and Purchaser agree to perform, execute, and/or deliver or cause to be performed, executed and/or delivered at the Close of Escrow or after the Close of Escrow any and all such further acts, deeds, and assurances as may be necessary to consummate the transaction contemplated herein

15. **BROKERS.** Each party warrants and represents to the other that no broker, agent or finder has been retained or consulted by it in connection with this transaction, and, except as otherwise provided herein, that neither party is responsible for payment of any real estate commission to any broker, agent, finder, or other third party.

16. **ASSIGNMENT.** Neither Purchaser nor Seller has the right to assign, either in whole or in part, this Agreement or their respective rights and liabilities under this Agreement, without the express written consent of the other party.

17. **ATTORNEY FEES.** In the event of any Action to enforce a term or condition of this Agreement, any alleged disputes, breaches, defaults, misrepresentations or Claims in connection with any provision of this Agreement or any Action in any way arising from this Agreement, including any interpleader of the Deposit by the Escrow Agent, the prevailing party in such action, or the nondismissing party when the dismissal occurs other than by a settlement, shall be entitled to recover its reasonable Costs and Expenses as defined herein, paid or incurred to review, defend, pursue or otherwise resolve such matters. The "prevailing party," for purposes of this Agreement, shall be deemed to be that party who obtains substantially the result sought, whether by settlement, dismissal or judgment.

18. **NOTICES.** All notices to be given under this Agreement must be in writing and sent to the respective party's notice addresses set forth below by:

18.1 certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed delivered upon refusal or receipt as indicated in the return receipt, or

18.2 personal delivery, or by commercial messenger or courier service, in which case notice will be deemed given upon refusal or receipt.

The notice addresses of the parties are as follows:

Seller:

Paula Rae Glick
1233 Elm Avenue

Beaumont, California 92223

Facsimile transmission may be made to: (951) 769-1920

Purchaser:

Community Redevelopment Agency of the City of Banning
99 East Ramsey Street
Banning, California 92220
Attn: Executive Director
Facsimile transmission may be made to: (951) 922-3174

With a Copy To:

Burke, Williams & Sorensen, LLP
2280 Market Street, Suite 300
Riverside, California 92501
Attn: Banning Community Redevelopment Agency General Counsel
Facsimile transmission may be made to: (951) 788-5785

or to such other address as Purchaser or Seller may designate by written notice to the other given in the manner prescribed herein.

19. **ENTIRE AGREEMENT.** Notwithstanding any other agreement entered into by or between the Seller and Purchaser, this Agreement contains the entire agreement between the parties with respect to the purchase and sale of the Real Property and supersedes all prior or contemporaneous agreements and understandings (whether written or oral) of the parties with respect to the purchase and sale of the Real Property. This Agreement cannot be modified in any manner except by an instrument in writing executed by the duly authorized representatives of the parties.

20. **WAIVERS.** No waiver of any covenant or condition in this Agreement is to be deemed a waiver of any other covenant or condition in this Agreement and no waiver is valid unless in writing and executed by the duly authorized representative of the waiving party. An extension of time for performance of any obligation or act is not to be deemed an extension of the time for performance of any other obligation or act.

21. **CONSTRUCTION.** The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions, and arrangement of this instrument do not in any way affect, limit, amplify, or modify the terms and provisions of this Agreement. The singular form includes plural, and vice versa. This Agreement is not to be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. The recitals and all exhibits to this Agreement are incorporated into it by this reference.

22. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which is an original but all of which together constitute but one and the same instrument. Any signature page of this Agreement may be detached from any counterpart and re-attached to any other counterpart of this Agreement which is identical in form hereto but having attached to it one or more additional signature pages.

23. **TIME OF THE ESSENCE.** Time is of the essence in this Agreement.

24. **SUCCESSORS.** Subject to the provisions of Section 17 [Assignment], this Agreement inures to the benefit of and is binding upon the parties to this Agreement and their respective heirs, successors, and assigns.

25. **GOVERNING LAW.** This Agreement is to be governed by and construed in accordance with the internal laws of the State of California, without regard to principles of conflicts of laws.

26. **COMPUTATION OF TIME.** The date on or before which any act is to be done under this Agreement is computed by excluding the first day (such as the day Escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Government Code § 6700 and § 6701.

27. **RECITALS AND DEFINITIONS.** The Recitals and Definitions set forth at the beginning of this Agreement are a substantive and integral part of this Agreement and are incorporated by reference in the Operative Provisions portion of this Agreement.

28. **SURVIVAL.** The representations, warranties, covenants, and indemnities of and by the parties contained in this Agreement survive until, and shall expire and be of no further force or effect after, the date that is one (1) year after the Close of Escrow and the delivery of the Deed.

29. **EFFECTIVE DATE.** This Agreement shall become effective on the date it has been formally approved by the Purchaser's Board of Directors and executed by the appropriate authorities of the Seller and Purchaser.

[SIGNATURE AND EXHIBIT PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective duly authorized officers or representatives as of the date first written above.

PURCHASER:

COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF BANNING

By: _____
Brian Nakamura, Executive Director

ATTEST:

Marie Calderon
Secretary

APPROVED AS TO FORM

By: _____
Burke, Williams & Sorensen, LLP
Agency General Counsel

SELLER:

PAULA RAE GLICK.

Paula Rae Glick

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ATTACHMENT "A"

Legal Description

Parcel 1:

Lot 7 in Block 2 of the Amended Map of the Banning Land Company, as shown by Map on file in Book 9 page 44 of Maps, Records of San Bernardino County, California.

More commonly known as Assessor's Parcel No. ("APN") 541-141-002 in the City of Banning, County of Riverside, State of California.

Parcel 2:

Lot 8 in Block 2 of the Amended Map of the Banning Land Company, as shown by Map on file in Book 9 page 44 of Maps, Records of San Bernardino County, California;

Excepting therefrom the Northerly 30 feet thereof.

More commonly known as Assessor's Parcel No. ("APN") 541-141-003 in the City of Banning, County of Riverside, State of California.

Parcel 3:

The Northerly 30,00 feet of Lot 8 in Block 2 of the Amended Map of the Banning Land Company, as shown by Map on file in Book 9 page 44 of Maps, Records of San Bernardino County, California.

More commonly known as Assessor's Parcel No. ("APN") 541-141-004 in the City of Banning, County of Riverside, State of California.

ATTACHMENT "B"

Grant Deed

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

Community Redevelopment
Agency of the City of
Banning
Attn: City Clerk
99 East Ramsey Street
Banning, California 92220

Space above This Line for Recorder's Use

GRANT DEED

A.P. NO.: 541-141-002, 541-141-003, and 541-141-004

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, PAULA RAE GLICK ("Grantor"), hereby grants to COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING ("Grantee"), all that certain real Real Property located in the City of Banning, County of Riverside, State of California, described in **Exhibit "1"** attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the undersigned has executed this Grant Deed on this ____ day of _____ 200_, to be effective upon its recordation in the Official Records of Riverside County, California.

GRANTOR:

PAULA RAE GLICK.

By: _____
_____, _____

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CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real Real Property conveyed by the Grant Deed, dated as of _____, 2008, by PAULA RAE GLICK. to the Community Redevelopment Agency of the City of Banning is hereby accepted by the undersigned officer on behalf of the Community Redevelopment Agency of the City of Banning pursuant to authority vested in him, and the grantee consents to the recordation thereof by its duly authorized officer.

Dated: _____, 2008

COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF BANNING

By: _____
Brian Nakamura, Executive Director

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

(SIGNATURE OF NOTARY)

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☐
☐

INDIVIDUAL
CORPORATE OFFICER

TITLE(S)

☐

PARTNER(S) ☐ LIMITED
☐ GENERAL

☐

ATTORNEY-IN-FACT
TRUSTEE(S)

☐

GUARDIAN/CONSERVATOR

☐

OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

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

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "1" TO GRANT DEED

Legal Description

Parcel 1:

Lot 7 in Block 2 of the Amended Map of the Banning Land Company, as shown by Map on file in Book 9 page 44 of Maps, Records of San Bernardino County, California.

More commonly known as Assessor's Parcel No. ("APN") 541-141-002 in the City of Banning, County of Riverside, State of California.

Parcel 2:

Lot 8 in Block 2 of the Amended Map of the Banning Land Company, as shown by Map on file in Book 9 page 44 of Maps, Records of San Bernardino County, California;

Excepting therefrom the Northerly 30 feet thereof.

More commonly known as Assessor's Parcel No. ("APN") 541-141-003 in the City of Banning, County of Riverside, State of California.

Parcel 3:

The Northerly 30,00 feet of Lot 8 in Block 2 of the Amended Map of the Banning Land Company, as shown by Map on file in Book 9 page 44 of Maps, Records of San Bernardino County, California.

More commonly known as Assessor's Parcel No. ("APN") 541-141-004 in the City of Banning, County of Riverside, State of California.

ATTACHMENT "C"

SECURED PROMISSORY NOTE

On or about _____, 2008, the Community Redevelopment Agency of the City of Banning, as Purchaser, and Paula Rae Glick, as Seller, entered into that certain Purchase and Sale Agreement (the "**Agreement**") pursuant to which Purchaser acquired that certain Real Property of Seller as described and defined in the said Agreement. This Secured Promissory Note (this "**Note**") is a material part of the purchase money consideration delivered to Seller from Purchaser at the closing under the Agreement.

NOW, THEREFORE, FOR VALUE RECEIVED, the undersigned ("**Obligor**") hereby promises to pay to the order of Paula Rae Glick, or order ("**Holder**"), at such place as Holder may designate from time to time, in lawful money of the United States of America, the principal sum of Two Hundred Thousand Dollars and No Cents (\$200,000.00), in accordance with the terms of this Note as follows:

1. Deed of Trust. Obligor's obligations under this Note are secured by a deed of trust (the "**Deed of Trust**") which encumbers certain real Real Property located in the County of Riverside, California, as described in the legal description attached hereto as **Exhibit "A"** (the "**Security Real Property**"). The date of recording of the Deed of Trust is the "**Recording Date**".

2. Interest. Interest on the unpaid principal amount of this Note from time to time outstanding shall accrue and be computed at a rate equal to seven and one-half percent (7.5%) per annum, commencing upon the Recording Date and continuing until all principal is paid in full.

3. Principal and Interest Payments. The principal sum of Two Hundred Thousand Dollars and No Cents (\$200,000.00) plus accrued interest thereon shall be due and payable as follows:

One payment annually for a period of 15 years, due and payable on the 31st of January, in the amount of Twenty-Two Thousand Two Hundred Forty-Eight Dollars and Thirty Cents (\$22,248.30), or until said principal and interest have been paid in full.

4. Transfer of Real Property/Default/Acceleration. This Note shall become due and payable at the option of Holder, and Holder shall become entitled to exercise its rights under the Deed of Trust, or any other instrument securing Obligor's obligations under this Note, upon (i) the sale, conveyance, transfer or alienation of the Security Real Property, or any interest therein, voluntarily or involuntarily, other than as expressly permitted under the terms of this Note; or (ii) upon the occurrence at any time of any of the following (each, an "**Event of Default**"):

a. Payment/Performance. Failure to pay when due any payment of principal or interest due hereunder, or failure to perform or observe any other obligation or covenant under this Note, the Deed of Trust or any other instrument evidencing or securing Obligor's obligations under this Note; provided, however, that except with respect to a failure to maintain any requisite insurance, Holder shall have first given Obligor notice of the failure to pay or other default pursuant to the terms of this Note and ten (10) business days opportunity to cure.

b. Voluntary Bankruptcy. The making of an assignment for the benefit of creditors by any party liable for the payment of this Note, or the voluntary appointment of a receiver, custodian, liquidator or trustee in bankruptcy of any such party's Real Property or the filing by any such party of a petition in bankruptcy or other similar proceeding under any law for relief of debtors.

c. Involuntary Bankruptcy. The filing against any party liable for the payment of this Note of a petition in bankruptcy or other similar proceeding under any law for relief of debtors, or the involuntary appointment of a receiver, custodian, liquidator or trustee in bankruptcy of the Real Property of any such party, where such petition or appointment is not vacated or discharged within sixty (60) days after the filing or making thereof.

5. Default; Collection Costs. From and after the occurrence of any Event of Default and until such default has been cured, all outstanding amounts under this Note shall bear interest at the rate of ten percent (10%) per annum (the "**Default Rate**"). Obligor promises to pay all costs and expenses, including reasonable attorneys' fees, incurred by Holder and arising out of or related to the collection of any amounts due hereunder or the enforcement of any rights provided for herein or in the Deed of Trust. Such costs and expenses shall include, without limitation, all costs, attorneys' fees and expenses incurred by Holder in connection with any insolvency, bankruptcy, reorganization, or other similar proceedings involving Obligor which in any way affect the exercise by Holder of its rights and remedies under this Note, the Deed of Trust or any instrument securing this Note.

6. Non-Recourse. Notwithstanding any term or provision of this Note to the contrary, Obligor assumes no personal liability for payment of this Note, for any default under the Deed of Trust, or for the payment of any deficiency established after judicial foreclosure or after a Trustee's sale under the Deed of Trust. By accepting this Note, Holder waives any personal liability of Obligor and agrees to look solely to the security of the Deed of Trust, if any, for payment of this Note. In the event of any default by Obligor under the terms of this Note or the Deed of Trust, the sole recourse of Holder for any and all such defaults shall be by judicial foreclosure or by the exercise of Trustee's power of sale.

7. Right to Transfer the Security Real Property Without Principal Payment. Notwithstanding any provision of this Note or the Deed of Trust to the contrary, upon written notice to Holder and provided Obligor is not then in default of its obligations under this Note, Obligor shall have the right, at any time and from time to time, to transfer and convey the Security Real Property to any entity legally existing that is controlled by or under common

control with Obligor, and such conveyance shall not result in breach or acceleration of the Note or Deed of Trust or otherwise require payment or partial payment of the outstanding principal balance of the Note (unless otherwise due).

8. Waivers.

a. By Obligor. Presentment, demand, protest, and all notices of every kind (including notices of protest, dishonor and nonpayment of this Note) are hereby waived by Obligor. To the extent permitted by applicable law, the defense of any statute of limitations is hereby waived by Obligor.

b. By Holder. Nothing contained herein shall prevent Holder from waiving, in writing, in any certain instance or on any particular occasion, any right or remedy hereunder (including, but not limited to, the operation of the acceleration clauses above). Consent to one (1) such transaction shall not be deemed to be a consent or waiver to any future transaction. No such waiver shall constitute a further or continuing waiver of such right or remedy as to any preceding or succeeding breach hereunder. No single or partial exercise of any right hereunder or under any instrument securing or guaranteeing this Note shall preclude any other or further exercise thereof or the exercise of any other right. Holder shall at all times have the right to proceed against any security for this Note in such order and in such manner as Holder may deem fit, without waiving any rights with respect to any other security. No delay or omission on the part of Holder in exercising any right hereunder or under any other instrument shall operate as a waiver of such right or of any other right under this Note. No acceptance by Holder of any payment due hereunder which is less than the full amount then due and owing shall operate as a waiver of the same or any other right or option, except as and to the extent provided by law. The release of any party liable on this Note shall not operate to release any other party liable hereon. All rights and remedies of Holder hereunder and under any documents guaranteeing or securing this Note are cumulative.

9. Severability. If any portion of this Note is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Note, and the remaining parts shall remain in full force as though such invalid or unenforceable provision had not been a part of this Note.

10. Notices. Any notice, request, demand, waiver, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person to an officer or duly authorized representative of the other party or deposited in the United States mail, duly certified or registered, return receipt requested, postage prepaid, and addressed to the party for whom intended, as follows:

If to Holder:

Paula Rae Glick
1233 Elm Avenue
Beaumont, California 92223
Facsimile transmission may be made to: (951) 769-1920

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If to Obligor: Community Redevelopment Agency of the City of Banning
99 East Ramsey Street
Banning, California 92220
Attn: Executive Director
Facsimile transmission may be made to: (951) 922-3174

With a Copy To: Burke, Williams & Sorensen, LLP
2280 Market Street, Suite 300
Riverside, California 92501
Attn: General Counsel for the Community Redevelopment
Agency of the City of Banning
Facsimile transmission may be made to: (951) 788-5785

Either party may by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as stated above, the same shall be deemed delivered and received two (2) days after mailing as provided above.

11. Insurance. During the term of this Note and until all obligations under this Note are satisfied, Obligor shall maintain self-insurance, or in the alternative shall obtain a policy of general liability insurance, which shall provide limits of not less than One Million Dollars (\$1,000,000) per occurrence for personal injury and/or Real Property damage, which policy shall name Holder as additionally insured, and Obligor shall provide Holder with a current certificate evidencing same.

12. Performance of Acts on Business Days. If the date for payment of any amount hereunto falls on a Saturday, Sunday or state or federal holiday, such payment may be made on the next succeeding business day.

13. Miscellaneous. "Holder" and "Obligor," as used herein, shall include the heirs, executors or administrators, or successors or assigns, of those parties. This Note is the joint work product of the parties. This Note shall be governed by and construed in accordance with the laws of the State of California.

14. Counterparts. This Note may be executed in counterparts, each of which shall be deemed as original regardless of the date of execution or delivery, and together shall constitute one and the same document.

IN WITNESS WHEREOF, Obligor and Holder have executed this Note as of the date subscribed below.

Dated: _____

"OBLIGOR"

COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF BANNING,

By: _____
Brian Nakamura, Executive Director

ATTEST:

Marie Calderon
Secretary

APPROVED AS TO FORM

By: _____
Burke, Williams & Sorensen, LLP
Agency General Counsel

Dated: _____

"HOLDER"

PAULA RAE GLICK,
An individual

By: _____
Paula Rae Glick

EXHIBIT "A" TO SECURED NOTE

[Legal description of Security Real Property]

Parcel 1:

Lot 7 in Block 2 of the Amended Map of the Banning Land Company, as shown by Map on file in Book 9 page 44 of Maps, Records of San Bernardino County, California.

More commonly known as Assessor's Parcel No. ("APN") 541-141-002 in the City of Banning, County of Riverside, State of California.

Parcel 2:

Lot 8 in Block 2 of the Amended Map of the Banning Land Company, as shown by Map on file in Book 9 page 44 of Maps, Records of San Bernardino County, California;

Excepting therefrom the Northerly 30 feet thereof.

More commonly known as Assessor's Parcel No. ("APN") 541-141-003 in the City of Banning, County of Riverside, State of California.

Parcel 3:

The Northerly 30,00 feet of Lot 8 in Block 2 of the Amended Map of the Banning Land Company, as shown by Map on file in Book 9 page 44 of Maps, Records of San Bernardino County, California.

More commonly known as Assessor's Parcel No. ("APN") 541-141-004 in the City of Banning, County of Riverside, State of California.

ATTACHMENT "D"

Deed of Trust

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

(Document exempt from recording fees
pursuant to Cal. Gov. Code § 27383)

Community Redevelopment Agency of the
City of Banning
Attn: Executive Director
99 East Ramsey Street
Banning, California 92220

Space Above This Line For Recorder's Use

DEED OF TRUST AND ASSIGNMENT OF RENTS

This DEED OF TRUST AND ASSIGNMENT OF RENTS, made as of _____, 2008 between the Community Redevelopment Agency of the City of Banning, a public body, corporate and politic, herein called TRUSTOR, whose mailing address is 99 East Ramsey Street, Banning, California 92220; _____, herein called TRUSTEE, and PAULA RAE GLICK, herein called BENEFICIARY.

Trustor irrevocably grants, transfers and assigns to Trustee in Trust, with Power of Sale, that Real Property in the City of Banning, County of Riverside, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO
(hereinafter referred to as "Real Property")

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the Purpose of Securing repayment of the sum of Two Hundred Thousand Dollars and no cents (\$200,000.00), plus interest thereon as may accrue, according to the terms of that Agreement entered into by and between Trustor and Beneficiary dated _____, 2008 (hereinafter referred to as the "Agreement") and as reflected in the Promissory Note (hereinafter referred to as "Promissory Note") executed by Trustor and dated _____, 2008.

Trustor acknowledges that this Deed of Trust secures not only the repayment of money and the obligations recited herein, but also the performance by the undersigned of certain covenants, promises, agreements, obligations and responsibilities created in Trustor under the Agreement and Promissory Note incorporated herein. Any default or breach by the undersigned of any covenant, promise, agreement or obligation of Trustor under any of said instruments secured hereby that is not timely cured as required in such instruments, shall allow Beneficiary to take all actions to which it is entitled, including but not limited to, the exercise of its right to declare the loan immediately due and payable and foreclose on the Real Property under this Deed of Trust.

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A. To protect the security of this Deed of Trust, Trustor agrees:

- (1) To keep said Real Property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said Real Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any act upon said Real Property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said Real Property may be reasonably necessary, the specific enumerations herein not excluding the general.
- (2) To provide, maintain and deliver to Beneficiary insurance satisfactory to Beneficiary pursuant to the Agreement. The amount collected under any insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- (3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.
- (4) To pay, at least ten days before delinquency all taxes and assessments affecting said Real Property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said Real Property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may, make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said Real Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay reasonable attorney's fees.

- (5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby, any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

- (1) That any award of damages in connection with any condemnation for public use of or injury to said Real Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him or her in the same manner and with the same effect as provided above in paragraph A(2) regarding disposition of proceeds of fire or other insurance.
- (2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

(3) That upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven, and upon surrender of this Deed of Trust and said Promissory Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the Real Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(4) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of the Agreement and Promissory Note, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said Real Property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said Promissory Note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said Real Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said Real Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the Real Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(5) That Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said Real Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

(6) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term Beneficiary shall mean the owner and holder, including pledgees of the Promissory Note secured hereby, whether or not named as Beneficiary herein.

(7) That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

(8) That in the event of any Transfer (as defined below) of said Real Property, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. As used herein, "Transfer" means any sale, conveyance, lease, transfer or disposition of all or any part of said Real Property or any interest of Trustor therein, or the further hypothecation or encumbering of said Real Property or any part thereof, or the entry into any agreement to do any of the foregoing, without the prior written consent of Beneficiary

Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge thereof does not exceed the maximum allowed by laws.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

TRUSTOR

Community Redevelopment Agency of the City of Banning,

By: _____
Brian Nakamura, Executive Director

ATTEST:

Marie Calderon
Secretary

APPROVED AS TO FORM

By: _____
Burke, Williams & Sorensen, LLP
Agency General Counsel

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EXHIBIT "A" TO DEED OF TRUST

Parcel 1:

Lot 7 in Block 2 of the Amended Map of the Banning Land Company, as shown by Map on file in Book 9 page 44 of Maps, Records of San Bernardino County, California.

More commonly known as Assessor's Parcel No. ("APN") 541-141-002 in the City of Banning, County of Riverside, State of California.

Parcel 2:

Lot 8 in Block 2 of the Amended Map of the Banning Land Company, as shown by Map on file in Book 9 page 44 of Maps, Records of San Bernardino County, California;

Excepting therefrom the Northerly 30 feet thereof.

More commonly known as Assessor's Parcel No. ("APN") 541-141-003 in the City of Banning, County of Riverside, State of California.

Parcel 3:

The Northerly 30,00 feet of Lot 8 in Block 2 of the Amended Map of the Banning Land Company, as shown by Map on file in Book 9 page 44 of Maps, Records of San Bernardino County, California.

More commonly known as Assessor's Parcel No. ("APN") 541-141-004 in the City of Banning, County of Riverside, State of California.

ATTACHMENT "E"

Estoppel Certificate

TENANT ESTOPPEL CERTIFICATE

This Tenant Estoppel Certificate ("Certificate"), dated as of _____, is executed by _____ ("Lessee") in favor of the Community Redevelopment Agency of the City of Banning ("Purchaser").

Recitals

A. Purchaser and Paula Rae Glick ("Lessor") have entered into an Agreement of Purchase and Sale dated as of _____, 2008 ("Purchase Agreement"), whereby Purchaser has agreed to purchase the improved real property known as 128-130 North San Gorgonio Avenue, located within the City of Banning, County of Riverside, California and more particularly known as Assessor's Parcel Nos. 541-141-002, 541-141-003, and 541-141-004.

B. Lessee and Lessor have entered into a written Lease Agreement dated as of _____ for a portion of the Property ("Lease").

C. Pursuant to the Lease, Lessee has agreed that upon the request of Lessor, Lessee would execute and deliver a tenant estoppel certificate certifying to the status of the Lease.

D. In connection with the Purchase Agreement, Lessor has requested that Lessee execute this Certificate.

NOW, THEREFORE, Lessee certifies, warrants, and represents to Purchaser as follows:

Section 1. Lessee. Lessee is the lessee of _____, a portion of the Property ("Leased Premises"), pursuant to the oral Lease.

Section 2. Leased Premises. The Leased Premises consist of approximately _____ () square feet on the second (2nd) floor of the Property.

Section 3. Full Force of Lease. As of the date of this Certificate, the Lease is in full force, has not been terminated, and is enforceable in accordance with its terms, subject only to any offsets, counterclaims, or defenses of Lessee in Section 12.

Section 4. Complete Agreement. The Lease constitutes the complete agreement between Lessor and Lessee for the Leased Premises and the Property, and no amendments to the Lease, either written or oral, currently exist.

Section 5. Acceptance of Leased Premises. Lessee has accepted and is currently occupying the Leased Premises.

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Section 6. Lease Term. The term of the Lease commenced on _____ [date] and runs month-to-month, subject to either party's termination upon _____ () days notice.

Section 7. Purchase Rights. Lessee has no option, right of first refusal, right of first offer, or other right to purchase all or any portion of the Leased Premises or all or any portion of the Property.

Section 8. Rights of Lessee. Except as expressly stated in this Certificate, Lessee:

8.1 has no right to renew or extend the term of the Lease;

8.2 has no option or other right to purchase all or any part of the Leased Premises or all or any part of the Property;

8.3 has no right, title, or interest in the Lease Premises, other than as Lessee under the Lease.

Section 9. Rent. The monthly rent currently payable under the Lease is _____ Dollars (\$ _____), subject to the following adjustments: _____ [Describe any adjustments].

Section 10. Security Deposit. The amount of Lessee's security deposit held by Lessor under the Lease is _____ Dollars (\$ _____).

Section 11. Prepaid Rent. The amount of prepaid rent, separate from the security deposit, is _____ Dollars (\$ _____) covering the period _____ [describe period coverage by prepaid rent].

Section 12. Lessor's Obligations. As of the date of the Certificate, to the best of Lessee's knowledge, Lessor has performed all obligations required of Lessor under the Lease, no offsets, counterclaims, or defenses of Lessee under the Lease exist against Lessor; and no events have occurred that, with the passage of time or the giving of notice, would constitute a basis for offsets, counterclaims, or defenses against Lessor.

Section 13. Notification of Lessee. From the date of the Certificate and continuing until _____ [date], Lessee agrees to immediately notify Purchaser at the following addresses, on the occurrence of any event or the discovery of any fact that would make any representation contained in this Certificate inaccurate:

Community Redevelopment Agency of the City of Banning
99 East Ramsey Street
Banning, California 92220
Attn: Executive Director
Facsimile transmission may be made to: (951) 922-3174

With a Copy To:

Burke, Williams & Sorensen, LLP

2280 Market Street, Suite 300

Riverside, California 92501

Attn: Banning Community Redevelopment Agency General Counsel

Facsimile transmission may be made to: (951) 788-5785

Lessee makes the Certificate with the knowledge that it will be relied on by Purchaser in agreeing to purchase the Property.

Lessee has executed this Certificate as of the date first written above.

LESSEE:

____[name]_____

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