

4-17-08

OWNER PARTICIPATION AGREEMENT

[Hendon Building]

by and between

the

COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF BANNING

and

BOTTOM LINE PROPERTY MANAGEMENT, LLC

Dated April 17, 2008

OWNER PARTICIPATION AGREEMENT

This Owner Participation Agreement (the "Agreement"), which is dated for reference as indicated on the cover page, is hereby entered into by and between the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, a public body, corporate and politic ("Agency") and BOTTOM LINE PROPERTY MANAGEMENT, LLC, a California limited liability company ("Participant"), on the following terms and conditions:

RECITALS

A. **General Purpose.** This Agreement provides a mechanism whereby Participant may participate in the redevelopment of the Project Area. Its general purpose is to implement the Redevelopment Plan, to decrease blight, and to enhance the economic feasibility of development within the Project Area in a manner consistent with the goals, objectives, policies and standards of the Redevelopment Plan and those of Agency and the City. This Agreement is in accord with the applicable state and federal laws.

B. **Specific Purpose.** The specific purpose of this Agreement is to facilitate development of the Project by Participant as described herein. Conditions existing within the Project Area are perpetuating the existence of blight, serving to retard private development, and currently render development of the Project economically infeasible without the assistance of the Agency. This Agreement is, therefore, intended to set forth the obligations of Participant to develop the Project and the manner in which and the extent to which the Agency will assist Participant in that endeavor.

C. **Evidence of Indebtedness.** Through this Agreement, Agency has indebted itself to the payment of a monetary obligation, subject to the terms and conditions contained herein, and such debt, whether funded, unfunded, assumed or otherwise, may be considered a debt of Agency for purpose of issuing Statements of Indebtedness and Reconciliation Statements pursuant to California Health and Safety Code § 33675.

D. **Speculation not Permitted.** Participant understands and acknowledges that the purpose of this Agreement is not to facilitate speculation or excess profit-taking in the Project or Site within the meaning of California Health and Safety Code § 33437.5 as that section exists on the date of this Agreement or as it may thereafter be amended, repealed and reenacted, or otherwise modified.

DEFINITIONS

"**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.

"**Agency**" shall mean the Community Redevelopment Agency of the City of Banning, a public body organized and existing and exercising those governmental functions and powers, as

authorized under the Community Redevelopment Law (Health and Safety Code § 33000, et seq.) of the State of California. The term the "Agency" shall also include any assignee of, or successor to, the rights and responsibilities of Agency under this Agreement.

"City" shall mean the City of Banning, a 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.

"Completion" shall mean the completion of the Project as provided for in Section 1.2.1.5 [Completion] of this Agreement.

"Default" shall mean the failure of a party to perform any material action or covenant required by and within the time periods provided herein following notice and opportunity to cure, as set forth in Section 6.1 [Default] of this Agreement.

"Development Costs" shall mean all the costs and expenses which must necessarily be incurred in the design, development, construction and completion of the Project, including but not limited to: predevelopment costs; Participant's overhead and related costs; costs of acquiring the Site; design and engineering costs; development costs; construction costs; fees payable to accountants, appraisers, architects, attorneys, biologists, construction managers, engineers, geologists, hydrologists, inspectors, planners, testing facilities, and other consultants; impact, development, park, school and other fees and charges imposed by governmental entities as a condition approval on the Project; costs for obtaining permits and approvals; taxes; assessments; costs related to testing for and remediation of Hazardous Substances; utility connection fees and other utility related charges; costs relating to financing including principal, interest, points, fees and other lender charges; escrow fees and closing costs; recording fees; court costs; costs relating to insurance; costs relating to title insurance; costs relating to bonds; Development Fees, and all other costs and expenses of Participant related to the performance of this Agreement.

"Development Fees" shall mean those fees, charges, and exactions imposed by the City upon the development of the Project on the Site, including, but not limited to, application fees, processing fees, development fees, impact fees, mitigation fees, park fees, storm drain fees, sewer fees, and other related charges.

"Effective Date" shall mean the date the Agreement has been formally approved by the Agency's governing board and executed by the appropriate authorities of the Agency and Participant.

"Environmental Review" shall mean the investigation and analysis of the Project's impacts on the environment as may be required under the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000, et seq., and/or the Project's impacts on any species of plant or animal listed as a species of concern, a threatened species, or an endangered species, or habitat therefore, as may be required by the California Endangered Species Act ("CESA"), Fish and Game Code § 2050, et seq., and/or the U.S. Endangered Species Act ("USES"), 16 U.S.C. § 1531, et seq., or other applicable California or federal law or regulation.

"Executive Director" shall mean the Executive Director of the Agency and/or any person designated and authorized by the Executive Director to act in the Executive Director's capacity with regard to this Agreement.

"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.

"Litigation Expenses" shall mean all costs and expenses, to the extent reasonable in amount, actually and necessarily incurred by a party in good faith in the investigation, prosecution or defense of an Action or to cure a Default of another party, including, but not limited to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys fees, consultant fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs, and any other costs or expenses, the award of which a court of competent jurisdiction may determine to be just and reasonable.

"Local Regulations" shall mean all the provisions of the City's General Plan, the City's Municipal Code (including but not limited to, all zoning, development, subdivision, and building standards, regulations, and procedures, and all uniform codes incorporated therein), any applicable specific plan, the conditions of any applicable map being processed or having been approved under the Subdivision Map Act (Government Code § 66410, *et seq.*), any mitigation measures imposed as a result of Environmental Review for the Project, all as they exist on the date of this Agreement or as they may thereafter be amended, repealed and reenacted, or otherwise modified.

"Participant" shall mean Bottom Line Property Management, LLC having its principal place of business at 68 North First Street, Banning, California who is the owner of the Site and the building located upon the Site. The term "Participant" shall, to the extent such is expressly permitted under this Agreement, include any assignee of, or successor to, the rights and responsibilities of the Participant under this Agreement.

"Project" shall mean the renovation by the Participant of the interior and exterior of the building located on the Site under the terms and conditions set forth in this Agreement. The Project shall specifically require, but not be limited to, the items of construction and renovation defined and described in Attachment "G" [Scope of Project].

"Project Approvals" shall mean any permit, approval, determination, and/or entitlement required by the Agency and/or City and pertaining to the design, development, construction, and installation of the Project, including, but not limited to, General Plan amendments, Specific Plan amendments, zone changes, zone variances, conditional use permits, site development plans, change plans, planned sign programs, grading permits, building permits, actions under the Subdivision Map Act, encroachment permits, business licenses and other such approvals as may be required under the Banning Municipal Code, the Redevelopment Plan, and all other applicable ordinances, codes, policies, and procedures approved by the Agency and/or City and effective as of the Effective Date of the Agreement.

"Project Area" shall mean that portion of the City that is subject to, and the boundaries of which are specifically described in, the Redevelopment Plan for the City.

"Project Plans" shall mean all construction, building, engineering, and architectural plans, drawings, and diagrams for grading, drainage, traffic, parking, construction and/or building, landscaping and other plans related to the Project and all designs, diagrams, drawings, specifications and other representations of or documents associated with the Project Plans.

"Redevelopment Plan" shall mean merged plan of redevelopment for the Downtown and Midway Redevelopment Projects that was adopted by the Agency and City pursuant to the California Community Redevelopment Law, by Ordinance No. 1280 on February 26, 2002, and as subsequently may be amended, from time to time, hereafter.

"Reimbursable Costs" shall mean the following Development Costs which must necessarily be incurred in the design, development, construction and completion of the Project: design and engineering costs; construction costs; impact, development, park, and other fees and charges imposed by the City or the Agency, but not by other governmental entities, as a

condition of approval on the Project; costs for obtaining permits and approvals; costs related to testing for and remediation of Hazardous Substances; utility connection fees and other utility-related charges directly related to the installation of utilities for the purpose of satisfying new tenant requirements; recording fees; and Development Fees. Any Development Costs not specifically enumerated herein are not to be deemed Reimbursable Costs.

"Site" shall mean that certain parcel of real property located at 68 North First Street in the City of Banning, California and commonly known as Assessor's Parcel Number 540-168-004, as more particularly described in the legal description attached hereto and incorporated herein by reference as Attachment "A" and as depicted on the diagram attached hereto and incorporated herein by reference as Attachment "B." The building located on the Site is commonly known as the Hendon Building and is a two-story building of wood frame construction, with Nine Thousand Eight Hundred (9,800) square feet of usable space on the first floor and Nine Thousand Eight Hundred (9,800) square feet of usable space on the second floor.

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:

ARTICLE 1 - DEVELOPMENT OF THE PROJECT

1.1. **Scope of Development.** Participant shall, at its sole cost and expense, notwithstanding any assistance that may be provided by the Agency under this Agreement, design, develop, and construct the Project on the Site in accordance with the following provisions:

1.1.1. **Quality.** It is the intent of the parties that the Project exhibit the highest standards of competent design and good workmanship. As such, all design work for the Project shall be undertaken by qualified architectural and/or engineering consultants and all construction work shall be performed by responsible contractors holding valid licenses for the class and category of work being undertaken. All materials incorporated into the Project shall be of a standard or grade reasonably acceptable to the Agency.

1.1.2. **Project Approvals.** Participant shall prepare, file, process applications for, and obtain all Project Approvals, whether ministerial or discretionary, which the City, and/or any other governmental entity having jurisdiction, requires for the Project. Participant agrees to comply with the Local Regulations and all established procedures and policies of the City's planning, building, and public works departments regarding the submittal and review of applications. Participant understands, acknowledges, and agrees that the construction and use of the Project is subject to the discretionary review (including architectural and design review) and approval by the City, including, but not limited to, the City Planning Commission and/or the City Council, and that nothing in this Agreement is, or shall be interpreted to be, an agreement by the Agency or the City to approve or issue any permit, approval, or entitlement for the Project.

1.1.3. **Conformity to Redevelopment Plan.** In addition to any Project Approvals required by Section 1.1.2 [Project Approvals], Participant acknowledges and agrees

that the Agency, by either its governing board or Executive Director, in accordance with the procedure adopted by the Agency, has the power and discretion to review and approve this Agreement and the Project as to conformity with the Redevelopment Plan. Participant shall prepare, file, and process any application required by the Agency for the Governing Board or Executive Director to undertake this review and approval process.

1.1.4. Project Plans. Participant shall promptly prepare and submit the Project Plans to the appropriate department of the City for review and approval within the time provided under Section 1.2 [Schedule of Performance]. In the event the Project Plans, or any portion thereof, are disapproved, the Participant shall expeditiously revise and resubmit the Project Plans or applicable portions thereof to the City.

1.1.5. CEQA/NEPA Review. Participant shall undertake, commence, and complete any Environmental Review required for the Project and shall comply with any mitigation measures imposed as a result thereof.

1.1.6. Development Costs. Notwithstanding any assistance to be provided by the Agency under this Agreement, Participant shall be solely responsible for payment of all Development Costs.

1.1.7. Development Fees. Notwithstanding any assistance to be provided by the Agency under this Agreement, Participant shall be solely responsible for payment of all Development Fees.

1.1.8. Rights of Access and Inspection. Representatives of the Agency and the City, including the Executive Director and his or her designees, shall have the reasonable right of access to the Site without charges or fees, at normal construction and/or business hours during the performance of the Project, for the purpose of, including but not limited to, reviewing Participant's progress in commencing and diligently pursuing the Project to Completion as required under this Agreement.

1.1.9. Compliance with Prevailing Wage Law. Participant acknowledges that the construction and construction-related activities for the Project are subject to the California Prevailing Wage Law and Participant is required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720, *et seq.*, of the California Labor Code for all covered work performed on the Project. The Director's determination of prevailing rates is on file with, and open to inspection at, the office of the City Clerk and is referred to and made a part hereof. Due to the fact that Prevailing Wage Law applies to the Project, the Contractor shall submit weekly certified payrolls of all workers employed on this Project to the Agency in a form acceptable to the Agency. Participant acknowledges the possibility of wage increases during construction of the Project and that Participant and/or its contractors shall be responsible for paying such increases. Participant acknowledges that it is aware of and shall comply with, and that its contractors shall be aware of and shall comply with, the following sections of the California Labor Code: (i) Section 1775 prescribing sanctions for failure to pay prevailing wage rates; (ii) Section 1776 requiring the making, keeping and disclosing of detailed payroll records and prescribing sanctions for failure to do so; (iii) Section 1777.5 prescribing the terms and

conditions for employing registered apprentices; (iv) Section 1810 providing that eight hours of labor shall be a day's work; and (v) Section 1813 prescribing sanctions for violations of the provisions concerning eight-hour work days and forty-hour work weeks.

1.2. **Schedule of Performance.** Participant shall undertake, commence, and thereafter diligently pursue the Project to Completion as provided herein:

1.2.1. **Mile Stones.** Participant shall perform the following actions within the times indicated or be in Default of this Agreement:

1.2.1.1. **Project Plans.** Within Thirty (30) days from and after the Effective Date, Participant shall submit complete Project Plans to the City and Agency for review and approval.

1.2.1.2. **Project Approvals.** Within Sixty (60) days from and after the Effective Date, Participant shall have taken all actions reasonably necessary to obtain the Project Approvals, including the Agency's determination of consistency with the Redevelopment Plan to obtain all of the Project Approvals.

1.2.1.3. **Commence Interior Construction.** Within Ninety (90) days from and after the Effective Date, Participant shall commence, and thereafter diligently pursue to Completion, construction of the interior portions of the Project.

1.2.1.4. **Commence Exterior Construction.** Within Ninety (90) days from and after the Effective Date, Participant shall commence, and thereafter diligently pursue to Completion, construction of the exterior portions of the Project

1.2.1.5. **Completion.** Within Two Hundred Forty (240) days from and after the Effective Date, Participant shall complete construction of the Project. Participant shall be deemed to have completed the Project at such time as the City issues a Certificate of Occupancy for the Project. However, in the event that the City has not issued a Certificate of Occupancy for the Project, Completion may be deemed to have occurred for the Project if the Agency determines, in its sole discretion, that, solely for the purposes of this Agreement, the Project has been substantially completed, in which event the Agency may issue a Certificate of Completion. However, it is understood, acknowledged, and agreed by Participant that the Agency's issuance of a Certificate of Completion shall not in any way satisfy or supersede any requirement that the Participant obtain a Certificate of Occupancy, or any other permit or approval required by the City or other governmental entity having jurisdiction for occupancy and operation of the Project or any phase thereof.

1.2.2. **Amendments to Schedule.** The Schedule of Performance is subject to revision from time-to-time as mutually agreed upon in writing by Participant and the Executive Director. In the event that Participant desires a change to the Schedule of Performance, it shall submit a written request to the other party specifying the nature of the change, the reason for the change, that the change is not due to the negligence or Default of the Participant, and evidence that the change is reasonably necessary to implement this Agreement. The Executive Director shall either approve or disapprove the request in writing within five (5) days of its receipt. Such extension approved by the Executive Director shall not exceed thirty (30) days unless a longer

extension is approved by the Governing Board of the Agency. Extensions of time required by acts of God and other force majeure events shall be controlled by Section 7.2 [Enforced Delays; Extension of Times] of this Agreement.

1.3. **Compliance with Laws.** Participant shall design, develop, and construct the Project in compliance with all applicable federal and state laws, regulations, and rules, all Local Regulations, and the Redevelopment Plan.

ARTICLE 2 - USE AND MAINTENANCE OF THE SITE

2.1. **Regulatory Agreement.** Participant covenants and agrees that the provisions set forth in this Article 2 [Use and Maintenance of the Site] of the Agreement shall be incorporated into a Regulatory Agreement in a form substantially similar in all material respects to the form set forth in Attachment "H." The Regulatory Agreement shall be recorded against the Site. The Regulatory Agreement shall run with title to the Site and shall be binding upon the Participant, its successors and its assigns throughout the term of the Operating Covenant.

2.2. **Operating Covenant.** Participant covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Site or part thereof, that for a period of not less than ten (10) years from and after Completion, Participant shall operate the Site in accordance with all terms and provisions of this Agreement.

2.3. **Management of Site.** The unique qualifications and expertise of Participant are of particular significance to the success of the Project and long-term viability of the Site. It is because of this expertise and experience that the Agency has entered into this Agreement with Participant. Participant therefore agrees that it will continue to own and manage the Site through and including the date that is ten (10) years following Completion or it will obtain Agency approval of any change in ownership or management.

2.4. **Hours of Operation.** Participant agrees that the Site is a key property for the revitalization of the area subject to the Redevelopment Plan. The Project and continued viability of the Site directly effects the viability of other businesses in the area subject to the Redevelopment Plan. In light of this, Participant agrees to the following:

2.4.1. The first floor of the Site shall be open to the public at least Monday through Saturday for not less than eight (8) hours per day, excepting state holidays as provided in California Government Code sections 6700 and 6701. Nothing in the foregoing shall prohibit any lessee from operating a business in excess of eight (8) hours per day or on any state holiday.

2.4.2. Participant shall require as a condition of the lease for each and every tenant leasing space in the Site, a provision requiring the tenant to open their business to the public at least Monday through Saturday, for not less than eight (8) hours per day, excepting national holidays.

2.5. **Use Covenant.** Participant covenants and agrees for itself, its successors and assigns, and any successor-in-interest to the Site or part thereof, that, during the term of the Operating Covenant, Participant shall use the Site in accordance with the following provisions:

2.5.1. Use Consistent with Project. Participant shall use the Site for the Project or such other uses as the Agency may determine, in its sole discretion, are consistent with the Project and the Redevelopment Plan, and for which the City has issued the appropriate Project Approvals. The ground floor of the Site shall be used for commercial space directly serving the public and contributing to the economic viability of the area subject to the Redevelopment Plan. No enterprise that consists substantially of office space or similar non-retail uses shall be permitted as a ground floor tenant on the Site without prior written approval of the Agency's Executive Director. The foregoing shall not be deemed to disallow commercial tenants from including within their leased space an office sized to serve the needs of the commercial business conducted therein. The parties agree that the following uses are preferred uses for the Site and Participant shall make every effort to devote the Site to them:

2.5.1.1. Restaurant. Within four (4) months of Completion, Participant shall use best efforts to enter into a written lease with a restaurant as a tenant for the Site. Agency acknowledges that Participant may, if unable to enter into a lease with a restaurant, enter into a lease for a different type of business providing dining. No less than Two Thousand Eight Hundred (2,800) square feet of the Site shall be used for restaurant or other dining-related purposes. Should the restaurant or other dining-related tenant default on or otherwise terminate its lease, Participant shall use best efforts to enter into a written lease with a replacement restaurant or other dining-related tenant within four (4) months of the initial tenant vacating the Site. Any prospective restaurant or other dining-related tenant must understand and agree to comply with all terms of the Use Covenant, including the provisions of Section 2.5.2 [Adult Businesses] and Section 2.5.8 [Commercial Retail].

2.5.1.2. Commercial Retail. That portion of the first floor of the Site not used for a restaurant pursuant to Section 2.5.1.1 [Restaurant] shall generally be used for specialty retail purposes. Within four (4) months of Completion, Participant shall use best efforts to enter into written leases with businesses providing specialty commercial retail items or services as tenants for the Site. Examples of acceptable tenant uses include an art gallery, book/music store, copy center/graphic designer, photographer, bakery, specialty gift shop, apparel/accessories store, florist, ice cream specialty store, and cyber café. Should a specialty retail tenant default on or otherwise terminate its lease, Participant shall use best efforts to enter into a written lease with a replacement specialty retail tenant within four (4) months of the initial tenant vacating the Site. Any prospective specialty retail tenant must understand and agree to comply with all terms of the Use Covenant, including the provisions of Section 2.5.2 [Adult Businesses].

2.5.1.3. Offices. Within four (4) months of Completion, Participant shall use best efforts to enter into written leases with businesses as tenants to occupy second-floor offices at the Site. Participant shall use best efforts to enter into leases with tenants that will provide professional services. The Agency acknowledges that Participant may, if unable to enter into leases with tenants for "professional" services, enter into leases for different types of businesses compatible with a professional office complex. Should a tenant default on or otherwise terminate its lease, Participant shall use best efforts to enter into a written lease with a replacement professional services tenant within four (4) months of the initial tenant vacating the Site.

2.5.1.4. Participant's Obligation to Secure Tenants. Should Participant, despite use of best efforts, not enter into a written lease with a restaurant, specialty retail, or professional services tenant within six (6) months of Completion, Participant will be deemed to be in Default of this Agreement under Section 6.1 [Default]. Pursuant to Section 6.1 [Default], Participant shall have thirty (30) days to cure the Default. If Participant fails to cure the Default, Agency may, at its option, exercise its rights under this Agreement. Participant further agrees that, due to the importance of the Site to the Revitalization of Downtown, all leaseable space shall remain leased and actively used for retail operations. If at any time leaseable space remains unoccupied or otherwise not used for retail operations for a period exceeding four (4) consecutive months, Participant will be deemed to be in Default of this Agreement under Section 6.1 [Default]. Pursuant to Section 6.1 [Default], Participant shall have thirty (30) days to cure the Default. If Participant fails to cure the Default, Agency may, at its option, exercise its rights under this Agreement.

2.5.2. Adult Businesses. No sexually-oriented businesses or entertainment establishments (as defined in Banning Municipal Code § 9152), shall be established, maintained, or permitted to be established or maintained on the Site. The use, sale, distribution, display, advertisement, or other exhibition of material that is obscene, that depicts "Specified anatomical areas," (as defined in Banning Municipal Code § 9152), "Specified sexual activities," (as defined in Banning Municipal Code § 9152), a "Specified criminal act" (as defined in Banning Municipal Code § 9152), or any "Adult oriented merchandise" (defined as merchandise depicting or designed for use in connection with Specified anatomical areas, Specified sexual activities or Specified criminal acts, as defined in Banning Municipal Code § 9152), is prohibited on the Site.

2.5.3. Sales of Alcohol. No sale, or offering for sale, of any alcoholic beverages shall be permitted on the Site, except as may be allowed by the City after review and approval thereof by the City under ordinances, rules, and official procedures of the City and as lawfully permitted under a valid permit or license obtained from the appropriate governmental agency having jurisdiction.

2.5.4. Sales of Tobacco Products. No sale, or offering for sale, of any tobacco products, including but not limited to cigarettes, cigars, cut tobacco, chewing tobacco, snuff, or similar tobacco products, shall be permitted on the Site.

2.5.5. Sales of Weapons. No sale, or offering for sale, of any lethal or potentially lethal weapon, including but not limited to any gun, rifle, shotgun, revolver, pistol, or other firearm, knife, dagger, dirk, sword, deadly implement of the martial arts, or other implement, the primary purpose of which is to cause serious bodily injury, shall be permitted on the Site.

2.5.6. Laundromat. No laundromat, whether self-service or full-service (including dry cleaning or other laundry-related services), shall be permitted on the Site.

2.5.7. Bail Bonds. No commercial enterprise that has as any part of its business the sale or provision of bail, bail bonds, or other securities in any way related to the posting of bail shall be permitted on the Site.

2.6. **Maintenance of the Site.** The Participant covenants and agrees for itself, its tenants, its successors and assigns, and any successor-in-interest to the Site, or part thereof, that it will, at its sole cost and expense: (i) maintain the appearance and safety of the Site (including all improvements, fixtures, and landscaping) in good order, condition, and repair, and free from the accumulation of trash, waste materials, and other debris; (ii) remove all graffiti placed upon the Site (including all improvements, fixtures, and landscaping) within seventy-two (72) hours of its appearance; (iii) maintain in good order, condition and repair, properly functioning landscape irrigation systems on the Site; and (iv) remove and promptly replace all dead or diseased landscaping material on the Site. In the event of a default of this covenant and of a failure to cure the default within fifteen (15) days after service of a written notice by Agency and/or the City, Agency and/or the City, or their agents, employees and contractors, shall have the right to enter upon the Site without further notice and to take such actions as are necessary to cure the default. Participant shall reimburse Agency and/or the City for all costs associated with cure of the default (including but not limited to, staff services, administrative costs, legal services, and third-party costs), within fifteen (15) days after service of a written notice by Agency and/or City. If Participant fails to pay within the time provided, such costs shall be a lien upon the Property, as provided by California Civil Code § 2881. The Agency may enforce and foreclose such lien in any manner legally allowed.

2.7. **Nondiscrimination in Employment.** The Participant covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Site or part thereof, that all persons employed by or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth, or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 200, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. § 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, the Immigration Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b, *et seq.*, 42 U.S.C. § 1981, the California Fair Employment and Housing Act, California Government Code § 12900, *et seq.*, the California Equal Pay Law, California Labor Code § 1197.5, California Government Code § 11135, the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, and all other anti-discrimination laws and regulations for the United States and the State of California as they now exist or may hereafter be amended.

2.8. **Nondiscrimination and Nonsegregation.** Participant covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Site or part thereof, that it shall abide by the following provisions:

2.8.1. **Obligation to Refrain from Discrimination.** They shall refrain from restricting the rental, sale, lease, sublease, transfer, use, development, occupancy, tenure, or enjoyment of the Site (or any part thereof) on the basis of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto), of any person or group of persons, and shall comply with the applicable anti-discrimination provisions of the Americans

with Disabilities Act (42 U.S.C. § 12101, *et seq.*) and the California Fair Employment and Housing Act (Cal. Government Code § 12900, *et seq.*) as they exist on the date of this Agreement or as they may thereafter be amended, repealed and reenacted, or otherwise modified. They shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed.

2.8.2. Nondiscrimination and Nonsegregation Clauses. Any deeds, leases, or contracts which are proposed to be, or which are, entered into with respect to the rental, sale, lease, sublease, transfer, use, development, occupancy, tenure, or enjoyment of the Site (including improvements and fixtures) (or party thereof), shall be subject to, and shall expressly contain, nondiscrimination or nonsegregation clauses in substantially the following form:

2.8.2.1. In Deeds. "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that it shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U. S. C. § 12101, *et seq.*) and the California Fair Employment and Housing Act (Cal. Government Code § 12900, *et seq.*), as they currently exist or as they may thereafter be amended, repealed and reenacted, or otherwise modified, and that there shall be no discrimination against or segregation of, any person or group or persons on account of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto) in the rental, sale, lease, sublease, transfer, use, occupancy, or tenure of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

2.8.2.2. In Leases. "The lessee covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that it shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*) and the California Fair Employment and Housing Act (Cal. Gov. Code § 12900, *et seq.*), as they currently exist or as they may thereafter be amended, repealed and reenacted, or otherwise modified, and that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto) in the rental, sale, lease, sublease, transfer, use, occupancy, or tenure of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein leased."

2.8.2.3. In Contracts. "There shall be no discrimination against or segregation of, any person or group or persons on account of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto) in the rental, sale, lease, sublease, transfer, use, occupancy, or tenure of the land or premises affected by this instrument, nor shall the contracting or subcontracting party or parties, or other transferees under this instrument, or any person claiming under or through it, violate the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*), and the California Fair Employment and Housing Act (Cal. Gov. Code § 12900, *et seq.*) as they currently exist or as they may thereafter be amended, repealed and reenacted, or otherwise modified, nor establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land. This provision shall obligate the contracting and subcontracting party or parties, and other transferees under this instrument, or any person claiming under or through it."

2.9. Taxes and Encumbrances. Participant shall pay, when due: (i) all *ad valorem* property taxes imposed on the Site under Article XIII A of the California Constitution; (ii) all special taxes imposed on the Site; (iii) all special assessments imposed on the Site; (iv) all taxes payable under the California Bradley-Burns Uniform Local Sales & Use Tax Law, Revenue and Taxation Code § 7200, *et seq.*; and (v) all other taxes, assessments, fees, exactions, or charges, any portion of which are allocated to, or received by, the City or the Agency and which are imposed due to the ownership, use, or possession of the Site or interest therein or due to the construction or operation of the Project. Upon failure to so pay, Participant shall remove any lien, levy, or encumbrance made on the Site within ninety (90) days of the attachment of such. Participant hereby waives any right it may have to contest the imposition of such taxes, assessments, fees, exactions, or charges against the Site or upon the construction or operation of the Project which are levied by the City, the Agency, the County of Riverside, or the State of California, or any special district of any of the foregoing.

2.10. Compliance with Laws. The Participant covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Project and/or Site or part thereof, that it shall operate and maintain the Site and Project in conformity with the Redevelopment Plan, Local Regulations, the Regulatory Agreement, and all applicable state and federal laws, including all applicable labor standards, disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* and the Unruh Civil Rights Act, California Civil Code § 51, *et seq.*

2.11. Effect of Violation. The Agency and City are deemed the beneficiaries of the terms and provisions of this Agreement and for the purposes of protecting the interest of the community and other parties, public or private, in whose favor and for whose benefit this Agreement has been provided. The Agency and City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of the Agreement and covenants may be entitled.

ARTICLE 3 - AGENCY ASSISTANCE

3.1. **Method of Assistance.** Subject to and conditioned upon Participant's satisfaction and continued compliance with the provisions of Section 3.3 [Conditions of Providing Assistance] of this Agreement, the Agency agrees to provide Participant with certain assistance related to the Project as follows:

3.1.1. **Funding.** The Agency shall reimburse to Participant certain costs of the Project, not to exceed Four Hundred Fifty Thousand Dollars and No Cents (\$450,000.00), for use by Participant to defray the Reimbursable Costs. The parties agree that Agency shall have no obligation to reimburse Participant for any development-related cost or expense other than Reimbursable Costs.

3.1.2. **Disbursement of Reimbursement Funds.** Subject to the foregoing, Agency agrees to disburse the Reimbursement Funds to Participant in periodic installment draws as provided herein:

3.1.2.1. **Initial Disbursement.** Upon receipt of a building permit for the Project from the City, Participant may apply for and the Agency shall provide an initial disbursement of Ninety-Thousand Dollars (\$90,000).

3.1.2.2. **Periodic Disbursement Requests.** Following the initial disbursement required by Section 3.1.2.1 [Initial Disbursement], Participant may, from time to time, during the installation and construction of the Public Improvements submit requests for disbursements ("Disbursement Requests") to Agency for processing and payment.

3.1.2.3. **Contents of Disbursement Requests.** Each Disbursement Request shall meet the following requirements: (i) it shall be in writing and in a form deemed satisfactory by Agency's Executive Director; and (ii) it shall be supported by documentation, deemed satisfactory to the Agency's Executive Director, demonstrating that actual work has been performed on the Project and paid for by Participant, the percentage of work completed to date, the work remaining to be completed, and the amount of the request. The amount of the request shall not exceed the reasonable cost actually incurred for the Reimbursable Costs performed to date. Documents deemed acceptable to support the requested amount shall include executed contracts for construction, contractor's certified progress reports, invoices for labor and/or materials, checks paid and other evidences of costs incurred. The Agency shall only be obligated to disburse assistance for actual, reasonable, and necessary Reimbursable Costs that have been incurred by Participant on the Project, but in no event shall the Agency be obligated to disburse, in the aggregate, a sum exceeding the amount of Four Hundred Fifty Thousand Dollars and No Cents (\$450,000.00).

3.1.2.4. **Processing and Approval of Disbursement Requests.** Agency agrees to promptly review and process for approval each Disbursement Request and to notify Participant within fifteen (15) days of receipt by Agency as to whether the Disbursement Request contains sufficient supporting documentation and is otherwise deemed complete or incomplete. If the request is incomplete, Participant shall provide Agency with sufficient information and documentation to cure any defects identified by Agency. Agency will re-

review the Disbursement Request after submittal of supplemental information within fifteen (15) days of such resubmittal. Agency agrees to disburse to Participant ninety percent (90%) of the Agency approved amount of the Disbursement Request within thirty (30) days after determining the Disbursement Request to be complete.

3.1.2.5. Retention Amount. Agency shall retain ten percent (10%) of each approved Disbursement Request for distribution upon an approval final Disbursement Request submitted by Participant after Completion of the Project as provided in Section 1.2.1.5 [Completion].

3.1.2.6. No Interest on Funds. Pending disbursement of any funds to Participant, no interest shall accrue in favor of Participant on the assistance or any amount requested under a pending Disbursement Request. The Agency shall have sole and exclusive authority to maintain, or account for, the funds to be used for assistance in an escrow account, internal account, or indication on a ledger, budget, or similar financial report or statement of the Agency or City.

3.2. Security for Assistance. Participant shall make and give to the Agency the following types of security for the financial assistance being provided by the Agency under Section 3.1 [Method of Assistance] of this Agreement:

3.2.1. Reimbursement. Participant covenants and agrees that in the event that Participant is in Default of this Agreement, which Default remains uncured after the period provided for cure in Section 6.1 [Default] of this Agreement, Participant shall repay to the Agency on demand all funds paid or advanced to Participant by the Agency under Section 3.1. [Method of Assistance] without further notice or demand by the Agency.

3.2.2. First Promissory Note. Participant's obligation to reimburse the Agency for funds paid or advanced by the Agency to Participant under Section 3.1 [Method of Assistance] shall be further evidenced by a promissory note having a form and content the same in all material respects to the promissory notes attached hereto and incorporated herein by reference as Attachment "C" (the "First Promissory Note") and shall provide:

3.2.2.1. The First Promissory Note shall have a term of five (5) years commencing from and after the Effective Date and shall be for a principal amount equal to half of the funds advanced by the Agency to Participant under Section 3.1. [Method of Assistance]. The parties acknowledge that the principal amount secured by the First Promissory Note shall increase periodically after the Effective Date as the Agency pays or makes advances of the assistance to Participant as provided under Section 3.1. [Method of Assistance], but shall not exceed Two Hundred Twenty Five Thousand dollars (\$225,000.00), plus accrued interest;

3.2.2.2. That the unpaid principal balance of the First Promissory Note shall bear simple interest at a rate equal to the lesser of the commercial prime interest rate or the legal rate of ten percent (10 %) per annum from and after the Effective Date until paid or forgiven in full;

3.2.2.3. That the outstanding balance of the First Promissory Note, including all principal and accrued interest, is eligible to be forgiven on the fifth (5th)

anniversary of the Completion of the Project on the condition that the Participant remains the owner of the Site and remains in compliance with the Management Covenant and Operating Covenant as provided for in this Agreement. Participant shall only be eligible for forgiveness so long as Participant remains in full compliance with the material terms and conditions of the Agreement, allows no Default to remain uncured after the expiration of the period provided for cure in this Agreement with the exception of a Default arising under Section 2.5.1 [Use Consistent with Project] where the City elects to exercise its right to seek out tenants under Section 2.5.1.3 [Agency's Right to Execute Lease and Secure Tenants], and does not permit chronic or recurring Defaults of the Agreement regardless of whether such Defaults were timely cured or not;

3.2.2.4. That any Default of this Agreement by Participant which remains uncured after the period provided for cure under Section 6.1 [Default] of this Agreement with the exception of a Default arising under Section 2.5.1 [Use Consistent with Project] where the City elects to exercise its right to seek out tenants under Section 2.5.1.4 [Agency's Right to Execute Lease and Secure Tenants], shall be a breach of the First Promissory Note in which event the entire outstanding principal balance of the First Promissory Note plus accrued interest shall become due and payable by Participant on demand by the Agency;

3.2.2.5. That the First Promissory Note shall be secured by a deed of trust and assignment of rents having a form and content the same in all material respects to the deeds of trust attached hereto and incorporated herein by reference as Attachment "D" ("First Deed of Trust"). The First Deed of Trust shall provide that, by incorporating this Agreement by reference, it is subordinate and junior only to prior encumbrances and subsequent encumbrances as may approved by the Agency. The Agency hereby agrees to subordinate the First Deed of Trust to any lease of commercial space in the Site, any construction loan obtained for purposes of financing the Project, and any refinancing of an existing mortgage on the Site provided the form of the refinancing documents is reviewed by and approved by the City's city attorney. The Agency further agrees not to unreasonably withhold its approval of subsequent encumbrances and subordination thereto, provided the form of the subsequent encumbrance is reviewed by and approved by the City's city attorney. The rights established in this Section and under the First Deed of Trust are not intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the Agency will have provided public funds to assist the development of a private Project as permitted under the Community Redevelopment Law.

3.2.3. Second Promissory Note. Participant's obligation to reimburse the Agency for funds paid or advanced by the Agency to Participant under Section 3.1 [Method of Assistance] shall be further evidenced by a promissory note having a form and content the same in all material respects to the promissory note attached hereto and incorporated herein by reference as Attachment "E" (the "Second Promissory Note").

3.2.3.1. The Second Promissory Note shall have a term of ten (10) years commencing from and after the Effective Date and shall be for a principal amount equal to half

of the funds advanced by the Agency to Participant under Section 3.1. [Method of Assistance]. The parties acknowledge that the principal amount secured by the Second Promissory Note shall increase periodically after the Effective Date as the Agency pays or makes advances of the assistance to Participant as provided under Section 3.1. [Method of Assistance], but shall not exceed Two Hundred Twenty Five Thousand dollars (\$225,000.00), plus accrued interest;

3.2.3.2. That the unpaid principal balance of the Second Promissory Note shall bear simple interest at a rate equal to the lesser of the commercial prime interest rate or the legal rate of ten percent (10 %) per annum from and after the Effective Date until paid or forgiven in full;

3.2.3.3. That the outstanding balance of the Second Promissory Note, including all principal and accrued interest, is eligible to be forgiven at the end of the Operating Covenant as provided for in Section 2.1 [Operating Covenant] in this Agreement. Participant shall only be eligible for forgiveness so long as Participant remains in substantial compliance with the material terms and conditions of the Agreement, allows no Default to remain uncured after the expiration of the period provided for cure in this Agreement with the exception of a Default arising under Section 2.5.1 [Use Consistent with Project] where the City elects to exercise its right to seek out tenants under Section 2.5.1.3 [Agency's Right to Execute Lease and Secure Tenants], and does not permit chronic or recurring Defaults of the Agreement regardless of whether such Defaults were timely cured or not;

3.2.3.4. That any Default of this Agreement by Participant which remains uncured after the period provided for cure under Section 6.1 [Default] of this Agreement with the exception of a Default arising under Section 2.5.1 [Use Consistent with Project] where the City elects to exercise its right to seek out tenants under Section 2.5.1.4 [Agency's Right to Execute Lease and Secure Tenants], shall be a breach of the Second Promissory Note in which event the entire outstanding principal balance of the Second Promissory Note plus accrued interest shall become due and payable by Participant on demand by the Agency;

3.2.3.5. That the Second Promissory Note shall be secured by a deeds of trust and assignment of rents having a form and content the same in all material respects to the deeds of trust attached hereto and incorporated herein by reference as Attachment "F" ("Second Deed of Trust"). The Second Deed of Trust shall provide that, by incorporating this Agreement by reference, it is subordinate and junior only to prior encumbrances and subsequent encumbrances as may approved by the Agency. The Agency hereby agrees to subordinate the Second Deed of Trust to any lease of commercial space in the Site, any construction loan obtained for purposes of financing the Project, and any refinancing of an existing mortgage on the Site provided the form of the refinancing documents is reviewed by and approved by the City's city attorney. The Agency further agrees not to unreasonably withhold its approval of subsequent encumbrances and subordination thereto, provided the form of the subsequent encumbrance is reviewed by and approved by the City's city attorney. The rights established in this Section and under the Second Deed of Trust are not intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are

to be interpreted in light of the fact that the Agency will have provided public funds to assist the development of a private Project as permitted under the Community Redevelopment Law.

3.3. **Conditions on Assistance.** The following are conditions upon the Agency's obligation to provide the assistance specified in Section 3.1 [Method of Assistance]:

3.3.1. **Limit on Assistance.** Except as is expressly provided for in Section 3.1 [Method of Assistance], the City shall have no obligation to provide Participant with additional assistance, to make any other contribution toward the Project, to pay any Development Cost or Development Fee, or to carry-out or complete the Project or any phase thereof. Nothing in this Agreement is or shall be construed to be a pledge or commitment by the Agency of any specific tax revenue, grant funds, or other specific monies, funds, or revenues to which the Agency is in possession of or may become entitled to receive. This Agreement does not, and shall not be construed to, grant or vest the Participant with any right to make a claim or impose a lien against any specific tax revenue, grant funds, or other specific monies, funds, or revenues to which the Agency is in possession of or may become entitled to receive. The Agency, in its sole discretion, may use any revenue, funds, or monies available to the Agency, as may be allowed for by law, to provide the Assistance provided under this Agreement;

3.3.2. **Development of the Project.** Participant's commencement and diligent construction of the Project to Completion within the time provided and otherwise in strict compliance with Article 1 [Development of the Project] of this Agreement;

3.3.3. **Use of the Site.** Participant's compliance with the covenants and agreements made under Article 2 [Use and Maintenance of the Site] of this Agreement;

3.3.4. **Insurance Policies.** Participant delivering to the Agency the insurance policies and evidence of insurance as required under Article 4 [Insurance] of this Agreement prior to the Agency's payment or advancement of assistance to Participant;

3.3.5. **Payment of Taxes.** Participant's payment, when due, of all *ad valorem* property taxes levied against the Site under Article XIII A of the California Constitution, as well as any special assessments or special taxes levied against the Site (collectively "Property Taxes"), payment of all taxes payable under the California Bradley-Burns Uniform Local Sales & Use Tax Law, Revenue and Taxation Code §7200, *et seq.*, and payment of all other taxes, any portion of which is allocated to, or received by, the City or the City's Redevelopment Agency.

ARTICLE 4 - INSURANCE

4.1. **Participant's Liability Insurance.** Participant shall, at its sole expense, obtain and keep in force until the expiration of term of the Operating Covenant, a policy of commercial general liability insurance in an occurrence form providing for broad form property damage coverage, broad form contractual coverage, personal injury, bodily injury, and advertising injury coverage with employee exclusion as to each named insured deleted, and products and complete operations coverage, insuring Participant, and naming Agency and City as an additional named insureds, against any liability arising out of or in connection with Participant's possession and use of the Site and all improvements thereon, Agency's activities in connection with the Project, or any other claim arising out of or relating to the Project or work on the Site. Such insurance

policy shall have (a) a combined single limit for both bodily injury or death in an amount not less than Two Million Dollars (\$2,000,000.00), and (b) a limit for both bodily injury or death in one accident or occurrence or for property damage in an amount not less than One Million Dollars (\$1,000,000.00), which amounts shall be increased from time to time as reasonably required by Agency. Such insurance policy and each portion thereof shall be in the broadest and most comprehensive form available in the market at the time such policy is issued or amended. The policy shall insure performance by Participant of the indemnity provisions of Section 5.1 [General Indemnity] of this Agreement. The limits of said insurance shall not limit the liability of Participant hereunder.

4.2. **Participant's Casualty Insurance.** Participant shall, at its sole expense, obtain and/or cause to be maintained by any tenant on the Site, and shall keep in force on all buildings and improvements constructed as part of the Project until the expiration of term of the Operating Covenant, a policy of standard "all risk" fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of one hundred percent (100%) of full replacement value against "all risks of physical loss" including without limitation a guaranteed replacement cost and code compliance coverage endorsement (including without limitation, if recommended by a seismic engineer retained by Agency, earthquake coverage with deductible related thereto of no more than ten percent (10%) of the replacement value of the all buildings and improvements constructed as part of the Project, including boiler and machinery insurance coverage, heating, air conditioning equipment, and other equipment of such nature), and insurance against loss or damage to personal property located on the Site by fire and other hazards covered by such insurance (without any deductible clause unless approved in writing by Agency). In the event any tenant on the Site fails to maintain coverage to the extent of one hundred percent (100%) of full replacement value for the Site, then Participant shall maintain such additional or gap insurance to satisfy the requirements of this Section. All such insurance shall be payable to Agency. Such insurance policy and each portion thereof shall be in the broadest and most comprehensive form available in the market at the time such policy is issued or amended. Such policy shall, if required by Agency, contain an agreed value clause sufficient (as determined by Agency) to eliminate any risk of Agency's coinsurance.

4.3. **Worker's Compensation Insurance.** Participant shall, at its expense, obtain and keep in effect (or cause any contractor to procure and keep in effect), Worker's Compensation Insurance (including employer's liability in an amount satisfactory to Agency and if applicable, insurance covering claims of workers against employers arising under Federal law) covering all employees of Participant and any contractor and, if required under applicable law, any subcontractor engaged in work on, or with respect to, the Property, in such amount as is reasonable satisfactory to Agency and in the minimum amount for one (1) person of not less than One Million Dollars (\$1,000,000.00), and in the minimum amount for one (1) accident or occurrence of not less than Five Hundred Thousand Dollars (\$500,000.00).

4.4. **Insurance Policies.** All of Participant's insurance shall be primary insurance written in a form satisfactory to Agency by companies licensed in California acceptable to Agency (which must be Class IX A or better as rated by Best's Insurance Reports) and shall specifically provide that such policies shall not be subject to cancellation or other change except after at least thirty (30) days prior written notice of Agency. Copies of the policies, together with satisfactory evidence of payment of premiums shall be deposited with Agency as provided

herein, and upon each renewal of such policies, which shall be effected not less than thirty (30) days prior to the expiration date of the term of such coverage.

4.5. **Other Insurance Provisions.** Said policy or policies, as applicable, shall combine aggregate limits for Bodily Injury, Property Damages, Personal Injury, and Advertising Injury, in the amounts specified above, that apply specifically to and can only be exhausted in connection with claims arising out of or relating to the Property. If any claim, event, or loss occurs during the policy period which will or may decrease the aggregate amount of insurance coverage available under the policy, Participant shall immediately secure additional coverage sufficient to provide total aggregate limits at least equal to the amounts set forth above on a going forward basis. Should any part of the coverage required above be provided by "excess" or "umbrella" policies, those policies shall specifically provide that the coverage under those policies shall "drop down" as to both defense and indemnity obligations in the event of insolvency of the primary or underlying carrier. Such "excess" or "umbrella" policies shall also contain all the other provisions required by this Agreement.

ARTICLE 5 - INDEMNITY

5.1. **General Indemnity.** Except as to the sole negligence, active negligence or willful misconduct of the Agency or City, Participant expressly agrees to, and shall, indemnify, defend, release, and hold the Agency, the City, and their respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, lien, and Costs and Expenses which arises out of, or are in any way related to, any act or omission of Participant, or its officers, directors, employees, agents, or contractors, connected with the performance under this Agreement, the obligations set forth in Section 1.1.9 [Compliance with Prevailing Wage Law], the construction, use, or operation of the Project or Site, notwithstanding that the Agency and/or City may have benefited therefrom, or any challenge to this Agreement. This Section shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Participant's officers, directors, employees, agents and contractors. The Parties expressly agree that any payment, or Costs and Expenses the Agency and/or City incurs or makes to, or on behalf of, an injured employee under the Agency's self administered workers' compensation, is included as a loss or Costs and Expenses for the purpose of this Section. The Agency and City shall not be responsible for any acts, errors or omissions of any person or entity except the Agency and the City and their respective officers, agents, servants, employees or contractors. The Parties expressly agree that the obligations of Participant under this Section shall survive the expiration or early termination of the Agreement.

5.2. **Hazardous Substances Indemnity.** Participant expressly agrees to indemnify, defend, and hold the Agency, the City and their respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, lien, encumbrance, and Costs and Expenses that, foreseeably or unforeseeably, directly or indirectly, arises from, or is in any way related to, the release, treatment, use, generation, transportation, storage, or disposal in, on, under, to, or from the Site of any Hazardous Substances by Participant or its officers, directors, employees, agents, and contractors. For the purposes of this Section, "Costs and Expenses" include, but are not limited to, the cost of any necessary, ordered, adjudicated, or otherwise required remediation or removal of Hazardous

Substances, any cost of repair of improvements on the Site or surrounding property necessitated by or related to the remediation or removal of Hazardous Substances, the cost of any tests, samples, studies, investigations, or other preparation reasonably undertaken in preparation or furtherance of remediation or removal of Hazardous Substances, and the cost of preparing plans for the remediation or removal of Hazardous Substances. Notwithstanding the foregoing, Participant expressly agrees to, at its sole expense, and with legal counsel of the Agency's choice, defend the Agency, the City and their respective officials, officers, employees, agents, and contractors in any Action in which the Agency, the City or their respective officials, officers, employees, agents, and contractors become or may become involved as a result of the release, treatment, use, generation, transportation, storage, or disposal in, on, under, to, or from the Site of any Hazardous Substances by Participant or its officers, directors, partners, employees, agents, and contractors. Participant's obligations under this Section shall survive the Termination of this Agreement.

ARTICLE 6 - DEFAULT AND REMEDIES

6.1. **Default.** Either party's failure or unreasonable delay to perform any term or provision of this Agreement constitutes a Default of this Agreement. In the event of a Default, the injured party shall give written "Notice of Default" to the defaulting party, specifying the Default. Delay in giving such notice shall not constitute a waiver of the Default. If the defaulting party fails to cure the Default within thirty (30) days after receipt of a notice specifying the Default, or, if the Default is of a nature that cannot be cured within thirty (30) days, the defaulting party fails to commence to cure the Default within said thirty (30) days and thereafter diligently prosecute such cure to completion, then the defaulting party shall be liable to the injured party for any and all damages caused by such Default, unless otherwise provided for by this Agreement.

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

6.3. **Specific Performance.** If a Default under this Agreement is not fully cured by the defaulting party as provided in Section 6.1 [Default], the non-defaulting party may, at its option, thereafter commence an action for specific performance of the terms of this Agreement.

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

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

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

6.4.3. **Attorney's Fees.** In the event either party commences an Action against the other party which arises out of a Default of, breach of, failure to perform, or that is otherwise related to, this Agreement, then the Prevailing Party (as defined herein) in the Action shall be entitled to recover its Litigation Expenses (as defined herein) from the other party in addition to whatever relief to which the prevailing party may be entitled. For purposes of this section, "Litigation Expenses" includes all Costs and Expenses, to the extent such are reasonable in amount, that are actually and necessarily incurred in good faith by the Prevailing Party directly related to the Action. For the purposes of this section, "Prevailing Party" shall have the meaning ascribed in §1032(a)(4) of the California Code of Civil Procedure.

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

6.6. **Termination by Agency.** The Agency may terminate this Agreement upon the occurrence of any of the following events:

6.6.1. Participant (or any successor in interest) Assigns or attempts to Assign the Agreement or any rights therein or in the Site in violation of this Agreement.

6.6.2. Participant (or any successor in interest) becoming insolvent or Participant (or any successor in interest) voluntarily or involuntarily making an assignment or transfer for the benefit of creditors other than the Agency and/or the City, and/or the voluntary or involuntary appointment of a receiver, custodian, liquidator or trustee of Participant's property and/or the Site;

6.6.3. Participant is otherwise in Default of this Agreement and fails to cure such Default within the time set forth in Section 6.1 [Default] hereof.

If, after the occurrence of any of the above-entitled events, the Agency elects, in its sole discretion, to terminate this Agreement, then all rights of Participant and any person or entity claiming by or through Participant arising under this Agreement or with regard to the Site as may arise under this Agreement shall immediately cease and be terminated, except that any obligations of the Participant to indemnify or reimburse the Agency or the City shall continue in full force and effect and the Agency shall have all of the remedies to enforce a breach or a Default of this Agreement as may be provided hereunder and under the law.

6.7. **Termination by Participant.** In the event that Participant is not in default under this Agreement and the Agency is otherwise in default and which is not cured within the time set forth in Section 6.1 [Default] hereof, and any such failure is not cured within the applicable time period after written demand by Participant, then this Agreement may, at the option of Participant, be terminated by written notice thereof to the Agency. From the date of the written notice of termination of this Agreement by Participant to the Agency and thereafter, this Agreement shall

be deemed terminated and there shall be no further rights or obligations between the parties, except that Participant may pursue any remedies it has hereunder.

ARTICLE 7 - GENERAL PROVISIONS

7.1. **No Excuse for Changes in Economic Conditions.** Participant agrees that foreseeable or unforeseeable future changes in economic or market conditions may make performance of its obligations and covenants under this Agreement impracticable, difficult or economically infeasible. However, Participant expressly assumes the risk of foreseeable and unforeseeable future changes in economic and general market conditions and expressly agrees that such changes shall not excuse or delay the strict performance of Participant's obligations and covenants hereunder. Without limiting the generality of the foregoing, Participant agrees that future foreseeable or unforeseeable changes in economic and market conditions shall not operate to relieve Participant of its (or its successors) obligation to abide by the terms, conditions, and Covenants of this Agreement.

7.2. **Enforced Delays; Extension of Times.** In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: litigations challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; inability to secure necessary labor materials or tools; delays of any contractor, sub-contractor or supplier; or withdrawal of financing not caused by any act or omission of Participant; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental agency or entity (other than the acts of failures to act of the Agency which shall not excuse performance by the Agency); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within forty-five (45) days of the commencement of the cause.

7.3. Tax Consequences.

7.3.1. Participant understands and acknowledges that it may experience adverse federal, state, and/or local tax consequences resulting from or related to the performance of this Agreement. Participant acknowledges and agrees that Agency and City are in no manner responsible or liable for any of Participant's federal, state, or local tax liabilities arising out of, or in any way related to, this Agreement.

7.3.2. Participant acknowledges that performance of this Agreement may create a taxable possessory interest in real or personal property and that Participant will be responsible for the payment of any and all tax upon such possessory interest. Participant expressly agrees that by inclusion of this Section in the Agreement, Agency has satisfied all of its obligations under Revenue and Taxation Code § 107.6. Participant hereby waives, releases and holds Agency and City harmless from any right to damages which may now or in the future accrue to

Participant against Agency or City under Revenue and Taxation Code § 107.6 or such comparable section of the United States Internal Revenue Code in any way relating to this Agreement.

7.3.3. Participant acknowledges that neither Agency, the City, nor any elected official, officer, employee, agent, or consultant thereof has provided Participant with any tax, legal, accounting, or other advice or opinions, or made any representations or warranties, concerning the tax consequences, legal effect, financial effect, or other effects that performance of the Agreement may have on Participant.

7.3.4. Participant acknowledges that it has been represented in this transaction by Participant's own independent advisors, including, but not limited to, attorneys, accountants, and/or financial consultants. Participant represents and warrants that it is entering into this Agreement based solely upon its own independent investigation, conducted with due diligence, of the facts and possible effects of this Agreement on Participant.

7.4. **Non-liability of Agency Officials and Employees.** No board member, official, consultant, attorney, or employee of the Agency shall be personally liable to Participant, or any successor, or assign, or any person claiming under or through them, in the event of any default or breach by the Agency or for any amount which may become due to Participant or to its successor, or on any obligations arising under this Agreement.

7.5. **Conflicts of Interest.** No board member, official, consultant, attorney, or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

7.6. **Warranty Against Payment of Consideration for Agreement.** Participant represents and warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement, other than payments to attorneys or consultants retained by Participant to assist it in the negotiation of this Agreement, excepting however, any contributions which this Agreement requires Participant to make to the Project.

7.7. **No Third Party Beneficiaries.** This Agreement and the CC&R's are for the sole and exclusive benefit of the Agency, the City, and Participant. No other parties or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the parties' obligations under this Agreement.

7.8. **Integration.** This Agreement consists of pages 1 through 26, inclusive, and Attachments "A" through "I" attached hereto and incorporated herein by this reference, which constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

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

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

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

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

7.13. **Amendments to Agreement.** Any amendments to this Agreement must be in writing and signed by the appropriate authorities of the Agency and Participant.

7.14. **Administration.** This Agreement shall be administered and executed by Agency's Executive Director, or his or her designated representative, following approval of this Agreement by Agency's governing board. Agency shall maintain authority of this Agreement through the Executive Director (or his or her authorized representative). The Executive Director shall have the authority to issue interpretations and to make minor amendments to this Agreement on behalf of Agency as provided in Section 7.13 [Amendments to Agreement]. All other changes, modifications, and amendments shall require the prior approval of Agency's governing board.

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

If notice is to be made to the Agency:

Banning Redevelopment Agency
Attn: Executive Director
99 E. Ramsey Street
Banning, California 92220
Facsimile transmission may be made to: (951) 922-3174

If notice is to be made to Participant:

Bottom Line Property Management, LLC
PO Box 206
Banning, California 92220
Facsimile transmission may be made to: (951) 755-0335

7.16. **Ceremonies.** To ensure proper protocol and recognition of the Agency board members, Participant shall cooperate with the Agency and City staff in the organization or any project-related groundbreakings, grand openings or any such inaugural events/ceremonies sponsored by Participant celebrating the development, which is the subject of this Agreement.

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

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

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

7.20. **Effective Date of Agreement.** This Agreement shall not become effective until the date it has been formally approved by the Agency's Governing Board and executed by the appropriate authorities of the Agency and Participant.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

AGENCY:


BANNING REDEVELOPMENT AGENCY

By: 
Brian Nakamura
Executive Director

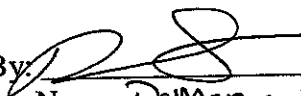
ATTEST:

By: 
Marie Calderon
Agency Secretary

APPROVED AS TO FORM

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

PARTICIPANT:

By: 
Name: DeMario Jackson
Title: Executive Manager

By: _____
Name: _____
Title: _____

ATTACHMENT "G"
(Scope of Project)

ATTACHMENT "G"
(Scope of Project)

ATTACHMENT "G"
(Scope of Project)

[Reserved]

ATTACHMENT "A"
(Legal Description of Site)

ATTACHMENT "A"
(Legal Description of Site)

ATTACHMENT "A"
(Legal Description of Site)

ATTACHMENT "A"
(Legal Description of Site)

Lot 16 and the North 25 feet of Lot 17 in Block 204, in the City of Banning, County of Riverside, State of California as shown by amended map of the Banning Land Company on file in Book 9, Page 44 of Maps, San Bernardino County Records.

Commonly known as APN 540-168-004-0 or ²⁸68 North First Street, Banning, California 92220.

ATTACHMENT "B"
(Diagram of Site)

ATTACHMENT "B"
(Diagram of Site)

ATTACHMENT "B"
(Diagram of Site)

ATTACHMENT "C"
(Promissory Note)

ATTACHMENT "C"
(Promissory Note)

ATTACHMENT "C"
(Promissory Note)

ATTACHMENT "C"

PROMISSORY NOTE SECURED BY DEED OF TRUST

Borrower:	Bottom Line Property Management, LLC PO Box 206 Banning, California 92220	Lender:	Banning Community Redevelopment Agency 99 East Ramsey Street Banning, California 92220
\$225,000.00			Banning, California

1. For value received, Bottom Line Property Management, LLC, a California limited liability company (the "**Borrower**"), promises to pay to Banning Community Redevelopment Agency, a public body, corporate and politic (the "**Agency**"), or order, at Agency's office located at the above address, or at such other place as Agency from time to time may designate, the principal sum of Two Hundred Twenty-Five Thousand Dollars and no cents (\$225,000.00) (the "**Loan Amount**"), or such lesser amount as may be advanced under this promissory note (the "**Note**"), plus interest as specified in this Note. This Note evidences a loan (the "**Loan**") from Agency to Borrower, pursuant to that Owner Participation Agreement dated _____, 2008 ("**Agreement**"), the terms of which are hereby incorporated herein and made a part of this Note.
2. The principal sum outstanding from time to time under this Note bears interest at variable rate equal to the lesser of the commercial prime interest rate or the legal rate of ten percent (10 %). Changes in the interest rate will not occur more often than once each year, at the Agency's discretion. Interest is calculated on the basis of a 365-day year.
3. Borrower and Agency agree that, should Borrower remain as the owner and operator of the Site and in full compliance with the terms of the Management Covenant and the Operating Covenant until that date which is five (5) years from and after the date of Completion of the Project ("**Maturity Date**"), then on the Maturity Date all sums of principal and interest under this Note will be forgiven by the Agency and the Agency will execute any documents required to provide evidence of the forgiveness of the Loan.
4. Borrower understands that, should the Agency in its sole discretion not find that Borrower has complied with all terms of the Management Covenant and the Operating Covenant for the five (5) year period, Borrower shall make one lump-sum payment of all sums of principal and interest under this Note, due on the Maturity Date.
5. Borrower understands that advances under this Note will be made subject to and only as provided in the Agreement. The Agency has no obligation to make any advance under this Note at any time when an Event of Default exists under this Note or under any of the

Loan documents. The Agency is not required under any circumstances to make any advance if that would cause the outstanding principal of this Note to exceed the Loan Amount.

6. Borrower's obligations under this Note are in addition to its obligations to pay Loan Fees and all other amounts payable by the Borrower under the other Loan documents.
7. If any of the following "**Events of Default**" occur, any obligation of the Agency to make advances under this Note terminates and at the Agency's option, exercisable in its sole discretion, all sums of principal and interest under this Note will become immediately due and payable without notice of default, presentment or demand for payment, protest or notice of protest, nonpayment or dishonor, or other notices or demands of any kind or character:
 - 7.1. The Borrower applies any of the principal amount to any cost, expense, or liability other than the Project defined in the Agreement.
 - 7.2. An Event of Default (as defined therein) occurs under the Agreement or any other Loan document.
8. All amounts payable under this Note are payable in lawful money of the United States during normal business hours on a Banking Day, as defined below. Checks constitute payment only when collected.
9. The Borrower agrees to pay all costs and expenses (including, without limitation, attorneys' fees) incurred by the Agency in connection with or related to this Note, or its enforcement, whether or not suit is brought. The Borrower's agreement to pay all costs and expenses includes any matter arising out of or relating to any Insolvency Proceeding or any other situation in which the Agency incurs cost and expenses to enforce or protect the Agency's rights or interests under this Note or any of the other Loan Documents. From the time(s) incurred until paid in full to the Agency, all such sums will bear interest at the Default Rate. The Borrower further waives presentment, demand for payment, notice of dishonor, notice of nonpayment, protest, notice of protest, and any and all other notices and demands in connection with the delivery, acceptance, performance, default, or enforcement of this Note, and the Borrower hereby waives the benefits of any statute of limitations with respect to any action to enforce or otherwise related to this Note.
10. This Note, and all acts and transactions pursuant or relating hereto, and all rights and obligations of the parties hereto shall be governed, construed, and interpreted in accordance with the laws of the State of California without regard for principles of conflicts of laws. Borrower (i) agrees that all actions or proceedings relating directly or indirectly hereto shall, at the option of Agency, be litigated in courts located within the county in the State of California where the Loan is payable; (ii) consents to the jurisdiction of any such court and consents to the service of process in any such action or proceeding by personal delivery or any other method permitted by law; and (iii) waives any and all rights Borrower may have to transfer or change the venue of any such action

or proceeding. Borrower and Agency hereby waive the right to a jury trial in any action, proceeding, claim or counterclaim in connection with this Note or the Loan Documents.

11. The Agency may accept additional or substitute security for this Note, or release any security or any party liable for this Note, or extend or renew this Note, all without notice to the Borrower and without affecting the liability of the Borrower.
12. If the Agency delays in exercising or fails to exercise any of its rights under this Note, that delay or failure will not constitute a waiver of any of the Agency's rights, or of any breach, default or failure of condition of or under this Note. No waiver by the Agency of any of its rights, or of any such breach, default or failure of condition is effective, unless the waiver is expressly stated in a writing signed by a duly authorized officer of the Agency. All of the Agency's remedies in connection with this Note or under applicable law are cumulative, and the Agency's exercise of any one or more of those remedies will not constitute an election of remedies.
13. This note inures to the benefit of and binds the heirs, legal representatives, successors and assigns of the Borrower and the Agency; provided, however, that the Borrower may not assign this Note or any Loan funds, or assign or delegate any of its rights or obligations, without the Agency's prior written consent in each instance which consent may be granted or withheld in the Agency's sole discretion. The Agency in its sole discretion may transfer this Note and may sell or assign participation or other interests in all or part of the Loan, on the terms and subject to the conditions of the Loan Documents, all without notice to or the consent of the Borrower. Also without notice to or the consent of the Borrower, the Agency may disclose to any actual or prospective purchaser of any securities issued or to be issued by the Agency or its affiliates, and to any actual or prospective purchaser or assignee of any participation or other interest in this Note, the Loan or any other loans made by the Agency to the Borrower (whether evidenced by this Note or otherwise), any financial or other information, data or material in the Agency's possession relating to the Borrower, the Loan or the Property, including any improvements on it. If the Agency so requests, the Borrower agrees to sign and deliver a new note, in the form and substance of this Note, to be issued in exchange for this Note.
14. The term "**Banking Day**" means a day, other than a Saturday or Sunday, that the Agency is open for business in Banning, California.
15. An Extension Notice shall be in writing addressed to the attention of Brian Nakamura, Executive Director, at the Agency's address as specified in the caption of this Note and shall be deemed to have been duly given or made (a) if delivered personally (including by commercial courier or delivery service) to such address, then as of the date delivered (or if delivery is refused, on presentation), or (b) if mailed by certified mail to such address, postage prepaid and return receipt requested, then at the time received at such address as evidenced by the return receipt, or (c) if mailed by first class mail to such address, postage prepaid, then on the third (3rd) banking Day following deposit in the United States Mail.

BORROWER:

By: _____
Name: _____

By: _____
Name: _____

ATTACHMENT "D"
(Deed of Trust)

ATTACHMENT "D"
(Deed of Trust)

ATTACHMENT "D"
(Deed of Trust)

ATTACHMENT "D"

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

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

Banning Redevelopment Agency
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
BOTTOM LINE PROPERTY MANAGEMENT, LLC, herein called TRUSTOR, whose mailing address is P.O.
Box 206, Banning, California 92220; _____, _____, herein called TRUSTEE, and BANNING
COMMUNITY REDEVELOPMENT AGENCY, a public body, corporate and politic, herein called
BENEFICIARY.

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

SEE EXHIBIT "A" ATTACHED HERETO
(hereinafter referred to as "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: (1) repayment of the sum of Two Hundred Twenty-Five Thousand Dollars and no
cents (\$225,000.00), 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 that
Regulatory Agreement executed by Trustor on _____, 2008 (hereinafter referred to as the "Regulatory
Agreement") and as reflected in the Promissory Note (hereinafter referred to as "First Promissory Note") executed
by Trustor and dated _____, 2008; (2) the performance of Trustor's covenants, promises, agreements, obligations
and responsibilities under the Agreement, Regulatory Agreement, and First Promissory Note, which are
incorporated herein by reference; and (3) payment of additional sums and interest thereon which may hereafter be
loaned or otherwise disbursed to Trustor, or its successors or assigns, when evidenced by an amendment to the
Agreement or other instruments reciting that they are secured by this Deed of Trust.

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 First 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 Property under this Deed of Trust.

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

- (1) To keep said Property in good condition and repair; not to remove or demolish any building thereon; 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 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 Property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said 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 Property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said 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 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 judgement 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 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 First 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 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 First 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 Property, which notice Trustee shall Cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said First 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 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 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 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 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 First 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 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 Property or any interest of Trustor therein, or the further hypothecation or encumbering of said 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

[name],

[type of organization or natural persons]

By  Bottom Line Property management LLC [requires notary's acknowledgement]

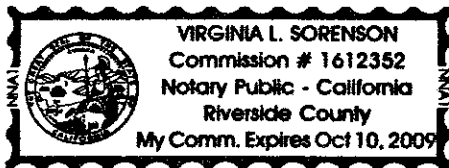
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of RIVERSIDE

On APRIL 17, 2008 before me, VIRGINIA L. SORENSON NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared DEMARIO JACKSON
Name(s) of Signer(s)



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 Virginia L. Sorenson
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: DEED OF TRUST & ASSIGN OF RENTS

Document Date: ATT "D" Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

ATTACHMENT "E"
(Promissory Note)

ATTACHMENT "E"
(Promissory Note)

ATTACHMENT "E"
(Promissory Note)

ATTACHMENT "E"

PROMISSORY NOTE SECURED BY DEED OF TRUST

Borrower:	Bottom Line Property Management, LLC PO Box 206 Banning, California 92220	Lender:	Banning Community Redevelopment Agency 99 East Ramsey Street Banning, California 92220
\$225,000.00			Banning, California

1. For value received, Bottom Line Property Management, LLC, a California limited liability company (the "**Borrower**"), promises to pay to Banning Community Redevelopment Agency, a public body, corporate and politic (the "**Agency**"), or order, at Agency's office located at the above address, or at such other place as Agency from time to time may designate, the principal sum of Two Hundred Twenty-Five Thousand Dollars and no cents (\$225,000.00) (the "**Loan Amount**"), or such lesser amount as may be advanced under this promissory note (the "**Note**"), plus interest as specified in this Note. This Note evidences a loan (the "**Loan**") from Agency to Borrower, pursuant to that Owner Participation Agreement dated _____, 2008 ("**Agreement**"), the terms of which are hereby incorporated herein and made a part of this Note.
2. The principal sum outstanding from time to time under this Note bears interest at variable rate equal to the lesser of the commercial prime interest rate or the legal rate of ten percent (10 %). Changes in the interest rate will not occur more often than once each year, at the Agency's discretion. Interest is calculated on the basis of a 365-day year.
3. Borrower and Agency agree that, should Borrower remain in compliance with the terms of the Operating Covenant until that date which is ten (10) years from and after the date of Completion of the Project ("**Maturity Date**"), then on the Maturity Date all sums of principal and interest under this Note will be forgiven by the Agency and the Agency will execute any documents required to provide evidence of the forgiveness of the Loan.
4. Borrower understands that, should the Agency in its sole discretion not find that Borrower has complied with all terms of the Operating Covenant for the ten (10) year period, Borrower shall make one lump-sum payment of all sums of principal and interest under this Note, due on the Maturity Date.
5. Borrower understands that advances under this Note will be made subject to and only as provided in the Agreement. The Agency has no obligation to make any advance under this Note at any time when an Event of Default exists under this Note or under any of the Loan documents. The Agency is not required under any circumstances to make any

- advance if that would cause the outstanding principal of this Note to exceed the Loan Amount.
6. Borrower's obligations under this Note are in addition to its obligations to pay Loan Fees and all other amounts payable by the Borrower under the other Loan documents.
 7. If any of the following "**Events of Default**" occur, any obligation of the Agency to make advances under this Note terminates and at the Agency's option, exercisable in its sole discretion, all sums of principal and interest under this Note will become immediately due and payable without notice of default, presentment or demand for payment, protest or notice of protest, nonpayment or dishonor, or other notices or demands of any kind or character:
 - 7.1. The Borrower applies any of the principal amount to any cost, expense, or liability other than the Project defined in the Agreement.
 - 7.2. An Event of Default (as defined therein) occurs under the Agreement or any other Loan document.
 8. All amounts payable under this Note are payable in lawful money of the United States during normal business hours on a Banking Day, as defined below. Checks constitute payment only when collected.
 9. The Borrower agrees to pay all costs and expenses (including, without limitation, attorneys' fees) incurred by the Agency in connection with or related to this Note, or its enforcement, whether or not suit is brought. The Borrower's agreement to pay all costs and expenses includes any matter arising out of or relating to any Insolvency Proceeding or any other situation in which the Agency incurs cost and expenses to enforce or protect the Agency's rights or interests under this Note or any of the other Loan Documents. From the time(s) incurred until paid in full to the Agency, all such sums will bear interest at the Default Rate. The Borrower further waives presentment, demand for payment, notice of dishonor, notice of nonpayment, protest, notice of protest, and any and all other notices and demands in connection with the delivery, acceptance, performance, default, or enforcement of this Note, and the Borrower hereby waives the benefits of any statute of limitations with respect to any action to enforce or otherwise related to this Note.
 10. This Note, and all acts and transactions pursuant or relating hereto, and all rights and obligations of the parties hereto shall be governed, construed, and interpreted in accordance with the laws of the State of California without regard for principles of conflicts of laws. Borrower (i) agrees that all actions or proceedings relating directly or indirectly hereto shall, at the option of Agency, be litigated in courts located within the county in the State of California where the Loan is payable; (ii) consents to the jurisdiction of any such court and consents to the service of process in any such action or proceeding by personal delivery or any other method permitted by law; and (iii) waives any and all rights Borrower may have to transfer or change the venue of any such action or proceeding. Borrower and Agency hereby waive the right to a jury trial in any action, proceeding, claim or counterclaim in connection with this Note or the Loan Documents.

11. The Agency may accept additional or substitute security for this Note, or release any security or any party liable for this Note, or extend or renew this Note, all without notice to the Borrower and without affecting the liability of the Borrower.
12. If the Agency delays in exercising or fails to exercise any of its rights under this Note, that delay or failure will not constitute a waiver of any of the Agency's rights, or of any breach, default or failure of condition of or under this Note. No waiver by the Agency of any of its rights, or of any such breach, default or failure of condition is effective, unless the waiver is expressly stated in a writing signed by a duly authorized officer of the Agency. All of the Agency's remedies in connection with this Note or under applicable law are cumulative, and the Agency's exercise of any one or more of those remedies will not constitute an election of remedies.
13. This note inures to the benefit of and binds the heirs, legal representatives, successors and assigns of the Borrower and the Agency; provided, however, that the Borrower may not assign this Note or any Loan funds, or assign or delegate any of its rights or obligations, without the Agency's prior written consent in each instance which consent may be granted or withheld in the Agency's sole discretion. The Agency in its sole discretion may transfer this Note and may sell or assign participation or other interests in all or part of the Loan, on the terms and subject to the conditions of the Loan Documents, all without notice to or the consent of the Borrower. Also without notice to or the consent of the Borrower, the Agency may disclose to any actual or prospective purchaser of any securities issued or to be issued by the Agency or its affiliates, and to any actual or prospective purchaser or assignee of any participation or other interest in this Note, the Loan or any other loans made by the Agency to the Borrower (whether evidenced by this Note or otherwise), any financial or other information, data or material in the Agency's possession relating to the Borrower, the Loan or the Property, including any improvements on it. If the Agency so requests, the Borrower agrees to sign and deliver a new note, in the form and substance of this Note, to be issued in exchange for this Note.
14. The term "**Banking Day**" means a day, other than a Saturday or Sunday, that the Agency is open for business in Banning, California.
15. An Extension Notice shall be in writing addressed to the attention of Brian Nakamura, Executive Director, at the Agency's address as specified in the caption of this Note and shall be deemed to have been duly given or made (a) if delivered personally (including by commercial courier or delivery service) to such address, then as of the date delivered (or if delivery is refused, on presentation), or (b) if mailed by certified mail to such address, postage prepaid and return receipt requested, then at the time received at such address as evidenced by the return receipt, or (c) if mailed by first class mail to such address, postage prepaid, then on the third (3rd) banking Day following deposit in the United States Mail.

BORROWER:

By: [Signature] Bottom Line property management LLC
Name: DeMario Jackson

By: _____
Name: _____

ATTACHMENT "F"
(Deed of Trust)

ATTACHMENT "F"
(Deed of Trust)

ATTACHMENT "F"
(Deed of Trust)

ATTACHMENT "F"

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

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

Banning Redevelopment Agency
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 BOTTOM LINE PROPERTY MANAGEMENT, LLC, herein called TRUSTOR, whose mailing address is P.O. Box 206, Banning, California 92220; _____, herein called TRUSTEE, and BANNING COMMUNITY REDEVELOPMENT AGENCY, a public body, corporate and politic, herein called BENEFICIARY.

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

SEE EXHIBIT "A" ATTACHED HERETO
(hereinafter referred to as "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: (1) repayment of the sum of Two Hundred Twenty-Five Thousand Dollars and no cents (\$225,000.00), 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 that Regulatory Agreement executed by Trustor on _____, 2008 (hereinafter referred to as the "Regulatory Agreement") and as reflected in the Promissory Note (hereinafter referred to as "Second Promissory Note") executed by Trustor and dated _____, 2008; (2) the performance of Trustor's covenants, promises, agreements, obligations and responsibilities under the Agreement, Regulatory Agreement, and Second Promissory Note, which are incorporated herein by reference; and (3) payment of additional sums and interest thereon which may hereafter be loaned or otherwise disbursed to Trustor, or its successors or assigns, when evidenced by an amendment to the Agreement or other instruments reciting that they are secured by this Deed of Trust.

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 Second 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 Property under this Deed of Trust.

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

(1) To keep said Property in good condition and repair; not to remove or demolish any building thereon; 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 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 Property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said 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 Property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said 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 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 judgement 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 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 Second 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 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 Second 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 Property, which notice Trustee shall Cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said Second 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 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 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 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 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 Second 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.

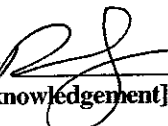
(8) That in the event of any Transfer (as defined below) of said Property, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. As used herein, 'Transfer' means any sale, conveyance, lease, transfer or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

[name],
[type of organization or natural persons]

By  Bottom Line Property Management LLC
acknowledgement] [requires

notary's

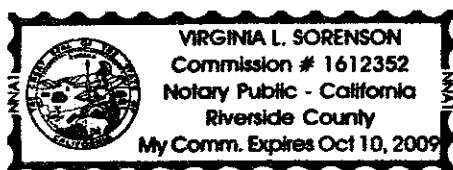
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of RIVERSIDE

On APRIL 17, 2008 before me, VIRGINIA L. SORENSON, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared DEHARIO JACKSON
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is 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 Virginia L. Sorenson
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Deed of Trust - Assign of Rents

Document Date: "Att F" Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

ATTACHMENT "H"
(Regulatory Agreement)

ATTACHMENT "H"
(Regulatory Agreement)

ATTACHMENT "H"
(Regulatory Agreement)

OFFICIAL BUSINESS.
Document entitled to free
recording per Government
Code § 27837.

Recording Requested by and
When Recorded Mail to:

COMMUNITY
REDEVELOPMENT AGENCY OF
THE CITY OF BANNING
99 E. Ramsey Street
Banning, CA 92220

SPACE ABOVE THIS LINE
FOR RECORDING USE

REGULATORY AGREEMENT

Between

COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING

And

BOTTOM LINE PROPERTY MANAGEMENT, LLC

This Regulatory Agreement ("Regulatory Agreement"), dated for reference purposes as of _____, 2008, is made and entered into by and between BOTTOM LINE PROPERTY MANAGEMENT, LLC, a California limited liability company ("Owner"), and the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, a public body corporate and politic ("Agency") with reference to the following:

RECITALS

A. This Regulatory Agreement is made and recorded in accordance with, and subject to, that certain OWNER PARTICIPATION AGREEMENT dated _____, 2008 ("Agreement"), by and between Owner and the Agency. The Agreement and all associated documents are public records maintained on file with the Office of the Banning City Clerk located at 99 East Ramsey Street, Banning California 92220, or as may thereafter, from time to time, be established.

B. Unless otherwise specified herein, all definitions in the Agreement will have the same meaning when referred to herein.

C. This Agreement affects that parcel of real property commonly known as Assessor's Parcel Number 540-168-004, generally located at 68 North First Street, in the City of Banning, County of Riverside, State of California, as more particularly described on the legal description attached hereto as Exhibit "A", and incorporated herein ("Property"):

D. The term "Owner" as used in this Regulatory Agreement includes Bottom Line Property Management, LLC, a California limited liability company, and their successors and assigns to the Property described herein, and all lessees, tenants, contractors, agents, and all persons claiming an interest in the Property, or claiming an interest by and through any of the foregoing.

E. Owner has proposed and by the recording of this document will have commenced construction on the Property of the Project as defined in the Agreement. Owner's financing of the project involves reimbursement for certain Reimbursable Costs by the Authority, as provided in the Agreement.

NOW, THEREFORE, Owner, in consideration of Agency entering into the Agreement, hereby covenants, agrees, and declares that the Property shall be owned, held, used, maintained, occupied, rented, and otherwise transferred pursuant to the following restrictive covenants ("Covenants") and that such Covenants shall be binding upon all Owner's successors and assigns to the Property, and all lessees, tenants, contractors, agents, and all persons claiming an interest in the Property, or claiming an interest by and through any of the foregoing:

COVENANTS

1. **Covenants Run With the Land.** The Covenants set forth herein are limitations on the ownership and use of the land as provided in California Civil Code § 784. The Covenants are made for the direct benefit of the Property and shall run with the land and be binding upon the Owner, as defined herein, as provided in California Civil Code § 1460 through § 1468. The Covenants set forth herein benefit, and may be enforced by, Agency, the City of Banning ("City"), and their respective successors or assigns. Owner shall not challenge the Restrictions as set forth in this Regulatory Agreement or any right of Agency or the City created under this Regulatory Agreement or the Agreement. Owner expressly acknowledges and agrees that the Covenants are reasonable restraints on Owner's right to own, use, maintain, and transfer the Property and any estate or interest therein and are not and shall not be construed to be an unreasonable restraint or alienation.
2. **Term.** The parties agree that these Covenants shall remain in effect for a period of not less than ten (10) years from and after Completion of the Project as anticipated by the Agreement ("Term"). The Term shall run continuously from the date of Completion until expiration, unless tolled by operation of law, order of a court of competent jurisdiction, or as may be provided for in the Agreement.

3. **Management of Site.** The unique qualifications and expertise of Participant are of particular significance to the success of the Project and long-term viability of the Site. It is because of this expertise and experience that the Agency has entered into this Agreement with Participant. Participant therefore agrees that it will continue to own and manage the Site through and including the date that is ten (10) years following Completion or it will obtain Agency approval of any change in ownership or management.
4. **Hours of Operation.** Participant agrees that the Site is a key property for the revitalization of the area subject to the Redevelopment Plan. The Project and continued viability of the Site directly effects the viability of other businesses in the area subject to the Redevelopment Plan. In light of this, Participant agrees to the following:
 - 4.1. The first floor of the Site shall be open to the public at least Monday through Saturday for not less than eight (8) hours per day, excepting state holidays as provided in California Government Code sections 6700 and 6701. Nothing in the foregoing shall prohibit any lessee from operating a business in excess of eight (8) hours per day or on any state holiday.
 - 4.2. Participant shall require as a condition of the lease for each and every tenant leasing space in the Site, a provision requiring the tenant to open their business to the public at least Monday through Saturday, for not less than eight (8) hours per day, excepting national holidays.
5. **Use Consistent with Project.** Participant shall use the Site for the Project or such other uses as the Agency may determine, in its sole discretion, are consistent with the Project and the Redevelopment Plan, and for which the City has issued the appropriate Project Approvals.
 - 5.1. Participant shall use the Site for the Project or such other uses as the Agency may determine, in its sole discretion, are consistent with the Project and the Redevelopment Plan, and for which the City has issued the appropriate Project Approvals. The ground floor of the Site shall be used for commercial space directly serving the public and contributing to the economic viability of the area subject to the Redevelopment Plan. No enterprise that consists substantially of office space or similar non-retail uses shall be permitted as a ground floor tenant on the Site without prior written approval of the Agency's Executive Director. The foregoing shall not be deemed to disallow commercial tenants from including within their leased space an office sized to serve the needs of the commercial business conducted therein. The parties agree that the following uses are preferred uses for the Site and Participant shall make every effort to devote the Site to them:
 - 5.1.1. **Restaurant.** Within four (4) months of Completion, Participant shall use best efforts to enter into a written lease with a restaurant

as a tenant for the Site. Agency acknowledges that Participant may, if unable to enter into a lease with a restaurant, enter into a lease for a different type of business providing dining. No less than Two Thousand Eight Hundred (2,800) square feet of the Site shall be used for restaurant or other dining-related purposes. Should the restaurant or other dining-related tenant default on or otherwise terminate its lease, Participant shall use best efforts to enter into a written lease with a replacement restaurant or other dining-related tenant within four (4) months of the initial tenant vacating the Site. Any prospective restaurant or other dining-related tenant must understand and agree to comply with all terms of the Use Covenant, including the provisions of Section 2.5.2 [Adult Businesses] and Section 2.5.8 [Commercial Retail].

- 5.1.2. Commercial Retail. That portion of the first floor of the Site not used for a restaurant pursuant to Section 2.5.1.1 [Restaurant] shall generally be used for specialty retail purposes. Within four (4) months of Completion, Participant shall use best efforts to enter into written leases with businesses providing specialty commercial retail items or services as tenants for the Site. Acceptable tenant uses include an art gallery, book/music store, copy center/graphic designer, photographer, bakery, specialty gift shop, apparel/accessories store, florist, ice cream specialty store, and cyber café. Should a specialty retail tenant default on or otherwise terminate its lease, Participant shall use best efforts to enter into a written lease with a replacement specialty retail tenant within four (4) months of the initial tenant vacating the Site. Any prospective specialty retail tenant must understand and agree to comply with all terms of the Use Covenant, including the provisions of Section 2.5.2 [Adult Businesses].
- 5.1.3. Offices. Within four (4) months of Completion, Participant shall use best efforts to enter into written leases with businesses as tenants to occupy second-floor offices at the Site. Participant shall use best efforts to enter into leases with tenants that will provide professional services. The Agency acknowledges that Participant may, if unable to enter into leases with tenants for "professional" services, enter into leases for different types of businesses compatible with a professional office complex. Should a tenant default on or otherwise terminate its lease, Participant shall use best efforts to enter into a written lease with a replacement professional services tenant within four (4) months of the initial tenant vacating the Site.
- 5.1.4. Participant's Obligation to Secure Tenants. Should Participant, despite use of best efforts, not enter into a written lease with a restaurant, specialty retail, or a significant professional office

tenant within six (6) months of Completion, Participant will be deemed to be in Default of this Agreement under Section 6.1 [Default]. Pursuant to Section 6.1 [Default], Participant shall have thirty (30) days to cure the Default. If Participant fails to cure the Default, Agency may, at its option, exercise its rights under this Agreement. Participant further agrees that, due to the importance of the Site to the revitalization of downtown, all leaseable space shall remain leased and actively used for retail operations. If at any time leaseable space remains unoccupied or otherwise not used for retail operations for a period exceeding four (4) consecutive months, Agency may, at its option, exercise its rights under this Agreement.

- 5.2. **Adult Businesses.** No sexually-oriented businesses or entertainment establishments (as defined in Banning Municipal Code § 9152), shall be established, maintained, or permitted to be established or maintained on the Site. The use, sale, distribution, display, advertisement, or other exhibition of material that is obscene, that depicts "Specified anatomical areas," (as defined in Banning Municipal Code § 9152), "Specified sexual activities," (as defined in Banning Municipal Code § 9152), a "Specified criminal act" (as defined in Banning Municipal Code § 9152), or any "Adult oriented merchandise" (defined as merchandise depicting or designed for use in connection with Specified anatomical areas, Specified sexual activities or Specified criminal acts, as defined in Banning Municipal Code § 9152), is prohibited on the Site.
- 5.3. **Sales of Alcohol.** No sale, or offering for sale, of any alcoholic beverages shall be permitted on the Site, except as may be allowed by the City after review and approval thereof by the City under ordinances, rules, and official procedures of the City and as lawfully permitted under a valid permit or license obtained from the appropriate governmental agency having jurisdiction.
- 5.4. **Sales of Tobacco Products.** No sale, or offering for sale, of any tobacco products, including but not limited to cigarettes, cigars, cut tobacco, chewing tobacco, snuff, or similar tobacco products, shall be permitted on the Site.
- 5.5. **Sales of Weapons.** No sale, or offering for sale, of any lethal or potentially lethal weapon, including but not limited to any gun, rifle, shotgun, revolver, pistol, or other firearm, knife, dagger, dirk, sword, deadly implement of the martial arts, or other implement, the primary purpose of which is to cause serious bodily injury, shall be permitted on the Site.

- 5.6. **Laundromat.** No laundromat, whether self-service or full-service (including dry cleaning or other laundry-related services), shall be permitted on the Site.
- 5.7. **Bail Bonds.** No commercial enterprise that has as any part of its business the sale or provision of bail, bail bonds, or other securities in any way related to the posting of bail shall be permitted on the Site.
6. **Maintenance of the Site.** The Participant covenants and agrees for itself, its tenants, its successors and assigns, and any successor-in-interest to the Site, or part thereof, that it will, at its sole cost and expense: (i) maintain the appearance and safety of the Site (including all improvements, fixtures, and landscaping) in good order, condition, and repair, and free from the accumulation of trash, waste materials, and other debris; (ii) remove all graffiti placed upon the Site (including all improvements, fixtures, and landscaping) within seventy-two (72) hours of its appearance; (iii) maintain in good order, condition and repair, properly functioning landscape irrigation systems on the Site; and (iv) remove and promptly replace all dead or diseased landscaping material on the Site. In the event of a default of this covenant and of a failure to cure the default within fifteen (15) days after service of a written notice by Agency and/or the City, Agency and/or the City, or their agents, employees and contractors, shall have the right to enter upon the Site without further notice and to take such actions as are necessary to cure the default. Participant shall reimburse Agency and/or the City for all costs associated with cure of the default (including but not limited to, staff services, administrative costs, legal services, and third-party costs), within fifteen (15) days after service of a written notice by Agency and/or City. If Participant fails to pay within the time provided, such costs shall be a lien upon the Property, as provided by California Civil Code § 2881. The Agency may enforce and foreclose such lien in any manner legally allowed.
7. **Nondiscrimination in Employment.** The Participant covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Site or part thereof, that all persons employed by or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth, or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 200, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. § 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, the Immigration Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b, *et seq.*, 42 U.S.C. § 1981, the California Fair Employment and Housing Act, California Government Code § 12900, *et seq.*, the California Equal Pay Law, California Labor Code § 1197.5, California Government Code § 11135, the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, and all other anti-discrimination laws.

and regulations for the United States and the State of California as they now exist or may hereafter be amended.

8. **Nondiscrimination and Nonsegregation.** Participant covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Site or part thereof, that it shall abide by the following provisions:

8.1. **Obligation to Refrain from Discrimination.** They shall refrain from restricting the rental, sale, lease, sublease, transfer, use, development, occupancy, tenure, or enjoyment of the Site (or any part thereof) on the basis of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto), of any person or group of persons, and shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*) and the California Fair Employment and Housing Act (Cal. Government Code § 12900, *et seq.*) as they exist on the date of this Agreement or as they may thereafter be amended, repealed and reenacted, or otherwise modified. They shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed.

8.2. **Nondiscrimination and Nonsegregation Clauses.** Any deeds, leases, or contracts which are proposed to be, or which are, entered into with respect to the rental, sale, lease, sublease, transfer, use, development, occupancy, tenure, or enjoyment of the Site (including improvements and fixtures) (or party thereof), shall be subject to, and shall expressly contain, nondiscrimination or nonsegregation clauses in substantially the following form:

8.2.1. **In Deeds.** "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that it shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U. S. C. § 12101, *et seq.*) and the California Fair Employment and Housing Act (Cal. Government Code § 12900, *et seq.*), as they currently exist or as they may thereafter be amended, repealed and reenacted, or otherwise modified, and that there shall be no discrimination against or segregation of, any person or group or persons on account of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto) in

the rental, sale, lease, sublease, transfer, use, occupancy, or tenure of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

8.2.2. In Leases. "The lessee covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that it shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*) and the California Fair Employment and Housing Act (Cal. Gov. Code § 12900, *et seq.*), as they currently exist or as they may thereafter be amended, repealed and reenacted, or otherwise modified, and that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto) in the rental, sale, lease, sublease, transfer, use, occupancy, or tenure of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein leased."

8.2.3. In Contracts. "There shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto) in the rental, sale, lease, sublease, transfer, use, occupancy, or tenure of the land or premises affected by this instrument, nor shall the contracting or subcontracting party or parties, or other transferees under this instrument, or any person claiming under or through it, violate the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*), and the California Fair Employment and Housing Act (Cal. Gov. Code § 12900, *et seq.*) as they currently exist or as they may thereafter be amended, repealed and reenacted, or otherwise modified, nor establish or permit any such practice or practices of discrimination or segregation with


reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land. This provision shall obligate the contracting and subcontracting party or parties, and other transferees under this instrument, or any person claiming under or through it."

9. **Taxes and Encumbrances.** Participant shall pay, when due: (i) all *ad valorem* property taxes imposed on the Site under Article XIII A of the California Constitution; (ii) all special taxes imposed on the Site; (iii) all special assessments imposed on the Site; (iv) all taxes payable under the California Bradley-Burns Uniform Local Sales & Use Tax Law, Revenue and Taxation Code § 7200, *et seq.*; and (v) all other taxes, assessments, fees, exactions, or charges, any portion of which are allocated to, or received by, the City or the Agency and which are imposed due to the ownership, use, or possession of the Site or interest therein or due to the construction or operation of the Project. Upon failure to so pay, Participant shall remove any lien, levy, or encumbrance made on the Site within ninety (90) days of the attachment of such. Participant hereby waives any right it may have to contest the imposition of such taxes, assessments, fees, exactions, or charges against the Site or upon the construction or operation of the Project which are levied by the City, the Agency, the County of Riverside, or the State of California, or any special district of any of the foregoing.
10. **Speculation in Land Prohibited.** Owner covenants and agrees that it shall use, maintain, and transfer the Property in such a manner as to prevent speculation and/or excess profit taking in the Property within the meaning of California Health and Safety Code § 33437.5 as that section exists on the date this Agreement was recorded or as it may thereafter be amended, repealed and reenacted, or otherwise modified.
11. **Effect of Violation.** Agency and City are deemed the beneficiaries of the terms and provisions of this Regulatory Agreement for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Regulatory Agreement has been provided. Agency and City shall have the right, if the Agreement or any covenants stated in this Regulatory Agreement are breached, to exercise all rights and remedies provided for under the Agreement, and to maintain any actions or suits at law or in equity or other proper proceedings, including specific performance, to enforce the curing of such breaches.
12. **Subordination.** This Regulatory Agreement is subject and subordinate to [REDACTED]. Authority agrees to execute a Subordination Agreement(s) if required by the Owner or a title company.

IN WITNESS WHEREOF, the Owner has caused this instrument to be executed by themselves or by their respective officers duly authorized this 27 day of March, 2007. The Owner hereby approves each of the Covenants set forth in this Regulatory Agreement.

"Owner"

[Requires Notarization]

By:  Bottom Line property management LLC

Demario Jackson

[Requires Notarization]

By: _____

"Agency"

**COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF BANNING,
a public corporation**

By: _____
Brian Nakamura
Executive Director

APPROVED AS TO FORM:

By: _____
Julie Hayward Biggs
General Counsel

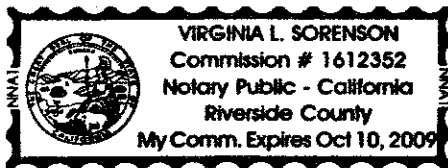
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of RIVERSIDE

On APRIL 17, 2008 before me, VIRGINIA L. SORENSON, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared DEMARIO JACKSON
Name(s) of Signer(s)



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 Virginia L. Sorenson
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Regulatory Agreement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
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