

**FILE COPY**

## OWNER PARTICIPATION AGREEMENT

by and between

the

COMMUNITY REDEVELOPMENT AGENCY OF THE  
CITY OF BANNING

a public body, corporate and politic

and

The Haven Corporation, DBA Haven Coffeehouse and Art Gallery

42 W Ramsey Street

Banning, CA 92220

Dated this 18<sup>th</sup> Day of November, 2009

## 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 THE HAVEN CORPORATION, DBA THE HAVEN COFFEEHOUSE AND ART GALLERY ("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 and economic viability of projects 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. Participant owns a commercial operation in the Project Area occupying the entire ground floor of the building at 42 West Ramsey Street, Banning, California (the "Site"), which Site shall be operated and maintained as a coffeehouse and art gallery featuring local art, special events and as a focal point to attract customers to downtown, a key component in attracting customers to the Downtown Area (the "Project"). The Agency is funding a vigorous commercial rehabilitation program designed to reverse the economic decline of the Downtown, and the success of Participant's business will be critical to the success of the overall program. 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.

**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 - 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.

**"Agency Loan"** shall bear the meaning ascribed to it in Section 4.1 hereof.

**"Agreement" or "OPA"** shall mean this entire Owner Participation Agreement ("OPA"), including all attachments, which attachments are a part hereof and incorporated herein in their entirety, and all other documents incorporated herein by reference.

**"Assisted Project Costs"** means those Project costs that shall be paid for by Participant with monies from the Agency Loan. Assisted Project Costs shall consist of the actual, necessary and reasonable costs associated with (i) the installation of a building/business identification sign at the Site, and (ii) the construction/improvement of an outdoor patio for customer use, under the terms and conditions set forth in this Agreement, and (iii) as the continued operation of the Site as a coffeehouse and art gallery in accordance with Section 3.2 hereof.

**"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.

**"Claims and Liabilities"** shall mean any challenge by adjacent owners or any other third parties (i) to the legality, validity or adequacy of the General Plan, development approvals, this Agreement, or other actions of City or Agency pertaining to the Project, (ii) seeking damages against City or Agency as a consequence of the foregoing actions or for the taking or diminution in value of their property, or in any other manner, or (iii) for any tort claim or action against the City or Agency arising in connection with Participant's construction of the Project.

**"Completion"** shall mean the completion of the Project as provided for in Section 2.2.1.5 [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 8.1 [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. Eligible Development costs must be as indentified within the Project Budget, as it may be amended from time to time.

**"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 THE HAVEN CORPORATION, DBA THE HAVEN COFFEEHOUSE AND ART GALLERY having its principal place of business at 42 West Ramsey Street and 33 South San Geronimo Avenue, Banning, California, and who is the lessor of the Site and the owner and operator of the Site as a coffeehouse and art gallery. 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 (i) the installation of a building/business identification sign, and (ii) the construction/improvement of an outdoor patio for customer use, under the terms and conditions set forth in this Agreement, and (iii) as the continued operation of the Site as a coffeehouse and art gallery. The Project shall specifically require, but not be limited to, the items of construction and renovation defined and described in **Attachment "C" [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. The date of the Project Approvals shall be the date of the last approval from Agency or City for the Project to proceed but shall not be later than the date of issuance of building permits for the improvements.

**"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.

**"Site"** shall mean those commercial premises leased by Participant pursuant to the lease agreement between Participant and the Banning Commercial Investors dated January 1, 2009. The Site occupies the entire ground floor of that building located at 42 West Ramsey Street in the City of Banning, California and commonly known as the "Haven Coffeehouse and Art Gallery" as more specifically described in, and depicted on the diagram, attached hereto and incorporated herein by reference as **Attachment "A"**. For purposes of this Agreement, the term Site shall refer to Participant's leasehold interest therein as well as the actual physical premises occupied by Participant pursuant to its lease with Banning Commercial Investors dated January 1, 2009.

## ARTICLE 2 - DEVELOPMENT OF THE PROJECT

2.1. **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:

2.1.1. **Quality.** It is the intent of the parties that the Project exhibits 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.

2.1.2. **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.

2.1.3. **Conformity to Redevelopment Plan.** In addition to any Project Approvals required by Section 2.1.2 [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.

2.1.4. **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 2.2 [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.

2.1.5. **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.

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

2.1.7. **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.

2.1.8. **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.

2.1.9. **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. Participant will indemnify, defend and hold harmless the Agency and/or the City of Banning from any and all claims, liabilities, penalties, fines or fees attributable to Participant's violation of State or Federal labor standards, including but not limited to the payment of prevailing wages and Participant shall be solely liable for the cost thereof. This Project is being developed and budgeted for assuming the payment of prevailing wages as needed.

2.2. **Schedule of Performance.** Except as provided in Section 9.2 hereunder concerning enforced delays, Participant shall undertake, commence, and thereafter diligently pursue the Project to Completion as provided herein:

2.2.1. **Milestones.** Participant shall perform the following actions within the times indicated or be in Default of this Agreement:

2.2.1.1. **Project Plans.** No later than seven (7) days from and after the Effective Date, Participant shall submit a complete application and complete Project Plans to the City and Agency for review and approval.



2.2.1.2. Project Approvals. Participant shall timely respond to comments and revisions requested by Agency and shall take 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. It is the expectation of the Parties that this would occur no later than fifteen (15) days from the Effective Date.

2.2.1.3. Commence Exterior Construction. Within thirty (30) days from and after the Project Approvals, Participant shall commence, and thereafter diligently pursue to Completion, construction of the exterior portions of the Project.

2.2.1.4. Commence Interior Construction. There are no interior improvements included in this Agreement.

2.2.1.5. Completion. Within ninety (90) days from and after the Effective Date, Participant shall complete construction of the Project, which Completion shall be demonstrated by the City's issuance of a Certificate of Occupancy for the Project and Participant's actual taking of Site occupation. From the day of Project Completion and thereafter for a period of not less than six (6) years, Participant shall continue its occupation of the Site uninterrupted in accordance with Section 3.2 hereof.

2.2.2. Amendments to Schedule. The above 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 cumulatively exceed ninety (90) 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 9.2 [Enforced Delays; Extension of Times] of this Agreement.

2.3. 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 3 - USE AND MAINTENANCE OF THE SITE**

3.1. Leasehold Mortgage & Regulatory Agreement. Participant covenants and agrees that the provisions set forth in this Article 3 [Use and Maintenance of the Site] of the Agreement shall be incorporated into a "Leasehold Mortgage & Regulatory Agreement" in a form substantially similar in all material respects to the form set forth in Attachment "D" (the "Regulatory Agreement"). The Regulatory Agreement shall be recorded against Participant's leasehold interest in the Site. The Regulatory Agreement shall include the Operating Covenant, run with Participant's leasehold interest in the Site, and shall be binding

upon the Participant, its successors and its assigns so long as the rights and obligations of this Agreement are surviving.

**3.2. 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 six (6) years from and after Completion, Participant shall operate the Site in accordance with all terms and provisions of this Agreement as a coffeehouse and art gallery featuring local art, special events and as a focal point to attract customers to the Banning Downtown Area; provided that with Agency's approval, which shall not be unreasonably withheld, Participant may change the use of the Site. Participant shall conduct the coffeehouse on the Property consistent with applicable zoning, which coffeehouse shall have gourmet coffee as its primary or focal menu item (i.e., coffee and/or tea drinks actually as the primary retail item as opposed to a "kitchen oriented" or short-order coffeeshop.)

**3.3. 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 business occupying the Site through and including the date that is **six (6) years** following the Effective Date or it will obtain Agency approval of any change in ownership or management as more specifically described in Article 7 and the Regulatory Agreement.

**3.4. Hours of Operation.** Participant agrees that the Site is a key property for the revitalization of the Banning Downtown 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: The Site shall be open to the public at least Monday through Saturday for not less than eight (8) hours of operation per day, as described in the Regulatory Agreement Attachment "D", *Section 5, Hours of Operation*, excepting state holidays as provided in California Government Code sections 6700 and 6701. Nothing in the foregoing shall prohibit Participant from operating a business in excess of eight (8) hours per day or on any state holiday.

**3.5. Maintenance of the Site.** Participant, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:

**3.5.1. General Maintenance Standard.** Maintenance of the appearance, working order, and safety of the Site and all related on-site improvements, easements, rights-of-way and landscaping thereon at Participant's sole cost and expense, including, without limitation, buildings, parking areas, lighting, signs and walls, in a first class condition and repair, free of rubbish, debris, graffiti and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction over the Site. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition, the proper maintenance of irrigation systems and prevention of over watering or spray, and the replacement of damaged or dying landscaping with landscaping materials of similar maturity (per the approved plans); and

(iii) the repair, replacement and re-striping of asphalt or concrete paving using the same type of material originally installed, such that the paving is at all times kept in a level and smooth condition and free from hazards.

**3.5.2. Prevention of Nuisance.** Participant is required to maintain the Site in such a manner as to avoid (i) the reasonable determination of a duly authorized official of Agency or City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general welfare or (ii) a condition of deterioration or disrepair which causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Relocation Site.

**3.5.3. Access.** The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times. No vehicles or other obstruction shall project into any of such driveways or traffic aisles. Vehicles associated with the operation of the Site, including delivery vehicles, vehicles of employees and vehicles of persons with business on the Site shall park solely on the Site and shall not park on streets or adjacent property.

**3.5.4. Buildings and Equipment.** Any construction, repair, modification or alteration of any buildings, equipment, structures or improvements on the Site shall be subject to the following restrictions:

**3.5.4.1. Mechanical Equipment.** All mechanical and electrical fixtures and equipment to be installed on the roof of the building or on the ground shall be adequately and decoratively screened. The screening must blend with the architectural design of the building(s). Equipment on the roof must be at least six (6) inches lower than the parapet line and adequately screened. All details and materials of said screening shall be approved by the Executive Director prior to installation. Any exception to this provision shall be approved by the Executive Director, in writing.

**3.5.4.2. Exterior Appearance.** The texture, materials and colors used on the buildings, as well as the design, height, texture and color of fences and walls shall be subject to the approval of the Executive Director.

**3.5.4.3. Signs.** Signs on the Site shall conform to City's standards and ordinances and to a uniform design theme approved by City. Any signs installed on the Site shall conform to said design scheme and shall be approved by the Executive Director prior to installation.

**3.5.4.4. Lighting.** Lights installed on the building shall be of a decorative design. No lights shall be permitted which may create any glare or have a negative impact on the residential areas, if any, existing around the Site. The design and location of any lights shall be subject to the approval of the Executive Director.

**3.5.4.5. Outside Storage.** Trash or other storage shall be limited to outside storage areas approved by Agency or as required by law. No storage of any kind shall be permitted outside the building(s) located on the Site. Adequate trash enclosures shall be provided and screened. Locations of such areas and types of screening must be approved by the

Executive Director and, where applicable, City. Gates for trash storage area shall be kept closed at all times except when in actual use.

**3.5.5. Public Agency Rights of Access.** Participant hereby grants to Agency, City and other public agencies the right, at their sole risk and expense, to enter the Site or any part thereof at all reasonable times with as little interference as possible for the purpose of construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities located on the Site. Any damage or injury to the Relocation Site or to the improvements constructed thereon resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the damage or injury.

**3.6. 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.

**3.7. Nondiscrimination and Non-segregation.** 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:

**3.7.1. 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.

**3.7.2. Nondiscrimination and Non-segregation 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 non-segregation clauses in substantially the following form:

**3.7.2.1. 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."

**3.7.2.2. 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."

**3.7.2.3. 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."

3.8. **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.

3.9. **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.*

3.10. **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. The Agency's enforcement rights include all provisions set forth in Article 8 and in the Regulatory Agreement.

#### ARTICLE 4 - AGENCY ASSISTANCE

4.1. **Method of Assistance.** Subject to and conditioned upon Participant's satisfaction and continued compliance with the provisions of Section 4.3 [Conditions of Providing

Assistance] of this Agreement, the Agency agrees to provide Participant with certain assistance as follows:

**4.1.1. Funding.** Agency agrees to loan to Participant an amount not to exceed Thirty Thousand Dollars (\$30,000) ("Agency Loan"). The Agency Loan will be disbursed as described in Section 4.1.2. of this Agreement. Participant acknowledges that the Agency Loan is subject to all terms and conditions imposed by the Agency, this Agreement, and any other local, state or federal agency with jurisdiction over the source of these funds.

**4.1.2. Disbursement of Reimbursement Funds.** Subject to the foregoing, Agency agrees to disburse the Agency Loan to Participant, up to a total maximum of Thirty Thousand Dollars, in two sets of draws as provided herein:

**4.1.2.1. Initial Disbursement.** Upon on the Effective Date of this Agreement, the Participant may apply for and the Agency shall provide an initial disbursement of Fifteen Thousand Dollars (\$15,000) (the "Initial Disbursement") which represents fifty percent (50%) of the Agency Loan. This Initial Disbursement shall be promptly and solely used by Participant to pay for the following Assisted Project Costs: (i) the commercial signage for the Site's business operations, and (ii) for designing, contracting, building and decorating an outdoor patio to the Site, and (iii) any other costs of securing materials, contracting or implementing the Project.

**4.1.2.2. Periodic Further Disbursement Requests.** Following the Initial Disbursement required by Section 4.1.2.1 [Initial Disbursement], and after receipt of a building permit for the Project from City, Participant may, submit requests for further disbursements ("Disbursement Requests") to Agency, which further disbursements shall be used solely for Participant's payment of costs actually incurred for the installation and construction of Project improvements. The further disbursements provided in this Section 4.1.2.2 shall be subject to the following limitations: (i) Disbursement Requests may be submitted not more frequently than monthly, and (ii) Participant's right hereunder to submit Disbursement Requests shall terminate at the end of ninety (90) days after the Effective Date hereof, such that 90 days after the Effective Date Participant shall have no further right to request an Agency Loan disbursement, and (iii) in any event, the further disbursements provided in this Section 4.1.2.2 shall not exceed Fifteen Thousand Dollars (\$15,000) or fifty percent (50%) of the total Agency Loan. If Participant fails to exercise its right to request the full \$15,000 amount of further disbursements permitted by this Section (i.e., such that Participant fails to receive or accept the full \$30,000 to which it is entitled under this Agreement), then such non-disbursed amounts shall be deducted from the Agency Loan due and owing under this Agreement.

**4.1.3. 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; (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, and (iii) it must be accompanied with

mechanic's lien releases and other evidence showing that contractor's and subcontractors are being paid. 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 Assisted Project 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 \$30,000 (Thirty Thousand Dollars and No Cents).

4.1.4. Processing and Approval of Disbursement Requests. Agency agrees to promptly review and process for approval each Disbursement Request and to notify Participant within ten (10) 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 promptly 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 ten (10) days of such resubmittal. Agency agrees to disburse to Participant the Agency approved amount of the Disbursement Request within fifteen (15) days after determining the Disbursement Request to be complete.

4.1.4.1. Retention Amount. Agency shall retain ten percent (10%) of each approved Disbursement Request for distribution upon an approval of final Disbursement Request submitted by Participant after Completion of the Project as provided in Section 2.2.1.5 [Completion]. Payment shall not be made until all lien releases have been obtained, any stop notices have been released, and all other provisions of the Civil Code governing Mechanic's Liens have been satisfied and 30 days following the recordation of the Notice of Completion.

4.1.4.2. 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.

4.1.4.3. Agency Access to Project Documentation. The Executive Director may elect to review Participant's records and/or financial statements on behalf of the Agency and may have them reviewed by an independent, qualified financial expert selected in the Agency's sole discretion. Within ten (10) days of an Agency request, Participant shall allow the Executive Director or his/her designee to review copies of Project cost statements, including invoices, payments, checks and bank statements in order to verify that Participant is utilizing the Agency Loan solely for the payment of Assisted Project Costs in accordance with this Agreement. In the event the Agency finds that Participant has utilized Agency Loan funds for any purposes other than the permitted payment of Assisted Project Costs, such use may be declared a default of this Agreement pursuant to Section 8.1 hereof.



**4.2. 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 4.1 [Method of Assistance] of this Agreement:

**4.2.1. Advanced Repayment on Default.** 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 8.1 [Default] of this Agreement, Participant shall repay to the Agency on demand all funds actually paid or advanced to Participant by the Agency under Section 4.1. [Method of Assistance] without further notice or demand by the Agency.

**4.2.2. Promissory Note.** Participant's obligation to reimburse the Agency for funds paid or advanced by the Agency to Participant under Section 4.1 [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 "B" (the "Promissory Note")**, which Promissory Note shall be further secured through the Regulatory Agreement recorded upon Participant's leasehold interest, and shall provide:

**4.2.2.1. Amount and Term of Loan.** The Promissory Note shall have a term of **six (6) years** commencing from and after the date of the Effective Date and shall be for a principal amount equal to the amount of funds actually loaned and paid by the Agency pursuant to Section 4.1, but not to exceed Thirty-Thousand Dollars (\$ 30,000.00) plus accrued interest.

**4.2.2.2. One-Year Deferral of Repayment; Monthly Payments.** Notwithstanding the foregoing, payment of the Agency Loan shall be deferred for a period of one (1) year, though interest shall accrue with payments commencing in the thirteenth (13th) month after the Effective Date and continuing on a monthly basis thereafter. Each monthly payment by Participant on the Agency Loan shall be a minimum payment of \$590 per month; excepting, however, that no more often than once every three (3) months, the Participant may submit a written notice requesting the Agency to adjust or re-amortize said minimum payments in to order to account for either any substantial above-minimum payments made by Participant or any pre-payments made by Participant pursuant to Section 4.2.2.3 below. The Agency shall have sole and absolute discretion to determine whether adjustments in minimum payments will be made and will so inform Participant of its decision in writing (including the new amount of minimum payments due) within ten (10) business days after receiving such a request from Participant.

**4.2.2.3. Prepayments.** The Participant shall have the right, but not the obligation, to make pre-payments on the Agency Loan during the first year after the Effective Date without penalty. Regardless of whether Participant makes such pre-payments, the 3% annual interest established in Section 4.2.2.4 shall commence accrual from the Effective Date.

4.2.2.4. Interest. That the unpaid principal balance of the Promissory Note shall bear simple interest at a rate of three percent (3%) per annum from and after the Effective Date until paid or forgiven in full.

4.2.2.5. Forgiveness. There is no forgiveness associated with the Agency Loan.

4.2.2.6. Acceleration. That any Default of this Agreement by Participant which remains uncured after the period provided for cure under Section 8.1 [Default] of this Agreement, shall be a breach of the Promissory Note in which event the entire outstanding principal balance of the Promissory Note plus accrued interest shall become due and payable by Participant on demand by the Agency.

4.3. Conditions on Assistance. The following are conditions upon the Agency's obligation to provide the assistance specified in Section 4.1 [Method of Assistance]:

4.3.1. Limit on Assistance. Except as is expressly provided for in Section 4.1 [Method of Assistance], the Agency/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. This Agreement shall be subordinate to any pledge of monies made by Agency as a part of any bond or other public financing. 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;

4.3.2. 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 2 [Development of the Project] of this Agreement;

4.3.3. Use of the Site. Participant's compliance with the covenants and agreements made under Article 3 [Use and Maintenance of the Site] of this Agreement;

4.3.4. Insurance Policies. Participant delivering to the Agency the insurance policies and evidence of insurance as required under Article 5 [Insurance] of this Agreement prior to the Agency's payment or advancement of assistance to Participant;

4.3.5. 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 5 - INSURANCE

5.1. **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 (i) a combined single limit for both bodily injury or death in an amount not less than Two Million Dollars (\$2,000,000.00), and (ii) 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.

5.2. **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.

5.3. **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).

5.4. **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.

5.5. **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 6 - INDEMNITY**

6.1. **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 (herein "Claims and Liabilities") which arises out of, or are related to, and to the extent of 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 2.1.9 [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 there from, 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 Claims and Liabilities 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 to the later of forgiveness or full repayment of the loan.

6.2. **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 Claims and Liabilities that, foreseeable or unforeseeable, 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, "Claims and Liabilities" 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 7 - TRANSFER**

7.1. **Prohibition on Transfer without Agency Approval.** Except as otherwise provided herein, the Participant shall not sell, transfer, or assign this Agreement or any part thereof without the prior written consent of the Agency Board expressed by resolution, and then only under such conditions as may therein be prescribed.

7.2. **Transfer Defined.** As used herein, a "Transfer" or assignment shall include any sale, transfer, lease, assignment, hypothecation or encumbrance of the Site and the transfer to any person or group of persons acting in concert of more than fifty percent (50%) of the present ownership and/or control of the Participant in the aggregate, taking all transfers into account on a cumulative basis. In the event Participant or its successor is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of Participant, or the beneficial interests of such trust; in the event that Participant is a limited or general partnership, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all transfers into account on a cumulative basis.

**7.3. Approval of Transfer.** Approval and consent shall be granted by the Agency Board upon presentation of evidence demonstrating that the person to whom any of the rights or privileges granted herein are to be sold, transferred, leased, assigned, hypothecated, encumbered, merged, or consolidated, meets the following criteria: (i) the transferee has the financial strength and capability to perform its obligations under the Agreement; (ii) the transferee has the experience and expertise to operate the Project; and (iii) the transferee will complement other users in the Auto Center. However, the Agency Board may make any modifications in this Agreement or establish such conditions to the transfer as may be necessary to effectuate the purposes of this Agreement and protect the public health, safety, and general welfare.

**7.3.1. Exceptions.**

The foregoing prohibition shall not apply to any of the following:

- (a) The conveyance or dedication of any portion of the property to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate the Project.
- (b) A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.
- (c) Any transfer or series of transfers of ownership interest in the Agreement, to any Participant Affiliate. "Participant Affiliate" shall mean any entity which owns or controls Participant, to any entity owned or controlled by Participant, to any entity owned or controlled by or affiliated with any entity which owns or controls Participant, or to any entity resulting from a consolidation, or to the surviving entity in case of a merger, to which consolidation or merger Participant shall be a party, or to an entity to which all or substantially all of the assets of Participant have been sold.
- (d) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing, but Participant shall notify Agency in advance of any such mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing pertaining to the Property.
- (e) A sale or transfer of 25% or more of ownership or control interest between members of the same immediate family or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of immediate family members of the Trustor or transfers to a corporation or partnership in which the immediate family members

or shareholders of the transferor have a controlling majority interest to 51% or more.

7.3.2. **Obligations of Assigns or Successors.** In the event of transfer or assignment as provided for herein, the Participant's assigns or successors shall accept this Agreement in the same manner as provided herein, and the provisions of the Agreement shall be binding upon such assigns or successors in like manner as upon the Participant.

7.3.3. **Transfer in Violations Default.** Any purported sale, transfer, lease, assignment, encumbrance, merger, agreement, consolidation or similar transaction affecting the Agreement regardless of whether such transaction is voluntary or involuntary and which occurs without the prior approval and consent of the Agency Board, if required, shall constitute a default and be grounds for forfeiture under the Agreement.

## **ARTICLE 8 - DEFAULT AND REMEDIES**

8.1. **Default.** A Non-Defaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other party ("Defaulting Party") to perform any material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in "Default" under this Agreement, if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within thirty (30) days after the date of such notice ("Cure Period"). Monetary Defaults must be cured within the Cure Period. However, if a non-monetary breach or failure cannot be cured within such Cure Period, and if and, as long as the Defaulting Party does each of the following:

- (a) Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the thirty (30) day period;
- (b) Notifies the Non-Defaulting Party of the Defaulting Party's proposed cause of action to cure the Default;
- (c) Promptly commences to cure the Default within the thirty (30) day period;
- (d) Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and
- (e) Diligently prosecutes such cure to completion.

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

8.2. **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.

8.3. **Specific Performance.** If a Default under this Agreement is not fully cured by the defaulting party as provided in Section 8.1 [Default], the non-defaulting party may, at its option, thereafter commence an action for specific performance of the terms of this Agreement.

8.4. **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:

8.4.1. **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.

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

8.4.3. **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.

8.5. **Other Rights of Agency and City.** In the event of any violation or threatened violation of any of the provisions of this Agreement, then in addition to, the right to enjoin such violations or threatened violation in a court of competent jurisdiction or of any other right or remedy Agency and City may have to enforce the provisions hereof, Agency and City shall have the right (i) to enforce the provisions hereof as a party hereto, (ii) the right to withhold or revoke, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the Site or any part thereof or interests therein as to the violating person or one threatening violation.

8.6. **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.



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

- (a) Participant Transfers or attempts to Transfer the Agreement or any rights therein or in the Site in violation of this Agreement;
- (b) Participant 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;
- (c) Participant violates the terms of the Regulatory Agreement and fails to timely cure the breach in accordance with the terms thereof; or
- (d) Participant is otherwise in Default of this Agreement and fails to cure such Default within the time set forth in Section 8.1 [Default] hereof.
- (e) Participant fails to make timely make payments or repay the obligations of indebtedness under the Promissory Note.

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.

**8.8. Termination by Participant.** In the event that Participant is not in default under this Agreement and the Agency is otherwise in default hereof, and any such failure is not cured within the applicable time period as provided in Section 8.1 [Default] 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.

**8.9. No Agency or City Liability.** The granting of a right of enforcement to Agency or City does not create a mandatory duty on the part of Agency or City to enforce any provision of this Agreement. The failure of Agency or City to enforce this Agreement shall not give rise to a cause of action on the part of any person. No officer or employee of Agency or City shall be personally liable to Participant, its successors, transferees or assigns for any default or breach by Agency or City under this Agreement.

## ARTICLE 9 - GENERAL PROVISIONS

9.1. **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.

9.2. **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; governmental agency (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 ten (10) days of the commencement of the cause. Reimbursable

### 9.3. **No Representations by Agency.**

9.3.1. **Tax Consequence.** 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.

9.3.2. **Possessory Interest.** 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.

9.3.3. **No Advice from Agency.** 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.

9.3.4. **Adequacy of Funds.** Participant acknowledges that Agency has made no representation to Participant concerning the adequacy of the Agency Loan to pay the Assisted Project Costs, or that any further funds or financial assistance is available beyond that stated herein to Participant or the Project in any manner, including fee waivers, or the provision of improvements or other consideration in any manner by Agency or City, and that responsibility for all Development Costs rest solely with Participant.

9.3.5. **Independent Advisors.** 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.

9.4. **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.

9.5. **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.

9.6. **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.

9.7. **No Third Party Beneficiaries.** This Agreement and the Regulatory Agreement 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.

9.8. **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.

9.9. **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. Notices shall be given to the addresses provided below:

**If notice is to be made to Participant:**

John Utterback, President and Vincent Pellegrini, Managing Director

The Haven Corporation  
42 W Ramsey Street  
Banning, California 92220  
Facsimile transmission may be made to: (951) 849-1221

**If notice is to be made to the Agency:**

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

**With a copy to:**

Aleshire & Wynder, LLP  
Attn: David J. Aleshire Esq., General Counsel  
18881 Von Karman Ave., Suite 400  
Irvine, California 92612  
Facsimile transmission may be made to: (949) 223-1180

9.10. **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.

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

9.12. **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) to issue interpretations of this Agreement. All changes, modifications, and amendments shall require the prior approval of Agency's governing board.

9.13. **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.

9.14. **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..

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

9.16. **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.

9.17. **Integration.** This Agreement includes Attachments "A" through "D" 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. The attachments are as follows:

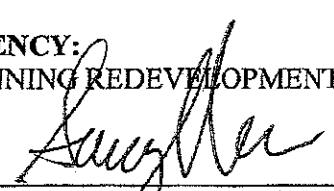
Attachments:

- A. Description/Depiction of Site
- B. Promissory Note
- C. Scope of Work and Project Budget
- D. Regulatory Agreement.


9.18. **Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound

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

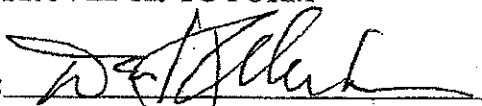
**AGENCY:**  
BANNING REDEVELOPMENT AGENCY

By:   
Sam Racadio,  
Interim Executive Director

**ATTEST:**

By:   
Marie Calderon,  
Agency Secretary

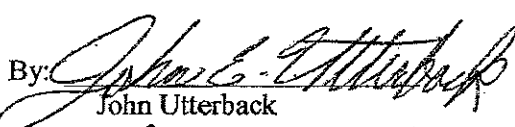
**APPROVED AS TO FORM**

By:   
David Aleshire, Esq  
Agency General Counsel

Date: 11/19/2009

Date: 11/19/09

**PARTICIPANT:**

By:   
John Utterback  
President, Haven Corporation

By:   
Vincent Pellegrini  
Managing Director

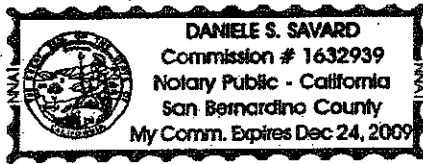
# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Riverside

On 11-19-09 before me, Daniele S. Savard, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Vincent Arthur Pellegrini  
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: [Signature]

Signature of Notary Public

Place Notary Seal and/or Stamp 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: owner participation Agreement

Document Date: 11-18-09

Number of Pages: 29 Pages  
& exhibits

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Vincent Arthur Pellegrini

Signer's Name: \_\_\_\_\_

☒ Corporate Officer — Title(s): Managing Director

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

Signer Is Representing: The  
Haven, INC.

Signer Is Representing: \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

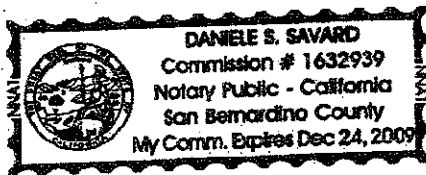
State of California

County of Riverside

On 11-19-09 before me, Daniele S. Savard, Notary Public

personally appeared John Edward Utterback

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: [Signature]

Signature of Notary Public

Place Notary Seal and/or Stamp 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.

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Title or Type of Document: owner participation Agreement

Document Date: 11/18/09 Number of Pages: 29 pages

Signer(s) Other Than Named Above: Vincent Arthur Pellegrini

### Capacity(ies) Claimed by Signer(s)

Signer's Name: John Edward Utterback Signer's Name: \_\_\_\_\_

☒ Corporate Officer — Title(s): President

- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

Signer Is Representing: The Haven, INC.

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

☐ Corporate Officer — Title(s): \_\_\_\_\_

- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here



**ATTACHMENT "A"**  
**(Description of Leasehold Site)**

The Site consists of those premises leased by Participant pursuant to the lease agreement between Participant and the Banning Commercial Investors dated January 1, 2009. For purposes of this Agreement, the term Site shall refer to Participant's leasehold interest therein as well as the actual physical premises occupied by Participant pursuant to its lease with Banning Commercial Investors dated January 1, 2009. The Site occupies the entire ground floor of that building located upon the following legally-described parcel:

Lots 9 and 10, 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; and

The North 2 inches of Lot 8, 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 42 W Ramsey Street, Banning, California 92220. APN # 540-204-010.

## 1