AGENDA

CITY COUNCIL - SPECIAL MEETING (WORKSHOP)
CITY OF BANNING, CALIFORNIA

June 5, 2025
5:00 p.m.
In Chambers

Council Chambers
99 E. Ramsey Street
Banning, CA 92220

The following information comprises the agenda for the special meeting of the Banning City Council, a joint meeting of the City Council and Banning Utility Authority, and the Banning City Council sitting in its capacity as the Banning Successor Agency Board.

This meeting is being held via Zoom so that members of the public may observe and participate in this meeting electronically. If you participate in this meeting via Zoom, you are agreeing to abide by the City's Zoom Community Standards for Public Meetings (provided in full on the last page of the agenda). *Esta reunión se lleva a cabo en la Cámara y a través de Video/Teleconferencia en Zoom para que los miembros del público puedan observar y participar en esta reunión de manera electrónica. Si elige participar en esta reunión a través de Zoom, acepta cumplir con los Estándares comunitarios de Zoom para reuniones públicas de la ciudad (que se proporcionan en su totalidad en la última página de la agenda).*

To observe and participate in the online video portion of the meeting through your personal computer or device, follow this link:
https://us02web.zoom.us/j/84858979450?pwd=BHCK5baZSa71F4Safec7daJKGwCb4t.1

Dial in: +1 669 900 9128

Meeting ID: 848 5897 9450
Password: 92220

Per the City of Banning Manual of Procedural Guidelines, matters taken up by the Council before 10 p.m. may be concluded, but no new matters shall be taken up except upon a majority vote of the council members present and voting. Such an extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.

1. **CALL TO ORDER**

2. **PUBLIC COMMENTS** - ***Agenda Items Only***

3. **WORKSHOP**

   3.1 Proposed Development of the Banning Municipal Airport by Industrial VI Enterprises, LLC ("Hillwood")
   Recommendation: Receive and File.

4. **ADJOURNMENT**

Zoom Community Standards for Public Meetings

By participating in this meeting on Zoom, you are agreeing to abide by the City of Banning's Community Standards for Public Meetings. Zoom attendees that fail to adhere to these standards may be removed from the meeting room.

- Your microphone must remain on mute, and you may only unmute your microphone when/if you are recognized by the Mayor.
- Your camera must be turned off unless/until you are recognized by the Mayor.
- To indicate a desire to make Public Comment, you must use the Raise Hand function. The Mayor will not recognize those who have not used the Raise Hand function.
- Public Comment from Zoom attendees will immediately follow in-person comment from members of the public in Council Chambers.
- If you fail to adhere to these community guidelines, **you may be removed** for disrupting the meeting occurring in Council Chambers. You may rejoin the meeting but may be removed for each violation of these community standards.
- The chat function will be disabled for all City Council meetings on Zoom.

Estándares comunitarios de Zoom para Reuniones Públicas

Al participar en esta reunión en Zoom, usted acepta cumplir con los Estándares Comunitarios para Reuniones Públicas de la ciudad de Banning. Los que atienden por Zoom que no cumplan con estos estándares pueden ser retirados de la sala de reuniones.

- Su micrófono debe permanecer en silencio, y solo puede reactivar su micrófono cuando / si es reconocido por el alcalde.
- Su cámara debe estar apagada a menos que sea reconocido por el alcalde.
- Para indicar el deseo de hacer un Comentario Público, debe utilizar la función Levantar la mano. El alcalde no reconocerá a quienes no hayan utilizado la función Levantar la mano.
- Los comentarios públicos de lo que atienden por Zoom seguirán inmediatamente los comentarios en persona de los miembros del público en las Cámaras del Consejo.
- Si no cumple con estas pautas de la comunidad, es posible que lo destituyan por interrumpir la reunión que tiene lugar en las Cámaras del Consejo. Puede volver a unirse a la reunión, pero es posible que lo eliminen por cada violación de estos estándares de la comunidad.
- La función de chat estará deshabilitada para todas las Reuniones del Ayuntamiento en Zoom.

AFFIDAVIT • DECLARACIÓN JURADA

IT IS HEREBY CERTIFIED under the laws of the State of California that the above agenda was posted on the City's website (www.banningca.gov) as well as the Bulletin Board at Banning City Hall, located at 99 E Ramsey Street, Banning, CA 92220, at least 24 hours in advance of the meeting.

Vickie Sellers, Elected City Clerk
Secretaria Municipal Electa

PUBLIC NOTICE • NOTICIA PÚBLICA

Meeting Agendas and Notices

Interested in receiving email and/or text notifications of upcoming City Council meetings? Sign up for meeting notifications through the City's website. Pursuant to amended Government Code §54957.5(b), staff reports and other public records related to open session agenda items are available on the City's website (www.banningca.gov/).

Public Comment

Agenda Items

Any member of the public may address this meeting of the City Council on any item appearing on the agenda. A five-minute limitation shall apply to each member of the public and no member of the public shall be permitted to share their time with any other person.

Non-Agenda Items

Any member of the public may address this meeting of the City Council on any item which does not appear on the regular meeting agenda but is of interest to the general public and is an item upon which the City Council may act. A three-minute limitation shall apply to each member of the public and no member shall be permitted to share their time with any other person. No action shall be taken, nor discussion held by the City Council, on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of §54954.2 of the Government Code.

Special Assistance/Accessibility Requests

In compliance with the Americans with Disabilities Act, any member of the public may request that the agenda and agenda packet be mailed to them. If you need special assistance to participate in this meeting (such as translation services), please contact the City Clerk's Office. Advanced notification of at least 48 hours prior to the meeting will allow the city to make arrangements to ensure your accessibility.

¿Necesita servicios de traducción para participar? Contacto Oficina del Secretario de la Ciudad.

CONTACT • CONTACTO

City Clerk's Office | 951-922-3102 | CityClerks@banningca.gov
99 East Ramsey Street, Banning, California 92220

CITY OF BANNING
STAFF REPORT

TO:	**CITY COUNCIL**
FROM:	**Robert Fisher, Acting City Manager**
PREPARED BY:	**Art Vela, Public Works Director**
MEETING DATE:	**June 5, 2025**
SUBJECT:	**Proposed Development of the Banning Municipal Airport by Industrial VI Enterprises, LLC ("Hillwood")**

RECOMMENDATION:

Receive and File.

BACKGROUND:

On April 25, 2017, City Council adopted Resolution 2017-44, "Declaring that it shall be a goal of the City of Banning to Close the Banning Municipal Airport, as soon as legally permitted and directing the City Manager to implement all necessary administrative measures accordingly". Subsequently, on June 13, 2023, the City Council adopted Resolution 2023-109, "Directing the City Manager to Continue Efforts to Close the Banning Municipal Airport, as soon as Legally Permitted."

On October 27, 2020 the City entered into an Exclusive Negotiating Agreement (ENA) with Grandave Capital, LLC. for the development of the airport property.

On May 24, 2022, the Grandave ENA was replaced with a new ENA that included both Grandave Capital, LLC. and First Industrial. This new ENA went on to expire.

On December 12, 2023, the City Council approved Resolution 2023-187, approving an ENA with Industrial VI Enterprises, LLC ("Hillwood") for the development of the airport property upon its closure.

On May 16, 2024, the Federal Aviation Administration (FAA) Reauthorization Act of 2024 was signed into law and includes, in Section 756, the approval for the closure of the Banning Municipal Airport. Since the approval of the FAA Reauthorization Act of 2024, City staff along with the Hillwood's support, has been working with FAA on the closure process, including the submittal of an Airport Closure Report and Tenant Relocation Plan.

Hillwood will make a presentation to City Council regarding the details of the proposed project within the airport property, which includes the development of an industrial park consisting of six industrial/warehouse buildings totaling approximately 3.3 million square feet on 202.7 acres.

JUSTIFICATION:

To introduce and provide details of Hillwood's proposed development within the Banning Municipal Airport property.

FISCAL IMPACT:

N/A

ALTERNATIVES:
N/A

BUDGETED?:
No

CONTRACT/AGREEMENT:
No

ATTACHMENTS:
1. Reso 2023-187 Hillwood ENA.pdf
2. FAA Reauthorization Bill Language.pdf
3. Development Site Plan.pdf
4. 2023 12 12_ENA_Hillwood - 200 S Hathaway Street.pdf

RESOLUTION 2023-187

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AN EXCLUSIVE NEGOTIATING AGREEMENT WITH INDUSTRIAL VI ENTERPRISES, LLC (HILLWOOD) FOR BANNING MUNICIPAL AIRPORT PROPERTIES (APNs 532-130-011, 012, AND 018; 532-140-003; 532-150-002, 003 AND 004; 541-240-009 AND 541-250-009)

WHEREAS, Industrial VI Enterprises is a Delaware Limited Liability Company based in Dallas, Texas; and

WHEREAS, the City of Banning is the owner of the property located at 200 S. Hathaway Street, Banning, CA 92220 (APNs 532-130-011, 012 and 018; 532-140-003; 532-150-002, 003 and 004; 541-240-009 and 541-250-009); and

WHEREAS, the proposed Exclusive Negotiating Agreement would allow Industrial VI Enterprises (Hillwood) the exclusive negotiating rights to the property for five years, allowing them to complete necessary due diligence on the site; and

WHEREAS, the City is interested in development of the site, which could bring needed employment and revenue to the City.

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

SECTION 1. The City Council hereby approves the attached Exclusive Negotiating Agreement for 200 S. Hathaway Street, Banning, CA 92220 as revised by the City Council.

SECTION 2. The City Council hereby authorizes and directs the City Manager ("Authorized Representative") to sign the Exclusive Negotiating Agreement with Industrial VI Enterprises, LLC on behalf of the City Council.

PASSED, APPROVED AND ADOPTED this 12th day of December 2023.

Mayor
City of Banning

ATTEST:

Caroline Patton, Administrative City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:



Serita R. Young, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Caroline Patton, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2023-187, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of December 2023 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Caroline Patton, Administrative City Clerk
City of Banning, California

EXHIBIT A
Exclusive Negotiation Agreement between City of Banning and Industrial VI Enterprises, LLC

DRAFT

EXCLUSIVE NEGOTIATING AGREEMENT
(Hillwood)

This EXCLUSIVE NEGOTIATING AGREEMENT ("ENA") is dated as of _____ _____, 2023, and is entered into by and between the CITY OF BANNING ("City"), and INDUSTRIAL VI ENTERPRISES, LLC, a Delaware limited liability company ("Developer"). City and Developer are sometimes individually referred to herein as a "Party" and are sometimes collectively referred to herein as the "Parties."

RECITALS

A. City owns the land in the City of Banning, California described on Exhibit "A" (the "Property"), a portion of which is currently used as the Banning Municipal Airport. The development and use of the Property for the Project is dependent on closure of the Banning Municipal Airport, which closure must be approved by the federal government.

B. Developer desires to apply for various entitlements for a mixed use project for the Property including a movie studio (the "Studio Parcel") and light industrial warehouse development, with multiple buildings (the "Warehouse Parcels", and collectively with the Studio Parcel, the "Project"), and enter into an agreement ("AGREEMENT") with City for a single or multiple ground leases ("Ground Lease") with City for the Property and Warehouse Parcels. Developer and City contemplate that a movie studio would be developed on approximately 30 acres of APNs 532-240-009 and 541-250-009). The terms and conditions relating to the Warehouse Parcels and Studio Parcel shall be negotiated and included in the AGREEMENT.

C. It is contemplated that the Ground Lease (the form(s) of which would be attached to the AGREEMENT as an exhibit) would have a term of 55 years, and that extensions by City and rights to purchase the Property will be addressed in the Ground Lease.

D. Developer and City will incur significant costs in preparing California Environmental Quality Act ("CEQA") documents, processing entitlements, and negotiating the AGREEMENT (and form of Ground Lease).

E. Developer has requested that City negotiate with Developer on an exclusive basis for a specified period of time to establish the terms and conditions of the entitlements and AGREEMENT (and the Ground Lease), and in consideration of that exclusive negotiating right, Developer will provide City with an ENA fee and other benefits as provided in this ENA.

NOW, THEREFORE, the Parties hereto agree as follows:

1. Term. The term of this ENA shall commence on the date hereof and shall end on the earlier of: (i) the date that is five (5) calendar years after the date of this ENA, subject to extension as hereinafter set forth, or (ii) the date on which City or Developer terminates this ENA as provided in Section 3 below (the "ENA Period").

2. Extensions.

(a) The City Manager may extend the term of this ENA for up to six (6) months by written notice to Developer provided all of the terms of the AGREEMENT (including the form of Ground Lease) shall have been negotiated and shall be acceptable to City staff (it being contemplated that such extension may be necessary to complete compliance with CEQA and City entitlements for the Project and/or to complete the process of the closure of the airport on the Property).

(b) Developer shall have the right to extend the term of this ENA for up to two (2) one-year extension periods, by written notice to City given on or before the date that is six (6) months prior to the expiration of the then-current term, and paying to City concurrently with such notice, the sum of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) as a nonrefundable extension fee (for each extension).

3. Termination.

(a) The City Manager may terminate this ENA by written notice to Developer if Developer should fail to comply with or perform any material provisions of this ENA and such failure is not cured within thirty (30) days after City Manager's delivery of written notice to Developer; provided that if such failure is of the nature that it cannot reasonably be cured within such thirty (30) day period, such cure period shall be extended for as long as Developer in good faith commences curative efforts within thirty (30) days of its receipt of such notice from the City Manager and diligently and expeditiously continues its curative efforts.

(b) Developer may terminate this ENA by written notice to City at any time if Developer, in its sole and absolute discretion, determines that it does not wish to pursue the Project any further. However, in the event of such termination, no ENA Fees shall be returned to Developer, except that provided Developer is not then in default under this ENA, City shall return a pro-rata portion of the $250,000 ENA Fee described in Section 5(b)(ii) below that Developer shall have prepaid for the one year period in which the termination occurs (based on the number of days in such annual period after the date of termination, divided by 365) .

4. City Covenant Regarding Exclusivity. During the ENA Period, City shall not negotiate with any person or entity other than Developer for the sale, lease, financing, or development of the Property or any portion thereof, nor shall City solicit or entertain bids or proposals to do any of the same.

5. Non-Binding Term Sheet; ENA Fees; CEQA Costs.

(a) The parties intend to negotiate, within six (6) months after the date of this ENA, a non-binding term sheet acceptable to both parties as the basis for negotiating the AGREEMENT; however, neither party shall be bound by any terms unless and until the AGREEMENT is negotiated, finalized ,and executed, after or concurrently with compliance with CEQA.

(b) In exchange for the exclusivity rights granted to Developer in this ENA (in a very competitive real estate market for warehouse space, and for commercial property

generally), Developer shall pay the sums described below (collectively, the "ENA Fees"), which shall not be refundable, except as expressly provided in Section 3(b) above:

(i) Upon the parties indicating that such term sheet is acceptable (which may be communicated by City by email to Scott Morse [Scott.Morse@hillwood.com] of Developer), Developer shall, within five (5) business days thereafter, deliver the amount of $500,000.00 (as an initial ENA Fee) to City.

(ii) On or before the second anniversary of the date of this ENA during the initial term of this ENA, and on each subsequent anniversary of the date of this ENA, Developer shall deliver the amount of $250,000.00 (as additional ENA Fees) to City.

(c) In addition to the ENA Fees, Developer shall reimburse City for all of the City's costs and expenses in connection with complying with CEQA, including, without limitation, costs of CEQA consultants.

6. Due Diligence by Developer; Due Diligence Deadline.

(a) Until the date that is one hundred and eighty (180) days after the date of this ENA, as may be extended in writing for cause by the City Manager by up to an additional ninety (90) days (the "Due Diligence Deadline"), Developer shall have the right and obligation to inspect the Property and title to the Property (including completing a survey, and completing environmental/hazmat inspections and reports), and document the City staffs' willingness to recommend approval by the City Council of relocation of any City of Banning recorded and unrecorded easements that could materially interfere with Developer's contemplated development, and the City staffs' willingness to recommend City Council approval (short of condemnation) to relocate third party easements that materially interfere with Developer's contemplated development. If Developer does not approve the condition of title or the condition of the Property, then Developer may terminate this ENA by written notice to City Manager by the Due Diligence Deadline.

(b) Developer shall also be entitled to inspect the Property and title to the Property after such Due Diligence Deadline for purposes of confirming that there shall have been no material change in title matters or physical condition prior to its execution of the AGREEMENT and prior to its execution of the Ground Lease(s).

(c) If Developer does not so terminate this ENA and enters into the AGREEMENT, then Developer shall have no right under the AGREEMENT or Ground Lease to terminate the AGREEMENT or Ground Lease as a result of any such title or survey matter, or any physical condition of the Property, except for material changes to such title or physical condition that occur after the completion of Developer's title and physical condition reviews/investigations prior to the execution of the AGREEMENT and Ground Lease and which are not caused by Developer or its contractors.

(d) Concurrently with its execution of this ENA, Developer and City shall also execute and deliver a counterpart of the Right of Entry Agreement in the form attached hereto as Attachment No. 3.

7. Confidentiality of Information.

(a) Any information provided by Developer to City, including, without limitation, financial reports, proformas and other financial projections (whether in written, graphic, electronic or any other form) (collectively, "**Confidential Information**") shall be subject to the provisions of this Section 7.

(b) Subject to the terms of this Section 7, City shall prevent disclosure of Confidential Information to any third parties, except as may be required by the California Public Records Act (Government Code Section 7920.000 *et seq.*) or other applicable local, state, or federal law ("**Public Disclosure Laws**"). Notwithstanding the preceding sentence, City may disclose Confidential Information to its officials, employees, agents, attorneys, and advisors to the extent necessary to carry out the purpose for which the Confidential Information was disclosed.

(c) If the City becomes subject to a requirement by law, regulation, deposition question, interrogatory, Public Records Act request, Freedom of Information Act request, other type of request for information or documents, subpoena, civil investigative demand, or similar process (collectively, "**Requirement**") to disclose any Confidential Information, the City will, prior to producing any Confidential Information, notify Developer of the existence, terms, and circumstances of such Requirement(s) within five (5) calendar days of receiving such Requirement(s) so that Developer may seek an appropriate protective order. If the City and the Developer do not agree that the document is exempt from disclosure, the Developer may commence a "reverse" Public Records Act lawsuit to preclude the City's disclosure of the communication, and the City shall, to the extent supported by the law and the facts, invoke all extensions or excused delay legally available to the City under the Public Records Act and applicable law before producing such privileged information/document so as to afford Developer as much time as possible to file a "reverse" Public Records Act lawsuit. If the City is subject to a Requirement and has complied with the notification and cooperation obligations described in the preceding sentence, is compelled, in the opinion of its legal counsel, to disclose privileged information or else violate the law or stand liable for contempt or other substantial penalty, the City shall furnish only that portion of the Confidential Information that is legally required pursuant to the terms of such Requirement as modified by any protective order or "reverse" Public Records Act lawsuit. If the above time limits conflict with the time within which response to discovery or information requests must be made under applicable law, then the Parties shall act to provide the notification contemplated by this paragraph as soon as possible.

(d) In the event that the City is subject to a Requirement and, based upon an objection received from the Developer, the City does not produce the requested information, the Developer's indemnity obligations as set forth in this ENA shall extend to the defense of the City if an action, claim, or liability arises or results from the City's refusal to release information withheld at the Developer's request.

(e) The restrictions set forth in this Section 7 shall not apply to Confidential Information to the extent such Confidential Information (i) is now, or hereafter becomes, through no act or failure to act on the part of City, publicly known or available, (ii) is known by City at the time of receiving such information as evidenced by City's public records, (iii) is independently developed by City without any breach of this ENA and without any use of, or access to, City's

Confidential Information as evidenced by City's records, or (iv) is the subject of a written permission to disclose provided by Developer to City. The provisions of this Section 7 shall survive the termination of this ENA.

8. Indemnity for ENA Challenges.

(a) Developer shall indemnify and defend City, and its officers, directors, members, employees, agents and contractors (each an "**Indemnified Party**" and collectively "**Indemnified Parties**") from and against any and all claims and causes of action (including reasonable legal fees and costs), losses, or liabilities, in law or equity, or alleged by any third parties arising directly out of, or resulting directly from, any and all CEQA-related and non-CEQA-related litigation, lawsuits, claims, or causes of action challenging the City's execution of this ENA (a "**ENA Challenge**"), and including attorney's fees and costs arising out of the City's approval of the ENA, provided that no Indemnified Party shall be entitled to indemnification under this Section 8 for matters to the extent caused by the gross negligence, fraud or willful misconduct of such Indemnified Party. In addition, Developer shall fully indemnify the City and shall pay any award of attorney's fees or costs that may be awarded against the City or that the City may be required to pay as a result of a court order in, or settlement of, the ENA Challenge.

(b) Developer shall reimburse the City for all costs (including court costs) and attorney's fees that the City may be required by a court to pay as a result of the ENA Challenge, as well as attorney's fees and costs (including court costs) incurred by the City in its defense of the ENA Challenge, with counsel of the City's choice. The City's use of the City Attorney's office to defend the City in the Action shall not relieve Indemnitor of its obligations under this Agreement.

(c) Developer and City shall endeavor to provide the defense of the ENA Challenge in a cost-efficient manner and agree that they shall coordinate and cooperate in their defense activities. As used in this Agreement, cooperation does not include the City's having to take any action or make any decision or not take any action or refrain from making any decision that the City does not believe, in the exercise of its good faith judgment, is in its own best interest. Unless expressly provided to the contrary, nothing in this Agreement shall be construed in a manner that requires the City to exercise its discretion in a particular manner. The Parties will further coordinate their activities, to the extent reasonable and feasible, in a manner that will preserve applicable attorney-client privileges and work product privileges with respect to any legal research or other work product prepared in connection with the ENA Challenge; provided, however, that neither Party will have any right to or interest in any reports or other attorney-client privileged materials prepared by the other Party's attorneys in connection with the ENA Challenge.

(d) City agrees to give prompt notice to Developer with respect to any suit filed or claim made against City no later than the earlier of (i) ten (10) days after valid service of process as to any filed suit, or (ii) immediately upon the City's receipt of a petitioner's election to prepare the administrative record or any notice of a case management conference to discuss the administrative record pursuant to Public Resources Code section 21167.6(b), and City shall not respond to any such petitioner election or notice of case management conference without first notifying Developer in writing and affording Developer a reasonable amount of time to confer with City regarding such response, or (iii) fifteen (15) days after receiving written notification of

the assertion of such claim, which City has good reason to believe is likely to give rise to a claim for indemnification under this Section 8 by the Developer. The provisions of this Section 8 shall survive the termination of this ENA.

9. Economic Subsidy Statutes and Prevailing Wages Statutes.

(a) Developer acknowledges that material financial assistance by City to the Project (including, if applicable, charging rent under the Ground Lease that is less than fair market rent) will require: (i) a public hearing and subsidy report under California Government Code Section 53083 or 53083.1; and (ii) that Developer pay prevailing wages for the applicable portion of the construction of the Project under California Labor Code Section 1720 et seq.

(b) If such prevailing wage requirement applies, then Developer shall be required to expressly covenant in the Ground Lease to pay such prevailing wages, to the extent applicable. In any event, the Ground Lease shall include an obligation of Developer and ground lessee to defend and indemnify City with respect to claims, liabilities, damages, costs and expenses arising out of any failure by such ground lessee to pay any required prevailing wages.

10. Specific Developer and City Tasks.

(a) In exchange for City holding the Property off the market and negotiating exclusively with Developer, and in order to permit the preparation and revision of the AGREEMENT (and Ground Lease) by City staff and counsel:

(1) Developer shall deliver the materials and information identified on Attachment No. 1 attached hereto to City within the times set forth on Attachment No. 1; and

(2) On or before the first business day of each January and July, Developer shall provide a written report to City describing in reasonable detail Developer's other activities with respect to the Project during the prior six (6)-month period (i.e., 6-month period preceding the date of the report).

(b) City shall perform City tasks described on Attachment No. 2.

11. CEQA/NEPA Compliance. City and Developer acknowledge that all applicable requirements of CEQA (and if applicable, NEPA in conjunction with the airport closure) must be met in order for City to approve Project entitlements and for City to approve the entitlements, the AGREEMENT (with Ground Lease(s)) and other approvals required for the Project (including a general plan amendment, a zoning amendment, a tentative parcel map, and design review), and that this may require various reports and/or analyses (collectively, the "CEQA Documents"). City will, at its cost, fully cooperate with Developer in Developer's preparation of CEQA Documents. Developer acknowledges that pursuant to City's governmental land use/entitlements process, Developer shall be required to pay for the costs of the CEQA Documents.

12. Retention of Discretionary Authority. Developer understands and agrees that by entering into this Agreement, City is making no commitment that it will approve an AGREEMENT. City specifically retains the right to approve or deny a proposed AGREEMENT, in accordance with the discretion accorded to City pursuant to applicable law. No consents,

approvals, comments or discussions by staff shall diminish, affect, or waive: (i) rights of City to later impose conditions and requirements under CEQA; (ii) the right of City not to approve the entitlements, the AGREEMENT, or other Project approvals; or (iii) City's other discretionary governmental rights, powers, and obligations.

13. Assignment; Developer Affiliates as Parties to AGREEMENT and Ground Lease(s). Developer represents and warrants that its undertakings pursuant to this ENA are for the purpose of development of the Property and not for speculation in land, and Developer recognizes that, in view of the importance of the development of the Property to the general welfare of the community, the qualifications and identity of Developer and its principals are of particular concern to City; therefore, this ENA may not be assigned by Developer to any entity not affiliated with Developer without the prior express written consent of City in his sole and absolute discretion. However, City acknowledges that Developer may intend to form a new entity to be party to the AGREEMENT and/or Ground Lease, and Developer may do so provided that such new entity is controlled by Developer or by owners of Developer and that Developer or such owners have or will have a substantial financial investment in such entity and the Project, and provided, further, that Developer first delivers to City a copy of the applicable executed assignment and assumption agreement, and any other documents necessary for City to confirm compliance with the foregoing ownership and control conditions.

14. Notices. Any notice, request, approval, or other communication to be provided by one Party to the other shall be in writing and provided by certified mail, return receipt requested, or a reputable overnight delivery service (such as Federal Express) and addressed as follows:

Developer:

c/o Hillwood Development Company, LLC
3000 Turtle Creek Boulevard
Dallas, TX 75219
Attn: Scott Morse, Vice President

City:

City of Banning
99 E. Ramsey Street
Banning, CA 92220
Attn: City Manager

Notices shall be deemed delivered: (i) if sent by certified mail, then upon the date of delivery or attempted delivery shown on the return receipt; and (ii) if delivered by overnight delivery service, then one (1) business day after delivery to the service as shown by records of the service.

15. Entire Agreement. This ENA constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof. There are no agreements or understandings between the Parties and no representations by either Party to the other as an inducement to enter into this ENA,

except as may be expressly set forth herein, and any and all prior discussions and negotiations between the Parties are superseded by this ENA.

16. Amendment of ENA. This ENA may not be altered, amended, or modified except by a writing duly authorized and executed by all Parties.

17. Waivers. No provision of this ENA may be waived except by an express written waiver duly authorized and executed by the waiving Party.

18. Attorneys' Fees. If either Party should bring any legal action or proceeding relating to this ENA or to enforce any provision hereof, the Party in whose favor a judgment or decision is rendered shall be entitled to recover reasonable attorneys' fees and expenses from the other. The Parties agree that any legal action shall be filed in and shall occur in the County of Riverside, California.

19. Governing Law. The interpretation and enforcement of this ENA shall be governed by the substantive laws of the State of California (without regard to conflict of laws rules).

20. Time of the Essence. Time is of the essence of each and every provision hereof in which time is a factor.

21. Execution in Counterparts. This ENA may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same ENA.

22. Email Delivery of Executed Counterparts. Executed counterparts of this ENA may be delivered electronically by email to: dschulze@banningca.gov (for City), and to_____ (for Developer).

23. Real Estate Commissions. Neither party hereto shall be liable for any real estate commissions or brokerage fees incurred by the other party that may arise here from. Each party hereto agrees to hold the other party hereto harmless from any claim by any broker, agent or finder retained by the indemnifying party.

IN WITNESS WHEREOF, the Parties hereto have executed this ENA as of the day and year first written above.

CITY:

CITY OF BANNING

By: _____
Douglas Schulze, City Manager

DEVELOPER:

INDUSTRIAL VI ENTERPRISES, LLC, a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

ATTEST:

_____

Caroline Patton, Administrative City Clerk

APPROVED AS TO FORM:

_____

Serita Young, City Attorney

EXHIBIT "A"

DESCRIPTION OF PROPERTY

The land in the City of Banning, County of Riverside, State of California, described as follows:

APNs: 532-130-011, 012, and 018; 532-150-002 and 003; 532-240-009; 532-250-009

[THE FOLLOWING ARE ALSO REFERRED TO IN THE HILLWOOD LOI---IF ANY ARE TO BE INCLUDED, NEED CITY CONFIRMATION THAT THEY ARE OWNED BY CITY AND SHOULD BE INCLUDED:

541-260-009
541-140-003

532-150-004
532-180-134]

ATTACHMENT NO. 1

SPECIFIC DEVELOPER TASKS

1. On or before the date that is sixty (60) days after the date of this ENA, Developer shall deliver to City for staff review and approval, a preliminary financing plan for the Project and an organizational chart of the Developer-related entity proposed to be a party to the AGREEMENT and/or Ground Lease.

2. Developer shall promptly obtain and review a preliminary report for the Property from a title company selected by Developer and copies of the documents listed as title exceptions therein, and shall if desired by Developer obtain/perform a survey based on such preliminary report by the Due Diligence Deadline, and shall deliver copies of the report and documents and later any survey based on such report to City by email to dschulze@banningca.gov.

3. On or before the Due Diligence Deadline, Developer shall inspect the Property, including (without limitation) obtaining and reviewing a Phase I environmental (hazmat) report for the Property, and if recommended by the Phase I, a Phase II report. Developer shall promptly deliver copies of the final signed reports to City when received.

ATTACHMENT NO. 2

SPECIFIC CITY TASKS

1. City shall provide to Developer copies of all currently written information regarding the Property in its possession, to the extent not previously delivered to Developer and to the extent material to the Property or Project and not subject to the attorney-client or attorney work-product privilege.

2. Subject to Developer's execution of a Deposit and Reimbursement Agreement of the sort typically required by City in connection with CEQA, and Developer's timely making any required deposits thereunder, City shall to prepare and process any required CEQA Documents as soon as reasonably possible after submission by Developer of a complete development application and payment of applicable fees/deposits.

3. City shall provide a draft of the AGREEMENT to Developer, and shall revise said draft periodically to the extent permitted by the negotiations.

ATTACHMENT NO. 3

FORM OF RIGHT OF ENTRY AGREEMENT

(Attached.)

RIGHT OF ENTRY AND ACCESS AGREEMENT

THIS RIGHT OF ENTRY AND ACCESS AGREEMENT ("Agreement") is dated _____ __, 2023 and is entered into by and between the CITY OF BANNING (the "City") and INDUSTRIAL VI ENTERPRISES, LLC, a Delaware limited liability company ("Developer").

R E C I T A L S

A. City and Developer have entered into an Exclusive Negotiating Agreement dated substantially concurrently herewith (the "ENA") with respect to certain real property described in the ENA, and hereinafter referred to as the "Site".

B. The ENA contemplates that City and Developer will negotiate a disposition and development agreement ("AGREEMENT") and one or more ground leases ("Ground Lease") for the Site, and permits Developer to commence its due diligence inspections of the Site, which may include access necessary to prepare a survey ("Inspections").

C. Consequently, City and Developer desire to enter into this Agreement to provide access to the Site to Developer for purposes of such Inspections.

NOW, THEREFORE, in consideration of the foregoing recitals, the ENA, the mutual covenants and agreements contained herein, and other consideration, the sufficiency of which are hereby acknowledged, City and Developer hereby covenant and agree as follows:

1. Term. This Agreement shall be effective upon the date hereof, and unless earlier terminated by City pursuant to Section 12 below, shall expire upon the expiration or earlier termination of the ENA.

2. Access. Subject to compliance with the terms and provisions of this Agreement, Developer and Developer's consultants who are designated in writing to City (collectively, "Developer's Designees") shall have the right to enter upon the Site for the purpose of performing the Inspections provided they make arrangements for entry at least two (2) days in advance with the City Manager or his designee at dschulze@banningca.gov, who shall have the right to require that he or another City staff person or City consultant staff person accompany Developer or Developer's Designee, as applicable, during performance of the Inspections; provided, however, that such the failure of such representative to attend a previously scheduled Inspection shall not require Developer or Developer's Designee to reschedule such inspection.

3. Indemnity. Developer shall indemnify, defend and hold City harmless from and against any and all third-party claims, liabilities, damages (but excluding punitive, speculative, consequential, or lost profits), losses, costs and expenses of any kind or nature whatsoever, including, without limitation, reasonable attorneys' fees and expenses and court costs (collectively, "Losses") that City actually suffers or incurs as a direct result of (i) a breach of Developer's agreements set forth in this Agreement in connection with the Inspections or (ii) physical damage to the Site or bodily injury caused by Developer or Developer's Designees during its exercise of the right of inspection granted under this Agreement, but expressly excluding Losses arising out of the discovery of pre-existing conditions, the negligence or willful misconduct of

City, or any diminution in value in the Site arising from, or related to, matters discovered but not created by Developer or Developer's Designees during any Investigations. The indemnification and defense obligations of Developer contained herein shall survive the expiration or earlier termination of this Agreement and the ENA for a period of (1) year.

4. Reports. In the event this Agreement is terminated, Developer shall promptly provide to City copies of all surveys, letters, studies, and reports related to or arising from the Inspections; provided, however, all such materials shall be delivered without representation or warranty, and Developer shall not be obligated to deliver any confidential, proprietary or other materials covered by attorney-client privilege.

5. Insurance. Developer at its sole expense shall procure and maintain in full force and effect from and after the date on which Developer or any of its Designees enters the Site for any purpose, all of the insurance described in Exhibit "A" hereto, and otherwise comply with said Exhibit "A", and makes the grants/waivers described in Exhibit "A". Prior to entering upon the Site, Developer shall deliver to City copies of certificates of liability insurance showing that such policies are in effect, and showing the additional insured coverage required by Exhibit "A". Thereafter, copies of all required policies shall be furnished from time to time promptly following written request therefor.

6. Limitations. City does not hereby convey to Developer any right, title, or interest in or to the Site, but merely grants the specific and limited contractual rights and privileges hereinabove set forth.

7. Notices. Except as otherwise expressly provided herein, any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be in writing and shall be addressed as follows and given by United States certified mail, postage prepaid, return receipt requested or by nationally recognized overnight mail service (such as FedEx).

If to Developer:

c/o Hillwood Development Company, LLC
3000 Turtle Creek Boulevard
Dallas, TX 75219
Attn: Scott Morse, Vice President

If to CITY:

City of Banning
99 E. Ramsey Street
Banning, CA 92220
Attn: City Manager

8. Term. Except for provisions which expressly survive, this Agreement shall terminate on the date (the "Termination Date") that is the earliest of (i) the execution and delivery of the AGREEMENT by City and Developer, (ii) the expiration or earlier termination of the ENA.

9. Assignment. This Agreement may not be assigned by Developer, in whole or in part.

10. Governing Law. This Agreement shall be construed, enforced, and interpreted in accordance with the laws of the State of California (without regard to conflict of laws rules).

11. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

12. Default; Termination. If Developer fails to cure a default by Developer hereunder within thirty (30) days after City Manager's delivery of written notice to Developer, the City Manager may terminate this Agreement and ENA by further written notice to Developer.

13. Email Delivery of Executed Counterparts. This Agreement may be executed in counterparts and delivered by electronic transmission (e.g., .PDF format/email), to dschulze@banningca.gov (for delivery to City) and to Scott Morse [Scott.Morse@hillwood.com] (for delivery to Developer), each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

CITY:

CITY OF BANNING

By: _____
Douglas Schulze,
City Manager

DEVELOPER:

INDUSTRIAL VI ENTERPRISES, LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

Attest:

_____
Caroline Patton,
Administrative City Clerk

EXHIBIT "A" TO RIGHT OF ENTRY AGREEMENT

INSURANCE REQUIREMENTS

8. Developer (hereinafter referred to as "Contractor" in this Exhibit "A") shall, prior to entering onto the Site, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder (consisting of inspections and tests) by Contractor, its agents, representatives, employees, or subcontractors. The cost of such insurance shall be borne by the applicable Contractor.

9. Minimum Scope and Limit of Insurance. Coverage shall be at least as broad as:

(a) **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit (these limits may be achieved by a combination of a primary policy and an excess or umbrella liability policy). The policy shall include broad form contractual liability coverage.

(b) **Automobile Liability:** ISO Form Number CA 0001 covering any auto (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with combined single limit no less than $1,000,000 per accident for bodily injury and property damage.

(c) **Workers' Compensation** insurance as required by the State of California, with statutory limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

10. Contractor should check with Contractor's insurance advisors to verify compliance and determine if additional coverage or limits may be needed to adequately insure Contractor's obligations under this Agreement. These are the minimum required and do not in any way represent or imply that such coverage is sufficient to adequately cover Contractor's liability under this Agreement. These insurance requirements shall not in any way relieve Contractor of liability in excess of such coverage, nor shall it preclude City from taking such other actions as are available to it under any other provisions of this Agreement or law. These insurance requirements shall not in any way act to reduce coverage that is broader or includes higher limits than those required. If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage required, which are applicable to any given loss, shall be available to City.

11. The insurance to be provided by Contractor under this Agreement shall not include any endorsement limiting coverage available to City that is otherwise required herein; and any policy or endorsement language that (i) negates coverage to City for City's own negligence; (ii) limits the duty to defend City under the policy; (iii) provides coverage to City only if Contractor is negligent, or (iv) permits the recovery of defense costs from any additional insured. The

insurance provided under this Agreement shall not contain any restrictions or limitations which are inconsistent with City's rights under this Agreement.

12. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

(a) Additional Insured Status. The City of Banning, its City Council, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability additional insured coverage shall be provided in the form of an endorsement to Contractor's insurance at least as broad as ISO Form CG 20 10 (ongoing operations) and CG 20 37 (completed operations).

(b) Separation of Insureds. A separation of insureds provision must apply for all the additional insureds, ensuring that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limits of liability.

(c) Primary Coverage. For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects City, its City Council, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by City, its City Council, its officers, officials, employees, agents, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

(d) Notice of Cancellation/Change in Coverage. Each insurance policy required above shall state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, non-renewed, or materially changed except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium. Prior written notice shall be sent to City pursuant to the Notices provisions of this Agreement.

(e) Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which any insurer of Contractor may acquire against City, its City Council, its officers, officials, employees, agents, and volunteers from Contractor by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer. Contractor's Workers' Compensation policy shall be specifically endorsed from the insurer with a waiver of subrogation in favor of City, its City Council, its officers, officials, employees, agents, and volunteers. A blanket endorsement is insufficient and unacceptable in satisfying this requirement. Said endorsement from the insurer must be received, reviewed, and approved by City prior to right of entry.

(f) Self-Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or

provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(g) Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A:VII. The current A.M. Best rating for each insurer shall be noted on a cover letter provided by the producer of the Certificate(s) of Insurance.

(h) Certificate Holder. Certificate Holder on each insurance certificate shall be addressed pursuant to the Notices provisions of this Agreement.

(i) Verification of Coverage. Contractor shall furnish City with certificates and all required amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. A statement on an insurance certificate will not be accepted in lieu of the actual endorsements required herein. Each insurance certificate shall specifically identify this Agreement. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require copies of all required insurance policies, including endorsements required by these specifications, at any time.

(j) Failure to Maintain Insurance Coverage. If Contractor, for any reason, fails to maintain insurance coverage that is required pursuant to this Agreement, the same shall be brought to Contractor's attention in writing and, if not cured within 5 (five) business days, be deemed a material breach of this Agreement. City, at its sole option, may terminate this Agreement at any time and file for damages from Contractor resulting from said breach. Alternatively, City may, upon written notice and, if not cured within 5 (five) business days, purchase such coverage (but has no special obligation to do so), and without further notice to Contractor, City may deduct from sums due to Contractor any premium costs advanced by City for such insurance.

(K) Special Risks or Circumstances. City reserves the right to modify these requirements at any time, including limits, based on its good-faith assessment of the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

SEC. 755. GAO STUDY ON TRANSIT ACCESS.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall conduct a study on transit access to airports and submit to the appropriate committees of Congress a report on the results of such study.

(b) CONTENTS.—In carrying out the study under subsection (a), the Comptroller General shall review public transportation access to commercial service airports throughout the United States, including accessibility and other potential barriers for individuals.

SEC. 756. BANNING MUNICIPAL AIRPORT.

(a) IN GENERAL.—The United States, acting through the Administrator, shall release the City of Banning, California, from all restrictions, conditions, and limitations on the use, encumbrance, conveyance, and closure of the Banning Municipal Airport, as described in the most recent airport layout plan approved by the FAA, to the extent such restrictions, conditions, and limitations are enforceable by the Administrator.

(b) CONDITIONS.—The release under subsection (a) shall not be executed before the City of Banning, California, or its designee, transfers to the United States Government the following:

(1) A reimbursement for 1983 grant the City of Banning, California received from the FAA for the purchase of 20 acres of land, at an amount equal to the fair market value for the highest and best use of the Banning Municipal Airport property determined in good faith by 2 independent and qualified real estate appraisers and an independent review appraiser on or after the date of the enactment of this Act.

(2) An amount equal to the unamortized portion of any Federal development grants other than land paid to the City of Banning for use at the Banning Municipal Airport, which may be paid with, and shall be an allowable use of, airport revenue notwithstanding section 47107 or 47133 of title 49, United States Code.

(3) For no consideration, all airport and aviation-related equipment of the Banning Municipal Airport owned by the City of Banning and determined by the FAA or the Department of Transportation of the State of California to be salvageable for use at other airports.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the applicability of—

(1) the requirements and processes under section 46319 of title 49, United States Code;

(2) the requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(3) the requirements and processes under part 157 of title 14, Code of Federal Regulations; or

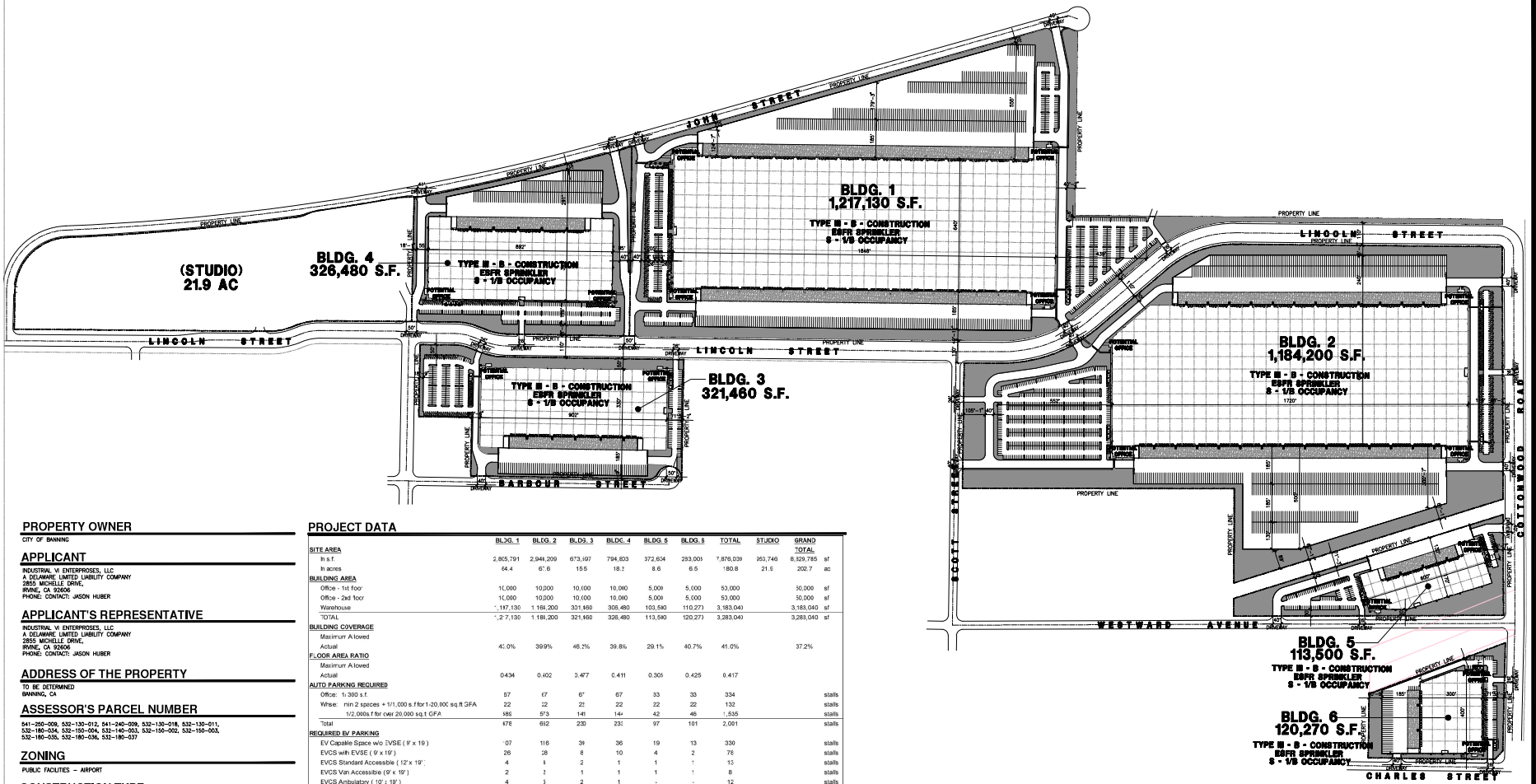
(4) the public notice requirements under section 47107(h)(2) of title 49, United States Code.

SEC. 757. DISPUTED CHANGES OF SPONSORSHIP AT FEDERALLY OBLIGATED, PUBLICLY OWNED AIRPORT.

(a) APPROVAL AUTHORITY.—

(1) IN GENERAL.—Subject to paragraph (2), in the case of a disputed change of airport sponsorship, the Administrator shall have the sole legal authority to approve any change in the sponsorship of, or operational responsibility for, the airport

CAUTION: IF THIS SHEET IS NOT 30"X42" IT IS A REDUCED PRINT



PROPERTY OWNER

CITY OF BANNING

APPLICANT

INDUSTRIAL VI ENTERPROSES, LLC
A DELAWARE LIMITED LIABILITY COMPANY
2855 MICHELLE DRIVE,
IRVINE, CA 92606
PHONE: CONTACT: JASON HUBER

APPLICANT'S REPRESENTATIVE

INDUSTRIAL VI ENTERPROSES, LLC
A DELAWARE LIMITED LIABILITY COMPANY
2855 MICHELLE DRIVE,
IRVINE, CA 92606
PHONE: CONTACT: JASON HUBER

ADDRESS OF THE PROPERTY

TO BE DETERMINED
BANNING, CA

ASSESSOR'S PARCEL NUMBER

541-250-009, 532-130-012, 541-240-009, 532-130-018, 532-130-011, 532-180-034, 532-150-004, 532-140-003, 532-150-002, 532-150-003, 532-180-035, 532-180-036, 532-180-037

ZONING

PUBLIC FACILITIES – AIRPORT

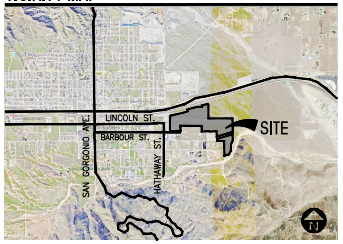
CONSTRUCTION TYPE

CONCRETE TILT-UP BUILDING
BUILDING OCCUPANCY: S-1/B OFFICE & WAREHOUSE
CONSTRUCTION TYPE: III-B
FIRE SPRINKLER: ESFR SYSTEM

LEGAL DESCRIPTION

SEE CIVIL PLANS.

VICINITY MAP



PROJECT DATA

	BLDG. 1	BLDG. 2	BLDG. 3	BLDG. 4	BLDG. 5	BLDG. 6	TOTAL	STUDIO	GRAND TOTAL	
SITE AREA										
In s.f.	2,865,791	2,944,209	673,497	794,803	372,634	283,005	7,876,039	953,746	8,829,785	sf
In acres	64.4	67.6	15.5	18.2	8.6	6.5	180.8	21.9	202.7	ac
BUILDING AREA										
Office - 1st floor	10,000	10,000	10,000	10,000	5,000	5,000	50,000		50,000	sf
Office - 2nd floor	10,000	10,000	10,000	10,000	5,000	5,000	50,000		50,000	sf
Warehouse	1,197,130	1,164,200	301,460	308,480	103,590	110,270	3,183,040		3,183,040	sf
TOTAL	1,217,130	1,184,200	321,460	328,480	113,590	120,270	3,283,040		3,283,040	sf
BUILDING COVERAGE										
Maximum Allowed										
Actual	42.0%	39.9%	46.2%	39.8%	29.1%	40.7%	41.0%		37.2%	
FLOOR AREA RATIO										
Maximum Allowed										
Actual	0.434	0.402	0.477	0.411	0.303	0.425	0.417			
AUTO PARKING REQUIRED										
Office: 1/300 s.f.	67	67	67	67	33	33	334			stalls
Whse: min 2 spaces + 1/1,000 s.f for 1-20,000 sq.ft GFA	22	22	22	22	22	22	132			stalls
1/2,000s f for over 20,000 sq.ft GFA	186	573	141	144	42	46	1,535			stalls
Total	478	662	230	233	97	101	2,001			stalls
REQUIRED EV PARKING										
EV Capable Space w/o EVSE (9' x 19')	107	116	39	36	19	13	330			stalls
EVCS with EVSE (9' x 19')	26	28	8	10	4	2	78			stalls
EVCS Standard Accessible (12' x 19')	4	4	2	1	1	1	13			stalls
EVCS Van Accessible (9' x 19')	2	2	1	1	1	1	8			stalls
EVCS Ambulatory (10' x 19')	4	5	2	1	-	-	12			stalls
Total	143	155	52	49	25	17	441			stalls
*Note: EVCS and EV Capable are provided per Calgreen 5.106.5.3.2										
PROVIDED PARKING BREAKDOWN										
Standard (9' x 19')	556	633	199	181	97	80	1,722			stalls
Standard Accessible (9' x 19')	13	14	6	6	4	3	46			stalls
Van Accessible (9' x 19')	2	2	1	1	1	1	8			stalls
EV Capable Space (9' x 19')	107	116	39	36	19	13	330			stalls
EVCS with EVSE (9' x 19')	26	28	8	10	4	2	78			stalls
EVCS Standard Accessible (9' x 19')	4	4	2	1	1	1	13			stalls
EVCS Van Accessible (12' x 19')	2	2	1	1	1	1	8			stalls
EVCS Ambulatory (10' x 19')	4	5	2	1	-	-	12			stalls
Total	714	774	258	242	127	101	2,217			
TRAILER PARKING PROVIDED										
Trailer (10' x 53)	476	542	72	120	-	30	1,240			stalls
ZONING ORDINANCE										
Zoning - Industrial										
MAXIMUM BUILDING HEIGHT ALLOWED										
Height - 2 stories or 50'										
LANDSCAPE REQUIREMENT										
15% of net area of all parking area shall be landscaped										
LANDSCAPE PROVIDED										
Landscape Area	331,342	525,230	108,133	148,030	119,119	60,580	1,292,434		1,292,434	sf
Percentage	12%	18%	16%	19%	32%	21%	16%		15%	
PARKING AREA PROVIDED										
Parking area (including driveways, loading areas & spaces)	1,257,319	1,231,779	244,304	320,293	140,015	102,155	3,300,565		3,300,565	sf
Percentage	45%	42%	36%	40%	38%	36%	42%		37%	
SETBACKS										
Front - 10'										
Side - 10'										
Rear - 10 Adjacent R zone										

MASTER SITE PLAN (A)
scale: 1" = 200'-0"

SCALE: 1" = 200'-0"
0 200' 400' 600'
TRUE NORTH

HPA architecture 43 Years

hpa, inc.
18831 bardeen avenue. - ste. #100
irvine, ca
92612
tel: 949•863•1770
email: hpa@hparchs.com

Owner:

HILLWOOD
A PEROT COMPANY
901 Via Piemonte, Suite 175
Ontario, CA 91764

tel: (909) 382-0033
fax: (909) 382-0073

Project:

BANNING MUNICIPAL AIRPORT REDEVELOPMENT

BLDG. 1 THRU 6

BANNING, CA

Consultants:

CIVIL	HUITT-ZOLLARS
STRUCTURAL	-
MECHANICAL	-
PLUMBING	-
ELECTRICAL	-
LANDSCAPE	HUNTER
FIRE PROTECTION	-
SOILS ENGINEER	-

Title: MASTER SITE PLAN

Project Number: 22588
Drawn by: AC
Date: 09/27/2024
Revision:

Sheet:

DAB-A1.0

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

EXCLUSIVE NEGOTIATING AGREEMENT
(Hillwood)

This EXCLUSIVE NEGOTIATING AGREEMENT ("**ENA**") is dated as of December 12, 2023, and is entered into by and between the CITY OF BANNING ("**City**"), and INDUSTRIAL VI ENTERPRISES, LLC, a Delaware limited liability company ("Developer"). City and Developer are sometimes individually referred to herein as a "**Party**" and are sometimes collectively referred to herein as the "**Parties**."

R E C I T A L S

A. City owns the land in the City of Banning, California described on Exhibit "A" (the "**Property**"), a portion of which is currently used as the Banning Municipal Airport. The development and use of the Property for the Project is dependent on closure of the Banning Municipal Airport, which closure must be approved by the federal government.

B. Developer desires to apply for various entitlements for a mixed use project for the Property including a movie studio (the "**Studio Parcel**") and light industrial warehouse development, with multiple buildings (the "**Warehouse Parcels**", and collectively with the Studio Parcel, the "**Project**"), and enter into an agreement ("**Agreement**") with City for a single or multiple ground leases (each, a "**Ground Lease**") with City for the Property and Warehouse Parcels. Developer and City contemplate that a movie studio would be developed on approximately 30 acres of APNs 541-240-009 and 541-250-009). The terms and conditions relating to the Studio Parcel shall be further detailed in the Agreement.

C. It is contemplated that each Ground Lease (the form of which would be attached to the Agreement as an exhibit) would have a term of 55 years, and that extensions and rights to purchase the Property will, be addressed in the Ground Lease(s).

D. Developer and City will incur significant costs in preparing California Environmental Quality Act ("**CEQA**") documents, processing entitlements, and negotiating the Agreement (and Ground Lease).

E. Developer has requested that City negotiate with Developer on an exclusive basis for a specified period of time to establish the terms and conditions of the entitlements and Agreement (and Ground Lease), and in consideration of that exclusive negotiating right, Developer will provide City with an ENA fee and other benefits as provided in this ENA.

NOW, THEREFORE, the Parties hereto agree as follows:

1. Term. The term of this ENA shall commence on the date hereof and shall end on the earlier of: (i) the date that is five (5) calendar years after the date of this ENA, subject to extension as hereinafter set forth, or (ii) the date on which City or Developer terminates this ENA as provided in Section 3 below (the "**ENA Period**").

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

2. Extensions.

(a) The City Manager may extend the term of this ENA for up to six (6) months by written notice to Developer provided all of the terms of the Agreement (including the form of Ground Lease) shall have been negotiated and shall be acceptable to City staff (it being contemplated that such extension may be necessary to complete compliance with CEQA and City entitlements for the Project and/or to complete the process of the closure of the airport on the Property).

(b) Developer shall have the right to extend the term of this ENA for up to two (2) one-year extension periods, by written notice to City given on or before the date that is six (6) months prior to the expiration of the then-current term, and paying to City concurrently with such notice, the sum of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) as a nonrefundable extension fee (for each extension).

3. Termination.

(a) The City Manager may terminate this ENA by written notice to Developer if Developer should fail to comply with or perform any material provisions of this ENA and such failure is not cured within thirty (30) days after City Manager's delivery of written notice to Developer; provided that if such failure is of the nature that it cannot reasonably be cured within such thirty (30) day period, such cure period shall be extended for as long as Developer in good faith commences curative efforts within thirty (30) days of its receipt of such notice from the City Manager and diligently and expeditiously continues its curative efforts.

(b) Developer may terminate this ENA by written notice to City at any time if Developer, in its sole and absolute discretion, determines that it does not wish to pursue the Project any further. However, in the event of such termination, no ENA Fees shall be returned to Developer, except that provided Developer is not then in default under this ENA, City shall return a pro-rata portion of the $250,000 annual ENA Fee described in Section 5(b)(i) and (ii) below that Developer shall have prepaid for the one year period in which the termination occurs (based on the number of days in such annual period after the date of termination, divided by 365).

4. City Covenant Regarding Exclusivity. During the ENA Period, City shall not negotiate with any person or entity other than Developer for the sale, lease, financing, or development of the Property or any portion thereof, nor shall City solicit or entertain bids or proposals to do any of the same.

5. Non-Binding Term Sheet; ENA Fees; CEQA Costs.

(a) The parties intend to negotiate, within six (6) months after the date of this ENA, a non-binding term sheet acceptable to both parties as the basis for negotiating the Agreement; however, neither party shall be bound by any terms unless and until the Agreement is negotiated, finalized, and executed, after or concurrently with compliance with CEQA.

(b) In exchange for the exclusivity rights granted to Developer in this ENA (in a very competitive real estate market for warehouse space, and for commercial property generally),

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

Developer shall pay the sums described below (collectively, the "**ENA Fees**"), which shall not be refundable, except as expressly provided in Section 3(b) above:

(i) Upon the parties indicating that such term sheet is acceptable (which may be communicated by City by email to Scott Morse [Scott.Morse@hillwood.com] of Developer), Developer shall, within five (5) business days thereafter, deliver the amount of $250,000.00 (as an initial ENA Fee) to City, which payment shall be deemed applicable to the first year of this ENA.

(ii) On or before the first anniversary of the date of this ENA during the initial term of this ENA, and on each subsequent anniversary of the date of this ENA, Developer shall deliver the amount of $250,000.00 (as additional ENA Fees) to City.

(c) Developer shall reimburse City for an aggregate amount of up to $40,000 of the City's actual, out of pocket legal fees incurred in negotiating this ENA, the Term Sheet, Agreement and Ground Lease (the "**Legal Fee Reimbursement**"). Developer shall pay the Legal Fee Reimbursement to City within ten (10) days after City delivers to Developer reasonable evidence of such incurred legal fees, including, without limitation, paid invoices.

6. Diligence Deadline.

(a) Until the date that is one hundred and eighty (180) days after the date of this ENA, as may be extended in writing for cause by the City Manager by up to an additional ninety (90) days (the "**Due Diligence Deadline**"), Developer shall have the right and obligation to inspect the Property and title to the Property (including completing a survey, and completing environmental/hazmat inspections and reports), and document the City staffs' willingness to recommend approval by the City Council of relocation of any City of Banning recorded and unrecorded easements that could materially interfere with Developer's contemplated development, and the City staffs' willingness to recommend City Council approval (short of condemnation) to relocate third party easements that materially interfere with Developer's contemplated development. If Developer does not approve the condition of title or the condition of the Property, then Developer may terminate this ENA by written notice to City Manager by the Due Diligence Deadline.

(b) Developer shall also be entitled to inspect the Property and title to the Property after such Due Diligence Deadline for purposes of confirming that there shall have been no material change in title matters or physical condition prior to its execution of the Agreement and prior to its execution of the Ground Lease(s).

(c) If Developer does not so terminate this ENA and enters into the Agreement, then Developer shall have no right under the Agreement or Ground Lease to terminate the Agreement or Ground Lease as a result of any such title or survey matter, or any physical condition of the Property, except for material changes to such title or physical condition that occur after the completion of Developer's title and physical condition reviews/investigations prior to the execution of the Agreement and Ground Lease and which are not caused by Developer or its contractors.

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

(d) Concurrently with its execution of this ENA, Developer and City shall also execute and deliver a counterpart of the Right of Entry Agreement in the form attached hereto as Attachment No. 3.

7. Confidentiality of Information.

(a) Any information provided by Developer to City, including, without limitation, financial reports, proformas and other financial projections (whether in written, graphic, electronic or any other form) (collectively, "**Confidential Information**") shall be subject to the provisions of this Section 7.

(b) Subject to the terms of this Section 7, City shall prevent disclosure of Confidential Information to any third parties, except as may be required by the California Public Records Act (Government Code Section 7920.000 *et seq.*) or other applicable local, state, or federal law ("**Public Disclosure Laws**"). Notwithstanding the preceding sentence, City may disclose Confidential Information to its officials, employees, agents, attorneys, and advisors to the extent necessary to carry out the purpose for which the Confidential Information was disclosed.

(c) If the City becomes subject to a requirement by law, regulation, deposition question, interrogatory, Public Records Act request, Freedom of Information Act request, other type of request for information or documents, subpoena, civil investigative demand, or similar process (collectively, "**Requirement**") to disclose any Confidential Information, the City will, prior to producing any Confidential Information, notify Developer of the existence, terms, and circumstances of such Requirement(s) within five (5) calendar days of receiving such Requirement(s) so that Developer may seek an appropriate protective order. If the City and the Developer do not agree that the document is exempt from disclosure, the Developer may commence a "reverse" Public Records Act lawsuit to preclude the City's disclosure of the communication, and the City shall, to the extent supported by the law and the facts, invoke all extensions or excused delay legally available to the City under the Public Records Act and applicable law before producing such privileged information/document so as to afford Developer as much time as possible to file a "reverse" Public Records Act lawsuit. If the City is subject to a Requirement and has complied with the notification and cooperation obligations described in the preceding sentence, is compelled, in the opinion of its legal counsel, to disclose privileged information or else violate the law or stand liable for contempt or other substantial penalty, the City shall furnish only that portion of the Confidential Information that is legally required pursuant to the terms of such Requirement as modified by any protective order or "reverse" Public Records Act lawsuit. If the above time limits conflict with the time within which response to discovery or information requests must be made under applicable law, then the Parties shall act to provide the notification contemplated by this paragraph as soon as possible.

(d) In the event that the City is subject to a Requirement and, based upon an objection received from the Developer, the City does not produce the requested information, the Developer's indemnity obligations as set forth in this ENA shall extend to the defense of the City if an action, claim, or liability arises or results from the City's refusal to release information withheld at the Developer's request.

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

(e) The restrictions set forth in this Section 7 shall not apply to Confidential Information to the extent such Confidential Information (i) is now, or hereafter becomes, through no act or failure to act on the part of City, publicly known or available, (ii) is known by City at the time of receiving such information as evidenced by City's public records, (iii) is independently developed by City without any breach of this ENA and without any use of, or access to, City's Confidential Information as evidenced by City's records, or (iv) is the subject of a written permission to disclose provided by Developer to City. The provisions of this Section 7 shall survive the termination of this ENA.

8. Indemnity for ENA Challenges.

(a) Developer shall indemnify and defend City, and its officers, directors, members, employees, agents and contractors (each an "**Indemnified Party**" and collectively "**Indemnified Parties**") from and against any and all claims and causes of action (including reasonable legal fees and costs), losses, or liabilities, in law or equity, or alleged by any third parties arising directly out of, or resulting directly from, any and all CEQA-related and non-CEQA-related litigation, lawsuits, claims, or causes of action challenging the City's execution of this ENA (a "**ENA Challenge**"), and including attorney's fees and costs arising out of the City's approval of the ENA, provided that no Indemnified Party shall be entitled to indemnification under this Section 8 for matters to the extent caused by the gross negligence, fraud or willful misconduct of such Indemnified Party. Notwithstanding the foregoing, Developer may alternatively elect (in its sole and absolute discretion and at any time) to terminate its pursuit of the Project rather than defend the CEQA Challenge. In addition, Developer shall fully indemnify the City and shall pay any award of attorney's fees or costs that may be awarded against the City or that the City may be required to pay as a result of a court order in, or settlement of, the ENA Challenge, provided that City shall not be entitled to indemnification under this Section 8 for matters to the extent caused by the gross negligence, fraud or willful misconduct of City.

(b) Developer shall reimburse the City for all costs (including court costs) and attorney's fees that the City may be required by a court to pay as a result of the ENA Challenge, as well as attorney's fees and costs (including court costs) incurred by the City in its defense of the ENA Challenge, with counsel of the City's reasonable choice. The City's use of the City Attorney's office to defend the City in the Action shall not relieve Indemnitor of its obligations under this ENA.

(c) Developer and City shall endeavor to provide the defense of the ENA Challenge in a cost-efficient manner and agree that they shall coordinate and cooperate in their defense activities. As used in this ENA, cooperation does not include the City's having to take any action or make any decision or not take any action or refrain from making any decision that the City does not believe, in the exercise of its good faith judgment, is in its own best interest. Unless expressly provided to the contrary, nothing in this ENA shall be construed in a manner that requires the City to exercise its discretion in a particular manner. The Parties will further coordinate their activities, to the extent reasonable and feasible, in a manner that will preserve applicable attorney-client privileges and work product privileges with respect to any legal research or other work product prepared in connection with the ENA Challenge; provided, however, that neither Party will have any right to or interest in any reports or other attorney-client privileged materials prepared by the other Party's attorneys in connection with the ENA Challenge.

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

(d) City agrees to give prompt notice to Developer with respect to any suit filed or claim made against City no later than the earlier of (i) ten (10) days after valid service of process as to any filed suit, or (ii) immediately upon the City's receipt of a petitioner's election to prepare the administrative record or any notice of a case management conference to discuss the administrative record pursuant to Public Resources Code section 21167.6(b), and City shall not respond to any such petitioner election or notice of case management conference without first notifying Developer in writing and affording Developer a reasonable amount of time to confer with City regarding such response, or (iii) fifteen (15) days after receiving written notification of the assertion of such claim, which City has good reason to believe is likely to give rise to a claim for indemnification under this Section 8 by the Developer. The provisions of this Section 8 shall survive the termination of this ENA.

9. Economic Subsidy Statutes and Prevailing Wages Statutes.

(a) Developer acknowledges that material financial assistance by City to the Project (including, if applicable, charging rent under the Ground Lease that is less than fair market rent) will require: (i) a public hearing and subsidy report under California Government Code Section 53083 or 53083.1; and (ii) that Developer pay prevailing wages for the applicable portion of the construction of the Project under California Labor Code Section 1720 et seq.

(b) If such prevailing wage requirement applies, then Developer shall be required to expressly covenant in the Ground Lease to pay such prevailing wages, to the extent applicable. In any event, the Ground Lease shall include an obligation of Developer and ground lessee to defend and indemnify City with respect to claims, liabilities, damages, costs and expenses arising out of any failure by such ground lessee to pay any required prevailing wages.

10. Specific Developer and City Tasks.

(a) In exchange for City holding the Property off the market and negotiating exclusively with Developer, and in order to permit the preparation and revision of the Agreement (and Ground Lease) by City staff and counsel:

(1) Developer shall deliver the materials and information identified on Attachment No. 1 attached hereto to City within the times set forth on Attachment No. 1; and

(2) On or before the first business day of each January and July, Developer shall provide a written report to City describing in reasonable detail Developer's other activities with respect to the Project during the prior six (6)-month period (i.e., 6-month period preceding the date of the report).

(b) City shall perform City tasks described on Attachment No. 2.

11. CEQA/NEPA Compliance. City and Developer acknowledge that all applicable requirements of CEQA (and if applicable, NEPA in conjunction with the airport closure) must be met in order for City to approve Project entitlements and for City to approve the entitlements, the Agreement (with Ground Lease(s)) and other approvals required for the Project (including a general plan amendment, a zoning amendment, a tentative parcel map, and design review), and that this may require various reports and/or analyses (collectively, the "**CEQA Documents**"). City

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

will, at its cost, fully cooperate with Developer in Developer's preparation of CEQA Documents. Developer acknowledges that pursuant to City's governmental land use/entitlements process, Developer shall be required to pay for the costs of the CEQA Documents.

12. Negotiations; Retention of Discretionary Authority.

(a) The City, in its proprietary capacity, shall cause City staff to negotiate in with Developer to negotiate the Term Sheet, Agreement, and Ground Lease.

(b) Developer and City staff, as needed, shall meet or hold a conference call approximately every two (2) weeks during the ENA Period to negotiate the Term Sheet, Agreement and Ground Lease and discuss the status of activities and tasks related to the negotiations and the Project, the accomplishment of such activities and tasks and other such matters as City or Developer reasonably requests. The Parties shall follow reasonable negotiation procedures, including meetings, telephone and video calls, and correspondence.

(c) Developer understands and agrees that by entering into this ENA, City is making no commitment that it will approve a Term Sheet or an Agreement. City specifically retains the right to approve or deny a proposed Term Sheet or Agreement, in accordance with the discretion accorded to City pursuant to applicable law. No consents, approvals, comments or discussions by staff shall diminish, affect, or waive: (i) rights of City to later impose conditions and requirements under CEQA; (ii) the right of City not to approve the entitlements, the Term Sheet, the Agreement, or other Project approvals; or (iii) City's other discretionary governmental rights, powers, and obligations.

13. Assignment; Developer Affiliates as Parties to Agreement and Ground Lease(s). Developer represents and warrants that its undertakings pursuant to this ENA are for the purpose of development of the Property and not for speculation in land, and Developer recognizes that, in view of the importance of the development of the Property to the general welfare of the community, the qualifications and identity of Developer and its principals are of particular concern to City; therefore, this ENA may not be assigned by Developer to any entity not affiliated with Developer without the prior express written consent of City in his sole and absolute discretion. However, City acknowledges that Developer may intend to form a new entity to be party to the Agreement and/or Ground Lease, and Developer may do so provided that such new entity is controlled by Developer or by owners of Developer and that Developer or such owners have or will have a substantial financial investment in such entity and the Project, and provided, further, that Developer first delivers to City a copy of the applicable executed assignment and assumption agreement, and any other documents necessary for City to confirm compliance with the foregoing ownership and control conditions.

14. Notices. Any notice, request, approval, or other communication to be provided by one Party to the other shall be in writing and provided by certified mail, return receipt requested, or a reputable overnight delivery service (such as Federal Express) and addressed as follows:

Developer:

c/o Hillwood Development Company, LLC

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

3000 Turtle Creek Boulevard
Dallas, TX 75219
Attn: Scott Morse, Vice President

City:

City of Banning
99 E. Ramsey Street
Banning, CA 92220
Attn: City Manager

Notices shall be deemed delivered: (i) if sent by certified mail, then upon the date of delivery or attempted delivery shown on the return receipt; and (ii) if delivered by overnight delivery service, then one (1) business day after delivery to the service as shown by records of the service.

15. Entire Agreement. This ENA constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof. There are no agreements or understandings between the Parties and no representations by either Party to the other as an inducement to enter into this ENA, except as may be expressly set forth herein, and any and all prior discussions and negotiations between the Parties are superseded by this ENA.

16. Amendment of ENA. This ENA may not be altered, amended, or modified except by a writing duly authorized and executed by all Parties.

17. Waivers. No provision of this ENA may be waived except by an express written waiver duly authorized and executed by the waiving Party.

18. Attorneys' Fees. If either Party should bring any legal action or proceeding relating to this ENA or to enforce any provision hereof, the Party in whose favor a judgment or decision is rendered shall be entitled to recover reasonable attorneys' fees and expenses from the other. The Parties agree that any legal action shall be filed in and shall occur in the County of Riverside, California.

19. Governing Law. The interpretation and enforcement of this ENA shall be governed by the substantive laws of the State of California (without regard to conflict of laws rules).

20. Time of the Essence. Time is of the essence of each and every provision hereof in which time is a factor.

21. Execution in Counterparts. This ENA may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same ENA.

22. Email Delivery of Executed Counterparts. Executed counterparts of this ENA may be delivered electronically by email to: dschulze@banningca.gov (for City), and to Scott.Morse@hillwood.com (for Developer).

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

23. Real Estate Commissions. Neither party hereto shall be liable for any real estate commissions or brokerage fees incurred by the other party that may arise here from. Each party hereto agrees to hold the other party hereto harmless from any claim by any broker, agent or finder retained by the indemnifying party.

IN WITNESS WHEREOF, the Parties hereto have executed this ENA as of the day and year first written above.

CITY:

CITY OF BANNING

By: DocuSigned by: 0AD14BA217CE497...
Douglas Schulze, City Manager

DEVELOPER:

INDUSTRIAL VI ENTERPRISES, LLC, a Delaware limited liability company

By: DocuSigned by: Scott Morse ED0A9D446F6C4F4...

Print Name: Scott Morse

Title: Executive Vice President

ATTEST:

DocuSigned by: 6DDB189985DF475...
Caroline Patton, Administrative City Clerk

APPROVED AS TO FORM:

DocuSigned by: Serita Young F3821C827AF84EF...
Serita Young, City Attorney

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

EXHIBIT "A"

DESCRIPTION OF PROPERTY

The land in the City of Banning, County of Riverside, State of California, described as follows:

APNs:

532-130-011
532-130-012
532-130-018
532-140-003
532-150-002
532-150-003
532-150-004
532-180-034
532-180-035
532-180-036
532-180-037
541-240-009
541-250-009

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066



Exhibit A
Page 1 of 1

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

ATTACHMENT NO. 1

SPECIFIC DEVELOPER TASKS

1. On or before the date that is sixty (60) days after the date of this ENA, Developer shall deliver to City for staff review and approval, a preliminary financing plan for the Project and an organizational chart of the Developer-related entity proposed to be a party to the Agreement and/or Ground Lease.

2. Developer shall promptly obtain and review a preliminary report for the Property from a title company selected by Developer and copies of the documents listed as title exceptions therein, and shall if desired by Developer obtain/perform a survey based on such preliminary report by the Due Diligence Deadline, and shall deliver copies of the report and documents and later any survey based on such report to City by email to Doug Schulze <dschulze@banningca.gov>.

3. On or before the Due Diligence Deadline, Developer shall inspect the Property, including (without limitation) obtaining and reviewing a Phase I environmental (hazmat) report for the Property, and if recommended by the Phase I, a Phase II report. Developer shall promptly deliver copies of the final signed reports to City when received.

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

ATTACHMENT NO. 2

SPECIFIC CITY TASKS

1. City shall provide to Developer copies of all currently written information regarding the Property in its possession, to the extent not previously delivered to Developer and to the extent material to the Property or Project and not subject to the attorney-client or attorney work-product privilege.

2. Subject to Developer's execution of a Deposit and Reimbursement Agreement of the sort typically required by City in connection with CEQA, and Developer's timely making any required deposits thereunder, City shall to prepare and process any required CEQA Documents as soon as reasonably possible after submission by Developer of a complete development application and payment of applicable fees/deposits.

3. City shall provide a draft of the Agreement to Developer, and shall revise said draft periodically to the extent permitted by the negotiations.

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

ATTACHMENT NO. 3

FORM OF RIGHT OF ENTRY AGREEMENT

(Attached.)

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

RIGHT OF ENTRY AND ACCESS AGREEMENT

THIS RIGHT OF ENTRY AND ACCESS AGREEMENT ("Agreement") is dated December 12, 2023 and is entered into by and between the CITY OF BANNING (the "City") and INDUSTRIAL VI ENTERPRISES, LLC, a Delaware limited liability company ("Developer").

R E C I TA L S

A. City and Developer have entered into an Exclusive Negotiating Agreement dated substantially concurrently herewith (the "ENA") with respect to certain real property described in the ENA, and hereinafter referred to as the "Site".

B. The ENA contemplates that City and Developer will negotiate a disposition and development agreement ("AGREEMENT") and one or more ground leases ("Ground Lease") for the Site, and permits Developer to commence its due diligence inspections of the Site, which may include access necessary to prepare a survey ("Inspections").

C. Consequently, City and Developer desire to enter into this Agreement to provide access to the Site to Developer for purposes of such Inspections.

NOW, THEREFORE, in consideration of the foregoing recitals, the ENA, the mutual covenants and agreements contained herein, and other consideration, the sufficiency of which are hereby acknowledged, City and Developer hereby covenant and agree as follows:

1. Term. This Agreement shall be effective upon the date hereof, and unless earlier terminated by City pursuant to Section 12 below, shall expire upon the expiration or earlier termination of the ENA.

2. Access. Subject to compliance with the terms and provisions of this Agreement, Developer and Developer's consultants who are designated in writing to City (collectively, "Developer's Designees") shall have the right to enter upon the Site for the purpose of performing the Inspections provided they make arrangements for entry at least two (2) days in advance with the City Manager or his designee at dschulze@banningca.gov, who shall have the right to require that he or another City staff person or City consultant staff person accompany Developer or Developer's Designee, as applicable, during performance of the Inspections; provided, however, that such the failure of such representative to attend a previously scheduled Inspection shall not require Developer or Developer's Designee to reschedule such inspection.

3. Indemnity. Developer shall indemnify, defend and hold City harmless from and against any and all third-party claims, liabilities, damages (but excluding punitive, speculative, consequential, or lost profits), losses, costs and expenses of any kind or nature whatsoever, including, without limitation, reasonable attorneys' fees and expenses and court costs (collectively, "Losses") that City actually suffers or incurs as a direct result of (i) a breach of Developer's agreements set forth in this Agreement in connection with the Inspections or (ii) physical damage to the Site or bodily injury caused by Developer or Developer's Designees during its exercise of the right of inspection granted under this Agreement, but expressly excluding Losses arising out of the discovery of pre-existing conditions, the negligence or willful misconduct of

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

City, or any diminution in value in the Site arising from, or related to, matters discovered but not created by Developer or Developer's Designees during any Investigations. The indemnification and defense obligations of Developer contained herein shall survive the expiration or earlier termination of this Agreement and the ENA for a period of (1) year.

4. Reports. In the event this Agreement is terminated, Developer shall promptly provide to City copies of all surveys, letters, studies, and reports related to or arising from the Inspections; provided, however, all such materials shall be delivered without representation or warranty, and Developer shall not be obligated to deliver any confidential, proprietary or other materials covered by attorney-client privilege.

5. Insurance. Developer at its sole expense shall procure and maintain in full force and effect from and after the date on which Developer or any of its Designees enters the Site for any purpose, all of the insurance described in Exhibit "A" hereto, and otherwise comply with said Exhibit "A", and makes the grants/waivers described in Exhibit "A". Prior to entering upon the Site, Developer shall deliver to City copies of certificates of liability insurance showing that such policies are in effect, and showing the additional insured coverage required by Exhibit "A". Thereafter, copies of all required policies shall be furnished from time to time promptly following written request therefor.

6. Limitations. City does not hereby convey to Developer any right, title, or interest in or to the Site, but merely grants the specific and limited contractual rights and privileges hereinabove set forth.

7. Notices. Except as otherwise expressly provided herein, any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be in writing and shall be addressed as follows and given by United States certified mail, postage prepaid, return receipt requested or by nationally recognized overnight mail service (such as FedEx).

If to Developer:

c/o Hillwood Development Company, LLC
3000 Turtle Creek Boulevard
Dallas, TX 75219
Attn: Scott Morse, Vice President

If to CITY:

City of Banning
99 E. Ramsey Street
Banning, CA 92220
Attn: City Manager

8. Term. Except for provisions which expressly survive, this Agreement shall terminate on the date (the "Termination Date") that is the earliest of (i) the execution and delivery of the Agreement by City and Developer, (ii) the expiration or earlier termination of the ENA.

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

9. Assignment. This Agreement may not be assigned by Developer, in whole or in part.

10. Governing Law. This Agreement shall be construed, enforced, and interpreted in accordance with the laws of the State of California (without regard to conflict of laws rules).

11. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

12. Default; Termination. If Developer fails to cure a default by Developer hereunder within thirty (30) days after City Manager's delivery of written notice to Developer, the City Manager may terminate this Agreement and ENA by further written notice to Developer.

13. Email Delivery of Executed Counterparts. This Agreement may be executed in counterparts and delivered by electronic transmission (e.g., PDF format/email), to dschulze@banningca.gov (for delivery to City) and to Scott Morse [Scott.Morse@hillwood.com] (for delivery to Developer), each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

CITY:

CITY OF BANNING

By: _____
Douglas Schulze, City Manager

Attest:

_____
Caroline Patton,
Administrative City Clerk

DEVELOPER:

INDUSTRIAL VI ENTERPRISES, LLC, a Delaware limited liability company

By:_____

Print Name: _____

Title: _____

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

EXHIBIT "A" TO RIGHT OF ENTRY AGREEMENT

INSURANCE REQUIREMENTS

1. Developer (hereinafter referred to as "Contractor" in this Exhibit "A") shall, prior to entering onto the Site, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder (consisting of inspections and tests) by Contractor, its agents, representatives, employees, or subcontractors. The cost of such insurance shall be borne by the applicable Contractor.

2. Minimum Scope and Limit of Insurance. Coverage shall be at least as broad as:

(a) **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit (these limits may be achieved by a combination of a primary policy and an excess or umbrella liability policy). The policy shall include broad form contractual liability coverage.

(b) **Automobile Liability:** ISO Form Number CA 0001 covering any auto (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with combined single limit no less than $1,000,000 per accident for bodily injury and property damage.

(c) **Workers' Compensation** insurance as required by the State of California, with statutory limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

3. Contractor should check with Contractor's insurance advisors to verify compliance and determine if additional coverage or limits may be needed to adequately insure Contractor's obligations under this Agreement. These are the minimum required and do not in any way represent or imply that such coverage is sufficient to adequately cover Contractor's liability under this Agreement. These insurance requirements shall not in any way relieve Contractor of liability in excess of such coverage, nor shall it preclude City from taking such other actions as are available to it under any other provisions of this Agreement or law. These insurance requirements shall not in any way act to reduce coverage that is broader or includes higher limits than those required. If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage required, which are applicable to any given loss, shall be available to City.

4. The insurance to be provided by Contractor under this Agreement shall not include any endorsement limiting coverage available to City that is otherwise required herein; and any policy or endorsement language that (i) negates coverage to City for City's own negligence; (ii) limits the duty to defend City under the policy; (iii) provides coverage to City only if Contractor is negligent, or (iv) permits the recovery of defense costs from any additional insured. The

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

insurance provided under this Agreement shall not contain any restrictions or limitations which are inconsistent with City's rights under this Agreement.

5. **Other Insurance Provisions**. The insurance policies are to contain, or be endorsed to contain, the following provisions:

(a) Additional Insured Status. The City of Banning, its City Council, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability additional insured coverage shall be provided in the form of an endorsement to Contractor's insurance at least as broad as ISO Form CG 20 10 (ongoing operations) and CG 20 37 (completed operations).

(b) Separation of Insureds. A separation of insureds provision must apply for all the additional insureds, ensuring that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limits of liability.

(c) Primary Coverage. For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects City, its City Council, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by City, its City Council, its officers, officials, employees, agents, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

(d) Notice of Cancellation/Change in Coverage. Each insurance policy required above shall state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, non-renewed, or materially changed except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium. Prior written notice shall be sent to City pursuant to the Notices provisions of this Agreement.

(e) Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which any insurer of Contractor may acquire against City, its City Council, its officers, officials, employees, agents, and volunteers from Contractor by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer. Contractor's Workers' Compensation policy shall be specifically endorsed from the insurer with a waiver of subrogation in favor of City, its City Council, its officers, officials, employees, agents, and volunteers. A blanket endorsement is insufficient and unacceptable in satisfying this requirement. Said endorsement from the insurer must be received, reviewed, and approved by City prior to right of entry.

(f) Self-Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or

DocuSign Envelope ID: DE29FF4B-780F-4DEB-88C6-7538B2D01066

provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(g) Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A:VII. The current A.M. Best rating for each insurer shall be noted on a cover letter provided by the producer of the Certificate(s) of Insurance.

(h) Certificate Holder. Certificate Holder on each insurance certificate shall be addressed pursuant to the Notices provisions of this Agreement.

(i) Verification of Coverage. Contractor shall furnish City with certificates and all required amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. A statement on an insurance certificate will not be accepted in lieu of the actual endorsements required herein. Each insurance certificate shall specifically identify this Agreement. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require copies of all required insurance policies, including endorsements required by these specifications, at any time.

(j) Failure to Maintain Insurance Coverage. If Contractor, for any reason, fails to maintain insurance coverage that is required pursuant to this Agreement, the same shall be brought to Contractor's attention in writing and, if not cured within 5 (five) business days, be deemed a material breach of this Agreement. City, at its sole option, may terminate this Agreement at any time and file for damages from Contractor resulting from said breach. Alternatively, City may, upon written notice and, if not cured within 5 (five) business days, purchase such coverage (but has no special obligation to do so), and without further notice to Contractor, City may deduct from sums due to Contractor any premium costs advanced by City for such insurance.

(k) Special Risks or Circumstances. City reserves the right to modify these requirements at any time, including limits, based on its good-faith assessment of the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

099999\16955001v10