



TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** October 08, 2013

From: Dennis Cron, Assistant Town Manager **Item No:** 3
Municipal Operations and Contract Services

Subject: RESOLUTION NO. 2013-38, A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, APPROVING OF THE DISPOSITION OF SURPLUS PROPERTY LOCATED AT 13643 TONIKAN ROAD (APNs 3087-382-19, 3087-382-20, 3087-382-21) AND 22411 HIGHWAY 18 (APNs 3087-382-15, 3087-382-16, 3087-382-17) IN THE TOWN OF APPLE VALLEY, CALIFORNIA AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE DISPOSITION AGREEMENTS FOR THE PROPERTIES AND TAKE ANY FURTHER ACTIONS NECESSARY TO CARRY OUT SUCH DISPOSITIONS

T.M. Approval: _____

Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

That the Town Council adopt Resolution No. 2013-38, A Resolution of the Town Council of the Town of Apple Valley, California, approving the disposition of surplus property located at 13643 Tonikan Road (APNs 3087-382-19, 3087-382-20, 3087-382-21) and 22411 Highway 18 (APNs 3087-382-15, 3087-382-16, 3087-382-17) and authorizing the Town Manager to execute the purchase agreements for the properties and take any further actions necessary to carry out such dispositions.

SUMMARY:

Government Code section 54221 mandates that parcels of real property owned by a local agency are deemed surplus property when they are no longer necessary for the local agency's use. The Town of Apple Valley, California, is the owner of certain real property, located at 13643 Tonikan Road, Assessor Parcel Numbers 3087-382-19, 20, and 21 (the "Tonikan Property") and 22411 Highway 18, Assessor Parcel Numbers 3087-382-15, 16, and 17 (the "Highway 18 Property"). The Tonikan Property and Highway 18 Property are collectively referred to herein as the "Subject Properties."

The Town initially acquired the Subject Properties to serve as the Town's Public Works and Wastewater Department maintenance yard. In addition to being used as public works yards, the Subject Properties have been used by the Town for such purposes as an animal shelter and Household Hazardous Waste Collection Facility. However, Town staff has determined that the Subject Properties are no longer needed for these or other Town purposes and are therefore surplus properties that are no longer necessary for the Town's use. Disposal of the Subject Properties will allow for them to be developed consistent with the General Plan and Zoning of the Town and would allow the Town to remove the land from its holdings, avoiding ongoing maintenance and liability expenses.

In furtherance of the disposal, on or about July 18, 2013 and August 6, 2013, the Town sent a written notice of availability of the Subject Properties to the entities identified in California Government Code sections 54221 and 54222, including the Apple Valley School District, the San Bernardino County Regional Parks, and the California Department of Parks & Recreation, within whose jurisdiction the Subject Properties are located, offering such entities the opportunity to express interest in acquiring the Subject Properties through purchase or exchange, indicating the land uses for the Subject Properties permitted in the Town's General Plan [Service Commercial (C-S)] and zoning code [Service Commercial (C-S)], and indicating that nothing set forth in the notice shall be deemed to constitute an agreement to sell the Subject Properties, even if the recipient expressed an interest in purchasing the Subject Properties. Each of these entities responded in writing stating that they had no such interest to purchase the Subject Properties.

Further, on September 18, 2013, as required by California Government Code section 65402, the Town's Planning Commission adopted Resolution No. 2013-010, a copy of which is attached, approving General Plan Conformity Finding that the disposition of the Subject Properties conforms with the Town's General Plan. Specifically, the Town's Planning Commission found that the location, purpose, and extent of the Town's disposition of the Subject Properties conforms with the Town's General Plan.

Town staff have negotiated the terms of the disposition of the Tonikan Property with willing buyers, Ronald P. & Dorothy Borgens, as memorialized in the Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate dated July 30, 2013, as modified by a Counter-Offer dated August 21, 2013, and as amended by written agreement on August 27, 2013 (collectively referred to as the "Tonikan Purchase Agreement"). The disposition of the Tonikan Property pursuant to the Tonikan Purchase Agreement is contingent on the majority approval of the Town Council of the Town of Apple Valley, by resolution, granting the Town Manager the authority to execute the Tonikan Purchase Agreement and to take any further actions necessary to carry out the disposition of the Tonikan Property. The Tonikan Purchase Agreement is attached.

Town staff has negotiated the terms of the disposition of the Highway 18 Property with a willing buyer, Kelley's Underground Construction, Inc., as memorialized in the Commercial Lease Agreement & Option to Purchase dated March 1, 2013 (the "Highway 18 Purchase Agreement"). The disposition of the Highway 18 Property pursuant to the Highway 18 Purchase Agreement is contingent on the majority approval of the Town Council of the Town of Apple Valley, by resolution, finding the Highway 18 Property to be surplus property of the Town and granting the Town Manager the authority to execute the Highway 18 Purchase Agreement and to take any further actions necessary to carry out the disposition of the Highway 18 Property. The Highway 18 Purchase Agreement is also attached.

Staff recommends that the Town Council approve the disposition of the Subject Properties by a majority vote and authorize the Town Manager to execute the Tonikan Purchase Agreement and the Highway 18 Purchase Agreement and take any further actions necessary for the disposition of the Subject Properties. Further, staff recommends that the Town Council authorize staff to take any other appropriate action consistent with the disposition of the Subject Properties pursuant to the resolution.

CEQA:

The disposition of the Subject Properties is categorically exempt from the California Environmental Quality Act (CEQA). Staff recommends that the Town Council direct the Town Clerk to file a Notice of Exemption for the disposition of the Subject Properties with the Clerk of the County of San Bernardino pursuant to the provisions of Section 15312, Class 12 of the California Environmental Quality Act (CEQA) which create a categorical exemption to CEQA allowing for the sale of surplus government property.

FISCAL IMPACT:

The Town would receive the sales price of the Tonikan Property, a total of \$360,000, as well as the lease payments totaling \$81,259 over the lease term plus the sales price of the Highway 18 Property, which will be determined by a forthcoming appraisal of the property.

ATTACHMENTS:

Exhibit "A" - Tonikan Purchase Agreement

Exhibit "B" - Highway 18 Purchase Agreement

Exhibit "C" - Planning Commission Resolution No. 2013-010

RESOLUTION NO. 2013-38

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, APPROVING OF THE DISPOSITION OF SURPLUS PROPERTY LOCATED AT 13643 TONIKAN ROAD (APNs 3087-382-19, 3087-382-20, 3087-382-21) AND 22411 HIGHWAY 18 (APNs 3087-382-15, 3087-382-16, 3087-382-17) IN THE TOWN OF APPLE VALLEY, CALIFORNIA AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE DISPOSITION AGREEMENTS FOR THE PROPERTIES AND TAKE ANY FURTHER ACTIONS NECESSARY TO CARRY OUT SUCH DISPOSITIONS

WHEREAS, Government Code section 54221 mandates that parcels of real property owned by a local agency are deemed surplus property when they are no longer necessary for the local agency's use; and

WHEREAS, the Town of Apple Valley, California ("Town") is the owner of certain real property located within the Town at 13643 Tonikan Road, Assessor Parcel Numbers 3087-382-19, 20, and 21 (the "Tonikan Property") and 22411 Highway 18, Assessor Parcel Numbers 3087-382-15, 16, and 17 (the "Highway 18 Property"). The Tonikan Property and Highway 18 Property are collectively referred to herein as the "Subject Properties"; and

WHEREAS, the Town initially acquired the Subject Properties to serve as the Town's Public Works and Wastewater Department maintenance yard. In addition to being used as public works yards, the Subject Properties have been used by the Town for such purposes as an animal shelter and Household Hazardous Waste Collection Facility. However, Town staff has determined that the Subject Properties are no longer needed for these or other Town purposes and are therefore surplus properties that are no longer necessary for the Town's use; and

WHEREAS, the Town wishes to dispose of the Subject Properties which will allow for them to be developed consistent with the General Plan and Zoning of the Town and would allow the Town to remove the land from its holdings, avoiding ongoing maintenance and liability expenses; and

WHEREAS, in furtherance of the disposal of the Subject Properties, on or about July 18, 2013 and August 6, 2013, the Town sent a written notice of availability of the Subject Properties to the entities identified in California Government Code sections 54221 and 54222, including the Apple Valley School District, the San Bernardino County Regional Parks, and the California Department of Parks & Recreation, within whose jurisdiction the Subject Properties are located offering such entities the opportunity to express interest in acquiring the Subject Properties through purchase or

exchange, indicating the land uses for the Subject Properties permitted in the Town's General Plan [Service Commercial (C-S)] and zoning code [Service Commercial (C-S)],

And indicating that nothing set forth in the notice shall be deemed to constitute an agreement to sell the Subject Properties, even if the recipient expressed an interest in purchasing the Subject Properties. Each of these entities responded in writing stating that they had no such interest to purchase the Subject Properties; and

WHEREAS, on September 18, 2013, as required by California Government Code section 65402, the Town's Planning Commission adopted Resolution No. 2013-010, approving General Plan Conformity Finding that the disposition of the Subject Properties conforms with the Town's General Plan. Specifically, the Town's Planning Commission found that the location, purpose, and extent of the Town's disposition of the Subject Properties conforms with the Town's General Plan; and

WHEREAS, Town staff have negotiated the terms of the disposition of the Tonikan Property with willing buyers, Ronald P. & Dorothy Borgens, as memorialized in the Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate dated July 30, 2013, as modified by a Counter-Offer dated August 21, 2013, and as amended by written agreement on August 27, 2013 (collectively referred to as the "Tonikan Purchase Agreement"). The disposition of the Tonikan Property pursuant to the Tonikan Purchase Agreement is contingent on the majority approval of the Town Council of the Town of Apple Valley, by this Resolution, granting the Town Manager the authority to execute the Tonikan Purchase Agreement and to take any further actions necessary to carry out the disposition of the Tonikan Property. The Tonikan Purchase Agreement is attached hereto as Exhibit "A"; and

WHEREAS, Town staff have negotiated the terms of the disposition of the Highway 18 Property with a willing buyer, Kelley's Underground Construction, Inc., as memorialized in the Commercial Lease Agreement & Option to Purchase dated March 1, 2013 (the "Highway 18 Purchase Agreement"). The disposition of the Highway 18 Property pursuant to the Highway 18 Purchase Agreement is contingent on the majority approval of the Town Council of the Town of Apple Valley, by Resolution, finding the Highway 18 Property to be surplus property of the Town and granting the Town Manager the authority to execute the Highway 18 Purchase Agreement and to take any further actions necessary to carry out the disposition of the Highway 18 Property. The Highway 18 Purchase Agreement is attached hereto as Exhibit "B"; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED by the Town Council for the Town of Apple Valley, California as follows:

Section 1. The Recitals, and the Exhibits referenced therein, that are set forth above are true and correct and are incorporated herein by reference.

Section 2. That the Town Council of the Town of Apple Valley, California ("Town Council") does hereby find and determine as follows:

- A. That the Subject Properties are surplus properties which are no longer necessary for the Town's use as public works yards or other uses. Therefore, the disposition of the Subject Properties for future development is appropriate for the existing commercial areas and such development is in conformity with the Town's General Plan and zoning;
- B. That the Town sent a written notice of availability of the Subject Properties to the entities identified in California Government Code sections 54221 and 54222 within whose jurisdiction the Subject Properties are located offering such entities the opportunity to express interest in acquiring the Subject Properties through purchase or exchange, indicating the land uses for the Subject Properties permitted in the Town's General Plan [Service Commercial (C-S)] and zoning code [Service Commercial (C-S)], and indicating that nothing set forth in the notice shall be deemed to constitute an agreement to sell the Subject Properties, even if the recipient expressed an interest in purchasing the Subject Properties. Each of these entities responded in writing stating that they had no such interest to purchase the Subject Properties; and
- C. That on September 18, 2013, as required by California Government Code section 65402, the Town's Planning Commission adopted Resolution No. 2013-010, a copy of which is attached hereto as Exhibit "C", approving General Plan Conformity Finding that the disposition of the Subject Properties conforms to the Town's General Plan. Specifically, the Town's Planning Commission found that the location, purpose, and extent of the Town's disposition of the Subject Properties conform to the Town's General Plan.

Section 3. The Town Council hereby approves the disposition and sale of the Tonikan Property pursuant to the terms of the Tonikan Purchase Agreement attached hereto as Exhibit "A" and the Town Manager is hereby granted the authority to execute the Tonikan Purchase Agreement and to take any further actions necessary to carry out the disposition of the Tonikan Property and to accomplish the purposes of this Resolution.

Section 4. The Town Council hereby approves the disposition and sale of the Highway 18 Property pursuant to the terms of the Highway 18 Purchase Agreement attached hereto as Exhibit "B" and the Town Manager is hereby granted the authority to execute the Highway 18 Purchase Agreement and to take any further actions necessary

To carry out the disposition of the Highway 18 Property and to accomplish the purposes of this Resolution.

Section 5. Town staff is hereby authorized and directed to take any appropriate action consistent with the purposes of this Resolution to implement and administer the Town's rights and obligations pursuant hereto.

Section 6. The Town Clerk is hereby directed to file a Notice of Exemption for the disposition of the Subject Properties with the Clerk of the County of San Bernardino pursuant to the provisions of Section 15312, Class 12 of the California Environmental Quality Act (CEQA) which create a categorical exemption to CEQA allowing for the sale of surplus government property.

Section 7. This Resolution shall become effective upon its adoption.

APPROVED and **ADOPTED** by the Town Council of the Town of Apple Valley this 8th day of October, 2013.

Curt Emick, Mayor

ATTEST:

La Vonda Pearson, Town Clerk

EXHIBIT "A"

TONIKAN PURCHASE AGREEMENT

[ATTACHED BEHIND THIS PAGE]



STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE OF REAL ESTATE (Non-Residential)

AIR Commercial Real Estate Association

July 30, 2013 (Date for Reference Purposes)

1. Buyer. 1.1 Buyer, Ronald P. & Dorothy Borgans, hereby offers to purchase the real property, hereinafter described, from the owner thereof ("Seller")...

upon the terms and conditions set forth in this agreement ("Agreement"). Buyer shall have the right to assign Buyer's rights hereunder, but any such assignment shall not relieve Buyer of Buyer's obligations herein unless Seller expressly releases Buyer.

1.2 The term "Date of Agreement" as used herein shall be the date when by execution and delivery (as defined in paragraph 20.2) of this document or a subsequent counteroffer thereto Buyer and Seller have reached agreement in writing whereby Seller agrees to sell and Buyer agrees to purchase the Property upon terms accepted by both Parties

2. Property. 2.1 The real property ("Property") that is the subject of this offer consists of (insert a brief physical description) Service Commercial zoned property formerly used as animal shelter/euthanasia building & kennels within metal building and front office/residential building, also Town Public Works storage yard...

2.2 If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of Seller's Choice ("Title Company")...

2.3 The Property includes, at no additional cost to Buyer, the permanent improvements thereon, including those items which pursuant to applicable law are a part of the property, as well as the following items, if any, owned by Seller and at present located on the Property...

2.4 The fire sprinkler monitor is owned by Seller and included in the Purchase Price. Its leased by Seller, and Buyer will need to negotiate a new lease with the fire monitoring company.

2.5 Except as provided in Paragraph 2.3, the Purchase Price does not include Seller's personal property, furniture and furnishings, and all unwanted debris & building materials currently stored.

3. Purchase Price. 3.1 The purchase price ("Purchase Price") to be paid by Buyer to Seller for the Property shall be \$ 300,000.00 payable as follows:

(a) Cash down payment, including the Deposit as defined in paragraph 4.3 (or if an all cash transaction, the Purchase Price); \$ 10,000.00 (Strike if not applicable) (b) Amount of "New Loan" as defined in paragraph 5.1, if any \$

AB DR3 INITIALS

Handwritten signature and initials

(c) Buyer shall take title to the Property subject to and/or assume the following existing deed(s) of trust ("Existing Deed(s) of Trust") securing the existing promissory note(s) ("Existing Note(s)");

(i) An Existing Note ("First Note") with an unpaid principal balance as of the Closing of approximately: \$ _____
 Said First Note is payable at \$ N/A per month, including interest at the rate of _____ % per annum until paid (and/or the entire unpaid balance is due on _____).

(ii) An Existing Note ("Second Note") with an unpaid principal balance as of the Closing of approximately: \$ _____
 Said Second Note is payable at \$ N/A per month, including interest at the rate of _____ % per annum until paid (and/or the entire unpaid balance is due on _____).

(d) Buyer shall give Seller a deed of trust ("Purchase Money Deed of Trust") on the property, to secure the promissory note of Buyer to Seller described in paragraph 8 ("Purchase Money Note") in the amount of: \$ _____

Total Purchase Price: \$ 300,000.00

3.2 If Buyer is taking title to the Property subject to, or assuming, an Existing Deed of Trust and such deed of trust permits the beneficiary to demand payment of fees including, but not limited to, points, processing fees, and appraisal fees as a condition to the transfer of the Property, Buyer agrees to pay such fees up to a maximum of 1.5% of the unpaid principal balance of the applicable Existing Note.

4. Deposits.

4.1 Buyer has delivered to Broker a check in the sum of \$ 20,000.00, payable to Escrow Holder, to be delivered by Broker to Escrow Holder within 2 or N/A business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder, or within 2 or N/A business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder. Buyer shall deliver to Escrow Holder a check in the sum of \$ N/A. If said check is not received by Escrow Holder within said time period then Seller may elect to unilaterally terminate this transaction by giving written notice of such election to Escrow Holder whereupon neither Party shall have any further liability to the other under this Agreement. Should Buyer and Seller not enter into an agreement for purchase and sale, Buyer's check or funds shall, upon request by Buyer, be promptly returned to Buyer.

4.2 Additional deposits:

(a) Within 5 business days after the Date of Agreement, Buyer shall deposit with Escrow Holder the additional sum of \$ N/A to be applied to the Purchase Price at the Closing.

(b) Within 5 business days after the contingencies discussed in paragraph 5.1 (a) through (c) are approved or waived, Buyer shall deposit with Escrow Holder the additional sum of \$ N/A to be applied to the Purchase Price at the Closing.

4.3 Escrow Holder shall deposit the funds deposited with it by Buyer pursuant to paragraphs 4.1 and 4.2 (collectively the "Deposit"), in a State or Federally chartered bank in an interest bearing account whose term is appropriate and consistent with the timing requirements of this transaction. The interest therefrom shall accrue to the benefit of Buyer, who hereby acknowledges that there may be penalties or interest forfeitures if the applicable instrument is redemmed prior to its specified maturity. Buyer's Federal Tax Identification Number is N/A. NOTE: Such interest bearing account cannot be opened until Buyer's Federal Tax Identification Number is provided.

5. Financing Contingency - ~~(Strike if not applicable)~~

5.4 This offer is contingent upon Buyer obtaining from an insurance company, financial institution or other lender, a commitment to lend to Buyer a sum equal to at least N/A % of the Purchase Price, on terms reasonably acceptable to Buyer. Such loan ("New Loan") shall be secured by a first deed of trust or mortgage on the Property. If this Agreement provides for Seller to carry back/junior financing, then Seller shall have the right to approve the terms of the New Loan. Seller shall have 7 days from receipt of the commitment setting forth the proposed terms of the New Loan to approve or disapprove of such proposed terms. If Seller fails to notify Escrow Holder, in writing, of the disapproval within said 7 days it shall be conclusively presumed that Seller has approved the terms of the New Loan.

5.5 Buyer hereby agrees to diligently pursue obtaining the New Loan. If Buyer shall fail to notify its Broker, Escrow Holder and Seller, in writing within N/A days following the Date of Agreement, that the New Loan has not been obtained, it shall be conclusively presumed that Buyer has either obtained said New Loan or has waived this New Loan contingency.

5.6 If, after due diligence, Buyer shall notify its Broker, Escrow Holder and Seller, in writing, within the time specified in paragraph 5.2 hereof, that Buyer has not obtained said New Loan, this Agreement shall be terminated, and Buyer shall be entitled to the prompt return of the Deposit, plus any interest earned thereon, less only Escrow Holder and Title Company cancellation fees and costs, which Buyer shall pay.

6. Seller Financing (Purchase Money Note) - ~~(Strike if not applicable)~~

6.1 If Seller approves Buyer's financials (see paragraph 6.5) the Purchase Money Note shall provide for interest on unpaid principal at the rate of N/A % per annum, with principal and interest paid as follows: N/A

The Purchase Money Note and Purchase Money Deed of Trust shall be on the current forms commonly used by Escrow Holder, and be junior and subordinate only to the Existing Note(s) and/or the New Loan expressly called for by this Agreement.

6.2 The Purchase Money Note and/or the Purchase Money Deed of Trust shall contain provisions regarding the following (see also paragraph 10.3 (b)):

8.8 The Closing shall occur on the Expected Closing Date, or as soon thereafter as the Escrow is in condition for Closing; provided, however, that if the Closing does not occur by the Expected Closing Date and said Date is not extended by mutual instructions of the Parties, a Party not then in default under this Agreement may notify the other Party, Escrow Holder, and Brokers, in writing that, unless the Closing occurs within 9 business days following said notice, the Escrow shall be deemed terminated without further notice or instructions.

8.9 Except as otherwise provided herein, the termination of Escrow shall not relieve or release either Party from any obligation to pay Escrow Holder's fees and costs or constitute a waiver, release or discharge of any breach or default that has occurred in the performance of the obligations, agreements, covenants or warranties contained therein.

8.10 If this sale of the Property is not consummated for any reason other than Seller's breach or default, then at Seller's request, and as a condition to any obligation to return Buyer's deposit (see paragraph 21), Buyer shall within 5 days after written request deliver to Seller, at no charge, copies of all surveys, engineering studies, soil reports, maps, master plans, feasibility studies and other similar items prepared by or for Buyer that pertain to the Property. Provided, however, that Buyer shall not be required to deliver any such report if the written contract which Buyer entered into with the consultant who prepared such report specifically forbids the dissemination of the report to others.

9. Contingencies to Closing.

9.1 The Closing of this transaction is contingent upon the satisfaction or waiver of the following contingencies, IF BUYER FAILS TO NOTIFY ESCROW HOLDER, IN WRITING, OF THE DISAPPROVAL OF ANY OF SAID CONTINGENCIES WITHIN THE TIME SPECIFIED THEREIN, IT SHALL BE CONCLUSIVELY PRESUMED THAT BUYER HAS APPROVED SUCH ITEM, MATTER OR DOCUMENT. Buyer's conditional approval shall constitute disapproval, unless provision is made by the Seller within the time specified therefore by the Buyer in such conditional approval or by this Agreement, whichever is later, for the satisfaction of the condition imposed by the Buyer. Escrow Holder shall promptly provide all Parties with copies of any written disapproval or conditional approval which it receives. With regard to subparagraphs (a) through (m) the pre-printed time periods shall control unless a different number of days is inserted in the spaces provided.

(a) **Disclosure.** Seller shall make to Buyer, through Escrow, all of the applicable disclosures required by law (See AIR Commercial Real Estate Association ("AIR") standard form entitled "Seller's Mandatory Disclosure Statement") and provide Buyer with a completed Property Information Sheet ("Property Information Sheet") concerning the Property, duly executed by or on behalf of Seller in the current form or equivalent to that published by the AIR within 10 or N/A days following the Date of Agreement. Buyer has 10 days from the receipt of said disclosures to approve or disapprove the matters disclosed.

(b) **Physical Inspection.** Buyer has 0 or N/A days from the receipt of the Property Information Sheet or the Date of Agreement, whichever is later, to satisfy itself with regard to the physical aspects and size of the Property.

(c) **Hazardous Substance Conditions Report.** Buyer has 30 or 10 days from the receipt of the Property Information Sheet or the Date of Agreement, whichever is later, to satisfy itself with regard to the environmental aspects of the Property. Seller recommends that Buyer obtain a Hazardous Substance Conditions Report concerning the Property and relevant adjoining properties. Any such report shall be paid for by Buyer. A "Hazardous Substance" for purposes of this Agreement is defined as any substance whose nature and/or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare. A "Hazardous Substance Condition" for purposes of this Agreement is defined as the existence on, under or adjacently adjacent to the Property of a Hazardous Substance that would require remediation and/or removal under applicable Federal, state or local law.

(d) **Soil Inspection.** Buyer has 30 or 10 days from the receipt of the Property Information Sheet or the Date of Agreement, whichever is later, to satisfy itself with regard to the condition of the soils on the Property. Seller recommends that Buyer obtain a soil test report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any soil report that Seller may have within 10 days of the Date of Agreement.

(e) **Governmental Approvals.** Buyer has 30 or 10 days from the Date of Agreement to satisfy itself with regard to approvals and permits from governmental agencies or departments which have or may have jurisdiction over the Property and which Buyer deems necessary or desirable in connection with its intended use of the Property, including, but not limited to, permits and approvals required with respect to zoning, planning, building and safety, fire, police, handicapped and Americans with Disabilities Act requirements, transportation and environmental matters.

(f) **Conditions of Title.** Escrow Holder shall cause a current commitment for title insurance ("Title Commitment") concerning the Property issued by the Title Company, as well as legible copies of all documents referred to in the Title Commitment ("Underlying Documents"), and a scaled and dimensioned plot showing the location of any easements to be delivered to Buyer within 10 or N/A days following the Date of Agreement. Buyer has 10 days from the receipt of the Title Commitment, the Underlying Documents and the plot plan to satisfy itself with regard to the condition of title. The disapproval by Buyer of any monetary encumbrance, which by the terms of this Agreement is not to remain against the Property after the Closing, shall not be considered a failure of this contingency, as Seller shall have the obligation, at Seller's expense, to satisfy and remove such disapproved monetary encumbrance at or before the Closing.

(g) **Survey.** Buyer has 30 or 10 days from the receipt of the Title Commitment and Underlying Documents to satisfy itself with regard to any ALTA title supplement based upon a survey prepared to American Land Title Association ("ALTA") standards for an owner's policy by a licensed surveyor, showing the legal description and boundary lines of the Property, any easements of record, and any improvements, poles, structures and things located within 10 feet of either side of the Property boundary lines. Any such survey shall be prepared at Buyer's direction and expense. If Buyer has obtained a survey and approved the ALTA title supplement, Buyer may elect within the period allowed for Buyer's approval of a survey to have an ALTA extended coverage owner's form of title policy, in which event Buyer shall pay any additional premium attributable thereto.

(h) **Existing Leases and Tenancy Statements.** Seller shall within 10 or N/A days of the Date of Agreement provide both Buyer and Escrow Holder with legible copies of all leases, subleases or rental arrangements (collectively, "Existing Leases") affecting the Property, and with a tenancy statement ("Estoppel Certificate") in the latest form or equivalent to that published by the AIR, executed by Seller and/or each tenant and subtenant of the Property. Seller shall use its best efforts to have each tenant complete and execute an Estoppel Certificate. If any tenant fails or refuses to provide an Estoppel Certificate then Seller shall complete and execute an Estoppel Certificate for that tenancy. Buyer has 10 days from the receipt of said Existing Leases and Estoppel Certificates to satisfy itself with regard to the Existing Leases and any other tenancy issues.


INITIALS

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FORM OPR-04H2E
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(l) **Owner's Association.** Seller shall within 10 or N/A days of the Date of Agreement provide Buyer with a statement and transfer package from any owner's association servicing the Property. Such transfer package shall at a minimum include: copies of the association's bylaws, articles of incorporation, current budget and financial statement. Buyer has 10 days from the receipt of such documents to satisfy itself with regard to the association.

(m) **Other Agreements.** Seller shall within 10 or N/A days of the Date of Agreement provide Buyer with legible copies of all other agreements ("Other Agreements") known to Seller that will affect the Property after Closing. Buyer has 10 days from the receipt of said Other Agreements to satisfy itself with regard to such Agreements.

(n) **Financing.** If paragraph 3 hereof dealing with a financing contingency has not been stricken, the satisfaction or waiver of such New Loan contingency.

(o) **Existing Notes.** If paragraph 3.1(c) has not been stricken, Seller shall within 10 or N/A days of the Date of Agreement provide Buyer with legible copies of the Existing Notes, Existing Deeds of Trust and related agreements (collectively, "Loan Documents") in which the Property will remain subject after the Closing. Escrow Holder shall promptly request from the holders of the Existing Notes a beneficiary statement ("Beneficiary Statement") containing: (1) the amount of the unpaid principal balance, the current interest rate, and the date to which interest is paid, and (2) the nature and amount of any impounds held by the beneficiary in connection with such loan. Buyer has 10 or N/A days from the receipt of the Loan Documents and Beneficiary Statements to satisfy itself with regard to such financing. Buyer's obligation to close is conditioned upon Buyer being able to purchase the Property without consideration or change in the terms of any Existing Notes or changes to Buyer except as otherwise provided in this Agreement or approved by Buyer, provided, however, Buyer shall pay the transfer fee referred to in paragraph 3.2 hereof. Likewise if Seller is to carry back a Purchase Money Note then Seller shall within 10 or N/A days of the Date of Agreement provide Buyer with a copy of the proposed Purchase Money Note and Purchase Money Deed of Trust. Buyer has 10 or N/A days from the receipt of such documents to satisfy itself with regard to the form and content thereof.

(p) **Personal Property.** In the event that any personal property is included in the Purchase Price, Buyer has 10 or N/A days from the Date of Agreement to satisfy itself with regard to the title condition of such personal property. Seller recommends that Buyer obtain a UCC-1 report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any liens or encumbrances affecting such personal property that it is aware of within 10 or N/A days of the Date of Agreement.

(q) **Destruction, Damage or Loss.** There shall not have occurred prior to the Closing, a destruction of, or damage or loss to, the Property or any portion thereof, from any cause whatsoever, which would cost more than \$10,000.00 to repair or cure. If the cost of repair or cure is \$10,000.00 or less, Seller shall repair or cure the loss prior to the Closing. Buyer shall have the option, within 10 days after receipt of written notice of a loss costing more than \$10,000.00 to repair or cure, to either terminate this Agreement or to purchase the Property notwithstanding such loss, but without deduction or offset against the Purchase Price. If the cost to repair or cure is more than \$10,000.00, and Buyer does not elect to terminate this Agreement, Buyer shall be entitled to any insurance proceeds applicable to such loss. Unless otherwise notified in writing, Escrow Holder shall assume no such destruction, damage or loss has occurred prior to Closing.

(r) **Material Change.** Buyer shall have 10 days following receipt of written notice of a Material Change within which to satisfy itself with regard to such change. "Material Change" shall mean a substantial adverse change in the use, occupancy, tenants, title, or condition of the Property that occurs after the date of this offer and prior to the Closing. Unless otherwise notified in writing, Escrow Holder shall assume that no Material Change has occurred prior to the Closing.

(s) **Seller Performance.** The delivery of all documents and the due performance by Seller of each and every undertaking and agreement to be performed by Seller under this Agreement.

(t) **Brokerage Fee.** Payment at the Closing of such brokerage fee as is specified in this Agreement or later written instructions to Escrow Holder executed by Seller and Brokers ("Brokerage Fee"). It is agreed by the Parties and Escrow Holder that Brokers are a third party beneficiary of this Agreement insofar as the Brokerage Fee is concerned, and that no change shall be made with respect to the payment of the Brokerage Fee specified in this Agreement without the written consent of Brokers.

9.2 All of the contingencies specified in subparagraphs (a) through (m) of paragraph 9.1 are for the benefit of, and may be waived by, Buyer, and may be elsewhere herein referred to as "Buyer's Contingencies."

9.3 If any of Buyer's Contingencies or any other matter subject to Buyer's approval is disapproved as provided for herein in a timely manner ("Disapproved Item"), Seller shall have the right within 10 days following the receipt of notice of Buyer's disapproval to elect to cure such Disapproved Item prior to the Expected Closing Date ("Seller's Election"). Seller's failure to give to Buyer within such period, written notice of Seller's commitment to cure such Disapproved Item on or before the Expected Closing Date shall be conclusively presumed to be Seller's Election not to cure such Disapproved Item. If Seller elects, either by written notice or failure to give written notice, not to cure a Disapproved Item, Buyer shall have the right, within 10 days after Seller's Election to either accept title to the Property subject to such Disapproved Item, or to terminate this Agreement. Buyer's failure to notify Seller in writing of Buyer's election to accept title to the Property subject to the Disapproved Item without deduction or offset shall constitute Buyer's election to terminate this Agreement. Unless expressly provided otherwise herein, Seller's right to cure shall not apply to the remediation of Hazardous Substance Conditions or to the Financing Contingency. Unless the Parties mutually instruct otherwise, if the time periods for the satisfaction of contingencies or for Seller's and Buyer's elections would expire on a date after the Expected Closing Date, the Expected Closing Date shall be deemed extended for 3 business days following the expiration of: (a) the applicable contingency period(s), (b) the period within which the Seller may elect to cure the Disapproved Item, or (c) if Seller elects not to cure, the period within which Buyer may elect to proceed with this transaction, whichever is later.

9.4 Buyer understands and agrees that until such time as all Buyer's Contingencies have been satisfied or waived, Seller and/or its agents may solicit, entertain and/or accept back-up offers to purchase the Property.

9.6 The Parties acknowledge that extensive local, state and Federal legislation establish broad liability upon owners and/or users of real property for the investigation and remediation of Hazardous Substances. The determination of the existence of a Hazardous Substance Condition and the evaluation of the impact of such a condition are highly technical and beyond the expertise of Brokers. The Parties acknowledge that they have been advised by Brokers to consult their own technical and legal experts with respect to the possible presence of Hazardous Substances on the Property or adjoining properties, and Buyer and Seller are not relying upon any investigation by or statement of Brokers with respect thereto. The Parties hereby assume all responsibility for the impact of such Hazardous Substances upon their respective interests herein.


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11.7 **Variances in New Loan Balance.** In the event Buyer is obtaining a New Loan and the amount ultimately obtained exceeds the amount set forth in paragraph 8.1, then the amount of the Purchase Money Note, if any, shall be reduced by the amount of such excess.

11.8 **Owner's Association Fees.** Escrow Holder shall (i) bring Seller's account with the association current and pay any delinquencies or transfer fees from Seller's proceeds, and (ii) pay any up front fees required by the association from Buyer's funds.

12. **Representations and Warranties of Seller and Disclaimers.**

12.1 Seller's warranties and representations shall survive the Closing and delivery of the deed for a period of 3 years, and any lawsuit or action based upon them must be commenced within such time period. Seller's warranties and representations are true, material and relied upon by Buyer and Brokers in all respects. Seller hereby makes the following warranties and representations to Buyer and Brokers:

(a) **Authority of Seller.** Seller is the owner of the Property and/or has the full right, power and authority to sell, convey and transfer the Property to Buyer as provided herein, and to perform Seller's obligations hereunder.

(b) **Maintenance During Escrow and Equipment Condition At Closing.** Except as otherwise provided in paragraph 8.1(f) hereof, Seller shall maintain the Property until the Closing in its present condition, ordinary wear and tear excepted.

(c) **Hazardous Substances/Storage Tanks.** Seller has no knowledge, except as otherwise disclosed to Buyer in writing, of the existence or prior existence on the Property of any Hazardous Substance, nor of the existence or prior existence of any above or below ground storage tank.

(d) **Compliance.** Seller has no knowledge of any aspect or condition of the Property which violates applicable laws, rules, regulations, codes or covenants, conditions or restrictions, or of improvements or alterations made to the Property without a permit where one was required, or of any unfulfilled order or directive of any applicable governmental agency or casualty insurance company requiring any investigation, remediation, repair, maintenance or improvement to be performed on the Property.

(e) **Changes in Agreements.** Prior to the Closing, Seller will not violate or modify any Existing Lease or Other Agreement, or create any new leases or other agreements affecting the Property, without Buyer's written approval, which approval will not be unreasonably withheld.

(f) **Possessory Rights.** Seller has no knowledge that anyone will, at the Closing, have any right to possession of the Property, except as disclosed by this Agreement or otherwise in writing to Buyer.

(g) **Mechanics' Liens.** There are no uninstalled mechanics' or materialsmen's lien rights concerning the Property.

(h) **Actions, Suits or Proceedings.** Seller has no knowledge of any actions, suits or proceedings pending or threatened before any commission, board, bureau, agency, arbitrator, court or tribunal that would affect the Property or the right to occupy or utilize same.

(i) **Notice of Changes.** Seller will promptly notify Buyer and Brokers in writing of any Material Change (see paragraph 9.1(a)) affecting the Property that becomes known to Seller prior to the Closing.

(j) **No Tenant Bankruptcy Proceedings.** Seller has no notice or knowledge that any tenant of the Property is the subject of a bankruptcy or insolvency proceeding.

(k) **No Seller Bankruptcy Proceedings.** Seller is not the subject of a bankruptcy, insolvency or probate proceeding.

(l) **Personal Property.** Seller has no knowledge that anyone will, at the Closing, have any right to possession of any personal property included in the Purchase Price nor knowledge of any liens or encumbrances affecting such personal property, except as disclosed by this Agreement or otherwise in writing to Buyer.

12.2 Buyer hereby acknowledges that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing condition and will, by the time called for herein, make or have waived all inspections of the Property Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, inducements, promises, agreements, assurances, oral or written, concerning the Property, or any aspect of the occupational safety and health laws, Hazardous Substance laws, or any other act, ordinance or law, have been made by either Party or Brokers, or relied upon by either Party hereto.

12.3 In the event that Buyer learns that a Seller representation or warranty might be untrue prior to the Closing, and Buyer elects to purchase the Property anyway then, and in that event, Buyer waives any right that it may have to bring an action or proceeding against Seller or Brokers regarding said representation or warranty.

12.4 Any environmental reports, soil reports, surveys, and other similar documents which were prepared by third party consultants and provided to Buyer by Seller or Seller's representatives, have been delivered as an accommodation to Buyer and without any representation or warranty as to the sufficiency, accuracy, completeness, and/or validity of said documents, all of which Buyer relies on at its own risk. Seller believes said documents to be accurate, but Buyer is advised to retain appropriate consultants to review said documents and investigate the Property.

13. **Possession.**

Possession of the Property shall be given to Buyer at the Closing subject to the rights of tenants under Existing Leases.

14. **Buyer's Entry.**

At any time during the Escrow period, Buyer, and its agents and representatives, shall have the right at reasonable times and subject to rights of tenants, to enter upon the Property for the purpose of making inspections and tests specified in this Agreement. No destructive testing shall be conducted, however, without Seller's prior approval which shall not be unreasonably withheld. Following any such entry or work, unless otherwise directed in writing by Seller, Buyer shall return the Property to the condition it was in prior to such entry or work, including the recompaction or removal of any disrupted soil or materials as Seller may reasonably direct. All such inspections and tests and any other work conducted or materials furnished with respect to the Property by or for Buyer shall be paid for by Buyer as and when due and Buyer shall indemnify, defend, protect and hold harmless Seller and the Property and from any and all claims, liabilities, losses, expenses (including reasonable attorneys' fees), damages, including those for injury to person or property, arising out of or relating to any such work or materials or the acts or omissions of Buyer, its agents or employees in connection therewith.

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16. Further Documents and Assurances.

The Parties shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the Escrow in condition for Closing as and when required by this Agreement. The Parties agree to provide all further information, and to execute and deliver all further documents, reasonably required by Escrow Holder or the Title Company.

16. Attorneys' Fees.

If any Party or Broker brings an action or proceeding (including arbitration) involving the Property whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereinafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

17. Prior Agreements/Amendments.

17.1 This Agreement supersedes any and all prior agreements between Seller and Buyer regarding the Property.

17.2 Amendments to this Agreement are effective only if made in writing and executed by Buyer and Seller.

18. Broker's Rights.

18.1 If this sale is not consummated due to the default of either the Buyer or Seller, the defaulting Party shall be liable to and shall pay to Brokers the Brokerage Fee that Brokers would have received had the sale been consummated. If Buyer is the defaulting party, payment of said Brokerage Fee is in addition to any obligation with respect to liquidated or other damages.

18.2 Upon the Closing, Brokers are authorized to publicize the facts of this transaction.

19. Notices.

19.1 Whenever any Party, Escrow Holder or Brokers herein shall desire to give or serve any notice, demand, request, approval, disapproval or other communication, each such communication shall be in writing and shall be delivered personally, by messenger or by mail, postage prepaid, to the address set forth in this Agreement or by facsimile transmission.

19.2 Service of any such communication shall be deemed made on the date of actual receipt if personally delivered. Any such communication sent by regular mail shall be deemed given 48 hours after the same is mailed. Communications sent by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed delivered 24 hours after delivery of the same to the Postal Service or courier. Communications transmitted by facsimile transmission shall be deemed delivered upon telephonic confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If such communication is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

19.3 Any Party or Broker hereto may from time to time, by notice in writing, designate a different address to which, or a different person or additional persons to whom, all communications are thereafter to be made.

20. Duration of Offer.

20.1 If this offer is not accepted by Seller on or before 5:00 P.M. according to the time standard applicable to the city of

Apple Valley, CA on the date of August 2, 2013

it shall be deemed automatically revoked.

20.2 The acceptance of this offer, or of any subsequent counteroffer hereto, that creates an agreement between the Parties as described in paragraph 1.2, shall be deemed made upon delivery to the other Party or either Broker hereto of a duly executed writing unconditionally accepting the last outstanding offer or counteroffer.

21. LIQUIDATED DAMAGES. (This Liquidated Damages paragraph is applicable only if initiated by both Parties.)

THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX, PRIOR TO SIGNING THIS AGREEMENT, THE ACTUAL DAMAGES WHICH WOULD BE SUFFERED BY SELLER IF BUYER FAILS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. THEREFORE, IF, AFTER THE SATISFACTION OR WAIVER OF ALL CONTINGENCIES PROVIDED FOR THE BUYER'S BENEFIT, BUYER BREACHES THIS AGREEMENT, SELLER SHALL BE ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF N/A. UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ANY ESCROW CANCELLATION FEES AND TITLE COMPANY CHARGES SHALL BE PAID BY SELLER.

RS DS
Buyer Initials

[Signature]
Seller Initials

22. ARBITRATION OF DISPUTES. (This Arbitration of Disputes paragraph is applicable only if initiated by both Parties.)

22.1 ANY CONTROVERSY AS TO WHETHER SELLER IS ENTITLED TO THE LIQUIDATED DAMAGES AND/OR BUYER IS ENTITLED TO THE RETURN OF DEPOSIT MONEY, SHALL BE DETERMINED BY BINDING ARBITRATION BY, AND UNDER THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("COMMERCIAL RULES"). ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED. ANY SUCH CONTROVERSY SHALL BE ARBITRATED BY 3 ARBITRATORS WHO SHALL BE IMPARTIAL REAL ESTATE BROKERS WITH AT LEAST 5 YEARS OF FULL TIME EXPERIENCE IN BOTH THE AREA WHERE THE PROPERTY IS LOCATED AND THE TYPE OF REAL ESTATE THAT IS THE SUBJECT OF THIS AGREEMENT. THEY SHALL BE APPOINTED UNDER THE COMMERCIAL RULES; THE ARBITRATORS SHALL HEAR AND DETERMINE SAID CONTROVERSY IN ACCORDANCE WITH APPLICABLE LAW, THE INTENTION OF THE PARTIES AS EXPRESSED IN THIS AGREEMENT AND ANY AMENDMENTS THERETO, AND UPON THE EVIDENCE PRODUCED AT AN ARBITRATION HEARING. PRE-ARBITRATION DISCOVERY SHALL BE PERMITTED IN ACCORDANCE WITH THE COMMERCIAL RULES OR STATE LAW APPLICABLE TO ARBITRATION PROCEEDINGS. THE AWARD SHALL BE EXECUTED BY AT LEAST 2 OF THE 3 ARBITRATORS, BE RENDERED WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING, AND MAY INCLUDE ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY PER

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PARAGRAPH 18 HEREOF. JUDGMENT MAY BE ENTERED ON THE AWARD IN ANY COURT OF COMPETENT JURISDICTION NOTWITHSTANDING THE FAILURE OF A PARTY DULY NOTIFIED OF THE ARBITRATION HEARING TO APPEAR THEREAT.

22.2 BUYER'S RESORT TO OR PARTICIPATION IN SUCH ARBITRATION PROCEEDINGS SHALL NOT BAR SUIT IN A COURT OF COMPETENT JURISDICTION BY THE BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE UNLESS AND UNTIL THE ARBITRATION RESULTS IN AN AWARD TO THE SELLER OF LIQUIDATED DAMAGES, IN WHICH EVENT SUCH AWARD SHALL ACT AS A BAR AGAINST ANY ACTION BY BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE.

22.3 NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

RB DB
Buyer Initials

[Signature]
Seller Initials

23. Miscellaneous.

23.1 Binding Effect. This Agreement shall be binding on the Parties without regard to whether or not paragraphs 21 and 22 are initialed by both of the Parties. Paragraphs 21 and 22 are each incorporated into this Agreement only if initialed by both Parties at the time that the Agreement is executed.

23.2 Applicable Law. This Agreement shall be governed by, and paragraph 22.3 is amended to refer to, the laws of the state in which the Property is located. Any litigation or arbitration between the Parties hereto concerning this Agreement shall be initiated in the county in which the Property is located.

23.3 Time of Essence. Time is of the essence of this Agreement.

23.4 Counterparts. This Agreement may be executed by Buyer and Seller in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Escrow Holder, after verifying that the counterparts are identical except for the signatures, is authorized and instructed to combine the signed signature pages on one of the counterparts, which shall then constitute the Agreement.

23.5 Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

23.6 Conflict. Any conflict between the printed provisions of this Agreement and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

23.7 1031 Exchange. Both Seller and Buyer agree to cooperate with each other in the event that either or both wish to participate in a 1031 exchange. Any party initiating an exchange shall bear all costs of such exchange.

23.8 Days. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Agreement shall mean and refer to calendar days.

24. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

24.1 The Parties and Brokers agree that their relationship(s) shall be governed by the principles set forth in the applicable sections of the California Civil Code, as summarized in paragraph 24.2.

24.2 When entering into a discussion with a real estate agent regarding a real estate transaction, a Buyer or Seller should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Buyer and Seller acknowledge being advised by the Brokers in this transaction, as follows:

(a) Seller's Agent. A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or subagent has the following affirmative obligations: (1) To the Seller: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller. (2) To the Buyer and the Seller: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(b) Buyer's Agent. A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In those situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations. (1) To the Buyer: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer. (2) To the Buyer and the Seller: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(c) Agent Representing Both Seller and Buyer. A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. (1) In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer. b. Other duties to the Seller and the Buyer as stated

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above in their respective sections (a) or (b) of this paragraph 24.2. (2) In representing both Seller and Buyer, the agent may not without the express permission of the respective Party, disclose to the other Party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered. (3) The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect their own interests. Buyer and Seller should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(6) **Further Disclosures.** Throughout this transaction Buyer and Seller may receive more than one disclosure, depending upon the number of agents assisting in the transaction. Buyer and Seller should each read its contents each time it is presented, considering the relationship between them and the real estate agent in this transaction and that disclosure. Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this transaction may be brought against Broker more than one year after the Date of Agreement and that the liability (including court costs and attorney's fees), of any Broker with respect to any breach of duty, error or omission relating to this Agreement shall not exceed the fee received by such Broker pursuant to this Agreement; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

24.3 **Confidential Information:** Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

25. **Construction of Agreement.** In construing this Agreement, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Agreement. Whenever required by the context, the singular shall include the plural and vice versa. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Agreement shall mean and refer to calendar days. This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

26. **Additional Provisions:**

Additional provisions of this offer, if any, are as follows or are attached hereto by an addendum consisting of paragraphs _____ through _____ . (If there are no additional provisions write "NONE".)

This is an all cash transaction with no appraisal or financing contingency. Buyers are purchasing with funds from a 1031 Exchange at NO cost to Seller.

Buyers ask for decision from Seller within 2 days of contract date regarding purchase. If close of escrow shall be later than 30 days from acceptance. Buyers reserve the right to lease the yard space under separate contract while waiting for close of escrow.

Offer is contingent upon Buyers obtaining approval from the Town to operate a semi-truck storage and remain facility along with offices at the property. 10 day due diligence upon acceptance for written Town tentative approval. Permits to follow at normal Town issuance.

Buyers are aware of potential hazardous and environmental issues with regards to usage by the Town of Apple Valley. Bids for clean up and mitigation of potential hazards have been received in excess of \$80k. Buyers will purchase "as-is" as long as it is suitable for usage.

Town to provide Phase One report to Buyers and remove any contingencies of usage within the designated zone. Sellers shall provide Buyers with any existing information on file relating to subject property.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS AGREEMENT OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS AGREEMENT.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PROPERTY. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PROPERTY, THE INTEGRITY AND CONDITION OF ANY STRUCTURES AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE.

WARNING: IF THE PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THIS AGREEMENT MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

NOTE:

1. THIS FORM IS NOT FOR USE IN CONNECTION WITH THE SALE OF RESIDENTIAL PROPERTY.
2. IF THE BUYER IS A CORPORATION, IT IS RECOMMENDED THAT THIS AGREEMENT BE SIGNED BY TWO CORPORATE OFFICERS.

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The undersigned Buyer offers and agrees to buy the Property on the terms and conditions stated and acknowledges receipt of a copy hereof.

BROKER:

Shear Realty
 18564 Hwy. 18, #205 Apple Valley, Ca. 92307
 Attn: Carol Yulo *Carol Yulo*
 Title: Broker
 Address: 18564 Hwy. 18 #205
Apple Valley, Ca. 92307
 Telephone: (760) 242-7221
 Facsimile: (760) 242-7226
 Email: _____
 Federal ID No. 95-3450274
 Broker/Agent DRE License #: 00818152

BUYER:

Ronald P. & Dorothy Borgans
 By: Ronald P. Borgans
 Date: July 30, 2013
 Name Printed: Ronald P. Borgans
 Title: _____
 Telephone: N/A
 Facsimile: N/A
 Email: N/A
 By: Dorothy J. Borgans
 Date: July 30, 2013
 Name Printed: Dorothy J. Borgans
 Title: _____
 Address: _____
 Telephone: N/A
 Facsimile: N/A
 Email: N/A
 Federal ID No. _____

27. Acceptance.

27.1 Seller accepts the foregoing offer to purchase the Property and hereby agrees to sell the Property to Buyer on the terms and conditions herein specified.

27.2 Seller acknowledges that Brokers have been retained to locate a Buyer and are the procuring cause of the purchase and sale of the Property set forth in this Agreement. In consideration of real estate brokerage service rendered by Brokers, Seller agrees to pay Brokers a real estate Brokerage Fee in a sum equal to 5.000 % of the Purchase Price to be divided equally between Seller's Broker and Buyer's Broker. This Agreement shall serve as an irrevocable instruction to Escrow Holder to pay such Brokerage Fee to Brokers out of the proceeds accruing to the account of Seller at the Closing.

27.3 Seller acknowledges receipt of a copy hereof and authorizes Brokers to deliver a signed copy to Buyer.

NOTE: A PROPERTY INFORMATION SHEET IS REQUIRED TO BE DELIVERED TO BUYER BY SELLER UNDER THIS AGREEMENT.

BROKER:

Coldwell Banker Commercial
N/A
 Attn: Nick DiCosola or Ben Barbieri
 Title: _____
 Address: _____
 Telephone: _____
 Facsimile: _____
 Email: _____
 Federal ID No. _____
 Broker/Agent DRE License #: _____

SELLER:

Town of Apple Valley
 By: _____
 Date: _____
 Name Printed: _____
 Title: _____
 Telephone: _____
 Facsimile: _____
 Email: _____
 By: _____
 Date: _____
 Name Printed: _____
 Title: _____
 Address: _____
 Telephone: N/A
 Facsimile: N/A
 Email: N/A
 Federal ID No. _____

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017, Telephone No. (213) 687-8777. Fax No.: (213) 687-8876.

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136-11 Timber Rd

The undersigned Buyer offers and agrees to buy the Property on the terms and conditions stated and acknowledges receipt of a copy hereof.

BROKER:
Shear Realty

Title: Buyers Agent
Address: 18564 Highway 18 #208
Apple Valley, Ca. 92307
Telephone: (760) 483-3000
Facsimile: (760) 242-7226
Email: pdhall@shear11.com
Federal ID No. _____
Broker/Agent DRE License #: 00020152 / 01487880

BUYER:
Ronald P. & Dorothy Borgens

By: Ronald P. Borgens
Date: July 30, 2013
Name Printed: Ronald P. Borgens
Title: _____
Telephone: _____
Facsimile: _____
Email: _____
By: Dorothy J. Borgens
Date: July 30, 2013
Name Printed: Dorothy J. Borgens
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____
Federal ID No.: N/A

27. Acceptance.

27.1 Seller accepts the foregoing offer to purchase the Property and hereby agrees to sell the Property to Buyer on the terms and conditions therein specified.

27.2 Seller acknowledges that Brokers have been retained to locate a Buyer and are the procuring cause of the purchase and sale of the Property set forth in this Agreement. In consideration of real estate brokerage service rendered by Brokers, Seller agrees to pay Brokers a real estate Brokerage Fee in a sum equal to 6.000 % of the Purchase Price to be divided between the Brokers as follows: Seller's Broker 3.000 % and Buyer's Broker 3.000 %. This Agreement shall serve as an irrevocable instruction to Escrow Holder to pay such Brokerage Fee to Brokers out of the proceeds accruing to the account of Seller at the Closing.

27.3 Seller acknowledges receipt of a copy hereof and authorizes Brokers to deliver a signed copy to Buyer.

NOTE: A PROPERTY INFORMATION SHEET IS REQUIRED TO BE DELIVERED TO BUYER BY SELLER UNDER THIS AGREEMENT.

BROKER:
Colwell Broker Commercial

Attn: Nick DiCicola/Ron Barbieri
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____
Federal ID No. _____

Broker/Agent DRE License #: _____

SELLER:
Town of Apple Valley

By: [Signature]
Date: 8/20/13
Name Printed: DENNIS L. CRAN
Title: ASST. TOWN MANAGER

Telephone: _____
Facsimile: _____
Email: _____

By: [Signature]
Date: 8/20/13
Name Printed: Frank R. Robinson
Title: Town Manager
Address: _____

Telephone: _____
Facsimile: _____
Email: _____
Federal ID No. _____

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 600 N Brand Blvd, Suite 800, Glendale, CA 91203. Telephone No. (213) 687-6777. Fax No.: (213) 687-6816.

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Produced with zipForm® by zipLegal, 14070 Filson Mills Road, Fraser, Michigan 48026 www.zipLegal.com

[Signature]
FORM OEA 91-0411EE
United



COUNTER OFFER - SELLER
AIR Commercial Real Estate Association

Dated: August 21, 2013
By and between (Seller): Town of Apple Valley
(Buyer): Ronald F. & Dorothy Borgens
Address of Property: 13463 Toniken Rd
Apple Valley, CA 92307
(APN 3087-382-19, 20 and 21)

This is a Counter Offer to the "Standard Offer and Agreement for Purchase of Real Estate" dated July 30, 2013 regarding the above-referenced Property and Parties (hereinafter the "Offer"). A full and complete copy of the Offer is attached hereto and incorporated herein by reference.

1. Seller hereby accepts the Counter Offer provided the Buyer agrees to the following changes in the Counter Offer:

(Please check the appropriate box or boxes)

- Uninitialed pen and ink changes have been made to the Offer.
Seller shall be deemed to have initialed paragraph 21 regarding liquidated damages and paragraph 22 regarding arbitration of disputes.
The changes are detailed in the addendum attached hereto consisting of paragraphs through.
The changes are set forth below.

A. The sales price shall be \$360,000.00 (Three Hundred Sixty Thousand Dollars)

B. Upon Buyer's acceptance of this counter offer from the Seller and opening of escrow, the Buyer shall be allowed to occupy property. After 30 days of occupancy at no rent, the Buyer shall have the option to rent the property month to month at \$2,000.00 (Two Thousand Dollars) per month

C. The Seller cannot agree to close escrow within 90 days of the opening of escrow because of the reasons described in paragraph 3 of the Addendum to the Seller's first counter. However, subject to the limitations described in that paragraph, the Seller will attempt to close escrow within 90 days.

D.

E.

NOTE: PARAGRAPHS IN THE OFFER WHICH REQUIRE INITIALS BY ALL PARTIES, BUT ARE NOT INITIALED BY ALL PARTIES, ARE EXCLUDED FROM THE FINAL AGREEMENT UNLESS SPECIFICALLY REFERENCED FOR INCLUSION IN THIS COUNTER OFFER.

2. REMAINING TERMS: All of the terms and conditions contained in the Offer which have not been specifically modified or deleted by this Counter Offer are hereby approved by Seller.

3. (Seller's Initials:) (If checked and initialed) MULTIPLE COUNTER OFFER: Concurrently herewith, Seller is also making a Counter Offer to another prospective buyer on terms which may or may not be the same as in this Counter Offer. Acceptance of this Counter Offer by Buyer shall not, therefore, be binding unless and until it is subsequently re-signed by Seller in paragraph 11 below.

4. RIGHT TO ACCEPT OTHER OFFERS: Seller reserves the right to continue to offer the Property for sale, and to accept any other offer at any time prior to actual receipt by Seller's authorized agent, of a copy of this Counter Offer duly accepted and signed by Buyer and, if applicable, the re-signing of this Counter Offer by Seller as provided in paragraph 3. Seller's acceptance of such a prior offer shall revoke this Counter Offer.

5. EXPIRATION: This Counter Offer shall expire and be revoked, without further notice, at 5:00 pm on unless it is accepted and signed by Buyer and a fully executed copy is actually received by Seller's agent (as specified in paragraph 4) prior to said time. Upon expiration, Buyer's Deposit, if any, shall be returned. This Counter Offer may be executed in counterparts.

6. TIME: Time is of the essence.

7. BINDING EFFECT: This Counter Offer, when fully executed by both Buyer and Seller, and delivered and received as specified above, shall

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to a binding contract. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS AGREEMENT OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE ADVISED TO SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS AGREEMENT.

NOTE:

1. THIS FORM IS NOT FOR USE IN CONNECTION WITH THE SALE OF RESIDENTIAL PROPERTY.
2. IF EITHER PARTY IS A CORPORATION, IT IS RECOMMENDED THAT THIS AGREEMENT BE SIGNED BY TWO OF ITS CORPORATE OFFICERS.

6. The undersigned Seller agrees to sell the Property on the terms and conditions stated herein.

BROKER: Coldwell Banker Commercial	SELLER: Town of Apple Valley
Att: Ronald Barbieri & Nicholas Di Cosola	By: <i>[Signature]</i>
Title: Senior Vice Presidents	Date: 8-20-13
Address: 19300 West Sand St., 2nd Floor	Name Printed: Frank Robinson
Victorville, CA 92392	Title: Town Manager
Telephone: (760)484-8000	
Facsimile: (760)484-9760	By: <i>[Signature]</i>
Email: RBBarbieri@CB.com & NDDeCosola@CB.com	Date: 8-20-13
Federal ID No.:	Name Printed: Curt Enick
Broker/Agent CRE License #:	Title: Mayor
	Address:
	Telephone: ()
	Facsimile: ()
	Federal ID No.:

9. ACCEPTANCE: Buyer accepts the foregoing Counter Offer and agrees to purchase the Property on the terms and conditions specified, and authorizes Broker to deliver a signed copy to Seller.

BROKER: Bhear Realty	BUYER: Ronald P. & Dorothy Borgens
Att: Carroll Yale <i>[Signature]</i>	By: <i>[Signature]</i>
Title:	Date: 8-20-13
Address: 18804 Highway 18, #205	Name Printed: Ronald P. Borgens
Apple Valley	Title:
Telephone: (760)483-3000	By: <i>[Signature]</i>
Facsimile: (760)482-7226	Date: 8-20-13
Email:	Name Printed: Dorothy Borgens
Federal ID No.: 25-345,3224	Title:
Broker/Agent CRE License #: 00K18162	Address:
	Telephone: ()
	Facsimile: ()
	Federal ID No.:

10. ACKNOWLEDGEMENT OF RECEIPT: Seller's agent hereby acknowledges that a copy of the Counter Offer executed by Buyer was received on _____ at _____.

11. MULTIPLE COUNTER OFFER SIGNATURE LINE: (Applicable only if paragraph 9 is checked and initialed.) By signing below, Seller accepts this Multiple Counter Offer, and creates a binding contract. (Note to Seller: Do NOT sign in this paragraph until after Buyer has accepted the Counter Offer by signing in paragraph 9).

SELLER:	SELLER:
By: _____	By: _____
Date: _____	Date: _____
Name Printed: _____	Name Printed: _____
Title: _____	Title: _____

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you

RB
[Signature]
INITIALS

[Signature]
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are utilizing the most current form: AIR Commercial Real Estate Association, 600 W 6th Street, Suite 800, Los Angeles, CA 90017.
Telephone No. (213) 687-5777. Fax No.: (213) 687-6616.

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PAGE 3 OF 3

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FORM COS-3-7/08E

**AMENDMENT TO PURCHASE AGREEMENT BETWEEN
THE TOWN OF APPLE VALLEY AND RONALD P. BORGENS AND DOROTHY
BORGENS**

This AMENDMENT ("First Amendment") is made by and between Ronald P. Borgens and Dorothy Borgens ("Buyers") and the Town of Apple Valley, a California Municipal Corporation ("Town"), in order to amend, in writing, the purchase agreement.

WHEREAS, effective 20 August, 2013, Town and Buyers entered into Purchase Agreement ("Agreement") whereby the Buyers will purchase 13643 Tonikan Road, Apple Valley, California 92307 ("Property") from the Town; and

WHEREAS, Town and Buyers wish to amend the Agreement to enable Buyers to waive its right to a Phase I Environmental Audit and to permit the Buyers to utilize the large parking lot portion of the property for truck parking prior to closing.

NOW, THEREFORE, the parties hereto agree as follows:

1. Except as modified by this First Amendment, all provisions of the Agreement shall remain in full force and effect for the term hereof. In case of any conflict, the terms of the First Amendment shall prevail over the provisions of the Agreement.

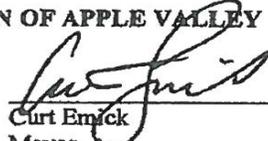
2. Waiver of Environmental Audit. Buyers knowingly and intentionally waives its right to conduct any environmental due diligence at the property, including a Phase I and a Phase II environmental audit. In addition, Buyers waive any and all claims against the Town related to the environmental condition of the Property. Buyers understand that it is taking the Property as is. To the fullest extent permitted by law, Buyers shall defend, indemnify and hold the Town, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to Buyers' waiver of its right to environmental due diligence under this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses.

3. Use of the Parking Lot. Town agrees to grant to Buyers the right to use the parking lot portion of the Property for the parking of its trucks from the date of execution of this First Amendment until the occurrence of the earlier of the following events: (1) the closing date listed in the Agreement; or (2) the termination of the Agreement for any reason whatsoever. The parking lot portion of the Property is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. To the fullest extent permitted by law, Buyers shall defend, indemnify and hold the Town, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to Buyers' use of the parking lot portion of the Property under this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 27 day of August, 2013.

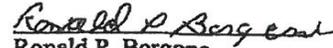
TOWN OF APPLE VALLEY

By:


Curt Emick
Mayor

BUYERS

By:


Ronald P. Borgens

ATTEST:


LeYonda M. Pearson, Town Clerk

By:


Dorothy Borgens

APPROVED AS TO CONTENT:


Frank Robinson, Town Manager

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP


John Brown, Town Attorney

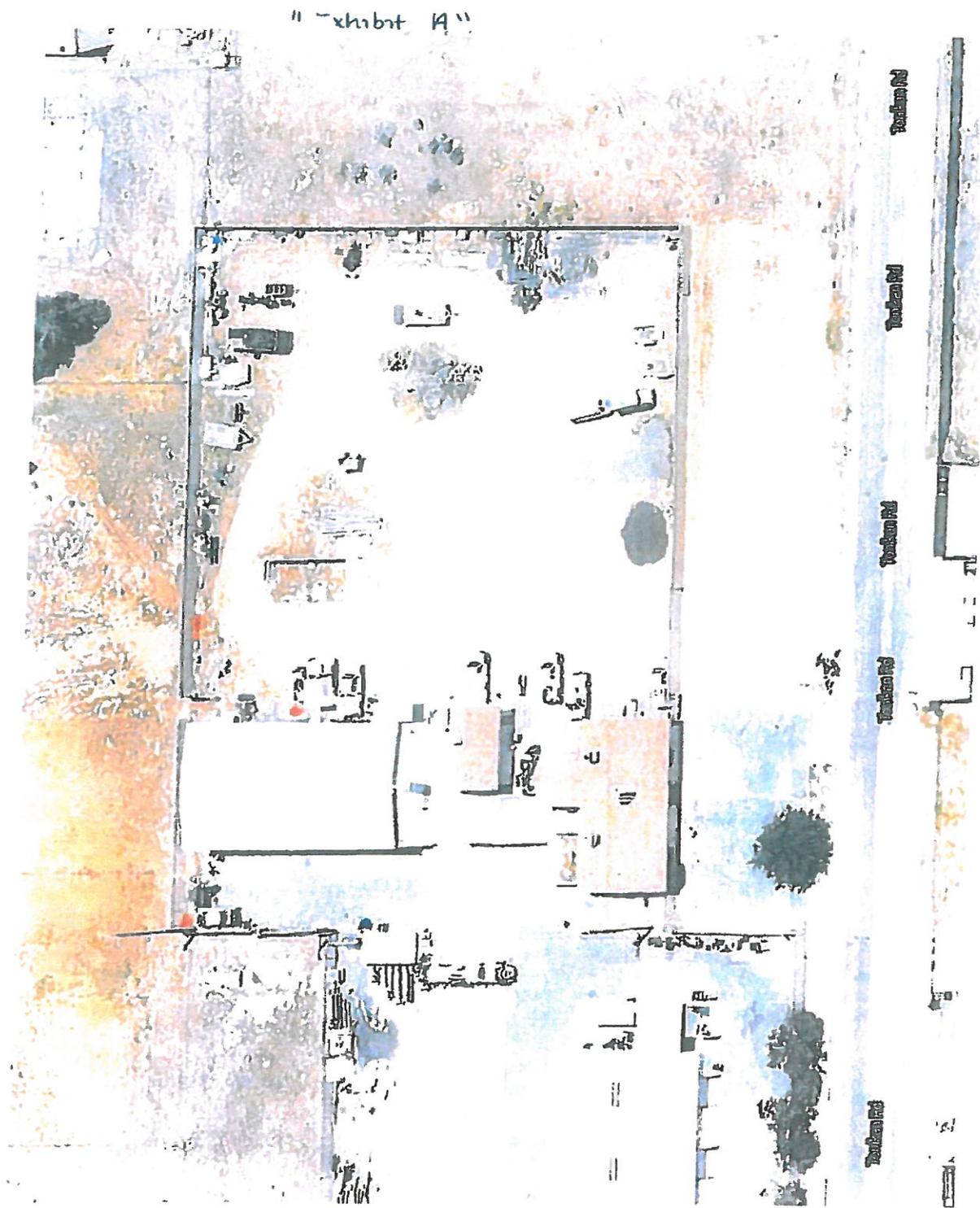


EXHIBIT "B"

HIGHWAY 18 PURCHASE AGREEMENT

[ATTACHED BEHIND THIS PAGE]

COMMERCIAL LEASE AGREEMENT

&

OPTION TO PURCHASE

THIS COMMERCIAL LEASE AGREEMENT & OPTION TO PURCHASE (the "Lease") is made and entered into by and between the Town of Apple Valley ("Landlord"), and Kelley's Underground Construction, Inc. ("Tenant"), under the following terms and conditions:

1. Description Of The Leased Premises: Landlord hereby leases to Tenant and Tenant hereby leases from Landlord a single tenant industrial building consisting of approximately 8,360 +/- sq ft. Including 2 lots which include the building improvements and one vacant adjoining and contiguous lot east of the improved parcels located at 22411 Outer Hwy 18 Apple Valley California, office and warehouse space consisting of approximately 8,360 +/- square feet of floor area, referred to herein as the "Premises".

2. Term, Occupancy, And Renewal:

1. Term: The term of this Lease shall be for 3 years and 3 months, said term shall commence on **March 1, 2013** (the "Commencement Date"), and end on **May 31, 2016**. Tenant shall receive 3 months' rent free for March 2013, April 2013, May 2013

a. Occupancy. Tenant may, upon execution of this Lease by Landlord and Tenant, occupy the Premises before the Commencement Date for the purposes of repair of the Premises and subject to all terms and conditions of this Lease, provided Tenant complies with Section 16 (Insurance) and delivers an insurance certificate to Landlord prior to entry.

3. Option to Purchase: Subject to the Town of Apple Valley's Town Council ("Council") declaration of the Premises as surplus property, and subject further to the approval of and ratification of the terms of sale by the Council, and provided that Lessee is not in default of any of the provisions of the Lease, Lessee shall have an option to purchase the Premises (the "Option"). On or about May 31, 2015, Lessor and Lessee shall obtain an appraisal ("Appraisal") of the Premises to determine the purchase price ("Purchase Price"). The option period shall commence June 1, 2015 and terminate at midnight on May 31, 2016 ("Option Period"). To exercise the Option, Lessee shall provide Lessor with written notice of its intent to exercise the Option and provide Lessor with written confirmation of its ability to obtain financing in the amount of the Purchase Price on or before the expiration of the Option Period. Provided that the Town Council has declared the Premises to be surplus property and otherwise available for sale, that Town Council has approved the foregoing terms and conditions, and that Lessee is not in default under the Lease, the close of escrow for the purchase of the Premises ("Closing") shall occur within six months (6 months) of the date of exercise of the Option ("Closing Period"). Lessor and Lessee may agree, in writing, to extend the Closing Period. If the Option is not exercised within the Option Period or the Closing does not occur within the Closing Period, the Option shall expire and be of no further force or effect. Lessor and Lessee agree to execute such additional escrow instructions as may be necessary and normal to effect the Closing. If the Option is not exercised or the Closing fails to occur within the Closing Period, Lessee agrees to execute a Quit Claim Deed in favor of

Lessor releasing Lessee's interest in such Option. Lessor and Lessee shall each bear such expenses of escrow, title insurance and closing costs as are normally incurred in the purchase and sale of commercial or industrial real estate.

4. Appraisal Cost. The costs for the Appraisal shall be borne equally by Lessor and Lessee.
5. Application of Rent. If Lessee shall exercise the Option, the Purchase Price shall be adjusted to credit twenty-five percent (25%) of base rent paid through the Closing to the Purchase Price ("Rent Applicable to Purchase Price"). If Lessee shall not exercise the Option, or the Closing shall not occur, one hundred percent (100%) of base rent paid shall be treated as rental payments and no credits shall be due to Lessee or any other party.

6. Rent: The initial annual rent during the term of this Lease shall be:

\$.27 per square foot / \$2,257.20 per month.

PBID: Tenant shall be responsible for the annual PBID assessment for APN # 3087-382-15, 16, 17. For year 2013 the amount shall be \$1,607.20 this amount shall be in addition to the lease rate and is subject to increase as provided in Section 4d below. Tenant shall, commencing on the Commencement Date, and continuing thereafter on the first (1st) day of each and every month during the term of this Lease, pay to Landlord in advance, the minimum monthly rent which shall be the following amount, but which is subject to increase as provided below in Section 4d:

Increases: The lease payment shall be \$2,257.20 per month, which shall be adjusted annually effective July 1 of each year, with the first CPI adjusted lease/rental payment to occur on July 1, 2014. The adjustment will be based upon the change in the Consumer Price Index for the month of May (preceding the July 1 effective date of the change) on a year-over-year basis for All Urban Consumers ("CPI-U") as published by the U.S. Department of Labor for the Los Angeles-Riverside-Orange Counties Standardized Metropolitan Statistical Area (SMSA). Excepting that the minimum increase shall be 3%, and the maximum increase shall not exceed 5% per year.

- a. Late Charge. Tenant acknowledges that late payment by Tenant to Landlord of rent will cause Landlord to incur costs not contemplated by this Lease. If any installment of rent due from Tenant is not received by Landlord within five (5) days after it becomes due, Tenant shall pay to Landlord an additional sum of ten (10) percent of the overdue rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

- b. Interest On Unpaid Rent. Rent or other charges under this Lease not paid within five (5) days of the date due shall, in addition to any late charges under paragraph 3.a, above, bear interest at the lesser of the maximum legal rate or ten (10) percent per annum from the date due until paid.

- c. Holdover. Tenant may only hold over after the expiration or earlier termination of the term hereof with the express prior written consent of Landlord. Acceptance of rent is not Landlord's consent to holdover. Without Landlord's express consent Tenant shall become a tenant at sufferance only at a rental rate equal to one hundred ten percent (110%) of the rent in effect upon the date of such expiration.

Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a holdover hereunder or result in a renewal. The foregoing provisions of this Paragraph 4 are in addition to and do not affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. If Tenant fails to surrender the Premises upon the expiration of this Lease, Tenant shall indemnify, protect, defend and hold Landlord harmless from all loss or liability, including without limitation, any claim made by any succeeding tenant founded on or resulting from such failure to surrender. Such indemnity shall survive the expiration of this Lease.

7. Security Deposit: Shall be in the amount of Two Thousand Two Hundred Fifty Seven Dollars and 20/100 (\$2,257.20)

8. Place of Payment Of Rent: Rent and all other sums which shall become due under this Lease, including but not limited to late charges and additional rent, shall be payable by hand delivery or mail at the office of the Landlord located at Town of Apple Valley, 14955 Dale Evans Parkway, Apple Valley, Ca., 92307, or at such other place as Landlord may designate from time to time in writing. Mailed payments must be received (not postmarked) by Landlord by the date due.

9. Condition Of, And Improvements To, Premises:

a. Improvements: Under this Lease, Landlord shall have no obligation or responsibility, actual or implied, to install, construct, accommodate, or make any improvements to the Premises prior to, or as a condition of, Tenant's occupation of the Premises, unless specifically authorized and agreed to in writing in advance by Landlord.

b. As-Is Condition: Tenant warrants and agrees that Tenant has inspected the Premises. Tenant agrees to take possession of the Premises in an AS-IS condition (which exists on the date this Lease is signed) and Tenant further agrees that Landlord shall have no responsibility for any repairs or improvements to the Premises, prior to, or as a condition of, Tenant's occupation of the Premises.

c. Condition Upon Surrender: Upon termination of this Lease, Tenant shall surrender the Premises to Landlord in as good condition as when received, ordinary wear and tear and damage by fire, earthquake, or act of God excepted, and including any repairs or improvements made by Tenant. If Tenant fails to maintain the Premises in good order and repair, after thirty (30) days' prior written notice, Landlord may, at its option, make such repairs, and Tenant shall pay the reasonable cost thereof as additional rent hereunder within ten (10) days after receipt of a written statement therefor. In the event the giving of thirty (30) days' prior notice may result in additional damage to the Premises, Landlord may make such repairs, at Tenant's expense, without thirty days' prior written notice.

d. Tenant Improvements: Tenant will complete all of its own improvements on the property with tenants own funds. Tenant improvement money spent on the property, other than regular and routine maintenance items, shall be credited toward the purchase price of the property. Tenant agrees to save and supply all tenant improvement receipts to justify such expenses at time of purchase. Tenant agrees and certifies that all such improvements which require a building permit shall be commenced only upon the issuance of a valid Town of Apple Valley building permit. Should tenant fail to purchase the property at the conclusion of the lease term, all tenant improvement monies expended on said improvements shall be forfeited, and tenant shall deliver property to Town with tenant improvements left in place.

10. Use: The Premises shall be used only for the operation of Administrative Offices and Storage of Equipment for an Underground Utility Company. Tenant shall not use any portion of the Premises for purposes other than those specified without first obtaining the written consent of Landlord. Tenant shall not do, bring, or keep anything in, on, or about the Premises which will in any way increase the premium rate or cause the cancellation of any fire or other insurance upon the Premises, the building in which the Premises are located, or any of its contents.

11. Compliance With Law: Tenant shall promptly comply, at its sole cost, with all laws, ordinances, rules, and regulations affecting the occupancy and use of the Premises which may now be in effect or which may hereafter be enacted or promulgated by any governmental authority with jurisdiction over the Premises or its use, including without limitation the obligation to comply with any law that requires alteration, maintenance, or restoration of the Premises as a result of Tenant's particular and specific use of the Premises at the time.

12. Waste; Nuisance; Quiet Enjoyment: Tenant shall not suffer or commit any waste or nuisance on the Premises. Tenant shall not use or allow the Premises to be used for any improper, immoral, or objectionable purposes. Tenant will comply, and cause its employees and agents to comply, with all rules and regulations adopted by Landlord in connection with the use of the Premises, the parking areas, and common areas, which rules and regulations may be adopted or amended by Landlord at any time.

13. Repair and Maintenance:

a. Tenant shall, at Tenant's sole cost and expense, maintain the Premises in good condition and repair. Said maintenance shall include but not be limited to, the interior of the Premises, exterior doors and windows, all fixtures and equipment, including without limitation, plate glass, electrical wiring, plumbing fixtures, plumbing drains (from the interior of the Premises to the point of connection of Tenant's drainage system with the sanitary sewer system owned, managed, and/or maintained by the local municipality). Landlord has heating and air conditioning system which tenant shall maintain in good and working order at tenants sole expense and cost.

14. Utilities: Tenant shall make all arrangements for, and pay for, all utilities and services furnished to or used by Tenant upon the Premises, including gas service, electrical service, cable service, telephone services and all connection charges. Landlord shall not be responsible for any interruptions or disturbance of service nor will there be any abatement of rent resulting from any cessation or interruption of utility service. Tenant shall provide its own janitorial services at its sole cost.

15. Taxes:

a. Personal Property Taxes. Tenant shall pay all taxes, assessments, license fees, and other charges that are levied or assessed against Tenant's personal property installed or located in or on the Premises. If any such taxes on Tenant's personal property or trade fixtures or improvements are levied against the Landlord or Landlord's property, and if Landlord pays the same, which Landlord shall have the right to do regardless of the validity of such levy, or if the assessed value of the Landlord's premises is increased by the inclusion therein of a value placed upon such personal property or improvements of Tenant, and if Landlord pays the taxes based on such increased assessment, which the Landlord shall have the right to do, regardless of the validity thereof, Tenant, upon demand shall, as the case may be, repay to Landlord the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in the assessment.

b. Real Property Taxes. If real property taxes (including, if applicable, any possessory interest taxes), general and special taxes, and assessments ("real property taxes") are levied and assessed against:

(i) the Premises and Tenant's improvements on the Premises due to Tenant's possessory interest in the Premises, Tenant shall, semi-annually but not later than the taxing authority's delinquency date, pay, or cause to be paid, all real property taxes attributable to the Premises and Tenant's improvements on the Premises;

(ii) the real property upon which the building is located, Landlord shall notify Tenant each year of the real property taxes, and immediately on receipt of the tax bill, deliver to Tenant a copy of the tax bill. Tenant shall, semi-annually but not later than the taxing authority's delinquency date, pay the real property taxes for the property.

(iii) Tenant's Tax Liability Prorated. Tenant's liability to pay real property taxes and new assessments shall be prorated on the basis of a 365-day year to account for any fractional portion of a fiscal tax year included in the Term at its inception and expiration or earlier termination in accordance with this Lease.

(iv) Revenue & Taxation Code Section 107.6. Possessory Interest Tax. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxes and that, if a possessory interest is created, Tenant shall, in accordance with Section 13 (b) hereof, be responsible for payment of property taxes levied against such possessory interest.

16. Alterations And Liens: Any alterations, additions, or improvements affixed to the Premises, except furnishings, equipment, and trade fixtures, shall, at Landlord's option, become part of the real property and belong to Landlord on expiration or termination of the term and any extension thereof. If Landlord consents to the making of any alteration, additions, or improvements to the Premises, they shall be made at Tenant's sole cost and expense. ~~Tenant shall keep the Premises free and clear of any liens or encumbrances which may arise from such work.~~ At Landlord's option, Tenant shall, at its sole cost and expense, remove all such additions, alterations, and improvements from the Premises at the end of the term hereof and repair any damage to the Premises occasioned by such removal. If Tenant shall fail to complete such removal and repair such damage within ten (10) days after such termination, Landlord may do so and Tenant shall pay the reasonable cost thereof as additional rent within ten (10) days after Landlord shall render to Tenant a written statement therefor.

17. Assignment And Subletting: Tenant shall not assign or encumber this Lease or any interest therein or sublet the Premises or any portion thereof either voluntarily or by operation of law without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Consent to one assignment, subletting, or use by any person other than Tenant shall not be deemed to be consent to a subsequent assignment, subletting, or use by any other person. In considering whether or not to grant such consent, Landlord may consider, among other things, the proposed tenant's character, credit, and professional standing. Any assignment or subletting not in compliance with the provisions of this paragraph shall be a material breach of the Lease, voidable and, at Landlord's option, shall terminate this Lease.

18. Entry By Landlord: Except for emergencies such as fire, water intrusion and the like, Landlord and its agents shall have the right to enter the Premises at reasonable times and upon twenty-four (24) hours' notice to inspect and examine the same.

19. Indemnification:

a. Waiver of Claims. To the extent permitted by law, Tenant waives all claims against Landlord for damage to person or property arising for any reason.

b. General Indemnity. Tenant agrees, as an independent unsecured obligation, separate from any of its promises or covenants in this Lease, to indemnify, defend (with counsel approved by Landlord at Tenant's expense), protect and hold harmless Landlord, its employees, agents, public officials, legal counsel, assigns, any successor or successors to Landlord's interest in the Premises and any future owners of the Premises to whom this Lease is assigned (hereinafter collectively referred to as the "Indemnitees") from and against all claims, actual damages (including but not limited to special and consequential damages), punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses arising out of any damage to any person or property occurring in, on, or about the Premises; except for any acts of gross negligence or willful misconduct by Landlord. Tenant's obligation under this paragraph to indemnify and hold the other party harmless shall be limited to the sum that exceeds the amount of insurance proceeds, if any, received by the party being indemnified. Landlord shall not be liable to Tenant for any damage by or resulting from any act or negligence of any other tenant of property adjoining the Premises or by the owner or occupant of any adjoining or contiguous property.

20. Insurance:

a. Liability Insurance. Tenant shall carry, during the term hereof, public liability and property damage insurance with a single combined liability limit of not less than \$1 million and property damage limits of not less than \$1 million insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use and occupancy of the Premises. Landlord shall be named as an additional insured on each such policy. Tenant shall provide proof of such insurance in the form of a certificate of insurance prior to taking occupancy of the Premises.

b. Waiver of Subrogation. The parties release each other, and their respective authorized representatives, from any claims (for damage to any person or to the Premises and/or the building in which the Premises are located, and to the fixtures, personal property, Tenant's improvements, and alterations of either Landlord or Tenant in or on the Premises and/or the building in which the Premises are located) that are caused by or result from risks which are insured against under any insurance policies carried by the parties and in force at the time of any such damage and to the full extent of any proceeds paid under said policies.

21. Destruction Of Premises:

a. Destruction Due to Risk Covered by Insurance. If, during the term of this Lease and any renewal term, the Premises or the building and other improvements in which the Premises are located are totally or partially destroyed from a risk covered by insurance carried by either Tenant or Landlord for the building, rendering the Premises totally or partially inaccessible or unusable, Landlord shall restore the Premises or the building, and other improvements in which the Premises are located, to substantially the

same condition as they were immediately before destruction if they can be repaired within 270 days from date of destruction. Such destruction shall not terminate this Lease. If the existing laws do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party. Provided, however, if the cost of the restoration exceeds the amount of proceeds received from the insurance, or the estimate of time to fully restore the Premises exceeds the lesser of 270 days or the remaining Term of the Lease, Landlord can elect to terminate this Lease by giving notice to Tenant within fifteen (15) days after determining that the restoration cost will exceed the insurance proceeds.

b. Destruction Due to Risk Not Covered by Insurance. If, during the term of this Lease and any renewal term, the Premises or the building and other improvements in which the Premises are located are totally or partially destroyed by a risk not covered by the insurance, rendering the Premises totally or partially inaccessible or unusable, Landlord can elect to terminate this Lease by giving notice to Tenant within fifteen (15) days after determining the restoration cost and replacement value.

c. Abatement or Reduction of Rent. In case of destruction, there shall be an abatement or reduction of rent between the date of destruction and the date of substantial completion of restoration based on the extent to which the destruction interferes with Tenant's use of the Premises.

d. Waiver of Civil Code Sections. Tenant waives the provisions of California Civil Code Section 1932(2) and California Civil Code Section 1933(4) with respect to any destruction of the Premises.

22. Default And Landlord's Remedies:

a. Default. The occurrence of any of the following shall constitute a default by Tenant:

(1) Tenant shall fail to pay when due any rent or any other monetary sum payable under this Lease.

(2) Tenant shall fail to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and such default continues for a period of ten (10) days after written notice by Landlord specifying the nature of the default with reasonable particularity, unless the nature of the default is such that more than ten (10) days is required to cure it and Tenant commences to cure it within such ten (10)-day period and thereafter diligently pursues it to completion.

(3) Tenant shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or take or have taken against Tenant any proceedings of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act and, in the event any such proceedings are involuntary, Tenant is not discharged from the same within thirty (30) days thereafter.

(4) A receiver is appointed for a substantial part of the assets of Tenant, and such receivership is not released within thirty (30) days.

(5) The abandonment of the Premises by Tenant, or the vacation (hereby defined to be ten (10) or more consecutive days of continual absence from the Premises) of the Premises by Tenant.

(6) This Lease or any estate of Tenant hereunder shall be levied upon by any attachment or execution and such levy is not released within thirty (30) days.

Notices given under this section shall specify the alleged default and the applicable Lease provisions, and shall demand that Tenant perform the provisions of this Lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises.

b. Landlord's Remedies. If any default by Tenant shall occur, and following notice of default as required by this Lease (for the period applicable to the default under the applicable provision of this Lease), Landlord shall have the following remedies in addition to all other rights and remedies provided by law or equity, to which Landlord may resort cumulatively or in the alternative.

(1) Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate. In the event that Landlord shall so elect to terminate this Lease, then Landlord may recover from Tenant:

(a) The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and

(e) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in Subparagraphs (a) and (b) above of this section, the "worth at the time of award" is computed by allowing interest at the maximum rate an individual is permitted by law to charge. As used in subparagraph (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(2) In the event of the vacation or abandonment of the Premises by Tenant, or in the event that Landlord shall elect to reenter as provided herein or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then Landlord shall have the remedy specified by Civil Code Section 1951.4, in which Landlord may from time to time recover all rental as it becomes due or relet the Premises or any part thereof for the account of Tenant on such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. In the event that Landlord shall elect so to relet, then rentals received by Landlord from such reletting shall be applied first, to the payment of any indebtedness, other than rent due hereunder, owed by Tenant to Landlord; second, to the payment of any cost (including commissions) of such reletting; third to the payment of the cost of any alterations and repairs to the Premises; fourth, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder.

Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord upon demand. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any and all costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

(3) No reentry or taking possession of the Premises by Landlord pursuant to this section shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

23. Signs: Landlord agrees that Tenant may provide signs on the building fascia at the front of the Premises, subject to any CC&Rs and Town's sign ordinance criteria.

24. Parking: Tenant shall have the exclusive use of the parking area owned by Landlord at and around the Premises; provided, however, that no tenant may park in a area designated, identified, and/or reserved for customer parking, if any.

25. Attorneys' Fees: If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

26. Notices: Any notice required or permitted to be given hereunder may be given by personal delivery or by United States certified mail, postage prepaid, addressed to Tenant at the Premises and to Landlord at Town of Apple Valley, 14955 Dale Evans Parkway, Apple Valley, CA. 92307, or at such other address as the Landlord shall designate in writing.

27. Waiver: No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such right or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved.

28. Time Is Of The Essence: Time is of the essence of this Lease as to the performance of all terms, covenants, and conditions stated herein.

29. Nondiscrimination: Tenant herein covenants by and for itself, all owners of the Tenant, and their executors, administrators, and assigns, and all persons claiming under or through them, that this Lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, age, gender, marital status, sexual preference, disability, national origin, or ancestry, in the leasing, sub-leasing, transferring, use, occupancy, tenure, or enjoyment of the Premises herein leased; nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, sublessees, subtenants, invitees, or vendees in the Premises herein leased. Tenant shall be responsible to insure that the Premises complies with all government requirements as to access and/or disabilities, including but not limited to the Americans With Disabilities Act.

30. Successors And Assigns: Except as otherwise provided herein, all of the terms and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

31. Titles And Definitions: The titles of paragraphs herein are for identification only. They shall not be considered to be a part of this Lease and shall have no effect upon the construction or interpretation thereof. The word "Landlord" and "Tenant" as used in this Lease shall include both singular, plural, masculine, feminine, and neuter as the context shall require.

32. Entire Agreement: This Lease contains the entire agreement of the parties and supersedes all prior negotiations, drafts, and other understandings which the parties may have concerning the subject matter hereof.

33. Amendment: This Lease may not be modified except by written instrument duly executed by the parties hereto or their successors in interest.

34. Estoppel Certificate. Tenant shall execute and deliver to Landlord within 10 days of request a commercially reasonable estoppel statement. Landlord and Tenant intend that any statement delivered pursuant to this Paragraph 30 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the building or any interest therein and failure to execute and return such estoppel shall be a material breach of the Lease.

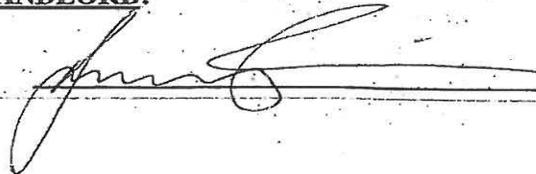
35. Commission- The Town of Apple Valley will be responsible to pay Lee & Associates 4% of the agreed lease amount based on year 1 lease amount. The total commission amount will be \$3,250.36. ½ of the commission amount will be paid upon lease execution and ½ of the commission amount will be due upon expiration of the free rent period

36. Commission- In the event a sale is consummated. Lee & Associates will be paid a sales commission by the Town of Apple Valley in the amount of 4% of the gross sales amount based on the terms listed below. The Town will receive a credit towards the sales commission in the amount of \$ 3,250.36 which represents the initial lease commission. The Town shall not be required to pay commission on the value of any improvements made by Kelley's underground that ultimately get credited back to the purchase price of the property per paragraph 7 (d) of this lease agreement. The Town will not be required to pay a commission based on the sales credit due to buyer regarding 25% of rental payments being applied to purchase price of the property per 3 (a) of this lease agreement.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the day and year set forth below:

LANDLORD:

Dated: 3/1/13



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By: Frank Robinson, Town Manager
For: Town of Apple Valley

TENANT(S):

Dated: 3/1/13

Frank Robinson
TENANT Simon Kelly
By: 3/1/13

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EXHIBIT “C”

PLANNING COMMISSION RESOLUTION NO. 2013-010

[ATTACHED BEHIND THIS PAGE]

PLANNING COMMISSION RESOLUTION NO. 2013-010

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, FINDING THE DISPOSITION OF SURPLUS TOWN PROPERTY TO BE IN CONFORMANCE WITH THE GENERAL PLAN.

WHEREAS, on August 11, 2009 the Town Council adopted a Comprehensive General Plan Update for the Town of Apple Valley; and

WHEREAS, Government Code section 54221 mandates that parcels of real property owned by a local agency are deemed surplus property when they are no longer necessary for the local agency's use; and

WHEREAS, the Town of Apple Valley owns the following six (6) parcels of real property: three (3) parcels at 13643 Tonikan Road (APNs 3087-382-19, 3087-382-20, 3087-382-21) and three (3) parcels at 22411 Outer Highway 18 (APNs 3087-382-15, 3087-382-16, and 3087-382-17); and

WHEREAS, Government Code Sections 65402(a) and (c) of the State of California requires that, prior to the disposal of real property, findings be made by the Planning Commission as to the conformity with the General Plan; and

WHEREAS, the matter for the disposition of the six (6) parcels has been submitted to the Planning Commission for its review.

NOW, THEREFORE, BE IT RESOLVED, the Planning Commission of the Town of Apple Valley, California, does hereby resolve, order and determine as follows:

Section 1. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. The six (6) parcels are no longer needed by the Town to be the sites of public works and animal control facilities or for any other use. Therefore, the disposition of the six (6) parcels for future development is appropriate for the existing commercial areas and that they are in conformance with the Land Use Element of the General Plan.

Section 3. The six (6) surplus parcels can now be developed to the character of the surrounding areas and these properties can now be removed from the Town's holdings and reduce the Town's maintenance costs and liability.

Section 4. The Planning Commission of the Town of Apple Valley does hereby resolve and find that the location, purpose, and extent of the disposition of the six (6) Town owned surplus parcels is in conformance with the goals, objectives and policies of the General Plan, as specifically set forth below:

1. **Land Use Element Objective** - The Land Use Element establishes the vision of Apple Valley for its long-term development. The Town has carefully reviewed development patterns, and made changes to the Land Use Element where it felt that the historic pattern may need redirection. This Element reflects the Town's core values as they relate to long-term development activity. It focuses on the protection and enhancement of existing neighborhoods, and establishes goals, policies and programs to assure that development in

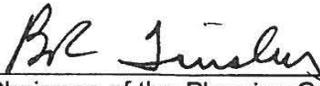
the future enhances what already exists in Town. The proposed sale of the six (6) surplus parcels that will put the parcels to development uses consistent with the existing development in the Town. The parcels have been determined to not be necessary for the Town's use.

2. Service Commercial (C-S) General Plan Designation – The C-S designation is assigned to lands in “The Village” of the Town, and is intended as a transition designation allowing commercial and industrial land uses on a smaller scale. Its location in an established area of Town necessitates flexibility in development standards, due to existing development and infrastructure constraints. Land uses in this designation include vehicle sales and service; lumber, home repair and building supply, general retail, warehousing and manufacturing uses completely contained within an enclosed structure. There is no minimum size for project sites in this designation, but assemblage of smaller parcels is encouraged. The proposed sale of these six (6) surplus parcels may result in the sale of the parcels to individuals or groups that will put the parcels to development uses consistent with the existing development and infrastructure constraints in the area. The parcels have been determined to not be necessary for the Town's use.
3. Land Use Element Goal 2 - A well planned, orderly development pattern that enhances community values, and assures development of adequate infrastructure.
 - a. *Land Use Element Policy 2.A* - The Town shall maintain a land use map that assures a balance of residential, commercial, industrial, open space and public lands.
4. The proposed sale of these six (6) surplus parcels allows for eventual commercial development and use that enhances the Town's community values and assures the development of adequate infrastructure.
5. Land Use Element Goal 6 - Commercial development shall strengthen the local economy and enhance the quality of life.
 - a. *Land Use Element Policy 6.B* - The Town shall promote commercial and industrial development that are capable of strengthening the local economy and enhancing the quality of life of Town residents.
 - b. The proposed sale of these six (6) surplus parcels may allow for commercial development that will strengthen the local economy and enhance the quality of life. The proposed sale allows for commercial development opportunities that will permit the surrounding area to develop to its full potential.

Section 5. The proposed project is categorically exempt pursuant to Section 15312, Class 12 of the California Environmental Quality Act (CEQA) which allows for the sale of surplus government property.

NOW, THEREFORE BE IT RESOLVED, that the Planning Commission hereby reports that the sale of six (6) parcels (Assessor Parcel Numbers: 3087-382-15 thru 17 and 3087-382-19 thru 21), as shown on Exhibit “A”, attached hereto and made a part hereof is in conformance with the Town of Apple Valley General Plan.

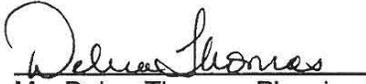
Approved and Adopted by the Planning Commission of the Town of Apple Valley this 18th day of September, 2013.



Acting Chairman of the Planning Commission

ATTEST:

I, Debra Thomas, Secretary to the Planning Commission of the Town of Apple Valley, California, do hereby certify that the foregoing resolution was duly and regularly adopted by the Planning Commission at a regular meeting thereof, held on the 18th day of September, 2013 by the following vote, to-wit:



Ms. Debra Thomas, Planning Commission Secretary

Ms. Debra Thomas, Planning Commission Secretary

AYES: COMMISSIONER QUALLS, SHoup AND TINSLEY

NOES:

ABSENT: VICE-CHAIRMAN KALLEN AND CHAIRMAN LAMOREAUX

ABSTAIN:

