

TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** June 23, 2015

From: Dennis Cron, Assistant Town Manager **Item No:** 7

Subject: AUTHORIZE ASSISTANT TOWN MANAGER OF FINANCE TO DISPOSE OF SURPLUS PROPERTY LOCATED AT 22411 HIGHWAY 18 (Apns 3087-382-15, 3087-382-16, 3087-382-17) IN CONFORMANCE WITH THE PREVIOUSLY APPROVED COMMERCIAL LEASE AND OPTION TO PURCHASE AGREEMENT WITH KELLEY'S UNDERGROUND CONSTRUCTION

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

That the Town Council:

1. Authorize the Assistant Town Manager of Finance to dispose of surplus property located at 22411 Highway 18 (APNs 3087-382-15, 3087-382-16, 3087-382-17) in conformance with the previously approved Commercial Lease and Option to Purchase Agreement with Kelley's Underground Construction and take any further actions necessary to carry out the sale.
2. That the Town Council authorize Lee and Associates to complete the sale and close of escrow for the property located at 22411 Highway 18.

SUMMARY:

The Town entered into a Commercial Lease and Option to Purchase Agreement ("Agreement") with Kelley's Underground Construction ("Kelley's") dated March 1, 2013. The Kelley's have been leasing the property since that date and the Agreement included an option to purchase the property. The Kelley's have informed the Town that they are interested in moving forward with the purchase at this time. If approved by council, the sale would occur earlier than the end of the lease term which is May 31, 2016.

The Kelley's had an appraisal performed through the broker financing their loan as a requirement by the bank and the Town had an appraisal performed by Integra Realty Resources. The appraisal the Kelley's had performed has the property valued at \$500,000 and the appraisal the Town had performed has the property valued at \$420,000. The appraisals do not specifically consider the value relating to any tenant improvements the Kelley's have made while leasing the property. Under the terms of the Agreement, appropriate tenant improvements made by the Kelley's shall be credited toward the purchase price of the property. The purchase price will also be adjusted to credit twenty-five (25%) percent of the base rent paid to date and through the closing date, as stated in the Agreement. The Town and the Kelley's have mutually agreed that the final sales price shall split the difference between the two (2) appraisals, which will set the sales price of the former Public Works Facility property at \$460,000 before adjustment as indicated.

Lee and Associates is the real estate brokerage firm that was authorized by the Town and used to market this property for sale. As such, Lee and Associates will be handling the sale and escrow on behalf of the Town. The Town is required to pay Lee and Associates a 4% commission on the final sale price in accordance with the prior engagement.

BACKGROUND:

The Town initially purchased the property to serve as the Town's Public Works/Wastewater Department maintenance yard. On May 8, 2012, the Town Council authorized staff to list the property for sale/lease purchase and Lee and Associates listed the property on behalf of the Town. On March 1, 2013, the Town entered into a Commercial Lease Agreement and Option to Purchase with Kelley's Underground Construction, contingent upon the Town Council declaring the property "surplus". On October 8, 2013, the Town Council approved Resolution No. 2013-010, approving the disposition of surplus property located at 22411 Highway 18 (APNs 3087-382-15, 3087-382-16, 3087-382-17).

FISCAL IMPACT:

The Town will receive the adjusted sales price of the property and pay to Lee and Associates a 4% sales commission out of the proceeds of the sale as stated in the Agreement.

ATTACHMENTS:

Commercial Lease Agreement & Option to Purchase

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 expensed 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.

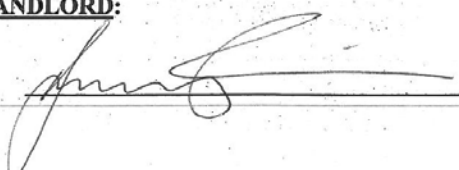
35. Commission- The Town of Apple Valley will be responsible to pay Lee & Associates 4% of the agreed lease amount based on year 1 lease amount. The total commission amount will be \$3,250.36. ½ of the commission amount will be paid upon lease execution and ½ of the commission amount will be due upon 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 IN REPLY KELLEY
By: 3/1/13

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