




TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** July 11, 2017
From: Marc Puckett **Item No:** 9
Assistant Town Manager
Subject: RESOLUTION APPROVING THE REFUNDING OF THE APPLE VALLEY PUBLIC FINANCE AUTHORITY LEASE REVENUE BONDS (TOWN HALL ANNEX PROJECT) 2007 SERIES A AND FINANCING THE COST OF ACQUIRING CERTAIN VEHICLES AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO

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

RECOMMENDED ACTION:

That the Town Council:

- 1) Conduct the public hearing under the requirements of the Internal Revenue Code of 1986, as amended (the "Code").
- 2) Adopt Resolution Number 2017-25 of the Town of Apple Valley approving the form and authorizing the execution of certain lease financing documents in connection with the refunding of the Apple Valley Public Finance Authority Lease Revenue Bonds (Town Hall Annex Project) 2007 Series A and financing the cost of acquiring certain vehicles and authorizing and directing certain actions with respect thereto.

SUMMARY:

The Town and Public Finance Authority issued Series A Lease Revenue Bonds in the amount of \$11,355,000 in 2007. These bonds were issued for the construction of the Town Hall Annex commonly referred to as the Development Services building. Refunding of these bonds at an interest rate of 2.90% will allow the Town to save approximately \$650,000 in present value savings due to prevailing interest rates in the municipal bond market. These savings will allow the Town to reduce the debt service payments on the refunded debt outstanding and finance the acquisition of certain vehicles with such savings.

BACKGROUND:

The prior bonds were originally issued in the amount of \$11,355,000. Proceeds of the prior bonds were used to assist the Town in financing certain capital improvement projects including the construction of the Development Services building (the prior project). Due to prevailing interest rates and for other reasons, it is desirable to prepay the prior bonds at this time and cause the redemption of the prior bonds and to finance the acquisition of vehicles and to implement a lease

financing for such purposes.

To facilitate these actions the Town will enter into a lease agreement, site and facility lease, termination agreement and a letter agreement for purchase and rate lock as further defined within the resolution and attachments to the staff report. The principal components of such lease payments under the lease agreement shall not exceed a maximum of \$8,600,000. The annual interest rate under the lease agreement will not exceed 2.90% over the remaining term and the final maturity of the lease agreement will not extend beyond September 1, 2027, the original final maturity on the prior bonds. The Town is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code").

In order for all or a portion of the Bonds to qualify as tax-exempt bonds, the town of Apple Valley must conduct a public hearing providing the members of the community an opportunity to speak in favor of or against the refunding of the referenced tax-exempt bonds. Prior to such hearing, reasonable notice was provided to the members of the community.

FISCAL IMPACT:

Refunding of the 2007 Series A Lease Revenue Bonds will allow the Town to achieve present value savings of approximately \$650,000 due to prevailing interest rates. The proceeds from the refunding bonds and these savings will be used to reduce the debt service payments on the refunded debt and finance the acquisition of certain vehicles. The Town can issue the refunding bonds at 2.9%. The final maturity of the prior bonds will not be extended by this refunding.

CONCLUSION:

In light of the foregoing, staff recommends approval of the recommended actions, adoption of the resolutions of the Town and PFA, refunding of the prior bonds, and issuance of refunding bonds as described herein.

- Attachments: 1) Resolution Number 2017-25 of the Town of Apple Valley
2) Letter Agreement for Purchase and Rate Lock
3) Lease Agreement
4) Site and Facility Lease
5) Termination Agreement
6) Assignment Agreement

ATTACHMENT 1
TOWN OF APPLE VALLEY

RESOLUTION NO. 2017-24

RESOLUTION APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS IN CONNECTION WITH THE REFUNDING OF THE APPLE VALLEY PUBLIC FINANCING AUTHORITY LEASE REVENUE BONDS (TOWN HALL ANNEX PROJECT) 2007 SERIES A AND FINANCING THE COST OF ACQUIRING CERTAIN VEHICLES AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO

RESOLVED, by the Town Council (the "Council") of the Town of Apple Valley (the "Town"), as follows:

WHEREAS, the Apple Valley Public Financing Authority (the "Authority") has heretofore issued and delivered \$11,355,000 of the Authority's Lease Revenue Bonds (Town Hall Annex Project) 2007 Series A (the "Prior Bonds"), pursuant to the terms of an Indenture, dated as of July 1, 2007 (the "Prior Indenture"), by and between the Authority and U.S. Bank National Association, as trustee (the "Prior Trustee");

WHEREAS, the Prior Bonds are currently outstanding in the principal amount of \$7,465,000;

WHEREAS, the proceeds of the Prior Bonds were used by the Authority to (i) assist the Town in financing certain capital projects, including the construction of an annex to the Town Hall (the "Prior Project"), (ii) purchase a debt service reserve surety bond for deposit in the reserve account for the Prior Bonds, and (iii) pay the costs of issuance of the Prior Bonds;

WHEREAS, the payment of the principal of and interest on the Prior Bonds is payable from certain revenues consisting primarily of certain rental payments ("Prior Base Rental Payments") made by the Town to the Authority pursuant to a Lease Agreement, dated as of July 1, 2007 (the "Prior Lease"), by and between the Authority and the Town as consideration for the Authority subleasing the Prior Project to the Town;

WHEREAS, the Town has determined at this time, due to prevailing interest rates in the municipal bond market and for other reasons, to (a) prepay the Prior Base

Rental Payments under the Prior Lease and to cause the redemption of the Prior Bonds and (b) to finance the acquisition of vehicles for the Town (the “2017 Project”) and to implement a lease financing for such purposes;

WHEREAS, it is in the public interest and for the public benefit that the Town authorize and direct execution of the Lease Agreement (hereinafter defined) and certain other financing documents in connection therewith; and

WHEREAS, the documents below specified have been filed with the Town and the members of the Council, with the aid of its staff, have reviewed said documents;

NOW, THEREFORE, it is hereby DECLARED and ORDERED, as follows:

Section 1. The Council hereby approves the prepayment of the Prior Base Rental Payments under the Prior Lease and the redemption of the Prior Bonds and the financing of the 2017 Project.

Section 2. A letter agreement for purchase and rate lock, by and among a financial institution selected by the Town Manager (the “Purchaser”), the Town and the Public Property Financing Corporation of California, a California nonprofit public benefit corporation (the “Corporation”), whereby the Purchaser agrees to acquire the rights of the Corporation under the Lease Agreement (other than certain reserved rights), including, but not limited to, the right to receive lease payments to be made by the Town under the Lease Agreement, and the rights of the Corporation under the Site and Facility Lease (hereinafter defined), in the form on file with the Town Clerk, be and is hereby approved, and the Mayor, the Mayor Pro Tem or the Town Manager, or the designee thereof (each, a “Designated Officer”), are hereby authorized and directed to execute said document, with such changes, insertions and omissions as may be approved by such official;

Section 3. The below-enumerated documents, in the forms on file with the Town Clerk, be and are hereby approved, and any Designated Officer is hereby authorized and directed to execute said documents, with such changes, insertions and omissions as may be approved by such official, and the Town Clerk is hereby authorized and directed to attest to such official’s signature:

(a) a site and facility lease, by and between the Town, as lessor, and the Corporation, as lessee (the “Site and Facility Lease”), pursuant to which the Town will lease certain existing real property and the improvements thereon (the “Property”) to the Corporation;

(b) a lease agreement, by and between the Corporation, as sublessor, and the Town, as sublessee (the "Lease Agreement"), pursuant to which the Corporation will lease the Property back to the Town and pursuant to which the Town will agree to make semi-annual lease payments (the "Lease Payments"), so long as the principal component of the Lease Payments under the Lease Agreement does not exceed \$8,600,000, the annual interest rate with respect to the principal component of the Lease Payments under the Lease Agreement does not exceed 2.90% and the term of the Lease Agreement, except in the case of an abatement under the Lease Agreement, does not extend beyond September 1, 2027;

(c) a termination agreement, by and among the Town, the Prior Trustee, relating to the termination of recorded documents with respect to the Prior Bonds; and

(d) a letter agreement, by and among the Town, the Corporation and the Purchaser, pursuant to which the Purchaser agrees to acquire the rights of the Corporation under the Lease Agreement (other than certain reserved rights).

Section 4. The Mayor, the Mayor Pro Tem, the Town Manager, the Town Clerk, any deputy to the Town Clerk and all other appropriate officials of the Town are hereby authorized and directed to execute such other agreements, documents and certificates as may be necessary to effect the purposes of this resolution and the financing herein authorized.

Section 5. This Resolution shall take effect upon its adoption by the Council.

PASSED APPROVED AND ADOPTED THIS 11TH DAY OF JULY 2017.

Mayor

ATTEST:

Town Clerk

ATTACHMENT 2

LETTER AGREEMENT FOR PURCHASE AND RATE LOCK

July __, 2017

Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307
Attention: Town Manager

Public Property Financing Corporation of California
2945 Townsgate Road, Suite 200
Westlake Village, CA 91361
Attention: President

Re: \$8,600,000 Lease Agreement, dated as of July 1, 2017, by and between the Public Property Financing Corporation of California and the Town of Apple Valley, assigned to Capital One Public Funding, LLC, a New York limited liability company

Ladies and Gentlemen:

The undersigned, Capital One Public Funding, LLC, a New York limited liability company (the "Assignee"), offers, upon the following terms, to acquire (a) the rights, title and interest of Public Property Financing Corporation of California (the "Corporation") under the Lease Agreement (hereinafter defined), including its rights to receive Lease Payments to be made by the Town of Apple Valley (the "Town") under the Lease Agreement, dated as of July 1, 2017 (the "Lease Agreement"), by and between the Corporation and the Town; provided that the Corporation's rights to indemnification and payment or reimbursement for any costs or expenses thereunder have been retained by the Corporation to the extent such rights accrue to the Corporation and shall have been assigned to the Assignee, as assignee, to the extent such rights accrue to the Assignee, by entering into an Assignment Agreement, dated as of July 1, 2017 (the "Assignment Agreement"), with the Corporation; and (b) except for the Corporation's obligation under Section 4 thereof, the rights, title and interest of the Corporation under the Site and Facility Lease, dated as of July 1, 2017 (the "Site and Facility Lease"), by and between the Town and the Corporation.

Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Lease Agreement.

Section 1. Purchase and Purchase Price; Terms of Corporation's Obligations. The Town and the Corporation agree to execute and deliver the Site and Facility Lease and the Lease Agreement, and the Assignee agrees to purchase the Corporation's rights, title and interest under the Lease Agreement, as described more specifically above and in the Assignment Agreement, at an aggregate purchase price of \$8,600,000. The Lease Payments under the Lease Agreement and the interest rates applicable thereto shall be as shown in Exhibit A hereto.

The Town acknowledges that:

(a) The Assignee is acting in this transaction solely for its own loan account and not as a fiduciary for the Town or in the capacity of broker, dealer, municipal securities underwriter, placement agent, or municipal advisor.

(b) The Assignee has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the Town (including to any financial advisor or placement agent engaged by the Town) with respect to the structuring of the financing or the execution and delivery of the Lease Agreement.

(c) The Assignee has no fiduciary duty pursuant to section 15B of the Securities Exchange Act of 1934, as amended, to the Town with respect to the transactions relating to the structuring of the financing or the execution and delivery of the Lease Agreement and the discussions, undertakings, and procedures leading thereto.

(d) Each of the Town and its placement agent, if any, has sought and shall seek and obtain financial, legal (including securities law), tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters) with respect to the lease financing transaction from its financial, legal, and other advisors (and not the Assignee or its affiliates) to the extent that the Town or its placement agent, if any, desires to, should, or needs to obtain such advice.

(e) The Assignee has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to the Town's placement agent, if any, or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to the Town's financial advisor or placement agent, if any, with respect to any such matters.

(f) The transactions between the Town and the Assignee are an arm's-length, commercial loan transaction in which the Assignee is acting and has acted solely as a principal and for its own interest, and the Assignee has not made

recommendations to the Town with respect to the transactions relating to the Lease Agreement.

Section 2. Use of Funds. The purchase price paid by the Assignee shall be used by the Corporation to pay the Town an advance rental of \$8,600,000, pursuant to Section 4 of the Site and Facility Lease. The Town shall use such advance rental payment received from the Corporation to (a) prepay certain base rental payments under a Lease Agreement, dated as of July 1, 2007, between the Apple Valley Public Financing Authority (the "Authority") and the Town, and to concurrently redeem the Authority's Lease Revenue Bonds (Town Hall Annex Project) 2007 Series A (the "Prior Bonds"), issued pursuant to an Indenture, dated as of July 1, 2007 (the "Prior Indenture"), between the Authority and U.S. Bank National Association, as trustee (the "Prior Trustee") the proceeds of which facilitated the construction of an annex to the Town Hall and certain other purposes; (b) finance the acquisition of vehicles for the Town (the "2017 Project"); and (c) pay the costs related to the preparation, execution and delivery of the Lease Agreement, the Site and Facility Lease, the Assignment Agreement and documents related to the redemption of the Prior Bonds and the financing of the 2017 Project.

Section 3. Disposition of Proceeds.

(a) On the Closing Date, the Assignee shall transfer, via wire transfer, to the Prior Trustee, the amount of \$_____ to be deposited in the Lease Payment Fund established under the Prior Indenture and applied to redeem the Prior Bonds on September 1, 2017. Wire information will be provided prior to the Closing Date.

(b) On the Closing Date, the Assignee shall transfer, via wire transfer, to the Town, the amount of \$_____ to be deposited by the Town in a segregated account and applied to the payment of the costs of the 2017 Project.

(c) On the Closing Date, the Assignee shall transfer, via wire transfer (wire information to be provided to the following recipients, for payment of the costs of the financing transaction, as follows:

(i) to Kutak Rock LLP, as a Special Counsel, \$_____ (invoice with wire information to be provided prior to the Closing Date);

(ii) to the Prior Trustee, \$_____ (invoice with wire information to be provided prior to the Closing Date);

(iii) to Chicago Title Company, as title insurer, \$_____ (invoice with wire information to be provided prior to the Closing Date); and

(iv) to the Town, \$_____, to be applied to the payment of the fee of the California Debt and Investment Advisory Commission and to

the Town's costs of the transaction. Wire instructions to be provided prior to the Closing Date.

Section 4. Closing. At 8:00 a.m., California Time, on July __, 2017, or at such other time or on such earlier or later date as the Assignee, the Corporation and the Town mutually agree upon (the "Closing Date"), the Town will deliver (or cause to be delivered) the Site and Facility Lease and the Lease Agreement executed by the Town and the Corporation, and the Assignment Agreement executed by the Corporation and the Assignee, and the Assignee will pay the purchase price for the Corporation's rights, title and interest in the Site and Facility Lease and the Lease Agreement as set forth in Section 1 hereof in federal or other immediately available funds.

Section 5. Representations and Warranties of the Town. The Town represents and warrants to the Assignee that:

(a) The Town is a municipal corporation and general law city organized and existing under the Constitution and the laws of the State of California (the "State"), and has all necessary power and authority to enter into and perform its duties under this Agreement, the Site and Facility Lease and the Lease Agreement (collectively, the "Town Documents").

(b) None of the execution and delivery of the Town Documents, compliance with the provisions on the Town's part contained therein, nor the consummation of any other of the transactions herein and therein contemplated, nor the fulfillment of the terms hereof and thereof, materially conflicts with or constitutes a material breach of or default under nor materially contravenes any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Town is a party or is otherwise subject, nor does any such execution, delivery, adoption or compliance result in a security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Town under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided by the Town Documents.

(c) The Town Documents have been duly authorized by the Town, and, assuming due authorization, execution and delivery by the other parties thereto, will constitute legal, valid and binding agreements of the Town enforceable in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles if sought and by the limitations on legal remedies imposed on actions against cities in the State of California.

(d) There is no consent, approval, authorization or other order of, or filing with, or certification by, any regulatory agency having jurisdiction over the Town

required for the execution and delivery of the Town Documents or the consummation by the Town of the other transactions contemplated by the Town Documents.

(e) To the best knowledge of the Town, there is, and on the Closing Date (as hereinafter defined) there will be, no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened against the Town to restrain or enjoin the payments to be made pursuant to the Lease Agreement, or in any way contesting or affecting the validity of the Town Documents or the authority of the Town to approve this Agreement, or enter into the Town Documents or contesting the powers of the Town to enter into or perform its obligations under any of the foregoing or in any way contesting the powers of the Town in connection with any action contemplated by this Agreement or to restrain or enjoin the payment of Lease Payments, nor is there any basis for any such action, suit, proceeding or investigation.

(f) By official action of the Town prior to or concurrently with the execution hereof, the Town has duly authorized and approved the execution and delivery of, and the performance by the Town of the obligations on its part contained in, the Town Documents and the consummation by it of all other transactions contemplated by this Agreement.

(g) The Town is not in breach of or default under any material applicable law or administrative regulation of the State of California or the United States or any material applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Town is a party or is otherwise subject and in connection with which the Town is obligated to make payments from its own funds, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument the consequence of which could be to materially and adversely affect the performance of the Town under the Town Documents.

(h) The Town will deliver all opinions, certificates, letters and other instruments and documents reasonably required by the Assignee and this Agreement.

(i) Any certificate of the Town delivered to the Assignee shall be deemed a representation and warranty by the Town to the Assignee as to the statements made therein.

(j) As of the time of acceptance hereof and as of the Closing Date the Town does not and will not have outstanding any indebtedness which is secured by a lien on the Town's general fund except as disclosed to the Assignee.

(k) The financial statements of, and other financial information regarding the Town delivered to the Assignee fairly present the financial position and results of the operations of the Town as of the dates and for the periods therein set forth and the audited financial statements have been prepared in accordance with generally accepted accounting principles consistently applied.

(l) Between the date of this Agreement and the date of Closing Date, the Town will not, without the prior written consent of the Assignee, offer or issue any certificates, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, secured by a lien on the Town's general fund.

(m) The Town acknowledges that Assignee will treat the acquisition of the Corporation's rights in the Lease Agreement as a loan.

Section 6. Conditions Precedent to the Closing. Other conditions precedent to the Closing are:

(a) The delivery by the Town of a certified copy of (i) the resolution of the Town Council authorizing the execution and delivery by the Town of the Site and Facility Lease and the Lease Agreement, together with an incumbency certificate of the Town; and (ii) the resolution of the Board of Directors of the Corporation authorizing the execution and delivery by the Corporation of the Site and Facility Lease, the Lease Agreement and the Assignment Agreement, together with an incumbency certificate of the Corporation;

(b) The delivery by the Town of the fully executed Site and Facility Lease, Lease Agreement and Assignment Agreement in form and substance acceptable to the Assignee;

(c) The execution and delivery by the Town of an Internal Revenue Service Form 8038-G in a form acceptable to Special Counsel and the Assignee;

(d) delivery of a legal opinion addressed to the Town, with a reliance letter to the Assignee, dated the Closing Date, of Kutak Rock LLP, as Special Counsel, with respect to (i) the validity and enforceability of the Lease Agreement, the Site and Facility Lease, and the Assignment Agreement by and against the Town and the Corporation (as applicable), (ii) the tax-exempt status of the interest component of the Lease Payments, and (iii) such other matters as may be requested by the Assignee in form and substance acceptable to the Assignee;

(e) the delivery of a certificate dated the Closing Date and signed by the Town Manager, or such other officer of the Town as the Town Council may approve, to the effect that:

(i) to the best knowledge of the Town, there are no actions or proceedings against the Town pending and notice of which has been served on the Town or threatened that materially adversely affect the Town's ability to pay the Lease Payments or to perform its obligations under the Site and Facility Lease and Lease Agreement;

(ii) the representations and warranties of the Town contained in this Agreement, the Site and Facility Lease and the Lease Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; and

(iii) the Town acknowledges receipt from the Assignee, on behalf of the Corporation, of the advance rental payment specified in Section 4 of the Site and Facility Lease;

(f) the delivery by the Town of a title policy for the property that is the subject of the Site and Facility Lease and Lease Agreement in form acceptable to the Assignee;

(g) the execution and delivery by the Town of a certificate as to arbitrage;

(h) the delivery by the Assignee of a letter of representations in form and substance as attached hereto as Exhibit B; and

(i) such other documents as may be reasonably requested by the Assignee.

Section 7. Events Permitting the Assignee to Terminate. The Assignee may terminate its obligation to purchase the Corporation's rights, title and interest under the Site and Facility Lease and the Lease Agreement before the Closing Date if any of the following occurs:

(a) any legislative, executive or regulatory action (including the introduction of legislation) or any court decision that, in the judgment of the Assignee, casts sufficient doubt on the legality of or the tax-exempt status of the interest component of obligations such as those represented by the Lease Agreement and the Lease Payments so as to materially impair the marketability or to materially reduce the market price of such obligations, in the reasonable opinion of the Assignee;

(b) any action by the Securities and Exchange Commission or a court that would require registration of the Lease Agreement under the Securities Act of 1933, as amended;

(c) any event occurs or becomes known that has a material adverse effect on the financial condition of the Town or on the ability of the Town or the

Corporation to perform under the Site and Facility Lease, the Lease Agreement or the Assignment Agreement; or

(d) any of the representations or warranties of the Town made in this Letter Agreement for Purchase are determined by the Assignee to be untrue or materially inaccurate.

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EXHIBIT A

SCHEDULE OF LEASE PAYMENTS

Lease Payment Date	Principal Component	Interest Component*	Total Lease Payment	Annual Lease Payment
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* The interest component of the Lease Payments shall be calculated based on an interest rate of 2.90% per annum.

EXHIBIT B

FORM OF LETTER OF REPRESENTATIONS

Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307
Attention: Town Manager

Public Property Financing Corporation of California
2945 Townsgate Road, Suite 200
Westlake Village, CA 91361
Attention: President

Kutak Rock LLP
777 South Figueroa Street, Suite 4550
Los Angeles, CA 90017

Re: \$8,600,000 Lease Agreement, dated as of July 1, 2017, by and between the Public Property Financing Corporation of California and the Town of Apple Valley, assigned to Capital One Public Funding, LLC, a New York limited liability company

Ladies and Gentlemen:

The undersigned, Capital One Public Funding, LLC, a New York limited liability company (the "Assignee"), has agreed to acquire the rights, title and interest of Public Property Financing Corporation of California (the "Corporation") under the Lease Agreement, dated as of July 1, 2017 (the "Lease Agreement"), by and between the Town of Apple Valley (the "Town") and the Corporation, including its rights to receive lease payments to be made by the Town under the Lease Agreement (collectively, the "Lease Obligation"), and the Site and Facility Lease, dated as of July 1, 2017 (the "Site Lease"), between the Town and the Corporation. In connection with such purchase, the Assignee hereby agrees and certifies to the Corporation and the Town that:

1. The Assignee has full power and authority to carry on its business as now conducted, deliver this letter and make the representations and certifications contained herein.

2. The Assignee is a lender that regularly extends credit to state and local government by making loans the repayment obligations under which are evidenced by obligations such as the Lease Obligation; has knowledge and experience in financial and business matters that make it capable of evaluating the Town, the Lease Obligation, and the risks associated with the extension of credit evidenced by the Lease Obligation; has the ability to bear the economic risk of extending the credit evidenced by the Lease Obligation; and is a limited liability company engaged in the primary business of extending credit and making loans to state and local governments and non-profit entities and has total assets in excess of \$1 billion. The Assignee is not acting as a broker, dealer,

municipal securities underwriter, municipal advisor or fiduciary in connection with its extension of credit evidenced by the Lease Obligation.

3. The Assignee has conducted its own investigation of the financial condition of the Town, the purpose for which the Lease Obligation is being executed and delivered and of the security for the payment of the principal and interest components of the rental payments on the Lease Obligation, and has obtained such information regarding the Lease Obligation and the Town and its operations, financial condition and financial prospects as the Assignee deems necessary to make an informed lending decision with respect to its extension of credit evidenced by the Lease Obligation.

4. The Assignee is extending credit to the Town evidenced by the Lease Obligation and is acquiring the Lease Obligation for its own account and without any present intention of distributing, assigning, or selling any interest therein or portion thereof, provided that the Assignee retains the right at any time to dispose of the Lease Obligation or any interest therein or portion thereof, but agrees that any such sale, transfer or distribution by the Assignee shall be made, in accordance with applicable law and the provisions of the Lease Agreement. The Town has furnished to the Assignee all the information which the Assignee has requested of the Town as a result of the Assignee having attached significance thereto in making its decision with respect to the Lease Obligation, and the Assignee has had the opportunity to ask questions of and receive answers from knowledgeable individuals concerning the Town and the Lease Obligation.

5. The Assignee acknowledges that (a) the Lease Obligation (i) has not been registered under the Securities Act of 1933, as amended, (ii) has not been registered or otherwise qualified for sale under the securities laws of any state, and (iii) will not be listed on any securities exchange and (b) there is no established market for the Lease Obligation and that none is likely to develop. The Assignee understands and acknowledges that (a) its extension of credit evidenced by the Lease Obligation is not intended to be subject to the requirements of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended, and (b) in connection with the Assignee's extension of credit evidenced by the Lease Obligation, the Town has not prepared or caused to be prepared, any official statement, private placement memorandum or other offering document.

6. The Assignee is acting solely for its own account and not as a fiduciary for the Town or in the capacity of broker, dealer, placement agent, municipal securities underwriter, municipal advisor, or fiduciary. The Assignee has not provided, and will not provide, financial, legal (including securities law), tax, accounting, or other advice to or on behalf of the Town (including to any financial advisor or any placement agent engaged by the Town) with respect to the structuring or delivery of the Lease Obligation. The Assignee has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Town with respect to the transactions relating to the structuring or delivery of the Lease Obligation and the discussions, undertakings, and procedures leading thereto. Each of the Town, its financial advisor (if any), and its placement agent has sought and shall seek and obtain financial, legal (including securities law), tax, accounting, and other advice (including as it relates to structure, timing, terms, and similar matters and compliance with legal requirements applicable to such parties) with respect

to the Lease Obligation from its own financial, legal, tax, and other advisors (and not from the undersigned or its affiliates) to the extent that the Town, its financial advisor (if any), or its placement agent desires to, should, or needs to obtain such advice. The Assignee expresses no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to the Town's financial advisor (if any) or placement agent, or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to the Town's financial advisor (if any) or placement agent, with respect to any such matters. The transactions between the Town and the Assignee are arm's-length, commercial transactions in which the Assignee is acting and has acted solely as a principal and for its own interest, and the Assignee has not made recommendations to the Town with respect to the transactions relating to the Lease Obligation.

CAPITAL ONE PUBLIC FUNDING, LLC, a
New York limited liability company

By _____
, Vice President

ATTACHMENT 3
LEASE AGREEMENT

by and between

PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA,
as Sublessor,

and

TOWN OF APPLE VALLEY,
as Sublessee,

Dated as of July 1, 2017

Table of Contents

	Page
ARTICLE I	
DEFINITIONS; RULES OF INTERPRETATION	
Section 1.01. Definitions.....	2
Section 1.02. Interpretation	7
ARTICLE II	
COVENANTS, REPRESENTATIONS AND WARRANTIES	
Section 2.01. Covenants, Representations and Warranties of the Town	7
Section 2.02. Covenants, Representations and Warranties of the Corporation	10
ARTICLE III	
DEPOSIT AND APPLICATION OF FUNDS	
Section 3.01. Deposit of and Application of Funds	12
ARTICLE IV	
LEASE OF PROPERTY; LEASE PAYMENTS	
Section 4.01. Sublease of Property by the Corporation Back to the Town	12
Section 4.02. Term	12
Section 4.03. Lease Payments.....	12
Section 4.04. Quiet Enjoyment.....	15
Section 4.05. Title.....	15
Section 4.06. Substitution of Property	16
ARTICLE V	
MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS	
Section 5.01. Maintenance, Utilities, Taxes and Assessments	16
Section 5.02. Modification of Property.....	17
Section 5.03. Public Liability Insurance	17
Section 5.04. Casualty Insurance.....	17
Section 5.05. Rental Interruption Insurance	18
Section 5.06. Workers' Compensation Insurance	18
Section 5.07. Recordation Hereof; Title Insurance.....	18
Section 5.08. Insurance Net Proceeds; Form of Policies	18
Section 5.09. Installation of Town's Personal Property	19
Section 5.10. Liens.....	19
Section 5.11. Advances.....	19
Section 5.12. Environmental Covenants	19
Section 5.13. Town Consent to Assignment Agreement	20
ARTICLE VI	
EMINENT DOMAIN; USE OF NET PROCEEDS	
Section 6.01. Eminent Domain.....	20

Table of Contents
(continued)

Page

Section 6.02.	Application of Net Proceeds	20
Section 6.03.	Abatement of Lease Payments in the Event of Damage or Destruction	22

ARTICLE VII

OTHER COVENANTS OF THE TOWN

Section 7.01.	Disclaimer of Warranties	23
Section 7.02.	Access to the Property; Grant and Conveyance of Right of Entry	23
Section 7.03.	Release and Indemnification Covenants	23
Section 7.04.	Assignment by the Corporation	24
Section 7.05.	Assignment and Subleasing by the Town.....	24
Section 7.06.	Amendment of Lease Agreement.....	25
Section 7.07.	Tax Covenants	26
Section 7.08.	Financial Statements; Budgets; Other Information	27
Section 7.09.	Records and Accounts	27
Section 7.10.	Observance of Laws and Regulations	28
Section 7.11.	Notices	28
Section 7.12.	Limitation on Obligations Secured by the General Fund	28

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01.	Events of Default Defined	29
Section 8.02.	Remedies on Default	30
Section 8.03.	No Remedy Exclusive	31
Section 8.04.	Agreement To Pay Attorneys' Fees and Expenses	31
Section 8.05.	No Additional Waiver Implied by One Waiver.....	32
Section 8.06.	Assignee To Exercise Rights.....	32
Section 8.07.	Judicial Reference	32

ARTICLE IX

PREPAYMENT OF LEASE PAYMENTS

Section 9.01.	Security Deposit	33
Section 9.02.	Optional Prepayment.....	34
Section 9.03.	Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain.....	34

ARTICLE X

MISCELLANEOUS

Section 10.01.	Notices	34
Section 10.02.	Binding Effect	35
Section 10.03.	Severability	35
Section 10.04.	Net-net-net Lease.....	35
Section 10.05.	Further Assurances and Corrective Instruments	35
Section 10.06.	Execution in Counterparts	35

Table of Contents
(continued)

Page

Section 10.07. Applicable Law	35
Section 10.08. Captions	35
EXHIBIT A DESCRIPTION OF THE SITE	
EXHIBIT B DESCRIPTION OF THE FACILITY	
EXHIBIT C SCHEDULE OF LEASE PAYMENTS	

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease Agreement"), dated as of July 1, 2017, is by and between the **PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA**, a nonprofit, public benefit corporation organized and existing under the laws of the State of California, as lessor (the "Corporation"), and the **TOWN OF APPLE VALLEY**, a municipal corporation and general law city organized and existing under and by virtue of the laws of the State of California, as lessee (the "Town");

WITNESSETH:

WHEREAS, the Apple Valley Public Financing Authority (the "Authority") has heretofore issued and delivered \$11,355,000 of the Authority's Lease Revenue Bonds (Town Hall Annex Project) 2007 Series A (the "Prior Bonds"), pursuant to the terms of an Indenture, dated as of July 1, 2007 (the "Prior Indenture"), by and between the Authority and U.S. Bank National Association, as trustee (the "Prior Trustee"); and

WHEREAS, the Prior Bonds are currently outstanding in the principal amount of \$7,465,000; and

WHEREAS, the proceeds of the Prior Bonds were used by the Authority to (a) assist the Town in financing certain capital projects, including the construction of an annex to the Town Hall (the "Prior Project"); (b) purchase a debt service reserve surety bond for deposit in the reserve account for the Prior Bonds; and (c) pay the costs of issuance of the Prior Bonds; and

WHEREAS, the payment of the principal of and interest on the Prior Bonds is payable from certain revenues consisting primarily of certain rental payments ("Prior Base Rental Payments") made by the Town to the Authority pursuant to a Lease Agreement, dated as of July 1, 2007 (the "Prior Lease"), by and between the Authority and the Town as consideration for the Authority subleasing the Prior Project to the Town; and

WHEREAS, the Town has determined at this time, due to prevailing interest rates in the municipal bond market and for other reasons, to (a) prepay the Prior Base Rental Payments under the Prior Lease and to cause the redemption of the Prior Bonds; and (b) to finance the acquisition of vehicles for the Town (the "2017 Project") and to implement a lease financing for such purposes; and

WHEREAS, pursuant to that certain Site and Facility Lease, dated as of July 1, 2017 (the "Site and Facility Lease"), the Town has leased those certain parcels of real property situated in San Bernardino County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements thereon, more particularly described in Exhibit B hereto (the "Facility" and, with the Site, the "Property"), to the Corporation, all for the purpose of enabling the Town to (a) prepay the Prior Base Rental Payments under the Prior Lease and to cause the redemption of the Prior Bonds, and (b) to finance the 2017 Project; and

WHEREAS, the Corporation proposes to lease the Property back to the Town pursuant to this Lease Agreement and to assign all of its rights, title and interest in, to and under this Lease Agreement, including its right to receive lease payments under this Lease Agreement (the "Lease Payments"), its right to enforce payment of the Lease Payments and otherwise to enforce its interest and rights under this Lease Agreement in the event of a default hereunder by the Town and its rights under the Site and Facility Lease, to Capital One Public Funding, LLC, a New York limited liability company (the "Assignee"), pursuant to that certain assignment agreement, dated as of July 1, 2017, by and between the Corporation and the Assignee; and

WHEREAS, the Town and the Corporation have agreed to enter into this Lease Agreement providing for Lease Payments with an aggregate principal component in the amount of \$[Principal Amount] for the purpose of implementing the financing transactions described above;

NOW, THEREFORE, for and in consideration of the premises and the covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

Section 1.01. Definitions. All terms defined in this Section 1.01 have the meanings herein specified for all purposes of this Lease Agreement.

"Additional Payments" means the amounts specified as such in Section 4.03(b) of this Lease Agreement.

"Applicable Environmental Laws" means and shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 USC Sections 9601 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 USC Sections 6901 et seq.; the Federal Water Pollution Control Act, 33 USC Sections 1251 et seq.; the Clean Air Act, 42 USC Sections 7401 et seq.; the California Hazardous Waste Control Law ("HWCL"), California Health & Safety Code Sections 25100 et seq.; the Hazardous Substance Account Act ("HSAA"), California Health & Safety Code Sections 25300 et seq.; the Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), California Water Code Sections 1300 et seq.; the Air Resources Act, California Health & Safety Code Sections 3900 et seq.; the Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 et seq.; and the regulations under each thereof; and any other local, state, and/or federal laws or regulations, whether currently in existence or hereafter enacted, that govern:

- (a) the existence, cleanup, and/or remedy of contamination on property;

(b) the protection of the environment from spilled, deposited, or otherwise emplaced contamination;

(c) the control of hazardous wastes; or

(d) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

“Applicable Law” means (a) all applicable common law and principles of equity and (b) all applicable provisions of all (i) constitutions, statutes, rules, regulations and orders of all Governmental Authorities; (ii) Applicable Environmental Laws; (iii) applicable seismic building code requirements at the time of construction; and (iv) orders, decisions, judgments, writs, injunctions and decrees of all courts (whether at law or in equity) and arbitrators.

“Assignee” means (a) initially, [Bank], an [State] corporation, as assignee of all rights, title and interests of the Corporation hereunder; and (b) any other entity to whom the rights of the Corporation hereunder are assigned, including subsequent assignees of the Assignee.

“Assignment Agreement” means the Assignment Agreement, dated as of July 1, 2017, by and between the Corporation, as assignor, and the Assignee, as originally executed or as thereafter amended under any duly authorized and executed amendments thereto.

“Council” means the Town Council.

“Bond Counsel” means (a) Kutak Rock LLP, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income under Section 103 of the Tax Code.

“Business Day” means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in the State.

“Closing Date” means the date this Lease Agreement or a memorandum thereof is recorded in the office of the County Recorder of San Bernardino County, California.

“Contract” means any indenture, trust agreement, contract, agreement (other than this Lease Agreement), other contractual restriction, lease, mortgage or instrument.

“Corporation” means the Public Property Financing Corporation of California, a nonprofit, public benefit corporation, organized and existing under the laws of the State.

“Corporation Representative” means the President, the Vice President, the Executive Director or the Treasurer or the designee of any such official, or any other person authorized by resolution of the Corporation delivered to the Assignee to act on behalf of

the Corporation under or with respect to the Site and Facility Lease, the Lease Agreement and the Assignment Agreement.

“Determination of Taxability” means any determination, decision or decree by the Commissioner of Internal Revenue, or any District Director of Internal Revenue, or any court of competent jurisdiction, to the effect that an Event of Taxability shall have occurred; provided, however, that the Town shall have the opportunity to take such remedial action necessary to restore the tax-exempt status of the interest component of Lease Payments under this Lease Agreement. A Determination of Taxability also shall be deemed to have occurred on the first to occur of the following:

(e) the date when the Town files any statement, supplemental statement, or other tax schedule, return or document, which discloses that an Event of Taxability shall have occurred; or

(f) a sale or other deliberate action within the meaning of Treas. Reg. § 1.141 2(d), occurs with respect to all or a portion of the Property without the Town furnishing the Assignee with an opinion of independent counsel nationally recognized in tax exempt finance matters and reasonably acceptable to the Assignee to the effect that such change in use (and accompanying remedial action, if any) will not cause interest component of the Lease Payments to become includable in the gross income of the recipient.

“Event of Default” means any of the events of default as defined in Section 8.01.

“Event of Taxability” means, with respect to this Lease Agreement: (a) the application of the proceeds of the advance rental payment by the Assignee pursuant to the Site and Facility Lease in such manner that this Lease Agreement becomes an “arbitrage bond” within the meaning of Tax Code Sections 103(b)(2) and 148, and with the result that interest component of the Lease Payments is or becomes includable in a recipient’s gross income (as defined in Tax Code Section 61); or (b) if as the result of any act, failure to act or use of the proceeds of the advance rental payment or any misrepresentation or inaccuracy in any of the representations, warranties or covenants contained in this Lease Agreement or the Site and Facility Lease by the Town, the interest component of Lease Payments is or becomes includable in a recipient’s gross income (as defined in Tax Code Section 61); and (c) the Town does not undertake any remedial action afforded to it by the Internal Revenue Service.

“Facility” means those certain existing facilities more particularly described in Exhibit B to the Site and Facility Lease and in Exhibit B to the Lease Agreement.

“Federal Securities” means any direct general non-callable obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), or obligations the timely payment of principal of and interest on which are directly guaranteed by the United

States of America.

“*Fiscal Year*” means each twelve-month period during the Term of this Lease Agreement commencing on July 1 in any calendar year and ending on June 30 in the next succeeding calendar year, or any other 12-month period selected by the Town as its fiscal year period.

“*Governmental Authority*” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, city or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

“*Gross-Up Rate*” means an interest rate equal to 4.495%.

“*Hazardous Substance*” means any substance that shall, at any time, be listed as “hazardous” or “toxic” in any Applicable Environmental Law or that has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Laws; and also means, without limitation, raw materials, building components, the products of any manufacturing, or other activities on the Property, wastes, petroleum, and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC Sections 3011 et seq.).

“*Lease Agreement*” means this Lease Agreement, dated as of July 1, 2017, between the Corporation and the Town.

“*Lease Payment Date*” means March 1 and September 1 in each year, commencing March 1, 2018, and continuing to and including the date on which the Lease Payments are paid in full.

“*Lease Payments*” means all payments required to be paid by the Town under Section 4.03, including any prepayment thereof under Section 9.02 or 9.03.

“*Material Adverse Effect*” means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business, facilities or operations of the Town; (b) the ability of the Town to carry out its business in the manner conducted as of the date of this Lease Agreement or to meet or perform its obligations under this Lease Agreement on a timely basis; (c) the validity or enforceability of this Lease Agreement; or (d) the exclusion of the interest component of the Lease Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes.

“*Material Litigation*” means any action, suit, proceeding, inquiry or investigation against the Town in any court or before any arbitrator of any kind or before or by any Governmental Authority, (a) if determined adversely to the Town, may have a Material

Adverse Effect; (b) seek to restrain or enjoin any of the transactions contemplated by this Lease Agreement; or (c) may adversely affect (i) the exclusion of the interest component of the Lease Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes, or (ii) the ability of the Town to perform its obligations under this Lease Agreement.

“*Net Proceeds*” means any insurance or eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers), paid with respect to the Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

“*Permitted Encumbrances*” means, as of any time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the Town may permit to remain unpaid under Article VI of this Lease Agreement; (b) the Site and Facility Lease, this Lease Agreement and the Assignment Agreement; (c) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (d) the exceptions disclosed in the title insurance policy issued with respect to the Property issued as of the Closing Date; and (e) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the Town certifies in writing will not materially impair the use of the Property for its intended purposes.

“*Permitted Investments*” means any of the following:

- (g) interest and non-interest bearing deposit accounts with the Assignee;
- (h) interest bearing savings accounts with the Assignee;
- (i) certificates of deposit issued by the Assignee;
- (j) money market funds available through the Assignee; and
- (k) any other investments which are authorized for the investment of Town funds under the laws of the State of California for which the Town receives written approval from the Assignee.

“*Prior Bonds*” means the Apple Valley Public Financing Authority’s Lease Revenue Bonds (Town Hall Annex Project) 2007 Series A, currently outstanding in the principal amount of \$7,465,000.

“*Prior Lease*” means that certain Lease Agreement, dated as of July 1, 2007, by and between the Corporation and the Town.

“*Prior Lease Payments*” means a payment of interest component of Lease Payments

made on or prior to the date of any Determination of Taxability.

“*Property*” means, collectively, the Site and the Facility.

“*Rental Period*” means each period during the Term of the Lease commencing on and including September 2 in each year and extending to and including the next succeeding September 1. The first Rental Period begins on the Closing Date and ends on September 1, 2018.

“*Site*” means that certain real property more particularly described in Exhibit A to the Site and Facility Lease and in Exhibit A to the Lease Agreement.

“*Site and Facility Lease*” means the Site and Facility Lease, dated as of July 1, 2017, by and between the Town, as lessor, and the Corporation, as lessee, together with any duly authorized and executed amendments thereto.

“*State*” means the State of California.

“*Tax Code*” means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

“*Term of this Lease Agreement*” or “*Term*” means the time during which this Lease Agreement is in effect, as provided in Section 4.02.

“*Town*” means the Town of Apple Valley, a municipal corporation and general law city organized and existing under the laws of the State.

“*Town Representative*” means the Mayor, the Mayor Pro Tem, the Town Manager, or the designee of any such official, or any other person authorized by resolution delivered to the Corporation and the Assignee to act on behalf of the Town under or with respect to the Site and Facility Lease and this Lease Agreement.

“*2017 Project*” means the acquisition of vehicles.

Section 1.02. Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

COVENANTS, REPRESENTATIONS AND WARRANTIES

Section 2.01. Covenants, Representations and Warranties of the Town. The Town makes the following covenants, representations and warranties to the Corporation as of the date of the execution and delivery of this Lease Agreement:

(a) ***Due Organization and Existence.*** The Town is a municipal corporation and general law city, organized and existing under and by virtue of the laws of the State, has full legal right, power and authority under the laws of the State to enter into the Site and Facility Lease and this Lease Agreement and to carry out and consummate all transactions on its part contemplated hereby and thereby, and by proper action the Town has duly authorized the execution and delivery by the Town of the Site and Facility Lease and this Lease Agreement.

(b) ***Due Execution.*** The representative of the Town executing the Site and Facility Lease and this Lease Agreement has been fully authorized to execute the same by a resolution duly adopted by the Council.

(c) ***Valid, Binding and Enforceable Obligations.*** The Site and Facility Lease and this Lease Agreement have been duly authorized, executed and delivered by the Town and constitute the legal, valid and binding agreements of the Town enforceable against the Town in accordance with their respective terms.

(d) ***No Conflicts.*** The execution and delivery of the Site and Facility Lease and this Lease Agreement, the consummation of the transactions therein and herein contemplated and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Town is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature

whatsoever upon any of the property or assets of the Town, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site and Facility Lease or this Lease Agreement or the financial condition, assets, properties or operations of the Town.

(e) **Consents and Approvals.** No consent or approval of any trustee or holder of any indebtedness of the Town or of the voters of the Town, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with the execution and delivery of the Site and Facility Lease and this Lease Agreement, or the consummation of any transaction therein and herein contemplated, except as have been obtained or made and as are in full force and effect.

(f) **No Litigation.** There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other Governmental Authority pending and notice of which has been served on the Town or, to the knowledge of the Town after reasonable investigation, threatened against or affecting the Town or the assets, properties or operations of the Town which, if determined adversely to the Town or its interests, would have a Material Adverse Effect upon the consummation of the transactions contemplated by or the validity of the Site and Facility Lease and this Lease Agreement or upon the financial condition, assets, properties or operations of the Town, and the Town is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other Governmental Authority, which default might have consequences that would have a Material Adverse Effect on the consummation of the transactions contemplated by this Lease Agreement, or the financial condition, assets, properties or operations of the Town.

(g) **Sufficient Funds.** The Town reasonably believes that sufficient funds can be obtained to make all Lease Payments and all other amounts required to be paid pursuant to this Lease Agreement.

(h) **No Defaults.** The Town has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any financing lease of the same general nature as this Lease Agreement, or under any of its bonds, notes, or other debt obligations.

(i) **Fee Title.** The Town is the owner in fee of title to the Property. No lien or encumbrance on the Property materially impairs the Town's use of the Property for the purposes for which it is, or may reasonably be expected to be, held.

(j) **Use of the Property.** During the term of this Lease Agreement, the Property will be used by the Town only for the purpose of performing one or more governmental or proprietary functions of the Town consistent with the permissible scope of the Town's authority.

(k) **Change in Financial Condition.** The Town has experienced no material change in its financial condition since June 30, 2016.

(l) **Hazardous Substances.** The Property is free of all Hazardous Substances, and the Town is in full compliance with all Applicable Environmental Laws.

(m) **Flooding Risk.** The Property is not located in a 100-year flood zone and has never been subject to material damage from flooding.

(n) **Value of Property and Useful Life of Facility.** The value of the Property (real property replacement cost) is not less than \$[Principal Amount]. The useful life of the Facility extends to at least September 1, 2037.

(o) **Essential to Town Operations.** The Property is essential to the Town's efficient and economic operations and the lease thereof for use by the Town is in the best interest of the Town.

(p) **Financial Statements.** The statement of financial position of the Town as of June 30, 2016, and the related statement of activities and statement of cash flows and changes in financial position for the year then ended and the auditors' reports with respect thereto, copies of which have heretofore been furnished to the Assignee, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the Town at such date and for such period, and were prepared in accordance with generally accepted accounting principles. Since the period of such statements, there has been no (i) change which would have a Material Adverse Effect, and (ii) no material increase in the indebtedness of the Town.

(q) **No Material Adverse Change.** Since the most current date of the information, financial or otherwise, supplied by the Town to the Assignee:

(i) There has been no change in the assets, liabilities, financial position or results of operations of the Town which might reasonably be anticipated to cause a Material Adverse Effect.

(ii) The Town has not incurred any obligations or liabilities which might reasonably be anticipated to cause a Material Adverse Effect.

(iii) The Town has not (A) incurred any material indebtedness, other than the Lease Payments, and trade accounts payable arising in the ordinary course of the Town's business and not past due; or (B) guaranteed the indebtedness of any other person.

(r) **Accuracy of Information.** All information, reports and other papers and data furnished by the Town to the Assignee were, at the time the same were so furnished, complete and accurate in all material respects and insofar as necessary to give the Assignee a true and accurate knowledge of the subject matter and were provided in expectation of the Assignee's reliance thereon in entering into the transactions contemplated by this Lease Agreement. No fact is known to the Town which has had or, so far as the Town can now reasonably foresee, may in the future have a Material Adverse Effect, which has not been set forth in the financial statements previously furnished to the Assignee or in other such information, reports, papers and data or otherwise disclosed in writing to the Assignee prior to the Closing Date. Any financial, budget and other projections furnished to the Assignee by the Town or its or their agents were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of the conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent the Town's best estimate of its future financial performance. No document furnished nor any representation, warranty or other written statement made to the Assignee in connection with the negotiation, preparation or execution of this Lease Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state (as of the date made or furnished) any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were or will be made, not misleading.

(s) **Facility.** The Facility complies with all applicable restrictive covenants, zoning ordinances, building laws and other Applicable Laws (including, without limitation, the Americans with Disabilities Act, as amended).

Section 2.02. Covenants, Representations and Warranties of the Corporation. The Corporation makes the following covenants, representations and warranties to the Town as of the date of the execution and delivery of this Lease Agreement:

(a) **Due Organization and Existence.** The Corporation is a nonprofit, public benefit corporation, duly organized and existing under the laws of the State, has full legal right, power and authority to enter into the Site and Facility Lease, this Lease Agreement and the Assignment Agreement and to carry out and consummate all transactions on its part contemplated hereby and thereby, and by proper action the Corporation has duly authorized the execution and delivery by

the Corporation of the Site and Facility Lease, this Lease Agreement and the Assignment Agreement.

(b) **Due Execution.** The representative of the Corporation executing the Site and Facility Lease, this Lease Agreement and the Assignment Agreement is fully authorized to execute the same under official action taken by the Council of Directors of the Corporation.

(c) **Valid, Binding and Enforceable Obligations.** The Site and Facility Lease, this Lease Agreement and the Assignment Agreement have been duly authorized, executed and delivered by the Corporation and constitute the legal, valid and binding agreements of the Corporation, enforceable against the Corporation in accordance with their respective terms.

(d) **No Conflicts.** The execution and delivery of the Site and Facility Lease, this Lease Agreement and the Assignment Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Corporation is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site and Facility Lease, this Lease Agreement and the Assignment Agreement or the financial condition, assets, properties or operations of the Corporation.

(e) **Consents and Approvals.** No consent or approval of any trustee or holder of any indebtedness of the Corporation, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with the execution and delivery of the Site and Facility Lease, this Lease Agreement or the Assignment Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) **No Litigation.** There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other Governmental Authority pending and notice of which has been served on the Corporation or, to the knowledge of the Corporation after reasonable investigation, threatened against or affecting the Corporation or the assets, properties or

operations of the Corporation which, if determined adversely to the Corporation or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Site and Facility Lease, this Lease Agreement or the Assignment Agreement, or upon the financial condition, assets, properties or operations of the Corporation, and the Corporation is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other Governmental Authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site and Facility Lease, this Lease Agreement or the Assignment Agreement or the financial condition, assets, properties or operations of the Corporation.

ARTICLE III

DEPOSIT AND APPLICATION OF FUNDS

Section 3.01. Deposit of and Application of Funds. On the Closing Date, from the amounts paid by the Assignee, the Corporation shall cause (a) the amount of \$_____ to be transferred to the Prior Trustee for deposit in the Lease Payment Fund and applied to the redemption of the Prior Bonds, (b) the amount of \$_____ to be transferred to the Town for payment of the costs of the 2017 Project, and (c) the amount of \$_____ to be transferred to various recipients to pay financing costs of the transaction.

ARTICLE IV

LEASE OF PROPERTY; LEASE PAYMENTS

Section 4.01. Sublease of Property by the Corporation Back to the Town.

(a) The Corporation hereby subleases the Property to the Town, and the Town hereby subleases the Property from the Corporation, upon the terms and conditions set forth in this Lease Agreement.

(b) The leasing of the Property by the Town to the Corporation pursuant to the Site and Facility Lease shall not affect or result in a merger of the Town's subleasehold estate pursuant to this Lease Agreement and its fee estate as lessor under the Site and Facility Lease.

Section 4.02. Term. The Term of this Lease Agreement commences on the date of recordation of this Lease Agreement or a memorandum hereof and ends on September 1, 2027, or the date on which all of the Lease Payments have been paid or deemed paid in full pursuant to the terms of this Lease Agreement. If on September 1, 2027, the Lease Payments payable hereunder shall have been abated at any time and for any reason and not otherwise paid from rental interruption insurance or other sources, or the Town shall

have defaulted in its payment of Lease Payments hereunder or any Event of Default has occurred and continues without cure by the Town, then the term of this Lease Agreement shall be extended for the actual period of abatement or for so long as the default remains uncured, as necessary to accommodate the final payment of all Lease Payments due hereunder, not to exceed 10 years. The provisions of this Section 4.02 are subject to the provisions of Section 6.01 relating to the taking in eminent domain of the Property or any portion thereof.

Section 4.03. Lease Payments.

(a) **Obligation To Pay.** Subject to the provisions of Sections 6.01 and 6.03 and the provisions of Article IX, the Town agrees to pay to the Corporation, its successors and assigns, the Lease Payments (denominated into components of principal and interest) in the amounts specified in Exhibit C attached hereto (including any supplements thereto) and by this reference incorporated herein, to be due and payable in immediately available funds on each of the respective Lease Payment Dates specified in Exhibit C; provided, however, that if any Lease Payment Date is not a Business Day, such Lease Payment shall be due on the next succeeding Business Day with the same force and effect as if such Lease Payment was made on the Lease Payment Date. The Lease Payments payable in any Rental Period with respect to the Property shall be for the use of the Property during such Rental Period. The interest components of the Lease Payments have been calculated based on an interest rate of 2.90% per annum, on the basis of a 360-day year of twelve 30-day months. The Town understands that the Assignee will send an invoice to the Town in advance of each Lease Payment Date.

Upon the occurrence of a Determination of Taxability, with respect to the Lease Agreement, the Town shall, with respect to future payments of the Lease Payments, begin making Lease Payments calculated at the Gross-Up Rate, but in no event shall the present value of such Lease Payments at the Gross-Up Rate exceed the Fair Rental Value of the Property. In addition, the Town shall make immediately upon demand of the Assignee a payment to the Assignee sufficient to indemnify the Assignee and supplement Prior Lease Payments made after, but not prior to, a Determination of Taxability with respect to such obligation to the Gross-Up Rate, and such obligation shall survive the termination of this Lease Agreement.

(b) **Additional Payments.** In addition to the Lease Payments set forth herein, the Town agrees to pay as Additional Payments all of the following:

(i) all taxes and assessments of any nature whatsoever, including but not limited to excise taxes, ad valorem taxes, ad valorem and specific lien special assessments and gross receipts taxes, if any, levied upon the Property or upon any interest of the Corporation or the Assignee

therein or in this Lease Agreement; provided, however, the Town may, at the Town's expense and in its name, in good faith contest any such taxes and assessments and, in the event of such contest, may permit such taxes and assessments to remain unpaid during the period of such contest and appeal therefrom unless the Corporation shall notify the Town that, in the opinion of Bond Counsel, by nonpayment of any such items, the interest of the Corporation in the Property will be materially endangered or the Property, or any portion thereof, will be subject to loss or forfeiture, in which event the Town shall promptly pay such taxes and assessments or provide the Corporation and the Assignee with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation;

(ii) insurance premiums, if any, on all insurance required under the provisions of Article V hereof;

(iii) any other reasonable fees, costs or expenses incurred by the Corporation and the Assignee in connection with the execution, performance or enforcement of this Lease Agreement or any of the transactions contemplated hereby or related to the Property, including, without limitation, any amounts which may become due; provided, however, the Town shall not be responsible for any costs incurred by the Corporation associated with any assignment made by the Assignee; and

(iv) any amounts required to be paid as rebate to the United States pursuant to the Tax Certificate.

Amounts constituting Additional Payments payable hereunder shall be paid by the Town directly to the person or persons to whom such amounts shall be payable. The Town shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within 60 days after notice in writing from the Corporation to the Town stating the amount of Additional Payments then due and payable and the purpose thereof.

(c) **Reserved.**

(d) **Rate on Upon Event of Default.** If the Town fails to make any of the payments required in this Section 4.03 for more than 10 days after the due date for payment, the payment in default will continue as an obligation of the Town until the amount in default has been fully paid, and the Town agrees to pay a rate equal to the rates specified in Section 4.03(a) above, plus 5% from the date of default to the date of payment.

(e) **Fair Rental Value.** The Lease Payments coming due and payable during each Rental Period constitute the total rental for the Property for such Rental Period, and will be paid by the Town in each Rental Period for and in

consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments due during each Rental Period are not in excess of the fair rental value of the Property during such Rental Periods. In making this determination, consideration has been given to the estimated fair market value of the Property, the estimated replacement cost of the Property, the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the Town and the general public.

(f) **Source of Payments; Budget and Appropriation.** The Lease Payments are payable from any source of legally available funds of the Town, subject to the provisions of Sections 6.01, 6.03 and 9.01 below. The Town covenants to take such action as may be necessary to include all Lease Payments in each of its annual budgets during the Term of this Lease Agreement and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the Town herein contained constitute duties imposed by law and it is the duty of each and every public official of the Town to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Town to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the Town.

(g) **Allocation of Lease Payments.** All Lease Payments received shall be applied first to the interest components of the Lease Payments due hereunder, then to the principal components of the Lease Payments due hereunder, but no such application of any payments that are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

(h) **No Offsets.** Notwithstanding any dispute between the Corporation, or Assignee as the Corporation's assignee, and the Town, the Town shall make all Lease Payments when due without deduction or offset of any kind and shall not withhold any Lease Payments pending the final resolution of such dispute.

(i) **Assignment Agreement.** The Town understands and agrees that all Lease Payments have been assigned by the Corporation to the Assignee under the Assignment Agreement executed concurrently herewith, and the Town hereby assents to such assignment. The Corporation hereby directs the Town, and the Town hereby agrees, to pay to the Assignee, all payments payable by the Town under this Section 4.03 and all amounts payable by the Town under Article IX. Lease Payments shall be paid to the Assignee pursuant to an invoice to be transmitted to the Town by the Assignee not less than 30 days prior to each Lease Payment Date.

(j) **Payments Under This Lease Agreement.** The Assignee hereby directs the Town, and the Town hereby agrees, to pay to the Assignee (or to its assignees as directed pursuant to Section 7.04 hereof) all payments payable by the Town under this Section 4.03 and all amounts payable by the Town under Article IX. Lease Payments shall be paid to the Assignee as follows:

[Bank]: _____
ABA #: _____
For Credit to: _____
Reference: Town of Apple Valley

Section 4.04. Quiet Enjoyment. Throughout the Term of this Lease Agreement, the Corporation will provide the Town with quiet use and enjoyment of the Property and the Town will peaceably and quietly have and hold and enjoy the Property, without suit, trouble or hindrance from the Corporation, except as expressly set forth in this Lease Agreement. The Corporation will, at the request of the Town and at the Town's cost, join in any legal action in which the Town asserts its right to such possession and enjoyment to the extent the Corporation may lawfully do so. Notwithstanding the foregoing, the Corporation and the Assignee have the right to inspect the Property as provided in Sections 5.12(c) and 7.02 below.

Section 4.05. Title. At all times during the Term of this Lease Agreement, the Town shall hold title to the Property, including all additions which comprise fixtures, repairs, replacements or modifications thereto, subject to Permitted Encumbrances and subject to the provisions of Section 7.02 below.

Upon the termination of this Lease Agreement (other than under Section 8.02(b) hereof), all right, title and interest of the Corporation in and to the Property shall be transferred to and vested in the Town. Upon the payment in full of all Lease Payments allocable to the Property, or upon the deposit by the Town of security for such Lease Payments as provided in Section 9.01, all right, title and interest of the Corporation in and to the Property shall be transferred to and vested in the Town. The Corporation agrees to take any and all steps and execute and record any and all documents reasonably required by the Town to consummate any such transfer.

Section 4.06. Substitution of Property.

(a) In the event of damage or destruction of the Property due to earthquake or other uninsured casualty for which rental interruption insurance is not available or in the event that following the condemnation of all or a portion of the Property the fair rental value of the Property remaining after such condemnation is less than the remaining Lease Payments due under this Lease Agreement, the Town shall substitute under the Site and Facility Lease and this Lease Agreement one or more parcels of unimpaired and unencumbered real

property, the fair rental value of which, for each remaining Rental Period and in the aggregate, shall be at least equal to the remaining Lease Payments hereunder.

(b) If for any reason the Town is unable to so substitute real property for the Property with a fair rental value at least equal to the remaining Lease Payments hereunder, the Town shall use its best efforts to obtain other financing in an amount necessary to prepay the principal component of the Lease Payments not supported by the fair rental value of the substituted property, if any.

ARTICLE V

MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

Section 5.01. Maintenance, Utilities, Taxes and Assessments. Throughout the Term of this Lease Agreement, as part of the consideration for the rental of the Property, all improvement, repair and maintenance of the Property are the sole responsibility of the Town, and the Town will pay for or otherwise arrange for the payment of all utility services supplied to the Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the Town or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Corporation agrees to provide only the Property, as hereinbefore more specifically set forth. The Town waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the Town under the terms of this Lease Agreement.

The Town will pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Corporation, the Assignee or the Town affecting the Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Town is obligated to pay only such installments as are required to be paid during the Term of this Lease Agreement as and when the same become due.

The Town may, at the Town's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Corporation shall notify the Town that, in its reasonable opinion, by nonpayment of any such items the interest of the Corporation in the Property will be materially endangered or the Property or any part thereof will be subject to loss or forfeiture, in which event the Town will promptly pay such taxes, assessments or charges or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation. The

Town shall promptly notify the Assignee of any tax, assessment, utility or other charge it elects to contest.

Section 5.02. Modification of Property. The Town has the right, at its own expense, to make additions, modifications and improvements to the Property or any portion thereof. All additions, modifications and improvements to the Property will thereafter comprise part of the Property and become subject to the provisions of this Lease Agreement. Such additions, modifications and improvements may not in any way damage the Property, or cause the Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, upon completion of any additions, modifications and improvements made thereto under this Section, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements.

Section 5.03. Public Liability Insurance. The Town shall maintain or cause to be maintained throughout the Term of this Lease Agreement a standard comprehensive general liability insurance policy or policies in protection of the Town, the Assignee and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Property. Such policy or policies must provide coverage with limits of at least \$1,000,000 per occurrence, \$3,000,000 in the aggregate, for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events in form and amount (including any deductibles) satisfactory to the Assignee. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the Town (including, with Assignee's prior written consent, a self-insurance program), and may be maintained in whole or in part in the form of the participation by the Town in a joint powers authority or other program providing pooled insurance. The Town will apply the proceeds of such liability insurance toward extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 5.04. Casualty Insurance. The Town will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, casualty insurance against loss or damage to all buildings situated on the Property and owned by the Town, in an amount at least equal to the greater of the replacement value of the insured buildings and the aggregate principal amount of the Lease Payments outstanding, with a lender's loss payable endorsement. Such insurance must, as nearly as practicable, cover loss or damage by all "special form" perils. Such insurance shall be subject to a deductible of not to exceed \$250,000. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the Town (including, with the Assignee's prior written consent, a self-insurance program), and may be maintained in whole or in part in the form of the participation by the Town in a joint

powers authority or other program providing pooled insurance. The Town will apply the Net Proceeds of such insurance as provided in Section 6.02.

Section 5.05. Rental Interruption Insurance. The Town will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Property and the improvements situated thereon as a result of any of the hazards covered in the insurance required by Section 5.04, in an amount at least equal to the maximum Lease Payments coming due and payable during any future 24-month period. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the Town, and may be maintained in whole or in part in the form of the participation by the Town in a joint powers authority or other program providing pooled insurance; provided that such rental interruption insurance shall not be self-insured by the Town. The Town will apply the Net Proceeds of such insurance towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

Section 5.06. Workers' Compensation Insurance. If required by applicable California law, the Town shall carry workers' compensation insurance covering all employees on, in, near or about the Property and, upon request, shall furnish to the Corporation certificates evidencing such coverage throughout the Term of this Lease Agreement. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the Town (including a self-insurance program), and may be maintained in whole or in part in the form of the participation by the Town in a joint powers authority or other program providing pooled insurance.

Section 5.07. Recordation Hereof; Title Insurance. On or before the Closing Date, the Town shall, at its expense, (a) cause this Lease Agreement, the Site and Facility Lease and the Assignment Agreement, or a memorandum hereof or thereof in form and substance approved by Bond Counsel, to be recorded in the office of the San Bernardino County Recorder with respect to the Property; and (b) obtain a CLTA title insurance policy insuring the Assignee's interests in the leasehold estate established under the Site and Facility Lease and hereunder in the Property, subject only to Permitted Encumbrances, in an amount equal to the original principal components of the Lease Payments. The Town will apply the Net Proceeds of such insurance as provided in Section 6.02.

Section 5.08. Insurance Net Proceeds; Form of Policies. All insurance policies (or riders) required by this Article V and provided by third-party insurance carriers shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State, and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least 10 days before the cancellation or revision becomes effective. Each insurance policy or rider required by Sections 5.03, 5.04 and 5.05 above, and provided by third-party insurance carriers shall

name the Town and the Assignee as insured parties and the Assignee as loss payees and shall include a lender's loss payable endorsement for the benefit of the Assignee. In the case of coverage pursuant to Section 5.03 above, the Corporation and the Assignee shall be added as an additional insureds. Prior to the Closing Date, the Town will deposit with the Assignee policies (and riders and endorsements, if applicable) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), the Town will furnish to the Assignee evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V unless such insurance is no longer obtainable, in which event the Town shall notify the Assignee of such fact.

Section 5.09. Installation of Town's Personal Property. The Town may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Property. All such items shall remain the sole property of the Town, in which the Corporation has no interest, and may be modified or removed by the Town at any time. The Town must repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement prevents the Town from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof; provided that no such lien or security interest may attach to any part of the Property.

Section 5.10. Liens. The Town will not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, other than as herein contemplated and except for such encumbrances as the Town certifies in writing to the Assignee do not materially and adversely affect the leasehold estate in the Property hereunder and for which the Assignee provides its prior written approval, which approval shall be at Assignee's sole discretion. Except as expressly provided in this Article V, the Town will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The Town will reimburse the Assignee for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 5.11. Advances. If the Town fails to perform any of its obligations under this Article V, the Corporation may take such action as may be necessary to cure such failure, including the advancement of money, and the Town shall be obligated to repay all such advances as additional rental hereunder, with interest at the default rate set forth in Section 4.03(d) above.

Section 5.12. Environmental Covenants.

(a) **Compliance With Laws; No Hazardous Substances.** The Town will comply with all Applicable Environmental Laws with respect to the Property and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the Property.

(b) **Notification of Assignee.** The Town will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the Property and any operations conducted thereon or any conditions existing thereon to the Assignee, and the Town will notify the Assignee in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the Property, or the people, structures, or other property thereon, provided that no such notification shall create any liability or obligation on the part of the Assignee.

(c) **Access for Inspection.** The Town will permit the Assignee, its agents, or any experts designated by the Assignee to have full access to the Property during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws; provided that the Assignee has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

Section 5.13. Town Consent to Assignment Agreement. The Corporation's rights under this Lease Agreement (excluding the right to receive notices, the right to reimbursement of costs and to indemnification), including the right to receive and enforce payment of the Lease Payments, and the Site and Facility Lease, are being assigned to the Assignee pursuant to the Assignment Agreement. The Town hereby consents to such assignment and to any additional assignment of such rights by the Assignee or its assignees. The Town agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by the Assignee or its assignees to protect their interests in the Property and in this Lease Agreement.

ARTICLE VI

EMINENT DOMAIN; USE OF NET PROCEEDS

Section 6.01. Eminent Domain. If all of the Property shall be taken permanently under the power of eminent domain or sold to a governmental entity threatening to exercise the power of eminent domain, the Term of this Lease Agreement shall cease as of the day possession shall be so taken. If less than all of the Property shall be taken permanently, or if all of the Property or any part thereof shall be taken temporarily under

the power of eminent domain, (a) this Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary; and (b) there shall be a partial abatement of Lease Payments in an amount equal to the application of the Net Proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, in an amount to be agreed upon by the Town and the Assignee such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portion of the Property.

Section 6.02. Application of Net Proceeds.

(a) ***From Insurance Award.***

(i) Any Net Proceeds of insurance against damage to or destruction of any part of the Property collected by the Town in the event of any such damage or destruction shall be deposited by the Town promptly upon receipt thereof in a special fund with the Assignee designated as the "Insurance and Condemnation Fund."

(ii) Within 90 days following the date of such deposit, the Town shall determine and notify the Corporation and the Assignee in writing of its determination either (A) that the replacement, repair, restoration, modification or improvement of the Property is not economically feasible or in the best interest of the Town and the Net Proceeds, together with other moneys available therefor, are sufficient to cause the prepayment of the principal components of all unpaid Lease Payments pursuant to Section 9.03 hereof; or (B) that all or a portion of such Net Proceeds are to be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property and the fair rental value of the Property following such repair, restoration, replacement, modification or improvement will at least equal the unpaid principal component of the Lease Payments.

(iii) In the event the Town's determination is as set forth in clause (A) of Section 6.02(a)(ii) above, such Net Proceeds shall be promptly applied to the prepayment of Lease Payments and other amounts pursuant to Section 9.03 of this Lease Agreement; provided, however, that in the event of damage or destruction of the Property in full, such Net Proceeds may be so applied only if sufficient, together with other moneys available therefor, to cause the prepayment of the principal components of all unpaid Lease Payments, all accrued and unpaid interest, Prepayment Premiums described in Section 9.02, and all other costs related to such prepayments pursuant to Section 9.03 of this Lease Agreement and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property; provided further, however, that

in the event of damage or destruction of the Property in part, such Net Proceeds may be applied to the prepayment of Lease Payments only if the resulting Lease Payments following such prepayment from Net Proceeds represent fair consideration for the remaining portions of the Property and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property, evidenced by a certificate signed by a Town Representative.

(iv) In the event the Town's determination is as set forth in clause (B) of Section 6.02(a)(ii) above and the Town certifies to the Assignee that such repair or replacement can be completed within 24 months, such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property by the Town, and until the Property has been restored to its prior condition, the Town shall not place any lien or encumbrance on the Property that is senior to this Lease Agreement without the prior written consent of the Assignee, at its sole discretion.

(b) **From Eminent Domain Award.** If all or any part of the Property shall be taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Net Proceeds therefrom shall be deposited by the Town in the Insurance and Condemnation Fund and shall be applied and disbursed as follows:

(i) If the Town has given written notice to the Corporation and the Assignee of its determination that (A) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the Town to meet any of its obligations with respect to the Property under this Lease Agreement; and (B) such proceeds are not needed for repair or rehabilitation of the Property, the Town shall so certify to the Corporation and the Assignee, and the Town shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.03 of this Lease Agreement.

(ii) If the Town has given written notice to the Corporation and the Assignee of its determination that (A) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the Town to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are needed for repair, rehabilitation or replacement of the Property, the Town shall so certify to the Corporation and the Assignee, and the Town shall apply such amounts for such repair or rehabilitation.

(iii) If (A) less than all of the Property shall have been taken in such eminent domain proceedings or sold to a government threatening the use of eminent domain powers, and if the Town has given written notice to the Corporation and the Assignee of its determination that such eminent domain proceedings have materially affected the operation of the Property or the ability of the Town to meet any of its obligations with respect to the Property under the Lease Agreement; or (B) all of the Property shall have been taken in such eminent domain proceedings, then the Town shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.03 of this Lease Agreement.

(iv) In making any determination under this Section 6.02(b), the Town may, but shall not be required to, obtain at its expense, the report of an independent engineer or other independent professional consultant, a copy of which shall be filed with the Corporation and the Assignee. Any such determination by the Town shall be final.

(c) **From Title Insurance.** The Net Proceeds from a title insurance award shall be deposited by the Town in the Insurance and Condemnation Fund and credited towards the prepayment of Lease Payments required to be paid pursuant to Section 9.03 of this Lease Agreement.

Section 6.03. Abatement of Lease Payments in the Event of Damage or Destruction. Lease Payments shall be abated during any period in which, by reason of damage or destruction, there is substantial interference with the use and occupancy by the Town of the Property or any portion thereof to the extent to be agreed upon by the Town and the Assignee. The parties agree that the amounts of the Lease Payments under such circumstances shall not be less than the amounts of the unpaid Lease Payments as are then set forth in Exhibit C, unless such unpaid amounts are determined to be greater than the fair rental value of the portions of the Property not damaged or destroyed, based upon an appropriate method of valuation, in which event the Lease Payments shall be abated such that they represent said fair rental value. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction as evidenced by a Certificate of a Town Representative to the Corporation and the Assignee. In the event of any such damage or destruction, this Lease Agreement shall continue in full force and effect and the Town waives any right to terminate this Lease Agreement by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 6.03 to the extent that (a) the proceeds of rental interruption insurance; or (b) amounts in the Insurance and Condemnation Fund are available to pay Lease Payments which would otherwise be abated under this Section 6.03, it being hereby declared that such proceeds and amounts constitute special funds for the payment of the Lease Payments.

ARTICLE VII

OTHER COVENANTS OF THE TOWN

Section 7.01. Disclaimer of Warranties. THE CORPORATION MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE TOWN OF THE PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF. THE TOWN ACKNOWLEDGES THAT THE TOWN LEASES THE PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE TOWN. In no event is the Corporation liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease Agreement for the existence, furnishing, functioning or use of the Property by the Town.

Section 7.02. Access to the Property; Grant and Conveyance of Right of Entry. The Town agrees that the Corporation, and the Corporation's successors or assigns, has the right at all reasonable times, following at least 48 hours' written notice provided to the Town, to enter upon and to examine and inspect (to the extent permitted by law and public policy) the Property or any part thereof. The Town further agrees that the Corporation, and the Corporation's successors or assigns shall have such rights of access to the Property or any component thereof, following at least 48 hours' written notice provided to the Town, as may be reasonably necessary to cause the proper maintenance of the Property if the Town fails to perform its obligations hereunder. Neither the Corporation nor any of its assigns has any obligation to cause such proper maintenance.

The Town further grants, conveys and confirms to the Corporation, for the use, benefit and enjoyment of the Corporation, its successors and assigns in interest to the Property, including the Assignee, and its sublessees, and their respective employees, invitees, agents, independent contractors, patrons, customers, guests and members of the public visiting the Property, a right of entry which shall be irrevocable for the Term of this Lease Agreement over, across and under the property of the Town adjacent to the Property to and from the Property for the purpose of: (a) ingress, egress, passage or access to and from the Property by pedestrian or vehicular traffic; (b) installation, maintenance and replacement of utility wires, cables, conduits and pipes; and (c) other purposes and uses necessary or desirable for access to and from and for operation and maintenance of the Property.

Section 7.03. Release and Indemnification Covenants. The Town hereby indemnifies the Corporation, the Assignee and their respective directors, officers, agents, employees, successors and assigns against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or

management of, or from any work or thing done on the Property by the Town or the Town's employees, agents, contractors, invitees or licensees; (b) any breach or default on the part of the Town in the performance of any of its obligations under this Lease Agreement; (c) any negligence or willful misconduct of the Town or of any of its agents, contractors, servants, employees or licensees with respect to the Property; (d) any intentional misconduct or negligence of any sublessee of the Town with respect to the Property; (e) the acquisition, construction, improvement and equipping of the Property; (f) the clean-up of any Hazardous Substances or toxic wastes from the Property; or (g) any claim alleging violation of any Applicable Environmental Laws, or the authorization of payment of the costs thereof. No indemnification is made under this Section 7.03 or elsewhere in this Lease Agreement for willful misconduct or gross negligence under this Lease Agreement by the Corporation, the Assignee, or their respective officers, agents, employees, successors or assigns. The Town and the Corporation each agree to promptly give notice to each other and the Assignee of any claim or liability hereby indemnified against following learning thereof.

Section 7.04. Assignment by the Corporation. The Corporation's rights, title and interests under this Lease Agreement, including the right to receive and enforce payment of the Lease Payments to be made by the Town hereunder, have been assigned to the Assignee; provided that the Corporation's rights to indemnification and payment or reimbursement for any costs or expenses hereunder have been retained by the Corporation to the extent such rights accrue to the Corporation and shall have been assigned to the Assignee to the extent such rights accrue to the Assignee. The Town hereby consents to such assignment. Whenever in this Lease Agreement any reference is made to the Corporation, such reference shall be deemed to refer to the Assignee (including its assignees).

The Assignee shall have the right at any time to assign, transfer or convey the Lease Agreement in whole, but no such assignment, transfer or conveyance shall be effective as against the Town unless and until the Assignee has delivered to the Town at least five Business Days' prior written notice thereof that discloses the name and address of the assignee and an executed copy of the letter of representations addressed to the Town and the Corporation substantially in the form of the letter of representations delivered by the Assignee on the Closing Date. Any such assignment, transfer or conveyance shall be made only to (i) a wholly-owned affiliate of the Assignee or (ii) a "qualified institutional buyer" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended. Nothing herein shall limit the right of the Assignee or its assignee to sell or assign participation interests in the Lease Agreement to one or more entities listed in (i) or (ii) above, provided that the Assignee or its assignee shall be the only party recognized under this Lease Agreement with respect to payment of Lease Payments and with respect to the rights and interests of the Assignee under the Lease Agreement and the Site and Facility Lease, including the exercise of rights and remedies of the Assignee upon the occurrence of an event of default under the Lease Agreement.

Section 7.05. Assignment and Subleasing by the Town. This Lease Agreement may not be assigned, mortgaged, pledged or transferred by the Town. The Town may sublease the Property, or any portion thereof, with the prior written consent of the Assignee, at the Assignee's sole discretion, subject to all of the following conditions:

(a) This Lease Agreement and the obligation of the Town to make Lease Payments hereunder shall remain obligations of the Town, and any sublease shall be subject and subordinate to this Lease Agreement.

(b) The Town shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Corporation and the Assignee a true and complete copy of such sublease.

(c) No such sublease by the Town may cause the Property to be used for a purpose other than as may be authorized under the provisions of the laws of the State.

(d) The Town shall furnish the Corporation and the Assignee with a written opinion of Bond Counsel stating that such sublease does not cause the interest components of the Lease Payments to become includable in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State.

(e) Any such sublease shall be subject and subordinate in all respects to the Site and Facility Lease and this Lease Agreement.

Notwithstanding the foregoing, in connection with any sublease entered into for financing purposes, the principal component of the then remaining Lease Payments plus the principal component of the sublease payments shall not exceed the fair market value of the Property.

Section 7.06. Amendment of Lease Agreement.

(a) **Substitution of Property.** The Town shall have, and is hereby granted, the option at any time and from time to time during the Term of the Lease Agreement to substitute other property (the "Substitute Property") for the Property; provided, however, that any substitution of the Property shall be subject to the prior written consent of the Assignee and that the Town shall satisfy all of the following requirements (to the extent applicable) which are hereby declared to be conditions precedent to such substitution:

(i) the Town shall file with the Corporation and the Assignee an amended Exhibit A to the Site and Facility Lease which adds thereto a description of such substitute site and deletes therefrom the description of the former Site;

(ii) the Town shall file with the Corporation and the Assignee an amended Exhibit A to this Lease Agreement which adds thereto a description of such substitute site and deletes therefrom the description of the former Site;

(iii) the Town shall file with the Corporation and the Assignee an amended Exhibit B to the Site and Facility Lease which adds thereto a description of such substitute facility and deletes therefrom the description of the former Facility;

(iv) the Town shall file with the Corporation and the Assignee an amended Exhibit B to this Lease Agreement which adds thereto a description of such substitute facility and deletes therefrom the description of the former Facility;

(v) the Town shall certify in writing to the Corporation and the Assignee that the Substitute Property serves the purposes of the Town, constitutes property that is unencumbered, subject to Permitted Encumbrances, and constitutes property which the Town is permitted to lease under the laws of the State;

(vi) the Town delivers to the Corporation and the Assignee evidence (which may be insurance values or any other reasonable basis of valuation acceptable to the Assignee and need not require an appraisal) that the value of the Property following such substitution is equal to or greater than the unpaid principal amount of this Lease Agreement;

(vii) the Substitute Property shall not cause the Town to violate any of its covenants, representations and warranties made herein;

(viii) the Town shall obtain an endorsement to the title insurance policy required pursuant to Section 5.06 hereof which adds thereto a description of the substitute Site and deletes therefrom the description of the former Site or a new CLTA policy of title insurance insuring the Site and Facility Lease; and

(ix) the Town shall certify that the Substitute Property is essential to the Town as was the former Property,

(c) **Generally.** The Town and the Assignee may at any time amend or modify any of the provisions of this Lease Agreement.

Section 7.07. Tax Covenants.

(a) **Generally.** The Town will not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, the interest components of the Lease Payments to become includable in gross income of the Assignee for federal income tax purposes and will deliver a tax certificate on the Closing Date.

(b) **Private Activity Bond Limitation.** The Town will ensure that the proceeds of the Lease Payments are not so used as to cause the Town's obligations hereunder to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(c) **Federal Guarantee Prohibition.** The Town will not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Lease Payments to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(d) **No Arbitrage.** The Town will not take, or permit or suffer to be taken, any action with respect to the proceeds of the Lease Payments which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Lease Payments to be "arbitrage bonds" within the meaning of Section 148(a) of the Tax Code.

(e) **Arbitrage Rebate.** The Town will take any and all actions necessary to assure compliance with Section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Lease Payments.

(f) The Town hereby designates this Lease Agreement as a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Code. In support of such designation, the Town hereby certifies that (i) this Lease Agreement will be at no time a "private activity bond" (as defined in Section 141 of the Code); (ii) as of the date hereof in calendar year 2017, other than this Lease Agreement, no tax-exempt obligations of any kind have been issued (A) by or on behalf of the Town, (B) by other issuers, any of the proceeds of which have been or will be used to make any loans to the Town; or (C) any portion of which has been allocated to the Town for purposes of Section 265(b) of the Code; and (iii) not more than \$10,000,000 of obligations of any kind (including this Lease Agreement) issued (A) by or on behalf of the Town, (B) by other issuers any of the proceeds of which have been or will be used to make any loans to the Town, or (C) any portion of which has been allocated to the Town for purposes of Section 265(b) of the Code during calendar year 2017 will be designated for purposes of Section 265(b)(3) of the Code. The Town is not subject to control by any entity, and there are no entities subject to control by the Town. On the date

hereof, the Town does not reasonably anticipate that for calendar year 2017 it will issue, borrow the proceeds of or have allocated to it for purposes of Section 265(b) of the Code, any Section 265 Tax-Exempt Obligations (other than this Lease Agreement), or that any Section 265 Tax-Exempt Obligations will be issued on behalf of it. "Section 265 Tax-Exempt Obligations" are obligations the interest on which is excludable from gross income of the owners thereof under section 103 of the Code, except for private activity bonds, other than qualified 501(c)(3) bonds, both as defined in Section 141 of the Code. The Town will not, in calendar 2017, issue, permit the issuance on behalf of it or by any entity subject to control by the Town (which may hereafter come into existence), borrow the proceeds of or agree to an allocation to it for purposes of Section 265(b) of the Code, Section 265 Tax-Exempt Obligations (including the Lease Agreement) that exceed the aggregate amount of \$10,000,000 during calendar year 2017, unless it first obtains an opinion of Bond Counsel to the effect that such issuance, borrowing or allocation will not adversely affect the treatment of this Lease Agreement as a "qualified tax-exempt obligation" for the purpose and within the meaning of Section 265(b)(3) of the Code. Interests in this Lease Agreement have not been sold in conjunction with any other tax exempt obligations.

Section 7.08. Financial Statements; Budgets; Other Information. Within 210 days following the end of each Fiscal Year of the Town during the Term of this Lease Agreement, the Town will provide the Corporation and the Assignee with a copy of its audited financial statements for such Fiscal Year. Such audited financial statements shall include the Town's Comprehensive Annual Financial Report ("CAFR"), including such information as is required by applicable Government Accounting Standards Board pronouncements and applicable State law. Within 30 days of the end of each fiscal year, the Town will provide the Assignee with a copy of its annual budget. The Town hereby agrees to provide the Assignee with such other information as may be reasonably requested by the Assignee.

Section 7.09. Records and Accounts. The Town covenants and agrees that it shall keep proper books of record and accounts of its operations in accordance with GASB, in which complete and correct entries shall be made of all transactions relating to the Town. Said books and records shall at all reasonable times be subject to the inspection of the Assignee upon 72 hours' prior notice.

Section 7.10. Observance of Laws and Regulations. The Town will well and truly keep, observe and perform or cause to be kept, observed and performed all valid and lawful obligations, regulations or Applicable Laws now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, or by any officer, board, commission or Governmental Authority having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired and enjoyed by the Town, including the Town's right to exist and carry on business as a municipal corporation, to the end that such rights, privileges and

franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

Section 7.11. Notices. During the Term of this Lease Agreement, the Town shall provide to the Assignee:

- (a) immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default under this Lease Agreement, together with a detailed statement by a Town Representative of the steps being taken by the Town to cure the effect of such Event of Default;
- (b) prompt written notice of any Material Litigation, or any investigation, inquiry or similar proceeding by any Governmental Authority;
- (c) with reasonable promptness, such other information respecting the Town, and the operations, affairs and financial condition of the Town as the Assignee may from time to time reasonably request;
- (d) notices of filings with the Municipal Securities Regulatory Board's EMMA system, other than regular annual filings; and
- (e) notice of an event that could cause a Material Adverse Effect.

Section 7.12. Limitation on Obligations Secured by the General Fund. The Town covenants and agrees that, during the Term of the Lease Agreement, it will not incur Long-Term Indebtedness payable from the general fund in any Fiscal Year that would require the Town to make an annual payment which, when added to the maximum annual Lease Payments due in any Fiscal Year plus any other previously incurred Long-Term Indebtedness payable from the general fund, including the Town's annual litigation settlement payment, would be greater than 15% of the Town's prior fiscal year general fund revenues. "Long-Term Indebtedness" means indebtedness (including capital leases and installment sale agreements) having a maturity greater than one year or renewable or extendible at the option of the Town for a period greater than one year from the date of original measurement and all indebtedness (including capital leases and installment sale agreements) required to be classified as long-term indebtedness in accordance with generally accepted accounting principles.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default Defined. Any one or more of the following events constitutes an Event of Default hereunder:

(a) failure by the Town to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein;

(b) failure by the Town to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in the preceding Section 8.01(a), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Town by the Assignee. However, if in the reasonable opinion of the Town the failure stated in the notice can be corrected, but not within such 30-day period, the Corporation and the Assignee shall not unreasonably withhold their consent to an extension of such time (for a period not to exceed 60 days) if corrective action is instituted by the Town within such 30-day period and diligently pursued until the default is corrected;

(c) the filing by the Town of a voluntary petition in bankruptcy, or failure by the Town promptly to lift any execution, garnishment or attachment, or adjudication of the Town as a bankrupt, or assignment by the Town for the benefit of creditors, or the entry by the Town into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Town in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar federal or State act now existing or which may hereafter be enacted;

(d) any statement, representation or warranty made by the Town in or pursuant to this Lease Agreement or its execution, delivery or performance shall have been false, incorrect, misleading or breached in any material respect on the date when made;

(e) any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which the Town is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by the Assignee or any affiliate of the Assignee; or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$500,000;

(f) any default by the Town to observe any covenant, condition or agreement on its part to be observed or performed under the Site and Facility Lease;

(g) any court of competent jurisdiction shall find or rule that the Site and Facility Lease or this Lease Agreement is not valid or binding against the Town;

(h) the Town abandons any part of the Property; and

(i) any Material Adverse Effect shall exist.

Section 8.02. Remedies on Default. Whenever any Event of Default has happened and is continuing, the Corporation may exercise any and all remedies available under law or granted under this Lease Agreement; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable.

Each and every covenant hereof to be kept and performed by the Town is expressly made a condition and upon the breach thereof the Corporation may exercise any and all rights granted hereunder; provided, that no termination of this Lease Agreement shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Corporation may exercise any one or more of the following remedies:

(a) ***Enforcement of Payments Without Termination.*** If the Corporation does not elect to terminate this Lease Agreement in the manner hereinafter provided for in Section 8.02(b) hereof, the Town agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Corporation for any deficiency arising out of the re-leasing of the Property, or, if the Corporation is unable to re-lease the Property, then for the full amount of all Lease Payments to the end of the Term of this Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Corporation or any suit in unlawful detainer, or otherwise, brought by the Corporation for the purpose of effecting such re-entry or obtaining possession of the Property or the exercise of any other remedy by the Corporation. The Town hereby irrevocably appoints the Corporation as the agent and attorney-in-fact of the Town to enter upon and re-lease the Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Property, to place such property in storage or other suitable place in San Bernardino County for the account of and at the expense of the Town, and the Town hereby exempts and agrees to save harmless the Corporation from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Property and the removal and storage of such property by the Corporation or its duly authorized agents in accordance with the provisions herein contained. The Town agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Corporation to re-lease the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Corporation in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the Town the right to terminate this Lease Agreement shall vest

in the Corporation to be effected in the sole and exclusive manner hereinafter provided for in Section 8.02(b) below. The Town agrees to surrender and quit possession of the Property upon demand of the Corporation for the purpose of enabling the Property to be re-let under this paragraph. Any rental obtained by the Corporation in excess of the sum of Lease Payments plus costs and expenses incurred by the Corporation for its services in re-leasing the Property shall be paid to the Town.

(b) **Termination of Lease.** If an Event of Default occurs and is continuing hereunder, the Corporation at its option may terminate this Lease Agreement and re-lease all or any portion of the Property, subject to the Site and Facility Lease. If the Corporation terminates this Lease Agreement at its option and in the manner hereinafter provided due to a default by the Town (and notwithstanding any re-entry upon the Property by the Corporation in any manner whatsoever or the re-leasing of the Property), the Town nevertheless agrees to pay to the Corporation all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Payments. Any surplus received by the Corporation from such re-leasing shall be applied by the Corporation to Lease Payments due under this Lease Agreement. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Corporation shall of itself operate to terminate this Lease Agreement, and no termination of this Lease Agreement on account of default by the Town shall be or become effective by operation of law, or otherwise, unless and until the Corporation shall have given written notice to the Town of the election on the part of the Corporation to terminate this Lease Agreement. The Town covenants and agrees that no surrender of the Property, or of the remainder of the Term hereof or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Corporation by such written notice.

(c) **Proceedings At Law or In Equity.** If an Event of Default occurs and continues hereunder, the Corporation may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

(d) **Remedies Under the Site and Facility Lease.** If an Event of Default occurs and continues hereunder, the Corporation may exercise its rights under the Site and Facility Lease.

Section 8.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to

exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article VIII it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

Section 8.04. Agreement To Pay Attorneys' Fees and Expenses. If either party to this Lease Agreement defaults under any of the provisions hereof and the nondefaulting party should employ attorneys (including in-house legal counsel) or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party (including the Assignee) the reasonable fees of such attorneys' (including allocable costs and expenses of in-house legal counsel, if any) and such other expenses so incurred by the nondefaulting party.

Section 8.05. No Additional Waiver Implied by One Waiver. If any agreement contained in this Lease Agreement is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

Section 8.06. Assignee To Exercise Rights. Such rights and remedies as are given to the Corporation under this Article VIII have been assigned by the Corporation to the Assignee, to which assignment the Town hereby consents.

Section 8.07. Judicial Reference.

(a) **Judicial Reference.** The Assignee and the Town hereby agree: (i) each proceeding or hearing based upon or arising out of, directly or indirectly, this Lease Agreement, the Site and Facility Lease, the Property or any document related thereto, any dealings between the Town and the Assignee related to the subject matter of this Lease Agreement, the Site and Facility Lease or any related transactions, and/or the relationship that is being established between the Town and the Assignee (hereinafter, a "Claim") shall be determined by a consensual general judicial reference (the "Reference") pursuant to the provisions of Section 638 et seq. of the California Code of Civil Procedure, as such statutes may be amended or modified from time to time; (ii) upon a written request, or upon an appropriate motion by either the Assignee or the Town, as applicable, any pending action relating to any Claim and every Claim shall be heard by a single Referee (as defined below) who shall then try all issues (including any and all questions of law and questions of fact relating thereto), and issue findings of fact and conclusions of law and report a statement of decision. The Referee's statement of decision will constitute the conclusive determination of the Claim. The Assignee

and the Town agree that the Referee shall have the power to issue all legal and equitable relief appropriate under the circumstances before the Referee; (iii) the Assignee and the Town shall promptly and diligently cooperate with one another, as applicable, and the Referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of all Claims in accordance with the terms of this Section 8.07; (iv) either the Assignee or the Town, as applicable, may file the Referee's findings, conclusions and statement with the clerk or judge of any appropriate court, file a motion to confirm the Referee's report and have judgment entered thereon. If the report is deemed incomplete by such court, the Referee may be required to complete the report and resubmit it; (v) the Authority and the Town, as applicable, will each have such rights to assert such objections as are set forth in Section 638 et seq. of the California Code of Civil Procedure; and (vi) all proceedings shall be closed to the public and confidential, and all records relating to the Reference shall be permanently sealed when the order thereon becomes final.

(b) **Selection of Referee; Powers.** The parties to the Reference proceeding shall select a single neutral referee (the "Referee"), who shall be a retired judge or justice of the courts of the State of California, or a federal court judge, in each case, with at least 10 years of judicial experience in civil matters. The Referee shall be appointed in accordance with Section 638 of the California Code of Civil Procedure (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts). If within 10 days after the request or motion for the Reference, the parties to the Reference proceeding cannot agree upon a Referee, then any party to such proceeding may request or move that the Referee be appointed by the Presiding Judge of the San Bernardino County Superior Court, or of the U.S. District Court for the Central District of California. The Referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this Section 8.07.

(c) **Provisional Remedies and Self Help.** No provision of this Section 8.07 shall limit the right of either the Assignee or the Town, as the case may be, to (i) exercise such self-help remedies as might otherwise be available under applicable law; or (ii) obtain or oppose provisional or ancillary remedies, including without limitation injunctive relief, writs of possession, the appointment of a receiver, and/or additional or supplementary remedies from a court of competent jurisdiction before, after, or during the pendency of any Reference. The exercise of, or opposition to, any such remedy does not waive the right of the Assignee or the Town to the Reference pursuant to this Section 8.07(c).

(d) **Costs and Fees.** Promptly following the selection of the Referee, the parties to such Reference proceeding shall each advance equal portions of the estimated fees and costs of the Referee. In the statement of decision issued by the Referee, the Referee shall award costs, including reasonable attorneys' fees,

to the prevailing party, if any, and may order the Referee's fees to be paid or shared by the parties to such Reference proceeding in such manner as the Referee deems just.

ARTICLE IX

PREPAYMENT OF LEASE PAYMENTS

Section 9.01. Security Deposit. Notwithstanding any other provision of this Lease Agreement, the Town may on any date secure the payment of the Lease Payments in whole or in part by depositing with the Assignee or a fiduciary reasonably satisfactory to the Assignee, in trust, an amount of cash, which shall be held in a segregated trust or escrow fund under a trust or escrow agreement that is in form and content acceptable to the Assignee, which cash so held is either (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Exhibit C; or (b) invested in whole in non-callable Federal Securities maturing not later than the dates such funds will be required to make Lease Payments or any prepayment in an amount which is sufficient, in the opinion of an independent certified public accountant (which opinion must be in form and substance, and with such an accountant, acceptable to the Assignee and addressed and delivered to the Assignee), together with interest to accrue thereon and without reinvestment and together with any cash which is so deposited, to pay such Lease Payments when due under Section 4.03(a) or when due on any optional prepayment date under Section 9.02 below, as the Town instructs at the time of said deposit; provided, however, that at or prior to the date on which any such security deposit is established; the Town shall deliver to the Assignee an opinion of Bond Counsel (in form and substance acceptable to the Assignee) to the effect that any such security deposit will not adversely affect the excludability of the interest component of Lease Payments from gross income of the Assignee for federal income tax purposes. In the event of a security deposit under this Section with respect to all unpaid Lease Payments, (i) the Term of this Lease Agreement shall continue; (ii) all obligations of the Town under this Lease Agreement, and all security provided by this Lease Agreement for said obligations, shall thereupon cease and terminate, excepting only (A) the obligation of the Town to make, or cause to be made, all of the Lease Payments from such security deposit and, to the extent of any deficiency, as rent payable from other legally available funds of the Town, and (B) the release and indemnification obligations of the Town under Sections 7.03(f) and (g) above; and (iii) under Section 4.05, the Corporation's leasehold interest in the Property will vest in the Town on the date of said deposit automatically and without further action by the Town or the Corporation. The Town hereby grants a first priority security interest in and the lien on said security deposit and all proceeds thereof in favor of the Assignee. Said security deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease Agreement and, notwithstanding anything to the contrary herein, Lease Payments therefrom shall not be

subject to abatement under Section 6.03 hereof to the extent payable from the funds held by the Assignee or the fiduciary as described in the first sentence of this Section 9.01.

Section 9.02. Optional Prepayment. The Town may prepay the principal component of the Lease Payments in full but not in part, on any Lease Payment Date on and after September 1, 2022, upon at least 30 days' notice to the Assignee, at a prepayment amount equal to the principal amount of Lease Payments to be prepaid, plus a prepayment premium of 1.00% of the principal amount to be prepaid, together with accrued interest to the date fixed for prepayment.

Section 9.03. Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain. The Town shall be obligated to prepay the unpaid principal components of the Lease Payments in whole or in part in such order of prepayment as shall be selected by the Town on any date, together with any accrued and unpaid interest, and any other costs related to such prepayment, from and to the extent of any proceeds of insurance award or condemnation award with respect to the Property to be used for such purpose under Section 6.02. The Town and the Corporation hereby agree that such proceeds, to the extent remaining after payment of any delinquent Lease Payments, shall be credited towards the Town's obligations under this Section 9.03.

ARTICLE X

MISCELLANEOUS

Section 10.01. Notices. Any notice, request, complaint, demand or other communication under this Lease Agreement shall be given by first-class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication; (b) 48 hours after deposit in the United States of America first-class mail, postage prepaid; or (c) in the case of personal delivery to any person, upon actual receipt. The Corporation, the Town and the Assignee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

to the Town: Town of Apple Valley
 14955 Dale Evans Parkway
 Apple Valley, CA 92307
 Telephone: (760) 240-7000
 Attention: Town Manager

to the Corporation: Public Property Financing Corporation of California
2945 Townsgate Road, Suite 200
Westlake Village, CA 91361
Telephone: (805) 719-1235
Attention: President

to the Assignee: Capital One Public Funding, LLC
275 Broadhollow Road
Melville, NY 11747
Attention: President

Section 10.02. Binding Effect. This Lease Agreement inures to the benefit of and is binding upon the Corporation, the Town and their respective successors and assigns.

Section 10.03. Severability. If any provision of this Lease Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 10.04. Net-net-net Lease. This Lease Agreement is a “net-net-net lease” and the Town hereby agrees that the Lease Payments are an absolute net return to the Corporation, free and clear of any expenses, charges or setoffs whatsoever.

Section 10.05. Further Assurances and Corrective Instruments. The Corporation and the Town agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended to be so or for carrying out the expressed intention of this Lease Agreement.

Section 10.06. Execution in Counterparts. This Lease Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Section 10.07. Applicable Law. This Lease Agreement is governed by and construed in accordance with the laws of the State.

Section 10.08. Captions. The captions or headings in this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or section of this Lease Agreement.

IN WITNESS WHEREOF, the Corporation and the Town have caused this Lease Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

PUBLIC PROPERTY FINANCING
CORPORATION OF CALIFORNIA

By _____
Name _____
Title _____

TOWN OF APPLE VALLEY

By _____
Frank Robinson, Town Manager

Attest:

By _____
La Vonda M-Pearson, Town Clerk

EXHIBIT A

DESCRIPTION OF THE SITE

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO, CITY OF APPLE VALLEY, AND IS DESCRIBED AS FOLLOWS:

EXHIBIT B
DESCRIPTION OF THE FACILITY

RECORDING REQUESTED AND
 WHEN RECORDED MAIL TO:
 Sam S. Balisy, Esq.
 Kutak Rock LLP
 Suite 4200
 601 South Figueroa Street
 Los Angeles, CA 90017

EXHIBIT C

SCHEDULE OF LEASE PAYMENTS

Lease Payment Date	Principal Component	Interest Component*	Total Lease Payment	Annual Lease Payment
03/01/18		%	\$	\$
09/01/18				
03/01/19				
09/01/19				
03/01/20				
09/01/20				
03/01/21				
09/01/21				
03/01/22				
09/01/22				
03/01/23				
09/01/23				
03/01/24				
09/01/24				
03/01/25				
09/01/25				
03/01/26				
03/01/26				
03/01/27				
09/01/27				

ATTACHMENT 4

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

SITE AND FACILITY LEASE

by and between

TOWN OF APPLE VALLEY,
as Lessor

and

PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA,
as Lessee

Dated as of July 1, 2017

Table of Contents

	Page
Section 1.	Definitions..... 2
Section 2.	Site and Facility Lease 2
Section 3.	Term 2
Section 4.	Advance Rental Payment 2
Section 5.	Purpose 2
Section 6.	Town's Interest in the Property 2
Section 7.	Town Representations and Certifications to the Corporation and the Assignee..... 2
Section 8.	Assignments and Subleases 3
Section 9.	Right of Entry..... 4
Section 10.	Termination 4
Section 11.	Default..... 4
Section 12.	Quiet Enjoyment..... 4
Section 13.	Waiver of Personal Liability 4
Section 14.	Taxes..... 4
Section 15.	Eminent Domain..... 5
Section 16.	Use of the Proceeds 5
Section 17.	Attorneys' Fees, Costs and Expenses..... 5
Section 18.	Partial Invalidity 5
Section 19.	Notices 5
Section 20.	Binding Effect 5
Section 21.	Amendment..... 5
Section 22.	Section Headings 6
Section 23.	Applicable Law 6
Section 24.	No Merger 6
Section 25.	Execution in Counterparts 6
EXHIBIT A	DESCRIPTION OF THE SITE
EXHIBIT B	DESCRIPTION OF THE FACILITY

SITE AND FACILITY LEASE

THIS SITE AND FACILITY LEASE (this "Site and Facility Lease"), dated as of July 1, 2017, is by and between the **TOWN OF APPLE VALLEY**, a municipal corporation and general law city organized and existing under and by virtue of the laws of the State of California (the "Town"), as lessor, and the **PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA**, a nonprofit, public benefit corporation organized and existing under and by virtue of the laws of the State of California (the "Corporation"), as lessee;

WITNESSETH:

WHEREAS, the Apple Valley Public Financing Authority (the "Authority") has heretofore issued and delivered \$11,355,000 of the Authority's Lease Revenue Bonds (Town Hall Annex Project) 2007 Series A (the "Prior Bonds"), pursuant to the terms of an Indenture, dated as of July 1, 2007 (the "Prior Indenture"), by and between the Authority and U.S. Bank National Association, as trustee (the "Prior Trustee"); and

WHEREAS, the Prior Bonds are currently outstanding in the principal amount of \$7,465,000; and

WHEREAS, the proceeds of the Prior Bonds were used by the Authority to (a) assist the Town in financing certain capital projects, including the construction of an annex to the Town Hall (the "Prior Project"); (b) purchase a debt service reserve surety bond for deposit in the reserve account for the Prior Bonds; and (c) pay the costs of issuance of the Prior Bonds; and

WHEREAS, the payment of the principal of and interest on the Prior Bonds is payable from certain revenues consisting primarily of certain rental payments ("Prior Base Rental Payments") made by the Town to the Authority pursuant to a Lease Agreement, dated as of July 1, 2007 (the "Prior Lease"), by and between the Authority and the Town as consideration for the Authority subleasing the Prior Project to the Town; and

WHEREAS, the Town has determined at this time, due to prevailing interest rates in the municipal bond market and for other reasons, to (a) prepay the Prior Base Rental Payments under the Prior Lease and to cause the redemption of the Prior Bonds, and (b) to finance the acquisition of vehicles for the Town (the "2017 Project") and to implement a lease financing for such purposes; and

WHEREAS, pursuant to this Site and Facility Lease, the Town proposes to lease those certain parcels of real property situated in San Bernardino County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements thereon, more particularly described in Exhibit B hereto (the "Facility" and, with the Site, the "Property"), to the Corporation, all for the purpose of enabling the Town to prepay the Prior Base Rental Payments under the Prior Lease and to cause the redemption of the Prior Bonds and to finance the 2017 Project; and

WHEREAS, the Corporation proposes to lease the Property back to the Town pursuant to that certain Lease Agreement, dated as of July 1, 2017, a memorandum of which is recorded concurrently herewith (the "Lease Agreement") and to assign all of its rights, title and interest in, to and under this Site and Facility Lease and the Lease Agreement, including its right to receive lease payments under the Lease Agreement (the "Lease Payments"), its right to enforce payment of the Lease Payments and otherwise to enforce its interest and rights under the Lease Agreement in the event of a default thereunder by the Town, to [bank], an [State] banking corporation (the "Assignee"), pursuant to that certain assignment agreement, dated as of July 1, 2017, by and between the Corporation and the Assignee (the "Assignment Agreement"), and recorded concurrently herewith;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, as follows:

Section 8. Definitions. Capitalized terms used, but not otherwise defined, in this Site and Facility Lease shall have the meanings ascribed to them in the Lease Agreement.

Section 9. Site and Facility Lease. The Town hereby leases to the Corporation and the Corporation hereby leases from the Town, on the terms and conditions hereinafter set forth, the Property.

Section 10. Term. The term of this Site and Facility Lease shall commence on the date of recordation of this Site and Facility Lease in the Office of the County Recorder of San Bernardino County, State of California, and shall end on September 1, 2027, unless such term is extended or sooner terminated as hereinafter provided. If, on September 1, 2027, the aggregate amount of Lease Payments (as defined in and as payable under the Lease Agreement) shall not have been paid by reason of abatement, default or otherwise, or provision shall not have been made for their payment in accordance with the Lease Agreement, then the term of this Site and Facility Lease shall be extended until such Lease Payments shall be fully paid or provision made for such payment, but in no event later than September 1, 2037. If, prior to September 1, 2027, all Lease Payments shall be fully paid or provision made for such payment in accordance with the Lease Agreement, the term of this Site and Facility Lease shall end.

Section 11. Advance Rental Payment. The Town agrees to lease the Property to the Corporation in consideration of the payment by the Corporation of an advance rental payment of \$_____. The Town and the Corporation agree that by reason of the assignment of this Site and Facility Lease and the Lease Agreement to the Assignee under and pursuant to the Assignment Agreement and the payment of the advance rental payment by the Assignee, the advance rental payment referenced in the preceding sentence shall be deemed to have been paid.

Section 12. Purpose. The Corporation shall use the Property solely for the purpose of leasing the Property to the Town pursuant to the Lease Agreement and for such purposes as may be incidental thereto; provided, however, that in the event of

default by the Town under the Lease Agreement, the Corporation and its assigns may exercise the remedies provided in the Lease Agreement.

Section 13. Town's Interest in the Property. The Town covenants that it is the owner in fee of the Property.

Section 14. Town Representations and Certifications to the Corporation and the Assignee. The Town hereby certifies and represents, warrants, covenants and agrees as follows:

(a) This Site and Facility Lease is in full force and effect, and there have been no amendments, modifications, changes or additions since its execution.

(b) To the best of the Town's knowledge, the Corporation is not and will not be, in any respect, in default under the terms and provisions of this Site and Facility Lease. Further, to the best of the Town's knowledge, the Town knows of no event which would, currently or with the passage of time or giving of notice, or both, constitute a default under the terms of this Site and Facility Lease by either the Corporation or the Town.

(c) The Town has not currently encumbered its fee interest in the Property to any lender or financial institution, whether by way of mortgage, deed of trust or other security instruments, except for this Site and Facility Lease and the Lease Agreement which is being recorded concurrently herewith and Permitted Encumbrances (as defined in the Trust Agreement).

(d) The Town hereby consents to the Lease Agreement and the Assignment Agreement.

(e) Upon the Event of Default under the Lease Agreement, the Town will standstill and allow the Corporation or the Assignee to pursue any and all remedies available to the Corporation or Assignee under either this Site and Facility Lease or the Lease Agreement.

(f) Except for the rental payment referenced in Section 4, no additional rent is or will be due under this Site and Facility Lease by the Corporation through the term of this Site and Facility Lease and the Corporation has satisfied all of its obligations under this Site and Facility Lease.

(g) During the term of the Site and Facility Lease, the Town will not consent to any amendment, modification or termination of this Site and Facility Lease without the prior written consent of the Assignee.

(h) During the term of this Site and Facility Lease, the Town will not encumber its interest in the Site without the prior written consent of the Assignee.

(i) The Town acknowledges that this Site and Facility Lease cannot be terminated by the Town for any reason, except according to Section 3.

(j) Notwithstanding any Site and Facility Lease provisions to the contrary, policies of fire, casualty, and extended coverage insurance shall be carried and maintained by the Town in accordance with the terms of the Lease Agreement covering the building or buildings constructed on the Site, with a loss payable clause to Assignee.

Section 15. Assignments and Subleases. Unless the Town shall be in default under the Lease Agreement, the Corporation may not assign its rights under this Site and Facility Lease or sublet the Property, except as provided in the Lease Agreement and the Assignment Agreement, without the written consent of the Town and the Assignee. The Town consents to the assignment of the Corporation's interest in this Site and Facility Lease to the Assignee. If the Town is in default under the Lease Agreement, the Assignee (including their successors and assigns under the Lease Agreement) may fully and freely assign and sublease the Property or any portion thereof, subject to this Site and Facility Lease.

Section 16. Right of Entry. The Town reserves the right for any of its duly authorized representatives to enter upon the Property at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

Section 17. Termination. The Corporation agrees, upon the termination of this Site and Facility Lease, to quit and surrender the Property in the same good order and condition as the same were in at the time of commencement of the term hereunder, reasonable wear and tear excepted, and agrees that any permanent improvements and structures existing upon the Site at the time of the termination of this Site and Facility Lease shall remain thereon and title thereto shall vest in the Town.

Section 18. Default. In the event the Corporation shall be in default in the performance of any obligation on its part to be performed under the terms of this Site and Facility Lease, which default continues for 30 days following notice and demand for correction thereof to the Corporation, the Town may exercise any and all remedies granted by law, except that no merger of this Site and Facility Lease and of the Lease Agreement shall be deemed to occur as a result thereof and the Town shall have no right to terminate this Site and Facility Lease as a remedy for such default. Notwithstanding the foregoing, so long as the Lease Agreement remains in effect, the Town will continue to pay the Lease Payments to the Assignee.

In the event of the occurrence of an Event of Default under the Lease Agreement or a breach or default of the certifications and representations, warranties and covenants of the Town contained in Section 7, the Assignee, as assignee of the Corporation, may (a) exercise the remedies provided in the Lease Agreement; (b) use the Property for any

lawful purpose, subject to any applicable legal limitations or restrictions; and (c) exercise all options provided herein.

Section 19. Quiet Enjoyment. The Corporation, at all times during the term of this Site and Facility Lease, shall peaceably and quietly have, hold and enjoy all of the Property subject to the provisions of the Lease Agreement.

Section 20. Waiver of Personal Liability. All liabilities under this Site and Facility Lease on the part of the Corporation are solely liabilities of the Corporation and the Town hereby releases each and every Board member, director, officer, employee and agent of the Corporation of and from any personal or individual liability under this Site and Facility Lease. No Board member, director, officer, employee or agent of the Corporation shall at any time or under any circumstances be individually or personally liable under this Site and Facility Lease for anything done or omitted to be done by the Corporation hereunder.

Section 21. Taxes. All assessments of any kind or character and all taxes, including possessory interest taxes, levied or assessed upon the Property or the Corporation's interest in the Property created by this Site and Facility Lease (including both land and improvements) will be paid by the Town in accordance with the Lease Agreement.

Section 22. Eminent Domain. In the event the whole or any part of the Property is taken by eminent domain proceedings, the interest of the Corporation shall be recognized and is hereby determined to be the amount of the then unpaid principal component of the Lease Payments, any then unpaid interest component of the Lease Payments and any premium due with respect to the prepayment of Lease Payments to the date such amounts are remitted to the Corporation or its assignee, and, subject to the provisions of the Lease Agreement, the balance of the award, if any, shall be paid to the Town. The Town hereby waives, to the extent permitted by law, any and all rights that it has or may hereafter have to acquire the interest of the Corporation in and to the Property through the eminent domain powers of the Town. However, the Town hereby agrees, to the extent permitted by law, that the compensation to be paid in any condemnation proceedings brought by or on behalf of the Town with respect to the Property shall be in an amount not less than the total unpaid principal component of Lease Payments, the interest component of Lease Payments accrued to the date of payment of all Lease Payments and any premium due with respect to the prepayment of Lease Payments under the Lease Agreement.

Section 23. Use of the Proceeds. The Town and the Corporation hereby agree that the lease to the Corporation of the Town's right and interest in the Property pursuant to Section 2 serves the public purposes of the Town.

Section 24. Attorneys' Fees, Costs and Expenses. In any civil action or proceeding arising from or relating to this Site and Facility Lease or a party's performance under this Site and Facility Lease, the prevailing party shall be awarded its reasonable

attorneys' fees, costs and expenses, including the reasonable attorneys' fees, costs and expenses incurred in collecting or executing upon any judgment, order or award.

Section 25. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site and Facility Lease shall, to any extent, be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding, order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site and Facility Lease shall be affected thereby, and each provision of this Site and Facility Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 26. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid, at the addresses set forth in the Lease Agreement, or to such other addresses as the respective parties may from time to time designate by notice in writing.

Section 27. Binding Effect. This Site and Facility Lease shall inure to the benefit of and shall be binding upon the Town and the Corporation and their respective successors and assigns. The Assignee are hereby made third-party beneficiaries hereunder with all rights of a third-party beneficiary.

Section 28. Amendment. This Site and Facility Lease may not be amended except as permitted under the Lease Agreement.

Section 29. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site and Facility Lease.

Section 30. Applicable Law. This Site and Facility Lease shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in California.

Section 31. No Merger. Neither this Site and Facility Lease, the Lease Agreement nor any provisions hereof or thereof shall be construed to effect a merger of the title of the Town to the Property under this Site and Facility Lease and the Town's leasehold interest therein under the Lease Agreement.

Section 32. Execution in Counterparts. This Site and Facility Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Town and the Corporation have caused this Site and Facility Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

TOWN OF APPLE VALLEY

By _____
Frank Robinson, Town Manager

Attest:

By _____
La Vonda M-Pearson, Town Clerk

PUBLIC PROPERTY FINANCING
CORPORATION OF CALIFORNIA

By _____

EXHIBIT A

DESCRIPTION OF THE SITE

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO, CITY OF APPLE VALLEY, AND IS DESCRIBED AS FOLLOWS:

EXHIBIT B
DESCRIPTION OF THE FACILITY

* The interest component of the Lease Payments shall be calculated based on an interest rate of 2.90% per annum.

ATTACHMENT 5

RECORDING REQUESTED AND
WHEN RECORDED MAIL TO:

Sam S. Balisy, Esq.
Kutak Rock LLP
Suite 4550
777 South Figueroa Street
Los Angeles, CA 90017.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER
TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND
TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES
PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

TERMINATION AGREEMENT

by and among

TOWN OF APPLE VALLEY,

APPLE VALLEY PUBLIC FINANCING AUTHORITY,

and

U.S. BANK NATIONAL ASSOCIATION,
as Trustee and as Assignee

Relating to the

\$11,355,000
Apple Valley Public Financing Authority
Lease Revenue Bonds (Town Hall Annex Project) 2007 Series A

Dated as of July 1, 2017

TERMINATION AGREEMENT

THIS TERMINATION AGREEMENT is dated as of July 1, 2017, and is by and among the **TOWN OF APPLE VALLEY**, (the “Town”), and **U.S. BANK NATIONAL ASSOCIATION**, as trustee (the “2007 Trustee”), and the **APPLE VALLEY PUBLIC FINANCING AUTHORITY** (the “Authority”).

W I T N E S S E T H :

WHEREAS, the Town and the Authority have heretofore entered into a Lease Agreement, dated as of July 1, 2007 (the “2007 Site and Facility Lease”), and the Lease Agreement, dated as of July 1, 2007 (the “2007 Lease Agreement”), pursuant to which the Authority and the Town entered into a transaction for the lease financing of certain facilities, including the site thereof (the “2007 Property”), and the Town agreed to make certain lease payments (the “2007 Lease Payments”) to the Authority; and

WHEREAS, the 2007 Lease Agreement provides that in the event that the Town deposits, or causes the deposit on its behalf of moneys for the prepayment of the 2007 Lease Payments, then all of the obligations of the Town under the 2007 Lease Agreement and all of the security provided by the Town for such obligations, excepting only the obligation of the Town to make the 2007 Lease Payments from said deposit, shall cease and terminate, and unencumbered title to the Property shall be vested in the Town without further action by the Town or the Authority; and

WHEREAS, pursuant to an Assignment Agreement, dated as of July 1, 2007 (the “2007 Assignment Agreement”), by and between the Authority and the 2007 Trustee, the Authority assigned to the 2007 Trustee, among other things, its rights to receive 2007 Lease Payments from the Town under the 2007 Lease Agreement and the right to exercise such rights and remedies conferred on the Authority under the 2007 Lease Agreement to enforce payment of the 2007 Lease Payments; and

WHEREAS, pursuant to an Indenture, dated as of July 1, 2007, between the Authority and the 2007 Trustee, the Authority issued \$11,355,000 aggregate principal amount of Apple Valley Public Financing Authority Lease Revenue Bonds (Town Hall Annex Project) 2007 Series A (the “2007 Bonds”); and

WHEREAS, the Town has determined that, as a result of favorable financial market conditions and for other reasons, it is in the best interests of the Town at this time to refinance the Town’s obligation to make the 2007 Lease Payments under the 2007 Lease Agreement and, as a result thereof, to provide for the early redemption of the 2007 Bonds and, to that end, the Town proposes to lease certain real property and the improvements thereon (the “2017 Property”) to Public Property Financing Corporation of California (the “Corporation”) and to lease back the 2017 Property from the Corporation pursuant to that certain Lease Agreement, dated as of July 1, 2017 (the “2017 Lease Agreement”), a memorandum of which has been recorded concurrently herewith; and

WHEREAS, to obtain moneys to make such deposit, the Corporation proposes to assign and transfer certain of its rights under the 2017 Lease Agreement to [Bank] (the "Assignee"), pursuant to that certain Assignment Agreement, dated as of July 1, 2017, by and between the Corporation and the Assignee, and recorded concurrently herewith (the "2017 Assignment Agreement"), whereby the Assignee is to make a payment of \$8,600,000 to or to the order of the Town; and

WHEREAS, upon deposit of a portion of such amounts for prepayment of the 2007 Lease Payments, the 2007 Lease Agreement and the agreements related thereto need not be maintained except as otherwise provided below), and the parties hereto now desire to provide for the termination of such documents as provided herein.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree:

Section 1. Termination.

(a) By virtue of the deposit of amounts for prepayment of the 2007 Lease Payments, all obligations of the Town under the 2007 Lease Agreement shall cease and terminate, excepting only the obligation of the Town to make, or cause to be made, all payments from such deposit and title to the 2007 Property shall vest in the Town on the date of said deposit automatically and without further action by the Town or the Authority. Said deposit and interest earnings thereon shall be deemed to be and shall constitute a special fund for the prepayment of the 2007 Lease Payments.

(b) In accordance with the foregoing, the following agreements are hereby terminated and are of no further force or effect:

(i) 2007 Site and Facility Lease, recorded on July __, 2007, as Document No. _____, Official Records of San Bernardino County;

(ii) 2007 Lease Agreement, recorded by memorandum on July __, 2007, as Document No. _____, Official Records of San Bernardino County; and

(iii) 2007 Assignment Agreement, recorded on July __, 2007, as Document No. _____, Official Records of San Bernardino County.

(c) From and after the date hereof, none of the parties shall have any further rights or obligations thereunder.

Section 2. Execution in Counterparts. This Termination Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Termination Agreement.

TOWN OF APPLE VALLEY

By _

Frank Robinson, Town Manager

Attest:

By _

La Vonda M-Pearson, Town Clerk

APPLE VALLEY PUBLIC FINANCING
AUTHORITY

By _

Frank Robinson, Executive Director

Attest:

By _

Secretary

U.S. BANK NATIONAL ASSOCIATION, as
2007 Trustee and as Assignee

By _

Vice President

EXHIBIT A

DESCRIPTION OF THE SITE

All that certain real property situated in the Town of Apple Valley, San Bernardino County, State of California, described as follows:

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____,
personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

ATTACHMENT 6

RECORDING REQUESTED AND
WHEN RECORDED MAIL TO:
Sam S. Balisy, Esq.
Kutak Rock LLP
Suite 4550
777 South Figueroa Street
Los Angeles, CA 90017

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

ASSIGNMENT AGREEMENT

FOR VALUE RECEIVED, the **PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA**, a California nonprofit public benefit corporation (the "Corporation") without recourse does hereby sell, assign and transfer to [**BANK**], an [State] banking corporation, and its successors and assigns (the "Assignee"), (a) all rights, title and interest in and to the Lease Agreement, dated as of July 1, 2017, a memorandum of which has been recorded concurrently herewith, by and between the Corporation, as sublessor, and the Town of Apple Valley (the "Town"), as sublessee (said Lease Agreement and any supplements, amendments, annexations, extensions or renewals thereof are referred to hereinafter as the "Lease Agreement"), as well as its rights to receive all Lease Payments (as defined in the Lease Agreement) and to enforce payment of Lease Payments when due or otherwise to protect its interests and exercise all remedies in the event of a default or termination by the Town under the Lease Agreement; provided that the Corporation's rights to indemnification and payment or reimbursement for any costs or expenses thereunder have been retained by the Corporation to the extent such rights accrue to the Corporation and shall have been assigned to the Assignee to the extent such rights accrue to the Assignee; (b) except for the Corporation's obligation under Section 4 thereof, all of its rights, title and interest in and to the Site and Facility Lease, dated as of July 1, 2017, which has been recorded concurrently herewith, by and between the Town, as lessor, and the Corporation, as lessee (the "Site and Facility Lease"); and (c) all moneys, sums and amounts now due or hereinafter to become due under the Lease Agreement. The Site and Facility Lease and the Lease Agreement delivered to the Assignee are duly executed duplicate originals that comprise the entire writing, obligation and agreement between the Corporation and the Town respecting the leases made thereunder and the lease payments made therefor.

The Assignee, hereby accepts the foregoing assignment. The above assignment is intended to be an absolute and unconditional assignment to the Assignee and is not intended as a loan by the Assignee to the Corporation. Accordingly, in the event of bankruptcy of the Corporation, the assigned property shall not be part of the Corporation's estate. However, if the above assignment is deemed to be a loan by the Assignee to the Corporation, then the Corporation shall be deemed to have granted to the Assignee, and hereby grants to the Assignee, a continuing first priority security interest in the assigned property and all proceeds thereof as collateral security for all obligations of the Corporation hereunder and all obligations of the Town under the Lease Agreement and this Assignment Agreement shall be deemed a security agreement with respect to such loan.

The Corporation represents and warrants as follows:

(a) it has made no prior sale or assignment of any interest in the Site and Facility Lease and the Lease Agreement;

(b) that the Lease Agreement and the Site and Facility Lease are genuine and in all respects are what they purport to be;

(c) that the Assignee is not liable for and do not assume responsibility for the performance of any of the covenants, agreements, duties or obligations specified in the Lease Agreement to be kept, paid or performed by the Corporation, with exception of such covenants, agreements, duties and obligations, if any, which are expressly made the responsibility of the Assignee under the Lease Agreement;

(d) that the Corporation has the power, authority, and legal right to execute, deliver and perform this Assignment Agreement and this Assignment Agreement is a valid, binding, and enforceable obligation of the Corporation, except as such enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and by the application of equitable principles;

(e) that good and marketable title to the assigned property has been duly vested in the Assignee free and clear of any liens, security interests, encumbrances or other claims other than the rights of the Town under the Lease Agreement, and the Corporation has not assigned or transferred any of the assigned property or any interest in the assigned property to any party other than the Assignee;

(f) that this Assignment Agreement has been duly authorized by all necessary action on the part of the Corporation; and

(g) that the Corporation agrees that it (i) shall not have any right to amend, modify, compromise, release or terminate the Site and Facility Lease; (ii) shall not have any right to amend, modify, compromise, release, terminate or permit prepayment of the Lease Agreement; and (iii) shall not take any action that may impair the payment of Lease Payments or the validity or enforceability of the Lease Agreement.

If the Corporation receives any Lease Payments, then the Corporation shall receive such payments in trust for the Assignee and shall immediately deliver the same to the Assignee in the form received, duly endorsed by the Corporation for deposit by the Assignee.

The Corporation shall execute and deliver to the Assignee such notices of assignment, UCC financing statements, assignments of financing statements and other documents, in form and substance reasonably satisfactory to the Assignee, and the Corporation shall take such other actions, as the Assignee may reasonably request from time to time to evidence, perfect, maintain, and enforce the Assignee's rights in the rights assigned hereunder and/or to enforce or exercise the Assignee's rights or remedies under the Lease. The Assignee may, where permitted by law, file such UCC financing statements without the Corporation's signature.

The Corporation further represents and warrants that as of the date of this Assignment Agreement, the Lease Agreement and the Site and Facility Lease are in full force and effect and the Town is not in default of any of the terms set forth therein.

By its acceptance of this Assignment Agreement, the Assignee, represents and warrants (a) the price paid in consideration for assignment of the Site and Facility Lease and the Lease Agreement is \$_____ ; (b) that the Assignee reasonably expects to hold its interests in the Lease Agreement for their own account and do not presently expect to sell, assign, or otherwise transfer their interests in the Lease Agreement, subject to each Assignee's right to dispose of or otherwise deal with its property (including its interest in the Lease Agreement) as it determines to be in its best interests from time to time, subject to the limitations described below; and (c) that it will treat the acquisition of the Corporation's rights in the Lease Agreement as a loan.

This Assignment Agreement shall be construed and governed in accordance with the laws of the State of California applicable to contracts made and performed in the State of California. Any provision of this Assignment Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Assignment Agreement.

This Assignment Agreement binds and inures to the benefit of the parties and their respective successors and assigns. In the event of litigation between the Corporation and the Assignee arising under this Assignment Agreement, the prevailing party shall be entitled to recover from the other party all costs and expenses, including attorneys' fees

which may be those of in-house counsel, incurred by the prevailing party in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions of this Assignment Agreement.

The descriptions of the Site and the Facility which are the subject of the Site and Facility Lease and the Lease Agreement are set forth in Exhibits A and B attached hereto and by this reference incorporated herein.

[Remainder of page intentionally left blank]

This Assignment Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Dated as of July 1, 2017.

PUBLIC PROPERTY FINANCING
CORPORATION OF CALIFORNIA

By _____
Name _____
Title _____

[BANK], an [State] banking corporation, as
Assignee

By _____
Name _____
Title _____

EXHIBIT A

DESCRIPTION OF THE SITE

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO, CITY OF APPLE VALLEY, AND IS DESCRIBED AS FOLLOWS:

EXHIBIT B
DESCRIPTION OF THE FACILITY

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____,
personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
