

TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** June 9, 2015
From: Orlando Acevedo **Item No:** 12
Economic Development Manager
Economic Development Department
Subject: OWNER PARTICIPATION AGREEMENT FOR A 1.3 MILLION SQUARE
FOOT DISTRIBUTION CENTER PROJECT IN THE NORTH APPLE
VALLEY INDUSTRIAL SPECIFIC PLAN AREA

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

RECOMMENDED ACTION:

That the Town Council: 1) Approve an Owner Participation Agreement (OPA) between the Town of Apple Valley and AVDC LLC, for the development of a 1.3 Million Square Foot Distribution Center Project, and authorize the Mayor, Town Manager and Town Attorney to execute said Agreement; and, 2) Adopt Budget Amendment Request No. 2015-34 to appropriate funding from the NAVISP Infrastructure Fund to said Project.

SUMMARY:

The Town Council is requested to enter into an Owner Participation Agreement (OPA) for the development of a new 1.3 million square foot distribution center on 106-acres (Project) within the North Apple Valley Industrial Specific Plan area. The Project location is south of the Walmart Distribution Center and the Victor Valley College Public Safety Campus; it is bordered to the north by Lafayette Street and to the east by Navajo Road. The proposed OPA, between the Town and AVDC, LLC, sets forth the terms and conditions for the proposed financial assistance to be provided for the Project.

Acting on behalf of the corporate end user, who remains confidential at this time, AVDC has informed the Town that the new distribution facility will be designed with enhanced technology systems, and equipment that will improve support for their stores and their growth opportunity in eCommerce. The construction of the facility will be designed and managed by The Haskell Company, Jacksonville, FL. Finalization and submittal of the development plans are underway with construction expected to start in September 2015 and will take about 18 months to complete. The construction project, including land, is estimated to cost approximately \$115 million and will employ 300 skilled tradesmen at

peak of construction. AVDC anticipates they will be transitioning from their current operation to the new facility in early 2017.

The proposed Apple Valley Distribution Center will employ 400 to 500 associates with a total annual payroll of approximately \$10 million.

Other Project benefits will include:

- Total permit and development impact fee payments by AVDC to the Town estimated at more than \$2,800,000.
- Total street construction and improvement costs estimated at \$2,304,333.
- Annual property taxes estimated at more than \$600,000. For reference, Walmart Distribution Center generated \$618,000 in total property tax in 2013.
- Significant utility and water infrastructure construction and extensions to service this Project and adjacent properties.
- Demonstration and endorsement of the North Apple Valley Industrial Specific Plan area as a competitive and viable location for future industrial attraction.

To solidify the Town's competitive site location to Project representatives during their site selection process, Town staff looked to financially offset the significant level of off-site infrastructure improvement costs that would be required of this Project at this site. To better inform this consideration, staff was able to reference recent community surveys to gauge the interest and spending priorities of Apple Valley residents. According to the Town's 2011 Community Opinion Survey:

"When asked to prioritize among a series of projects and programs that could be funded by the Town of Apple Valley in the future, providing incentives to attract new employers and jobs to town was assigned the highest priority (71% high priority), followed by improving the maintenance of streets and roads (52%), and hiring more police officers (41%)."

These survey results have provided staff with a high level of confidence that the public investment detailed within the OPA accomplishes the two highest spending priorities of our residents and furthermore is consistent with the Town Council-adopted "Vision 2020" document, which prioritizes "Adequate and Well Maintained Infrastructure", a "Thriving Economy", and a "Strong Transportation System" atop the Council's areas of focus.

Moreover, according to peer-surveys, publications and testimony of site selection consultants, there are generally several critical factors that go into assessing the strength of a potential site, including for example; workforce skills and labor availability, transportation infrastructure and access, availability of utilities and infrastructure, tax structure and regulatory environment, construction and operating costs, and a streamlined permit process. In some cases, companies looking at new development sites will expect the infrastructure costs to the site to be paid by the local municipality. According to Site Selection Magazine's 2013 Site Selection Survey, "Transportation

infrastructure and particularly transportation access was the second most frequently cited critical location factor. In this context, a number of consultants also mentioned proximity to clients and markets as a critical location factor.” Importantly, because not all projects are the same or offer the same benefits, the same survey stated, “Two-thirds of consultants surveyed said that it was very important for a location to have the flexibility to craft a customized incentives package for a specific project.”

Understanding both the community survey results and the critical factors that go into a successful selection of a site, the Town Contribution proposed in the OPA is designed to improve transportation infrastructure availability to the proposed Project site and surrounding area, both to meet the needs of this specific Project and to offer general benefit to future industrial projects within the NAVISP area.

Accordingly, the OPA presented herein will fund public regional street improvements adjacent to the Project site; namely Navajo Road, LaFayette Street and Daschund Road.

The total street construction costs are estimated at \$2,304,333. As the Developer, AVDC will pay an estimated \$849,000 and the Town would fund the remainder utilizing \$265,079 from the Transportation Impact Fee credit otherwise paid by the Project, and an estimated \$965,274 from available NAVISP Infrastructure Funds. An estimated \$225,000 will be deferred until such time as Daschund Road is needed. For a comprehensive summary of the improvements, please see OPA Attachment 2: Scope of Development.

This public infrastructure investment paid by the Town helps pave the way for the development of this Project and opens the door to attract additional industrial projects and job opportunities to Apple Valley—benefiting not only our community but residents and job-seekers throughout the entire High Desert region. In summary, the Town is providing an infrastructure investment of less than \$2,150 per job (\$965,274 investment divided by 450 jobs).

Finally, the Town is sensitive in providing the Developer with a stable and predictable financial assessment, in as much as possible, of project costs and development fees and the OPA further states that the Town agrees to apply fees as outlined in the FY2014-15 Municipal Fee Schedule and that the Developer Improvements will be exempt from any fee increases promulgated prior to issuance of a Certificate of Occupancy. Furthermore, the Town agrees to defer the Developer’s payment of Development Impact Fees until completion of the Project, prior to the issuance of the Certificate of Occupancy.

A copy of the OPA is attached for review and approval.

As such, staff recommends adoption of the form motions.

BACKGROUND:

Since first obtaining this lead nearly nine (9) months ago, staff has worked diligently with Project representatives during a rigorous site selection and analysis process. Town staff was pleased to recently learn that Apple Valley had been tentatively selected for the Project location and has continued to-date to be successful during the due diligence phase in demonstrating that Apple Valley is the best and most viable location for the Project.

This selection is a testimony to the pro-business leadership of the Town Council, the Town's financial strength, as well as a grand endorsement of Apple Valley's industrial market, strategic logistics location, lower land and development costs, and as importantly, Apple Valley's concierge assistance during the pre-development phase and overall streamlined entitlement process which will assist the end-user in meeting their aggressive development timeline.

FISCAL IMPACT:

The funding for this Owner Participation Agreement comes from two sources: a credit of the Transportation Impact Fee paid by the Project, estimated at \$265,079; and a direct contribution from the Town from the NAVISP Infrastructure Fund account, estimated at \$965,274.

ATTACHMENTS:

1. Owner Participation Agreement
2. Budget Amendment Request

Attachment 1

**Owner Participation Agreement
Between the Town of Apple Valley and AVDC, LLC**

OWNER PARTICIPATION AGREEMENT

This Owner Participation Agreement ("Agreement") is entered into by and between the Town of Apple Valley, a public body corporate and politic, ("Town") and AVDC, Inc., an Illinois corporation ("Developer").

RECITALS:

The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Section 101 of this Agreement:

A. The Town and the Developer desire to enter into this Agreement in order for Developer to develop certain real property (the "Site" as more specifically defined in Section 101), otherwise known as "Project Jupiter", an approximately 1.3 million square foot distribution center on approximately 106.4 acres within the North Apple Valley Industrial Specific Plan, as set forth in Attachment No. 2 (the "PROJECT").

B. The Town further desires to enter into this Agreement to provide certain financial incentives to the Developer by providing for the completion of off-site regional street improvements relative to the Site, such incentives being necessary to make available additional goods and services, increase employment opportunities, generate additional property, sales and/or use and other tax revenues and provide an environment for the social, economic and psychological growth and well-being of the citizens of the Town.

C. From time to time, the Town and Developer may enter into amendments to this Agreement as mutually agreed upon in writing in order to facilitate the full and complete development of the Site.

D. The development of the Site pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and the best interests of the Town and the health, safety, and welfare of residents of the Town of Apple Valley, to meet the goals and objectives of Vision 2020 and in accord with the provisions of applicable federal, state and local laws.

E. The Town of Apple Valley, subject to the review and approval of the Site Plan Review, the California Environmental Quality Act ("CEQA") review, and the review and approval of all other the entitlements and approvals (collectively, the "Approvals") for the development of the Site, has approved the conditions for the financial assistance for the PROJECT. The Town shall be neither legally bound nor financially committed to funding the PROJECT until the Approvals are successfully completed and approved. Furthermore, this Agreement, the Town Contribution, and the work described herein to be accomplished with the Town's financial assistance shall only become legally binding upon the condition of the successful acquisition of title to and legal ownership of the real property Site upon which the PROJECT is to be developed by the Developer or the Developer's Designee (as hereinafter defined). This Agreement shall only become legally binding upon the condition of the successful completion and approval of the Approvals and the successful real property Site ownership transfer to Developer or to the Developer's Designee.

NOW, THEREFORE, the Town and the Developer hereby agree as follows:

100. INTRODUCTORY PROVISIONS

101. Recitals; Definitions. The foregoing recitals are true and correct and are hereby incorporated into this Agreement by reference as if fully set forth herein. The capitalized terms as used in this Agreement shall have the meanings as set forth in this Section 101:

"Town" means the Town of Apple Valley, a California municipal corporation.

"Agreement" means this Owner Participation Agreement by and between the Town and the Developer.

"Date of Agreement" means the date upon which this Agreement shall have been executed by the Town.

"Default" means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 401 hereof.

"Default Notice" is defined in Section 401 hereof.

"Development" means the commercial center to be constructed on the Site which shall include, but not be limited to, all public and private improvements to be constructed thereon, to be anchored by an approximately 1.3 million square foot distribution center.

"Developer" means AVDC, Inc., an Illinois corporation, or its designee.

"Developer Costs" is defined in Section 513 hereof.

"Developer's Designee" means Wachovia Services Corporation, a Delaware corporation.

"Developer Improvements" means the improvements as more particularly described herein and in the Scope of Development.

"Expiration Date of Agreement" means that, five (5) years from the "Date of the Agreement", the "Agreement" will expire unless otherwise amended pursuant to Recital "C".

"Scope of Development" means that certain Scope of Development attached hereto as Attachment No. 2 and incorporated herein by reference, which describes the scope and extent of development of the Developer Improvements.

"Site" means that certain real property which is located at the intersection of Navajo Road and Lafayette Street, as delineated on the Parcel Map attached hereto as Attachment No. 1 and incorporated herein by reference.

102. Representations and Warranties.

102.1 Town Representations. Town hereby makes the representations and warranties contained in this Section 102.1. All of the representations and warranties set forth in this Section 102.1 are effective as of the Date of this Agreement. All of the representations and warranties set forth in this Section 102.1 are made with the acknowledgement that they are material and with the intention that the Developer may rely upon them as inducements to enter into this Agreement and to perform its obligations hereunder and to close the transactions contemplated herein. The representations and warranties contained in this Section 102.1 shall each survive the execution of this Agreement without limitation as to time.

(a) Authority. The Town is a public body, corporate and politic, which has been authorized to transact business pursuant to action of the Town Council. The Town has full right, power and lawful authority to execute, fully perform and deliver this Agreement, including without limitation, the authority to collect and allocate certain fees as contemplated herein; in approving the Agreement the Town confirms that the use of the fees to the extent authorized hereunder is in compliance with the purposes of constructing public regional street improvements necessary to complete the construction of the PROJECT as approved and accepted, by the Town's Town Engineer.

(b) FIRPTA. The Town is not a "foreign person" within the parameters of FIRPTA or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute.

(c) No Conflict. The Town's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Town is a party or by which it is bound.

(d) No Town Bankruptcy. The Town is not the subject of a bankruptcy proceeding.

(e) Deliveries. All documents, instruments and other information delivered by the Town to the Developer pursuant to this Agreement, or in connection with the development of the Site, are true, correct and complete to the extent the context so indicates.

102.2 Developer's Representations. The Developer hereby makes the representations and warranties contained in this Section 102.2. All of the representations and warranties set forth in this Section 102.2 are made with the acknowledgement that they are material, and with the intention that the Town may rely upon them as inducements to enter into this Agreement and to perform its obligations hereunder and to close the transactions contemplated herein. The representations and warranties contained in this Section 102.2 shall each survive the execution of this Agreement without limitation as to time.

(a) Authority. The Developer is a corporation duly organized under the laws of the State of Illinois, is in good standing under the laws of the State of Illinois and is authorized to do business in California. The Developer has full right, power and lawful authority to undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by the Developer has been fully authorized by all requisite actions on the part of the Developer.

(b) No Conflict. The Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(c) No Developer Bankruptcy. The Developer is not the subject of a bankruptcy proceeding.

(d) Deliveries. All documents, instruments and other information prepared by Developer and delivered by the Developer to the Town pursuant to this Agreement are, to Developer's knowledge, true, correct and complete.

(e) Fee Title. The Developer's Designee will seek to obtain fee simple title to the Site. Developer's Designee has not entered into and will not enter into any agreement or document that would transfer all or any part of its interest in the Site to any third party, except that Developer and Developer's Designee will enter into a lease agreement pursuant to which the Developer will lease from Developer's Designee the Site and the Developer Improvements (the "Project Lease").

(f) No Impairment. The Developer shall not do anything that would impair the Developer's Designee's title to or right to use the Site until expiration of this Agreement or completion of the work contemplated herein, whichever occurs later.

103. Transfers of Interest in Site or Agreement.

103.1 Prohibition. For the period commencing upon the Date of this Agreement and until the issuance by the Town of the Certificate of Occupancy upon the completion of an approximately 1.3 million square foot distribution center, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, nor shall the Developer make or allow any total or partial sale, transfer, conveyance, assignment, or subdivision of the whole or any part of the Site or the Developer Improvements thereon other than the Project Lease without prior written approval of Town, except as expressly set forth herein.

103.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, Town approval of an assignment of this Agreement or conveyance of the Site or the Developer Improvements, or any part thereof, shall not be required in connection with any of the following:

(a) The conveyance or dedication of any portion of the Site to the Town or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Developer Improvements (as defined herein).

(b) Any requested assignment for financing purposes (subject to such financing being considered and approved by Town pursuant to Section 103.3 herein) to secure the funds necessary for land acquisition, construction and permanent financing of the Developer Improvements, including the Project Lease.

(c) The conveyance of a portion of the Site to an entity that is an end-user that will result in the development of a commercial facility for said end-user provided it is in conformance with Scope of Development and approved Site Plan as described in Attachments Nos. 2 and 3.

(d) The lease, sale or other transfer of the Site by Developer's Designee pursuant to the terms of the Project Lease.

(e) The sale or lease of any portion of the Site improved with a building in accordance with the Scope of Development.

103.3 Town Consideration of Requested Transfer. The Town agrees that it will not unreasonably withhold approval of a request made pursuant to Article 103, provided the Developer delivers written notice to the Town requesting such approval. Such notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the Town to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in Article 103 and as reasonably determined by the Town. The Town shall evaluate each proposed transferee or assignee on the basis of its development experience and/or qualifications and experience in developing commercial shopping center uses and its financial commitments and resources, and the Town may reasonably disapprove any proposed transferee or assignee, during the period for which Article 103 applies, which the Town determines does not possess equal or better qualifications than the transferring Developer, or if only a portion of the Site is concerned, the proposed assignee does not possess qualifications reasonably appropriate for the development of the applicable portion of the Site. An assignment and assumption agreement in form satisfactory to Town's legal counsel shall also be required for all proposed assignments. Within thirty (30) days after the receipt of the Developer written notice requesting Town approval of an assignment or transfer pursuant to Article 103, the Town shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, Town requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Developer shall promptly furnish to the Town such further information as may be reasonably requested, after which Town shall have thirty (30) days to approve or to request further information if the additional information is not satisfactory to the Town.

103.4 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon the Developer and its permitted successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

200. DEVELOPMENT OF THE SITE

201. Scope of Development.

201.1 Developer Improvements. Developer shall use commercially reasonable efforts to develop, or cause to be developed, the Developer Improvements as set forth in the Scope of Development herein incorporated as Attachment No. 2. The Developer Improvements will include any on-site and off-site public improvements which have been required by the Town as a condition to granting the Approvals.

201.2 Town Contribution. The Town shall contribute to the PROJECT by reimbursing the Developer for actual costs associated with public regional street improvements, up to, but not exceeding, funds in the amount of One Million Two Hundred Thirty Thousand and Three Hundred Thirty Three Dollars (\$1,230,333.00) (the "Town Contribution"). Said Town Contribution shall be solely for the purpose of reimbursing Developer for

Developer's public regional street improvements to enable construction of the PROJECT and the Development in accordance with the General Plan and North Apple Valley Industrial Specific Plan (NAVISP). The Town Contribution will be derived from the following sources: (1) the reimbursement of Transportation Impact Fees, paid by the Developer; estimated at \$265,079 and (2) Town's North Apple Valley Industrial Specific Plan Infrastructure Funds, estimated at \$965,274. Developer shall provide evidence of the actual costs associated with the public improvements in a form suitable to Town to verify the costs incurred by Developer, and a permanent Certificate of Occupancy for an approximately 1.3 million square foot distribution center shall have been issued, prior to payment by the Town hereunder of any reimbursement funds.

201.3 Conditions for Contributions. The Town will not provide a reimbursement of the public street improvements until such time as those improvements are accepted into the Town's street system by the Town Engineer, and a Certificate of Occupancy has been issued by the Town for the completion of the off-Site improvements, per the Town's Street Maintenance System as approved by the Town Engineer, and upon a receipt by the Town of a written request from the Developer. The Town will reimburse the Developer within 30 days after the available fees generated by Development are received by the Town from the Developer.

201.4 Costs Exceeding Current Estimated Project Cost. The Town and the Developer acknowledge that the final total PROJECT cost may ultimately exceed current estimates of the total PROJECT cost. For off-Site improvements, any additional PROJECT costs exceeding current estimates of the PROJECT cost that result from increased bids, change orders, or unforeseen site conditions, including utility relocation, shall be borne by the Party responsible for the off-Site work creating the additional costs for off-Site improvements. *Notwithstanding anything to the contrary in this Agreement*, the Town shall pay the additional cost exceeding current estimates of the PROJECT cost for the Town's portion of the work for off-Site improvements only and any additional costs that are result of changes or delays that are directly under the Town's control. In the event that the parties do not agree that changes or delays resulting in additional costs are directly under the control of the Town, both parties are encouraged to seek arbitration of the dispute prior to litigation. The Developer shall pay the additional cost exceeding current estimates of the PROJECT cost for the Developer's portion of the work for off-Site improvements. The Town shall not pay any cost exceeding current estimates of the PROJECT cost for frontage improvements. The Developer shall pay all costs exceeding current estimates of the PROJECT cost for frontage improvements

201.5 Requests for Additional Work. If either the Developer or the Town requests additional work that is beyond the scope of the original PROJECT, and not considered by all parties to be a necessary part of the PROJECT, said work, if approved by both parties, will be paid solely by the party requesting the work, unless both parties agree by written amendment to allocate the cost in accordance with a mutually agreed upon manner.

202. Labor Code Requirements. The construction of the public improvements by the Developer is a "public work" as defined in Part 7, Chapter 1 of the California Labor Code to which Section 1771 of the Labor Code shall apply, and shall be subject to the requirements for the payment of prevailing wage because its construction is paid for in whole or part out of public funds. Developer and all subcontractors shall comply with all provisions of the Labor Code of the State of California relative to contracts for public works, including related Title 8 of the California Code of Regulations. Town has copies of the general prevailing wage rate per diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the contract and which shall be posted at each job site. Developer shall fully comply with applicable Labor Code provisions and shall defend, indemnify and hold the Town, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with such laws.

Eight hours' labor shall constitute a legal day's hours per day, and forty hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. Developer shall forfeit as a penalty to Town \$25 for each calendar day during which such worker is required, or permitted to work more than eight hours in any one day or forty hours in any one calendar week in violation of the provisions of said Labor Code.

In accordance with the requirements of California Labor Code Section 1776, Developer shall keep; all require its subcontractors to keep, accurate payroll records which are on forms provided by the Division of Labor Standards Enforcement or forms which contain the same information required by such forms. Responsibility

for compliance with California Labor Code Section 1776 shall rest solely with Developer. Developer shall make all such records available for inspection at all reasonable hours.

In accordance with Labor Code section 1771.4, Developer and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR, which may include electronic submission. Developer shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.

Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from payment then due. The responsibility for compliance with this section is on the Developer. Attention is called to the provisions in Section 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Developer or any subcontractor under Developer.

A Developer or subcontractor who is ineligible pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work.

Pursuant to the requirements of Section 1860 of the Labor Code, the Developer will be required to secure the payment of workers' compensation to his or her employees in accordance with the provisions of Section 3700 of the Labor Code and shall execute and file with the Town the certification form required under Labor Code section 1861 to this effect.

203. Omitted

204. Cost of Construction. All of the costs of planning, designing, developing and constructing all of the Developer Improvements shall be borne solely by the Developer, except as provided in Section 201.2 herein (Town Contribution) with respect to the public regional street improvement elements, as defined herein.

Construction costs of public regional street improvements shall be based on actual quantities of various categories of work implemented, and utilizing mutually acceptable unit prices consistent with similar public improvement projects recently completed in the Victor Valley Region or per the Los Angeles Region Engineering News-Record.

205. Insurance. Prior to the commencement of construction of the Developer Improvements on the Site, the Developer shall obtain and maintain, or shall cause its contractor or contractors to obtain and maintain a policy or policies of general commercial liability which shall include blanket contractual coverage, and shall have limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence, and if a policy form with a general aggregate limit is used, or provided, the aggregate limit shall be not less than twice the per occurrence limit. Said insurance shall cover comprehensive general liability, including, without limitation, automobile liability covering owned, non-owned and hired vehicles; contractor liability; subcontractor liability; premises-operations; explosion and collapse; and broad form property damage and personal injury. Any and all insurance policies required hereunder shall be obtained from companies admitted in the State of California and rated at least a "VI" or better in Best's Insurance Guide. In addition, the Town, in its sole discretion, may reasonably consider any self-insurance program in which the Developer or the Developer's contractors or subcontractors participate. All of said insurance policies may not be cancelled unless the Town receives at least thirty (30) calendar days written notice in advance of cancellation prior to the effective date of cancellation and shall name the Town and the Town and their respective officers, representatives, agents and employees as additional insureds, and which policies as to additional insureds shall be primary and not contributing with other insurance available to said additional insureds. Any and all insurance required hereunder shall be maintained and kept in force until after the Town has issued a Certificate of Occupancy for the PROJECT.

The Developer shall furnish endorsement(s) of insurance countersigned by an authorized agent of the insurance carrier on a form of the insurance carrier evidencing and/or effecting the requirements herein and/or the changes to the Developer's policy to effect such conformity and setting forth the general provisions of the insurance coverage. An endorsement by the insurance carrier shall contain a statement of obligation on the part of the issuing agent or carrier to notify the Town of any material reduction, cancellation, or non-renewal of the coverage at least thirty (30) calendar days in advance of the effective date of any such material change, or non-renewal. Not less than

fifteen (15) days prior to the expiration date of any policy of insurance required by this Section 205, Developer shall cause to be delivered to the Town a binder or certificate of insurance with request to each renewal or new policy, bearing a notation evidencing payment of the premium therefor, or other proof of payment reasonably satisfactory to the Town. In each instance of the provision of insurance, certified duplicate copies of the policy(s) or renewal policy(s), as applicable, shall be delivered to the Town Manager of the Town within thirty (30) days of the date of such policy(s).

The Developer shall also furnish or cause to be furnished to the Town evidence satisfactory to the Town and the Town that it and any contractor with whom it has contracted for the performance of work on the Site or otherwise pursuant to the Agreement carries workers' compensation insurance as required by law.

Notwithstanding the foregoing, the Developer shall have the right to request the Town to authorize the Developer to self-insure all insurance liabilities contained in this Agreement; provided the Developer's net worth at all times during the term of this Agreement exceeds One Hundred Million Dollars (\$100,000,000.00). In such event, the Town shall authorize the Developer to such self-insurance.

206. Developer's Indemnity. The Developer shall defend (with attorneys approved by the Town), indemnify, assume all responsibility for, and hold the Town and its officials, and their representatives, volunteers, officers, employees and agents, harmless from, all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs), which are legally caused by any acts or omissions of the Developer, or any of Developer's agents, employees, officers, contractors, subcontractors or others acting for or on behalf of Developer pursuant to or under this Agreement. This indemnity shall terminate one (1) year after the Expiration Date of the Agreement.

207. Rights of Access. For purposes of assuring compliance with this Agreement, representatives of the Town shall have the right to access the Site upon three (3) days written notice, without charges or fees, at normal hours from the Date of this Agreement until the later of the expiration of this Agreement or satisfactory completion of the work contemplated herein. Developer shall cooperate with Town representatives in the performance of any inspection of the Site or of any activity made necessary due to a Default by Developer. The Town or its representatives shall, except in emergency situations, notify the Developer prior to exercising its rights pursuant to this Section.

208. Compliance with Laws. The Developer shall carry out the design and construction of the Developer Improvements in material conformity with all applicable laws, including all applicable state labor standards, the Town zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Town's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Sections 12101, et seq., California Government Code Section 4450, et seq., California Government Code Sections 11135, et seq., and the Unruh Civil Rights Act, California Civil Code Sections 51, et seq.

209. Site Conditions. The Developer shall take all necessary precautions to prevent the release into the environment of any hazardous materials that are located in, on or under the Site. Such precautions shall include compliance with all governmental requirements with respect to hazardous materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards prevailing in the industry, to the extent such standards exceed applicable governmental requirements, as respects the disclosure, storage, use, removal and disposal of hazardous materials. Developer shall cause each release of hazardous substances in, on or under the Site to be remediated in accordance with all governmental requirements.

210. Omitted

211. Inspection of the Work. Promptly after Developer determines that the PROJECT is complete in conformity with this Agreement, Developer shall provide the Town with notice of the same. The Town or its authorized representatives may inspect the PROJECT and approve or refuse to approve the PROJECT. In the event the Town refuses to approve the PROJECT, the Town shall provide Developer with a written statement of the

reasons the Town refused to approve the PROJECT and the actions Developer must take to obtain the Town's approval.

300. COVENANTS AND RESTRICTIONS

301. Operating Covenant. The Developer covenants and agrees (the "Operating Covenant") for itself, its successors and assigns and any successors in interest to the Site or any part thereof that the Site shall be developed as an approximately 1.3 million square foot distribution center, that the Development shall be completed, and 90% operational within three (3) years of the Date of Execution of the Agreement and that the Site shall be operated, used and occupied primarily as an approximately 1.3 million square foot distribution center.

302. Maintenance Covenants. Developer covenants and agrees for itself, its successors and assigns and any successor in interest to The Site or part thereof to maintain the Site and all improvements thereon in material compliance with all applicable provisions of the Town of Apple Valley Municipal Code and all other applicable laws and regulations.

303. Effect of Violation of the Terms and Provisions of this Agreement. The Town is deemed the beneficiary of the terms and provisions of this Agreement for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement has been provided. The Town shall have the right, if the Agreement or covenants are breached, to exercise its remedies in accordance with Section 400 of this Agreement. The covenants contained in this Agreement shall remain in effect for five (5) years from date of execution of this Agreement, unless the context otherwise indicates; provided however, that notwithstanding the foregoing, the covenants against discrimination set forth in Section 306 below shall remain in effect in perpetuity.

304. Omitted.

305. Omitted.

306. Nondiscrimination in Employment. The Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, in connection with the Site, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Sections 621, et seq., the Immigration Discrimination in Employment Act of 1967, 29 U.S.C. Sections 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Sections 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, California Government Code Sections 12900, et seq., the California Equal Pay Law, California Labor Code Sections 1197.5, California Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Sections 12101, et seq., and all other anti-discrimination laws and regulations for the United States and the State of California as they now exist or may hereafter be amended.

400. DEFAULTS AND REMEDIES

401. Default Remedies. Subject to the extensions of time set forth in Section 502 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default (the "Claimant") shall give written notice to the other party specifying the alleged grounds for the Default (the "Default Notice"). Except as otherwise expressly provided in this Agreement, the Claimant shall not institute any proceeding against any other party and the other party shall not be in Default if such party within forty-five (45) days from receipt of the notice required by this Section 401, with due diligence, commences to cure, correct or remedy such failure or delay and diligently continues to completion such cure, correction or remedy.

402. Omitted.

403. Termination by Developer. In the event that the Developer is not in default under this Agreement and Town is otherwise in default and which is not cured within the time set forth in Section 401 hereof, and any such failure is not cured within the applicable time period after written demand by the Developer, then this Agreement may, at the option of the Developer, be terminated by written notice thereof to Town. From the date of the written notice of termination of this Agreement by the Developer to Town and thereafter, this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties, except that Developer may pursue, as Developer's sole and exclusive remedy, an action at law to seek the payment of the Town's Contribution in accordance with Section 201.2 of this Agreement, which shall be recoverable only if Developer is otherwise itself in material compliance with and is authorized pursuant to the terms and conditions of this Agreement to receive said payments.

404. Termination by Town. In the event that Town is not in default under this Agreement and either

(a) Developer (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Site in violation of this Agreement, or

(b) Developer is otherwise in default of this Agreement and fails to cure such default within the time set forth in Section 401 hereof, then this Agreement and rights of Developer or any assignee or transferee with respect to or arising out of the Agreement or the Site shall, at the option of the Town be terminated by the Town by written notice thereof to the Developer. From the date of the written notice of termination of this Agreement by the Town to the Developer and thereafter the Town shall not be obligated to make any future payments to Developer pursuant to this Agreement, this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties. Further, if within any reasonable time hereafter the Town becomes aware the PROJECT will not be completed and opened or that the then current owner of the PROJECT has elected not to proceed for any reason to complete construction, occupy and open the PROJECT for business, then not later than thirty (30) days after written demand by the Town, the Developer shall fully reimburse the Town for the Town Contribution (to the extent it has been paid to Developer), plus interest thereon at the legal rate.

405. Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the Town, service of process on the Town may be made by personal service upon the Clerk of the Town or other agent authorized to accept service or in such other manner as may be provided by law. In the event that any legal action is commenced by the Town against the Developer, service of process on the Developer may be made by personal service upon the entity or the officer identified in Section 501 at the address listed therein or any other address provided to or known by Town or in such other manner and place as may be permitted by law.

406. Omitted

407. Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

408. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement. Venue shall be in the County of San Bernardino, State of California.

500. GENERAL PROVISIONS

501. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") required or permitted under this Agreement must be in writing and shall be sufficiently given if delivered by hand (and a receipt therefor is obtained or is refused to be given) or dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by telecopy or overnight delivery service to:

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

To: Developer: AVDC, Inc.
c/o Vorys, Sater, Seymour and Pease LLP
700 Louisiana Street
Suite 4100
Houston, TX 77002
Attn: Daniel J. Minor, Esq.

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 501.

502. Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: good faith litigation challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; inability to secure necessary labor materials or tools or delays of any contractor, subcontractor or supplier which were not reasonably foreseeable and could not have been reasonably avoided; or withdrawal of financing not caused by any act or omission of the Developer which were not reasonably foreseeable and could not be reasonably avoided; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; unusually severe weather; acts or omissions of the other party which were not reasonably foreseeable and could not have been reasonably avoided; acts or failures to act of the Town and/or any other public or governmental agency or entity (other than the acts or failures to act of the Town which shall not excuse performance by the Town) which were not reasonably foreseeable and could not have been reasonably avoided; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform which were not reasonably foreseeable and could not have been reasonably avoided. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within forty-five (45) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the Town and the Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Developer Improvements shall not constitute grounds of enforced delay pursuant to this Section 502.

503. Non-Liability of Officials and Employees of Town to Developer. No member, agent, representative, officer, official or employee of the Town or Town shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the Town or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement. No officer, partner, member, manager, or employee of Developer shall be personally liable for any of the covenants or obligations of Developer contained in this Agreement.

504. Relationship Between Town and Developer. It is hereby acknowledged that the relationship between the Town and the Developer is not that of a partnership or joint venture and that neither the Town nor the Developer shall be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the Town shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Site. Developer agrees to indemnify, hold harmless and defend (with attorneys approved by Town) the Town and/or their respective directors, officers, agents and employees from any claim made against the Town and or any of their respective directors, officers, agents and employees arising from a claimed relationship of partnership or joint venture between the Town and the Developer with respect to the development, operation, maintenance or management of the Site.

505. Town Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by the Town, the Town Manager of the Town of Apple Valley, or designee, on behalf of the Town, as applicable, is authorized to act on behalf of the Town unless specifically provided otherwise or the context should require otherwise.

506. Omitted.

507. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in three (3) originals, each of which is deemed to be an original.

508. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and facts such party deems material. This Agreement includes pages 1 through 13 and Attachment Nos. 1 through 3, which constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

509. Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, or rescind in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled to recover reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees. Costs recoverable for enforcement of any judgment shall be deemed to include reasonable attorneys' fees.

510. Omitted.

511. Ceremonies. To ensure proper protocol and recognition of Town officials, the Developer shall cooperate with Town staff in the organization of any project-related groundbreakings, grand openings or any other such inaugural events/ceremonies sponsored by the Developer celebrating the development, which is the subject of this Agreement.

512. Administration. This Agreement shall be administered and executed by the Town Manager, or designated representative, following approval of this Agreement by the Town Council. The Town shall maintain authority of this Agreement through the Town Manager (or designated representative). The Town Manager shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the Town so long as such actions do not substantially change the uses or development permitted on the Site, or add to the costs to the Town as specified herein as agreed to by the Town Council, and such amendments may include extensions of time specified in the Schedule of Performance. All other waivers or amendments shall require the written consent of the Town Council.

513. Amendments of Agreement. The Developer and the Town agree to mutually consider reasonable requests for amendments to this Agreement. The Developer shall be responsible for the costs incurred by the Town, including without limitation reasonable attorneys' fees (the "Developer Costs"), in connection with any amendments to this Agreement which are requested by the Developer (the "Developer Request"). The Developer shall be responsible for payment of the Developer Costs as provided in this Section 513 regardless of the outcome of the Developer Request.

514. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

515. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word

"including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

516. No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

517. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

518. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

519. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

520. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

521. Time of Essence. Time is expressly made of the essence with respect to the performance by the Town and the Developer of each and every obligation and condition of this Agreement.

522. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

523. Conflicts of Interest. No member, official or employee of Town shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

524. Approval and Execution. After the execution of this Agreement by the Developer and the prompt delivery of this Agreement thereafter by the Developer to the Town, said Agreement must be executed and delivered by the Town to the Developer within (14) calendar days after the date of Town Council approval of the Agreement in order for the Agreement to become effective. In the event that the Town has not approved, executed and delivered the Agreement to the Developer within said period, this Agreement shall be deemed to be of no further force or effect unless the time for said approval, execution and delivery is extended by written notice from the Developer to the Town.

525. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the parties.

526. Exhibits, Attachments and Recitals. All exhibits, attachments, and recitals contained herein are hereby incorporated into this Agreement by reference as if fully set forth herein.

IN WITNESS WHEREOF, the Town and the Developer have signed this Agreement on the respective dates set forth below.

TOWN:

Town of Apple Valley, a public body, corporate and politic

Dated: _____, 2015

By: _____
Mayor

ATTEST:

Town Secretary

By: _____
Town Manager

APPROVED AS TO FORM:

Town Attorney

DEVELOPER:

AVDC, Inc.

By: Timothy A. Johnson
Name: Timothy A. Johnson
Its: Executive Vice President, Chief Financial Officer

By: Joseph Y. Heuer
Name: Joseph Y. Heuer
Its: Assistant Secretary



Dated: June 1, 2015

ATTACHMENT NO. 1

LEGAL DESCRIPTION AND PARCEL MAP NO. 19645

PARCEL MAP NO. 19645

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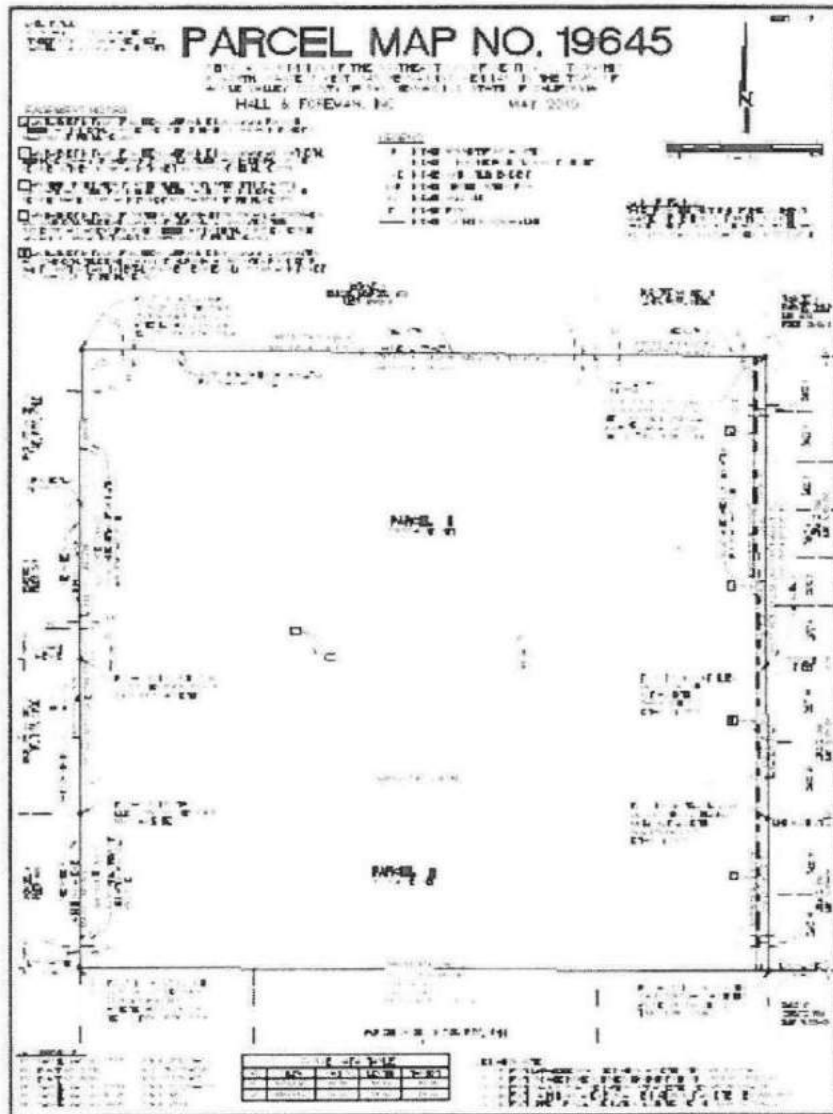
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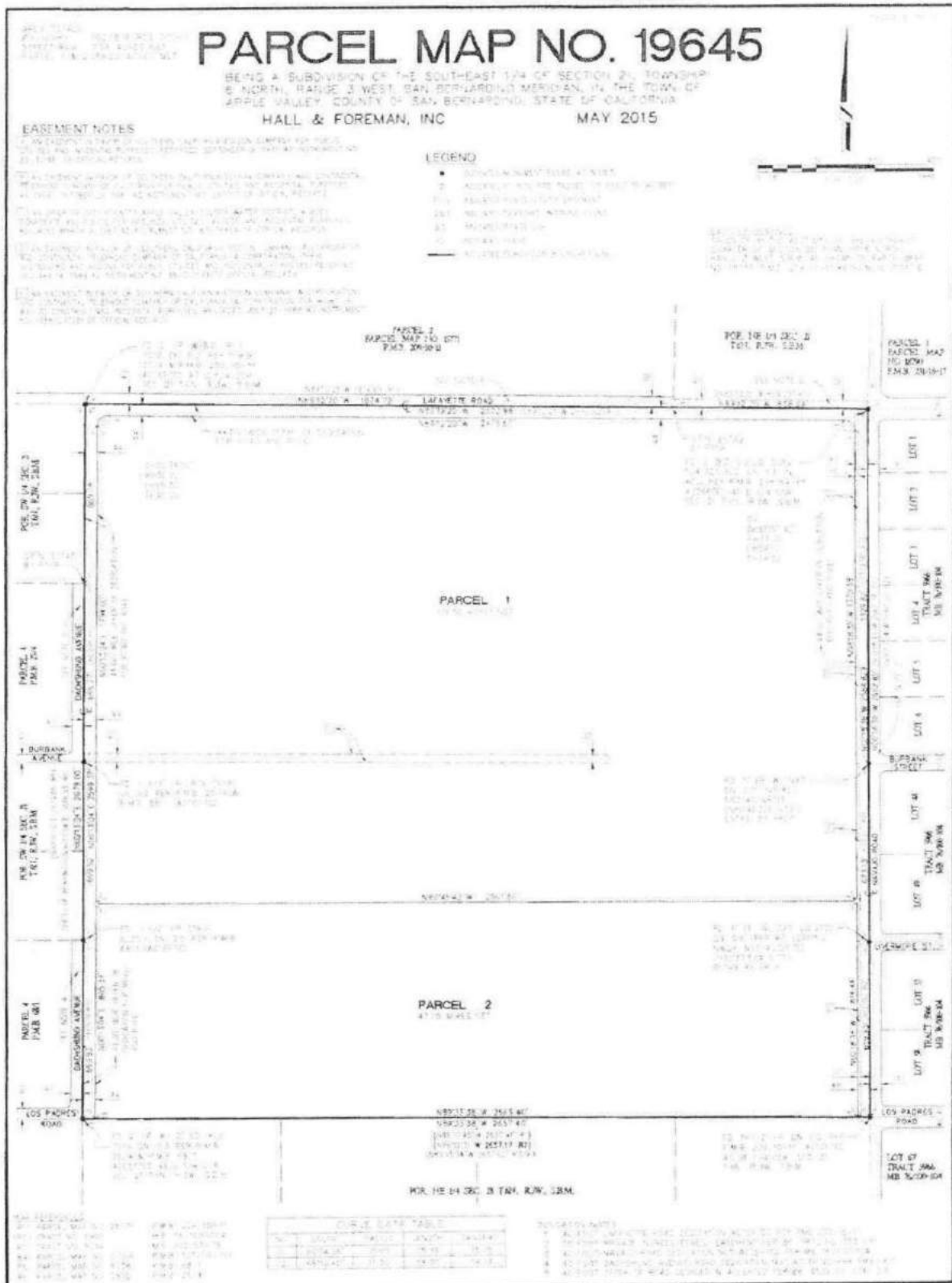
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PARCEL MAP NO. 19645

BEING A SUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 21, TOWNSHIP
6 NORTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN, IN THE TOWN OF
APPLE VALLEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

HALL & FOREMAN, INC

MAY 2015

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE ALL AND ONLY THE PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND SUBDIVIDED AS SHOWN ON THIS MAP AND THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS TITLE TO SAID LAND, AND THAT WE CONSENT TO THE PREPARATION AND RECORDATION OF THIS PARCEL MAP.

WE HEREBY IRREVOCABLY OFFER TO DEDICATE TO THE TOWN OF APPLE VALLEY, THE PUBLIC IN GENERAL, AND TO ANY OF THE SEVERAL PUBLIC UTILITY COMPANIES WHICH ARE AUTHORIZED TO SERVE IN SAID SUBDIVISION, AN EASEMENT FOR PUBLIC RIGHT-OF-WAY, PUBLIC ROADS AND PUBLIC UTILITY PURPOSES IN, UNDER, OVER, THROUGH, AND ACROSS NAVAJO ROAD, LAFAYETTE STREET AND BACHSHUND AVENUE AS SHOWN ON THE ANNEXED MAP. THE EXPRESSED RIGHTS TO THE PUBLIC IN GENERAL AND TO THE SEVERAL UTILITY COMPANIES SHALL BE AND SHALL REMAIN INFERIOR TO THE SUPERIOR RIGHTS OF THE TOWN OF APPLE VALLEY.

WATSON LAND COMPANY, A CALIFORNIA CORPORATION

SIGNATURE _____ PRINTED NAME _____

TITLE _____ DATE _____

NOTARY ACKNOWLEDGEMENT

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 }
COUNTY OF _____ } SS
ON _____ BEFORE ME, (INSERT NAME AND TITLE OF THE OFFICER)

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/IT/ THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITIES, AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL

SIGNATURE _____

NAME _____

COUNTY OF _____

MY COMMISSION EXPIRES _____

COMMISSION NUMBER _____

AUDITOR'S CERTIFICATE

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF THE OFFICE, AS OF THIS DATE, THERE ARE NO LENS AGAINST THE REAL PROPERTY SHOWN UPON THIS MAP FOR UNPAID STATE, COUNTY, MUNICIPAL OR LOCAL TAXES, SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS NOT YET PAYABLE, ESTIMATED TO BE _____.

DATE _____ LARRY WALKER, AUDITOR-CONTROLLER/
TREASURER/TAX COLLECTOR
COUNTY OF SAN BERNARDINO

BY: _____
DEPUTY

SIGNATURE OMISSIONS STATEMENT

PURSUANT TO THE PROVISIONS OF SECTION 66438 OF THE SUBDIVISION MAP ACT OF THE STATE OF CALIFORNIA, THE SIGNATURES OF THE FOLLOWING OWNERS/HOLDERS/BENEFICIARIES OF EASEMENTS AND/OR OTHER INTEREST HAVE BEEN OMITTED:

AN EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON COMPANY FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES, RECORDED SEPTEMBER 9, 1988 AS INSTRUMENT NO. 88-301451 OF OFFICIAL RECORDS.

AN EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON COMPANY AND CONTINENTAL TELEPHONE COMPANY OF CALIFORNIA FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES, RECORDED OCTOBER 29, 1987 AS INSTRUMENT NO. 87013 OF OFFICIAL RECORDS.

AN OFFER OF DEDICATION TO APPLE VALLEY COUNTY WATER DISTRICT, A BODY-CORPORATE AND POLITICAL FOR PIPELINES, UTILITIES, ACCESS AND INCIDENTAL PURPOSES, RECORDED MARCH 9, 1987 AS INSTRUMENT NO. 87-76854 OF OFFICIAL RECORDS.

A RIGHT OF WAY FOR DITCHES AND CANALS AS RESERVED BY THE UNITED STATES OF AMERICA IN THE PATENT RECORDED JUNE 1, 1916 IN BOOK "K" OF PATENTS, PAGE 94.

A RIGHT OF WAY FOR DITCHES AND CANALS AS RESERVED BY THE UNITED STATES OF AMERICA IN THE PATENT RECORDED JULY 7, 1925 IN BOOK 12, PAGE 33 OF OFFICIAL RECORDS.

AN EASEMENT FOR POLE LINES AND INCIDENTAL PURPOSES IN THE DOCUMENT RECORDED IN BOOK 523, PAGE 58 OF OFFICIAL RECORDS.

AN EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, AND CONTINENTAL TELEPHONE COMPANY OF CALIFORNIA, A CORPORATION, THEIR SUCCESSORS AND ASSIGNS FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES, RECORDED JANUARY 14, 1988 AS INSTRUMENT NO. 88-012194 OF OFFICIAL RECORDS.

AN EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, AND CONTINENTAL TELEPHONE COMPANY OF CALIFORNIA, A CORPORATION FOR RIGHT OF WAY TO CONSTRUCT AND INCIDENTAL PURPOSES, RECORDED JULY 21, 1988 AS INSTRUMENT NO. 1988-237281 OF OFFICIAL RECORDS.

SURVEYOR'S STATEMENT

THIS PARCEL MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE, AT THE REQUEST OF CRAIG HALVERSON IN MAY, 2015. ALL MONUMENTS SHOWN HEREON ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR WILL BE SET IN SUCH POSITIONS ON OR BEFORE MAY 1, 2016, IN COMPLIANCE WITH SECTIONS 66495 AND 66496 OF THE SUBDIVISION MAP ACT, AND ARE OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

WILLIAM C. HOFF, L.S. 6685

DATE _____



TOWN ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE MAP ENTITLED PARCEL MAP NO. 19654, THAT THE SUBDIVISION IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE PARCEL MAP AND ANY APPROVED ALTERATIONS THEREOF, AND THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT OF THE STATE OF CALIFORNIA AND ANY LOCAL ORDINANCE APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE PARCEL MAP, IF REQUIRED, HAVE BEEN COMPLIED WITH.

NORMAN BRADLEY MILLER, REC 59809

DATE _____

TOWN ENGINEER, TOWN OF APPLE VALLEY, CALIFORNIA
EXPIRATION DATE: DECEMBER 31, 2015

TOWN SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP ENTITLED PARCEL MAP NO. 19654, AND THAT I AM SATISFIED THAT THE MAP IS TECHNICALLY CORRECT.

ANIELA PAULA PERORA, L.S. 8493

DATE _____

TOWN SURVEYOR, TOWN OF APPLE VALLEY, CALIFORNIA
EXPIRATION DATE: DECEMBER 31, 2016

TOWN COUNCIL'S CERTIFICATE

I HEREBY CERTIFY THAT THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, DULY APPROVED THIS MAP OF PARCEL MAP NO. 19654, I HEREBY ACKNOWLEDGE THE FOREGOING OFFERS OF DEDICATION, AND TO ACCEPT ALL EASEMENTS FOR PUBLIC RIGHT-OF-WAY, PUBLIC ROADS AND PUBLIC UTILITY PURPOSES, SUBJECT TO THEIR IMPROVEMENTS IN ACCORDANCE WITH THE TOWN OF APPLE VALLEY STANDARDS.

LA VONDA MURPHY-PEARSON
TOWN CLERK, TOWN OF APPLE VALLEY, CALIFORNIA

DATE _____

BY: _____
DEPUTY

BOARD OF SUPERVISORS' CERTIFICATE

I HEREBY CERTIFY THAT A BOND IN THE SUM OF _____ HAS BEEN EXECUTED AND FILED WITH THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, CONDITIONED UPON THE PAYMENT OF ALL TAXES, STATE, COUNTY, MUNICIPAL OR LOCAL, AND ALL SPECIAL ASSESSMENTS COLLECTED AS TAXES, WHICH AT THE TIME OF THE FILING OF THIS MAP WITH THE COUNTY RECORDER ARE A LENS AGAINST SAID PROPERTY, BUT NOT YET PAYABLE, AND THAT THE SUBDIVIDER HAS FILED WITH ME A CERTIFICATE BY THE PROPER OFFICER GIVING HIS ESTIMATE OF THE AMOUNT OF SAID TAXES AND SPECIAL ASSESSMENTS, AND SAID BOND IS HEREBY ACCEPTED.

DATE _____

LAURA H. WELCH, CLERK OF THE BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO

BY: _____
DEPUTY

SAN BERNARDINO COUNTY RECORDER'S CERTIFICATE

THIS MAP HAS BEEN FILED UNDER DOCUMENT NUMBER _____

THIS _____ DAY OF _____, 20____, AT _____ M. IN BOOK _____

OF _____ AT PAGE _____ AT THE REQUEST

OF _____

IN THE AMOUNT OF \$ _____

BOB BUTTON
ASSESSOR-RECORDER
COUNTY OF SAN BERNARDINO

BY: _____
DEPUTY

AREA TOTALS
BOUNDARY 162.18 ACRES GROSS
STREET R/W 7.98 ACRES NET
PARCEL 1 & 2 154.20 ACRES NET

PARCEL MAP NO. 19645

BEING A SUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 21, TOWNSHIP 6 NORTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN, IN THE TOWN OF APPLE VALLEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

HALL & FOREMAN, INC

MAY 2015

SHEET 2 OF 2

EASEMENT NOTES

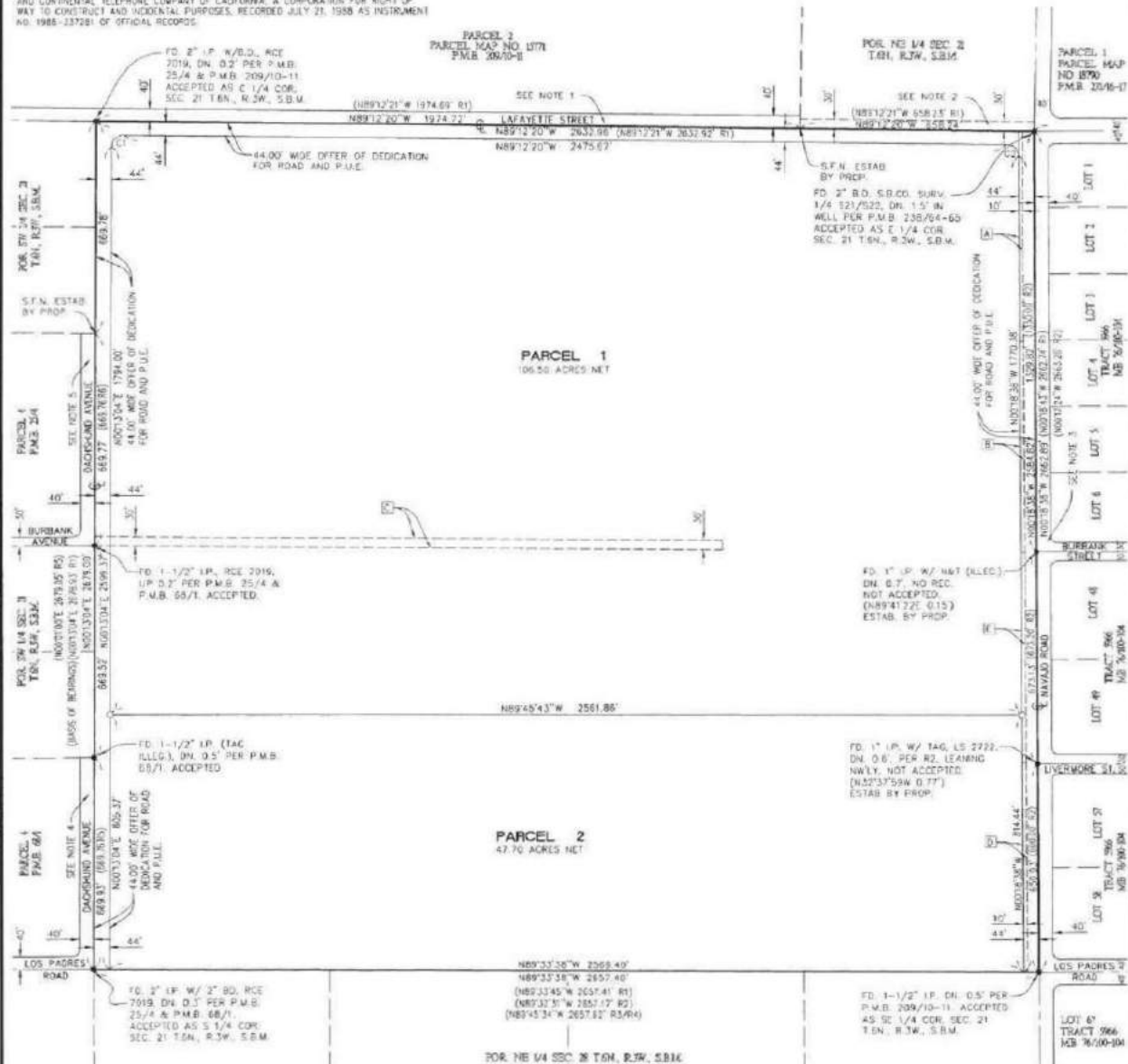
- A. AN EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON COMPANY FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES, RECORDED SEPTEMBER 9, 1988 AS INSTRUMENT NO. 88-30451 OF OFFICIAL RECORDS.
- B. AN EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON COMPANY AND CONTINENTAL TELEPHONE COMPANY OF CALIFORNIA FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES, RECORDED OCTOBER 29, 1987 AS INSTRUMENT NO. 39703 OF OFFICIAL RECORDS.
- C. AN OFFER OF DEDICATION TO APPLE VALLEY COUNTY WATER DISTRICT, A BODY CORPORATE AND POLICE FOR PIPELINES, UTILITIES, ACCESS AND INCIDENTAL PURPOSES, RECORDED MARCH 9, 1987 AS INSTRUMENT NO. 87-76854 OF OFFICIAL RECORDS.
- D. AN EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, AND CONTINENTAL TELEPHONE COMPANY OF CALIFORNIA, A CORPORATION, THEIR SUCCESSORS AND ASSIGNS FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES, RECORDED JANUARY 14, 1988 AS INSTRUMENT NO. 88-012194 OF OFFICIAL RECORDS.
- E. AN EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, AND CONTINENTAL TELEPHONE COMPANY OF CALIFORNIA, A CORPORATION FOR RIGHT OF WAY TO CONSTRUCT AND INCIDENTAL PURPOSES, RECORDED JULY 21, 1988 AS INSTRUMENT NO. 1988-137281 OF OFFICIAL RECORDS.

LEGEND

- INDICATES MONUMENT FOUND AS NOTED
- INDICATES 1" IRON PIPE TAGGED "LS 6685" TO BE SET
- P.U.E. INDICATES PUBLIC UTILITY EASEMENT
- S.N.F. INDICATES SEARCHED, NOTHING FOUND
- B.D. INDICATES BRASS DISK
- FD. INDICATES FOUND
- INDICATES SUBDIVISION BOUNDARY LINE



BASES OF BEARINGS:
TAKEN FROM THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 6 NORTH, RANGE 3 WEST, S.B.M. AS SHOWN ON PARCEL MAP NO. 15771, P.M.B. 209/10-11 BEING N 00°13'04" E.



MAP REFERENCES

- | | |
|---------------------------|-------------------|
| (R1) PARCEL MAP NO. 15771 | P.M.B. 209/10-11 |
| (R2) TRACT NO. 5966 | M.B. 76/100-104 |
| (R3) TRACT NO. 8034 | M.B. 105/67-75 |
| (R4) PARCEL MAP NO. 11066 | P.M.B. 127/99-100 |
| (R5) PARCEL MAP NO. 6736 | P.M.B. 68/1 |
| (R6) PARCEL MAP NO. 2805 | P.M.B. 20/4 |

CURVE DATA TABLE

NO.	DELTA	RADIUS	LENGTH	TANGENT
C1	90°34'36"	35.00'	56.33	25.35
C2	85°53'42"	35.00'	54.20	34.33

DEDICATION NOTES

1. 40 FOOT LAFAYETTE ROAD DEDICATION ACCEPTED PER P.M.B. 209/10-11.
2. 40 FOOT PRIVATE INGRESS/EGRESS EASEMENT PER BK. 7872 PG. 353 D.R.
3. 40 FOOT NAVAJO ROAD DEDICATION NOT ACCEPTED PER MB 76/100-104
4. 40 FOOT DACHSHUND AVENUE ROAD DEDICATION NOT ACCEPTED PER P.M.B. 68/1
5. 40 FOOT OFFER OF ROAD DEDICATION ACCEPTED PER BK. 8535 PG. 1040 D.R.

ATTACHMENT NO. 2

SCOPE OF DEVELOPMENT

DEVELOPER IMPROVEMENTS

The following are general requirements for construction of the Developer Improvements on the Site. Detailed requirements shall be addressed in the Approvals. In the event of any inconsistency between this Scope of Development and the Construction Drawings, approved plans, or building permits issued by the Town, the approved plans or permits shall govern.

The Site shall be designed and developed as a high-quality approximately 1.3 million square foot distribution center on 106-acres within the North Apple Valley Industrial Specific Plan. The PROJECT is bordered at the north by Lafayette Street and the east by Navajo Road.

PROJECT off-site street improvement costs are estimated at Two Million Three Hundred Four Thousand Three Hundred Thirty-Three Dollars (\$2,304,333); please see table below. The Town agrees to fund all regional (secondary travel lanes) street improvements, including design and construction. Frontage street improvement costs remain the responsibility of the Developer. In the case of Daschund Road, it is mutually agreed to defer construction until such time as the roadway is needed by an adjacent project or at a more appropriate time as demand warrants. Developer shall provide a cash deposit equal to the estimated cost of their share of those improvements, estimated at \$236,000, prior to issuance of Certificate of Occupancy.

Off-Site Street Improvements	Present Town Contribution	Future Town Contribution	Developer Net Cost	Total Estimated Cost
Lafayette Street: Northside of site, non-project frontage; Two travel lanes from Dachshund to Dale Evans to the West; Secondary Street Designation	\$344,000	-	\$0	\$344,000
Lafayette Street: Northside of site along project frontage; Three travel lanes, curb gutter, sidewalk and landscape from Navajo to Daschund; Secondary Street Designation	482,333	-	361,000	843,333
Navajo Road: East of site; Two travel lanes, curb gutter, sidewalk and landscape; Secondary Street Designation)	236,000	-	240,000	476,000
Daschund Road: West of site; Two travel lanes, curb gutter, sidewalk and landscape; Secondary Street Designation	-	225,000	236,000	461,000
Daschund Road Design Only	12,000	-	12,000	24,000
Dale Evans/Lafayette Right Turn Pockets (2)	156,000	-	0	156,000
		-		
Total	\$1,230,333	\$225,000	\$849,000	\$2,304,333

The Developer and the Town will cooperate and direct their consultants, architects and engineers to cooperate so as to ensure the continuity and coordination necessary for the timely completion of the Developer Improvements. The Developer shall be responsible for filing and processing all applications and obtaining all permits necessary for the construction of the Developer Improvements including all required on-site improvements. The Town shall cooperate with and provide reasonable assistance to the Developer to obtain permits from other governmental agencies consistent with this Agreement, provided that nothing herein is intended to increase the Town's financial obligations hereunder

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The Town hereby agrees to apply fees as outlined in the Fiscal Year 2014-2015 Municipal Fee Schedule and that the Developer Improvements, and that the Developer Improvements will be exempt from any fee increases promulgated prior to issuance of Certificate of Occupancy. Furthermore, the Town hereby agrees to defer the Developer's payment of development impact fees until completion of the Project, prior to the issuance of the Certificate of Occupancy.

ATTACHMENT NO. 3
TOWN LETTER DATED FEBRUARY 12, 2015

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Town of Apple Valley

A Better Way of Life

February 12, 2015

Mr. Mike Mullis
J. M. Mullis, Inc.
3753 Tyndale Drive; Suite 101
Memphis, TN 38125

Dear Mr. Mullis,

Thank you for this final opportunity to reaffirm Apple Valley as the right location for Project Jupiter.

During the course of this due-diligence process, since October 2014, the Town of Apple Valley and property owner Watson Land Company have worked diligently to present our community, and the site-in-question, as the location that best meets the distribution and transportation strategies of Project Jupiter.

Apple Valley offers a healthy political, financial and economic climate, with strong community assets and vibrant character. These features offer an appealing, cost-effective and sustainable location for Project Jupiter. The following facts reinforce our overall premise:

Apple Valley's leadership is steadfast. Apple Valley successfully reelected all of their incumbent Council Members this most recent election. This is not mere anecdote but affirms our residents' support for our pro-business leaders and the manner in which they govern our community overall. Furthermore, executive officer Town Manager Frank Robinson, first appointed in 2008, was recently awarded a contract extension through 2017. Mr. Robinson is only the fourth executive officer since Apple Valley's incorporation in 1988.

Apple Valley's fiscal house is in order. Apple Valley is a financially conservative community and has received numerous financial budgeting awards and accolades during the last decade. Today it operates a healthy and balanced budget. Standard and Poors has recognized the Town's stable and improving financial condition by recently upgrading the Town's debt rating from A- to A.

These facts are critically relevant to Project Jupiter as the Town continues to propose to 1) fund \$1,080,000 in regional street improvements; and 2) has reclassified Transportation Impact Fees—a fee reduction of \$1,254,576 (Town Letter of Intent, December 9, 2014). In this case, the Town has the financial means and will to invest here.

Apple Valley helped to decrease Ephemeral Stream Diversion improvement costs related to Project Jupiter. After a comprehensive due-diligence meeting with Haskell Engineering on January 12, 2015, it is anticipated that proposed storm water improvements will be downsized and result in significant project cost savings. Watson Land proactively commissioned a preliminary hydrology study to confirm this analysis. This study is expected to be released any day.

www.AppleValley.org

14955 Dale Evans Parkway • Apple Valley, California 92307 • 760.240.7000

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Apple Valley's entitlement process will accelerate Project Jupiter's time to market. Adopted in 2007, the North Apple Valley Industrial Specific Plan accomplished CEQA requirements in advance of Project Jupiter by completing a Program Environmental Impact Report. This advance planning document sets forth an administrative Site Plan Review process that requires only site-specific biological and cultural studies. For example, a 1.2 million square foot Walmart Distribution Center was permitted in less than 140 days.

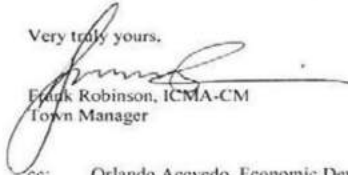
Apple Valley may amend its truck route circulation plan relevant to Project Jupiter. Per the Town's reply email to Haskell Engineering, February 3, 2015, the Town will consider, upon request, a modification to truck route designations on Johnson and Stoddard Wells Roads. This action may help to further reduce time and travel distance for certain transportation movements to and from the site.

Apple Valley's pro-business leadership is top-down. Staff has been responsive and timely every step of the way during this five month due diligence process. Staff has worked to broker communications with property owner Watson Land Company, neighboring Walmart Distribution Center, third-party utilities and service providers including Apple Valley Fire Protection District, Apple Valley Ranchos Water Company, Southern California Edison, Victor Valley College, and the County of San Bernardino Workforce Development Department—not to mention Apple Valley's own executive team and entitling divisions. This support is indicative of the concierge-service your client will continue to receive throughout the development process.

In closing, we are confident Apple Valley meets the site criteria of the client and is the right location for Project Jupiter.

If you have further questions please contact me or Orlando Acevedo, Economic Development Manager, at (760) 240-7915 or by email at select@applevalley.org.

Very truly yours,



Frank Robinson, ICMA-CM
Town Manager

cc: Orlando Acevedo, Economic Development Manager

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ATTACHMENTS

Attachment No. 1	Legal Description and Parcel Map
Attachment No. 2	Scope of Development
Attachment No. 3	Town Letter Dated February 12, 2015

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Consent and Agreement of Town

In the implementation of the Owner Participation Agreement between the Town of Apple Valley ("Town") and AVDC, Inc., an Illinois corporation ("Developer") entered into as of _____, 2015, the Town of Apple Valley ("Town") does hereby consent to the terms of the Owner Participation Agreement, and does hereby agree:

1. To cooperate with the Town and the Developer in implementing the provisions of the Owner Participation Agreement;
2. To consider and act upon, in a timely and good faith manner, the matters submitted to it by the Town and Developer.

Town of Apple Valley

Dated: _____

By: _____
Mayor

ATTEST:

Town Clerk

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Attachment 2

Budget Amendment Request No. 2015-34



TOWN OF APPLE VALLEY

BUDGET AMENDMENT REQUEST

15-34

Requesting Department	Prepared By	Date Prepared
Economic Development	Orlando Acevedo	June 9, 2015

REVENUES AND OTHER FINANCING SOURCES

Account Description	Fund	Dept	Account No.	Amendment Amount
REVENUE TOTAL				-

EXPENDITURES AND OTHER FINANCING USES

Account Description	Fund	Dept	Account No.	Amendment Amount
North Apple Valley Street Improvements (Navajo Rd, LaFayette St, Daschund Rd)	4050	4310	9485	965,274
EXPENDITURE TOTAL				965,274

PURPOSE

NAVISP Street Improvements

Department Director	Date	ATM Fin. & Admin./Asst. Fin. Dir.	Date

Town Manager	Date	Entered by	Date