

COPY

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AGREEMENT OF PURCHASE AND SALE OF
JESS RANCH WASTEWATER SYSTEM
AND
ASSESSMENT DISTRICT NO. 86-1
WATER SYSTEM IMPROVEMENTS

THIS AGREEMENT OF PURCHASE AND SALE ("Agreement") is made and entered into as of this 28th day of July, 1998, by and between the Town of Apple Valley ("Town"), a municipal corporation, and Apple Valley Ranchos Water Company ("Water Company"), a California corporation with respect to the following:

RECITALS

A. Water Company own and operates certain wastewater system improvements which serve that area within the Town known as Jess Ranch consisting of approximately 1,447 acres. The wastewater system consists of certain pipelines, force mains, lift stations, future flow equalization improvements, lateral connections, manholes, cleanouts, rights-of-way and properties for the system facilities, including flow equalization, and certain appurtenances and appurtenant work (the "Wastewater System"). The Wastewater System is further described in Exhibit A attached hereto and incorporated herein by this reference.

B. The Town owns and operates certain water system improvements which serve that area within the Town encompassed within and without the boundaries of Assessment District No. 86-1, originally formed by the Apple Valley County Water District. The water system improvements consist of certain pipelines, one offsite production well, well pump, controls and certain appurtenances and appurtenant work (the "Water System"). The Water System is further described in Exhibit B attached hereto and incorporated herein by this reference. The Water System that is the subject of this Agreement does not include, nor is this Agreement meant to convey, any Water Rights, as hereinafter defined, owned by the Town, and the Town hereby expressly retains such water rights.

C. Town desires to purchase the Wastewater System from Water Company and Water Company desires to purchase the Water System from Town upon the terms and conditions set forth below. The Wastewater System and the Water System are collectively referred to hereafter as the "Systems."

D. The parties intend that each of the Systems be sold and transferred in accordance with this Agreement. If for any reason a party is unable to complete the sale of its System as contemplated hereunder, then the other party shall not be obligated to proceed with the sale of its System to the non-performing party.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Definitions. As used in this Agreement the following terms shall have the following definitions:

"Agreement" shall mean this agreement as defined in the preamble hereto.

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"Environmental Laws" means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (as defined subsequently in this Agreement), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property), occupational or environmental conditions on, under, or about the Property, as now in effect, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 USCS §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 USCS §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 USCS §§ 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 USCS §§ 2601 et seq.]; the Hazardous Materials Transportation Act ("HMTA") [49 USCS §§ 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USCS §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USCS §§ 6901 et seq.]; the Clean Air Act [42 USCS §§ 7401 et seq.]; the Safe Drinking Water Act [42 USCS §§ 300f et seq.]; the Solid Waste Disposal Act [42 USCS §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USCS §§ 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 et seq.]; the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [H & S C §§ 25280 et seq.]; the California Hazardous Substances Account Act [H & S C §§ 25300 et seq.]; the California Hazardous Waste Control Act [H & S C §§ 25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C §§ 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Wat C §§ 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect that pertains to occupational health or industrial hygiene, and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

"EPA" is defined in Section 13(a)(i)(d)

"Hazardous Substances" includes without limitation:

- (a) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminant" in CERCLA, RCRA, TSCA, HMTA, or under any other Environmental Law;
- (b) Those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 CFR Part 302];
- (c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and
- (d) Any material, waste, or substance that is
 - (1) a petroleum or refined petroleum product,
 - (2) asbestos (excepting asbestos cement pipelines),
 - (3) polychlorinated biphenyl,

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- (4) designated as a hazardous substance pursuant to 33 USCS § 1321 or listed pursuant to 33 USCS § 1317,
- (5) a flammable explosive, or
- (6) a radioactive material.

“Water Rights” means the rights to divert, pump, or otherwise appropriate and put to beneficial use any water, including surface water, ground water, flood water, recycled or reclaimed water, whether under claim of riparian, pueblo, appropriative, prescriptive, contractual or overlying right, and includes but is not limited to those water rights owned by the Town as defined in the Stipulated Judgment entered on January 10, 1996, in the Superior Court of the County of Riverside, Case No. 20856 (the “Mojave River Adjudication”), or in the event such Stipulated Judgment shall be determined by a court of general jurisdiction to be ineffective, those water rights to which the Town held title prior to the initiation of the Mojave River Adjudication.

SECTION 2. Purchase and Sale of the Wastewater System and Water System.

- a. Wastewater System. Water Company hereby agrees to sell the Wastewater System to Town and Town hereby agrees to purchase the Wastewater System from Water Company upon the terms and conditions hereinafter set forth.
- b. Water System. Town hereby agrees to sell the Water System to Water Company and Water Company hereby agrees to purchase the Water System from Town upon the terms and conditions hereinafter set forth.

SECTION 3 Purchase Price.

- a. Wastewater System. The purchase price for the Wastewater System shall be \$1,459,127.00.
- b. Water System. The purchase price for the Water System shall be \$2,320,804.00.

SECTION 4. Payment of Purchase Price.

On the Closing Date, the Town shall deposit with the Escrow Agent the Purchase Price for the Wastewater System and the Water Company shall deposit with the Escrow Agent the Purchase Price for the Water System.

SECTION 5. Escrow.

By this Agreement, the parties hereto establish an escrow ("Escrow") with All Points ("Escrow Agent") subject to the provisions of the standard conditions for acceptance of escrow (the "Standard Conditions"), but only to the extent that the Standard Conditions impose no additional obligations or liabilities on the parties. A signed counterpart of this Agreement shall be delivered as escrow instructions to Escrow Agent.

SECTION 6. Representations Regarding Inspection and Review of Wastewater System and Water System.

- a. Wastewater System. The Town represents that it has had a reasonable opportunity to review the physical condition of the Wastewater System, including but not limited to, inspection and examination of

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soils, environmental factors, and Hazardous Substances, if any, relating to the Wastewater System; and a review and investigation of the effect of any zoning, maps, permits, reports, engineering data, regulations, ordinances, and laws affecting the Wastewater System.

Water Company represents that it has delivered to Town or made available to Town for its review and inspection copies of all plans, surveys, specifications, regulatory permits and other documents pertaining to the physical, geological, or environmental condition of the Wastewater System that are owned by or in the possession of Water Company.

Town represents that it is satisfied with the results of such inspection and review of the Wastewater System.

b. Water System. Water Company represents that it has had a reasonable opportunity to review the physical condition of the Water System, including but not limited to, inspection and examination of soils, environmental factors, and Hazardous Substances, if any, relating to the Water System; and a review and investigation of the effect of any zoning, maps, permits, reports, engineering data, regulations, ordinances, and laws affecting the Water System.

Town represents that it has delivered to Water Company or made available to Water Company for its review and inspection copies of all plans, surveys, specifications, regulatory permits and other documents pertaining to the physical, geological, or environmental condition of the Water System that are owned by or in the possession of Town.

Water Company represents that it is satisfied with the results of such inspection and review of the Water System.

SECTION 7. Conditions to Performance.

a. Town. The Town's obligation to perform under this Agreement is subject to the following conditions:

(1) Formation of an assessment district pursuant to the Municipal Improvement Act of 1913 (California Streets and Highways Code Section 10000 and following), Article XIID of the Constitution of the State of California and the Proposition 218 Omnibus Implementation Act (California Government Code Section 53750 and following) and the issuance, sale and receipt of the proceeds of limited obligation improvement bonds (the "Bonds") pursuant to the Improvement Bond Act of 1915 (California Streets and Highways Code Section 8500 and following) representing unpaid assessments within such assessment district in a principal amount, which together with prepaid assessments, will be sufficient to pay the purchase price of the Wastewater System, fund a reserve fund for the Bonds and pay the costs of issuance related to such Bonds.

Town and Water Company agree to each advance one-half of the preformation costs related to the proposed assessment district, with the exception of the costs of valuing the systems (\$30,000) which has been advanced solely by and shall be the sole responsibility of Water Company ("Preformation Costs"). In no event, however, shall Water Company be required to advance an additional amount in excess of one-half of \$71,228 as its share of the Preformation Costs unless agreed to in writing by Water Company. Town may request that Water company advance its one-half share of such costs as such costs are incurred. Water Company shall deposit with Town within 20 business days after written notice from Town of such requirement its one-half share of those Preformation Costs that Town anticipates that it will incur within thirty (30) days of the date of that notice. The notice shall set forth the amount and anticipated use of such

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anticipated Preformation Costs. Town Manager shall provide Water Company a statement setting forth the use of all Preformation Costs advanced by Water Company upon request by Water Company. If the assessment district is successfully formed and the Bonds are issued, Town shall reimburse Water Company solely from Bond proceeds any moneys advanced to pay Water Company's share of any Preformation Costs that it has paid to or on behalf of Town. If the assessment district is not formed or the Bonds are not issued regardless of the cause, Water Company and Town agree to each absorb one-half of all prior advances to pay Preformation Costs, subject to the limit on Water Company's advances set forth above.

(2) Final approval of the sale of the Water System pursuant to the provisions of Article 9 of Chapter 2 of Part 1 of Division 1 of Title 5 of the California Government Code (Section 50550 and following).

(3) The representations and warranties contained herein of the other parties to this Agreement being correct as of the date of this Agreement and as of the Close of Escrow.

(4) The performance by Water Company of all obligations which it is required to perform pursuant to this Agreement, including, without limitation, its sale and transfer of the Wastewater System to Town.

(5) The Wastewater System shall not have suffered since December 31, 1997 an effect, event, change, fact or condition that is, or is reasonably likely to be in the future, materially adverse to the value of the Wastewater System or materially adverse to the condition (financial or otherwise), results of operation or prospects of the Wastewater System;

(6) Water Company shall have obtained all consents and approvals required to be obtained by it to effect the transactions contemplated by this Agreement, unless in Town's sole judgement, the failure to obtain such consents and approvals would not interfere with Town's ownership or operation of the Wastewater System after the Closing Date;

(7) No provision of any applicable legal requirement and no judgement, injunction, order or decree shall restrain, prohibit or otherwise interfere with the effective operation or possession by Town of the Wastewater System. There shall not be pending or threatened by any governmental entity, any proceeding (or by any other person any proceeding which has a reasonable likelihood of success), (i) challenging or seeking to restrain or prohibit the purchase or sale of any material portion of either System or any of the other transactions contemplated by this Agreement or seeking to obtain from Town in connection with the purchase and sale of the Wastewater System any damages that are material in relation to its operation by Town of any material portion of the Wastewater System;

(8) Water Company shall have furnished to Town such other documents relating to its authority to sell the Wastewater System, purchase the Water System, the absence of any liens on the Wastewater System and such other matters as Town or its counsel may reasonably request; and

(9) All approvals and consents required by any governmental entity, including the California Public Utilities Commission ("CPUC") to effect the transactions contemplated by the Agreement shall have been obtained prior to the Closing Date.

b. Water Company. The obligations of Water Company to perform under this Agreement is subject to the following conditions:

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- (1) The representations and warranties contained herein of the Town being correct as of the date of this Agreement and as of the Close of Escrow.
- (2) The performance by Town of all of the obligations it is required to perform pursuant to this Agreement, including, without limitation, the sale and transfer of the Water System to Water Company;
- (3) Park Water Company ("Park"), parent of Water Company, shall have obtained all necessary consents of its bondholders to the sale of the Wastewater System to Town pursuant to the terms of this Agreement;
- (4) Town shall have delivered to Water Company through the escrow grant deeds, assignments and bills of sale, and other good and sufficient instruments of transfer as Water Company deems necessary and appropriate to vest in it all right, title and interest to and under the Water System except Water Rights;
- (5) The Water System shall not have suffered since December 31, 1997 an effect, event, change, fact or condition that is, or is reasonably likely to be in the future, materially adverse to the value of the Water System or materially adverse to the condition (financial or otherwise), results of operation or prospects of the Water System;
- (6) Town shall have obtained all consents and approvals required to be obtained by it to effect the transactions contemplated by this Agreement, unless in Water Company's sole judgement, the failure to obtain such consents and approvals would not interfere with Water Company's ownership or operation of the Water System after the Closing Date;
- (7) No provision of any applicable legal requirement and no judgement, injunction, order or decree shall restrain, prohibit or otherwise interfere with the effective operation or possession by Water Company of the Water System. There shall not be pending or threatened by any governmental entity, any proceeding (or by any other person any proceeding which has a reasonable likelihood of success), (I) challenging or seeking to restrain or prohibit the purchase or sale of any material portion of either System or any of the other transactions contemplated by this Agreement or seeking to obtain from Water Company in connection with the purchase and sale of the Water System any damages that are material in relation to its operation by Water Company of any material portion of the Water System;
- (8) Town shall have furnished to Water Company such other documents relating to its authority to sell the Water System, purchase the Wastewater System, the absence of any liens on the Water System and such other matters as Water Company or its counsel may reasonably request; and
- (9) All approvals and consents required by any governmental entity, including the California Public Utilities Commission ("CPUC") to effect the transactions contemplated by the Agreement shall have been obtained prior to the Closing Date.

SECTION 8. Close of Escrow

- a. Title. Simultaneously with the Close of Escrow (as defined below), Escrow Agent shall issue to Water Company, with reference to the Water System, and to Town, with reference to the Wastewater System:

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(1) An ALTA Owner's Policy of Title Insurance ("Title Policy") to Water Company in the amount of the Purchase Price for the Water System, and to Town, and a Title Policy to Town in the amount of the Purchase Price for the Wastewater System, together with such endorsements thereto as Water Company or Town may reasonably require, subject only to the following matters:

- (a) A lien for real property taxes, bonds, and assessments not then due;
- (b) Two (2) leases with the Bureau of Land Management for water storage tank sites with respect to the Water System;
- (c) Such other exceptions as Water Company and Town may approve in writing prior to the Closing Date; and
- (d) Proof of easement for flow equalization facility.

The matters described in clauses (a), (b), (c) and (d) above are referred to hereafter as the "Approved Exceptions."

b. Town's Deposits into Escrow. Town shall deposit with Escrow Agent on or prior to the Close of Escrow the following documents:

- (1) A grant deed executed and acknowledged by Town conveying to Water Company good and marketable fee simple title to the Water System, subject only to the Approved Exception ("Water System Deed");
- (2) An assignment and bill of sale ("Assignment"), executed by Town, assigning to Water Company all of Town's right, title, and interest in all plans, specifications, construction drawings, project files, service agreements, maintenance agreements, permits, licenses, entitlements, utility deposit refunds, and all other intangible assets relating to the Water System; provided, however that only those agreements designated by Water Company shall be assigned to the Water Company;
- (3) Good funds or Bonds in the principal face amount of the Purchase Price for the Wastewater System; and
- (4) Good funds in an amount equal to Water Company's advances of Preformation Costs town pursuant to Section 7(a)(1) of this Agreement.

c. Water Company's Deposits into Escrow. Water Company shall deposit with the Escrow Agent on or prior to the Close of Escrow the following documents:

- (1) A grant deed executed and acknowledged by Water Company conveying to Town good and marketable fee simple title to the Wastewater System, subject only to the Approved Exception ("Wastewater Deed");
- (2) An assignment and bill of sale executed by Water Company ("Assignment"), assigning to Town all of Water Company's, title, and interest, if any, in all plans, specifications, construction drawings, project files, service agreements, maintenance agreements, permits, licenses, entitlements, utility deposit refunds, and all other intangible assets relating to the Wastewater

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System; provided, however that only those agreements designated by Town shall be assigned to the Town; and

- (3) Good funds in the amount of the Purchase Price for the Water System.

SECTION 9. Closing Date.

The conveyance of the Wastewater System to the Town and the Water System to the Water Company and the closing of these transactions ("Close of Escrow") shall take place on the fifth business day following the satisfaction of the conditions set forth in Sections 7, but in no event later than 09/15, 1998, at which time Escrow Agent shall ("Closing Date"):

- a. File and record the Wastewater System Deed in the Official Records of San Bernardino County (the Official Records");
- b. File and record the Water System Deed in the Official Records;
- c. Prorate taxes, assessments, rents, and other charges as provided in Section 10(f);
- d. Disburse to Town the Purchase Price for the Water System less prorated amounts and charges to be paid by or on behalf of Town;
- e. Disburse to Water Company the Purchase Price for the Wastewater System less prorated amounts and charges to be paid by or on behalf of Town;
- f. Disburse to Water Company an amount equal to the Preformation Costs paid by Water Company pursuant to Section 7(a)(1) of this Agreement;
- g. Prepare and deliver to both each party to this Agreement one signed copy of Escrow Agent's closing statement showing all receipts and disbursements of the Escrow; and
- h. Deliver to Town the Assignment by Water Company and deliver to Water Company the Assignment by Town.

If Escrow Agent is unable to simultaneously perform all of the instructions set forth above, Escrow Agent shall notify the parties to this Agreement and retain all funds and documents pending receipt of further instructions jointly issued by the parties.

SECTION 10. Prorations.

- a. Costs.

Escrow Agent shall prorate the following costs at the Close of Escrow:

Town shall pay:

- (1) All governmental conveyancing fees and taxes due upon transfer of the Water System;
- (2) (½) of the escrow fee charged by Escrow Agent;
- (3) Any recording charges in connection with the recordation of the Water System Deed; and

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- (4) The premium for the title policy covering the Water System;

Water Company shall pay:

- (5) All governmental conveyancing fees and taxes due upon transfer of the Wastewater System;
- (6) (1/2) of the escrow fee charged by Escrow Agent;
- (7) Any recording charges in connection with the recordation of the deed for the Wastewater System; and
- (8) The premium for the title policy covering the Wastewater System.

b. Real Estate Taxes, Bonds and Assessments. Real property taxes, if any, for the Wastewater System and the Water System shall be prorated at the Close of Escrow based on the most current real property tax bill available, including any additional property taxes that may be assessed after the Close of Escrow but that relate to a period prior to the Close of Escrow, regardless of when notice of those taxes is received or who receives the notice. All installments of any bond or assessment that constitutes a lien on the Wastewater System at the Close of Escrow shall be paid by Water Company. All installments of any bond or assessment that constitutes a lien on the Water System at the Close of Escrow shall be paid by the Town. All installments of any bond or assessment that constitutes a lien on the Wastewater System at the Close of Escrow, excluding the assessment lien on the properties within the assessment district formed pursuant to Section 7.a.(1), shall be paid by the Water Company.

SECTION 11. Possession.

- a. Wastewater System. Possession of the Wastewater System shall be delivered to Town at the Close of Escrow.
- b. Water System. Possession of the Water System shall be delivered to the Water Company at the Close of Escrow.

SECTION 12. Damage or Destruction

- a. Wastewater System. If any portion of the Wastewater System is damaged by earthquake, mudslide, fire, release of or exposure to any Hazardous Substances, or any other casualty (other than any damage caused by Town or its employees, agents, or contractors), prior to the Close of Escrow, Town may elect either (i) to terminate this Agreement upon written notice to the other parties hereto, in which event no party to this Agreement shall have any further obligations under this Agreement except as otherwise provided in this Agreement, or (ii) to proceed with the purchase of the Wastewater System, in which event this Agreement shall remain in full force and effect, and Water Company shall pay or assign to Town (i) any amount due from or paid by any insurance company or any other party as a result of the damage and (ii) the amount of any deductible under Water Company's insurance policy and/or the cost of repairing or correcting such damage not covered by insurance shall be credited against the cash portion of the Purchase Price and shall reduce the amount payable at Close of Escrow.
- b. Water System. If any portion of the Water System is damaged by earthquake, mudslide, fire, release of or exposure to any Hazardous Substances, or any other casualty (other than any damage caused by Water Company or its employees, agents, or contractors), prior to the Close of Escrow, Water

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Company may elect either (I) to terminate this Agreement upon written notice to the other parties hereto, in which event no party to this Agreement shall have any further obligations under this Agreement except as otherwise provided in this Agreement, or (ii) to proceed with the purchase of the Water System, in which event this Agreement shall remain in full force and effect, and Town shall pay or assign to Water Company (I) any amount due from or paid by any insurance company or any other party as a result of the damage and (ii) the amount of any deductible under Town's insurance policy and/or the cost of repairing or correcting such damage not covered by insurance shall be credited against the cash portion of the Purchase Price and shall reduce the amount payable at Close of Escrow.

SECTION 13. Representations and Warranties

a. Representations and Warranties of the Town. To the best of the Town's knowledge, the Town represents and warrants to the other parties to this Agreement that as of the date of this Agreement and as of the Close of Escrow:

(1) Hazardous Substances.

- (a) The Water System is free and has always been free from Hazardous Substances and is not and has never been in violation of any Environmental Laws.
- (b) There are no buried or partially buried storage tanks located in the Water System.
- (c) Town has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions in the Water System are or have been in violation of any Environmental Law, or informing Town that the Water System is subject to investigation or inquiry regarding Hazardous Substances in the Water System or the potential violation of any Environmental Law.
- (d) There is no monitoring program required by the Environmental Protection Agency ("EPA") or any similar state agency concerning the Water System.
- (e) No toxic or hazardous chemicals, waste, or substances of any kind have ever been spilled, disposed of, or stored on, under, or at the Water System, whether by accident, burying, drainage, or storage in containers, tanks, or holding areas, or by any other means.
- (f) The Water System has never been used as a dump or landfill.
- (g) Town has disclosed to the other parties to this Agreement all information, records, and studies, if any, in Town's possession in connection with the Water System concerning Hazardous Substances.

(2) Violations of Law. No condition on the Water System violates any health, safety, fire, environmental, sewage, building, or other federal, state, or local law, code, ordinance, or regulation.

(3) Other Agreements. Except as provided below in this Section 13a(3), no leases, licenses, or other agreements allowing any third party rights to use the Water System are or will be in force. The Town has leased two (2) sites from the Bureau of Land Management for the location

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of water storage tanks. The Town currently serves a Bureau of Land Management fire station located east of the boundaries of Assessment District No. 86-1 which service is provided without an out of area service agreement.

(4) **Litigation.** There are no legal proceedings or investigations, pending or threatened litigation against or affecting the Water System, nor is there any reasonable basis on which any such proceeding may be brought in the future.

(5) **Condition of Property.**

(a) there are no natural or artificial conditions upon the Water System or any part of the Water System that could result in a material and adverse change in the condition of the Water System;

(b) all governmental approvals and permits required for the use of the Water System for its intended purpose have been obtained;

(6) **Disclosure.** Any information that Town has delivered to the other parties to this Agreement, either directly or through Town's agents, is accurate and Town has disclosed all material facts concerning the operation or condition of the Water System.

(7) **Power and Authority.** Town has all necessary power and authority to execute and deliver this Agreement and all other documents to be executed and delivered by it pursuant hereto and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the other documents to be executed and delivered pursuant hereto and the consummation by Town of the transactions contemplated hereby have been duly authorized by all necessary action on the part of Town. This Agreement has been duly executed and delivered by Town and each additional document to be executed and delivered hereto ("Collateral Documents"), when duly executed and delivered by Town, will constitute legal and valid obligations of Town, and be enforceable against Town in accordance with their terms. The execution and delivery of this Agreement and of the Collateral Documents, and the consummation of the transactions contemplated hereby and the compliance with the terms of this Agreement do not, or will not (i) violate any legal requirement applicable to Town, (ii) conflict with any provision of other applicable documents, (iii) conflict with any material contract to which Town is a party or by which it or the Water System is bound, or (iv) require any consent, approval, notice or order or authorization of, or the registration, declaration or filing with any governmental entity or any other person other than as set forth in Schedule 1A hereto.

(8) **Undisclosed Liabilities.** There are no liabilities relating to the Water System of any kind, whether accrued, contingent or otherwise, and there is no existing condition, situation or set of circumstances which reasonably could be expected to result in such liability, other than: (i) liabilities disclosed on Schedule 2A; (ii) liabilities for the payment or performance of obligations required by the terms of Assumed Contracts to be assumed by Water Company hereunder.

(9) **Compliance with the Applicable Laws.** Town has complied with, and has not received any written notice of any failure to comply with any legal requirements that apply to it, or which relate to the Water System or the transactions contemplated by this Agreement. Town has not received written notice of any proceeding or review by any governmental entity with respect to the Water System.

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(10) Good Title to Water System. The sale of the Water System pursuant to this Agreement will effectively convey to Water Company the entire Water System and all tangible and intangible property (other than software and telemetry system) used by Town or otherwise required as of the date hereof and as of the Closing Date to operate the Water System except Water Rights.

(11) Acquired Assets. Town has good, valid, marketable and indefeasible title ("Marketable Title") to the Water System. Upon consummation of the transactions contemplated in this Agreement, Water company will have acquired Marketable Title to each asset constituting the Water System, and all of Town's right, title and interest therein, free of any liens, except Approved Exceptions.

The assets that Town will transfer to Water Company at the Closing Date include all assets, including rights under contracts to be assumed by Water Company necessary to enable Water Company to operate and conduct the Water System in substantially the same manner as it has been operated and conducted by Town prior to the date hereof.

(12) Contracts. Town is not a party to or bound by any contracts relating to the Water System, except as disclosed on Schedule 3A. All contracts to be acquired by Water Company hereunder ("Assumed Contracts") are valid, binding, in full force and effect and are enforceable by Town in accordance with their terms. Town has performed all material obligations required to be performed by it to date under the Assumed Contracts and is not (with or without the lapse of time or the giving of notice, or both) in breach or default in any material respect thereunder. No other party to any of the Assumed Contracts is (with or without the lapse of time or the giving of notice, or both) in breach or default in any material respect thereunder and no persons has threatened to cancel or terminate any such Assumed Contract or threatened any claim for a breach thereof. Each Assumed Contract is fully assignable by Town to Water Company.

(13) Licenses and Permits. Schedule 4A correctly describes each permit held by Town effecting or relating to the Water System (the "Permits") together with the name of the governmental entity issuing such Permit. Such Permits are valid and in full force and effect at the Closing Date, are transferable by Town and none of the permits will be terminated or impaired or become terminable as a result of the transactions contemplated hereunder, Water Company will have all of the right, title and interest in all the Permits, which constitute all permits and licenses required to operate the Water System as currently operated.

(14) Absence of Certain Changes. Since December 13, 1997, the Water System has been operated in the ordinary course of business consistent with recent past practices and there has not been: (i) any event or development, which has had or could reasonably be expected to have a material adverse effect on the Water System or (ii) any material damage, destruction or other casualty loss effecting any asset comprising the Water System.

Town shall promptly notify the other parties to this Agreement of any facts that would cause any of the representations contained in this Agreement to be untrue as of the Close of Escrow and shall deliver to Purchaser at the Close of Escrow a certificate ("Closing Certificate") in a form reasonably satisfactory to the other parties to this Agreement confirming that the representations contained in this Agreement continue to be true as of the Close of Escrow. The obligations of other parties to this Agreement to consummate the transactions contemplated are conditioned upon the delivery by Town of the Closing Certificate. If the Water Company reasonably concludes that a fact materially and adversely affects the

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Water System, Water Company shall have the option to terminate this Agreement by delivering written notice to Town and Escrow Agent. If Water Company terminates this Agreement pursuant to this Section, Escrow Agent shall cancel the Escrow.

Town agrees to indemnify the other parties to this Agreement and agrees to defend and hold other parties to this Agreement harmless from all loss, cost, liability, expense, damage, or other injury, including without limitation, attorney fees and expenses, to the fullest extent not prohibited by applicable law, and all other costs and expenses incurred by reason of, or in any manner resulting from the breach of any warranties and representations in this Section 12, and all third-party claims arising out of or related to any facts or circumstances with respect to the period prior to the Close of Escrow or the failure of Town to perform any of its covenants contained in this Agreement.

b. Representations and Warranties of the Water Company Water Company represents and warrants to the Town that as of the date of this Agreement and as of the Close of Escrow:

(1) Hazardous Substances.

- (a) The Wastewater System is free and has always been free from Hazardous Substances and is not and has never been in violation of any Environmental Laws.
- (b) There are no buried or partially buried storage tanks located in the Wastewater System.
- (c) Water Company has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions in the Wastewater System are or have been in violation of any Environmental Law, or informing Water Company that the Wastewater System is subject to investigation or inquiry regarding Hazardous Substances in the Wastewater System or the potential violation of any Environmental Law.
- (d) There is no monitoring program required by the Environmental Protection Agency ("EPA") or any similar state agency concerning the Wastewater System.
- (e) No toxic or hazardous chemicals, waste, or substances of any kind have ever been spilled, disposed of, or stored on, under, or at the Wastewater System, whether by accident, burying, drainage, or storage in containers, tanks, or holding areas, or by any other means.
- (f) The Wastewater System has never been used as a dump or landfill.
- (g) Water Company has disclosed to the other parties to this Agreement all information, records, and studies, if any, in Water Company's possession in connection with the Wastewater System concerning Hazardous Substances.

(2) Violations of Law. No condition on the Wastewater System violates any health, safety, fire, environmental, sewage, building, or other federal, state, or local law, code, ordinance, or regulation.

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(3) Other Agreements. No leases, licenses, or other agreements allowing any third party rights to use the Wastewater System are or will be in force.

(4) Litigation. There are no legal proceedings or investigations, pending or threatened litigation against or affecting the Wastewater System, nor is there any reasonable basis on which any such proceeding may be brought in the future.

(5) Condition of Property.

(a) there are no natural or artificial conditions upon the Wastewater System or any part of the Wastewater System that could result in a material and adverse change in the condition of the Wastewater System;

(b) all governmental approvals and permits required for the use of the Wastewater System for its intended purpose have been obtained;

(6) Disclosure. Any information that Water Company have delivered to Town, either directly or through the agents of Water Company, is accurate and Water Company have disclosed all material facts concerning the operation or condition of the Wastewater System.

(7) Power and Authority. Water Company has all necessary power and authority to execute and deliver the Agreement and all other documents to be executed and delivered by it pursuant hereto and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the other documents to be executed and delivered pursuant hereto and the consummation of the transactions contemplated hereby by Water Company have been duly authorized by all necessary action on the part of Water Company. This Agreement has been duly executed and delivered by Water Company and each additional documents to be executed and delivered hereto ("Collateral Documents"), when duly executed and delivered by Water Company, will constitute legal and valid obligations of Water Company, enforceable against Water Company in accordance with their terms. The execution and delivery of the Agreement and of the Collateral Documents, and the consummation of the transactions contemplated hereby and the compliance with the terms of this Agreement do not, or will not (i) violate any legal requirement applicable to Water Company, (ii) conflict with any provision of Water Company's articles of incorporation, bylaws or other applicable documents, (iii) conflict with any material contract to which Water Company is a party or by which it is bound, or (iv) require any consent, approval, notice or order or authorization of, or the registration, declaration or filing with any governmental entity or any other person other than as set forth in Schedule 1B hereto.

(8) Undisclosed Liabilities. There are no liabilities relating to the Wastewater System of any kind, whether accrued, contingent or otherwise, and there is no existing condition, situation or set of circumstances which reasonably could be expected to result in such assumed liability or other liability, other than: (i) liabilities disclosed on Schedule 2B; (ii) liabilities for the payment or performance of obligations required by the terms of Assumed Contracts to be assumed by Town hereunder.

(9) Compliance with Applicable Laws. Water Company has complied with, and has not received any written notice of any failure to comply with any legal requirements that apply to it, or which relate to the Wastewater System or the transactions contemplated by this Agreement. Water Company has not received written notice of any proceeding or review by any governmental entity with respect to the Wastewater System.

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(10) Good Title to Wastewater System. The sale of the Wastewater System pursuant to this Agreement will effectively convey to Town the entire Wastewater System and all tangible and intangible property (other than software proprietary to Water Company) used by Water Company or otherwise required as of the date hereof and as of the Closing Date to operate the Wastewater System.

(11) Acquired Assets. Water Company has good, valid, marketable and indefeasible title ("Marketable Title") to the Wastewater System. Upon consummation of the transactions contemplated in this Agreement, Town will have acquired Marketable Title to each asset constituting the Wastewater System, and all of Water Company's right, title and interest therein, free of any liens, except Approved Exceptions.

The Assets that Water Company will transfer to Town at the Closing Date include all assets, including rights under contracts to be assumed by Town necessary to enable Town to operate the Wastewater System in substantially the same manner as it has been operated by Water Company prior to the date hereof.

(12) Contracts. Water Company is not a party to or bound by any contracts relating to the Wastewater System, except as disclosed on Schedule 3-B. All contracts to be acquired by Town hereunder ("Assumed Contracts") are valid, binding, in full force and effect and are enforceable by Water Company in accordance with their terms. Water Company has performed all material obligations required to be performed by it to date under the Assumed Contracts (with or without the lapse of time or the giving of notice, or both) in breach or default in any material respect thereunder and no person has threatened to cancel or terminate any such Assumed Contract or threatened any claim for a breach thereof. Each Assumed Contract is fully assignable by Water Company to Town, except as set forth on Schedule 3-B-1.

(13) Licenses and Permits. Schedule 4-B correctly describes each permit held by Water Company effecting or relating to the Wastewater System (the "Permits") together with the name of the governmental entity issuing such Permit. Such Permits are valid and in full force and effect at the Closing Date, are transferable by Water Company and none of the Permits will be terminated or impaired or become terminable as a result of the transactions contemplated by this Agreement, except as set forth on Schedule 4-B.1. Upon consummation of the transactions contemplated hereunder, Town will have all of the right, title and interest in all the Permits, which constitute all permits and licenses required to operate the Wastewater System as currently operated.

(14) Absence of Certain Changes. Since December 31, 1997, the Wastewater System has been operated in the ordinary course of business consistent with recent past practices and there has not been: (i) any event or development, which has had or could reasonably be expected to have a material adverse effect on the Wastewater System or (ii) any material damage, destruction or other casualty loss effecting any asset comprising the Wastewater System.

Water Company shall promptly notify Town of any facts that would cause any of the representations contained in this Agreement to be untrue as of the Close of Escrow and shall deliver to Town at the Close of Escrow a certificate ("Closing Certificate") in a form reasonably satisfactory to the other parties to this Agreement confirming that the representations contained in this Agreement continue to be true as of the Close of Escrow. The obligations of other parties to this Agreement to consummate the transactions contemplated are conditioned upon the delivery by Water Company of the Closing

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Certificate. If the Town reasonably concludes that a fact materially and adversely affects the Wastewater System, Town shall have the option to terminate this Agreement by delivering written notice to the other parties to this Agreement and Escrow Agent. If Town terminates this Agreement pursuant to this Section, Escrow Agent shall cancel the Escrow.

Water Company agrees to indemnify Town and agrees to defend and hold Town harmless from all loss, cost, liability, expense, damage, or other injury, including without limitation, attorney fees and expenses, to the fullest extent not prohibited by applicable law, and all other costs and expenses incurred by reason of, or in any manner resulting from the breach of any warranties and representations in this Section 13, and all third-party claims arising out of or related to any facts or circumstances with respect to the period prior to the Close of Escrow and any failure by Water Company to perform any of its covenants hereunder.

SECTION 14. Covenants

a. Covenants of Town. Commencing with the full execution of this Agreement by both parties and until the Close of Escrow:

- (1) Town shall not permit any liens, encumbrances, or easements to be placed on the Water System, nor shall Town enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Water System that would be binding on Water Company or the Water System after the Close of Escrow without the prior written consent of Water Company.
- (2) During the period from the date hereof to the Closing, except as expressly provided in this Agreement or as Water Company shall otherwise consent in writing, Town shall operate the Water System in the ordinary course of business consistent with recent practices, including capital expenditures relating to the Water System. Notwithstanding anything in the foregoing to the contrary, during the period from the date hereof to the Closing, except (a) as otherwise expressly contemplated by this Agreement, or (b) Water Company shall otherwise consent in writing in advance, in its sole discretion, Town shall not sell, lease, license or otherwise dispose of any asset that constitutes part of the Water System, take any action that would or might result in any representations and warranties of Town set forth in this Agreement becoming untrue, any of the conditions of the Closing set forth in Section 7 not being satisfied or any of the assets constituting part of the Water System becoming materially less valuable; create or incur any lien on any property constituting part of the Water System; and not enter into any transaction, commitment or contract relating to the Water System other than transactions, commitments and contracts in the ordinary course of business consistent with past practices and those contemplated by this Agreement. In no event, however, shall Town enter into any contract or other commitment with a value in excess of \$5,000 with respect to the Water System, unless it has received prior written consent of Water Company.
- (3) Town shall afford to Water Company and its accountants, counsel, employees and other representatives, collectively "Representatives" complete and unlimited access between the date of this Agreement and the Closing during normal business hours, to the Water System and all books and records of Town relating thereto.
- (4) Town shall take all reasonable actions necessary to comply promptly with all legal requirements which may be imposed on it in connection with the transactions contemplated

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hereunder and will promptly cooperate with and furnish information to Water Company in connection with any such legal requirements.

(5) Town shall promptly notify Water Company of any notice or other communication from any person alleging that the consent of such person is or may be required in connection with the transactions contemplated by this Agreement, any notice or other communication from any governmental entity in connection with the transactions contemplated by this Agreement, and any proceedings commenced or threatened relating to the consummation of the transactions contemplated by this Agreement.

b. Water Company.

(1) Water Company shall not permit any liens, encumbrances, or easements to be placed on the Wastewater System, nor shall Water Company enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Wastewater System that would be binding on Town or the Wastewater System after the Close of Escrow without the prior written consent of Town.

(2) During the period from the date hereof to the Closing, except as expressly provided in this Agreement or as Town shall otherwise consent in writing, Water Company shall operate the Wastewater System in the ordinary course of business consistent with recent practices, including capital expenditures relating to it. Notwithstanding anything in the foregoing to the contrary, during the period from the date hereof to the Closing, except (a) as otherwise expressly contemplated by this Agreement, or (b) as Town hereto shall otherwise consent in writing in advance, in its sole discretion, Water Company shall not sell, lease, license or otherwise dispose of any asset that constitute part of the Wastewater System, take any action that would or might result in any representations and warranties of Water Company set forth in this Agreement becoming untrue, any of the conditions of the Closing set forth in Section 7 not being satisfied or any of the assets constituting part of the Wastewater System becoming materially less valuable; create or incur any lien on any property constituting part of the Wastewater System other than transactions, commitments and contracts in the ordinary course of business consistent with past practices and those contemplated by this Agreement. In no event, however, shall Water Company enter into any contract or other commitment with a value in excess of \$5,000 with respect to the Wastewater System, unless it has received the prior written consent of Town.

(3) Water Company shall afford to Town and its accountants, counsel, employees and other representatives, collectively "Representatives" complete and unlimited access between the date of this Agreement and the Closing during normal business hours, to the Wastewater System and all books and records of Water Company relating thereto.

(4) Water Company shall take all reasonable actions necessary to comply promptly with all legal requirements which may be imposed on it in connection with the transactions contemplated hereunder and will promptly cooperate with and furnish information to Town in connection with any such legal requirements.

(5) Water Company shall promptly notify the other parties hereto of any notice or other communication from any person alleging that the consent of such person is or may be required in connection with the transactions contemplated by this Agreement, any notice or other communication from any governmental entity in connection with the transactions contemplated by this Agreement, and any proceedings commenced or threatened relating to the consummation

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of the transactions contemplated by this Agreement.

c. Additional Covenants of Water Company and Town.

(1) Water Company shall continuously operate and maintain the Water System for the purpose of providing water service to property within the boundaries of Assessment District No. 86-1.

(2) After the Closing, Town shall operate the Wastewater System as the "wholesaler" of reclaimed water to Water Company and Water Company shall have the exclusive right and obligation under the Water Company's C.P.U.C. Certificate to sell and deliver reclaimed water within Water Company's current and future sales areas within the current and future territorial limits and boundaries of the Town, under the terms and conditions set by the rules, regulations and tariffs of C.P.U.C. The Water Company hereby acknowledges its obligation to sell and deliver reclaimed water to customers within Water Company's current and future service areas. If the Water Company is unable or refuses to sell and deliver reclaimed water to any customer or customers within Water Company's current or future service area, which is located within the territorial limits and boundaries of the Town, then the Town shall have the right to sell and deliver reclaimed water to such customer or customers.

(3) Town shall use its best efforts to facilitate and effect the transfer of Water System to Water Company and shall, without limitation, from and after the Closing execute and deliver to Water Company such assignments, deeds, bills of sale, consents and other instruments as Water Company or its counsel may reasonably request as necessary for such purpose promptly after any such request.

(4) Water Company shall use its best efforts to facilitate and effect the transfer of Wastewater System to Town and shall, without limitation, from and after the Closing execute and deliver to Town such assignments, deeds, bills of sale, consents and other instruments as Town or its counsel may reasonably request as necessary for such purpose promptly after any such request.

SECTION 15. Termination

a. Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing by (i) the mutual written consent of the parties; (ii) by Town or by Water Company if the Closing does not occur prior to Sept. 15, 1998; provided, however, that the party seeking termination pursuant to this clause (ii) is not in breach of any of its representations, warranties, covenants or agreements contained in this Agreement; (iii) by either Town or Water Company if there has been a material breach of any representation, warranty, covenant or agreement on the part of the other that would have a material adverse affect on either, the Water System or the Wastewater System which breach has not been cured within ten (10) business days following receipt by the breaching party of notice of such breach, (iv) if any permanent injunction or other order of a court of competent jurisdiction or other order of a government authority preventing the sale or transfer of the Water System or the Wastewater System shall have become final and non-appealable; or (v) upon the occurrence of circumstances described in Section 12(a) and (b) for which the affected party has elected to terminate this Agreement or the occurrence of an event described in Sections 13(a)(14)(i) or (ii) or (b)(14)(i) or (ii).

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b. If the parties terminate this Agreement pursuant to this Section 15, written notice thereof shall be forthwith given to the other party and the transactions contemplated by this Agreement shall be terminated, without further action by any party.

c. If this Agreement is terminated and the transactions contemplated hereby are abandoned as described in this Section 15, this Agreement shall become null and void and of no further force and effect, except the parties shall retain all rights for any breach of the terms of this Agreement by the other party.

SECTION 16. Assignment

No party shall have the right to assign all rights and liabilities under this Agreement to any party without the prior written consent of the other parties hereto.

SECTION 17. Attorney Fees

If litigation is commenced between the parties, the Prevailing Party in that litigation shall be entitled to recover from the nonprevailing party all reasonable attorney fees and costs. "Prevailing Party" shall include without limitation a party who dismisses an action in exchange for sums allegedly due; the party who receives performance from the other party for an alleged breach of contract or a desired remedy where the performance is substantially equal to the relief sought in an action; or the party determined to be the prevailing party by a court of law.

SECTION 18. Notices

All notices to be given under this Agreement shall be in writing and sent by

- a. certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail,
- b. a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier,
- c. hand delivery, in which case notice shall be deemed delivered upon receipt, or
- d. telecopy or similar means if a copy of the notice is also sent by United States Certified Mail, in which case notice shall be deemed delivered on transmittal by telecopier or other similar means, provided that a transmission report is generated by reflecting the accurate transmission of the notices, as follows:

If to Town:

Mail: Town of Apple Valley
PO Box 429
Apple Valley, CA 92307
ATTN: Mr. Bruce Williams; Mgr.

Shipping: Town of Apple Valley
20440 Highway 18
Apple Valley, CA 92307
ATTN: Mr. Bruce Williams; Mgr.

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If to Water Company:

Apple Valley Ranchos Water Company
21760 Ottawa Road
Apple Valley, CA 92308
ATTN: Jack C. Clarke

or to such other address as any party may respectively designate by written notice to the others.

SECTION 19. Entire Agreement

This Agreement and the documents referenced herein contain the entire agreement between the parties to this Agreement and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

SECTION 20. Severability

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

SECTION 21. Waivers

A waiver or breach of covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act.

SECTION 22. Construction

The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions, and arrangement of this instrument do not in any way affect, limit, amplify, or modify the terms and provisions of this Agreement. The singular form shall include plural, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if all parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits referred to in this Agreement are attached to it and incorporated in it by this reference.

SECTION 23. Merger

All of the terms, provisions, representations, warranties, and covenants of the parties under this Agreement shall survive the Close of Escrow and shall not be merged in the Deed or other documents.

SECTION 24. Counterparts

This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

SECTION 25. Time of the Essence

Time is of the essence in this Agreement.

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SECTION 26. Successors

This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors, and assigns.

SECTION 27. Governing Law

This Agreement shall be governed and construed in accordance with California law.

The parties have executed this Agreement as of the date first written above.


[Remainder of this page intentionally left blank. The next page is the signature page.]

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


TOWN OF APPLE VALLEY

APPLE VALLEY RANCHOS WATER COMPANY



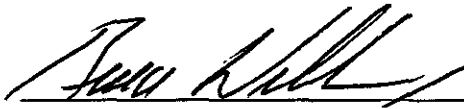
David Holman, Mayor
8-26-98

Date



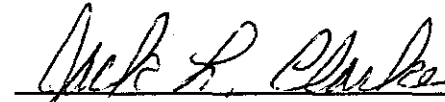
Henry H. Wheeler, President
Aug. 26th 1998

Date



Bruce Williams, Town Manager
8/26/98

Date



Jack L. Clarke, Vice President
AUG. 26, 1998

Date

ATTEST:



Eunice S. Puckett, Town Clerk