

WATER SERVICE AGREEMENT ANTELOPE VALLEY BUSINESS PARK

This Agreement made and entered into by and among:

- the City of Gillette, Wyoming, a municipal corporation and City of the First Class, hereinafter CITY, whose address is 201 East Fifth Street, Gillette, Wyoming 82716;
- the Antelope Valley Business Park Improvement and Service District of Campbell County, Wyoming, hereinafter DISTRICT #1, whose mailing address is P.O. Box 545, Gillette, Wyoming 82717-545;
- the Antelope Valley Business Park Improvement and Service District II of Campbell County, Wyoming, hereinafter DISTRICT #2, whose mailing address is 25528 Genessee Trail Road, Golden, Colorado 80401; and
- Doud Land Company, LLC, hereinafter DOUD, whose mailing address is 25528 Genessee Trail Road, Golden, Colorado 80401.

All of the above entities may be referred to collectively herein as the PARTIES.

WHEREAS, the CITY owns and operates a public water system and is developing a regional system for water supply, known as the Gillette Regional Water Supply System, which is intended to result in a significant increase in water supply; and,

WHEREAS, the CITY will not have any further significant increase in water production delivered into its system until the Gillette Regional Water Supply System is completed, which is estimated to be in 2016; and,

WHEREAS, DISTRICT #1 is made up of the lands encompassed by the Antelope Valley Business Park Subdivision of Campbell County, including all replats of lands within this subdivision; and

WHEREAS, DISTRICT #2 is made up of the lands encompassed by:

- the Antelope Valley Business Park II Subdivision of Campbell County, and
- the Antelope Valley Business Park III Subdivision of Campbell County; and

WHEREAS, Exhibit A to this Agreement includes copies of the original plats and replats for the three aforementioned subdivisions of Campbell County;

WHEREAS, DISTRICT #1 owns and operates a public water system which is used to provide water service to some or all of the lots within both DISTRICT #1 and DISTRICT #2; and

WHEREAS, several property owners or property lessees within DISTRICT #1 AND #2 operate businesses within these two districts that are of significant economic value to the CITY; and

WHEREAS, these properties would greatly benefit by having the CITY provide water service to them in lieu of DISTRICT #1 due to the increased reliability and additional fire protection capabilities that can be provided by the CITY's water system; and

WHEREAS, DOUD is the owner of the following properties, to wit: Lots 7, 8, 9 10 and 11, Antelope Valley Business Park II Subdivision, and Lot 14, Antelope Valley Business Park III Subdivision; and

WHEREAS, DISTRICT #1, DISTRICT #2 and DOUD are all desirous of having the CITY provide retail water service to each of the lots within the aforementioned three subdivisions of Campbell County, as well as to plan for future service to currently undeveloped lands to the east and south of the three aforementioned subdivisions; and

WHEREAS, portions of DISTRICT #1's public water system were not installed in conformance with current City standards and specifications, and contain lots which may not be easily integrated into the typical development pattern of an urbanized area;

WHEREAS, the CITY currently owns a sanitary sewer system within the boundaries of DISTRICT #1 and DISTRICT #2, and provides outside-city retail sewer service to several lots within these two districts; and

WHEREAS, the PARTIES intend by this Agreement to formalize and fully set forth their complete understanding and agreement concerning their respective duties and obligations.

NOW, THEREFORE, the PARTIES agree to enter into this Agreement under the following terms and conditions:

1. Within ten (10) days of execution of this Agreement, DISTRICT #1 shall pay the CITY an amount of \$32,000.00, which is the estimated cost to design a water distribution system that would meet CITY standards and specifications to serve all existing lots within the area encompassed by DISTRICT #1 and DISTRICT #2 at the date of this Agreement, hereinafter CITY Standard District System, "CSDS". The CITY shall use these monies to design the CSDS, using an engineer under contract with the CITY. The CSDS will be designed to connect to the CITY's water distribution system so that the existing customers of DISTRICT #1 could become retail water service customers of the CITY, including any and all requirements pertaining to applicable fire protection, backflow prevention and individual customer metering facilities. To the extent possible as determined

solely by the CITY, the design of the CSDS shall incorporate components of the DISTRICT #1's water distribution system. If DISTRICT #1 does not provide these monies within the ten-day period, this Agreement shall be null and void, unless mutually extended by all parties to this Agreement.

2. Once the design of CSDS is completed by the CITY's engineer, the CITY shall provide DISTRICT #1 and DOUD with the estimated cost to construct the water distribution system to serve all lots encompassed by DISTRICT #1 and DISTRICT #2 at the date of this Agreement, including any engineering or administrative costs that will be incurred by the CITY during construction. DISTRICT #1 and DOUD shall have ten (10) days to notify the CITY if DISTRICT #1 and DOUD desire to have the CITY proceed with construction of the CSDS. If DISTRICT #1 and DOUD desire to have the CITY proceed with construction, they shall so notify the CITY in writing, and the CITY shall incorporate the CSDS's construction into its Gillette Regional Water Project Phase I District Extensions Project (City Project No. 12UT05). If DISTRICT #1 and DOUD do not provide written notification to the CITY within the ten-day period that they desire to have the CITY proceed with construction, this Agreement shall be null and void, unless mutually extended by all parties to this Agreement.

3. If construction of the CSDS to serve DISTRICT #1 and DISTRICT #2 moves forward, DISTRICT #1 shall pay the CITY for the costs associated with its construction. The CITY shall submit to the DISTRICT #1 no more frequently than monthly a progress payment billing for the cost to construct the water distribution system to serve DISTRICT #1 and DISTRICT #2 (including any related administrative and engineering costs during construction), and DISTRICT #1 shall make payment to the CITY within forty-five (45) days of receipt of said bill from the CITY. Should design costs incurred by the CITY exceed the amount originally provided by DISTRICT #1 to the CITY as stipulated in Paragraph 2, or should the CITY incur any right-of-way acquisition costs, the CITY shall include the design cost overrun and the right-of-way acquisition costs to DISTRICT #1 along with the first construction progress payment billing, and DISTRICT #1 shall make this payment to the CITY.

4. The CITY and DISTRICT #1 recognize that the cost for design and construction of the Gillette Regional Water Supply System 8" water transmission main to be constructed as part of City Project No. 12UT05 (that extends from the CITY'S 42" transmission main on the north side of Union Chapel Road to the southwest corner of Lot 14) shall be at the CITY's total cost. However, any design and construction costs associated with connecting to and/or otherwise utilizing this 8" transmission main to serve lots within DISTRICT #1 and DISTRICT #2 shall be the responsibility of DISTRICT #1. Furthermore, if it becomes necessary to

increase the size of this 8" transmission main to meet fire protection standards, DISTRICT #1 shall provide the additional cost for such size increase.

5. The Gillette Regional Water Supply System 8" transmission main identified in the previous paragraph shall have an isolation valve installed at or near its connection point to the 42" transmission main located on the north side of Union Chapel Road. It shall also have a connection to DISTRICT #1's existing water supply system, which is a groundwater well located in the southeast corner of Lot 1 of the Antelope Valley Business Park Subdivision. Once the CITY completes construction of this 8" transmission main and the CSDS to serve DISTRICT #1 and DISTRICT #2 are complete, DISTRICT #1 shall utilize this system constructed by the CITY and its existing water supply system to continue to serve its existing customers. DISTRICT #1 may elect to also provide water service to any lots not currently receiving water service that are within the boundaries of the three subdivisions as they exist at the date of this Agreement, contingent upon approval by the CITY and the signing of an Annexation Agreement and Petition Non-Contiguous Property as discussed in Paragraph 13. Service shall be provided via the CSDS by DISTRICT #1 until the water supply being constructed as part of the Gillette Regional Water Supply System is available for use (currently anticipated for completion in 2016), as determined by the CITY. Once the CITY determines that the Gillette Regional Water Supply system is available to provide water to the existing customers of DISTRICT #1, DISTRICT #1 shall bear the cost to disconnect its existing water supply system, and the CITY shall open the valve that will allow water from the Gillette Regional Water Supply System to serve the existing DISTRICT #1 customers. At that time, all DISTRICT #1 customers shall become outside-city retail water service customers of the CITY, shall pay for water at the then-existing applicable rate, and shall abide by all CITY rules and regulations relating to receipt of water service. Thereafter, the CITY shall henceforth operate and maintain the CSDS in order to provide water service in the area and the CITY can extend it as desired in the sole discretion of the CITY, to serve other future customers, with such extensions made without providing any compensation to either DISTRICT #1 or DISTRICT #2.

6. During the interim period between completion of construction of the CSDS and when the CITY determines that the Gillette Regional Water Supply System is available for use for DISTRICT #1 customers the CITY shall own the system. DISTRICT #1 may lease and use the CSDS to provide water service in the area during this interim period as stipulated in Paragraph 5. In allowing interim use of the distribution system by DISTRICT #1, the CITY shall incur no liability whatsoever for or related to providing water service within this area during this interim period, including any liability associated with providing fire protection to the properties within DISTRICT #1 AND DISTRICT #2.

7. In the event that DISTRICT #1's existing water supply system becomes incapable of serving its existing customers with domestic service during the interim period identified in Paragraph 6, and an exceptional emergency situation then exists, the CITY may, consistent with Resolution No. 2327, open the isolation valve discussed in Paragraph 5 and provide water to DISTRICT #1 prior to the delivery of water from the Gillette Regional Water Supply System. Prior to opening the isolation valve to alleviate the exceptional emergency situation, DISTRICT #1 will disconnect its existing water supply system at its sole cost, from the CSDS.

8. The CITY agrees to waive any and all plant investment fees and secondary plant investment fees for the existing water services within the fifteen (15) lots currently within the three aforementioned subdivisions, regardless of whether or not a building or buildings exist on the various lots at the time of this Agreement. This fee payment waiver shall apply up until the time that the CITY assumes operation and maintenance responsibilities for the new water distribution system, when the CSDS is operational and the CITY determines that the Gillette Regional Water Supply System is available for use for DISTRICT #1 customers. After such time, the CITY may assess plant investment fees and secondary plant investment fees for any new connections made subsequent to ownership assumption, consistent with its then-existing fee schedule. DISTRICT #1 agrees to not provide water service to any lands other than the fifteen (15) lots within these three aforementioned subdivisions. Further subdivision of any of the 15 lots shall not be grounds for increasing the number of customers served.

9. DISTRICT #1, DISTRICT #2 and DOUD shall work jointly with Campbell County and the affected landowners within the three subdivisions to replat applicable lots that contain access easements where streets are now constructed so that these access easements are converted to publicly-dedicated lands for rights-of-ways. The access easements are shown in the various plats and replats included within Exhibit A. The replatting shall be completed prior to commencement of water service by the CITY to lands within DISTRICT #1 and DISTRICT #2. The three areas where such conditions currently exist include:

- Otto Road,
- LeTourneau Drive, both east and west of the intersection with Otto Road, and
- The access easement between Lots 13 and 14 of Antelope Valley Business Park III Subdivision.

10. DOUD shall replat Lots 7 and 8 of the Antelope Valley Business Park II Subdivision into one lot. The replatting shall be completed prior to commencement of water service by the CITY to lands within DISTRICT #1 and DISTRICT #2.

11. DOUD shall reimburse DISTRICT #1 for any and all construction costs associated with the replacement or upgrade of the three areas identified in Paragraph 9 performed by the CITY in conjunction with the installation of the water distribution system. This requirement of DOUD is made consistent with a commitment made previously by DOUD via a letter agreement between DOUD and DISTRICT #1 dated May 17, 2012 and shown in Exhibit B.

12. DOUD currently provides domestic water service to Lots 13 and 14 of the Antelope Valley Business Park Phase III Subdivision via a private well not associated with DISTRICT'S water supply system. In order to allow for connection to the water distribution system being constructed by the CITY so that the buildings on these lots can be served with domestic water, DOUD shall be responsible for all costs associated with connecting the buildings on Lots 13 and 14 to the CITY's proposed water distribution system, including, but not limited to, individual service lines to each building, metering facilities, etc. DOUD may connect to the water distribution system prior to the time that the CITY begins using the Gillette Regional Water Supply System to serve the area. However, DISTRICT #1 makes no guarantee that its existing water supply system can deliver the increased flow of water to also serve Lots 13 and 14. As such, should DOUD perform this early connection and it is determined by DISTRICT #1 that its existing water supply system cannot deliver water at the increased flow rate, DOUD shall immediately disconnect the buildings located on Lots 13 and 14 from DISTRICT #1's system.

13. The PARTIES acknowledge that this Agreement contemplates the future annexation of the properties within DISTRICT #1 and DISTRICT #2 into the CITY. To that end, and as of the date of this Agreement, the owners of Lots 1, 2, 3A, 6, 7, 8, 9, 10, 11, 12, 13 and 14 have previously executed an Annexation Agreement and Petition Non-Contiguous Property for their respective properties. In order for Lots 3B, 4A and 5A to receive water service consistent with this Agreement, the owners of these lots must each sign an Annexation Agreement and Petition Non-Contiguous Property similar in content to those previously executed by the owners of Lots 1, 2, 3A, 6, 7, 8, 9, 10, 11, 12, 13 and 14. Until such time as annexation occurs and then only to those properties actually annexed, the City shall not provide any other conventional city services, such as police services, building code enforcement, street, mosquito control, flood control or animal control to users within either DISTRICT #1 or DISTRICT #2.

14. Upon written request by DISTRICT #1, the CITY shall support and submit a grant request prepared by District 1 to the Wyoming Business Council for the purpose of obtaining a grant from the Wyoming Business Council's Business Committed or Community Readiness programs to assist with the cost of constructing the water distribution system, hereinafter the Grant. (Special districts

such as DISTRICT #1 AND #2 are not eligible to apply for such grants.) Any grant funds obtained by the CITY from the Wyoming Business Council for this area shall be used by the CITY to offset any grant eligible costs that would otherwise be the responsibility of DISTRICT #1 in the design and construction of the water distribution system described in previous paragraphs within this Agreement. District 1 shall be responsible for the local match for the Grant and for all project costs not covered by the Grant.

15. Any notice, which either party may or is required to give, shall be given in writing personally delivered to the other party or by mailing the same, postage prepaid, to the addresses shown on the first page of this Agreement, or at such other places as may be designated by the parties from time to time in writing. Notice is effective upon mailing or receipt if hand delivered.

16. This Agreement shall be governed by the laws of the State of Wyoming. The District Court of the sixth Judicial District in Campbell County, Wyoming shall have exclusive venue and jurisdiction for any action, at law or in equity, which may be instituted to enforce any of the terms of this Agreement

17. This Agreement shall take effect upon the approval and final execution of the Agreement by all the parties hereto. The terms of this Agreement shall bind the parties hereto and their successors and assigns, which shall include another governmental entity or corporation. This Agreement shall not be assigned to whole or in part without the prior written approval and consent of the CITY. Any assignment without the prior written approval of the CITY is void. It is further specifically agreed that the terms of this Agreement shall bind any successor of the PARTIES.

18. Notwithstanding the above, nothing in this Agreement shall be read to constitute or to require a waiver of any rights of the City under the doctrine of sovereign immunity, or a waiver of its immunity under the Wyoming Governmental Claims Act, W.S. 1-39-101 *et sec.*

This Agreement is effective on the date of the last signature below.

CITY OF GILLETTE, WYOMING


ATTEST:

City Clerk

Mayor

ANTELOPE VALLEY BUSINESS PARK IMPROVEMENT AND SERVICE
DISTRICT, CAMPBELL COUNTY, WYOMING

ATTEST:



Secretary



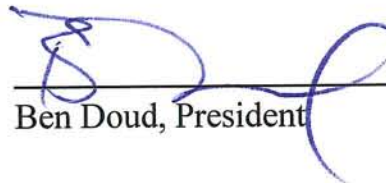
Judy Blauer, President

ANTELOPE VALLEY BUSINESS PARK IMPROVEMENT AND SERVICE
DISTRICT II, CAMPBELL COUNTY, WYOMING

ATTEST:



Secretary



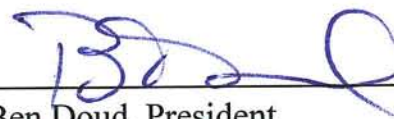
Ben Doud, President

DOUD LAND COMPANY, LLC, GOLDEN, COLORADO

ATTEST:



Secretary



Ben Doud, President

STATE OF WYOMING)

County of Campbell)

The foregoing instrument was acknowledged before me by _____
_____, Mayor of the City of Gillette, this _____ day of
_____, 2013.

Notary Public

My Commission expires:

STATE OF WYOMING)

County of Campbell)

The foregoing instrument was acknowledged before me by Judy Blauer, President and Joel Kurtenbach, Secretary of the Antelope Valley Business Park Improvement and Service District, this 9th day of December, 2013.



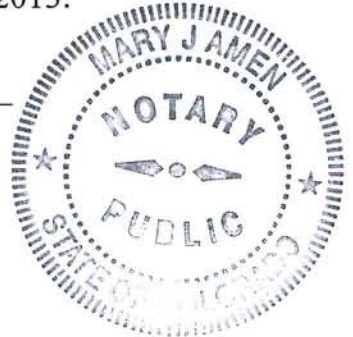
Cali Pope
Notary Public

My Commission Expires: 9-14-2014

STATE OF Colorado)
)ss
County of Jefferson)

The foregoing instrument was acknowledged before me by Ben Doud, President
and Brad Neff, Secretary of the Antelope Valley Business Park II
Improvement and Service District, this 6th day of December, 2013.

Mary J. Amen
Notary Public



My Commission Expires: 3.5.14

STATE OF Colorado)
)ss
County of Jefferson)

The foregoing instrument was acknowledged before me by Ben Doud, President
and Brad Neff, Secretary of Doud Land Company, LLC, this 6th
day of December, 2013.

Mary J. Amen
Notary Public



My Commission Expires: 3.5.14

EXHIBIT A

VARIOUS RECORDED PLATS AND REPLATS OF
SUBDIVISIONS WITHIN THE ANTELOPE VALLEY BUSINESS
PARK IMPROVEMENT AND SERVICE DISTRICT AND ANTELOPE
VALLEY BUSINESS PARK II IMPROVEMENT AND SERVICE DISTRICT,
AS OF THE DATE OF THIS AGREEMENT

SURVEYOR'S CERTIFICATE

I, William J. Smith, of the State of Wyoming, being duly sworn, depose and say that the foregoing is a true and correct copy of the original survey as shown to me by the owner thereof, and that the same is a true and correct copy of the original survey as shown to me by the owner thereof, and that the same is a true and correct copy of the original survey as shown to me by the owner thereof.

FINAL PLAT

ANTELOPE VALLEY BUSINESS PARK

PART OF THE SW1/4 NE1/4
SECTION 13
T49N R72W

Campbell County, Wyoming

DEDICATION

The owner and his heirs, assigns and assigns forever, do hereby dedicate to the public of the State of Wyoming, the land described in the foregoing plat, for the use and purpose of a business park, and the same shall be known as the Antelope Valley Business Park.

APPROVALS

Approved by the Campbell County Board of Commissioners, this 1st day of February, 1970.

Approved by the City of Cheyenne, Wyoming, this 1st day of February, 1970.

Approved by the City of Laramie, Wyoming, this 1st day of February, 1970.

Approved by the City of Rock Springs, Wyoming, this 1st day of February, 1970.

Approved by the City of Riverton, Wyoming, this 1st day of February, 1970.

Approved by the City of Wheatland, Wyoming, this 1st day of February, 1970.

Approved by the City of Torrington, Wyoming, this 1st day of February, 1970.

Approved by the City of Casper, Wyoming, this 1st day of February, 1970.

Approved by the City of Gillette, Wyoming, this 1st day of February, 1970.

Approved by the City of Hot Springs, Wyoming, this 1st day of February, 1970.

Approved by the City of Buffalo, Wyoming, this 1st day of February, 1970.

Approved by the City of Cody, Wyoming, this 1st day of February, 1970.

Approved by the City of Park, Wyoming, this 1st day of February, 1970.

Approved by the City of Jackson, Wyoming, this 1st day of February, 1970.

Approved by the City of Teton, Wyoming, this 1st day of February, 1970.

Approved by the City of Yellowstone, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Teton, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Canyon, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Loop, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Circle, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand View, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Lake, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Island, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Junction, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Rapids, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Haven, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Rapids, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Rapids, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Rapids, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Rapids, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Rapids, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Rapids, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Rapids, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Rapids, Wyoming, this 1st day of February, 1970.

Approved by the City of Grand Rapids, Wyoming, this 1st day of February, 1970.

SCALE

1" = 100'

LEGEND

ROAD RIGHT-OF-WAY

PROPERTY LINE

UTILITY LINE

WATER LINE

SEWER LINE

RAILROAD RIGHT-OF-WAY

ADJACENT PROPERTY

ADJACENT ROAD

ADJACENT RAILROAD

ADJACENT WATERWAY

ADJACENT AIRPORT

ADJACENT PARK

ADJACENT SCHOOL

ADJACENT CHURCH

ADJACENT SYNAGOGUE

ADJACENT MOSQUE

ADJACENT TEMPLE

ADJACENT MONASTERY

ADJACENT CONVENT

ADJACENT NUNNERY

ADJACENT PRIORY

ADJACENT ABBEY

ADJACENT CLOISTER

ADJACENT CHAPEL

ADJACENT ALTAR

ADJACENT PULPIT

ADJACENT AMBON

ADJACENT ALTAR

ADJACENT ALTAR

ADJACENT ALTAR

ADJACENT ALTAR

ADJACENT ALTAR

ADJACENT ALTAR

ADJACENT ALTAR

ADJACENT ALTAR

ADJACENT ALTAR

ADJACENT ALTAR

ADJACENT ALTAR

ADJACENT ALTAR

ADJACENT ALTAR

ADJACENT ALTAR

EXHIBIT B

LETTER AGREEMENT BETWEEN BEN DOUD AND
ANTELOPE VALLEY BUSINESS PARK IMPROVEMENT
AND SERVICE DISTRICT DATED MAY 17, 2012

Antelope Valley Business Park I & S District
P.O. Box 545
Gillette, WY 82717

RE: Letter Agreement for fire flow protection for new Interstate Detroit Diesel building

To whom this may concern:

The following Letter Agreement describes Water Service Agreement between Antelope Valley Business Park I & S District and Ben Doud.

Mr. Doud will provide the following:

1. Install the necessary pipeline to provide for fire protection, will include at minimum a 6-inch water line. Isolation valves in locations approved by the District. Design will be approved by the District water operator
2. Provide permanent easements for the water line to the district.
3. Submit the design to Campbell County for DEQ permit to construct.
4. Provide for the annexation of properties built by Ben Doud and currently not part of the district, but which receive water from the district. To include an annexation map to be submitted to the election office, the Assessor's office, and Secretary of State's Office. Provide that Mr. Doud shall be responsible for, pay for, and indemnify Antelope Valley Business Park I & S District for all costs, expenses, and fees (including attorney fees) associated with or related to any streets located in the district or to become part of the district, including costs, expenses and fees relating to the exercise of the powers of the district pertaining to streets as set forth in W.S. 18-12-112(a) (xvii) and (xviii) and amendments thereto, and including any requirement, now or in the future, that said streets be brought into compliance with city requirements. This to be done no later than 12/31/12
5. Provide an Adjudication Map to be submitted to the State Engineer.
6. Supply the District with Record Drawings.
7. Ben Doud shall pay all the above costs.
8. Ben Doud will pay tap fees to Antelope Valley Business Park I & S District
9. Ben Doud to immediately provide "as built" of the water and sewer lines currently in use in the district.
10. Nothing herein guarantees that Antelope Valley Business Park I & S District has the water available or the necessary equipment to provide fire flow as intended in this agreement.


Respectively Submitted,

Ben Doud

BY: 

Title: Owner

Attest:


Jeffrey Borrego, Controller

Accepted this 17th day of May, 2012

By: 

Attest: 

Antelope Valley Business Park I & S District