

**TOWN OF APPLE VALLEY  
REAL PROPERTY DONATION AGREEMENT**

This DONATION AGREEMENT ("Agreement") is made this 27th day of June, 2023 by and between the TOWN OF APPLE VALLEY, a general law city and municipal corporation, herein called "the Town," and HS CLUSTER, LLC, a Texas limited liability company herein called "Donor." Town and Donor are sometimes individually referred to as "Party" and collectively as "Parties."

A. WHEREAS, Donor desires to donate in fee title to the Town of approximately 4.27 acres of certain real property commonly known as 22311 Bear Valley Road, Building A, Apple Valley, CA 92308 and with the Assessor's Parcel Number 308-005-133, as more particularly described on Exhibit "A" and shown on Exhibit "B" attached hereto and incorporated herein by this reference (the "Donated Property" or "Property") for use by the Town, subject to the conditions described in this Agreement.

B. WHEREAS, the Town desires to acquire the Property.

NOW, THEREFORE, the Town and Donor agree as follows:

1. Donation of Property. Donor shall offer to donate the Property to the Town and the Town shall accept the offer of donation of the Property upon the terms and conditions set forth in this Agreement.

2. Obligations of Donor.

2.1 Fee Interest. Upon acceptance by the Town, Donor shall convey, assign and transfer its fee interest in the Property to the Town, free and clear of all liens, encumbrances, easements, leases (recorded or unrecorded), bonds, assessments, and taxes except for: (i) liens for non-delinquent property taxes and assessments, accruing for the remainder of the fiscal year in effect as of the Closing Date; and (ii) those encumbrances and easements reflected in the Preliminary Report, which are approved by the Town as defined below ("Approved Exceptions").

2.2 Representations and Warranties of Donor. Donor represents and warrants to the Town that as of the date of this Agreement and as of the Closing Date:

2.2.1 Hazardous Substances. To the best of Donor's knowledge and except as set forth in any environmental reports delivered or made available to the Town, the Property is: (i) free from Hazardous Substances; (ii) contains no buried or partially buried storage tanks located on the Property; (iii) has not been used for the generation, storage or disposal of any Hazardous Substance and no Hazardous Substance has been spilled, disposed of, or stored on, under, or at the Property; and (iv) has never been used as a dump or landfill;

2.2.2 Leases. To the best of Donor's knowledge and except as set forth in the Title Policy, there are no leases, licenses, or other agreements allowing any third party rights to use the Property that are now or will be in force as of the Closing Date;

2.2.3 Litigation and Investigations. There is no pending or, to the best of Donor's knowledge, threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Property, and Donor has received no notice, warning, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are or have been in violation of any Laws or Environmental Laws, or informing Donor that the Property is subject to investigation or inquiry regarding the violation of any Laws or Environmental Laws;

2.2.4 No Insolvency Proceedings. Donor has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its creditors; (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets; (iv) suffered the attachment or other judicial seizure of substantially all of its assets; or (v) admitted in writing its inability to pay its debts as they come due;

2.2.5 No Other Agreements, Undertakings or Tenancies. Donor will not enter into any agreements or undertake any new obligations prior to the Closing Date which will in any way burden, encumber or otherwise affect the Property without the prior written consent of the Town; and

2.2.6 Warranty as to Property Ownership; Authority to Enter Agreement. Donor represents and warrants that the individuals who have signed this Agreement on behalf of Donor have the legal power, right, and authority to make this Agreement.

## 2.3 Definitions.

2.3.1 "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.

2.3.2 "Hazardous Substances" includes without limitation:

(i) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminant" in any Environmental Law;

(ii) 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];

(iii) 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

(iv) Any material, waste, or substance that is: a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 U.S.C.A. § 1321 or listed pursuant to 33 U.S.C.A. § 1317, a flammable explosive, or a radioactive material.

2.3.3 “knowledge” means the best knowledge of Harbinder Singh on behalf of Donor after due investigation or inquiry.

3. Escrow. By this Agreement, the Town and Donor establish an escrow (“Escrow”) with Touchstone Escrow or another reputable title company chosen by Donor (the “Escrow Agent”), subject to the provisions of the standard conditions for acceptance of escrow and the terms and conditions in this Agreement, with a signed counterpart of this document to be delivered as escrow instructions to Escrow Agent. In the event of any conflict between the terms of this Agreement and the standard conditions for acceptance of escrow, the terms of this Agreement shall control. The Town’s agent for matters related to the Closing of Escrow shall be the Town Manager or his designee.

#### 4. Title.

4.1 Immediately following the execution of this Agreement by both Parties, the Town shall obtain (with a copy to Donor) an updated preliminary report for an ALTA Standard Policy of Title Insurance, setting forth all liens, encumbrances, easements, restrictions, conditions, pending litigation, judgments, administrative proceedings, and other matters affecting Donor’s title to the Property (“Preliminary Report”), together with copies of all documents relating to title exceptions referred to in the Preliminary Report. The Town shall have a period of

4.2 Following the full execution of this Agreement by both Parties, the Town may cause a survey and/or an ALTA Survey of the Property to be prepared by a registered surveyor or professional engineer (“Survey”). Donor agrees to deliver to the Town, promptly following the full execution and delivery of this Agreement, copies of any survey of the Property in the possession of Donor.

#### 5. Close of Escrow.

5.1 Title. Simultaneously with the Close of Escrow, Escrow Agent shall issue an ALTA Standard Policy of Title Insurance (formerly referred to as a CLTA Title Policy) (“Title Policy”) in the amount of \$2,900,000.00, subject only to (i) liens for real property taxes, bonds, and assessments not delinquent and any not then due for any fiscal year following the fiscal year in effect as of the Closing Date, and (ii) the Approved Exceptions.

5.2 Donor’s Deposits into Escrow. Donor shall deposit with Escrow Agent on or prior to the Close of Escrow the following documents:

(i) a grant deed in the form attached hereto as Exhibit “C” executed and acknowledged by Donor, conveying to the Town fee simple title to the Property, subject only to the Approved Exceptions (“Deed”);

- (ii) Donor's affidavit of non-foreign status as contemplated by Section 1445 of the Internal Revenue Code of 1986, as amended ("FIRPTA Affidavit");
- (iii) all funds required to be placed in escrow by Donor; and
- (iv) Donor's approval of the draft of Escrow Agent's closing statement.

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

- (i) The Town's approval of the Survey, if any;
- (ii) All funds required to be placed in escrow by Town; and
- (iii) The Town's approval of the draft of Escrow Agent's closing statement.

5.4 Closing Date. The conveyance of the Property to the Town and the closing of this transaction ("Close of Escrow") shall take place on the later of the date which is sixty (60) days following the establishment of an Escrow pursuant to Section 3 of this Agreement or ten (10) business days following the satisfaction of the conditions set forth in Section 6.1.1, below ("Closing Date").

5.5 Closing Statements. No more than two (2) days prior to the Closing Date, Escrow Agent shall deliver to the Town and to Donor, for their respective approvals, drafts of Escrow Agent's closing statement showing all receipts and disbursements of the Escrow.

5.6 Closing Instructions. On the Closing Date (or any extension thereof), Escrow Agent shall close Escrow as follows:

- (i) record the Deed (marked for return to the Town) with the San Bernardino County Recorder;
- (ii) issue the Title Policy;
- (iii) prorate taxes, assessments, rents, and other charges as provided in Section 5.7 below;
- (iv) prepare and deliver to both the Town and Donor one signed copy of Escrow Agent's closing statement showing all receipts and disbursements of the Escrow;
- (v) deliver to the Town the FIRPTA Affidavit, and the Withholding Affidavit; and
- (vi) If Escrow Agent is unable to simultaneously perform all of the instructions set forth above, Escrow Agent shall notify the Town and Donor and retain all

funds and documents pending receipt of further instructions jointly issued by the Town and Donor.

5.7 Closing Costs and Pro-rations.

5.7.1 The Town shall pay the following closing costs and pro-rations through the Close of Escrow:

(i) All the fees and charges in connection with issuance of the Title Policy in the amount of \$2,900,000.00;

(ii) All costs associated with any environmental reports, including the Phase I Environmental Site Assessment Report, and any further testing and reports which may be reasonably necessary as a result of such report;

(iii) All charges related to any survey undertaken in connection with an ALTA Extended Policy of Title Insurance;

(iv) The recording charges in connection with recordation of the Deed; and

(v) All the fees and charges levied by Escrow Agent.

5.7.2 Donor shall pay the following closing costs and pro-rations through the Close of Escrow:

(i) All governmental conveyancing fees and taxes, if any, due upon transfer of the Property;

(ii) The cost of discharging any liens or monetary encumbrances for the Property; and

(iii) Donor shall pay real property taxes and assessments for the remainder of the fiscal year in effect as of the Closing Date based on the most current real property tax bill available, including any additional property taxes that may be assessed after the Closing Date but that relate to a period prior to the Closing Date, regardless of when notice of those taxes is received or who receives the notice. Donor may seek reimbursement from the San Bernardino County Tax Assessor's office for any property taxes that have been assessed for a period after the Closing Date as the Town is a municipal corporation exempt from payment of such taxes. The Town further agrees to cooperate with Donor to provide any necessary information to the Assessor's office in connection with such request for refund. All installments of any bond or assessment that constitutes a lien on the Property at the Closing Date shall be paid by Donor.

6. Acceptance.

6.1.1 The acceptance of the Property by the Town and the Closing Date (as defined in Section 5.4) are subject to the satisfaction of the following no later than the Closing Date:

(i) The Town's approval of the physical condition of the Property and title to the Property ;

(ii) The Town's approval of the Phase 1 Report commissioned for the Property.

(iii) The representations and warranties of Donor set forth in Section 2.2 shall be true and accurate as of the Closing Date;

(iv) Donor's delivery to Escrow of a Grant Deed in substantially the form attached hereto as Exhibit "C" transferring title to the Property to the Town

(v) Donor's performance of all obligations under this Agreement;

(vi) No adverse material change shall have occurred with respect to the condition of the Property from the execution of this Agreement through the Closing Date; and

(vii) Donor shall ensure that the Town has access to the Property, should such access not be available through a public roadway.

7. Right to Terminate. This Agreement may be terminated by the Town or Donor upon three (3) days written notice to the other Party if the conditions to closing in favor of such Party as set forth in Section 6 have not been fulfilled on or before the Closing Date.

8. Notices. As used in this Agreement, notice includes but is not limited to, the communication of any notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment. All notices must be in writing. Notice is given either (i) when delivered in person to the person or company intended named below, (ii) when delivered via facsimile with confirmation from the receiving party via return fax; or (iii) when sent via reputable overnight courier (such as Federal Express), addressed by name and addressed to the party or persons intended, as follows:

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

With copy to: Best Best & Krieger LLP  
2855 E. Guasti Road, Suite 400  
Ontario, CA 91761

Phone: (909) 989-8584  
Attention: Town Attorney, Town of Apple Valley

To Donor: HS Cluster, LLC  
10159 Alondra Boulevard  
Bellflower, CA 90706  
Phone: On file  
Attention: Harbinder Singh

With copy to: Reserved

To Escrow: Touchstone Escrow  
12138 Industrial Boulevard, Suite 260  
Victorville, Ca 92395  
Phone: (760) 985-6461  
Attention: Norma Szakas (Escrow Officer)

until such time as a party gives notice of the change of address in accordance with the terms of this section.

9. Amendments. This Agreement shall not be changed, modified or amended except upon the written consent of the Parties hereto.

10. Survival. Unless otherwise specifically provided herein, the provisions of this Agreement shall survive the Close of Escrow, provided, however, the representations and warranties of Donor as set forth in Sections 2.2.1, 2.2.2, 2.2.3 or 2.2.5 shall be of no further force or effect two (2) years following the Closing Date.

11. AS-IS. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF DONOR SET FORTH HEREIN, THE TRANSFER OF A PROPERTY TO THE TOWN SHALL BE ON A STRICTLY "AS-IS" BASIS WITHOUT ANY COVENANTS OR WARRANTIES (EXPRESS OR IMPLIED) OF ANY KIND.

12. Integration. This Agreement is the result of negotiations between the Parties and is intended by the Parties to be a final expression of their understanding with respect to the matters herein contained. This Agreement supersedes any and all other prior agreements and understandings, oral or written, in connection therewith.

12. Assignment. Donor, their assigns and successors in interest, shall be bound by all the terms and conditions contained in this Agreement, and all the parties thereto shall be jointly and severally liable thereunder. The Town shall not have any right to assign its rights under this Agreement without the prior written consent of Donor which may be withheld in Donor's sole and absolute discretion.

13. Applicable Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed within the state. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In

addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement. No provision contained herein shall be construed against any party solely because it prepared this Agreement in its executed form.

14. Agreement Approval. This Agreement is not binding until executed by the Town Manager of the Town of Apple Valley, following approval by the Town Council in an open meeting, and Donor's signatories set forth below.

15. No Further Town Obligations. Notwithstanding any other provision of this Agreement or any other agreement between any of the Parties hereto, once the Property is conveyed to and accepted by the Town, the Town shall have no right or obligation to return the Property to the Donor under any circumstances, except in the sole and exclusive discretion of the Town. The Parties shall have such other remedies at law and equity as are appropriate to their obligations hereunder.

16. Form 8283. The Town agrees to cooperate with Donor to acknowledge receipt of the donation of the Property, the size of which is to be determined by Donor to be eligible for a charitable contribution deduction, by signing Internal Revenue Form 8283 (Non-Cash Charitable Contributions) and any other tax-related forms or documents reasonably requested by Donor and to return any such forms to Donor within thirty calendar (30) days after the Town's receipt of such forms from Donor. Notwithstanding the foregoing, the Town makes no representation or warranty to Donor regarding the tax attributes of this transaction, nor shall the Town endorse or otherwise acknowledge any valuation of the Property for tax purposes, it being understood that the Donor has obtained its own appraisals and tax advice for such purposes.

17. 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.



IN THE WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly-authorized representatives on the date and year set forth below.

**DONOR:**

Date: \_\_\_\_\_

**HS Cluster, LLC**

A Texas limited liability company

By: \_\_\_\_\_

Harbinder Singh  
its managing member

**THE TOWN:**

Date: \_\_\_\_\_

**Town of Apple Valley**

a general law city and municipal corporation

By: \_\_\_\_\_

Douglas B. Robertson, Town Manager

**ATTEST:**

By: \_\_\_\_\_

La Vonda M-Pearson, Town Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Thomas A. Rice, Town Attorney

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCELS 1 AND 2 OF PARCEL MAP NO. 19260, IN THE CITY OF APPLE VALLEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP THEREOF FILED IN BOOK 240, PAGES 62, 63 AND 64 OF PARCEL MAPS, RECORDS OF SAID COUNTY.

EXCEPT ONE-HALF OF ALL OIL AND MINERAL RIGHTS IN AND UNDER SAID LAND, AS RESERVED IN THE DEED FROM A.E. CRAIG, RECORDED JUNE 2, 1954 IN BOOK 3406 PAGE 239 OFFICIAL RECORDS.

APN: 3080-051-12-OLD

APN: 3080-051-33 AND 34 NEW

**EXHIBIT B**  
**MAP/DEPICTION OF PROPERTY**

APN: 308-005-133; Address: 22311 Bear Valley Road, Building A, Apple Valley, CA 92308



**EXHIBIT C**  
**GRANT DEED**

Recorded at request of and return to:

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

DOCUMENTARY TRANSFER TAX \$0\*

\* Computed on the consideration or value of property  
conveyed; OR

Computed on the consideration or value less liens

remaining at time of sale.

(Space Above For Recorder's Use)

\_\_\_\_\_  
Signature of Declarant or Agent determining tax—Firm Name

**GRANT DEED**

APN: 308-005-133

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **HS CLUSTER, LLC**, a Texas limited liability company, herein called “**Donor/Grantor**”, hereby GRANTS to **TOWN OF APPLE VALLEY**, a California general law city and municipal corporation (“**Grantee**”), the real property in the County of San Bernardino, State of California, as more particularly described on Exhibit "A", attached hereto and incorporate herein by this reference..

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of the \_\_\_th day of \_\_\_\_\_, 2023.

HS CLUSTER, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Harbinder Singh, its managing member

## ACKNOWLEDGMENT

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

State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name of notary)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCELS 1 AND 2 OF PARCEL MAP NO. 19260, IN THE CITY OF APPLE VALLEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP THEREOF FILED IN BOOK 240, PAGES 62, 63 AND 64 OF PARCEL MAPS, RECORDS OF SAID COUNTY.

EXCEPT ONE-HALF OF ALL OIL AND MINERAL RIGHTS IN AND UNDER SAID LAND, AS RESERVED IN THE DEED FROM A.E. CRAIG, RECORDED JUNE 2, 1954 IN BOOK 3406 PAGE 239 OFFICIAL RECORDS.

APN: 3080-051-12-OLD

APN: 3080-051-33 AND 34 NEW

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the real property conveyed by **HS Cluster, LLC**, on the Grant Deed dated \_\_\_\_\_, 2023, to the **TOWN OF APPLE VALLEY** (Grantee), is hereby accepted by the undersigned officer on behalf of the Grantee, pursuant to authority conferred by the Town Council of the Town of Apple Valley.

GRANTEE:

Date: \_\_\_\_\_, 2023

TOWN OF APPLE VALLEY

By: \_\_\_\_\_  
Douglas B. Robertson, Town Manager

ATTEST:

By: \_\_\_\_\_  
La Vonda M-Pearson, Town Clerk