



# CITY COUNCIL AGENDA REPORT

ADELANTO GOVERNMENTAL CENTER | 11600 AIR EXPRESSWAY | ADELANTO, CALIFORNIA 92301

**DATE:** March 23, 2016

**TO:** Honorable Mayor and Council

**FROM:** Cindy Herrera, City Manager

**BY:** Mark De Manincor, Senior Planner

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**SUBJECT:** APPROVAL OF 2<sup>ND</sup> READING OF ORDINANCE NO. 544

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**STAFF RECOMMENDATION:**

Staff recommends the council approve the Second reading of Ordinance No. 544.

**BACKGROUND:**

The first Reading was approved at the Council Meeting of March 9, 2016.

**FISCAL IMPACT:**

Staff Time and Costs

**ATTACHMENTS:**

Ordinance No. 544

ORDINANCE NO. 544

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ADELANTO,  
CALIFORNIA, ADOPTING CODE AMENDMENT 16-01 AMENDING  
TITLE 17 OF THE ADELANTO MUNICIPAL CODE, AMENDING  
CHAPTER 17.165 NONCONFORMING USES AND STRUCTURES TO  
EXEMPT EXISTING RESIDENTIAL USES AND STRUCTURES IN THE  
BUSINESS PARK ZONE

WHEREAS, the City of Adelanto has enacted procedural regulations as part of the adopted Zoning Code; and

WHEREAS, a duly noticed public hearing was held before the Planning Commission, February 2, 2016, to hear public testimony and consider the proposal; and

WHEREAS, the Planning Commission voted 5-0 to recommend the proposed changes to the City Council at the meeting; and

WHEREAS, a duly noticed public hearing was held before the City Council on March 9, 2016, to hear public testimony and consider the proposals; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ADELANTO,  
CALIFORNIA HEREBY ORDAINS AS FOLLOWS:

SECTION 1: The above recitals are all true and correct.

SECTION 2: The City Council has reviewed and considered the information included in the General Plan, Zoning Code, staff report for the public hearing, and public testimony prior to taking action on the proposed Code Amendment and Ordinance. This information is on file and available at the Community Development Department at the City Hall of the City of Adelanto.

SECTION 3: The City Council finds and determines that the adoption of Ordinance 544 and Code Amendment 16-01 is exempt pursuant to Section 15061(b)(3) of the California Environmental Quality Act as the Code Amendment will have no significant effect on the environment and the City Council determinations reflect the independent judgment of the City Council.

SECTION 4: The City Council hereby further finds and determines that the City has followed the procedures for Ordinance Amendments as set forth in Sections 65850 thru 65863.13 of the California Government Code.

SECTION 5: The City Council of the City of Adelanto hereby adopts Ordinance No. 544, adopting Code Amendment 16-01, amending Chapter 17.165, attached hereto as Exhibits A and incorporated herein. The Chapter attached as an Exhibit to this Ordinance replaces the existing same numbered Chapter of the Municipal Code in its entirety. Previously adopted ordinances

Ordinance 544  
Code Amendment 16-01

that are inconsistent with this Ordinance are repealed to the extent they are inconsistent with the terms of this Ordinance.

SECTION 6: If any provision of this ordinance or the application thereof to any persons or circumstances is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 7: The Mayor shall sign and the City Clerk shall certify passage and adoption of this Ordinance, and shall cause the same to be published and posted pursuant to the provisions of law in this regard, and this Ordinance shall take effect thirty (30) days after its final passage.

Attachments

1. Exhibit A Amended Chapter 17.165

PASSED, APPROVED AND ADOPTED THIS 9<sup>th</sup> DAY OF MARCH, 2016.

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Rich Kerr

Mayor of the City of Adelanto

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Cindy Herrera, MMC

City Clerk

APPROVED AS TO FORM:

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City Attorney

Ordinance 544  
Code Amendment 16-01

I, Cindy Herrera, City Clerk of the City of Adelanto, California, do hereby certify that the foregoing Ordinance No. 544 was duly introduced for the first reading on the 9<sup>th</sup> day of March, 2016 and regularly adopted at a regular meeting of the City Council of the City of Adelanto on this 23<sup>rd</sup> day of March, 2016, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I hereunto set my hand and affix the official seal of the City of Adelanto on this 23<sup>rd</sup> day of March, 2016.

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Cindy Herrera, MMC

City Clerk

SEAL

## CHAPTER 17.165

### NONCONFORMING USES AND STRUCTURES

<b>17.165.010</b>	<b>General Provisions</b>
<b>17.165.020</b>	<b>Nonconforming Uses</b>
<b>17.165.030</b>	<b>Nonconforming Structures</b>
<b>17.165.040</b>	<b>Exceptions for Residential Structures</b>
<b>17.165.050</b>	<b>Notice of Nonconformity and Amortization</b>
<b>17.165.060</b>	<b>Nonconforming Signs</b>
<b>17.165.070</b>	<b>Nonconforming Adult Businesses</b>

#### **17.165.010 General Provisions**

The regulations in this Chapter shall apply to all existing nonconforming uses and structures and to any uses or structures made nonconforming upon adoption of subsequent ordinances.

#### **17.165.020 Nonconforming Uses**

The following regulations shall apply to the legal, nonconforming use of any building or structure. Regulations applicable to nonconforming structures are provided in Section 17.165.030.

(a) Continuation

Any nonconforming use may be continued through the amortization period, provided that the use shall not be increased, enlarged, extended, or altered except as provided in this Chapter.

(b) Termination Due to Cessation of Use

Any part of a building or land occupied by a nonconforming use in which that use is discontinued for one hundred eighty (180) days or more shall thereafter lose its nonconforming use status. All subsequent uses shall be used in conformity with the provisions of this Zoning Code.

(c) Amortization of Nonconforming Uses: General

Every legal nonconforming use shall be terminated according to the amortization time schedule established by Resolution of the City Council or the provisions of this Chapter.

(d) Amortization of Nonconforming Use Where No Building Exists

Except as otherwise provided herein, the legal nonconforming use of land where no structure exists may continue for a period of not more than ten (10) years from the date the use became nonconforming, provided the nonconforming use will not in any way be expanded or extended, either on the same or adjoining property.

(e) Alteration of Nonconforming Uses

- (1) A legal nonconforming use may not be enlarged, expanded, or otherwise increased in scope unless a Conditional Use Permit has been issued pursuant to Chapter 17.130 of this Zoning Code.
- (2) Any alteration required by governmental or court action shall be exempt from these conditions.
- (3) Restrictions and conditions affecting a nonconforming use shall apply to the existing use, land, and structures, and shall not be affected by ownership changes.

**17.165.030 Nonconforming Structures**

(a) Continuation

Any nonconforming structure may be continued and maintained through the amortization period, provided there are no structural alterations except as provided in this Chapter.

(b) Alterations

The following alterations are permitted to a nonconforming structure:

- (1) When a subsequently adopted ordinance or regulation requires specific alterations, those alterations shall be made.
- (2) Additions to a nonconforming structure may be made, provided the proposed addition meets all requirements in effect at the time the application for the addition is made.

(c) Amortization

- (1) Every legal nonconforming structure shall be completely removed or altered to conform to the requirements of the zoning district in which it is located according to the amortization time schedule established by Resolution of the City Council or the provisions of this Chapter. Such time schedule for removal or alteration may not be fixed for a date before the expiration of the normal life of any building, as determined by the Planning Director. Such determination of the normal life of a nonconforming building, and the fixing of time for its removal or alteration, may only be made after notice to the owner.

(2) An order for removal or alteration shall require such action on a date no less than five (5) years from the time such an order is made. It shall be the duty of the Planning Department to give the owner of the affected structure written notice of the required removal or alteration immediately upon the order becoming final. A second notice shall be issued not less than sixty (60) or more than one hundred eighty (180) days prior to the date such removal or alteration is required to be completed. If the Planning Department fails to give this second notice within the above time period, the owner shall be given sixty (60) days from the notice's actual postmark date.

(d) Reconstruction of Damaged Structure

Any nonconforming structure damaged by any natural or man-made catastrophe subsequent to the effective date of this Zoning Code may be reconstructed, provided that the cost of such reconstruction does not exceed fifty percent (50%) of the appraised value of such structure at the time such damage occurred.

If, in the process of reconstructing a nonconforming structure pursuant to this subsection, certain nonconformities can be brought into conformance, they shall be brought into conformance.

**17.165.040 Exceptions for Residential Structures**

- (a) A nonconforming residential structure which complied with the applicable development standards at the time of its construction, and which is utilized for residential purposes in a zoning district that allows such residential uses, or is in the Business Park Zone (BP), is not subject to the provisions of this Chapter.
- (b) The requirement for a Conditional Use Permit shall not apply to nonconforming residential uses where such uses are being expanded or modified by no more than twenty-five percent (25%) of the floor space or ground area existing at the time such use became a nonconforming use.

**17.165.050 Notice of Nonconformity and Amortization**

- (a) Upon determination that the provisions in this Chapter apply to a given parcel of land, the Planning Director or his/her designee shall send a notice regarding this parcel by certified United States mail, return receipt requested, to the owner of said parcel as shown on the last equalized assessment roll. The Director shall also post this property with a similar notice and shall publish such notice at least once in a newspaper of general circulation. Should the certified mailed notice be returned to the City for any reason, the City shall cause a copy of the same to be mailed to the property owner shown on the last equalized assessment roll by regular first-class mail with postage fully paid.
- (b) The notice provided for in this Section shall state that the property in question is a nonconformity and shall state the date of abatement established in the Resolution of the City Council. The abatement date shall be deemed to apply unless the property owner requests a hearing before the hearing body. The

property owner shall have sixty (60) days from the date of the notice to request a hearing.

**17.165.052 Hearing Body Designated; Hearing**

- (a) The City Council by Resolution shall designate the hearing body for purposes of this Chapter.
- (b) If a hearing is requested by the property owner in accordance with Section 17.165.050, the hearing body shall hold a public hearing to determine whether the nonconformity should be abated or whether a time extension should be granted. Notice of the hearing shall be given to all property owners within a three-hundred foot (300) radius of subject property.
- (c) The hearing body shall receive written and oral testimony at such hearing regarding the abatement or elimination of the nonconformity.
- (d) At the close of the public hearing, the hearing body shall find and determine whether the nonconformity should be abated and all facts in support thereof, whether the owner of the property can amortize his/her investment in the term for abatement provided in the Resolution of the City Council, and if not, what term for abatement should be provided.
- (e) The hearing body shall also find and determine whether the nonconforming use or structure can economically be used in its present condition or if the nonconformity can be successfully modified for a purpose permitted in the zoning district in which it is located.
- (f) The hearing body, or the City Council on appeal, shall base its decision as to the length of the permitted amortization period on any competent evidence presented, including but not limited to the depreciation schedule attached to the owner's latest federal income tax return.

**17.165.054 Decision and Findings**

The decision of the hearing body and the findings in support of said decision shall be in the form of a written order and shall be served to the property owner personally or by certified United States mail, return receipt requested, within ten (10) days after the decision is rendered. Findings shall be made as to whether or not the balancing of the public interest and the request by the owner for continuance, alteration, or expansion of the nonconformity of the subject property require a deviation from the development standards of the City of Adelanto.

**17.165.056 Right of Appeal**

- (a) The decision of the hearing body terminating the nonconformity or an extension may be appealed to the City Council in accordance with the Adelanto Municipal Code.

- (b) After the expiration of the appeal period, the decision of the hearing body shall be final and conclusive unless an appeal was timely filed in accordance with the provisions of this Section.
- (c) The City Council on appeal shall conduct the hearing in accordance with Section 17.165.052 and may uphold, reverse, or amend any decision of the hearing body. The decision of the City Council shall be final and conclusive. Notice of the City Council's decision shall be mailed by the City Clerk to the property owner or other appellant within ten (10) days of the City Council's decision by certified United States mail, return receipt requested.

**17.165.057 Recordation of Order**

After the conclusion of all appeals, the City Clerk shall cause notice of the decision and order of the hearing body, or the City Council in the case of an appeal, to be recorded with the County Recorder of the County of San Bernardino. The notice shall consist of a Notice of Zoning Violation.

**17.165.058 Revocation**

- (a) Whenever the use, maintenance, or continuation of nonconforming conditions or use is granted through the means of Conditional Use Permits, Variances, Location and Development Approval, Extensions, Expansions, or other approved changes, the same may be revoked by the City Council whenever the City Council finds that the terms or conditions of any CUP, Variance, Location and Development Approval, Extension, Expansion, or other approval are being violated, the condition or use of the property constitutes a public nuisance, or the health, safety, or welfare of the surrounding property owners or residents is being threatened by the continuation of said nonconforming use or condition.
- (b) The revocation process may be initiated by the order of the City Council, or any person demonstrating that his/her health, safety, or welfare is being adversely affected by the continuation of circumstances existing on nonconforming property.
- (c) The property owner shall be notified of the commencement of the revocation process pursuant to Sections 17.165.050 and 17.165.054.

**17.165.059 Public Nuisance**

Any nonconforming use or structure continuing beyond the date for abatement set by the hearing body, or City Council on appeal, shall be deemed a public nuisance, subject to abatement thereof and prosecution either through civil or criminal action.

**17.165.060 Nonconforming Signs**

Nonconforming signs shall comply with the applicable provisions contained in Chapter 17.70 of this Zoning Code.

**17.165.070 Nonconforming Adult Businesses**

Nonconforming adult businesses shall comply with the applicable provisions contained in Chapter 17.85 of this Zoning Code.



## CITY COUNCIL AGENDA REPORT

ADELANTO GOVERNMENTAL CENTER | 11600 AIR EXPRESSWAY | ADELANTO, CALIFORNIA 92301

**DATE:** March 23, 2016

**TO:** Honorable Mayor and Council

**FROM:** Cindy Herrera, City Manager

**BY:** Belen Cordero, Conservation Specialist/Recycling Coordinator

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**SUBJECT:** APPROVAL OF RESOLUTION NO. 16-12 REGARDING THE HIGH DESERT REGIONAL ENERGY LEADER PARTNERSHIP

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**STAFF RECOMMENDATION:**

Staff recommends the council approve a Resolution between Southern California Edison and the City of Adelanto

**BACKGROUND:**

The High Desert Regional Energy Leader partnership supports "Energy Efficiency" working with the surrounding communities to promote energy efficiency awareness and incorporate energy efficiency and make our communities a "greener cities".

**FISCAL IMPACT:**

None

**ATTACHMENTS:**

Resolution No. 16-12

RESOLUTION NO. 16-12

A RESOLUTION OF THE CITY OF ADELANTO DECLARING SUPPORT FOR AN ENERGY PARTNERSHIP BETWEEN SOUTHERN CALIFORNIA EDISON TO BE KNOWN AS "THE HIGH DESERT REGIONAL ENERGY LEADER PARTNERSHIP"

WHEREAS, the High Desert Regional Energy Leader Partnership supports "energy efficiency" initiatives, policies, and construction standards in order to ensure that our communities follow and encourage sustainable practices; and

WHEREAS, local demand for electricity has grown, and it is expected that demand for electricity will continue to grow in the near future to support a growing population and economy; and

WHEREAS, residents and businesses spend significant amounts for energy, it makes economic sense and good public policy to encourage energy efficiency in the City of Adelanto and our community; and

WHEREAS, energy efficiency programs enhance our environment by improving air quality, reducing greenhouse gases and other pollution, and conserving natural resources; and

WHEREAS, it is vital for our community to keep spending locally and to encourage innovations in the way we behave, build, and incorporate energy into our everyday business and personal lives; and

WHEREAS, there is a growing movement within California communities and businesses to improve everyday practices and create more sustainable and "greener" cities; and

WHEREAS, the community of Adelanto seeks to promote innovative methods and state-of-the-art technologies used in the design and construction of new residential and commercial buildings within the City, in order to bring energy and natural resource consumption in line with our sustainability goals.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ADELANTO DOES HEREBY RESOLVE AS FOLLOWS:**

1. That the above recitations are true and correct.
2. That the "*The City of Adelanto*" supports a commitment to sustainable practices through energy efficiency, and will provide leadership and guidance in promoting, facilitating, and instituting such practices in the region.
3. That the "*The City of Adelanto* " supports and endorses the High Desert Regional Energy Leader Partnership an effective method to help meet long-term regional economic and environmental goals.

4. That the "*The City of Adelanto*" will name one or more individuals to the Partnership working group that will review progress regularly with SCE.

5. That the "*The City of Adelanto*" with the assistance of SCE, will identify and support implementing the suite of programs and projects within the "*The City of Adelanto*" municipal facility and community energy efficiency and sustainability goals.

**PASSED, APPROVED AND ADOPTED** this 23rd day of March, 2016

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Rich Kerr, Mayor

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Cindy M. Herrera, City Clerk, MMC

Resolution No. 16-12

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I, Cindy M. Herrera, City Clerk of the City of Adelanto, California, do hereby certify that the foregoing Resolution No. 16-12 was duly and regularly adopted at a regular meeting of the City Council of the City of Adelanto on this 23<sup>rd</sup> day of March, 2016 be the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS THEREOF, I hereunto set my hand and affix the official seal of the City of Adelanto on the 23rd day of March, 2016

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Cindy M. Herrera, City Clerk, MMC



# CITY COUNCIL AGENDA REPORT

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ADELANTO GOVERNMENTAL CENTER | 11600 AIR EXPRESSWAY  
| ADELANTO, CALIFORNIA 92301

**DATE:** March 23, 2016

**TO:** Honorable Mayor and Council

**FROM:** Cindy Herrera, City Manager

**BY:** Julia Sylva, Interim City Attorney

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**SUBJECT:** LISTING AGREEMENT BETWEEN CITY OF ADELANTO AND CPI CAPITAL

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**STAFF RECOMMENDATION:**

Staff recommends the council approve the Exclusive Right to Represent Owner for Sale or Lease of Real Property ("Listing Agreement") between the City of Adelanto and CPI Capital.

**BACKGROUND:**

During the Closed Session of the City Council Meeting of March 9, 2013, the City Council approved by a 4-0-1 vote, (with Mayor Pro Tem Wright absent), the Listing Agreement for the sale of City-owned property known as APN 459-221-23 (consisting of 2.08 acres of vacant land located on the corner of Palm Street and Cortez Avenue) (the "Property"). The Listing Price is \$120,000. The term of the Listing Agreement is from March 11, 2016 to July 11, 2016; Seller to pay commission of 6%.

**FISCAL IMPACT:**

Sale proceeds of the Property will be deposited into the Community Redevelopment Trust Fund of the Successor Agency.

**ATTACHMENTS:**

Listing Agreement



EXCLUSIVE RIGHT TO REPRESENT OWNER
FOR SALE OR LEASE OF REAL PROPERTY

(Non-Residential)

AIR COMMERCIAL REAL ESTATE ASSOCIATION

1. BASIC PROVISIONS ("BASIC PROVISIONS").

1.1 Parties: This agency Agreement ("Agreement"), dated for reference purposes only March 11, 2016, is made by and between City of Adelanto, whose address is 11600 Air EXPY, Adelanto, Ca 92301, telephone number (760) 246-2300, Fax No. (760) 246-8421 ("Owner"), and CPI Capital, whose address is 12530 Hesperia Rd Suite 216, Victorville, CA 92395, telephone number (760) 243-2205, Fax No. (760) 243-1789 ("Agent").

1.2 Property/Premises: The real property, or a portion thereof, which is the subject of this Agreement is commonly known by the street address of APN # 0459-221-23-0000, located in the City of Adelanto, County of San Bernardino, State of CA, and generally described as (describe briefly the nature of the property): Vacant land consisting of 2.08 acres located on the corner of Palm St. and Cortez Ave. ("Property"). (See also Paragraph 3).

1.3 Term of Agreement: The term of this Agreement shall commence on March 11, 2016 and expire at 5:00 p.m. on July 11, 2016, except as it may be extended ("Term"). (See also paragraph 4)

1.4 Transaction: The nature of the transaction concerning the Property for which Agent is employed ("Transaction") is (check the appropriate box(es)):

(a) [X] A sale for the following sale price and terms: \$120,000 (One Hundred Twenty Thousand Dollars) or terms acceptable to the seller.

and other additional standard terms reasonably similar to those contained in the "STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR THE PURCHASE OF REAL ESTATE" published by the AIR Commercial Real Estate Association ("AIR"), or for such other price and terms agreeable to Owner;

(b) [ ] A lease or other tenancy for the following rent and terms:

and other additional standard terms reasonably similar to those contained in the appropriate AIR lease form or for such other rent and terms agreeable to Owner.

2. EXCLUSIVE EMPLOYMENT AND RIGHTS.

2.1 Owner hereby employs Agent as Owner's sole and exclusive agent to represent Owner in the Transaction and to find buyers or lessees/tenants ("lessees"), as the case may be, for the Property. Agent shall use reasonably diligent efforts to find such buyers or lessees. All negotiations and discussions for a Transaction shall be conducted by Agent on behalf of Owner. Owner shall promptly disclose and refer to Agent all written or oral inquiries or contacts received by Owner from any source regarding a possible Transaction.

2.2 Owner authorizes Agent to:

- (a) Place advertising signs on the Property;
(b) Place a lock box on the Property if vacant;
(c) Accept deposits from potential buyers or lessees; and
(d) Distribute information regarding the Property to participants in THE MULTIPLE ("MULTIPLE") of the AIR and/or any other

appropriate local commercial multiple listing service, to other brokers, and to potential buyers or lessees of the Property. Owner shall identify as "confidential" any information provided to Agent that Owner considers confidential and does not want disclosed. All other information provided by Owner may be disclosed as Agent may deem appropriate or necessary. After consummation of a Transaction, Agent may publicize the terms of such Transaction.

INITIALS

INITIALS

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FORM OA-7-3/15E

CPI Capital Properties P.O. Box 1717 Victorville, CA 92393
Phone: 760-243-2205 Fax: 760-243-1789

CPI

City of Adelanto

2.3 Agent shall comply with the Rules of Professional Conduct of the AIR, if a member or if not, the Rules of Professional Conduct of the Society of Industrial and Office Realtors, and shall submit the Property to the MULTIPLE. Agent shall cooperate with participants in the MULTIPLE and may, at Agent's election, cooperate with other real estate brokers (collectively "Cooperating Broker").

2.4 If the Transaction is a sale and Agent finds a prospective buyer for the Property, or if the Transaction is a lease and Agent finds a prospective lessee for the Property, Owner hereby authorizes Agent also to represent and act as the agent for such buyer or lessee, and Owner consents to such dual agency. If a Cooperating Broker finds such a buyer or lessee, then Agent shall act as agent for Owner only, the Cooperating Broker shall act as agent for the buyer or lessee only, and the Cooperating Broker shall not be Owner's agent, even though the Cooperating Broker may share in the commission paid by Owner to Agent. A Cooperating Broker shall not be an agent or subagent of Owner or Agent.

2.5 Owner agrees that Agent may, during the ordinary and normal course of marketing the Property, respond to inquiries on the Property by showing and providing information on the Property, as well as on other competing properties, to prospective buyers and lessees and that such activities may result in the payment of a commission to Agent by a third party.

### 3. PROPERTY.

3.1 The term "Property" shall include all of the following which are currently located on the Property and owned by Owner: permanent improvements, electrical distribution systems (power panels, buss ducting, conduits, disconnects, lighting fixtures, etc.), telephone distribution systems (lines, jacks and connections), space heaters, air conditioning equipment, air lines, carpets, window coverings, wall coverings, partitions, doors, suspended ceilings, built-ins such as cabinets, and \_\_\_\_\_

(if there are no additional items write "NONE"). If the Transaction is a sale, the term "Property" shall additionally include, to the extent owned by Owner, oil and mineral rights, leases and other agreements which will continue in effect after Owner's transfer of title to the Property.

3.2 Within five business days after the commencement of the Term hereof, Owner shall provide Agent with the following:

- (a) A duly completed and fully executed Property Information Sheet on the most current form published by the AIR;
- (b) Copies of all leases, subleases, rental agreements, option rights, rights of first refusal, rights of first offer, or other documents containing any other limitations on Owner's right, ability and capacity to consummate a Transaction, and
- (c) If available to Owner, copies of building plans, and if the Transaction is a sale, title reports, boundary surveys, and existing notes and trust deeds which will continue to affect the Property after consummation of a sale.

3.3 Agent shall have no responsibility for maintenance, repair, replacement, operation, or security of the Property, all of which shall be Owner's sole responsibility. Unless caused by Agent's gross negligence, Agent shall not be liable for any loss, damage, or injury to the person or property of Owner, any lessees of the Property, any buyer, prospective buyer, lessee, or prospective lessee, including, but not limited to, those which may occur as a result of Agent's use of a lock box.

4. **EXTENSION OF TERM.** If the Transaction is a sale, and a sale is not consummated for any reason after Owner accepts an offer to purchase the Property ("**Sale Agreement**"), then the expiration date of the Term of this Agreement shall be extended by the number of days that elapsed between the date Owner entered into the Sale Agreement and the later of the date on which the Sale Agreement is terminated or the date Owner is able to convey title to a new buyer free and clear of any claims by the prior buyer of the Property; provided, however, in no event shall the Term be so extended beyond one year from the date the Term would have otherwise expired.

### 5. COMMISSION.

5.1 Owner shall pay Agent a commission  in the amount of 6%  in accordance with the commission schedule attached hereto ("**Agreed Commission**"), for a Transaction, whether such Transaction is consummated as a result of the efforts of Agent, Owner, or some other person or entity. Agent shall also be entitled to the Agreed Commission if any of the Owner's representations and warranties described in paragraph 8 are shown to be false. Such Agreed Commission is payable:

(a) If the Transaction is a sale, (i) the Property is sold; (ii) Owner breaches or repudiates any Sale Agreement, escrow instructions or other documents executed by Owner regarding the sale of the Property; (iii) the Property or any interest therein is voluntarily or involuntarily sold, conveyed, contributed or transferred; (iv) the Property or any interest therein is taken under the power of Eminent Domain or sold under threat of condemnation, or (v) if Owner is a partnership, joint venture, limited liability company, corporation, trust or other entity, and any interest in Owner is voluntarily or involuntarily sold, contributed, conveyed or transferred to another person or entity that, as of the date hereof, does not have any ownership interest in Owner;

(b) If the Transaction is a lease and a lease of the Property, or a portion thereof is executed; or

(c) If Owner (i) removes or withdraws the Property from a Transaction or the market; (ii) acts as if the Property is not available for a Transaction; (iii) treats the Property as not available for a Transaction; (iv) breaches, terminates, cancels or repudiates this Agreement; (v) renders the Property unmarketable; or (vi) changes the status of the Property's title, leases, agreements, physical condition or other aspects thereof, which such change adversely impacts the value, use, desirability or marketability of the Property.

(d) If earnest money or similar deposits made by a prospective purchaser or tenant are forfeited Agent shall be entitled to one-half (½) thereof, but not to exceed the total amount of the commission that would have been payable had the sale or lease transaction been consummated.

5.2 If the Transaction is a sale, the purchase agreement and/or escrow instructions to be entered into by and between Owner and a buyer of the Property shall provide that:

(a) Owner irrevocably instructs the escrow holder to pay from Owner's proceeds accruing to the account of Owner at the close of escrow the Agreed Commission to Agent;

(b) A contingency to the consummation of the sale shall be the payment of the Agreed Commission to Agent at or prior to close of the escrow; and

(c) No change shall be made by Owner or buyer with respect to the time of, amount of, or the conditions to payment of the Agreed Commission, without Agent's written consent.

**6. ALTERNATIVE TRANSACTION.** If the Transaction changes to any other transaction, including, but not limited to, a sale, exchange, option to buy, right of first refusal, ground lease, lease, sublease or assignment of lease (collectively "**Alternative Transaction**"), then Agent shall automatically be Owner's sole and exclusive Agent for such Alternative Transaction and represent Owner in such Alternative Transaction, under the terms and conditions of this Agreement. If, during the Term hereof, an Alternative Transaction is entered into, then Owner shall pay Agent the Agreed Commission.

**7. EXCLUDED AND REGISTERED PERSONS.**

7.1 Owner shall, within 5 business days after the date hereof, provide Agent, in writing, with the names of those persons or entities registered with Owner by any other broker under any prior agreement concerning the Property ("**Excluded Persons**", see paragraph 7.5). Owner shall also specify for each Excluded Person the type of transaction the consummation of which during the Term of this Agreement entitles such other broker to any compensation ("**Excluded Transaction**"). Agent may within 10 days of receiving such written list, either (a) accept the Excluded Persons and Excluded Transactions, (b) cancel this Agreement, or (c) attempt to renegotiate this portion of the Agreement with Owner. Once accepted by Agent, the written list shall automatically become an exhibit to this Agreement. If Owner timely provides Agent with the names of the Excluded Persons and specifies the Excluded Transaction for each Excluded Person, then the Agreed Commission paid to Agent with respect to consummation of such an Excluded Transaction with an Excluded Person shall be limited as follows: if such Excluded Transaction is concluded within the first 30 days of the commencement of the Term hereof, then Agent shall be paid a commission equal to the reasonable out-of-pocket expenses incurred by Agent in the marketing of the Property during said 30 days; or if such Excluded Transaction is concluded during the remainder of the Term hereof, then Agent shall be entitled to a commission equal to one-half of the Agreed Commission. If the specified information concerning Excluded Persons and Transactions is not provided as set forth herein, then it shall be conclusively deemed that there are no Excluded Persons.

7.2 Agent shall, within 5 business days after the expiration of the Term hereof, provide Owner, in writing, with the name of those persons or entities with whom Agent either directly or through another broker had negotiated during the Term hereof ("**Registered Persons**", see paragraph 7.5), and specify the type of transaction of the Property for which such negotiations were conducted ("**Registered Transaction**"). Those persons or entities who submitted written offers or letters of intent shall, however, automatically be deemed to be Registered Persons for the type of transaction which was the subject of such offer or letter of intent. If Agent fails to timely notify Owner of the existence of any other Registered Persons, then it shall be conclusively deemed that there are no other Registered Persons. A person or entity shall not be a Registered Person if Agent fails to timely specify a Registered Transaction for such person or entity. The parties are aware that the registration of certain individuals and/or entities might create a Dual Agency, and Owner hereby consents to any such Dual Agency.

7.3 If, within 180 days after the expiration of the Term hereof, Owner enters into a contract with a Registered Person for consummation of a Registered Transaction, then Owner shall, upon consummation of such Registered Transaction, pay Agent the Agreed Commission for the Registered Transaction.

7.4 If, within 180 days after the expiration of the Term hereof, Owner enters into another owner-agency or listing agreement with a broker other than Agent for any transaction concerning the Property, then Owner shall provide to Owner's new broker the names of the Registered Persons and the Registered Transaction for each Registered Person, and provide in such new agreement that the new broker shall not be entitled to receive any of the compensation payable to Agent hereunder for consummation of a Registered Transaction with a Registered Person.

7.5 In order to qualify to be an Excluded Person or a Registered Person the individual or entity must have: toured the Property, submitted a letter of interest or intent, and/or made an offer to buy or lease the Property. In addition, Excluded Persons may only be registered by a broker who previously had a valid listing agreement covering the Property, and such broker may only register individuals and entities actually procured by such listing broker.

**8. OWNER'S REPRESENTATIONS.**

Owner represents and warrants that:

(a) Each person executing this Agreement on behalf of Owner has the full right, power and authority to execute this Agreement as or on behalf of Owner;

(b) Owner owns the Property and/or has the full right, power and authority to execute this Agreement and to consummate a Transaction as provided herein, and to perform Owner's obligations hereunder;

(c) Neither Owner nor the Property is the subject of a bankruptcy, insolvency, probate or conservatorship proceeding;

(d) Owner has no notice or knowledge that any lessee or sublessee of the Property, if any, is the subject of a bankruptcy or insolvency proceeding;

(e) There are no effective, valid or enforceable option rights, rights of first refusal, rights of first offer or any other restrictions, impediments or limitations on Owner's right, ability and capacity to consummate a Transaction, except as disclosed in writing pursuant to Paragraph 3.2(b).

(f) That as of the date of this Agreement the asking sales price is not less than the total of all monetary encumbrances on the Property.

**9. OWNER'S ACKNOWLEDGMENTS.** Owner acknowledges that it has been advised by Agent to consult and retain experts to advise and represent it concerning the legal and tax effects of this Agreement and consummation of a Transaction or Alternative Transaction, as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title and

environmental aspects. Agent shall have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and Agent. Owner further acknowledges that in determining the financial soundness of any prospective buyer, lessee or security offered, Owner will rely solely upon Owner's own investigation, notwithstanding Agent's assistance in gathering such information.

**10. MISCELLANEOUS.**

10.1 This Agreement shall not be construed either for or against Owner or Agent, but shall be interpreted, construed and enforced in accordance with the mutual intent of the parties ascertainable from the language of this Agreement.

10.2 All payments by Owner to Agent shall be made in lawful United States currency. If Owner fails to pay to Agent any amount when due under this Agreement, then such amount shall bear interest at the rate of 15% per annum or the maximum rate allowed by law, whichever is less.

10.3 In the event of litigation or arbitration between Owner and Agent arising under or relating to this Agreement or the Property, the prevailing party shall be paid its attorney's fees and costs by the losing party. The term, "Prevailing Party" shall include, without limitation, one who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorney's fees award shall not be computed in accordance with any court fee schedule, but shall be in an amount to fully reimburse all attorney's fees reasonably incurred in good faith.

10.4 Owner agrees to indemnify, defend (with counsel reasonably acceptable to Agent), and hold Agent harmless from and against any claim or liability asserted against Agent as a result of the failure of Owner to make a full and complete disclosure pursuant to law and paragraph 3.2(a) or as a result of the fact that any of the representations made by Owner (see paragraph 8) were not true at the time that this Agreement was signed.

10.5 Owner hereby releases and relieves Agent, and waives Owner's entire right of recovery against Agent, for direct or consequential loss or damage arising out of or incident to the perils covered by insurance carried by Owner, whether or not due to the negligence of Agent.

10.6 In the event that the Transaction is not an outright sale, Owner agrees that if Agent is not paid the Agreed Commission provided for herein within thirty days of the date due, that Agent shall have a lien in the amount of such commission, and may record a notice of such lien, against the Property.

10.7 Owner agrees that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to the services to be performed by Agent pursuant to this Agreement may be brought against Agent more than one year after the expiration of the Term of this Agreement (see paragraph 1.3) and that the liability (including court costs and attorney's fees) of Agent with respect to any such lawsuit and/or legal proceeding shall not exceed any fee received by Agent pursuant to this Agreement; provided, however, that the foregoing limitation on liability shall not be applicable to any gross negligence or willful misconduct of Agent.

**11. ARBITRATION OF DISPUTES.**

11.1 ANY CONTROVERSY ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL BE DETERMINED BY BINDING ARBITRATION TO BE CONDUCTED BY:  THE AMERICAN ARBITRATION ASSOCIATION OR  \_\_\_\_\_ USING THE COMMERCIAL RULES ESTABLISHED BY SUCH ORGANIZATION OR IF NONE THE AMERICAN ARBITRATION ASSOCIATION'S COMMERCIAL RULES. ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED.

11.2 NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

11.3 WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

\_\_\_\_\_  
Owner's Initials

\_\_\_\_\_  
Agent's Initials

11.4 THE PROVISIONS OF THE ABOVE ARBITRATION CLAUSE SHALL NOT BE BINDING ON EITHER PARTY UNLESS BOTH PARTIES HAVE PLACED THEIR INITIALS UNDER PARAGRAPH 11.3.

12. **Additional Provisions:** Additional provisions of this Agreement are set forth in the following blank lines or in an addendum attached hereto and made a part hereof consisting of paragraphs \_\_\_\_\_ through \_\_\_\_\_ (if there are no additional provisions write "NONE"):

13. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.** When entering into an agreement with a real estate agent an Owner should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction.

(i) *Owner's Agent.* An Owner's agent may act as an agent for the Owner only. An Owner's agent or subagent has the following affirmative obligations: *To the Owner:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings. *To a potential buyer/lessee and the Owner:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

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INITIALS

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INITIALS

(ii) *Agent Representing Both Parties.* A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both Parties in a transaction, but only with the knowledge and consent of the Parties. In a dual agency situation, the agent has the following affirmative obligations to both Parties: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Party. b. Other duties to the Owner as stated above in subparagraph (i). When representing both Parties, an agent may not without the express permission of the respective Party, disclose to the other Party that the Owner will accept rent/purchase price in an amount less than that indicated in the listing or that the buyer/lessee is willing to pay a higher rent/purchase price than that offered.

The above duties of the Agent do not relieve Owner from the responsibility to protect its own interests. Owner should carefully read all agreements to assure that they adequately express its understanding of the transaction.

"OWNER"

"AGENT"

City of Adelanto

CPI Capital

Hendon M. Harris

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

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

Name Printed: \_\_\_\_\_

Name Printed: Hendon M. Harris

Title: \_\_\_\_\_

Title: Broker Associate

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

Date: March 11, 2016

Agent BRE License #: 00588828

**NOTICE:** These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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