

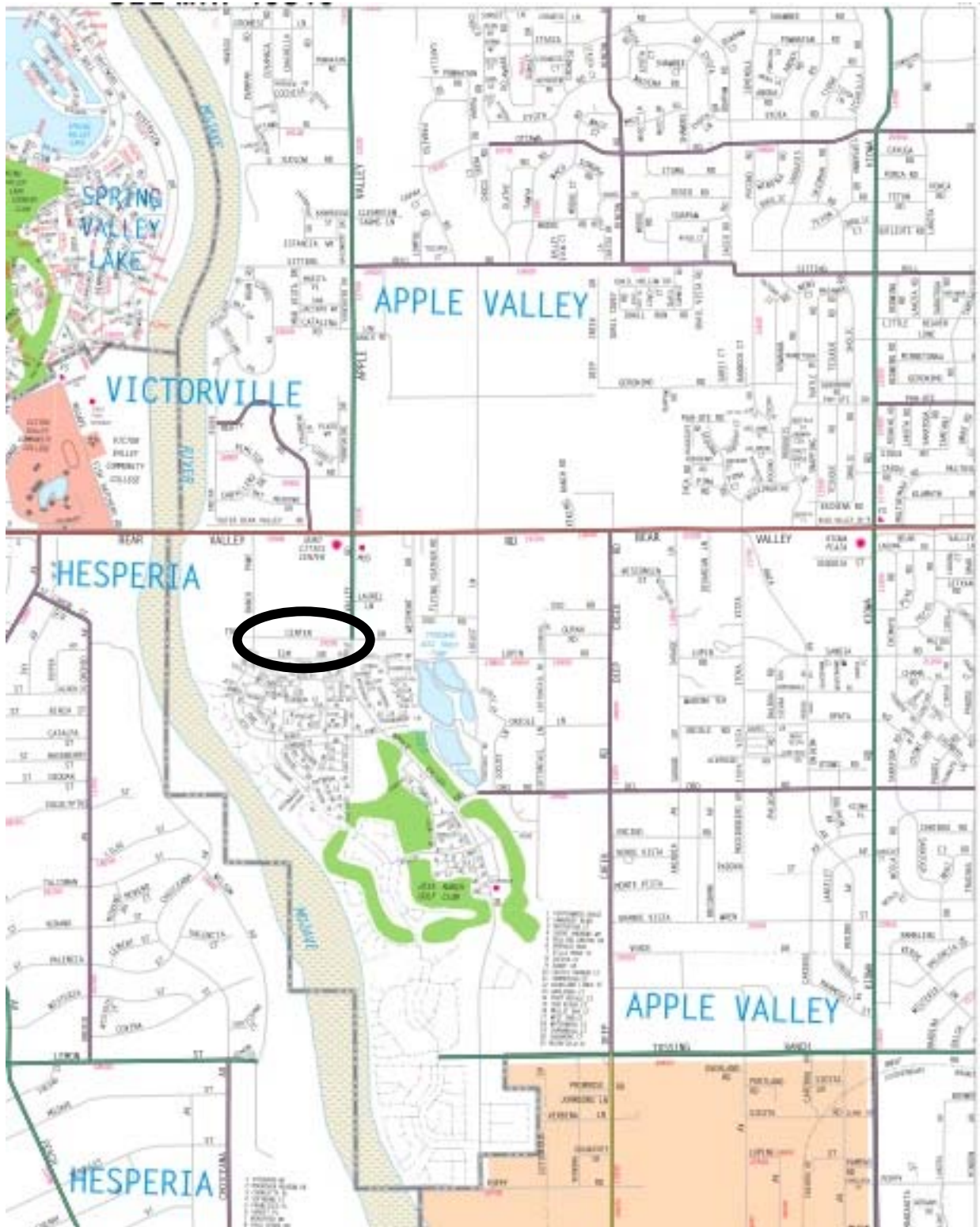
Summary Statement
Continued
Page 2

Approving the agreement and the security for the construction of the south half of Town Center Drive, as permitted by the Development Code, will allow individual property owners to receive their Certificates of Occupancy prior to completion of the street.

The Town Attorney has reviewed and approved the Agreement and the Letter of Credit as to form. The Town Engineer's current estimated cost for construction and installation of the Improvements and fulfillment of Security obligations is \$196,845.

Attachments

Location Map
Agreement
Letter of Credit



LOCATION MAP

TOWN OF APPLE VALLEY
AGREEMENT TO CONTRIBUTE AND GUARANTY CONTRIBUTION TOWARD
CONSTRUCTION OF STREET IMPROVEMENTS, TOWN CENTER DRIVE

Security: Letter of Credit No. _____

Description of Improvement(s): Contribution for Paving, Median Concrete, Tree Stump Removal and Compaction Testing to be constructed on Town Center Drive for joint Project(s) identified as Combined Town Center Drive Improvement Project, including, in part, improvements required under development projects 2006-011 and 2007-025, and as per Town Development Code.

Recitals:

WHEREAS, the undersigned Developers (“Developers”) have submitted or are planning to submit in the near future their respective requests for Certificates of Occupancy for their respective properties in connection with the above-referenced project(s) to the Town of Apple Valley (“Town”) for approval; and

WHEREAS, current and future project conditions and/or development-related laws and ordinances require the Developers to guaranty the completion of construction of the above described improvements (“Improvements”) and to provide a letter of credit as security to the Town prior to issuance of Certificates of Occupancy for current and/or proposed or planned projects; and

WHEREAS, Developers desire by this agreement to guaranty their obligation to complete the Improvements and pay for the cost thereof (the “contribution”), and to furnish a letter of credit to guarantee its payment; and

WHEREAS, it is anticipated that the construction of the Improvements will occur through a construction contract entered into by certain of or by or on behalf of all of Developers of property adjacent to or near the Project(s); and

WHEREAS, this Agreement evidences Developers’ obligation to the Town to install said Improvements, and to guarantee the installation and construction thereof; and

WHEREAS, the Developers represent and are acting on behalf of the undersigned South Town Center Property Owners, a non-profit organization consisting of the hereinafter listed property owners, who have combined in such organization for the purpose of jointly and severally obligating themselves hereunder to cause the construction of the above-described Combined Town Center Drive Improvement Project in accordance with the terms hereunder, and the Developers signing below on behalf of South Town Center Property Owners hereby further warrant they are authorized to enter into this Agreement on behalf of and thereby bind said individual property owners and said non-profit organization; said individual owners include: (1)

Gary and Wini Ledford, (2) American Security Bank, (3) Robert E. and Barbara Hove, Trustees, Jonathan D. Hove, and Corbett Hove [two parcels], (4) Ramadas K. Kamath, MD [two parcels], (5) BMS Hi-Desert and (6) High Desert Federal Credit Union [three parcels merged into one].

NOW, THEREFORE, before obtaining the issuance of Certificates of Occupancy (when otherwise entitled thereto), and as required by any existing and/or anticipated conditions of approval for the Projects, Developers promise and agree at their own expense to do all the work and make or cause to be made all of the required Improvements in a good and workmanlike manner as follows:

1. The above recitals are incorporated herein by this reference.
2. The Town Engineer's current estimated cost for construction and installation of the Improvements and fulfillment of Security obligations hereunder is \$196,845. It is understood that the list of work and improvements as shown herein is only a general designation of the work and improvements and not a binding description thereof. All of said work shall be done and improvements made and completed which are shown on and in strict compliance with applicable plans and specifications, as approved, and any subsequent approved alterations thereto, which alterations in said plans and specifications and the work to be performed may be accomplished without first giving prior notice thereof to the Developers or South Town Center Property Owners or to the Issuer (the "Issuer") of the letter of credit securing the obligations of the Developers and South Town Center Property Owners hereunder (the "Letter of Credit"), which Letter of Credit is described further in Section 3 below.
3. As security to guaranty Developers' performance of this Agreement and the obligations of South Town Center Property Owners hereunder, Developers shall provide the Town with a Letter of Credit in form satisfactory to the Town Engineer and Town Attorney. The Letter of Credit shall be in the face amount of \$196,845, and shall provide security to the Town in the amount shown herein, which shall serve to guarantee performance under this Agreement, guarantee payment to any contractors, subcontractors, and persons furnishing labor, material and equipment to them for the performance of the work described herein, and the sum of 50% of said face amount to guarantee the work for a period of one year following completion and acceptance of the Improvements against any defective work or labor done, or defective materials furnished.
4. Such work shall be completed and improvements made within one year from the date hereof, unless such time is extended by Town upon written application of Developers. In the event construction of the Improvements has not been completed and accepted by the Town within one year from the date hereof, Developers shall thereupon be considered in default of this Agreement.
5. The issuance of the Letter of Credit by Issuer includes the Issuer's consent in advance to any extension of time as may be given by the Town to Developers and its waiver of notices of such extensions. The making of an application for an extension of time by Developers shall, if approved, upon the granting of the application by Town, constitute a waiver by Developers and the Issuer of all defenses of laches, estoppel, statutes of limitations, and other limitations of

action in any action or proceeding filed by Town within a period of four (4) years immediately following the date to which the time of performance was extended.

6. If Developers fail to complete the Improvements within the time set forth herein, or fail to comply with any other obligation contained herein, then the Developers and the individual property owners represented by South Town Center Property Owners shall be jointly and severally liable to the Town for any administrative expenses and attorney's fees incurred in obtaining compliance with this Agreement and any such expenses and fees incurred in processing any action for damages or for any other remedies permitted by law, and the Developers' obligations hereunder, and the said expenses and fees shall not be limited to the face amount of the Letter of Credit. Developers further agree that they will maintain all of the improvements to be constructed under this Agreement in a state of good repair until all of the work and improvements are completed and accepted by or on behalf of the Town. Developers further agree under this Agreement to defend and hold the Town and its officers and employees free and harmless from any claim, demand or action for damages, injury, or death, and to indemnify the Town and its officers and employees for any loss arising out of or incurred as a result of or in connection with improper maintenance or dangerous conditions or any act or omission in connection with any of the maintenance activities required under this paragraph, existing or occurring or arising out of any act or omission occurring prior to final acceptance by the Town of all the work and improvements constructed under this agreement.

7. In the event of default hereof by Developers, the Town shall have the right upon giving of prior seven days notice to Developers, to enter upon the property and to complete construction of the Improvements, and if the Town determines to construct or cause to be constructed the Improvements or the remaining incompleting Improvements, Developers hereby grant to the Town, or to its agents or contractors, or employees or permittees, their irrevocable permission to enter upon the properties of Developers for the purpose of planning for and completing the Improvement.

8. The Developers agree at all times, up to the completion and acceptance of the work or improvements by Town, to give good and adequate warning to the traveling public of each and every dangerous condition caused by the construction or maintenance of the improvements and to protect the traveling public from such defective or dangerous conditions, and to indemnify and hold harmless the Town, and its officers and employees, from any claims, actions or judgments resulting therefrom.

9. The work and improvements described herein to be constructed will constitute a public project as defined in California Labor Code, Sections 1720, and following, and shall be performed as a public work, including, without limitation, compliance with all applicable prevailing wage requirements. In the event Developers or Developers' contractor(s), any subcontractor(s) or others fail to comply with or fail to cause compliance with such requirements, Developers shall indemnify, hold harmless and defend (with attorneys approved by Town) the Town, and its officers, agents and employees, against any claim(s), action(s) or judgment(s) relating to or resulting therefrom.

10. Developers agree to immediately notify the Issuer and the Town of any transfer of Developers' property containing the Projects or any portion(s) thereof whether voluntary or

involuntary and agree to condition any voluntary transfer of the property upon prior assumption of the obligations contained herein by the transferee in form approved by the Town. Failure to comply with the terms of this paragraph shall give the Town the right, if it so elects, upon twenty calendar days notice to the Developers and the Issuer to declare a default hereof, as determined by the Town Engineer, and thereafter pursue any action(s) for damages or for any other remedy permitted by law, as deemed necessary by the Town.

Executed effective on the 8th day of April, 2008.

Developers:

South Town Center Property Owners,
a nonprofit joint venture

Ramadas K. Kamath,
an individual

By: _____
Ramadas K. Kamath
Authorized Representative

Thomas J. Brown,
an individual

By: _____
Thomas J. Brown
Authorized Representative

Jonathan D. Hove,
an individual

By: _____
Jonathan D. Hove
Authorized Representative

[Attach Notarial Acknowledgement(s) of Signatures of the Developers, as individuals, and of South Town Center Property Owners, a joint venture]

TOWN OF APPLE VALLEY

By: _____
Mayor

Attest: _____
Town Clerk

4/08/08 REDRAFT

American Security Bank
19181 Town Center Drive
Apple Valley, CA 92308

TOWN OF APPLE VALLEY
TOWN COUNCIL
14955 DALE EVANS PARKWAY
APPLE VALLEY, CA 92307
ATTN:TOWN MANAGER AND TOWN ENGINEER

SUBJECT: Irrevocable Letter of Credit No. _____

ISSUE DATE: April 8, 2008

EXPIRATION DATE: April 8, 2009*

TOTAL AMOUNT: \$196,845 *

* **50% of said sum to expire at the earlier of one year after Town acceptance of completion of all work and related obligations or April 8, 2010, as a maintenance guarantee under 4/8/08 Agreement.**

Gentlemen:

We, American Security Bank, subject to regulation by the State of California or the United States Government, at the request of South Town Center Drive Property Owners hereby establish in your favor this Irrevocable Letter of credit for the total amount of **\$196,845.00** available by your site draft, drawn on American Security Bank expiring April 8, 2009, unless automatically renewed as provided herein, subject to the 50% maintenance guarantee, shown above, under the Agreement dated April 8, 2008 and expiring April 8, 2010. This is provided as an instrument for improvement security required by the conditions of approval referenced in the Agreement dated April 8, 2008, secured by this Letter of Credit and under the Town of Apple Valley Development Code.

The undersigned pledges that the sum in U.S. Dollars of **One hundred ninety-six thousand eight hundred forty five dollars (\$196,845.00)** is now on deposit in a trust fund which shall not be subject to levy or attachment by any creditors of American Security Bank or the South Town Center Drive Property Owners and guaranteed for payment to ensure the faithful performance of the Agreement, executed by Developers, including South Town Center Drive Property Owners, and by the Town of Apple Valley, dated April 8, 2008, which provides for the construction of the following described improvements for the Project fronting on Town Center Drive and specifically located between Jess Ranch Parkway and Apple Valley Road and guaranteed for all payments as required under and to be constructed under said Agreement, all in accordance with

the plans and specifications on file with the Town Engineer. The total amount of said total guarantee relating to the construction of said improvements, including, generally, paving, median concrete, tree stump removal and compaction testing, and all payments and obligations for payments described in said Agreement, is the total sum of \$196,845.00.

As part of the obligation secured hereby and in addition to the face amount hereof, there is included costs and reasonable expenses and fees, including reasonable attorneys' fees incurred by the Town in successfully enforcing the obligations hereby secured.

American Security Bank hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or the specifications accompanying the same shall in any manner affect its obligations under this Letter of Credit, and it does hereby waive notice of any such change, extension, alteration, or addition. Subject to the expiration and renewal provisions herein, this Letter of Credit remains in effect until the above-described improvements have been completed to the reasonable satisfaction of the Town Engineer, all payments have been made for labor and material supplied, and the funds maintained hereunder released by the Town of Apple Valley and notice thereof has been given to American Security Bank by the Town.

Payments of the whole or any portion of the above sum will be made to the Town of Apple Valley on sight upon the written demand of the Town Engineer or the Town Council, certifying that the sum demanded is due and payable under the terms of the Agreement accompanied by a draft on us and an itemized statement showing respective amount of loss, damage, or liability and that this amount is therefore due and payable. The whole or any portion of said sum may be released only by written order of the Town of Apple Valley pursuant to the rules and/or practices established for such release by the said Town.

After the work covered by the Agreement is completed to the reasonable satisfaction of the Town of Apple Valley and the Town has accepted the work, the Town may provide us with a written release on a portion of the amount of the obligation of this letter of credit; we anticipate the remaining obligation of this Letter of Credit will then likely be reduced to 50% of its current total (but we will reserve adequate funds for labor and material claims as specified by the Town in its written release instruction and those funds will be released only upon further written instruction from the Town that no claims thereon have been made or that the period to make claims has expired) with remaining 50% being security for the one year guarantee period provided for in the Agreement.

A drawing to be made by the Town of Apple Valley under this letter of credit by sight or registered mail shall be drawn on or before April 8, 2009, or April 8, 2010 as to said one-year maintenance sum, which terms shall be deemed automatically extended without amendment for one (1) year periods from the expiration date hereof, or any future expiration date unless at least 120 calendar days prior to any expiration date we shall notify you by registered or certified mail that we elect not to renew this letter of credit as to the expiring portion. We understand and agree that the Town has the right to demand the amount of this letter of credit if notice of expiration is given. All drafts drawn under the Letter of Credit must bear its date and number. Partial draws are permitted.

Drafts drawn at sight by the Town of Apple Valley under this letter must be marked: ‘Drawn under American Security Bank - Apple Valley Branch, **Letter of Credit Number and issue date**) and accompanied by the original letter of credit for proper endorsement. A partial draw by The Town of Apple Valley on this letter of credit shall not cause a revocation of this letter of credit, which letter of credit shall remain in full force and effect until fully drawn or expired, whichever comes first. Any and all draws and payments on this letter of credit shall be made in U.S. Dollars.’”

We, American Security Bank, hereby represent to you, The Town of Apple Valley, that the drafts drawn and presented strictly in compliance with the terms of this letter of credit will be duly honored by us if presented on or before the initial expiration date as stated above, or before the expiration of any automatically extended period thereafter, at our office located at 19181 Town Center Drive, Apple Valley CA 92308, or, if our office location changes, then to any other office of ours in the United States.

This Letter of Credit is assignable in its entirety and except as otherwise provided herein, is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce Publication No. 500 (UCP), and to the extent not inconsistent with UCP, shall be governed by the provisions of the California Commercial Code.

American Security Bank

By _____
John L. Beck, Executive Vice President & Chief Credit Officer

ATTEST:

H. Scott Miller, III, Vice President & Credit Administrator

Notary Acknowledgements Attached