

**TOWN OF  
APPLE VALLEY, CALIFORNIA**

**AGENDA MATTER**

**Subject Item:**

**CHANGE OF OWNERSHIP, DEVELOPMENT AGREEMENT FOR NORTH POINTE  
SPECIFIC PLAN**

Applicant: Apple Valley Partners, LLC  
Location: Generally located north of Falchion Road, east and west sides of future  
Choco Road and south side of Stoddard Wells Road.

**Summary Statement**

On September 25, 2007 the Town Council adopted the North Pointe Specific Plan and the Development Agreement for the development of approximately 495 acres west of Bell Mountain. The approvals also included a General Plan Amendment and Zone change. In November 2009, Cambridge Homes, LLC sold the development to Apple Valley Partners, LLC. As such, Apple Valley Partners, LLC is requesting that the Town Council approve the Ownership transfer of the Development Agreement. The language in the Development Agreement requires the Town Council approval of an Ownership transfer.

“Upon considering the request of the Owner and the information provided, the Town Council shall approve the sale, transfer or assignment if it finds the proposed transferee is financially able and has sufficient experience to complete the Project as proposed. If the Council fails to act within forty-five (45) days after receipt by the Town of the written notice and all information reasonably requested by Director on behalf of the Town Council, then in that event the Council shall be deemed to have approved the sale, transfer or assignment.”

(Continued on next page)

**Recommended Action:**

Approve the Ownership transfer from Cambridge Homes, LLC to Apple Valley Partners, LLC.

**Proposed by:**           Planning Division                **Item Number**      \_\_\_\_\_

**T. M. Approval:** \_\_\_\_\_ **Budgeted Item**    **Yes**    **No**    **N/A**

Summary  
Page Two

The change of ownership occurred without approval of the new ownership by the Town Council as required in the Development Agreement. Apple Valley Partners, LLC is requesting that the Town Council approve the change in ownership and modify the Development Agreement after the close of escrow. Attached is a letter from Mr. Lamoreaux, President of Coldwell Banker Commercial, addressing the development and financial ability of Apple Valley Partners to fulfill and complete the responsibilities in the Development Agreement. Mr. Lamoreaux and Coldwell Banker are managing the transfer of ownership and will act as managers of the development process of the Specific Plan.

Attachments:

1. Revised Development Agreement
2. Letter from Jason Lamoreaux, Coldwell Banker on behalf of Apple Valley Partners, LLC.

Recording Request By, And  
When Recorded, Mail To:

Town Clerk  
Town Of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, Ca 92307

Exempt from filing fees. Cal. Gov't Code § 6103

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(space above this line for recorder's use)

**Development Agreement**

**Between**

**~~Cambridge Homes, Inc.~~**

**Apple Valley Partners, LLC**

**And**

**The Town Of Apple Valley**

**(Pursuant To California Government Code Sections 65864 – 65869.5)**

**September 25, 2007**

**Revised (New Ownership) November 9, 2010**

**North Pointe Specific Plan**

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This Development Agreement (hereinafter “**Agreement**”) is entered into this 25<sup>TH</sup> day of September, 2007 (hereinafter the “**effective date**”) by the Town of Apple Valley (hereinafter “**Town**”), and ~~Cambridge Homes, Inc., a Nevada Corporation~~ Apple Valley Partners, LLC (hereinafter “**Owner**”), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code. The Town and the Owner may be referred to herein individually as a “party” and collectively as the “parties.”

#### Recitals

Whereas, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the legislature of the state of California adopted Section 65864 et seq. of the California Government Code, which authorizes the Town to enter into a Development Agreement with any person or entity having a legal or equitable interest in real property, providing for the development of such property and establishing certain reciprocal rights and obligations related to such development; and

Whereas, to implement the above-described State laws, the Town adopted Chapter 9.04 of the Town of Apple Valley Development Code, establishing procedures and requirements for considering and approving Development Agreements; and

Whereas, the Owner has a legal and equitable interest in the property located within the north central part of the Town of Apple Valley comprising the area within the North Pointe Specific Plan, which property consists of approximately 485 acres (the “property”), thereby satisfying the statutory requirement for entering into this agreement. The property is described in **Exhibit “A”**, attached hereto and incorporated herein by this reference; and

Whereas, the Owner proposes to develop the property as a single-family residential subdivision consisting of detached and attached single-family residences, and for office professional and commercial units as more specifically set forth in the North Pointe Specific Plan (the “**Project**”); and

Whereas, the Owner has applied for approval of the proposed North Pointe Specific Plan and this agreement (the “**Entitlements**”) for the project; and

Whereas, the Owner has requested the Town to enter into this Development Agreement and proceedings have initiated in accordance with Chapter 9.04 the Development Code; and

Whereas, by electing to enter into this agreement, the Town will thereby bind future the Town Councils of the Town by the obligations specified herein and limit the future exercise of certain Governmental and proprietary powers of the Town as set forth herein; and

Whereas, the Owner and the Owner’s key principal, personnel, are experienced real estate developers, experienced in the development and management of high quality developments including amenities similar to those proposed in the project; and

Whereas, the implementation of this agreement will provide the Town with significant public benefits in the form of facilities and infrastructure, including a sixty-acre park, as described herein; consequently, entering into this agreement is acknowledged to be to the mutual benefit of the parties; and

Whereas, following a duly noticed public hearing by the Planning Commission, when the Planning Commission made the findings and recommendations set forth in Section 9.04.020 of the Development Code, the Town Council conducted a duly noticed public hearing in accordance with Chapter 9.04 of the Development Code on the 11<sup>th</sup> day of September, 2007, approved the recommendations of the Planning Commission, and made all findings and determinations relating to this agreement which are required by said Chapter 9.04, and approved this agreement by its adoption of Ordinance no. 358, on September 25, 2007. In doing so, the Town Council determined that this agreement is consistent with the North Pointe Specific Plan, which was adopted on said date and with the General Plan; and

Whereas, the Town Council finds that execution of this agreement and the performance of and compliance with the terms and conditions set forth herein by the parties: (i) is in the best interests of the Town; (ii) will promote the public convenience, general welfare and good land use practices in the Town; (iii) will provide benefits to the Town, including a sixty-acre park; (iv) will provide a high-quality development and for public services appropriate to the development of the Owner's project; (v) will encourage the development of the project by providing a reasonable level of certainty to the Owner; and (vi) will provide for orderly growth and development in a manner consistent with the North Pointe Specific Plan and the general plan of the Town; and

Whereas, in accordance with the requirements of the California Environmental Quality Act, the necessary findings were made, and before approving the project and adopting ordinances approving the North Pointe Specific Plan and this agreement, the Town Council adopted a Mitigated Negative Declaration and Mitigation Monitoring Program, finding that on the basis of the whole record before the Town Council (including the initial study and any comments received), that there is no substantial evidence that the project as mitigated will have a significant effect on the environment and that the Mitigated Negative Declaration reflects the Town's independent judgment; and that the environmental documents, including the records of those proceedings, are available in the offices of the Economic and Community Development Department of the Town.

#### Covenants.

Now, therefore, in consideration of the above recitals, all of which are hereby expressly incorporated into this agreement, and the mutual promises and obligations of the parties set forth herein, the parties agree as follows:

#### 1. Definitions.

1.1 Definitions. The following terms when used in this agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "Town" means the Town of Apple Valley, a municipal corporation organized and existing under the laws of the state of California.

1.1.3 "The Town Council" means the Town Council of the Town of Apple Valley.

1.1.4 “Development” means the improvement of the property for the purposes of completing the structures, improvements and facilities comprising the project including, but not limited to: grading; the construction of infrastructure and public facilities related to the project whether located within or outside the property; the construction of residential dwelling units, buildings and structures; and the installation of landscaping. “Development” does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.5 “Development approvals” means all permits and other entitlements for use subject to approval or issuance by the Town in connection with development of the property including, but not limited to:

- (a) Specific Plan;
- (b) Tentative and Final subdivision and parcel maps;
- (c) Conditional Use Permits, Variances, site plot plans;
- (d) Development Permit;
- (e) Zoning Amendments;
- (f) Grading and building permits;
- (g) Street and utility improvement permits.

1.1.6 “Development Exaction” means any requirement of the Town in connection with or pursuant to any land use regulation or development approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests, including, without limitation, the Owner’s obligation to develop the North Pointe community park within the Town limits (the “park”) by the Owner’s performance of the tasks enumerated in Exhibit “C”, attached and incorporated by reference at the Owner’s sole expense, unless otherwise provided. The Town and the Owner acknowledge and agree the Owner’s obligation to develop the park is in lieu of its 1975 Quimby Act (the “act”; cal. Gov. Code §66477, et seq.) Obligation to set aside land, donate conservation easements, or pay fees for park improvements, and the Owner’s obligation as set forth herein is in excess of that required by the act. The Town shall have the option to amend the scope of the park’s development but the Town shall bear any resulting increase in costs, including increases in costs of the park’s development due to delay caused solely by the Town. The term “development exaction” or “exaction” shall not include the Town administrative, permit processing or other the Town-wide imposed development fees to cover the estimated or actual costs to the Town of processing applications for development approvals, subsequent development approvals, or costs associated with preparation or implementation of this Development Agreement or for monitoring compliance with any development approvals which may be granted or issued pursuant to this agreement.

1.1.6a “Development Impact Fees” or “DIF” means all the Town adopted fees and monetary exactions that are designed to pay for new or expanded public facilities needed to serve, or to mitigate the adverse effects of, a given development project and that are imposed by the Town by ordinance or resolution of general application or as a condition of approval of discretionary or ministerial permits for, or in connection with, the implementation of that development project. The term

“Development Impact Fees” (the “DIF”) does not include processing fees and charges as described in this agreement.

1.1.7 “development plan” means the development approvals and the land use regulations applicable to development of the property, including but not limited to the environmental clearance and the North Pointe Specific Plan.

1.1.8 “Effective date” means the date this agreement is executed by the Town following the effective date of the ordinance approving this agreement.

1.1.9 “Existing development approvals” means all development approvals approved or issued prior to the effective date and all other approvals which are a matter of public record on the effective date.

1.1.10 “Existing land use regulations” means all land use regulations in effect on the effective date and all other development regulations which are a matter of public record on the effective date.

1.1.11 “Land use regulations” means all ordinances, resolutions, codes, rules, regulations and official policies of the Town governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the property. “Land use regulations” does not include any Town ordinance, resolution, Code, rule, regulation or official policy, governing:

- (a) The conduct of businesses, professions, and occupations;
- (b) Taxes, fees (including, without limitation, processing fees and DIF’s and assessments;
- (c) The control and abatement of nuisances;
- (d) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;
- (e) The exercise of the power of eminent domain.

1.1.12 “Owner” means the persons and entities listed as the Owner on page 1 of this agreement and their successors in interest to all or any part of the property.

1.1.13 “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.14 “Project” means the development of the property contemplated by the development plan as defined herein as such plan may be further defined, enhanced or modified pursuant to the provisions of this agreement.

1.1.15 “Property” means the real property described on exhibit “a” and the park site shown as “not a part” on exhibit “a” to this agreement , which is the land upon which the North Pointe community park will be built and made a part herein by this reference.



1.1.16 “Subsequent development approvals” means all development approvals obtained or required subsequent to the effective date in connection with development of the property.

1.1.17 “Subsequent land use regulations” means any land use regulations adopted and effective after the effective date of this agreement.

## 2. General provisions.

2.1 **Binding Effect of Agreement.** The property is hereby made subject to this agreement. Development of the property is hereby authorized and shall be carried out in accordance with the terms of this agreement and the development plan.

2.2 **Ownership of property.** The Owner represents and covenants that it is the Owner of the fee simple title to the property.

### 2.3 Term of Agreement.

2.3.1 **Normal term.** The term of this agreement shall commence on the effective date, being the date of execution following the effective date of the ordinance approving this agreement (the “effective date”), and shall extend for a period of ten (10) years thereafter, unless this agreement is earlier terminated, modified or extended in accordance with the provisions of this agreement.

2.3.2 **Extension.** The ten-year term of this agreement may be extended one time for up to three years and thereafter one time for up to two years. Each extension shall be separately considered by the Town according to the provisions in this agreement. An extension of the term of this agreement shall be upon the same terms and conditions contained in this agreement and any modifications thereto.

2.3.3 **Extension Application.** The Owner shall submit its application for an extension of this agreement no later than six (6) months prior to its expiration. The Town may, at its sole discretion, accept a late application for an extension of this agreement, but under no circumstances shall the Town be obligated by law or in equity to accept or consider an application for extension of this agreement after the date of expiration of its then current term.

2.3.4 **Extension Granted.** Each of the two extensions of the term of this agreement provided for in Subsection 2.3.2 above shall be granted upon determination by the Town of the following:

2.3.4.1 All obligations of the Owner under this agreement have been or are being completed in conformance with the standards and timing required by this agreement, and the phasing of the North Pointe community park improvements, (exhibit “c” to this agreement which is incorporated herein by this reference), and the project approvals.

2.3.4.2 The architecture, construction and amenities of the portions of the project that have been completed meet the standards set forth in this agreement, the related project approvals and the North Pointe Specific Plan.

- 2.3.4.3 The Owner is found by the director of economic and community development to be diligently proceeding with the project in an effort to timely meet the phasing requirements for the park improvements as described in Exhibit “C” hereto.
- 2.3.4.4 The Owner has not abandoned the project. If the Owner has abandoned the project as set forth herein, this agreement shall be deemed automatically terminated and of no further force and effect. The Owner shall be deemed to have abandoned the project if any of the following occur at any time:
  - 2.3.4.4.1 The Owner is dissolved or has filed a voluntary petition for dissolution in bankruptcy or been adjudicated bankrupt in an involuntary dissolution proceeding. Provided however, that if a voluntary petition for dissolution is filed and the affected mortgagee notifies the Town in writing within thirty-five (35) days of service of notice of the petition to the mortgagee as shown in the bankruptcy court’s records that the mortgagee intends to pursue possession of the property and assumption of this agreement and thereafter diligently pursues such rights, the Owner shall not be deemed to have abandoned the project.
  - 2.3.4.4.2 The Owner notifies the Town in writing that it no longer intends to pursue development of the project.
  - 2.3.4.4.3 The Owner has not submitted timely public improvement agreements, construction plans and required security for public improvements required hereunder at least six months prior to the expiration of the then current term of this agreement.
  - 2.3.4.4.4 Abandonment of the project shall be a material breach of this agreement.
- 2.3.4.5 There are no outstanding material breaches of this agreement, or material defaults under the project approvals, public improvement agreements or bonds issued in connection with the property or project which are not being diligently cured within any time permitted for such cure under the applicable document. Approval of any extension may be withheld under this provision until such cure is completed within the allotted cure period. The Town’s ability to grant an extension of the term of this agreement shall not terminate during the pendency of such cure period so long as the Owner, or its Town approved assignee, is taking reasonable steps to effect such cure to the reasonable satisfaction of the Director.
- 2.3.5 Maximum term. If the granting of an extension of the term of this agreement occurs after the expiration of the term of this agreement, or any prior extension thereof, the extension shall be reduced by the total number of days that have

elapsed after the original date of expiration of term. Except as otherwise specifically allowed herein, this agreement, shall not be effective for more than a total of fifteen (15) years from its effective date, including all periods of extension.

2.3.6 Termination.

2.3.6.1 If not already terminated by reason of any other provision hereof, this agreement shall automatically terminate upon: (i) total build-out of the project, including entitlement approvals and any amendments thereto; (ii) the issuance of all occupancy permits for structures requiring such permits, or final building inspections for improvements on the property; and (iii) acceptance by the Town of all dedications of public rights-of-way and public improvements (to the extent the Town elects to accept dedication of public rights-of-way and public improvements), and including all dedications and improvements described in exhibit “c” hereto.

2.3.6.2 Similarly, where all such conditions have been satisfied in or substantial portion of the Specific Plan, provided that all fees have been paid or credited and provided that the Owner obligations required by that time have been completed as to dedication and improvement of all related infrastructure, including said park improvements, as set forth in this agreement and the project approvals, then the Owner may make a written request, and the director shall review and act upon the written request, to terminate this agreement as to a substantial portion (as determined by the director). The Director shall act upon said request within thirty (30) days of receipt. If the request is not granted, the director shall specify in writing all reasons for denying the request.

2.3.6.3 For purposes of termination upon completion hereunder, “total build-out” shall mean the completion of all construction in the project, or in substantial portion of the project, of all buildings, structures, infrastructure, improvements, landscaping and associated amenities contemplated, required or permitted by the Specific Plan, all other infrastructure required by this agreement and the project approvals, and performance by the Owner and the Town of all of their respective obligations hereunder.

2.3.6.4 This agreement shall automatically terminate as to any individual dwelling unit upon close of escrow for a sale to an end user of that dwelling unit and issuance of a certificate of occupancy or final Town inspection for that unit located upon a lot that has been finally subdivided as contemplated by the Specific Plan.

2.3.6.5 This agreement shall be deemed terminated and of no further effect upon (a) either the expiration of the stated term of this agreement or of any applicable extension or extensions hereof; or (b) completion of a referendum proceeding or entry of a final judgment setting

aside, voiding or annulling the adoption of the ordinance approving this agreement.

2.3.6.6 Termination of this agreement shall not constitute termination of any other land use entitlements approved for the property prior to the entitlements approved in connection with this agreement. Upon the termination of this agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this agreement that has occurred prior to such termination. Upon receipt of request therefore by the Owner (which for this purpose shall be deemed to constitute ~~Cambridge Homes, Inc.~~ Apple Valley Partners, LLC or any assignee as provided in 2.4), the Town shall execute and make available to the Owner a writing in form acceptable to the Town which recites that this agreement has been terminated.

## 2.4 Assignment.

2.4.1 Right to Assign. The Owner shall have the right to sell, transfer or assign the property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.) To any person, partnership, joint venture, firm or corporation at any time during the term of this agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this agreement as applied to the property in whole or in part and be made in compliance with the following conditions precedent:

(a) No sale, transfer or assignment of any right or interest under this agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the property;

(b) At least forty-five (45) days prior to any such sale, transfer or assignment, the Owner shall notify the Town, in writing, of such proposed sale, transfer or assignment and shall provide the Town with information reasonably required by director of the proposed transferee's financial ability and experience to proceed with the project and with an executed agreement, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of the Owner under this agreement which apply to the property in whole or in part being sold, transferred or assigned, in written form and content acceptable to the Town attorney and the Town manager. Failure of the Owner to comply shall constitute a material breach hereof. Also, if the Owner is in default hereof at the time of said proposed sale, transfer or assignment, said default shall serve as an additional basis for the Town to deny approval. Upon considering the request of the Owner and the information provided, the Town Council shall approve the sale, transfer or assignment if it finds the proposed transferee is financially able and has sufficient experience to complete the project as proposed. If the council fails to act within forty-five (45) days after receipt by the Town of the written notice and all information reasonably requested by director on behalf of the Town Council, then in that event the council shall be deemed to have approved the sale, transfer or assignment.

Notwithstanding any other provision in this Section, a sale or lease of a portion of the property (whether or not a "bulk" sale of lots) to builders without an assignment of any of the rights or obligations of this

agreement shall not constitute an assignment or other conveyance sufficient to trigger the requirements of this Section.

2.4.2 Termination of Agreement with respect to individual lots upon sale to public and completion of construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in “bulk”) sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this agreement, this agreement shall terminate with respect to any lot and such lot shall be released and shall no longer be subject to this agreement without the execution or recordation of any further document upon satisfaction of all of the following conditions:

(a) The lot has been finally subdivided and individually (and not in “bulk”) sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,

(b) A certificate of occupancy has been issued for a building on the lot.

2.5 Amendment or Cancellation of Agreement. This agreement may be amended or canceled in whole or in part only in the manner provided for in Government Code Section 65868.

2.6 Notices.

(a) As used in this agreement, “notice” includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below, or (ii) two business days after deposit in the united states mail in a sealed envelope as either registered or certified mail with return receipt requested, postage and postal charges prepaid, and addressed to the recipient named below, or (iii) when faxed to and received by the recipient effective two business days after proof of proper transmission of the faxed notice to the below facsimile numbers, provided that a copy of the document faxed shall also be mailed by first class mail, properly addressed and with postage prepaid on the date the faxed transmission. All notices shall be addressed as follows:

If to Town:

Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, Ca 92307  
Attn: Town Manager

Facsimile: (760) 961-6242

With copies to:

Kenneth J. Henderson  
Assistant Town Manager of Economic and Community  
Development  
Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, Ca 92307

Facsimile: (760) 240-7910

If to Owner:

~~Cambridge Homes, Inc.  
Attn: David G. Faylor  
17189 Yuma Street  
Victorville, California 92395  
Facsimile: (760) 245-5987  
Telephone: (760) 245-5130~~

Apple Valley Partners, LLC  
Atten: Dr. Rajendar Reddy  
1751 Muscat Place  
Hanford, CA 93230

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. Development of the property.

3.1 Right to Develop. Subject to the terms of this agreement including the reservations of authority set forth in Section 3.7 hereof, the Owner shall develop the property in accordance with, and to the extent of, the Development Plan and this Agreement. All subsequent development approvals required to complete the project shall be processed as contemplated by the Development Plan and this Agreement and consistent with the entitlements and this Agreement. Except as otherwise provided in this Agreement, the permitted uses of the property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation of dedication of land for public purposes shall be those set forth in the development plan and this agreement.

3.2 Subsequent Development Approvals. This agreement shall not prevent the Town, in acting on subsequent development approvals, from applying subsequent land use regulations which do not conflict with the development plan and this Agreement, nor shall this Agreement prevent the Town from denying or conditionally approving any subsequent development approval on the basis of the existing land use regulations or any subsequent land use regulations not in conflict with the development plan and this agreement.

3.3 Timing of Development. The parties acknowledge that the Owner cannot at this time predict when or the rate at which phases of the property will be developed. Such decisions depend upon numerous factors which are not within the control of the Owner, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Because the California Supreme Court held in Pardee Construction Co. v. Town of Camarillo (1984) 37 cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that the Owner shall have the right to develop the property in such order and at such rate and at such time as the Owner deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in the Development Plan and this Agreement. The Owner expects to accomplish the park improvements described in Exhibit "C" in compliance with the timing/planning as set forth therein.

3.4 [intentionally omitted.]

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the project may require subsequent development approvals and may demonstrate that changes are appropriate and mutually desirable in the existing development approvals. In the event the Owner finds that a change in the existing development approvals is necessary or appropriate, the Owner shall apply for a subsequent development approval to effectuate such change and the Town shall process and act on such application in accordance with the existing land use regulations, except as otherwise provided by this agreement including the reservations of authority. Unless otherwise required by law, as determined in the Town's reasonable discretion, a change to the existing development approvals may be deemed by the Town to be "minor" and not require an amendment to this agreement provided such change does not:

- (a) Alter the permitted uses of the property as a whole; or
- (b) Increase the density or intensity of use of the property as a whole; or
- (c) Increase the maximum height and size of permitted buildings; or
- (d) Delete a requirement for the reservation or dedication of land or providing improvements for public purposes within the property as a whole, and including the said park; or
- (e) Constitute a project requiring a subsequent or environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Occasional modifications to the phasing schedule reference in exhibits "C", "D", and "E" may be approved by the director if found by the director to be reasonable and consistent with the overall substance and intent of that portion of this Agreement

3.7 Reservations of Authority.

3.7.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following subsequent land use regulations shall apply to the development of the property.

- (a) Processing fees and charges imposed by the Town to cover the estimated actual costs to the Town of processing applications for development approvals or for monitoring compliance with any development approvals granted or issued; amended or adopted DIFs, except as otherwise provided in this agreement.
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.
- (c) Regulations governing construction standards and specifications including, without limitation, the Uniform Building, Plumbing, Mechanical, Electrical, and Fire Codes as adopted and amended by the Town of Apple Valley.
- (d) Regulations which may be in conflict with the Development Plan and this Agreement but which are reasonably necessary to protect the public health and safety. To the extent deemed reasonably possible by the Town, any such regulations shall be applied and

construed so as to provide the Owner with the rights and assurances provided under this agreement.

(e) Regulations that are not in conflict with the Development Plan. Any regulation, whether adopted by initiative or otherwise, imposing a development moratorium or limiting the rate or timing of development of the property shall be deemed to conflict with the development plan and shall therefore not be applicable to the development of the property.

3.7.2 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the effective date of this agreement, prevent or preclude compliance with one or more of the provisions of this agreement, or render the Town subject to liability, fine, penalty, charge, cost or restrictions on its authority or powers in order to comply with this agreement, such provisions of this agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this agreement shall remain in full force and effect to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

3.8 Referenda and Moratorium. It is the express intent of the Town and the Owner that as of the effective date of this agreement, this agreement is a legally binding contract which shall, to the extent permitted by law, prevail over the provisions of any subsequently enacted moratorium, statute, ordinance, limitation or other measure, whether or not enacted by the Town, or by voter initiative or referendum, and whether or not such initiative, moratorium, referendum, statute, ordinance, limitation or other measure relates, in whole or in part, to the rate, timing, sequencing or phasing of the development or construction of all or part of the project or the development plan or affects development approvals which are issued by the Town.

In the event any initiative, moratorium, referendum, statute, ordinance, limitation or other measure is enacted subsequent to the effective date that would otherwise modify the development rights vested pursuant to this Agreement, the Owner reserves the right to challenge any such enactment in a court of law should it become necessary to protect the development rights vested in the Owner pursuant to the terms and conditions of this agreement. Should any initiative or referendum be enacted which would preclude or make not feasible construction of all or any part of the project, and should such enactment be determined by a court of competent jurisdiction to invalidate or prevail over all or any part of this agreement, the Owner shall have no recourse against the Town for any damage the Owner might sustain as a result thereof so long as the Town did not participate in nor support any such initiative or referendum, except the Town shall provide for and timely implement an equitable program to reimburse the Owner for unused fees and for an equitable reimbursement for public improvements or fees theretofore made but not required by the extent of development as of the date of the enactment.

3.9 Exactions. All further applications for development approvals contemplated by this Agreement, or made in connection with the development, construction, use or operation of the project hereunder, shall be processed in accordance with the existing rules and the standards, terms and conditions of this agreement, except that (a) the Town shall not impose thereunder, any further exactions other than those called for under the existing approvals and/or as permitted under the provisions of this Agreement, and (b) such applications and development approvals thereunder, shall not result in the imposition upon the Owner of any additional requirements, other than those already imposed pursuant to the development approvals, or otherwise permitted under the provisions of this Agreement.

3.10 Tentative Subdivision Map Extension. Tentative subdivision map(s) hereafter approved in connection with development of the property may be granted an extension of time for up to the



expiration of the term of this agreement, including any or extensions thereof, to the extent permitted by the Development Agreement Law of this State.

3.11 Town Fees.

3.11.1 Payment of Fees. The Owner shall pay all Town administrative, permit processing and other Town-wide imposed development fees in accordance with applicable Town regulations and enactments. DIFs in effect on the effective date of this agreement shall apply to the project during the first five years of the term of this agreement, provided the Owner is timely proceeding with development of the project, including the development of the North Pointe community park, as provided hereunder. Thereafter, the DIFs in effect when payable during further development of the project hereunder shall apply to the remainder of the construction of the project. The portion of the DIFs which include Quimby fees will be applied against the cost to the Owner of the development of said park and in the manner as described in Exhibit "C" hereto.

3.12 Prevailing Wage; Acknowledgment. The Owner acknowledges that provisions of this Agreement, including without limitation, allowance of fee credits or caps, provision of public financing, and any other benefit to the Owner, may cause the project or portions thereof to become subject to prevailing wage and/or public contract bidding requirements under existing or future State or Federal law and/or court decisions. The Owner acknowledges that the Town has made no representations as to the non-applicability of such requirements to the project, and, in fact, for purposes of said laws, requires full compliance, as applicable, under any construction contracts for infrastructure or other improvements. The Owner hereby assumes any and all responsibility for such determinations and any all risk and responsibility related thereto. The Owner hereby expressly agrees to indemnify, defend (with attorneys approved by the Town) and hold harmless the Town, and its officers, employees, representatives, contractors, and agents from any cost, claim, liability, action, damages or judgment related to prevailing wage or public bidding requirements for any public work related to the project that the Owner, assignee developer or builder is conditioned and/or agrees to provide. The Town and Owner agree that the prevailing wage requirements that are applicable for North Pointe 60-acre community park shall not affect the Owner's prevailing wage requirements for the project.

4. Benefits.

4.1 Acknowledgement. The Owner acknowledges that it receives a substantial benefit by entering into this Agreement. The approval and execution of this Agreement by the Town will provide the Owner with substantial vested rights and assurances that it would otherwise not receive as part of the development process, including without limitation, protection from the Town-imposed moratoria, and protection from certain changes in the land use regulations and the project approvals that the Town could otherwise have imposed in the exercise of its legitimate regulatory powers as a Government agency. Under state law related to Development Agreements, by providing the protections of a Development Agreement, the Town is entitled to receive from the Owner consideration in the form of benefits to the public that otherwise would or could not be imposed as conditions of approval for the project. Therefore, as consideration for this Agreement, in addition to the other terms and conditions of this Agreement, the Owner shall provide to the Town the public benefits provided for in this Agreement.

4.2 Street Names. All names of streets and of public facilities located in the development shall require approval by the Town Department of Economic and Community Development.

5. Review for Compliance.

5.1 Periodic Review. The Assistant Town Manager of Economic and Community development shall review this Agreement on or before the first anniversary of the effective date, in order to ascertain the good faith compliance by the Owner with the terms of the Agreement. The Owner shall submit a monitoring report, in a form acceptable to the Assistant Town Manager of Economic and Community Development, within thirty (30) days after written notice from the Assistant Town Manger of Economic and Community Development.

5.2 Procedure.

(a) During either a periodic review or a special review, the Owner shall be required to demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on the Owner.

(b) Upon completion of a periodic review, the Assistant Town Manager of Economic and Community Development shall submit a report to the Town Council setting forth the evidence concerning good faith compliance by the Owner with the terms of this Agreement and his or her recommended finding on that issue.

(c) If the Town Council finds on the basis of substantial evidence that the Owner has complied in good faith with the terms and conditions of this Agreement, the review shall be concluded.

(d) If the Town Council makes a preliminary finding that the Owner has not complied in good faith with the terms and conditions of this Agreement, the Town Council may modify or terminate this agreement as provided in Section 5.3 and Section 5.4. Notice of default as provided under Section 6.3(b) of this Agreement shall be given to the Owner prior to or concurrent with, proceedings under Section 5.3 and Section 5.4.

5.3 Proceedings Upon Modifications or Termination. If, upon a finding under Section 6.2, the Town determines to proceed with modification or termination of this Agreement, the Town shall give

written notice to the Owner of its intention so to do. The notice shall be given at least ten (10) calendar days prior to the scheduled hearing and shall contain:

- (a) The time and place of the hearing; and
- (b) A statement as to whether or not the Town proposes to terminate or to modify the agreement; and
- (c) Such other information as is reasonably necessary to inform the Owner of the nature of the proceeding.

5.4 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the Owner shall be given an opportunity to be heard. The Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. If the Town Council finds, based upon substantial evidence, that the Owner has not complied in good faith with the terms or conditions of the Agreement, the Town Council may terminate this agreement or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the Town. The decision of the Town Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the California Code of civil procedure.

5.5 Certificate of Agreement Compliance. If, at the conclusion of a periodic review, the Owner is found to be in compliance with this agreement, director on behalf of the Town shall, upon request by the Owner, issue a certificate of agreement compliance (“certificate”) to the Owner stating that after the most recent periodic review and based upon the information known or made to the Assistant Town Manager of Economic and Community Development and the Town Council that (1) this Agreement remains in effect and (2) the Owner is not in default. The certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance. The Owner may record the certificate with the County Recorder.

## 6. Default and remedies.

6.1 Enforcement. Unless amended or canceled as herein provided, this agreement is enforceable by any party to it notwithstanding a change in the applicable general or Specific Plan, zoning, subdivision, or building regulations adopted by the Town which otherwise would alter or amend the rules, regulations, or policies governing permitted uses of the property, density, design, improvement, and construction standards and specifications applicable to the Specific Plan.

6.2 Events of Default. A party to this agreement is in default under this agreement upon the happening of one or more of the following events or conditions:

- (a) If a warranty, representation or statement made or furnished by the Owner to the Town or the Town to the Owner is false or proves to have been false in any material respect when it was made;
- (b) A finding and determination by the Town or the Owner that upon the basis of substantial evidence the Town or the Owner has not complied in good faith with one or more of the terms or conditions of this Agreement.

6.3 Procedure Upon Default.

(a) Upon the occurrence of an event of default, the non-defaulting party may initiate proceedings under this Agreement in accordance with the procedures set forth in Subsection 6.3(b) below.

(b) The party claiming default shall provide written notice to the other party specifying the event of default and the steps the other party must take to cure the default. If, within thirty (30) days after the effective date of such notice, the other party does not commence all steps reasonably necessary to bring itself into compliance as required and thereafter diligently pursue such steps to completion, then the other party shall be deemed to be in default under the terms of this Agreement.

(c) All other remedies at law or in equity which are not otherwise provided for in this Agreement or in the Town's regulations governing Development Agreements are available to the parties to pursue in the event there is a breach, except the parties acknowledge that the Town would not have entered into this agreement had it been exposed to monetary damage claims from the Owner for any breach of this agreement. As such, the parties agree that in no event shall the Owner, or its successors or assigns, be entitled to recover any monetary damages against the Town, or its officers, employees, agents, contractors or representatives for breach of this agreement but shall only be entitled to such specific performance remedy if allowed and determined by the court.

6.4 Owner's Default. In the event of any default by the Owner, in addition to any other remedies which may be available to the Town, whether legal or equitable, the Town shall be entitled to retain any fees, grants, dedications or improvements to public property which it may have received prior to the Owner's default without recourse from the Owner or its successors or assigns.

6.5 Indemnity. The Owner shall indemnify and hold the Town, its officers, agents and employees and independent contractors free and harmless from any claims or liability based or asserted upon any act or omission of the Owner, its officers, agents, employees, subcontractors and independent contractors for property damage, bodily injury, or death (the Owner's employees included) or any other element or damage of any kind or nature, relating to or in any way connected with or arising from the activities of the Owner and its successors in interest as to the property, or portion thereof, provided in this Agreement. The Owner shall defend (with attorneys approved by the Town), at its expense, including payment of attorneys' fees, the Town, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. The Town may in its discretion participate in the defense of any such legal action.

6.6 Environmental Indemnity. The Owner shall defend (with attorneys approved by the Town), indemnify and hold the Town, its officers, agents, employees, and independent contractors free and harmless from any claims or liability based upon or arising from the presence of any hazardous substance on any of the property located in the project. As used herein, "hazardous substance" shall mean any "hazardous substances," "toxic substance," "hazardous waste," or "hazardous material" as defined in one or more environmental laws, whether now in existence or hereinafter enacted; provided, however, that "hazardous substance" shall (i) include petroleum and petroleum products (other than naturally occurring crude oil and gas) and (ii) include radioactive substances which are not naturally occurring, and (iii) include any friable or non-friable asbestos or asbestos-containing material contained in or affixed to a structure existing on the property or otherwise located in, on or about the property as of the date of this

agreement. As used herein, "environmental laws" shall mean any and all federal, state, municipal and other Governmental laws, statutes, ordinances, rules, and regulations which are in effect as of the date of this agreement, or any and all federal or state or municipal or other Governmental laws, statutes, rules and regulations which may hereafter be enacted and which apply to the property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment or removal of any hazardous substances, including without limitation, the Comprehensive Environmental Response Compensation Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., The Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., ("RCRA"), The Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., The Clean Water Act, 33 U.S.C. Section 1251, et seq., and California Health and Safety Code Section 25100, et seq. To the extent that the Owner is or may be entitled to defense or indemnification from the prior the Owner in connection with the presence of any such hazardous substances on the property, the Owner shall assert any such defenses or indemnification rights on behalf of the Town, its officers, agents, employees, and independent contractors, or assign such rights to the Town, at the Town's option. Notwithstanding anything herein to the contrary, the Owner shall have no obligation to indemnify the Town as herein provided with respect to any hazardous substances which are proven by the Owner to have been first brought onto the property subsequent to the Town-approved sale by the Owner of the property, or the affected portions thereof.

#### 7. Mortgagee Protection.

The parties hereto agree that this agreement shall not prevent or limit the Owner, in any manner, at the Owner's sole discretion, from encumbering the property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the property. The Town acknowledges that the lenders providing such financing may request certain agreement interpretations and minor, non-substantive modifications and agrees upon request, from time to time, to meet with the Owner with representatives of such lenders to negotiate in good faith any such request for interpretation or non-substantive modification. The Town will not unreasonably withhold its consent to any such requested interpretation or non-substantive modification provided such interpretation or non-substantive modification is consistent with the intent and purposes of this agreement and will not in any manner reduce or remove or jeopardize any benefits or rights of the Town hereunder. Any mortgagee of the property shall be entitled to the following rights and privileges:

- (a) Neither entering into this agreement nor a breach of this agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the property made in good faith and for value, unless otherwise required by law.
- (b) The mortgagee of any mortgage or deed of trust encumbering the property, or any part thereof, which mortgagee has submitted a request in writing to the Town in the manner specified herein for giving notices, shall be entitled to receive written notification from the Town or any default by the Owner in the performance of the Owner's obligations under this Agreement.
- (c) If the Town timely receives a request from a mortgagee requesting a copy of any notice of default given to the Owner under the terms of this Agreement, the Town shall provide a copy of that notice to the mortgagee within ten (10) days of sending the notice of default to the Owner. The mortgagee shall have the right, but not the obligation, to timely cure the default to the extent permitted hereunder during the remaining cure period allowed such party under this Agreement.
- (d) Any mortgagee who comes into possession of the property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such

foreclosure, shall take the property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this agreement to the contrary, no mortgagee shall have any obligation or duty under this agreement to perform any of the Owner's obligations or other affirmative covenants of the Owner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by the Owner is a condition precedent to the performance of a covenant by the Town, the performance thereof shall continue to be a condition precedent to the Town's performance hereunder, and unless otherwise permitted by the Town shall not be entitled to the enforceable rights and benefits of the Owner hereunder, and further provided that any sale, transfer or assignment by any mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

8. Miscellaneous Provisions.

8.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the Town clerk within the period and in the manner required by Section 65868.5 of the Government Code.

8.2 Entire Agreement. This agreement sets forth and contains the entire understanding and agreement of the parties.

8.3 Severability. If any terms, provisions, covenants or conditions of this agreement shall be determined invalid, void or unenforceable, the remainder of this agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provisions pertaining to development of the property and the public benefits and improvements provided under this Agreement, are essential elements of this Agreement and the Town and the Owner would not have entered into this Agreement but for such provisions and if determined to be invalid, void or unenforceable, this entire agreement shall be deemed to be and shall be considered to be null and void.

8.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the state of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed by interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

8.5 Section Headings. All Section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

8.6 Singular and Plural. As used herein, the singular of any word includes the plural.

8.7 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement.

8.8 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this agreement thereafter.

8.9 Binding Effect of Agreement; No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. This Agreement shall bind, and inure to the benefit of, the respective parties and their successors in interest, including their heirs, representatives, assigns, partners and investors. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land as to the property. However, there shall be no third party beneficiaries of this Agreement, except that this Agreement shall be enforceable by the Town and on behalf of any of its subsidiary or affiliated public agencies. No other person shall have any right of action based upon any provision of this Agreement.

8.10 No Property Interest. Nothing herein shall be construed as a dedication or transfer of any right or interest in, or as creating a lien with respect to, title to the property.

8.11 Force of nature. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is solely caused by floods, earthquakes, other acts of god, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), Government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control, which could not have been reasonably anticipated and avoided. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written Agreement of the parties for the period of time that such events prevented such performance, provided that the terms of this agreement shall not be extended under any circumstances for more than six (6) months as a result of any such force majeure event, without the written consent of the other party.

8.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed by such benefited party.

8.13 Successors In Interest. The burdens of this agreement shall be binding upon, and the benefits of this agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the property: (a) is for the benefit of and is a burden upon every portion of the property; (b) runs with the property and each portion thereof; and, (c) is binding upon each party and each successor in interest during Ownership of the property or any portion thereof.

8.14 Counterparts. This agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

8.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

8.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this agreement. No partnership, joint venture or other association of any kind is formed by this agreement. The only relationship between the Town and the Owner is that of a Government entity regulating the development of private property and the Owner of such property.

8.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. Immediately prior to execution of this Agreement by the Town, the Owner shall provide the Town with a current title report evidencing the Owner is the record Owner of the property.



8.18 Authority to Execute. The person(s) executing this Agreement on behalf of the Owner warrants and represents that he, she or they has/have the authority to execute this agreement on behalf of his, her or their corporation, partnership or business entity and warrants and represents that he, she or they has/have the authority to bind the Owner to the performance of its obligations hereunder.

8.19 Cooperation. The Town agrees that it shall accept for processing and promptly take action on all applications, provided they are in a proper form and complete and in compliance with all requirements of the Town and acceptable for required processing, for discretionary permits, tract or parcel maps, or other land use entitlements for development of the project in accordance with the provisions of this Agreement. The Town shall cooperate with the Owner in providing expeditious review of any such applications, permits or land use entitlements and, upon request and payment by the Owner of any costs and/or extra fees required by the Town for such expeditious processing, the Town shall assign such review to project planner(s), building inspector(s), other staff personnel and/or contract planning or engineering consultants as required to insure the expeditious review, processing and completion of the project.

[signature page follows]

In witness whereof, the parties hereto have executed this agreement on the day and year set forth below.

Dated: \_\_\_\_\_

the Town of Apple Valley, a Municipal Corporation  
of the State of California

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

Attest:

\_\_\_\_\_  
Town Clerk

Approved as to form:

Approved as to Content:

\_\_\_\_\_  
Town Attorney

\_\_\_\_\_  
Town Manager

~~Cambridge Homes, Inc., a Nevada Corporation~~

Apple Valley Partners, Inc.

By: \_\_\_\_\_  
"Owner"

All signatures are to be acknowledged  
Before a notary public

State of California )  
 ) ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, notary public,  
(print name of notary public)

Personally appeared \_\_\_\_\_

personally known to me

**-or-**

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 the Town, 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.

Witness my hand and official seal.

\_\_\_\_\_  
Signature of notary

### Optional

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### Capacity claimed by signer

- individual  
 corporate officer

\_\_\_\_\_  
Title(s)

- partner(s)       limited  
 attorney-in-fact       general  
 trustee(s)  
 guardian/conservator  
 other: \_\_\_\_\_

Signer is representing:  
Name of person(s) or entity(ies)

\_\_\_\_\_  
\_\_\_\_\_

#### Description of attached document

\_\_\_\_\_  
Title or type of document

\_\_\_\_\_  
Number of pages

\_\_\_\_\_  
Date of documents

\_\_\_\_\_  
Signer(s) other than named above

State of California )  
 ) ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, notary public,  
(print name of notary public)

Personally appeared \_\_\_\_\_

personally known to me

**-or-**

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 the Town, 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.

Witness my hand and official seal.

\_\_\_\_\_  
Signature of notary

### Optional

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- individual  
 corporate officer

\_\_\_\_\_  
Title(s)

- partner(s)       limited  
 attorney-in-fact       general  
 trustee(s)  
 guardian/conservator  
 other: \_\_\_\_\_

Signer is representing:  
Name of person(s) or entity(ies)

\_\_\_\_\_  
\_\_\_\_\_

#### Description of attached document

\_\_\_\_\_  
Title or type of document

\_\_\_\_\_  
Number of pages

\_\_\_\_\_  
Date of documents

\_\_\_\_\_  
Signer(s) other than named above

## Exhibit "A"

### Description of Property

North Pointe is located west of Bell Mountain in northern Apple Valley, north of the extension of Falchion Road. The 485-acre site supports incremental residential development and capitalizes on the future High Desert Corridor which bisects the site by providing mixed-use and commercial/retail use opportunities for future and existing residents of the Town of Apple Valley. The site is bordered on the north by Stoddard Wells Road, on the south by Falchion Road extended and on the west by Choco Road extended (APN #0472-301-08, -10, 0472-311-01, -51, -52, -55, -56, -60, and -62). The 60-acre park (APN #0472-301-09) is located directly east of the Specific Plan area, on the north side of the extension of Saugus Road and west of Bell Mountain.

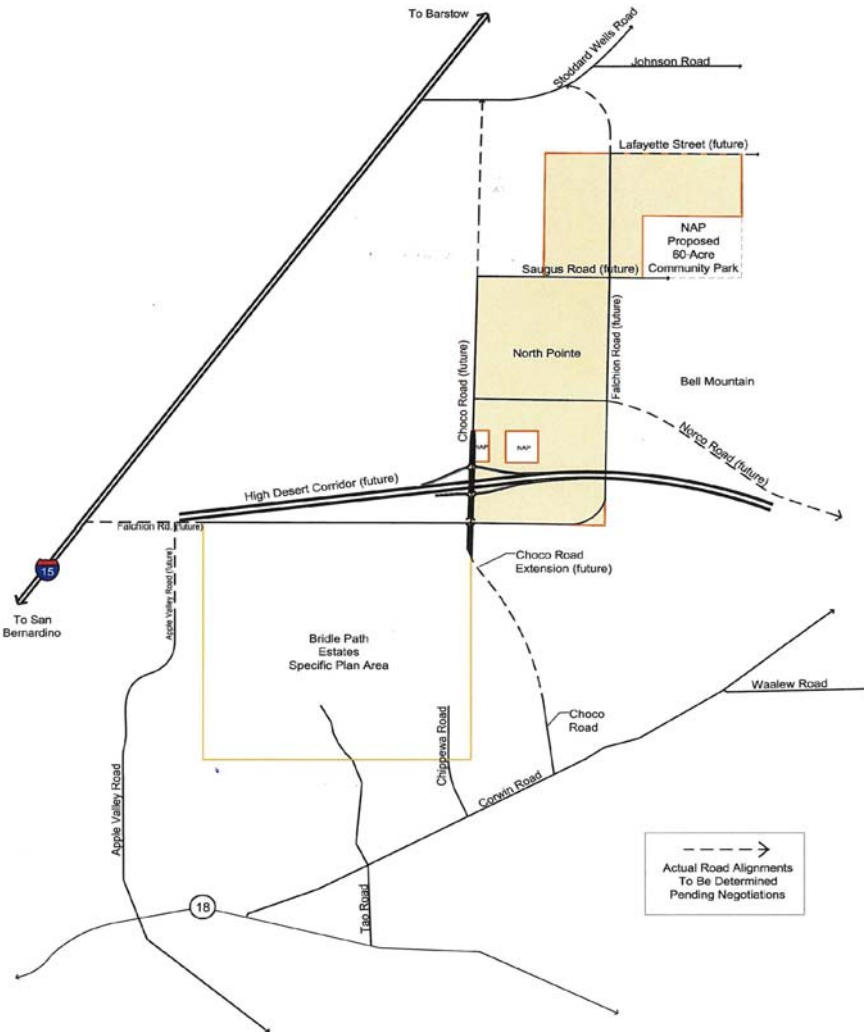


Exhibit "B"

Land Use Map





11. Installation of asphalt concrete parking lot including striping.  
Phase 1 = 33,000 sf.  
Phase 2 = 49,000 sf.
12. Construction of a maintenance building and obtain certificate of occupancy.
13. Construction of two (2) restroom buildings/snackbars, one (1) at Phase 1 and the another one (1) at Phase 2. Both require certificates of occupancy.
14. Construction of three (3) soccer fields (including fine grading, turf & irrigation, striping and two (2) goal posts each). Phase 1 and phase 3a.
15. Construction of two (2) baseball fields (including fine grading, turf & irrigation, brick dust, chain link fencing, two (2) bleachers, two (2) dugouts, dugout paving and two (2) benches) phase 2.
16. Installation of trash receptacles; four (4) at phase 1, three (3) at phase 2 and one (1) at phase 3a.
17. Installation of monument signage; one (1) at phase 1.
18. Installation of drinking fountains; one (1) at phase 1, one (1) at phase 2 and one (1) at phase 3a.
19. Installation of block wall trash enclosures; one (1) at phase 1, two (2) at phase 2.
20. Installation of six (6) charcoal BBQ's at Phase 2.
21. Installation of shade pavilion/trellis structures; two (2) at Phase 1, two (2) at Phase 2 and one (1) at Phase 3a.
22. Installation of bike racks; one (1) at Phase 1, two (2) at Phase 2.
23. Installation of picnic tables; six (6) at Phase 2.

**Cambridge Developer tasks with Town funding:**

1. Soil preparation and fine grade, Phases 3b and 4.
2. Mulching of Phases 3b and 4.
3. Decomposed granite/gravel of Phases 3b and 4.
4. Automatic irrigation Phases 3b and 4.
5. Installation of trees as follows (including tree drainage).

<u>Phase 3b</u>	<u>Phase 4</u>
70 24-inch box	87 24-inch box
<u>35 15 gallon</u>	<u>58 15 gallon</u>
105 trees	145 trees

6. Installation of shrubs and groundcovers phases 3a and 4 including five (5) gallon, one (1) gallon and flatted material.
7. Installation of seeded turf Phases 3b and 4.
8. Slope stabilization planting and irrigation.
9. Installation of asphalt concrete parking lot, including striping.  
Phase 3b = 29,800 sf.  
Phase 4 = 23,140 sf.

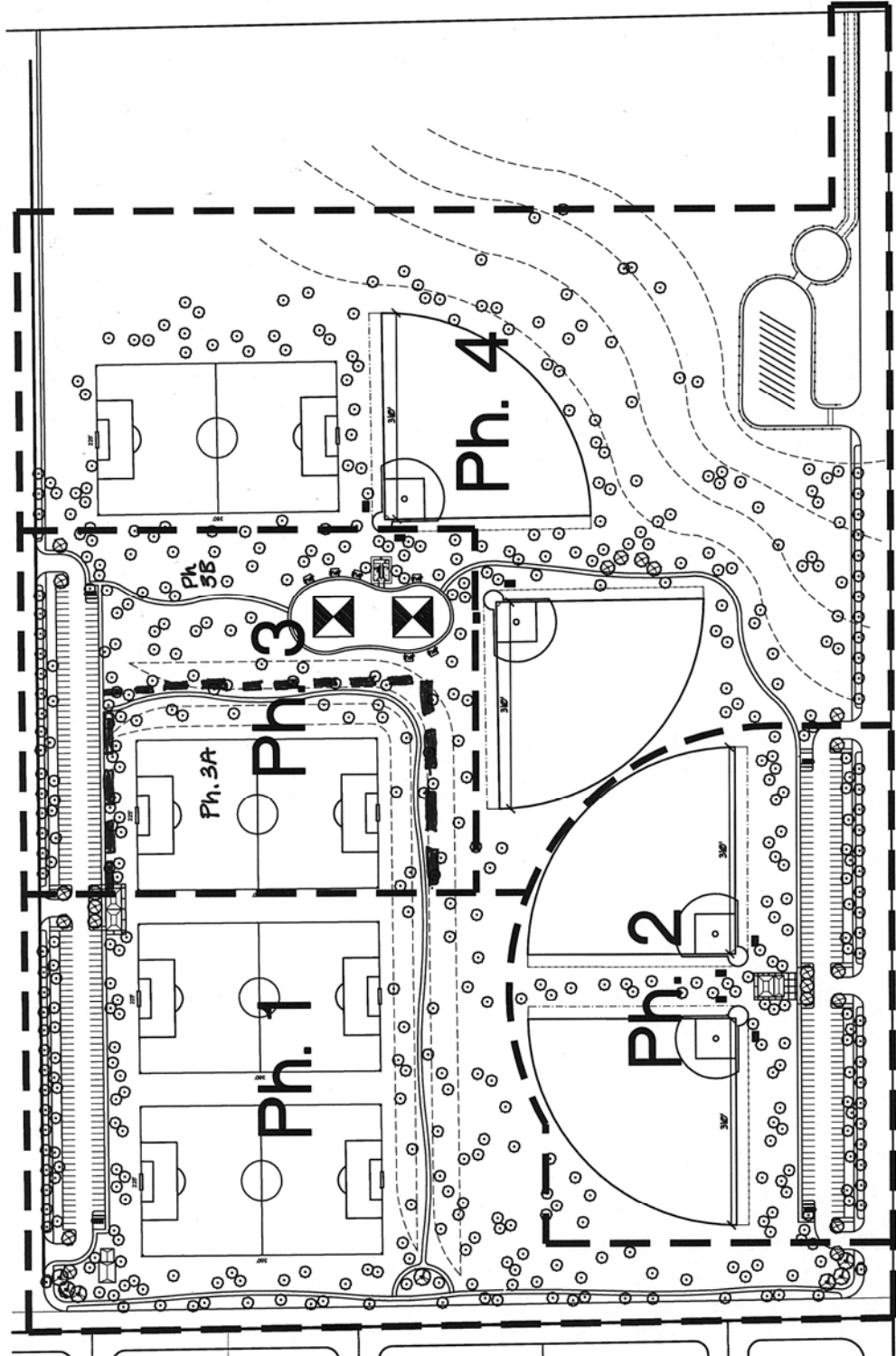


10. Installation of a six (6)-foot concrete sidewalk.  
Phase 3b = 5,000 sf.  
Phase 4 = 1,050 sf.
11. Installation of tot lot equipment and shade structures (including fine grading).
12. Construction of a tot lot restroom building and obtain a certificate of occupancy.
13. Installation of six (6) trellis structures at tot lot.
14. Installation of ten (10) picnic tables, Phase 3b.
15. Installation of trash receptacles; four (4) at Phase 3b and two (2) at Phase 4.
16. Installation of concessions/snack bar at Phase 4.
17. Construction of two (2) baseball fields (including fine grading, turf & irrigation, brick dust, chain link fencing, two (2) bleachers, two (2) dugouts, dugout paving and two (2) benches) at Phase 4.
18. Construction of one (1) soccer field (including fine grading, turf & irrigation, striping and two (2) goal posts each) at Phase 4.
19. Installation of bike racks; two (2) at Phase 3b and one (1) at Phase 4.
20. Installation of five (5) charcoal BBQ's, Phase 3b.
21. Installation of one (1) block wall trash enclosures at Phase 3b.
22. Installation of two (2) drinking fountains, Phase 4.
23. Installation of perimeter chain link fencing.
24. Installation of trail and staging area (decomposed granite) 8,500 sf.
25. Installation of bridle trail fencing, 1,565 lf.
26. Installation of park lighting.



**Exhibit "E"**

**Park Development Phasing**





COLDWELL BANKER COMMERCIAL  
REAL ESTATE SOLUTIONS  
15500 WEST SAND STREET, 2ND FLOOR  
VICTORVILLE, CA 92392  
OFFICE (760) 684-8000  
FAX (760) 243-9700  
www.CBCdesert.com

October 26, 2010

Lori Lamson  
Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, CA 92307

RE: North Pointe Specific Plan - Development Agreement

Dear Mrs. Lamson,

Thank you for the time you have taken to assist us with transferring the development agreement for North Pointe Specific Plan (NPSP) from the previous owners, Cambridge Homes, LLC, to our client, Apple Valley Partners, LLC. As discussed in prior conversations, our clients wish to have the development agreement for NPSP assigned to their holding company; Apple Valley Partners, LLC. This correspondence shall address the requirements of the transfer identified in your email dated August 17, 2010.

As outlined in section 2.4.1(b) of the development agreement, our clients, along with our firm, possess the required elements to successfully develop NPSP as set forth in the development agreement. The primary issues are financial ability and development experience. I will address each issue below.

**Financial Ability** – Apple Valley Partners, LLC purchased the 476 acres comprising of NPSP cash, without encumbrances. The primary partner, the Hanumandla Reddy Family Trust, has provided a confidential letter from Wells Fargo Bank enclosed herein confirming a cash balance of \$10m. Collectively, the members of Apple Valley Partners, LLC have a combined wealth far in excess of \$100m. If required, the partnership could develop the project without financing or an exterior capital infusion.

**Development Experience** – The primary partner of Apple Valley Partners, LLC has developed multi-family and commercial projects throughout California. Currently, they own and manage over 1,000 apartments in the Bay Area. In addition, Mehdi Mostaedi and myself will be involved with the development of the property, bringing substantial experience to the partnership including development of a 2,500 acre master planned community with 900 acres of commercial and a PGA golf course in Reno, NV. Collectively, the group has almost 100 years of development experience in all

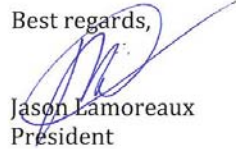
Each Office Is Independently Owned And Operated.

facets of development including land entitlement, single-family residence, commercial, industrial and multi-family.

This letter shall confirm our desire to have the Town of Apple Valley assign the development agreement for NPSP to Apple Valley Partners, LLC. Please feel free to call me with any questions you may have or additional documents you may require to facilitate the assignment of the development agreement.

We look forward to working with the Town of Apple Valley in the future to develop the North Pointe community. Thank you for your consideration.

Best regards,



Jason Lamoreaux  
President

JL:tl

Enclosures: Wells Fargo account verification  
K-1 partnership statement confirming relationship  
Email dated August 17, 2010 concerning assignment of Development Agreement



California Business Banking  
Southern California Division  
500 La Terraza Boulevard, Suite 200  
Escondido, CA 92025

October 13, 2010

Regarding Customer:

Hanumandla Reddy Family Revocable Trust

To Whom It May Concern:

This letter is verification that the customer named above has an account with Wells Fargo.

This account number ending in -2981 was opened on July 6, 2010 and has a current balance of \$10,014,177.57.

If you need deposit information, refer to the customer names above or you can call me directly at 760-432-5409.

Sincerely,

A handwritten signature in blue ink, appearing to read "Deep Bhullar".

Deep Bhullar  
Assistant Vice President  
500 La Terraza Blvd. suite 200  
Escondido, CA 92025

