

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

APPROVAL OF A SITE DEDICATION AND DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF APPLE VALLEY AND HDC GROUP, LLC, FOR LAND DEDICATION

Summary Statement:

In February of this year, Mayor Pro-Tem Scott Nassif was approached by representatives and supporters of Brett Sports & Entertainment to determine whether or not the Town of Apple Valley had an interest in securing a California League (Single "A") baseball team, and building a baseball stadium for that purpose within the Town's corporate boundaries. Brett Sports & Entertainment ("Brett") is the owner of the High Desert Mavericks, the California League Single "A" franchise that has operated continuously in the City of Adelanto since 1990. After receiving a formal letter of interest from Brett, Town Manager Robinson reported to the Town Council the results of a meeting held with Brett representatives, Mayor Pro-Tem Nassif and Assistant Town Manager Henderson. As a result of this report, Mr. Robinson received approval from the Town Council to form a Baseball Stadium Task Force to study the feasibility of developing a minor league baseball stadium that would meet the standards and specifications of the National Association of Minor League Baseball and the California League.

The members of this task force were comprised of Populous, Inc., an architectural services company with the most extensive experience of any such firm in the country in designing minor league baseball stadiums and related facilities, Mayor Pro-Tem Nassif, Town Manager Robinson, Assistant Town Manager Pattison and Assistant Town Manager Henderson. During the feasibility analysis portion of this project, the task force received extensive reports from Populous, Inc., regarding minor league baseball stadiums recently constructed throughout the country, the costs related to such facilities, design parameters, methods of financing and, in some cases, related stadium development and lease agreements.

Recommended Action:

That the Town Council and Redevelopment Agency Board of Directors approve and adopt a Site Dedication and Development Agreement between Town and HDC Group, LLC, for land donation purposes; and, authorize the Town Manager, Town Attorney and Town Clerk to execute said agreement.

Proposed by: Assistant Town Manager, Econ. & Comm. Dev Item Number _____

T. M. Approval: _____ Budgeted Item Yes No N/A

Based upon the review and analysis of this information, three key items of interest became clear to the task force: (i) the cost of construction of minor league baseball stadiums had risen between 500% and 600% since the construction of Mavericks' stadium in 1989; (ii) in order for the Town to be able to take advantage of this opportunity, and to keep the ultimate lease payments and agreement provisions acceptable to Brett, the land for the stadium and related improvements would have to be donated free of charge to the Town; and, (iii) before the Town could engage Brett in serious negotiations, it would have to secure site control in order to assure Brett that, if agreement was reached, the Town could deliver on its legal obligations.

During the course of task force deliberations, various, potential stadium locations were analyzed by staff. Some of these potential locations were immediately discarded for one reason or another and some required further due diligence analysis. After this process was complete, the potential sites were rated by staff. Other than the sites' ability to accommodate a development of the type being considered, the key rating factor in establishing a preferred site alternative was the willingness and ability of the property owners to consider land donations to the Town for this purpose. Two land owners, owning property immediately adjacent to one another were able to meet this key requirement, HDC Group, LLC (represented by Tom Hrubik), and Bear Valley & Apple Valley 103, LLC (represented by Robert ("Bob") Shaw), respectively. After negotiations, it was determined that HDC Group, LLC, would donate 30-acres to the Town and Bear Valley & Apple Valley 103, LLC would donate 11.6-acres, for a total of 41.6-acres for the Apple Valley baseball stadium project.

The specific deal points related to the above referenced land donations are contained in the attached Site Dedication and Development Agreements, but it is important to summarize for the Council, and the general public, the key elements of the attached agreements. The Site Dedication and Development Agreements provide that the Town, at its sole cost, will (i) develop and approve a Specific Plan and Environmental Impact Report (EIR); install full-width road improvements on Geronimo Road, from Apple Valley Road to Deep Creek Road, including a traffic signal at the intersection of Apple Valley and Geronimo Roads; (ii) install full-width road improvements on Locust Road, from Geronimo Road to Bear Valley Road, including drainage systems and a traffic signal at Locust and Bear Valley Roads; and (iii) install road improvements on Bear Valley Road, from Locust Road to Cottontail Road (stadium property fronting Bear Valley Road).

In addition to the above items, the proposed 209-acre Specific Plan will contain land uses related to the baseball stadium and three additional athletic fields, commercial development and high quality, for-sale only, multifamily town homes and condominiums. The Specific Plan will further provide for the relocation of "The Mansion" project from its former, proposed location in the Deep Creek area, which was denied by court action, to an area generally located at the northwest corner of Bear Valley Road and the logical extension of Deep Creek Road, north of Bear Valley Road. Because the anticipated opening date of the stadium is April 2011, and because the stadium takes at least one-year to construct, the only way for the Town Council to accomplish its goal with respect to this project is embark upon the development of a Specific Plan in order to provide for the land uses and activities described above. In this regard, staff is recommending the approval of a professional services agreement between the Town and Terra Nova Partners for the development of the Specific Plan and Environmental Impact Report. The company Terra Nova Partners is familiar to those members of the community who have followed the development and approval of the North Apple Valley Specific Plan and the Town's first comprehensive General Plan Update since 1991, which occurred at the Town Council's last meeting. Terra Nova's intimate knowledge of the Town enables it to use much of the data it

developed while preparing the General Plan for the proposed Specific Plan development process, saving the Town money and time in carrying out this signature project.

While the Specific Plan development process is taking place, Populous, Inc., the proposed architect of record will be taking all necessary steps to design a baseball stadium facility that meets the standards and specifications of the National Association of Minor League Baseball and the California League. As noted earlier, Populous has extensive, direct, on-point experience in developing baseball stadium facilities of the type contemplated by the Apple Valley stadium development program. The proposed agreement between Populous, Inc., and the Town outlines the full scope of architectural services required by this project, including design development, cost estimating, project management, bid preparation and issuance and related services.

In the current economic climate, it is important to address how the Town would pay for the improvements it would commit itself to in the event the Council approves the actions recommended by staff. First, it is important to state up front that no Town General Fund revenues would be used to finance the Town obligations associated with this project. As the Council is aware, the General Fund is the life blood of any municipality in the state of California. As such, any transaction that would require a General Fund contribution from the Town would not be recommended by staff. In that regard, staff is pleased to note for the record that the Town obligations will be met by the issuance of lease revenue bonds (or similar financial facility), whereby the lease payments made by the High Desert Mavericks would pay for, and extinguish, the bond indebtedness associated with the successful sale of the lease revenue bonds and the cost of stadium construction. Further, the Town's redevelopment, traffic impact fee, sewer and drainage funds will pay for the public infrastructure improvements the Town will be installing. As the Assistant Town Manager for Finance & Administration has previously reported, monies in these funds are sufficient for the Town to meet its obligations in connection with the proposed baseball stadium project.

It is noted that the four proposed agreements are a package deal; that is to say this project cannot proceed as envisioned if the Council adopts one or two, but not all, of the proposed agreements. **It is also important to point out that the recommended motions are actions of both the Town and the Redevelopment Agency.** If the Council is desirous of proceeding as recommended, all four agreements must be approved and adopted. To assist the Council in this regard, staff is recommending that the Council receive one oral staff report on the four related items, but take separate actions on each of the proposed agreements. In this way, the public record will reflect four separate actions taken by the Council and Redevelopment Agency regardless of the actions taken. Based upon the foregoing, staff recommends adoption of the form motion.

**STADIUM SITE DEVELOPMENT
AND
DEDICATION AGREEMENT**

BETWEEN

**THE TOWN OF APPLE VALLEY,
a California Municipal Corporation**

and

**HDC GROUP, LLC,
a California Limited Liability Company**

August __, 2009

STADIUM SITE DEVELOPMENT AND DEDICATION AGREEMENT

THIS STADIUM SITE DEVELOPMENT AND DEDICATION AGREEMENT ("Agreement") is made by the Town of Apple Valley, a California Municipal Corporation ("Town") and HDC GROUP, LLC, a California Limited Liability Company ("Property Owner").

RECITALS

A. The Town desires to enter negotiations for the relocation of the High Desert Mavericks ("Team"), a minor league professional baseball team, and an affiliate of the Seattle Mariners to the town of Apple Valley ("Relocation").

B. In order to facilitate the Relocation, the Town is undertaking the development and implementation of a specific plan ("Specific Plan") which will include the development and construction of a 41.6 acre baseball stadium complex with related amenities and improvements ("Stadium"), as well as related road and storm drain improvements and infrastructure ("Improvements") to serve the Stadium and the surrounding area within a specific plan area of approximately 209 acres which includes that certain real property identified by assessors parcel numbers 3087-171-07, 08, 11, 12, 14, 15, 16, 17 and 18 ("Specific Plan Area").

C. Property Owner owns certain land located within the proposed boundaries of the Specific Plan Area identified as assessors parcel numbers 3087-171-08, 11 and 12 ("Owner Property").

D. The Town desires the Property Owner's cooperation and support in the development of the Specific Plan, including the dedication of fee ownership of approximately 30 acres of assessors parcel number 3087-171-08 ("Property") to the Town for use as part of the Stadium site which is depicted on the attached Exhibit "A" ("Dedication Parcel"). Property Owner shall retain fee ownership of the remainder of the Property ("Remainder Parcel") and the Out Parcels (as defined in Section 3(c)(iv)), located within the Remainder Parcel.

E. Property Owner desires to obtain the benefits of the Specific Plan for the Owner Property and is willing to dedicate the Dedication Parcel, in fee, to the Town, subject to the obligations of the Town which are set forth in this Agreement.

F. It is the intent of the Town and Property Owner that the dedication of the Dedication Parcel shall occur following the formal adoption of the Specific Plan and the satisfaction or waiver by the Town of certain conditions of dedication set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals noted above, and the mutual promises and covenants herein contained, it is agreed as follows:

1. Effective Date. This Agreement shall become not become effective until it has been (i) executed by an authorized representative of the Town; (ii) executed by an authorized

representative of the Property Owner; and (iii) is approved by the Town Council. The Effective Date of this Agreement shall be the date upon which all of the foregoing conditions to effectiveness have occurred, provided, however, that if the Effective Date has not occurred as of September 30, 2009, then either party can terminate this Agreement.

2. Obligations of Property Owner

(a) License and Right of Way to Property. Property Owner hereby grants to the Town a non-exclusive license and right of way during the term of this Agreement to enter onto the Property and the Dedication Parcel and to undertake such due diligence and inspections, surveys and tests as may be necessary in Town's reasonable discretion for the evaluation, planning and development process for the Stadium and the Improvements, including, without limitation, Phase I and Phase II environmental site assessments, soils, geological and/or engineering studies and land use or related studies. All such due diligence shall be at the Town's sole cost and expense. The Town and its agents, employees, contractors or representatives shall coordinate all on site activities with the Property Owner and the Property Owner shall have the right to be present during any inspections or other activities on the Property. If Town proposes to make any tests in connection with any Phase II environmental assessment or any other tests which involve drilling, boring or other similar intrusive or invasive action on or under the Property, then Town shall restore the Property to its original condition after any and all tests and/or inspections. Town shall not excavate, grade, stock pile or relocate any soil, fill, gravel or other material prior to Town's Acceptance (as defined in Section 4) of the Dedication. Town agrees that it shall indemnify, protect, defend and hold harmless Property Owner and the Property from and against any and all costs, losses, liabilities, damages, lawsuits, judgments, actions, proceedings, penalties, demands, attorneys' fees, liens (including, without limitation, mechanic's liens), or expenses of any kind or nature whatsoever, arising out of or resulting from any entry and/or activities upon the Property by Town, Town's agents, contractors and/or subcontractors. Town's indemnification obligations set forth herein shall survive any termination of this Agreement. The Town is insured against liability pursuant to a self insured retention program and risk pool. Town shall keep such coverage in full force and effect during the Term and agrees to provide Property Owner, upon reasonably request, pertinent information regarding its coverage. For purposes of this Agreement, Property Owner shall be included and/or treated as if it were an additional named insured under Town's self insurance program.

(b) Cooperation. Property Owner agrees to cooperate with Town to support the planning process consistent with the terms of this Agreement and to provide such input and information for the development of the Specific Plan as may be reasonably requested by Town, but at no cost to Property Owner, from time to time during the term of this Agreement.

(c) Dedication. Property Owner agrees to dedicate the Dedication Parcel to the Town ("Dedication") within ten (10) business days of receiving written notice from the Town that the following conditions to Dedication have been satisfied (i) the formal adoption of a Specific Plan by the Town Council which substantially complies with the terms of Section 3(b); and (ii) the satisfaction or waiver by Town of the Conditions of Acceptance which are set forth in Section 4. Town shall give Property Owner written notice of the completion of the conditions set forth in clause (i) and clause (ii) above. The Dedication shall be memorialized by Property Owner's execution of a grant deed in substantially the form attached hereto as Exhibit "B"

("Grant Deed"). The Town shall pay all expenses (to the extent that Town is not exempt under applicable law) incurred in connection with the preparation and recording of the Grant Deed, including without limitation, all costs associated with escrow, title insurance, recording and documentary transfer taxes. The Grant Deed shall contain a condition of reversion that in the event that the Town does not use the Dedication Parcel for the construction of the Stadium or terminates this Agreement in accordance with Section 5(b), then the Dedication Parcel shall revert to Property Owner.

3. Obligations of Town.

(a) Specific Plan. In order to move forward with the development of the Stadium and the Dedication, the Town must first adopt a Specific Plan for the Specific Plan Area. Immediately following the Effective Date, the Town shall allocate resources for the commencement of the planning process to prepare and adopt the Specific Plan, including environmental compliance for the Specific Plan Area. Property Owner shall be included in the planning process and shall have the opportunity to provide input and information regarding the future development of the Owner Property and the Remainder Parcel as part of the Specific Plan. The Town intends to use its best efforts to complete said process and obtain final adoption of the Specific Plan during the month of December, 2009, so as to allow the Town to commence construction of the Stadium in March, 2010 with a target date of opening the Stadium complex in time for the 2011 baseball season. The foregoing schedule is for planning purposes only and is subject to the timely completion of all of the requirements of the planning process and the concurrent satisfaction of the conditions that are set forth in Section 4.

(b) Treatment of Property. The Town intends to include in the Specific Plan a designation concerning the approval of "The Mansion" project to be located on approximately 20 acres in the northwest corner of the Remainder Parcel in the vicinity of Bear Valley Road and adjacent to Deep Creek Road as "right-of-zone" providing for the development of a 340 unit senior development. The designation of the Remainder Parcel, the Owner Property and all other properties within the Specific Plan Area is subject to the completion of the Town's planning process and the final adoption of the Specific Plan by the Town Council. Property Owner acknowledges that the Town is not legally obligated to include any designation for "The Mansion" project within the Remainder Parcel, provided, however, that the obligation of Property Owner to make the Dedication shall be expressly contingent on such designation for the Remainder Parcel or such alternative designation as the Property Owner may approve.

(c) Completion of Improvements.

(i) As part of the development of the Stadium complex and the implementation of the Specific Plan, the Town shall complete, at its sole cost and expense, including without limitation, the cost of any regulatory compliance or mitigation measures, the following Improvements within the Specific Plan Area:

(1) Install full width road improvements on Geronimo Road from Apple Valley Road to Deep Creek Road, including installation of a traffic signal at the intersection of Apple Valley Road and Geronimo Road;

(2) Install full width road improvements on Locust Road from Bear Valley Road to Geronimo Road, including installation of a traffic signal at the intersection of Bear Valley Road and Locust Road;

(3) Install a regional storm drainage system along Locust Road from Bear Valley Road to the north side of Geronimo Road, which will accommodate and receive drainage from the Dedication Parcel, the Remainder Parcel and the Owner Property, provided, however, that Property Owner shall consent to the inclusion of the Remainder Parcel and the Owner Property within the boundary of the assessment district to be formed for the maintenance of the regional storm drainage system and shall be responsible for payment of all of the regular fees and charges associated with connecting to and receiving service from such system.

(4) Install infrastructure to that portion of the Remainder Parcel identified on Exhibit "C" which will be located immediately in front of the Stadium (the "Out Parcels"), such that the Out Parcels shall be "development ready. The parties have tentatively agreed to the location and size of the Out Parcels, which agreement is subject to further clarification; and

(5) Install sewer infrastructure at a location to be determined by Town and HDC, which shall include sewer infrastructure to the Dedication Parcel, the Out Parcels and to the western property line of The Mansion project.

(ii) Dedication of Right of Way and Construction of Improvements. At the request of Town, no less than thirty (30) days prior to the commencement of construction of the Improvements, Property Owner agrees to dedicate, at no cost to Town and free and clear of any encumbrances, a public right of way to the Town within the boundary line of the Property as reasonably necessary for the Town to complete and maintain the Improvements described in Section 3(c)(i) ("Right of Way"). During the Construction of the Improvements, the Town and/or its contractor, shall (1) cooperate with Property Owner during such construction to avoid any unreasonably interference with Property Owner's use of the Property; (2) indemnify and hold harmless Property Owner from any damages, claims or liability arising as a result of construction activities and maintain appropriate insurance coverage for such claims as provided in Section 2(a) or through the commercial carrier of any contractor, which will be required to provide customary insurance coverage; and (3) shall promptly remove any lien or encumbrance on the Property arising as a result of the construction of the Improvements.

(iii) Cost of Improvements. It is intended by the parties that the Town shall bear all costs and expenses related to the Improvements and Property Owner shall not be obligated to pay any impact, mitigation or other fee related to the cost of the Improvements, provided, however, that connection fees for sewer service shall apply to the development of the Remainder Parcel and the Out-Parcels.

(d) Negotiation of Definitive Agreements for Stadium. The Town shall negotiate, in good faith, with the current owner of the High Desert Mavericks, Major League Baseball, the National Association of Professional Baseball Leagues, the American League of Professional Baseball Clubs and the Seattle Mariners' or any affiliate or successor of the above entities to implement the relocation of the High Desert Mavericks to the Town.

(e) Reimbursement of Costs. The Town agrees to reimburse Property Owner for certain stranded development costs, including legal fees, which have been incurred by Property Owner in connection with its planned development of a senior housing project in the amount of Sixty Thousand Dollars (\$60,000), subject to verification by Town staff of the actual amount of such costs.

(f) Obligations Regarding Dedicated Parcel. The transfer of the Dedication Parcel to the Town shall be exempt from compliance with the Subdivision Map Act, however, within six months of the Dedication, the Town shall take such steps as are necessary, at its sole cost and expense, for the Dedication Parcel and the Remainder Parcel to be recognized as separate legal parcels under the requirements of the Subdivision Map Act. The Town shall further deliver to Property Owner an independent appraisal of the Dedicated Parcel, which appraisal shall take into account the value of the Dedicated Parcel as a portion of the Stadium site..

(g) Use of Sky Box. The Town shall negotiate with the Team to retain the exclusive use of a sky box at the Stadium (provided that in no event shall Town be required to purchase or pay an annual fee to the Team for the sky box) and shall enter into a joint use agreement with Property Owner for the joint use of such sky box by Property Owner and Town for a period of _____ (__) years. Property Owner and Town shall each pay their pro-rata share of any periodic maintenance fees in connection with the use of such sky box and each party shall be solely responsible for any service, food or beverage fees incurred by such party or its invitees.

4. Conditions of Acceptance. Town's obligation to accept the Dedication of the Dedication Parcel and to move forward with the construction of the Stadium and the Improvements is subject to the satisfaction of the following conditions for Town's benefit (or Town's waiver thereof, it being agreed that Town may waive any or all of such conditions) (collectively, the "Conditions of Acceptance"):

(a) Approval of the Property. Town shall be satisfied with all aspects of the Dedication Parcel and its condition and suitability for Town's use for the Stadium site.

(b) Approval of Title and Release of Encumbrances. Town shall have reviewed and approved the condition of title to the Dedicated Parcel. Property Owner shall have obtained and provided to the Town agreements of partial reconveyance from all holders of mortgages, deeds of trust, liens and other encumbrances over the Dedication Parcel releasing the Dedication Parcel from such mortgages, deeds of trust, liens and other encumbrances.

(c) Adoption of the Specific Plan. Town shall have adopted the Specific Plan.

(d) Concurrent Dedication. Town shall have negotiated a related Stadium Site Development and Dedication Agreement with Bear Valley & Apple Valley 103, LLC ("BVAV") for the dedication of property owned by BVAV within the Specific Plan Area which is adjacent to the Dedication Parcel for use as the Stadium Site.

(e) Stadium Lease Agreement. The Town and the owner of the Team shall have entered into a binding Memorandum of Understanding or other binding contractual commitment, which contains the material terms concerning the Relocation of the Team and the

lease of the Stadium for a period no less than the term of the bonds described in sub-section (f) below.

(f) Financing Contingency for Stadium. The obligation of Town to move forward with the construction of the Stadium and the Improvements shall be subject to the availability of financing for the Stadium in the form of lease revenue bonds or such other financing vehicle which is acceptable to the Town Council.

(g) Approvals. Town shall have received the following approvals or a reasonable assurance of such approvals in a form which is satisfactory to Town and its legal counsel:

(i) Major League Baseball and the National Association of Professional Baseball Leagues (Minor League Baseball) shall have approved, in writing, the Relocation of the High Desert Mavericks;

(ii) Major League Baseball and the National Association of Professional Baseball Leagues (Minor League Baseball) shall have approved, in writing, all plans for the proposed stadium and facilities; and

(iii) The Seattle Mariners, or any successor Major League Baseball affiliate, and the American League of Professional Baseball Clubs shall have approved, in writing, the Relocation.

5. Termination.

(a) Termination Without Cause Prior to Dedication.

(i) By Property Owner. Property Owner shall have the right to terminate this Agreement upon ten (10) days written notice to Town if (i) it has not become effective as of September 30, 2009; (ii) the Specific Plan has not been adopted in substantial compliance with Section 3(b); and/or (iii) the other Conditions of Acceptance have not been satisfied or waived as of June 30, 2010.

(ii) By Town. Town shall have the right to terminate this Agreement upon ten (10) days written notice to Property Owner if (i) it has not become effective as of September 30, 2009; or (ii) the Specific Plan has not been adopted and/or the other Conditions of Acceptance have not been satisfied or waived as of June 30, 2010.

(iii) Effect of Termination. If Property Owner or Town terminates this Agreement due to the failure to adopt the Specific Plan or the non satisfaction of any of the other Conditions of Acceptance, then both Property Owner and Town shall be relieved of all further obligations and liabilities under this Agreement, except for any indemnity and insurance obligations of Town set forth in the Agreement, which shall survive termination.

(b) Termination Without Cause Following Dedication. Following Dedication, the Town shall have the right to terminate this Agreement upon thirty (30) days written notice to Property Owner if there is the subsequent failure of one of the Conditions of Acceptance set forth in Section 4(e), 4(f) or 4(g), there is a legal or regulatory challenge to the Stadium project or the

Specific Plan, or the Town determines that the Stadium project is no longer economically viable for any reason. Upon the effective date of such termination, the Dedication Parcel shall revert to Property Owner in accordance with the condition of reversion set forth in the Grant Deed and the Deed Restriction shall terminate. Town agrees to execute such documentation as is reasonably requested by Property Owner to further evidence and document such reversion and termination. Following such termination, Property Owner and Town shall be relieved of all further obligations and liabilities under this Agreement, except for any indemnity and insurance obligations of Town set forth in the Agreement, which shall survive termination.

(c) Termination For Breach. In the event either party defaults in the performance of any one of its obligations under this Agreement, such party shall be deemed to be in material breach of this Agreement if, following ten (10) days written notice, such party fails to correct such default, or in the case of any obligation requiring more than ten (10) days to cure, if such party fails to commence and diligently pursue to completion such cure and does within a reasonable period complete such cure. Except as set forth in Section 5(d), in the event of a material breach, the sole and exclusive remedy shall be termination of this Agreement.

(d) Right to Pursue Remedies. Notwithstanding the terms of Section 5(b), upon a breach by Property Owner of its obligations under Section 2(c) or a breach by Town of its obligations under Section 3(c), the non breaching party shall have the right to pursue any right or remedy that is available to it under law or equity.

6. Miscellaneous.

(a) Authority. Each of the signatories hereto represents and warrants to the other parties that it is authorized to execute this Agreement and that the obligations of the party on whose behalf it signs have been authorized by all requisite corporate action, as appropriate.

(b) Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by overnight courier or sent by facsimile and shall be deemed received upon the earlier of (i) if personally delivered or sent via overnight courier, the date of delivery to the address of the person to receive such notice, or (ii) if given by facsimile, when sent. Any notice, request, demand, direction or other communication sent by facsimile must be confirmed within twenty-four (24) hours by letter delivered by overnight courier.

To Town: Town of Apple Valley
 Attn: Frank W. Robinson, Town Manager
 14955 Dale Evans Parkway
 Apple Valley, California 92307
 Telephone: (760) 240-7000

With a copy to: Best, Best & Krieger
 3500 Porsche Way
 Ontario, California 91764
 Attention: Mr. John Brown
 Telephone: (909) 989-8584

Facsimile: (909) 944-1441

To Property Owner: HDC GROUP, LLC
P.O. Box 2611
Apple Valley, California 92307
Attention: Tom Hrubik, Operations Manager
Telephone: (760) 240-3544
Facsimile: (760) 240-9555

With a copy to: O'Connor, Packer & Dunivan
3400 Fourth Avenue
San Diego, CA 92103-491
Attention: Ms. Laura W. Packer
Telephone: (619) 298-9034
Facsimile: (619) 298-1220

(c) Term. This Agreement shall remain in effect, unless earlier terminated in accordance with Section 5, until all obligations of Property Owner and Town have been fulfilled. Upon completion of the Dedication, the grant of the Right of Way and the construction of the Stadium and Improvements in accordance with Section 3, this Agreement shall expire, except for any indemnity and insurance obligations of Town set forth in this Agreement, which obligations shall survive expiration.

(d) Integration. This Agreement supersedes all prior agreements and understandings between the parties relating to the subject matter hereof. Neither of the parties has relied upon any oral or written representation or oral or written information given to it by any representative of the other party.

(e) Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(f) Binding Effect. This Agreement shall bind and inure to the benefit of the parties successors and permitted assigns.

(g) Construction of Agreement. This Agreement will be liberally construed to effectuate the intention of the parties with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, neither this Agreement nor any uncertainty or ambiguity herein will be construed or resolved against either party (including the party primarily responsible for drafting and preparation of this Agreement), under any rule of construction or otherwise, it being expressly understood and agreed that the parties have participated equally or have had equal opportunity to participate in the drafting hereof.

(h) Amendment/Modification. No change or modification of the terms or provisions of this Agreement shall be deemed valid unless in writing and signed by both parties.

(i) Governing Law/Venue. This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of California. The parties agree that any litigation or arbitration regarding this Agreement will be brought in the courts of the County of San Bernardino, California.

(j) No Third Party Beneficiaries. This Agreement is not intended to extend to third party beneficiaries and does not create any right in third parties to enforce the rights or obligations of the parties hereto.

(k) Attorneys' Fees. In the event of any action or proceeding to enforce or construe any of the provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to attorneys' fees and costs.

(l) Counterparts. This Agreement may be executed in counterparts and, when so executed by the parties, shall become binding upon them and each such counterpart will be an original document.

(m) Memorandum of Agreement. A memorandum of this Agreement in the form attached hereto as Exhibit "D" may be recorded against the Property by Town at any time following the Effective Date. Promptly following the termination of this Agreement pursuant to Section 5(a) or 5(b), the Town shall execute a release of the Property from the memorandum of agreement.

(n) Assignment/ Benefits & Burdens Run with the Property. This Agreement shall be binding on the successors and assigns of the parties. Property Owner shall have the right to assign and delegate its rights and obligations under this Agreement, but only in connection with the transfer of all or any portion of the Property and then, only with the written consent of the Town. Notwithstanding the foregoing, however, Property Owner's rights shall not be assigned without the concurrent delegation of any and all of Property Owner's duties and obligations hereunder. The benefits and burdens shall run with the Property. Property Owner shall disclose the existence of this Agreement, and the material terms thereof, in any document selling, transferring, or conveying any interest (including any option) in the Property.

(o) Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party contractual rights by custom, estoppel, or otherwise.

(p) Cooperation; Further Acts. The parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

(q) Captions/Headings. The captions of the various sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

(r) Incorporation of Exhibits/ Recitals. The Recitals of this Agreement and the Exhibits attached hereto are incorporated herein and made an operative part of this Agreement.

(s) Not a Statutory Development Agreement. This Agreement is not a statutory development agreement as described by Government Code Section 65864, et seq. This Agreement confers no vested entitlements with respect to the development of the Property. This Agreement does not limit, in any way whatsoever, any authority the Town may have to lawfully increase any development impact fee, change land use regulations, or otherwise lawfully exercise all powers available to the Town pursuant to its police power, statutes, and judicial decision.

[signature page follows]

SIGNATURE PAGE
TO
STADIUM SITE DEVELOPMENT AND DEDICATION AGREEMENT

Date: August __, 2009

TOWN OF APPLE VALLEY,
a California Municipal Corporation

By: _____
Frank W. Robinson

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
John Brown, Town Attorney

HDC GROUP, LLC,
a California Limited Liability Company

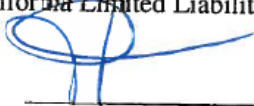
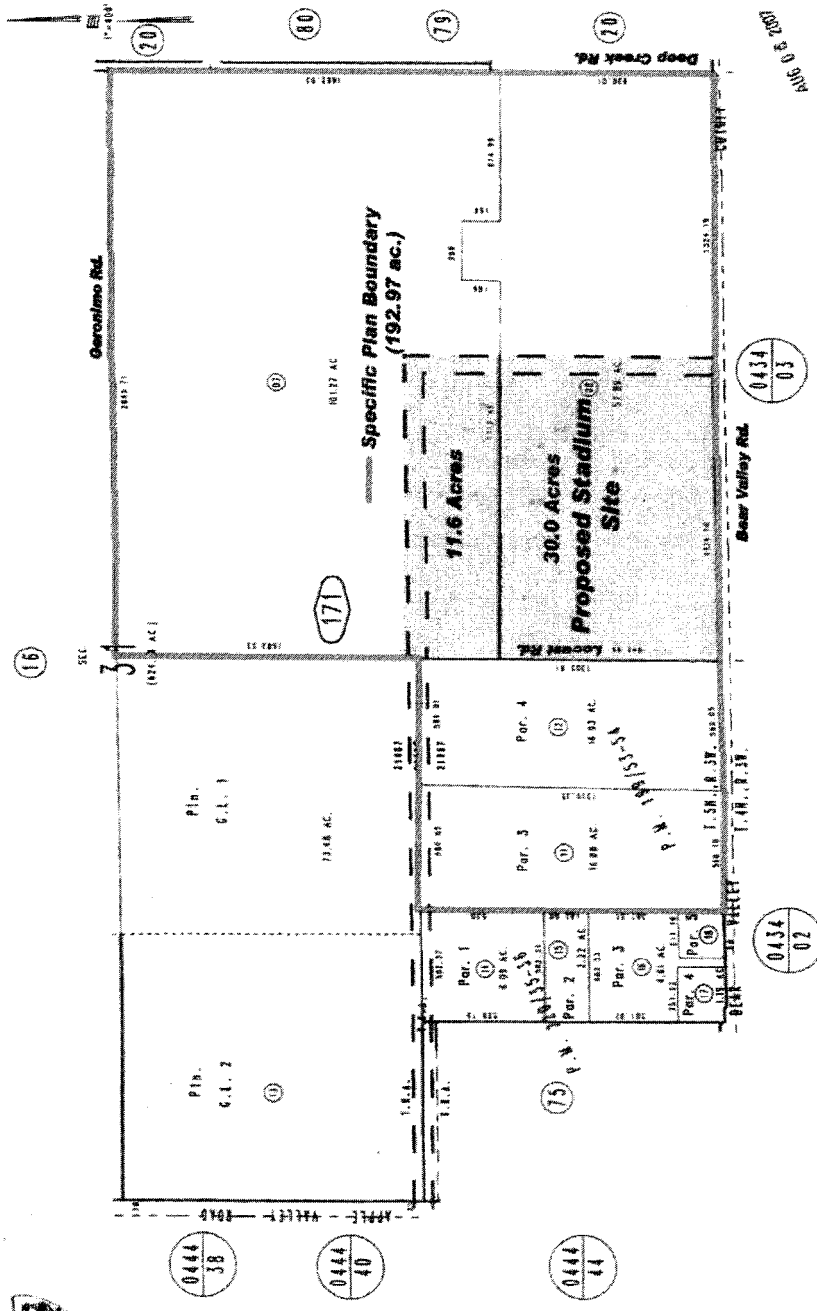
By: 
Name: THOMAS A HRUAK
Title: PRESIDENT

EXHIBIT "A"
 MAP OF PROPERTY AND RETAINED PARCEL

S.1/2 Fractional Sec. 31, T.5N.,R.3W., S.B.M.
 Town of Apple Valley 3087-17
 Tax Rate Area
 21007, 21015

THIS MAP IS FOR THE PURPOSE
 OF ASSESSMENT ONLY.



Assessor's Map
 Book 3087 Page 17
 San Bernardino County

Parcel Map No. 17486, P.M. 270/35-38
 Plan, Parcel Map No. 15851, P.M. 189/51-54

OCTOBER 1995

EXHIBIT "B"
GRANT DEED

See Attached

RECORDING REQUESTED BY, AND
WHEN RECORDED, RETURN TO:

Glen W. Price
BEST BEST & KRIEGER LLP
3750 University Avenue, Suite 400
Riverside, CA 92501

Space above this line for Recorder's Use

GRANT DEED

No Recording Fee Pursuant to Gov 't Code § 27383
No Documentary Transfer Tax Pursuant to
California Revenue & Taxation Code § 11922

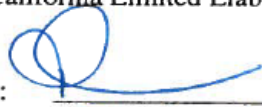
THE UNDERSIGNED GRANTOR DECLARES:

Documentary Transfer Tax is: \$ -0- **Transfer is exempt pursuant to R&T § 11922**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, HDC GROUP, LLC, a California Limited Liability Company, hereby GRANTS to TOWN OF APPLE VALLEY, a California Municipal Corporation, the real property located in the County of San Bernardino, State of California, as more particularly described on Exhibit "A", attached hereto and incorporate herein by this reference.

Dated: _____

HDC GROUP, LLC,
a California Limited Liability Company

By: 
Name: THOMAS A HRVAK
Title: PRESIDENT

MAIL TAX STATEMENTS TO:

NOTARY ACKNOWLEDGEMENT ATTACHED

EXHIBIT "A" TO GRANT DEED

LEGAL DESCRIPTION

[A legal description adequate to describe the Dedication Parcel and convey title of such parcel to the Town shall be added at the time of dedication]

EXHIBIT "C"
 MAP OF OUT-PARCELS



EXHIBIT "D"
MEMORANDUM OF AGREEMENT

See Attached

RECORDING REQUESTED BY, AND
WHEN RECORDED, RETURN TO:

Glen W. Price
BEST BEST & KRIEGER LLP
3750 University Avenue, Suite 400
Riverside, CA 92501

Space Above This Line For Recorder's Use

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (the "Memorandum") is made as of August __, 2009, by and among HDC Group, LLC, a California Limited Liability Company ("Property Owner") and the Town of Apple Valley, a California Municipal Corporation ("Town"), each of whom is sometimes collectively referred to herein as a "Party" and collectively as the "Parties".

1. Property Owner is the owner of certain real property located in the Town of Apple Valley, County of San Bernardino, State of California, as more particularly described on Exhibit "A" attached hereto ("Property").

2. Pursuant to that certain Stadium Site Development and Dedication Agreement dated August 17, 2009 (the "Agreement") between Property Owner and Town, Property Owner has agreed, subject to the satisfaction of certain terms, conditions and limitations set forth in detail in the Agreement, to dedicate portions of the Property to the Town for use as a municipal stadium site and to provide a public right of way for certain public improvements in connection with said stadium site.

3. The Agreement is subject to termination without cause by Property Owner and/or Town upon the occurrence of certain events. Following any such termination of the Agreement, the Town shall promptly execute a release of this Memorandum of Agreement.

4. The purpose of this Memorandum is solely to give notice of the existence of the rights granted by or on behalf of the Parties under the Agreement with respect to the Property and nothing contained herein shall be interpreted to alter, amend or modify the terms of the Agreement.

Signature Page Follows

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Agreement to be executed and sealed, all the day and year first written above.

Date: August __, 2009

TOWN OF APPLE VALLEY,
a California Municipal Corporation

By: _____
Frank W. Robinson


ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:
BEST BEST & KRIEGER LLP

By: _____
John Brown, Town Attorney

HDC GROUP, LLC,
a California Limited Liability Company

By: 
Name: THOMAS A. HRVAK
Title: PRESIDENT

NOTARY ACKNOWLEDGEMENTS ATTACHED

EXHIBIT "A" TO MEMORANDUM OF AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 1:

BEGINNING AT THE SOUTH ¼ CORNER, SECTION 31, TOWNSHIP 5 NORTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN; THENCE NORTH 00° 33' 30" EAST, ALONG THE WEST LINE OF THE SOUTHEAST ¼ OF SAID SECTION 31 959.99 FEET; THENCE NORTH 89° 43' 56" EAST 1712.42 FEET; THENCE NORTH 00° 16' 04" WEST 166.00 FEET; THENCE NORTH 89° 43' 56" EAST 260.00 FEET; THENCE SOUTH 00° 16' 04" EAST 166.00 FEET; THENCE NORTH 89° 43' 56" EAST 674.99 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST ¼ OF SAID SECTION 31, SAID POINT BEING NORTH 0° 30' 03" EAST 960.01 FROM THE SOUTHEAST CORNER OF SAID SECTION 31; THENCE SOUTH 00° 30' 03" WEST, ALONG THE EAST LINE OF SAID SOUTHEAST ¼ 960.01 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 31; THENCE SOUTH 89° 45' 27" WEST, ALONG THE SOUTH LINE OF SAID SECTION 31 1324.20 FEET TO THE SOUTHEAST CORNER OF THE WEST ½ OF THE SOUTHEAST ¼ OF SAID SECTION 31; THENCE SOUTH 89° 42' 29" WEST, CONTINUING ALONG THE SOUTH LINE OF THE SOUTHEAST ¼ OF SAID SECTION 31 1324.17 FEET TO THE POINT OF BEGINNING.

EXCEPTING THE SOUTHERLY 30.00 FEET OF THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 31, TOWNSHIP 5 NORTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN.

ALSO EXCEPTING THE SOUTHERLY 17.00 FEET OF THE WEST ½ OF THE SOUTHEAST ¼ OF SECTION 31, TOWNSHIP 5 NORTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN.

ALSO EXCEPTING AND RESERVING UNTO TEXACO PRODUCING, INC. ALL OF THE MINERALS, INCLUDING WITHOUT LIMITATION, ALL THE OIL, GAS AND OTHER HYDROCARBON SUBSTANCES BUT WITHOUT ANY RIGHTS TO USE THE SURFACE OR THAT PORTION OF SAID LAND LYING WITHIN FIVE HUNDRED (500) FEET OF THE SURFACE, AND ALSO EXCEPTING AND RESERVING UNTO TEXACO PRODUCING, INC. THE RIGHT TO DRILL INTO AND THROUGH SAID LAND LYING BELOW FIVE HUNDRED (500) FEET FROM THE SURFACE. THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE NO. LLA-2002-9, DATED JANUARY 20, 2003, AND RECORDED JANUARY 30, 2003, AS INSTRUMENT NO. 03-63210 OF OFFICIAL RECORDS.

PARCEL 2:

Summary Statement
Page 25

PARCELS 3 AND 4 OF PARCEL MAP NO. 16051, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 199 OF PARCEL MAPS, PAGES 53 AND 54, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM ALL OF THE MINERALS, INCLUDING AND WITHOUT LIMITATION, ALL THE OIL, GAS AND OTHER HYDROCARBON SUBSTANCE BUT EXCLUDING EXPLICITLY LIMESTONE AND WITHOUT ANY RIGHTS TO USE THE SURFACE OF THAT PORTION OF SAID LAND LYING WITHIN 500 FEET OF THE SURFACE, AND ALSO THE RIGHT TO DRILL INTO AND THROUGH SAID LAND BELOW 500 FEET FROM THE SURFACE, AS RESERVED TO TEXACO PRODUCING, INC., A DELAWARE CORPORATION, IN DEED RECORDED MAY 4, 1987, INSTRUMENT NO. 87-145771, OFFICIAL RECORDS.

APN: 3087-171-08-0-000 and 3087-171-11-0-000 and 3087-171-12-0-000