

AGENDA ITEM NO. 8.7

ORDINANCE NO. 29-2014

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADOPTING A DEVELOPMENT AGREEMENT WITH ELK GROVE TOWN CENTER, LP

WHEREAS, on June 27, 2001, the City Council certified the Environmental Impact Report (EIR, State Clearinghouse No. 1997122002) for the Lent Ranch Marketplace Project and adopted the Lent Ranch Special Planning Area, which provided for the development of a regional mall and surrounding retail, office, and entertainment development; and

WHEREAS, the Planning Division of the City of Elk Grove received an application on April 11, 2014 from Elk Grove Town Center, LP (the "Applicant") requesting an amendment to the approved District Development Plan for the Regional Mall site (District A) of the Lent Ranch Special Planning Area (the "Project"); and

WHEREAS, the proposed Project is located on real property in the incorporated portions of the City of Elk Grove more particularly described as APN 134-1010-001; and

WHEREAS, the City determined that the Project is subject to the California Environmental Quality Act; and

WHEREAS, the Project is located within the Lent Ranch Special Planning Area for which an EIR (State Clearinghouse No. 1997122002) was prepared and certified July 2001; and

WHEREAS, California Environmental Quality Act (CEQA) Guidelines section 15162 identifies that when an EIR has been certified for a project, no subsequent EIR shall be prepared for that project unless then lead agency (the City) determines, on the basis of substantial evidence in light of the whole record, one or more substantial change in the project, circumstances, or information (as defined in the section) have occurred; and

WHEREAS, the Planning Commission held a duly noticed public hearing on September 18, 2014 as required by law to consider all of the information presented by staff, information presented by the Applicant, and public testimony presented in writing and at the meeting; and

WHEREAS, the City Council held a duly noticed public hearing on October 8, 2014 as required by law to consider all of the information presented by staff, information presented by the Applicant, and public testimony presented in writing and at the meeting.

NOW, THEREFORE, the City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose

The purpose of this Ordinance is to adopt the Development Agreement with Elk Grove Town Center, LP for the Project known as The Outlet Collection at Elk Grove.

Section 2: Findings

This Ordinance is adopted based upon the following findings:

California Environmental Quality Act (CEQA)

Finding: No further environmental review is required under the California Environmental Quality Act pursuant to State CEQA Guidelines section 15162.

Evidence: The City has reviewed the Project and analyzed it based upon the provisions in section 15162 of the State CEQA Guidelines. As described in the Project description, the Project will modify the format of the Regional Mall from a “traditional” mall to an “outlet” concept, but the configuration of the Project will be within the development parameters analyzed under the 2001 EIR for the Lent Ranch SPA. Specifically, the EIR identified a total leasable area of 1,300,000 square feet for District A and the Project proposes a first phase of approximately 775,000 total square feet with 689,000 being gross leasable area, or approximately 53-percent of the total allowed gross leasable area. Phase 2 has not been proposed for development as part of the project description, but will be required to fall within the approved uses and total development potential of the SPA that were analyzed in the 2001 EIR. The characteristics of the Phase 2 area are undefined and subject to speculation and, pursuant to CEQA Guidelines section 15145, cannot be further analyzed at this time. The proposed wireless telecommunication facilities (through the conditional use permit) will be within the core development area and are design consistent with the maximum height and density/intensity of development otherwise allowed in the District. Therefore, there are no substantial changes in the Project from that analyzed in the 2001 EIR and no new significant environmental effects, or substantial increase in the severity of previously identified significant effects. No new information of substantial importance has been identified.

Further, since no changes to the EIR are necessary to support the Project, the City is not required to prepare an Addendum to the EIR as required by State CEQA Guidelines Section 15164. Therefore, the prior EIR is sufficient to support the Project and no further environmental review is required.

Development Agreement

Finding #1: The development agreement is consistent with the General Plan objectives, policies, land uses, and implementation programs and any other applicable specific plans.

Evidence: The proposed Development Agreement is consistent with the General Plan as the General Plan designates the subject property for commercial development and the Development Agreement provides for the development up to the 1,300,000 square feet allocated for District A, consistent with the Special Planning Area. The site is not subject to a specific plan.

Finding #2: The development agreement is in conformance with the public convenience and general welfare of persons residing in the immediate area and will not be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole.

Evidence: The Project is in conformity with public convenience, general welfare and good land use practices because it will develop a Regional Mall along the Highway 99 corridor that will accommodate the growing need for such services in the City of Elk Grove and surrounding region. The Project will create a commercial, retail, and entertainment development that is of high quality and fully integrated on one site rather than less desirable piecemeal land uses spread out over several other locations. The Project will provide an expanded economic base for the City of Elk Grove through the generation of significant increased tax revenue. The Development Agreement is necessary in order to obtain the major investment necessary to develop the Project. Absent approval of the Development Agreement, the City would not obtain the benefits of the Project to the community. The Development Agreement will establish land use regulations for a reasonable period to allow project build out in accordance with the approved entitlements for development, and to ensure a cohesive development. The Project will provide the variety of land uses noted above at one attractively designed, well-planned site, located adjacent to major highways and a freeway interchange for maximum public convenience. The Project will also provide these services to the residents of existing and planned residential developments, thereby reducing the number of vehicle miles traveled to obtain these same services at greater distances, and improving air quality. The Project will also create indirect economic benefits and serve as a catalyst for additional economic activity as a result of job creation and the spending of Project wages in the City. Thus, in accordance with good land use practices, the Project will promote a better balance of employment, services and housing, and improve the mix of uses in the community.

Finding #3: The development agreement will promote the orderly development of property or the preservation of property values.

Evidence: the Project site is designated in the General Plan for commercial development. Approval of the Project will result in the development of these lands and the provision of urban levels of public infrastructure and services to areas within the City. Thus, the uses proposed by the Project are consistent with those envisioned for the area in the General Plan. The Project will contribute to a balance of land uses within the City by providing a diversity of necessary services that respond to the needs of the surrounding community and the region. The Project will be compatible with and preserve (or even increase) the property values of the predominantly residential development proposed or otherwise approved for surrounding areas, by providing necessary and desirable services nearby. The Project, as designed, will be a cohesive, planned multi-use development, and will provide a visually pleasing, safe and attractive gathering place that will encourage community identity. Necessary infrastructure, including sewer, water, and roadways, to serve the Project have been constructed. As a result, the Project will not adversely affect the orderly development of property, and property values will be preserved or increased.

Section 3: Action

The City Council hereby approves and adopts the Development Agreement between the City of Elk Grove and Elk Grove Town Center, LP, attached as Exhibit A and incorporated herein by this reference. The City Manager is hereby authorized and directed to execute the Development Agreement on behalf of the City.

Section 4: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 6: Savings Clause

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and affect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 7: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

ORDINANCE: **29-2014**
INTRODUCED: October 8, 2014
ADOPTED:
EFFECTIVE:

GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

SIGNED: _____

EXHIBIT A

OFFICIAL CITY BUSINESS
No recording fee
Government Code Section 6103

RECORDING REQUESTED BY:

City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Clerk

WHEN RECORDED MAIL TO:

City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

DEVELOPMENT AGREEMENT
BETWEEN THE
CITY OF ELK GROVE,
AND
ELK GROVE TOWN CENTER, LP

DEVELOPMENT AGREEMENT

This Development Agreement (this Agreement) is entered into between the City of Elk Grove ("City"), and Elk Grove Town Center, LP, a Delaware limited partnership ("Developer"). For the purposes of this Agreement, Developer and City are referred to individually as "Party" and collectively as the "Parties."

RECITALS

This Agreement is predicated upon the following findings:

- A. On September 5, 2001 by Ordinance 13-2001, the Elk Grove City Council adopted that certain Development Agreement among the M&H Realty Partners III L.P, a California limited partnership ("M&H Realty"), Robert H. and Lisa Lent, the Brian Wayne Lent Trust, and Susan Rasmussen (the "Lents"), the Marilyn J. Wackman Revocable Trust; and the City of Elk Grove, for the development of the 295-acre Lent Ranch Marketplace Special Planning Area (the "2001 Development Agreement"), and
- B. Concurrently with the approval of the 2001 Development Agreement, the City adopted the Lent Ranch Marketplace Special Planning Area ("SPA"), along with amendments to the City's General Plan and Zoning Code, and certified an Environmental Impact Report pursuant to the requirements of the California Environmental Quality Act ("CEQA"); and
- C. Developer is that party identified as the "Mall Developer" under the 2001 Development Agreement; and
- D. Pursuant to the 2001 Development Agreement and the SPA, on July 11, 2007 the Elk Grove City Council approved a Development Plan Review (EG-05-878) for the Elk Grove Promenade development, which permitted the construction of an initial 1.1 million square foot open-air regional mall in SPA District A; and
- E. Developer has completed construction of major backbone infrastructure and offsite improvements to serve the SPA area; and
- F. While substantial construction of the Elk Grove Promenade project was undertaken, the project was stopped in December 2008 due to the economic recession and the bankruptcy reorganization of General Growth Properties, Inc.; and
- G. Developer has submitted a plan for the substantial reuse of the existing building construction and improvements in SPA District A, through the development of commercial and retail uses; and

- H. The approved Development Plan Review described in the Project Approvals will result in development of the Property and significant benefits to the City through tax revenue, employment opportunities and the utilization of a partially developed but vacant property at a critical gateway location in the City; and
- I. In exchange for the benefits to the City, Developer desires to receive the assurance that it may proceed with the Project in accordance with the Existing Land Use Regulations, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded Developer by *Government Code* §65864.

NOW, THEREFORE, the Parties agree as follows:

TERMS AND CONDITIONS

1. Definitions

- 1.1. "Adopting Ordinance" is the ordinance of the City Council approving this Agreement, as adopted on October 22, 2014 by City Ordinance No. 29-2014.
- 1.2. "City" means the City of Elk Grove, and depending on the context, may include its agents, officers, employees, representatives and elected and appointed officials.
- 1.3. "City Council" shall mean the City Council of the City of Elk Grove and its designees.
- 1.4. "Developer" means Elk Grove Town Center LP or any Successor.
- 1.5. "Development Agreement Law" means Government Code Section 65864 *et seq.*
- 1.6. "Effective Date" means that day on which the Adopting Ordinance shall be effective 30 days after its adoption by the City Council, unless the Adopting Ordinance becomes subject to a qualified referendum, in which case the Effective Date shall be the day after the referendum election, if the Adopting Ordinance is approved by a majority of the voters. Litigation filed to challenge the Adopting Ordinance or this Agreement shall not affect the Effective Date, absent a court order or judgment overturning or setting aside the Adopting Ordinance, or staying the Effective Date, or remanding the Adopting Ordinance to the City.
- 1.7. "EIR" means that certain Draft and Final Environmental Impact Report for the Project, State Clearinghouse No. 1997122002, as certified by the City Council in June 2001, and including all Addenda thereto subsequently approved by the City.

- 1.8. "Existing Land Use Regulations" means the City of Elk Grove General Plan, any applicable specific plans, and the Elk Grove zoning ordinance existing as of September 5, 2001, except as modified by the 2001 Approvals.
- 1.9. "Fee" shall include charges, expenses, costs, monetary exactions and any other monetary obligation imposed on Developer by the City, and shall not be limited to fees paid pursuant to this Agreement, but shall not include fees collected by City on behalf of and for the benefit of another public agency. (The term "fee" need not be capitalized in this Agreement.)
- 1.10. "Improvement" means any on-site or off-site conveyance, grant or dedication of property or property rights, non-monetary exaction, construction and/or installation of a work of public improvement, street, facility, utility or park or recreational amenity which is to be transferred to the City or any other contribution of property (other than fees), imposed on Developer by the City, as applicable. (The term "improvement" need not be capitalized in this Agreement.)
- 1.11. "Law" means the case law, ordinances, statutes, rules, regulations, standards, policies, programs, or any order, decree or directive of any court or any local, regional, state or federal government agency, including the City, unless the context suggests a different meaning.
- 1.12. "Mitigation Measures" mean the mitigation measures included in the EIR or its mitigation monitoring plan as modified and/or adopted by the City Council.
- 1.13. "New Construction" shall mean any building, structure or improvement that is not part of the original 572,368 square feet of shell buildings permitted, and that has not already been partially constructed as of the Effective Date.
- 1.14. "Project" is defined by reference to the Project Approvals, as supplemented by the provisions of this Agreement.
- 1.15. "Project Approvals" shall mean the following land use approvals, all approved on or before October 22, 2014 which, among other things, govern the permitted uses, density and intensity of land uses, the timing and sequencing of development, and the maximum height and size of proposed buildings with respect to the Property:
- 1.15.1. This Agreement, as adopted by the Adopting Ordinance
- 1.15.2. Regional Mall District Development Plan & Review, File. 14-012.

- 1.15.3. Amendments to the Lent Ranch Special Planning Area, as adopted by the City Council by Ordinance 28-2014.
- 1.16. "Property" is that certain real property consisting of approximately 100.34 acres in the City of Elk Grove, Assessor's Parcel Number 134-1010-001, and more particularly described in Exhibit A hereto. The term "Property" may include any part of the Property, depending on the context.
- 1.17. "SPA" shall mean the Lent Ranch Marketplace Special Planning Area, as approved by the City on September 5, 2001 and amended by the City, per Ordinance 28-2014.
- 1.18. "SPA District A" shall mean the Property, as defined and regulated under the SPA
- 1.19. "Successor" is any assignee pursuant to Section 10 (i.e., any recognized successor in interest under this Agreement), and any subsequent assignees.
- 1.20. "2001 Approvals" shall mean those approvals and entitlements approved by the City in June 2001, as follows:
 - 1.20.1. General Plan Amendments as adopted by Resolution No. 2001-43 for the Lent Ranch Marketplace development
 - 1.20.2. Zoning Code Text Amendment to Establish the SPA, as adopted by Ordinance No. 10-2001 and the remaining provisions of the Zoning Code in effect as of September 5, 2001
 - 1.20.3. Tentative Parcel Map for the Lent Ranch Marketplace, as adopted by Resolution No. 2001-43, and all final subdivision maps affecting the Property
 - 1.20.4. The EIR, as defined by Section 1.7
 - 1.20.5. The 2001 Development Agreement
- 1.21. "2001 Development Agreement" shall mean that certain Development Agreement adopted by Ordinance 13-2001 on September 5, 2001.
- 1.22. "Vested right" is a right to proceed with the development of the Project in accordance with: (1) the terms and scope of the Project Approvals as defined in this Agreement, which Project Approvals may not be amended, modified or changed by the City except as provided by this Agreement, and (2) the Existing Land Use Regulations, and (3) the rights vested by the 2001 Development Agreement as set forth in Exhibit B of

this Agreement (The term "vested right" need not be capitalized in this Agreement.)

2. Representations, Warranties and Acknowledgments

- 2.1. Title to Property. Developer represents and warrants that as of the Effective Date, Developer holds a legal or equitable interest in and to the Property.
- 2.2. Authority. The parties represent and warrant that the persons signing this Agreement are duly authorized to enter into and execute this Agreement on behalf of their respective principals.
- 2.3. Agreement as Binding Covenant. The parties intend and determine that the provisions of this Agreement shall constitute covenants which shall run with said Property, and the burdens and benefits hereof shall bind and inure to all successors in interest to the parties hereto. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property hereunder, or with respect to any City owned property or property interest, (i) is for the benefit of such properties and is a burden upon such property, (ii) runs with such properties, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

3. Term and Termination

- 3.1. Term. The term of this Agreement shall commence on the Effective Date and shall last four (4) years following the Effective Date, unless this Agreement is (1) earlier terminated as set forth in this Agreement or (2) extended in writing by mutual agreement of all of the parties. In the event that development of 400,000 square feet of gross building area pursuant to the Project Approvals is completed (as documented by the issuance of a final certificate of occupancy for 400,000 square feet of gross building area), the Agreement shall automatically be extended for an additional period of ten (10) years without the need for further action or approval by the parties. Otherwise, this Agreement shall automatically expire on the fourth anniversary of the Effective Date.
- 3.2. Termination by Mutual Consent. This Agreement may be terminated in whole or in part by the mutual written consent of all of the parties. Any fees paid or improvements dedicated to the City prior to the effective

date of termination shall be retained by the City, as applicable. Notwithstanding the above, nothing in this section shall be interpreted to result in the forfeiture of impact fees or permit fees (or eligibility for fee credits or refunds) previously paid by Developer for building square footage that has either (1) not been constructed as of the date of termination of this Agreement by mutual consent, or (2) previously constructed by Developer and demolished pursuant to the Project Approvals.

- 3.3. Effect of Termination. Termination of this Agreement, whether by mutual written consent as provided in Section 3.2, default as provided in Section 8, or by expiration of its own accord, shall not: (1) affect any pre-existing liability under this Agreement owed by one party to the other, which remains unsatisfied as of the effective date of termination; (2) affect those provisions of this Agreement which provide that they shall survive the termination of this Agreement; (3) be construed to terminate or modify an applicable covenant, condition, servitude or restriction that runs with the land and binds Successors; (4) affect the validity of any structure on the Property or improvement which is completed as of the date of termination and is in compliance with all necessary permits; or (5) prevent Developer from completing any structure on the Property or improvement under construction at the time of termination, provided that any such structure or improvement is completed in accordance with all necessary permits.
- 3.4. Effect of Termination on Vested Rights. Upon termination of this Agreement, whether by mutual written consent as provided in Section 3.2 or default as provided in Section 8 or by expiration of its own accord, the Project Approvals and any amendments thereto shall not automatically be repealed or rescinded, but Developer shall no longer have a vested right to them except to the extent that Developer has independently acquired a common law vested right to them.

4. Project Approvals and Vested Rights

- 4.1. Project Approvals. Upon the Effective Date, and except as otherwise provided in this Agreement, Developer shall acquire and/or maintain a vested right in the Project Approvals, the 2001 Approvals and the Existing Land Use Regulations for the term of this Agreement. Developer shall acquire a vested right to any amendments to the Project Approvals, the 2001 Approvals or Existing Land Use Regulations affecting the Property as of the date of approval of such amendments by the City Council; provided, however, that Developer shall not acquire a vested right to any such amendment approved after the expiration of the term of this Agreement.
- 4.2. Development Standards. The density and intensity of use, the rate, timing and sequencing of development, the maximum height and size of

proposed buildings, and provisions for reservation and dedication of land shall be as set forth in the 2001 Approvals, except as modified by the Project Approvals.

- 4.3. Phasing and Timing of Development. The parties recognize that the Project is the initial phase of development within SPA District A, and further development within SPA District A may occur in one or more additional phases. The parties acknowledge that, as of the Effective Date, Developer has not proposed a plan for the development of future phases within the SPA. The City retains discretion to review and approve subsequent applications for future phases of development within SPA District A, subject to the vested rights provided by this Agreement.

With the exception of the Project, the parties acknowledge that Developer cannot at this time predict with certainty when or the rate at which phases of the Property would be developed. Such decisions depend upon numerous factors which are not all within the control of Developer, such as market conditions and demand, interest rates, competition and other factors. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), 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 controlling the parties' agreement, it is the intent of City and Developer to hereby acknowledge and provide for the right of Developer to develop the Property in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment, subject to the terms, requirements and conditions of the Project Approvals and this Agreement. City acknowledges that such a right is consistent with the intent, purpose and understanding of the parties to this Agreement, and that without such a right, Developer's development of the Property would be subject to the uncertainties sought to be avoided by the Development Agreement Statute and this Agreement. The Developer shall use its best efforts, in accordance with its business judgment and taking into consideration market conditions and other economic factors influencing Developer's business decision, to commence or to continue development, and to develop the Property in a regular, progressive and timely manner in accordance with the provisions and conditions of this Agreement and with the Project Approvals. Notwithstanding the foregoing, it is the Developer's intent, without limiting its legal rights, to develop not less than 400,000 square feet of gross building area eligible for a final certificate of occupancy prior to the fourth anniversary of the Effective Date.

- 4.4. Initiatives, Referenda and Growth Control. Subject to the vesting provisions of the Development Agreement Law, Developer and City intend that, except as otherwise provided herein, this Agreement shall vest the Project Approvals against subsequent City resolutions,

ordinances, growth control measures and initiatives or referenda, other than a referendum that specifically overturns City's approval of the Development Agreement, that would directly or indirectly limit the rate, timing or sequencing of development, or would prevent or conflict with the land use designations, permitted or conditionally permitted uses on the Property, design requirements, density and intensity of uses as set forth in the Project Approvals, and that any such resolution, ordinance, initiative or referendum shall not apply to the development of the Property. Notwithstanding any other provision of this Agreement, Developers shall, to the extent allowed by the Development Agreement Law, be subject to any growth limitation ordinance, resolution, rule, regulation or policy which is adopted and applied on a uniform, city-wide basis and directly concerns an imminent public health or safety issue. In such case, City shall apply such ordinance, resolution, rule, regulation or policy uniformly, equitably and proportionately to Developer and the Property and to all other public or private owners and properties directly affected thereby.

4.5. Reserved Powers. Subject to the vested rights granted by this Agreement, the City reserves the right to:

- 4.5.1. Grant or deny applications for land use approvals for the Project and the Property, provided such grant or denial is consistent with this Agreement;
- 4.5.2. Approve, disapprove or revise subdivision maps, parcel maps or lot line adjustments for the Project and the Property, provided such grant or denial is consistent with this Agreement;
- 4.5.3. Adopt, increase and impose regular taxes applicable on a City-wide basis;
- 4.5.4. Adopt, increase and impose utility charges applicable on a City-wide basis;
- 4.5.5. Adopt, increase and impose permit processing fees, inspection fees and plan check fees applicable on a City-wide basis;
- 4.5.6. Adopt and apply regulations mandated by Law or necessary to protect the public health and safety. To the extent that such regulations affect the Developer, the City shall apply such ordinance, resolution, rule, regulation or policy uniformly, equitably and proportionately to Developer and the Property and all other public or private owners and properties affected thereby. For purposes of this Agreement, any Law with respect to flood protection shall be deemed necessary to protect the public health and safety;

- 4.5.7. Adopt, increase or decrease the amount of, fees, charges, assessments or special taxes, except to the extent restricted by this Development Agreement; provided, however, that Developer may challenge the imposition of any newly imposed fee solely on the grounds that such fee was not properly established in accordance with applicable law;
 - 4.5.8. Adopt and apply regulations relating to the temporary use of land, the control of traffic, the regulation of sewers, water, and similar subjects, and the abatement of public nuisances;
 - 4.5.9. Adopt and apply City engineering design standards and construction specifications;
 - 4.5.10. Adopt and apply the various building standards codes, as further provided in Section 4.6;
 - 4.5.11. Adopt Laws that are not in conflict with, or that are less restrictive than, the terms and conditions for development of the Project established by this Agreement; and
 - 4.5.12. Exercise its power of eminent domain with respect to any part of the Property.
- 4.6. Building Codes Applicable. New construction undertaken pursuant to the Project Approvals shall be constructed in accordance with the California Building Standards Codes, Title 24 of the California Code of Regulations, as adopted and amended by the City, as the same shall be in effect as of the time of approval of the permit in question. If no permit is required for a given infrastructure improvement or other improvement, such improvement will be constructed in accordance with said Codes in effect in the City as of the commencement of construction of such improvement.
- 4.7. Meet and Confer. If Developer believes that the City is taking action to impair a vested right conferred by this Agreement, Developer shall provide written notice to City describing the basis for Developer's position. The parties shall meet and confer within thirty (30) days thereafter in an attempt to arrive at a mutually acceptable solution.
- 4.8. Court Order or Judgment. Notwithstanding anything in this Agreement to the contrary, a vested right acquired by Developer with respect to any Project Approval shall be deemed a nullity without compensation to Developer in the event that such Project Approval is overturned or set aside by a court of law. An invalidated Project Approval shall regain its vested right status in the event that the court's decision is reversed on appeal.

4.9. Effect on 2001 Development Agreement. Except as provided in Exhibit B, Developer shall have no further rights or obligations under the 2001 Development Agreement, which shall be superseded with respect to the Property and Developer by this Agreement. Nothing in this Agreement shall effect or modify the rights or obligations of the 2001 Development Agreement as to those parties (or any of them) identified as "Developers" therein.

5. Fees, Improvements and Mitigation Measures

5.1. Waiver of Fee Vesting. Notwithstanding anything in this Agreement to the contrary, but subject to Section 5.3 and the 2001 Approvals (including Exhibit E to the 2001 Development Agreement), Developer hereby waives the vesting of all City fees. Accordingly, the amount of all fees not addressed under Section 5.3 of this Agreement and the 2001 Approvals shall be determined as of the time they become due and payable after imposition by the City. Nothing herein shall preclude Developer from challenging the establishment of any new fee (as opposed to an increase in an existing fee) solely on the grounds that such fee was not properly established in accordance with applicable law or this Agreement.

5.2. Processing Fees. Developer shall pay all City costs in connection with processing and preparing any Project permit, certificate, map, approval, consent or agreement, including this Agreement. All such costs incurred prior to the Effective Date shall be paid in full, prior to the Effective Date. Thereafter, all such costs incurred must be paid, in full, prior to approval of each phase of the Project, as determined by the City.

5.3. Developer's Satisfaction of Prior Obligations under the 2001 Development Agreement. It is acknowledged by the parties that many of the obligations of Developer under the 2001 Development Agreement for payment of fees, dedication of land, and construction of public improvements in connection with development of the Property have already been satisfied, as specifically identified on Exhibit C to this Agreement. Developer shall be required to pay Measure A Development Impact Fees for New Construction. It is the intent of the parties that all obligations of Developer as set forth on Exhibit C be applicable to and credited toward the Project, and all future development on the Property that may be approved by the City during the Term of this Agreement. Notwithstanding the above, the limitations contained in this section shall not apply to any increment of future development on the Property that would exceed the scope or impact of development within SPA District A allowed under the 2001 Approvals.

5.4. Mitigation of EIR Impacts. Developer shall at its own cost timely satisfy and comply with all Mitigation Measures in accordance with the schedule in the mitigation monitoring plan adopted by the City Council in connection with the Project Approvals, to the extent the same have not

been previously satisfied as set forth in Section 5.3. The Mitigation Measures are conditions of approval of the Project but are not the exclusive conditions of approval of the Project. A failure to timely satisfy or complete any Mitigation Measure or other condition of approval without prior written City approval may be considered an event of default under this Agreement, subject to Section 8.

5.5. Other Public Agencies. Nothing in this Agreement is intended to govern the authority of public agencies other than the City to impose dedication or improvement conditions, or fees.

6. Permits

6.1. Necessary Permits. Developer shall not commence any work under this Agreement until it has obtained all required City, county, state and federal permits, approvals and licenses.

6.2. Withholding of Permits. In the event that any fee, improvement or dedication required under this Agreement is not timely paid, made or completed, the City may withhold any permit, certificate, approval or consent (including building permits) until payment is made, irrespective of whether there is a nexus between the fee, improvement or dedication and the permit, certificate, approval or consent.

7. Amendments to this Agreement

7.1. Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of all of the parties hereto and in accordance with the procedures of the Development Agreement Law.

7.2. Insubstantial Amendments. The City Manager is authorized to approve insubstantial amendments to this Agreement on behalf of the City without a hearing before or action by the Planning Commission or City Council. "Insubstantial amendments" means amendments to this Agreement which do not relate to (a) the term of the Agreement; (b) the permitted uses of the Property; (c) the reservation or dedication of land; (d) the location and maintenance of on-site and off-site improvements; (e) the density or intensity of use of the Project; (f) the maximum height or size of proposed buildings; (g) monetary contributions by Developer required by this Agreement; or (h) the phasing or timing of construction of the improvements, which shall require an amendment of this Agreement. The City Manager shall be empowered in his or her sole discretion to determine whether or not an amendment is insubstantial. Notwithstanding this section and Section 7.3 of this Agreement, the City Manager retains the right, but not the obligation, to seek City Council approval and/or direction as to any amendments to this Agreement, even if such amendments might be considered insubstantial.

7.3. Amendment of Project Approvals. Any amendment of Project Approvals relating to: (a) the permitted use of the Property; (b) provision for reservation or dedication of land; (c) the density or intensity of use of the Project; (d) the maximum height or size of proposed buildings; (e) monetary contributions by the Developer; (f) the location and maintenance of on-site and off-site improvements; (g) any other issue or subject not identified as an "insubstantial amendment" in Section 7.2 of this Agreement; or (h) the phasing or timing of construction of the improvements, shall require an amendment of this Agreement approved by the City Council, with a recommendation by the Planning Commission if such recommendation is required by law. Other amendment of the Project Approval(s) shall not require amendment of this Agreement unless the amendment of the Project Approval(s) relates specifically to some provision of this Agreement or is otherwise required by law.

8. Default

8.1. Default. The failure of any party to this Agreement to perform any obligation or duty under this Agreement within the time required by this Agreement or any applicable cure period under this Agreement shall constitute an event of default. (For purposes of this Agreement, a party asserting that the other party is in default shall be referred to as the "Complaining Party" and the other party shall be referred to as the "Defaulting Party.")

8.2. Notice. No party shall be in default under this Agreement until the Complaining Party has first given written notice to the Defaulting Party, specifying the nature of the default and the manner in which the default may be cured, and the Defaulting Party fails to cure the failure to perform in accordance with Section 8.3. Any failure or delay by the Complaining Party in giving such notice shall not waive such default or waive any of the Complaining Party's remedies.

8.3. Cure. The Defaulting Party shall have thirty (30) days from the receipt of notice to cure the default. If the default cannot be reasonably cured within such time, the default cure shall be deemed cured if: (1) the cure is commenced at the earliest practicable date following receipt of notice; (2) the cure is diligently prosecuted to completion at all times thereafter; (3) at the earliest practicable date (but in no event later than thirty (30) days after receiving the notice of default), the Defaulting Party provides written notice to the Complaining Party that the cure cannot be reasonably completed within such thirty (30) day period; and (4) the default is cured at the earliest practicable date, but in no event later than ninety (90) days after receipt of the first notice of default. At the election of the City, the Term of this Agreement may be extended for the length of any cure period under this section.

- 8.4. Remedies. If the Defaulting Party fails to cure a default in accordance with the foregoing, the Complaining Party shall have the right to terminate this Agreement upon notice to the Defaulting Party and may pursue all remedies available at law or equity, including specific performance and injunctive relief.
- 8.5. Permits. In addition to and not in lieu of its other remedies, in the event that the City gives Developer a notice of default as provided in Section 8.2, the City shall have the right to withhold any permit, certificate, approval or consent for the Project (including building permits), irrespective of whether there is a nexus between the default and such permit, certificate, approval or consent. Such withholding shall cease when the default is cured in accordance with this Agreement.
- 8.6. Waiver of Damages. Developer acknowledges that under the Development Agreement Law, land use approvals (including development agreements) must be approved by the City Council and that under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer therefore waives all claims for damages against the City in the event that this Agreement or any Project Approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions or deletions to which Developer is opposed. Developer further acknowledges that as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer waives all claims for damages against the City in this regard. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that the City would not have entered into this Agreement had it been exposed to liability for monetary damages from Developer, and that therefore, Developer hereby waives any and all claims for monetary damages against the City for breach of this Agreement. Nothing in this section is intended to nor does it limit Developer's or the City's rights to equitable remedies as permitted by law, such as specific performance, injunctive and/or declaratory relief, provided that Developer waives any claims to monetary damages in conjunction with any such requested relief.
- 8.7. Rescission. Without limitation to other rights under this Agreement, or under law or equity, in the event that Developer believes that the purposes of this Agreement have been frustrated by the City Council's approval of this Agreement or any Project Approval with new changes, amendments, conditions or deletions to which Developer is opposed, Developer shall have ten (10) days after such approval in which to provide notice to the City that this Agreement shall be rescinded, without any further liability of the parties.

9. Insurance and Indemnity

9.1. Indemnification, Defense and Hold Harmless. Developer shall indemnify, defend, and hold harmless to the fullest extent permitted by law, the City (as defined in this Agreement) from and against any and all claims, liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with the Project, the Project Approvals or the Property (including any challenge to the adoption or validity of any provision of this Agreement or the Project Approvals, and including any actions or inactions of Developer's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Property or the Project), or Developer's failure to comply with any of its obligations in this Agreement, or Developer's failure to comply with any current or prospective Law; provided, however, that Developer shall have no obligations under this Section for such loss or damage which was caused by the sole negligence or willful misconduct of the City. This indemnification obligation shall survive this Agreement and shall not be limited by any insurance policy, whether required by this Agreement or otherwise.

9.1.1. In the event of any administrative, legal or equitable action instituted by any third party challenging this Agreement or any City approval, consent or action made in connection with this Agreement (each a "Third Party Challenge"), the City may tender the defense to Developer. In the event of such tender, Developer shall indemnify the City against any and all fees and costs arising out of the defense of such Third Party Challenge. The parties shall cooperate in defending such action or proceeding to dismissal, settlement or final judgment. The City's consent shall be required for any settlement.

9.1.2. If Developer should fail to timely accept a tender of defense as provided above, City may assume the control of the defense and settlement of such Third Party Challenge, and make any decisions in connection therewith in its sole discretion. Such assumption of the defense by the City shall not relieve Developer of its indemnification obligations for such Third Party Challenge.

9.2. Required Policies. Developer shall at all times during any construction activity with respect to the Property maintain a policy or policies in an amount of \$2 million combined single limit of: (1) commercial general liability insurance with policy limits reasonably acceptable to the City; and (2) Workers' Compensation insurance for all persons employed by Developer for work at the Project site. Developer shall require each contractor and subcontractor similarly to provide Workers' Compensation insurance for their respective employees.

9.3. Policy Requirements. The aforesaid required commercial general liability policies described in Section 9.2 shall: (1) contain an additional insured endorsement naming the City, its elected and appointed boards, commissions, officers, agents, employees and representatives; (2) include either a severability of interest clause or cross-liability endorsement; (3) require the carrier to give the City at least fifteen (15) business days' prior written notice of cancellation in coverage; (4) be issued by a carrier admitted to transact insurance business in California; and (5) be in a form reasonably satisfactory to the City.

9.4. Evidence of Insurance. Prior to commencement of any construction activity with respect to the Project, Developer shall furnish evidence satisfactory to the City of the insurance required above. The total limits of insurance required by the City may be satisfied with primary policies or through a combination of primary and excess/umbrella policies.

10. Right to Assign.

10.1. Right to Assign. The Developers shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively "assign"), in whole or in part, its rights, interests and obligations under this Agreement to a third party during the term of this Agreement. 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. A sample form of Assumption and Assignment is attached as Exhibit D.

10.2. City Consent. Except as provided in Section 10.4, no assignment shall be effective until the City, by action of the City Council, approves the assignment. Approval shall not be unreasonably withheld provided:

1. The assignee (or the guarantor(s) of the assignee's performance) has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and
2. The proposed assignee has adequate experience with developments of comparable scope and complexity to the portion of the Project that is the subject of the assignment.

10.3. Request for City Approval of Consent. Any request for City approval of an assignment shall be in writing and accompanied by certified financial statements of the proposed assignee and any additional information concerning the identify, financial condition and experience of the assignee as the City may reasonably request; provided that, any such request for additional information shall be made, if at all, not more than fifteen (15) business days after the City's receipt of the request for approval of the proposed assignment. All detailed financial information

submitted to the City shall constitute confidential trade secret information if the information is maintained as a trade secret by the assignee and if such information is not available through other sources. The assignee shall mark any material claimed as trade secret at the time it is submitted to the City. If City receives a public records request for any information designated a "trade secret" City shall notify the assignee of such request prior to releasing the material in question to the requesting party. If the assignee directs the City not to release the material in question, the assignee shall indemnify the City for any costs incurred by City, including but not limited to staff time and attorney's fees, as a result of any action brought by the requesting party to obtain release of the information and/or to defend any lawsuit brought to obtain such information. If the City wishes to disapprove any proposed assignment, the City shall set forth in writing and in reasonable detail the grounds for such disapproval. If the City fails to disapprove any proposed assignment within forty-five (45) calendar days after receipt of written request for such approval, such assignment shall be deemed to be approved.

- 10.4. Assignment in Connection with Sale of Small Parcels. The City's consent to a transfer or assignment of any parcel or portion of the Property less than or equal to 3 acres in area shall not be required. Developer shall provide written notice of any sale or transfer under this section to the City within 30 days after such sale or transfer is completed. For parcels that are greater than 3 acres in area but less than or equal to 5 acres in area, Developer shall seek and obtain City Manager approval for an assignment or transfer of such parcels. The City Manager may request any information listed in Section 10.2 in determining if his or her consent shall be granted. Such consent shall not be unreasonably withheld.
- 10.5. Financing. Mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable method of financing are permitted, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, the development and construction of improvements on the Property, operations and other necessary and related expenses. The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

- 10.6. Further Subdivision. The parties recognize and acknowledge that any further subdivision or parcelization of the Property must comply with applicable City laws and regulations and be consistent with the 2001 Approvals, the Project Approvals and this Agreement.
- 10.7. Reorganization Not An Assignment. Notwithstanding anything to the contrary set forth above, the following shall not be deemed an assignment requiring City consent under this Agreement: (i) any sale, pledge, assignment or other transfer of all or a portion of the Property to an entity directly controlled by Developer or its managers or affiliates and (ii) any change in corporate form, such as a transfer from a corporation to a limited liability company or partnership, that does not affect or change beneficial ownership of the Property (each, a "Permitted Change"); provided, however, Developer shall provide to City written notice of any such Permitted Change, together with such backup materials or information reasonably requested by City, within thirty (30) days following the date of such Permitted Change or City's request for backup information, as applicable.

11. Lender Rights and Obligations.

- 11.1. Prior to Lender Possession. No lender shall have any obligation or duty under this Agreement prior to the time the lender obtains possession of all or any portion of the Property to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of Developer or Developer's successors-in-interest, but such lender shall otherwise be bound by all of the terms and conditions of this Agreement which pertain to the Property or such portion thereof in which lender holds an interest. Nothing in this Section shall be construed to grant to a lender rights beyond those of the Developer hereunder or to limit any remedy City has hereunder in the event of a breach by Developer, including termination or refusal to grant subsequent additional land use approvals with respect to the Property.
- 11.2. Lender in Possession. A lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of Developer and which remain unpaid as of the date such lender takes possession of the Property or any portion thereof. Provided, however, that a lender shall not be eligible to apply for or receive approvals with respect to the Property, or otherwise be entitled to develop the Property or devote the Property to any uses or to construct any improvements thereon other than the development contemplated or authorized by this Agreement and subject to all of the terms and conditions hereof, including payment of all fees (delinquent,

current and accruing in the future) and charges, and assumption of all obligations of Developer hereunder; provided, further, that no lender, or successor thereof, shall be entitled to the rights and benefits of the Developer hereunder or entitled to enforce the provisions of this Agreement against City unless and until such lender or successor in interest qualifies as a recognized assignee of this Agreement and makes payment of all delinquent and current City fees and charges pertaining to the Property.

- 11.3. Notice of Developers' Breach Hereunder. If City receives notice from a lender requesting a copy of any notice of breach given to Developer hereunder and specifying the address for notice thereof, then City shall deliver to such lender, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed a breach, and if City makes a determination of non-compliance, City shall likewise serve notice of such non-compliance on such lender concurrently with service thereof on Developer.
- 11.4. Lender's Right to Cure. Each lender shall have the right, but not the obligation, for the same period of time given to Developer to cure or remedy, on behalf of Developer, the breach claimed or the areas of non-compliance set forth in City's notice. Such action shall not entitle a lender to develop the Property or otherwise partake of any benefits of this Agreement unless such lender shall assume and perform all obligations of Developer hereunder.
- 11.5. Right to Encumber. City agrees and acknowledges that this Agreement shall not prevent or limit the owner of any interest in the Property, or any portion thereof, at any time or from time to time in any manner, at such owner's sole discretion, from encumbering the Property, the improvements thereon, or any portion thereof with any mortgage, deed of trust, sale and leaseback arrangement or other security device. City acknowledges that any lender may require certain interpretations of the agreement and City agrees, upon request, to meet with the owner(s) of the property and representatives of any lender to negotiate in good faith any such request for interpretation. City further agrees that it shall not unreasonably withhold its consent to any interpretation to the extent such interpretation is consistent with the intent and purpose of this Agreement

12. Miscellaneous

- 12.1. Prevailing Wages. Where required by the Prevailing Wage Law (*Labor Code §1720 et seq.*), Developer shall pay prevailing wages, and shall direct its contractors and other parties with which it has a contractual relationship with respect to the Project, to pay prevailing wages. Developer's indemnification, defense and hold harmless obligations under Section 9.1 shall extend to any failure to pay prevailing wages where the same are required by law in connection with the Project.

Nothing in this section shall preclude Developer from challenging a prevailing wage determination made by the City or another agency, or from requesting a prevailing wage determination.

- 12.2. Estoppel Certificate. Either party may at any time request another party to certify in writing that: (1) this Agreement is in full force and effect; (2) this Agreement has not been amended except as identified by the other party; and (3) to the best knowledge of the other party, the requesting Party is not in default, or if in default, the other party shall describe the nature and any amount of any such default. The other party shall use its best efforts to execute and return the estoppel certificate to the requesting party within thirty (30) days of the request. The City Manager shall have authority to execute such certificates on behalf of the City.
- 12.3. Recordation. This Agreement shall not be operative until recorded with the Sacramento County Recorder's office. The City Clerk shall record this Agreement at its expense with the County Recorder's office within ten (10) days of the Effective Date, and shall cause any amendment to this Agreement or any instrument affecting the term of this Agreement to be recorded within ten (10) days from date on which the same become effective. Any amendment to this Agreement or any instrument affecting the term of this Agreement which affects less than all of the Property shall contain a legal description of the portion thereof that is the subject of such amendment or instrument.
- 12.4. Notices. All notices required by this Agreement or the Development Agreement Law shall be in writing and personally delivered or sent by certified mail, postage prepaid, return receipt requested. Notice required to be given to the City shall be addressed as follows:

City of Elk Grove
Planning Director
8401 Laguna Palms Way
Elk Grove, CA 95758
(with a copy to the City Manager and City Attorney)

Notice required to be given to Developer shall be addressed as follows:

Elk Grove Town Center, LP
c/o The Howard Hughes Corporation
One Galleria Tower
13355 Noel Road, 22nd Floor
Dallas, TX 75240
Attn: President
(with a copy to General Counsel)

Either party may change the address stated herein by giving notice in

writing to the other party, and thereafter notices shall be addressed and transmitted to the new address. All notices shall be deemed received on the earlier of the date that personal delivery is effected or the date shown on the return receipt.

- 12.5. Further Assurances, Consent and Cooperation. The parties agree to execute such reasonable additional instruments as are necessary to effectuate the intent of this Agreement; provided, however, that the City Council's discretion to vote in a particular manner cannot be constrained and that the City shall not be required to incur any costs thereby. Whenever the consent or approval of the other party is required under this Agreement, such consent shall not be unreasonably withheld, conditioned or delayed. The parties shall cooperate in good faith in obtaining any permits, entitlements or approvals required by other government entities for the Project.
- 12.6. Business Relationship. The parties acknowledge that Developer is not an agent, joint venturer, or partner of the City.
- 12.7. Third Party Beneficiaries. This Agreement is entered into for the sole benefit of the parties hereto and any Successors. No other party shall have any cause of action or the standing to assert any rights under this Agreement
- 12.8. Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, economic conditions, moratoria or similar bases for excused performance. If written notice of such delay is given to the City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

In the event litigation is initiated by any party other than Developer that challenges any of the Project Approvals or the environmental document for those approvals and an injunction or temporary restraining order is not issued, Developer may elect to have the term of this Agreement tolled, i.e., suspended, during the pendency of said litigation, upon written notice to City from Developer. The tolling shall commence upon receipt by the City of written notice from Developer invoking this right to tolling. The tolling shall terminate upon the earliest date on which either a final order is issued upholding the challenged approvals or said litigation is dismissed with prejudice by all plaintiffs. In the event a court

enjoins either the City or the Developer from taking actions with regard to the Project as a result of such litigation that would preclude any of them from enjoying the benefits bestowed by this Agreement, then the term of this Agreement shall be automatically tolled during the period of time such injunction or restraining order is in effect.

- 12.9. Bankruptcy. The obligations of this Agreement shall not be dischargeable in bankruptcy.
- 12.10. Attorneys' fees. In the event of litigation by one party against another under this Agreement and/or the related Amended and Restated Agreement Regarding Regional Mall, Fees and Infrastructure ("Amended Mall Agreement"), or to enforce any provision herein and/or the related Amended Mall Agreement, the prevailing party shall be entitled to recovery of its reasonable and actual attorneys' fees and litigation costs (as may be fixed by the Court) from the non-prevailing party, which recovery shall not cumulatively exceed One Hundred and Seventy Five Thousand Dollars (\$175,000.00) per lawsuit, including any counterclaims, cross-claims, related lawsuit and/or consolidated lawsuit. All attorneys' fees and litigation costs incurred by the prevailing party in excess of the amount recoverable under this section shall be borne by the prevailing party.
- 12.11. Liability of Officials. No City official or employee, agent or City contractor shall be personally liable under this Agreement.
- 12.12. Delegation. Any reference to any City body, official or employee in this Agreement shall include that the designee of that body, official or employee, except where delegation is prohibited by law.
- 12.13. Severability. Should any provision of this Agreement be found invalid or unenforceable by a court of law, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.
- 12.14. Integration. This Agreement constitutes the entire integrated understanding and agreement of the parties with respect to the subject matter hereof and supersedes any previous oral or written agreement. This Agreement may be modified or amended only by a subsequent written instrument executed by all of the parties.
- 12.15. Counterparts. This Agreement may be signed in one or more counterparts, and will be effective when all of the parties have affixed their signatures to the counterparts, at which time the counterparts together shall be deemed one original document; provided, however, that all executed counterparts are provided to the City Clerk.

- 12.16. Interpretation. The parties acknowledge that this Agreement has been negotiated by all parties and their legal counsel and agree that this Agreement shall be interpreted as if drafted by all parties.
- 12.17. Inconsistency. In the event of any conflict or inconsistency between the provisions of this Agreement and the Project Approvals and/or the 2001 Approvals, or exhibits thereto, this Agreement shall prevail.
- 12.18. Incorporation. The recitals and all defined terms in this Agreement are part of this Agreement. The following Exhibits attached hereto are incorporated into this Agreement and made a part hereof by this reference.
 - Exhibit A: Legal Description
 - Exhibit B: Vested Rights under 2001 Development Agreement
 - Exhibit C: Developer's Satisfaction of Prior Obligations
 - Exhibit D: Form of Assignment
- 12.19. Compliance with Laws. In connection with its performance under this Agreement, Developer shall comply with all applicable Laws.
- 12.20. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to principles of conflicts of law. In the event of litigation arising under this Agreement, venue shall reside exclusively in the Superior Court of the County of Sacramento.
- 12.21. Time of the essence. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of this _____ day of _____, 2014.

CITY OF ELK GROVE

Name: _____
City Manager

Name: _____
Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ELK GROVE TOWN CENTER, L.P., a Delaware Limited partnership

By: Elk Grove Town Center, L.L.C., its general partner

By: The Howard Research and Development Corporation, its sole member

By: _____

Its: _____

EXHIBIT A

Legal Description of the Property

All that certain real property situated in the City of Elk Grove, County of Sacramento, State of California, and is described as follows:

All of Lot A as depicted on that certain map entitled "Subdivision No. 00-038.00 Lent Ranch Marketplace", filed for record on December 14, 2007 in Book 372 of Maps, page 27, Sacramento County Records.

Together with a portion of Abandoned West Stockton Boulevard per Book 20081110, Page 381, Official Records of the County of Sacramento and more particular described as follow:

BEGINNING at the easterly terminus in the curved northerly boundary of said Lot A, being a curve concave to the south having a radius of 400.00 feet, a radial line of said curve to said terminus bears North 24°22'51" East; thence from said **POINT OF BEGINNING** North 52°04'42" East, a distance of 46.00 feet;

Thence South 37°55'18" East, a distance of 736.17 feet;

Thence South 33°02'59" East, a distance of 541.63 feet to the easterly line of said Lot A;

Thence coincidental with said easterly line, North 37°55'18" West, a distance of 1275.84 feet to the **POINT OF BEGINNING**.

Containing 100.34 acres of land net, more or less.

The **Basis of Bearings** for this description is the California State Plane Coordinate System, Zone 2, NAD'83, Epoch Date 1997.30, as measured between NGS Station "Eschinger," 1st order, and NGS station "Keller," 1st order. Said bearing is North 20°56'36" West. Distances shown are ground based
August 29, 2014

END OF DESCRIPTION

Michael E. Long P.L.S. 6815
Expires September 30, 2014.

PREPARED BY WOOD RODGERS, INC.
SACRAMENTO, CALIFORNIA

EXHIBIT B

Vested Rights Under 2001 Development Agreement

Except as otherwise specifically provided in the Agreement, the vested rights established under the following sections of the 2001 Development Agreement shall remain in full force and effect for the term of the Agreement:

1. Vested rights under the "Project Approvals" (as defined under the 2001 Development Agreement, except as specifically modified by the Project Approvals (as defined in Section 1.15 of the Agreement). See Sections 2(u) and 11 of the 2001 Development Agreement.
2. Subsequent Approvals as defined under Section 12 of the 2001 Development Agreement issued by the City prior to the Effective Date, except as specifically modified by the Project Approvals (as defined in Section 1.15 of the Agreement).
3. Vested rights granted to the "Mall Developer" under Section 15 and Exhibit E of the 2001 Development Agreement, except as otherwise specifically provided under the Agreement.

EXHIBIT C

Satisfaction Of Developer's Prior Obligations

The following sets forth the obligations under the 2001 Approvals that have been satisfied to date by the Developer.

Section 1 - Development Impact Fees

The table below summarizes the development impact and mitigation fees paid for permitted buildings. (572,368 Square Feet)

Fees Paid to City of Elk Grove

Capital Facilities Fee	\$1,051,157
Very Low Income Housing Fee	\$442,650
Roadway Fee*	\$8,531,766
Laguna Ridge Park Fee	\$120,625
<u>City Sub Total</u>	<u>\$6,514,090</u>

Fees Paid to Other Agencies

Elk Grove Unified School District	\$240,395
SASD	\$1,103,795
SRCSD	\$269,090
Zone 1 Fire Fee	\$792,676
Water	\$2,691,100
Storm Drainage	\$1,971,599
Swainson's Hawk	\$93,085
Agricultural Mitigation	Dedicated Easement
<u>Sub Total</u>	<u>\$6,128,669</u>
<u>Grand Total</u>	<u>\$12,642,759</u>

*Roadway fees prepaid for 1,213,254 square feet pursuant to the terms of that certain Agreement Regarding Regional Mall, Fees and Infrastructure by and between City and Developer dated November 14, 2007.

Section 2 - Construction of Infrastructure

Roadway Improvements

Roadway Segments

- Promenade Parkway – Kammerer Road to Lent Ranch North Project Boundary
- Kammerer Road – Promenade Parkway to Western Lent Ranch Project Boundary, and additional acceleration/deceleration lane on the north side of Kammerer Road, between Promenade Parkway to Western Lent Ranch Project Boundary
- Lent Ranch Parkway - Kammerer Road to Promenade Parkway
- Bilby Road - Promenade Parkway to Western Lent Ranch Project Boundary
- Kyler Road - Promenade Parkway to Western Lent Ranch Project Boundary

Intersections

- Promenade Parkway/Lent Ranch Parkway - Intersection
- Kammerer/Promenade Parkway - Intersection
- Promenade Parkway & Bilby Road - Intersection
- Promenade Parkway & Kyler Road - Intersection
- Lent Ranch Parkway/Kammerer Road - Intersection

Traffic Signals

- Promenade Parkway/Kyler Road
- Promenade Parkway/Bilby Road
- Promenade Parkway/Lent Ranch Parkway
- Promenade Parkway/South Mall Entrance
- Kammerer/Lent Ranch Parkway

Water Transmission and Distribution Mains

- 20" Transmission main within West Stockton Boulevard, from the Southern Boundary of the Elk Grove Automall to the Northerly Lent Ranch Project Boundary.
- 20" Transmission main within Promenade Parkway, from the Northerly Lent Ranch Project Boundary to the intersection of Promenade Parkway and Bilby Road.
- 24" Transmission main within Promenade Parkway, from intersection of Promenade Parkway and Bilby Road to the Intersection of Promenade Parkway and Kammerer Road
- 20" Transmission main within Bilby Road, from the Western Lent Ranch Project Boundary to the intersection of Promenade Parkway and Bilby Road.
- 16" Transmission main within Lent Ranch Parkway, from the intersection of Promenade Parkway and Lent Ranch Parkway to the Intersection of Lent Ranch Parkway and Kammerer Road.

- 20" Transmission main within Kammerer Road, from the Western Lent Ranch Project Boundary to the intersection of Kammerer Road and Promenade Parkway.
- 22 - 12" D-Main Stubs for Service to Parcels
- 10 - 8" D-main Stubs for Service to Hydrants

Trunk and Collector Sewer System

- 8" Sewer Main within Promenade Parkway from +/- 435' South of the Northern Lent Ranch Project Boundary to intersection of Promenade Parkway and Kyler Road
- 15" Sewer Main within Promenade Parkway from the intersection of Promenade Parkway and Kyler Road to the intersection of Promenade Parkway and Bilby Road
- 8" Sewer Main within Bilby Road from +/- 65' East of the Western Lent Ranch Project Boundary to the Intersection of Promenade Parkway and Bilby Road
- 12" Sewer Main within Promenade Parkway from the intersection of Promenade Parkway and Bilby Road to the intersection of Promenade Parkway and Lent Ranch Parkway
- 8" Sewer Main within Lent Ranch Parkway from +/- 300' North of the intersection of Lent Ranch Parkway and Kammerer Road to the Intersection of Lent Ranch Parkway and Promenade Parkway
- 15" Sewer Main within Promenade Parkway from the intersection of Promenade Parkway and Lent Ranch Parkway to +/- 600' North of the intersection of Promenade Parkway and Kammerer Road
- 8" Sewer Main within Promenade Parkway from +/- 600' North of the intersection of Promenade Parkway and Kammerer Road to intersection of Promenade Parkway and Kammerer Road
- 15" Sewer Main within Kyler Road from the intersection of Kyler Road and Promenade Parkway to the Western Lent Ranch project boundary
- 15" Sewer Main within Future Kyler Road traversing the Sterling Meadows Project from the Western Lent Ranch Marketplace Project Boundary to a future intersection of future Kyler Road and a future Roadway located +/- 600' from the Western Sterling Meadows Project Boundary
- 18" Sewer Main within Future Kyler Road traversing the Sterling Meadows Project from a future intersection of future Kyler Road and a future Roadway located +/- 600' from the Western Sterling Meadows Project Boundary to the Sewer Lift Station
- 17 - 8" Lateral connections to the sewer mains listed above to serve fronting parcels within the Lent Ranch Marketplace Project
- 1 - 6" Lateral connection to the sewer main listed above to serve a fronting parcel within Lent Ranch Marketplace Project
- 1 - 12" Lateral connection to the sewer main listed above to serve the future Sterling Meadows Project
- 1 - 8" Lateral connection to the sewer main listed above to serve the future Sterling Meadows Project

Sewer Lift Station and Force Main

- Sewer Lift with capacity of +/- 2.1 million gallons per day to server development of Lent Ranch and Sterling Meadows located on the Western boundary of Sterling Meadows +/- 4,100' North of Kammerer Road on the North side of future Kyler Road
- 12" Force Main within the Future Right of Way of the Sterling Meadows Project that is the extension of Kyler Road, from the Sewer Lift Station to the Western Lent Ranch Project Boundary
- 12" Force Main within Kyler Road, from Western Lent Ranch Parkway to the Intersection of Kyler Road and Promenade Parkway
- 12" Force Main traversing Lent Ranch Parcel G, from the Intersection of Kyler Road and Promenade Parkway to the Eastern Boundary of Lent Ranch Parcel G
- 12" Force Main Bore and Jack Crossing of State Route 99 from Lent Ranch Parcel G to the intersection of East Stockton Boulevard and Hampton Oak Drive
- Connection to East Elk Grove Trunk Sewer Main within East Stockton Boulevard at the intersection of East Stockton Boulevard and Hampton Oak Drive

Trunk and Local Storm Drainage

- 24" Storm Drainage Line within Promenade Parkway from +/- 125' South of the Northern Lent Ranch project boundary to +/- 425' South of the Northern Lent Ranch Project Boundary
- 30" Storm Drainage Line within Promenade Parkway from +/- 425' South of the Northern Lent Ranch Project Boundary to +/- 800' South of the Northern Lent Ranch Project Boundary
- 36" Storm Drainage Line within Promenade Parkway from +/- 800' South of the Northern Lent Ranch Project Boundary to the intersection of Promenade Parkway and Kyler Road
- 42" Storm Drainage Line within Promenade Parkway from the intersection of Promenade Parkway and Kyler Road to +/- 600' South of the intersection of Promenade Parkway and Kyler Road
- 48" Storm Drainage Line within Promenade Parkway from +/- 600' South of the intersection of Promenade Parkway and Kyler Road to the intersection of Promenade Parkway and Bilby Road
- 66" Storm Drainage Line within Promenade Parkway from the intersection of Promenade Parkway and Bilby Road to the intersection of Promenade Parkway and Lent Ranch Parkway
- 54" Storm Drainage Line within Promenade Parkway from the intersection of Promenade Parkway and Lent Ranch Parkway to +/- 650' North of Kammerer Road
- 48" Storm Drainage Line within Promenade Parkway from +/- 650' North of Kammerer Road to the intersection of Promenade Parkway and Kammerer Road

- 18" Storm Drainage Line within Kammerer Road from +/- 50' East of the Western Lent Ranch project boundary to +/- 700' West of the Intersection of Kammerer Road and Promenade Parkway
- 18" Storm Drainage Line within Kammerer Road from the Intersection of Kammerer Road and Promenade Parkway to +/- 200 East of the Intersection of Kammerer Road and Promenade Parkway
- 24" Storm Drainage Line within Lent Ranch Parkway the intersection of Lent Ranch Parkway and Kammerer Road to +/- 100' North of the intersection of Lent Ranch Parkway and Kammerer Road
- 36" Storm Drainage Line within Lent Ranch Parkway from +/- 100' North of the intersection of Lent Ranch Parkway and Kammerer Road to +/- 300' North of the intersection of Lent Ranch Parkway and Kammerer Road
- 42" Storm Drainage Line within Lent Ranch Parkway from +/- 300' North of the intersection of Lent Ranch Parkway and Kammerer Road to +/- 500' Southwest of the intersection of Lent Ranch Parkway and Promenade Parkway
- 48" Storm Drainage Line within Lent Ranch Parkway from +/- 500' Southwest of the intersection of Lent Ranch Parkway and Promenade Parkway to the intersection of Lent Ranch Parkway and Promenade Parkway
- 78" Storm Drainage Line within Bilby Road from the intersection of Promenade Parkway and Bilby Road to the Western Lent Ranch project boundary
- 78" Storm Drainage Line within Future Bilby Road Traversing the Sterling Meadows project from the Western Lent Ranch project boundary to the Storm Water Detention and Water Quality Basin Located on the Sterling Meadows Project Western +/- 2,000' North of Kammerer Road
- 24" Storm Drainage Line within Kyler Road from the intersection of Promenade Parkway and Kyler Road to +/- 50' from the Western Lent Ranch project boundary
- 48" Storm Drainage Line within Public Drainage Easement Traversing Lent Ranch Parcel A (Outlet Collection at Elk Grove Site) conveying storm water from State Route 99 and Grantline Road/Kammerer Road Interchange
- 1 - 30" Lateral connection to the Storm Drainage Lines listed above to serve fronting parcel within the Lent Ranch Marketplace Project
- 10 - 24" Lateral connections to the Storm Drainage Lines listed above to serve fronting parcels within the Lent Ranch Marketplace Project
- 24 - 18" Lateral connections to the Storm Drainage Lines listed above to serve fronting parcels within the Lent Ranch Marketplace Project
- 4 - 36" Lateral connection to the Storm Drainage Lines listed above to serve the future Sterling Meadows Project
- 4 - 12" Lateral connection to the Storm Drainage Lines listed above to serve the future Sterling Meadows Project
 - Storm Water Detention and Storm Water Quality Basin

• EXHIBIT D

Sample Form of Assignment and Assumption Agreement

OFFICIAL BUSINESS

Document entitled to free recording
Government Code Section 6103

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made by and between Elk Grove Town Center, LP, a Delaware limited partnership ("EGTC"), and _____, a _____ ("Assignee").

RECITALS

1. On _____, 2014, the City of Elk Grove, and EGTC entered into that certain "Development Agreement" (the "Development Agreement"). Pursuant to the Development Agreement, EGTC agreed to develop the Property (as that term is defined in the Development Agreement) as set forth in the Development Agreement. The Development Agreement was recorded against the Property in the Official Records of Sacramento County on _____, 20____, as Instrument No. 20__-_____.
2. EGTC intends to convey a portion of the Property to Assignee, commonly referred to as Parcel _____, and more particularly identified and described in Exhibit B attached hereto and incorporated herein by this reference (the "Assigned Parcel").
3. EGTC desires to assign and Assignee desires to assume all of EGTC's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, EGTC and Assignee hereby agree as follows:

1. EGTC hereby assigns, effective as of its conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of EGTC under the Development Agreement with respect to the Assigned Parcel. EGTC retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect the Property other than the Assigned Parcel.

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of EGTC under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of EGTC under the Development Agreement with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for EGTC as the "Developer" under the Development Agreement with respect to the Assigned Parcel.

3. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. The Notice Address described in the Development Agreement with respect to the Assigned Parcel shall be:

5. This Agreement may be signed in identical counterparts.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of this ____ day of _____, 2014.

Elk Grove Town Center, LP

ASSIGNEE:

a _____

a _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____