

**RESOLUTION NO. 2000-36**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AUTHORIZING THE CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY A  
REIMBURSEMENT AGREEMENT AND AN AGREEMENT FOR INDEMNIFICATION  
WITH M&H REALTY PARTNERS III L.P. IN CONNECTION WITH THE LENT  
RANCH MARKETPLACE PROJECT**

**WHEREAS**, the City Council of the City of Elk Grove wishes to enter into two agreements with M&H Realty Partners III L.P. in connection with the Lent Ranch Marketplace Project.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** by the City Council of the City of Elk Grove that the City Manager is hereby authorized to execute the agreements. Copies of the agreements are on file in the City Clerk's Office and are incorporated herein by reference and made part of this resolution.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 30<sup>th</sup> day of August 2000, by the follow vote:

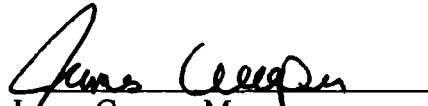
AYES: Council Members: Scherman, Briggs, Soares, Leary, Cooper

NOES: Council Members: None

ABSTAIN: Council Members: None

ABSENT: Council Members: None

ATTEST:

  
James Cooper, Mayor

  
Diana Biddle, City Clerk

Resolution No. 2000-36  
City Attorney File Number: 10784.018  
Project Name: Lent Ranch Marketplace

### **AGREEMENT FOR INDEMNIFICATION**

THIS AGREEMENT FOR INDEMNIFICATION (“Agreement”), made and entered into this 1<sup>st</sup> day of July 2000, is by and between the CITY OF ELK GROVE, a California municipal corporation (“Elk Grove”), and M&H REALTY PARTNERS III L.P, a California limited partnership, (hereinafter referred to as “M&H”).

#### **WITNESSETH:**

WHEREAS, M&H has requested that Elk Grove accept, review, consider, and approve M&H’s application for a general plan amendment, rezoning and zone text amendment, vesting tentative subdivision map, transportation system management plan, and development agreement, and to make California Environmental Quality Act (“CEQA”) decisions related to all these actions (collectively, “Elk Grove’s Discretionary Approvals”), all in connection with M&H’s proposal to approve a project known as the Lent Ranch Marketplace (“the Project”); and

WHEREAS, it is in the public interest for M&H to indemnify and hold harmless Elk Grove from any and all damage, liability, or loss, or claim of damage, liability, or loss, including without limitation attorney’s fees and costs, connected with or arising out of the acceptance, review, consideration, approval, disapproval, or granting of any of Elk Grove’s Discretionary Approvals or any action taken or decision made by Elk Grove approving the Project or any part thereof. For purposes of this Agreement, “CEQA decisions” include, without limitation, certifying an environmental impact report, making findings, approving mitigation measures, adopting statements of overriding considerations, and approving mitigation monitoring and reporting programs.

NOW, THEREFORE, IT IS AGREED BETWEEN ELK GROVE AND M&H as follows:

1. M&H shall defend, indemnify and hold harmless Elk Grove and its agents, officers, consultants, independent contractors and employees (“Elk Grove’s Agents”) from any and all damage, liability or loss, or any claim of damage, liability or loss, including without limitation attorney’s fees or costs, connected with or arising out of any action or proceeding (collectively “Action”) against Elk Grove or Elk Grove’s Agents to attack, set aside, void, or annul Elk Grove’s Discretionary Approvals, or any part thereof, or any decision, determination, or action made or taken approving the Project or any part thereof, or any related approvals or Project conditions imposed by Elk Grove or Elk Grove’s Agents concerning the Project, or to

impose personal liability against Elk Grove's Agents, resulting from their involvement in the Project, including any claim for private attorney general fees claimed by or awarded to any party against Elk Grove. In the event of any such Action, the City and M&H shall confer and cooperate with each other in response to such Action, including the use of outside consultants and / or legal counsel, however, this agreement to 'confer and cooperate,' shall in no way be construed to limit the City's independence in its response to such Action, including without limitation, the retention and / or use of outside consultants and / or legal counsel, nor shall it obligate the City to in any way compromise or alter its attorney-client relationships or confidences with legal counsel or outside consultants. To the extent that Elk Grove uses any of its resources responding to such action, M&H shall reimburse Elk Grove in accordance with this Agreement for the use of such resources within thirty days of demand for payment thereof by Elk Grove. Such resources include, but are not limited to, staff time, court costs, and City Attorney's or other Elk Grove legal counsel's, agent's or consultant's time at a rate equal to its total costs, or any other direct or indirect costs associated with responding to the Action. If M&H does not reimburse all costs within sixty days of the demand for payment, interest shall accrue on the unpaid amount at a rate of 10% per annum, compounded daily.

2. Elk Grove shall promptly notify M&H of any Action.

3. Elk Grove shall actively participate, at M&H's expense, in the defense of any Action in which it is named as a party. If Elk Grove retains outside counsel, agents, or consultants (collectively "Agents") at M&H's expense as part of Elk Grove's active participation, then Elk Grove shall exercise sole, reasonable control and supervision over Agents.

4. Nothing in this Agreement shall be construed in a manner that requires Elk Grove to exercise its discretion in a particular manner.

5. All notices under this Agreement shall be deemed valid and effective immediately upon personal service, or five (5) calendar days following deposit in the United States mail, postage prepaid, by certified and/or registered mail, addressed as follows:

To M&H: **M&H Realty Partners III L.P.,  
a California limited partnership  
12555 High Bluff Dr., Suite 385  
San Diego, CA 92130**

To CITY: **City Manager  
City of Elk Grove  
8949 Elk Grove Blvd.  
Elk Grove, CA 95624**

Any party may, by written notice to the other party to this Agreement, revise the address at which that party receives written notice under this section.

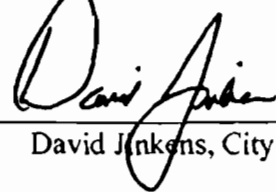
6. This Agreement shall become effective on the first date ("effective date") Elk Grove approves any of Elk Grove's Discretionary Approvals.

7. This Agreement represents the complete understanding between the parties with respect to matters set forth herein.

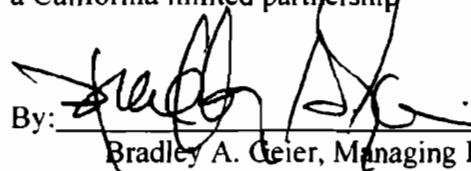
8. All waivers of or amendments to the provisions of this Agreement must be in writing and signed by the appropriate official of Elk Grove or M&H. No waiver of any breach of any term or provision of this Agreement shall constitute a waiver of any other or future breach of the same or any other term or provision.

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed to be effective on the date hereinabove first written.

CITY OF ELK GROVE

By:   
David Jenkins, City Manager

M&H REALTY PARTNERSHIP L.P.,  
a California limited partnership

By:   
Bradley A. Geier, Managing Director

Resolution No. 2000- 36

City Attorney File Number: 10784.018

Project Name: Lent Ranch Marketplace

**AGREEMENT FOR ADVANCE OF FUNDS**  
**(Reimbursement Agreement for Staff Processing)**

M&H Realty Partners III L.P., a California limited partnership, (“Developer”) hereby agrees to advance to the City of Elk Grove, a public entity (“the City”) the sum of \$50,000.00 (fifty thousand dollars) (the “Funds”), which Funds shall be used to reimburse the City for costs incurred in processing the application submitted by Developer in connection with the Lent Ranch Marketplace (“the Project”) described in “Exhibit A,” attached hereto and incorporated herein by this reference.

1. The advance of Funds shall be made to the City upon execution of this Agreement for Advance of Funds (hereinafter “this Agreement”).

2. If, after completion of the Application Process as determined by the City in the City’s sole discretion (“Application Process”), any portion of the Funds has not been expended or committed for expenditure, the City shall, within 30-days of such determination, return to Developer such unexpended or uncommitted amount.

3. The Developer fully understands and agrees to each of the following:

a. Developer acknowledges that the Funds paid herewith may not be adequate to fully reimburse the City for costs incurred in connection with the Application Process, and that periodically, as the need arises, Developer may be called upon to make further deposit of Funds. Developer agrees that there shall always remain on deposit with the City sufficient Funds to cover the anticipated costs to be incurred with the Application Process for a period of thirty (30) business days. In the event, for any reason, a City request for further deposit of Funds from Developer is not fully satisfied, within thirty (30) business days the City shall cease processing of the application, and shall record the failure to make the requested deposit of Funds as the Developer’s request to cease processing the application. In addition, should the Funds on deposit ever fall below an amount, estimated by the City in its sole discretion, sufficient to cover the anticipated costs to be incurred in the Application Process for a period of thirty (30) business days, the City shall cease processing of the application and cancel same, and shall record the lack of Funds as the Developer’s request to cease processing the application.

b. Prior to the date of any City Council hearing for the project, the City may notify Developer in writing of the amounts owed, or that will be owed, if any to the City by the

Developer as of the date of such hearing. Developer agrees to pay to the City and the City shall receive the full payment of the amount stated owed in the above notification within 10-days of receiving such written notification or by the date of the hearing, which ever is sooner. Developer shall pay the charges estimated by the City for work to be performed through the public hearing date.

c. The Funds shall be deposited and maintained in a segregated account. The Funds shall be used, in the sole discretion of the City, to fund or aid in the funding of services, studies, activities, supplies and other costs incurred by the City in processing Developer's applications submitted in connection with the Project.

d. The advance of Funds shall not be contingent on the hiring of any specific employee or consultant. The City reserves absolute discretion as to the selection, hiring, assignment, supervision and evaluation of any and all employees, contractors, or consultants that may be necessary to assist the City in completing the Application Process. The City shall have the sole discretion to establish the amount of compensation paid to the employees and the amount of fees paid to the consultants or the consultants' firms that are hired by the City to review and process Developer's application.

e. The advance of Funds shall not be dependent upon the City's approval or disapproval of the Developer's application, or upon the result of any action, and shall in no way influence the Project. Neither Developer nor any other person providing funding for the Project shall, as a result of such funding, have any expectation as to the results of the Application Process or the selection of an alternative favorable to or benefiting Developer.

f. Developer is expressly prohibited from directly or indirectly exercising any supervision or control over any employee, agent or consultant of the City engaged in the Project. Violation of this provision is cause for the City to cease processing the application and/or to cancel the application, either of which may be done at the sole and exclusive direction of City. This prohibition shall not be construed to preclude Developer, its agents or representatives, from providing information to the City or any employee, agent or consultant of the City for incorporation into the Project, or from seeking information from the City, or any employee, agent or consultant of the City with respect to the Project.

4. Each party acknowledges that this Agreement sets forth all covenants, promises, conditions and understandings between the parties regarding the advance of Funds and the uses thereof, and there are no promises, conditions or understandings either oral or in writing between the parties other than as set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties unless reduced to writing and signed by a principal of each party. No course of conduct shall be binding upon the City and waiver of one or more provisions or violations shall not be construed as a course of conduct to be relied upon and may not be the basis for any expectation of future waiver or estoppel.

5. This Agreement shall be a public record of the City.

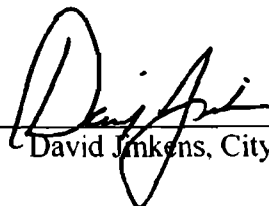
6. This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the

terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Sacramento, State of California.

7. Should legal proceedings of any type arise out of this Agreement, the prevailing party shall be entitled to costs, attorney's fees, and legal expenses, including but not limited to expert fees.

CITY OF ELK GROVE

Dated: 9-01-00

By:   
David Jenkins, City Manager

M&H REALTY PARTNERS III L.P., a  
California limited partnership

Dated: 8/21/00

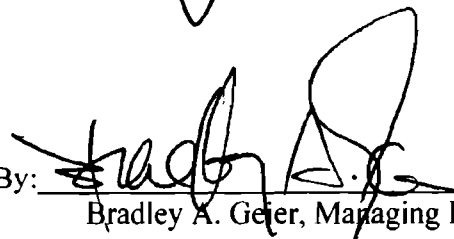
By:   
Bradley A. Geler, Managing Director

EXHIBIT A

PROJECT DESCRIPTION

The Lent Ranch Marketplace project site is located in the City of Elk Grove, approximately two miles south of the Elk Grove commercial district. The site is bounded on the northeast by West Stockton Boulevard and State Route 99 (SR 99), and generally on the south by Kammerer Road.

The project site is triangular in shape and encompasses about 294.8 acres on four individual parcels. The Assessor's Parcel Numbers (APNs) for the four parcels are 132-0152-002, 134-0600-019, 134-0220-068 and -069.

The Lent Ranch Marketplace project would involve development of about 280 multi-family residential units and about 3.1 million square feet of regional mall, general commercial, hotel, entertainment, office, and other retail uses. The regional mall would be about 1.3 million square feet of that total. The multi-family residential units would be built at the northern end of the site, along the western boundary; the regional mall would front SR 99. Other shopping center and general commercial uses would be built along the southern and western boundaries of the site. Land uses are proposed in six planning districts within the project.