

## ORDINANCE NO. 18-2008

### **AN ORDINANCE OF THE CITY OF ELK GROVE ADOPTING AND IMPLEMENTING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ELK GROVE, COSUMNES COMMUNITY SERVICES DISTRICT AND ELK GROVE ASSOCIATES, LLC., STERLING MEADOWS PROJECT EG-01-130, APN 132-0152-001-0000**

The City Council of the City of Elk Grove does ordain as follows

#### Section 1: Purpose and Authority

The purpose of this Ordinance is to adopt and implement a Development Agreement between the City of Elk Grove, Cosumnes Community Services District and Elk Grove Associates, LLC, attached as Exhibit A. This Ordinance is authorized by Government Code Sections 65864-65869.5

#### Section 2: Findings

##### *California Environmental Quality Act*

Finding: Prior to adoption of this ordinance, an analysis and public disclosure of the environmental impacts of the project have been completed in accordance with the California Environmental Quality Act (CEQA).

Evidence: The City prepared a Draft Environmental Impact Report ("EIR") for the project, which circulated through the State Clearinghouse (SCH No. 1999122067) and distributed to interested parties. The City has completed the Final EIR, which includes the Draft EIR, comments received during the public review period and responses to those comments. The City Council has certified an Environmental Impact Report, determining that it has been completed in accordance with CEQA. The EIR finds that the project will have a significant adverse impact on the environment.

The City Council has adopted a Mitigation Monitoring and Reporting Program for the project, which avoids and minimizes environmental impacts to the extent feasible. Section 6.8 of the Development Agreement states that the developer shall satisfy and comply with all mitigation measures. However, certain significant, unavoidable impacts will occur, even with the inclusion of these mitigation measures. The City Council has approved a Statement of Overriding Considerations, finding that the project may be approved due to social, economic and other factors.

##### *Development Agreement Findings*

Government Code section 65867.5 and City Zoning Ordinance section 23.16.140(3) provide that the City Council is to make certain findings in conjunction with the approval of a development agreement. Set forth below are the findings and supporting evidence.

### Findings:

- a. The Development Agreement is consistent with the General Plan objectives, policies, land uses, and implementation programs and any other applicable specific plans.
- b. 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.
- c. The Development Agreement will promote the orderly development of property or the preservation of property values.
- d. The Development Agreement vests a subdivision which complies with the provisions of Government Code section 66473.7

### Evidence:

- a. The project vested by the development agreement is consistent with the general plan as follows:
  - i. The land uses shown in the development plan are consistent with the land use exhibit of the general plan, as amended.
  - ii. The project will widen and improve major roadways, including Kameron Road, Bilby Road and Lotz Parkway. The location and design of these road improvements are consistent with the Circulation Element exhibits and policies.
  - iii. The project will provide approximately 19 acres of park land for a community and neighborhood park providing recreational facilities for residents. In addition, the project will provide approximately 5 acres for parkway corridors. Within the parkway corridors and along major roads, the project will install trails for use by pedestrians and bicyclists. The amount and location of park, recreation and trail facilities are consistent with the Parks, Trails, and Open Space Element.
- b. The Development Agreement provides for the public convenience and general welfare by:
  - i. Requiring that land be dedicated and improved for parks and trails in accordance with a phasing plan;
  - ii. Providing for the acquisition of a fire station site by Cosumnes Community Services District.
  - iii. Providing a net, 10-acre site for affordable housing
  - iv. Providing for the public safety through (1) construction of a storm water detention basin and conveyance system to minimize flooding hazard, (2) construction of masonry walls to minimize noise impacts on future residential uses, (3) reservation of a site for a future fire station which will enhance the safety of residents in the area, and (4) construction of off-street trails that reduce the risk of pedestrian/bicyclist accidents with vehicles.
- c. The Development Agreement provides for the orderly development of the area through the coordination of the project's public improvements with existing or planned improvements by the mall which abuts the property to the east. For example, the project design accommodates planned construction of a sewer line and sewer lift station and a storm water detention basin that is needed by the mall. Major roadways within the project are planned to connect with existing and

planned roadways of the mall, including the extension of Bilby Road and Kyler Road.

- d. In conjunction with the subdivision, a water supply assessment was prepared in accordance with Government Code section 66473.7. That water supply assessment was approved by the Sacramento County Water Agency Board of Directors on May 17, 2005. Through the approval of the tentative subdivision map, the City Council has determined that there is an adequate water supply for the subdivision.

### Section 3: Action

The City Council hereby approves and adopts the Development Agreement among the City of Elk Grove, Cosumnes Community Services District and Elk Grove Associates attached as Exhibit A. The City Manager and City Clerk are hereby authorized and directed to execute and attest, respectively, the Development Agreement on behalf of the City of Elk Grove.

### 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.

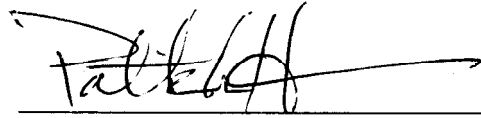
### Section 5: Severability.

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: 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 15 days after its passage, a summary of the ordinance may be published at least five 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).

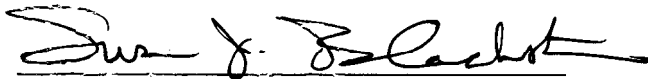
ORDINANCE: 18-2008  
INTRODUCED: May 28, 2008  
ADOPTED: June 11, 2008  
EFFECTIVE: July 11, 2008



PATRICK HUME, VICE MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:



SUSAN J. BLACKSTON, CITY CLERK



SUSAN COCHRAN, CITY ATTORNEY

Date signed: June 19, 2008

# EXHIBIT A

OFFICIAL CITY BUSINESS  
No recording fee  
Government Code Section 6103

RECORDING REQUESTED BY:

City of Elk Grove  
8380 Laguna Palms Way  
Elk Grove, CA 95758  
Attn: City Clerk

WHEN RECORDED MAIL TO:

City of Elk Grove  
8380 Laguna Palms Way  
Elk Grove, CA 95758  
Attn: City Clerk

Cosumnes Community Services District  
8820 Elk Grove Blvd.  
Elk Grove, CA 95624  
Attn: General Manager

Elk Grove Associates, LLC  
404 Saratoga Avenue, Suite 100  
Santa Clara, CA 95050  
Attn: Charles G. McKeag

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

**STERLING MEADOWS DEVELOPMENT AGREEMENT**

**AMONG THE**

**CITY OF ELK GROVE,**

**COSUMNES COMMUNITY SERVICES DISTRICT**

**AND**

**ELK GROVE ASSOCIATES, LLC**

## STERLING MEADOWS DEVELOPMENT AGREEMENT

This Sterling Meadows Development Agreement (this Agreement) is entered into among the City of Elk Grove, the Cosumnes Community Services District, and Elk Grove Associates, LLC, a California limited liability corporation.

### RECITALS

Whereas, Elk Grove Associates, LLC proposes to develop a new residential community on approximately 200 acres in the City, containing approximately 984 residential lots and 200 multi-family residential units, park improvements and open space, a stormwater detention basin, a fire station, a sewer lift station, and other uses;

Whereas, the City wishes to obtain commitments from Elk Grove Associates, LLC to provide certain amenities and infrastructure improvements in connection with the development of the Project, which commitments the City would not be able to obtain in the absence of this Agreement;

Whereas, as consideration for providing such commitments to the City, Elk Grove Associates, LLC wishes to obtain certain vested rights before such rights would vest under the common law, in order to receive assurances that it may develop the Project as set forth herein;

Whereas, the parties wish to accomplish these purposes by entering into this Agreement pursuant to the Development Agreement Law;

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 \_\_\_\_\_, 2008 by City Ordinance No. \_\_\_\_\_.

1.2 "CCSD" means the Cosumnes Community Services District, and depending on the context, may include its Board of Directors, agents, officers, employees, representatives and elected and appointed officials.

1.3 "CCSD Board" means the Board of Directors of CCSD and its designees.

1.4 "CFD" means a Community Facilities District formed pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code § 53311 *et seq.*)

1.5 "City" means the City of Elk Grove, and depending on the context, may include its agents, officers, employees, representatives and elected and appointed officials.

1.6 "City Council" shall mean the City Council of the City of Elk Grove and its designees.

1.7 "Developer" means Elk Grove Associates, LLC or any Successor.

1.8 "Development Agreement Law" means Government Code Section 65864 et seq.

1.9 "Effective Date" means that day on which both of the following have occurred: (1) the CCSD Board approves this Agreement and (2) the Adopting Ordinance shall be effective. 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.

1.10 "EIR" means that certain Draft and Final Environmental Impact Report for the Project, State Clearinghouse No. 1999122067, as certified by the City Council.

1.11 "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 the Effective Date.

1.12 "Fee" shall include charges, expenses, costs, monetary exactions and any other monetary obligation imposed on Developer by the City or CCSD, other than assessments imposed pursuant to an assessment district and taxes imposed pursuant to a Mello-Roos Community Facilities District, 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 other than CCSD. (The term "fee" need not be capitalized in this Agreement.)

1.13 "Final Subdivision Map" means a final map as that term is used in the Subdivision Map Act.

1.14 "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 CCSD, as applicable, or any other contribution of property (other than fees), imposed on Developer by the City or CCSD, as applicable. (The term "improvement" need not be capitalized in this Agreement.)

1.15 "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 (or CCSD, to the extent it has such authority), unless the context suggests a different meaning.

1.16 "Mitigation Measures" mean the mitigation measures included in the EIR or its mitigation monitoring plan as modified and/or adopted by the City Council.

1.17 "Project" is defined by reference to the project description in the EIR, as supplemented by the provisions of this Agreement.

1.18 "Project Approvals" shall mean the following land use approvals, all approved on \_\_\_\_\_, 2008, 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:

1.18.1 This Agreement, as adopted by the Adopting Ordinance and the CCSD Board.

1.18.2 General Plan Amendment, as adopted by City Council Resolution No. \_\_\_\_\_.

1.18.3 Amendments to the Zoning Ordinance, as adopted by City Council Ordinance No. \_\_\_\_\_.

1.18.4 Large or residential lot Tentative Subdivision Map(s), as adopted by City Council Resolution No. \_\_\_\_\_.

1.19 "Property" is that certain real property consisting of approximately 200 acres in the City of Elk Grove, Assessor's Parcel Number 132-0152-001, and more particularly described in Exhibit A hereto. The term "Property" may include any part of the Property, depending on the context.

1.20 "SASD" means the Sacramento Area Sewer District.

1.21 "Successor" is any assignee approved by the City pursuant to Section 13.1(i.e., any recognized successor in interest under this Agreement), and any subsequent assignees approved by the City pursuant to Section 13.2.

1.22 "Tentative Subdivision Map" means a Tentative Subdivision Map as that term is used in the Subdivision Map Act. "Tentative Subdivision Map" shall not mean a "vesting Tentative Subdivision Map" as that term is used in the Subdivision Map Act.

1.23 "Subdivision Map Act" means Government Code § 66410 *et seq*

1.24 "Vested right" is a right to proceed with the development of the Project in accordance with the terms and scope of the Project Approvals, which Project Approvals may not be amended, modified or changed by the City or CCSD except as provided by 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 Brokers. The parties represent and warrant that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Agreement, and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Agreement. In the event any real estate broker or agent shall come forward and claim the right to a commission or other form of



compensation in connection with this Agreement, Developer shall indemnify, defend and hold harmless the City and CCSD in accordance with Section 12.1.

### 3. Term and Termination

3.1 Term. The term of this Agreement shall commence on the Effective Date and shall last for a period of ten (10) years, 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.

3.2 Automatic Termination Upon Completion and Sale of Individual Lots. Except as provided herein, this Agreement shall automatically be terminated, without any further action by any party or need to execute or record any additional document, with respect to any improved commercial or residential lot within a parcel designated by the Project Approvals for such use, upon issuance by the City of a final occupancy certificate for a retail structure or dwelling unit upon such lot and conveyance of such lot by Developer to a bona-fide, good-faith purchaser. In connection with its issuance of a final inspection for such lot, the City shall confirm that all improvements which are required to serve the lot have been dedicated to and accepted by the City and CCSD, and all applicable fees have been paid by Developer. Termination of this Agreement as to any such lot shall not in any way be construed to terminate or modify any applicable assessment district or special tax lien with respect to such lot.

3.3 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 or CCSD prior to the effective date of termination shall be retained by the City or CCSD, as applicable.

3.4 Effect of Termination. Termination of this Agreement, whether by mutual written consent as provided in Section 3.3, default as provided in Section 11 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.

3.4.1 Upon termination of this Agreement, whether by mutual written consent as provided in Section 3.3, default as provided in Section 11 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 a vested right in the Project 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 or Existing Land Use Regulations 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.

4.1.1 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 those in force on the Effective Date.

4.2 Reserved Powers. Notwithstanding anything in this Agreement to the contrary, the City reserves the right to:

4.2.1 Grant or deny applications for land use approvals for the Project and the Property, provided such grant or denial is consistent with this Agreement;

4.2.2 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;

4.2.3 Adopt and apply design and construction requirements for specific public improvements to serve the Project;

4.2.4 Adopt, increase and impose taxes;

4.2.5 Adopt, increase and impose utility charges;

4.2.6 Adopt, increase and impose permit processing fees, inspection fees and plan check fees;

4.2.7 Adopt and apply regulations mandated by Law or necessary to protect the public health and safety. For purposes of this Agreement, any Law with respect to flood protection shall be deemed necessary to protect the public health and safety;

4.2.8 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;

4.2.9 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;

4.2.10 Adopt and apply City engineering design standards and construction specifications;

4.2.11 Adopt and apply the various building standards codes, as further provided in Section 4.3;

4.2.12 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

4.2.13 Exercise its power of eminent domain with respect to any part of the Property.

CCSD shall have the same reserve powers as the City to the extent that CCSD may exercise such powers under law.

4.3 Building Codes Applicable. The Project 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.

4.4 Meet and Confer. If Developer believes that the City or CCSD is taking action to impair a vested right conferred by this Agreement, Developer shall provide written notice to City or CCSD, as applicable, 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.

4.5 Referendum. Developer acknowledges that those Project Approvals which are legislative land use approvals are potentially subject to referendum. Notwithstanding anything in this Agreement to the contrary, Developer shall not acquire a vested right to any legislative land use approval (or to any amendment thereto): (1) while such approval or amendment is still potentially subject to referendum or (2) in the event that such approval or amendment is reversed by referendum.

4.6 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.

## 5. Subdivision Maps

5.1 Term of Tentative Subdivision Map. The term or "life" of any Tentative Subdivision Maps for the Project shall automatically be extended to be coterminous with the term of this Agreement.

5.2 Vesting Tentative Subdivision Maps. The parties acknowledge that the term of vesting of any Tentative Subdivision Maps for the Project shall be controlled by this Agreement and not the Subdivision Map Act.

5.3 Conditions of Approval. Developer acknowledges that any of its obligations under this Agreement may be made conditions of approval of any Tentative Subdivision Map for the Project and agrees to waive any challenge thereto.

5.4 Water Supply. The parties acknowledge that pursuant to Government Code Section 65867.5, all Tentative Subdivision Maps for the Property shall comply with Government Code Section 66473.7.

6. Fees, Improvements and Mitigation Measures

6.1 Waiver of Fee Vesting. Notwithstanding anything in this Agreement to the contrary, Developer hereby waives the vesting of all City and CCSD fees. Accordingly, the amount of all fees shall be determined as of the time they become due and payable after imposition by the City or CCSD. 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.

6.2 Processing Fees. Developer shall pay all City and CCSD 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 and CCSD.

6.3 Developer's Obligations. Developer acknowledges that there shall be no cost to City or CCSD for the improvements or provision of services identified in the following Exhibits, and that all such costs shall be borne by Developer:

6.3.1 Stormwater Detention Basin. Developer's stormwater detention obligations are set forth in Exhibit B.

6.3.2 Sewer Lift Station. Developer's sewer lift station dedication obligations are set forth in Exhibit C.

6.3.3 Park and Recreation Improvements. Developer's park and recreation obligations are set forth in Exhibit D.

6.3.4 Fire Station Obligations. Developer's fire station obligations are set forth in Exhibit E.

6.3.5 Roadway Dedications. Developer's obligations for roadway dedications and improvements shall be imposed in the reasonable discretion of the City as conditions to the Tentative Subdivision Map. Developer waives all rights to challenge such dedications and improvements to the extent that they are based on a traffic study.

6.4 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 certification of the EIR. 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 shall be a breach of this Agreement.

6.5 Off-Site Improvements. Prior to the approval of the first Final Subdivision Map for the Project, Developer shall enter into an agreement with the City (in a form substantially similar to Exhibit F) for the acquisition of any land for off-site improvements required by this Agreement which Developer, despite its best efforts, is unable to acquire. Developer acknowledges that the City may, in this off-site improvement reimbursement agreement, require an initial deposit in the amount not less than \$100,000 to secure the Developer's faithful performance of its obligations, which the City may draw against at its discretion, and which shall be replenished to the full \$100,000 amount by Developer within 30 days of request by City.

6.6 Liens. Whenever Developer shall dedicate an interest in land to the City, SASD or CCSD, the property shall be free and clear of all liens, taxes, assessments and encumbrances except as allowed by the City, SASD or CCSD, as applicable.

6.7 Escrow Account. An escrow account may be used at the City's, SASD's or CCSD's discretion in connection with any of Developer's required dedications. Developer shall be responsible for paying of all escrow fees and costs.

6.8 Security. Prior to Final Subdivision Map approval, Developer shall deposit with the City cash, a letter of credit, or other security satisfactory to City, SASD or CCSD, as applicable, in an amount determined by City, SASD or CCSD, as applicable to be reasonably necessary to guarantee the faithful performance of any improvements required under this Agreement. The amount of such security shall be reduced by 50 percent 120 days after acceptance of the related improvements by the City and CCSD.

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

6.10 City Engineer. All improvements and work performed by Developer in connection with the Project shall be to the satisfaction of either the City Engineer or Public Works and Community Development Director, or their designee, and to the CCSD Parks and Recreation Administrator for all improvements and work pertaining to parks and recreation.

## 7. Assessment Districts and Maintenance Obligations

7.1 Formation. Developer acknowledges that there shall be no cost to City or CCSD arising out of the construction or maintenance of the infrastructure necessary for the Project. Toward that end, prior to the approval of the first Final Subdivision Map for the Project, Developer shall consent to the formation of any special assessment district(s) as shall be requested by the City (or, for park and recreation purposes, by CCSD) ("the Assessment Districts") and shall be responsible for the costs of establishing such Assessment Districts or annexation into existing Assessment Districts, as applicable. Developer acknowledges that the services to be financed by the Assessment Districts will provide a "special benefit" to the Property (as defined in Article XIID of the California Constitution). Developer further acknowledges that the decision

of whether to form an Assessment District shall rest within the absolute discretion of the City or CCSD, as applicable.

7.1.1 The Assessment Districts may encompass without limitation the annexation of property into the City's Street Maintenance Assessment District, No.1, Zone 5 for the purpose of funding a portion of the additional costs for roadway maintenance related to serving new development.

7.2 Cost of Maintenance Obligations. Developer acknowledges that the total annual cost of the maintenance obligations will not be known as of the Effective Date, and therefore will be determined thereafter. The cost associated with the Assessment Districts shall be adjusted annually on each January 1, beginning on the first January following the formation of the applicable Assessment District, based upon an index approved by the City or CCSD, as applicable, at the time of formation of the Assessment District.

7.3 Public Parcel Exclusion. Parcels conveyed or to be conveyed to the City, CCSD, or any other public entity shall be excluded from any assessments to be imposed by the Assessment District.

7.4 Homeowners' Association. Developer shall cause to be established a Homeowners' Association or other non-governmental entity, to the satisfaction of the City, to own and perform the maintenance of such private common area improvements within the Project as are designated by the City.

7.5 Bylaws and CC&R's. The City shall have the right but not the obligation to approve and enforce all bylaws for all Homeowners' Association and all Covenants, Conditions and Restrictions for the Property as they pertain to maintenance and repair obligations and parking restrictions on any private roads.

## 8 Community Facilities Districts

8.1 Annexation. Developer acknowledges that there shall be no cost to City or CCSD arising out of the construction or maintenance of the infrastructure necessary for the Project. Toward that end, prior to the approval of the first Final Subdivision Map for the Project, Developer shall consent to annexation of the Property to any CFD, including without limitation: (1) the City's Laguna Ridge Community Facilities District (CFD) 2005-1 Infrastructure Component for the purpose of financing off-site, public improvements that benefit Project residents, as determined by City in its sole discretion; and (2) the City's Police Services CFD 2003-2 to fund a portion of the additional costs for police services related to serving new development.

8.2 Park and Landscape Improvements. Developer's financing obligations with respect to park and recreational facilities are set forth in Exhibit D hereto.

8.3 Other Formation. Developer may petition for the formation of a CFD for the purpose of financing the acquisition or construction of any other improvements required by this Agreement and issuing bonds thereon. The decision of whether to initiate CFD formation procedures shall be within the absolute discretion of the City and/or CCSD, as applicable.

8.4 Costs. Developer shall be responsible for the costs of forming and establishing any CFDs.

8.5 Payment Prior to Issuance of Bonds. Nothing in this Agreement shall preclude the payment by an owner of any of the parcels to be included within the CFD an amount equal to its proportionate share of costs for the improvements, or any portion thereof, prior to the issuance of bonds.

8.6 Acquisition and Payment. City shall use its best efforts to allow and facilitate the acquisition of completed CFD improvements or completed portions thereof, and payment of appropriate amounts for such improvements to the person or entity constructing them, provided that the City shall be obligated only to use CFD bond or special tax proceeds for such acquisitions.

## 9. Permits

9.1 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.

9.1.1 Withholding of Permits. In the event that any fee, improvement or dedication required under this Agreement is not timely paid, made or completed, or in the event any Assessment District is not timely formed or property is not timely included therein, the City may withhold any permit, certificate, approval or consent (including Final Subdivision Map approval and building permits), irrespective of whether there is a nexus between the fee, improvement or dedication and the permit, certificate, approval or consent.

## 10 Amendments to this Agreement

10.1 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.

10.2 Insubstantial Amendments. The City Manager, in consultation with the CCSD General Manager, as applicable to park and fire facilities, 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, shall require an amendment of this Agreement.

10.3 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 10.2 of this Agreement;

or (h) the phasing or timing of construction of the improvements, shall require an amendment of this Agreement. 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.

## 11. Default

11.1 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 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.")

11.2 Notice. The Complaining Party may not place the Defaulting Party in default unless it 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. 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.

11.3 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.

11.4 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.

11.5 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 11.2, the City shall have the right to withhold any permit, certificate, approval or consent for the Project (including Final Subdivision Map approval and building permits), irrespective of whether there is a nexus between the default and such permit, certificate, approval or consent. In the event that CCSD gives Developer a notice of default as provided in Section 11.2, CCSD shall have the right to withhold any approval or consent for the Project, 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.

11.6 Waiver of Damages. Notwithstanding anything in this Agreement to the contrary, the parties acknowledge that neither the City nor CCSD would have entered into this Agreement had they been exposed to liability for damages from Developer, and that therefore, Developer hereby waives all claims for damages against the City or CCSD for breach of this Agreement. Developer further 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 and CCSD in the event that this Agreement or any Project Approval is: (1) not approved by the City Council or CCSD Board or (2) is approved by the City Council or CCSD Board, 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 or CCSD'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 and CCSD in this regard.

11.7 Rescission. In the event that Developer believes that the purposes of this Agreement have been frustrated by the City Council's or CCSD Board'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 days after such approval in which to provide notice to the City and CCSD that this Agreement shall be rescinded, without any further liability of the parties.

## 12. Insurance and Indemnity

12.1 Indemnification, Defense and Hold Harmless. Developer shall indemnify, defend, and hold harmless to the fullest extent permitted by law, the City and CCSD (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 or CCSD, or with respect to the maintenance, repair or condition of any Improvement after dedication to and acceptance by the City or another public entity (except as provided in an improvement agreement or warranty bond). This indemnification obligation shall survive this Agreement and shall not be limited by any insurance policy, whether required by this Agreement or otherwise.

12.1.1 In the event of any administrative, legal or equitable action instituted by any third party challenging this Agreement or any City (and if applicable, CCSD) approval, consent or action made in connection with this Agreement (each a "Third Party Challenge"), the City (and CCSD, if applicable), may tender the defense to Developer. In the event of such tender, Developer shall indemnify the City (and CCSD, if applicable), against any and all fees and costs arising out of the defense of such Third Party Challenge. Developer shall be entitled to direct the defense such Third Party Challenge, provided that the City's consent (and CCSD's consent, if applicable) shall be required for any settlement.

12.1.2 If Developer should fail to timely accept a tender of defense as provided above, City (and CCSD, as applicable) 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 (or CCSD if applicable) shall not relieve Developer of its indemnification obligations for such Third Party Challenge.

12.2 Required Policies. Developer shall at all times during any construction activity with respect to the Project maintain a policy in an amount of \$2 million combined single limit of: (1) comprehensive general liability insurance with policy limits reasonably acceptable to the City and CCSD; 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.

12.3 Policy Requirements. The aforesaid required policies shall: (1) contain an additional insured endorsement naming the City, CCSD, their 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 and CCSD at least fifteen (15) business days' prior written notice of cancellation or reduction 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 and CCSD.

12.4 Evidence of Insurance. Prior to commencement of any construction activity with respect to the Project, Developer shall furnish evidence satisfactory to the City and CCSD of the insurance required above.

### 13. Binding Effect on Successors

#### 13.1 Assignment.

13.1.1 Developer may not assign its interests under this Agreement without the: (1) written consent of the City Manager and CCSD General Manager, which consent shall not be unreasonably withheld; and (2) execution by Developer and the assignee of an assignment and assumption substantially in the form as attached hereto as Exhibit G. Upon such assignment and assumption, Developer shall be released from any further liability or obligation hereunder related to that portion of the Property so conveyed, and the Successor shall be deemed to step into the shoes of Developer for purposes of this Agreement with respect to such conveyed property.

13.1.2 The City Manager's or CCSD General Manager's withholding of consent shall be deemed reasonable if the proposed assignee is unable to satisfy the City that it possesses the financial resources to pay the fees, make the dedications or complete the improvements required under this Agreement.

13.1.3 Any attempt to assign any rights under this Agreement other than by executing the form of assignment attached hereto at Exhibit G shall be void and constitute a default under this Agreement. Notwithstanding the foregoing, private parties who purchase an individual parcel defined by an approved and recorded Final Subdivision Map that has been improved with a lawful dwelling or commercial structure shall not be required to execute the form of assignment attached hereto as Exhibit G, shall not be considered Successors, and this Agreement shall not be binding upon them.

13.2 Subsequent Assignments. Any Successor may assign its rights under this Agreement by complying with the procedures set forth in this Section.

13.3 Runs with the Land. Except as otherwise provided in Section 13.1.1, all of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1466 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 owned property: (a) is for the benefit of such properties and is a burden upon such properties; (b) runs with such properties; and (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each party and its property hereunder and each other person succeeding to an interest in such properties.

#### 14. Miscellaneous

14.1 Prevailing Wages. 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 where the same is required by the Prevailing Wage Law. Developer's indemnification, defense and hold harmless obligations under Section 12.1 shall extend to any failure to pay prevailing wages where the same are required in connection with the Project.

14.2 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.

14.3 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.

14.4 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)

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

Cosumnes Community Services District  
General Manager  
8820 Elk Grove Boulevard  
Elk Grove, California 95624  
(with a copy to the Parks and Recreation Administrator)

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

Elk Grove Associates, LLC  
Charles G. McKeag  
Vice President, Land Acquisition & Development  
404 Saratoga Avenue, Suite 100  
Santa Clara, CA 95050

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.

14.5 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 or CCSD Board's discretion to vote in a particular manner cannot be constrained and that the City and CCSD 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.

14.6 Business Relationship. The parties acknowledge that Developer is not an agent, joint venturer, or partner of either the City or CCSD.

14.7 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.

14.8 Force Majeure. Neither party shall be liable for, and both parties shall be excused from, any failure to deliver or perform or for delay in delivery or performance (except any obligation to pay any sum of money) due to any act of God. The foregoing shall not apply to floods that affect the Property.

14.9 Bankruptcy. The obligations of this Agreement shall not be dischargeable in bankruptcy.

14.10 Attorney's fees. In the event of litigation by one party against another under this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

14.11 Liability of Officials. No City or CCSD official or employee shall be personally liable under this Agreement.

14.12 Delegation. Any reference to any CCSD or 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.

14.13 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.

14.14 Integration. This Agreement constitutes the entire 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.

14.15 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.

14.16 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.

14.17 Inconsistency. In the event of any conflict or inconsistency between the provisions of this Agreement and the Project Approvals or Exhibits, this Agreement shall prevail.

14.18 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: Stormwater Detention Basin Obligations
- Exhibit C: Sewer Lift Station Obligations
- Exhibit D: Park and Recreation Obligations
- Exhibit E: Fire Station Dedication Obligations
- Exhibit F: Off-Site Improvement Reimbursement Agreement
- Exhibit G: Form of Assignment

14.19 Compliance with Laws. In connection with its performance under this Agreement, Developer shall comply with all applicable present and prospective Laws.

14.20 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.

14.21 Time of the essence. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed this \_\_\_\_\_ day of 2008.

CITY OF ELK GROVE

ELK GROVE ASSOCIATES, LLC

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

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

Name: \_\_\_\_\_  
Mayor

Name: \_\_\_\_\_  
Its: \_\_\_\_\_

COSUMNES COMMUNITY SERVICES DISTRICT

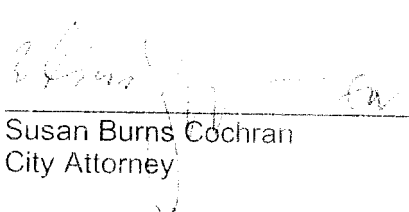
By: \_\_\_\_\_  
Keith Gruenberg,  
President

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Susan Burns Cochran  
City Attorney

\_\_\_\_\_  
Kevin Collins  
General Counsel  
Cosumnes Community Services District

EXHIBIT A

Legal Description of the Property

Real property in the City of Elk Grove, County of Sacramento, State of California,  
described as follows:

PARCEL 1, AS SHOWN ON THE PARCEL MAP ENTITLED "NE 1/4 SECTION 13 AND  
A PORTION OF SOUTHEAST 1/4 SECTION 12, T, 6N., R. 5E., M.D.M.", RECORDED  
NOVEMBER 26, 1996 IN BOOK 146 OF PARCEL MAPS AT PAGE 22. APN: 132-0152-  
001-0000.

## EXHIBIT B

### Stormwater Detention Basin Obligations

Prior to the Effective Date, Developer shall deposit into escrow dedications to the City of such easements, irrevocable offers of dedication, or fee interests or combination thereof (such as an easement to be succeeded by a final transfer of all remaining interests in fee at the time of Final Subdivision Map approval) as determined by City, as are necessary to enable the construction, maintenance and repair of, a stormwater detention and water quality treatment basin and related storm water conveyance facilities, with sufficient size and capacity to accommodate stormwater runoff and water quality requirements from both the Project and the regional mall currently being developed adjacent to the Project (the "basin").

The basin shall be located within "Lot C" as depicted on the Tentative Subdivision Map for the Project.

The parties acknowledge that the owners and/or developers of the regional mall project will construct the basin; provided, however, that if said regional mall project owners or developers do not construct the basin prior to Developer's recordation of the first Final Subdivision Map for the Project, Developer shall be obligated, prior to issuance of the first building permit for the Project, to: (1) design, construct and dedicate to the City a basin to the satisfaction of the City Engineer; or (2) enter into a subdivision improvement agreement satisfactory to the City which shall accomplish the same.

The basin dedication shall include the transfer of such fee or easement interests (as determined by the City) as are necessary to operate, maintain and repair the basin and associated infrastructure.

Additional documents shall be attached to this Exhibit, depicting the basin improvements, parcel configuration and related easements for stormwater conveyance and outfalls. In the event that such additional documents are not attached to this Exhibit by the Effective Date, City shall be entitled to attach such additional documents in its sole discretion after the Effective Date, which additional documents shall be deemed part of this Agreement upon notice to Developer.



## EXHIBIT C

### Sewer Lift Station Obligations

Prior to the Effective Date, Developer shall deposit into escrow dedications to the Sacramento Area Sewer District of such easements, irrevocable offers of dedication, or fee interests or combination thereof (such as an easement to be succeeded by a final transfer of all remaining interests in fee at the time of Final Subdivision Map approval) as determined by the District, as are necessary to enable the construction, maintenance and repair of a sanitary sewer lift station and related conveyance facilities that will serve both the Project and the regional mall currently being developed adjacent to the Project (the "lift station").

The parties acknowledge that the owners and/or developers of the regional mall project will construct the lift station; provided, however, that if said regional mall owners or developers do not construct the lift station prior to Developer's recordation of the first Final Subdivision Map for the Project, Developer shall be obligated, prior to issuance of the first building permit for the Project, to: (1) design, construct and dedicate to the Sacramento Area Sewer District the lift station to the satisfaction of the City Engineer and the District's engineer; or (2) enter into a subdivision improvement agreement satisfactory to the City and the District which shall accomplish the same.

Additional documents shall be attached to this Exhibit, depicting the necessary lift station improvements, parcel configuration and related easements. In the event that such additional documents are not attached to this Exhibit by the Effective Date, City shall be entitled to attach such additional documents in its sole discretion after the Effective Date, which additional documents shall be deemed part of this Agreement upon notice to Developer.

## EXHIBIT D

### Park and Recreation Obligations

Developer shall, at no cost, dedicate to the City and CCSD, as tenants in common, approximately 23.35 acres of public park and open space within the Project, which shall include two public park sites and a series of parkway and landscape corridors, all as depicted on the Tentative Subdivision map for the Project. The 23.35 acres of public park and open space to be dedicated by Developer shall include approximately 4.84 acres to be used as a 50-foot wide parkway, from Kameron Road through the entire site to the northern property line. The 4.84 acres will provide pedestrian/bicycle access through the site, connecting to two parks and the detention basin, and will be improved with landscaping and a 10-foot wide paved path.

Any structures, walls, fences, wells or storage tanks located on the property to be dedicated pursuant to this Exhibit D must be removed, unless otherwise approved in writing by the City and CCSD, in accordance with all applicable laws and regulations prior to acceptance by the City and CCSD of any grant deed.

Developer shall at its own cost pay for all park improvements. Developer shall not receive any additional credit (aside from Quimby Act credits) for the dedication of the 23.35 acres nor shall it receive credit or be exempt from any taxes, fees or assessments associated with applicable Community Facilities Districts, Assessment Districts or park and recreation maintenance fees.

Developer shall comply with the following schedule and requirements:

1. Prior to or concurrently with the recordation of the first final map, Developer shall perform each of the following actions listed below to the satisfaction of City and CCSD. City shall not approve any final map until and unless each of the following has been accomplished:

a. Developer shall dedicate a minimum of 18.51 acres of park land, shown as Lots "A" and "B" on the tentative subdivision map, which will satisfy Developer's Quimby Act obligations. The dedication of 4.84 acres land in parkway lots shall not be eligible for Quimby Act credits.

b. Developer shall additionally develop Master Plans for each park site in accordance with standards specified by the City and the CCSD, subject to review and approval by the City and the CCSD.

c. Developer shall provide Master Plans for each landscape parkways/paseos in accordance with standards specified by the City and the CCSD subject to review and approval by the City and the CCSD.

d. Developer shall provide Design Development Plans for each park site, based upon the approved Master Plans, in accordance with standards specified by the City and the CCSD subject to review and approval by the City and CCSD.

e. Developer shall petition for the formation of a financing mechanism satisfactory to City to provide adequate funding for maintaining the parks, parkways and landscape corridors or as otherwise specified in a Development

Agreement. Funding mechanism shall be in place prior to recordation of the Final Subdivision Map.

f. If the parkways/paseos abuts residential lot side or rear yards, Developer will be required to install a 6 ft. high masonry wall, which will be built to the specifications of the CCSD along the park area where it abuts these lots. The wall is to be installed when construction of the park site begins, or when construction on the adjoining lots commences, whichever comes first. The wall is on the homeowner's property. Accordingly, general maintenance, repair or replacement of the wall is the responsibility of the homeowner, not the CCSD or the City. The CCSD and the City will be responsible solely for graffiti removal on the exterior portion of the wall, which faces the parkway/paseo.

g. Land dedicated to the CCSD and City shall be free and clear of any past or future taxes or assessments; any liens or encumbrances, and any easements not disclosed on the tentative map. Any structures, walls, fences, wells or storage tanks must be removed per the specifications of the appropriate agency with concurrence of the City and the CCSD and in accordance with all applicable laws and regulations prior to the acceptance of any grant deed.

h. Provide the CCSD with a copy of the Army Corp of Engineers (ACOE) Permit for wetland fill authorization, or alternatively an ACOE letter stating no permit was required.

i. Provide the CCSD with a copy of all environmental documents processed for the park site per CEQA including initial studies, negative declarations, etc. All mitigation requirements of such studies shall be complete prior to acceptance of the park.

j. Developer shall provide Construction Plans and Specifications and Estimates for both parks, in accordance with standards specified by the City and the CCSD subject to review and approval by the City and CCSD.

k. Developer shall provide Construction Plans and Specifications and Estimates, enter into an improvement agreement and post securities for parkways/paseos within the proposed subdivision, adjacent to any street being constructed by this subdivision and/or needed to connect subdivision to the 13.7 acre park (Lot A), in accordance with standards specified by the City and the CCSD subject to review and approval by the City and CCSD. The remaining parkways/paseos shall be designed and constructed with the subsequent subdivisions subject to the same criteria above.

2. Developer shall pay Park and Recreation processing fees as required by the CCSD to the CCSD prior to or concurrently with the recordation of the first final map. These fees include review and inspection in accordance with CCSD Ordinance 8.

3. Prior to the issuance of the first residential building permit, Developer shall perform each of the following actions listed below to satisfaction of City and CCSD:

a. Developer shall enter into improvement agreement with the City reasonably satisfactory to the City for the 13.7 acre park site (Lot A) and post the required securities.

b. Developer shall commence construction on the 13.7 acre park site (Lot A) in accordance with the approved Construction Plans and Specifications and subject to review and inspection or as otherwise specified in a Development Agreement. Construction shall include full width frontage improvements along all sides fronted with streets. Improved access from the developing lots shall also be provided.

4. Prior to the issuance of the 401st residential building permit, Developer shall perform each of the following actions listed below to the satisfaction of City and CCSD. City shall not issue building permits for more than 400 residences until and unless each of the following has been accomplished:

a. Developer shall complete construction on 13.7 acre park site (Lot A) and request start of 180 day maintenance period. Compliance with this condition shall be based upon written request by the Developer and written authorization by the City in concurrence with the CCSD to start the maintenance period.

5. Prior to the issuance of the 601st residential building permit, Developer shall perform each of the following actions listed below to the satisfaction of City and CCSD. City shall not issue building permits for more than 600 residences until and unless each of the following has been accomplished:

a. Developer shall enter into Improvement Agreement with the City for the 4.9 acre park site Lot B and post the required securities.

b. Developer shall commence construction on the 4.9 acre park site Lot B in accordance with the approved Construction Plans and Specifications and subject to review and inspection or as otherwise specified in a Development Agreement. Construction shall include full width frontage improvements along all sides fronted with streets. Improved access from the developing lots shall also be provided.

6. Prior to the issuance of the 701st residential building permit, Developer shall perform each of the following actions listed below to the satisfaction of City and CCSD. City shall not issue building permits for more than 700 residences until and unless each of the following has been accomplished:

a. Developer shall complete construction on the 4.9 acre park site Lot B and request start of 180 day maintenance period. Compliance with this condition shall be based upon written request by the Developer and written authorization by the City in concurrence with the CCSD to start the maintenance period.

7. Prior to the acceptance of the Park(s), Developer shall complete minimum 180 day maintenance period and all deficiencies in maintenance and establishment have been corrected. Maintenance period shall be extended beyond the 180 days should corrections not be made. Additionally, the following items must be achieved prior to release of the Developer's obligation to retain maintenance of all improvements:

a. Submittal of acceptable as-builts for the park in full sized and half sized sheets. Electronic copies shall also be required in a form acceptable to the City and CCSD.

- b. Submittal of full bound set of approved submittals and manufacturer recommended maintenance procedures.
- c. All equipment required to be turned over in accordance with the plans and specifications.
- d. Submittal of the grant deed to the City and CCSD in fee as "Tenants in Common" and documents satisfactory to the City and CCSD showing the land is free and clear.
- e. Maintenance obligation of the Developer has been met with funds from funding mechanism having been received and in possession of the City.
- f. City, with concurrence of the CCSD, has provided written acceptance of the park improvements with the date of acceptance and maintenance turn over specified.

8. Prior to the acceptance of the parkway/paseos and landscape corridors, Developer shall complete minimum 180 day maintenance period and all deficiencies in maintenance and establishment have been corrected. Maintenance period shall be extended beyond the 180 days should corrections not be made. Additionally, the following items must be achieved prior to release of the Developer's obligation to retain maintenance of all improvements:

- a. Submittal of acceptable as-builts for the improvements in full sized and half sized sheets. Electronic copies shall also be required in a form acceptable to the City and CCSD.
- b. Submittal of full bound set of approved submittals and manufacturer recommended maintenance procedures.
- c. All equipment required to be turned over in accordance with the plans and specifications.
- d. Submittal of the grant deed to the City and CCSD in fee as "Tenants in Common" and documents satisfactory to the City and CCSD showing the land is free and clear.
- e. Maintenance obligation of the Developer has been met with funds from funding mechanism having been received and in possession of the City.
- f. City, with concurrence of the CCSD, has provided written acceptance of the parkways/paseos and landscape corridor improvements with the date of acceptance and maintenance turn over specified.
- g. Adjacent and underlying civil improvements shall be accepted by City prior to or concurrently with acceptance of parkways/paseos and/or landscape corridors.

## EXHIBIT E

### Fire Station Dedication Obligations

(a) Lots D and Lots 187-192, inclusive, on the tentative subdivision map consisting of approximately 2.24 acres (the "Fire Station Site" or "Site"), shall be reserved to CCSD for the use of a fire station. A fire station is a permitted use on this residentially zoned site. The City agrees to process any further land use applications necessary for the site to be used as a fire station by CCSD. The Fire Station Site shall be valued at \$125,000 per acre. The property may be purchased by CCSD using available fee credits.

CCSD will perform at its own cost the survey of the Fire Station Site to establish the legal description of the property. The City, CCSD and Developer agree to work cooperatively to effectuate any minor boundary line adjustment for the Site to the extent necessary as part of the improvement plan processing.

CCSD and Developer shall each pay fifty percent (50%) of the escrow costs related to the acquisition of the Fire Station Site. The escrow period shall be 60 days unless mutually extended or shortened.

(b) Developer shall provide all necessary infrastructure to provide public utilities to the Fire Station Parcel, which may include but is not limited to power, water, sewer, and storm drainage hook-ups, as well as providing an emergency signal at the entrance to the Fire Station Parcel and curb, sidewalk, gutters and other facilities required by the City along the Fire Station Parcel roadways.

(c) Developer shall pay all Fire Facilities Impact Fees assessed prior to issuance of building permits for the Project including, without limitation, any fees related to the construction of permanent and temporary fire facilities. If Developer fails to promptly pay any and all required Fire Facilities Impact Fees, the CCSD and City may take any and all actions necessary to collect all Fire Facility Impact Fees, including, but not limited to, suspending the construction of the Permanent Fire Station and/or withholding building permits.

EXHIBIT F

Off-Site Improvement Reimbursement Agreement

THIS OFF-SITE IMPROVEMENT REIMBURSEMENT AGREEMENT (this "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20 , by and among the City of Elk Grove, a municipal corporation ("City"), and \_\_\_\_\_ ("Developer").

RECITALS

A. On \_\_\_\_\_, City of Elk Grove Planning Commission approved the Tentative Map for Developer for property located within the subdivision, also known as \_\_\_\_\_ (the "Project").

B. Approval of the \_\_\_\_\_ /Tentative Map for the Project by City has been conditioned upon Developer making certain improvements to the development project as outlined in the Tentative Map, including all or a portion of said improvements which shall be located on property adjacent to, near, or in support of the Project (the "Property") as conditioned in the Tentative Map.

C. Title to the Property is not held by Developer; Developer must acquire title to the Property prior to making any improvements thereon.

D. Developer and City desire to set forth the procedure for acquisition of title to the Property.

NOW, THEREFORE, in consideration of the rights and obligations hereunder and for other good and valuable consideration, Developer and City agree as follows

AGREEMENT

Article 1 – GENERAL

1. Agreement. Developer shall attempt in good faith, in accordance with the terms hereof, to negotiate the purchase of the Property from the owner thereof. If, after good faith attempts to negotiate the purchase of the Property, Developer has not been able to acquire title to the Property, Developer may request that City acquire the Property by eminent domain.

2. Costs. Developer shall be responsible for all costs related to its acquisition of the Property, and if Developer submits a written request that City acquire the Property by eminent domain, Developer shall be responsible for all of City's costs and expenses, as hereinafter defined, incurred in acquiring the Property. Developer shall be responsible for all fees, costs and expenses incurred by City in prosecuting a condemnation action and acquiring title to the Property through settlement, trial and any appeal, including, but not limited to, staff fees, legal fees, consultant and expert witness fees, costs and expenses, the value of the Property as determined by settlement or judgment, loss of business goodwill damages as determined by settlement or judgment, and the opposing party's costs and legal fees in the event City is ordered by a court of competent jurisdiction to pay such costs and legal fees (the "Fees and Costs").

## Article 2 - PURCHASE NEGOTIATIONS

1. Appraisal. Prior to the commencement of negotiations with the owner of the Property, or as soon as reasonably practicable thereafter if Developer has begun negotiations prior to the date hereof, Developer shall, at its sole cost and expense, obtain an appraisal of the Property (the "Appraisal"). The Appraisal shall be performed by a MAI certified appraiser whose appraisal business is located within the greater Sacramento area. Said appraiser shall be familiar with the Elk Grove market. The appraisal shall be completed according to current USPAP standards. Developer may request a list of local appraisers from the City. If requested, City will provide Developer with the name of the appraiser within five days after City receives Developer's request therefor. In addition to USPAP standards, the appraisal must conform to the requirements of Cal.Civ.Proc.Code Sections 1263.010, et seq., and Cal.Govt.Code Sections 7267 and 7267.1.

If, for any reason, after good faith effort, Developer is unable to obtain a valid appraisal of the Property, because of property access limitations, or otherwise, Developer may refer the matter to City as set forth in Article 3, so long as such referral is accompanied by a written explanation of the reason that Developer was unable to obtain such appraisal.

2. Good Faith Offers. Developer must make three (3) good faith attempts to acquire the Property from the owner thereof, including at least one personal meeting with the owner of record or the owner's authorized representatives. All firm offers to purchase the Property must be in writing. The amount of Developer's final offer must not be less than the fair market value established by the Appraisal.

3. Quarterly Status Reports. On the first day of each quarter calendar year during the course of negotiations by Developer, Developer shall provide City with a report (i) identifying the Project and the Property, (ii) describing the current status of negotiations, and (iii) identifying any specific issues that are impeding resolution of individual acquisitions, (the "Quarterly Report"). If Developer has more than one project within the boundaries of City, for which a reimbursement agreement has been executed, Developer may consolidate the Quarterly Reports for all such projects.

Quarterly Reports shall be submitted to:

Real Property Manager  
City of Elk Grove  
Development Services -- Public Works  
8401 Laguna Palms Way  
Elk Grove, CA 95758

## Article 3 - CONDEMNATION

1. Referral to City. If, after three (3) written, good faith attempts to acquire the Property, Developer has not acquired title thereto, Developer may refer the matter, in writing, to City for its review and determination whether to proceed with eminent domain (the "Referral Notice"). Developer acknowledges and agrees that a referral to City does not guarantee that title to the Property will be obtained, and further, that if City commences an eminent domain proceeding, City cannot guarantee that title will be



obtained within Developer's project timelines.

- a. Documents. The Referral Notice shall be accompanied by:
  - (i) Copies of Correspondence. Copies of all correspondence with the owner of the Property relative to the acquisition of the Property through the date of the Referral Notice.
  - (ii) Possession Date. The date on which Developer will be ready to begin work on the Property, if possession can be obtained thereon.
  - (iii) Other Documentation. Any and all other documentation in Developer's possession or control relating to the Developer's attempts to acquire the Property (the "Documents").
  - (iv) Right of Way Tasks. All documents and reports required by and set forth in Attachment B – Scope of Work, Right of Way Engineering Requirements.

b. Initial Deposit. The Referral Notice shall also be accompanied by the deposit of:

(i) Fair Market Value of Property. The amount of the current fair market value of the Property, substantiated by a copy of the Appraisal. The parties acknowledge that the value of the property is set by the most recent Appraisal, which contains a "date of value" that is not earlier than six (6) months prior to the date of the Referral Notice.

(ii) Appraisal Update Costs. The estimated cost of an update to the Appraisal (or a new appraisal, if the Appraisal is not in compliance with the terms hereof), if more than 90 days has passed since the date of the Appraisal (see Attachment A).

(iii) City Staff Fees and Costs. A deposit in the amount of (\$\_\_\_\_\_ ) Dollars, representing an initial deposit for Fees and Costs of City Staff.

2. City Review of Developer's Information. City shall review the Documents within two weeks after receipt thereof and shall provide Developer with written notice of its determination whether Developer has complied with the terms of this Agreement. If Developer has not complied with the terms hereof, City's notice shall describe any deficiency and shall return Developer's Initial Deposit, less City Staff Fees and Costs. Developer may correct such deficiencies and may re-submit its Referral Notice. If City determines that Developer has complied with the terms hereof, City shall notify Developer thereof and shall provide Developer an estimate of the Fees and Costs to be incurred by the City to complete acquisition of the Property by eminent domain (the "Notice of Acceptance").

a. Pre-condemnation. After City submits its Notice of Acceptance, City shall commence pre-condemnation activities in accordance with the Code of Civil

Procedure. Pre-condemnation activities include, but shall not be limited to, the following: inspection of the Property; updating the Appraisal; and performing an environmental assessment of the Property.

b. Resolution of Necessity. After City has performed its pre-condemnation activities, City shall place a proposed resolution of necessity on the agenda, for consideration by City's council. Developer acknowledges that the council must adopt a resolution of necessity prior to City proceeding with an eminent domain action. Developer further acknowledges that this Agreement shall not bind the council to adopt such resolution, and if the council fails to adopt such resolution within one hundred and eighty (180) days after City's receipt of the Notice of Acceptance, City shall refund the unused portion of Developer's deposits and shall remove the project condition requiring the acquisition of the Property.

3. Waiver of Map Condition. Notwithstanding anything to the contrary contained in Section 2 above, the City Engineer is hereby authorized to review each referral to the City, during the period between the service of the Notice of Acceptance and the placement of a proposed resolution of necessity on the council's agenda, to determine whether it is in the best interest of the City to withdraw the Notice of Acceptance and waive the condition of approval that requires acquisition of the Property. Upon a determination that it is in the best interests of the City, the City Engineer may, by notice to Developer, waive the condition, so long as the act of waiving the condition is exempt from further CEQA review. If the City Engineer elects to waive the condition, Developer's payment of all City's costs arising hereunder, through the date of the proposed waiver, shall be a condition precedent to the effectiveness of such waiver. The waiver of a condition of approval for the Project, shall not obligate the City Engineer to waive a similar condition of approval on any other projects of Developer within the jurisdiction of the City.

4. Relocation Plan. Developer shall pay the cost of a relocation estimate and plan obtained from a relocation firm engaged by City. Should relocation be necessary, Developer shall pay all relocation benefits identified by the relocation firm, or required by order of an administrative body or court with jurisdiction over the Property.

5. Payment of Fees and Costs. During the course of the eminent domain action, Developer shall reimburse City for Fees and Costs as follows:

a. First Additional Deposit. Upon Developer's receipt of the Notice of Acceptance, Developer shall deposit with City, the amount of City's estimate of the Fees and Costs set forth herein.

b. Second Additional Deposit. If the updated Appraisal concludes that the Property has a higher value than the amount of the fair market value deposited, Developer will deposit the difference within fifteen (15) days after Developer's receipt of City's written request therefor.

c. Ongoing Fees and Costs. During the pendency of the litigation, City may notify Developer that additional amounts are necessary to obtain a Final Order of Condemnation. Developer shall pay such amounts within thirty (30) days after receipt of City's request substantiating the need therefor. City shall be available to meet with Developer to discuss the need for additional advances of Fees and Costs, including amounts and timing, and City shall consult Developer before making a statutory offer of

compensation, pursuant to CCP §1250.410. If City does not receive Developer's payment of Fees and Costs within the thirty (30) day period, City may cease all work and effort related to the acquisition of the Property, until such time as the additional funds are received; provided, however, if litigation has been commenced, City may abandon the condemnation and Developer shall bear the risk of any costs and penalties incurred thereby.

d. Final Payment. Within sixty (60) days after the conclusion of all condemnation proceedings, including, but not limited to, post-trial motions and appeals, City shall deliver to Developer a final accounting of any and all unpaid Fees and Costs payable by Developer. Developer shall reimburse City such amounts within thirty (30) days after Developer's receipt thereof.

6. Disbursement of Funds. City shall have sole discretion as to the disbursement of all funds advanced by the Developer, limited only by the provisions of this Agreement.

7. Abandonment. If, at any time during the pendency of the litigation, Developer determines that it will not proceed with the Project and desires that City cease the acquisition of the Property, Developer shall provide written notice thereof to City (the "Abandonment Notice"). Within 10 days after receipt thereof, City shall provide to Developer an itemization of all outstanding Fees and Costs incurred, but unpaid, and an estimate of the Fees and Costs required to abandon the action. Developer shall pay the same to City upon receipt. Developer acknowledges that the parties defending an eminent domain action could be entitled to reimbursement of Fees and Costs incurred in defense of the action, pursuant to CCP §1268.610 and §1268.620, and Developer further acknowledges that such amounts shall be paid to City as Fees and Costs of abandonment upon receipt of City's request therefor.

8. Satisfaction of Map Condition. The condition to City's approval of the map for the Project which requires that Developer construct improvements on the Property shall not be deemed satisfied by Developer entering into this Agreement, nor by Developer's referral of the matter to the City, pursuant to Article 3, Section 1, hereof

9. Selection and Compensation of Personnel. City's use of any funds advanced by Developer and the requirement for the Developer to advance funds hereunder shall not be contingent on the hiring of any specific employee or consultant. 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 City in acquiring the Property. 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 City in connection with the acquisition of the Property.

10. City's Control of Decisions. City's use of funds advanced by Developer and the requirement for the Developer to advance funds hereunder shall not be dependent upon City's approval of any action requested by the Developer and shall in no way influence City's decisions with respect to the acquisition of the Property. Neither Developer nor any other person providing funding hereunder shall, as a result of such funding, have any expectation as to the results of the acquisition of the Property or the selection of an alternative favorable to or benefiting the Developer, at any time prior to or after obtaining a Final Order of Condemnation, including, but not limited to, whether

to seek an order for possession before judgment. The amount of any final offer of compensation or the desire to appeal a judgment or order of the trial court.

11. Supervision and Control of Personnel. Developer is expressly prohibited from directly or indirectly exercising any supervision or control over any employee, agent or consultant of City engaged in the acquisition of the Property. Violation of this provision is cause for City to cease proceedings to acquire the Property. This prohibition shall not be construed to preclude Developer, its agents or representatives, from consulting with City regarding the acquisition of the Property, nor from providing information to City or any employee, agent or consultant of City in connection therewith, or from seeking information from City, or any employee, agent or consultant of City with respect thereto.

#### Article 4 – MISCELLANEOUS

1. Indemnification, Defense and Hold Harmless. Developer hereby acknowledges and agrees that Developer shall defend, indemnify, release and hold harmless City and its agents, officers, attorneys, elected officials, consultants (whether professional, legal, technical, or other), independent contractors and employees ("City'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 (including claims for "private attorney general" fees), connected with or arising out of any action, proceeding or alternative dispute resolution process (collectively, "Action") against City or City's Agents to: (a) attack, set aside, void, or annul the actions of City or City's Agents related to this Agreement, including, without limitation, any decision, determination, or action made or taken with respect to the acquisition of the Property; or (b) to impose personal liability against City's Agents resulting from or arising out of their involvement in the acquisition of the Property pursuant to this Agreement.

a. Confer and Cooperate. In the event of any such Action, City and Developer 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 City's independence in its response to such Action, including without limitation, its authority in connection with the retention and/or use of outside consultants and/or legal counsel, nor shall it obligate City to in any way compromise or alter its attorney-client relationships or confidences with legal counsel or outside consultants. To the extent that City uses any of its resources, including, without limitation, the fees and expenses of outside consultants, attorneys and experts, in responding to any Action, Developer shall reimburse City in accordance with this Agreement for the use of such resources within thirty (30) days of City's written demand for payment. Such resources include, but are not limited to, staff time, court costs, and City Attorney's or other City 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.

b. City to Notify Developer. City shall promptly notify Developer of any Action.

c. City's Active Participation. City shall actively participate, at Developer's expense, in the defense of any Action in which it is named as a party. If City retains outside counsel, agents, or consultants (collectively, "Agents") at

Developer's expense as part of City's active participation, then City shall exercise sole, reasonable control and supervision over such Agents.

2. Assignment. Developer, for itself, its heirs, distributes, executors, administrators, legal representatives, successors and assigns, covenants that it will not assign this Agreement without the prior written consent of City in each instance, which consent may be withheld in City's sole discretion. Any assignment in violation of this Article 4 will be void. No permitted assignee of this Agreement may further assign this Agreement without City's prior written consent.

3. Notices. All notices under this Agreement shall be delivered by personal service, deposited in the United States mail, postage prepaid, certified and/or registered, or deposited with any nationally-recognized overnight courier that routinely issues receipts, addressed to the as set forth below. All notices shall be deemed delivered upon receipt or refusal thereof.

To (Company/Developer Name): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To City: City Clerk  
City of Elk Grove  
8380 Laguna Palms Way  
Elk Grove, CA 95758

With a Copy to: Real Property Manager  
City of Elk Grove  
Development Services -- Public Works  
8401 Laguna Palms Way  
Elk Grove, CA 95758

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

4. Governing Law; Venue. 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.

5. Materials Confidential. All of the materials prepared or assembled pursuant to this Agreement shall be confidential, unless are deemed to be public records, and shall not be made available to any individual or organization without the prior written approval of City, except by court order.

6. Joint and Several Obligation. If Developer consists of more than one person or entity, the liability of each such person or entity signing this Agreement as Developer shall be joint and several.

7. Entire Agreement. This Agreement embodies the entire agreement between the parties hereto relative to the subject matter herein. No amendment,

alteration, modification of, or addition to this Agreement will be valid or binding unless expressed in writing and signed by all parties.

8. Severability. If any provision of this Agreement proves to be illegal, invalid or unenforceable, the remainder of this Agreement will not be affected by such finding, and in lieu of each provision of this Agreement that is illegal, invalid or unenforceable will be added as a part of this Agreement as similar in terms to such illegal, invalid or unenforceable provision as may be possible and legal, valid and enforceable.

9. No Waiver. The waiver by either party of any agreement, condition, or provision contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Agreement.

10. Authority. Developer and the party executing this Agreement on behalf of Developer represent to City that such party is authorized to do so by requisite action of the CCSD Board, or partners, as the case may be, and agree, upon request, to deliver to City a resolution or similar document to that effect.

11. Late Payment Interest. If any payment required by this Agreement is not made when payment is due, a late rate charge of 18% per annum or the maximum rate allowed by applicable law, whichever is less, shall accrue on the payment owed from the date on which it was due until the date on which it is paid in full with accrued interest.

12. Time of the Essence. Time is of the essence of each and every provision of this Agreement.

## Attachment B

### Scope of Work Right of Way Engineering Requirements

#### Right of Way Tasks

- Research and define existing right of way and determine how title is held (i.e. fee simple or easement) to the center line of the road and include on base plans.
- List all encumbrances shown on the title reports, and the location of existing public and private utilities obtained from utility companies, and include on the base plans.
- Prepare an Appraisal Index Map, Legal Descriptions, Acquisition Plat, and Aerial Right of Way Acquisition or each of the proposed right of way takes (acquisition).

#### Right of Way Engineering Deliverables

##### 1. Appraisal Map – please include the following items:

- Appropriate scale to identify parcels, proposed right of way, public utility easement and temporary construction easement, street names, existing visible surface structures
- A legend summarizing parcels and right of way takes
- A North Arrow
- Assessor Parcel Numbers
- Owner's Name(s), total area, right of way area, TCE area, tabulated as needed.
- Key map corresponding to each individual legal and plat descriptions
- Show proposed right of way take area calculations (size and dimension)
- Show temporary construction easement area calculations (size and dimension)
- Show all topography
- Show Property Boundaries
- Show existing right of way and "areas" encumbered by roads and public utilities
- If possible overlay image of improvements impacted by the take area.

## 2. Plat Map

Show APN and reference to the appraisal index map number to be included on each plat/exhibit

- Show a legend defining take areas, landscape corridor, Fee Take, Public Utility Easement, Permanent Easement, Temporary Construction Easement with calculated areas
- Show right of way take area and remainder area, and the temporary construction easement in both acreage and square feet
- Show existing easements and encumbrances in relation to right of way take
- Total parcel areas based on field resolved and/or computed boundaries and calculations
- Property owner name(s)
- Show North Arrow
- Provide stand alone plat maps for each right of way take such as Fee, Public Utility Easement and Temporary Construction Easement

## 3. Legal Description

- A metes and bound legal description of the right of way take area as well as stand alone temporary construction easements
- \* Separate Plat Maps for Each Property Interest
- \* Total parcel areas based on field resolved and/or computed boundaries and calculations
- \* APN
- \* North Arrow



EXHIBIT G

Form of Assignment

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)

STERLING MEADOWS ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS STERLING MEADOWS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made by and between Elk Grove Associates, LLC a California corporation ("Elk Grove Associates"), and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

RECITALS

1. On \_\_\_\_\_, 200\_\_, the City of Elk Grove, the Costumes Community Services District ("CCSD") and Elk Grove Associates entered into that certain "Sterling Meadows Development Agreement" (the "Development Agreement"). Pursuant to the Development Agreement, Elk Grove Associates 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 \_\_\_\_\_, 200\_\_ as Instrument No. 200\_\_ - \_\_\_\_\_.

2. Elk Grove Associates 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. Elk Grove Associates desires to assign and Assignee desires to assume all of Elk Grove Associates' 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, Elk Grove Associates and Assignee hereby agree as follows:

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

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Elk Grove Associates under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Elk Grove Associates 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 Elk Grove Associates 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 WHEREOF, the parties hereto have executed this Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

ELK GROVES ASSOCIATES, LLC

ASSIGNEE:

\_\_\_\_\_

\_\_\_\_\_

a \_\_\_\_\_

a \_\_\_\_\_

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

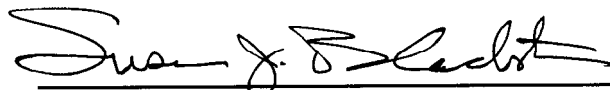
**CERTIFICATION**  
**ELK GROVE CITY COUNCIL ORDINANCE NO. 18-2008**

STATE OF CALIFORNIA            )  
COUNTY OF SACRAMENTO        )        ss  
CITY OF ELK GROVE             )

*I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on May 28, 2008 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on June 11, 2008 by the following vote:*

**AYES :**        **COUNCILMEMBERS:**        *Hume, Scherman, Leary,*  
**NOES:**        **COUNCILMEMBERS:**        *None*  
**ABSTAIN:**   **COUNCILMEMBERS:**        *None*  
**ABSENT:**    **COUNCILMEMBERS:**        *Davis, Cooper*

*A summary of the ordinance was published pursuant to GC 36933(c) (1).*



**Susan J. Blackston, City Clerk**  
**City of Elk Grove, California**