

ORDINANCE NO. 23-2016

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

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

WHEREAS, on September 5, 2001, the City Council adopted a Development Agreement Between the City of Elk Grove and M&H Realty Partners, Elk Grove Town Center, L.P., ET AL., for the Lent Ranch Marketplace Project (the "2001 Development Agreement"); and

WHEREAS, on July 11, 2007, the City Council adopted an Agreement Regarding the Regional Mall, Fees, and Infrastructure with Elk Grove Town Center, LP regarding the regional mall; and

WHEREAS, on October 8, 2014, the City Council approved a new Development Plan Review for the Regional Mall site (District A) of, and pursuant to, the Lent Ranch Special Planning Area, referred to as the Outlet Collection at Elk Grove, file EG-14-012; and

WHEREAS, as part of the approval of the Outlet Collection at Elk Grove, the City Council entered into a new Development Agreement and an Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure with the Applicant, Elk Grove Town Center, L.P.; and

WHEREAS, the City of Elk Grove received an application on August 30, 2016, from the Applicant requesting amendments to the Development Agreement and an Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure (the "Agreements") to remove the Phase 2 portion from these agreements; and

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

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

WHEREAS, the Planning Commission held a duly noticed public hearing on September 15, 2016, as required by law to consider all of the information presented by staff, information presented by the Applicant, and public testimony presented in writing and at the meeting, and the Planning Commission recommended approval of the

amendments to the Agreements to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on October 12, 2016, as required by law to consider all of the information presented by staff, information presented by the Applicant, and public testimony presented in writing and at the meeting.

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

Section 1: Purpose

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

Section 2: Findings

This Ordinance is adopted based upon the following findings:

California Environmental Quality Act (CEQA)

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

Evidence: The City has reviewed the Development Agreement amendment and analyzed it based upon the provisions in Section 15162 of the State CEQA Guidelines. The proposed amendments to the Development Agreement narrow the scope of these agreements to just the area covered by the 2014 approvals for the Outlet Collection at Elk Grove Project. That project proposed to develop approximately 750,000 square feet of commercial development, which is less than the 1,300,000 square feet analyzed in the Lent Ranch EIR. While the core development area (approximately 525,000 square feet) will be structured as an outlet center, it will continue to operate with retail tenants consistent with the description for the District included in the Draft EIR. The balance of the commercial center will include space for a movie theater, and locations for future pad buildings that will accommodate other retail and restaurant tenants. This is also consistent with the District A description from the Draft EIR that references “varied dining opportunities, and entertainment facilities including a possible theater complex.”

The proposed Development Agreement amendment will modify the application of the existing Development Agreement by narrowing the scope of these agreements to include only the area covered by the 2014 approvals for the Outlet Collection at Elk Grove Project. The amendment does not change the characteristics of the approved development. No specific development of the Phase 2 area is approved by the Development Agreement amendment. Therefore, there are no substantial changes in the project approvals from that analyzed in the 2001 EIR and no new significant environmental effects, or substantial increase in the severity of previously identified significant effects. No new information of substantial importance has been identified.

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

Development Agreement Amendment

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

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

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

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

employment, services and housing, and improve the mix of uses in the community.

The First Amendment to the Development Agreement reflects the project boundaries as contained in the project approvals dated October 2014 under File EG-14-102. No other development is approved by the Development Agreement amendments.

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

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

Section 3: Approval of Development Agreement Amendment.

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

Section 4: No Mandatory Duty of Care.

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

Section 5: Severability

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or

application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.


Section 6: Savings Clause

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

Section 7: Effective Date and Publication

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

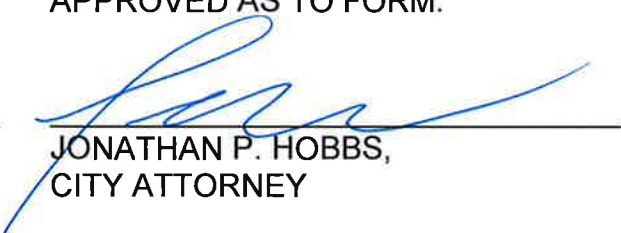
ORDINANCE: **23-2016**
INTRODUCED: October 12, 2016
ADOPTED: October 26, 2016
EFFECTIVE: November 25, 2016



GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:


JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: October 26, 2016

EXHIBIT A

OFFICIAL CITY BUSINESS
No recording fee
Government Code Section 6103

RECORDING REQUESTED BY:

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

WHEN RECORDED MAIL TO:

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

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

**FIRST AMENDMENT TO THE
DEVELOPMENT AGREEMENT
BETWEEN THE
CITY OF ELK GROVE,
AND
ELK GROVE TOWN CENTER, LP**

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

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

RECITALS

- A. The City and Developer have heretofore entered into a Development Agreement, approved by City of Elk Grove by Ordinance No. 29-2014, adopted on October 22, 2014 (the "Development Agreement"), and relating to certain Property in the City of Elk Grove upon which Developer desires to develop
- B. Those recitals provided in the Development Agreement are herein incorporated by reference.
- C. In furtherance of the Project, the City and Developer desire to enter into this First Amendment to make certain modifications and amendments to the Development Agreement.

NOW, THEREFORE, the Parties agree as follows:

AMENDED AGREEMENT

1. Section 1.16 is hereby amended to read as follows:

- 1.16 "Property" is that certain real property consisting of approximately 64.423 acres in the City of Elk Grove, being a portion of Assessor's Parcel Number 134-1010-001, and more particularly described in Exhibit A hereto. The term "Property" may include any part of the Property, depending on the context.

Continued on next page

2. EXHIBIT A, Legal Description of the Property, is hereby amended to read as follows:

**EXHIBIT A
LEGAL DESCRIPTION
ELK GROVE PROMENADE
REMAINING PROPERTY**

Being a portion of Lot A as shown on that certain map entitled "Subdivision No. 00-038.00 Lent Ranch Marketplace" filed for record on December 14, 2007 in Book 372 of Maps, Page 27, located in the City of Elk Grove, County of Sacramento, State of California, more particularly described as follows:

All of said Lot A.

EXCEPTING THEREFROM, the following described area:

COMMENCING at a point which is the northeasterly corner of Lot A of said map, being a 3/4" iron pipe with plug stamped L.S. 6815; Thence leaving said **POINT OF COMMENCEMENT** along the northeasterly line of said Lot A, South 37°55'18" East, a distance of 533.10 feet; Thence leaving said northeasterly line, entering and passing through said Lot A, South 51°30'01" West, a distance of 24.29 feet to the **TRUE POINT OF BEGINNING**; Thence leaving said Point of Beginning and continuing through said Lot A, South 51°30'01" West, a distance of 1780.56 feet to a point on the southwesterly line of said Lot A, also being a point on the northeasterly right-of-way line of Promenade Parkway as shown on said map;

Thence northwesterly and northerly, respectively, along said right-of-way line, the following Twenty-one (21) arcs, courses and distances:

- 1) from a radial line which bears South 57°17'37" West, along a non-tangent curve concave to the east, having a radius of 1,452.00 feet, northwesterly 564.43 feet along said curve through a central angle of 22°16'20";
- 2) North 79°33'57" East, a distance of 6.00 feet;
- 3) from a radial line which bears South 79°33'57" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 40.55 feet along said curve through a central angle of 92°56'41";
- 4) North 82°30'38" East, a distance of 51.72 feet;
- 5) North 07°29'22" West, a distance of 100.00 feet;
- 6) South 82°30'38" West, a distance of 53.51 feet;
- 7) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 40.62 feet along said curve through a central angle of 93°06'07";
- 8) South 85°36'45" West, a distance of 6.00 feet;
- 9) from a radial line which bears South 85°36'45" West, along a non-tangent curve concave to the east, having a radius of 1,454.00 feet, northerly 93.58 feet along said curve through a central angle of 03°41'16";
- 10) North 00°42'00" West, a distance of 147.80 feet;
- 11) North 89°18'00" East, a distance of 6.00 feet;
- 12) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 39.27 feet along said curve through a central angle of 90°00'00";
- 13) North 89°18'00" East, a distance of 6.00 feet;
- 14) North 00°42'00" West, a distance of 50.00 feet;
- 15) South 89°18'00" West, a distance of 13.34 feet;
- 16) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 38.46 feet along said curve through a central angle of 88°08'33";
- 17) South 87°26'33" West, a distance of 6.00 feet;

- 18) North 02°33'27" West, a distance of 51.58 feet;
- 19) North 00°42'00" West, a distance of 563.84 feet;
- 20) North 89°18'00" East, a distance of 6.00 feet;
- 21) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the east, having a radius of 25.00 feet, northerly 6.76 feet along said curve through a central angle of 15°30'00" to the northwest corner of said Lot A and a point on the common line between said Lot A and Lot G of said Map;

Thence leaving said northeasterly line, along said common line, the following four (4) arcs, courses and distances:

- 1) North 89°12'25" East, a distance of 86.70 feet;
- 2) along a tangent curve concave to the southwest, having a radius of 330.00 feet, southeasterly 314.08 feet along said curve through a central angle of 54°31'51";
- 3) South 36°15'44" East, a distance of 86.17 feet;
- 4) along a tangent curve concave to the north, having a radius of 25.00 feet, easterly 37.96 feet along said curve through a central angle of 87°00'21";

Thence leaving said common line, entering and passing through said Lot A, the following eight (8) arcs, courses and distances:

- 1) South 32°02'06" East, a distance of 66.91 feet;
- 2) from a radial line which bears North 33°08'11" West, along a non-tangent curve concave to the south, having a radius of 978.00 feet, easterly 417.51 feet along said curve through a central angle of 24°27'35";
- 3) North 81°19'25" East, a distance of 19.83 feet;
- 4) along a tangent curve concave to the south, having a radius of 879.00 feet, easterly 342.73 feet along said curve through a central angle of 22°20'25";
- 5) South 76°20'11" East, a distance of 12.19 feet;
- 6) along a tangent curve concave to the southwest, having a radius of 342.00 feet, southeasterly 157.69 feet along said curve through a central angle of 26°25'03";
- 7) along a compound curve concave to the southwest, having a radius of 342.00 feet, southeasterly 71.04 feet along said curve through a central angle of 11°54'08";
- 8) South 38°01'00" East, a distance of 346.19 feet to the **TRUE POINT OF BEGINNING.**

TOGETHER WITH, the following described area:

That portion of that certain "Frontage Road" being 46 feet wide, 65 feet wide and of varying width in the City of Elk Grove, County of Sacramento, State of California as described in that certain document entitled "Relinquishment of State Highway, in the County of Sacramento, Road III SAC-4-A,B" recorded in Volume 3710, Page 472, recorded in the County of Sacramento Recorder's Office at the request of the Commissioner of Highways on February 26, 1959, Official Records of said County described as follows:

Bounded on the southeast by the northwesterly prolongation that certain line having a bearing and distance of North 33° 02' 59" West 245.24 feet in the northeasterly line of Lot A as shown on "Subdivision No. 00-038.00, Lent Ranch Marketplace" filed in Book 372, Page 27 of Maps, Records of said County, on the northeast by the northeasterly line of said "Frontage Road", on the northwest by the north line of southeast one-quarter of Section 12, T.6.N., R.5.E., Mount Diablo Baseline and Meridian as shown on said Subdivision Map and on the southwest by the northeasterly lines of Lots A and G as shown on said Subdivision Map.

EXCEPTING THEREFROM that portion of said "Frontage Road" lying northwesterly of the following described line:

Beginning at the easterly terminus in the curved southerly boundary of Lot G, as shown on that certain map entitled "Lent Ranch Marketplace" filed in Book 372, Page 27 of Maps, Records of said County, being a curve concave to the south having a radius of 400 feet, a radial line of said curve to said terminus bears North 24° 22' 51" East; thence from said Point of Beginning North 52° 04' 42" East 46.00 feet to the northeasterly line of said "Frontage Road".

The aforementioned description was abandoned by the City of Elk Grove by Resolution No. 2008-237 recorded November 10, 2008 in Book 20081110, Page 381, Official Records.

Containing 64.423 acres, more or less.

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

June 24, 2016

END OF DESCRIPTION

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IN WITNESS WHEREOF, this Amended Agreement has been executed as of this 26th day of October, 2016.

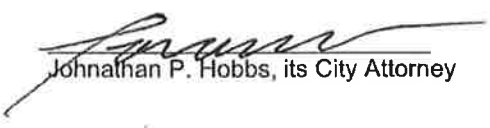
CITY OF ELK GROVE

Laura S. Gill, its City Manager

ATTEST:

Jason Lindgren, its City Clerk

APPROVED AS TO FORM:



Johnathan P. Hobbs, its City Attorney

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

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

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

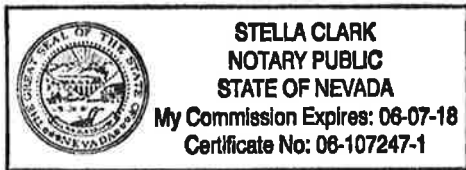
By: 

David Kautz, Senior Vice President

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on Oct 3, 2016,
by David Kautz

Stella Clark
Notary Public



**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 23-2016**

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

I, Jason Lindgren, 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 October 12, 2016 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on October 26, 2016 by the following vote:

AYES : **COUNCILMEMBERS:** *Davis, Ly, Detrick, Suen*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *Hume*

ABSENT: **COUNCILMEMBERS:** *None*

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



**Jason Lindgren, City Clerk
City of Elk Grove, California**