

**AMENDED AND RESTATED AGREEMENT
REGARDING REGIONAL MALL, FEES AND INFRASTRUCTURE**

This Amended and Restated Agreement Regarding Regional Mall, Fees and Infrastructure (the "**Agreement**") is entered into as of [REDACTED], 2014 (the "**Effective Date**") by and between the City of Elk Grove, California, a municipal corporation organized under the laws of the State of California ("**Elk Grove**" or "**City**"), and Elk Grove Town Center, L.P., a Delaware limited partnership ("**EGTC**").

Recitals

This Agreement is predicated upon the following findings:

- A. On September 5, 2001 by Ordinance 13-2001, the Elk Grove City Council adopted that certain Development Agreement (the "2001 Development Agreement") for the development of the 295-acre Lent Ranch Marketplace Special Planning Area (the "SPA"), and
- B. Pursuant to the 2001 Development Agreement and the SPA, on July 11, 2007 the Elk Grove City Council approved a Development Plan Review (EG-05-878) for the Elk Grove Promenade development, which permitted the construction of an initial 1.1 million square foot open-air regional mall in SPA District A; and
- C. Following the 2001 Development Agreement, the City and EGTC entered into that certain "Agreement Regarding Mall, Fees and Infrastructure" dated November 14, 2007 (the "2007 Mall Agreement"); and
- D. Developer has completed construction of major backbone infrastructure and offsite improvements to serve the SPA area; and
- E. While substantial construction of the Elk Grove Promenade project was completed, the project was stopped in December of 2008 due to the economic recession and the bankruptcy reorganization of General Growth Properties, Inc.; and
- F. City has approved Regional Mall District Development Plan & Review File No. EG-14-012 for the substantial reuse of the existing building construction and improvements in SPA District A, through the development of commercial and retail uses; and
- G. Concurrently with the City's approval of Regional Mall District Development Plan & Review File No. EG-14-012, the City has entered into

that certain Development Agreement dated [REDACTED] with EGTC (the "2014 Development Agreement")

- H. The parties wish to amend, restate and supersede the 2007 Mall Agreement, to acknowledge the satisfaction of certain obligations and commitments of the parties under the 2007 Mall Agreement and to establish future obligations and commitments of the parties with respect to Regional Mall District Development Plan & Review File No. EG-14-012.

NOW, THEREFORE, the Parties agree as follows:

1. Effect on 2007 Mall Agreement. This Agreement shall amend and restate the 2007 Mall Agreement in its entirety, and upon the Effective Date of this Agreement, the 2007 Mall Agreement shall be deemed to be superseded and replaced in its entirety by this Agreement.
2. Mall Requirements. EGTC acknowledges that as a material inducement for Elk Grove to enter into this Agreement, EGTC will, subject to receiving the necessary approvals from the City and other applicable governmental agencies, construct and open a retail center ("**Mall**") meeting the following criteria:
 - a. Minimum of 400,000 square feet of gross building area in the initial phase of development, which will be constructed in substantial conformance to Regional Mall District Development Plan File No. EG-14-012, subject to any modifications thereto as may be required or approved by the City.
 - b. The stores within the initial phase of the Mall, developed pursuant to Regional Mall District Development Plan File No. EG-14-012, will include at least 21 tenants found in attached Exhibit A. All tenants that count toward the Exhibit A total will have square footage sizes that are customary for such tenants' retail stores.
 - c. The construction of the initial phase of the Mall will be complete, and all of the provisions in Section 1(b) above shall be met (i.e., the tenants in the Mall specified in Section 1(b) shall be open to the public), within one (1) year after the initial opening of any portion of the Mall to the public.
 - d. The parties agree that the initial phase of the Mall shall be open to the public no later than four (4) years after the effective date of the 2014 Development Agreement.

3. License of Improvements. Concurrent with this Agreement, City and EGTC shall enter into a License Agreement in the form attached hereto as Exhibit B (the “**License Agreement**”).
4. Public Improvements. All public improvements required for the development of SPA District A, including without limitation the improvements listed on attached Exhibit C (the “Offsite Improvements”), have been constructed by EGTC and accepted by the appropriate governmental agencies. EGTC represents, to best of its knowledge, the Offsite Improvements were constructed in compliance with the prevailing wage requirements of *Labor Code §1720 et. seq.*
5. Prevailing Wage Requirements and Indemnity. If any on-site or off-site improvements related to the Mall, including, without limitation, the Offsite Improvements defined herein, constructed by or caused to be constructed by EGTC or any of its predecessors, affiliates, contractors, sub-contractors, or agents, are considered to be public works for purposes of prevailing wages under State law, then when such improvements are constructed, or were constructed, they shall be, or shall have been, constructed in compliance with the prevailing wage law pursuant to *Labor Code §1720 et seq.* and implementing regulations of the Department of Industrial Relations and shall comply with the other applicable provisions of the prevailing wage law, including, without limitation, the payment of prevailing wages in the construction of such improvements, as those wages are determined pursuant to the prevailing wage law. The City makes no representations or warranties as to whether any such improvements are considered to be public works for purposes of prevailing wages under State law. Should EGTC or any of the aforementioned persons or entities fail to pay, fail to cause to be paid, or fail to have paid or caused to have been paid, prevailing wages, or to have complied with the aforementioned prevailing wage laws as to any such improvements, and it is alleged, contended, or determined that it should have paid prevailing wages, or otherwise fail to comply with the prevailing wage law, EGTC shall indemnify, defend, and hold harmless to the fullest extent permitted by law, the City (as defined in this Agreement) from and against any and all claims, liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with the failure to pay prevailing wages or comply with the prevailing wage law. This indemnification obligation shall survive the termination of this Agreement.
6. Unreimbursed Infrastructure. The City agrees to reimburse the Developer

for the acquisition and installation of the "Unreimbursed Cost of Offsite Improvements" as defined herein and in the License Agreement. This reimbursement is based on the actual construction cost of the Offsite Improvements, as determined by the City in the amount of fifteen million three hundred eight thousand seven hundred seventy six dollars and no cents (\$15,308,776).

7. Miscellaneous.

- a. Assignment. EGTC, for itself, its heirs, distributes, executors, administrators, legal representatives, successors and assigns, covenants that it will not assign any of its rights or obligations under this Agreement without the prior written consent of Elk Grove in each instance, which consent may be withheld in Elk Grove's sole discretion. Any assignment in violation of this Section 12(a) will be void. No permitted assignee of this Agreement may further assign this Agreement without Elk Grove's prior written consent.
- b. 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.

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 EGTC shall be addressed as follows:

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

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.

- c. 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.
- d. Amendment. No amendment, alteration, modification of, or addition to this Agreement will be valid or binding unless expressed in writing and signed by all parties.
- e. 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.
- f. 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.
- g. Authority. EGTC and the persons or parties executing this Agreement on behalf of EGTC represent to City that such party is authorized to do so by requisite action of the board of directors, or partners, as the case may be, and agree, upon request, to deliver to City a resolution or similar document to that effect.
- h. Attorneys' Fees. In the event of litigation by one party against another under this Agreement and/or the related 2014 Development Agreement, or to enforce any provision herein and/or the related 2014 Development Agreement, the prevailing party shall be entitled to recovery of its reasonable and actual attorneys' fees and litigation costs (as may be fixed by the Court) from the non-prevailing party, which recovery shall not cumulatively exceed One Hundred and Seventy Five Thousand Dollars (\$175,000.00) per lawsuit, including any counterclaims,

cross-claims, related lawsuits and/or consolidated lawsuits. All attorneys' fees and litigation costs incurred by the prevailing party in excess of the amount recoverable under this section shall be borne by the prevailing party.

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

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

CITY OF ELK GROVE

Name: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

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

By: Elk Grove Town Center, L.L.C., its general partner
By: The Howard Research and Development Corporation, its sole member

By: _____

Its: _____

EXHIBIT A

TENANT LIST

(Outlet or Full-Price Format)

- 2B Bebe
- 7 for all Mankind
- Abercrombie & Fitch
- Adidas
- Aeropostale
- Aerosoles
- Aldo
- American Eagle
- Ann Taylor
- ASICS
- Banana Republic
- Bare Essentials
- Bass Shoes
- Bath & Body Works
- Body Shop
- Bose
- Brighton
- Brooks Brothers
- CAbi
- Cache
- Calvin Klein
- Carter's
- Charlotte Russe
- Chico's
- Children's Place
- Claire's
- Clark's
- Coach
- Cole Haan
- Columbia Sportswear
- Converse
- Crabtree & Evelyn
- Crocs
- DKNY
- Dooney & Bourke
- Dressbarn Express
- Famous Footwear
- Forever 21
- Fossil
- Gap
- Gap Kids
- GNC
- Guess
- Gymboree
- H&M
- Hanes
- Hartstrings Childrens
- Helzberg
- Hot Topic
- Hurley Outlet
- IT'SUGAR
- IZOD
- J. Crew
- Jared
- Jockey
- Joe's Jeans
- Johnston & Murphy
- Jones New York
- Jos A Bank
- Journey's
- Justice & Brothers
- Kate Spade
- Kay Jewelers
- Kenneth Cole
- Kitchen Collection
- L.L. Bean
- Lane Bryant
- Le Creuset
- Levi's
- Lindt Chocolate
- Loft
- Lucky Brand
- Michael Kors
- Motherhood Maternity
- Movado
- Multi-screen cinema
- Nautica
- Nautica Kids
- Neiman-Marcus
- Last Call Studio
- New Balance
- Nike
- Nine West
- Nordstrom Rack
- NY & Co.
- Oakley
- Old Navy
- OshKosh
- PacSun
- Perfumania
- Perry Ellis
- Polo Ralph Lauren
- Pottery Barn
- PUMA
- Rack Room Shoes
- Reebok and Rockport
- Restoration Hardware
- Saks Off-Fifth
- Samsonite
- Seiko
- Sketchers USA
- Sperry
- Steve Madden

- Stride Rite
- Sunglass Hut
- Sunglass Warehouse
- Swarovski
- Table-service restaurant(s): 1 each
- Talbots
- The Northface
- Tilly's
- Tommy Hilfiger
- True Religion Brand Jeans
- U.S. Polo Assn
- UGG Australia
- Under Armour
- Van Heusen
- Victoria's Secret
- Vineyard Vines
- Vitamin World
- White House Black Market
- Wilson's Leather
- Wireless store
- Yankee Candle
- Zumiez

EXHIBIT B
FORM OF LICENSE AGREEMENT

LICENSE AGREEMENT

This License Agreement is entered into as of this [REDACTED] day of [REDACTED] 2014 (the "Effective Date"), by and between THE CITY OF ELK GROVE, a municipal corporation ("City"), and ELK GROVE TOWN CENTER, L.P., a Delaware limited partnership ("Owner")

RECITALS

- A. Owner is the owner in fee of that certain real property (the "Site") consisting of approximately 100.34 acres of land located generally North of Kammerer Road, West of State Route 99, which is described on Exhibit A.
- B. On or about [REDACTED], 2014, Owner and the City entered into a Development Agreement ("2014 Development Agreement") that provides the terms and conditions under which the Site shall be developed with retail uses in furtherance of the City's General Plan.
- C. Concurrently herewith, the City and the Owner have entered into that certain Amended and Restated Agreement Regarding Regional Mall, Fees and Infrastructure ("Mall Agreement") which contains the terms and conditions pursuant to which the entire Site will be developed with retail and commercial uses consistent with the Lent Ranch Marketplace Special Planning Area and the 2014 Development Agreement (the "Mall"), the financing and reimbursement for previously constructed off-site public improvements related to the development of the Elk Grove Promenade project and providing for the Owner to grant to the City a nonexclusive license over a portion of the Site for public parking and limited event purposes, as described herein.
- D. As a condition of prior City regulatory approvals related to the development of the Elk Grove Promenade project, Owner constructed or installed certain public improvements and dedicated right-of-way as set forth in Exhibit C of the Mall Agreement (the "Offsite Improvements"), consisting of certain roadway improvements, water and sewer transmission lines and drainage and flood control improvements.
- E. Owner was partially reimbursed for the cost of construction and installation of the Offsite Improvements through fee programs, however, a portion of the cost of construction and installation of the Offsite Improvements will not be reimbursed through such fee programs or otherwise. The unreimbursed portion of the Owner's cost of construction

and installation of the Offsite Improvements and dedicated right-of-way (such unreimbursed portion, the "Unreimbursed Cost of Offsite Improvements") is fifteen million three hundred eight thousand seven hundred seventy six dollars and no cents (\$15,308,776) .

- F. The 2014 Development Agreement, Mall Agreement and related prior approvals for the Elk Grove Promenade project authorize and permit Owner to construct and maintain certain public parking areas and private streets in conjunction with the development of the Site to accommodate the traffic circulation and off-street parking demands to be generated by the Mall.

- G. The City and Owner agree that development of the Mall on the Site and construction of the Off-site Improvements (collectively, the "Project") are in the vital and best interests of the City and the welfare of its residents, and in accordance with the public purposes and provisions of applicable law. The public purposes to be served by the Project include, without limitation, the provision of improved access and circulation, increased public parking including the use of an area within the parking lot as a park-and-ride-facility and use of undeveloped areas of the Site for City events, as provided herein; assistance with the long term financial stability of the City, the encouragement of retail development along major corridors in the City; the creation of local job opportunities and the preservation of the current employment base; expansion of the number and variety of shopping opportunities for the citizens of Elk Grove; provision of additional tax revenues to fund police, fire and other vital public services; reduction of sales tax leakage; and aesthetic enhancement of the community. The City and Owner further agree that, without the long term financial security provided by this License Agreement, it would be financially unfeasible for Owner to commence and complete construction of the Project and that, in the absence of this License Agreement, the City's ability to achieve the important public purposes to be served by the Project would be lost.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and conditions set forth in this License Agreement, City and Owner agree as follows:

COVENANTS

1. Grant of Nonexclusive License for Public Parking and Access Purposes. Owner hereby agrees to grant to City and City hereby agrees to accept from Owner a nonexclusive license for public parking and event purposes, as defined herein. Public parking shall include use of the

parking lot for a park-and-ride-facility (in the manner set forth herein) and for automobiles and light trucks only over and across the parking lot(s) to be constructed and maintained by Owner on the Site (the "Parking License Areas" as shown on Exhibit B) existing from time to time, together with the right of ingress to and egress from the nearest public street and such parking lot(s) on the driveways to be located on the Site from time to time, all pursuant to the 2014 Development Agreement, the Mall Agreement and related approvals, as the same may be amended from time to time, and without any fee or charge to the City or members of the public using the Parking License Areas. Additionally, the license shall include the City's ability to hold up to four events a year on undeveloped areas within the Site (such areas, the "Event License Areas," as shown on Exhibit C). The foregoing grant is subject to the following specific limitations:

- a. The grant of the nonexclusive license rights for public parking and events and access as provided herein shall become effective as of the date that City issues the first certificate of occupancy for any of the stores or buildings to be provided on the Site.
- b. City shall not use or permit to be used the Parking License Areas or Event License Areas for purposes that are inconsistent with either or both:
 - i. The intended primary function of such area as parking for the customers, employees, licensees and invitees of the Mall;
or
 - ii. The satisfaction of Owner's off-street parking requirements for the Site.

Not by way of limitation of the foregoing, City shall have no right under this License Agreement to permit the Parking License Areas to be used for parking of vehicles or an event in excess of the time restrictions established by Owner in accordance with subparagraph e. below, or for a park-and-ride facility or for the satisfaction of off-street parking requirements that apply to other properties in the vicinity of the Site.

- c. City shall have no right to construct, reconstruct, maintain, demolish or remove any structures or improvements or to erect any barriers within the Parking License Areas or Event License Areas unless such structures or improvements and barriers are approved by Owner in the exercise of its sole business judgment.

- d. Owner shall have the full right to construct, reconstruct, maintain, demolish or remove structures and improvements, construct a parking structure and improvements, erect barriers and make other physical changes to the improvements within the Parking License Areas and Event License Areas that are consistent with the 2014 Development Agreement, Mall Agreement and related approvals (as the same may be amended from time to time) and other governmental regulations and requirements. City agrees that the area of the Site defined as the Parking License Area on Exhibit B and the Event License Area on Exhibit C shall be revised as appropriate to reflect subsequent development approvals issued by the City, and to amend Exhibit B or C as necessary from time to time during the term of this License Agreement.
- e. Owner shall have the full right to promulgate and enforce parking and circulation restrictions and regulations within the Parking License Areas that are consistent with the 2014 Development Agreement, Mall Agreement and related approvals (as the same may be amended from time to time) any reciprocal easement agreement or other recorded instrument governing the use of the Site ("REA"), and applicable governmental regulations and requirements including, without limitation, closure of the Parking License Areas during hours that the businesses on the Site are closed to the public, time restrictions, valet parking programs (including charges for valet customers), designation of parking areas where employees are required to park, designation of handicapped spaces and similar matters.
- f. Owner shall retain full authority to temporarily take parking spaces out of service when Owner reasonably determines that such action is necessary for safety reasons or to effectuate maintenance, repairs, reconstruction or improvement of said portion of the Site or for temporary outdoor sales.
- g. Use of a portion of the Parking License Areas by the City for park-and-ride purposes shall be limited to 24 spaces. These spaces shall be available for park-and-ride use between the hours of 5 A.M. and 11 P.M., Monday through Friday. Park-and-ride spaces shall be non-exclusive, and shall not be limited to use for park-and-ride purposes. Owner may relocate any and all designated park-and-ride spaces within the Parking License Areas, in accordance with its sole business judgment or to facilitate future improvements to the Site. City agrees to indemnify, defend and hold harmless Owner for any claims, liability, damages and losses arising out of City's use of

parking spaces for park-and-ride purposes as set forth herein.

- h. Subject to obtaining any necessary governmental permits and approvals, Owner shall retain full authority at any time and from time to time to restripe or relocate parking stalls within the Parking License Areas and make other physical alterations and improvements, provided that not fewer than the minimum number of parking spaces required to satisfy Owner's obligations for off-street parking shall be maintained on a permanent basis in accordance with applicable City ordinances, regulations, rules and official policies.
- i. Owner shall have the right to grant utility easements and easements for private ingress and egress that do not materially interfere with City's use of the Site as set forth herein.
- j. This License Agreement shall replace and supersede that certain license agreement dated November 14, 2007 between City and Owner, recorded on December 14, 2007 in Book 20071214, Page 752 in the Official Records of Sacramento County, as of the Effective Date.
- k. City will make a written request to Owner at least ninety (90) days in advance to use any undeveloped portion of the Event License Areas Site for an event. Within thirty (30) days of the request to Owner for Site use, Owner shall provide a response in which Owner either approves, approves with conditions, or declines the request. Owner shall evaluate each event request in its sole business judgment, with regard to the potential effects on the operations of Owner and its tenants on the Site. Owner shall not unreasonably withhold consent for use of the Event License Areas for an event. The number of City events held in a single calendar year shall not exceed four, unless specifically approved in writing by Owner on a case-by-case basis. City agrees to indemnify, defend and hold harmless Owner for any claims, liability, damages and losses arising out of City's use of any portion of the Event License Area for events, as set forth herein. Nothing in this license shall operate to preclude the future development of any portion of the Site by Owner.
- l. Nothing in this License Agreement shall constitute a guarantee or warranty by Owner that the Event License Areas, or any portion thereof, are suitable for a particular event contemplated or proposed by the City or a third party. Moreover, Owner shall not

be required to make any improvements to the Event License Areas to facilitate an event. To the extent that improvements within the Event License Areas are necessary to support an event, in the judgment of the City, such improvements are to be made at the sole cost of the City, or a third party under agreement with the City. No improvements shall be made to or installed within the Event License Areas by the City or a third party without the prior consent of Owner, under Section 1(k). If requested by Owner, the City shall be responsible for removing any improvements made within the Event License Areas following the conclusion of the event, and to restore the Event License Areas to their previous condition to the extent practicable. The City shall be responsible for all utilities, sanitation, traffic and parking control, and debris and trash removal associated with events held pursuant to this License Agreement. Unless agreed specifically by Owner in writing, the City shall not utilize the Parking License Areas, or any portion thereof, for parking associated with events held pursuant to this License Agreement.

2. Management and Control. Owner shall retain full management and control of the Parking License Areas and Event License Areas, subject only to the nonexclusive rights of City and members of the public to utilize the Parking License Areas and Event License Areas as set forth herein.
3. City to Have No Responsibility for Maintenance or Repair or Liability for Injuries or Damage. City shall have no obligation for maintenance, repair, replacement, reconstruction or improvement of all or any portion of the Parking License Areas or any improvements now or hereafter constructed thereon. In addition, and except as provided in Section 1(g) and (k), City shall have no liability by virtue of its property interest in the Parking License Areas for any personal injuries or death, property damage or economic loss arising out of any occurrence on or adjacent to the Parking License Areas, and Owner agrees to indemnify, defend and hold City and its officers, employees, agents, counsel and consultants harmless from and against any claims, liabilities or losses arising from such an occurrence on the Site.
4. Term. This License Agreement and City's rights hereunder shall terminate and become null and void on the date that City makes the final payment due to Owner pursuant to paragraph 5 below. Upon termination of this License Agreement, City agrees to execute in recordable form such documents as may reasonably be required by Owner or the holder of any security interest in all or any portion of the Parking License Areas or Event License Areas to remove the lien or encumbrance of this License

Agreement.

5. City Payments to Owner.

- a. In consideration for Owner's provision of a license to City allowing public use of the Parking License Areas and Event License Areas as set forth in this License Agreement, in order to reimburse Owner for the Unreimbursed Cost of Offsite Improvements, and in consideration of the substantial public benefits to be achieved by the Project during each year of the term hereof, as referenced in Recital G herein, City agrees to make periodic payments ("Payments") to Owner in the amounts, at the times and subject to the terms and conditions set forth herein.
- b. The Payments required to be made by City hereunder shall be calculated based upon the amount of Sales Taxes generated by the Site, where "Sales Taxes" shall mean the sales tax revenues from the imposition of the Bradley-Bums Uniform Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code), as the same may be amended from time to time, that the California State Board of Equalization ("SBOE") determines are generated by the Site and are paid to the City ("Sales Taxes"). Any sales tax revenues generated by the Site that the SBOE determines are payable to any jurisdiction other than City shall be excluded in the calculation of Sales Taxes hereunder. In no event shall the Payments required to be made hereunder be secured by the City's general fund.
- c. The Payments shall be made quarterly by the City, in arrears, on the following schedule:

Quarter 1 (January 1 to March 31)	Payment due October 1 of the same calendar year.
Quarter 2 (April 1 to June 30)	Payment due January 1 of the following calendar year
Quarter 3 (July 1 to September 30)	Payment due April 1 of the following calendar year
Quarter 4 (October 1 to December 31)	Payment due July 1 of the following calendar year

The first quarter-year for which Payments shall be made shall be the first quarter year within which (1) the initial phase of the Mall is open to the public with stores as described in Section 2(b) of the Mall Agreement open for business, and (2) Sales Taxes are generated in excess of Two Hundred and Seventy Five Thousand Dollars (\$275,000.00) (such figure shall be increased annually by a factor of 1.03). After the first such quarter-year, City's obligation shall continue until the date on which the total amount of Payments made to Owner pursuant to this Paragraph 5 equals the amount of Owner's actual Unreimbursed Cost of Offsite Improvements, as defined in Recital E.

- d. For each year for which Owner is entitled to receive a Payment hereunder, beginning with the first quarter year for which payment is owed under Section 5c, the Payment for such year (as a total of the four quarterly Payments made within the one-year period in question) shall equal the following amount:
 - i. An amount equal to all Sales Taxes for the year in excess of Two Hundred and Seventy Five Thousand Dollars (\$275,000.00) (such figure shall be increased annually by a factor of 1.03), but less than One Million Nine Hundred Thousand Dollars (\$1,900,000.00 (such figure shall be increased annually by a factor of 1.03); plus
 - ii. An amount equal to one-half (1/2) of all Sales Taxes for the year in excess of One Million Nine Hundred Thousand Dollars (\$1,900,000.00) (such figure shall be increased annually by a factor of 1.03).
- e. The City, prior to making each quarterly Payment, shall determine the total Sales Taxes generated from the operation of the Site during the quarterly period for which Payment is due and actually paid to the City for such period based on the data provided by its consultant who receives the information from SBOE, and based upon such determination and the formula describe in Section 5(d) above, the amount of the applicable quarterly Payment. Such determination as between City and Owner shall be conclusive and binding on City and Owner, except that either party shall have the right to contest the sales tax data provided by SBOE in accordance with the procedures available under applicable law, and if any final decision in such contest results in a recalculation of such data, then the parties shall make such adjustments in the amounts credited pursuant to this Section as are necessary to reflect the final

determination.

- f. In the event that Owner is entitled to receive a Payment in accordance herewith, then City shall, in the ordinary course of business, remit the amount of the Payment to Owner. All sums payable hereunder shall be due and payable in lawful money of the United States of America.
- g. Owner shall cooperate with City in providing to City such information that Owner may have regarding Sales Taxes, subject to any nondisclosure or confidentiality provisions in Owner's leases with its tenants. Specifically, Owner shall, to the best of its ability using commercially reasonable efforts, provide and require any of its tenants, licensees, franchisees or transferees to provide to City copies of the quarterly sales tax reports submitted to the SBOE or concurrently with submission to the SBOE.
- h. Prior to the Effective Date, Owner submitted to City a complete accounting of the Owner's actual cost of constructing and installing the eligible Offsite Improvements, including but not limited to the submittal of contracts, proofs of payment, unconditional lien releases, and any other documents or materials reasonably requested by the City, consistent with current policies and procedures for City-administered impact fee programs and/or community facility districts.
- i. It is understood and agreed that the Payments required to be made by City to Owner hereunder with respect to the Site are intended to correspond in any relevant period to the benefit provided to City hereunder during such period by use of the license rights hereunder granted with respect to the Site and by the development and operation of the Site.
- j. City payments to Owner shall not take into account Proposition 57, the California Economic Recovery Bond Act, which allowed the State to issue bonds for a budget deficit. In order to ensure repayment of those bonds without raising taxes multiple revenue sources were used to repay the bonds. Including the exchange of taxes under California Revenue and Taxation Code Section 97.68. This temporary revenue measure that shifts revenue in a three step process ("Triple Flip") allows the State to exchange sales tax for property tax in the first flip to gain immediate access to more funds. Thus, the City receives 75% of its 1% of sales tax from the state and 25% of the sales tax is earmarked as property tax. City

shall make payment to Owner of the full 1% of sales tax by extrapolating the 75% of the 1% received by the City regardless of the State's recognition of the exchange.

6. Restrictions on Assignment. The license rights granted herein shall be personal to City and shall not be appurtenant to any real property owned by City. City shall not assign its rights hereunder to any other person or entity without the express prior written approval of Owner, which approval may be granted, conditioned or withheld in Owner's sole and absolute discretion. It is understood that City holds its rights under this License Agreement for the benefit of the citizens and residents of the City of Elk Grove and persons desiring ingress to and egress from the Site and parking in the Parking License Areas. Subject to the foregoing restrictions on assignment, this License Agreement shall be coupled with an interest in real property, shall not be revocable by Owner (in the absence of a material default and failure to cure by City), and shall bind and inure to the benefit of the successors and assigns of City and Owner.
7. Interpretation. The terms of this License Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this License Agreement or any other rule of construction that might otherwise apply. The section headings are for the purposes of convenience only, and shall not be construed to limit or extend the meaning of this License Agreement.
8. Waivers and Amendments. All waivers of the provisions of this License Agreement must be in writing and signed by the appropriate authorities of City or Owner, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of City and Owner.
9. Cooperation: Execution of Documents. Each party shall execute and deliver to the other all such other further instruments and documents as may be necessary to carry out this License Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder. Not by way of limitation of the foregoing, at the request of Owner or any holder of a mortgage or deed of trust with respect to all or any portion of the Site, City shall timely execute and deliver to Owner or such holder a written statement of City:
 - a. That, to the best of City's knowledge and belief, no default or breach exists (or would exist with the passage of time, or giving of notice, or both) by Owner under this License Agreement if such be the case, and certifying as to whether or not Owner has at the date

of such certification complied with any obligation of such Owner hereunder as to which such holder may inquire; and/or

- b. Certifying the status of payments made or due hereunder.

The form of any estoppel letter or certificate shall be prepared by Owner or the holder of the mortgage or deed of trust and shall be at no cost to the City.

10. Validation. This License Agreement is entered into by the parties hereto in connection with the Mall Agreement and in order to finance construction of, or reimbursement for, the eligible Offsite Improvements and is an integral part of the method of financing the eligible Offsite Improvements. As such, this License Agreement is a contract, obligation or evidence of indebtedness within the meaning of Government Code Section 53511.

IN WITNESS WHEREOF, City and Owner have executed this License Agreement as of the date first set forth above

CITY OF ELK GROVE

Name: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

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

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

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

By: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION

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

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

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

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

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

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

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

Containing 100.34 acres of land net, more or less.

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

END OF DESCRIPTION

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

PREPARED BY WOOD RODGERS, INC.
SACRAMENTO, CALIFORNIA

EXHIBIT B

PARKING LICENSE AREA

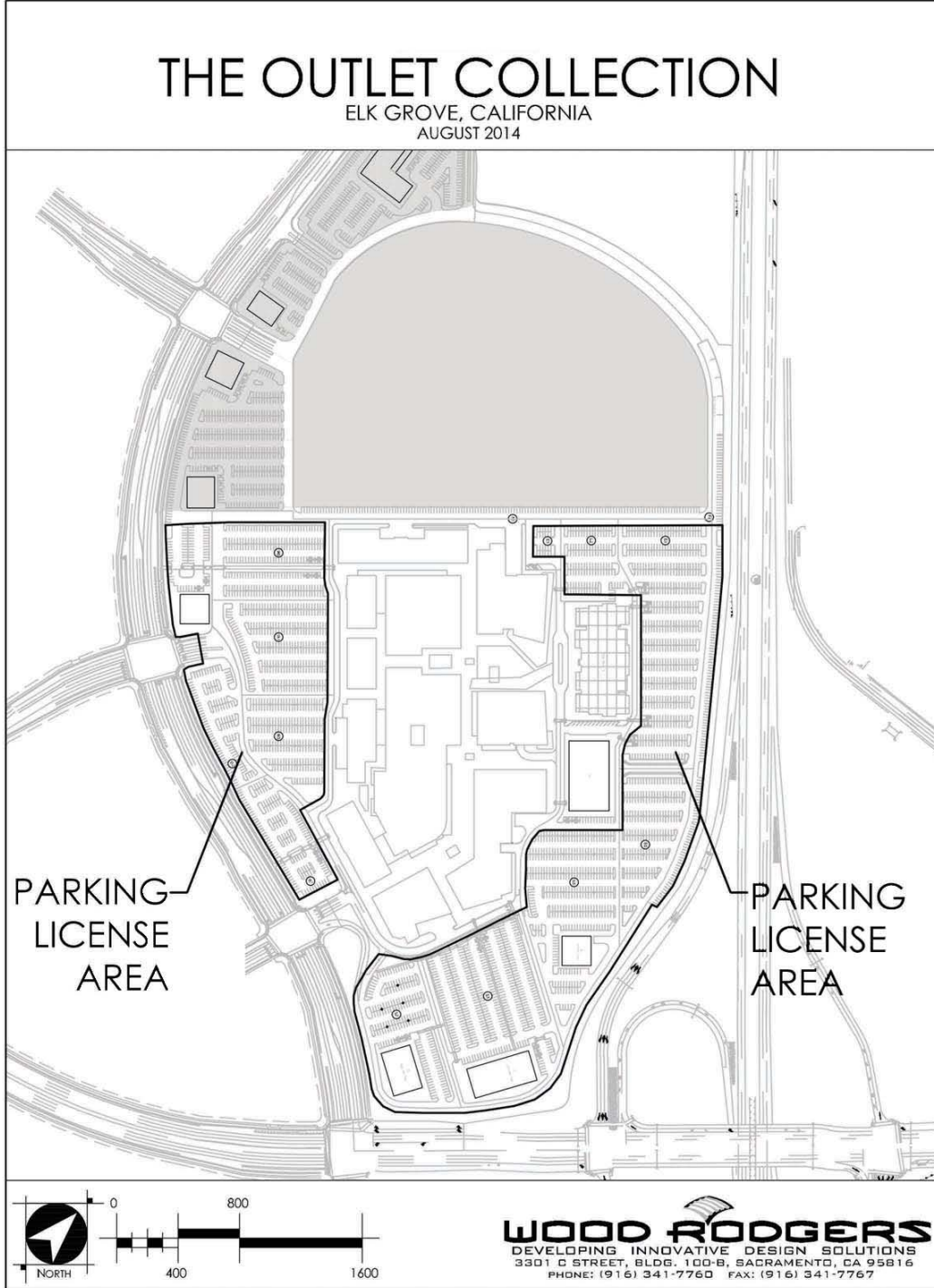


EXHIBIT C

EVENT LICENSE AREA



EXHIBIT C

OFFSITE IMPROVEMENTS

Roadway Improvements

Roadway Segments

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

Intersections

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

Traffic Signals

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

Water Transmission and Distribution Mains

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

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

Trunk and Collector Sewer System

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

Sewer Lift Station and Force Main

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

Trunk and Local Storm Drainage

- 24" Storm Drainage Line within Promenade Parkway from +/- 125' South of the Northern Lent Ranch project boundary to +/- 425' South of the Northern Lent Ranch Project Boundary
- 30" Storm Drainage Line within Promenade Parkway from +/- 425' South of the Northern Lent Ranch Project Boundary to +/- 800' South of the Northern Lent Ranch Project Boundary
- 36" Storm Drainage Line within Promenade Parkway from +/- 800' South of the Northern Lent Ranch Project Boundary to the intersection of Promenade Parkway and Kyler Road
- 42" Storm Drainage Line within Promenade Parkway from the intersection of Promenade Parkway and Kyler Road to +/- 600' South of the intersection of Promenade Parkway and Kyler Road
- 48" Storm Drainage Line within Promenade Parkway from +/- 600' South of the intersection of Promenade Parkway and Kyler Road to the intersection of Promenade Parkway and Bilby Road
- 66" Storm Drainage Line within Promenade Parkway from the intersection of Promenade Parkway and Bilby Road to the intersection of Promenade Parkway and Lent Ranch Parkway
- 54" Storm Drainage Line within Promenade Parkway from the intersection of Promenade Parkway and Lent Ranch Parkway to +/- 650' North of Kammerer Road
- 48" Storm Drainage Line within Promenade Parkway from +/- 650' North of Kammerer Road to the intersection of Promenade Parkway and Kammerer Road
- 18" Storm Drainage Line within Kammerer Road from +/- 50' East of the Western Lent Ranch project boundary to +/- 700' West of the Intersection of Kammerer Road and Promenade Parkway

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