

**RESOLUTION NO. 2002-131**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AUTHORIZING THE EXECUTION OF A LAGUNA SOUTH PUBLIC FACILITIES FEE  
PROGRAM REIMBURSEMENT AGREEMENT FOR THE LAGUNA SOUTH PUBLIC  
FACILITIES FEE PROGRAM FORMATION COSTS WITH  
M & H REALTY PARTNERS AFFILIATED FUND III L.P.**

**WHEREAS**, Chapter 16.83 of the Elk Grove City Code provides for the establishment of development fees, special funds, and reimbursement agreements between the City of Elk Grove, a municipal corporation ("CITY"), and Laguna South Fee Program area property owners; and

**WHEREAS**, M & H Realty Partners Affiliated Fund III L.P. (M&H), a property owner within the Laguna South Fee Program area, paid the costs associated with the formation of the Laguna South Fee Program; and

**WHEREAS**, CITY desires to reimburse M & H for the costs of plan formation.


**NOW, THEREFORE**, be it resolved and ordered that the Mayor of the City of Elk Grove be and is hereby authorized and directed to execute an Agreement, in the form attached hereto, on behalf of the CITY, with M&H, a California limited partnership, for a Laguna South Public Facilities Fee Program Reimbursement Agreement, and to do and perform everything necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove on this 7th day of August 2002.



\_\_\_\_\_  
RICK SOARES, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

**AYES:** Leary, Cooper,  
Briggs, Soares  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** Scherman

**AGREEMENT FOR REIMBURSEMENT OF FUNDS  
(City of Elk Grove Laguna South Fee Program)**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and between the City of Elk Grove ("CITY"), a municipal corporation, and M & H REALTY PARTNERS AFFILIATED FUND III L.P. ("DEVELOPER"), a California limited partnership, hereinafter collectively referred to as the "Parties."

**RECITALS**

1. DEVELOPER's Lent Ranch Marketplace Special Planning Area (hereinafter the "Project") was approved on June 27, 2001.
2. One of the conditions of approval of the Projects required that the Laguna South Fee Program ("LSFP") be formed and implemented prior to approval of any additional entitlements.
3. DEVELOPER has advanced funds to CITY to pay for the preparation and implementation of the LSFP, which was adopted by the City Council and is codified as Chapter 16.83 of the Elk Grove City Code.
4. Pursuant to the LSFP, DEVELOPER is entitled to reimbursement of amounts advanced by DEVELOPER in excess of DEVELOPER's fair share of the cost of the LSFP.

**AGREEMENT**

In consideration of the mutual promises contained herein, the Parties hereto, intending to be legally bound, agree as follows:

- A. **RECITALS**: The foregoing recitals are hereby incorporated into and made a part of this Agreement.
- B. **REIMBURSEMENT FROM FEES COLLECTED**: Pursuant to the LSFP, CITY shall impose and collect fees as a condition of building permits issued in the Laguna South area, and shall reimburse DEVELOPER an amount not to exceed \$66,239, which amount represents the amount advanced by DEVELOPER in addition to DEVELOPER's fair share of the cost of preparation of the LSFP as determined by CITY.
- C. **TERM OF THE AGREEMENT**: This Agreement shall expire ten (10) years from the date of execution by both parties. Upon such expiration, all rights of DEVELOPER and obligations of CITY under this Agreement shall be null and void, provided, however, that any funds

collected by CITY not yet disbursed to DEVELOPER shall be properly disbursed to DEVELOPER pursuant to the terms of this Agreement.

**D. REIMBURSEMENT LIMITED TO AMOUNTS COLLECTED DURING TERM OF AGREEMENT:** CITY shall only be obligated to reimburse DEVELOPER to the extent and in the amount of fees actually collected during the specified ten (10) year period, up to the maximum reimbursable amount stated hereinabove. It shall be DEVELOPER's responsibility to keep CITY apprised of a mailing address during the term of this Agreement. In the event CITY is unable to locate DEVELOPER at the time that any fees are actually collected, CITY shall hold such moneys until the expiration of this Agreement. Upon the expiration of this Agreement, any fees not reimbursed to DEVELOPER shall escheat to CITY. Subject to the foregoing, CITY agrees to reimburse fees to DEVELOPER within 60 days after execution of this Agreement.

**E. RELATIONSHIP BETWEEN THE PARTIES:** Neither this Agreement nor CITY's reimbursement of costs to DEVELOPER shall constitute or create any form of association, joint venture, partnership, or cooperative activity of any nature whatsoever between DEVELOPER and CITY. Neither this Agreement nor CITY's collection of Fees for reimbursement of costs to DEVELOPER shall constitute or create a trust, express or implied, for the benefit of DEVELOPER or any other person.

**F. GENERAL PROVISIONS:**

1. **Integration:** This Agreement contains the entire agreement of the Parties pertaining to the subject matter hereof and supersedes any prior or contemporaneous negotiations, representations, agreements, and understandings of the Parties with respect to such matters, whether written or oral. The Parties acknowledge that each has not relied on any promise, representation or warranty, expressed or implied, not contained in the Agreement.

2. **Successors and Assigns:** Each and every provision of this Agreement shall be binding and inure to the benefit of the successors in interest of the Parties hereto.

3. **Choice of Law:** This Agreement is made under, and will in all respects be interpreted, enforced, and governed by, the laws of the State of California.

4. **Venue:** 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. **Amendment:** This Agreement cannot be altered, amended or modified in any respect, except by a writing duly executed by the Party against whom the alteration, amendment or modification is charged.

6. **Construction:** This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against either of the Parties.

7. **Enforcement:** If there is any legal action of any kind to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover the reasonable attorneys' fees and costs incurred in connection with such litigation or the appeal thereof.

8. **Authority:** The Parties represent and warrant that they have all requisite power, authority and legal right necessary to execute and deliver this Agreement and to perform and carry out the transactions contemplated by this Agreement upon the terms and subject to the conditions of this Agreement. Each of the individuals executing this Agreement on behalf of a Party represents that he or she has been duly authorized by such Party to execute this Agreement on its behalf.

G. **NOTICES:** Notices under this Agreement shall be deemed given when delivered or mailed by first class mail, postage prepaid, or sent by telegram, telecopier or telex, addressed as follows:

CITY:

City Manager  
City of Elk Grove  
8400 Laguna Palms Way  
Elk Grove, CA 95758

DEVELOPER:

M & H Realty Partners  
12555 High Bluff Drive, Suite 385  
San Diego, CA 92130

H. **SEVERABILITY:** Should any portion, term, condition or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California or otherwise be rendered unenforceable or ineffective, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

IN WITNESS WHEREOF, CITY OF ELK GROVE, a municipal corporation, has caused this Agreement to be executed in duplicate by its City Manager and attested to by its City Clerk, and DEVELOPER has caused this Agreement to be executed.

CITY OF ELK GROVE,  
A municipal corporation

By: \_\_\_\_\_  
Rick Soares  
Mayor of the City of Elk Grove

DEVELOPER

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

By: MHRP Affiliated III L.P., a California  
limited partnership, its' general partner

By: Merlone/Hagenbuch Inc., a California  
corporation, its' general partner

By: \_\_\_\_\_  
Bradley A. Geier  
Managing Director

**ATTEST:**

**By:** \_\_\_\_\_  
**Peggy Jackson**  
**City Clerk**

**APPROVED AS TO FORM:**

**By:** \_\_\_\_\_  
**Anthony B. Manzanetti**  
**City Attorney**