

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT is made and entered into this _____ day of _____, 2018, by and between the City of Merced, a California Charter Municipal Corporation (“City”) and Merced Mall, LP, a California Limited Partnership, whose address of record is 3510 Unocal Place, Suite 300, Santa Rosa, California 95403 (“Developer”).

WHEREAS, Developer desires to expand and redevelop the Merced Mall on approximately 52 acres, generally bound by M Street on the east, West Olive Avenue on the south, R Street on the west, and Loughborough Drive on the north (hereinafter referred to as the “Project”); and

WHEREAS, Developer desires to reimburse City for all of the costs and expenses associated with assessing the environmental impacts of said Project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. REIMBURSEMENT. Without regard to the outcome or adequacy thereof, and without offset for any reason, Developer agrees to reimburse City for all of the fees, costs, and expenses of a certain contract entered into or to be entered into between City and LSA Associates, Inc. (the “Consultant”) relating to the environmental review of the proposed Project. It is understood that City would not have engaged Consultant had Developer not made an express promise and guarantee to pay the fees, costs, and expenses related thereto.

A. With regard to the aforementioned contract with Consultant, Developer shall reimburse the City the sum of Seventy-Six Thousand Seven Hundred Forty-Five Dollars (\$76,745.00) as follows: (a) the sum of Twenty Thousand Dollars (\$20,000.00) upon execution of this Agreement; (b) the sum of Twenty Thousand Dollars (\$20,000.00) within thirty (30) days of execution of this Agreement; (c) the sum of Twenty Thousand Dollars (\$20,000.00) within sixty (60) days of execution of this Agreement; and (d) the sum of Sixteen Thousand Seven Hundred Forty-Five Dollars (\$16,745.00) within one hundred twenty (120) days of execution of this Agreement. In the event the foregoing amount (\$76,745.00) is amended or otherwise adjusted in the contract with the Consultant, Developer agrees to similarly amend its reimbursement obligation hereunder with the intent that the City will at all times be reimbursed for all the fees, costs, and

expenses under said contract with the Consultant. In the event the contract with the Consultant terminates, the Developer will only be responsible for its pro-rata share of the Consultant's cost to the date of the termination.

B. In addition to the Consultant time spent on preparing the environmental document, City staff will spend considerable time administering the Consultant contract. Under City Council Resolution #98-31, also known as the "Planning and Development Fee Schedule," the management fee for environmental review reports is ten percent (10%) of the cost. Pursuant to said Schedule, the Development hereby agrees to deposit upon the mutual execution of this Agreement, the additional sum of Seven Thousand Six Hundred Seventy-Four Dollars and Fifty Cents (\$7,674.50) to be applied toward the cost of City staff time administering the preparation of an environmental document by the Consultant. The Developer may request periodic statements from the City's Finance Department itemizing costs applicable toward the deposit. All costs over and above the initial deposit are due and payable prior to the final Planning Commission/City Council action on the Project.

2. The Developer acknowledges that the above-referenced contract with Consultant is being entered into by City as an accommodation to the Developer to facilitate evaluation of the Developer's Project and does not guarantee any particular result or outcome. The Developer further acknowledges and agrees that it shall have no control over the work product of Consultant, and that its payment of the above sums is not dependent thereon. The Developer also acknowledges and agrees that failure of the Developer to make payments when due shall be grounds for City to suspend work and/or cancel said contract.

3. The Developer reserves the right to provide a performance bond on behalf of Consultant, subject to Consultant's consent, and at the Developer's sole expense.

4. The Developer shall have the right to utilize the reports and work product of Consultant in connection with the proposed Project.

5. No application for any project from the Developer shall be considered for approval until the above-referenced contract with Consultant is completed. Nothing herein is intended to suggest any result upon the hearing of any such application thereon. The City retains its authority to grant, deny, or condition any and all projects and applications.

6. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

7. In the event that either City or the Developer shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

8. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

9. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

10. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

11. This Agreement constitutes the complete, entire, exclusive, and final agreement and understanding between the parties as to the subject matter herein, superseding all negotiations, prior discussions, and preliminary agreements or contemporaneous understandings, written or oral.

12. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

13. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

///

///

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Deputy City Clerk

APPROVED AS TO FORM:

BY:  4-4-2018
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

{Signatures continued on next page.}

DEVELOPER
MERCED MALL, LP,
A California Limited Partnership
By: MERCED MALL, LLC,
A California Limited Liability Company
Its: General Partner
By: CODDING ENTERPRISES, LP,
A California Limited Partnership
Its: Sole Member
By: CODDING INVESTMENTS, INC.,
A California Corporation
Its: General Partner

BY: 
Leory Knibb

ITS: Vice President

Taxpayer I.D. No. 94-2379331

ADDRESS: 3510 Unocal Place, Ste. 300
Santa Rosa, CA 9540

TELEPHONE: 707-978-5800

FAX: 707-623-9469

EMAIL: leroyk@coddington.com