

## **PARKING LEASE**

THIS PARKING LEASE (this "Lease"), is dated as of April 2, 2007, and is entered into by and between MANTECA LIFESTYLE CENTER, LLC, a Delaware limited liability company (the "Landlord"), as lessor, and the CITY OF MANTECA, a municipal corporation and a political subdivision of the State of California (the "City"), as lessee.

### **RECITALS**

WHEREAS, Landlord is the fee owner of that certain real property located in Manteca, California (the "Leased Premises") described on Exhibit A which consists of parking areas. Landlord intends to operate a lifestyle shopping center on adjacent property, as generally depicted on Exhibit B (the "Project"); and

WHEREAS, City has need for public parking, staging areas in the case of emergency or local, regional or national disaster situations, City sponsored recreational activities and a Park-and-Ride Facility (as defined herein);

WHEREAS, City further wants to accommodate and encourage commerce in the City; and

WHEREAS, Landlord desires to lease to City and City desires to lease the Leased Premises from Landlord on the terms hereinafter set forth, including a rental rate that the City has determined represents a fair market rental rate for the Leased Premises ;

NOW, THEREFORE, for good and adequate consideration, the sufficiency of which is hereby acknowledged, it is hereby mutually agreed as follows:

**SECTION 1. Lease of Property.** Landlord leases to City and City leases from Landlord the Leased Premises for the Term and upon the covenants, agreements, and conditions set forth herein. The City will lease the parking areas as shown in Exhibit B. There will be not less than one thousand nine hundred twenty-two (1,922) parking spaces within the parking areas.

**SECTION 2. Term and Effective Date.** The term of this Lease shall commence on the Effective Date (as hereinafter defined) and shall end on the thirty-fifth (35th) anniversary thereof (the "Term"). The term "Effective Date" shall mean the first day of the first fiscal quarter beginning after the parking spaces on the Leased Premises are constructed and the City has legal access to said spaces for the stated uses. From the time the first Certificate of Occupancy has been issued for the Project until the Effective Date has occurred, Landlord shall provide City with a monthly written description of the amount and uses of leasable space generating State sales tax that has been leased.

For purposes of this Lease, a fiscal year shall be the period from July 1 of one calendar year through June 30 of the subsequent calendar year. (Consequently, fiscal quarters shall begin on July 1, October 1, January 1 and April 1.)

In the event the parking area constituting the Leased premises (and access thereto) have not been constructed and completed by July 1, 2010, City may terminate this Lease by providing written notice to Landlord.

In the event a Bass Pro store is not constructed within the Project, City may terminate this Lease by providing written notice to Landlord.

**SECTION 3. Rent Schedule and Rent Payments.**

(a) A Scheduled Annual Rent Payment schedule is attached hereto as Exhibit C.

(b) City shall pay to the Landlord, as rent hereunder, annual lease payments in an amount equal to fifty-five percent (55%) of the previous fiscal year's actual local sales tax under Chapter 3.08 (Sections 3.08.010 et seq.) of the Manteca Municipal Code generated from the taxable sales of the Project's operation as reported to the California State Board of Equalization, and actually received by City (regardless of the form of payment) from the State of California (the "Payment Cap"). Payments are payable by September 1 of each year beginning the first September after the Effective Date. Rental payments shall be made by City from any source of legally available funds.

(c) If Landlord's operation of the Project generates taxable sales from the Project such that the Payment Cap for such fiscal year is less than the rent payment amount for that fiscal year indicated in Exhibit C (the "Scheduled Annual Rent Payment"), then the difference between the Payment Cap and the Scheduled Annual Rent Payment (such amount, the "Shortfall") for that fiscal year will accrue without interest and shall become due the following fiscal year, in addition to the Scheduled Annual Rent Payment for such following fiscal year. Shortfalls (including sums that accrue and are due the following fiscal year under the previous sentence, but are not paid when so due) will continue to accrue in this manner, carrying over to subsequent fiscal years, until (i) it is paid or (ii) the conclusion of the Term, at which time the Shortfall shall be forgiven. In no event shall City be obligated to make any payment under this Section 3 for a fiscal year in excess of the Payment Cap applicable to that fiscal year.

(d) If Landlord's operation of the Project generates taxable sales from the Project such that 55% of the local sales tax received by the City therefrom is greater than the Scheduled Annual Rent Payment, then the amount of City's payment in excess of such year's Scheduled Rent Payment will apply first to any previous Shortfalls and then to Scheduled Annual Rent Payment for the following fiscal year. Payments in excess of the Scheduled Annual Rent Payment shall continue to be credited against the Scheduled Annual Rent Payment amount in subsequent fiscal years until the thirty-five (35) year term of the Lease has expired or the total amount of City's lease payments to Developer reaches the total of Scheduled Annual Rent Payments indicated on Exhibit C, whichever is sooner. Under no condition shall the City be obligated to make lease payments which in the aggregate exceed the total of the Scheduled Annual Rent Payments.

(e) City may, at its sole and absolute discretion and when no Shortfall is outstanding, prepay any Scheduled Annual Rent Payment provided that prepayments shall be applied to the Scheduled Annual Rent Payments in Exhibit C in reverse order of their due dates (i.e., payments will be applied first to the last Scheduled Annual Rent Payment, then to the next to last Scheduled Annual Rent Payment, and so on).

**SECTION 4. Permitted Uses.** Uses permitted at the Leased Premises shall include public and special event parking (subject to Section 5(b)), staging areas in the case of emergency (including local, regional or national disaster situations), the City sponsored recreational activities and a Park-and-Ride Facility. City sponsored recreational activities must be consented to by Landlord, and Landlord shall not unreasonably withhold, condition or delay such consent.

Landlord represents that it has not entered into or approved (and covenants that it will not enter into or approve) any "conditions, covenants and/or restrictions (CC&R's)" that would restrict the City's or public's use of the Leased Premises. Landlord hereby represents and warrants that neither Landlord nor any of its members, officers, managers or employees know of any such CC&R's that currently affect or purport to affect the Leased Premises.

**SECTION 5. Costs and Revenues: Landlord Special Events**

(a) **Costs.** Landlord shall pay all costs of acquisition, construction, equipping, installation, furnishing and operation of the Leased Premises, and all financing costs, except that City shall be responsible for all costs associated with the construction and maintenance of improvements and fixtures required for the Park-and-Ride Facility (as shown on Exhibit B) and for its operations. All construction shall be done in compliance with applicable law. Landlord and City will meet and confer in good faith after the execution of this Lease to finalize the timing of the construction of the Park-and-Ride Facility.

(b) **Revenue.** The Landlord may charge for special event parking and shall receive in return one hundred percent (100%) of the revenue generated by such use of the Leased Premises; provided, however, that there shall be no more than one special event per month and not more than six special events per calendar year. Before each special event the Landlord shall first obtain an appropriate permit from the City which City (in its proprietary capacity as the lessee under this Lease) agrees to not unreasonably withhold, condition or delay. Each special event shall be for not more than seven (7) days and shall not interfere with the operations of the Park-and-Ride Facility.

(c) **Maintenance, Utilities, Taxes and Assessments.** Except for City improvements in the Park-and-Ride area, during the Term, all maintenance and repair, whether or not ordinary, of the Leased Premises shall be the sole responsibility of Landlord, which shall at all times maintain and repair or otherwise arrange for the maintenance and repair of the Leased Premises in good condition, and Landlord shall pay for or otherwise arrange for the payment of all utility services supplied to the Leased Premises. In addition, Landlord shall pay for or otherwise arrange for the payment of the premiums for all insurance policies required to be maintained with respect to the Leased Premises as set forth in Section 7 hereof. Landlord shall not be responsible for the costs of repair due to the willful misconduct or gross negligence of City, and City shall be obligated to repair, at its cost, any damage stemming from such willful misconduct or gross negligence.

Landlord shall also pay all taxes and assessments of any type or nature assessed or levied by any governmental agency or entity having power to levy taxes or assessments affecting or relating to the Leased Premises or the respective interests or estates therein.

If the Landlord fails to cure a default by Landlord under this clause (c) within thirty (30) days after written notice from City, City may cure the default and deduct all associated costs, with annualized interest at the rate of eight percent (8%), from the next rent payments due (in addition to its other rights and remedies).

**SECTION 6. Improvements.** City may install park-and-ride improvements and fixtures in the Park-and-Ride area shown on Exhibit B (such area, the Park-and-Ride Facility). Landlord may not materially alter the Leased Premises (including the Park-and-Ride Facility, and any improvement and fixtures therein), as shown on Exhibit B, without the City's prior written consent given in its proprietary capacity under this Lease, which will not be unreasonably withheld, conditioned or delayed.

**SECTION 7. Assignment and Subletting.** City shall not assign its rights under this Lease, but City may engage others to operate the Park-and-Ride Facility and sublease the Park-and -Ride Facility to another public entity for the operation of such facility. Landlord shall have the right to freely and completely assign its rights and obligations under this Lease upon prior written notice to City.

**SECTION 8. Right of Entry.** City shall have the right to enter and inspect the Leased Premises at any time.

**SECTION 9. Insurance.** The Landlord shall carry commercially reasonable liability and property insurance in an amount of not less than \$1 million per incident and \$10 million cumulative, naming the City and its elective or appointed boards, councilmembers, officers, employees and agents as additional insureds and including the insurers waiver of subrogation rights. The policy may not be modified or cancelled without having first provided City with not less than thirty (30) calendar days written notice. Should standards for commercially reasonable liability and property insurance change during the term of this Lease, City may require Landlord to provide insurance in the amounts then commercially reasonable, as determined in good faith by the City.

Landlord shall deliver evidence of such insurance to City concurrently with its execution and delivery of this Lease, and from time to time thereafter within ten (10) business days after written notice from City or City may terminate this Lease.

City shall facilitate the provision of insurance naming Landlord as an additional insured for the Park-and-Ride Facility under the coverage normally provided by the California Department of Transportation. Should City engage another public entity to operate the Park-and-Ride Facility, City shall require such entity to provide insurance naming Landlord as an additional insured under the coverage normally provided by the California Department of Transportation for such operation.

**SECTION 10. Surrender.** City agrees, upon the expiration or earlier termination of this Lease, to quit and surrender the Leased Premises to Landlord.

**SECTION 11. Default.** In the event the City shall be in default in the performance of any obligation on its part to be performed under the terms of this Lease, and default continues for sixty (60) days following notice and demand for correction thereof to the City, Landlord may exercise any and all remedies granted by law, including but not limited to damages.

**SECTION 12. Quiet Enjoyment.** The parties hereto mutually covenant that the City, so long as it keeps and performs agreements and covenants herein contained, and is not in default hereunder, shall at all times during the Term of this Lease, subject to the provisions of Section 4 hereof, peaceably and quietly have, hold and enjoy the Leased Premises without suit, trouble or hindrance from Landlord or any person or entity claiming rights or interests in or with respect to the Leased Premises received from Landlord or from any of Landlord's predecessors-in-interest.

**SECTION 13. Waivers of Personal Liability.** All liabilities under this Lease on the part of Landlord are solely liabilities of Landlord, and City hereby releases each and every member, officer, agent and employee of Landlord of and from any personal or individual liability under this Lease.

All liabilities under this Lease on the part of City are solely liabilities of City, and Landlord hereby releases each and every member, officer, agent and employee of City of and from any personal or individual liability under this Lease. However, nothing herein is intended to, or shall be interpreted to, constitute a waiver of any governmental tort claim immunities or governmental rights.

**SECTION 14. Indemnification.** Landlord shall assume the defense of, indemnify and save harmless City, each and every member, officer, agent and employee of City (the "Indemnified Parties") from and against any and all liabilities, and any actions, damages, claims, losses, costs and expenses of every and any type and description to which they may be subjected or put, by reason of, or resulting from the breach of any provision of this Lease by Landlord, or Landlord's agent's or contractor's violations of law, or negligent design, engineering and/or construction of any structure on the Leased Premises, the Landlord's non-payment under contracts between Landlord and its consultants, engineers, advisors, contractors, subcontractors and suppliers in the construction of any structure upon the Leased Premises, or any other claims of persons employed by Landlord or its agents to construct any structure upon the Leased Premises.

In the event that Landlord (or its assignees or successors) defaults under this Section 14 and fails to cure the default within thirty (30) days after written notice from City, then City may terminate this Lease by written notice to Landlord; however, prior to such termination, and without waiving its right to terminate (which shall be an ongoing right), City may offset against the rent and any other sums due from City to Landlord under this Lease all costs, expenses, damages, losses and liabilities incurred or suffered by City as a direct or indirect result of, or which are directly or indirectly related to, Landlord's breach (including, without limitation, any violation of applicable law by Landlord or any of its contractors).

Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable to the intentional acts or active negligence of the Indemnified Parties hereunder; however, neither the City's authorization, approval and execution of this Lease nor the City's performance of its obligations under this Lease shall constitute "active negligence" or an "intentional act" for the purposes of this sentence.

**SECTION 15. Eminent Domain.** In the event the whole or any part of the Leased Premises or the improvements thereon are taken permanently or temporarily under the power of eminent domain, it is the intent of the parties that the interest of the Landlord in, under and to this Lease shall be recognized, in addition to any other value the Leased Premises or improvements thereon may have.

**SECTION 16. Partial Invalidity.** If any one or more of the terms, provisions, covenants or conditions of this Lease shall to any extent be invalid, unenforceable, void or voidable for any reason whatsoever, none of the remaining terms, provisions, covenants and conditions of this Lease shall be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**SECTION 17. Notices.** All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if

delivered personally or if mailed by United States certified or registered mail, return receipt requested, postage prepaid, and:

If to Landlord: Manteca Lifestyle Center, LLC  
6410 Poplar Avenue, Suite 850  
Memphis, TN 38119  
Attention: General Counsel

With a copy to: Latham & Watkins LLP  
633 W. Fifth Street, Suite 4000  
Los Angeles, California 90071-2007  
Attn: Ursula H. Hyman, Esq.

If to City: City of Manteca  
1001 W. Center Street  
Manteca, CA 95337  
Attn: Community Development Director

With copies to: City of Manteca  
1001 W. Center Street  
Manteca, CA 95337  
Attn: City Clerk

City of Manteca  
1001 W. Center Street  
Manteca, CA 95337  
Attn: Finance Director

or to such other addresses as each respective party may from time to time designate by notice in writing.

**SECTION 18. Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

**SECTION 19. Amendment.** This Lease may only be amended by a written instrument duly authorized and executed by Landlord and City.

**SECTION 20. Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same lease.

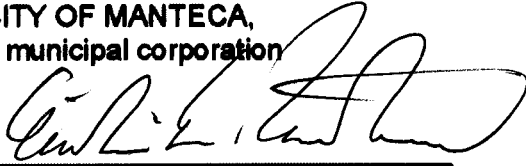
**SECTION 21. Binding Effect.** The easements granted herein shall run with the ownership of the Leased Premises and shall be binding upon and inure to the benefit of Landlord and City and their respective successors, assigns and successors in interest.

[Signature Page Follows]

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

**CITY:**

CITY OF MANTECA,  
a municipal corporation



By: **WILLIE W. WEATHERFORD**  
Its: Mayor

**DEVELOPER:**

MANTECA LIFESTYLE CENTER, LLC,  
a Delaware limited liability company



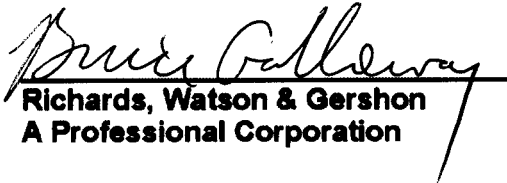
By: **JOSHUA D. POAG**  
Its: Executive Vice President

**ATTEST:**



**JOANN L. TILTON, CITY CLERK**

**APPROVED AS TO FORM:**



**Richards, Watson & Gershon**  
A Professional Corporation

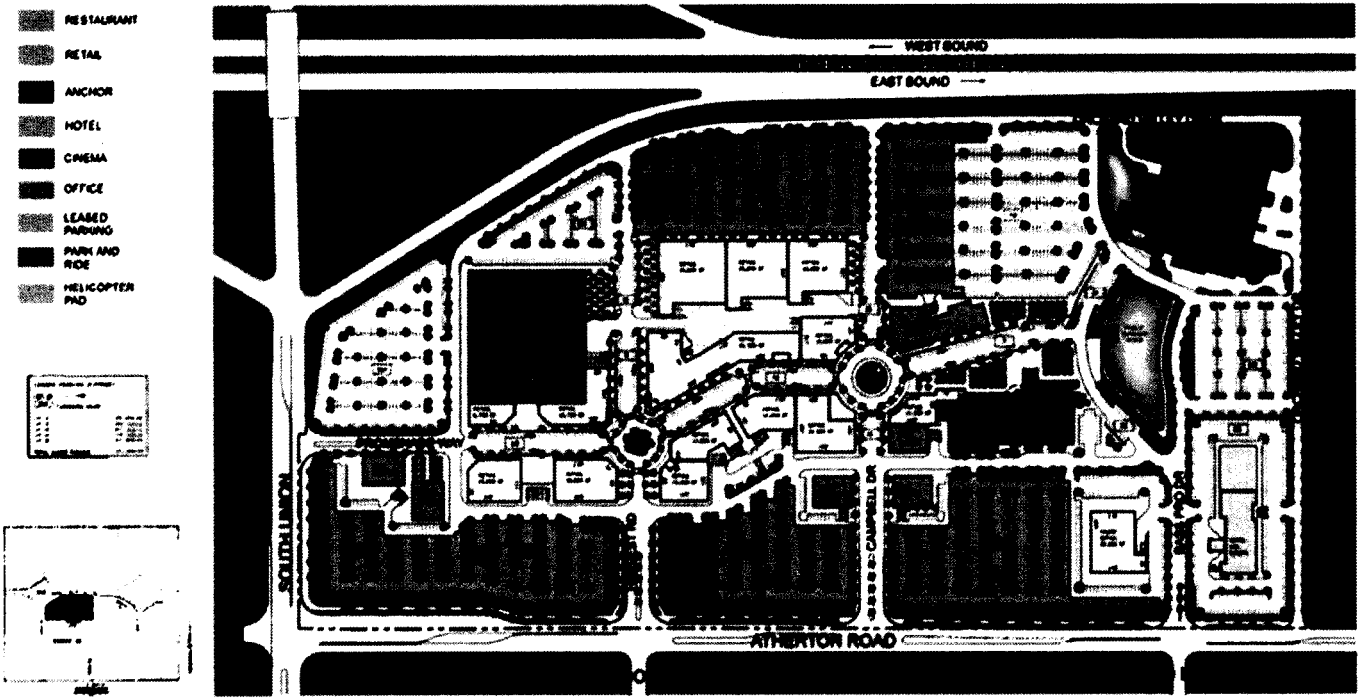
**EXHIBIT A**

**LEGAL DESCRIPTION OF THE LEASED PREMISES**

**Parcels and leased spaces are identified on the site map contained in Exhibit B hereto.**

<b>Parcel 25</b>	<b>-</b>	<b>384 spaces</b>
<b>Parcel 26</b>	<b>-</b>	<b>258 spaces</b>
<b>Parcel 28</b>	<b>-</b>	<b>457 spaces</b>
<b>Parcel 29</b>	<b>-</b>	<b>376 spaces</b>
<b>Parcel 30</b>	<b>-</b>	<b>447 spaces</b>
<b>Total Spaces</b>	<b>-</b>	<b>1,922 spaces</b>

**EXHIBIT B  
PROJECT SITE MAP**



**EXHIBIT C**

**SCHEDULED ANNUAL RENT PAYMENTS**

<u>Year</u>	<u>Scheduled Annual Rent Payment</u>
1	\$ 938,549
2	\$ 976,976
3	\$ 1,085,529
4	\$ 1,118,095
5	\$ 1,151,638
6	\$ 1,186,187
7	\$ 1,221,773
8	\$ 1,258,426
9	\$ 1,296,179
10	\$ 1,335,064
11	\$ 1,375,116
12	\$ 1,416,370
13	\$ 1,458,861
14	\$ 1,502,627
15	\$ 1,547,705
16	\$ 1,594,137
17	\$ 1,641,961
18	\$ 1,691,219
19	\$ 1,741,956
20	\$ 1,794,215
21	\$ 1,848,041
22	\$ 1,903,482
23	\$ 1,960,587
24	\$ 2,019,404
25	\$ 2,079,987
26	\$ 2,142,386
27	\$ 2,206,658
28	\$ 2,272,857
29	\$ 2,341,043
30	\$ 2,411,274
31	\$ 2,483,613

<u>Year</u>	<u>Scheduled Annual Rent Payment</u>
32	\$ 2,558,121
33	\$ 2,634,865
34	\$ 2,713,911
35	\$ 2,795,328



# CITY OF MANTECA

 **COPY**

ADMINISTRATION

15 March 2007

Manteca Lifestyle Center, LLC  
Attn: Mr. Robert Rogers  
6410 Poplar Avenue, Suite 850  
Memphis, Tennessee 38119

RE: Fair Share Payment for Promenade Shops at Orchard Valley

Dear Mr. Rogers:

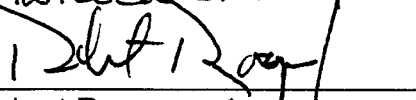
Regarding the issue of "fair share" payments called for regional projects in the Environmental Impact Report as mitigation measures, be advised that the City of Manteca will not require Manteca Lifestyle Center, LLC to contribute any additional funds for regional transportation improvements other than the amounts required for City's Transportation PFIP funds pursuant to the fee formula contained in Exhibit H of the Development Agreement.

Sincerely,



Robert F.D. Adams  
City Manager

Acknowledged:  
Manteca Lifestyle Center, LLC



by: Robert Rogers, Jr.  
Senior V.P. & Gen'l Counsel

Date: April 2, 2007



POAG & MCEWEN  
LIFESTYLE CENTERS

April 2, 2007

City of Manteca  
c/o Robert F.D. Adams, City Manager  
1001 West Center Street  
Manteca, California 95337

Dear Mr. Adams:

Manteca Lifestyle Center, LLC (the "Developer") is currently sponsoring the development of, among other things, a parking lot in the city of Manteca, California ("City"). City has need for public parking, staging areas in the case of emergency or local, regional or national disaster situations, City sponsored recreational activities and a commuter park and ride parking area. Accordingly, City has expressed an interest in leasing such parking lot from the Developer pursuant to a form of parking lease that has been negotiated and agreed upon by the Developer, as Lessor, and City, as lessee (such lease, the "Parking Lease").

In order to induce the Developer and City to enter into the Parking Lease and the transactions contemplated thereunder, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Poag & McEwen Lifestyle Centers, LLC ("Poag") and City agree as follows in this side letter agreement (as amended, modified, supplemented or restated from time to time in writing with the prior express written consent of the City, this "Side Letter"):

1. Poag will assume the defense of, indemnify and save harmless City, each and every member, officer, agent and employee of City (the "Indemnified Parties") from and against any and all liabilities, and any actions, damages, claims, losses, costs and expenses of every and any type and description to which they may be subjected or put, by reason of, or resulting directly or indirectly from, City's obligation to pay rent or provide any other consideration in connection with the Parking Lease, or City's actual payment of rent or any other consideration in connection with the Parking Lease (collectively, the "Liabilities"). Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable to the intentional acts or active negligence of the Indemnified Parties hereunder; however, neither the City's authorization, approval and execution of this Lease nor the City's performance of its obligations under this Lease shall constitute "active negligence" or an "intentional act" for the purposes of this sentence.
2. The maximum amount of the Liabilities for which Poag shall be liable pursuant to this Side Letter shall be \$5,000,000, exclusive of reasonable attorneys' fees and other costs which the Indemnified Parties incur in enforcing Poag's obligations hereunder.

3. Notwithstanding anything to the contrary herein, this Side Letter shall only apply if the City files a claim against the Developer under the indemnification provisions of the Parking Lease (which may include a claim against Poag under this Side Letter) within 390 days after the last permit (including, without limitation, any final certificate of occupancy) for the Project (as defined in the Parking Lease) or any portion thereof has been issued by the City, and Poag shall be liable to the City under this Side Letter only to the extent that the Liabilities exceed sums actually received by the Indemnified Parties from the Developer under the indemnification provisions of the Parking Lease by the time required in any judgment covered by the indemnification provisions of the Parking Lease or this Side Letter.
4. You shall give Poag prompt written notice of any action brought against you which may give rise to indemnification hereunder and Poag may elect to defend such action on your behalf. In the event that counsel chosen by Poag advises you that it is unable to represent you as a result of an unwaivable conflict, you may be separately represented by a single firm of legal counsel reasonably satisfactory to Poag.
5. This Side Letter and all disputes arising out of this Side Letter shall be governed in all respects by the laws of the State of California without regard to choice of laws or conflict of laws provisions thereof.
6. Any dispute, controversy or claim arising out of, based upon or relating to this Side Letter or the interpretation or enforcement of this Side Letter shall be resolved by binding arbitration pursuant to this section; however, this section shall not limit any party's right to obtain injunctive relief in any court with jurisdiction. Upon written demand for arbitration by any party hereto, the parties to the dispute shall promptly confer and attempt in good faith to agree upon one arbitrator. If the parties have not agreed upon an arbitrator within thirty (30) days after receipt of such written demand, each party to the dispute shall appoint one arbitrator and those two arbitrators shall agree upon a third arbitrator who then shall be the sole arbitrator deciding the matter. All arbitrators shall be selected from panels maintained by, and the binding arbitration shall be conducted in accordance with, the real estate arbitration rules of the American Arbitration Association or any successor organization, and such arbitration shall be binding upon the parties. All arbitration proceedings shall take place in San Joaquin County. Judgment upon an arbitration award may be entered in any court having jurisdiction. The prevailing party in the arbitration proceedings (as determined by the arbitrator) shall be awarded reasonable attorneys' fees and expert witness costs and expenses, and the non-prevailing party (as determined by the arbitrator) shall pay for the cost of the arbitrator(s). In the event that such rules are replaced, the replacement rules shall be used; in the event that such rules and any such replacement rules are discontinued, then the parties shall within thirty (30) days after written notice from one to the other agree to use similar, reasonable, published arbitration rules, and if the parties fail to timely agree, then either party may apply to any court with jurisdiction to select reasonable substitute arbitration rules and such selection shall be binding on both parties.

7. Any notice, payment or instrument required or permitted by this Side Letter to be given or delivered to either party shall be deemed to have been received when personally delivered, or transmitted by facsimile transmission or electronic mail (which shall be immediately confirmed by telephone), or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

If to City:

City of Manteca  
Attn: Community Development Director  
1001 West Center Street  
Manteca, California 95337  
FAX No. (209) 825-2534

With copy to:

City of Manteca  
Attn: City Clerk  
1001 West Center Street  
Manteca, California 95337  
FAX No. (209) 825-2333

If to Developer:

Poag & McEwen Lifestyle Centers, LLC  
Attn: Joshua Poag and Robert L. Rogers  
6410 Popular Avenue, Suite 850  
Memphis, TN 38119  
FAX No. (901) 761-5325

With copy to:

Latham & Watkins LLP  
Attn: Ursula Hyman, Esq.  
633 West Fifth Street, Suite 4000  
Los Angeles, California 90071-2007  
FAX No. (213) 891-8763  
E-mail: Ursula.Hyman@lw.com

Poag shall continue to be liable under this Side Letter and the provisions hereof shall remain in full force and effect notwithstanding: (i) any modification, agreement or stipulation with respect to any liabilities or obligations of Developer that are the same or similar to the obligations or liabilities of Poag under this letter agreement (the "Developer Obligations"); (ii) any waiver of or failure to enforce any of the Developer Obligations or any modifications thereof; (iii) any release of Developer from any Developer Obligations or any portion thereof.

The liability of Poag under this Side Letter is not conditioned or contingent upon the genuineness, validity, regularity or enforceability of the Developer Obligations or the pursuit by City of any remedies which it now has or may hereafter have with respect thereto. Poag further agrees that City may enforce this letter notwithstanding the existence of any dispute between Developer and City with respect to the existence or performance of the Developer Obligations (or any portion thereof) or any counterclaim, set-off or other claim which Developer may allege with respect thereto.

Poag hereby waives, to the extent permitted by law: (a) all notices to Poag, to the Developer or to any other person, including, but not limited to, notices of acceptance or of the creation, renewal, extension or modification of the Developer Obligations, or of default in the performance of the Developer Obligations (or any portion thereof) and enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto; (b) diligence and demand of performance; (c) all principles or provisions of law which conflict with the terms of this Side Letter.

Poag waives all rights and defenses arising out of an election of remedies by the City, even though that election of remedies has destroyed Poag's rights of subrogation and reimbursement against the principal. Moreover, Poag agrees that its obligations shall not be affected by any other circumstances which constitute a legal or equitable discharge of a guarantor or surety.

Except to the extent expressly provided in Section 3 above, Poag agrees that City may enforce this Side Letter without the necessity of first proceeding against Developer or first pursuing any other right or remedy.

Poag hereby fully and completely waives and relinquishes any right of subrogation, reimbursement and contribution against Developer prior to the full satisfaction of Poag's obligations herein and Poag understands and acknowledges that Poag may therefore incur a partially or totally non-reimbursable liability hereunder. Poag further agrees that to the extent the waiver of its rights of subrogation, reimbursement and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement and contribution Poag may have against Developer shall be junior and subordinate to any rights City may have against Developer.

Without limiting the generality of the foregoing, Poag hereby expressly waives any and all benefits and defenses under California Civil Code ("CC") Sections 2787 to 2855, inclusive, and 2899, 2953 and 3433, including, without limitation, the right to require City to (i) proceed against Developer (except as expressly required by Section 3) or any other person or entity, or (ii) pursue any other right or remedy for the benefit of Poag.

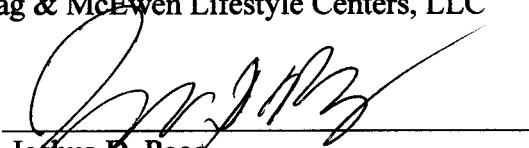
*[Remainder of this page left intentionally blank]*

If the foregoing correctly sets forth our understanding, please indicate your acceptance of the terms hereof by returning to us an executed counterpart hereof, whereupon this Side Letter shall become a binding agreement between us.

Very truly yours,

Poag & McEwen Lifestyle Centers, LLC


By



Joshua D. Poag  
Executive Vice President & Chief Financial  
Officer

Accepted and agreed to as of  
the date first above written:

City of Manteca

By   
Robert F.D. Adams  
City Manager

City Council Agenda  
April 2, 2007  
Public Hearing

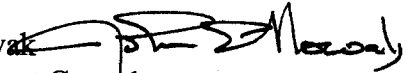
Reviewed by  
City Mgr's office: RED

Memo to: Manteca City Council

Via: Kyle Kollar  
Community Development Director



From: John E. Nowak  
Redevelopment Consultant



Date: March 23, 2007

Subject: Approval of Parking Lease between Manteca Lifestyle Center, LLC and City of Manteca

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Recommendation:

It is recommended that the City Council approve a Parking Lease between the City of Manteca and Manteca Lifestyle Center, LLC related to properties at the Promenade Shops at Orchard Valley.

Background:

Manteca Lifestyle Center, LLC (Developer) is proposing to construct a Lifestyle center at the northeast quadrant of Union Road and Atherton Drive to include retail shops, including a Bass Pro Shop, restaurants, a movie theater and hotel. Among the amenities in the development will be a lake and a pedestrian oriented main street with a series of small pocket parks. The City and the Developer have agreed that the overall project lends itself to community events and activities. To allow the City access to the parking areas both to stage events and to provide for general public parking (unrestricted use by the public), that the City would lease spaces throughout the project site.

Salient points of the Agreement include:

1. The City will use the parking areas for a Park-and-Ride lot, an emergency response staging area with helicopter landing capabilities, and recreational activities.
2. The Lease is for a period of thirty-five years, with a total of 1,922 spaces being leased.
3. The Lease begins after the parking spaces are available for the City's use.
4. The Developer may restrict portions of the leased spaces for special events no more than six times a year and for no more than seven days per event.
5. The Developer will be responsible for maintenance of all of the leased spaces at its sole expense. The Developer will also carry insurance covering the City.

6. The lease payment will be based on the actual new sales tax revenue generated for the City. An amount equal to fifty-five percent of the annual general sales tax generated by businesses in the Project and actually received by the City will be serve as the bass of the annual lease payment. Sales tax revenues generated by the City of Manteca's Measure M and the San Joaquin County's Measure K are not included in any lease calculation and are not in any way whatsoever impacted by the Lease.
7. The total payments under the Lease are not to exceed \$18.5 million based on net present value. If the new revenue generated by the Project is greater than projected in any given year, the amount above the scheduled annual payment is retained by the City. If the revenue generated is less than the projected amount, the City's annual lease payment is capped at fifty-five percent of the year's annual receipt, the difference between the scheduled annual payment and the actual payment is carried over to the following year(s). If the actual revenue generated by the Project over the thirty-five years does not cover the amount of the scheduled lease payments, any remaining balance due by the City is forgiven.

Approving the Lease Agreement gives the City of Manteca the ability to draw upon the regional attraction of a private development to provide opportunities for community events without having to cover the initial capital costs. The payments are based solely on the success of the Project in generating new revenues for the City, and will not impact restricted new revenues approved by the voters.

Staff recommends that the City Council approve the Lease Agreement between Manteca Lifestyle Center, LLC and the City of Manteca.

Attached: Lease Agreement