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APNs:

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF BEAUMONT AND
BEAUMONT REGENCY AVG, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

EFFECTIVE DATE: _____, 2025

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF BEAUMONT AND
BEAUMONT REGENCY AVG, LLC

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into this ____ day of _____, 2025 by and between the CITY OF BEAUMONT, a municipal corporation (“**City**”), and Beaumont Regency AVG, LLC, a Delaware limited liability company (“**Owner**”). This Agreement is made pursuant to the Development Agreement Laws (defined below). This Agreement refers to the City and Owner collectively as the “**Parties**” and singularly as the “**Party**.”

RECITALS

1. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted California Government Code Sections 65864-65869.5 (the “**Development Agreement Laws**”) to authorize any city, county or city and county to enter into a development agreement with an applicant for a development project, establishing certain development rights in the property which is the subject of the development project application.

2. Owner has a legal and equitable interest in approximately 28 acres of land consisting of eight (8) parcels located within the north-central portion of the City of Beaumont, Riverside County, California, south of and adjacent to Oak Valley Parkway, approximately 500 feet east of Interstate 10 (I-10), and legally described and depicted on Exhibit “A” attached hereto and incorporated herein by this reference (“**Property**”).

3. Owner desires to develop the Property in accordance with the provisions and requirements of this Agreement and the Project Approvals attached hereto as Exhibit “B” (“**Project**”).

4. This Agreement is voluntarily entered into by Owner to implement the General Plan of the City of Beaumont and in consideration of the rights conferred and the procedures specified herein for the development of the Property. This Agreement is voluntarily entered into by the City in the exercise of its legislative discretion to implement the General Plan and in consideration of the agreements and undertakings of Owner hereunder.

5. On February 12, 2025, the Beaumont-Cherry Valley Water District Board of Directors approved a will-serve letter for water service imposing conditions of approval and authorized the annexation of a portion of the Property into the District’s Service Boundary.

6. On May 28, 2025, the Planning Commission of the City of Beaumont (“**Planning Commission**”) approved the following land use related entitlements and development rights via approval of the Plot Plan (PP2024-0059) for an approximately 279,941 SF community retail center; Parking Variance (V2024-0019) and Open Space Variance (V2025-0031) – variances to Beaumont Municipal Code (“**BMC**”) Section 17.05.040 (parking) and BMC Section 17.03.080.G.6 (open space); Master Sign Program (PLAN 2024-0157); and making findings in accordance with the California Environmental Quality Act (“**CEQA**”), Section 15183 of the

CEQA Guidelines (in the aggregate these approvals are referred to herein as the “**Planning Entitlements**”).

7. On May 28, 2025, the Planning Commission adopted Resolution No. 2025-02 making findings required by City Resolution 1987-34 and a recommendation that the City Council of the City of Beaumont (“**City Council**”) adopt the Ordinance approving this Agreement (“**Ordinance**”). The Planning Entitlements and the Ordinance are referenced in the aggregate as the “**Entitlement Applications**”. The approvals granted as requested by the Entitlement Applications in connection with the development of the Project as intended and proposed are further itemized on **Exhibit “B”** and are referenced in the aggregate herein as the “**Project Approvals**”.

8. On _____, 2025, the City Council introduced and adopted the first reading of Ordinance No. XX making findings required by City Resolution 1987-34 and approving this Agreement.

9. On _____, 2025, the City Council held a second reading and considered and approved this Agreement by adopting Ordinance No. XX.

10. The City has given public notice of its intention to adopt this Agreement, has conducted public hearings thereon pursuant to Govt. Code Section 65867 and the Development Agreement Laws. The City has found that the provisions of this Agreement and its purposes are consistent with the objectives, policies, general land uses and programs specified in the General Plan as amended by the Project Approvals, and that the terms and conditions of this Agreement have undergone extensive review by the City, including the City Council, and have been found to be fair, just and reasonable. The City has further concluded that the pursuit of the Project will promote the health, safety and welfare of the City and its citizens and provide substantial benefits to the City and its residents by, among other things, (a) providing the specific public benefits described below; (b) providing retail opportunities not currently sufficiently available in the community, including retail sales; (c) creating employment opportunities in the commercial, retail sectors; (d) providing new economic benefit to the City and its residents, including new sales tax and property tax revenues that can be used for City services; (e) providing for investment in capital improvements for water, sewer, storm drain, roadway and circulation facilities to further the planned development of land in the City to facilitate local and regional distribution of goods, while minimizing impacts to residents by locating new commercial within a convenient location for residents and visitors.

11. It is the intent of the City and Owner that this Agreement be a legally binding contract which shall prevail over the provisions of any subsequently enacted moratoria, statutes, ordinances, limitations, or other measures, enacted by the City, or under the authority of the City by voter initiative or referendum, and whether or not such initiative, moratorium, referendum, statute, ordinance, limitation, or other measure relates, in whole or in part, to the rate, timing, sequence, or phasing of the development or construction of all or part of the Project or the improvements or affecting parcel or subdivision maps, building permits, occupancy certificates, or other entitlement or authorization to use the Property or to provide utilities which are issued by the City, subject only to the rights and powers reserved to the City under the terms of this Agreement and the requirements of California law.

12. The Project will require the construction of public and private improvements, some of which improvements will benefit the Project, other property and developments within the vicinity of the Property and the entirety of the City. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, provide the certainty necessary for Owner to make significant investments in improvements, assure the timely and progressive installation of necessary improvements, provide significant public benefits to the City and provide public services appropriate to each stage of development. Either of the Parties could easily be discouraged and deterred from making the long-term commitments inherent to the process of developing the Project on the Property. Both Parties desire to enter into this Agreement to reduce and/or eliminate as many development risks and uncertainties as possible.

13. As permitted by law through the City's consideration and approval of the Entitlement Applications filed by Owner and/or by this Agreement, the Parties desire to establish the permitted uses for the Project, and to identify the scope of improvements to be required for the Project and, where appropriate, to provide for the payment of certain fees.

14. This Agreement will promote and encourage the development of the Property by providing Owner, its ground lessees, lenders and investors with a greater degree of certainty of Owner's ability to expeditiously and economically complete the Project and will provide the City, among other things, with certain public benefits that it could not otherwise obtain. The Parties agree that the consideration to be received by the City pursuant to this Agreement and the rights secured to Owner hereunder constitute sufficient consideration to support the mutual and respective covenants and agreements of the Parties.

15. In exchange for the benefits to the City, Owner desires to receive the assurance that it may proceed with the Project in accordance with the existing land use ordinances, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded Owner by the Development Agreement Laws with respect to the Project. These assurances are of vital concern to Owner to offset or remove the disincentives and uncertainties inherent in development of the Project.

AGREEMENT

IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES CONTAINED HEREIN AND THE FOREGOING RECITALS WHICH ARE INCORPORATED HEREIN, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE CITY AND OWNER AGREE AS FOLLOWS:

1. General Provisions.

1.1 **Definitions.** To the extent defined in this Agreement, the terms used in this Agreement shall have the meanings set forth in this Agreement.

1.2 **Property Ownership and Binding Covenants; Execution of Major Retail Lease as a Condition to Closing.** Owner represents that it has a legal or equitable interest in the Property and has the right to enter into this Agreement on behalf of its successors and assigns. Owner further represents and warrants that, unless the City otherwise consents in its sole discretion, Owner will not proceed with the acquisition of fee title to the Property unless, prior to or concurrent with such closing, it has entered into or is entering into a lease with a major retailer with a nation-wide

presence for the lease of at least 125,000 square feet of floor space within the Project. The Parties intend and determine that the provisions of this Agreement shall constitute covenants which shall run with said Property, and the burdens and benefits hereof shall bind and inure to all successors in interest of the Parties. In order to provide continued notice thereof, the Parties will record this Agreement in the public records of Riverside County. The word “**Owner**” as previously defined and used herein shall include each and every successor owner of all or a portion of the Property, or an interest therein, apart from government or quasi-public agencies, who is assigned the rights and responsibilities of all or any portion of this Agreement in accordance with the terms set forth herein, unless and until such Owner is released pursuant to the terms of this Agreement.

1.3 **Effective Date and Term.**

1.3.1 **Generally.** The term (“Term”) of this Agreement shall commence on the later of (i) the date the Ordinance adopting this Agreement is effective (the “**Effective Date**”) and (ii) the date that the initial Owner identified in the first paragraph above acquires fee title to the Property, and shall continue for a period of ten (10) years thereafter, unless said Term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties. Notwithstanding the foregoing, if the Effective Date has not occurred prior to June 30, 2026, and if the City does not elect, in its sole discretion, to further extend that outside date, then this Agreement shall not become effective and it shall be of no force or effect. Each Owner, provided it is not then in material default under this Agreement, shall have the right to extend the Term with respect to the portion of the Property owned by it for an additional five (5) years as to the portion of the Property owned by it by provision of written notice to the City no earlier than one hundred and eighty (180) days and no later than thirty (30) days prior to the expiration of the original Term.

1.3.2 **Effect of Termination.** Following the expiration of the Term, this Agreement and the Project Approvals shall terminate and be of no further force and effect and to evidence such termination the City and Owner shall cause a written notice of termination to be recorded with the County Recorder; provided that such expiration shall not limit, restrict or waive any of the surviving rights and obligations that have accrued as of the date of that expiration as further provided in Section 14.9 below.

1.4 **Equitable Servitudes and Covenants Running With the Land.** Any successors in interest to the City and Owner shall be subject to and benefitted by the provisions set forth in Govt. Code Sections 65865.4. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each successor in interest to Owner during ownership of the Property or any portion thereof and upon each successor in interest to the City. Nothing herein shall waive or limit the provisions of Section 1.5, and no successor Owner of the Property, any portion of it, or any interest in it shall

have any rights in this Agreement except as Assigned to the successor by Owner in writing pursuant to Section 1.5 below.

1.5 Assignment.

1.5.1 Subject to the other provisions of this Agreement, Owner shall have the right to assign (and each such action is referred to herein as an “**Assignment**”), in whole or in part, its rights, interests and obligations under this Agreement to a third party during the term of this Agreement (an “**Assignee**”).

1.5.2 No Assignment shall be effective until the City approves the Assignment pursuant to Section 1.8.2 below. Approval shall not be unreasonably withheld, conditioned or delayed provided the proposed Assignee provides documentation to the City, along with the formal request for approval of Assignment, that shows:

(a) The proposed Assignee (or, at the election of the assigning Owner, the assigning Owner acting as guarantor of Assignee's performance) has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the Assignment; and

(b) The proposed Assignee has adequate experience with similar developments of comparable scope and complexity to the portion of the Project that is the subject of the Assignment.

Any request for City approval of an Assignment shall be in writing and accompanied by certified financial statements of the proposed Assignee for the three (3) most recent fiscal years and any additional information concerning the identify, financial condition and experience of the proposed Assignee as the City may reasonably request; provided that, any such request for additional information shall be made, if at all, not more than fifteen (15) business days after the City's receipt of the request for approval of the proposed Assignment. If the City decides to disapprove any proposed Assignment, the City shall set forth in writing and in reasonable detail the grounds for such disapproval. If the City fails to respond to such request for approval of the Assignment within thirty (30) days after submission of such request for approval Owner shall submit a second written request in accordance with Section 8 specifically reciting the terms of this paragraph calling for deemed consent in the event of failure to respond and if City continues to fails to approve or disapprove the request, then the City shall be deemed to have consented to such assignment ten (10) days after the receipt of the second notice.

1.5.3 Owner shall have the right, upon at least twenty (20) calendar days prior written notice to the City, to Assign all or any portion of this Agreement to a Lender in connection with the granting, with respect to the Property, of a mortgage or deed of trust, hypothecation, pledge, assignment for security purposes, bond, grant of taxable or tax exempt funds from a governmental agency or other security interest or any documents constituting or relating to a sale-leaseback transaction without the obligation to comply with Section 1.5.2 and without consent of the City, but only for the purpose of securing loans of funds to be used for refinancing any existing encumbrance, or financing the development, construction or operation of improvements on the Property, performance of mitigation and public benefits and other development related to the

Property, and other necessary and related expenses including but not limited to payment of fees, taxes and assessments.

1.5.4 Subject to the other applicable requirements of this Section 1.5, Owner shall have the right upon at least ten (10) calendar days prior written notice thereof to City and without the obligation to comply with Section 1.5.2 and without consent of the City: (a) to assign its rights, interests and obligations under this Agreement to an Owner Affiliate, and (b) to assign to any tenant operating on and occupying the Property or any portion thereof the portion of this Agreement applicable to the Property or portion thereof so leased or occupied. Notwithstanding anything in this Agreement to the contrary, nothing herein shall be construed or understood to restrict Owner's right to transfer the Property or any direct or indirect interest therein. For purposes of this Agreement, "Owner Affiliate" means (a) any entity that controls Owner, is controlled by Owner, or is under common control with Owner

1.5.5 Except as otherwise set forth in this Section 1.5.5 or Section 12, or as to the Anchor Tenant as defined in Section 11 following execution of a recorded Assignment of all or any portion of this Agreement, each Assignee shall be an Owner having the rights and obligations of an Owner under this Agreement with respect to the matters assigned, and shall be responsible to complete the improvements within the portion of the Property it acquires which are required to be constructed by such Owner and all related public improvements not then completed required to serve or otherwise required for the operation or use of any completed improvements on such portion of the Property and the Project. In addition, if bonds or other security are then in place to secure obligations under a subdivision map or other obligation and such security is being replaced in connection with such Assignment, Assignee shall provide for the assignment of existing security and bonds or issuance of equal new equal substitute security or bonds prior to the effective date of such Assignment. Upon any Assignment of this Agreement or the rights hereunder approved by the City, the seller, transferor or assignor shall be released of all obligations under this Agreement that relate to the portion of this Agreement and the Property being transferred and, thereafter, City shall look solely to such transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. In connection with each such transfer, transferor shall require the Assignee to assume in writing all of the obligations under this Agreement that relate to the portion of the Property being transferred. If any such Assignee defaults under this Agreement, such default shall not constitute a default by the Owner of any other portion of the Property and shall not entitle City to terminate this Agreement with respect to such other portion of the Property or the Owner thereof who is not in default. Each Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property with respect to which such transferee is the Owner.

1.6 **Notices.** Formal written notices, demands, correspondence and communications between the City and Owner shall be sufficiently given if delivered or sent to the Parties by the means and in the manner set forth in Section 8 hereof. Such written notices, demands, correspondence and communications may be directed in the same manner to such other Persons and addresses as either Party may from time to time designate. Owner shall give written notice to the City concurrently with any Assignment of its rights, interests and obligations under this Agreement, setting forth the portion of the Property transferred in connection with such Assignment, the name of Assignee and Assignee's mailing address, the name and address of a

single person to whom any notice relating to such Assignee shall be given, the effective date of the Assignment and any other information reasonably necessary for the City to take any other action the City is required to take under this Agreement with respect to such Assignment.

1.7 **Amendment of Agreement.** This Agreement may be amended from time to time by mutual consent of the Parties, in accordance with the provisions of Govt. Code Sections 65867 and 65868, by means of an ordinance adopted by the City Council.

1.8 **Major Amendments and Minor Amendments.**

1.8.1 **Major Amendments.** Any amendment to this Agreement which affects or relates to (a) the Term of this Agreement; (b) the uses allowed on the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Property or the maximum height or square footage of proposed buildings or other structures or improvements; (f) monetary contributions by Owner or (f) any other substantive change to this Agreement determined to be material by City in its reasonable and good faith judgment, shall be deemed a “**Major Amendment**” and shall require the giving of notice and approval or disapproval in a public hearing before the Planning Commission and the City Council.

1.8.2 **Minor Amendments.** The Parties acknowledge that interpretation of the terms of this Agreement or the Project Approvals involving certain minor changes may be appropriate with respect to the details and performance of the Parties under this Agreement (“**Minor Amendment**”). The Authority to enter into such Minor Amendments, or to take any other actions in the implementation or application of this Agreement, is hereby delegated to the City Manager and the City Manager is hereby authorized to execute any Minor Amendments or take such implementing actions without further City Council action. However, nothing in this Agreement shall be construed to prohibit the City Manager from seeking approval of Minor Amendments or actions in implementation of this Agreement from the City Council, in accordance with the provisions applicable to Major Amendments.

2. **Development of the Property.**

2.1 **Vested Rights; Permitted Uses and Development Standards.** Owner shall have the vested right to develop the Project and the Property in the manner, to the extent, for the uses and in accordance with and subject to the terms and conditions of this Agreement, the Applicable Rules and the Project Approvals. In accordance with Government Code Section 65866, “Applicable Rules” means (a) the land use regulations of the City, such as, but not limited to, the General Plan, the Project Approvals and other laws, statutes, ordinances, rules and regulations and official policies governing permitted uses of land, density, design, and improvement and construction standards and specifications applicable to development of the Project on the Property in effect as of the Effective Date, including but not limited to those governing the planning and zoning laws applicable to the Project, and (b) future rules that are not inconsistent with the

foregoing and made applicable to the Project in accordance with the requirements of this Agreement or which are hereafter agreed to in writing by Owner and the City.

2.2 **Subsequent Project Approvals.**

2.2.1 **Discretionary Approvals.** The vested right to develop the Project granted to Owner pursuant to this Agreement may require the Owner to seek subsequent discretionary approvals; provided, that, as set forth in Government Code Section 65865.2, in reviewing and acting upon these subsequent discretionary approvals, the City shall not impose any conditions, terms, restrictions or requirements that preclude the development of the Project for the uses and to the density and intensity of development set forth in the Project Approvals. Any subsequent discretionary approvals, including conditional use permits and plot plan approvals, shall become part of the Project Approvals once approved and after all appeal periods have expired, or, if an appeal is filed, after the appeal is decided in favor of the approval. In reviewing and approving applications for subsequent discretionary approvals, the City shall exercise its discretionary review and may attach such reasonable conditions and requirements as may be deemed necessary or appropriate to carry out the policies, goals, standards and objectives of the General Plan and to comply with legal requirements and policies of the City pertaining to such discretionary approvals, so long as such conditions and requirements do not preclude the uses and/or the density and intensity of use set forth in this Agreement and are not inconsistent with the Applicable Rules. Any such approval shall become subject to all the terms and conditions of this Agreement, shall be treated as a Project Approval, and Owner's right to proceed in accordance with those approvals shall be deemed vested under this Agreement.

2.3 **Duration of Maps and Project Approvals.** Pursuant to Govt. Code Section 66452.6(a), the duration of all tentative and final maps filed by Owner with respect to the Property or any portion thereof and approved by the City shall remain in effect for the Term of this Agreement and shall terminate concurrently with the termination of this Agreement. Tentative maps, either vesting or non-vesting, may be processed in phases subject to the Applicable Rules and Subdivision Map Act. In addition, all Project Approvals, including all plot plans, conditional use permits and other entitlement permits and approvals issued by the City with respect to the Project shall remain in effect for Term of this Agreement. The term of ministerial permits such as grading permits and building permits shall not be affected by or extended by this Agreement.

2.4 **CEQA.** The evaluation of environmental impacts for the Project is contained in Environmental Assessment No. ENV2025-0002. Based upon the City's current findings under Section 15183 of the CEQA Guidelines, no further environmental review is required for the Project, and a Notice of Exemption will be filed with the applicable public office or official.

2.5 **Development Timing and Phasing.**

2.5.1 **Generally.** The Parties acknowledge that Owner cannot at this time predict with certainty when or the rate at which phases of the Property would be developed. Such decisions depend upon numerous factors which are not all within the control of Owner, such as market orientation and demand, interest rates, competition and other factors. Because the California Supreme Court held in *Pardee Construction Co. v. the City of Camarillo*, 37 Ca1.3d 465 (1984), that the failure of the Parties therein to provide for the timing of development resulted

in a later adopted initiative restricting the timing of development controlling the Parties' agreement, it is the intent of the City and Owner to hereby acknowledge and provide for the right of Owner to develop the Project in such order and at such rate and times as Owner deems appropriate within the exercise of its sole and subjective business judgment, subject to the terms, requirements and conditions of the Applicable Rules and the Project Approvals, including but not limited to the infrastructure phasing requirements therein, and this Agreement. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Owner's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Laws and this Agreement. Owner shall use commercially good faith efforts, in accordance with its sole and subjective business judgment and taking into consideration market conditions and other economic factors influencing Owner's sole and subjective business judgment, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Agreement and with the Project Approvals, however, Owner shall not, by reason of its entry into this Agreement or commencement of any phase of the Project, have an obligation to commence construction of any phase or portion of the Improvements other than Improvements already commenced and related infrastructure.

2.5.2 Project Not Subject to Restrictions. Subject to Development Agreement Laws, Owner and the City intend that, except as otherwise provided herein, this Agreement shall vest the Applicable Rules and the Project Approvals against subsequent City resolutions, ordinances, growth control measures, initiatives and referenda (other than a referendum on the current Project Approvals that specifically overturns the City's approval of these Project Approvals) that would directly or indirectly limit the rate, timing or sequencing of development, or would prevent or conflict with the land use designations, permitted or conditionally permitted uses on the Property, design requirements, or the density and intensity of uses as set forth in the Project Approvals, and that any such resolution, ordinance, measure, initiative or referendum shall not apply to the Project Approvals and the Project. In the event of a conflict between this Agreement and such subsequent action, this Agreement shall control to the extent of such conflict. The orderly and measured build-out of the Project in accordance with the Applicable Rules will allow for the absorption of the new development into the community and the integration of the Project into the community.

2.5.3 Infrastructure Improvements and Phasing. Consistent with this Agreement and the Project Approvals, each final map shall include a detailed description of the infrastructure improvements, utility easements and other requirements under the map. As necessary for orderly development of the Project, the City may modify the public improvement requirements necessary to serve each phase as shown on particular final maps so long as such modifications substantially comply with the intent of this Agreement and the Applicable Rules. Owner and City further recognize that economic and market conditions may necessitate changing the order in which the Project infrastructure is constructed, and City and Owner hereby agree that should it become necessary or desirable to develop any portion of the Project's infrastructure in an order that differs from the order set forth in this Agreement, the Project Approvals or any subsequent Project approvals, Owner and City shall meet and confer and City shall permit any such modification reasonably requested by Owner so long as the modification continues to ensure adequate infrastructure is available to serve the improvements on that portion of the Project that is in fact being constructed at that time.

2.6 **Property Acquisition for Offsite Infrastructure.** Owner and City shall dedicate and/or make available without further cost or charge, any right of way, utility easement or other property rights over the property they own or control as necessary to construct or otherwise provide the public improvements contemplated by this Agreement and the Project Approvals. Owner and City have confirmed that they do not have any current knowledge that any additional right of way or other property interests required for construction of the public improvements are outside of the ownership or control of the Owner and City.

If, notwithstanding their current understanding that no additional right of way or property interests will be required for the Project, such acquisition does become necessary, Owner shall, in a timely manner as determined by the City and consistent with the requirements of the Project and the conditions of approval for the Project, acquire the property rights necessary to construct or otherwise provide the public improvements contemplated by this Agreement and the Project Approvals. In any instance where Owner is required to construct any public improvement on land within the municipal limits of the City, as the same are determined, and to which neither Owner nor the City has sufficient title or interest, including fee title, an easement, right of way or license determined necessary by the City, Owner shall make reasonable, good faith efforts to acquire such title or interest for at least ninety (90) days. For the purposes of this Section, “reasonable good faith efforts” shall include proof that Owner made a written offer to purchase the property interest at fair market value, in accordance with an appraisal conducted by an MAI appraiser. If Owner is unable to acquire such title or interest despite demonstrating to the City such reasonable, good faith efforts, Owner may request of the City in writing and the City shall, subject to compliance with all applicable laws governing notice, hearing and deliberation, consider the acquisition of such title or interest by condemnation provided Owner funds the cost of such activities in advance. If the City intends to approve the acquisition of such title or interest by condemnation, Owner shall first be required to enter into a reimbursement agreement with City whereby Owner deposits monies with City to cover all reasonable costs associated with such acquisition or condemnation proceedings including but not limited to attorneys' fees, expert witness fees, cost of the property interest being acquired and jury awards of any kind and all of the legal, appraisal and other costs reasonably incurred by City related to the acquisition of such title or interest by condemnation in accordance with applicable law. Upon acquisition of the necessary interest in land, or upon obtaining a right of entry, either by agreement or court order, Owner shall commence and complete the public improvements. This requirement shall be included, and, if necessary, detailed, in any subdivision improvement agreement entered into between Owner and the City pursuant to Govt. Code § 66462.

2.7 **Fee Credits, Reimbursement and Incentive Payment**

2.7.1 **Traffic and Transportation Improvements.** As a condition to issuance by the City of a certificate of occupancy for the first building in the Project, to offset impacts from the Project due to vehicular traffic and other causes and as specifically provided in the conditions of approval for the Project, Owner shall construct the traffic, transportation, and related improvements listed on Exhibit “D” to this Agreement and described in the referenced plans for those improvements (“**Offsite Traffic Improvements**”), the currently estimated cost of which is also identified in Exhibit “D”. Notwithstanding the forgoing, if Owner is delayed in construction of that portion of the Offsite Traffic Improvements consisting of traffic lights and related improvements located at the intersections of Elm Avenue and Oak Valley Parkway and Desert

Lawn Drive and Oak Valley Parkway (“Traffic Signal Improvements” and collectively with the Offsite Traffic Improvement, the “Offsite Traffic Improvements”) based on required acquisition of property rights from third parties by negotiation or condemnation, City shall not withhold the issuance of a certificate of occupancy for such reason as provided in the preceding sentence; thereafter, Owner shall diligently and continuously secure the third party property rights, complete the improvements within one year thereafter and seek reimbursement of the cost of such improvements separately from the remainder of the Offsite Traffic Improvements upon completion of such improvements in accordance with this Section 2.7.1. Provided that (i) Owner has substantially completed the Offsite Traffic Improvements, (ii) Owner has substantially completed the on-site improvements (i.e. horizontal work including grading, asphalt, landscape, utilities, concrete, parking lot lighting, etc. in all material respects), and (iii) EITHER (A) a major retailer with a nation-wide presence having at least 125,000 square feet of floor space has opened within the Project, OR (B) Owner obtained certificates of occupancy from the City for not less than 50,000 square feet of building space for the Project (to include, as a portion of such square footage, a grocery store of at least 20,000 square feet in size) and City has received at least one dollar of sales tax revenue originating from a business located within said improvements, then City shall reimburse Owner for the actual cost of the construction of the Offsite Traffic Improvements within thirty (30) days after City receives the Owner’s written request for reimbursements provided such request meets all of the submittal requirements in this Agreement and is in compliance with a reimbursement agreement to be executed by Owner and City in the form attached hereto as Exhibit D-1, attached hereto and made a part hereof by this reference (“**Offsite Traffic Improvement Reimbursement Agreement**”). City and Owner shall execute the Offsite Traffic Improvement Reimbursement Agreement contemporaneously with and subject to the effectiveness of this Agreement. In connection with such reimbursement Owner shall provide to City copies of receipts for paid invoices for all labor, materials, equipment and other amounts incurred by Owner to construct the Offsite Traffic Improvements in a lien free condition. If City determines that any submission for reimbursement is incomplete, it shall notify Owner of any additional required submission materials within the (10) days after submission to the City.. If there is disagreement with respect to the right to reimbursement on any portion of any submission, it shall not limit reimbursement for the undisputed portion of any submission and that undisputed portion shall be paid without delay.

It is intended that the Offsite Traffic Improvements will be subject to prevailing wages, but that the reimbursement of the same shall not trigger the payment of prevailing wages for any of the other private elements of the Project under Labor Code Section 1720(c)(2) providing that (i) where public funds are paid solely for public improvements on an otherwise private development project and those public improvements are required as a condition of regulatory approval, and (ii) the public entity contributes no more money or assistance to the project than what is required to fund the cost of those public improvements, and (c) the public entity does not retain a proprietary interest in the overall project, then only the public improvements shall be subject to the requirement for payment of prevailing wage. Notwithstanding the foregoing the amount of reimbursement by the City for the construction of the Offsite Traffic Improvements shall not exceed the amount of Six Million Dollars \$6,000,000 (“**Maximum Reimbursement**”). The City Council will provide for the Maximum Reimbursement Amount in the City’s Capital Improvement Program and Budget at the time of approving the Ordinance adopting this Agreement so that such reimbursement is documented, scheduled and committed to as a part of the standard budgeting process. The Offsite Traffic Improvements receiving reimbursement from the City under this Section 2.7.1 shall not be

subject to additional reimbursement under Section 2.7.2 below. Notwithstanding anything herein to the contrary, in no event shall the reimbursements received by Owner with respect to the Offsite Traffic Improvements exceed the maximum amount permitted by Labor Code Section 1720(c) so as to ensure that, under all circumstances, such reimbursement shall not trigger a prevailing wage requirement on any improvements other than the Offsite Traffic Improvements.

2.7.2 Reimbursement Agreement. Owner shall be entitled to receive a reimbursement for public improvements built at the sole cost and expense of the Owner that exceed the capacity required by the Owner's project ("**Additional Capacity**") from future parties who will benefit from such Additional Capacity. If Owner becomes aware of any future property that would be subject to this reimbursement requirement, Owner shall promptly provide written notice to City of such property and the amount of the reimbursement proposed. The City shall enter into an agreement to reimburse Owner from development agreement fees, CFD funds, development impact fees, grants or other fees paid for the Additional Capacity by developers of other properties contributing their fair share to such Additional Capacity or funded by CFD funds under a reimbursement agreement for such improvements consistent with the applicable provisions of Govt. Code Sections 66485-66489 ("**Reimbursement Agreement**") in order to allow Owner to recover the total amount for such excess capacity as and when such additional projects receive building permits. The Parties acknowledge that the goal of any such Reimbursement Agreement is to seek to assure that all future projects pay their fair share of the cost of the Additional Capacity, as reasonably determined by the City. Without limiting the effect of the foregoing, the City will have no direct financial or other liability to Owner under any Reimbursement Agreement other than with respect to the funds received from the Benefiting Parties or other third party sources, and will only administer reimbursements from projects that benefit from the Additional Capacity or such third party sources. Such separate Reimbursement Agreement shall have a term of no longer than twenty-five (25) years. To ensure that owners of property which reasonably benefit from the Additional Capacity ("**Benefiting Parties**") pay their fair share for such improvements, the City hereby agrees that, to the extent that it has legal authority to do so, it shall condition or otherwise require that Benefiting Parties pay for such improvements, either through development agreements, subdivision improvement agreements or other mechanisms with the City or by requiring that such Benefiting Parties enter into agreements with Owner directly. The Reimbursement Agreement between the City and Owner shall provide that if and when a particular property benefiting from the Additional Capacity is developed, the City shall either reimburse Owner for the pro rata share of the costs of the Additional Capacity actually used by it or shall enforce the condition or obligation for payment set forth in any separate agreement or assign the right to so enforce the separate agreement to Owner. Owner shall have no recourse against the City under the Reimbursement Agreement except that the City shall have the obligation, enforceable by Owner, to pay to Owner, until Owner is fully reimbursed for the costs of the Additional Capacity, any monies it receives from developers or other sources for the Additional Capacity, including but not limited to grant funding. Similarly, if the Benefiting Party fails to reimburse Owner for the Additional Capacity, Owner shall have no recourse against the City for the actions of such Benefiting Party; however, Owner shall retain all rights against the Benefiting Parties and benefited property, if any. In no case shall the City be obligated to reimburse Owner from general funds of the City (other than third party funds received for the purpose of reimbursement to Owner) or file any litigation to enforce or collect monies from developers. Whenever in this Agreement or in future reimbursement agreements the City is making reimbursements to Owner, the reimbursements shall be made on a quarterly basis. The City shall not reimburse Owner for costs

of interim temporary improvements (improvements with a service life of less than 5 years) as reasonably determined by the City.

2.7.3 Application of Fee Credits and Reimbursement Rights. Owner's rights of reimbursement for Offsite Traffic Improvements and Additional Capacity shall vest for each improvement upon construction and payment, as specified in Section 2.7.1 and 2.7.2, as applicable. Owner's reimbursement amounts shall include all actual "hard" and "soft" direct and indirect costs of design, permitting, processing, construction and land acquisitions and/or right of way acquisition costs arising from or related only to obligations incurred in transactions with third parties and Owner's performance under this Agreement as to the Offsite Traffic Improvements or Additional Capacity, as applicable. In any event, the reimbursements to Owner for Offsite Traffic Improvements under Section 2.7.1 shall not exceed the Maximum Reimbursement amount set forth in Section 2.7.1.

2.8 Rules, Regulations and Official Policies; Future Rules.

2.8.1 Applicable Rules. During the Term, the rules, regulations, ordinances and official policies governing the permitted uses of land, the density and intensity of use, conceptual architecture, and improvement of the Property including but not limited to the maximum height and size of proposed buildings and other structures and improvements on the Property, shall be those rules, regulations and official policies in force on the effective date of the ordinance enacted by the City Council approving this Agreement. Except as otherwise provided in this Agreement, (a) the permitted uses of the Property shall include construction of commercial buildings and appurtenant structures, installation of all improvements and infrastructure reasonably incident thereto, and all other uses permitted under the Project Approvals. The density and intensity of use of the Property and the maximum height and size of proposed buildings shall be as set forth in the Applicable Rules. Except as expressly provided otherwise in this Agreement, to the extent any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations or policies adopted by the City purport to be applicable to the Property but are not consistent with the terms and conditions of this Agreement, the terms of this Agreement and the Applicable Rules in effect prior to such changes shall prevail.

2.8.2 Reservation of Rights. Unless permitted pursuant to clauses (a) through (e) of this Section 2.8.2, any future changes in the General Plan, zoning codes or future rules, ordinances, regulations or policies including any moratorium, whether adopted by initiative or referendum or otherwise, shall be deemed to be inconsistent with the vested rights conferred by this Agreement and shall therefore not be applicable to the development of the Property or the Project and shall not interfere with or prevent the development of the Property; provided that the following are deemed not to be inconsistent with the Applicable Rules:

(a) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, excluding only any such procedural provisions specifically set forth in this Agreement, which shall continue to be controlling.

(b) The application to the Property of state or federal laws, and changes in City laws, regulations, plans or policies which are specifically mandated and required by

changes in state or federal laws or regulations. To the extent that any actions of federal or state agencies (or actions of regional and local agencies, including the City, required by federal or state agencies) have the effect of preventing, delaying or modifying development of the Property, the City shall not in any manner be liable for any such prevention, delay or modification of said development. Owner is required, at its cost and without cost to or obligation on the part of the City, to participate in such mandatory regional or local programs and to be subject to such development restrictions as may be mandated by reason of such actions of federal or state agencies (or such actions of regional and local agencies, including the City, required by federal or state agencies). In the event either Party believes that state or federal laws or regulations enacted after this Agreement is entered into are inconsistent with or prevent or preclude compliance with one or more provisions of this Agreement and/or require changes in Project Approvals, such Party shall provide the other Party with a copy of such law or regulation and written notice concerning the conflict with this Agreement or the required change in Project Approvals. The Parties shall, within thirty (30) days of the first such notice, meet and confer in good faith in a reasonable attempt to modify this Agreement and/or the Project Approvals to comply with such law or regulation in the manner that is least disruptive to the vested rights and Applicable Rules in effect prior to such new law and that preserves the purpose and intent of this Agreement to the maximum feasible extent. Thereafter, if the Parties are unable to reach agreement on the effect of such Federal or State law or regulation, the matter shall be scheduled for hearing before the City Council by the City Clerk, at its next most convenient meeting. At least ten (10) days' written notice of the time and place of such hearing shall be given by the City Clerk to the representative of Owner and the City Manager. The City Council, at such hearing, or at a continuation of such hearing, shall determine the exact modification which is necessitated by such Federal or State law or regulation. Owner, and any other interested person, shall have the right to offer oral and written testimony at the hearing. Approval of any change or modification shall be by the affirmative vote of not less than a majority of the total voting membership of the City Council. The determination of the City Council shall be final and conclusive, except for judicial review thereof.

(c) Regulations that may be inconsistent with the Applicable Rules but that, after duly noticed public hearing before the City Council, are determined necessary to protect the public from conditions that would be dangerous to their health and safety, which condition cannot be mitigated in a reasonable manner with respect to the development of the Property and the Project except through the imposition of such future regulation and which future regulations are applied consistently and evenly throughout the City. In determining whether any such regulations are necessary to protect the public health and safety as set forth above, the City Council shall make findings, based on substantial evidence presented to and accepted by the City Council, that the changes are necessary to protect the public health or safety and that the other conditions described above apply. To the extent possible, any such regulations shall be applied and construed to minimally impact Owner's rights provided under this Agreement. No such subsequently adopted changes in the General Plan, zoning codes or rules, ordinances, regulations or policies of the City shall apply if its application to the Property would physically prevent development of the Property for the uses and to the density or intensity of development set forth in the Existing Project Approvals, as the same may be amended in accordance with the requirements of this Agreement.

(d) Regulations that are not inconsistent with the Applicable Rules and do not adversely affect the ability to complete the Project in accordance with the Project Approvals or significantly increase the cost of completing or operating the Project.

(e) Regulations that are inconsistent with the Applicable Rules to the extent, but only to the extent, each Owner to which such regulations would be applicable has given written consent to the application of such regulations to development of the Property, such consent to be granted or denied in such Owner's sole discretion.

If application of a subsequently enacted law, rule, regulation or policy under Section 2.8.2(b) through (e) above results in a reduction in the scope of the Project (as by reducing the permitted square footage, use or density of development), then the exactions required hereunder shall be equitably reduced.

2.8.3 The Project shall be constructed in accordance with the applicable standards, requirements and prohibitions of the Uniform Building, Mechanical, Plumbing, Electrical, Fire Codes and other codes, City standard construction specifications and details and Title 24 of the California Code of Regulations (California Building Standards Code) in effect throughout the City at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project. The City adopts by reference guidelines, policies and standards applicable to roads, utility lines, public improvements and fire safety imposed by other agencies including Riverside County and the Orange County Sanitation District ("Incorporated Regulations") which are applicable to properties on a citywide basis. The Project shall be constructed in accordance with the Incorporated Regulations in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project. If no permits are required for the infrastructure improvements required by the Project Approvals, such improvements shall be constructed in accordance with the provisions of the codes delineated herein in effect at the start of construction of such infrastructure. Ordinances, resolutions, rules, regulations and official policies governing the design, improvement and construction standards and specifications applicable to public improvements to be constructed by Owner shall be those in force and effect at the time the applicable permit for the construction of such improvements is issued. If no permit is required for the public improvements, the date of the permit shall be deemed the date construction for the public improvements is commenced.

2.9 Fees, Exactions, Conditions and Dedications.

2.9.1 Development Fees. Impact fees, connection fees and capacity fees levied by the City shall be those in effect at the time of the issuance of a building permit and due and payable by Owner prior to the issuance of the building permit for the building in question. For the sake of clarity, as a condition to building permit issuance for each building, Owner shall pay the development impact fees listed on Exhibit "C" for such building in the amount in effect at the time the building permit for such building is issued, as well as any new or increased development impact fees authorized by this Agreement and adopted in accordance with applicable law. The City retains discretion to prospectively revise such fees as the City deems appropriate, in accordance with applicable law, and to adopt new development impact fees in accordance with applicable law. The City may apply subsequently adopted development impact fees to the Project if the same are applied uniformly to development either throughout the City or with a defined area of benefit that includes the Property so long as the subsequently adopted exaction is not applied on an ad hoc basis solely applicable to or targeted at the Project and the subsequently adopted fee does not physically prevent development of the Property for the uses and to the density and intensity of development set forth in this Agreement. The development impact fees listed on Exhibit "C", as

the same may be modified pursuant to this Agreement, are referred to herein as “**Development Fees**”. For the sake of clarity, Owner shall pay the Development Fees at the time of and in the amount as determined by the City at the time the building permit is issued for such building and such payments shall be paid as a condition of building permit issuance or at such other time as required by the generally applicable provisions of the Beaumont Municipal Code. Nothing in this Agreement shall prevent an Owner from contesting, in any appropriate forum, the imposition or the amount of any processing fees, development impact fees or exaction, or any increases therein, under the provisions of applicable law. Notwithstanding any pending contest of such fees, City shall proceed with issuance of all required approvals and permits with respect to the Project and shall not withhold or delay issuance of those permits or approvals based upon any pending good faith protest or appeal with respect to such future fees or exactions or increases therein.

2.9.2 Limitations; Future Impacts. Except as otherwise specifically set forth in this Agreement, in the Project Approvals or in the Applicable Rules, the City shall not impose any obligations on Owner to dedicate land or to construct improvements, or impose any exactions to defray all or a portion of public improvements, public services, community amenities or for other municipal purposes, mitigation measures, obligations for construction of on-site or offsite improvements or dedication or reservation requirements upon Owner that apply to the Property, the Project or any improvements thereon or permit or Project Approval therefor without the prior written consent of each affected Owner in its sole discretion. Notwithstanding the foregoing, if the Project or any part thereof is modified by Owner in a manner that increases density, intensity of use or square footage or constitutes a change in use, the City shall have the right to require mitigation of the additional impacts associated with such modifications. The Parties acknowledge that certain of the Project Approvals may provide the City Engineer and other City staff with the right to review and approve technical studies and reports implementing the Project to confirm the technical adequacy of the determinations therein and in that context may require refinement of the Project plans as well as mitigation of impacts, provided the same are not inconsistent with the Applicable Rules or the Project Approvals.

2.9.3 Processing Fees. The City may charge and Owner shall pay fees for processing applications for governmental approvals, plan check fees, inspection fees and similar fees permissible under California Constitution Article XIII C Section 1(e)(1)-(7), judicial interpretations thereof or any successor provision(s) of law including, but not limited to those for reviewing and inspecting such applications and the construction being performed or to be performed pursuant thereto, which are in force and effect on a city-wide basis at the time the application is submitted for those permits.

2.9.4 Regional Impact Fees. Unless otherwise relieved by agreement with such agencies (e.g., TUMF and/or MSHCP fee credit agreement or similar agreement), Owner shall be required to pay the current and later adopted regional development impact fees, including but not limited to TUMF and MSHCP fees, in effect and in the amount due at the time of applying for a building permit.

2.9.5 Assignment. The benefit of or credit for Development Fees and processing fees paid by Owner may be assigned by Owner to any Assignee of a corresponding part of the Property or the Project provided that a written Assignment of the credit clearly identifying

the source, amount and type of credit executed by the assignor Owner and Assignee is provided to the City Manager for the City Manager's record keeping.

2.9.6 **Completion of Improvements.** The City generally requires that all improvements necessary to service new development be completed prior to issuance of final certificates of occupancy for those affected improvements. The Parties acknowledge that some of the backbone or in-tract improvements associated with the development of the Property may not need to be completed to adequately service portions of the Property as such development occurs. Therefore, as and when portions of the Property are developed, only the backbone or in-tract infrastructure improvements required to service such portion of the Property in accordance with the Applicable Rules need be completed prior to issuance of the final certificate(s) of occupancy for the improvements within such portion of the Property as reasonably determined by the City.

Subject to Owner's installation of infrastructure in accordance with the requirements of the Project Approvals, City has determined and hereby finds that it will have sufficient capacity in its infrastructure, services and utility systems, including, without limitation, traffic circulation, storm drainage, sewer collection, sewer treatment, and sanitation services to accommodate the Project. To the extent that City renders such services or provides such utilities, City hereby agrees that it will serve the Project and that there shall be no restriction on hookups or service for the Project. Any tentative maps prepared for this Project shall comply with the provisions of Government Code Section 66473.7 to the extent applicable hereto. In connection with the foregoing, the City has determined that the said Section 66473.7 is not applicable to the Project in that the immediate contiguous properties surrounding the Project are, or previously have been, developed for urban uses within the meaning of Government Code Section 66473.7(i). Further, the City has, in any event, found and determined that sufficient water supplies are, or will be, available prior to completion of the Project that will satisfy the requirements of Government Code Section 66473.7.

2.10 **Expedited Processing; Cooperation with Permits.** The City agrees to timely consider and act upon any matter which is reasonably required, necessary or desirable to accomplish the intent, purpose and understanding of the Parties in entering into this Agreement, including, without limitation, processing of any ministerial permit or ministerial approval or any request for a discretionary action or discretionary approval. The City further agrees that, if Owner satisfactorily complies with all preliminary procedures, actions, payments of applicable processing fees, and criteria generally required of developers by the City for processing applications for such discretionary actions or discretionary approvals that the City will not unreasonably withhold or unreasonably condition or delay any such subsequent discretionary action or discretionary approval required in connection with any Project approval. All subsequent project approvals shall be subject to the terms and conditions of this Agreement, and, once approved, shall be deemed a part of the Project Approvals and Applicable Rules vested by this Agreement

If standard City staffing fails to result in processing of any permits or approvals as promptly as required by each Owner, then the City agrees, upon request of an Owner, to reasonably cooperate with that Owner in hiring additional staff or consultants to process the ministerial permits and approvals or discretionary actions and approvals at the sole cost of the Owner, and the Owner requesting such additional staff shall submit a reasonable advanced evergreen deposit for such purposes to be drawn upon by City and reimburse the City for all costs of such staff or consultants, within thirty (30) days after such Owner receives an invoice identifying such reimbursable

expenses; provided, the applicable Owner shall have the right to audit such costs, at its expense, upon request.

The City shall cooperate with Owner in the securing of any permits or approvals from other governmental agencies having jurisdiction over the Project, including, without limitation, any permits or approvals required as a result of any further modification to the Project processed with City. Owner shall apply for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project, and the City shall cooperate with Owner in its endeavors to obtain such permits.

3. Obligations of Owner.

If Owner exercises its vested right to develop the Project and proceeds to develop the Project, Owner shall develop the Property in accordance with and subject to the terms and conditions of this Agreement and the Project Rules. The failure of Owner to comply with any term or condition of or fulfill any obligation of Owner under this Agreement or the Project Rules shall constitute a default by Owner under this Agreement; provided that failure of Owner to construct all or any portion of the Project, or to commence or complete the public benefits or any public improvements shall not be a default under this Agreement unless such public benefits or public improvements are needed to provide service to any improvements subject to a previously issued building permit and which are in fact constructed on the Property.

4. Default, Remedies, Termination.

4.1 **General Provisions.** In the event of default by either Party in the performance of any of its material obligations under the terms or conditions of this Agreement, the Party alleging such default shall give the other Party notice in writing specifying in reasonable detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. The Party receiving such notice shall have fifteen (15) days from the date of receipt of such notice to cure any monetary default and thirty (30) days from the date of receipt of such notice to cure any non-monetary default, provided, however, for non-monetary defaults, if the amount of time reasonably required to cure the breach exceeds said thirty (30) days, the breaching Party shall have such longer time period as may be reasonably required provided that the breaching Party has commenced to cure such default within that thirty (30) day period and thereafter diligently prosecutes such cure to completion. During any such cure period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings or exercise of any other remedies for such default. After notice and expiration of the applicable cure period, if such default has not been cured, the other Party to this Agreement may at its option:

(a) Terminate this Agreement (provided that if any portion of the Project or Property has previously been Assigned, such termination shall only affect the portion of the Property and/or Project owned by Owner claiming City default or the portion of the Property and/or Project owned by the defaulting Owner, as applicable), in which event neither Party affected by such termination shall have any further rights against or liability to the other with respect to this Agreement or the Property first arising thereafter; provided that if the City commences such termination proceedings, it shall give not less than thirty (30) days prior written notice thereof to

Owner, which notice shall specify the affected Parcel or Parcels and the grounds for termination and shall set a date, time and place for a public hearing before the City Council. At the noticed public hearing, the affected Owner and/or its designated representative shall be given an opportunity to make a full and public presentation to the City and to respond to the City's evaluation of Owner's performance, either orally or in a written statement, at such Owner's election. If, following the taking of evidence and the hearing of testimony at said public hearing, the City finds, based upon substantial evidence, that Owner is not in compliance with a specific, material term or provision of this Agreement, and failed to timely cure such failure within the applicable cure period, then the City may terminate this Agreement as to the applicable portion of the Property owned by the defaulting Owner. No expiration or termination of this Agreement, or a portion thereof, shall affect any right or duty arising from previously granted entitlements or approvals or obligations or rights that accrued prior to such termination, including the Project Approvals on the Property approved prior to the effective date of the City Council's decision to terminate provided that the term of such Project Approvals shall be determined by reference to applicable law and not this Agreement following such termination of this Agreement.

(b) Institute legal or equitable action to cure, correct or remedy any default, including but not limited to an action for injunctive relief or specific performance of the terms of this Agreement; provided, however, that in no event shall either Party be liable to the other for money damages for any default or breach of this Agreement except for monetary amounts specifically provided for in this Agreement to be paid to such Party, including, without limitation, the right of Owner to recover from City the reimbursements provided for in Section 2.7. If any portion of the Project or Property has prior to such default been assigned, such enforcement action shall only be brought against and shall only affect the portion of the Property and/or Project owned by the defaulting Owner and may only be brought by the Owner(s) who have been harmed by the City default. Nothing herein shall preclude either Party from seeking reimbursement for amounts expressly required to be paid by one Party to the other under this Agreement including but not limited to application fees, Development Fees, reimbursement of consultants' fees to City, or TUMF credit agreement or any other reimbursement or credit agreement fees to Owner or to recover attorneys' fees if it is the prevailing Party as provided herein. Any such monetary obligations not paid when due hereunder shall thereafter bear interest at the rate of ten percent (10%) per annum from the date originally due until the date paid. It is expressly recognized that (a) except as set forth above with respect to the limited remedies for monetary damages, injunctive relief and specific enforcement of this Agreement are the proper and desirable remedies and that the non-breaching Party's remedy for a breach or violation of this Agreement shall normally be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement or to terminate this Agreement and (b) no act or omission of any Defaulting Owner shall by itself constitute a default by another Owner, and the City shall have no obligation whatsoever to cure any such default by one Owner for the benefit of any other Owner within the Project. As set forth in Section 2.5 above, in any event City shall not have the right to specifically enforce against any Owner, nor in any way compel an Owner to either start or complete the Project, nor to seek any monetary damages from the Owner for an Owner's failure to start or complete the Project; provided, that, City shall have the right (i) to compel Owner, by an action for specific performance, to complete any public improvements which have been commenced and are partially completed as of the date of termination, including, without limitation, bringing an action against any bonds posted to secure the construction of those improvements, and (ii) to require Owner to dedicate any property and complete any public improvements which are

required by the Project Approvals to be dedicated and/or completed prior to occupancy of those Project improvements in fact constructed on the Property pursuant to this Agreement.

4.2 **Owner's Right to Terminate Upon Specified Events.**

Notwithstanding any other provisions of this Agreement to the contrary, the Owner retains the right to terminate this Agreement upon thirty (30) days written notice to the City in the event that the Owner determines in its good faith judgment that continued development of the Project has become economically infeasible or impracticable due to changed market conditions, increased development costs, or burdens imposed, consistent with this Agreement, by the City or another governmental entity as conditions to subsequent project approvals. In the event Owner exercises this right, it shall nonetheless be responsible for mitigation of impacts to City resulting from development that may have occurred on the Property prior to the notice of termination, on a fair share or nexus basis, and within the thirty (30) day notice period City and Owner shall meet to identify any such mitigation obligation that may remain to be satisfied. If the Parties are in disagreement at the end of the (30) day notice period, the Agreement shall be terminated as to all matters except for the remaining mitigation obligation in dispute.

4.3 **Annual Review.**

4.3.1 **Process.** Without limiting the effect of Section 4.1, the City Manager shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Owner with the terms and conditions of this Agreement since the preceding annual review. Such periodic review shall be limited in scope to reviewing Owner's good faith compliance with the terms and conditions of this Agreement pursuant to Govt. Code Section 65865.1. The Planning Director shall begin the review by giving thirty (30) days prior written notice to Owner that the Planning Commission intends to undertake a periodic review of the Agreement. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement. If the Planning Director has recommended further review of performance, the Planning Commission shall conduct a public hearing at which the Owner shall provide substantial evidence of good faith compliance with the terms of this Agreement. The Planning Commission shall determine upon the basis of substantial evidence whether or not Owner has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

(a) If the Planning Director initially determines that Owner has complied in good faith with the terms and conditions of the Agreement or if the Planning Commission, after referral from the Planning Director, finds and determines on the basis of substantial evidence that Owner has complied in good faith with the terms and conditions of the Agreement during the period under review, the review for that period is concluded and, if requested by Owner, the City shall issue the Certificate described in Section 4.3.5.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that Owner has not complied in good faith with the terms and conditions of the Agreement during the period under review, the City shall provide written notice to Owner of the determination by registered mail.

The Planning Commission shall make its decision regarding compliance within twenty (20) days after the close of its public hearing. Notice of the decision shall be filed by the Planning Director with the City Clerk, together with a report of the proceedings, and a copy mailed by registered mail to Owner.

4.3.2 **Appeal; City Council Review.** The decision of the Planning Commission shall be final unless, within fifteen (15) days of the Owner's receipt of said decision, Owner or any interested person files an appeal or unless the City Council orders the matter set for public hearing. If the Planning Commission is unable to make a decision, that fact shall be reported to the City Council in the same manner for reporting decisions and the failure to make a decision shall constitute a decision not to confirm a good faith compliance finding. Once the matter has been referred to the City Council, the City Council retains the right to refer the matter back to the Planning Commission for further proceedings or for report and recommendation, provided that the City Council shall make the final decision following any further action by the Planning Commission.

4.3.3 **Owner Right to Respond and Cure.** Proceedings related to modification or proposed termination of this Agreement shall be conducted in accordance with this Agreement and the Development Agreement Laws. At each public hearing, Owner shall be provided an opportunity to respond to any report or finding; any such response timely submitted in writing shall be included in the submittal to the City Council. As provided in this Agreement, failure to prosecute the Project based upon good faith business judgment shall not be a default under this Agreement or a cause for finding of noncompliance at annual review. If there is more than one Owner, then the finding of the Planning Commission and City Council shall be made with respect to the conduct of each Owner individually and the noncompliance applicable to one Owner shall not be a basis to find noncompliance by other Owner(s) in the absence of a determination that the other Owner(s) are also noncompliant under this Agreement. Prior to any modification or termination of this Agreement, Owner shall be provided a right to cure any alleged default in accordance with Section 4.1.

4.3.4 **Effect of No Review.** Failure of the City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Owner have or assert any defense to such enforcement by reason of any such failure to conduct an annual review. Owner shall not be penalized in the event that the City fails to request periodic review as contemplated in this Section and any failure to conduct such annual review shall not adversely impact the Owner's rights hereunder in any way. Any finding of non-compliance with this Agreement shall be made solely on the basis of substantial evidence that Owner has not complied in good faith with the terms and conditions of this Agreement at or following a public hearing.

4.3.5 **Certificate of Agreement Compliance.** If, at the conclusion of a periodic review, Owner is found to be in compliance with this Agreement, the City shall, upon written request of the Owner, issue a certificate (the "**Certificate**") to Owner stating that after the most recent periodic review and based upon the information known or made known to the person or body conducting such review that: (a) this Agreement remains in effect, and (b) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, and shall state the

anticipated date of commencement of the next periodic review. Owner may record the Certificate with the County Recorder. If the City does not find Owner to be in compliance with this Agreement, it shall not be obligated to issue the Certificate.

4.4 **Limitation on Liability.** In no event shall the public officials, officers, agents or employees of City or the employees, officers, members, lessees, or partners of Owner, be personally liable in damages for any breach or violation of this Agreement.

4.5 **Applicable Law, Venue and Attorneys' Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of California exclusive of its choice of law rules and the venue for any legal action concerning this Agreement shall be in Riverside County Superior Court. Owner acknowledges and agrees that the City has approved and entered into this Agreement in the exercise of its legislative discretion and that the standard of review of the validity or meaning of this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, expert witness fees, court costs and such other costs as may be fixed by the Court, including any such costs incurred on appeal or in the enforcement of any resulting judgment.

4.6 **Invalidity of Agreement.** If this Agreement shall be determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any state or federal law which becomes effective after the date of this Agreement the unenforceable provision shall be deemed severable and the remainder of the Agreement shall remain in force and effect and the Parties shall negotiate in good faith for amendments to this Agreement that will cure the invalidity or unenforceability to the extent possible.

4.7 **Termination for Reasons Other than Owner or City Default.** Notwithstanding that there is no default by either Party under this Agreement, this Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(b) Entry after all appeals have been exhausted, of a final judgment or issuance of a final order by a court of competent jurisdiction directing the City to set aside, void or annul the adoption of the ordinance approving this Agreement or the adoption of the Project Approvals, provided the time for filing any return to writ has also expired.

(c) The adoption of a referendum measure specifically overriding or repealing the ordinance approving this Agreement and the Project Approvals or any thereof.

(d) Owner's election to terminate this Agreement and all of the Project Approvals prior to the commencement of the Project in accordance with the Project Approvals. If Owner elects not to develop the Property as a commercial project in substantial conformance with the Project Approvals or elects to terminate this Agreement pursuant to Section 4.2 of this Agreement, Owner shall provide at least thirty (30) days advance written notice of said election to the City.

Upon the termination of this Agreement pursuant to Section 4.2 or this Section 4.7, no Party shall have any further right or obligation hereunder, except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Termination of this Agreement shall not affect any of the covenants of the City or Owner specified in this Agreement to continue after the termination of this Agreement.

5. Hold Harmless Agreement.

5.1 **Hold Harmless Agreement.** Owner hereby agrees to and shall hold the City, its elective and appointive council members, boards, commissions, officers, agents and employees harmless from any third party liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage, which may arise from Owner or Owner's contractors, subcontractors, agents or employees construction of the Project, whether such operations be by Owner, or by any of Owner's contractors, subcontractors, or by any one or more Person(s) directly or indirectly employed by or acting as agent for Owner or any of Owner's contractors or subcontractors provided that the foregoing shall not extend to any such claim to the extent it results from the gross negligence or misconduct of the City or its representatives or agents. In the event of any legal action instituted by a third party or any governmental entity or official challenging the approval, execution or implementation of this Agreement or any provision of this Agreement (exclusive of any such actions brought by the City), the Parties agree to and shall cooperate fully and join in the defense by the City of such action, provided that Owner shall be allowed to provide a joint defense to the City and Owner at its sole cost and expense with counsel acceptable to City to defend both City and Owner, which approval shall not be unreasonably withheld, conditioned or delayed. The City may, in its sole discretion and at its sole expense, elect to also participate in the defense of any such claim, action or proceeding, but such participation shall not relieve Owner of its obligation to provide a joint defense of such action or increase the defense costs of Owner. The Parties shall keep each other informed of all developments relating to defense of such matters subject only to confidentiality requirements that may prevent the communication of such information. Any proposed settlement of litigation or other challenge by Owner shall result in a final resolution providing for no liability or cost to City or shall otherwise be subject to the Parties' approval, each in its reasonable discretion. Notwithstanding the foregoing, Owner may elect not to defend a challenge to the Project, the Project Approvals, or this Agreement. In such event, the City shall have the right, in its sole discretion, to defend against such action at its sole cost and expense or to elect not to defend such action. If Owner, and thereafter City, each elects not to defend against the action, Owner shall remain obligated to indemnify and hold City harmless from and against any reasonable damages, attorneys' fees or costs that could not be avoided despite City's reasonable cooperation in the resolution of such litigation. It is agreed by the City that Owner shall take the lead role defending against any legal action to which this Section applies. The filing of any third party lawsuit(s) against City or Owner relating to this Agreement, the Project Approvals, any subsequent project approvals or other development issues or approvals affecting the Property shall not delay or stop the development, processing or construction of the Project, approval of any future discretionary approvals, or issuance of future permits or approvals, unless the third party obtains a court order preventing the activity (which City shall not stipulate to or cooperate in the issuance of) or the City Attorney

determines that the issuance of such permits or approvals will likely result in liability to the City which is not adequately addressed by the existing Owner indemnity of the City set forth above.

5.2 **Prevailing Wages.** Owner acknowledges the existence of the requirements of California Labor Code §1720, *et seq.*, and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 1600 *et seq.* (“**Prevailing Wage Laws**”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects, as defined by the Prevailing Wage Laws. If work pursuant to this Agreement is being performed by Owner as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation under the contract in question is \$1,000 or more, Owner agrees to fully comply with such Prevailing Wage Laws. Upon Owner's request, the City shall provide a copy of the then current prevailing rates of per diem wages. Owner shall make available to interested parties upon request, copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the work subject to Prevailing Wage Laws and shall post copies at Owner's principal place of business and at the Property. Owner shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless pursuant to the indemnification provisions of this Agreement from any claim or liability arising out of any failure or alleged failure by Owner to comply with the Prevailing Wage Laws associated with any “public works” or “maintenance” projects associated with Project development which are subject thereto.

Except as expressly provided in Section 2.7.1 with respect to the Offsite Traffic Improvements, nothing in this Agreement shall in any way require, or be construed to require, Owner to pay prevailing wages with respect to any work of construction or improvement within the Project (a “**Non Intended Prevailing Wage Requirement**”). But for the understanding of the Parties as reflected in the immediately preceding sentence, the Parties would not have entered into this Agreement based upon the terms and conditions set forth herein. Owner and City have made every effort in reaching this Agreement to ensure that its terms and conditions will not result in a Non Intended Prevailing Wage Requirement. These efforts have been conducted in the absence of any applicable existing judicial interpretation of which the Parties are aware that would indicate that the terms and conditions of this Agreement would result in a Non-Intended Prevailing Wage Requirement. If, despite such efforts, any provision of this Agreement shall be determined by the Department of Industrial Relations, the Labor and Workforce Development Agency, or any court of competent jurisdiction to result in a Non Intended Prevailing Wage Requirement, the Parties shall take such steps as are available, including any necessary modification or amendment to this Agreement, to mitigate or avoid such Non-Intended Prevailing Wage Requirement or its application to this Project at the sole cost and expense of the Developer.

5.3 **Survival of Provisions.** The provisions of this Section 5 shall survive the termination of this Agreement with respect to matters arising during the Term.

6. Project as a Private Undertaking.

It is specifically understood and agreed by and between the Parties that the development of the Property is a separately undertaken private development. No partnership, joint venture or other association of any kind between Owner and the City is formed by this Agreement. The only

relationship between the City and Owner is that of a governmental entity regulating the development of private property and the actions of the owner of such private property.

7. City Representations and Consistency with General Plan.

The City hereby finds, determines and represents that execution of this Agreement is in the best interest of the public health, safety and general welfare of the City and that this Agreement and the Project and the Project Approvals are consistent with the General Plan and that the Project Approvals lawfully authorize the construction and use of the Project. City has the authority to permit Owner to develop the Project, subject to, and in accordance with: (a) the Project Approvals; (b) the Applicable Rules; and (c) the terms and conditions of this Agreement, and, based upon all the information made available to City prior to or concurrently with the execution of this Agreement, there are no Applicable Rules that would prohibit or prevent the full completion and occupancy of the Project in accordance with the uses, densities, heights, and terms of development incorporated and agreed to herein. City has the legal authority to enter into and implement this Agreement.

8. Notices. Except as otherwise expressly provided in this Agreement, all notices required by this Agreement shall be in writing and delivered in person, by overnight delivery (including federal express), or sent by certified mail, postage prepaid, to the addresses of the Parties as set forth below. Notice required to be given to the City shall be addressed as follows:

City of Beaumont
550 East 6th Street
Beaumont CA 92223
Attn: City Manager

Notice required to be given to Owner shall be addressed as follows:

Beaumont Regency AVG, LLC
c/o Regency Centers Corporation
One Independent Drive, Suite 114
Jacksonville, Florida 32202-5019
Attn: VP, Legal Department

With a Copy to: Beaumont Regency AVG, LLC
c/o Regency Centers Corporation
420 Stevens Avenue, Suite 320
Solana Beach, California 92075
Attn: Market Officer

Abram Roy LLP
24025 Park Sorento, Suite 460
Calabasas, California 91302
Attn: Dennis Roy, Esq.

Either Party may change the address stated herein by giving notice in writing to the other Party, or by modifying the address for written notice in a written Assignment agreement submitted to the City pursuant to the requirements of this Section and recorded against the Property or applicable portion thereof. Thereafter notices shall be addressed and transmitted to the new address. If there is more than one Owner, notices shall be sent by the City to each and every Owner unless otherwise specified in an assignment and assumption agreement recorded against the Property.

9. Recordation.

When fully executed, this Agreement shall be recorded in the official records of Riverside County, California. Any amendments to this Agreement shall also be recorded in the official records of Riverside County.

10. Estoppel Certificates.

Either Party may, at any time, and from time to time, but no more often than quarterly, unless in connection with an Assignment, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, (c) the requesting Party is not in default in the performance of its obligations under this Agreement to the knowledge of the responding Party, or, if in default, to describe therein the nature and extent of any such defaults, and (d) and such other reasonable information or confirmations as the requesting Party may request. The City Manager shall be authorized to execute any certificate hereunder. Each Party from which an estoppel certificate is requested shall provide a fully executed certificate within fifteen (15) calendar days following the date of written request. The failure to timely deliver a requested estoppel certificate shall constitute a conclusive presumption that this Agreement is in full force and effect without modification, except as may be represented by the requesting Owner, and that there are no uncured defaults in the performance of the requesting Owner, except as may be represented by the requesting Owner. Any such certificate may be and is intended to be relied upon by any person, including, but not limited to, the other Party, potential purchasers or lessees of all or any part of the Property, lenders or potential lenders, and investors and potential investors.

11. Provisions Relating to Anchor Tenant.

11.1 Anchor Tenant Rights and Obligations.

11.1.1 **Anchor Tenant Takeover Rights.** The City hereby acknowledges that Owner intends to enter into a ground lease agreement with a nationally recognized anchor retailer (the “Anchor Tenant”) for a significant portion of the Property (“Anchor Tenant Premises”), along with certain other related agreements including, without limitation, a Site Development Agreement with the Anchor Tenant (“SDA”). The City hereby acknowledges that the SDA will obligate Owner to perform the construction of certain improvements within the Project (such as, by way of example but not limitation, parking areas, drive aisles, and other common area improvements), and will also obligate Owner to perform the Offsite Traffic Improvements as required under this Agreement. The SDA will further provide the Anchor Tenant certain rights, but not the obligation,

to take over and perform one or more of Owner's obligations under the SDA pursuant to the terms more particularly set forth in the SDA ("Anchor Tenant Takeover Right"). Upon execution of its lease, the Anchor Tenant shall have the rights and obligations of an Owner hereunder as to, and solely as to, its leased Anchor Tenant Premises, and shall have no obligation or duty under this Agreement to construct or complete the construction of the Offsite Traffic Improvements or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of Owner or Owner's successors-in-interest under this Agreement. Notwithstanding the foregoing, in the event that the Anchor Tenant exercises the Anchor Tenant Takeover Right under the SDA, the Anchor Tenant shall have the right, but not the obligation, by written notice to City, to assume Owner's obligations under this Agreement to perform the Offsite Traffic Improvements in accordance with the terms and conditions of this Agreement ("Anchor Tenant Assumption").

11.1.2 Anchor Tenant Payment of Fees; Reimbursement. Anchor Tenant shall not be obligated to pay any fees or charges which are obligations of Owner under this Agreement; provided, however, that any development of the Anchor Tenant Premises shall be subject to the Project Approvals applicable to the Anchor Tenant Premises and subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and charges, and assumption of all obligations of Owner hereunder that are applicable to the development of the Anchor Tenant Premises. In the event that the Anchor Tenant exercised the Anchor Tenant Takeover Rights under the SDA and completes the Offsite Traffic Improvements as required under this Agreement, the Anchor Tenant shall be entitled to such reimbursements as is owing by the City under this Agreement, less any amounts of such reimbursement as has been previously paid by the City to Owner.

11.1.3 Notice of Owner's Breach Hereunder. If the City receives notice from the Anchor Tenant requesting a copy of any notice of default given to Owner hereunder and specifying the address for notice thereof, then the City shall deliver to such Anchor Tenant, concurrently with service thereon to Owner, any notice given to Owner with respect to any claim by the City that Owner is in default, and if the City makes a determination of non-compliance, the City shall likewise serve notice of such noncompliance on such Anchor Tenant concurrently with service thereof on Owner.

11.1.4 Anchor Tenant's Right to Cure. The Anchor Tenant shall have the right (but not the obligation) for a period of sixty (60) days after the expiration of the time period for cure provided to Owner pursuant to Section 4.1 to cure or remedy, or to commence to cure or remedy, the default claimed or the areas of noncompliance set forth in the City's notice. If any default or noncompliance cannot, with diligence, be remedied or cured within such sixty (60) day period, then such Anchor Tenant shall have such additional time as may be reasonably necessary to remedy or cure such default or noncompliance if such Anchor Tenant commences cure during such sixty (60) day period and thereafter diligently pursues such cure to completion. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to permit or authorize any Anchor Tenant to undertake or continue construction or completion of any Offsite Traffic Improvements without first having delivered to the City the Anchor Tenant Assumption.

12. Provisions Relating to Lenders.

12.1 Lender Rights and Obligations.

12.1.1 **Prior to Lender Possession.** Owner may enter into mortgages, deeds of trust and other security instruments described in the following sentence secured by Owner's interest in the Property. The holder or beneficiary of any indenture of mortgage or deed of trust, hypothecation, pledge, assignment for security purposes, bond, grant of taxable or tax exempt funds from a governmental agency or other security interest or any documents constituting or relating to a sale-leaseback transaction ("**Lender**") shall have no obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of Owner or Owner's successors-in-interest, but such Lender shall otherwise be bound by all of the terms and conditions of this Agreement which pertain to the Property or such portion thereof in which Lender holds an interest.

12.1.2 **Lender in Possession.** A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of Owner and which remain unpaid as of the date such Lender takes possession of the Property or any portion thereof; provided, however, that a Lender shall not be eligible to apply for or receive Project Approvals with respect to the Property, or otherwise be entitled to develop the Property or devote the Property to any uses or to construct any improvements thereon other than the development contemplated or authorized by this Agreement and subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and charges, and assumption of all obligations of Owner hereunder; provided, further, that no Lender, or successor thereof, shall be entitled to the rights and benefits of Owner hereunder or entitled to enforce the provisions of this Agreement against the City unless and until such Lender or successor in interest qualifies as a recognized Assignee of this Agreement and makes payment of all delinquent and current City fees and charges pertaining to the Property.

12.1.3 **Notice of Owner's Breach Hereunder.** If the City receives notice from a Lender having a secured interest in the property within the Project requesting a copy of any notice of default given to Owner hereunder and specifying the address for notice thereof, then the City shall deliver to such Lender, concurrently with service thereon to Owner, any notice given to Owner with respect to any claim by the City that Owner is in default, and if the City makes a determination of non-compliance, the City shall likewise serve notice of such noncompliance on such Lender concurrently with service thereof on Owner.

12.1.4 **Lender's Right to Cure.** Each Lender shall have the right (but not the obligation) for a period of sixty (60) days after the expiration of the time period for cure provided to Owner pursuant to Section 4.1 to cure or remedy, or to commence to cure or remedy, the default claimed or the areas of noncompliance set forth in the City's notice. If the default or such noncompliance is of a nature which can only be remedied or cured by such Lender upon obtaining possession, such Lender may seek to obtain possession with diligence and continuity through a receiver or otherwise and may thereafter remedy or cure the default or noncompliance within sixty (60) days after obtaining possession. If any default or noncompliance cannot, with diligence, be

remedied or cured within such sixty (60) day period, then such Lender shall have such additional time as may be reasonably necessary to remedy or cure such default or noncompliance if such Lender commences cure during such sixty (60) day period and thereafter diligently pursues such cure to completion. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to permit or authorize any Lender to undertake or continue construction or completion of any improvements comprising the Project (beyond the extent necessary to conserve or protect improvements or construction already completed) without first having expressly assumed the defaulting Owner's obligations under this Agreement.

12.1.5 **Other Notices by the City.** A copy of all other notices given by the City to Owner pursuant to the terms of this Agreement shall also be sent to any Lender who has requested such notices at the address provided to the City by the Lender.

12.2 **Right to Encumber.** The City agrees and acknowledges that this Agreement shall not prevent or limit Owner of any interest in the Property, or any portion thereof, at any time or from time to time in any manner, at such Owner's sole discretion, from encumbering the Property, the improvements thereon, or any portion thereof with any mortgage, deed of trust, sale and leaseback arrangement or other security device.

12.3 **Reasonable Modifications.** The City agrees that it shall consider and adopt as Minor Amendments such other industry standard provisions requested by Owner to obtain financing if the same is requested by a Lender in order to protect its collateral under any deed of trust, mortgage or other security instrument, provided the same does not materially diminish the interests of the City under this Agreement.

13. Cooperation and Defense of Agreement.

13.1 **Further Actions and Instruments.** The Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The Parties further agree to mutually cooperate with one another in carrying out the purposes of this Agreement.

13.2 **Defense of Agreement.** Subject to the other provisions of this Agreement, the City agrees to and shall timely take all actions which are reasonably necessary or required to uphold the validity and enforceability of this Agreement and the Applicable Rules and Project Approvals. If this Agreement is adjudicated and determined to be invalid or unenforceable, the City agrees, subject to all legal requirements, to consider and implement all modifications to this Agreement which are reasonably necessary or required to render it valid and enforceable to the extent permitted by applicable law.

13.3 **No Moratorium.** No future amendment of any existing City ordinance or resolution, or future adoption of any ordinance, resolution or other action, that purports to limit the

rate or timing over time of development or construction of all or any part of the Project or alter the sequencing of development phases or alter or limit entitlements to use or service (including but not limited to water and sewer), whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether adopted or imposed by the City Council, an agency of the City or through the initiative or referendum process, shall apply to the Property or any portion thereof, provided, however, the provisions of this Section shall not affect City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations to which the City is subject and mandated to comply notwithstanding the existence of this Agreement.

13.4 **Certificate of Performance.** Upon the completion of the Project, or the development of any portion thereof, or upon performance of this Agreement or its earlier revocation and termination, the City shall provide Owner, upon Owner's request, with a statement ("**Certificate of Performance**") evidencing said completion or revocation and the release of Owner from further obligations hereunder, provided that if the release relates to the completion of only a phase or particular parcels, the release shall pertain solely to the parcel or parcels which have been completed. The Certificate of Performance shall be signed by the appropriate agents of Owner of the affected parcel(s) or phase and the City and shall be recorded in the official records of Riverside County, California. Such Certificate of Performance is not a notice of completion.

14. **General.**

14.1 **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the Parties. Unless specifically stated to the contrary, the reference to an exhibit by designated letter or number shall mean that the exhibit is made a part of this Agreement.

14.2 **Section Headings.** All article, section and subsection headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Amendment.

14.3 **Singular and Plural.** As used herein, the singular of any word includes the plural.

14.4 **Time of Essence.** Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

14.5 **Waiver.** Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

14.6 **No Third-Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. Except as expressly provided in this Agreement, no other Person shall have any right to action based upon any provision of this Amendment. Nothing herein shall limit the rights of permitted successors and assigns expressly provided for in this Agreement.

14.7 **Recitals; Exhibits.** The Parties agree that the Recitals above are true and correct and intend to be bound by same. The Parties further agree to the incorporation by reference herein

of said Recitals, together with all definitions provided and exhibits referenced in this Agreement, including in said Recitals.

14.8 **Counterparts.** This Amendment may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

14.9 **Survival.** Notwithstanding anything herein to the contrary, all representations and warranties shall survive the expiration or earlier termination of this Agreement and rights and obligations that have already accrued, including, without limitation, the confidentiality obligations described in Section 14.10 below, and any amounts due and owing shall survive the expiration or earlier termination of this Agreement and shall remain enforceable by the benefited Party.

14.10 **Confidentiality.** The Parties acknowledge and agree that all trade secret proprietary information provided by Owner to City with respect to the Property are intended to be confidential and City shall not voluntarily report, publish, share, circulate, disseminate or otherwise release to any party, person or entity any or all of those proprietary trade secret confidential matters unless otherwise required to do so by applicable law. If such disclosure is required by applicable law, City shall provide Owner with as much advance notice as practicable of such required disclosure and shall cooperate with Owner to the maximum extent possible to limit the required disclosure and the impact thereof upon Owner. The Parties agree that if the confidentiality provisions contained in this Agreement are breached, the remedy at law may be inadequate, and, therefore, without limiting any other remedy available at law or in equity, an injunction, specific performance or other form of equitable relief, or any combination thereof, shall be available to enforce such obligation. Further, if a petition is filed by a member of the public to gains access to any information not disclosed by City pursuant to this paragraph, Developer shall reimburse City for all its reasonable attorneys' fees, liabilities and attorneys' fees awards against the City, if any, resulting from such petition.

[SIGNATURES FOLLOW]

CITY:

CITY OF BEAUMONT

By: _____
Mayor, the City of Beaumont

Attest: _____
City Clerk of the City of Beaumont

OWNER:

Beaumont Regency AVG, LLC, a Delaware limited liability company

By: _____
Name _____
Its: _____

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____

}

On _____ before me, _____,
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

_____ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____

}

On _____ before me, _____,
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

_____ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

EXHIBIT “A”

LEGAL DESCRIPTION AND DEPICTION OF PROPERTY

The Property is legally described and depicted consists of two distinct parcels: (1) the Overall Site Parcel and (2) the Major Retailer Parcel.

Overall Site Parcel

The Overall Site Parcel is legally described and depicted in 8 pages attached hereto as Exhibit A-1. The Overall Site Parcel comprises approximately 17.660 acres of the Property and encompasses all but the Major Retailer Parcel.

Major Retailer Parcel

The Major Retailer Parcel is legally described and depicted in 5 pages attached hereto as Exhibit A-2. The Major Retailer Parcel comprises approximately 12.217 acres of the Property.

EXHIBIT A-1
LEGAL DESCRIPTION AND DEPICTION OF OVERALL SITE PARCEL

EXHIBIT "A" – LEGAL DESCRIPTION

IN THE CITY OF BEAUMONT, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING LOTS 1 AND 2 OF LOT LINE ADJUSTMENT 01-XXXX RECORDED _____, 2025 AS DOCUMENT NO. _____, **TOGETHER WITH** LOTS 1 AND 2 OF LOT LINE ADJUSTMENT 02-XXXX RECORDED _____, 2025 AS DOCUMENT NO. _____, BOTH OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, ALL WITHIN SECTIONS 4 AND 5, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1 OF SAID LOT LINE ADJUSTMENT 01-XXXX;

THENCE ALONG THE NORTHWEST AND NORTH LINES OF LOTS 1 AND 2 OF SAID LOT LINE ADJUSTMENT 01-XXXX AND LOT 1 OF LOT LINE ADJUSTMENT 02-XXXX THE FOLLOWING TWELVE (12) COURSES:

- 1) NORTH 60°17'11" EAST, 308.92 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 91.00 FEET;
- 2) EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°17'38" AN ARC LENGTH OF 29.06 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 41.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS SOUTH 09°59'02" EAST;
- 3) EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 34°54'46" AN ARC LENGTH OF 24.98 FEET;
- 4) NORTH 24°55'44" EAST, 25.00 FEET;
- 5) NORTH 60°17'11" EAST, 122.72 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1731.00 FEET;
- 6) NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°30'38" AN ARC LENGTH OF 136.27 FEET;
- 7) SOUTH 68°45'47" EAST, 38.79 FEET;
- 8) NORTH 61°42'54" EAST, 71.80 FEET;
- 9) NORTH 23°24'50" EAST, 37.27 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1736.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS SOUTH 21°01'41" EAST;
- 10) EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°47'48" AN ARC LENGTH OF 418.03 FEET;
- 11) SOUTH 51°40'24" EAST, 36.97 FEET;
- 12) NORTH 85°59'20" EAST, 5.73 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 170.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS SOUTH 83°57'10" WEST;

SHEET 1 OF 4

EXHIBIT "A"
LEGAL DESCRIPTION
CITY OF BEAUMONT, CALIFORNIA

 **DORC Engineering, Inc.**
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210
Anaheim Hills, California 92808
(714) 685-6860

EXHIBIT "A" – LEGAL DESCRIPTION

THENCE ALONG THE EAST AND SOUTH LINES OF SAID LOT 1 OF LOT LINE ADJUSTMENT 02-XXXX THE FOLLOWING FOUR (4) COURSES:

- 1) SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°12'17" AN ARC LENGTH OF 51.05 FEET;
- 2) SOUTH 11°09'27" WEST, 37.18 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 270.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS SOUTH 06°15'06" EAST;
- 3) WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°14'37" AN ARC LENGTH OF 57.70 FEET;
- 4) SOUTH 71°30'17" WEST, 402.46 FEET TO THE EAST LINE OF LOT 2 OF SAID LOT LINE ADJUSTMENT 01-XXXX;

THENCE ALONG THE EAST, SOUTH, AND WEST LINES OF LOTS 1 AND 2 OF SAID LOT LINE ADJUSTMENT 01-XXXX THE FOLLOWING TWENTY (20) COURSES:

- 1) SOUTH 22°13'56" EAST, 75.39 FEET TO THE BEGINNING OF A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 256.00 FEET;
- 2) SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°32'23" AN ARC LENGTH OF 20.28 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 147.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS NORTH 72°18'27" EAST;
- 3) SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°27'44" AN ARC LENGTH OF 29.41 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 127.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS SOUTH 60°50'43" WEST;
- 4) SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°17'44" AN ARC LENGTH OF 29.47 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 174.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS NORTH 74°08'27" EAST;
- 5) SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°51'16" AN ARC LENGTH OF 42.07 FEET;
- 6) SOUTH 29°42'49" EAST, 68.91 FEET;
- 7) SOUTH 60°17'11" WEST, 10.00 FEET;
- 8) SOUTH 29°42'49" EAST, 111.35 FEET;
- 9) SOUTH 10°26'03" EAST, 297.53 FEET;
- 10) SOUTH 71°09'54" WEST, 261.73 FEET;
- 11) SOUTH 53°40'56" WEST, 434.56 FEET;
- 12) NORTH 66°52'07" WEST, 11.30 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 14.00 FEET;

SHEET 2 OF 4

EXHIBIT "A"
LEGAL DESCRIPTION
CITY OF BEAUMONT, CALIFORNIA

 **DORC Engineering, Inc.**
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210
Anaheim Hills, California 92808
(714) 685-6860

EXHIBIT "A" – LEGAL DESCRIPTION

- 13) SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 123°45'13" AN ARC LENGTH OF 30.24 FEET;
- 14) SOUTH 10°37'20" EAST, 9.64 FEET;
- 15) SOUTH 53°40'56" WEST, 2.78 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 325.00 FEET;
- 16) SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°37'27" AN ARC LENGTH OF 134.00 FEET;
- 17) NORTH 35°06'00" WEST, 31.11 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 700.00 FEET;
- 18) NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 35°56'28" AN ARC LENGTH OF 439.10 FEET;
- 19) NORTH 00°50'27" EAST, 258.73 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 700.00 FEET;
- 20) NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°00'52" AN ARC LENGTH OF 146.79 FEET TO THE **POINT OF BEGINNING**.

TOGETHER WITH LOT 2 OF SAID LOT LINE ADJUSTMENT 02-XXXX MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 2 OF SAID LOT LINE ADJUSTMENT 02-XXXX;

THENCE ALONG THE BOUNDARY LINES OF LOT 2 OF SAID LOT LINE ADJUSTMENT 02-XXXX THE FOLLOWING EIGHT (8) COURSES:

- 1) SOUTH 89°50'37" WEST, 191.08 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1736.00 FEET;
- 2) WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°14'40" AN ARC LENGTH OF 98.30 FEET;
- 3) SOUTH 40°20'16" WEST, 38.51 FEET;
- 4) SOUTH 85°59'20" WEST, 5.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 221.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS SOUTH 84°25'22" WEST;
- 5) SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°44'05" AN ARC LENGTH OF 64.55 FEET;
- 6) SOUTH 11°09'27" WEST, 25.38 FEET;
- 7) NORTH 89°45'21" EAST, 349.57 FEET;
- 8) NORTH 10°26'03" WEST, 122.97 FEET TO THE **POINT OF BEGINNING**.

SHEET 3 OF 4

EXHIBIT "A"
LEGAL DESCRIPTION
CITY OF BEAUMONT, CALIFORNIA

 **DORC Engineering, Inc.**
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210
Anaheim Hills, California 92808
(714) 685-6860

EXHIBIT "A" – LEGAL DESCRIPTION

CONTAINING: 17.660 ACRES, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

THIS DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.


JAKE W. LAPPERT
PLS 9303

5/20/2025
DATE



SHEET 4 OF 4

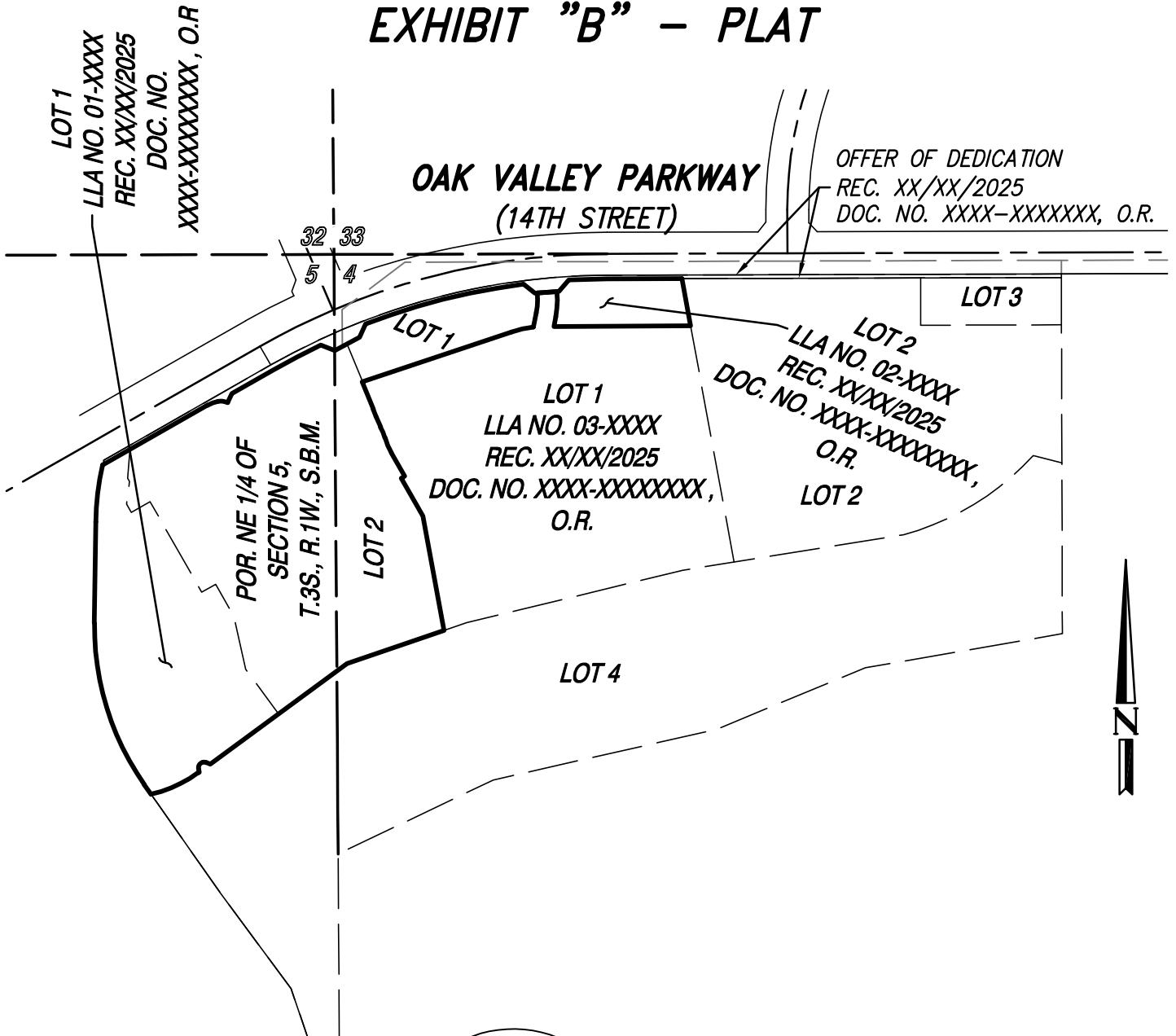
EXHIBIT "A"
LEGAL DESCRIPTION
CITY OF BEAUMONT, CALIFORNIA

 **DORC Engineering, Inc.**
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210
Anaheim Hills, California 92808
(714) 685-6860

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EXHIBIT "B" - PLAT



05/20/2025

LEGEND

- DESCRIPTION AREA
- UNDERLYING LOT LINE
- CENTERLINE
- SECTION LINE
- RIGHT-OF-WAY LINE



GRAPHIC SCALE: 1 INCH = 400 FT

SECTIONS 4 AND 5, T.3S., R.1W., S.B.M.

SHEET 1 OF 4

EXHIBIT "B"
PLAT
CITY OF BEAUMONT, CALIFORNIA



Engineering, Inc.
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road
Suite 210
Anaheim Hills, CA 92808
(714) 685-6860

OAK VALLEY PARKWAY (14TH STREET)



SEE SHEET 3



160 S. Old Springs Road
Suite 210
Anaheim Hills, CA 92808
(714) 685-6860

EXHIBIT "B" - PLAT

OFFER OF DEDICATION
REC. XX/XX/2025
DOC. NO. XXXX-XXXXXXXX, O.R.

OAK VALLEY
PARKWAY (14TH STREET)

SEE SHEET 2

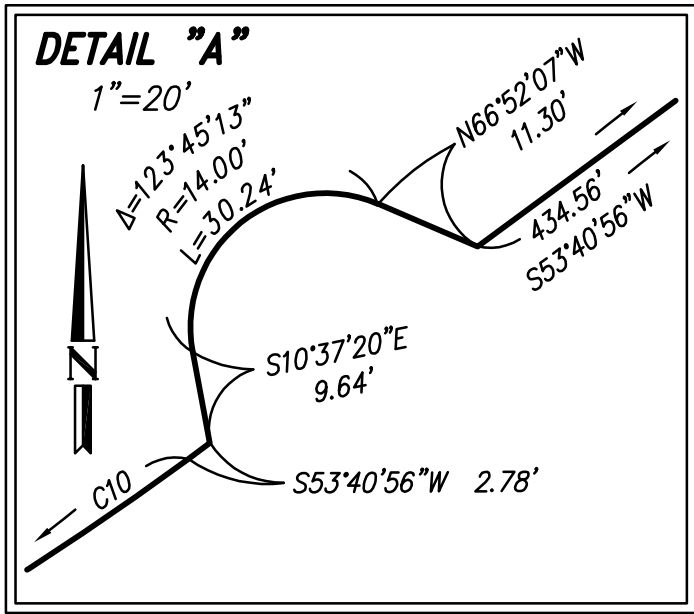
SEE SHEET 4

NOTE:
SEE SHEET 4 FOR LINE
AND CURVE DATA.

AREA=17.660 AC±

LOT 2
LLA NO. 01-XXXX
REC. XX/XX/2025
DOC. NO. XXXX-XXXXXXXX, O.R.

LOT 1
LLA NO. 03-XXXX
REC. XX/XX/2025
DOC. NO. XXXX-XXXXXXXX, O.R.



LEGEND

- DESCRIPTION AREA
- CENTER LINE
- UNDERLYING LOT LINE
- SECTION LINE



SHEET 3 OF 4

EXHIBIT "B"
PLAT
CITY OF BEAUMONT, CALIFORNIA

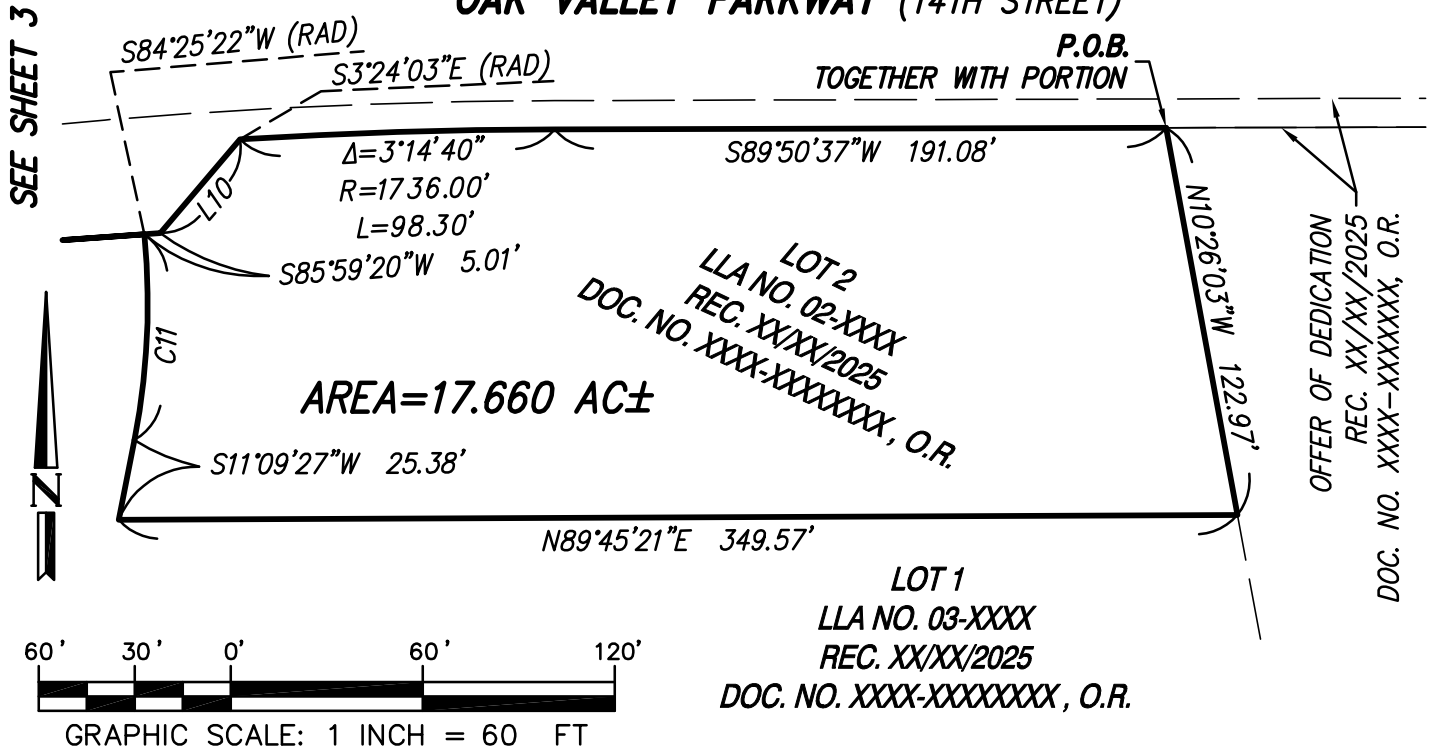


Engineering, Inc.
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road
Suite 210
Anaheim Hills, CA 92808
(714) 685-6860

EXHIBIT "B" – PLAT

OAK VALLEY PARKWAY (14TH STREET)



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N24°55'44"E	25.00'
L2	N60°17'11"E	122.72'
L3	N61°42'54"E	71.80'
L4	S51°40'24"E	36.97'
L5	N85°59'20"E	5.73'
L6	S11°09'27"W	37.18'
L7	S22°13'56"E	75.39'
L8	S29°42'49"E	68.91'
L9	S60°17'11"W	10.00'
L10	S40°20'16"W	38.51'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	18°17'38"	91.00'	29.06'
C2	34°54'46"	41.00'	24.98'
C3	4°30'38"	1731.00'	136.27'
C4	17°12'17"	170.00'	51.05'
C5	12°14'37"	270.00'	57.70'
C6	4°32'23"	256.00'	20.28'
C7	11°27'44"	147.00'	29.41'
C8	13°17'44"	127.00'	29.47'
C9	13°51'16"	174.00'	42.07'
C10	23°37'27"	325.00'	134.00'
C11	16°44'05"	221.00'	64.55'

LEGEND

- DESCRIPTION AREA
- UNDERLYING LOT LINE
- RIGHT-OF-WAY LINE

SHEET 4 OF 4

EXHIBIT "B"
PLAT
CITY OF BEAUMONT, CALIFORNIA



Engineering, Inc.
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road
Suite 210
Anaheim Hills, CA 92808
(714) 685-6860

EXHIBIT A-2
LEGAL DESCRIPTION AND DEPICTION OF MAJOR RETAILER PARCEL

EXHIBIT "A" – LEGAL DESCRIPTION

IN THE CITY OF BEAUMONT, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING LOT 1 OF LOT LINE ADJUSTMENT 03-XXXX RECORDED _____, 2025 AS DOCUMENT NO. _____, OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, ALL WITHIN SECTION 4, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID LOT 1;

THENCE ALONG THE BOUNDARY LINES OF SAID LOT 1, THE FOLLOWING TWENTY-ONE (21) COURSES:

- 1) SOUTH 22°13'56" EAST, 75.39 FEET TO THE BEGINNING OF A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 256.00 FEET;
- 2) SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°32'23" AN ARC LENGTH OF 20.28 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 147.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS NORTH 72°18'27" EAST;
- 3) SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°27'44" AN ARC LENGTH OF 29.41 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 127.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS SOUTH 60°50'43" WEST;
- 4) SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°17'44" AN ARC LENGTH OF 29.47 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 174.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS NORTH 74°08'27" EAST;
- 5) SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°51'16" AN ARC LENGTH OF 42.07 FEET;
- 6) SOUTH 29°42'49" EAST, 68.91 FEET;
- 7) SOUTH 60°17'11" WEST, 10.00 FEET;
- 8) SOUTH 29°42'49" EAST, 111.35 FEET;
- 9) SOUTH 10°26'03" EAST, 297.53 FEET;
- 10) NORTH 71°09'54" EAST, 61.32 FEET;
- 11) NORTH 76°22'25" EAST, 568.89 FEET;
- 12) NORTH 80°50'43" EAST, 132.64 FEET;
- 13) NORTH 10°26'03" WEST, 614.21 FEET;
- 14) SOUTH 89°45'21" WEST, 349.57 FEET;
- 15) NORTH 11°09'27" EAST, 25.38 FEET TO THE BEGINNING OF A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 221.00 FEET;

SHEET 1 OF 2

EXHIBIT "C"
LEGAL DESCRIPTION
CITY OF BEAUMONT, CALIFORNIA



Engineering, Inc.

Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210

Anaheim Hills, California 92808

(714) 685-6860

EXHIBIT "A" – LEGAL DESCRIPTION

- 16) NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°44'05" AN ARC LENGTH OF 64.55 FEET;
- 17) SOUTH 85°59'20" WEST, 51.02 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 170.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS SOUTH 83°57'10" WEST;
- 18) SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°12'17" AN ARC LENGTH OF 51.05 FEET;
- 19) SOUTH 11°09'27" WEST, 37.18 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 270.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS SOUTH 06°15'06" EAST;
- 20) WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°14'37" AN ARC LENGTH OF 57.70 FEET;
- 21) SOUTH 71°30'17" WEST, 402.46 FEET TO THE **POINT OF BEGINNING**.

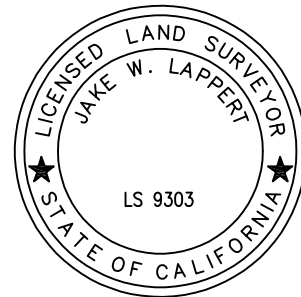
CONTAINING: 12.217 ACRES, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

THIS DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.


JAKE W. LAPPERT
PLS 9303

5/20/2025
DATE



SHEET 2 OF 2

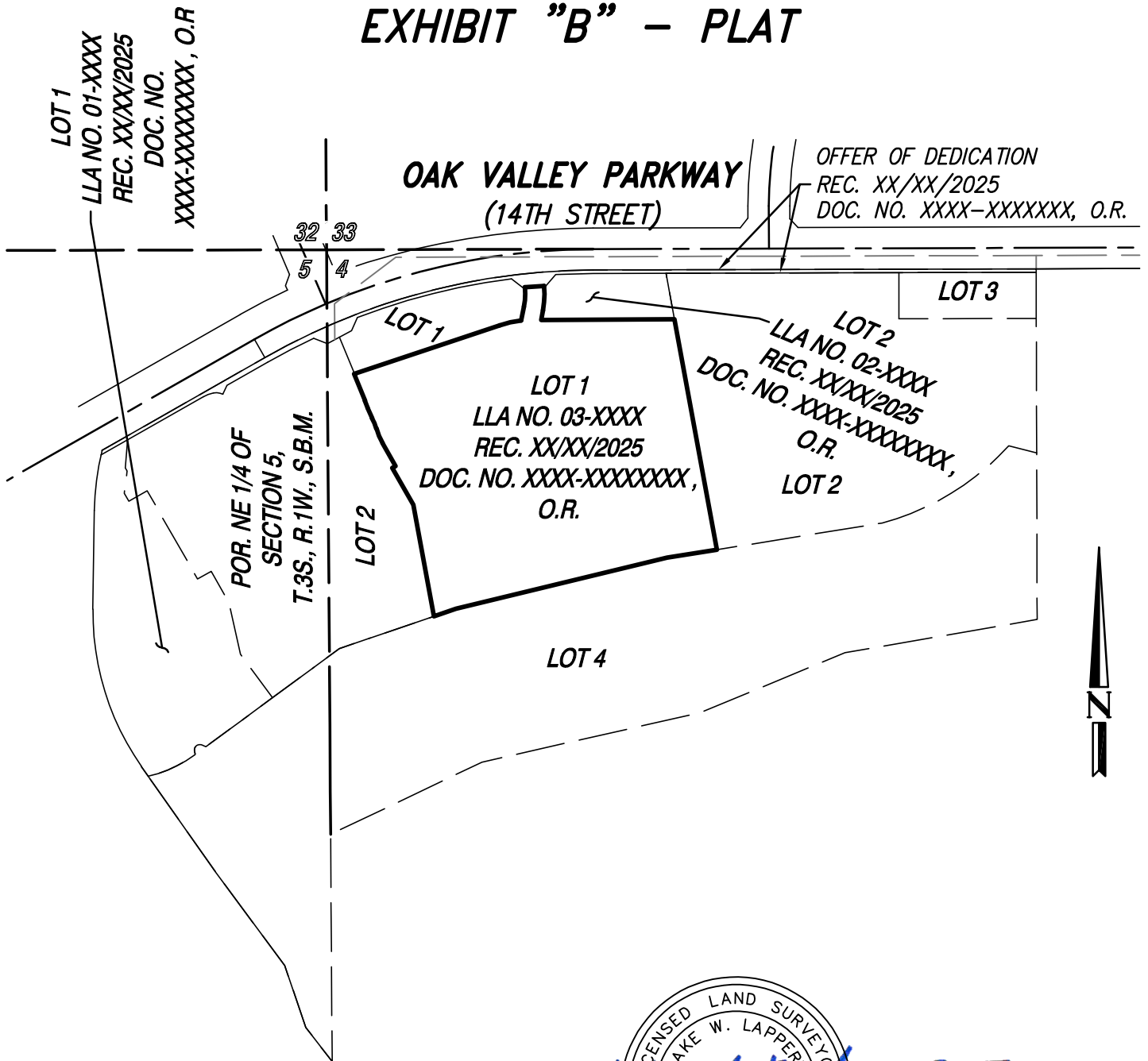
EXHIBIT "C"
LEGAL DESCRIPTION
CITY OF BEAUMONT, CALIFORNIA

 **DORC Engineering, Inc.**
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210
Anaheim Hills, California 92808
(714) 685-6860

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EXHIBIT "B" - PLAT



05/20/2025

LEGEND

- DESCRIPTION AREA
- UNDERLYING LOT LINE
- CENTERLINE
- SECTION LINE
- RIGHT-OF-WAY LINE



GRAPHIC SCALE: 1 INCH = 400 FT

SECTION 4, T.3S., R.1W., S.B.M.

SHEET 1 OF 3

EXHIBIT "D"
PLAT
CITY OF BEAUMONT, CALIFORNIA



Engineering, Inc.
Civil Engineering/Land Surveying/Land Planning

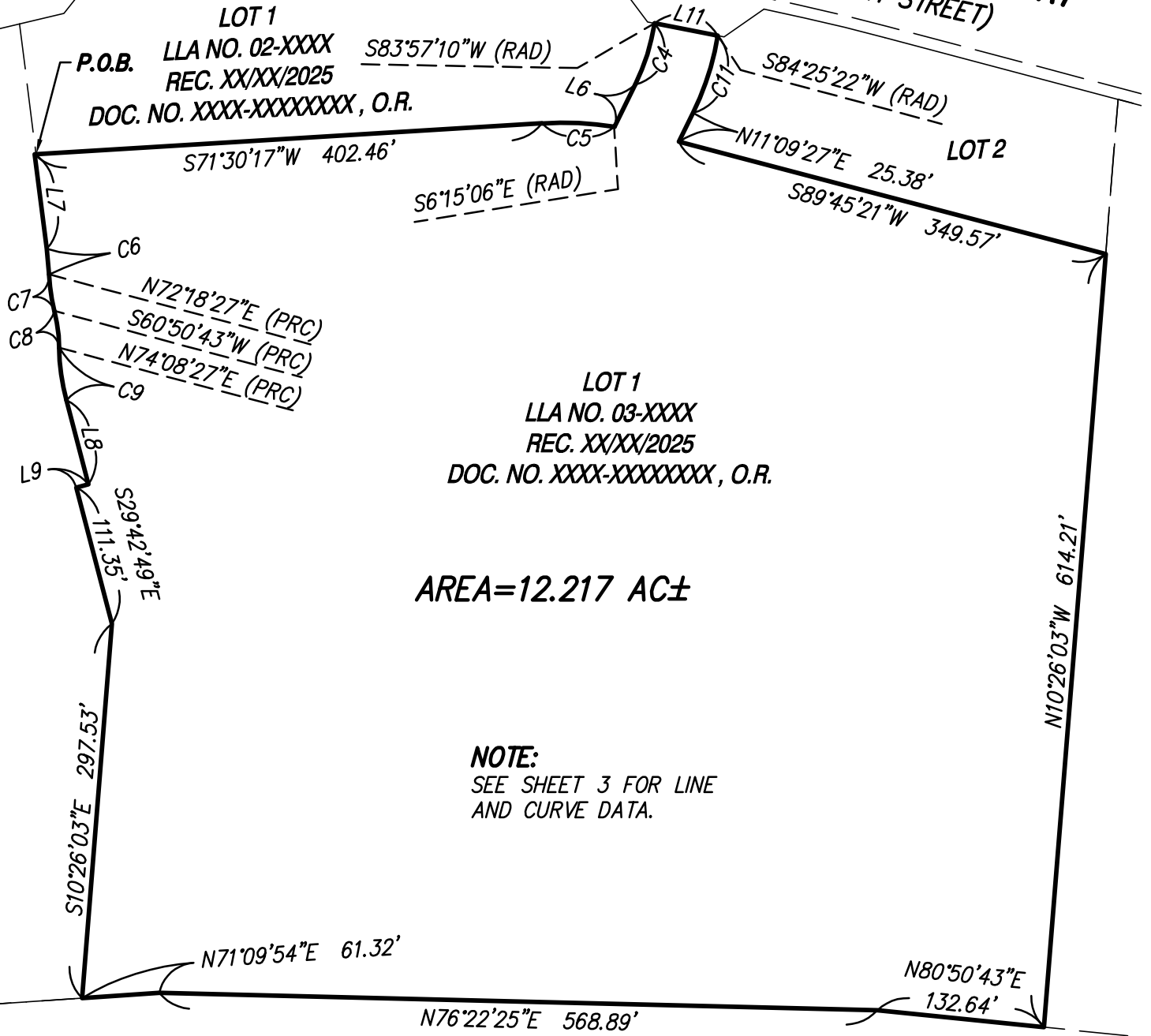
160 S. Old Springs Road
Suite 210
Anaheim Hills, CA 92808
(714) 685-6860

L:\2023\23-835 Regency Beaumont\Exh\Parcel Legals\23-835exh101 - Legal Parcels.dwg; May 21, 2025 - 8:38am

EXHIBIT "B" - PLAT

OFFER OF DEDICATION
REC. XX/XX/2025
DOC. NO. XXXX-XXXXXXX, O.R.

OAK VALLEY PARKWAY
(14TH STREET)



LEGEND

- DESCRIPTION AREA
- UNDERLYING LOT LINE
- CENTERLINE
- RIGHT-OF-WAY LINE



GRAPHIC SCALE: 1 INCH = 120 FT
SHEET 2 OF 3

EXHIBIT "D"
PLAT
CITY OF BEAUMONT, CALIFORNIA



Engineering, Inc.
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road
Suite 210
Anaheim Hills, CA 92808
(714) 685-6860

EXHIBIT "B" – PLAT

LINE TABLE		
LINE	BEARING	DISTANCE
L6	S11°09'27"W	37.18'
L7	S22°13'56"E	75.39'
L8	S29°42'49"E	68.91'
L9	S60°17'11"W	10.00'
L11	S85°59'20"W	51.02'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C4	17°12'17"	170.00'	51.05'
C5	12°14'37"	270.00'	57.70'
C6	4°32'23"	256.00'	20.28'
C7	11°27'44"	147.00'	29.41'
C8	13°17'44"	127.00'	29.47'
C9	13°51'16"	174.00'	42.07'
C11	16°44'05"	221.00'	64.55'

SHEET 3 OF 3

EXHIBIT "D"
PLAT
CITY OF BEAUMONT, CALIFORNIA



Engineering, Inc.
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road
Suite 210
Anaheim Hills, CA 92808
(714) 685-6860

EXHIBIT “B”

EXISTING PROJECT APPROVALS

- A. Plot Plan Approval PP2024-0059 permitting a 279,941 square foot community retail site on 28.95 acres consisting of eight parcels of land, providing for construction of one nationally recognized major retailer, one nationally recognized grocer, and nationally recognized restaurants.
- B. Parking Variance No. V2024-0019 reducing the parking spaces required by Section 17.05.040 of the Beaumont Municipal Code.
- C. Open Space Variance No. V2025-0031 reducing the required commercial open space as required by Section 17.03.080.G.6 of the Beaumont Municipal Code.
- D. Master Sign Program Plan No. 2024-0157 authorizing one Freeway Pylon Sign, one Digital Display Sign, two Project Pylon Signs, and two Monument Signs subject to discretionary approval by any external agencies with discretionary review.
- E. Environmental Assessment No. ENV2025-0002 and the Mitigation Monitoring and Reporting Program (MMRP) associated therewith to satisfy the requirements of the California Environmental Quality Act.
- F. Development Agreement No. XX as approved by Ordinance No. XX.
- G. City Council approval of Digital Display identified in Exhibit B-1, provided that Owner shall be required to separately obtain a sign permit approval from the City of Beaumont Planning Commission under Beaumont Municipal Code Chapter 17.07. Owner shall be solely responsible to secure any approval required of any other agency including but not limited to Cal Trans under the California Outdoor Advertising Act or implementing regulations for the Digital Display prior to erecting it. Owner shall indemnify, defend and hold harmless the City from and against any costs, expenses or liabilities including reasonable attorneys’ fees incurred by City as a result of any claim that Owner failed to comply with the Outdoor Advertising Act.

EXHIBIT “C”

DEVELOPMENT FEES IN EFFECT AS OF EFFECTIVE DATE

DEVELOPMENT IMPACT FEES FOR COMMERCIAL DEVELOPMENT Fees Effective on July 1, 2025 and January 1, 2026

City Development Impact Fee	Fee Basis	7/1/2025 Fee	1/1/2026 Fee
Emergency Preparedness Fee	Square Foot	\$0.002	\$0.002
Fire Protection Facilities Fee	Square Foot	\$0.360	\$0.430
General/Advanced Planning Impact	Square Foot	\$0.010	\$0.010
Police Facilities Fee	Square Foot	\$0.270	\$0.350
Public Facilities Fee	Square Foot	\$0.150	\$0.160
Railroad Crossing Impact Fee	Square Foot	\$2.810	\$4.240
Recycled Water Facility Fee	Square Foot	\$0.140	\$0.140
<u>Sewer Capacity Fee</u>			
Commercial (Low Strength)	Square Foot	\$0.900	\$0.940
Commercial (Medium Strength)	Square Foot	\$1.020	\$1.080
Commercial (High Strength)	Square Foot	\$2.060	\$2.190
Sewer Facilities Fee	Square Foot	\$0.250	\$0.310
Storm Drain Facilities Impact Fee	Square Foot	\$0.010	\$0.020
Streets & Bridges Impact Fee	Square Foot	\$10.700	\$15.050

EXHIBIT “D”

OFFSITE TRAFFIC IMPROVEMENTS

1. **Oak Valley Parkway Roadway Improvements.** Complete the following roadway improvements all in accordance with the Conditions of Approval for the Project:
 - a. Dedicate necessary right-of-way and construct street, curb, gutters, medians, sidewalks, driveway approaches, and access ramps along Oak Valley Parkway.
 - b. Mill and overlay along the existing portion of Oak Valley Parkway from street centerline and/or edge of raised median to edge of pavement, coincident with the project boundary and extending beyond the project boundary to the end of the lane reduction, approximately 700-feet east of Oak View Drive centerline and also being the east property line of parcel identified as APN 414-070-008. The overlay is to be applied after all other construction has occurred. Construct full AC/AB section in accordance with City standards for new widened portion of Oak Valley Parkway.
 - c. Install signage, striping and pavement markings in Oak Valley Parkway.
 - d. Install streetlights, pull boxes and conduit along Oak Valley Parkway per approved Conditions of Approval for the project.
 - e. Install median and parkway landscaping/irrigation along Oak Valley Parkway.
2. **Dry Utilities.** Underground or relocate SCE, phone, and other overhead utility lines along the Oak Valley Parkway frontage per approved Conditions of Approval for the Project.
3. **Wet Utilities.** Construct, reconstruct, or relocate sewer, water, storm drain, fire service, or others as necessary to facilitate the Off-Site Traffic Improvements all in accordance with the Conditions of Approval for the Project.
4. **Traffic Signals and Intersection Improvements.** Complete the following traffic signal installations or modifications and intersection improvements all in accordance with the Conditions of Approval for the Project:
 - a. Installation of a traffic signal at the intersection of Desert Lawn Drive and Oak Valley Parkway.

- b. Installation of a traffic signal at the intersection of Elm Avenue at Oak Valley Parkway. Intersection improvements shall include striping crosswalks on all legs.
- c. At intersection of Golf Club Drive at Oak Valley Parkway, construct the south leg of the intersection and provide dual exclusive northbound left-turn lanes, a shared northbound through/right-turn lane, and two inbound lanes. Restripe the north leg of the intersection to provide a southbound through lane. Widen and restripe the west leg of the intersection to provide two additional eastbound through lanes and an exclusive eastbound right-turn lane. Widen and restripe the east leg of the intersection to provide an exclusive westbound left-turn lane and two additional eastbound departure lanes. Modify the existing traffic signal for eight-phase operation. Stripe crosswalks on the south and east legs.
- d. At intersection of Oak Valley Plaza at Oak Valley Parkway, construct the south leg of the intersection and provide an exclusive northbound left-turn lane, a shared northbound through/right-turn lane, and one inbound lane. Restripe the north leg of the intersection to provide convert the exclusive southbound right-turn lane to a shared southbound through/right-turn lane. Widen and restripe the west leg of the intersection to provide one additional eastbound through lane and a shared eastbound through/right-turn lane. Widen and restripe the east leg of the intersection to provide an exclusive westbound left-turn lane and two additional eastbound departure lanes. Modify the existing traffic signal for eight-phase operation. Stripe crosswalks on the south and east legs.
- e. At intersection of Oak View Drive at Oak Valley Parkway, widen and restripe the west leg of the intersection to provide two additional eastbound through lanes. Widen and restripe the east leg of the intersection to provide two additional eastbound departure lanes. Modify the existing traffic signal. Stripe a crosswalk on the east leg.
- f. At Project Driveway 1 at Oak Valley Parkway, construct the south leg of the intersection and one inbound lane. Widen and restripe the west leg of the intersection to provide one additional eastbound through lane and one exclusive eastbound right-turn lane. Widen and restripe the east leg of the intersection to provide two additional eastbound departure lanes.

Other Costs Directly Related to the Construction of the Off-Site Traffic Improvements. Third party design, project management, City permits, inspections, insurances, general conditions, and contingencies as permitted by this Agreement and the Offsite Traffic Reimbursement Agreement. All of the forgoing Offsite Traffic Improvements are described in more detail in the conditions of approval for the Project Approvals. In the event of a conflict between this Exhibit and the Project Approvals, the Project Approvals shall prevail

[BEFORE EXECUTION, THE OFFSITE PLANS FOR THE OFFSITE TRAFFIC IMPROVEMENTS THAT ARE BEING FINALIZED BY THE DEVELOPER WILL BE ATTACHED TO THIS EXHIBIT OR INCORPORATED BY REFERENCE FOR ADDITIONAL CLARITY]

EXHIBIT “D”

OFFSITE TRAFFIC IMPROVEMENTS



BUDGET BREAKDOWN			
Project: Oak Valley Village PHASE 1	Offsite +/-	150,589	SF
Address: SEC Interstate 10 & Oak Valley Pkwy.	Onsite +/-	1,260,947	SF
City: Beaumont, CA			
Owner: Regency Centers			
Schedule: 15 mths			
Job #: xxx			
Bid Date: 5/15/2025			

CODE	TRADE	OFFSITE	ONSITE	BUDGET AMOUNT
01-000	General Conditions	107,500		107,500
00-010	General Requirements	75,000		75,000
01-014	Survey and Restaking	39,817		39,817
01-451	Testing and Inspection	-		By Owner
01-510	Temp Utilities	-		w/ GCs
01-740	Final Cleaning	-		w/ GCs
02-230	Site Clearing & Demo	139,870		139,870
02-300	Earthwork	179,190		179,190
02-370	Erosion Controls & Street Sweeping Allowance	40,000		40,000
02-510	Dry Utilities Underground (SCE, Telecom, Gas)	1,788,949		1,788,949
02-400	Traffic Control Allowance	75,000		75,000
02-510	Site Utilities - Fire Water			-
02-520	Site Utilities - Water			-
02-530	Site Utilities - Sewer	57,029		57,029
02-630	Site Utilities - Storm			-
02-740	AC Pavement	878,503		878,503
02-745	Bumpers & Striping	76,300		76,300
02-770	Site Concrete	516,493		516,493
02-900	Landscape & Irrigation	171,368		171,368
03-110	Concrete	-		w/ site conc.
03-308	Reinforcement	-		w/ trades
16-010	Traffic Signal Modifications	2,357,800		2,357,800
	SUBTOTAL:	6,502,819	-	6,502,819
				-
01-206	Liability Insurance	1.550%	100,794	-
01-206	Builder's Risk Insurance	0.000%	-	-
01-201	Perf & Payment Bond	0.000%	-	-
90-001	Fee	4.500%	297,163	-
80-001	Contractor Contingency	10.000%	690,078	-
01-205	Escalation (Market Volatility)	0.000%	-	-
	TOTAL:	7,590,853	-	7,590,853
		\$	50.41 \$	
			\$/SF	\$/SF

printed on 5/15/2025 at 12:00 PM

Breakdown Sheet PHASE 1 1 of 1

EXHIBIT D-1
FORM OF
OFFSITE TRAFFIC IMPROVEMENT REIMBURSEMENT AGREEMENT

**OFF-SITE TRAFFIC IMPROVEMENTS REIMBURSEMENT AGREEMENT
(Oak Valley Parkway Improvements)**

This Off-Site Traffic Improvements Reimbursement Agreement (the “Agreement”) is made this _____ day of _____, 2025 by and between the City of Beaumont, a California municipal corporation (“**City**”), and Beaumont Regency AVG (“**Owner**”).

RECITALS

A. Owner has a legal and equitable interest in approximately 28.95 acres of land located within the City of Beaumont, Riverside County, California along the south side of Oak Valley Parkway, approximately 500 feet east of Interstate 10 (I-10) that is legally described and depicted on **Exhibit “A”** attached hereto and incorporated herein by this reference (“**Property**”).

B. Owner and the City are parties to that certain Development Agreement, dated _____, 2025 and recorded with the Official Records of Riverside County as Document No. _____ as (the “**Development Agreement**”), pursuant to which the City vested Owner with certain land use entitlements for development of a commercial shopping center **and provided for** reimbursement of costs for certain public improvements on the terms and conditions set forth therein (the “**Project**”). This Agreement serves as the Off-Site Traffic Improvements Reimbursement Agreement referenced in Section 2.7.1 of the Development Agreement. Notwithstanding anything herein to the contrary, this Agreement shall be of no force or effect unless and until the Ordinance approving the Development Agreement becomes effective as this Agreement is being entered into in furtherance of the implementation of the Development Agreement.

C. Pursuant to the Development Agreement, Owner submitted applications for various land use entitlements to the City and was conditioned to construct certain public improvements as a condition precedent to development and operation of the Project.

D. As a condition of regulatory approval by the City, the Owner shall design, construct and install, among other things, the following public improvements in or along Oak Valley Parkway: pavement, curbs/gutters/sidewalks, streetlights, traffic signal installations or modifications, parkway landscape/irrigation, sewer, water, storm drain, and dry utility installations or relocations all in accordance with the land use entitlements and the conditions of approval for the Project (the “**Public Improvements**”). The City and the Owner will benefit from a coordinated plan of design, engineering and construction of the Public Improvements and the development of the Project.

E. The City and Owner desire that the Owner initially finance and construct the Public Improvements, subject to a single reimbursement payment from the City for actual costs incurred upon completion and satisfaction of all conditions precedent pursuant to the terms, conditions, requirements and procedures set forth herein and in the Development Agreement. The scope of work and estimated cost for the Public Improvements is described in **Exhibit “B” attached hereto and incorporated herein by reference. The City will make a reimbursement payment up to the Maximum Reimbursement amount as that term is defined in Section 2.7.1 of the Development Agreement using any and all legally available funds of the City.**

F. The City, by its approval of this Agreement, has determined that it will obtain no

advantage from undertaking the construction by the City directly of the Public Improvements and that the provisions of this Agreement require that the Public Improvements constructed by the Owner be constructed as if they had been constructed under the direction and supervision of the City. The Owner hereby represents that it has experience in the supervision of the construction of improvements of the character of the Public Improvements.

G. The City and Owner intend that this Agreement shall contain all of rights, requirements, and obligations of Owner and the City related to the Public Improvements.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually understood and agreed by City and Owner as follows:

TERMS

1. Incorporation of Recitals. The parties hereby agree that the above recitals are true and correct and are therefore incorporated herein by reference.

2. Design of Public Improvements – Preparation of Plans. Subject to reimbursement as set forth herein, Owner shall be solely responsible for the design of the Public Improvements in accordance with all local, state, and federal laws and regulations, including all costs and expenses incurred therefor. Prior to initiation of bidding, Owner shall submit the plans and specifications for plan check approval by the City Public Works Director. Owner shall be solely responsible for obtaining all required federal, state and local permits and approvals. The plans and specifications for the Public Improvements shall be approved by the City Public Works Director, subject to his/her good faith discretion (“**Plan**” or “**Plans**”). The Owner shall then include the approved Plans in the bid packet submitted pursuant to Section 3.2.1 herein.

3. Construction of Facilities. Owner shall construct or have constructed, at its own cost and expense, the Public Improvements in accordance with the Plans. Owner (and/or its contractors) shall provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the Public Improvements.

3.1 Permits and Notices. Prior to commencing any work with respect to the Public Improvements, Owner (through its contractors) shall, at its sole cost and expense, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Owner's obligations under this Agreement. Owner (through its contractors) shall conduct the work in full compliance with the regulations, rules, and other requirements contained in this Agreement, any applicable law, and any permit or license issued to Owner.

3.2 Public Works Requirements. Owner shall ensure that the bidding, awarding, and construction of the Public Improvements are undertaken as if such Public Improvements were constructed as a public works project under the direction and authority of City, pursuant to the applicable provisions of the Public Contract Code. Owner shall comply with applicable portions of the Labor Code and the payment of prevailing wages where applicable with respect to all Public Improvements related to Owner's project and Owner agrees to indemnify and hold harmless the City in connection with any issues related to prevailing wages arising from the construction of the Public Improvements by Owner. The City's minimum procedural requirements for bidding and contracting

are attached hereto as **Exhibit “C”**.

3.2.1 Prior to soliciting or awarding the bid for any portion of the Public Improvements, Owner shall submit the bid packet and a set of the approved construction drawings signed by Owner or another authorized representative designated by Owner for the work being bid to the City's Public Works Director (“**Public Works Director**”) for review and approval, which approval shall be granted or denied within fifteen (15) calendar days after submission of such bid packet. If the Public Works Director denies approval of such bid packet and construction drawings, the Public Works Director shall specify the reasons for such disapproval and Owner shall resubmit a revised bid packet for review and approval until such approval is obtained.

3.2.2 Owner shall obtain no fewer than three (3) bids for the construction of the Public Improvements in a manner which has been approved by the Public Works Director. Owner shall provide the Public Works Director with copies of all bids received from contractors and a bid summary in a form approved by the Public Works Director to assure that the contractor/subcontractors adhere to the applicable legal requirements for public works projects. The contract or contracts for the construction of the Public Improvements shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the Public Improvements, as determined by Owner in its good faith discretion. Owner shall enter into a construction contract with each contractor selected to perform work on the Public Improvements (after competitive bidding as set forth herein), (each, a “**Construction Contract**”) for the performance of the work set forth in the selected bid, and the terms of each Construction Contract entered into by Owner and each contractor/subcontractor shall be reasonably acceptable to the Public Works Director. Owner shall submit to City a copy of each executed Construction Contract for the Public Improvements within fifteen (15) days after execution thereof.

3.2.3 Owner's general contractor for the construction of the Public Improvements (“**General Contractor**”) shall pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and to otherwise comply with applicable provisions of the Labor Code, the Government Code, and the Public Contract Code relating to public works projects of cities/counties and as required by the procedures and standards of City with respect to the construction of its public works projects or as otherwise directed by the Public Works Director.

3.2.4 All contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the Public Improvements which they will construct in conformance the Agreement and requirements of the Public Works Director and City’s Risk Manager.

3.2.5 The Public Works Director, exercising reasonable discretion, may waive one or more of the foregoing requirements (other than Sections 3.2.3 and 3.2.4 set forth above, including the bidding requirements set forth in **Exhibit “C”** attached hereto.

3.3 Compliance with Plans and Specifications. The Public Improvements shall be completed in accordance with the Plans as approved by City.

3.4 Standard of Performance. Owner and its contractors shall perform all work required, constructing the Public Improvements in a skillful and workmanlike manner, and consistent

with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Owner shall require that its contractors be skilled in the professional calling necessary to perform the work. Owner shall require that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

3.5 Alterations to Public Improvements. All work shall be done and the Public Improvements completed as shown on the Plans, and any subsequent alterations thereto mutually agreed upon by City and Owner. If Owner desires to make any material alterations to the Plans, it shall provide written notice to the City of such proposed alterations. City shall have ten (10) business days after receipt of such written notice to administratively approve or disapprove such alterations, which approval shall not be unreasonably withheld, conditioned or delayed. If City fails to provide written notice to Owner of its approval or disapproval of the alterations within such ten (10) business day period, Owner may send a second written request specifically reciting the terms of this paragraph calling for deemed consent in the event of failure to respond and if City continues to fail to approve or disapprove the request, then the City shall be deemed to have consented to such alterations five (5) business days after receipt of such second notice. Any and all alterations in the Plans and the Public Improvements to be completed may be accomplished without first giving prior notice thereof to Owner's surety for this Agreement.

4. Bonds. Prior to the commencement of any work on the Public Improvements, Owner or its contractor shall provide City with surety bonds in the amounts and under the terms set forth below or, at the City's request, in lieu of surety bonds, a letter of credit or letters of credit by a banking institution with a rating to be reasonably approved by the City and terms to be reasonably approved by the City ("**Security**"). The amount of the Security shall be based on the estimated actual costs (the "**Estimated Costs**") to construct the Public Improvements, as determined by City after Owner has awarded a contract for construction of the Public Improvements to the lowest responsive and responsible bidder in accordance with this Agreement. If City determines, in its reasonable discretion, that the Estimated Costs have changed, Owner or its contractor shall adjust the Security in the amount requested by City. Owner's compliance with this Section 4 shall in no way limit or modify Owner's indemnification obligation provided in Section 13 of this Agreement.

4.1 Performance Bond. To guarantee the construction of the Public Improvements and faithful performance of all the provisions of this Agreement, to protect City if Owner is in default, and to secure the Warranty of the Public Improvements, Owner or its contractor shall provide City a faithful performance bond in an amount which sum shall be not less than one hundred (100%) of the Estimated Costs. The City shall partially release a portion or portions of the Security provided under this Section within not more than thirty (30) days after the Public Improvements are accepted by City, provided that Owner is not in default on any provision of this Agreement and the total remaining Security for the warranty period applicable to the Public Improvements is not less than twenty percent (20%) of the Estimated Costs. All remaining Security provided under this Section shall be released within not more than thirty (30) days after the end of the warranty period, provided that Owner is not in default on any provision of this Agreement and no warranty claim is pending and unresolved; provided, further, that such Security shall be released promptly thereafter as soon as such default has been cured or the warranty claim is resolved.

4.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Owner or its contractor shall provide City a labor and materials bond in an amount which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The Security provided under this Section shall be released by City not later than six (6) months after the date City accepts the Public Improvements in accordance with Section 7 herein.

4.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of at least "A" and FSC-VIII, and shall be licensed to do business in California. The surety shall agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the Plans shall in any way affect its obligation on the Security.

4.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms reasonably acceptable to the City, and when such forms are completed to the reasonable satisfaction of City in accordance with the bonding requirements for subdivision improvements under the California Subdivision Map.

4.5 Reduction. The Public Works Director, exercising reasonable discretion, may reduce or waive one or more of the foregoing Security requirements on a finding that the City is adequately secured for the applicable performance/liability.

5. Billings and Records. Owner shall be responsible for paying all charges within the time required by state law. Owner shall maintain complete and accurate records with respect to all costs and expenses pursuant to this Agreement. All such records shall be clearly identifiable. Owner shall allow a representative of the City, during normal business hours to examine, to audit and make transcripts or copies of such records and any other documents, proceedings, and activities related to the Agreement for a period of three (3) years from the termination of this Agreement.

6. Liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 8412 and 8414 of the Civil Code with respect to the Public Improvements, Owner shall provide to the City such evidence or proof as the City shall reasonably require that all persons, firms, and corporations supplying work, labor, materials, supplies, and equipment to the construction of the Public Facilities have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm, or corporation. Rather than await the expiration of the said time for the recording of claims of liens, Owner may elect to provide to the City a title insurance policy or other Security reasonably acceptable to the City guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property.

7. Inspection and Transfer of Public Improvements. Without modifying or limiting Owner's obligations under this Agreement, the City shall inspect and test the Public Improvements. The City shall have access to the Public Improvements site at all times to conduct any tests or inspections. The City's inspection rights shall not exceed twenty (20) days from completion of the Public Improvements. Thereafter, unless the City has objected to the design, development, and construction of such Public Improvements, such design, development, and construction shall be deemed

approved. Owner shall require its employees, contractors and agents to comply with all reasonable instructions given by the City during inspection or construction of the Public Improvements. Any deficiencies in the Public Improvements shall be corrected by Owner at its sole cost and expense. Upon completion of the Public Improvements to the satisfaction of the City, the Public Improvements shall be presented to the City for dedication and acceptance. The City shall accept the Public Improvements ("**Public Improvements Acceptance**") if it determines (a) that it was constructed in accordance with approved plans, specifications and contract documents, (b) that it operates satisfactorily, (c) all unconditional waivers and releases of mechanics' liens have been provided, (d) Owner provides two (2) sets of "as-built" or record drawings or plans to the City for all such Public Improvements -- the drawings shall be certified and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein, and (e) that all other requirements of this Agreement applicable to completion of the Public Improvements have been satisfied. Upon acceptance of the Public Improvements, Owner shall assign to the City on a non-exclusive basis all of Owner's rights and remedies, including warranties, as set forth in the approved contract documents. Owner will be required to convey title to the Public Improvements to the City in a form reasonably determined by the City.

8. Liability for Public Improvements Prior to Public Improvements Acceptance. Until the Public Improvements Acceptance, Owner shall be solely responsible for all damage to the Public Improvements, regardless of cause, and for all damages or injuries to any person or property at the work site, except damage or injury due to the sole or active negligence or willful misconduct of the City, its agents or employees.

9. Guarantee. Owner shall guarantee all work and materials for the Public Improvements to be free from all defects due to faulty materials or workmanship for a period of one (1) year after the date of the Public Improvements Acceptance. Owner shall repair or remove and replace any and all such work, together with any other work which may be displaced in so doing, that is found to be defective in workmanship or materials within the one-year period, without any expense whatsoever to the City. If the City and Owner are not in agreement as to whether any work is faulty or defective, such disagreement shall be resolved by the dispute resolution procedure set forth in Section 36 below. In the event Owner fails to comply with the above-mentioned provisions within thirty (30) days after such defect has been established by agreement or neutral determination, as applicable, then the City shall be authorized to proceed to have the defects remedied and made good at the sole cost and expense of Owner, who is hereby contractually bound to pay the costs and charges therefor immediately upon demand. Any such self-help action by the City (which may be taken prior to neutral determination of the defect in the event of an emergency, subject to final allocation of cost by agreement or neutral determination, as applicable) will not relieve Owner of the guarantee required by this Section. This Section shall not, in any way, limit the liability of Owner or any other party for any latent and patent design or construction defects in the work subsequently discovered by the City.

10. Terms for Reimbursement

10.1 Reimbursement for Actual Public Improvement Costs. The reimbursement amount for the Public Improvements shall be equal to the eligible design and construction costs for the Public Improvements ("**Reimbursement Amount**") subject to the Maximum Reimbursement in accordance with Section 2.7.1 of the Development Agreement which is incorporated herein by this

reference. In calculating the amount of such costs incurred by Owner for design and installation of the Public Improvements, the parties shall exclude any such costs which are or will be directly reimbursed to Owner for the installation of such Public Improvements by one or more third parties other than City, such as, for example, third party utility providers providing a reimbursement with respect to the installation of one or more of the Public Improvements.

10.2 Soft Construction Costs. The Public Works Director shall, in his/her sole reasonable discretion, determine the amount of reasonable soft costs eligible for reimbursement. Such amounts may include the actual third party soft costs related to the Public Improvements, such as indirect costs of construction, professional engineering and design services, construction management, soils testing, administrative costs, permits, plan check fees, and inspections. For soft costs to be reimbursable to Owner pursuant to this Agreement, City must be able to verify that such soft costs are properly attributable to the completion of the specified Public Improvements for which reimbursement is being made, by reference to separate subcontract(s) or by another means approved by the City. The Public Works Director may, in his/her reasonable discretion, reduce or disallow reimbursement for any costs he/she finds excessive or unreasonable; provided that the third party actual costs shall be presumed to be reasonable unless specific facts demonstrate to the contrary.

10.3 Conditions Precedent for Payment of Reimbursement Amount. City's obligation to pay or reimburse for the cost of Public Improvements pursuant to this Agreement is conditioned upon the prior satisfaction by Owner or written waiver by the City Administrator of each of the following conditions precedent within the times, if any, designated below:

10.4 Completion of Construction of Project. Owner shall have fulfilled the all of the express conditions applicable to reimbursement under Section 2.7.1 of the Development Agreement.

10.5 Completion of Construction of Public Improvements. Owner shall have completed the construction of the Public Improvements, and notices of completion shall have been recorded in relation to the Public Improvements, in accordance with California Civil Code Sections 8182 (as applicable), and thirty-five (35) days shall have elapsed since the recordation of such notices of completion. The purpose of this provision is to ensure that the Public Improvements will be independently functional and to maintain consistency with vesting rights, and nothing herein shall be deemed to make any part of the Project other than the Public Improvements a public work.

10.6 Submission of Bills/Invoices. Owner shall have made full and complete payment of all undisputed claims for work performed on the Public Improvements, or in the event of a dispute between Owner and the general contractor or a subcontractor, Owner shall have obtained a commercially reasonable bond reasonably satisfactory to the City to release any applicable mechanics' lien or stop notice, and Owner shall have submitted and the City shall have approved a written request for the reimbursement, including copies of all bills and/or invoices evidencing the hard costs of constructing the Public Improvements actually incurred by Owner.

10.7 As-Built Drawings. Owner shall have submitted two (2) sets of final as-built drawings for the Public Improvements certified by a licensed engineer in the State of California as to accuracy and completeness to the Public Works Director. Owner shall be solely responsible and liable for insuring completeness and accuracy of the record drawings.

10.8 Acceptance of Required Public Improvements by the City. The City, through the City Council, shall have accepted title to the Public Improvements, and Owner shall have provided the maintenance guarantees reasonably required by the City. The City agrees it will not unreasonably withhold or condition its acceptance of title to the Public Improvements.

10.9 No Default. Owner shall not be in default, following receipt of notice of default and expiration of its cure period, in any of its material obligations under the terms of this Agreement, and all representations and warranties of Owner contained in this Agreement shall be true and correct in all material respects. Further, the Development Agreement shall be effective, and Owner shall not be in default of any of its material obligations thereunder following receipt of notice and expiration of its opportunity for cure.

10.10 Reimbursement Procedures.

10.10.1 Upon Public Improvements Acceptance, the Owner shall submit a written request for the Reimbursement Amount (“**Reimbursement Request**”) to the City for review and approval. The Reimbursement Request shall include any document, requirement, evidence or information in the Owner's possession or under the Owner's control that City may reasonably request with regard to the Public Improvements and Public Improvements Acceptance. This includes without limitation, copies of the notice to proceed with the Public Improvements, notice of completion of the Public Improvements, any and all contracts and change orders entered into to complete the design and construction of the Public Improvements, invoices and checks for payment of the design and construction of the Public Improvements, and any and all other documents required by this Agreement. The City will review and approve, if acceptable, the Reimbursement Request within thirty (30) calendar days following the date of submittal.

10.10.2 City will remit payment to the Owner for the Reimbursement Amount within thirty (30) calendar days following the Reimbursement Request approval by the City within the thirty (30) day period provided for in the preceding sentence.

10.10.3 Upon payment of the Reimbursement Amount, the City shall have no further financial obligation to Owner and the Owner shall be entitled to no further compensation, payment, fee credit, offset or reimbursement of any kind from the City for the construction of the Public Improvements.

11. Term. This Agreement shall expire upon full payment of the Reimbursement Amount, unless earlier terminated as provided herein; provided however, that the indemnification shall survive termination of the Agreement, and the insurance provisions in Section 14.4 shall survive the completion of the Public Improvements in accordance with its terms. Owner waives any right to reimbursement for the installation of the Public Improvements except as contained in this Agreement.

12. Standard of Care; Safety. Owner shall ensure that all work on the Public Improvements is performed in compliance in all material respects with City-approved plans, specifications and contract documents. Owner shall also ensure that all work is performed in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals and contractors in the same discipline in the State of California. Owner shall procure the services of

professionals and contractors skilled in the professional calling necessary to design and construct the Public Improvements. All employees and subcontractors working on the Public Improvements shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform such work on the Public Improvements, and all such licenses and approvals shall be maintained throughout the term of their work on the Public Improvements. Owner shall ensure that it and its consultants and contractors execute and maintain their work so as to avoid injury or damage to any person or property. In carrying out their work, they shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Public Improvements, a threat to the safety of persons or property, or any employee who fails or refuses to perform his or her work in a manner acceptable to the City, shall be promptly removed from the Public Improvements.

13. Indemnification. Owner shall defend (with counsel reasonable acceptable to City), indemnify and hold the City, its officials, officers, consultants employees and agents free and harmless from any and all third party claims, liabilities, losses, costs, expenses, damages or injuries to property or persons, including wrongful death, arising out of or incident to any acts, omissions (where there was a duty to act) or willful misconduct of Owner, its members, officials, officers, employees, agents, consultants and contractors with respect to this Agreement or the design, construction or installation of the Public Improvements, including without limitation, the payment of all reasonable attorneys' fees and other related costs and expenses however caused, regardless of whether the allegations are false, fraudulent, or groundless, except to the extent of any active negligence or misconduct of the City or its officials, officers, employees, or authorized volunteers. At a minimum, this indemnification provision shall apply to the fullest extent of any warranty or guarantee implied by law or fact, or otherwise given to Owner by Owner's design consultant(s) or contractor(s) for the Public Improvements. In addition, this indemnity provision and any such warranties or guarantees shall not limit any liability under law of such consultants or contractors. Owner's obligation to indemnify shall survive the expiration or termination of this Agreement for a period of one year, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, officers, employees, or agents.

14. Insurance.

14.1 Requirement. Owner shall require all persons performing work on the Public Improvements, including its consultants, contractors, and subcontractors, to procure and maintain, at their expense, until full and adequate completion of the Public Improvements, insurance against claims for injuries to persons or damages to property which may arise out of or in connection with the performance of their work or that of their agents, representatives, employees or subcontractors.

14.2 Minimum Scope and Limits of Coverage. Such insurance shall provide City with coverage at least as broad as the latest version of the following:

14.2.1 **General Liability:** Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001) with a combined single limit of \$2,000,000; and

14.2.2 **Automobile Liability:** Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto) with a combined single limit of \$1,000,000; and

14.2.3 Workers' Compensation and Employers' Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance with a limit of at least \$1,000,000 per occurrence.

14.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Owner or the primary insured shall provide endorsements on forms reasonably approved by the City to add the following provisions to the insurance policies:

14.3.1 General Liability. The general liability policy shall be endorsed to state that: (A) the City, its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to this Agreement or operations performed by or on behalf of the Owner, including materials, parts or equipment furnished in connection with such work; and (B) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees and agents or, if excess, shall stand in an unbroken chain of coverage excess of the primary insured's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees or agents shall be excess of the primary insured's insurance and shall not be called upon to contribute with it in any way.

14.3.2 Automobile Liability. The automobile liability policy shall be endorsed to state that: (A) the City, its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the primary insured or for which the primary insured is responsible; and (B) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees and agents or, if excess, shall stand in an unbroken chain of coverage excess of the primary insured's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees or agents shall be excess of the primary insured's insurance and shall not be called upon to contribute with it in any way.

14.3.3 Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the primary insured.

14.3.4 All Coverages. Each insurance policy required by this Agreement shall be endorsed, to the extent then commercially available, to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees or agents.

14.4 Professional Liability Insurance. All architects, engineers, consultants or design professionals working on the Public Improvements shall be required to procure and maintain, for a period of five (5) years following completion of the Public Improvements, errors and omissions liability insurance with a combined single limit of not less than \$2,000,000. This insurance shall be endorsed to include contractual liability.

14.5 Separation of Insureds; No Special Limitations. All insurance required by this

Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees and agents.

14.6 Deductibles and Self-Insurance Retentions. City may require that any deductibles or self-insured retentions must be declared to and reasonably approved by the City.

14.7 Acceptability of Insurers. All policies of insurance shall be with companies licensed or approved by the State of California Insurance Commissioner and rated (i) A or better with respect to primary levels of coverage, and (ii) B+12 or better with respect to excess levels of coverage, in the most recent edition of Best's Insurance Guide and shall be issued and delivered in accordance with State law and regulations.

14.8 Verification of Coverage. Owner shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms reasonably satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf and shall be on forms provided by the City if reasonably requested. All certificates and endorsements must be received and approved by the City before work commences on the Public Improvements. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. Once City has reviewed any submitted insurance certificates or policies without further objection or correction thereto by City, such policies shall be deemed to comply with the requirements of this Agreement and any further right to object thereto shall be deemed waived and such submitted insurance policies shall be deemed to satisfy the terms of this Agreement until terminated or expiration.

15. Control and Payment of Subordinates; Independent Contractor. All work on the Public Improvements shall be performed by Owner or under its supervision. Owner and its contractors and consultants will determine the means, methods and details of performing the work subject to the requirements of this Agreement. City retains Owner on an independent contractor basis and not as an employee. Owner retains the right to perform similar or different work for others during the term of this Agreement. Any additional personnel performing the work under this Agreement on behalf of Owner shall also not be employees of City and shall at all times be under the exclusive direction and control of Owner or its contractors and consultants. All wages, salaries and other amounts due such personnel in connection with their performance of work under this Agreement and as required by law shall be paid by Owner or its consultants and contractors. Such entities shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social Security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

16. Termination. In the event of default by either party in the performance of any of its material obligations under the terms or conditions of this Agreement, the party alleging such default shall give the other party notice in writing specifying in reasonable detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. The party receiving such notice shall have fifteen (15) days from the date of receipt of such notice to cure any monetary default and thirty (30) days from the date of receipt of such notice to cure any non-monetary default, provided, however, for non-monetary defaults, if the amount of time reasonably required to cure the breach exceeds said thirty (30) days, the breaching Party shall have such longer time period as may

be reasonably required provided that the breaching Party has commenced to cure such default within that thirty (30) day period and thereafter diligently prosecutes such cure to completion; provided, further, that if such cure of a non-monetary default continues beyond an addition ninety (90) days thereafter, then, at any time after expiration of that ninety (90) day period and prior to completion of the cure, City may proceed with exercise of any of its remedies under Section 16(b) below pertaining to injunctive relief or specific performance, but City may not proceed with the exercise of the right of termination based upon such non-monetary default so long as the Owner continues to diligently prosecute such cure to completion. Except as expressly provided in the preceding proviso, during any such cure period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings or exercise of any other remedies for such default. After notice and expiration of the applicable cure period, if such default has not been cured, the other party to this Agreement may at its option:

(e) Terminate this Agreement, in which event neither party affected by such termination shall have any further rights against or liability to the other with respect to this Agreement or the Property first arising thereafter; provided that if the City commences such termination proceedings, it shall give not less than thirty (30) days prior written notice thereof to Owner, which notice shall specify the grounds for termination and shall set a date, time and place for a public hearing before the City Council. At the noticed public hearing, the Owner and/or its designated representative shall be given an opportunity to make a full and public presentation to the City and to respond to the City's evaluation of Owner's performance, either orally or in a written statement, at such Owner's election. If, following the taking of evidence and the hearing of testimony at said public hearing, the City finds, based upon substantial evidence, that Owner is not in compliance with a specific, material term or provision of this Agreement, and failed to timely cure such failure within the applicable cure period, then the City may terminate this Agreement.

(b) Institute equitable action to cure, correct or remedy any default, such as an action for injunctive relief or specific performance of the terms of this Agreement; provided, however, that in no event shall either Party be liable to the other for money damages for any default or breach of this Agreement except for provisions contemplating a monetary remedy specifically provided for in this Agreement to be paid to such Party, including, without limitation, the right of Owner to recover from City the reimbursements provided for in Section 10.1 or the express indemnity obligations of Owner set forth in this Agreement. Nothing herein shall preclude either Party from seeking reimbursement for amounts expressly required to be paid by one Party to the other under this Agreement including but not limited to the reimbursement payment to Owner or to recover attorneys' fees if it is the prevailing Party as provided herein. It is expressly recognized that except as set forth above with respect to the limited remedies for monetary damages, injunctive relief and specific enforcement of this Agreement are the proper and desirable remedies.

(c) Without limitation of the foregoing, the parties specifically acknowledge that the primary purpose of this Agreement is to document the conditions and terms of reimbursement to Owner if it decides, in its sole business judgment to proceed with the Project described in the Development Agreement. This Agreement shall not, under any circumstances, be construed or applied to expand the Owner's obligations to commence or complete the Project

beyond that set forth in the Development Agreement and this Agreement shall be applied consistent with that purpose. In that regard and for those reasons, although this Agreement will be executed by the parties concurrent with the Development Agreement, this Agreement shall not be of any force or effect unless and until Developer decides to proceed with Project and the “**Offsite Traffic Improvements**” pursuant to and as provided and described in the Development Agreement. In any event City shall not have the right to specifically enforce against any Owner, nor in any way compel an Owner to either start or complete the Project, nor to seek any monetary damages from the Owner for an Owner's failure to start or complete the Project; provided, that, City shall have the right (i) to compel Owner, by an action for specific performance, to complete any public improvements which have been commenced and are partially completed, including, without limitation, bringing an action against any bonds posted to secure the construction of those improvements, (ii) to require Owner to dedicate any property and complete any public improvements which are required by the Project Approvals to be dedicated and/or completed prior to occupancy of those Project improvements in fact constructed on the Property pursuant to this Agreement, (iii) and, once the effectiveness of this Agreement is triggered by the commencement of the Offsite Traffic Improvements, to recover money damages under the express indemnity provisions of this Agreement that are thereafter effective.

17. Labor/Prevailing Wages. Owner is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., and the implementing regulations promulgated thereunder (collectively, “**Prevailing Wage Laws**”), which require the payment of prevailing wage rates and the performance of other requirements if it is determined that the Owner’s contract(s) with its contractor(s) to construct the Public Improvements are “public works” contracts under the Prevailing Wage Laws. It is the responsibility of the Owner to ensure that each contractor and subcontractor hired to construct the Public Improvements by Owner comply with all applicable requirements of the Prevailing Wage Laws. Owner agrees to defend, indemnify and hold the City and its officials, officers, employees and agents free and harmless from any claim or liability including, without limitation, damages, penalties, attorneys’ fees and court costs, arising from any failure or alleged failure to comply with these provisions of the Labor Code, including the Prevailing Wage Laws, in connection with construction of the Public Improvements by Owner.

18. Attorneys’ Fees. In the event any action is commenced to enforce or interpret any term or condition of this Agreement, in addition to costs and any other relief, the prevailing party shall be entitled to its reasonable attorneys’ fees, expert fees and other reasonable costs of defense.

19. Owner Assignment. In no event shall the Owner assign or transfer any portion of this Agreement without the prior express written consent of City, which consent may be given or withheld in City's reasonable discretion; provided, however, Owner shall be permitted to absolutely or collaterally assign its right to receive payments hereunder to any person or entity who acquires all or any part of the Property or who makes a loan secured by all or any part of the Property and Owner shall be permitted to assign this Agreement to any successor or assign of the Development Agreement who is a permitted assignee approved or deemed approved by the City.

20. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

21. Invalidity and Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

22. Cooperation; Further Acts. The parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

23. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

24. Labor Certification. By its signature hereunder, Owner certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code. Owner agrees to comply with such provisions to the extent applicable to Owner and to require its consultants to comply with such provisions before commencing any work on the Plans.

25. Time of Essence. Time is of the essence for each and every provision of this Agreement for which time is a requirement.

26. No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the parties under the terms of this Agreement.

27. Construction; Captions. Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

28. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

29. Notices. All notices permitted or required under this Agreement shall be deemed made when delivered to the applicable party's representative as provided in this Agreement. Such notices shall be mailed or otherwise delivered to the addresses set forth below, or at such other addresses as the respective parties may provide in writing for this purpose:

30.

CITY OF BEAUMONT

City Manager
City of Beaumont
550 East 6th Street
Beaumont, CA 92223

OWNER

Beaumont Regency AVG, LLC
c/o Regency Centers Corporation
One Independent Drive, Suite 114
Jacksonville, Florida 32202-5019
Attn: VP, Legal Department

With a copy to:

Beaumont Regency AVG, LLC
c/o Regency Centers Corporation
420 Stevens Avenue, Suite 320
Solana Beach, California 92075
Attn: Market Officer

Such notice shall be deemed made when personally delivered, upon fax confirmation of the sender, or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, certified mail, return receipt requested, to the party at its applicable address.

31. Authority to Enter into Agreement. City and Owner warrant that they have all requisite power and authority to execute and perform this Agreement. Each person executing this Agreement on behalf of their party warrants that he or she has the legal power, right, and authority to make this Agreement and bind his or her respective party.

32. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

33. Integration. This Agreement, together with the Development Agreement, represents the entire understanding of City and Owner as to those matters contained herein and supersedes and cancels any prior oral or written understanding, promises, or representations with respect to those matters covered hereunder. This integrated Agreement may not be modified or altered except in writing signed by both parties hereto.

34. Severability and Waiver. The unenforceability, invalidity, illegality, or unconstitutionality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid, illegal, or unconstitutional. Waiver by any party of any portion of this Agreement shall not constitute a waiver of any other portion thereof.

35. Lender Protection Prior to Lender Possession. Owner may enter into mortgages, deeds of trust and other security instruments described in the following sentence secured by Owner's interest in the Property. The holder or beneficiary of any indenture of mortgage or deed of trust, hypothecation, pledge, assignment for security purposes, bond, grant of taxable or tax exempt funds from a governmental agency or other security interest or any documents constituting or relating to a

sale-leaseback transaction (“**Lender**”) shall have no obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of Owner or Owner's successors-in-interest, but such Lender shall otherwise be bound by all of the terms and conditions of this Agreement which pertain to the Property or such portion thereof in which Lender holds an interest.

(a) Lender in Possession. A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of Owner and which remain unpaid as of the date such Lender takes possession of the Property or any portion thereof; provided, however, that a Lender shall not be eligible to apply for or receive Project Approvals with respect to the Property, or otherwise be entitled to develop the Property or devote the Property to any uses or to construct any improvements thereon other than the development contemplated or authorized by this Agreement and subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and charges, and assumption of all obligations of Owner hereunder; provided, further, that no Lender, or successor thereof, shall be entitled to the rights and benefits of Owner hereunder or entitled to enforce the provisions of this Agreement against the City unless and until such Lender or successor in interest qualifies as a recognized Assignee of this Agreement and makes payment of all delinquent and current City fees and charges pertaining to the Property.

(b) Notice of Owner's Breach Hereunder. If the City receives notice from a Lender having a secured interest in the property within the Project requesting a copy of any notice of default given to Owner hereunder and specifying the address for notice thereof, then the City shall deliver to such Lender, concurrently with service thereon to Owner, any notice given to Owner with respect to any claim by the City that Owner is in default, and if the City makes a determination of non-compliance, the City shall likewise serve notice of such noncompliance on such Lender concurrently with service thereof on Owner.

(c) Lender's Right to Cure. Each Lender shall have the right (but not the obligation) for a period of sixty (60) days after the expiration of the time period for cure provided to Owner pursuant to Section 4.1 to cure or remedy, or to commence to cure or remedy, the default claimed or the areas of noncompliance set forth in the City's notice. If the default or such noncompliance is of a nature which can only be remedied or cured by such Lender upon obtaining possession, such Lender may seek to obtain possession with diligence and continuity through a receiver or otherwise and may thereafter remedy or cure the default or noncompliance within sixty (60) days after obtaining possession. If any default or noncompliance cannot, with diligence, be remedied or cured within such sixty (60) day period, then such Lender shall have such additional time as may be reasonably necessary to remedy or cure such default or noncompliance if such Lender commences cure during such sixty (60) day period and thereafter diligently pursues such cure to completion. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to permit or authorize any Lender to undertake or continue construction or completion of any improvements comprising the Project (beyond the extent necessary to conserve or protect improvements or construction already completed) without first having expressly assumed the defaulting Owner's obligations under this Agreement.

(d) Other Notices by the City. A copy of all other notices given by the City to Owner pursuant to the terms of this Agreement shall also be sent to any Lender who has requested such notices at the address provided to the City by the Lender.

(e) Right to Encumber. The City agrees and acknowledges that this Agreement shall not prevent or limit Owner of any interest in the Property, or any portion thereof, at any time or from time to time in any manner, at such Owner's sole discretion, from encumbering the Property, the improvements thereon, or any portion thereof with any mortgage, deed of trust, sale and leaseback arrangement or other security device.

(f) Reasonable Modifications. The City agrees that it shall consider and adopt as Minor Amendments such other industry standard provisions requested by Owner to obtain financing if the same is requested by a Lender in order to protect its collateral under any deed of trust, mortgage or other security instrument, provided the same does not materially diminish the interests of the City under this Agreement.

36. Provisions Relating to Anchor Tenant.

35.1 Anchor Tenant Rights and Obligations.

(a) Anchor Tenant Takeover Rights. The City hereby acknowledges that Owner intends to enter into a ground lease agreement with a nationally recognized anchor retailer (the "Anchor Tenant") for a significant portion of the Property ("Anchor Tenant Premises"), along with certain other related agreements including, without limitation, a Site Development Agreement with the Anchor Tenant ("SDA"). The City hereby acknowledges that the SDA will obligate Owner to perform the construction of certain improvements within the Project (such as, by way of example but not limitation, parking areas, drive aisles, and other common area improvements), and will also obligate Owner to perform the Offsite Traffic Improvements as required under this Agreement and the Development Agreement. The SDA will further provide the Anchor Tenant certain rights, but not the obligation, to take over and perform one or more of Owner's obligations under the SDA pursuant to the terms more particularly set forth in the SDA ("Anchor Tenant Takeover Right"). Upon execution of its lease, the Anchor Tenant shall have the rights and obligations of an Owner under the Development Agreement as to, and solely as to, its leased Anchor Tenant Premises, and shall have no obligation or duty under this Agreement or the Development Agreement to construct or complete the construction of the Offsite Traffic Improvements or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of Owner or Owner's successors-in-interest under this Agreement. Notwithstanding the foregoing, in the event that the Anchor Tenant exercises the Anchor Tenant Takeover Right under the SDA, the Anchor Tenant shall have the right, but not the obligation, by written notice to City, to assume Owner's obligations under this Agreement to perform the Offsite Traffic Improvements in accordance with the terms and conditions of this Agreement ("Anchor Tenant Assumption").

(b) Anchor Tenant Payment of Fees; Reimbursement. Anchor Tenant shall not be obligated to pay any fees or charges which are obligations of Owner under this Agreement; provided, however, that any development of the Anchor Tenant Premises shall be subject to the Project Approvals applicable to the Anchor Tenant Premises and subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and

charges, and assumption of all obligations of Owner hereunder that are applicable to the development of the Anchor Tenant Premises. In the event that the Anchor Tenant exercised the Anchor Tenant Takeover Rights under the SDA and completes the Offsite Traffic Improvements as required under this Agreement, the Anchor Tenant shall be entitled to such reimbursements as is owing by the City under this Agreement, less any amounts of such reimbursement as has been previously paid by the City to Owner.

(c) Notice of Owner's Breach Hereunder. If the City receives notice from the Anchor Tenant requesting a copy of any notice of default given to Owner hereunder and specifying the address for notice thereof, then the City shall deliver to such Anchor Tenant, concurrently with service thereon to Owner, any notice given to Owner with respect to any claim by the City that Owner is in default, and if the City makes a determination of non-compliance, the City shall likewise serve notice of such noncompliance on such Anchor Tenant concurrently with service thereof on Owner.

(d) Anchor Tenant's Right to Cure. The Anchor Tenant shall have the right (but not the obligation) for a period of sixty (60) days after the expiration of the time period for cure provided to Owner under this Agreement to cure or remedy, or to commence to cure or remedy, the default claimed or the areas of noncompliance set forth in the City's notice. If any default or noncompliance cannot, with diligence, be remedied or cured within such sixty (60) day period, then such Anchor Tenant shall have such additional time as may be reasonably necessary to remedy or cure such default or noncompliance if such Anchor Tenant commences cure during such sixty (60) day period and thereafter diligently pursues such cure to completion. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to permit or authorize any Anchor Tenant to undertake or continue construction or completion of any Offsite Traffic Improvements without first having delivered to the City the Anchor Tenant Assumption.

37. Judicial Reference. If City and Owner have a dispute, claim, or controversy in law or in equity related to the terms of this Agreement, the parties agree to first engage in discussions to attempt in good faith to negotiate a resolution of the dispute, claim, or controversy in question. The parties shall meet in an informal setting to attempt to resolve any disputes promptly but in no event later than 15 business days after the determination of a dispute, claim, or controversy has occurred pursuant to notice by one party to the other party. If any claim or controversy that arises out of or relates to, directly or indirectly, this Agreement cannot be settled by the parties within fifteen (15) business days after either party is first provided written notice of the claim or controversy by the other, the matter shall be determined by judicial reference pursuant to the provisions of California Code of Civil Procedure Sections 638 through 645.1, except as otherwise modified herein. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. In the event that a legal proceeding is initiated based on any such dispute, the following shall apply: (a) the proceeding shall be brought and held in Riverside County, California, unless the parties agree to a different venue; (b) the parties shall use the procedures adopted by the judicial arbitration and mediation service (jams) in Riverside County, California, for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties); (c) the referee must be a California state retired judge or otherwise approved by both parties in their sole discretion; (d) the referee shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the

reference services, or, if no entity is involved, by the court in accordance with California Code of Civil Procedure Sections 638 and 640; (e) the referee shall be authorized to provide all remedies available under this agreement and appropriate under the circumstances of the controversy; (f) the referee may require one or more pre-hearing conferences; (g) the parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge; (h) a stenographic record of the reference proceedings shall be made; (i) the referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; (j) the referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge; (k) the parties shall promptly and diligently cooperate with each other and the referee and perform such acts as may be necessary for an expeditious resolution of the dispute; and (l) the statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties. The parties acknowledge and accept that there is no jury in a judicial reference proceeding.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "JUDICIAL REFERENCE" PROVISION DECIDED BY JUDICIAL REFERENCE AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "JUDICIAL REFERENCE" PROVISION. IF YOU REFUSE TO SUBMIT TO JUDICIAL REFERENCE AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO USE THAT JUDICIAL REFERENCE PROCEEDING UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS JUDICIAL REFERENCE PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "JUDICIAL REFERENCE" PROVISION TO RESOLUTION BY THE REFEREE.

CITY'S INITIALS

OWNER'S INITIALS

[Signatures on following pages]

SIGNATURE PAGE TO REIMBURSEMENT AGREEMENT FOR PUBLIC
IMPROVEMENTS

IN WITNESS WHEREOF, the parties have executed this Agreement as the dates set forth
Below:

OWNER:
BEAUMONT REGENCY AVG

By: _____
Print Name: _____
Title: _____

CITY:
CITY OF BEAUMONT

By: _____
Print Name: _____
Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT “A”

LEGAL DESCRIPTION AND DEPICTION OF PROPERTY

The Property is legally described and depicted consists of two distinct parcels: (1) the Overall Site Parcel and (2) the Major Retailer Parcel.

Overall Site Parcel

The Overall Site Parcel is legally described and depicted in 8 pages attached hereto as Exhibit A-1. The Overall Site Parcel comprises approximately 17.660 acres of the Property and encompasses all but the Major Retailer Parcel.

Major Retailer Parcel

The Major Retailer Parcel is legally described and depicted in 5 pages attached hereto as Exhibit A-2. The Major Retailer Parcel comprises approximately 12.217 acres of the Property.

EXHIBIT A-1
LEGAL DESCRIPTION AND DEPICTION OF OVERALL SITE PARCEL

EXHIBIT A-2
LEGAL DESCRIPTION AND DEPICTION OF MAJOR RETAILER PARCEL

EXHIBIT B

PUBLIC IMPROVEMENTS

The term “Public Improvements” shall mean and refer to those certain “Offsite Traffic Improvements” more particularly described in Exhibit D to the Development Agreement, which Exhibit D is hereby incorporated by reference. A preliminary estimate of the costs of construction of those improvements is attached to this Exhibit B to provide a further sense of the contemplated scope and expense of those improvements.

EXHIBIT B PUBLIC IMPROVEMENTS



BUDGET BREAKDOWN

Project: Oak Valley Village PHASE 1	Offsite +/- 150,589 SF
Address: SEC Interstate 10 & Oak Valley Pkwy.	Onsite +/- 1,260,947 SF
City: Beaumont, CA	
Owner: Regency Centers	
Schedule: 15 mths	
Job #: xxx	
Bid Date: 5/15/2025	

CODE	TRADE	OFFSITE	ONSITE	BUDGET AMOUNT
01-000	General Conditions	107,500		107,500
00-010	General Requirements	75,000		75,000
01-014	Survey and Restaking	39,817		39,817
01-451	Testing and Inspection	-		By Owner
01-510	Temp Utilities	-		w/ GCs
01-740	Final Cleaning	-		w/ GCs
02-230	Site Clearing & Demo	139,870		139,870
02-300	Earthwork	179,190		179,190
02-370	Erosion Controls & Street Sweeping Allowance	40,000		40,000
02-510	Dry Utilities Underground (SCE, Telecom, Gas)	1,788,949		1,788,949
02-400	Traffic Control Allowance	75,000		75,000
02-510	Site Utilities - Fire Water			-
02-520	Site Utilities - Water			-
02-530	Site Utilities - Sewer	57,029		57,029
02-630	Site Utilities - Storm			-
02-740	AC Pavement	878,503		878,503
02-745	Bumpers & Striping	76,300		76,300
02-770	Site Concrete	516,493		516,493
02-900	Landscape & Irrigation	171,368		171,368
03-110	Concrete	-		w/ site conc.
03-308	Reinforcement	-		w/ trades
16-010	Traffic Signal Modifications	2,357,800		2,357,800
				-
	SUBTOTAL:	6,502,819	-	6,502,819
				-
01-206	Liability Insurance	1.550%	100,794	-
01-206	Builder's Risk Insurance	0.000%	-	-
01-201	Perf & Payment Bond	0.000%	-	-
90-001	Fee	4.500%	297,163	-
80-001	Contractor Contingency	10.000%	690,078	-
01-205	Escalation (Market Volatility)	0.000%	-	-
	TOTAL:	7,590,853	-	7,590,853

EXHIBIT C
DESIGN, BID AND CONTRACTING MINIMUM REQUIREMENTS

Design, Plan Approval, and Bidding Phase

- A. Bidding Documents. Unless otherwise noted, the bidding documents shall conform to the following minimum requirements and shall be submitted to City for its prior written approval before release for bid. City shall review and approve, conditionally approve, or disapprove the bidding documents within fifteen (15) days after receipt:
1. Unless impractical due to the nature of the Public Improvements, the bid proposal shall be unit priced rather than lump sum or time and materials.
 2. It is recommended that the bidding documents require the bidder/contractor to provide the following bonds:
 - a. Bid Bond - 10% of the amount of the bid.
 3. The bidding documents shall require the successful bidder to provide evidence of comprehensive public liability insurance in an amount established by the City.
 4. The bidding documents shall provide for monthly progress payments to the contractor.
 5. The contractor shall be required to pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and to otherwise comply with applicable provisions of the Labor Code, the Government Code, and the Public Contract Code relating to public works projects of cities/counties and as required by the procedures and standards of City with respect to the construction of its public works projects or as otherwise approved by the City.
 6. The bidding documents must clearly state the time, date, and place where bids are to be submitted and opened.
 7. The bidding documents shall clearly state the amount of time to complete the work. The time allowed must be reasonable for the amount of work. Accelerated construction time allowances must be supplemental bid and are not eligible for public reimbursement unless previously approved by the City's Public Works Director.
 8. The bid documents must require the contractor to provide 100% faithful performance and 100% labor/materials bonds.
 9. Owner shall keep a list of bidders with e-mail addresses, and addenda should be sent via email to ensure quick receipt.

10. Conditioned bids shall not be accepted.

- B. Owner may pre-qualify bidders in accordance with California Public Contract Code Section 20101, by requiring all persons interested in bidding on any portion of the Public Improvements to submit current financial statements and a pre-qualification questionnaire in a form approved by City, and by scoring each submission based on reasonable, objective criteria reasonably acceptable to City. Owner must implement an appeals procedure for responding to disputes in compliance with California Public Contract Code Section 20101(d). If Owner elects to pre-qualify bidders, only those bidders who have submitted complete pre-qualification packets and obtained the minimum required score based on the objective rating system adopted by Owner (and approved by City) shall be permitted to bid on any portion of the construction work for the Public Improvements.
- C. Owner shall keep a log of all persons obtaining pre-qualification questionnaires and/or bidding documents and all persons who submit pre-qualification questionnaires and/or bids and their mailing addresses.
- D. Addenda shall be mailed by first class mail (or submitted by confirmed electronic transmission) to all bidding document holders and the City's Public Works Director at the same time. The last addendum shall be issued no later than three (3) Business Days prior to the date of opening bids.
- E. Submitted bids shall be in sealed envelopes.
- F. Bids shall not be accepted after the stated time for submission.
- G. Bid opening shall be conducted by Owner at Owner's place of business or other site mutually acceptable to Owner and City's Public Works Director.
- H. Sealed bids shall be opened and read aloud immediately following the submission time. The City's Public Works Director shall be invited to attend the bid opening.
- I. Conditioned bids, unless the bid proposal lists them for all to bid on, shall not be accepted.
- J. The arithmetic of the lowest bid proposals received shall immediately be checked for errors.
- K. All bids received shall be provided to the City's Public Works Director. The City's Public Works Director may, in his or her reasonable discretion, reject any and all bids that he or she determines to be nonresponsive.
- L. Award shall be made to the lowest responsible qualified bidder within five (5) Business Days after the bid opening. At least three (3) bids must be received for each Construction Contract to be awarded.

- M. A preconstruction meeting shall be held with the contractor prior to beginning the work. A City representative shall be invited to attend the meeting.
- N. The Notice to Proceed shall be issued within a reasonable period following the contract execution.

Construction Phase

- A. The City's Public Works Director shall be provided a copy of the construction schedule.
- B. Owner shall require the contractor to conduct weekly construction status meetings to which the City's Public Works Director shall be invited.
- C. Any additional costs incurred solely for the benefit of Owner, such as accelerating the construction schedule, shall not be eligible for reimbursement unless previously approved by the City's Public Works Director.
- D. Any additional construction costs incurred due solely to unexcused delays caused by Owner following commencement of construction shall not be eligible for reimbursement under this Agreement.
- E. All contracts and construction related records shall be available to City as and when required for the final determination of eligible costs for reimbursement.
- F. Owner must file a Notice of Completion within thirty (30) days of City's approval of the Public Improvements (determining substantial completion).
- G. Owner must comply with all applicable requirements of the Public Contract Code with regard to stop notices and liens filed.
- H. Owner shall make prompt payment to all contractors and subcontractors.
- I. Amounts reflected in any stop notice properly filed against Owner or City shall be withheld from progress payments to contractors/subcontractors.
- J. All public improvements constructed by Owner are subject to inspection by or on behalf of the City Engineer. Construction shall be scheduled to allow for periodic inspection by the City Engineer or his designee. The Owner's contractor will be required to provide adequate quality assurance and quality control measures to ensure all public improvements are constructed in accordance with the Standard Specifications for Public Works Construction or Caltrans Standard Specifications, as appropriate for the work to be constructed.

General

Any deviation from these rules must be approved by either the City Manager, Public Works Director, or City Engineer or their designees.

EXHIBIT D
FORM OF PERFORMANCE AND PAYMENT BONDS

Performance Bond

Whereas, The Board of Supervisors of the County of ____ (or the City Council of the City of ____), State of California, and ____ (hereinafter designated as “principal”) have entered into an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated ____, 19__, and identified as project ____, is hereby referred to and made a part hereof; and

Whereas, Said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and ____, as surety, are held and firmly bound unto the County of ____, (or City of ____) hereinafter called (“____”), in the penal sum of ____ dollars (\$____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless ____, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney’s fees, incurred by county (or city) in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on ____, 19__.

Payment Bond

Whereas, The Board of Supervisors of the County of ____ (or City Council of the City of ____), State of California, and ____ (hereinafter designated as “the principal”) have entered into an agreement whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated ____, 20__, and identified as project ____, is hereby referred to and made a part hereof; and

Whereas, Under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the County of ____ (or the City of ____) to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

Now, therefore, the principal and the undersigned as corporate surety, are held firmly bound unto the County of ____ (or the City of ____) and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of ____ dollars (\$____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney’s fees, incurred by county (or city) in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on ____, 20__.