

**CONTRACT FOR SAN LEANDRO PLAZA SHOPPING CENTER  
ENHANCED POLICE SERVICES**

This CONTRACT for SAN LEANDRO PLAZA SHOPPING CENTER (hereafter the CONTRACT), is made as of this 21<sup>ST</sup> day of JUNE, 2004, by and between THE CITY OF SAN LEANDRO (hereafter the "CITY"), the San Leandro Redevelopment Agency (hereinafter the "AGENCY") and REGENCY CENTERS, L.P. (hereafter the "OPERATORS").

WHEREAS, the OPERATORS operate a regional shopping center known as the San Leandro Plaza Shopping Center located in San Leandro, California within the San Leandro Redevelopment Project Area (hereafter the PLAZA , and as further defined in Attachment "A"); and

WHEREAS, the CITY recognizes the need and its obligation, within its budget constraints, to provide police protection services to all persons and places within its borders, and

WHEREAS, the OPERATORS approached the CITY and the AGENCY requesting that it provide enhanced police protection services for the PLAZA by designating a CITY bicycle police officer to patrol the PLAZA; and

WHEREAS, the OPERATORS, in recognition of the expense to the CITY of providing the bicycle police officer, have offered to amend (as set forth on Attachment "B" hereto) its cost sharing agreement with the Agency under the Maintenance, Operation and Reciprocal Easement Agreement between the OPERATORS and the AGENCY of 1981 (hereinafter the MOREA); and

WHEREAS, the CITY and the OPERATORS agree and acknowledge that the sole purpose of this CONTRACT is to provide enhanced governmental law enforcement, crime prevention and police protection services only within the PLAZA, and that these services are not provided for profit, and neither party expects or anticipates that the CITY will realize any profit or direct financial benefit as a result of this CONTRACT; and

WHEREAS, the CITY is agreeable to providing the enhanced police protection services pursuant to the terms and conditions of this CONTRACT provided that such police protection services do not: (a) impair or interfere with the CITY'S ability to meet its other law enforcement responsibilities or (b) result in any CITY loss of operational efficiency or readiness.

THEREFORE, in consideration of these premises and the promises, agreements, representations, and acknowledgments contained in this CONTRACT and all the Attachments hereto, it is mutually agreed as follows:

1. This is a one-year rolling CONTRACT that shall be effective during the City's fiscal year, July 1<sup>st</sup> thru June 30<sup>th</sup> ("term"). The initial Term of this Contract shall commence on July 1, 2004, and shall end on June 30, 2005. Each year thereafter on July 1<sup>st</sup>, this CONTRACT shall automatically roll to the next fiscal year for a Term without any further act or notice being required by any party. Notwithstanding the foregoing, either party may terminate this CONTRACT prior to the start of a new Term by providing the thirty (30) days notice pursuant to Paragraph 15 below.
2. During the Term of the CONTRACT the CITY will provide a bicycle patrol officer (hereinafter the OFFICER) at the PLAZA. It is the CITY'S intent that an OFFICER will be present at the PLAZA seven (7) days a week. The OFFICER shall perform such police protection services and governmental law enforcement function authorized by law for the benefit of the general public.
3. Each year of this CONTRACT, OPERATORS shall pay their share of the total cost and expense for the enhanced police services contemplated herein. In the 2004 fiscal year, the amount of the OPERATORS' Contribution shall be the total sum of \$19,384.00 ("OPERATORS' Contribution") as more specifically described in Attachment "B". Each Term the OPERATORS shall pay the OPERATORS' Contribution. The amount of the OPERATORS' Contribution shall be increased annually based upon the percentage change in the United States Department of Labor Consumer Price Index for All Urban Consumers for the San Francisco, Oakland, San Jose, California area between August and August of each year. If the Consumer Price Index is discontinued, or revised, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained in the Consumer Price Index had not been discontinued or revised. The OPERATORS shall submit payment directly to the City. Payment of the OPERATOR'S Contribution shall be made in two equal installments, due and payable on August 1 and February 1.
4. Notwithstanding the CITY'S obligation to assign the OFFICER to patrol the PLAZA pursuant to Paragraph 2 above, the parties acknowledge and agree that the CITY has the sole and absolute discretion to reassign the OFFICER to other areas for reasonable periods of time as needed for law enforcement purposes. A reasonable period of time may include, but is not limited to the OFFICER'S shift of duty or some part thereof.
5. The CITY agrees that, at any time during the Term of this Contract, the City is unable to provide the OFFICER for an indefinite period, or for some portion of one day or for more than one day, it shall verbally communicate that fact to the OPERATORS, as soon as such fact becomes reasonably known to the CITY. The parties acknowledge and agree that in such event, either party may terminate this Contract as set forth in Paragraph 15 below.

6. The CITY reserves to itself any rights and obligations relating to the provision of any and all police and/or governmental law enforcement services, and this CONTRACT does not, and is not intended to, diminish, delegate, divest, impair, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, capacity, immunity, or character of office of the CITY, its agents, employees or officers.
7. The OPERATORS and the CITY agree that neither the CITY nor any officer, agent or employee of the CITY, by virtue of this CONTRACT, or otherwise, shall be considered or asserted to be an employee, contractor, sub-contractor, partner, joint venture, representative, or agent of the OPERATORS.
8. The OPERATORS agree that, at all times and for all purposes relevant to this CONTRACT, the CITY shall remain the sole and exclusive employer of all police officer(s) and in this regard:
  - a. The CITY shall remain solely and exclusively responsible for the direct payment to any police officer of any officer's wages, compensation, overtime wages, expenses, fringe benefits, pension or retirement benefits, travel expenses, mileage allowances, training expenses, transportation costs, and/or other allowances or reimbursements of any kind, including but not limited to, workers' disability compensation, unemployment compensation, Social Security Act protection and benefits, any employment taxes, and/or other statutory or contractual right or benefit based, in any way, upon any officer's status as an employee of the CITY.
  - b. The OPERATORS agree that it shall not grant, give, allow, pay, reimburse, compensate, or otherwise provide any wages, fringe benefits, gifts, equipment, personal property, supplies, entitlement, consideration (monetary or otherwise), or any other thing of value, either directly or indirectly, to, for the use by, or on behalf of, any individual CITY police officer, except that any money paid directly to the CITY by the OPERATORS to reimburse the CITY for its costs pursuant to this CONTRACT shall not be deemed consideration paid by the OPERATORS to any police officer.
  - c. The OPERATORS and the CITY agree that this CONTRACT does not, and is not intended to create, grant, modify, supplement, supersede, alter, or otherwise affect or control, in any manner or form: (a) any right, privilege, benefit, or any other term or condition of employment, of any kind or nature whatsoever, in, upon, or for any police officer and/or any officer's agents, representatives, unions, or the successors or assigns of any of them; (b) any applicable CITY employment and/or union contract; (c) any level or amount of police officer supervision,

standard of performance, training or education; (d) any CITY rule, regulation, hours of work, shift assignment, order, policy, procedure, directive, guideline, etc. which shall solely and exclusively, govern and control the employment relationship between the CITY and all officers.

- d. The OPERATORS and the CITY agree that this CONTRACT does not and is not intended to, limit, modify, control, or otherwise affect in any manner the CITY'S sole and exclusive right, obligation, and responsibility to determine, establish, modify, or implement any and all operational policies, procedures, orders, rules, regulations, guidelines, and/or any other policy or directive which in any way governs or controls the activity of any police officer.
  - e. The OPERATORS agree that this CONTRACT does not, and is not intended to include any CITY warranty, promise, or guaranty, either express or implied, of any kind or nature whatsoever, in favor of the OPERATOR, any agent, or any person present at the PLAZA, that any police protection provided by the CITY under the terms and conditions of this CONTRACT will result in any specific reduction in or prevention of any criminal activity, or any other performance-based outcome, at the PLAZA, provided that the foregoing shall not relieve the CITY of any of its obligations under this CONTRACT.
  - f. Under the terms of this CONTRACT other than the ordinary rights of the OPERATORS as citizens and except for the CITY'S obligations hereunder, the OPERATORS agree and promise that no police officer shall be asked or required to perform any services directly for the OPERATORS or otherwise be available to perform any other work or assignments from the OPERATORS or be expected to perform any acts other than governmental law enforcement functions, crime prevention or police protection, and that no police officer shall be employed in any manner or capacity by the OPERATORS.
  - g. The OPERATORS agree that neither the OPERATORS nor any of its agents shall otherwise provide, furnish or assign any police officer with any job instructions, job descriptions, job specifications, or job duties, or in any manner attempt to control, supervise, train or direct any police officer in the performance of any CITY duty or obligation to provide police protection under the terms of this CONTRACT.
9. The OPERATORS agree that this CONTRACT does not, and is not intended to, transfer, delegate, or assign to the CITY, its officers, agents or employees, any civil or legal responsibility, obligation, duty of care, or liability associated with the ownership, maintenance, or operation of the PLAZA.

10. The OPERATORS agree to and shall indemnify, defend, and hold harmless CITY, its officers, officials, employees, volunteers, agents and assigns (indemnitees) from and against any and all damages (whether special, general or punitive), loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property, strict liability, product liability, or for contribution or indemnity claimed by third parties) arising or resulting from or in any way connected with: (i) the operation of the OPERATORS, its agents, employees, contractors, and/or subcontractors, in performing or failing to perform this CONTRACT; (ii) the failure of the OPERATORS, its agents, employees, contractors and/or subcontractors to comply in all respects with applicable laws, ordinances and regulations, and/or applicable permits and licenses, and/or (iii) OPERATORS' ownership, operation, maintenance, control and acts or omissions in the PLAZA.

The OPERATORS will not, however, be required to reimburse or indemnify the CITY to the extent any damages, losses, liabilities, fines, penalties, forfeitures, claims, demands, actions, proceeding or suits, as more fully set forth above, are due to intentional wrongful acts or the active negligence of the CITY. In instances where OPERATORS and CITY are both named defendants, OPERATORS shall provide a defense for the CITY, unless after meeting and conferring on the issue, it appears that sufficient conflicts between the OPERATORS and the CITY exists so as to reasonably prevent a joint defense of the OPERATORS and CITY by counsel for the OPERATORS.

11. The OPERATORS agree that it shall be solely and exclusively responsible, during the term of this CONTRACT, for guaranteeing that all OPERATORS agents: (a) follow all lawful orders of any police officer performing any duties under this CONTRACT; (b) fully cooperate with all police officer(s) in providing any police protection services pursuant to this CONTRACT; (c) conform their activities to comply with the terms of this CONTRACT, including, but not limited to, the understanding concerning the CITY'S independent status.
12. The OPERATORS agree that it may not assign, delegate, contract, subcontract or otherwise transfer, promise, commit, or loan any police protection services or duties under this CONTRACT to any other person and/or public or private corporation, entity, or organization of any kind.
13. The OPERATORS represent and warrant that it has reviewed all of its current or proposed lease and licensing agreements with any tenants or other persons who are or may become contractually involved with the OPERATORS and hereby represents and warrants that the OPERATORS do not have, and will not in the future have, any other contractual agreement that

will in any manner restrict, interfere with, or prohibit the OPERATORS, its agents, or any other person from complying with the OPERATORS obligations and duties as set forth in this CONTRACT.

14. The OPERATORS agree that it shall promptly deliver to the CITY written notice and copies of any claim(s), complaint(s), charges, or any other accusation or allegation of negligence or other wrongdoing, whether civil or criminal in nature, that the OPERATOR becomes aware of which involves in any way the CITY or any police officer. The OPERATORS agree to reasonably cooperate with the CITY in any investigation conducted by the CITY into any act(s) or work performance of any police officer in connection with services provided under this CONTRACT.
15. Either the CITY or the OPERATORS may, before the scheduled termination of this CONTRACT, cancel this CONTRACT for any reason, or for no reason, without incurring any penalty or liability to any party because of the cancellation. Cancellation may be effectuated by delivering a written notice of cancellation of this CONTRACT("Notice OF Cancellation") to the other party at least thirty (30) days before the effective date of cancellation (which cancellation date shall be clearly stated in this written notice). At 11:59 p.m. on the stated effective date of cancellation set forth in the Notice of Cancellation, this CONTRACT shall be cancelled, and any unexpended funds shall be refunded by the CITY to the Agency. Upon receipt of any refund from the CITY, the CITY shall cause the Agency to pay to OPERATORS an amount equal to Operators Contribution minus 50% of the total expenses paid to the City for the enhanced police services
16. Because the Agency provided funds under the MOREA for the services contemplated herein, the CITY and the OPERATORS agree that if either party gives notice of termination to the other party, as set forth in Paragraph 15 above, it shall send a copy thereof to the Executive Director of the Agency at the same time notice is sent to the other party. Notwithstanding the foregoing, the only obligation Agency has under this CONTRACT is to refund Operator's Contribution pursuant to Paragraph 15 above, in the event this CONTRACT is terminated by either party before the end of the TERM.
17. The parties shall send, all correspondence or written notices required or permitted by this CONTRACT to each signatory of this CONTRACT, or any signatory successor in office by first class mail, return receipt requested, at the following addresses:

Police Chief  
City of San Leandro  
835 East 14<sup>th</sup> Street  
San Leandro, California 94577

MOREA PARTNERS

Regency Centers, L. P.  
1850 Mt. Diablo Blvd., Suite 225  
Walnut Creek, California 94596

City of San Leandro Redevelopment Agency  
Executive Director  
835 East 14<sup>th</sup> Street  
San Leandro, California 94577

18. Except as otherwise provided herein, all correspondence and written notice shall be considered delivered to a party as of the date that such notice is deposited in the United States mail with sufficient postage, with the United States Postal Service, or when personally delivered or delivered by a courier such as Federal Express.
19. This CONTRACT is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California. That language of all parts of this CONTRACT is intended to and, in all cases, shall be construed as a whole according to its fair meaning, and not construed strictly for or against any party. As used in this CONTRACT, the singular or plural number, possessive or non-possessive shall be deemed to include the other whenever the context so suggests or requires.
20. Absent an express waiver, the failure of any party to pursue any right granted under this CONTRACT shall not be deemed a waiver of that right regarding any existing or subsequent breach or default under this CONTRACT. No failure or delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of my other right, power or privilege.
21. The CITY and the OPERATORS acknowledge that this CONTRACT shall be binding upon each of them and, to the extent permitted by law, upon their administrators, representatives, subsidiaries, executors, successors, assigns, and all persons acting by, through, under, or in concert with any of them.
22. This CONTRACT and the Attachments hereto sets forth the entire agreement for enhanced police protection (bike patrol) between the CITY and the OPERATORS and fully supersedes any and all prior agreements or understandings between them in any way related to the subject matter hereof (except MOREA except to the extent modified hereby). It is further understood and agreed that the terms and conditions herein are contractual and are not a mere recital and that there are no other agreements,

understanding, contracts, or representations between the CITY and the CORPORATION in any way related to the subject matter hereof, except as expressly stated herein. This CONTRACT shall not be changed or supplemented orally and may be amended only by concurrent agreement of the CITY.

23. For and in consideration of the mutual promises, acknowledgments, representations, and agreements set forth in this CONTRACT, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the CITY and the OPERATORS hereby agree and promise to be bound by the terms and provisions of this CONTRACT.

REGENCY CENTERS, L.P.  
a Delaware limited partnership  
By: Regency Centers Corporation  
a Florida corporation  
Its: General Partner

By:   
Its: Vice President

Dated: 6-21-04

CITY OF SAN LEANDRO

  
JOHN J. JERMANIS  
City Manager

Dated: 6-23-04

REDEVELOPMENT AGENCY OF THE  
CITY OF SAN LEANDRO

  
JOHN J. JERMANIS  
Executive Director

APPROVED AS TO FORM:

  
Agency Counsel

G:\DEPT\Office of Business Development\Files RDA\Plaza\Regency\Security\Washington Plaza Security Agreement-Final.DOC  
683743v1; 432-021

HAHN PARCELS: 81-205133

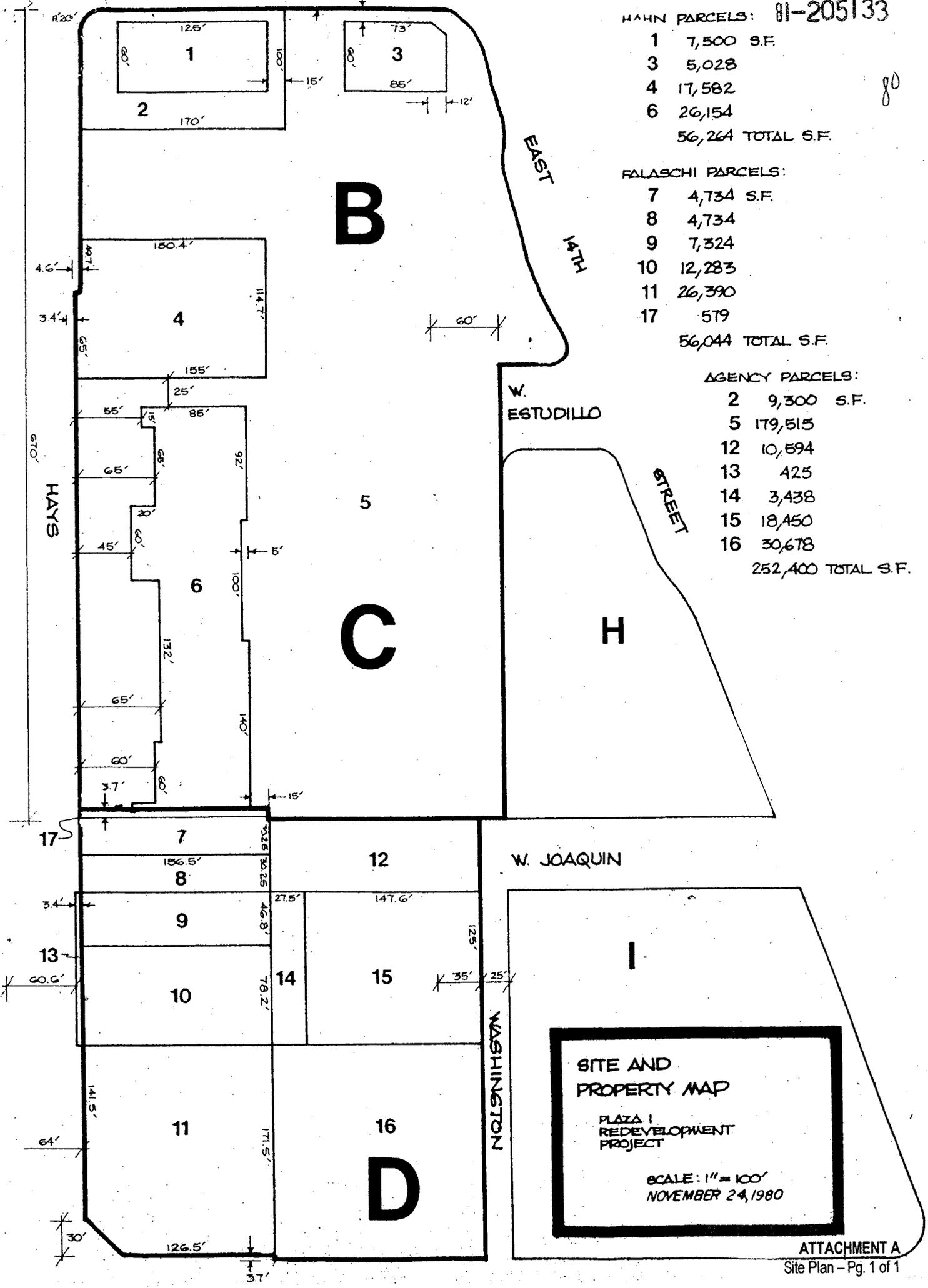
- 1 7,500 S.F.
- 3 5,028
- 4 17,582
- 6 26,154
- 56,264 TOTAL S.F.

FALASCHI PARCELS:

- 7 4,734 S.F.
- 8 4,734
- 9 7,324
- 10 12,283
- 11 26,390
- 17 579
- 56,044 TOTAL S.F.

AGENCY PARCELS:

- 2 9,300 S.F.
- 5 179,515
- 12 10,594
- 13 425
- 14 3,438
- 15 18,450
- 16 30,678
- 252,400 TOTAL S.F.



Attachment "B"

**TERMS OF REIMBURSEMENT**

Under the terms of the MOREA, the OPERATORS are responsible for providing and funding the maintenance of certain common areas in the PLAZA including, but not limited to, paying for the cost for policing and security services. (MOREA, section 105)

In consideration for and in accordance with the terms of this CONTRACT the PARTIES have agreed to contract with the San Leandro Police Department for enhanced security. The services under this CONTRACT are contemplated to be performed by one (1) police bike patrol officer. The Agency is agreeing to subsidize the additional cost of this enhanced security to the remaining MOREA partners, Regency Centers, L.P. and Safeway. The subsidy for the current fiscal year is noted below.

MOREA Partners (OPERATORS) Of which 39.6% is Regency, 38.2% is Safeway and 22.2% is Agency	\$ 19,384.00
CITY (General Fund)	\$ 51,000.00
REDEVELOPMENT AGENCY OF THE CITY OF SAN LEANDRO	\$ 31,616.00
	<hr/>
TOTAL (Cost for one (1) bike patrol officer)	\$102,000.00

[Based on this formula the Agency is agreeing to subsidize an additional \$31,616 over the Agency's current share of MOREA charges for fiscal year 2004-2005. These additional funds will be forwarded to the San Leandro Police Department by the Agency upon demand of the City of San Leandro. Additionally, the Operator agrees to shift those funds currently designated toward private security functions under the MOREA toward the cost of the enhanced security.]

## Attachment "C"

### CONTRACT DEFINITIONS

In addition to the terms and expressions, "CITY" and "OPERATORS," which are defined in this CONTRACT, the CITY and the OPERATORS agree that for all purposes, and as used throughout this CONTRACT hereto, the words and expressions below are also defined terms under this CONTRACT. The OPERATORS and the CITY also agree that whenever any defined term or expression is printed in all uppercase characters, and/or whether used in the singular or plural, possessive or non-possessive, and/or either within or without, quotation marks, it shall be defined, read, and interpreted as provided for in this CONTRACT.

C.1 "POLICE PROTECTION" shall be defined to include the responsibility for the prevention and detection of crime and the enforcement of the general criminal laws of this CITY and state and the motor vehicle and traffic laws of this CITY and state, including but not limited to, road patrol, crime detection, crime prevention, and criminal apprehension, and/or response to any emergency or non-emergency which, in the sole judgment of any OFFICER, appears to require the presence, attention, or services at any OFFICER to address, respond, or attend to any issue, event, or circumstance involving public safety, a breach of peace, public health, an accident or accidental injury, and related law enforcement functions as authorized and/or mandated by law but shall not include any responsibility or job duty of the OPERATORS or any agent including, but not limited to, supervisors, security guards, or any plant, operational or administrative personnel who perform any general crowd control and supervision functions, unless such activity is for the prevention of crime and the enforcement of the CITY and state criminal law including, but not limited to, criminal trespass.

C.2 "PLAZA" shall be defined as an enclosed retail shopping area and its contiguous outdoor parking space and other Common Areas. Common Areas are all of the property which is made up of nine separate legal descriptions, as specifically described in Attachment "A", including all lockers and restrooms, security and control rooms, offices, closets, and storage areas.

C.3 "CLAIM(S)" shall be defined to include any and all losses, complaints, demands for relief or damage, suits, causes of action, proceedings, judgments, deficiencies, penalties, costs and expenses, including but not limited to, any reimbursement for reasonable attorney's fees, witness fees, court costs, investigation and/or litigation expenses, any amounts paid in settlement, or any other amount for which the CITY becomes legally and/or contractually obligated to pay, or any other liabilities of any kind whatsoever whether direct, indirect or consequential whether based upon any alleged violation of the constitution (federal or state), any statute, rule, regulation, or that common law, whether in law or in equity, tort, contract, or otherwise, and/or whether commenced or threatened.

C.4 "OPERATORS' AGENT(S)" shall be defined to include any and all officers, directors, board members, employees, managers, departments, divisions, volunteers, agents, and representatives of the OPERATORS, any subsidiary, parent, joint venture or partner, and/or any and all persons acting by, through, under, or in concert with any of them.

C.5 "POLICE OFFICER(S)" shall be defined to include the Chief of Police, any Lieutenant, Sergeant, Detective, Officer, or any other person or persons of any rank, classification, or title who, pursuant to law, is a sworn officer of the Police Department, including bike patrol officer(s).

C.6 "CITY AGENT(S)" shall be defined to include any and all elected and appointed CITY officials, commissioners, officers, boards, committees, commissions, departments, divisions, trustees, volunteers, employees, agents, representatives, contractors, predecessors, successors, assigns, attorneys, or auditors (whether such persons act or acted in their personal, representative, or official capacities), and any and all persons acting by, through, under, or in concert with any of them.

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