

**REIMBURSEMENT AGREEMENT
ARCO CUP 19-003
6970 Brentwood Boulevard**

1. PARTIES AND DATE

This Agreement is made this ____ day of _____, 20__ (“Effective Date”) by and between the City of Brentwood, California, a Municipal Corporation (“City”) and Strauch Brother Incorporation (“Developer”). (Each a “Party” and collectively, “Parties.”)

2. RECITALS

2.1 As a condition to the development of Developer's Property, City required Developer to design, construct and install offsite improvements (“Improvements”). Plans for the Improvements will be completed and approved by the City pursuant to Title 16 of the City Brentwood Municipal Code and are described in more detail in Exhibit "A" attached.

2.2 Developer has advanced the costs of designing, financing, constructing, installing and inspecting the approved facilities subject to reimbursement from the City.

3. TERMS

3.1 Design and Construction of Improvements. Developer shall be solely responsible for designing, financing, bonding, constructing, installing and providing for the inspection of the Improvements. No reimbursement shall be allowed under this Agreement for any Improvement that has not been constructed and accepted by City or bonded in accordance with City ordinances and policies or secured by Developer in a manner satisfactory to the Director of Engineering/City Engineer. The Improvements shall be fully completed and ready for acceptance within the time period set forth in the Conditions of Approval for CUP 19-003. City shall approve the plans and specifications for the work prior to construction. The design, construction and installation of the Improvements shall be to the satisfaction of City in its sole and reasonably exercised discretion.

3.2 Source and Method of Reimbursement.

A. Upon acceptance of improvements by City Council, City shall provide payment to Developer for the costs associated with the construction, installation, inspection and project management of the Improvements indicated in Exhibit “A”.

3.3. Maximum Reimbursement. The total amount of the reimbursement obligation for the facilities described in Exhibit "A" shall be TWO HUNDRED AND TEN THOUSAND DOLLARS (\$210,000).

3.4 Inspection. The City shall have the right at all times to inspect the construction of the Improvements to confirm compliance with City plans and specifications.

3.5 Indemnity and Insurance

A. Indemnity.

i. Developer hereby agrees to and shall indemnify and hold City and its officers, agents, and employees harmless from any and all liabilities, obligations,

damages, costs, injuries, or claims, thereof, (collectively "claims") including, but not limited to, claims for damage or personal injury, including death, and claims for property damage, arising in any manner from the performance or failure to perform the provisions of this agreement. Developer agrees to, and shall, defend, indemnify, and hold harmless the City, its officers, agents, and employees from any suits or actions at law or in equity for damages, liabilities, or obligations caused by or arising from, or alleged to be caused by or arising from, the performance of this agreement.

ii. City does not, and shall not, waive any rights against the Developer which it may have by reason of the aforesaid indemnity clause, because of the City's acceptance, or the deposit with City by Developer, of any of the insurance policies described in this Agreement.

iii. The aforesaid indemnity clause by Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not CITY has prepared, supplied or approved of, plans and specifications for the Improvements, or regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

B. Insurance.

i. Liability Insurance. Prior to the commencement of any work, Developer shall furnish to the CITY, a certificate of insurance establishing satisfactory evidence of a project specific policy of liability insurance which shall be maintained at all times during the performance of their Agreement and until the acceptance of improvements by the City Council, in form and by a responsible company satisfactory to the CITY, insuring that the CITY, its officers, agents, and employees are held harmless and indemnified against loss or liability arising out of the condition of the premises or any of the work to be performed under this agreement by Developer, including all costs of defending any claim arising as a result thereof. All insurance companies affording coverage to the Developer shall be required to add the City of Brentwood as "additional insured" under the insurance policy for all work performed in accordance with this Agreement. Said policy or policies shall provide that the coverage afforded thereby shall be primary coverage to the full limit of liability stated in the declarations, and that if any of the CITY insured's have other insurance against the loss covered by said policy or policies, the other insurance shall be excess only. Said policy or policies shall provide for insurance in accordance with CITY required minimum limits in the amount of Five Million Dollars (\$5,000,000) for bodily injury or death, each person, and Five Million Dollars (\$5,000,000) for bodily injury or death, aggregate, and Five Million Dollars (\$5,000,000) for property damage, aggregate. All insurance companies affording coverage to the Developer shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California acceptable to the City Attorney, preferable with a Best's rating of not less than A:VII. Each policy shall contain an endorsement that said policy shall not be cancelled or coverage reduced except upon thirty (30) days advance written notice thereof to the CITY. Developer shall require its general contractor(s) and/or subcontractor(s) to obtain satisfactory insurance (Commercial General Liability) and add the City of Brentwood as "additional insured" under the policy. The City of Brentwood requires \$2,000,000 commercial general liability for property damage and \$2,000,000 for bodily injury or death, aggregate, and the City shall be sent copies of the insurance certificates and additional insured endorsements for

review and file. In addition, it shall be the responsibility of the Developer to ensure all Contractors and/or Subcontractors compliance with the insurance requirement as outlined in this section.

ii. Worker's Compensation Insurance. Developer shall take out and maintain, during the life of this agreement, Workers' Compensation insurance for all Developer's employees employed at the site of all Improvements, and in case any work is sublet, Developer shall require any general contractor or subcontractor similarly to provide Workers' Compensation insurance for contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by Developer. In case any class of employees engaged in work under this Agreement at the site of the project is not protected under any Workers' Compensation law, Developer shall provide, and shall cause each contractor and subcontractor to provide, adequate insurance for the protection of employees not otherwise protected. Contractor hereby indemnifies CITY for any damage resulting to it from failure of either Developer, its agents, employees, contractor, or subcontractor to take out or maintain such insurance.

3.6 Commencement of Construction and Inspection. Developer and its contractor or subcontractors shall not commence construction of any of the Improvements until Developer has received written authorization from City to proceed. Written authorization shall be in the form of signed approved plans along with permit issuance. All work performed on the Improvements shall be done in strict compliance with the City approved plans, specifications and the contract documents and in a good and workmanlike manner. All work performed by Developer, its contractor or agents to construct the Improvements shall be subject to inspection by City. All fees and costs to construct the Improvements shall be borne solely by Developer, subject to reimbursement as provided herein. Inspection by City or its employees or agents shall not relieve Developer of its liability for design defects or improper or inadequate workmanship.

3.7 Compliance with Applicable Laws. Developer shall insure that all work performed on the Improvements is performed in a manner which complies with all applicable federal, state, county and local government laws, regulations and rules, including all rules and regulations of City, as these laws, rules and regulations may be modified or changed from time to time.

3.8 Contractor Licenses. All work performed on the Improvements shall be done only by contractors licensed in the State of California and qualified to perform the type of work required and comply with the City's Business License Ordinance.

3.9 Acceptance of Work. Upon completion of the Improvements to the satisfaction of City, the Improvements shall be presented to the City Council for dedication and acceptance and for authorization to file a Notice of Completion. The City Council may accept the Improvements if it determines that the Improvements were constructed in accordance with the approved plans, specifications and contract documents that the Improvements operate satisfactorily, and that all other requirements of this agreement have been satisfied. Immediately upon, and as a condition of the expiration of the guarantee period set forth in Section 3.11, Developer shall assign to City all of Developer's rights and remedies, including warranties, as set forth in the approved contract documents, and thereafter City shall have the same recourse under said contract documents that City would have had if City itself had engaged Developer's contractor to construct the Improvements.

3.10 Liability for Work Prior to Formal Acceptance. Until the City Council has formally accepted the Improvements, Developer shall be solely responsible for all damage to the work, 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 negligence of City, or its employees.

3.11 Guarantee. Developer shall guarantee all work and materials for the Improvements to be free from all defects due to faulty materials or workmanship for a period of one (1) year after the date of formal acceptance of the work by City. A guarantee bond in the amount of ten (10) percent of the total cost of the Improvements as determined by the City its sole reasonable exercised discretion, shall be posted with the City prior to its acceptance of the Improvements. Developer shall repair or remove and replace 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 (1) year period, without any expense whatsoever to City. In the event Developer fails to comply with the above-mentioned provisions within thirty (30) days after being notified in writing (or in cases of emergency, immediately) City shall be authorized to proceed to have the defects remedied and made good at the sole cost and expense of Developer, who is hereby contractually bound to pay the costs and charges therefore immediately upon demand. Such action by City will not relieve Developer of the guarantee required by this section. This section shall not, in any way, limit the liability of Developer or any other party for any design or construction defects in the work subsequently discovered by City.

3.12 Record Drawings. Prior to acceptance of the Improvements by the City Council, Developer shall provide City with one mylar copy of record drawings with certification by a licensed engineer in the State of California as to accuracy and completeness. Developer shall be solely responsible and liable for ensuring the completeness and accuracy of the record drawings.

3.13 Ownership of the Improvements. From and after acceptance of the Improvements by formal action of the City Council, ownership of the Improvements shall be vested exclusively in City.

3.14 Notice. Any notices required or desired to be sent pursuant to this agreement shall be addressed as follows:

CITY:
City of Brentwood
Director of Engineering/ City Engineer
150 City Park Way
Brentwood, CA 94513
(925) 516-5420

DEVELOPER:
Strauch Brother Incorporation
Marc Strauch
193 Blue Ravine Rd Ste. 135
Folsom, CA 95630
marc.s@strauchco.com

3.17 Termination. In the event that Developer defaults in the performance of any of its obligations under this agreement or materially breaches any of the provisions of this agreement, City shall have the option to terminate this agreement upon written notice to Developer.

4. GENERAL PROVISIONS

4.1 Entire Agreement. This Agreement contains the entire agreement of the Parties hereto with respect to the matters contained herein and supersedes all other writings and negotiations.

4.2 Assignment. Neither this agreement, nor any part hereof, shall be assignable by Developer without the written consent of the City, not to be unreasonably withheld or delayed.

4.3 Severability. If any term, provision, condition or covenant of this Agreement or its application to either Party or circumstances will be held, to any extent, invalid or unenforceable,

the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, will not be affected, and will be valid and enforceable to the fullest extent permitted by law.

4.4 Authority. The individuals executing this Agreement and the instruments referenced in it on behalf of Developer each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions of this Agreement.

4.5 Jurisdiction, Venue and Governing Law. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of Contra Costa, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county. This Agreement will be governed by the laws of the State of California.

4.6 Waivers. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law will not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of same or of any other term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either Party of any fee or other money which may become due hereunder will not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or any applicable law.

4.7 Time of Essence. Time is of the essence for this Agreement.

DEVELOPER:

DocuSigned by:

By: Marc Strauch

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Printed Name: Marc Strauch

Title: President

DocuSigned by:

By: Marc Strauch

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Printed Name: Marc Strauch

Title: Secretary

CITY:

By: Tim Y. Ogden, City Manager

ATTEST:

By: Margaret Wimberly, City Clerk

APPROVED AS TO FORM:

By: Katherine Wisinski, Interim City Attorney

If a Corporation, Agreement must be signed by one corporate officer from each of the following two groups.

***Group A.**
Chairman,
President, **or**
Vice-President

****Group B.**
Secretary,
Assistant Secretary,
CFO **or** Assistant Treasurer

Otherwise, the corporation **must** attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

EXHIBIT "A"

REIMBURSABLE IMPROVEMENTS

**ARCO CUP 19-003
6970 Brentwood Boulevard**

Reimbursable Improvements	Amount Reimbursable for Improvements
	(Total Project)
Traffic Signal Modifications Brentwood Boulevard/Sunset Road	\$200,000
Project Management 5%	\$10,000
Total Project:	\$210,000