

**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY  
OF THE WEST COVINA  
REDEVELOPMENT AGENCY**

**A G E N D A**

West Covina City Council Chambers  
1444 West Garvey Avenue, West Covina, CA 91790

**Thursday, July 5, 2012**  
**4:00 p.m.**

*Luzmaria Chavez*, Board Member  
*Mike Gregoryk*, Board Member  
*Gerry Hertzberg*, Board Member  
*Mike Lee*, Board Member  
*Carrie A. Sutkin*, Board Member  
*Michael Touhey*, Board Member  
*Vacant*, Representative for County Superintendent of Education

**AMERICANS WITH DISABILITIES ACT**

The Board complies with the Americans with Disabilities Act (ADA). If you will need special assistance at Board Meetings, please call (626) 939-8433 (voice) or (626) 960-4422 (TTY) from 8 to 5 Monday through Thursday, at least 48 hours prior to the meeting to make arrangements.

**AGENDA MATERIAL**

Agenda material is available for review at the West Covina City Clerk's office, Room 317 in City Hall, 1444 W. Garvey Avenue, West Covina and at [www.westcovina.org](http://www.westcovina.org). Any writings or documents regarding any item on this agenda not exempt from public disclosure, provided to a majority of the Oversight Board that is distributed less than 72 hours before the meeting, will be made available for public inspection in the City Clerk's office, Room 317 of City Hall during normal business hours.

**PUBLIC COMMENT**

Any member of the public may address the Board on items within the Board's subject matter jurisdiction during Public Comments. The Board may not take action on matters not listed on the posted agenda. If you would like to address the Board, please complete a Speaker Card and submit to the Board Secretary. All comments are limited to three (3) minutes per speaker. All speakers shall observe decorum and order as specified in the *Rules of Procedure of the Oversight Board to the Successor Agency of the West Covina Redevelopment Agency*.

Thursday, July 5, 2012

4:00 p.m.

**I. CALL TO ORDER:**

**A. Roll Call**

- Luzmaria Chavez, Board Member
- Mike Gregoryk, Board Member
- Gerry Hertzberg, Board Member
- Mike Lee, Board Member
- Carrie A. Sutkin, Board Member
- Michael Touhey, Board Member
- Vacant, Representative for County Superintendent of Education

**B. Pledge of Allegiance**

**C. Oath of Office**

The West Covina Assistant City Clerk shall administer the Oath of Office to new appointees to the City of West Covina Oversight Board.

**D. Election of Chairperson and Vice Chairperson**

As a result of the recent resignation of the Chairman Fernando Oliveros and Vice Chairman Efrain Escobedo, the Oversight Board will need to elect a new Chairperson and Vice Chairperson. Upon the conclusion of the election(s), the Chairperson will take their seat at the head of the dais and conduct the meeting.

Recommended Action

Staff recommends that the Oversight Board to the Successor Agency of the West Covina Redevelopment Agency:

- a. Elect a Chairperson for the Oversight Board to the Successor Agency of the West Covina Redevelopment Agency;
- b. Elect a Vice Chairperson for the Oversight Board to the Successor Agency of the West Covina Redevelopment Agency;
- c. Adopt Resolution No. OB-0010 reflecting the selection of the Chairperson and Vice Chairperson.

**II. CHANGES TO AGENDA:**

**III. PUBLIC COMMENT:**

This is the time set aside for public comments. Please step forward to the podium and state your name and city of residence for the record when recognized by the Chairperson.

**IV. CONSENT AGENDA:**

*All matters listed under CONSENT CALENDAR are considered to be routine and can be acted on by one roll call vote. There will be no separate discussion of these items unless members of the Oversight Board request a specific item to be removed from the Consent Calendar for separate discussion or action.*

**A. Approval of Minutes (receive and file):**

**1. Regular Meeting Minutes of April 19, 2012 May 3, 2012**

Recommended Action

to approve all items on the Consent Agenda as recommended

except: \_\_\_\_\_

**V. EXECUTIVE DIRECTOR/SUCCESSOR AGENCY REPORTS**

**A. Update of the State of California Department of Finance Approvals/Denials of Schedules of Distribution of Future Tax Revenues (also known as the Recognized Obligation Payment Schedules "ROPS")**

Staff will provide an update on the State of California Department of Finance's ("DOF") approval and denial of items contained within the Schedules of Distribution of Future Tax Revenues (also known as the Recognized Obligation Payment Schedules "ROPS") for the period of January 1, 2012 through June 30, 2012 and July 1, 2012 through December 31, 2012.

Recommended Action

This is an informational item only. No action is required.

**B. Assembly Bill 1484 (AB 1484)**

To discuss recently passed legislation that affects the roles and responsibilities of the Oversight Board and Successor Agency.

Recommended Action

This is an informational item only. No action is required.

**VI. BUSINESS ITEM(S):**

**A. Review of Assets for Eastland Shopping Center, Lakes Office Development and Westfield Plaza (Mall)**

This report reviews 14 parcels of land owned by the former redevelopment agency. Staff will provide a brief staff report and provide a tour to the Oversight

Board Members of these properties. To prevent any Brown Act violation concerns, the Board Members will be caravanned in separate vehicles in groups no larger than 3 Board Members to the development areas (Eastland Shopping Center, Lakes Office Development and Westfield Plaza). At specific development areas, staff will provide additional information and/or clarification, if necessary.

Recommended Action

Staff recommends that the Oversight Board to the Successor Agency of the West Covina Agency Redevelopment Agency receive and file the staff report and recess the regular meeting to tour properties owned by the former redevelopment agency at the Eastland Shopping Center (8451-012-907), Lakes Office development (8474-011-942 & 943) and Westfield Plaza (8474-003-915, 918, 928, 929, 931, 932, 933, 934, 935, 939, & 940). At each of these locations, the meeting will reconvene for the purpose of receiving an overview of each property by Successor Agency staff and to address any questions from the members of the Oversight Board. The public will be invited to attend the meeting at each of these locations to observe the discussion/questions of the Oversight Board. After visiting each location, the Oversight Board will return to City Hall for purpose of concluding and adjourning this evening's meeting.

**VII. STUDY SESSION**

No Items

**VIII. BOARD MEMBERS' COMMENTS**

**IX. CLOSED SESSION**

No Items

**X. ADJOURNMENT**

Copies of staff reports or other written documentation, if any, relating to each item of business described above are on file in the West Covina City Hall, City Clerk's Office, 1444 West Garvey Avenue, West Covina, CA 91790, and are available for public inspection upon request during regular business hours of 8:00am to 5:30 p.m., Monday through Thursday.

Should any person have a question concerning any of the above agenda items prior to the meeting described herein, he or she may contact Christopher J. Chung, Community Development Commission, either in person at the Community Development Commission Department at the West Covina City Hall, 1444 West Garvey Avenue, West Covina, CA 91790, or by calling via telephone at (626) 939-8401 during regular business hours.

**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY  
OF THE WEST COVINA REDEVELOPMENT AGENCY**

**AGENDA REPORT**

Item No. I - D

Date: July 5, 2012

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**TO:** Chairman and Members of the Oversight Board to the Successor Agency of the West Covina Redevelopment Agency

**FROM:** Andrew G. Pasmant, City Manager/Executive Director

**BY:** Christopher J. Chung, Successor Agency Staff Member

**SUBJECT: ELECTION OF CHAIRPERSON AND VICE CHAIRPERSON**

**RECOMMENDATION:**

Staff recommends that the Oversight Board to the Successor Agency of the West Covina Redevelopment Agency:

- a. Elect a Chairperson for the Oversight Board to the Successor Agency of the West Covina Redevelopment Agency;
- b. Elect a Vice Chairperson for the Oversight Board to the Successor Agency of the West Covina Redevelopment Agency;
- c. Adopt Resolution No. OB-0010 reflecting the selection of the Chairperson and Vice Chairperson.

**PURPOSE:**

To elect a Chairperson and a Vice Chairperson for the Oversight Board to the Successor Agency of the West Covina Redevelopment Agency.

**DISCUSSION:**

Pursuant to ABX1 26, each Successor Agency shall have an Oversight Board. Each Oversight Board is required to take certain administrative actions to facilitate the performance of its duties. A Chairperson for the Oversight Board must be selected to preside over the Oversight Board's meetings. It is recommended that the Board also select a Vice Chairperson to serve in the absence or incapacity of the Chairperson.

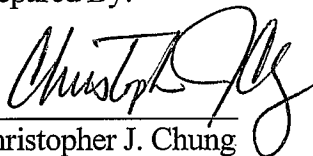
On April 19, 2012, the Oversight Board elected Juan Fernando Oliveros as Chairman and Efrain Escobedo as Vice Chairman. Following the first meeting of April 19, 2012 of the Oversight Board, the following Board members resigned:

- Ernesto Morales resigned on April 20, 2012 and Luzmaria Chavez was appointed by the County as his replacement as the “public representative” for the County Board of Supervisors.
- Juan Fernando Oliveros resigned on May 9, 2012 and the County appointed Gerry Hertzberg as his replacement as representative for the “LA County Board of Supervisors”
- Efrain Escobedo resigned on May 9, 2012 and the County appointed Carrie A. Sutkin as his replacement as the representative for the “Largest Special District,” being the Los Angeles County Library, which the Board of Supervisors is the governing body and makes the appointment.
- Dawn Bastin resigned on June 7, 2012, effective June 30, 2012. She was appointed by the County Superintendent of Education and a replacement is forthcoming.

Due to the resignation of Juan Fernando Oliveros and Efrain Escobedo, the Oversight Board currently does not have a Chairperson and Vice Chairperson and needs to conduct a new election to elect a new Chairperson and Vice Chairperson. Upon the conclusion of the election, the Chairperson will take their seat at the head of the dais and conduct the meeting.

All actions must be taken on a majority vote of the total membership of the Board. Given the lack of a Chairperson or Vice Chairperson, one voting procedure for consideration is for Staff to open and close nominations to the Oversight Board for the Chairperson and call for the vote for each nominee. The first nominee to receive four votes will be elected as the Chairperson. The election of the Vice Chairperson could follow the same process by Staff to open and close nominations to the Oversight Board for the Vice Chairperson and call for the vote for each nominee. The first nominee to receive four votes will be elected as the Vice Chairperson.

Prepared By:



Christopher J. Chung  
CDC Director

**Attachment:** Attachment No. 1 - Resolution No. OB-0010

# ATTACHMENT NO. 1

## RESOLUTION NO. OB-0010

**A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE WEST COVINA REDEVELOPMENT AGENCY AMENDING RESOLUTION NO. OB-0001, DESIGNATING A CHAIRPERSON, VICE-CHAIRPERSON AND IDENTIFYING ADDITIONAL OVERSIGHT BOARD MEMBERS AND PROVIDING NOTICE TO THE DEPARTMENT OF FINANCE ("DOF") AS REQUIRED BY HEALTH AND SAFETY CODE SECTION 34179**

**WHEREAS**, California Health and Safety Code Section 34179 requires that each Successor Agency have an Oversight Board: and

**WHEREAS**, Section 34179 further requires that the members of the Oversight Board elect one of their members as the chairperson. In the event that the Chairperson is not available to attend a meeting or perform an obligation required of the Chairperson, it is prudent to also elect a Vice Chairperson who is authorized to act in the absence of the Chairperson; and

**WHEREAS**, Section 34179 also requires that an Oversight Board transmit the names of its Chairperson and members to the Department of Finance; and

**WHEREAS**, the Oversight Board has previously adopted Resolution No. OB 0001 identifying the names of the Oversight Board Members and the Chairperson and Vice-Chairperson; and

**WHEREAS**, since the adoption of Resolution No. OB-0001, Chairman Fernando Oliveros, Vice-Chairman Efrain Escobedo, Board Members Ernesto Morales and Dawn Bastin have resigned; and

**WHEREAS**, the following appointments have therefore been made:

Luzmaria Chavez, public representative for County Board of Supervisors  
Gerry Hertzberg, representative for County Board of Supervisors  
Carrie A. Sutkin, representative for the Largest Special District.

**NOW THEREFORE, THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE WEST COVINA REDEVELOPMENT AGENCY HEREBY RESOLVES:**

**SECTION 1.** The Chairperson of the Oversight Board shall be \_\_\_\_\_.  
The Vice Chairperson shall be \_\_\_\_\_.

**SECTION 2.** The Successor Agency staff is hereby directed to transmit a copy of this resolution identifying the replacement appointees and Chairperson and Vice Chairperson to the State Department of Finance.

**SECTION 3.** The Oversight Board Secretary shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED on this 5<sup>th</sup> day of July, 2012.

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Chairperson  
Oversight Board to the Successor Agency  
of the West Covina Redevelopment Agency

ATTEST

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Susan Rush, Secretary  
Oversight Board to the Successor Agency  
of the West Covina Redevelopment Agency

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Oversight Board to the Successor Agency of the West Covina Redevelopment Agency at a special meeting held on the 19<sup>th</sup> day of April by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Susan Rush, Secretary  
Oversight Board to the Successor Agency  
of the West Covina Redevelopment Agency



**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY  
OF THE WEST COVINA  
REDEVELOPMENT AGENCY**

**MINUTES**

West Covina City Council Chambers  
1444 West Garvey Avenue, West Covina, CA 91790

**Special Meeting**  
**Thursday, April 19, 2012**  
**4:00 p.m.**

**I. CALL TO ORDER:**

Meeting was called to order at 4:07 p.m.

**A. Roll Call/Introduction**

Board Members Present: Efrain Escobedo, Mike Lee, Fernando Oliveros,  
Michael Touhey, Ernesto Morales, Mike Gregoryk  
(arrived at 4:25 p.m.)

Board Members Absent: Dawn Bastin

Staff: City Manager/Executive Director Andrew Pasmant,  
Finance Director Tom Bachman, Successor Agency  
Staff Member Chris Chung, Oversight Board  
Secretary Sue Rush

**Election of Chairperson**

Board Member Touhey called for nomination for chairperson.

Board Member Lee nominated Mike Touhey. Board Member Morales nominated  
Fernando Oliveros, seconded by Escobedo. Motion carried 4-1. (Lee voted no).

**B. Pledge of Allegiance**

Board Member Oliveros led the Pledge of Allegiance.

**C. Oath of Office**

Secretary Rush administered the Oath of Office to Board Members.

**D. Introduction of Staff**

City Manager/Executive Director Pasmant introduced City staff.

**II. CHANGES TO AGENDA:**

Motion by Morales, seconded by Lee to confirm the agenda as presented. Motion carried 5-0.

**III. PUBLIC COMMENT:**

Gretchen K. Newsan, Consultant for the County of Los Angeles, requested to reserve her comment for when the ROPS item is presented.

A.J. Magana, Consultant for the County and people of Los Angeles, requested to reserve his time for any questions brought forth when the ROPS are discussed.

**IV. CONSENT AGENDA:**

**A. Approval of Minutes:**

No items.

**V. BUSINESS ITEM(S):**

**A. Election of Chair and Vice Chair**

Item introduced by Chairman Oliveros.

- a. Election of Chairperson conducted at beginning of meeting.
- b. Board member Touhey nominated Efrain Escobedo to serve as Vice Chair. Board Member Lee nominated Mike Touhey as Vice Chair, and then withdrew his nomination. With no other nominations, Efrain Escobedo was elected Vice Chair by a vote of 5-0.
- c. Motion by Touhey and seconded by Escobedo to designate Andrew G. Pasmant, Executive Director to be the Designated Official to the Department of Finance. Motion carried 5-0.
- d. Motion by Morales and seconded by Escobedo to adopt the following resolution.

RESOLUTION NOB OB-0001 – A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE WEST COVINA REDEVELOPMENT AGENCY DESIGNATING A CHAIRPERSON,

VICE-CHAIRPERSON AND PUBLIC OFFICIAL FOR DEPARTMENT  
OF FINANCE CONTACT PURPOSES AS REQUIRED BY HEALTH  
AND SAFETY CODE SECTION 34179.

The Board engaged in discussion regarding errors and omissions insurance. Arnold Alvarez-Glasman, General Counsel to the Successor Agency of the West Covina Redevelopment Agency addressed the immunity provisions set forth in the statute.

Board Member Mike Gregoryk arrived at 4:25 p.m. Secretary Rush administered the Oath of Office to Board Member Gregoryk.

Motion by Escobedo and seconded by Morales to have Successor Agency Legal Counsel Alvarez-Glasman to contact and discuss with legal representatives from each Board Member's agency the issue of legal representation of the Board as a whole and to report findings to the Executive Director at the next meeting.

Motion carried 6-0.

Item V-A.d continued - Secretary Rush stated a vote has not yet been recorded on the motion and second on the floor for Resolution No. OB-0001.

Motion carried 6-0.

**B. Date and Time for Future Meetings**

Item introduced by Chairman Oliveros.

Motion by Gregoryk and second by Lee to adopt the following resolution.

Motion carried 6-0

RESOLUTION NO. OB-0002 – A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE WEST COVINA REDEVELOPMENT AGENCY ESTABLISHING THE DATE, TIME AND LOCATION OF OVERSIGHT BOARD MEETINGS

**C. Approval of Oversight Board Resolutions adopting Bylaws and Rules of Procedure for the Oversight Board to the Successor Agency of the West Covina Redevelopment Agency.**

Item introduced by Chairman Oliveros. Executive Director Pasmant stated that a typographical error correction is to be made as follows:

Resolution OB-0004, Exhibit A, Section 7B, the reference to Article III, should properly read Article I, not III.

Board engaged in discussion as to when the public would address the Board, during one public comment period or at the time each action item is being discussed, and for amount of time a speaker may speak before the Board.

Motion by Gregoryk and second by Oliveros to allow the public to address the board once for both agenda and non-agenda items for a maximum of 5 minutes.

Motion failed 2-4 (Escobedo, Lee, Morales, Touhey voting no).

Following further discussion regarding when during the meeting the public would be allowed to address the Board, and for how long the public will be allowed to speak, Board Member Gregoryk restated his previous motion.

Motion by Gregoryk and second by Touhey to allow the public to address the board for one five-minute period, with the public comment portion being held following “changes to the agenda” on the agenda. Motion carried 4-2 (Escobedo and Morales voting no).

Motion by Touhey and second by Gregoryk to adopt the following resolutions, as amended to change oral communications to a total of 5 minutes per speaker, from 3 minutes.

Motion carried 6-0.

RESOLUTION NO. OB-0003 – A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE WEST COVINA REDEVELOPMENT AGENCY APPROVING BYLAWS AND TAKING CERTAIN ACTIONS IN CONNECTION THEREWITH

RESOLUTION NO. OB-0004 – A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE WEST COVINA REDEVELOPMENT AGENCY APPROVING RULES OF PROCEDURE AND TAKING CERTAIN ACTIONS IN CONNECTION THEREWITH

**D. Role and Responsibilities of the Oversight Board**

Item introduced by Chairman Oliveros. Successor Agency staff member Chung provided a brief report. Motion by Touhey and second by Gregoryk to receive and file the report.

Motion carried 6-0.

**E. Proposed Legislation that could affect Oversight Board and Successor Agency**

Successor Agency staff member Chung provided a brief report. Motion by Touhey and second by Escobedo to receive and file the report.

Motion carried 6-0.

**F. Recognized Obligation Payment Schedule**

Gretchen Newsan, Consultant for the County of Los Angeles, addressed the Board of her opinion on certain line items within the ROPS.

Item introduced by Chairman Oliveros. West Covina Finance Director Bachman provided a staff report and brief overview of each line item on the ROPS for the period of January 2012 through June 2012.

A.J. Magana, Consultant for the City of Los Angeles, commented on several points of the discussion.

Arnold Alvarez-Glasman, City Attorney for the City of West Covina and counsel to the West Covina Successor Agency, addressed items on the ROPS and aspects of the AB1X26 legislation.

It was the concurrence of the Board to receive further information regarding each ROPS item. Motion by Morales and second by Gregoryk for a standard template which provides an executive summary and relevant information regarding every ROPS line item, including dates of agreements, parties involved, resolutions, dollar amounts, and whether parties met their obligations.

Motion carried 6-0

The Board engaged in discussion regarding the first ROPS schedule for the period of January 1, 2012 through June 30, 2012.

Motion by Gregoryk and second by Touhey to adopt Resolution No. OB-0005 approving the ROPS for the period of January 1, 2012 through June 30, 2012. The following audible votes were recorded.

AYES – Gregoryk, Lee, Touhey, NOES – Morales, ABSTAIN – Escobedo, Oliveros

Following discussion that all Oversight Board actions require four affirmative votes, the Board revisited Resolution No. OB-0005.

Motion by Escobedo and second by Gregoryk to adopt the following resolution.

Motion carried 4-1-1 (No-Morales, Abstain-Oliveros)

RESOLUTION NO. OB-0005 – A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY FOR THE WEST COVINA REDEVELOPMENT AGENCY APPROVING A SCHEDULES OF DISTRIBUTION OF FUTURE TAX REVENUES, ALSO KNOW AS THE RECOGNIZED OBLIGATION PAYMENT SCHEDULES (ROPS) PURSUANT TO HEALTH AND SAFETY CODE SECTION 34177 FOR THE SIX-MONTH FISCAL PERIOD COMMENCING JANUARY 1, 2012 AND ENDING JUST 30, 2012, AND TAKING CERTAIN ACTIONS IN CONNECTION THEREWITH

The Board engaged in discussion whether to hold the ROPS schedule for the period of July 1, 2012 through December 31, 2012 over to the May 3 meeting and results of not meeting the May 1 submittal deadline to the Department of Finance.

Motion by Escobedo and second by Morales to not approve Resolution No. OB-0006 and carry to May 3 meeting.

Motion failed by a vote of 3-3.

Motion by Gregoryk and second by Touhey to approve Resolution No. OB-0006 with the ability at the May 3 meeting to amend the ROPS schedule and that a submittal cover letter would state the Board has the right to amend.

Motion carried 5-1 (No-Morales)

RESOLUTION NO. OB-0006 – A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE WEST COVINA REDEVELOPMENT AGENCY APPROVING A SCHEDULES OF DISTRIBUTION OF FUTURE TAX REVENUES, ALSO KNOWN AS THE RECOGNIZED OBLIGATION PAYMENT SCHEDULES (ROPS) PURSUANT TO HEALTH AND SAFETY CODE SECTION 34177 FOR THE SIX-MONTH FISCAL PERIOD COMMENCING JULY 1, 2012 AND ENDING DECEMBER 31, 2012 AND TAKING CERTAIN ACTIONS IN CONNECTION THEREWITH

**G. Successor Agency Administrative Budget**

Brief staff report presented by West Covina Finance Director Tom Bachman.

Chairman Oliveros left the dais at 8:43 p.m.

Motion by Touhey and second by Gregoryk to adopt the following resolution.

Motion carried 5-0.

RESOLUTION NO. OB-0007 – A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE CITY OF WEST COVINA REDEVELOPMENT AGENCY APPROVING AN ADMINISTRATIVE BUDGET PURSUANT TO HEALTH AND SAFETY CODE SECTION 34177 FOR THE SIX-MONTH FISCAL PERIOD COMMENCING JANUARY 1, 2012 AND ENDING JUNE 30, 2012, AND TAKING CERTAIN ACTIONS IN CONNECTION THEREWITH

Motion by Touhey and second by Gregoryk to adopt the following resolution.

Motion carried 5-0.

RESOLUTION NO. OB-0008 – A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE CITY OF WEST COVINA REDEVELOPMENT AGENCY APPROVING AN ADMINISTRATIVE BUDGET PURSUANT TO HEALTH AND SAFETY CODE SECTION 34177 FOR THE SIX-MONTH FISCAL PERIOD COMMENCING JULY 1, 2012 AND ENDING DECEMBER 31, 2012, AND TAKING CERTAIN ACTIONS IN CONNECTION THEREWITH

Chairman Oliveros returned to the dais at 8:46 p.m.

**H. Housing Successor Agency**

Brief staff report presented by Successor Agency staff Chris Chung.

Motion by Gregoryk and second by Oliveros to adopt the following resolution.

Motion carried 6-0

RESOLUTION NO. OB-0009 -- A RESOLUTION OF THE OVERSIGHT BOARD TO THE WEST COVINA REDEVELOPMENT AGENCY RECOGNIZING THE CITY OF WEST COVINA COMMUNITY DEVELOPMENT COMMISSION (CDC) AS THE SUCCESSOR TO THE HOUSING FUNCTIONS OF THE FORMER WEST COVINA REDEVELOPMENTS AGENCY AND FURTHER RECOGNIZING THE TRANSFER OF HOUSING ASSETS TO THE CDC

**VI. STUDY SESSION**

No Items

**VII. BOARD MEMBERS' COMMENTS**

Chairman Oliveros expressed his appreciation and patience with the process.

Board Member Touhey introduced his fellow councilmember Fred Sykes in the audience.

Board Member Escobedo thanks staff for all the information provided and stated he is looking forward to working with his fellow board members and stated the need to resolve the issue regarding legal counsel for the board.

**VIII. CLOSED SESSION**

No Items

**IX. ADJOURNMENT**

Motion by Oliveros and second by Escobedo to adjourn the meeting at 9:05 p.m.

Submitted by

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Susan Rush  
Oversight Board Secretary



**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY  
OF THE WEST COVINA  
REDEVELOPMENT AGENCY**

**MINUTES**

West Covina City Council Chambers  
1444 West Garvey Avenue, West Covina, CA 91790

**Regular Meeting**  
**Thursday, May 3, 2012**  
**4:00 p.m.**

**I. CALL TO ORDER:**

Meeting was called to order at 4:06 p.m. by Chairman Oliveros.

**A. Roll Call**

Board Members Present: Fernando Oliveros, Dawn Bastin, Luzmaria Chavez,  
Mike Gregoryk, Mike Lee, Michael Touhey

Board Members Absent: Efrain Escobedo

Staff: City Manager/Executive Director Andrew Pasmant,  
Finance Director Tom Bachman, Successor Agency  
Staff Member Chris Chung, Oversight Board  
Secretary Sue Rush

**B. Pledge of Allegiance**

Board Member Oliveros led the Pledge of Allegiance.

**C. Oath of Office**

Secretary Rush administered the Oath of Office to Board Members Bastin and Chavez.

**II. CHANGES TO AGENDA:**

Motion by Oliveros, seconded by Bastin to confirm the agenda as presented. Motion carried 6-0.

**III. PUBLIC COMMENT:**

Lloyd Johnson, West Covina resident, inquired as to how the board will determine how much of the \$29 million [RDA/City loans] will be returned to the City; and inquired as to whom each of the Board Members represents.

Board Members introduced themselves as follows:

Michael Touhey, Mayor of West Covina  
Mike Lee, City of West Covina employee representative  
Dawn Bastin, West Covina Unified School District  
Fernando Oliveros, Community Development Commission of the County of Los Angeles and County appointee  
Luzmaria Chavez, County appointee and resident of City of West Covina  
Mike Gregoryk, Vice – President of Mount San Antonio College

Executive Director Pasmant stated that the amount referred to by Mr. Johnson are loans that are part of the ROPS discussion.

Philip Moreno, West Covina resident, stated his interest in the finances of the City, expressed concerns with lack of information available to the public including the lack of the meeting being posted of the City's website calendar. Asked that a press release be issued when there are resolutions to discussed issues.

#### IV. **CONSENT AGENDA:**

No items on the consent calendar.

#### V. **BUSINESS ITEM(S):**

##### A. **Review of the Schedule of Distribution of Future Tax Revenues (also known as Recognized Obligation payment Schedules "ROPS") Covering the Period of July 1, 2012 through December 31, 2012**

Item introduced by Chairman Oliveros. Staff report presented by Successor Agency staff Chung. Mr. Chung announced one correction to the ROPS attachment, line item number 22, sixth sentence in parenthesis should read (*items 20 and 21 above*) instead of (items 21 and 22 above).

Board Member Touhey commented on the Public Records Act request he made of the County at the previous meeting. Board Member Gregoryk stated he does not have a copy of the documents being referred to.

Board Members engaged into discussion regarding enforceable agreements as listed on the ROPS.

County Counsel addressed provisions of the AB1X26 legislation. Discussion followed regarding interpretation of the legislation language and the validity of the agreements between the former redevelopment agency and other agencies. Successor Agency Counsel Alvarez-Glasman also address the legislation.

Following discussion of various ROPS line items, the following motion was made:

Motion by Gregoryk and seconded by Touhey to approve the Recognized Obligation Payment Schedules (ROPS) for the period of July 1, 2012 through December 31, 2012 with the caveat that the Board has the privilege to add and remove items.

Motion carried 5-1 (Oliveros - No)

**VI. STUDY SESSION**

No Items

**VII. BOARD MEMBERS' COMMENTS**

Chairman Oliveros thanked the Successor Agency staff, County counsel and the City Attorney's office for their opinions. Chairman Oliveros invited the public to participate in the process.

Board Member Touhey requested the Successor Agency staff make copies of the documents he received from the County, regarding his Public Records Act request, for all members of the board.

Board Member Gregoryk echoed Chairman Oliveros comments and the openness allowed with the Board.

**VIII. CLOSED SESSION**

No Items

**IX. ADJOURNMENT**

Motion by Touhey and second by Gregoryk to adjourn the meeting at 5:53 p.m.

Submitted by

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Oversight Board Secretary

**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY  
OF THE WEST COVINA REDEVELOPMENT AGENCY**

**AGENDA REPORT**

Item No. V - A

Date: July 5, 2012

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**TO:** Chairman and Members of the Oversight Board to the Successor Agency  
of the West Covina Redevelopment Agency

**FROM:** Andrew G. Pasmant, City Manager/Executive Director

**BY:** Thomas Bachman, Finance Director

Christopher J. Chung, Successor Agency Staff Member

**SUBJECT:** UPDATE OF THE STATE OF CALIFORNIA DEPARTMENT OF  
FINANCE APPROVALS/DENIALS OF SCHEDULES OF  
DISTRIBUTION OF FUTURE TAX REVENUES (ALSO  
KNOWN AS THE RECOGNIZED OBLIGATION PAYMENT  
SCHEDULES "ROPS")

**RECOMMENDATION:**

This is an informational item only. No action is required.

**PURPOSE:**

Staff will provide an update on the State of California Department of Finance's ("DOF") approval and denial of items contained within the Schedules of Distribution of Future Tax Revenues (also known as the Recognized Obligation Payment Schedules "ROPS") for the period of January 1, 2012 through June 30, 2012 and July 1, 2012 through December 31, 2012.

**DISCUSSION:**

On April 19, 2012, the Over Sight Board to the Successor Agency of the West Covina Redevelopment Agency approved Resolution No. OB-0005, approving the ROPS for the period January 1, 2012 through June 30, 2012 and Resolution No. OB-0006, approving the ROPS for the period July 1, 2012 through December 31, 2012.

On April 24, 2012, Successor Agency staff submitted the approved ROPS to the County Auditor, State Controller's Office and DOF. DOF requested supporting documentation on several items and blanket denied such enforceable obligations in question. Staff provided DOF with the requested information and on May 31, 2012, DOF issued a letter that superseded all previously approvals and denials.

The DOF May 31, 2012 letter is attached as Attachment No.1. For the ROPS for the period of January through June 2012, DOF disqualified Line Item 15 (Housing Set Aside) and Line Items 21 through 25 (loans payable to the City of West Covina totaling \$60.9 million). In addition, DOF limited the maximum administrative cost allowance at \$292,805, which is five percent of the property tax allocated to the West Covina Successor Agency in January through June.

For the ROPS for the period of July through December 2012 (Attachment No. 2), DOF disqualified Line Item 14 (County Tax Collection Services) and Line Items 20 through 23 (loans payable to the City of West Covina totaling \$52.2 million). DOF indicated that the County Tax Collection Services is paid prior to distribution of ROPS. In addition, DOF limited the maximum administrative cost allowance at \$250,000.

In response to DOF's May 31, 2012 letter (Attachment No. 3), Successor Agency staff sent a letter, dated June 19, 2012 (Attachment No. 2) to DOF requesting re-consideration of the items. DOF denied and further requested clarification on DOF's calculation on the maximum administrative cost allowance. To date, no response has occurred.

Prepared By:



Thomas Bachman  
Finance Director



Christopher J. Chung  
CDC Director

**Attachments:** Attachment No. 1 – May 21, 2012 DOF Letter  
Attachment No. 2 – Jan. – June 2012 Schedule of DOF Approved ROPS  
Attachment No. 3 – Jul. – Dec. 2012 Schedule of DOF Approved ROPS  
Attachment No. 4 – June 19, 2012 City Letter to DOF



ATTACHMENT NO. 1

DEPARTMENT OF  
**FINANCE**

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO, CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

May 31, 2012

Dennis Swink, City Controller  
City of West Covina  
1444 West Garvey Avenue  
West Covina, CA 91790

Dear Mr. Swink:

Subject: Recognized Obligation Payment Schedule Approval Letter

Pursuant to Health and Safety Code (HSC) section 34177 (l) (2) (C), the City of West Covina Successor Agency submitted Recognized Obligation Payment Schedules (ROPS) to the California Department of Finance (Finance) on April 24, 2012 for the periods January to June 2012 and July to December 2012. Finance is assuming appropriate oversight board approval. Finance has completed its review of your ROPS, which may have included obtaining clarification for various items.

This letter supersedes Finance's letter dated May 3, 2012 wherein we questioned certain line items. Except for the following items disallowed in whole or in part as enforceable obligations, Finance is approving the remaining items listed in your ROPS for both periods.

HSC section 34171 (d) lists enforceable obligation (EO) characteristics. Based on a sample of line items reviewed and application of the law, the following do not qualify as EOs:

January to June 2012 ROPS:

- Line item 15 – Housing Set Aside in the amount of \$1.8 million. The requirement to set aside 20 percent of redevelopment agency (RDA) tax increment for low and moderate income housing purposes ended with the passing of the redevelopment dissolution legislation. HSC section 34177 (d) requires that all unencumbered balances in the Low and Moderate Income Housing Fund be remitted to the county auditor controller for distribution to the taxing entities.
- Line items 21 through 25 – Loans payable to the City of West Covina totaling \$60.9 million. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable unless the loan agreements were entered into within the first two years of the date of the creation of the RDA.
- Administrative cost claimed exceeds allowance by \$1.6 million. HSC section 34171 (b) limits the 2011-12 administrative cost allowance to five percent of the property tax allocated to the successor agency or \$250,000, whichever is greater. Five percent of the property tax allocated to West Covina Successor Agency in January through June

2012 is approximately \$292,805 and is therefore the maximum administrative cost allowance.

July to December 2012 ROPS:

- Line Item 14 – County Tax Collection Services in the amount of \$9.1 million. The county auditor deducts the collection fees prior to disbursement of the tax allocation funds.
- Line Items 20 through 23 – Loans payable to the City of West Covina totaling \$52.2 million. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created RDA and the former RDA are not enforceable unless the loan agreements were entered into within the first two years of the date of the creation of the RDA.
- Administrative cost claimed exceeds allowance by \$1.1 million. HSC section 34171 (b) limits the 2012-13 administrative cost allowance to three percent of the property tax allocated to the successor agency or \$250,000, whichever is greater. Three percent of the property tax allocated to West Covina Successor Agency in July through December 2012 is approximately \$161,247. Therefore, the administrative cost allowance is \$250,000.

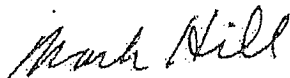
This is our determination with respect to any items funded from the Redevelopment Property Tax Trust Fund (RPTTF) for the June 1, 2012 property tax allocations. If your oversight board disagrees with our determination with respect to any items not funded with property tax, any future resolution of the disputed issue may be accommodated by amending the ROPS for the appropriate time period. Items not questioned during this review are subject to a subsequent review, if they are included on a future ROPS. If an item included on a future ROPS is not an enforceable obligation, Finance reserves the right to remove that item from the future ROPS, even if it was not removed from the preceding ROPS.

Please refer to Exhibit 12 at [http://www.dof.ca.gov/assembly\\_bills\\_26-27/view.php](http://www.dof.ca.gov/assembly_bills_26-27/view.php) for the amount of RPTTF that was approved by Finance based on the schedule submitted.

As you are aware the amount of available RPTTF is the same as the property tax increment that was available prior to ABx1 26. This amount is not and never was an unlimited funding source. Therefore as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available in the RPTTF.

Please direct inquiries to Evelyn Suess, Supervisor or Michael Barr, Lead Analyst at (916) 322-2985.

Sincerely,



MARK HILL  
Program Budget Manager

cc: Mr. Thomas Bachman, Assistant City Manager/Finance Director, City of West Covina  
Ms. Kristina Burns, Program Specialist III, Los Angeles County

# SCHEDULE OF DISTRIBUTION OF FUTURE TAX REVENUES RECOGNIZED OBLIGATION PAYMENT SCHEDULE

Per AB 26 - Section 34167 and 34169  
Adopted April 17, 2012

Project Name / Debt Obligation	Jan	Feb	March	April	May	June	SAVOB Approved ROPS	DOF Approved ROPS
1999 Tax Allocation Bonds	1,200.00	1,200.00	2,400.00	28,600.00	1,200.00	2,400.00	\$ 37,000.00	\$ 35,800.00
2002 Tax Allocation Bonds			2,177,736.00				\$ 217,736.00	\$ 217,736.00
1996 CFD Refunding Bonds			1,028,700.00				\$ 1,028,700.00	\$ -
1988 Lease Rev Refunding Bnds	940.00	940.00	2,290.00	27,940.00	940.00	2,290.00	\$ 35,340.00	\$ 34,400.00
2006 Lease Revenues Bonds	93,245.00	93,245.00	93,245.00	93,245.00	93,245.00	93,245.00	\$ 559,470.00	\$ 466,225.00
1998 Housing Set Aside Bonds			117,229.00				\$ 117,229.00	\$ 117,229.00
2001 Housing Set Aside Bonds			188,218.00				\$ 188,218.00	\$ 188,218.00
SERAF 2010 Housing Loan						1,632,327.00	\$ 1,632,327.00	\$ 1,632,327.00
SERAF 2011 Housing Loan						266,595.00	\$ 266,595.00	\$ 266,595.00
DDA - The Lakes	30,000.00			31,000.00		21,000.00	\$ 82,000.00	\$ 52,000.00
OPA - CFD							\$ -	\$ -
CFD Tax Increment Pledge						1,343,170.00	\$ 1,343,170.00	\$ 1,343,170.00
CSS - CFD	6,115.00	6,115.00	6,115.00	6,115.00	6,115.00	6,115.00	\$ 36,690.00	\$ 30,575.00
SB2557 Admin							\$ -	\$ -
Housing Set Aside	229,581.00						\$ 229,581.00	\$ -
Passthru	326,833.00	326,833.00	326,833.00	326,833.00	326,833.00	326,833.00	\$ 1,960,998.00	\$ -
Repay County Loan						1,340,325.00	\$ 1,340,325.00	\$ 1,340,325.00
Non personnel operation cost	421,332.00	32,683.00	32,683.00	32,683.00	32,683.00	32,683.00	\$ 584,747.00	\$ -
Employee Costs	231,954.00	19,131.00	69,210.00	40,196.00	40,196.00	40,196.00	\$ 440,883.00	\$ -
Anticipated/Existing Litigation	394,536.00	150,000.00	150,000.00	150,000.00	150,000.00	150,000.00	\$ 1,144,536.00	\$ -
City Note - Administration	123,633.00	123,633.00	123,633.00	123,633.00	123,633.00	123,633.00	\$ 741,798.00	\$ -
City Note - CIP	21,649.00	21,649.00	21,649.00	21,649.00	21,649.00	21,649.00	\$ 129,894.00	\$ -
City Note Revolving	46,385.00	46,385.00	46,385.00	46,385.00	46,385.00	46,385.00	\$ 278,310.00	\$ -
Sales Tax Reimbursement						1,250,000.00	\$ 1,250,000.00	\$ -
City Line Of Credit	5,031,250.00						\$ 5,031,250.00	\$ -
Golf Course Agreement							\$ -	\$ -
<b>Totals - This Page</b>	<b>\$ 6,958,653.00</b>	<b>\$ 821,814.00</b>	<b>\$ 2,426,326.00</b>	<b>\$ 928,279.00</b>	<b>\$ 842,879.00</b>	<b>\$ 6,698,846.00</b>	<b>\$ 18,676,797.00</b>	<b>\$ 5,724,600.00</b>
							<b>DOF Approval</b>	<b>\$ 5,667,096.00</b>
							<b>Difference</b>	<b>\$ 57,904.00</b>

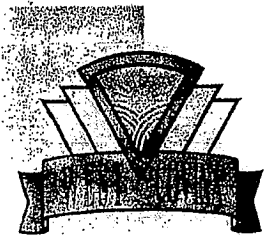


**SCHEDULE OF DISTRIBUTION OF FUTURE TAX REVENUES  
FINAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE**

Per AB 26 - Section 34167 and 34169  
Adopted April 17, 2012

Project Name / Debt Obligation	July	August	September	October	November	December	Total	DOF Approved ROPS
1) 1999 Tax Allocation Bonds	14,700.00	1,200.00	2,400.00	14,700.00	136,200.00	2,400.00	\$ 171,600.00	\$ 171,600.00
2) 2002 Tax Allocation Bonds	5,000.00		777,736.00				\$ 782,736.00	\$ 782,736.00
3) 1996 CFD Refunding Bonds			2,798,700.00				\$ 2,798,700.00	\$ -
4) 1988 Lease Rev Refunding Bnds	14,840.00	426,340.00	2,690.00	14,840.00	1,340.00	2,690.00	\$ 462,740.00	\$ 462,740.00
5) 2006 Lease Revenues Bonds	93,915.00	93,915.00	93,915.00	93,915.00	93,915.00	93,915.00	\$ 563,490.00	\$ 563,490.00
6) 1998 Housing Set Aside Bonds	3,500.00		327,229.00				\$ 330,729.00	\$ 330,729.00
7) 2001 Housing Set Aside Bonds			588,217.00			3,500.00	\$ 591,717.00	\$ 591,717.00
8) SERAF 2010 Housing Loan	136,027.25	136,027.25	136,027.25	136,027.25	136,027.25	136,027.25	\$ 816,163.50	\$ 816,163.50
9) SERAF 2011 Housing Loan	22,216.25	22,216.25	22,216.25	22,216.25	22,216.25	22,216.25	\$ 133,297.50	\$ 133,297.50
10) DDA - The Lakes					135,000.00		\$ 135,000.00	\$ 135,000.00
11) OPA - CFD				885,000.00			\$ 885,000.00	\$ -
12) CFD Tax Increment Pledge							\$ -	\$ -
13) CSS - CFD	6,236.42	6,236.42	6,236.42	6,236.42	6,236.42	6,236.42	\$ 37,418.50	\$ 37,418.50
14) SB2557 Admin						261,000.00	\$ 261,000.00	\$ -
15) Passthru	333,333.00	333,333.00	333,333.00	333,333.00	333,333.00	333,333.00	\$ 1,999,998.00	\$ -
16) Repay County Loan						1,350,000.00	\$ 1,350,000.00	\$ 1,350,000.00
17) Non personnel operation cost	32,683.83	32,683.83	32,683.83	32,683.83	32,683.83	32,683.83	\$ 196,103.00	\$ -
18) Employee Costs	40,195.55	40,195.55	40,195.55	40,195.55	40,195.55	40,195.55	\$ 241,173.31	\$ -
19) Anticipated/Existing Litigation	150,000.00	150,000.00	150,000.00	150,000.00	150,000.00	150,000.00	\$ 900,000.00	\$ -
20) City Note - Administration	121,790.67	121,790.67	121,790.67	121,790.67	121,790.67	121,790.67	\$ 730,744.00	\$ -
21) City Note - CIP	22,235.00	22,235.00	22,235.00	22,235.00	22,235.00	22,235.00	\$ 133,410.00	\$ -
22) City Note Revolving	47,641.00	47,641.00	47,641.00	47,641.00	47,641.00	47,641.00	\$ 285,846.00	\$ -
23) Sales Tax Reimbursement	116,666.67	116,666.67	116,666.67	116,666.67	116,666.67	116,666.67	\$ 700,000.00	\$ -
24) Golf Course Agreement							\$ -	\$ -
<b>Totals - This Page</b>	<b>\$ 1,160,980.64</b>	<b>\$ 1,550,480.64</b>	<b>\$ 5,619,912.64</b>	<b>\$ 2,037,480.64</b>	<b>\$ 1,395,480.64</b>	<b>\$ 2,742,530.64</b>	<b>\$ 14,506,865.81</b>	<b>\$ 5,374,891.50</b>

ATTACHMENT NO. 4



City Manager's  
Office

June 19, 2012

VIA U.S. MAIL AND E-MAIL [Redevelopment Administration@dof.ca.gov]

Mark Hill, Program Budget Manager  
California State Department of Finance  
915 L Street  
Sacramento, CA 95814-3706

**RE: Department of Finance Comments on West Covina ROPS**

Dear Mr. Hill:

The Successor Agency of the City of West Covina ("Successor Agency") is in receipt of your letter dated May 31, 2012 wherein you listed items that in the opinion of the Department of Finance ("DOF") do not qualify as enforceable obligations. By way of this letter, the Successor Agency concurs with some of the DOF's findings, but strongly disputes other determinations made by the DOF. In addition, the Successor Agency offers additional information that should help clarify the Successor Agency's *proper* and *lawful* reporting of such items as enforceable obligations.

In addition to this letter, the Successor Agency would appreciate the opportunity to speak with representatives of the DOF at an in-person meeting at the Department's Sacramento office. Accordingly, please consider this letter a formal request for such an in-person meeting.

**THE SUCCESSOR AGENCY CONCURS WITH DOF  
REGARDING HOUSING SET ASIDE**

The Successor Agency concurs with the DOF's determination regarding the Housing Set Aside in the amount of \$1.8 million, listed as line item 15 on the January through June 2012 Recognized Obligations Payment Schedule ("ROPS"). The Successor Agency acknowledges that this obligation is eliminated with the dissolution of redevelopment agencies. Since this ROPS covered January through June 2012, this amount was included to represent the 20% of tax increment that was received by the former Redevelopment Agency ("Former RDA" or "RDA") in January 2012 and deposited into the housing fund. This obligation will not be included on any future ROPS. It should be noted that while the Successor Agency does not currently challenge the position of the DOF on this issue, the Successor Agency reserves its right to make claims on these amounts in the event that legislation is adopted which authorizes the retention of Housing Set Aside funds by local agencies.

Mark Hill, Program Budget Manager, DOF  
Re: City of West Covina ROPS  
June 19, 2012  
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**THE CITY-FORMER RDA NOTES AND THE SALES TAX AGREEMENTS  
ARE PROPERLY LISTED ON THE ROPS**

- **Funding Agreement, Capital Improvement Projects Agreement, and Revolving Loan Agreement**

The Successor Agency strongly disagrees with the DOF's determination that the City-Former RDA notes, listed as line items 21 through 23 (on the January to June, 2012 ROPS) and line items 20 through 22 (on the July to December, 2012 ROPS) are not enforceable obligations.

These notes were lawfully entered into by and between the Former RDA and the City, as a loan by the City to help establish the RDA. On August 9, 1971, *the same date that the Former RDA was created*, the City also established a Community Redevelopment Agency Administrative Fund to fund administrative expenses and overhead of the RDA.<sup>1</sup> On February 28, 1972, both the City and the Former RDA approved a **Funding Agreement (line items 21 and 20, respectively)** which provided that the City would deposit funds into the Community Redevelopment Agency Administrative Fund for use in defraying administrative expenses and overhead costs of the RDA. The Agreement provided that any deposits from the City to the RDA shall constitute a loan from the City to the RDA and not a grant, with repayment to be prescribed by the City Council from funds available to the RDA. Advances and repayments were made as funding became available until July 14, 1986, at which time the City and the RDA set repayment schedule to begin on July 1, 1991.<sup>2</sup>

The Funding Agreement approved on February 28, 1972 was amended in 1976 to include **Capital Improvement Projects (line items 22 and 21, respectively)**. A payment schedule of this loan was established and commenced on July 1, 1991.<sup>3</sup> On December 10, 1990, the repayment schedule was modified and consolidated with the **Revolving Loan Agreement between the City and the RDA (line items 23 and 22, respectively)**. The Revolving Loan Agreement was for an initial \$815,500 for the purchase of properties in the CBD Project Area (Fashion Plaza).<sup>4</sup> An additional amount of \$3 million was later appropriated to the Revolving Loan in 1986, with repayment of the new total amount of \$3,815,500 to commence on July 1, 1990.<sup>5</sup> After the Revolving Loan Agreement was modified and consolidated with the Administrative Loan (items 21 and 22 above), the payments began on July 1, 1991 and are continuing per the repayment schedule<sup>6</sup> with a final maturity in 2025.

First and foremost, all three of these agreements fall squarely within the bounds of Health & Safety Code § 34171(d)(1)(E), which includes within the definition of "enforceable

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<sup>1</sup> City Resolution No. 4424.

<sup>2</sup> City Resolution No. 7226, RDA Resolution No. 344.

<sup>3</sup> *Id.*

<sup>4</sup> City Resolution No. 7135.

<sup>5</sup> City Resolution No. 7180.

<sup>6</sup> Later modified in 2008.

Mark Hill, Program Budget Manager, DOF  
Re: City of West Covina ROPS  
June 19, 2012  
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obligation" "[a]ny legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy." These notes are legally binding and enforceable, and violate neither the constitutional debt limit nor public policy. Rather, these agreements fostered the formation of the Former RDA, which furthered the State's stated interest in eliminating blight through the formation of redevelopment agencies. (H&S § 33131(a); *City of Cerritos v. Cerritos Taxpayers Ass'n* (2010) 183 Cal.App.4th 1417, 1424.) **Accordingly, by approving these three agreements, the City was lawfully pledging revenues towards the formation of the Former RDA, and the DOF must find that these agreements constitute enforceable obligations.**

Second, as noted above, the Funding Agreement was lawfully entered into between the City and the Former RDA on February 28, 1972, approximately six months after the Former RDA was formed on August 9, 1971. Accordingly, the Funding Agreement falls squarely within California Health & Safety Code section 34171(d)(2), which states:

"[L]oan agreements entered into between the redevelopment agency and the city, county, or city and county that created it, within two years of the date of creation of the redevelopment agency, *may be deemed to be enforceable obligations.*" (emphasis added).

As such, the DOF's position that the Funding Agreement is not an enforceable obligation is wrong, based on the clear language of section 34171(d)(2). The DOF was aware of the date of the Funding Agreement, since the Successor Agency provided DOF with resolutions, staff reports, and loan agreements in response to DOF's previous inquiry for additional information on these items. Those documents clearly demonstrated that the Funding Agreement was approved approximately *six months after* the Former RDA and the Community Redevelopment Agency Administrative Fund were created. The DOF's determination is in direct conflict with the law and with the information that was provided by the Successor Agency to DOF in support of this loan as an enforceable obligation.

Moreover, the DOF must reverse its position on these three agreements based on the legislative intent found in AB1x 26. For instance, the Legislature expressly announced its intention to honor pledges of revenues associated with the enforceable obligations of the former RDAs in Health & Safety Code section 34175(a):

"It is the intent of this part that *pledges of revenues* associated with enforceable obligations of the former redevelopment agencies *are to be honored.* It is intended that the cessation of any redevelopment agency shall not affect either the pledge, the legal existence of that pledge, or the stream of revenues available to meet that pledge." (Emphasis added.)

Interpreting AB1x 26 so as to remove these loan agreements from the ROPS would run counter to the entire legislative framework of AB1x 26, and would expose the City to serious financial risk. Importantly, the revenue stream flowing to the City was guaranteed by the Former RDA

Mark Hill, Program Budget Manager, DOF  
Re: City of West Covina ROPS  
June 19, 2012  
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when the loan agreements were approved. In the event DOF removes these loan agreements from the ROPS, the City will be deprived of its pledge of revenues at the time the Former RDA was created. **The DOF's position completely thwarts the expressed legislative intent of AB1x 26: to protect the City's pledges of revenue.**

Moreover, the DOF's determination contradicts the clear legislative intent of AB1x 26, expressed in Health & Safety Code section 34167(a):

*"This part is intended to preserve, to the maximum extent possible, the revenues and assets of redevelopment agencies so that those assets and revenues that are not needed to pay for enforceable obligations may be used by local governments to fund core governmental services including police and fire protection services and schools. ... All provisions of this part shall be construed as broadly as possible to support this intent and to restrict the expenditure of funds to the fullest extent possible."* (emphasis added).

If DOF does not reverse its determination, the City will experience a sudden and catastrophic elimination of 75% of the City's General Fund reserve, which was the source of funding for those loans. **The DOF's determination, if upheld, would seriously jeopardize the City's "core governmental services" AB1x 26 was intended to protect "to the maximum extent possible."**

Lastly, the effect of the DOF's determination, if upheld, would unconstitutionally impair a contract that has been in effect for almost 40 years.<sup>7</sup> The Successor Agency also notes that all of the challenged agreements were regularly submitted on the former RDA's annual Statement of Indebtedness, and that the agreements were never disputed or questioned by either the State or County of Los Angeles Auditor-Controller's office. Thus, DOF is taking a position that contradicts the implicit approval by the County Auditor-Controller's office by their prior allocation of tax increment funds for these agreements. Based on the foregoing, the Successor Agency demands a reversal of DOF's determination that the above-referenced agreements are not enforceable obligations.

- **1989 Sales Tax Reimbursement Agreement**

The Successor Agency also disagrees with DOF's determination that the Sales Tax Reimbursement Agreement, listed as line item 24 on the January to June, 2012 ROPS, is not an enforceable obligation.

The 1989 Reimbursement Agreement is an enforceable obligation established and entered into in conjunction with the 1989 Reimbursement Agreement and Cooperative Agreement between the CDC and the City as part of a 1990 Community Facilities District ("CFD") bond

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<sup>7</sup> See U.S. CONST. ART. I, § 10; CAL. CONST. ART. I, § 9; see also *Fourth La Costa Condominium Owners Ass'n v. Seith* (2008) 159 Cal.App.4th 299 (obligations of contract are unconstitutionally impaired by a law which renders them invalid, or releases or extinguishes them); *Goodman v. Riverside County* (1983) 190 Cal.App.3d 900.

Mark Hill, Program Budget Manager, DOF  
Re: City of West Covina ROPS  
June 19, 2012  
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issuance. City sales and uses taxes generated above a base amount in the 1990 CFD was pledged as security for the bonds issued in 1990 and refinanced in 1996. Under the 1989 Cooperative Agreement, the City was required to, among other things, credit the Former RDA sales and use taxes that would have been collected by the City through the adoption of City Ordinance No. 1818. As part of the City's agreement to credit the RDA future sales and use taxes, the City and RDA entered into the Agreement Regarding Reimbursement of Sales and Use Taxes and Transfer of Appropriations Limit (the "1989 Reimbursement Agreement"). Under Section 1 of the 1989 Reimbursement Agreement, the RDA agreed to reimburse the City sales and use taxes credited or otherwise pledged under the Owner Participation Agreement and the 1990 Bonds. This language requires the Former RDA to reimburse the City for all amounts received under the sales and use tax shift/credit.

The 1989 Reimbursement Agreement was later clarified by the City and the Former RDA in 2005 through the adoption of an amendment **for the purpose of clarifying reimbursement under the 1989 Reimbursement Agreement**. The 2005 clarification required the RDA to reimburse the City advances of past and future sales tax revenues generated in the Community Facilities District that were pledged and used to pay debt service on the 1996 CFD bonds, which expires with the final maturity of the bonds in 2025.<sup>8</sup>

The 1989 Sales Tax Reimbursement Agreement is precisely the type of enforceable obligation intended to be honored by the State Legislature under AB1x 26. First, Health & Section 34171(d)(1)(B) defines one type of enforceable obligation as "*[l]oans of moneys borrowed by the redevelopment agency for a lawful purpose, to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms.*" (emphasis added). The 2005 Agreement falls squarely within this definition and the DOF must reverse its determination.

Second, Section 34171(d)(1)(E), discussed above, defines another type of enforceable obligation as "*[a]ny legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy.*" Similar to the City's Notes, the 1989 Sales Tax Reimbursement Agreement is legally binding and enforceable, and does not violate either the constitutional debt limit or public policy. Rather, the 1989 Sales Tax Reimbursement Agreement fostered the formation of the Former RDA, which furthered *the States* stated interest in eliminating blight through the formation of redevelopment agencies. Accordingly, the DOF must find that the 1989 Sales Tax Reimbursement Agreement constitutes an enforceable obligation.

Third, DOF's position that the 1989 Sales Tax Reimbursement Agreement is not an enforceable obligation is wrong, based on the clear language of section 34171(d)(2). Section 34171(d)(2) expressly authorizes and recognizes obligations between a city and its redevelopment agency when the written agreements were entered into between the city and

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<sup>8</sup> City Resolution No. 2005-50, and RDA Resolution No. 582.

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agency at the time of issuance of the indebtedness obligation (but not no later than December 31, 2010).

The 1989 Sales Tax Reimbursement Agreement meets the criteria for an enforceable obligation under section 34171(d)(2), since (1) the debt was created at the time of the indebtedness obligation and was a prerequisite and indispensable component of the financing of the 1990 CFD, without which, the bond issuance could not have gone forward; (2) the City legitimately transferred funds in connection with a bond transaction that was necessary and a condition precedent to the issuance of the bonds; (3) the City funds went towards legitimate redevelopment purposes; and (4) the Agreement was entered many years prior to the enactment of AB1x 26 and demonstrates a legitimate, arms-length transaction between the City and the Former RDA. Thus, the 1989 Sales Tax Reimbursement Agreement clearly falls within the exception set forth under Section 34171(d)(2) of the California Health and Safety Code and should be recognized by the DOF.

Lastly, based on the authorities referenced above, the DOF's determination unconstitutionally impairs a valid, arms-length contract that complied with all legal requirements in existence at the time of execution. As such, the Successor Agency demands a reversal of DOF's determination that the 2005 Agreement is not an enforceable obligation.

**THE SUCCESSOR AGENCY REQUESTS CLARIFICATION REGARDING DOF'S  
DETERMINATION ON ADMINISTRATIVE COSTS (JANUARY TO JUNE, 2012 ROPS  
AND JULY TO DECEMBER 2012 ROPS)**

The Successor Agency concurs with the DOF's finding that the administrative costs claimed exceed the allowance of five percent of property tax allocated to the Successor Agency or \$250,000, whichever is greater, in the January to June period, and the three percent in the second period, and that the Successor Agency will only be allocated amounts for administrative costs based on those calculations

**However, the Successor Agency requests clarification on which items DOF viewed as administrative costs, since only items 18 and 19 on the January through June ROPS, and items 17 and 18 on the July through December ROPS, should be considered administrative costs.** All other items on the ROPS are for enforceable obligations that should not be considered administrative costs. In particular, the City has serious concerns that the Successor Agency's ongoing litigation costs have been eliminated, since a failure by the DOF to recognize these legitimate costs will seriously harm the City, and again, contradicts the clear legislative intent of AB1x 26 (See H & S Code § 34167(a), discussed above.) The Successor Agency has a clear duty to defend the Agency's actions (both past, present and future) in litigation and the DOF must recognize such costs as enforceable obligations that must be funded.

**THE SUCCESSOR AGENCY CONCURS WITH THE DOF  
REGARDING COUNTY TAX COLLECTION SERVICES**

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The Successor Agency also concurs with the DOF's finding regarding line item 14 on the July through December, 2012 ROPS, and acknowledges that the County auditor will collect tax collection services fees prior to disbursement of tax allocation funds.

### CONCLUSION

In closing, the Successor Agency would appreciate the opportunity to speak with representatives of the DOF at an in-person meeting at the Department's Sacramento office. Accordingly, please consider this letter a formal request for such a meeting. Successor Agency staff members are available to review any of these items with DOF staff. Please contact Tom Bachman, Assistant City Manager/Finance Director at (626) 939-8449 or [thomas.bachman@westcovina.org](mailto:thomas.bachman@westcovina.org) if you need further information regarding any of these items. We look forward to resolving these issues with you in the very near future.

Sincerely,



Andrew G. Pasmant  
Executive Director / City Manager

CC: Arnold M. Alvarez-Glasman, City Attorney  
Tom Bachman, Assistant City Manager/Finance Director



**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY  
OF THE WEST COVINA REDEVELOPMENT AGENCY**

**AGENDA REPORT**

Item No. V - B

Date: July 5, 2012

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**TO:** Chairman and Members of the Oversight Board to the Successor Agency  
of the West Covina Redevelopment Agency

**FROM:** Andrew G. Pasmant, City Manager/Executive Director

**BY:** Christopher J. Chung, Successor Agency Staff Member

**SUBJECT:** **ASSEMBLY BILL 1484 (AB 1484)**

**RECOMMENDATION:**

This is an informational item only. No action is required.

**PURPOSE:**

To discuss recently passed legislation that affects the roles and responsibilities of the Oversight Board and Successor Agency.

**DISCUSSION:**

On June 26, 2012, the Legislature approved AB 1484 as part of a budget trailer bill. The bill became law upon signature of the Governor on June 27, 2012.

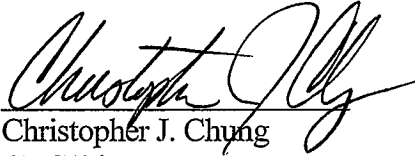
AB 1484 was passed only a day after the written text was publicly published. Due to the fast track approval process of the new bill, Successor Agency staff and Legal Counsel have not had the opportunity to complete a full analysis and dissemination of the new bill and therefore cannot provide any detailed summary of the new bill and an explanation of how it impacts the Successor Agency and Oversight Board. Therefore staff hesitates to offer any opinion or interpretation of the new bill within this report.

Staff attached the Senate Committee on Budget Summary (Attachment No. 1). The report was prepared by the Senate Committee on Budget and summarizes the new law; however it may not highlight or include every important aspect of the new bill. Staff noticed that the summary did not include mention of the \$10,000 penalty per day imposed on the Successor Agency for not submitting ROPS (approved by the Oversight Board) by the deadlines contained in the new bill. As a result, please be aware that the summary is the opinion of the Senate Committee on Budget and that the new bill may have other interpretations and/or impacts not known, disclosed and/or discussed.

Attachment No. 2 is AB 1484 as submitted. The ***bold italicized*** language has been added and **~~bold strikeout (example)~~** language has been eliminated.

Prepared By:

Reviewed and Approved



Christopher J. Chung  
CDC Director

Approved via Telephone  
Arnold M. Alvarez-Glasman  
Successor Agency Legal Counsel

**ATTACHMENTS:**

- Attachment No. 1: Summary prepared by Committee on Budget
- Attachment No. 2: Assembly Bill 1484 as submitted

# ATTACHMENT NO. 1

## SENATE COMMITTEE ON BUDGET AND FISCAL REVIEW

*Mark Leno, Chair*

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Bill No:	AB 1484
Author:	Committee on Budget
As Amended:	June 25, 2012
Consultant:	Mark Ibele
Fiscal:	Yes
Hearing Date:	June 26, 2012

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Subject: Budget Act of 2012: Redevelopment

**Summary:** This bill addresses numerous issues related to the dissolution of redevelopment agencies (RDAs) and related matters necessary for the implementation of the Budget Act of 2012. The bill contains measures necessary to achieve GF solutions of approximately \$3.1 billion in the budget year.

**Background:** As part of the 2011-12 budget agreement, the Legislature took action to eliminate RDAs in AB 26 X1, Statutes of 2011 (Blumenfeld) and institute a new alternative voluntary redevelopment program in AB 27 X1, Statutes of 2011 (Blumenfeld). By virtue of AB 27X1, RDAs could avoid elimination if the communities that formed them agreed to participate in the alternative voluntary redevelopment program that called for them to remit annual payments to K-12 education. The California Redevelopment Association challenged the constitutionality of both pieces of legislation. After an expedited review, the California Supreme Court released its ruling December 29, 2011, holding that both AB 26 X1 and AB 27 X1 were invalid. As a result, RDAs were dissolved as of February 1, 2012, with their affairs to be resolved by successor agencies (SAs), including the disposal of former RDA assets. Under current law, the elimination of RDAs will result in property tax revenues being used to pay required payments on existing bonds and other obligations, make pass-through payments to local governments, with remaining property tax revenues to be allocated to cities, counties, special districts and school and community college districts. The budget assumes that approximately \$1.7 billion will be received by K-14 education and serve to offset the state's Prop 98 General Fund obligation, with an additional \$1.4 billion to be received from freed-up former RDA cash and cash-equivalent assets during the budget year.

**Proposed Law:** This bill is the redevelopment trailer bill for the 2012-13 Budget. It clarifies certain matters associated with the dissolution of RDAs and addresses substantive issues related to administrative processes, affordable housing activities, repayment of loans from communities, use of existing bond proceeds, and the disposition or retention of former RDA assets. In addition, the bill includes a variety of measures designed to enhance compliance with current law. The bill contains the following provisions:

1. **Property Assets, Loans and Bond Proceeds.** The legislation allows SAs that have received a "finding of completion" (FOC) from the Department of Finance (DOF) additional discretion regarding former RDA real property assets, loan repayments to the local government community that formed the RDA (RDA communities) and use of proceeds from bonds issued by the former RDA. The FOC requires that amounts due with respect to cash and cash-equivalent assets, property tax allocations and pass-through payment amounts are paid, as discussed below. The FOC is an indication that all amounts determined to be due from the former RDA or the SA have been paid and satisfied. SAs in receipt of a FOC will be allowed to:

- a. Retain non-governmental physical assets in a separate trust until DOF has approved a long-range property management plan. The plan must be submitted to the oversight board (OB) and DOF no more than six months after the FOC has been issued and be based on an inventory of assets including: purpose of acquisition; legal description; estimate of current value; estimate of derived annual income; environmental history; potential transit-related use; and history of development proposals. The plan must also address the use or disposition of all the properties in the trust, including: retention for future development; sale of property; or use of property to fulfill an enforceable obligation (EO).
  - b. Include as EOs legitimate loans between the former RDA and the RDA community, subject to approval of the OB. Interest on the loan would be calculated at the Local Agency Investment rate, repaid beginning 2013-14 over a reasonable number of years, with repayment limited to amount equal to half the growth over the 2012-13 property tax allocated to local governments. These repayments would be subordinated to loan repayments to the Low and Moderate Income Housing Fund (LMIHF) and subject to a 20 percent set-aside for affordable housing.
  - c. Use certain existing proceeds stemming from bonds issued by the former RDA on or before December 31, 2010 for purposes for which the bonds were sold. If remaining bond proceeds cannot be spent in a manner consistent with the bond covenant, the proceeds would be used to defease the bond.
2. **Bond Issuance.** The legislation refines the circumstances under which refunding or other types of refinancing bonds to be issued by the SA would be allowed. These refinements include limitations and restrictions regarding: principal amount of debt; payment acceleration or restructuring; total interest costs; and amount of property taxes pledged as security. The bill states that certain bond issuances may be subject to local government approval or agreements regarding subordination and are subject to OB approval and review by DOF. Under the legislation, SAs may seek a waiver from DOF of the two-year statute of limitations that would generally apply.
3. **Housing Successor Assets.** The bill requires that a listing of housing assets be submitted to DOF by August 1, 2012, with such assets to include those transferred between February 1, 2012 and the submission date of the listing. The bill requires that DOF review and object to any asset or transfer, with any objections potentially subject to a meet and confer resolution process. Assets transferred to the housing successor entity are to be used for affordable housing activities, while disallowed assets would go to the SA for disposal or retention pursuant to an approved property management plan. The bill indicates that housing assets includes:
- a. Real and personal property acquired for low and moderate income housing with any source of funds.
  - b. Funds encumbered by an enforceable obligation to build or acquire low and moderate income housing.
  - c. Loans or grant receivables funded from the LMIHF from homebuyers, homeowners, developers, or other parties.

- d. Funds derived from rents or operation of properties acquired for low and moderate income housing purposes by other parties financed with any source of funds.
  - e. Streams of rents or other payments from low and moderate income housing financed with any source of funds.
  - f. Repayments of loans or deferrals owed to the LMIHF.
  - g. Certain other properties deemed at the OBs discretion to be housing assets, such as mixed use developments that contribute to community value or benefit local governments.
4. **Housing Fund Loans and Bonds.** The bill allows repayment of loans made from the LMIHF, which repayments could begin in 2013-14, but would be limited to one-half of the annual growth over the 2012-13 level in property taxes distributed to local governments. These repayments would take priority over loan repayments to RDA communities (20 percent of those latter loan repayments are to be set aside for affordable housing activities). The housing successor may use certain bond proceeds derived from bonds issued before January 1, 2011, and secured by the LMIHF, for affordable housing projects.
5. **Validation Actions.** Under the legislation, the two-year time limit for validation actions related to findings determinations of a former RDA, redevelopment bonds and similar financings, and various related redevelopment plans and efforts, would be tolled until DOF has issued a FOC. The two-year limit would not apply once the FOC has been issued by DOF.
6. **Assets and Transfers.** The legislation directs the Controller to examine asset transfers that occurred after January 31, 2012. The bill directs each SA to retain a licensed accountant to conduct a due diligence review (DDR), or arrange for an audit by the county-auditor controller, of unobligated cash or cash equivalent balances that would be available for transfer to local governments. The review must include value of assets previously transferred from either the former RDA or the SA and the entity to which such assets were transferred. DOF may adjust amounts available for distribution to local governments and must provide an explanation for any adjustment. The SA may request a meet and confer resolution process for any disputed amounts. The SA is required to transfer determined amounts to the county auditor-controller and report such amounts to DOF. Assets identified for transfer but not transferred could be subject to offset in an amount equivalent to asset value (as discussed further below). The DDR must:
- a. Reconcile assets, balances and liabilities of the SA with amounts previously reported to the Controller.
  - b. Specify total funds, including the LMIHF, identified for distribution to local governments after subtracting restricted amounts and non-cash items.
  - c. Indicate the asset sum available for distribution to local governments.
  - d. Be submitted to the OB, the county auditor-controller and DOF for review.
7. **Property Tax Allocations.** The bill specifies that if the former RDA or SA did not pay property tax or certain pass-through payments due to local governments for the 2011-12

fiscal year, or these amounts were not remitted by the county auditor controller, such amounts will be offset (as discussed further below) through future reductions in property tax allocations, from available SA reserves or other funds, by reductions in sales taxes allocable to the county, or by other means as appropriate. The bill requires the county auditor-controller to provide a report to DOF for each SA regarding the distribution that includes the total funds available for allocation, the pass-through amounts, the amounts distributed to SAs, and the amounts distributed to local governments. The bill makes no changes in the current treatment of pass-through amounts, and expresses the intent that full payment of pass-through amounts are to be made.

8. **Offsets for Unpaid Amounts.** Under the bill, if amounts due to local governments pursuant to the DDR, prior property tax allocations, and pass-through payments are not remitted, these amounts may be recovered, as appropriate, by actions directed to the entity to which the funds were transferred, the RDA community or the SA. These actions could include an offset of either sales and use tax or property tax allocations, or legal actions against any third party in receipt of the funds. Offsets amounts found to be unwarranted by a court would result in a reimbursement of that amount or a reversal of the offset, and a penalty imposed on the state.
9. **Successor Agencies.** The bill clarifies that SAs are local public entities separate from the RDA community, and which succeed to the organizational status of the former RDA but without redevelopment powers except those related to and necessary for the payment of EOs. Under the bill, SAs are required to provide an annual post-audit of SA financial transactions, and when all RDA debt is retired, dispose of all assets, end pass-through payments and terminate. For SAs that do not have a FOC from DOF, assets are to be disposed of with proceeds benefiting local governments.
10. **Oversight Boards.** The bill clarifies OB membership qualifications of the representative of the former employees of the RDA. It provides that OB members are protected by the immunities applicable to public entities and actions are to be taken by resolution. The bill allows OBs to contract for administrative support and specifies that OBs cannot reestablish loan agreements between the SA and community.
11. **Polanco Act Provisions.** The legislation provides that existing clean-up plans and liability limits authorized under the Polanco Redevelopment Act shall be transferred to the SA and may be transferred to the successor housing entity at the respective entity's request.
12. **RDA Communities.** The bill would allow RDA communities that elected not to be the SA to opt back in at a later date. It allows RDA communities to grant loans to the SA for certain costs and be repaid out of administrative costs or the property tax increment, upon approval of the OB. In addition, the bill provides that RDA communities may use the land use plans and functions of the RDA, provided that no new project areas or expanded boundaries of project areas are created or increase the amount of obligated property tax results.
13. **Administrative Costs.** The bill clarifies that the five percent limit on administrative costs is based initially on the property tax allocated for the Recognized Obligation Payment Schedule (ROPS) and allows the OB to reduce this amount upon SA approval. In addition, administrative costs would exclude certain litigation expenses and expenses related to employees costs associated with project specific activities.

14. **Enforceable Obligations.** The bill allows for required bond reserves to be included as EOs, along with costs associated with collective bargaining agreements for layoffs or terminations, the transfer of employees to the housing successor entity, and repayments of loans from the LMIHF. It also specifies that once funding for an EO is deleted or reduced by DOF, the funding may not be restored except as agreed to through the meet and confer resolution process or pursuant to court order. The bill allows SAs to petition DOF to provide written confirmation that its determination regarding an enforceable obligation is final and conclusive.
15. **ROPS Timing and Reporting Issues.** The bill provides for certain changes regarding filing and reporting requirements for ROPS, including: allowing SAs to amend the initial Enforceable Obligation Payment Schedule (EOPS) to provide for continued payment of EOs until the ROPS is approved by the OB and DOF; requiring the submission by SAs of each ROPS to the county administrative officer, county auditor-controller, and DOF at the same time it is submitted to the OB; specifying ROPS for the January 1, 2012 through June 30, 2012 period are to include payments made or to be made by the former RDA and SA from January 1 2012 and June 30, 2012; and directing SAs to submit ROPS for the January 1, 2013 through June 30, 2013 period by September 1, 2012, and to submit the OB-approved ROPS for the July 1, 2013 through December 31, 2013 to DOF and county auditor-controller 90 days before the property tax distribution. Under the bill, DOF is provided 45 days to make its determination of the EOs on the ROPS and SAs are given the ability to request additional review and a meet and confer resolution process with five days.
16. **Other ROPS Issues.** The bill specifies, if an SA that does not submit ROPS by the deadlines, it may be fined or have its administrative cost allowance reduced and DOF may direct the county-auditor controller withhold amounts for payments on EOs. SAs must submit a copy of the ROPS to DOF in a manner provided by DOF. The bill indicates that if DOF reviews and eliminates or modifies any item approved by the OB, DOF shall provide notice to the SA and the county auditor-controller as to the reasons for the action.
17. **Severability.** The bill states that if any provision of the act is held invalid, the invalidity shall not affect other provisions of the act which can be given effect without the invalid provision. Thus, provisions of the act are severable.
18. **Appropriation.** The bill appropriates \$22 million from the General Fund for allocation by the Director of Finance, including an amount of up to \$2 million for allocation by the Administrative Office of the Courts to the Superior Court of California, Sacramento. Allocation of funds by the Director of Finance shall be effective no sooner than 30 days following after the director notifies the Joint Legislative Budget Committee.

**Fiscal Effect:** Provisions of the bill are estimated to ensure the receipt of additional property tax revenues by local governments, \$3.2 billion of which would be received by local school districts and provide corresponding General Fund relief. There would also be receipt of additional funds and assets by local governments beginning in 2013-14, relative to current law.

**Support:** Unknown

**Opposed:** Unknown

**Comments:** The legislation recognizes that the RDA dissolution actions adopted as part of the 2011-12 budget resulted in significant changes in and disruption to local governments'

redevelopment activities. In addition, subsequent court actions and decisions have had unintended impacts on timing of various payments and reporting requirements and the ability of local governments to comply with the new law. The bill also acknowledges that there has been evidence of noncompliance with the law by some entities, particularly with respect to the scheduling of enforceable obligations to be made from property tax revenues and the transfer of former RDA assets. In view of this situation and these events, the legislation is intended to clarify ambiguities, fill in areas of incompleteness, and reconcile various deadlines that have resulted from the 2011 legislation or are due to subsequent legal events. In addition to providing a mechanism for helping to ensure compliance with current law, the bill creates significant opportunities for local governments to be repaid for past financial commitments to redevelopment, complete various projects, and lay out future development plans using the substantial amount of real property and other assets acquired by the former RDA.



# ATTACHMENT NO. 2

AMENDED IN SENATE JUNE 25, 2012

CALIFORNIA LEGISLATURE— 2011–2012 REGULAR SESSION

ASSEMBLY BILL

No. 1484

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Introduced by Committee on Budget (Blumenfield (Chair), Alejo, Bonilla, Brownley, Buchanan, Butler, Cedillo, Chesbro, Dickinson, Feuer, Gordon, Huffman, Mitchell, Monning, and Swanson)

January 10, 2012

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~~An act relating to the Budget Act of 2012. An act to amend Section 53760.1 of the Government Code, and to amend Sections 33500, 33501, 34163, 34171, 34173, 34175, 34176, 34177, 34178, 34179, 34180, 34181, 34182, 34183, 34185, 34186, 34187, 34188, and 34189 of, to add Sections 34167.10, 34177.3, 34177.5, 34178.8, 34179.5, 34179.6, 34179.7, 34179.8, 34182.5, 34183.5, 34189.1, 34189.2, and 34189.3 to, to add Chapter 9 (commencing with Section 34191.1) to Part 1.85 of Division 24 of, and to add and repeal Section 34176.5 of, the Health and Safety Code, relating to community redevelopment, and making an appropriation therefor, to take effect immediately, bill related to the budget.~~

## LEGISLATIVE COUNSEL'S DIGEST

AB 1484, as amended, Committee on Budget. ~~Budget Act of 2012.~~ *Community redevelopment. The Community Redevelopment Law authorizes the establishment of redevelopment agencies in communities to address the effects of blight, and, among other things, provides that an action may be brought to review the validity of specified agency actions, findings, or determinations that occurred after January 1, 2011, within 2 years of the triggering event. This bill would toll the time limit for bringing an action until the Department of Finance issues a finding of completion to the successor agency.*

*Existing law dissolved redevelopment agencies and community development agencies, as of February 1, 2012, and provides for the designation of successor agencies, as defined. Existing law requires successor agencies to wind down the affairs of the dissolved redevelopment*

agencies and to, among other things, make payments due for enforceable obligations, as defined, perform obligations required pursuant to any enforceable obligation, dispose of all assets of the former redevelopment agency, and to remit unencumbered balances of redevelopment agency funds, including housing funds, to the county auditor-controller for distribution to taxing entities.

Existing law authorizes the city, county, or city and county that authorized the creation of a redevelopment agency to retain the housing assets, functions, and powers previously performed by the redevelopment agency, excluding amounts on deposit in the Low and Moderate Income Housing Fund.

The bill would modify provisions relating to the transfer of housing responsibilities associated with dissolved redevelopment agencies and would define the term "housing asset" for these purposes. The bill would impose new requirements on successor agencies with regard to the submittal of the Recognized Obligation Payment Schedule, the conducting of a due diligence review to determine the unobligated balances available for transfer to affected taxing entities, and the recovery and subsequent remittance of funds determined to have been transferred absent an enforceable obligation. The bill would authorize the Department of Finance to issue a finding of completion to a successor agency that completes the due diligence review and meets other requirements. Upon receiving a finding of completion, the bill would authorize the successor agency to participate in a loan repayment program and limited property management activities.

Existing law authorizes the Department of Finance and the Controller to require any documents associated with enforceable obligations to be provided to them in a manner of their choosing.

The bill would authorize the county auditor-controller and the department, under specified circumstances, to require the return of funds improperly spent or transferred to a public entity and would authorize the department and the Controller to require the State Board of Equalization and the county auditor-controller to offset sales and use tax and property tax allocations, respectively, to the local agency. The bill would authorize the Controller to review the activities of a successor agency to determine if an improper asset transfer had occurred between the successor agency and the city or county that created the former redevelopment agency, and would require the Controller to order the return of these assets if such an asset transfer did occur.

The bill would impose new requirements on the county auditor-controller relating to the allocation of property tax revenues to affected taxing entities during a specified timeframe. By imposing additional duties upon local public officials, the bill would create a state-mandated local program.

The bill would appropriate up to \$22,000,000 to the Department of Finance from the General Fund for costs associated with the bill, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.~~

## Digest Key

## Bill Text

# THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### SECTION 1.

*Section 53760.1 of the Government Code is amended to read:*

53760.1.

As used in this article the following terms have the following meanings:

(a) "Chapter 9" means Chapter 9 (commencing with Section 901) of Title 11 of the United States Code.

(b) "Creditor" means either of the following:

(1) An entity that has a noncontingent claim against a municipality that arose at the time of or before the commencement of the neutral evaluation process and whose claim represents at least five million dollars (\$5,000,000) or comprises more than 5 percent of the local public entity's debt or obligations, whichever is less.

(2) An entity that would have a noncontingent claim against the municipality upon the rejection of an executory contract or unexpired lease in a Chapter 9 case and whose claim would represent at least five million dollars (\$5,000,000) or comprises more than 5 percent of the local public entity's debt or obligations, whichever is less.

(c) "Debtor" means a local public entity that may file for bankruptcy under Chapter 9.

(d) "Good faith" means participation by a party in the neutral evaluation process with the intent to negotiate toward a resolution of the issues that are the subject of the neutral evaluation process, including the timely provision of complete and accurate information to provide the relevant parties through the neutral evaluation process with sufficient information, in a confidential manner, to negotiate the readjustment of the municipality's debt.

(e) "Interested party" means a trustee, a committee of creditors, an affected creditor, an indenture trustee, a pension fund, a bondholder, a union that, under its collective bargaining agreements, has standing to initiate contract or debt restructuring negotiations with the municipality, or a representative selected by an association of retired employees of the public entity who receive income from the public entity convening the neutral evaluation. A local public entity may invite holders of contingent claims to participate as interested parties in the neutral evaluation if the local public entity determines that the contingency is likely to occur and the claim may represent five million dollars (\$5,000,000) or comprise more than 5 percent of the local public entity's debt or obligations, whichever is less.

(f) "Local public entity" means any county, city, district, public authority, public agency, or other entity, without limitation, that is a municipality as defined in Section 101(40) of Title 11 of the United States Code (bankruptcy), or that qualifies as a debtor under any other federal bankruptcy law applicable to local public entities, *and also includes a successor agency to a*

*redevelopment agency created pursuant to Part 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code.* For purposes of this article, “local public entity” does not include a school district.

(g) “Local public entity representative” means the person or persons designated by the local public agency with authority to make recommendations and to attend the neutral evaluation on behalf of the governing body of the municipality.

(h) “Neutral evaluation” is a form of alternative dispute resolution that may be known as mandatory mediation. A “neutral evaluator” may also be known as a mediator.

## **SEC. 2.**

*Section 33500 of the Health and Safety Code is amended to read:*

33500.

(a) Notwithstanding any other provision of law, including Section 33501, an action may be brought to review the validity of the adoption or amendment of a redevelopment plan at any time within 90 days after the date of the adoption of the ordinance adopting or amending the plan, if the adoption of the ordinance occurred prior to January 1, 2011.

(b) Notwithstanding any other provision of law, including Section 33501, an action may be brought to review the validity of any findings or determinations by the agency or the legislative body at any time within 90 days after the date on which the agency or the legislative body made those findings or determinations, if the findings or determinations occurred prior to January 1, 2011.

(c) Notwithstanding any other law, including Section 33501, an action may be brought to review the validity of the adoption or amendment of a redevelopment plan at any time within two years after the date of the adoption of the ordinance adopting or amending the plan, if the adoption of the ordinance occurred after January 1, 2011.

(d) Notwithstanding any other law, including Section 33501, an action may be brought to review the validity of any findings or determinations by the agency or the legislative body at any time within two years after the date on which the agency or the legislative body made those findings or determinations, if the findings or determinations occurred after January 1, 2011.

*(e) The time limit for bringing an action under subdivision (c) or (d) shall be tolled with respect to the adoptions, findings, and determinations of any former redevelopment agency or its legislative body until the Department of Finance has issued a finding of completion to the successor agency of that former redevelopment agency pursuant to Section 34179.7. Subdivisions (c) and (d) shall not apply to any adoption, finding, or determination of any former redevelopment agency or its legislative body after the department has issued a finding of completion to the successor agency of that former redevelopment agency pursuant to Section 34179.7.*

## **SEC. 3.**

*Section 33501 of the Health and Safety Code is amended to read:*

33501.

(a) An action may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of bonds and the redevelopment plan to be financed or refinanced, in whole or in part, by the bonds, or to

determine the validity of a redevelopment plan not financed by bonds, including without limiting the generality of the foregoing, the legality and validity of all proceedings theretofore taken for or in any way connected with the establishment of the agency, its authority to transact business and exercise its powers, the designation of the survey area, the selection of the project area, the formulation of the preliminary plan, the validity of the finding and determination that the project area is predominantly urbanized, and the validity of the adoption of the redevelopment plan, and also including the legality and validity of all proceedings theretofore taken and (as provided in the bond resolution) proposed to be taken for the authorization, issuance, sale, and delivery of the bonds, and for the payment of the principal thereof and interest thereon.

(b) Notwithstanding subdivision (a), an action to determine the validity of a redevelopment plan, or amendment to a redevelopment plan that was adopted prior to January 1, 2011, may be brought within 90 days after the date of the adoption of the ordinance adopting or amending the plan.

(c) Any action that is commenced on or after January 1, 2011, which is brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity or legality of any issue, document, or action described in subdivision (a), may be brought within two years after any triggering event that occurred after January 1, 2011. *The time limit for bringing an action under this subdivision shall be tolled with respect to the validity or legality of any issue, document, or action described in subdivision (a) of any former redevelopment agency or its legislative body until the Department of Finance has issued a finding of completion to the successor agency of that former redevelopment agency pursuant to Section 34179.7. This subdivision shall not apply to any adoption, finding, or determination of any former redevelopment agency or its legislative body after the department has issued a finding of completion to the successor agency of that former redevelopment agency pursuant to Section 34179.7.*

(d) For the purposes of protecting the interests of the state, the Attorney General and the Department of Finance are interested persons pursuant to Section 863 of the Code of Civil Procedure in any action brought with respect to the validity of an ordinance adopting or amending a redevelopment plan pursuant to this section.

(e) For purposes of contesting the inclusion in a project area of lands that are enforceably restricted, as that term is defined in Sections 422 and 422.5 of the Revenue and Taxation Code, or lands that are in agricultural use, as defined in subdivision (b) of Section 51201 of the Government Code, the Department of Conservation, the county agricultural commissioner, the county farm bureau, the California Farm Bureau Federation, and agricultural entities and general farm organizations that provide a written request for notice, are interested persons pursuant to Section 863 of the Code of Civil Procedure, in any action brought with respect to the validity of an ordinance adopting or amending a redevelopment plan pursuant to this section.

#### **SEC. 4.**

*Section 34163 of the Health and Safety Code is amended to read:*

34163.

Notwithstanding Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100), or any other law, commencing on the effective date of this part, an agency shall not have the authority to, and shall not, do any of the following:

(a) Make loans or advances or grant or enter into agreements to provide funds or provide financial assistance of any sort to any entity or person for any purpose, including, but not limited to, all of the following:

(1) Loans of moneys or any other thing of value or commitments to provide financing to nonprofit organizations to provide those organizations with financing for the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing or the acquisition of commercial property for lease, each pursuant to Chapter 7.5 (commencing with Section 33741) of Part 1.

(2) Loans of moneys or any other thing of value for residential construction, improvement, or rehabilitation pursuant to Chapter 8 (commencing with Section 33750) of Part 1. These include, but are not limited to, construction loans to purchasers of residential housing, mortgage loans to purchasers of residential housing, and loans to mortgage lenders, or any other entity, to aid in financing pursuant to Chapter 8 (commencing with Section 33750).

(3) The purchase, by an agency, of mortgage or construction loans from mortgage lenders or from any other entities.

(b) Enter into contracts with, incur obligations, or make commitments to, any entity, whether governmental, tribal, or private, or any individual or groups of individuals for any purpose, including, but not limited to, loan agreements, passthrough agreements, regulatory agreements, services contracts, leases, disposition and development agreements, joint exercise of powers agreements, contracts for the purchase of capital equipment, agreements for redevelopment activities, including, but not limited to, agreements for planning, design, redesign, development, demolition, alteration, construction, reconstruction, rehabilitation, site remediation, site development or improvement, removal of graffiti, land clearance, and seismic retrofits.

(c) Amend or modify existing agreements, obligations, or commitments with any entity, for any purpose, including, but not limited to, any of the following:

(1) Renewing or extending term of leases or other agreements, except that the agency may extend lease space for its own use to a date not to exceed six months after the effective date of the act adding this part and for a rate no more than 5 percent above the rate the agency currently pays on a monthly basis.

(2) Modifying terms and conditions of existing agreements, obligations, or commitments.

(3) Forgiving all or any part of the balance owed to the agency on existing loans or extend the term or change the terms and conditions of existing loans.

(4) ~~Increasing its Making any future~~ deposits to the Low and Moderate Income Housing Fund created pursuant to Section 33334.3 ~~beyond the minimum level that applied to it as of January 1, 2011.~~

(5) Transferring funds out of the Low and Moderate Income Housing Fund, except to meet the minimum housing-related obligations that existed as of January 1, 2011, to make required payments under Sections 33690 and 33690.5, and to borrow funds pursuant to Section 34168.5.

(d) Dispose of assets by sale, long-term lease, gift, grant, exchange, transfer, assignment, or otherwise, for any purpose, including, but not limited to, any of the following:

(1) Assets, including, but not limited to, real property, deeds of trust, and mortgages held by the agency, moneys, accounts receivable, contract rights, proceeds of insurance claims, grant proceeds, settlement payments, rights to receive rents, and any other rights to payment of whatever kind.

(2) Real property, including, but not limited to, land, land under water and waterfront property, buildings, structures, fixtures, and improvements on the land, any property appurtenant to, or used in connection with, the land, every estate, interest, privilege, easement, franchise, and right in land, including rights-of-way, terms for years, and liens, charges, or encumbrances by way of judgment, mortgage, or otherwise, and the indebtedness secured by the liens.

(e) Acquire real property by any means for any purpose, including, but not limited to, the purchase, lease, or exercising of an option to purchase or lease, exchange, subdivide, transfer, assume, obtain option upon, acquire by gift, grant, bequest, devise, or otherwise acquire any real property, any interest in real property, and any improvements on it, including the repurchase of developed property previously owned by the agency and the acquisition of real property by eminent domain; provided, however, that nothing in this subdivision is intended to prohibit the acceptance or transfer of title for real property acquired prior to the effective date of this part.

(f) Transfer, assign, vest, or delegate any of its assets, funds, rights, powers, ownership interests, or obligations for any purpose to any entity, including, but not limited to, the community, the legislative body, another member of a joint powers authority, a trustee, a receiver, a partner entity, another agency, a nonprofit corporation, a contractual counterparty, a public body, a limited-equity housing cooperative, the state, a political subdivision of the state, the federal government, any private entity, or an individual or group of individuals.

(g) Accept financial or other assistance from the state or federal government or any public or private source if the acceptance necessitates or is conditioned upon the agency incurring indebtedness as that term is described in this part.

## **SEC. 5.**

*Section 34167.10 is added to the Health and Safety Code, to read:*

*34167.10.*

*(a) Notwithstanding any other law, for purposes of this part and Part 1.85 (commencing with Section 34170), the definition of a city, county, or city and county includes, but is not limited to, the following entities:*

*(1) Any reporting entity of the city, county, or city and county for purposes of its comprehensive annual financial report or similar report.*

*(2) Any component unit of the city, county, or city and county.*

*(3) Any entity which is controlled by the city, county, or city and county, or for which the city, county, or city and county is financially responsible or accountable.*

*(b) The following factors shall be considered in determining that an entity is controlled by the city, county, or city and county, and are therefore included in the definition of a city, county, or city and county for purposes of this part and Part 1.85 (commencing with Section 34170):*

*(1) The city, county, or city and county exercises substantial municipal control over the entity's operations, revenues, or expenditures.*

*(2) The city, county, or city and county has ownership or control over the entity's property or facilities.*

*(3) The city, county, or city and county and the entity share common or overlapping governing boards, or coterminous boundaries.*

*(4) The city, county, or city and county was involved in the creation or formation of the entity.*

*(5) The entity performs functions customarily or historically performed by municipalities and financed through levies of property taxes.*

*(6) The city, county, or city and county provides administrative and related business support for the entity, or assumes the expenses incurred in the normal daily operations of the entity.*

*(c) For purposes of this section, it shall not be relevant that the entity is formed as a separate legal entity, nonprofit corporation, or otherwise, or is not subject to the constitution debt limitation otherwise applicable to a city, county, or city and county. The provisions in this section are declarative of existing law as the entities described herein are and were intended to*

*be included within the requirements of this part and Part 1.85 (commencing with Section 34170) and any attempt to determine otherwise would thwart the intent of these two parts.*

## **SEC. 6.**

*Section 34171 of the Health and Safety Code is amended to read:*

34171.

The following terms shall have the following meanings:

(a) "Administrative budget" means the budget for administrative costs of the successor agencies as provided in Section 34177.

(b) "Administrative cost allowance" means an amount that, subject to the approval of the oversight board, is payable from property tax revenues of up to 5 percent of the property tax allocated to the successor agency ~~for the 2011-12 fiscal year~~ *on the Recognized Obligation Payment Schedule covering the period January 1, 2012, through June 30, 2012*, and up to 3 percent of the property tax allocated to the Redevelopment Obligation Retirement Fund money that is allocated to the successor agency for each fiscal year thereafter; provided, however, that the amount shall not be less than two hundred fifty thousand dollars (\$250,000), *unless the oversight board reduces this amount*, for any fiscal year or such lesser amount as agreed to by the successor agency. However, the allowance amount shall exclude, *and shall not apply to*, any administrative costs that can be paid from bond proceeds or from sources other than property tax. *Administrative cost allowances shall exclude any litigation expenses related to assets or obligations, settlements and judgments, and the costs of maintaining assets prior to disposition. Employee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific costs and shall not constitute administrative costs.*

(c) "Designated local authority" shall mean a public entity formed pursuant to subdivision (d) of Section 34173.

(d) (1) "Enforceable obligation" means any of the following:

(A) Bonds, as defined by Section 33602 and bonds issued pursuant to ~~Section 58383~~ *Chapter 10.5 (commencing with Section 5850) of Division 6 of Title 1* of the Government Code, including the required debt service, reserve set-asides, and any other payments required under the indenture or similar documents governing the issuance of the outstanding bonds of the former redevelopment agency. *A reserve may be held when required by the bond indenture or when the next property tax allocation will be insufficient to pay all obligations due under the provisions of the bond for the next payment due in the following half of the calendar year.*

(B) Loans of moneys borrowed by the redevelopment agency for a lawful purpose, to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms.

(C) Payments required by the federal government, preexisting obligations to the state or obligations imposed by state law, other than passthrough payments that are made by the county auditor-controller pursuant to Section 34183, or legally enforceable payments required in connection with the agencies' employees, including, but not limited to, pension payments, pension obligation debt service, unemployment payments, or other obligations conferred through a collective bargaining agreement. *Costs incurred to fulfill collective bargaining agreements for layoffs or terminations of city employees who performed work directly on behalf of the former redevelopment agency shall be considered enforceable obligations payable from property tax funds. The obligations to employees specified in this subparagraph shall remain enforceable*



*obligations payable from property tax funds for any employee to whom those obligations apply if that employee is transferred to the entity assuming the housing functions of the former redevelopment agency pursuant to Section 34176. The successor agency or designated local authority shall enter into an agreement with the housing entity to reimburse it for any costs of the employee obligations.*

(D) Judgments or settlements entered by a competent court of law or binding arbitration decisions against the former redevelopment agency, other than passthrough payments that are made by the county auditor-controller pursuant to Section 34183. Along with the successor agency, the oversight board shall have the authority and standing to appeal any judgment or to set aside any settlement or arbitration decision.

(E) Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy. However, nothing in this act shall prohibit either the successor agency, with the approval or at the direction of the oversight board, or the oversight board itself from terminating any existing agreements or contracts and providing any necessary and required compensation or remediation for such termination. ***Titles of or headings used on or in a document shall not be relevant in determining the existence of an enforceable obligation.***

(F) Contracts or agreements necessary for the administration or operation of the successor agency, in accordance with this part, including, but not limited to, ***agreements concerning litigation expenses related to assets or obligations, settlements and judgements, and the costs of maintaining assets prior to disposition, and*** agreements to purchase or rent office space, equipment and supplies, and pay-related expenses pursuant to Section 33127 and for carrying insurance pursuant to Section 33134.

(G) Amounts borrowed from, or payments owing to, the Low and Moderate Income Housing Fund of a redevelopment agency, which had been deferred as of the effective date of the act adding this part; provided, however, that the repayment schedule is approved by the oversight board. ***Repayments shall be transferred to the Low and Moderate Income Housing Asset Fund established pursuant to subdivision (d) of Section 34176 as a housing asset and shall be used in a manner consistent with the affordable housing requirements of the Community Redevelopment Law (Part 1 (commencing with Section 33000)).***

(2) For purposes of this part, “enforceable obligation” does not include any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency. However, written agreements entered into (A) at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and (B) solely for the purpose of securing or repaying those indebtedness obligations may be deemed enforceable obligations for purposes of this part. Notwithstanding this paragraph, loan agreements entered into between the redevelopment agency and the city, county, or city and county that created it, within two years of the date of creation of the redevelopment agency, may be deemed to be enforceable obligations.

(3) Contracts or agreements between the former redevelopment agency and other public agencies, to perform services or provide funding for governmental or private services or capital projects outside of redevelopment project areas that do not provide benefit to the redevelopment project and thus were not properly authorized under Part 1 (commencing with Section 33000) shall be deemed void on the effective date of this part; provided, however, that such contracts or agreements for the provision of housing properly authorized under Part 1 (commencing with Section 33000) shall not be deemed void.

(e) “Indebtedness obligations” means bonds, notes, certificates of participation, or other evidence of indebtedness, issued or delivered by the redevelopment agency, or by a joint exercise of powers authority created by the redevelopment agency, to third-party investors or bondholders to finance or refinance redevelopment projects undertaken by the redevelopment agency in

compliance with the Community Redevelopment Law (Part 1 (commencing with Section 33000)).

(f) "Oversight board" shall mean each entity established pursuant to Section 34179.

(g) "Recognized obligation" means an obligation listed in the Recognized Obligation Payment Schedule.

(h) "Recognized Obligation Payment Schedule" means the document setting forth the minimum payment amounts and due dates of payments required by enforceable obligations for each six-month fiscal period as provided in subdivision (m) of Section 34177.

(i) "School entity" means any entity defined as such in subdivision (f) of Section 95 of the Revenue and Taxation Code.

(j) "Successor agency" means the ~~county, city, or city and county that authorized the creation of each redevelopment agency or another entity~~ *successor entity to the former redevelopment agency* as ~~provided~~ *described* in Section 34173.

(k) "Taxing entities" means cities, counties, a city and county, special districts, and school entities, as defined in subdivision (f) of Section 95 of the Revenue and Taxation Code, that receive passthrough payments and distributions of property taxes pursuant to the provisions of this part.

*(l) "Property taxes" include all property tax revenues, including those from unitary and supplemental and roll corrections applicable to tax increment.*

*(m) "Department" means the Department of Finance unless the context clearly refers to another state agency.*

*(n) "Sponsoring entity" means the city, county, or city and county, or other entity that authorized the creation of each redevelopment agency.*

*(o) "Final judicial determination" means a final judicial determination made by any state court that is not appealed, or by a court of appellate jurisdiction that is not further appealed, in an action by any party.*

## **SEC. 7.**

*Section 34173 of the Health and Safety Code is amended to read:*

34173.

(a) Successor agencies, as defined in this part, are hereby designated as successor entities to the former redevelopment agencies.

(b) Except for those provisions of the Community Redevelopment Law that are repealed, restricted, or revised pursuant to the act adding this part, all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies.

(c) (1) ~~Where~~ *If* the redevelopment agency was in the form of a joint powers authority, and ~~where~~ *if* the joint powers agreement governing the formation of the joint powers authority addresses the allocation of assets and liabilities upon dissolution of the joint powers authority, then each of the entities that created the former redevelopment agency may be a successor agency within the meaning of this part and each shall have a share of assets and liabilities based on the provisions of the joint powers agreement.

(2) ~~Where~~ *If* the redevelopment agency was in the form of a joint powers authority, and ~~where~~ *if* the joint powers agreement governing the formation of the joint powers authority does not address the allocation of assets and liabilities upon dissolution of the joint powers authority, then each of the entities that created the former redevelopment agency may be a successor agency within the meaning of this part, a proportionate share of the assets and liabilities shall be based

on the assessed value in the project areas within each entity's jurisdiction, as determined by the county assessor, in its jurisdiction as compared to the assessed value of land within the boundaries of the project areas of the former redevelopment agency.

(d) (1) A city, county, city and county, or the entities forming the joint powers authority that authorized the creation of each redevelopment agency may elect not to serve as a successor agency under this part. A city, county, city and county, or any member of a joint powers authority that elects not to serve as a successor agency under this part must file a copy of a duly authorized resolution of its governing board to that effect with the county auditor-controller no later than January 13, 2012.

(2) The determination of the first local agency that elects to become the successor agency shall be made by the county auditor-controller based on the earliest receipt by the county auditor-controller of a copy of a duly adopted resolution of the local agency's governing board authorizing such an election. As used in this section, "local agency" means any city, county, city and county, or special district in the county of the former redevelopment agency.

(3) (A) If no local agency elects to serve as a successor agency for a dissolved redevelopment agency, a public body, referred to herein as a "designated local authority" shall be immediately formed, pursuant to this part, in the county and shall be vested with all the powers and duties of a successor agency as described in this part. The Governor shall appoint three residents of the county to serve as the governing board of the authority. The designated local authority shall serve as successor agency until a local agency elects to become the successor agency in accordance with this section.

***(B) Designated local authority members are protected by the immunities applicable to public entities and public employees governed by Part 1 (commencing with Section 810) and Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the Government Code.***

***(4) A city, county, or city and county, or the entities forming the joint powers authority that authorized the creation of a redevelopment agency and that elected not to serve as the successor agency under this part, may subsequently reverse this decision and agree to serve as the successor agency pursuant to this section. Any reversal of this decision shall not become effective for 60 days after notice has been given to the current successor agency and the oversight board and shall not invalidate any action of the successor agency or oversight board taken prior to the effective date of the transfer of responsibility.***

(e) The liability of any successor agency, acting pursuant to the powers granted under the act adding this part, shall be limited to the extent of the total sum of property tax revenues it receives pursuant to this part and the value of assets transferred to it as a successor agency for a dissolved redevelopment agency.

***(f) Any existing cleanup plans and liability limits authorized under the Polanco Redevelopment Act (Article 12.5 (commencing with Section 33459) of Chapter 4 of Part 1) shall be transferred to the successor agency and may be transferred to the successor housing entity at that entity's request.***

***(g) A successor agency is a separate public entity from the public agency that provides for its governance and the two entities shall not merge. The liabilities of the former redevelopment agency shall not be transferred to the sponsoring entity and the assets shall not become assets of the sponsoring entity. A successor agency has its own name, can be sued, and can sue. All litigation involving a redevelopment agency shall automatically be transferred to the successor agency. The separate former redevelopment agency employees shall not automatically become sponsoring entity employees of the sponsoring entity and the successor agency shall retain its own collective bargaining status. As successor entities, successor agencies succeed to the organizational status of the former redevelopment agency, but without any legal authority to participate in redevelopment activities, except to complete any work related to an approved***

*enforceable obligation. Each successor agency shall be deemed to be a local entity for purposes of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).*

*(h) The city, county, or city and county that authorized the creation of a redevelopment agency may loan or grant funds to a successor agency for administrative costs, enforceable obligations, or project-related expenses at the city's discretion, but the receipt and use of these funds shall be reflected on the Recognized Obligation Payment Schedule or the administrative budget and therefore are subject to the oversight and approval of the oversight board. An enforceable obligation shall be deemed to be created for the repayment of those loans.*

*(i) At the request of the city, county, or city and county, notwithstanding Section 33205, all land use related plans and functions of the former redevelopment agency are hereby transferred to the city, county, or city and county that authorized the creation of a redevelopment agency; provided, however, that the city, county, or city and county shall not create a new project area, add territory to, or expand or change the boundaries of a project area, or take any action that would increase the amount of obligated property tax (formerly tax increment) necessary to fulfill any existing enforceable obligation beyond what was authorized as of June 27, 2011.*

## **SEC. 8.**

*Section 34175 of the Health and Safety Code is amended to read:*

34175.

(a) It is the intent of this part that pledges of revenues associated with enforceable obligations of the former redevelopment agencies are to be honored. It is intended that the cessation of any redevelopment agency shall not affect either the pledge, the legal existence of that pledge, or the stream of revenues available to meet the requirements of the pledge.

(b) All assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency are transferred on February 1, 2012, to the control of the successor agency, for administration pursuant to the provisions of this part. This includes all cash or cash equivalents and amounts owed to the redevelopment agency as of February 1, 2012. *Any legal or contractual restrictions on the use of these funds or assets shall also be transferred to the successor agency.*

## **SEC. 9.**

*Section 34176 of the Health and Safety Code is amended to read:*

34176.

(a) *(1) The city, county, or city and county that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the redevelopment agency. If a city, county, or city and county elects to retain the ~~responsibility for performing~~ authority to perform housing functions previously performed by a redevelopment agency, all rights, powers, duties, ~~and~~ obligations, and housing assets, as defined in subdivision (e), excluding any amounts on deposit in the Low and Moderate Income Housing Fund and enforceable obligations retained by the successor agency, shall be transferred to the city, county, or city and county.*

*(2) The entity assuming the housing functions of the former redevelopment agency shall submit to the Department of Finance by August 1, 2012, a list of all housing assets that contains an explanation of how the assets meet the criteria specified in subdivision (e). The Department of Finance shall prescribe the format for the submission of the list. The list shall include assets transferred between February 1, 2012, and the date upon which the list is created. The department shall have up to 30 days from the date of receipt of the list to object to any of the assets or transfers of assets identified on the list. If the Department of Finance objects to assets on the list, the entity assuming the housing functions of the former redevelopment agency may request a meet and confer process within five business days of receiving the department objection. If the transferred asset is deemed not to be a housing asset as defined in subdivision (e), it shall be returned to the successor agency and the provision of Section 34178.8 may apply. If a housing asset has been previously pledged to pay for bonded indebtedness, the successor agency shall maintain control of the asset in order to pay for the bond debt.*

(b) If a city, county, or city and county does not elect to retain the responsibility for performing housing functions previously performed by a redevelopment agency, all rights, powers, assets, ~~liabilities~~, duties, and obligations associated with the housing activities of the agency, excluding *enforceable obligations retained by the successor agency* and any amounts in the Low and Moderate Income Housing Fund, shall be transferred as follows:

(1) ~~Where~~ *If* there is no local housing authority in the territorial jurisdiction of the former redevelopment agency, to the Department of Housing and Community Development.

(2) ~~Where~~ *If* there is one local housing authority in the territorial jurisdiction of the former redevelopment agency, to that local housing authority.

(3) ~~Where~~ *If* there is more than one local housing authority in the territorial jurisdiction of the former redevelopment agency, to the local housing authority selected by the city, county, or city and county that authorized the creation of the redevelopment agency.

(c) Commencing on the operative date of this part, the entity ~~assuming~~ *that assumes* the housing functions formerly performed by the redevelopment agency *and receives the transferred housing assets* may enforce affordability covenants and perform related activities pursuant to applicable provisions of the Community Redevelopment Law (Part 1 (commencing with Section ~~33000~~) 33000)), including, but not limited to, Section 33418.

*(d) Except as specifically provided in Section 34191.4, any funds transferred to the city, county, or city and county or designated entity pursuant to this section, together with any funds generated from housing assets, as defined in subdivision (e), shall be maintained in a separate Low and Moderate Income Housing Asset Fund which is hereby created in the accounts of the entity assuming the housing functions pursuant to this section. Funds in this account shall be used in accordance with applicable housing-related provisions of the Community Redevelopment Law (Part 1 (commencing with Section 33000)).*

*(e) For purposes of this part, "housing asset" includes all of the following:*

*(1) Any real property, interest in, or restriction on the use of real property, whether improved or not, and any personal property provided in residences, including furniture and appliances, all housing-related files and loan documents, office supplies, software licenses, and mapping programs, that were acquired for low- and moderate-income housing purposes, either by purchase or through a loan, in whole or in part, with any source of funds.*

*(2) Any funds that are encumbered by an enforceable obligation to build or acquire low- and moderate-income housing, as defined by the Community Redevelopment Law (Part 1 (commencing with Section 33000)) unless required in the bond covenants to be used for repayment purposes of the bond.*

(3) Any loan or grant receivable, funded from the Low and Moderate Income Housing Fund, from homebuyers, homeowners, nonprofit or for-profit developers, and other parties that require occupancy by persons of low or moderate income as defined by the Community Redevelopment Law (Part 1 (commencing with Section 33000)).

(4) Any funds derived from rents or operation of properties acquired for low- and moderate-income housing purposes by other parties that were financed with any source of funds, including residual receipt payments from developers, conditional grant repayments, cost savings and proceeds from refinancing, and principal and interest payments from homebuyers subject to enforceable income limits.

(5) A stream of rents or other payments from housing tenants or operators of low- and moderate-income housing financed with any source of funds that are used to maintain, operate, and enforce the affordability of housing or for enforceable obligations associated with low- and moderate-income housing.

(6) (A) Repayments of loans or deferrals owed to the Low and Moderate Income Housing Fund pursuant to subparagraph (G) of paragraph (1) of subdivision (d) of Section 34171, which shall be used consistent with the affordable housing requirements in the Community Redevelopment Law (Part 1 (commencing with Section 33000)).

(B) Loan or deferral repayments shall not be made prior to the 2013–14 fiscal year. Beginning in the 2013–14 fiscal year, the maximum repayment amount authorized each fiscal year for repayments made pursuant to this paragraph and subdivision (b) of Section 34191.4 combined shall be equal to one-half of the increase between the amount distributed to taxing entities pursuant to paragraph (4) of subdivision (a) of Section 34183 in that fiscal year and the amount distributed to taxing entities pursuant to that paragraph in the 2012–13 base year. Loan or deferral repayments made pursuant to this paragraph shall take priority over amounts to be repaid pursuant to subdivision (b) of Section 34191.4.

(f) If a development includes both low- and moderate-income housing that meets the definition of a housing asset under subdivision (e) and other types of property use, including, but not limited to, commercial use, governmental use, open space, and parks, the oversight board shall consider the overall value to the community as well as the benefit to taxing entities of keeping the entire development intact or dividing the title and control over the property between the housing successor and the successor agency or other public or private agencies. The disposition of those assets may be accomplished by a revenue-sharing arrangement as approved by the oversight board on behalf of the affected taxing entities.

(g) (1) (A) The entity assuming the housing functions pursuant to this section may designate the use of and commit indebtedness obligation proceeds that remain after the satisfaction of enforceable obligations that have been approved in a Recognized Obligation Payment Schedule and that are consistent with the indebtedness obligation covenants. The proceeds shall be derived from indebtedness obligations that were issued for the purposes of affordable housing prior to January 1, 2011, and were backed by the Low and Moderate Income Housing Fund. Enforceable obligations may be satisfied by the creation of reserves for the projects that are the subject of the enforceable obligation that are consistent with the contractual obligations for those projects, or by expending funds to complete the projects.

(B) The entity assuming the housing functions pursuant to this section shall provide notice to the successor agency of any designations of use or commitments of funds specified in subparagraph (A) that it wishes to make at least 20 days before the deadline for submission of the Recognized Obligation Payment Schedule to the oversight board. Commitments and designations shall not be valid and binding on any party until they are included in an approved and valid Recognized Obligation Payment Schedule. The review of these designations and commitments by the successor agency, oversight board, and Department of

*Finance shall be limited to a determination that the designations and commitments are consistent with bond covenants and that there are sufficient funds available.*

*(2) Funds shall be used and committed in a manner consistent with the purposes of the Low and Moderate Income Housing Asset Fund. Notwithstanding any other law, the successor agency shall retain and expend the excess housing obligation proceeds at the discretion of the succeeding housing entity, provided that the successor agency ensures that the proceeds are expended in a manner consistent with the indebtedness obligation covenants and with any requirements relating to the tax status of those obligations. The amount expended shall not exceed the amount of indebtedness obligation proceeds available and such expenditure shall constitute the creation of excess housing proceeds expenditures to be paid from the excess proceeds. Excess housing proceeds expenditures shall be listed separately on the Recognized Obligation Payment Schedule submitted by the successor agency.*

## **SEC. 10.**

*Section 34176.5 is added to the Health and Safety Code, to read:*

34176.5.

(a) Notwithstanding any other law, the Director of Finance is authorized to contract with auditors, lawyers, and other types of advisors and consultants to assist, advise, and represent the director and the Department of Finance in any matter or action arising out of or contemplated by this part or Part 1.8 (commencing with Section 34161). In furtherance of this authorization, Sections 14827.1, 14827.2, and 14838 of the Government Code, and Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of and Section 10295 of, the Public Contract Code shall not apply to any agreement entered into by the director pursuant to this section.

(b) In addition to the waivers of statute provided in subdivision (a), Section 6072 of the Business and Professions Code shall not apply to the legal services agreement entered into by the director pursuant to this section.

(c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

## **SEC. 11.**

*Section 34177 of the Health and Safety Code is amended to read:*

34177.

Successor agencies are required to do all of the following:

(a) Continue to make payments due for enforceable obligations.

(1) On and after February 1, 2012, and until a Recognized Obligation Payment Schedule becomes operative, only payments required pursuant to an enforceable obligations payment schedule shall be made. The initial enforceable obligation payment schedule shall be the last schedule adopted by the redevelopment agency under Section 34169. However, payments associated with obligations excluded from the definition of enforceable obligations by paragraph

(2) of subdivision ~~(e)~~ (d) of Section 34171 shall be excluded from the enforceable obligations payment schedule and be removed from the last schedule adopted by the redevelopment agency under Section 34169 prior to the successor agency adopting it as its enforceable obligations payment schedule pursuant to this subdivision. The enforceable obligation payment schedule may be amended by the successor agency at any public meeting and shall be subject to the

approval of the oversight board as soon as the board has sufficient members to form a quorum. *In recognition of the fact that the timing of the California Supreme Court's ruling in the case California Redevelopment Association v. Matosantos (2011) 53 Cal.4th 231 delayed the preparation by successor agencies and the approval by oversight boards of the January 1, 2012, through June 30, 2012, Recognized Obligation Payment Schedule, a successor agency may amend the Enforceable Obligation Payment Schedule to authorize the continued payment of enforceable obligations until the time that the January 1, 2012, through June 30, 2012, Recognized Obligation Payment Schedule has been approved by the oversight board and by the Department of Finance.*

(2) The Department of Finance and the Controller shall each have the authority to require any documents associated with the enforceable obligations to be provided to them in a manner of their choosing. Any taxing entity, the department, and the Controller shall each have standing to file a judicial action to prevent a violation under this part and to obtain injunctive or other appropriate relief.

(3) Commencing on ~~May 1, 2012~~ *the date the Recognized Obligation Payment Schedule is valid pursuant to subdivision (1)*, only those payments listed in the Recognized Obligation Payment Schedule may be made by the successor agency from the funds specified in the Recognized Obligation Payment Schedule. In addition, ~~commencing May 1, 2012~~ *after it becomes valid*, the Recognized Obligation Payment Schedule shall supersede the Statement of Indebtedness, which shall no longer be prepared nor have any effect under the Community Redevelopment Law (*Part 1 (commencing with Section 33000)*).

(4) Nothing in the act adding this part is to be construed as preventing a successor agency, with the prior approval of the oversight board, as described in Section 34179, from making payments for enforceable obligations from sources other than those listed in the Recognized Obligation Payment Schedule.

(5) From February 1, 2012, to July 1, 2012, a successor agency shall have no authority and is hereby prohibited from accelerating payment or making any lump-sum payments that are intended to prepay loans unless such accelerated repayments were required prior to the effective date of this part.

(b) Maintain reserves in the amount required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds.

(c) Perform obligations required pursuant to any enforceable obligation.

(d) Remit unencumbered balances of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities, including, but not limited to, the unencumbered balance of the Low and Moderate Income Housing Fund of a former redevelopment agency. In making the distribution, the county auditor-controller shall utilize the same methodology for allocation and distribution of property tax revenues provided in Section 34188.

(e) Dispose of assets and properties of the former redevelopment agency as directed by the oversight board; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of certain assets pursuant to subdivision (a) of Section 34181. The disposal is to be done expeditiously and in a manner aimed at maximizing value. Proceeds from asset sales and related funds that are no longer needed for approved development projects or to otherwise wind down the affairs of the agency, each as determined by the oversight board, shall be transferred to the county auditor-controller for distribution as property tax proceeds under Section 34188. *The requirements of this subdivision shall not apply to a successor agency that has been issued a finding of completion by the Department of Finance pursuant to Section 34179.7.*



(f) Enforce all former redevelopment agency rights for the benefit of the taxing entities, including, but not limited to, continuing to collect loans, rents, and other revenues that were due to the redevelopment agency.

(g) Effectuate transfer of housing functions and assets to the appropriate entity designated pursuant to Section 34176.

(h) Expeditiously wind down the affairs of the redevelopment agency pursuant to the provisions of this part and in accordance with the direction of the oversight board.

(i) Continue to oversee development of properties until the contracted work has been completed or the contractual obligations of the former redevelopment agency can be transferred to other parties. Bond proceeds shall be used for the purposes for which bonds were sold unless the purposes can no longer be achieved, in which case, the proceeds may be used to defease the bonds.

(j) Prepare a proposed administrative budget and submit it to the oversight board for its approval. The proposed administrative budget shall include all of the following:

(1) Estimated amounts for successor agency administrative costs for the upcoming six-month fiscal period.

(2) Proposed sources of payment for the costs identified in paragraph (1).

(3) Proposals for arrangements for administrative and operations services provided by a city, county, city and county, or other entity.

(k) Provide administrative cost estimates, from its approved administrative budget that are to be paid from property tax revenues deposited in the Redevelopment Property Tax Trust Fund, to the county auditor-controller for each six-month fiscal period.

(l) (1) Before each six-month fiscal period, prepare a Recognized Obligation Payment Schedule in accordance with the requirements of this paragraph. For each recognized obligation, the Recognized Obligation Payment Schedule shall identify one or more of the following sources of payment:

(A) Low and Moderate Income Housing Fund.

(B) Bond proceeds.

(C) Reserve balances.

(D) Administrative cost allowance.

(E) The Redevelopment Property Tax Trust Fund, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation or by the provisions of this part.

(F) Other revenue sources, including rents, concessions, asset sale proceeds, interest earnings, and any other revenues derived from the former redevelopment agency, as approved by the oversight board in accordance with this part.

(2) A Recognized Obligation Payment Schedule shall not be deemed valid unless all of the following conditions have been met:

(A) A ~~draft~~ Recognized Obligation Payment Schedule is prepared by the successor agency for the enforceable obligations of the former redevelopment agency ~~by March 1, 2012. From October 1, 2011, to July 1, 2012, the~~ *The* initial ~~draft of that~~ schedule shall project the dates and amounts of scheduled payments for each enforceable obligation for the remainder of the time period during which the redevelopment agency would have been authorized to obligate property tax increment had ~~such the~~ a redevelopment agency not been dissolved, ~~and shall be reviewed and certified, as to its accuracy, by an external auditor designated pursuant to Section 34182.~~

(B) The certified Recognized Obligation Payment Schedule is submitted to and duly approved by the oversight board. *The successor agency shall submit a copy of the Recognized Obligation Payment Schedule to the county administrative officer, the county auditor-controller, and the*

***Department of Finance at the same time that the successor agency submits the Recognized Obligation Payment Schedule to the oversight board for approval.***

(C) A copy of the approved Recognized Obligation Payment Schedule is submitted to the county auditor-controller and both the Controller's office and the Department of Finance and be posted on the successor agency's Internet Web site.

(3) The Recognized Obligation Payment Schedule shall be forward looking to the next six months. The first Recognized Obligation Payment Schedule shall be submitted to the Controller's office and the Department of Finance by April 15, 2012, for the period of January 1, 2012, to June 30, 2012, inclusive. ***This Recognized Obligation Payment Schedule shall include all payments made by the former redevelopment agency between January 1, 2012, through January 31, 2012, and shall include all payments proposed to be made by the successor agency from February 1, 2012, through June 30, 2012.*** Former redevelopment agency enforceable obligation payments due, and reasonable or necessary administrative costs due or incurred, prior to January 1, 2012, shall be made from property tax revenues received in the spring of 2011 property tax distribution, and from other revenues and balances transferred to the successor agency.

***(m) The Recognized Obligation Payment Schedule for the period of January 1, 2013, to June 30, 2013, shall be submitted by the successor agency, after approval by the oversight board, no later than September 1, 2012. Commencing with the Recognized Obligation Payment Schedule covering the period July 1, 2013, through December 31, 2013, successor agencies shall submit an oversight board-approved Recognized Obligation Payment Schedule to the Department of Finance and to the county auditor-controller no fewer than 90 days before the date of property tax distribution. The Department of Finance shall make its determination of the enforceable obligations and the amounts and funding sources of the enforceable obligations no later than 45 days after the Recognized Obligation Payment Schedule is submitted. Within five business days of the department's determination, a successor agency may request additional review by the department and an opportunity to meet and confer on disputed items. The meet and confer period may vary; an untimely submittal of a Recognized Obligation Payment Schedule may result in a meet and confer period of less than 30 days. The department shall notify the successor agency and the county auditor-controllers as to the outcome of its review at least 15 days before the date of property tax distribution.***

***(1) The successor agency shall submit a copy of the Recognized Obligation Payment Schedule to the Department of Finance electronically, and the successor agency shall complete the Recognized Obligation Payment Schedule in the manner provided for by the department. A successor agency shall be in noncompliance with this paragraph if it only submits to the department an electronic message or a letter stating that the oversight board has approved a Recognized Obligation Payment Schedule.***

***(2) If a successor agency does not submit a Recognized Obligation Payment Schedule by the deadlines provided in this subdivision, the city, county, or city and county that created the redevelopment agency shall be subject to a civil penalty equal to ten thousand dollars (\$10,000) per day for every day the schedule is not submitted to the department. The civil penalty shall be paid to the county auditor-controller for allocation to the taxing entities under Section 34183. If a successor agency fails to submit a Recognized Obligation Payment Schedule by the deadline, any creditor of the successor agency or the Department of Finance or any affected taxing entity shall have standing to and may request a writ of mandate to require the successor agency to immediately perform this duty. Those actions may be filed only in the County of Sacramento and shall have priority over other civil matters. Additionally, if an agency does not submit a Recognized Obligation Payment Schedule within ten days of the***

*deadline, the maximum administrative cost allowance for that period shall be reduced by 25 percent.*

*(3) If a successor agency fails to submit to the department an oversight board-approved Recognized Obligation Payment Schedule that complies with all requirements of this subdivision within five business days of the date upon which the Recognized Obligation Payment Schedule is to be used to determine the amount of property tax allocations, the department may determine if any amount should be withheld by the county auditor-controller for payments for enforceable obligations from distribution to taxing entities, pending approval of a Recognized Obligation Payment Schedule. The county auditor-controller shall distribute the portion of any of the sums withheld pursuant to this paragraph to the affected taxing entities in accordance with paragraph (4) of subdivision (a) of Section 34183 upon notice by the department that a portion of the withheld balances are in excess of the amount of enforceable obligations. The county auditor-controller shall distribute withheld funds to the successor agency only in accordance with a Recognized Obligation Payment Schedule approved by the department. County auditor-controllers shall lack the authority to withhold any other amounts from the allocations provided for under Section 34183 or 34188 unless required by a court order.*

*(n) Cause a postaudit of the financial transactions and records of the successor agency to be made at least annually by a certified public accountant.*

## **SEC. 12.**

*Section 34177.3 is added to the Health and Safety Code, to read:*

*34177.3.*

*(a) Successor agencies shall lack the authority to, and shall not, create new enforceable obligations under the authority of the Community Redevelopment Law (Part 1 (commencing with Section 33000)) or begin new redevelopment work, except in compliance with an enforceable obligation that existed prior to June 28, 2011.*

*(b) Successor agencies may create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance.*

*(c) Successor agencies shall lack the authority to, and shall not, transfer any powers or revenues of the successor agency to any other party, public or private, except pursuant to an enforceable obligation on a Recognized Obligation Payment Schedule approved by the department. Any such transfers of authority or revenues that are not made pursuant to an enforceable obligation on a Recognized Obligation Payment Schedule approved by the Department of Finance are hereby declared to be void, and the successor agency shall take action to reverse any of those transfers. The Controller may audit any transfer of authority or revenues prohibited by this section and may order the prompt return of any money or other things of value from the receiving party.*

*(d) Redevelopment agencies that resolved to participate in the Voluntary Alternative Redevelopment Program under Chapter 6 of the First Extraordinary Session of the Statutes of 2011 were and are subject to the provisions of Part 1.8 (commencing with Section 34161). Any actions taken by redevelopment agencies to create obligations after June 27, 2011, are ultra vires and do not create enforceable obligations.*

*(e) The Legislature finds and declares that the provisions of this section are declaratory of existing law.*

## SEC. 13.

*Section 34177.5 is added to the Health and Safety Code, to read:*

34177.5.

*(a) In addition to the powers granted to each successor agency, and notwithstanding anything in the act adding this part, including, but not limited to, Sections 34162 and 34189, a successor agency shall have the authority, rights, and powers of the redevelopment agency to which it succeeded solely for the following purposes:*

*(1) For the purpose of issuing bonds or incurring other indebtedness to refund the bonds or other indebtedness of its former redevelopment agency or of the successor agency to provide savings to the successor agency, provided that (A) the total interest cost to maturity on the refunding bonds or other indebtedness plus the principal amount of the refunding bonds or other indebtedness shall not exceed the total remaining interest cost to maturity on the bonds or other indebtedness to be refunded plus the remaining principal of the bonds or other indebtedness to be refunded, and (B) the principal amount of the refunding bonds or other indebtedness shall not exceed the amount required to defease the refunded bonds or other indebtedness, to establish customary debt service reserves, and to pay related costs of issuance. If the foregoing conditions are satisfied, the initial principal amount of the refunding bonds or other indebtedness may be greater than the outstanding principal amount of the bonds or other indebtedness to be refunded. The successor agency may pledge to the refunding bonds or other indebtedness the revenues pledged to the bonds or other indebtedness being refunded, and that pledge, when made in connection with the issuance of such refunding bonds or other indebtedness, shall have the same lien priority as the pledge of the bonds or other obligations to be refunded, and shall be valid, binding, and enforceable in accordance with its terms.*

*(2) For the purpose of issuing bonds or other indebtedness to finance debt service spikes, including balloon maturities, provided that (A) the existing indebtedness is not accelerated, except to the extent necessary to achieve substantially level debt service, and (B) the principal amount of the bonds or other indebtedness shall not exceed the amount required to finance the debt service spikes, including establishing customary debt service reserves and paying related costs of issuance.*

*(3) For the purpose of amending an existing enforceable obligation under which the successor agency is obligated to reimburse a political subdivision of the state for the payment of debt service on a bond or other obligation of the political subdivision, or to pay all or a portion of the debt service on the bond or other obligation of the political subdivision to provide savings to the successor agency, provided that (A) the enforceable obligation is amended in connection with a refunding of the bonds or other obligations of the political subdivision so that the enforceable obligation will apply to the refunding bonds or other refunding indebtedness of the political subdivision, (B) the total interest cost to maturity on the refunding bonds or other indebtedness plus the principal amount of the refunding bonds or other indebtedness shall not exceed the total remaining interest cost to maturity on the bonds or other indebtedness to be refunded plus the remaining principal of the bonds or other indebtedness to be refunded, and (C) the principal amount of the refunding bonds or other indebtedness shall not exceed the amount required to defease the refunded bonds or other indebtedness, to establish customary debt service reserves and to pay related costs of issuance. The pledge set forth in that amended enforceable obligation, when made in connection with the execution of the amendment of the enforceable obligation, shall have the same lien priority as the pledge in the enforceable obligation prior to its amendment and shall be valid, binding, and enforceable in accordance with its terms.*

*(4) For the purpose of issuing bonds or incurring other indebtedness to make payments under enforceable obligations when the enforceable obligations include the irrevocable pledge of property tax increment, formerly tax increment revenues prior to the effective date of this part, or other funds and the obligation to issue bonds secured by that pledge. The successor agency may pledge to the bonds or other indebtedness the property tax revenues and other funds described in the enforceable obligation, and that pledge, when made in connection with the issuance of the bonds or the incurring of other indebtedness, shall be valid, binding, and enforceable in accordance with its terms. This paragraph shall not be deemed to authorize a successor agency to increase the amount of property tax revenues pledged under an enforceable obligation or to pledge any property tax revenue not already pledged pursuant to an enforceable obligation. This paragraph does not constitute a change in, but is declaratory of, the existing law.*

*(b) The refunding bonds authorized under this section may be issued under the authority of Article 11 (commencing with Section 53580) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, and the refunding bonds may be sold at public or private sale, or to a joint powers authority pursuant to the Marks-Roos Local Bond Pooling Act (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code).*

*(c) (1) Prior to incurring any bonds or other indebtedness pursuant to this section, the successor agency may subordinate to the bonds or other indebtedness the amount required to be paid to an affected taxing entity pursuant to paragraph (1) of subdivision (a) of Section 34183, provided that the affected taxing entity has approved the subordinations pursuant to this subdivision.*

*(2) At the time the successor agency requests an affected taxing entity to subordinate the amount to be paid to it, the successor agency shall provide the affected taxing entity with substantial evidence that sufficient funds will be available to pay both the debt service on the bonds or other indebtedness and the payments required by paragraph (1) of subdivision (a) of Section 34183, when due.*

*(3) Within 45 days after receipt of the agency's request, the affected taxing entity shall approve or disapprove the request for subordination. An affected taxing entity may disapprove a request for subordination only if it finds, based upon substantial evidence, that the successor agency will not be able to pay the debt service payments and the amount required to be paid to the affected taxing entity. If the affected taxing entity does not act within 45 days after receipt of the agency's request, the request to subordinate shall be deemed approved and shall be final and conclusive.*

*(d) An action may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of bonds or other obligations authorized by this section, the pledge of revenues to those bonds or other obligations authorized by this section, the legality and validity of all proceedings theretofore taken and, as provided in the resolution of the legislative body of the successor agency authorizing the bonds or other obligations authorized by this section, proposed to be taken for the authorization, execution, issuance, sale, and delivery of the bonds or other obligations authorized by this section, and for the payment of debt service on the bonds or the payment of amounts under other obligations authorized by this section. Subdivision (c) of Section 33501 shall not apply to any such action. The Department of Finance shall be notified of the filing of any action as an affected party.*

*(e) Notwithstanding any other law, including, but not limited to, Section 33501, an action to challenge the issuance of bonds, the incurrence of indebtedness, the amendment of an enforceable obligation, or the execution of a financing agreement by a successor agency shall*

*be brought within 30 days after the date on which the oversight board approves the resolution of the successor agency approving the issuance of bonds, the incurrence of indebtedness, the amendment of an enforceable obligation, or the execution of a financing agreement authorized under this section.*

*(f) The actions authorized in this section shall be subject to the approval of the oversight board, as provided in Section 34180. Additionally, an oversight board may direct the successor agency to commence any of the transactions described in subdivision (a) so long as the successor agency is able to recover its related costs in connection with the transaction. After a successor agency, with approval of the oversight board, issues any bonds, incurs any indebtedness, or executes an amended enforceable obligation pursuant to subdivision (a), the oversight board shall not unilaterally approve any amendments to or early termination of the bonds, indebtedness, or enforceable obligation. If, under the authority granted to it by subdivision (h) of Section 34179, the Department of Finance either reviews and approves or fails to request review within five business days of an oversight board approval of an action authorized by this section, the scheduled payments on the bonds or other indebtedness shall be listed in the Recognized Obligation Payment Schedule and shall not be subject to further review and approval by the department or the Controller. The department may extend its review time to 60 days for actions authorized in this section and may seek the assistance of the Treasurer in evaluating proposed actions under this section.*

*(g) Any bonds, indebtedness, or amended enforceable obligation authorized by this section shall be considered indebtedness incurred by the dissolved redevelopment agency, with the same legal effect as if the bonds, indebtedness, financing agreement, or amended enforceable obligation had been issued, incurred, or entered into prior to June 29, 2011, in full conformity with the applicable provisions of the Community Redevelopment Law that existed prior to that date, shall be included in the successor agency's Recognized Obligation Payment Schedule, and shall be secured by a pledge of, and lien on, and shall be repaid from moneys deposited from time to time in the Redevelopment Property Tax Trust Fund established pursuant to subdivision (c) of Section 34172, as provided in paragraph (2) of subdivision (a) of Section 34183. Property tax revenues pledged to any bonds, indebtedness, or amended enforceable obligations authorized by this section are taxes allocated to the successor agency pursuant to subdivision (b) of Section 33670 and Section 16 of Article XVI of the California Constitution.*

*(h) The successor agency shall make diligent efforts to ensure that the lowest long-term cost financing is obtained. The financing shall not provide for any bullets or spikes and shall not use variable rates. The successor agency shall make use of an independent financial advisor in developing financing proposals and shall make the work products of the financial advisor available to the Department of Finance at its request.*

*(i) If an enforceable obligation provides for an irrevocable commitment of property tax revenue and where allocation of such revenues is expected to occur over time, the successor agency may petition the Department of Finance to provide written confirmation that its determination of such enforceable obligation as approved in a Recognized Obligation Payment Schedule is final and conclusive, and reflects the department's approval of subsequent payments made pursuant to the enforceable obligation. If the confirmation is granted, then the department's review of such payments in future Recognized Obligation Payment Schedules shall be limited to confirming that they are required by the prior enforceable obligation.*

*(j) The successor agency may request that the department provide a written determination to waive the two-year statute of limitations on an action to review the validity of the adoption or amendment of a redevelopment plan pursuant to subdivision (c) of Section 33500 or on any findings or determinations made by the agency pursuant to subdivision (d) of Section 33500.*

*The department at its discretion may provide a waiver if it determines it is necessary for the agency to fulfill an enforceable obligation.*

#### **SEC. 14.**

*Section 34178 of the Health and Safety Code is amended to read:*

34178.

(a) Commencing on the operative date of this part, agreements, contracts, or arrangements between the city or county, or city and county that created the redevelopment agency and the redevelopment agency are invalid and shall not be binding on the successor agency; provided, however, that a successor entity wishing to enter or reenter into agreements with the city, county, or city and county that formed the redevelopment agency that it is succeeding may do so upon obtaining the approval of its oversight board. *A successor agency or an oversight board shall not exercise the powers granted by this subdivision to restore funding for an enforceable obligation that was deleted or reduced by the Department of Finance pursuant to subdivision (h) of Section 34179 unless it reflects the decisions made during the meet and confer process with the Department of Finance or pursuant to a court order.*

(b) Notwithstanding subdivision (a), any of the following agreements are not invalid and may bind the successor agency:

(1) A duly authorized written agreement entered into at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and solely for the purpose of securing or repaying those indebtedness obligations.

(2) A written agreement between a redevelopment agency and the city, county, or city and county that created it that provided loans or other startup funds for the redevelopment agency that were entered into within two years of the formation of the redevelopment agency.

(3) A joint exercise of powers agreement in which the redevelopment agency is a member of the joint powers authority. However, upon assignment to the successor agency by operation of the act adding this part, the successor agency's rights, duties, and performance obligations under that joint exercise of powers agreement shall be limited by the constraints imposed on successor agencies by the act adding this part.

#### **SEC. 15.**

*Section 34178.8 is added to the Health and Safety Code, to read:*

34178.8.

*Commencing on the effective date of the act adding this section, the Controller shall review the activities of successor agencies in the state to determine if an asset transfer has occurred after January 31, 2012, between the successor agency and the city, county, or city and county that created a redevelopment agency, or any other public agency, that was not made pursuant to an enforceable obligation on an approved and valid Recognized Obligation Payment Schedule. If such an asset transfer did occur, to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned to the successor agency. Upon receiving that order from the Controller, an affected local agency shall, as soon as practicable, reverse the transfer and return the applicable assets to the successor agency. This section shall not apply to housing assets as defined in subdivision (e) of Section 34176.*

**SEC. 16.**

**Section 34179 of the Health and Safety Code is amended to read:**

34179.

(a) Each successor agency shall have an oversight board composed of seven members. The members shall elect one of their members as the chairperson and shall report the name of the chairperson and other members to the Department of Finance on or before May 1, 2012. Members shall be selected as follows:

- (1) One member appointed by the county board of supervisors.
- (2) One member appointed by the mayor for the city that formed the redevelopment agency.
- (3) ~~(A)~~ One member appointed by the largest special district, by property tax share, with territory in the territorial jurisdiction of the former redevelopment agency, which is of the type of special district that is eligible to receive property tax revenues pursuant to Section 34188.  
***(B) On or after the effective date of this subparagraph, the county auditor-controller may determine which is the largest special district for purposes of this section.***
- (4) One member appointed by the county superintendent of education to represent schools if the superintendent is elected. If the county superintendent of education is appointed, then the appointment made pursuant to this paragraph shall be made by the county board of education.
- (5) One member appointed by the Chancellor of the California Community Colleges to represent community college districts in the county.
- (6) One member of the public appointed by the county board of supervisors.
- (7) One member representing the employees of the former redevelopment agency appointed by the mayor or chair of the board of supervisors, as the case may be, from the recognized employee organization representing the largest number of former redevelopment agency employees employed by the successor agency at that time. ***In the case where city or county employees performed administrative duties of the former redevelopment agency, the appointment shall be made from the recognized employee organization representing those employees. If a recognized employee organization does not exist for either the employees of the former redevelopment agency or the city or county employees performing administrative duties of the former redevelopment agency, the appointment shall be made from among the employees of the successor agency. In voting to approve a contract as an enforceable obligation, a member appointed pursuant to this paragraph shall not be deemed to be interested in the contract by virtue of being an employee of the successor agency or community for purposes of Section 1090 of the Government Code.***
- (8) If the county or a joint powers agency formed the redevelopment agency, then the largest city by acreage in the territorial jurisdiction of the former redevelopment agency may select one member. If there are no cities with territory in a project area of the redevelopment agency, the county superintendent of education may appoint an additional member to represent the public.
- (9) If there are no special districts of the type that are eligible to receive property tax pursuant to Section 34188, within the territorial jurisdiction of the former redevelopment agency, then the county may appoint one member to represent the public.
- (10) ~~Where~~ ***If*** a redevelopment agency was formed by an entity that is both a charter city and a county, the oversight board shall be composed of seven members selected as follows: three members appointed by the mayor of the city, ~~where such if that~~ appointment is subject to confirmation by the county board of supervisors, one member appointed by the largest special district, by property tax share, with territory in the territorial jurisdiction of the former redevelopment agency, which is the type of special district that is eligible to receive property tax revenues pursuant to Section 34188, one member appointed by the county superintendent of



education to represent schools, one member appointed by the Chancellor of the California Community Colleges to represent community college districts, and one member representing employees of the former redevelopment agency appointed by the mayor of the city ~~where such~~ **as if that** appointment is subject to confirmation by the county board of supervisors, to represent the largest number of former redevelopment agency employees employed by the successor agency at that time.

(b) The Governor may appoint individuals to fill any oversight board member position described in subdivision (a) that has not been filled by May 15, 2012, or any member position that remains vacant for more than 60 days.

(c) The oversight board may direct the staff of the successor agency to perform work in furtherance of the oversight board's duties and responsibilities under this part. The successor agency shall pay for all of the costs of meetings of the oversight board and may include such costs in its administrative budget. Oversight board members shall serve without compensation or reimbursement for expenses.

(d) Oversight board members ~~shall have personal immunity from suit for their actions taken within the scope of their responsibilities as oversight board members.~~ **are protected by the immunities applicable to public entities and public employees governed by Part 1 (commencing with Section 810) and Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the Government Code.**

(e) A majority of the total membership of the oversight board shall constitute a quorum for the transaction of business. A majority vote of the total membership of the oversight board is required for the oversight board to take action. The oversight board shall be deemed to be a local entity for purposes of the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974. **All actions taken by the oversight board shall be adopted by resolution.**

(f) All notices required by law for proposed oversight board actions shall also be posted on the successor agency's Internet Web site or the oversight board's Internet Web site.

(g) Each member of an oversight board shall serve at the pleasure of the entity that appointed such member.

(h) The Department of Finance may review an oversight board action taken pursuant to ~~the act adding this part. As such, all oversight board actions shall not be effective for three business days, pending a request for review by the department.~~ **Written notice and information about all actions taken by an oversight board shall be provided to the department by electronic means and in a manner of the department's choosing. An action shall become effective five business days after notice in the manner specified by the department is provided unless the department requests a review.** Each oversight board shall designate an official to whom the department may make ~~such those~~ requests and who shall provide the department with the telephone number and e-mail contact information for the purpose of communicating with the department pursuant to this subdivision. ~~In~~ **Except as otherwise provided in this part, in** the event that the department requests a review of a given oversight board action, it shall have ~~10~~ **40** days from the date of its request to approve the oversight board action or return it to the oversight board for reconsideration and ~~such the~~ oversight board action shall not be effective until approved by the department. In the event that the department returns the oversight board action to the oversight board for reconsideration, the oversight board shall resubmit the modified action for department approval and the modified oversight board action shall not become effective until approved by the department. **If the department reviews a Recognized Obligation Payment Schedule, the department may eliminate or modify any item on that schedule prior to its approval. The county auditor-controller shall reflect the actions of the department in determining the amount of property tax revenues to allocate to the successor agency. The**

*department shall provide notice to the successor agency and the county auditor-controller as to the reasons for its actions. To the extent that an oversight board continues to dispute a determination with the department, one or more future recognized obligation schedules may reflect any resolution of that dispute. The department may also agree to an amendment to a Recognized Obligation Payment Schedule to reflect a resolution of a disputed item; however, this shall not affect a past allocation of property tax or create a liability for any affected taxing entity.*

(i) Oversight boards shall have fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188. Further, the provisions of Division 4 (commencing with Section 1000) of the Government Code shall apply to oversight boards. Notwithstanding Section 1099 of the Government Code, or any other law, any individual may simultaneously be appointed to up to five oversight boards and may hold an office in a city, county, city and county, special district, school district, or community college district.

(j) Commencing on and after July 1, 2016, in each county where more than one oversight board was created by operation of the act adding this part, there shall be only one oversight board appointed as follows:

(1) One member may be appointed by the county board of supervisors.

(2) One member may be appointed by the city selection committee established pursuant to Section 50270 of the Government Code. In a city and county, the mayor may appoint one member.

(3) One member may be appointed by the independent special district selection committee established pursuant to Section 56332 of the Government Code, for the types of special districts that are eligible to receive property tax revenues pursuant to Section 34188.

(4) One member may be appointed by the county superintendent of education to represent schools if the superintendent is elected. If the county superintendent of education is appointed, then the appointment made pursuant to this paragraph shall be made by the county board of education.

(5) One member may be appointed by the Chancellor of the California Community Colleges to represent community college districts in the county.

(6) One member of the public may be appointed by the county board of supervisors.

(7) One member may be appointed by the recognized employee organization representing the largest number of successor agency employees in the county.

(k) The Governor may appoint individuals to fill any oversight board member position described in subdivision (j) that has not been filled by July 15, 2016, or any member position that remains vacant for more than 60 days.

(l) Commencing on and after July 1, 2016, in each county where only one oversight board was created by operation of the act adding this part, then there will be no change to the composition of that oversight board as a result of the operation of subdivision (b).

(m) Any oversight board for a given successor agency shall cease to exist when all of the indebtedness of the dissolved redevelopment agency has been repaid.

*(n) An oversight board may direct a successor agency to provide additional legal or financial advice than what was given by agency staff.*

*(o) An oversight board is authorized to contract with the county or other public or private agencies for administrative support.*

*(p) On matters within the purview of the oversight board, decisions made by the oversight board supersede those made by the successor agency or the staff of the successor agency.*

## **SEC. 17.**

*Section 34179.5 is added to the Health and Safety Code, to read:*

34179.5.

*(a) In furtherance of subdivision (d) of Section 34177, each successor agency shall employ a licensed accountant, approved by the county auditor-controller and with experience and expertise in local government accounting, to conduct a due diligence review to determine the unobligated balances available for transfer to taxing entities. As an alternative, an audit provided by the county auditor-controller that provides the information required by this section may be used to comply with this section with the concurrence of the oversight board.*

*(b) For purposes of this section the following terms shall have the following meanings:*

*(1) "Cash" and "cash equivalents" includes, but is not limited to, cash in hand, bank deposits, Local Agency Investment Fund deposits, deposits in the city or county treasury or any other pool, marketable securities, commercial paper, United States Treasury bills, banker's acceptances, payables on demand and amounts due from other parties as defined in subdivision (c), and any other money owned by the successor agency.*

*(2) "Enforceable obligation" includes any of the items listed in subdivision (d) of Section 34171, contracts detailing specific work to be performed that were entered into by the former redevelopment agency prior to June 28, 2011, with a third party that is other than the city, county, or city and county that created the former redevelopment agency, and indebtedness obligations as defined in subdivision (e) of Section 34171.*

*(3) "Transferred" means the transmission of money to another party that is not in payment for goods or services or an investment or where the payment is de minimus. Transfer also means where the payments are ultimately merely a restriction on the use of the money.*

*(c) At a minimum, the review required by this section shall include the following:*

*(1) The dollar value of assets transferred from the former redevelopment agency to the successor agency on or about February 1, 2012.*

*(2) The dollar value of assets and cash and cash equivalents transferred after January 1, 2011, through June 30, 2012, by the redevelopment agency or the successor agency to the city, county, or city and county that formed the redevelopment agency and the purpose of each transfer. The review shall provide documentation of any enforceable obligation that required the transfer.*

*(3) The dollar value of any cash or cash equivalents transferred after January 1, 2011, through June 30, 2012, by the redevelopment agency or the successor agency to any other public agency or private party and the purpose of each transfer. The review shall provide documentation of any enforceable obligation that required the transfer.*

*(4) The review shall provide expenditure and revenue accounting information and identify transfers and funding sources for the 2010–11 and 2011–12 fiscal years that reconciles balances, assets, and liabilities of the successor agency on June 30, 2012 to those reported to the Controller for the 2009–10 fiscal year.*

*(5) A separate accounting for the balance for the Low and Moderate Income Housing Fund for all other funds and accounts combined shall be made as follows:*

*(A) A statement of the total value of each fund as of June 30, 2012.*

*(B) An itemized statement listing any amounts that are legally restricted as to purpose and cannot be provided to taxing entities. This could include the proceeds of any bonds, grant funds, or funds provided by other governmental entities that place conditions on their use.*

*(C) An itemized statement of the values of any assets that are not cash or cash equivalents. This may include physical assets, land, records, and equipment. For the purpose of this accounting, physical assets may be valued at purchase cost or at any recently estimated market value. The statement shall list separately housing-related assets.*

*(D) An itemized listing of any current balances that are legally or contractually dedicated or restricted for the funding of an enforceable obligation that identifies the nature of the dedication or restriction and the specific enforceable obligation. In addition, the successor agency shall provide a listing of all approved enforceable obligations that includes a projection of annual spending requirements to satisfy each obligation and a projection of annual revenues available to fund those requirements. If a review finds that future revenues together with dedicated or restricted balances are insufficient to fund future obligations and thus retention of current balances is required, it shall identify the amount of current balances necessary for retention. The review shall also detail the projected property tax revenues and other general purpose revenues to be received by the successor agency, together with both the amount and timing of the bond debt service payments of the successor agency, for the period in which the oversight board anticipates the successor agency will have insufficient property tax revenue to pay the specified obligations.*

*(E) An itemized list and analysis of any amounts of current balances that are needed to satisfy obligations that will be placed on the Recognized Obligation Payment Schedules for the current fiscal year.*

*(6) The review shall total the net balances available after deducting the total amounts described in subparagraphs (B) to (E), inclusive, of paragraph (5). The review shall add any amounts that were transferred as identified in paragraphs (2) and (3) of subdivision (c) if an enforceable obligation to make that transfer did not exist. The resulting sum shall be available for allocation to affected taxing entities pursuant to Section 34179.6. It shall be a rebuttable presumption that cash and cash equivalent balances available to the successor agency are available and sufficient to disburse the amount determined in this paragraph to taxing entities. If the review finds that there are insufficient cash balances to transfer or that cash or cash equivalents are specifically obligated to the purposes described in subparagraphs (B), (D), and (E) of paragraph (5) in such amounts that there is insufficient cash to provide the full amount determined pursuant to this paragraph, that amount shall be demonstrated in an additional itemized schedule.*

## **SEC. 18.**

*Section 34179.6 is added to the Health and Safety Code, to read:*

34179.6.

*The review required pursuant to Section 34179.5 shall be submitted to the oversight board for review. The successor agency shall submit a copy of the Recognized Obligation Payment Schedule to the county administrative officer, the county auditor-controller, and the Department of Finance at the same time that the successor agency submits the review to the oversight board for review.*

*(a) By October 1, 2012, each successor agency shall provide to the oversight board, the county auditor-controller, the Controller, and the Department of Finance the results of the review conducted pursuant to Section 34179.5 for the Low and Moderate Income Housing Fund and specifically the amount of cash and cash equivalents determined to be available for allocation to taxing entities. By December 15, 2012, each successor agency shall provide to the oversight board, the county auditor-controller, the Controller, and the department the results of the review conducted pursuant to Section 34179.5 for all of the other fund and account balances and specifically the amount of cash and cash equivalents determined to be available for allocation to taxing entities. The department may request any supporting documentation and*

review results to assist in its review under subdivision (d). The department may specify the form and manner information about the review shall be provided to it.

(b) Upon receipt of the review, the oversight board shall convene a public comment session to take place at least five business days before the oversight board holds the approval vote specified in subdivision (c). The oversight board also shall consider any opinions offered by the county auditor-controller on the review results submitted by the successor agencies.

(c) By October 15, 2012, for the Low and Moderate Income Housing Fund and by January 15, 2013, for all other funds and accounts, the oversight board shall review, approve, and transmit to the department and the county auditor-controller the determination of the amount of cash and cash equivalents that are available for disbursement to taxing entities as determined according to the method provided in Section 34179.5. The oversight board may adjust any amount provided in the review to reflect additional information and analysis. The review and approval shall occur in public sessions. The oversight board may request from the successor agency any materials it deems necessary to assist in its review and approval of the determination. The oversight board shall be empowered to authorize a successor agency to retain assets or funds identified in subparagraphs (B) to (E), inclusive, of paragraph (5) of subdivision (c) of Section 34179.5. An oversight board that makes that authorization also shall identify to the department the amount of funds authorized for retention, the source of those funds, and the purposes for which those funds are being retained. The determination and authorization to retain funds and assets shall be subject to the review and approval of the department pursuant to subdivision (d).

(d) The department may adjust any amount associated with the determination of the resulting amount described in paragraph (6) of subdivision (c) of Section 34179.5 based on its analysis and information provided by the successor agency and others. The department shall consider any findings or opinions of the county auditor-controllers and the Controller. The department shall complete its review of the determinations provided pursuant to subdivision (c) no later than November 9, 2012, for the Low and Moderate Income Housing Fund and also shall notify the oversight board and the successor agency of its decision to overturn any decision of the oversight board to authorize a successor agency to retain assets or funds made pursuant to subdivision (c). The department shall complete its review of the determinations provided pursuant to subdivision (c) no later than April 1, 2013, for the other funds and accounts and also shall notify the oversight board and the successor agency of its decision to overturn any oversight board authorizations made pursuant to subdivision (c). The department shall provide the oversight board and the successor agency an explanation of its basis for overturning or modifying any findings, determinations, or authorizations of the oversight board made pursuant to subdivision (c).

(e) The successor agency and the entity or entities that created the former redevelopment agency may request to meet and confer with the department to resolve any disputes regarding the amounts or sources of funds identified as determined by the department. The request shall be made within five business days of the transmission, and no later than November 16, 2012, for the determination regarding the Low and Moderate Income Housing Fund, to the successor agency or the designated local authority of the department's determination, decisions, and explanations and shall be accompanied by an explanation and documentation of the basis of the dispute. The department shall meet and confer with the requesting party and modify its determinations and decisions accordingly. The department shall either confirm or modify its determinations and decisions within 30 days of the request to meet and confer.

(f) Each successor agency shall transmit to the county auditor-controller the amount of funds required pursuant to the determination of the department within five working days of receipt of the notification under subdivision (c) or (e) if a meet and confer request is made. Successor

agencies shall make diligent efforts to recover any money determined to have been transferred without an enforceable obligation as described in paragraphs (2) and (3) of subdivision (c) of Section 34179.5. The department shall notify the county auditor-controllers of its actions and the county auditor-controllers shall disburse the funds received from successor agencies to taxing entities pursuant to Section 34188 within five working days of receipt. Amounts received after November 28, 2012, and April 10, 2013, may be held and disbursed with the regular payments to taxing entities pursuant to Section 34183.

(g) By December 1, 2012, the county auditor-controller shall provide the department a report specifying the amount submitted by each successor agency pursuant to subdivision (d) for low- and moderate-income housing funds, and specifically noting those successor agencies that failed to remit the full required amount. By April 20, 2013, the county auditor-controller shall provide the department a report detailing the amount submitted by each successor agency pursuant to subdivision (d) for all other funds and accounts, and specifically noting those successor agencies that failed to remit the full required amount.

(h) If a successor agency fails to remit to the county auditor-controller the sums identified in subdivisions (d) and (f), by the deadlines specified in those subdivisions, the following remedies are available:

(1) (A) If the successor agency cannot promptly recover the funds that have been transferred to another public agency without an enforceable obligation as described in paragraphs (2) and (3) of subdivision (c) of Section 34179.5, the funds may be recovered through an offset of sales and use tax or property tax allocations to the local agency to which the funds were transferred. To recover such funds, the Department of Finance may order the State Board of Equalization to make an offset pursuant to subdivision (a) of Section 34179.8. If the Department of Finance does not order a sales tax offset, the county auditor-controller may reduce the property tax allocations to any local agency in the county that fails to repay funds pursuant to subdivision (c) of Section 34179.8.

(B) The county auditor-controller and the department shall each have the authority to demand the return of funds improperly spent or transferred to a private person or other private entity. If funds are not repaid within 60 days, they may be recovered through any lawful means of collection and are subject to a ten percent penalty plus interest at the rate charged for late personal income tax payments from the date the improper payment was made to the date the money is repaid.

(C) If the city, county, or city and county that created the former redevelopment agency is also performing the duties of the successor agency, the Department of Finance may order an offset to the distribution provided to the sales and use tax revenue to that agency pursuant to subdivision (a) of Section 34179.8. This offset shall be equal to the amount the successor fails to remit pursuant to subdivision (f). If the Department of Finance does not order a sales tax offset, the county auditor-controller may reduce the property tax allocations of the city, county, or city and county that created the former redevelopment agency pursuant to subdivision (c) of Section 34179.8.

(D) The department and the county auditor-controller shall coordinate their actions undertaken pursuant to this paragraph.

(2) Alternatively or in addition to the remedies provided in paragraph (1), the department may direct the county auditor-controller to deduct the unpaid amount from future allocations of property tax to the successor agency under Section 34183 until the amount of payment required pursuant to subdivision (d) is accomplished.

(3) If the Department of Finance determines that payment of the full amount required under subdivision (d) is not currently feasible or would jeopardize the ability of the successor agency

*to pay enforceable obligations in a timely manner, it may agree to an installment payment plan.*

*(i) (1) If a legal action contesting a withholding effectuated by the State Board of Equalization pursuant to subparagraphs (B), (C), or (B) and (C) of paragraph (2) of subdivision (b) of Section 34183.5 is successful and results in a final judicial determination, the court shall order the state to pay to the prevailing party a penalty equal to a percentage of the amount of funds found by the court to be improperly withheld, as provided in Section 34179.8. This percentage shall be equivalent to the number of months the funds have been found by the court to be improperly withheld, not to exceed 10 percent.*

*(2) If a legal action contesting an offset effectuated by the State Board of Equalization or the county auditor-controller pursuant to subdivision (h) is successful and results in a final judicial determination, the court shall order the state or the county auditor-controller to pay to the prevailing party a penalty equal to 10 percent of the amount of funds found by the court to be improperly offset, as provided in Section 34179.8.*

*(j) If a legal challenge to invalidate any provision in subdivision (h) or subparagraph (B) or (C), or subparagraphs (B) and (C) of paragraph (2) of subdivision (b) of Section 34183.5 is successful and results in a final judicial determination, the invalidated provision shall become inoperative and subdivision (i) shall become inoperative with respect to the invalidated provision.*

## **SEC. 19.**

*Section 34179.7 is added to the Health and Safety Code, to read:*

34179.7.

*Upon full payment of the amounts determined in subdivision (d) or (e) of Section 34179.6 as reported by the county auditor-controller pursuant to subdivision (g) of Section 34179.6 and of any amounts due as determined by Section 34183.5, or upon a final judicial determination of the amounts due and confirmation that those amounts have been paid by the county auditor-controller, the department shall issue, within five business days, a finding of completion of the requirements of Section 34179.6 to the successor agency.*

## **SEC. 20.**

*Section 34179.8 is added to the Health and Safety Code, to read:*

34179.8.

*(a) If an offset or withholding of sales and use tax is ordered by the Department of Finance pursuant to this part, the State Board of Equalization shall reduce the distribution of sales and use taxes collected under Chapter 1 (commencing with Section 7200) of Part 1.5 of Division 2 of the Revenue and Taxation Code to the entity that is the subject of the offset or withholding and shall direct the Controller to issue a warrant in the amount of any offset pursuant to subdivision (h) of Section 34179.6 to the county auditor-controller. The county auditor-controller shall distribute this amount to the taxing entities for the former redevelopment area according to Section 34188.*

*(b) (1) If a court has issued a final judicial determination or the department determines that some or all of the amount collected through the offset of sales and use tax has been paid by another means and no additional amount is owed, the court or the department shall notify the State Board of Equalization of that determination. Upon notification, the State Board of Equalization shall*

reverse the relevant amount of sales and use tax offset, add any penalty payable under subdivision (i) of Section 34179.6, and adjust the next distribution of sales and use tax to the affected local entity by reducing the allocation of tax to the General Fund and increasing the distribution to the local entity by that sum.

(2) The board shall inform the Controller of the reversal of the offset of sales and use tax undertaken pursuant to paragraph (1). The Controller shall send a demand for payment to the county auditor-controller for the amount of the offset reversal, excluding any penalty amount determined by the court pursuant to subdivision (i) of Section 34179.6 to be applicable to the offset. The auditor-controller shall reduce allocations to taxing entities in the next distributions under Section 34188 until the amount of the reversed offset is recovered and shall pay such recovered amounts to the State Controller for deposit in the General Fund.

(c) (1) If an offset of property tax is ordered by the county auditor-controller pursuant to this part, the auditor-controller shall reduce the distribution of property taxes to the entity that is the subject of the offset and shall distribute the amount to the taxing entities for the former redevelopment area according to Section 34188.

(2) If a court has issued a final judicial determination or the department determines that some or all of the amount collected through the offset made pursuant to paragraph (1) has been paid by another means and no additional amount is owed, the court or the department shall notify the county auditor-controller of that determination. Upon notification, the county auditor-controller shall reverse the relevant amount of property tax revenues offset in the next distribution of property tax to the affected local entity by reducing the allocation of tax to the taxing entities of the former redevelopment area under Section 34188 and increasing the distribution of property taxes to the local entity that was subject to the offset.

## **SEC. 21.**

***Section 34180 of the Health and Safety Code is amended to read:***

34180.

All of the following successor agency actions shall first be approved by the oversight board:

(a) The establishment of new repayment terms for outstanding loans where the terms have not been specified prior to the date of this part. ***An oversight board shall not have the authority to reestablish loan agreements between the successor agency and the city, county, or city and county that formed the redevelopment agency except as provided in Chapter 9 (commencing with Section 34191.1).***

~~(b) Refunding of outstanding bonds or other debt of the former redevelopment agency by successor agencies in order to provide for savings or to finance debt service spikes; provided, however, that no additional debt is created and debt service is not accelerated.~~

***(b) The issuance of bonds or other indebtedness or the pledge or agreement for the pledge of property tax revenues (formerly tax increment prior to the effective date of this part) pursuant to subdivision (a) of Section 34177.5.***

(c) Setting aside of amounts in reserves as required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds.

(d) Merging of project areas.

(e) Continuing the acceptance of federal or state grants, or other forms of financial assistance from either public or private sources, ~~where if that~~ assistance is conditioned upon the provision



of matching funds, by the successor entity as successor to the former redevelopment agency, in an amount greater than 5 percent.

(f) (1) If a city, county, or city and county wishes to retain any properties or other assets for future redevelopment activities, funded from its own funds and under its own auspices, it must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base property tax, as determined pursuant to Section 34188, for the value of the property retained.

(2) If no other agreement is reached on valuation of the retained assets, the value will be the fair market value as of the 2011 property tax lien date as determined by ~~the county assessor~~ ***an independent appraiser approved by the oversight board.***

(g) Establishment of the Recognized Obligation Payment Schedule.

(h) A request by the successor agency to enter into an agreement with the city, county, or city and county that formed the redevelopment agency that it is succeeding. ***An oversight board shall not have the authority to reestablish loan agreements between the successor agency and the city, county, or city and county that formed the redevelopment agency except as provided in Chapter 9 (commencing with Section 34191.1). Any actions to reestablish any other agreements that are in furtherance of enforceable obligations, with the city, county, or city and county that formed the redevelopment agency are invalid until they are included in an approved and valid Recognized Obligation Payment Schedule.***

(i) A request by a successor agency or taxing entity to pledge, or to enter into an agreement for the pledge of, property tax revenues pursuant to subdivision (b) of Section 34178.

(j) Any document submitted by a successor agency to an oversight board for approval by any provision of this part shall also be submitted to the county administrative officer, the county auditor-controller, and the Department of Finance at the same time that the successor agency submits the document to the oversight board.

## **SEC. 22.**

***Section 34181 of the Health and Safety Code is amended to read:***

34181.

The oversight board shall direct the successor agency to do all of the following:

(a) Dispose of all assets and properties of the former redevelopment agency ~~that were funded by tax increment revenues of the dissolved redevelopment agency~~; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, ***police*** and fire stations, ***libraries, and local agency administrative buildings,*** to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset. Disposal shall be done expeditiously and in a manner aimed at maximizing value. ***Asset disposition may be accomplished by a distribution of income to taxing entities proportionate to their property tax share from one or more properties that may be transferred to a public or private agency for management pursuant to the direction of the oversight board.***

(b) Cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations.

(c) Transfer housing ~~responsibilities and all rights, powers, duties, and obligations along with any amounts on deposit in the Low and Moderate Income Housing Fund to the appropriate entity~~ ***assets*** pursuant to Section 34176.

(d) Terminate any agreement, between the dissolved redevelopment agency and any public entity located in the same county, obligating the redevelopment agency to provide funding for any debt service obligations of the public entity or for the construction, or operation of facilities owned or operated by such public entity, in any instance where the oversight board has found that early termination would be in the best interests of the taxing entities.

(e) Determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of ~~such those~~ agreements ~~where if~~ it finds that amendments or early termination would be in the best interests of the taxing entities.

***(f) All actions taken pursuant to subdivisions (a) and (c) shall be approved by resolution of the oversight board at a public meeting after at least 10 days' notice to the public of the specific proposed actions. The actions shall be subject to review by the Department of Finance pursuant to Section 34179 except that the department may extend its review period by up to 60 days. If the department does not object to an action subject to this section, and if no action challenging an action is commenced within 60 days of the approval of the action by the oversight board, the action of the oversight board shall be considered final and can be relied upon as conclusive by any person. If an action is brought to challenge an action involving title to or an interest in real property, a notice of pendency of action shall be recorded by the claimant as provided in Title 4.5 (commencing with Section 405) of Part 2 of the Code of Civil Procedure within a 60-day period.***

## **SEC. 23.**

***Section 34182 of the Health and Safety Code is amended to read:***

34182.

(a) (1) The county auditor-controller shall conduct or cause to be conducted an agreed-upon procedures audit of each redevelopment agency in the county that is subject to this part, to be completed by ~~July~~ **October** 1, 2012.

(2) The purpose of the audits shall be to establish each redevelopment agency's assets and liabilities, to document and determine each redevelopment agency's passthrough payment obligations to other taxing ~~agencies~~ **entities**, and to document and determine both the amount and the terms of any indebtedness incurred by the redevelopment agency ~~and certify pursuant to~~ the initial Recognized Obligation Payment Schedule.

(3) The county auditor-controller may charge the Redevelopment Property Tax Trust Fund for any costs incurred by the county auditor-controller pursuant to this part.

(b) By ~~July 15~~ **October 5**, 2012, the county auditor-controller shall provide the Controller's office **and the Department of Finance** a copy of all audits performed pursuant to this section. The county auditor-controller shall maintain a copy of all documentation and working papers for use by the Controller.

(c) (1) The county auditor-controller shall determine the amount of property taxes that would have been allocated to each redevelopment agency in the county had the redevelopment agency not been dissolved pursuant to the operation of the act adding this part. These amounts are deemed property tax revenues within the meaning of subdivision (a) of Section 1 of Article XIII A of the California Constitution and are available for allocation and distribution in accordance with the provisions of the act adding this part. The county auditor-controller shall calculate the property tax revenues using current assessed values on the last equalized roll on

August 20, pursuant to Section 2052 of the Revenue and Taxation Code, and pursuant to statutory formulas or contractual agreements with other taxing ~~agencies~~ *entities*, as of the effective date of this section, and shall deposit that amount in the Redevelopment Property Tax Trust Fund.

(2) Each county auditor-controller shall administer the Redevelopment Property Tax Trust Fund for the benefit of the holders of former redevelopment agency enforceable obligations and the taxing entities that receive passthrough payments and distributions of property taxes pursuant to this part.

(3) In connection with the allocation and distribution by the county auditor-controller of property tax revenues deposited in the Redevelopment Property Tax Trust Fund, in compliance with this part, the county auditor-controller shall prepare estimates of amounts *of property tax* to be allocated and distributed, *and the amounts of passthrough payments to be made in the upcoming six-month period*, and provide those estimates to both the entities receiving the distributions and the Department of Finance, no later than ~~November~~ *October* 1 and ~~May~~ *April* 1 of each year.

(4) Each county auditor-controller shall disburse proceeds of asset sales or reserve balances, which have been received from the successor entities pursuant to Sections 34177 and 34187, to the taxing entities. In making such a distribution, the county auditor-controller shall utilize the same methodology for allocation and distribution of property tax revenues provided in Section 34188.

(d) By October 1, 2012, the county auditor-controller shall report the following information to the Controller's office and the Director of Finance:

(1) The sums of property tax revenues remitted to the Redevelopment Property Tax Trust Fund related to each former redevelopment agency.

(2) The sums of property tax revenues remitted to each agency under paragraph (1) of subdivision (a) of Section 34183.

(3) The sums of property tax revenues remitted to each successor agency pursuant to paragraph (2) of subdivision (a) of Section 34183.

(4) The sums of property tax revenues paid to each successor agency pursuant to paragraph (3) of subdivision (a) of Section 34183.

(5) The sums paid to each city, county, and special district, and the total amount allocated for schools pursuant to paragraph (4) of subdivision (a) of Section 34183.

(6) Any amounts deducted from other distributions pursuant to subdivision (b) of Section 34183.

(e) A county auditor-controller may charge the Redevelopment Property Tax Trust Fund for the costs of administering the provisions of this part.

(f) The Controller may audit and review any county auditor-controller action taken pursuant to the act adding this part. As such, all county auditor-controller actions shall not be effective for three business days, pending a request for review by the Controller. In the event that the Controller requests a review of a given county auditor-controller action, he or she shall have 10 days from the date of his or her request to approve the county auditor-controller's action or return it to the county auditor-controller for reconsideration and ~~such the county auditor-controller~~ *auditor-controller's* action shall not be effective until approved by the Controller. In the event that the Controller returns the county auditor-controller's action to the county auditor-controller for reconsideration, the county auditor-controller must resubmit the modified action for Controller approval and ~~such the modified county auditor-controller~~ *auditor-controller's* action shall not become effective until approved by the Controller.

## **SEC. 24.**

*Section 34182.5 is added to the Health and Safety Code, to read:*

34182.5.

*A county auditor-controller may review the Recognized Obligation Payment Schedules and object to the inclusion of any items that are not demonstrated to be enforceable obligations and may object to the funding source proposed for any items. This review may take place prior to the submission of the Recognized Obligation Payment Schedule to the oversight board or subsequent to oversight board action. The county auditor-controller shall promptly transmit notice of any of those objections to the successor agency, the oversight board, and the Department of Finance. Notice shall be given at least 60 days prior to an allocation date specified in Section 34183, except that for the January 1, 2013 to June 30, 2013 Recognized Obligation Payment Schedule, notice shall be given no later than October 1, 2012. If an oversight board disputes the finding of the county auditor-controller, it may refer the matter to the Department of Finance for a determination of what will be approved for inclusion in the Recognized Obligation Payment Schedule.*

## **SEC. 25.**

*Section 34183 of the Health and Safety Code is amended to read:*

34183.

(a) Notwithstanding any other law, from February 1, 2012, to July 1, 2012, and for each fiscal year thereafter, the county auditor-controller shall, after deducting administrative costs allowed under Section 34182 and Section 95.3 of the Revenue and Taxation Code, allocate moneys in each Redevelopment Property Tax Trust Fund as follows:

(1) Subject to any prior deductions required by subdivision (b), first, the county auditor-controller shall remit from the Redevelopment Property Tax Trust Fund to each local agency and school entity an amount of property tax revenues in an amount equal to that which would have been received under Section 33401, 33492.140, 33607, 33607.5, 33607.7, or 33676, as those sections read on January 1, 2011, or pursuant to any passthrough agreement between a redevelopment agency and a taxing-jurisdiction entity that was entered into prior to January 1, 1994, that would be in force during that fiscal year, had the redevelopment agency existed at that time. The amount of the payments made pursuant to this paragraph shall be calculated solely on the basis of passthrough payment obligations, existing prior to the effective date of this part and continuing as obligations of successor entities, shall occur no later than May 16, 2012, and no later than June 1, 2012, and each January 16 2 and June 1 thereafter. Notwithstanding subdivision (e) of Section 33670, that portion of the taxes in excess of the amount identified in subdivision (a) of Section 33670, which are attributable to a tax rate levied by a taxing-agency entity for the purpose of producing revenues in an amount sufficient to make annual repayments of the principal of, and the interest on, any bonded indebtedness for the acquisition or improvement of real property shall be allocated to, and when collected shall be paid into, the fund of that taxing-agency entity. *The amount of passthrough payments computed pursuant to this section, including any passthrough agreements, shall be computed as though the requirement to set aside funds for the Low and Moderate Income Housing Fund was still in effect.*

(2) Second, on ~~May 16, 2012, and~~ June 1, 2012, and each January 16 2 and June 1 thereafter, to each successor agency for payments listed in its Recognized Obligation Payment Schedule for

the six-month fiscal period beginning January 1, 2012, ~~or~~ *and* July 1, 2012, and each January ~~16~~ 2 and June 1 thereafter, in the following order of priority:

(A) Debt service payments scheduled to be made for tax allocation bonds.

(B) Payments scheduled to be made on revenue bonds, but only to the extent the revenues pledged for them are insufficient to make the payments and only ~~where if~~ the agency's tax increment revenues were also pledged for the repayment of the bonds.

(C) Payments scheduled for other debts and obligations listed in the Recognized Obligation Payment Schedule that are required to be paid from former tax increment revenue.

(3) Third, on ~~May 16, 2012,~~ and June 1, 2012, and each January ~~16~~ 2 and June 1 thereafter, to each successor agency for the administrative cost allowance, as defined in Section 34171, for administrative costs set forth in an approved administrative budget for those payments required to be paid from former tax increment revenues.

(4) Fourth, on ~~May 16, 2012,~~ and June 1, 2012, and each January ~~16~~ 2 and June 1 thereafter, any moneys remaining in the Redevelopment Property Tax Trust Fund after the payments and transfers authorized by paragraphs (1) to (3), inclusive, shall be distributed to local agencies and school entities in accordance with Section 34188.

(b) If the successor agency reports, no later than April 1, 2012, and May 1, 2012, and each December 1 and May 1 thereafter, to the county auditor-controller that the total amount available to the successor agency from the Redevelopment Property Tax Trust Fund allocation to that successor agency's Redevelopment Obligation Retirement Fund, from other funds transferred from each redevelopment agency, and from funds that have or will become available through asset sales and all redevelopment operations, are insufficient to fund the payments required by paragraphs (1) to (3), inclusive, of subdivision (a) in the next six-month fiscal period, the county auditor-controller shall notify the Controller and the Department of Finance no later than 10 days from the date of that notification. The county auditor-controller shall verify whether the successor agency will have sufficient funds from which to service debts according to the Recognized Obligation Payment Schedule and shall report the findings to the Controller. If the Controller concurs that there are insufficient funds to pay required debt service, the amount of the deficiency shall be deducted first from the amount remaining to be distributed to taxing entities pursuant to paragraph (4), and if that amount is exhausted, from amounts available for distribution for administrative costs in paragraph (3). If an agency, pursuant to the provisions of Section 33492.15, 33492.72, 33607.5, 33671.5, 33681.15, or 33688, *or as expressly provided in a passthrough agreement entered into pursuant to Section 33401*, made passthrough payment obligations subordinate to debt service payments required for enforceable obligations, funds for servicing bond debt may be deducted from the amounts for passthrough payments under paragraph (1), as provided in those sections, but only to the extent that the amounts remaining to be distributed to taxing entities pursuant to paragraph (4) and the amounts available for distribution for administrative costs in paragraph (3) have all been exhausted.

(c) The county treasurer may loan any funds from the county treasury *to the Redevelopment Property Tax Trust Fund of the successor agency for the purpose of paying an item approved on the Recognized Obligation Payment Schedule at the request of the Department of Finance* that are necessary to ensure prompt payments of redevelopment agency debts. *An enforceable obligation is created for repayment of those loans.*

(d) The Controller may recover the costs of audit and oversight required under this part from the Redevelopment Property Tax Trust Fund by presenting an invoice therefor to the county auditor-controller who shall set aside sufficient funds for and disburse the claimed amounts prior to making the next distributions to the taxing ~~jurisdictions~~ *entities* pursuant to Section 34188. Subject to the approval of the Director of Finance, the budget of the Controller may be augmented to reflect the reimbursement, pursuant to Section 28.00 of the Budget Act.

*(e) Within 10 days of each distribution of property tax, the county auditor-controller shall provide a report to the department regarding the distribution for each successor agency that includes information on the total available for allocation, the passthrough amounts and how they were calculated, the amounts distributed to successor agencies, and the amounts distributed to taxing entities in a manner and form specified by the department. This reporting requirement shall also apply to distributions required under subdivision (b) of Section 34183.5.*

## **SEC. 26.**

*Section 34183.5 is added to the Health and Safety Code, to read:*

34183.5.

(a) The Legislature hereby finds and declares that due to the delayed implementation of this part due to the California Supreme Court's ruling in the case California Redevelopment Association v. Matosantos et al. (2011) 53 Cal.4th 231, some disruption to the intended application of this part and other law with respect to passthrough payments may have occurred.

(1) If a redevelopment agency or successor agency did not pay any portion of an amount owed for the 2011–12 fiscal year to an affected taxing entity pursuant to Section 33401, 33492.140, 33607, 33607.5, 33607.7, or 33676, or pursuant to any passthrough agreement entered into before January 1, 1994, between a redevelopment agency and an affected taxing entity, and to the extent the county auditor-controller did not remit the amounts owed for passthrough payments during the 2011–12 fiscal year, the county auditor-controller shall make the required payments to the taxing entities owed passthrough payments and shall reduce the amounts to which the successor agency would otherwise be entitled pursuant to paragraph (2) of subdivision (a) of Section 34183 at the next allocation of property tax under this part, subject to the provisions of subdivision (b) of Section 34183. If the amount of available property tax allocation to the successor agency is not sufficient to make the required payment, the county auditor-controller shall continue to reduce allocations to the successor agency under paragraph (2) of subdivision (a) of Section 34183 until the time that the owed amount is fully paid. Alternately, the county auditor-controller may accept payment from the successor agency's reserve funds for payments of passthrough payments owed as defined in this subdivision.

(2) If a redevelopment agency did not pay any portion of the amount owed for the 2011–12 fiscal year to an affected taxing entity pursuant to Section 33401, 33492.140, 33607, 33607.5, 33607.7, or 33676, or pursuant to any passthrough agreement entered into before January 1, 1994, between a redevelopment agency and an affected taxing entity, but the county auditor-controller did pay the difference that was owing, the auditor controller shall deduct from the next allocation of property tax to the successor agency under paragraph (2) of subdivision (a) of Section 34183, the amount of the payment made on behalf of the successor agency by the county auditor-controller, not to exceed one-half the amount of passthrough payments owed for the 2011–12 fiscal year. If the amount of available property tax allocation to the successor agency is not sufficient to make the required deduction, the county auditor-controller shall continue to reduce allocations to the successor agency under paragraph (2) of subdivision (a) of Section 34183 until the time that the amount is fully deducted. Alternatively, the auditor-controller may accept payment from the successor agency's reserve funds for deductions of passthrough payments owed as defined in this subdivision. Amounts reduced from successor agency payments under this paragraph are available for the purposes of paragraphs (2) to (4), inclusive, of subdivision (a) of Section 34183 for the six-month period for which the property tax revenues are being allocated.

(b) In recognition of the fact that county auditor-controllers were unable to make the payments required by paragraph (4) of subdivision (a) of Section 34183 for the period January 1, 2012, through June 30, 2012, on January 16, 2012, due to the California Supreme Court's ruling in the case of California Redevelopment Association v. Matosantos (2011) 53 Cal.4th 231, in addition to taking the actions specified in Section 34183 with respect to the June 1 property tax allocations, county auditor-controllers should have made allocations as provided in paragraph (1).

(1) From the allocations made on June 1, 2012, for the Recognized Obligation Payment Schedule covering the period July 1, 2012, through December 31, 2012, deduct from the amount that otherwise would be deposited in the Redevelopment Property Tax Trust Fund on behalf of the successor agency an amount equivalent to the amount that each affected taxing entity was entitled to pursuant to paragraph (4) of subdivision (a) of Section 34183 for the period January 1, 2012, through June 30, 2012. The amount to be retained by taxing entities pursuant to paragraph (4) of subdivision (a) of Section 34183 for the January 1, 2012, through June 30, 2012, period is determined based on the Recognized Obligation Payment Schedule approved by the Department of Finance pursuant to subdivision (h) of Section 34179 and any amount determined to be owed pursuant to subdivision (b). Any amounts so computed shall not be offset by any shortages in funding for recognized obligations for the period covering July 1, 2012, through December 31, 2012.

(2) (A) If an affected taxing entity has not received the full amount to which it was entitled pursuant to paragraph (4) of subdivision (a) of Section 34183 of the property tax distributed for the period January 1, 2012, through June 30, 2012, and paragraph (1), no later than July 9, 2012, the county auditor-controller shall determine the amount, if any, that is owed by each successor agency to taxing entities and send a demand for payment from the funds of the successor agency for the amount owed to taxing entities if it has distributed the June 1, 2012, allocation to the successor agencies. No later than July 12, 2012, successor agencies shall make payment of the amounts demanded to the county auditor-controller for deposit into the Redevelopment Property Tax Trust Fund and subsequent distribution to taxing entities. No later than July 16, 2012, the county auditor-controller shall make allocations of all money received by that date from successor agencies in amounts owed to taxing entities under this paragraph to taxing entities in accordance with Section 34183. The county auditor-controller shall make allocations of any money received after that date under this paragraph within five business days of receipt. These duties are not discretionary and shall be carried out with due diligence.

(B) If a county auditor-controller fails to determine the amounts owed to taxing entities and present a demand for payment by July 9, 2012, to the successor agencies, the Department of Finance or any affected taxing entity may request a writ of mandate to require the county auditor-controller to immediately perform this duty. Such actions may be filed only in the County of Sacramento and shall have priority over other civil matters. Any county in which the county auditor-controller fails to perform the duties under this paragraph shall be subject to a civil penalty of 10 percent of the amount owed to taxing entities plus 1.5 percent of the amount owed to taxing entities for each month that the duties are not performed. The civil penalties shall be payable to the taxing entities under Section 34183. Additionally, any county in which the county auditor-controller fails to make the required determinations and demands for payment under this paragraph by July 9, 2012, or fails to distribute the full amount of funds received from successor agencies as required by this paragraph shall not receive the distribution of sales and use tax scheduled for July 18, 2012, or any subsequent payment, up to the amount owed to taxing entities, until the county auditor-controller performs the duties required by this paragraph.

(C) If a successor agency fails to make the payment demanded under subparagraph (A) by July 12, 2012, the Department of Finance or any affected taxing entity may file for a writ of mandate

to require the successor agency to immediately make this payment. Such actions may be filed only in the County of Sacramento and shall have priority over other civil matters. Any successor agency that fails to make payment by July 12, 2012, under this paragraph shall be subject to a civil penalty of 10 percent of the amount owed to taxing entities plus one and one-half percent of the amount owed to taxing entities for each month that the payments are not made. Additionally, the city or county or city and county that created the redevelopment agency shall also be subject to a civil penalty of 10 percent of the amount owed to taxing entities plus 1.5 percent of the amount owed to taxing entities for each month the payment is late. The civil penalties shall be payable to the taxing entities under Section 34183. If the Department of Finance finds that the imposition of penalties will jeopardize the payment of enforceable obligations it may request the court to waive some or all of the penalties. A successor agency that does not pay the amount required under this subparagraph by July 12, 2012, shall not pay any obligations other than bond debt service until full payment is made to the county auditor-controller. Additionally, any city, county or city and county that created the redevelopment agency that fails to make the required payment under this paragraph by July 12, 2012, shall not receive the distribution of sales and use tax scheduled for July 18, 2012, or any subsequent payment, up to the amount owed to taxing entities, until the payment required by this paragraph is made.

(D) The Legislature hereby finds and declares that time is of the essence. Funds that should have been received and were expected and spent in anticipation of receipt by community colleges, schools, counties, cities, and special districts have not been received resulting in significant fiscal impact to the state and taxing entities. Continued delay and uncertainty whether funds will be received warrants the availability of extraordinary relief as authorized herein.

(3) If an affected taxing entity has not received the full amount to which it was entitled pursuant to paragraph (4) of subdivision (a) of Section 34183 for the period January 1, 2012, through June 30, 2012, and paragraph (1), the county auditor-controller shall reapply the provisions of paragraph (1) to each subsequent property tax allocation until such time as the affected taxing entity has received the full amount to which it was entitled pursuant to paragraph (4) of subdivision (a) of Section 34183 for the period January 1, 2012, through June 30, 2012.

## **SEC. 27.**

*Section 34185 of the Health and Safety Code is amended to read:*

34185.

Commencing on ~~May 16, 2012~~ **June 1, 2012**, and on each January ~~16~~ **2** and June 1 thereafter, the county auditor-controller shall transfer, from the Redevelopment Property Tax Trust Fund of each successor agency into the Redevelopment Obligation Retirement Fund of that agency, an amount of property tax revenues equal to that specified in the Recognized Obligation Payment Schedule for that successor agency as payable from the Redevelopment Property Tax Trust Fund subject to the limitations of ~~Sections 34173 and subdivision (l) of Section 34177 and Section 34183.~~

## **SEC. 28.**

*Section 34186 of the Health and Safety Code is amended to read:*

34186.



(a) Differences between actual payments and past estimated obligations on recognized obligation payment schedules ~~must~~ shall be reported in subsequent recognized obligation payment schedules and shall adjust the amount to be transferred to the Redevelopment Obligation Retirement Fund pursuant to this part. These estimates and accounts shall be subject to audit by county auditor-controllers and the Controller.

(b) *Differences between actual passthrough obligations and property tax amounts and the amounts used by the county auditor-controller in determining the amounts to be allocated under Sections 34183 and 34188 for a prior six-month period shall be applied as adjustments to the property tax and passthrough amounts in subsequent periods as they become known. County auditor-controllers shall not delay payments under this part to successor agencies or taxing entities based on pending transactions, disputes, or for any other reason, other than a court order, and shall use the Recognized Obligation Payment Schedule approved by the Department of Finance and the most current data for passthroughs and property tax available prior to the statutory distribution dates to make the allocations required on the dates required.*

## SEC. 29.

*Section 34187 of the Health and Safety Code is amended to read:*

34187.

(a) (1) Commencing May 1, 2012, whenever a recognized obligation that had been identified in the Recognized Payment Obligation Schedule is paid off or retired, either through early payment or payment at maturity, the county auditor-controller shall distribute to the taxing entities, in accordance with the provisions of the Revenue and Taxation Code, all property tax revenues that were associated with the payment of the recognized obligation.

(2) *Notwithstanding paragraph (1), the Department of Finance may authorize a successor agency to retain property tax that otherwise would be distributed to affected taxing entities pursuant to this subdivision, to the extent the department determines the successor agency requires those funds for the payment of enforceable obligations. Upon making a determination, the department shall provide the county auditor-controller with information detailing the amounts that it has authorized the successor agency to retain. Upon determining the successor agency no longer requires additional funds pursuant to this subdivision, the department shall notify the successor agency and the county auditor-controller. The county auditor-controller shall then distribute the funds in question to the affected taxing entities in accordance with the provisions of the Revenue and Taxation Code.*

(b) *When all of the debt of a redevelopment agency has been retired or paid off, the successor agency shall dispose of all remaining assets and terminate its existence within one year of the final debt payment. When the successor agency is terminated, all passthrough payment obligations shall cease and no property tax shall be allocated to the Redevelopment Property Tax Trust Fund for that agency.*

## SEC. 30.

*Section 34188 of the Health and Safety Code is amended to read:*

34188.

For all distributions of property tax revenues and other moneys pursuant to this part, the distribution to each taxing entity shall be in an amount proportionate to its share of property tax revenues in the tax rate area in that fiscal year, as follows:

(a) (1) For distributions from the Redevelopment Property Tax Trust Fund, the share of each taxing entity shall be applied to the amount of property tax available in the Redevelopment Property Tax Trust Fund after deducting the amount of any distributions under paragraphs (2) and (3) of subdivision (a) of Section 34183.

(2) For each taxing entity that receives passthrough payments, that agency shall receive the amount of any passthrough payments identified under paragraph (1) of subdivision (a) of Section 34183, in an amount not to exceed the amount that it would receive pursuant to this section in the absence of the passthrough agreement. However, to the extent that the passthrough payments received by the taxing entity are less than the amount that the taxing entity would receive pursuant to this section in the absence of a passthrough agreement, the taxing entity shall receive an additional payment that is equivalent to the difference between those amounts.

(b) Property tax shares of local agencies shall be determined based on property tax allocation laws in effect on the date of distribution, without the revenue exchange amounts allocated pursuant to Section 97.68 of the Revenue and Taxation Code, and without the property taxes allocated pursuant to Section 97.70 of the Revenue and Taxation Code.

(c) The total school share, including passthroughs, shall be the share of the property taxes that would have been received by school entities, as defined in subdivision (f) of Section 95 of the Revenue and Taxation Code, in the jurisdictional territory of the former redevelopment agency, including, but not limited to, the amounts specified in Sections 97.68 and 97.70 of the Revenue and Taxation Code.

*(d) This section shall not be construed to increase any allocations of excess, additional, or remaining funds that would otherwise have been allocated to cities, counties, cities and counties, or special districts pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2, clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3, or Article 4 (commencing with Section 98) of Chapter 6 of Part 0.5 of Division 1, of the Revenue and Taxation Code, had this section not been enacted.*

## **SEC. 31.**

*Section 34189 of the Health and Safety Code is amended to read:*

34189.

(a) Commencing on the effective date of this part, all provisions of the Community Redevelopment Law that depend on the allocation of tax increment to redevelopment agencies; including, but not limited to, Sections 33445, 33640, 33641, 33645, and subdivision (b) of Section 33670, shall be inoperative, except as those sections apply to a redevelopment agency operating pursuant to Part 1.9 (commencing with Section 34192).

~~(b) The California Law Revision Commission shall draft a Community Redevelopment Law cleanup bill for consideration by the Legislature no later than January 1, 2013.~~

(c)

(b) To the extent that a provision of Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7

(commencing with Section 34100) conflicts with this part, the provisions of this part shall control. Further, if a provision of Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), or Part 1.7 (commencing with Section 34100) provides an authority that the act adding this part is restricting or eliminating, the restriction and elimination provisions of the act adding this part shall control.

~~(d)~~

(c) It is intended that the provisions of this part shall be read in a manner as to avoid duplication of payments.

### **SEC. 32.**

*Section 34189.1 is added to the Health and Safety Code, to read:*

34189.1.

*No party, public or private, may pursue, nor does a court have jurisdiction over, a validation action with respect to any action of a redevelopment agency or a successor agency to a redevelopment agency that took place on or after January 1, 2011, unless the Department of Finance and the Controller, representing interests of the State of California and each of the taxing entities who could be affected financially by the action, has been properly noticed. All actions shall be filed in the County of Sacramento.*

### **SEC. 33.**

*Section 34189.2 is added to the Health and Safety Code, to read:*

34189.2.

*A successor agency or any party to an enforceable obligation as defined under this part shall properly notice the state with respect to a validation action involving any enforceable obligation or matter of title to an asset that belonged to a redevelopment agency. For such an action to be properly filed, both the Controller and the Director of Finance shall be noticed and actions shall be filed in the County of Sacramento.*

### **SEC. 34.**

*Section 34189.3 is added to the Health and Safety Code, to read:*

34189.3.

*An action contesting any act taken or determinations or decisions made pursuant to this part or Part 1.8 (commencing with Section 34161) may be brought in superior court and shall be filed in the County of Sacramento.*

### **SEC. 35.**

*Chapter 9 (commencing with Section 34191.1) is added to Part 1.85 of Division 24 of the Health and Safety Code, to read:*

CHAPTER 9. Postcompliance Provisions

34191.1.

*The provisions of this chapter shall apply to a successor agency upon that agency's receipt of a finding of completion by the Department of Finance pursuant to Section 34179.7.*

34191.3.

*Notwithstanding Section 34191.1, the requirements specified in subdivision (e) of Section 34177 and subdivision (a) of Section 34181 shall be suspended, except as those provisions apply to the transfers for governmental use, until the Department of Finance has approved a long-range property management plan pursuant to subdivision (b) of Section 34191.5, at which point the plan shall govern, and supersede all other provisions relating to, the disposition and use of the real property assets of the former redevelopment agency. If the department has not approved a plan by January 1, 2015, subdivision (e) of Section 34177 and subdivision (a) of Section 34181 shall be operative with respect to that successor agency.*

34191.4.

*The following provisions shall apply to any successor agency that has been issued a finding of completion by the Department of Finance:*

*(a) All real property and interests in real property identified in subparagraph (C) of paragraph (5) of subdivision (c) of Section 34179.5 shall be transferred to the Community Redevelopment Property Trust Fund of the successor agency upon approval by the Department of Finance of the long-range property management plan submitted by the successor agency pursuant to subdivision (b) of Section 34191.7 unless that property is subject to the requirements of any existing enforceable obligation.*

*(b) (1) Notwithstanding subdivision (d) of Section 34171, upon application by the successor agency and approval by the oversight board, loan agreements entered into between the redevelopment agency and the city, county, or city and county that created by the redevelopment agency shall be deemed to be enforceable obligations provided that the oversight board makes a finding that the loan was for legitimate redevelopment purposes.*

*(2) If the oversight board finds that the loan is an enforceable obligation, the accumulated interest on the remaining principal amount of the loan shall be recalculated from origination at the interest rate earned by funds deposited into the Local Agency Investment Fund. The loan shall be repaid to the city, county, or city and county in accordance with a defined schedule over a reasonable term of years at an interest rate not to exceed the interest rate earned by funds deposited into the Local Agency Investment Fund. The annual loan repayments provided for in the recognized obligations payment schedules shall be subject to all of the following limitations:*

*(A) Loan repayments shall not be made prior to the 2013–14 fiscal year. Beginning in the 2013–14 fiscal year, the maximum repayment amount authorized each fiscal year for repayments made pursuant to this subdivision and paragraph (7) of subdivision (e) of Section 34176 combined shall be equal to one-half of the increase between the amount distributed to the taxing entities pursuant to paragraph (4) of subdivision (a) of Section 34183 in that fiscal year and the amount distributed to taxing entities pursuant to that paragraph in the 2012–13 base year. Loan or deferral repayments made pursuant to this subdivision shall be second in priority to amounts to be repaid pursuant to paragraph (7) of subdivision (e) of Section 34176.*

*(B) Repayments received by the city, county or city and county that formed the redevelopment agency shall first be used to retire any outstanding amounts borrowed and owed to the Low*

*and Moderate Income Housing Fund of the former redevelopment agency for purposes of the Supplemental Educational Revenue Augmentation Fund and shall be distributed to the Low and Moderate Income Housing Asset Fund established by subdivision (d) of Section 34176.*

*(C) Twenty percent of any loan repayment shall be deducted from the loan repayment amount and shall be transferred to the Low and Moderate Income Housing Asset Fund, after all outstanding loans from the Low and Moderate Income Housing Fund for purposes of the Supplemental Educational Revenue Augmentation Fund have been paid.*

*(c) (1) Bond proceeds derived from bonds issued on or before December 31, 2010, shall be used for the purposes for which the bonds were sold.*

*(2) (A) Notwithstanding Section 34177.3 or any other conflicting provision of law, bond proceeds in excess of the amounts needed to satisfy approved enforceable obligations shall thereafter be expended in a manner consistent with the original bond covenants. Enforceable obligations may be satisfied by the creation of reserves for projects that are the subject of the enforceable obligation and that are consistent with the contractual obligations for those projects, or by expending funds to complete the projects. An expenditure made pursuant to this paragraph shall constitute the creation of excess bond proceeds obligations to be paid from the excess proceeds. Excess bond proceeds obligations shall be listed separately on the Recognized Obligation Payment Schedule submitted by the successor agency.*

*(B) If remaining bond proceeds cannot be spent in a manner consistent with the bond covenants pursuant to subparagraph (A), the proceeds shall be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.*

34191.5.

*(a) There is hereby established a Community Redevelopment Property Trust Fund, administered by the successor agency, to serve as the repository of the former redevelopment agency's real properties identified in subparagraph (C) of paragraph (5) of subdivision (c) of Section 34179.5.*

*(b) The successor agency shall prepare a long-range property management plan that addresses the disposition and use of the real properties of the former redevelopment agency. The report shall be submitted to the oversight board and the Department of Finance for approval no later than six months following the issuance to the successor agency of the finding of completion.*

*(c) The long-range property management plan shall do all of the following:*

*(1) Include an inventory of all properties in the trust. The inventory shall consist of all of the following information:*

*(A) The date of the acquisition of the property and the value of the property at that time, and an estimate of the current value of the property.*

*(B) The purpose for which the property was acquired.*

*(C) Parcel data, including address, lot size, and current zoning in the former agency redevelopment plan or specific, community, or general plan.*

*(D) An estimate of the current value of the parcel including, if available, any appraisal information.*

*(E) An estimate of any lease, rental, or any other revenues generated by the property, and a description of the contractual requirements for the disposition of those funds.*

*(F) The history of environmental contamination, including designation as a brownfield site, any related environmental studies, and history of any remediation efforts.*

*(G) A description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.*

*(H) A brief history of previous development proposals and activity, including the rental or lease of property.*

*(2) Address the use or disposition of all of the properties in the trust. Permissible uses include the retention of the property for governmental use pursuant to subdivision (a) of Section 34181, the retention of the property for future development, the sale of the property, or the use of the property to fulfill an enforceable obligation. The plan shall separately identify and list properties in the trust dedicated to governmental use purposes and properties retained for purposes of fulfilling an enforceable obligation. With respect to the use or disposition of all other properties, all of the following shall apply:*

*(A) If the plan directs the use or liquidation of the property for a project identified in an approved redevelopment plan, the property shall transfer to the city, county, or city and county.*

*(B) If the plan directs the liquidation of the property or the use of revenues generated from the property, such as lease or parking revenues, for any purpose other than to fulfill an enforceable obligation or other than that specified in subparagraph (A), the proceeds from the sale shall be distributed as property tax to the taxing entities.*

*(C) Property shall not be transferred to a successor agency, city, county, or city and county, unless the long-range property management plan has been approved by the oversight board and the Department of Finance.*

### **SEC. 36.**

*The Legislature finds and declares as follows:*

*(a) Certain provisions of Assembly Bill 26 of the 2011–12 First Extraordinary Session of 2011 (Ch. 5, 2011–12 First Ex. Sess.) are internally inconsistent, or uncertain in their meaning, with regard to the calculation of the amount to be paid by a county auditor-controller from the Redevelopment Property Tax Trust Fund to meet passthrough payment obligations to local agencies and school entities.*

*(b) Consistent with the statement in Section 34183 of the Health and Safety Code, as added by the measure identified in subdivision (a), that the provisions of that section are to apply “[n]otwithstanding any other law,” it was the intent of the Legislature in enacting that measure that the amount of the passthrough payments that are addressed by that section be determined in the manner specified by paragraph (1) of subdivision (a) of Section 34183 of the Health and Safety Code, and that the amount so calculated not be reduced or adjusted pursuant to the operation of any other provision of that measure.*

### **SEC. 37.**

*If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application and to this end, the provisions of this act are severable.*

### **SEC. 38.**

*There is hereby appropriated up to twenty-two million dollars (\$22,000,000) from the General Fund, for allocation to departments by the Director of Finance in furtherance of the objectives of this act. Up to two million dollars (\$2,000,000) of this amount may be allocated to the Director of the Trial Court Trust Fund for allocation by the Administrative Office of the Courts to the Superior Court of California, County of Sacramento for work associated with Part 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code. An*

*allocation of funds approved by the Director of Finance under this item shall become effective no sooner than 30 days after the director files written notification thereof with the Chairperson of the Joint Legislative Budget Committee, and the chairpersons of the fiscal committees in each house of the Legislature, or no sooner than any lesser time the chairperson of the joint committee, or his or her designee, may in each instance determine.*

**SEC. 39.**

*No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.*

**SEC. 40.**

*This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.*

**SECTION 1.**

~~It is the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.~~

**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY  
OF THE WEST COVINA REDEVELOPMENT AGENCY**

**AGENDA REPORT**

Item No. VI - A

Date: July 5, 2012

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**TO:** Chairman and Board Members of the Oversight Board to the Successor Agency of the West Covina Redevelopment Agency

**FROM:** Andrew G. Pasmant, City Manager/Executive Director

**BY:** Christopher J. Chung, Successor Agency Staff Member

**SUBJECT: REVIEW OF ASSETS FOR EASTLAND SHOPPING CENTER, LAKES OFFICE DEVELOPMENT AND WESTIFELD PLAZA (MALL)**

**RECOMMENDATION:**

Staff recommends that the Oversight Board to the Successor Agency of the West Covina Agency Redevelopment Agency receive and file the staff report and recess the regular meeting to tour properties owned by the former redevelopment agency at the Eastland Shopping Center (8451-012-907), Lakes Office development (8474-011-942 & 943) and Westfield Plaza (8474-003-915, 918, 928, 929, 931, 932, 933, 934, 935, 939, & 940).

**PURPOSE:**

Assembly Bill 1X 26 (AB1X 26) requires the disposition of "*assets and properties of the former redevelopment agency as directed by the oversight board; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of certain assets pursuant to subdivision (a) of Section 34181.*" This report reviews 14 parcels of land owned by the former redevelopment agency. Staff will provide a brief staff report and provide a tour to the Oversight Board Members of these properties. To prevent any Brown Act violation concerns, the Board Member will be caravanned in separate vehicles in groups no larger than 3 Board Members to the development areas (Eastland Shopping Center, Lakes Office Development and Westfield Plaza). At specific development areas, staff will provide additional information and/or clarification, if necessary.

A follow up staff report will be brought back for the Oversight Board consideration and action at a later special or regular meeting providing the required 10 day public noticing requirement.

**BACKGROUND:**

Due to legislation known as Assembly Bill 1X 26 ("AB1X 26") and the Supreme Court's ruling in California Redevelopment Association et al v Matosantos et al, all redevelopment agencies including the City of West Covina Redevelopment Agency were dissolved as of February 1, 2012.



On January 10, 2012, the City Council of the City of West Covina ("City") adopted Resolution No. 2012-1 in which the City elected to become the "Successor Agency" to the former Redevelopment Agency pursuant to AB1X 26 (Part 1.85 of Division 24 of the California Health and Safety Code). The Successor Agency is charged with selling assets, repaying existing indebtedness, completing performance of existing contractual obligations and otherwise winding down the operations of the former redevelopment agency while preserving agency assets for the benefit of taxing agencies.

On January 17, 2012, the City adopted Ordinance 2226 and Resolutions 2012-10 and 2012-11, declaring the need for the Community Development Commission (CDC) in the City of West Covina to function as the City of West Covina Housing Authority and transferring all duties, powers and responsibilities of the West Covina Housing Authority to the Community Development Commission. On April 19, 2012, the Oversight Board to the Successor Agency of West Covina Redevelopment Agency authorized the City of West Covina Community Development Commission ("CDC Housing Authority") as the successor to the housing function of the former West Covina Community Development Commission (redevelopment agency) and directed the Successor Agency to transfer housing responsibilities and all rights, powers, duties and obligations along with any amounts on deposit in the Low and Moderate Income Housing Fund to the appropriate entity pursuant to Section 34176. Such transfer of housing responsibilities, rights, powers, duties and obligations includes any and all housing assets as provided for in current law and any future amendments thereof. There are no further actions required with respect to transferring any housing assets.

On June 26, 2012, the California Legislature approved Assembly Bill 1484 (AB 1484). AB 1484 made significant changes to AB1X 26. With respect to the disposition of property, AB 1484 eliminated language pertaining to the disposition of land "funded by tax increment revenues" and added that "*All actions taken pursuant to subdivisions (a) and (c) shall be approved by resolution of the oversight board at a public meeting after at least 10 days' notice to the public of the specific proposed actions.*" As a result, regardless of funding source, any asset in the former redevelopment agencies name must be disposed of in accordance with sections 34177 and 34181 of the California Health and Safety Code. Staff provided excerpts of the newly amended (AB 1484) Health and Safety Code Sections which are listed in its entirety in Attachment No. 1 are as follows:

Health and Safety Code 34177 (e) provides that successor agencies are required to, "*Dispose of assets and properties of the former redevelopment agency as directed by the oversight board; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of certain assets pursuant to subdivision (a) of Section 34181. The disposal is to be done expeditiously and in a manner aimed at maximizing value. Proceeds from asset sales and related funds that are no longer needed for approved development projects or to otherwise wind down the affairs of the agency, each as determined by the oversight board, shall be transferred to the county auditor-controller for distribution as property tax proceeds under Section 34188. The requirements of this subdivision shall not apply to a successor agency that has been issued a finding of completion by the Department of Finance pursuant to Section 34179.7.*"

Section 34179.7 of the Health and Safety Code states, "*Upon full payment of the amounts determined in subdivision (d) or (e) of Section 34179.6 as reported by the county auditor-controller pursuant to subdivision (g) of Section 34179.6 and of any amounts due as determined by Section 34183.5, or upon a final judicial determination of the amounts due and confirmation that those amounts have been paid by the county auditor-controller, the*

*department shall issue, within five business days, a finding of completion of the requirements of Section 34179.6 to the successor agency."*

Under Section 34181 (a) of the California Health and Safety Code, it states that the oversight board shall direct the successor agency to *"Dispose of all assets and properties of the former redevelopment agency ~~that were funded by tax increment revenues of the dissolved redevelopment agency~~; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset. Disposal shall be done expeditiously and in a manner aimed at maximizing value. Asset disposition may be accomplished by a distribution of income to taxing entities proportionate to their property tax share from one or more properties that may be transferred to a public or private agency for management pursuant to the direction of the oversight board."*

Under Section 34181 (f) of the California Health and Safety Code, *"All actions taken pursuant to subdivisions (a) and (c) shall be approved by resolution of the oversight board at a public meeting after at least 10 days' notice to the public of the specific proposed actions. The actions shall be subject to review by the Department of Finance pursuant to Section 34179 except that the department may extend its review period by up to 60 days. If the department does not object to an action subject to this section, and if no action challenging an action is commenced within 60 days of the approval of the action by the oversight board, the action of the oversight board shall be considered final and can be relied upon as conclusive by any person. If an action is brought to challenge an action involving title to or an interest in real property, a notice of pendency of action shall be recorded by the claimant as provided in Title 4.5 (commencing with Section 405) of Part 2 of the Code of Civil Procedure within a 60-day period."*

The Parking Authority of the City of West Covina ("Parking Authority") was formed on July 26, 1971 (City Council Resolution No. 4415) as a public corporation created under and exercising powers pursuant to the Parking Law of 1949, Part 2 of Division 18, commencing at Section 32500, of the Street and Highways Code of the State of California.

## **DISCUSSION:**

At the time this report was being prepared, one important factor of consideration was the funding source of the acquisition of properties as prior to AB 1484, the successor agency was not required to dispose of any assets or properties not funded by tax increment revenues. However, upon approval of AB 1484, the funding source of property assets is now irrelevant. The primary factor in the disposition of property is the intended purpose and current use of the properties and whether the assets/properties have any encumbrances or agreements that can or cannot be terminated.

Under Health and Safety Code Section 34177 (e) states that the Successor Agency is required to *"dispose of assets and properties of the former redevelopment agency as directed by the oversight board; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of certain assets pursuant to subdivision (a) of Section 34181."*

Section 34181 (a) states that the "oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset." As such, any asset that were constructed and used for "governmental purposes," the Oversight Board may direct the Successor Agency to transfer such assets to the appropriate public jurisdiction pursuant to existing agreements relating to the construction or use of such asset. A public parking facility providing free parking to the public is considered to be a use for "governmental purposes."

A majority of assets or properties owned by the former redevelopment agency were not acquired using (or funded by) tax increment revenues, but from City and bond proceeds such as Certificate of Participations issued through the City's Parking Authority or from City funds (i.e. City loans). All assets and properties serve a governmental purpose pursuant to existing agreements relating to the construction or use of such asset. In considering the above factors, it appears that all properties listed in this report (i.e. Eastland Shopping Center, Lakes Office Development and Westfield Plaza) could qualify to be transferred to the appropriate public jurisdiction (Parking Authority) based on being used for governmental purposes pursuant to existing agreements relating to the construction or use of such asset.

The former redevelopment agency of the City of West Covina currently retains title (ownership) to thirty-two (32) individual parcels that make up four (4) different developments. The developments are called the Eastland Shopping Center, The Lakes Office Development, the Westfield Plaza (Mall) and the West Covina Sportsplex Site. Fourteen (14) parcels make up the 3 development areas that are discussed herein, while 18 parcels relating to the West Covina Sportsplex is not discussed in detail herein and will be reviewed at a separate time. In addition, this report does not address the disposition of any deeds of trust secured by promissory notes, especially any deeds of trust currently in litigation and will also be addressed at a separate time (i.e. Clippinger Chevrolet Dealership, etc.).

#### Eastland Shopping Center:

The asset/property at the Eastland Shopping Center is comprised of 1 parcel of approximately 5.83 acres in size (Attachment No. 2). The parcel ("Parcel D") was acquired in 1986 from May Centers for the sole purpose of providing "free and non-exclusive public parking facility" to the general public and to patrons of the Eastland Shopping. Parcel D is subject to an Owner Participation Agreement (OPA), a Public Parking Facilities Operation Agreement (PPFOA), Grant Deed, and Reciprocal Easement Agreements (REA's) restricting the use and operation of the parcel as non-exclusive public parking. Parcel D is comprised of surface parking stalls, lighting, infrastructure, curb and gutter, landscaping and ingress and egress (roads and driveways) for the easterly section of the Eastland Shopping Center.

The OPA was executed on July 27, 1977 and provided for redevelopment of the Eastland Shopping Center, conveyance of Parcel D (total 6.74 acres) to the Agency, and an agreement for the Agency that the *"use of Parcel D shall be non-exclusive so as to allow patrons of the retail stores on the Site to use any and all parking facilities located on Parcel D without charge"* for a period of 50 years from the date of conveyance to Agency (Attachment No. 2 - A).

The Public Parking Facilities Operation Agreement (PPFOA) (Attachment No. 2 - B). was executed on November 23, 1977 and provides for the Agency to contract with the

Operator to manage, operate and maintain the parking facilities located on Parcel D at no cost to the Agency, *“for the public purpose for which the same is or is to become owned by the Agency, to wit: for use by the general public as off-street free public parking for patrons of the Eastland Shopping Center located on Parcels A, B, and C and for patrons of other businesses in the City of West Covina.”* The Operator is obligated to pay for taxes, duties and fees levied on Parcel D and maintain and make repairs to the parking facilities in good repair at Operator’s sole expense for a 50 year term (November 23, 2027).

The Grant Deed of Parcel D (Attachment No. 2 – C) was executed on December 28, 1982 covenants that *“the Property shall be used solely for use by the public as off-street free parking in accordance with the terms of such Operating Agreement, for fifty (50) years from the date of this Grant Deed, subject to Grantor’s right to re-purchase and develop it as hereinabove provided.”*

A Reciprocal Easement Agreement (REA) was executed on September 21, 1988 and encompassed properties owned by the developer, tenants and former redevelopment agency. There are still unresolved issues related to the REA and the impact is unclear as to the ability to sell the property. The REA restated the Developer reserved rights under the Grant Deed and further provided for a 5 to 1 parking ratio throughout the entire shopping center (Attachment No. 2 – D). Any party may only make alterations to the parking areas upon prior written consent of other parties, in their sole and absolute discretion. Any reduction in parking ratio must be replaced by the party proposing the reduction. The REA runs with the land and although the 50 year parking covenant as a free and non-exclusive public parking facility ends in 2027, the REA appears to survive in perpetuity and provides for ongoing covenants of reciprocal parking, reciprocal ingress and egress and a required 5 to 1 parking ratio on Parcel D. According to the REA, it may only be terminated upon agreement of all affected parties, which is unlikely to ever occur.

The property owner also maintains a first right (but not obligation) to purchase the property at any time however they have not initiated or exercised such right to purchase, as they already currently receiving free parking at no cost to them.

It is staff’s opinion that the agreements, restrictions and encumbrances cannot be terminated without significant liability to the Successor Agency and Oversight Board. Considering the numerous agreements that encumber the property and the fact that the assets cannot be developed or sold for any other purpose other than a parking facility, it is highly probable that marketing the asset for sale would not yield in any positive offers to purchase the asset(s) from the Successor Agency. In addition, any disposition not approved by the related parties could diminish the rights and value of related agreements and further subject the former redevelopment agency, Successor Agency and Oversight Board to significant liability.

**CONCLUSION:** Parcel D is a free public parking facility that was acquired and developed for the sole governmental public purpose of providing free public parking to the shopping center and general public. As Parcel D is encumbered by deed restrictions and agreements restricting the use of land strictly for free public parking purposes and is subject to numerous existing agreements, Parcel D should be transferred to the City’s Parking Authority to continue the intended goal of providing free public parking in accordance to existing agreements.

### Lakes Office Development:

The property assets at the Lakes Office development are comprised of two (2) parcels of approximately 4.16 acres in size (Attachment No. 3) and dedicated entirely for parking related improvements. The two parcels consist of surface parking spaces, one parking structure on each parcel (2 parking structures total), lighting, infrastructure, curb and gutter, landscaping and ingress and egress (roads and driveways). The properties are subject to numerous agreements detailing the development and primarily providing for the development and reservation of a public parking facility to the general public and to patrons of Lakes Office Development, Edwards Theater, Edwards Entertainment Center restaurants and adjacent businesses. The agreements include Lease Agreements, Disposition and Development Agreements, Indenture of Trust Agreement, Reimbursement Agreement, Installment Agreement, Agreement of Sublease, Agreement Regarding Option, Operating Agreement, reciprocal easement agreements (REA's), Implementation Agreements and subsequent numerous amendments.

The two (2) parcels was initially acquired and developed as a public parking facility by the Parking Authority based on a November 1, 1973 Parking Facilities Lease between the City and the Authority. The Parking Authority issued tax-exempt Certificate of Participation ("COP") Bonds (Attachment No. 3 - A) to acquire and construct the improvements and the COP Bonds was later refinanced through 1988 Lease Revenue Refunding Bonds by the redevelopment agency on August 1, 1988 (Attachment No. 3 - B). It is important to emphasize that the redevelopment agency obtained ownership of the asset through lease revenue bond proceeds, which are secured by lease agreements.

On August 1, 1988, the Agency concurrently entered into a Lease Agreement ("Master Lease") with the City, whereby the City leased the public parking facilities from the Agency for an initial 30-year term (August 1, 2018) with eleven (11) additional five-year extensions (2073). Under Article IV, Section 4.1 of the Master Lease (Attachment No. 3 - C), "the Project and the Site shall be used solely for the purpose of providing parking and-related-and-incident uses; and, in case of the portions of the Project and the Site which are not subject to the Developer Sublease, for the purpose of providing parking which is available to members of the general public." Furthermore, under the Master Lease and the Indenture of Trust (between the City and Dai-Ichi Kango Bank of California), the Bonds will be paid by the City from the lease payments to be made in accordance to the Master Lease. As such, tax increment revenues are not pledged for payment of bonds and were not used to fund the initial acquisition and construction of the public parking facilities asset.

The Lakes Office Development subleased the public parking facilities from the City under an Agreement to Sublease, dated August 1, 1988 under the same terms of the Master Lease of a initial 30 year period with eleven (11) additional five-year extensions (2073). Under the Agreement to Sublease, the Sublessee leased 25% of all parking spaces for Lakes office use and manages the remaining 75% of parking under the Operating Agreement as a parking facility on a non-exclusive basis for the public and Edwards Entertainment Center (Theater and Restaurants).

Under the Amended and Restated Construction, Operation and Reciprocal Easement Agreement ("REA"), the Agency covenanted (Attachment No. 3 - D) that Parking Structure I shall be available for use by the owners of the Watt Parcels and each of their Occupants and Permittees. The Agency further granted a *"nonexclusive easements in common with the general public without preference or priority, on, over and across*

*Parking Structure I for (i) vehicular parking on and vehicular ingress to and, egress from Parking Structure I, and (ii) pedestrian access on, over and across Parking Structure I, as reasonably necessary in connection with the forgoing vehicular parking and access easements.”* The Agency granted the owner of Watt Parcels and each of their Occupants and Permittees the same nonexclusive easements for Parking Structure II.

Although the numerous agreements encumber the properties as public parking facility, the Lakes Office Development property owner maintains a right (but not obligation) to purchase the properties (Agreement Regarding Option) after the bonds are paid in full for \$1,000 for the 25% leased area and full market value for the remaining 75% parking area based on the existing use as a public parking facility. As such, even if the Oversight Board directed the Successor Agency to sell such assets, the Successor Agency could not sell the assets without violating the Agreement Regarding Option and other encumbrances.

It is staff's opinion that the agreements, restrictions and encumbrances cannot be terminated without significant liability to the Successor Agency and Oversight Board. Considering the numerous agreements that encumber the property, outstanding bond payments, the fact that the assets cannot be developed or sold for any other purpose other than a parking facility, it is highly probable that marketing the asset for sale would not yield in any positive offers to purchase the asset(s) from the Successor Agency. In addition, any disposition not approved by the related parties could diminish the rights and value of related agreements and further subject the former redevelopment agency, Successor Agency and Oversight Board to significant liability.

CONCLUSION: The Lakes Office Development asset is a free public parking facility (not funded from tax increment revenues) and was acquired and developed for the sole governmental purpose of providing free public parking to the Lakes Office Development, Edwards Theater, Lakes Restaurants and surrounding businesses. As the use of the land is restricted for public parking purposes and is subject to numerous existing agreements, restrictions and encumbrances, the properties should be transferred to the City's Parking Authority to continue the intended goal of providing free public parking in accordance to existing agreements.

#### Westfield Plaza (Mall):

The property assets at the Westfield Plaza are comprised of eleven (11) parcels of approximately 22.47 acres in size (Attachment No. 4) and dedicated entirely for parking related improvements. Ten parcels consist of surface parking spaces, lighting, infrastructure, curb and gutter, landscaping and ingress and egress (roads and driveways). One parcel consists of a three-story parking structure. The use of all parcels is for public parking facilities and subject to numerous agreements, except that one parcel owned by the former redevelopment agency is encumbered by an encroachment permit in which the former redevelopment agency allowed the California Pizza Kitchen building to encroach on Agency land.

All eleven (11) parcels was acquired and developed as a public parking facilities by the Parking Authority. A portion of property within the surface parking came from the City in a transfer of property with Caltrans which resulted in the closure of California Street freeway hook off-ramp and the expansion of Vincent Avenue. The Parking Authority initially issued tax-exempt Certificate of Participation (“COP”) Bonds (Attachment No 3 – A) to acquire and construct the improvements and the COP Bonds were subsequently

financed through a Community Facilities District ("CFD") No. 1989-1 (Fashion Plaza) 1989 Special Tax Bonds (Attachment 4 - A and 4 - B).

The development of the Westfield West Covina Mall started back in 1972, when the former Redevelopment Agency (Agency) entered into a Participation Agreement (dated November 22, 1972) with Sylvan Shulman (Shulman) to develop the mall site. Under the Participation Agreement, property was conveyed to Shulman for development of the mall and the Agency was required to construct a 2,100 space parking garage structure and surface parking. As part of the Participation Agreement, the Shulman and Agency entered into a Construction, Operations, and Reciprocal Easement Agreement (REA), dated November 5, 1973 with the major anchor tenants (Broadway, Bullocks, Penny). The REA was amended several times and was replaced in the Third Amendment to and Restatement of Construction, Operations, and Reciprocal Easement Agreement ("Amended and Restated REA"), dated October 14, 1993. In the Amended and Restated REA (Attachment 4 - C), property owned by the former Redevelopment Agency was covenanted as "*non-exclusive easements in the Agency Tract for ingress to and egress from Agency Tract for the passage and parking of vehicles.*" The easement granted by the Agency "*continue so long as the Grantee's Store is in existence or is in the process of being restored.*" Utility easements that serve the development survive in perpetuity.

On July 26, 1989, the West Covina City Council and the Redevelopment Agency (Agency) approved an Owner Participation Agreement (OPA) between the Agency and Sylvan S. Shuman/West Covina Associates (developer). Under the OPA, the developer expanded the Mall and added a new major anchor (May Company), addition of 100,000 sq. ft of mall space, and another 82,000 sq. ft of additional peripheral development. The use of Parking Facilities granted under the OPA (Attachment No. 4 - D) are "*non-exclusive easements to use the parking facilities of the Public Improvements for automobile parking and vehicular and pedestrian access in common with members of the public entitled to use the same so long as the Reciprocal Easement Agreement for the Shopping Center remains in effect. The parking facilities of the public improvements shall be devoted to and available for use as public parking without preference or priority to any person and shall be subject to such reasonable restrictions and regulations as may be permitted by applicable tax laws governing the Public Financing.*" The total cost estimated for the project was over \$77 million of which \$45 million is attributed to the cost to acquire and construct the public surface parking and relocation of displaced tenants.

Under the terms of the OPA, debt service was to be paid back through a combination of a special tax (Mello-Roos) levied on the project (on property owners), sales tax revenues and tax increment revenues.

It is staff's opinion that the agreements, restrictions and encumbrances cannot be terminated without significant liability to the Successor Agency and Oversight Board. Considering the numerous agreements that encumber the property, outstanding bond payments, the fact that the assets cannot be developed or sold for any other purpose other than a parking facility, it is highly probable that marketing the asset for sale would not yield in any positive offers to purchase the asset. In addition, any disposition not approved by the related parties could diminish the rights and value of related agreements and further subject the former redevelopment agency, Successor Agency and Oversight Board to potential litigation.

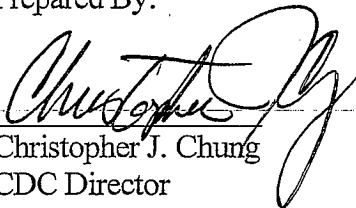
CONCLUSION: The properties and assets at the Westfield Plaza are for free public parking facilities was acquired and developed for the sole governmental purpose of providing free public parking to the Westfield Plaza and is restricted for public parking purposes and subject to numerous existing agreements. These properties and assets should be transferred to the City's Parking Authority to continue the intended goal of providing free public parking in accordance to existing agreements.

West Covina Sportsplex Site:

The property assets at the West Covina Sportsplex site are comprised of eighteen (18) parcels of approximately 156.07 acres in size that are owned by the former redevelopment agency. In addition, the former redevelopment agency has rights to developed (84.40 acres) on top of the top deck of the class 3 landfill as a municipal public golf course under a License Agreement which ownership remains with the former landfill operator, BKK.

The Oversight Board and Department of Finance approved the West Covina Municipal Golf Course as an Enforceable Obligation without funding. However, staff is not prepared to make any recommendations of disposition or development of the properties and/or assets at his time as staff needs additional time to research and evaluate all documents and agreements relating the acquisition, source of funding and development of West Covina Municipal Golf Course. Staff will bring back a separate report regarding the recommendation of the disposition or development of the parcels of land relating to the municipal golf course and protected habitat.

Prepared By:

  
Christopher J. Chung  
CDC Director

**ATTACHMENTS:**

Attachment No. 1: 34177, 34179.7 and 34181 of the California Health and Safety Code

Attachment No. 2: Eastland Shopping Center Map

Attachment No. 2 – A: Excerpt of OPA  
Attachment No. 2 – B: Excerpt of PPFOA  
Attachment No. 2 – C: Excerpt of Parcel D Grant Deed  
Attachment No. 2 – D: Excerpt of REA

Attachment No. 3: Lakes Office Development Map

Attachment No. 3 – A: Parking Authority Resolution approving issuance of Certificate of Participations for Lakes Office Development and Fashion Plaza (Westfield Mall)



Attachment No. 3 – B: City Council Resolution approving Lease Revenue  
Refunding Bonds for Lakes Project  
Attachment No. 3 – C: Excerpt of Lease Agreement  
Attachment No. 3 – D: Excerpt of REA

Attachment No. 4: Westfield Plaza (Mall) Map

Attachment No. 4 – A: May 4, 1993 City Memorandum  
Attachment No. 4 – B: Excerpts of Official Statement for \$45 million  
Redevelopment Agency of the City of West Covina  
Community Facilities District No. 1989-1 (Fashion Plaza)  
1989 Special tax Bonds  
Attachment No. 4 – C: Excerpt of Amended and Restated REA  
Attachment No. 4 – D: Excerpt of OPA

# ATTACHMENT NO. 1

## CHANGES CONTAINED IN ASSEMBLY BILL 1484

*Bold Italicized* was added and **bold** ~~strikeout~~ is eliminated.

### SEC. 11.

*Section 34177 of the Health and Safety Code is amended to read:*

34177.

Successor agencies are required to do all of the following:

(a) Continue to make payments due for enforceable obligations.

(1) On and after February 1, 2012, and until a Recognized Obligation Payment Schedule becomes operative, only payments required pursuant to an enforceable obligations payment schedule shall be made. The initial enforceable obligation payment schedule shall be the last schedule adopted by the redevelopment agency under Section 34169. However, payments associated with obligations excluded from the definition of enforceable obligations by paragraph (2) of subdivision ~~(e)~~ *(d)* of Section 34171 shall be excluded from the enforceable obligations payment schedule and be removed from the last schedule adopted by the redevelopment agency under Section 34169 prior to the successor agency adopting it as its enforceable obligations payment schedule pursuant to this subdivision. The enforceable obligation payment schedule may be amended by the successor agency at any public meeting and shall be subject to the approval of the oversight board as soon as the board has sufficient members to form a quorum.

*In recognition of the fact that the timing of the California Supreme Court's ruling in the case California Redevelopment Association v. Matosantos (2011) 53 Cal.4th 231 delayed the preparation by successor agencies and the approval by oversight boards of the January 1, 2012, through June 30, 2012, Recognized Obligation Payment Schedule, a successor agency may amend the Enforceable Obligation Payment Schedule to authorize the continued payment of enforceable obligations until the time that the January 1, 2012, through June 30, 2012, Recognized Obligation Payment Schedule has been approved by the oversight board and by the Department of Finance.*

(2) The Department of Finance and the Controller shall each have the authority to require any documents associated with the enforceable obligations to be provided to them in a manner of their choosing. Any taxing entity, the department, and the Controller shall each have standing to file a judicial action to prevent a violation under this part and to obtain injunctive or other appropriate relief.

(3) Commencing on ~~May 1, 2012~~ *the date the Recognized Obligation Payment Schedule is valid pursuant to subdivision (1)*, only those payments listed in the Recognized Obligation Payment Schedule may be made by the successor agency from the funds specified in the Recognized Obligation Payment Schedule. In addition, ~~commencing May 1, 2012~~ *after it becomes valid*, the Recognized Obligation Payment Schedule shall supersede the Statement of Indebtedness, which shall no longer be prepared nor have any effect under the Community Redevelopment Law *(Part 1 (commencing with Section 33000))*.

(4) Nothing in the act adding this part is to be construed as preventing a successor agency, with the prior approval of the oversight board, as described in Section 34179, from making payments

for enforceable obligations from sources other than those listed in the Recognized Obligation Payment Schedule.

(5) From February 1, 2012, to July 1, 2012, a successor agency shall have no authority and is hereby prohibited from accelerating payment or making any lump-sum payments that are intended to prepay loans unless such accelerated repayments were required prior to the effective date of this part.

(b) Maintain reserves in the amount required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds.

(c) Perform obligations required pursuant to any enforceable obligation.

(d) Remit unencumbered balances of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities, including, but not limited to, the unencumbered balance of the Low and Moderate Income Housing Fund of a former redevelopment agency. In making the distribution, the county auditor-controller shall utilize the same methodology for allocation and distribution of property tax revenues provided in Section 34188.

(e) Dispose of assets and properties of the former redevelopment agency as directed by the oversight board; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of certain assets pursuant to subdivision (a) of Section 34181. The disposal is to be done expeditiously and in a manner aimed at maximizing value. Proceeds from asset sales and related funds that are no longer needed for approved development projects or to otherwise wind down the affairs of the agency, each as determined by the oversight board, shall be transferred to the county auditor-controller for distribution as property tax proceeds under Section 34188. ***The requirements of this subdivision shall not apply to a successor agency that has been issued a finding of completion by the Department of Finance pursuant to Section 34179.7.***

(f) Enforce all former redevelopment agency rights for the benefit of the taxing entities, including, but not limited to, continuing to collect loans, rents, and other revenues that were due to the redevelopment agency.

(g) Effectuate transfer of housing functions and assets to the appropriate entity designated pursuant to Section 34176.

(h) Expeditiously wind down the affairs of the redevelopment agency pursuant to the provisions of this part and in accordance with the direction of the oversight board.

(i) Continue to oversee development of properties until the contracted work has been completed or the contractual obligations of the former redevelopment agency can be transferred to other parties. Bond proceeds shall be used for the purposes for which bonds were sold unless the purposes can no longer be achieved, in which case, the proceeds may be used to defease the bonds.

(j) Prepare a proposed administrative budget and submit it to the oversight board for its approval. The proposed administrative budget shall include all of the following:

(1) Estimated amounts for successor agency administrative costs for the upcoming six-month fiscal period.

(2) Proposed sources of payment for the costs identified in paragraph (1).

(3) Proposals for arrangements for administrative and operations services provided by a city, county, city and county, or other entity.

(k) Provide administrative cost estimates, from its approved administrative budget that are to be paid from property tax revenues deposited in the Redevelopment Property Tax Trust Fund, to the county auditor-controller for each six-month fiscal period.

(l) (1) Before each six-month fiscal period, prepare a Recognized Obligation Payment Schedule in accordance with the requirements of this paragraph. For each recognized obligation, the Recognized Obligation Payment Schedule shall identify one or more of the following sources of payment:

(A) Low and Moderate Income Housing Fund.

(B) Bond proceeds.

(C) Reserve balances.

(D) Administrative cost allowance.

(E) The Redevelopment Property Tax Trust Fund, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation or by the provisions of this part.

(F) Other revenue sources, including rents, concessions, asset sale proceeds, interest earnings, and any other revenues derived from the former redevelopment agency, as approved by the oversight board in accordance with this part.

(2) A Recognized Obligation Payment Schedule shall not be deemed valid unless all of the following conditions have been met:

(A) A ~~draft~~ Recognized Obligation Payment Schedule is prepared by the successor agency for the enforceable obligations of the former redevelopment agency ~~by March 1, 2012. From October 1, 2011, to July 1, 2012, the~~. ~~The initial draft of that schedule shall project the dates and amounts of scheduled payments for each enforceable obligation for the remainder of the time period during which the redevelopment agency would have been authorized to obligate property tax increment had such the a redevelopment agency not been dissolved, and shall be reviewed and certified, as to its accuracy, by an external auditor designated pursuant to Section 34182.~~

(B) The ~~certified~~ Recognized Obligation Payment Schedule is submitted to and duly approved by the oversight board. *The successor agency shall submit a copy of the Recognized Obligation Payment Schedule to the county administrative officer, the county auditor-controller, and the Department of Finance at the same time that the successor agency submits the Recognized Obligation Payment Schedule to the oversight board for approval.*

(C) A copy of the approved Recognized Obligation Payment Schedule is submitted to the county auditor-controller and both the Controller's office and the Department of Finance and be posted on the successor agency's Internet Web site.

(3) The Recognized Obligation Payment Schedule shall be forward looking to the next six months. The first Recognized Obligation Payment Schedule shall be submitted to the Controller's office and the Department of Finance by April 15, 2012, for the period of January 1, 2012, to June 30, 2012, inclusive. *This Recognized Obligation Payment Schedule shall include all payments made by the former redevelopment agency between January 1, 2012, through January 31, 2012, and shall include all payments proposed to be made by the successor agency from February 1, 2012, through June 30, 2012.* Former redevelopment agency enforceable obligation payments due, and reasonable or necessary administrative costs due or incurred, prior to January 1, 2012, shall be made from property tax revenues received in the spring of 2011 property tax distribution, and from other revenues and balances transferred to the successor agency.

*(m) The Recognized Obligation Payment Schedule for the period of January 1, 2013, to June 30, 2013, shall be submitted by the successor agency, after approval by the oversight board, no later than September 1, 2012. Commencing with the Recognized Obligation Payment Schedule covering the period July 1, 2013, through December 31, 2013, successor agencies shall submit an oversight board-approved Recognized Obligation Payment Schedule to the Department of Finance and to the county auditor-controller no fewer than 90 days before the date of property tax distribution. The Department of Finance shall make its determination of the enforceable obligations and the amounts and funding sources of the enforceable obligations no later than 45 days after the Recognized Obligation Payment Schedule is submitted. Within five business days of the department's determination, a successor agency may request additional review by the department and an opportunity to meet and confer on disputed items. The meet and confer period may vary; an untimely submittal of a Recognized Obligation Payment Schedule may result in a meet and confer period of less than 30 days. The department shall notify the successor agency and the county auditor-controllers as to the outcome of its review at least 15 days before the date of property tax distribution.*

(1) *The successor agency shall submit a copy of the Recognized Obligation Payment Schedule to the Department of Finance electronically, and the successor agency shall complete the Recognized Obligation Payment Schedule in the manner provided for by the department. A successor agency shall be in noncompliance with this paragraph if it only submits to the department an electronic message or a letter stating that the oversight board has approved a Recognized Obligation Payment Schedule.*

(2) *If a successor agency does not submit a Recognized Obligation Payment Schedule by the deadlines provided in this subdivision, the city, county, or city and county that created the redevelopment agency shall be subject to a civil penalty equal to ten thousand dollars (\$10,000) per day for every day the schedule is not submitted to the department. The civil penalty shall be paid to the county auditor-controller for allocation to the taxing entities under Section 34183. If a successor agency fails to submit a Recognized Obligation Payment Schedule by the deadline, any creditor of the successor agency or the Department of Finance or any affected taxing entity shall have standing to and may request a writ of mandate to require the successor agency to immediately perform this duty. Those actions may be filed only in the County of Sacramento and shall have priority over other civil matters. Additionally, if an agency does not submit a Recognized Obligation Payment Schedule within ten days of the deadline, the maximum administrative cost allowance for that period shall be reduced by 25 percent.*

(3) *If a successor agency fails to submit to the department an oversight board-approved Recognized Obligation Payment Schedule that complies with all requirements of this subdivision within five business days of the date upon which the Recognized Obligation Payment Schedule is to be used to determine the amount of property tax allocations, the department may determine if any amount should be withheld by the county auditor-controller for payments for enforceable obligations from distribution to taxing entities, pending approval of a Recognized Obligation Payment Schedule. The county auditor-controller shall distribute the portion of any of the sums withheld pursuant to this paragraph to the affected taxing entities in accordance with paragraph (4) of subdivision (a) of Section 34183 upon notice by the department that a portion of the withheld balances are in excess of the amount of enforceable obligations. The county auditor-controller shall distribute withheld funds to the successor agency only in accordance with a Recognized Obligation Payment Schedule approved by the department. County auditor-controllers shall lack the authority to withhold any other amounts from the allocations provided for under Section 34183 or 34188 unless required by a court order.*

(n) *Cause a postaudit of the financial transactions and records of the successor agency to be made at least annually by a certified public accountant.*

## **SEC. 19.**

*Section 34179.7 is added to the Health and Safety Code, to read:*

34179.7.

*Upon full payment of the amounts determined in subdivision (d) or (e) of Section 34179.6 as reported by the county auditor-controller pursuant to subdivision (g) of Section 34179.6 and of any amounts due as determined by Section 34183.5, or upon a final judicial determination of the amounts due and confirmation that those amounts have been paid by the county auditor-controller, the department shall issue, within five business days, a finding of completion of the requirements of Section 34179.6 to the successor agency.*

## SEC. 22.

*Section 34181 of the Health and Safety Code is amended to read:*

34181.

The oversight board shall direct the successor agency to do all of the following:

- (a) Dispose of all assets and properties of the former redevelopment agency ~~that were funded by tax increment revenues of the dissolved redevelopment agency~~; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, *police* and fire stations, *libraries, and local agency administrative buildings*, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset. Disposal shall be done expeditiously and in a manner aimed at maximizing value. *Asset disposition may be accomplished by a distribution of income to taxing entities proportionate to their property tax share from one or more properties that may be transferred to a public or private agency for management pursuant to the direction of the oversight board.*
- (b) Cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations.
- (c) Transfer housing ~~responsibilities and all rights, powers, duties, and obligations along with any amounts on deposit in the Low and Moderate Income Housing Fund to the appropriate entity assets~~ pursuant to Section 34176.
- (d) Terminate any agreement, between the dissolved redevelopment agency and any public entity located in the same county, obligating the redevelopment agency to provide funding for any debt service obligations of the public entity or for the construction, or operation of facilities owned or operated by such public entity, in any instance where the oversight board has found that early termination would be in the best interests of the taxing entities.
- (e) Determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of ~~such those~~ agreements ~~where if~~ it finds that amendments or early termination would be in the best interests of the taxing entities.
- (f) *All actions taken pursuant to subdivisions (a) and (c) shall be approved by resolution of the oversight board at a public meeting after at least 10 days' notice to the public of the specific proposed actions. The actions shall be subject to review by the Department of Finance pursuant to Section 34179 except that the department may extend its review period by up to 60 days. If the department does not object to an action subject to this section, and if no action challenging an action is commenced within 60 days of the approval of the action by the oversight board, the action of the oversight board shall be considered final and can be relied upon as conclusive by any person. If an action is brought to challenge an action involving title to or an interest in real property, a notice of pendency of action shall be recorded by the claimant as provided in Title 4.5 (commencing with Section 405) of Part 2 of the Code of Civil Procedure within a 60-day period.*

# Eastland Shopping Center - Parcel D

WORKMAN AVENUE

BARRANCA AVENUE

EASTLAND CTR DR.

CITRUS AVENUE

SAN BERNARDINO FREEWAY ROUTE 10



<b>WESTFIELD EASTLAND</b>			
<u>NO.</u>	<u>APN</u>	<u>Zoning</u>	<u>Acres</u>
1	8451-012-907	R - C	5.83
		<u>Intended Use</u>	
		Public Parking Lot	

ATTACHMENT NO. 2

# ATTACHMENT NO. 2 - A

Excerpt of

Property Owner Participation, Purchase  
and Sale Agreement  
(OPA)

Dated July 27, 1977

For:

EASTLAND SHOPPING CENTER

---



RECEIVED

JUL 29 1977

CITY CLERK'S OFFICE  
CITY OF WEST COVINA

EASTLAND REDEVELOPMENT PROJECT

WEST COVINA, CALIFORNIA

PROPERTY OWNER PARTICIPATION,  
PURCHASE AND REDEVELOPMENT AGREEMENT

By and Between

WEST COVINA REDEVELOPMENT AGENCY,

Agency

and

The MAY STORES SHOPPING CENTERS, INC.

Participant

E. [§ 405] Effect of Violation of the Terms  
and Provisions of this Agreement  
After Completion of Construction.

This Agreement and the covenants with the land contained herein shall run in favor of the Agency and the City of West Covina without regard to whether the Agency or the City of West Covina has been, remains, or is an owner of any land or interest therein in the Site, any parcel, or in the Project area. The Agency and the City of West Covina shall have the right if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which the Agency or the City may be entitled. Wherein covenants are binding on third parties, Participant shall urge and promote compliance but shall not be liable for non-compliance by such third parties.

F. [§ 406] Use of Parcel D for Parking Purposes

The Agency is purchasing Parcel D in order to use it for parking purposes. Said Parcel shall be devoted to such use for a period of fifty (50) years from the date of conveyance of said Parcel to the Agency. The use of Parcel D for parking shall be non-exclusive so as to allow patrons of the retail stores on the Site to use any and all parking facilities located on Parcel D without charge.

The Agency further agrees that portions of Parcel D may be used as a park and ride facility, and that such use shall not be significantly more than the extent and scope as such Parcel is currently used as a park and ride facility.

The parties acknowledge that damages would not be an adequate remedy for breach of this provision and it may therefore be specifically enforced. If Agency sells Parcel D it shall do so subject to this provision and Participants option presented in Section 606 and shall place both of record prior to sale.

# ATTACHMENT NO. 2 – B

Excerpt of  
Public Parking Facilities Operating Agreement  
("PPFOA")

Dated November 23, 1977

For:

EASTLAND SHOPPING CENTER

---

Operating - Mt. King  
November 23, 1977

EASTLAND REDEVELOPMENT PROJECT

PUBLIC PARKING FACILITIES OPERATING AGREEMENT

THIS AGREEMENT, executed in triplicate as of the 23<sup>rd</sup> day of November, 1977, by and between THE WEST COVINA REDEVELOPMENT AGENCY, a public body, corporate and politic of the State of California (hereinafter sometimes referred to as "Agency"), and <sup>THE</sup>MAY STORES SHOPPING CENTERS, INC., a corporation doing business under the laws of the State of California (hereinafter sometimes referred to as "Operator").

W I T N E S S E T H :

WHEREAS, Operator is the owner of certain real property in the City of West Covina, more particularly described as "Parcels A, B, C and E" in a certain "Property Owner Participation, Purchase, and Redevelopment Agreement" entered into between Agency and Operator and dated July 27, 1977 (hereinafter sometimes referred to as the "Participation Agreement"), which Parcels are illustrated on the attached Exhibit "A"; and

WHEREAS, Agency is, or is to become, the owner of certain other real property in the City of West Covina, more particularly described as "Parcel D" in the Participation Agreement, on which surface parking facilities have been constructed; and

~~WHEREAS, it is the intention of Agency that such surface parking facilities be used and operated so that the public shall have the benefit of convenient, free, off-street public parking on Parcel D; and~~

WHEREAS, the operation and management of such parking facilities in a manner which will produce the desired results present unusual and difficult problems demanding knowledge and experience; and

WHEREAS, Operator has special experience, competence and knowledge in the operation and management of such parking facilities; and

WHEREAS, Operator is operating and managing adjacent parking facilities on Parcel E, and it is practical to operate and manage the parking facilities on Parcels D and E jointly.

NOW, THEREFORE, in consideration of the performance of the mutual promises herein contained at the time and in the manner specified, the parties hereto agree as follows:

NOV 9 1977

SEP 16 1977

### Section 1. The Parking Facilities

The parking facilities located on Parcel D to be operated pursuant to the terms hereof consist of the parking facilities referred to in the recitals hereof.

### Section 2. Operation of Parking Facilities

Agency hereby contracts with Operator to manage and operate the parking facilities located on Parcel D, together with any other parking improvements constructed thereon, for and on behalf of and at no cost to Agency, for the public purposes for which the same is or is to become owned by the Agency, to wit: for use by the general public as off-street free public parking for patrons of the Eastland Shopping Center located on Parcels A, B, and C and for patrons of other businesses in the City of West Covina. Notwithstanding the foregoing, Operator is permitted to temporarily use Parcel D or parts of Parcel D for conducting promotional activities for the Eastland Shopping Center. The term of this Agreement shall commence on the day on which title to Parcel D is acquired by the Agency. The term of this Agreement shall be for a period of fifty (50) years. Nothing contained in this Agreement shall be construed to permit any use of Parcel D by Operator other than for the management and operation of the public parking facilities.

### Section 3. Title to Property

Title to all personal property placed on or about Parcel D by Operator shall remain in Operator. Title to all personal property and fixtures placed on or about Parcel D by Agency shall remain in Agency. Title to all fixtures placed on or about Parcel D by Operator shall remain in Operator unless such fixtures replace fixtures owned by Agency in which event they shall belong to Agency.

### Section 4. Duties of Operator

Operator shall manage, operate and maintain the parking facilities on Parcel D, and all appurtenant improvements thereon (but not "park and ride" facilities or improvements as permitted in accordance with Section 406 of the Participation Agreement), for the public purposes for which the same were acquired in accordance with the standards and subject to the controls set forth herein.

# ATTACHMENT NO. 2 – C

Excerpt of  
Grant Deed  
(for Parcel D)

Dated December 27, 1982

For:

EASTLAND SHOPPING CENTER

---

RECORDING REQUESTED  
THE WEST COVINA REDEVELOPMENT AGENCY  
West Covina, California  
AND WHEN RECORDED MAIL TO  
THE WEST COVINA REDEVELOPMENT AGENCY  
1111 West Garvey Avenue  
West Covina, California 91790

Grant Deed  
December 27, 1980

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

MAY CENTERS, INC., (formerly known as The May Stores Shopping Centers, Inc.) a Missouri corporation qualified in the State of California and having its principal office at 611 Olive Street, St. Louis, Missouri 63101, GRANTOR,

hereby GRANTS to

THE WEST COVINA REDEVELOPMENT AGENCY, a public body corporate and politic of the State of California, having its principal office at 1444 West Garvey Avenue, West Covina, California 91790, GRANTEE,

ALL that certain real property in the City of West Covina, County of Los Angeles and State of California, described in Exhibit A annexed hereto and delineated on Exhibit B annexed hereto as "Parcel 4", (hereinafter referred to as "the Property"),

SUBJECT to the encumbrances listed in Exhibit C annexed hereto, specifically including the right of Grantor to re-purchase and develop all or any portion of the Property pursuant to the terms of that certain Property Owner Participation, Purchase and Redevelopment Agreement between Grantor and Grantee listed in said Exhibit C, and Grantee shall not mortgage or otherwise encumber the Property without the written consent of Grantor, which consent shall not be unreasonably withheld if any such encumbrance does not pledge any portion of the Property as security for any debt or otherwise restrict its future development, and, in the event of re-purchase, Grantor shall accept title in the same condition as herein granted, subject to such additional encumbrances as are so consented to,

RESERVING to Grantor all rights to oil, gas and other mineral and hydrocarbon substances more than five hundred (500) feet below the surface of the Property, and Grantee shall not have the right to any such oil, gas or other mineral or hydrocarbon substances more than five hundred (500) feet below the surface of the Property, or the right to extract such substances or for any purpose connected therewith, through any opening or penetration from the surface of the Property,

RESERVING to Grantor title to all fixtures and personal property located on the Property and owned by Grantor,

RESERVING to Grantor all rights and benefits, subject to all conditions and burdens, of that certain Public Parking Facilities Operating Agreement made by Grantor and Grantee November 23, 1977 (the "Operating Agreement"), for the term of said Operating Agreement; and in accordance therewith, the Property shall be used solely for use by the public as off-street free public parking in accordance with the terms of such Operating Agreement, for fifty (50) years from the date of this Grant Deed, subject to the Grantor's right to re-purchase and develop it as hereinabove provided,

RESERVING to Grantor all rights and easements in the Property necessary or appropriate for operation and management of the adjoining lands owned and operated by Grantor as the Eastland Shopping Center, including:

- (1) the parking of vehicles and the passage of vehicles and pedestrians on and across the Property for the benefit of the said Eastland Shopping Center, to and from all abutting streets and driveways,
- (2) installation, maintenance, operation, repair and reconstruction of any and all improvements on the Property, including parking and traffic control improvements, paving, lighting fixtures, landscaping, signs, striping and other improvements thereon,
- (3) installation, maintenance, operation, repair, reconstruction

removal and relocation of underground and above-ground utility systems and appurtenances, including water, sewer, electrical, gas, telephone and other conduits, cables, pipelines, pedestals, controls and other utility equipment,

and (4) conducting temporary promotional and sales activities on the Property, in accordance with ordinances of the City of West Covina governing such activities.

The limitations, covenants and conditions herein stated shall be covenants running with the land for the mutual benefit of Grantor and Grantee and their respective successors and assigns, but any and all such covenants may be modified or terminated by the recording of a mutual agreement of Grantor and Grantee or their respective successors or assigns.

In Witness Whereof, Grantor has executed this Grant Deed the 27th day of December, 1982.

MAY CENTERS, INC., Grantor

By: *G.R.G.*  
GREGORY R. GLASS President

and *Alan Charlson* ALAN CHARLSON  
Assistant Secretary

STATE OF MISSOURI

COUNTY OF ST. LOUIS

On December 27, 1982 before me, the undersigned, a Notary Public in and for said State, personally appeared Gregory R. Glass known to me to be the President, and Alan Charlson known to me to be the Assistant Secretary of May Centers, Inc.

the Corporation that executed the within instrument and known to me to be the person(s) who executed the same on behalf of the Corporation therein named and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors

Witness my hand and official seal.

*Michelle K. Davis*

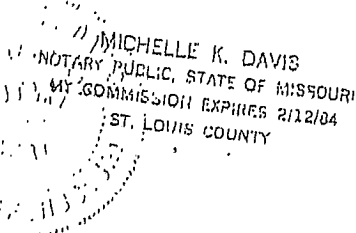




EXHIBIT A

ALL that property in the City of West Covina, County of Los Angeles, State of California, denominated Parcel 4 of Parcel Map No. 15316 recorded in the Office of the Recorder of Los Angeles County on December 22, 1982 in Book 158 pages 25 and 26, of Parcel Maps.

# PARCEL MAP NO. 15316

THE CITY OF WEST COVINA  
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

MOLLENHAUER, HIGASHI & MOORE, INC.

## LEGEND

Indicates the boundary of the tract being subdivided by this map.

Map prepared from a field survey. All north-south lines are "as of" base for Aug 15 1956. Mollenhauer, Higashi & Moore, Inc.

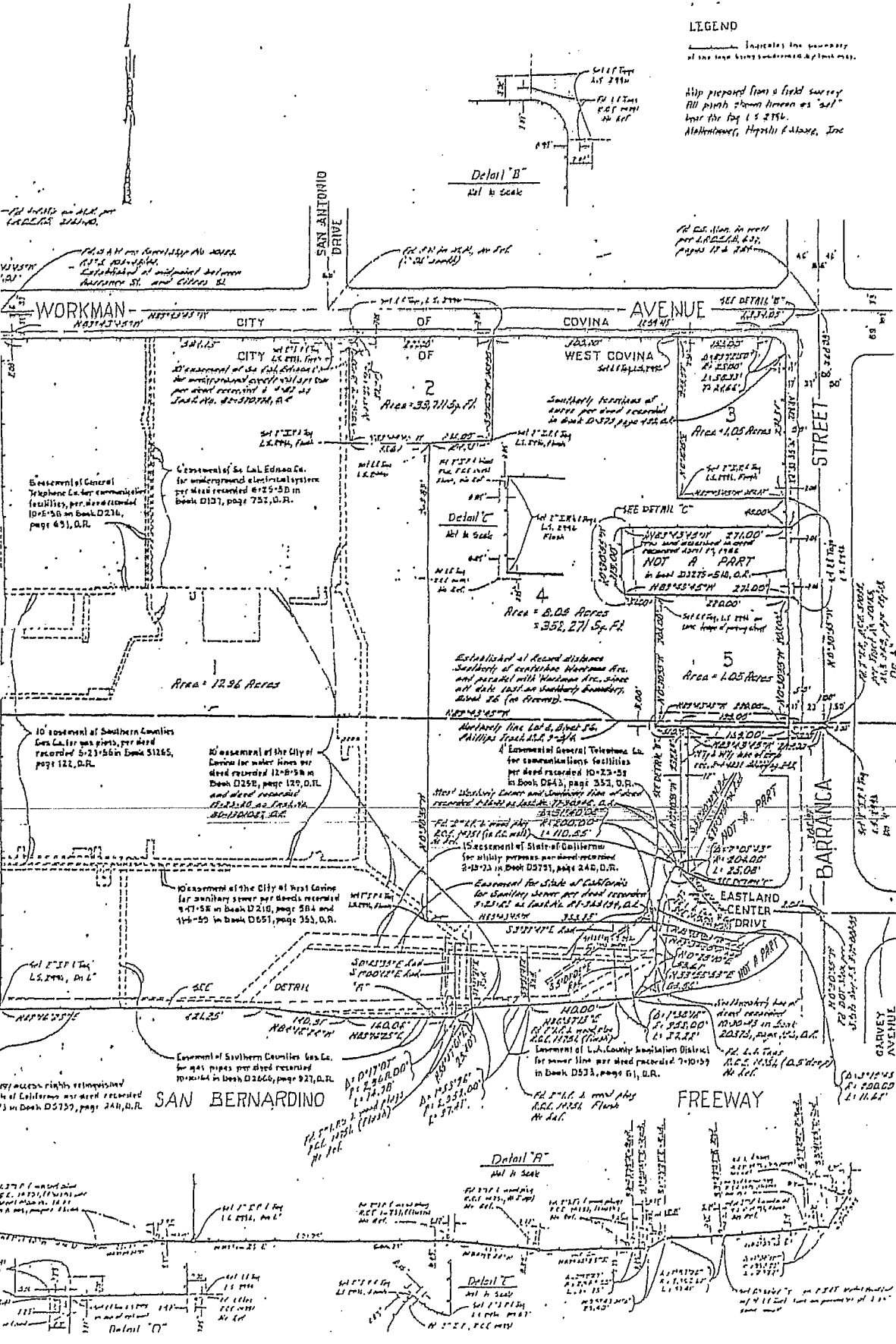


Exhibit C

Encumbrances on Title to Property  
in the City of West Covina, California  
Conveyed by May Centers, Inc. to  
The West Covina Redevelopment Agency

1. General and Special County and City Taxes for the Fiscal Year 1982 - 1983, Second Installment not yet due.
2. A waiver in favor of the State of California of any claim for damages by reason of the location of San Bernardino Freeway and other matters, as set forth in the following deeds:
  - (1) Instrument No. 1857, Recorded March 15, 1956 in Book 50604 page 90 of Official Records of Los Angeles County.
  - (2) Instrument No. 4194, Recorded April 11, 1956, in Book 50860 page 330 of Official Records.
  - (3) Instrument No. 4195, Recorded April 11, 1956, in Book 50860 page 324 of Official Records.
  - (4) Instrument No. 4445, Recorded August 17, 1956 in Book 52058 page 320 of Official Records.
  - (5) Instrument No. 1202, Recorded February 13, 1973 in Book D5759 page 248 of Official Records.
3. Easement in favor of General Telephone Company of California for right of way for communication facilities, recorded October 23, 1959 as Instrument No. 4691 in Book D-643 page 353 of Official Records.
4. Lease to The May Department Stores Company, recorded November 16, 1959, as Instrument No. 3493 in Book M391 page 207 of Official Records.
5. Rights granted to Columbia Savings and Loan Association by Document No. 1651 recorded July 19, 1966 in Book D3370 page 564 of Official Records and Document No. 1301 recorded March 20, 1968 in Book D-3945 page 96 of Official Records.
6. Inclusion of the Property in Eastland Redevelopment Project pursuant to Ordinance No. 1269 of the City Council of the City of West Covina, adopted July 14, 1975 and recorded July 30, 1975 as Instrument No. 3895 in Book M6077 page 572 of Official Records.
7. Easements under lease evidenced by Memorandum of Lease to Burbro, Inc., recorded September 20, 1977 as Instrument No. 77-1038425.
8. Property Owner Participation, Purchase and Redevelopment Agreement between The West Covina Redevelopment Agency and The May Stores Shopping Centers, Inc., dated July 27, 1977 and July 31, 1977 and Eastland Redevelopment Project Public Parking Facilities Operating Agreement between the same parties, dated as of November 23, 1977.

# ATTACHMENT NO. 2 - D

Excerpt of

Grant of Reciprocal Easement  
and  
Declaration of Covenants running with the Land  
(REA)

Dated September 21, 1988

For:

EASTLAND SHOPPING CENTER

---

#6

88-1589548

This document is being recorded by  
Sleight T. ...  
It has not been excluded from its execution or its effect upon the title or its recordability.

DOCUMENTARY TRANSFER TAX  
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED  
ON COMPUTED ON FULL VALUE OF FILMS AND  
RECORDS REMAINING AT TIME OF BILL  
\$100

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

The May Department Stores Company  
611 Olive Street, Suite 1750  
St. Louis, Missouri 63101  
Attention: Thomas D. Frost, Esq.

DOCUMENTARY TRANSFER TAX - 1  
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED  
ON COMPUTED ON FULL VALUE OF FILMS AND  
RECORDS REMAINING AT TIME OF BILL  
\$100

GRANT OF RECIPROCAL EASEMENT  
AND DECLARATION OF COVENANTS  
RUNNING WITH THE LAND

SEE 2/2/88

THIS GRANT OF RECIPROCAL EASEMENT AND DECLARATION OF  
COVENANTS RUNNING WITH THE LAND (the "Easement") is entered into  
as of this 21st day of September, 1988, by and between THE MAY  
DEPARTMENT STORES COMPANY, a New York corporation ("May"), and  
MAY CENTERS, INC., a Missouri corporation ("Developer").

RECITALS

A. May is the Tenant of that certain real property located  
in the City of West Covina, County of Los Angeles, State of  
California, more particularly described in Exhibit "A" attached  
hereto and made a part hereof (such real property, together with  
all appurtenances thereto, in hereinafter referred to as the "May  
Parcel"). Tenant's interest in the May Parcel was created by  
that certain Lease dated as of November 1, 1959 between The May  
Stores Shopping Centers, Inc., a Missouri corporation (now known  
as May Centers, Inc., a Missouri corporation) and May, which  
Lease was recorded in the Official Records of Los Angeles County,  
California on November 16, 1988 in Book M391, Page 207, as  
amended by (1) that certain Amendment to Lease dated October 6,  
1982, a copy of which was recorded on October 22, 1982, in the  
Official Records of Los Angeles County, California as Instrument  
No. 82-1664371, and (2) that certain Amended and Restated  
Agreement of Lease of even date herewith, a Short Form of which  
has been recorded immediately prior to this Agreement in the  
Official Records of Los Angeles County, California. Such Lease  
was further supplemented by (i) the consent of Developer to a  
certain unrecorded Lease dated as of August 21, 1985 between May  
and Sportmart, Inc., an Illinois corporation ("Sportmart"), (ii)  
an unrecorded letter agreement dated August 21, 1985 between May,

Developer and Sportmart, and (iii) the consent of Developer to certain provisions contained in an Agreement to Sublease dated as of August 22, 1985 by and between May and Chilio's, Inc., a Delaware corporation, a Short Form of which was recorded on December 12, 1988 in the Los Angeles County, California Official Records as Instrument No. 85-1458005. Such Lease, as amended and supplemented, is hereinafter referred to as the "May Lease".

B. Developer is the owner or tenant, as the case may be, of the following interests in real property located in the City of West Covina, County of Los Angeles and State of California:

1. A fee interest in those certain parcels of land (collectively, the "Developer Parcel") more particularly described in Exhibit "D", attached hereto and made a part hereof;

2. A fee interest in that certain parcel of land (the "Mervyn's Parcel") more particularly described in Exhibit "C", attached hereto and made a part hereof; the Mervyn's Parcel was leased by the Developer to Mervyn's, a California corporation, pursuant to a Ground Lease (the "Mervyn's Lease") dated as of June 19, 1978, a short form of which was recorded in the Official Records of Los Angeles County, California on April 15, 1980 as Instrument No. 80-379560; and

3. Easements and other rights in that certain parcel of land (the "Agency Parcel") more particularly described in Exhibit "D", attached hereto and made a part hereof. The Agency Parcel is owned in fee by the West Covina Redevelopment Agency (the "Agency"), a public redevelopment agency organized under the Community Redevelopment Law of the State of California; Developer's interests in the Agency Parcel were reserved in that certain Deed dated as of December 27, 1982 from Developer to the Agency, which deed was recorded on January 27, 1983 in the Official Records of Los Angeles County, California as Instrument No. 83-116759.

The Developer's interests in the Developer Parcel, the Mervyn's Parcel and the Agency Parcel are hereinafter referred to as the "Developer's Property". The Mervyn's Parcel and the Agency Parcel are subject to certain easement rights granted to May in the May Lease. The May Parcel, the Developer Parcel, the Mervyn's Parcel and the Agency Parcel shall hereinafter be collectively referred to as the "Parcels", and individually as a "parcel".

C. The Parcels are contiguous and adjacent to each other. May and Developer intend to develop and operate their respective Parcels in conjunction with each other and with the Mervyn's Parcel and the Agency Parcel as integral parts of a "Shopping Center" (as such term is hereinafter defined) and known as the Eastland Shopping Center. The parties are entering into

pay its proportionate share of the expenses of the operating agreement, as calculated with respect to payment of Common Area Costs.

5. Parking Area.

5.1. Ratio. There shall be maintained at all times in the Shopping Center sufficient Parking Area to provide not less than five (5) usable parking spaces for each one thousand (1,000) square feet of Gross Floor Area.

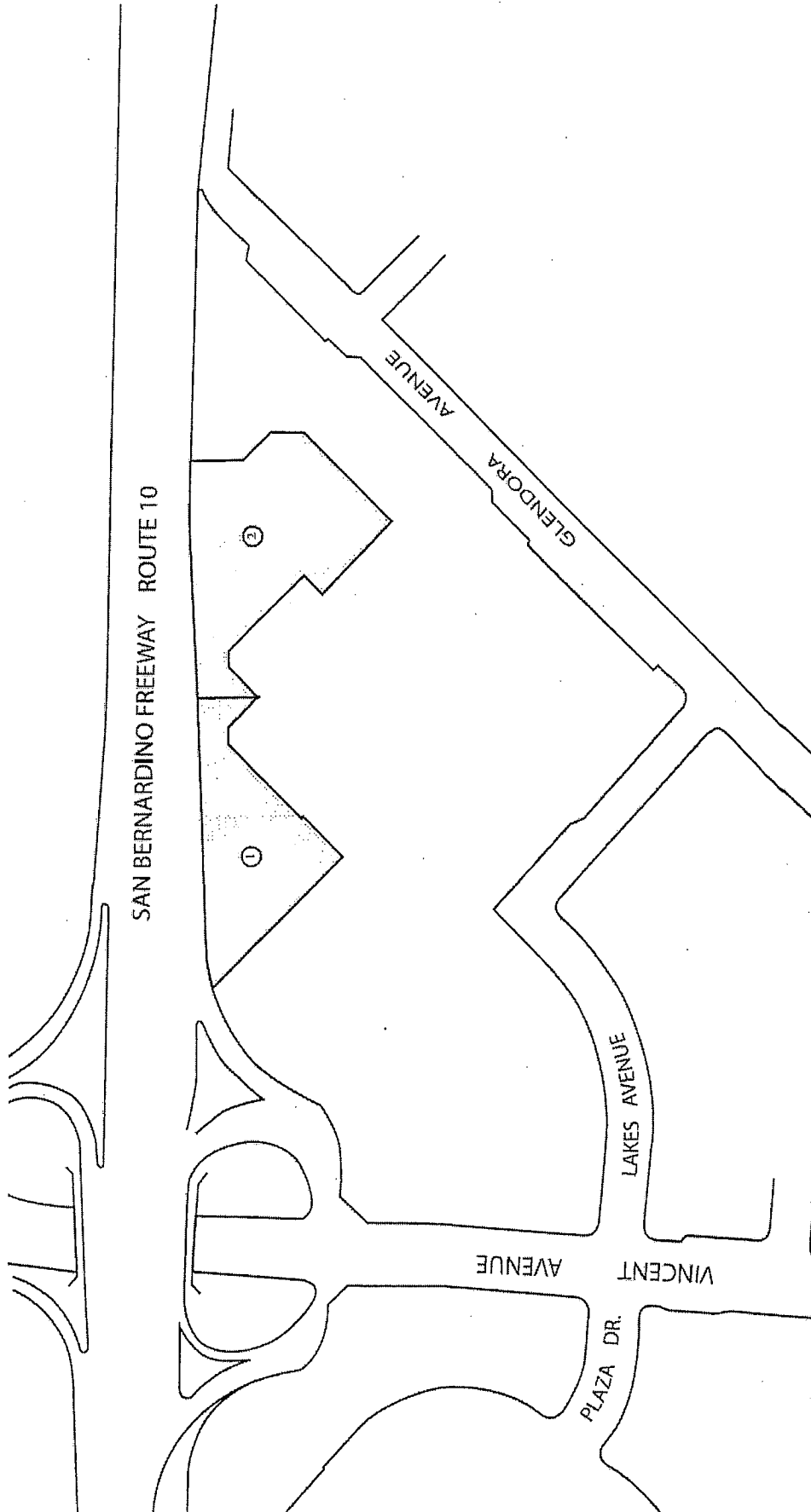
5.2. Parking Area Additions and Deletions. Any Party may make alterations to or construct additional Parking Area on their respective Parcels with the prior written consent of the other Party. Reductions in Parking Area shall only occur in connection with or as a result of construction of improvements permitted hereunder or as a result of exercising of the power of eminent domain. Any such alterations or additional Parking Area shall be designed to integrate with the then existing buildings and improvements, including without limitation, streets and other facilities, of the Shopping Center. All plans and specifications for any such alterations or additional Parking Area must be approved in writing in the manner provided in Article 8 by all of the Parties prior to the commencement of construction.

6. Developer's Insurance; Indemnification.

6.1. Required Coverages. During the term of this Agreement, Developer at its expense, shall maintain policies of insurance as follows:

(a) Insurance against loss or damage to the buildings and improvements upon the Developer Parcel by fire and the risks embraced by extended coverage, vandalism and malicious mischief endorsements and from such other hazards as may be covered by then standard "all risk" insurance (including specifically flood insurance if available under the Flood National Insurance Program as it may be changed or replaced but excluding earthquake insurance, provided, however, that if Developer otherwise carries a policy of blanket earthquake insurance, the Developer Parcel shall be included under such coverage), all, except flood and earthquake insurance, if any, in an amount sufficient to cover full replacement cost (without depreciation) of the buildings and improvements upon the Developer Parcel (excluding the cost of excavation and of foundations below the level of the lowest basement floor or, if there be no basement, below the level of the ground) and to prevent any co-insurance provision from becoming effective, but in any event, in an amount equal to at least ninety (90%) percent of the full insurable value thereof. Said insurance shall have devaluation, contingent liability and increased cost of construction endorsements.

# Lakes Office Development



Owned by RDA - Lakes Office Development

NO.	APN	Zoning	Intended Use	Acres
1	8474-011-942	CRWC	Office and Public Parking	1.77
2	8474-011-943	CRWC	Office and Public Parking	2.39
TOTAL ACRES				4.16

ATTACHMENT NO. 3



# ATTACHMENT NO. 3 - A

Resolution No. 15

Parking Authority Resolution approving and authorizing issuance of  
Certificate of Participations

November 15, 1985

For:

LAKES OFFICE DEVELOPMENT

and

FASHION PLAZA PARKING PROJECT  
(Westfield Mall)

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RESOLUTION NO. 15

"A RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF WEST COVINA APPROVING AND AUTHORIZING AND DIRECTING EXECUTION OF FOUR INSTALLMENT SALE AGREEMENTS FOR SALE OF LAND AND PUBLIC PARKING FACILITIES TO THE REDEVELOPMENT AGENCY OF THE CITY OF WEST COVINA, APPROVING SALE OF FOUR SERIES OF CERTIFICATES OF PARTICIPATION IN THE AGGREGATE PRINCIPAL AMOUNT OF \$75,605,000, APPROVING OFFICIAL STATEMENT AND RELATED DOCUMENTS, AND AUTHORIZING OFFICIAL ACTION."

WHEREAS, the Redevelopment Agency of the City of West Covina (the "Agency") has requested the Parking Authority of the City of West Covina (the "Authority") to acquire and construct four public parking facilities and related property (collectively, the "Projects"; individually, a "Project") described generally as follows:

<u>Description</u>	<u>Location</u>
1. The Atrium Parking Facility	Glendora Avenue/State Street
2. The Development Research Corporation (DRC Parking Facility)	Vincent Avenue/Garvey Avenue
3. The Fashion Plaza Expansion Parking Facility	Vincent Avenue/West Covina Parkway
4. The Eastland Center Parking Facility	Barranca Street/Workman Avenue/San Bernardino Freeway

WHEREAS, the Projects are proposed to be acquired by the Agency from the Authority for the aggregate principal purchase price of \$75,605,000, to be paid in installments together with interest on the unpaid principal balance pursuant to four separate installment Sale Agreements each relating to a separate Project and each dated as of November 1, 1985, between the Agency and The Authority (collectively, the "Installment Sale Agreements"); and

WHEREAS, the Agency's obligations under the Installment Sale Agreements are special obligations limited solely to the revenues and amounts described therein, including investment earnings on funds pending their use, payments to be made by developers and drawings under four separate irrevocable direct-pay letters of credit issued by Security Pacific National Bank; and

WHEREAS, the Authority proposes to finance all such acquisition and construction by assigning to Dai-Ichi Kangyo Bank of California, as trustee, (the "Trustee") certain rights of the Authority under each of the respective Installment Sale Agreements, pursuant to four separate Assignment Agreements, each dated as of November 1, 1985, and each by and between the Authority and the Trustee (collectively, the "Assignment Agreements"); and

WHEREAS, the Authority, the Agency and the Trustee propose to enter into four separate Trust Agreements, each dated as of November 1, 1985, and each relating to the financing of a separate Project (collectively, the "Trust Agreements") whereby the Trustee agrees to execute and deliver four series of certain Certificates of Participation in the aggregate principal amount of \$75,605,000 (collectively, the "Certificates"), evidencing the proportionate interests of the owners thereof in installment payments made by the Agency under the respective Installment Sale Agreements; and

WHEREAS, Rauscher Pierce Refsnes, Inc. and Security Pacific Capital Markets Group (Security Pacific National Bank) as underwriter (the "Underwriter") have proposed to submit an offer to purchase said Certificates of Participation pur-

suant to that certain Contract of Purchase in substantially the form on file with the Secretary of the Agency, among the Authority, the Agency and the Trustee (the "Contract of Purchase"), and have heretofore caused to be prepared a Preliminary Official Statement describing said Certificates of Participation; and

WHEREAS, the Authority approves of said transactions in the public redevelopment purposes of the Authority;

NOW, THEREFORE, BE IT RESOLVED by the Parking Authority of the City of West Covina as follows:

Section 1. Installment Sale Agreements. The Authority hereby approves the sale of each of the Projects to the Agency pursuant to each of the Installment Sale Agreements, in substantially the respective forms on file with the Secretary together with any additions thereto or changes therein deemed necessary or advisable by the General Manager. The Chairman and the Secretary of the Authority are hereby authorized and directed to execute, attest and affix the seal of the Authority to each of said agreements for and in the name and on behalf of the Authority. The Authority hereby authorizes the delivery and performance of each of said agreements.

Section 2. Trust Agreements. The Authority hereby approves and authorizes the delivery and performance of each of the Trust Agreements, in substantially the respective forms on file with the Secretary together with any additions thereto or changes therein deemed necessary or advisable by the General Manager. The Chairman and the Secretary of the Authority are hereby authorized and directed to execute, attest and affix the seal of the Authority to each of said agreements for and in the name and on behalf of the Authority.

Section 3. Assignment Agreements. The Authority hereby approves and authorizes the delivery and performance of each of the Assignment Agreements, in substantially the respective forms on file with the Secretary together with any additions thereto or changes therein deemed necessary or advisable by the General Manager. The Chairman and the Secretary of the Authority are hereby authorized and directed to execute, attest and affix the seal of the Authority to each of said agreements for and in the name and on behalf of the Authority.

Section 4. Sale of Certificates. The Authority hereby authorizes the sale of each of the following four series of Certificates of Participation, in the following respective principal amounts:

Designation of Certificates	Principal Amount
1. Certificates of Participation (Atrium Parking Project), Series A	\$ 7,750,000
2. Certificates of Participation (DRC Parking Project), Series B	\$ 7,355,000
3. Certificates of Participation (Fashion Plaza Parking Project), Series C	\$34,670,000
4. Certificates of Participation (Eastland Parking Project), Series D	\$25,830,000

The Certificates shall be sold to the Underwriter for the purpose of providing funds to be applied to the financing of the acquisition and construction of the respective Projects. The Certificates shall be sold pursuant to the Contract of Purchase, in substantially the form on file with the Secretary of the Authority, which agreement is hereby approved together with any additions thereto or

changes therein deemed necessary or advisable by the General Manager. The General Manager is hereby authorized and directed to execute the Contract of Purchase upon presentation of any offer by the Underwriter to purchase the Certificates which is acceptable to the General Manager; provided, however, that the purchase price shall be ninety-eight and three-quarters percent (98-3/4%) of the par amount thereof. The General Manager is hereby delegated the authority to approve the terms of any offer by the Underwriter to purchase the Certificates, provided that such offer is in form and substance acceptable to the General Manager and is within the limitations set forth in this Section 4.

Section 5. Official Statement. The Authority hereby approves the Preliminary Official Statement describing the Certificates, in substantially the form submitted by the Underwriter and on file with the Secretary, together with any changes therein or additions thereto deemed advisable by the General Manager. Distribution of the Preliminary Official Statement by the Underwriter is hereby ratified and approved. The Authority hereby authorizes the distribution of the Final Official Statement by the Underwriter. The General Manager is hereby authorized and directed to approve any changes in or additions to a final form of said Official Statement deemed advisable by the General Manager, and to execute said Final Official Statement for and in the name and on behalf of the Authority.

Section 6. Official Action. All actions heretofore taken by the officers and agents of the Authority with respect to the purchase of the Projects and the sale of the Certificates are hereby approved, confirmed and ratified. The General Manager, the Chairman, the Secretary, the Treasurer and any and all other officers of the Authority are hereby authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions, including execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful purchase, sale and financing of the Project pursuant to the agreements described herein.

Section 7. The Secretary shall certify to the adoption of this resolution.

APPROVED AND ADOPTED this 18th day of November, 1985.

Forest & Tennant Jr  
Chairman

ATTEST:

Samuel Berry, Assistant  
Secretary

I HEREBY CERTIFY that the foregoing Resolution No. 15 was duly adopted by the Parking Authority of the City of West Covina at an adjourned regular meeting thereof held on the 18th day of November, 1985 by the following vote:

AYES: Bacon, Manners, Chappell, Shearer  
NOES: None  
ABSENT: Tennant  
ABSTAIN: None

Samuel Berry, Assistant  
Secretary

APPROVED AS TO FORM:

Charles F. Adams  
for Jones Hall Hill & White, A  
Professional Law Corporation, as  
Authority Special Counsel

# ATTACHMENT NO. 3 – B

Resolution No. 8202

Resolution of the City Council of the City of West Covina  
authorizing the issuance and sale of \$7,750,000 Lease Revenue Refunding  
Bonds, Sublease Agreement and Operating Agreement

Dated June 27, 1988

For:

LAKES OFFICE DEVELOPMENT

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RESOLUTION NO. 8202

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$7,750,000 PRINCIPAL AMOUNT OF LEASE REVENUE REFUNDING BONDS (THE LAKES PUBLIC PARKING PROJECT), THE SUBLEASE OF LAND AND PARKING IMPROVEMENTS TO WATT INVESTMENT PROPERTIES, INC. AS DEVELOPER AND THE OPERATING AGREEMENT WITH DEVELOPER RELATING TO SUCH LAND AND PARKING IMPROVEMENTS, APPROVING REIMBURSEMENT AGREEMENT WITH NATIONAL WESTMINSTER BANK AND APPROVING RELATED DOCUMENTS AND OFFICIAL ACTIONS

WHEREAS, pursuant to the Community Redevelopment Law of the State of California (the "Law") the Redevelopment Agency of the City of West Covina (the "Agency") has previously entered into an Installment Sale Agreement dated as of November 1, 1985 (the "1985 Installment Sale Agreement"), with the Parking Authority of the City of West Covina (the "Authority") whereby the Authority has agreed to acquire certain land (the "Site") situated in the Central Business District Redevelopment Project Area of the Agency (the "Project Area") and build certain public parking facilities and related and appurtenant facilities and property (the "Project") thereon, and to sell the Project and the Site to the Agency; and

WHEREAS, under the Installment Sale Agreement, the Agency is obligated to pay certain installment payments to the Authority as the purchase price of the Project and the Site; and

WHEREAS, in order to provide funds to refinance the Installment Payments and thereby restructure the financing in a manner which is of benefit to the Agency, the Agency wishes to authorize the issuance of its Redevelopment Agency of the City of West Covina 1988 Lease Revenue Refunding Bonds (The Lakes Public Parking Project) in the principal amount of not to exceed \$7,750,000 (the "Bonds") pursuant to the Law and the provisions of Article 11 of Chapter 3 of Part 2 of Division 2 of Title 5 of the Government Code of the State of California; and

WHEREAS, the City of West Covina (the "City") proposes to lease the Site and the Project from the Agency pursuant to the Lease Agreement dated as of August 1, 1988 (the "Lease Agreement"), for the purpose, among others, of providing amounts sufficient to provide revenues for the payment of the Bonds and for the purpose of assisting the Agency in the redevelopment of the Project Area, and the City Council has previously adopted its ordinance approving the Lease Agreement and authorizing and directing the execution thereof; and

WHEREAS, the City proposes to sublease a portion of the Site and the Project to Watt Investment Properties, Inc., a California corporation (the "Developer"), pursuant to the Agreement For Sublease of Portion of Public Facilities dated as of August 1, 1988 (the "Sublease Agreement"), and to enter into an Operating Agreement for Portion of Parking Facilities dated as of August 1, 1988 (the "Operating Agreement"), with the Developer with respect to the remaining portion of the Site and the Project; and

WHEREAS, the Bonds are proposed to be secured by an irrevocable direct-pay letter of credit issued by National Westminster Bank PLC, acting through its San Francisco Overseas Branch (the "Bank"), in favor of the Trustee for the account of the City, pursuant to the Reimbursement Agreement dated as of August 1, 1988, as secured by the Pledge and security Agreement dated as of August 1, 1988 (collectively, the "Reimbursement Agreement"), each by and between the City and the Bank; and

WHEREAS, Security Pacific Merchant Bank, as prospective underwriter of the Bonds (the "Underwriter"), has informed the City that it intends to submit an offer to purchase the Bonds and in connection with the underwriting of the Bonds the Underwriter has caused to be prepared an Official Statement describing the Bonds and has proposed to act as remarketing agent with respect to the Bonds pursuant to the Remarketing Agreement dated as of August 1, 1988 (the "Remarketing Agreement"), by and among the Underwriter, the City and the Agency; and

WHEREAS, the City Council wishes at this time to authorize all proceedings relating to the financing of the Site and the Project, the sale of the Bonds and the execution and delivery of all related agreements and documents to which it is a party;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of West Covina as follows:

Section 1. Approval of Bonds. Pursuant to Section 33640 of the Law, the City Council hereby approves issuance of the Bonds by the Agency, in the aggregate principal amount of not to exceed \$7,750,000.

Section 2. Approval of Agreements. The City Council hereby approves the Reimbursement Agreement, the Remarketing Agreement, the Sublease Agreement and the Operating Agreement in substantially the respective forms on file with the City Clerk together with any changes therein or additions thereto deemed advisable by the City Manager. The City Council hereby authorizes and directs the Mayor to execute, and the City Clerk to countersign and affix the seal of the City to, the final forms of the Reimbursement Agreement, the Remarketing Agreement, the Sublease Agreement and the Operating Agreement for and in the name of the City.

Section 3. Sale of Bonds; Approval of Purchase Contract. The City Council hereby approves the sale of the Bonds by negotiation with the Underwriter, pursuant to the Purchase Contract by and among the Agency, the City and the Underwriter, in substantially the form on file with the City Clerk together with any changes therein or additions thereto approved by the City Manager or an authorized representative of the City Manager. The Purchase Contract shall be executed in the name and on behalf of the City by the City Manager or an authorized representative of the City Manager, who is hereby authorized and directed to execute and deliver said form of Purchase Contract on behalf of the City upon submission of a proposal by the Underwriter to acquire the Bonds, which proposal is acceptable to the City Manager or such representative. The purchase price received by the Agency for the Bonds shall be not less than ninety-eight percent (98%) of the par amount thereof and the net effective rate of interest to be borne by the Bonds during the initial interest period shall not exceed eight percent (8%) per annum.

Section 4. Official Statement. The City Council hereby approves the preliminary Official Statement describing the Bonds, in the form submitted by the Underwriter and on file with the City Clerk together with any changes therein or additions thereto deemed advisable by the City Manager or an authorized representative of the City Manager. The City Council approves and authorizes the distribution by the Underwriter of said preliminary Official Statement to prospective purchasers of the Bonds. The City Manager or an authorized representative of the City Manager is hereby authorized and directed to approve any changes in or additions to a final form of said Official Statement deemed advisable by the City Manager or such representative. The City Council hereby authorizes the distribution of the final Official Statement by the Underwriter.

Section 5. Official Actions. The Mayor, the City Manager, the Assistant City Manager, the City Clerk, and all other officers of the City are each authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the documents approved pursuant to this Resolution. Whenever in this resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer shall be absent or unavailable.

Section 6. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

Section 7. Certification. The City Clerk shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED this 27th day of June, 1988.

*Atrey Messer*  
Mayor

ATTEST:

*Janet Beuy*  
City Clerk

I HEREBY CERTIFY that the foregoing Resolution No. 8202 was duly adopted by the City Council of the City of West Covina at a regular meeting thereof held on the 27th day of June, 1988, by the following vote:

- AYES: McFadden, Lewis, Bacon, Manners
- NOES: Tarozzi
- ABSENT: None
- ABSTAIN: None

*Janet Beuy*  
City Clerk

APPROVED AS TO FORM:

*James Hill Hill & White*  
For Jones, Hill, Hill & White,  
A Professional Law Corporation,  
as Special Counsel

LAK224KJ-6/88

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) SS  
CITY OF WEST COVINA )  
I hereby certify the foregoing  
instrument is a full, true and correct  
copy of the original on file in this  
office.  
Dated: 7/5/88

*Janet Beuy*  
City Clerk



# ATTACHMENT NO. 3 – C

Excerpt of

Lease Agreement

Dated August 1, 1988

For:

LAKES OFFICE DEVELOPMENT

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**LEASE AGREEMENT**

Dated as of August 1, 1988

by and between the

**REDEVELOPMENT AGENCY OF THE CITY OF WEST COVINA,**  
as lessor

and the

**CITY OF WEST COVINA,**  
as lessee

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Relating to  
**\$7,750,000**  
Redevelopment Agency of the City of West Covina  
1988 Lease Revenue Refunding Bonds  
(The Lakes Public Parking Project)

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equipping of the Project will be substantially completed in accordance with plans and specifications approved by the Agency on or prior to August 1, 1990.

Upon the completion of the construction, improvement and equipping of the Project satisfactory to the Agency, but in any event not later than thirty (30) days following such completion, the Agency shall cause the Completion Certificate to be executed by its Authorized Representative and delivered to the City, the Trustee, the Developer and the Bank. Such written certificate shall identify the date of such completion and the total Project Costs of the Project.

If the Agency, for any reason whatsoever, cannot deliver possession of the completed Project or any portion thereof to the City hereunder by August 1, 1990, this Lease shall not be void or voidable; but in that event the remaining Lease Payments allocable to the Project or such portion thereof (as determined in accordance with Section 4.6) shall with respect to the period between August 1, 1990, and the date on which the Agency delivers possession pursuant to Section 4.3, be subject to abatement in full.

#### ARTICLE IV

#### LEASE OF PROJECT AND SITE; LEASE PAYMENTS; ADDITIONAL PAYMENTS.

SECTION 4.1. Lease; Use of Project. The Agency hereby leases the Project and the Site to the City, and the City hereby leases the Project and the Site from the Agency, upon the terms and conditions set forth in this Lease. During the Term of this Lease, the Project and the Site shall be used solely for the purpose of providing parking and related and incidental uses; and, in the case of the portions of the Project and the Site which are not subject to the Developer Sublease, for the purpose of providing parking which is available to members of the general public.

#### SECTION 4.2. Term of Lease.

(a) Initial Term. The Initial Term of this Lease shall commence on the date hereof, and shall end on the date on which the Indenture is discharged in accordance with the provisions of Article X thereof, but not beyond August 1, 2018.

(b) Option to Extend. Following the Initial Term of this Lease, the City shall have the option, exercisable in its sole discretion, to extend the Term of this Lease eleven (11) additional Extended Terms of five (5) years each. The City shall exercise its option to extend the Term of this Lease for any Extended Term by giving written notice of such exercise to the Agency at least ten (10) days in advance of the commencement of such Extended Term.

(c) Subject to Eminent Domain Proceedings. The provisions of this Section 4.2 are subject in all respects to the provisions of Section 6.1 relating to the termination of this Lease in the event of eminent domain proceedings with respect to the Project.

might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, or the financial conditions, assets, properties or operations of the Agency or its properties.

(g) The Agency will not use any of the proceeds of the Bonds (i) for facilities which would cause the Bonds to become "private activity bonds" within the meaning of Section 148 of the Tax Code, or (ii) which would cause the Bonds to become "arbitrage bonds" within the meaning of Section 148 of the Tax Code, or (iii) which would cause the Bonds to become "consumer loan bonds" within the meaning of Sections 141 through 147, inclusive, of the Tax Code.

(h) The Agency will not use any of the proceeds of the 1985 Installment Sale Agreement deposited in the Project Fund, pursuant to Section 3.02(b) of the Indenture, in a manner which would cause or have caused the obligations of the Agency under the 1985 Installment Sale Agreement to be "industrial development bonds" under Section 103(b) of the Internal Revenue Code of 1954, as amended, as in effect on the date of execution and delivery of the 1985 Installment Sale Agreement.

### **ARTICLE III**

#### **ISSUANCE OF BONDS; ACQUISITION OF SITE AND CONSTRUCTION OF PROJECT**

**SECTION 3.1. Issuance of Bonds.** The Agency has authorized the issuance of the Bonds pursuant to the Indenture in the aggregate principal amount of \$7,750,000. ~~The Agency agrees that the proceeds of sale of the Bonds shall be paid to the Trustee on~~ the Closing Date for deposit and application pursuant to Section 3.02 of the Indenture. The City hereby approves the Indenture, the assignment thereunder to the Trustee of the right, title and interest of the Agency (with certain exceptions) in this Lease, and the issuance by the Agency of the Bonds.

**SECTION 3.2. Acquisition and Construction of the Site and the Project.** The Agency has heretofore acquired the Site from amounts derived from the sale of certain tax allocation bonds of the Agency, and the City hereby consents to the reimbursement to the Agency of the Project Costs relating to such acquisition, in the amount of \$2,541,464. The Agency shall cause certain amounts on deposit in the Project Fund to be disbursed for such purpose on the Closing Date in accordance with Section 3.04 of the Indenture.

The Agency further agrees to supervise and provide for, or cause to be supervised and provided for, the construction, improvement and equipping of the Project pursuant to all applicable requirements of law and in accordance with the DDA, and will cause the same to be diligently performed after the Closing Date. The Agency shall pay all Project Costs from amounts on deposit in the Project Fund pursuant to Section 3.04 of the Indenture. The Agency hereby covenants that the construction, improvement and

# ATTACHMENT NO. 3 – D

Excerpt of

Amended and Restated  
Construction, Operation and Reciprocal Easement Agreement  
(REA)

Dated August 2, 1994

For:

LAKES OFFICE DEVELOPMENT

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**FILE COPY**

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
Redevelopment Agency of the )  
City of West Covina )  
P. O. Box 1440 )  
West Covina, CA 91793 )  
Attn: James J. Cleary III )  
)  
)  
)

94 1795437

ORIGINAL  
WITH CITY CLERK

RECORDED/FILED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
31 MIN. 4 P.M. SEP 29 1994  
PAST 4

(Space Above For Recorder's Use Only)

FEE \$ 97 M

AMENDED AND RESTATED CONSTRUCTION, OPERATION  
AND RECIPROCAL EASEMENT AGREEMENT

31  
32

THIS AMENDED AND RESTATED CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT ("REA") is entered into as of Aug-2, 1994, by and among WATT INVESTMENT PROPERTIES, INC., a California corporation, and WEST COVINA LAKES ASSOCIATES, a California limited partnership (collectively, together with their successors and assigns, "Watt"), ZELMAN DEVELOPMENT CO., a California limited partnership (together with its successors and assigns, "Zelman"), the CITY OF WEST COVINA (the "City"), and the REDEVELOPMENT AGENCY OF THE CITY OF WEST COVINA (together with its successors and assigns "Agency"), in connection with certain real property located in the City of West Covina, County of Los Angeles, State of California, as shown on that certain Site Map (the "Site Map") attached hereto as Diagram "1" and as more particularly described in Exhibit "A" attached hereto, both incorporated herein by this reference (the "Property").

RECITALS

- A. WHEREAS, Agency, City, Watt and INTERSTATE HOTELS DEVELOPMENT CORPORATION, a Delaware corporation ("IHC"), entered into that certain CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT, dated as of September 26, 1988 (the "Initial REA").
- B. WHEREAS, at the time of execution of the Initial REA, Watt Investment Properties, Inc., a California corporation, was the owner of Parcels 1 and 2 of the Property (collectively, the "Watt Parcels").
- C. WHEREAS, Watt Investment Properties, Inc., a California corporation, has transferred to West Covina Lakes Associates, a California limited partnership, title to the Watt Parcels.
- D. WHEREAS, Agency is the owner of Parcels 6, 7, 8, 9 and 10 of the Property (collectively, the "Agency Parcels") and Agency is also the owner of Parcels 3 and 4 which are

50919164-17

the use of such easement, then the owner(s) of the portion of the Property benefitted by such easement shall be responsible for causing such damage to be promptly repaired.

3.4 Parking Easements Inuring to the Benefit of the Watt Parcels and the Zelman Parcel. Parking Structure I shall be available for use by the owners of the Watt Parcels, and each of their Occupants and Permittees, in the manner set forth hereunder; provided, however, that notwithstanding anything else contained in the REA to the contrary, Parking Structure I shall not be available for use by the owner of the Zelman Parcel, its Occupants and Permittees. Any parking structures or areas constructed on the Zelman Parcel shall not be available for use by the owners of the Watt Parcels or the Agency Parcels, their Occupants and Permittees. Agency and the City grant to Watt for the benefit of Watt Parcels 1 and 2, and to the respective successors and assigns of Watt for its use, and for the use of its Occupants and Permittees, for so long as this REA is in effect (including any and all extensions thereto), nonexclusive easements in common with the general public without preference or priority, on, over and across Parking Structure I for (i) vehicular parking on and vehicular ingress to and egress from Parking Structure I, and (ii) pedestrian access on, over and across Parking Structure I, as reasonably necessary in connection with the foregoing vehicular parking and access easements.

Parking Structure II shall be available for use by the owner of the Watt Parcel and the owner of the Agency Parcel, and their respective Occupants and Permittees, in the manner set forth hereunder. Agency and the City grant to Watt for the benefit of Watt Parcels 1 and 2, and to the successors and assigns of Watt, for their use, and for the use of its Occupants and Permittees, for so long as this REA is in effect (including any and all extensions thereto), nonexclusive easements in common with the general public without preference or priority, on, over and across Parking Structure II for (i) vehicular parking on and vehicular ingress to and egress from Parking Structure II, and (ii) pedestrian access on, over and across Parking Structure II, as reasonably necessary in connection with the foregoing vehicular parking and access easements. Subject to the provisions of Section 6.2 hereof, the parking of vehicles permitted by virtue of the easement granted in this paragraph shall also be for the benefit of the Agency Parcels and shall be limited to the use of Parking Structure II. Notwithstanding anything to the contrary contained in the REA, the Agency Parcels will not be put to any use that would require parking rights in and to either Parking Structure I or Parking Structure II during "peak office hours", as hereinafter defined. For purposes of this REA, "peak office hours" shall mean Monday through Friday (excluding legal holidays) 7:30 a.m. to 5:30 p.m.

Notwithstanding anything in the foregoing to the contrary, pursuant to the Operating Agreement, the vehicular parking easements granted above shall be limited to the use of an aggregate of seventy-five percent (75%) of the parking spaces in Parking Structures I and II and conditioned upon the payment of certain obligations as set forth in Section 6.2 hereof.

Pursuant to the Sublease, the City has granted to Watt for the benefit of Watt Parcels 1 and 2, and to the respective successors and assigns of Watt, for their use, and for the use of their respective Occupants and Permittees, for so long as the Sublease is in effect (including any and all extensions thereto), the exclusive right to use and occupy twenty-five percent (25%) of the parking spaces in Parking Structures I and II (the "Leased Premises"). Watt shall be entitled to select whatever twenty-five percent (25%) portion of such parking structures as Watt wishes to use exclusively.

The owners of the Agency Parcels represent and warrant for the benefit of the owners of the Watt Parcels and their respective successors, assigns, lessees and/or permittees that the use of the easements granted above to Watt with respect to Parcels 3 and/or 4 and Parking Structures I and/or II are not as of the date hereof and shall not hereafter be subject or subordinate to the interest of any party, including but not limited to the interest of any mortgagee of Parcels 3 and/or 4 and Parking Structures I and/or II, respectively, that the consent of all parties required to give their consent to the granting of said easements has been obtained, and that the burdens of said easements will run with the land and be binding upon the successors (including but not limited to any mortgagee), assigns, lessees or permittees of Agency as to all or any portion of Parcels 3 and/or 4, and Parking Structures I and/or II, respectively.

3.5 Declaration of Easements by Watt. In the event that any of the Watt Parcels or any interest therein is sold, assigned, transferred or conveyed by any means, including but not limited to by gift or by operation of law, Watt hereby declares for the benefit of any one or more of the Watt Parcels (the "Dominant Watt Parcel(s)") the following easements with respect to all of the other Watt Parcels (the "Servient Watt Parcel(s)"), the location and use of which shall not unreasonably interfere with the construction, development and/or operation of the improvements to be located on the Servient Watt Parcels:

(a) Vehicular Areas Easement. A nonexclusive easement appurtenant to the Dominant Watt Parcel(s) in, over, through, to and across those Vehicular Areas located on the Servient Watt Parcel(s) for the purpose of ingress and egress for vehicles of Watt and/or its successor(s) in interest, and Occupants and Permittees.

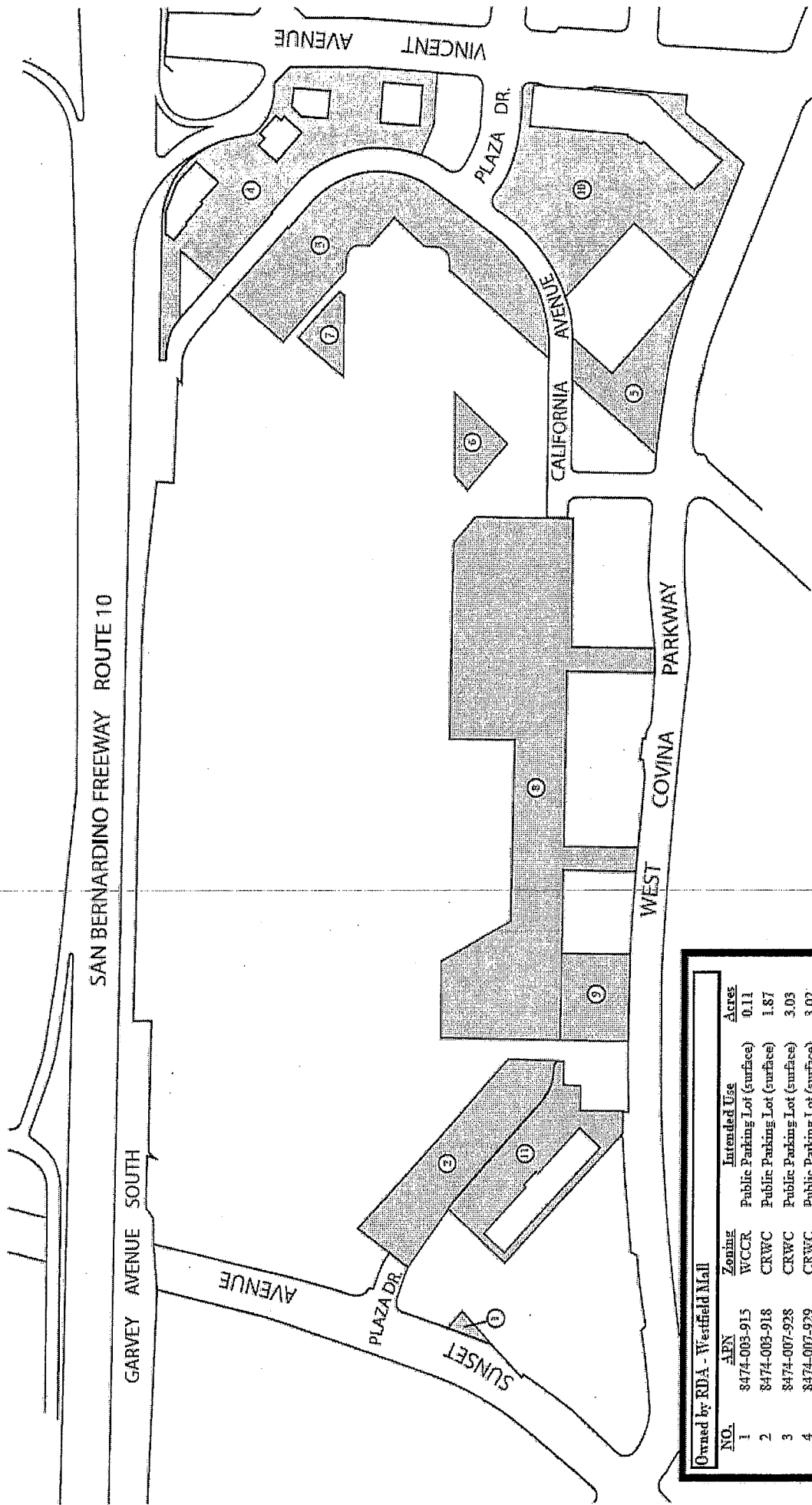
(b) Pedestrian Areas Easement. A nonexclusive easement appurtenant to the Dominant Watt Parcel(s) in, over, through, to and across those Pedestrian Areas located on the Servient Watt Parcel(s) for the purpose of providing pedestrian access to and from the Dominant Watt Parcel(s) through the Servient Watt Parcel(s) by Watt and/or its successor(s) in interest, and Occupants and Permittees.

(c) Construction Easements. A nonexclusive easement in, over, through, to and across the Servient Watt Parcel(s) for the purpose of effecting and furthering the development and construction of the improvements to be located on the Dominant Watt Parcel(s). The developer of such Dominant Watt Parcel(s) shall not, however, without the prior written consent of the developer of the Servient Watt Parcel(s), be entitled to use the Servient Watt Parcel(s) pursuant to any easement granted in this paragraph (c) for staging or storage areas or in any way which would unreasonably interfere with the development and construction of the improvements to be located on the Servient Watt Parcel(s). All easements granted in this paragraph (c) shall immediately terminate and be of no further force or effect upon the completion of the improvements to be located on the Dominant Watt Parcel(s).

(d) Utilities Easements. A nonexclusive easement appurtenant to the Dominant Watt Parcel(s) in, over, through, to and across the Utilities Areas located on the Servient Watt Parcel(s) for the purpose of accessing the connections, lines and/or facilities, or any portion thereof, lying within such Utilities Areas to the full extent necessary for the full use and enjoyment of the Dominant Watt Parcel(s). All easements granted in this paragraph (d) shall be subject to the reasonable right of the owner of the Dominant Watt Parcel(s) to relocate such connections, lines and/or facilities at its own cost.



# Westfield Plaza (Mall)



Owned by FDA - Westfield Mall

NO.	APN	Zoning	Intended Use	Acres
1	8474-003-915	WCCR	Public Parking Lot (surface)	0.11
2	8474-003-918	CRWC	Public Parking Lot (surface)	1.87
3	8474-007-928	CRWC	Public Parking Lot (surface)	3.03
4	8474-007-929	CRWC	Public Parking Lot (surface)	3.02
5	8474-007-931	CRWC	Public Parking Lot (surface)	0.97
6	8474-007-932	CRWC	Public Parking Lot (surface)	0.41
7	8474-007-933	CRWC	Public Parking Lot (surface)	0.28
8	8474-007-934	R-C	Public Parking Structure	7.08
9	8474-007-935	CRWC	Public Parking Lot (surface)	0.76
10	8474-007-939	CRWC	Public Parking Lot (surface)	3.45
11	8474-003-940	CRWC	Public Parking Lot (surface)	1.49
<b>TOTAL ACRES</b>				<b>21.47</b>

ATTACHMENT NO. 4

# ATTACHMENT NO. 4 – A

City Memorandum

Dated May 4, 1993

For:

WESTFIELD PLAZA (MALL)

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# Memo



DATE: May 4, 1993  
TO: West Covina Redevelopment Agency and the Executive Director  
FROM: Redevelopment Agency Staff  
SUBJECT: OPERATING AGREEMENT FOR PARKING FACILITIES (THE PLAZA)

**SUMMARY:** The Agency Board will consider approval of an Operating Agreement with CenterMark Properties requiring CenterMark to operate and maintain the public parking facilities built as part of The Plaza expansion

## BACKGROUND

The Agency entered into an Owner Participation Agreement in June 1989 with Sylvan S. Shulman Co./West Covina Associates to acquire land and to pay the costs of constructing public parking facilities within the expansion area of the shopping center. The funds obtained to accomplish this were the result of the sale of \$45 million Mello-Roos Community Facilities District bonds. The parking facilities will be complete by October of this year.

As part of the approval of the various bond documents, the Agency approved the Operating Agreement in substantially the same form being considered now. That same Operating Agreement was also an attachment to the Owner Participation Agreement approved in 1989. The Agreement, naming Shulman as the operator of the parking facilities, was inadvertently not executed.

## DISCUSSION

In May 1992, Sylvan S. Shulman entered into an agreement with CenterMark Properties to dissolve the partnership that made up Sylvan S. Shulman Co./West Covina Associates. This dissolution also assigned all developer rights and obligations under the Owner Participation Agreement to CenterMark. Shulman then sold its interest in The Plaza to CenterMark.

Also in May 1992, Shulman, the Agency and CenterMark approved the Second Amendment to the Owner Participation Agreement, which gave the Agency's consent to the dissolution agreement and acknowledged that CenterMark is now the owner and developer of The Plaza and the expansion. Due to the change in ownership, all developer's rights and obligations within documents that were previously executed by Mr. Shulman are now CenterMark's full responsibility.

Because the Operating Agreement was never executed, it is opportune and appropriate to revise the document to reflect the new ownership and have the Agency Board approve the document with the language changes.

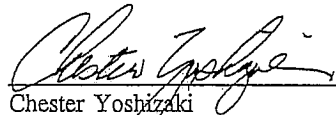
The Operating Agreement requires CenterMark Properties to operate, maintain and manage the parking facilities in the expansion area and repair the facilities when needed. The Agreement does not pertain to the existing parking structure, which is covered by a separate agreement. This Agreement shall be in effect for a period of five years. At that time, the Agency may renew the Agreement with CenterMark as operator of the facilities.

A copy of the revised document is on file in the Executive Director's office for your review.

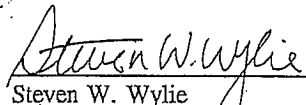
May 4, 1993

RECOMMENDATION

It is recommended that the Agency Board approve the Operating Agreement for Parking Facilities and authorize the Chairman to execute the Agreement.

  
\_\_\_\_\_  
Chester Yoshizaki  
Redevelopment Manager

APPROVED:

  
\_\_\_\_\_  
Steven W. Wylie  
Director of Redevelopment Services

FPE806KJ.DOC

# ATTACHMENT NO. 4 – B

Excerpt of

Official Statement for  
\$45 million Redevelopment Agency of the City of West Covina  
Community Facilities District No. 1989-1 (Fashion Plaza)  
1989 Special tax Bonds

Dated March 1, 1990

For:

WESTFIELD PLAZA (MALL)

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**NEW ISSUE**

**NO RATING**

*In the opinion of Jones Hall Hill & White, A Professional Law Corporation, San Francisco, California, Bond Counsel, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal individual and corporate alternative minimum taxes, although it is included in certain income and earnings in computing the alternative minimum tax imposed on certain corporations. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. See "CONCLUDING INFORMATION—Tax Matters" herein.*

**\$45,000,000\***

**REDEVELOPMENT AGENCY OF THE CITY OF WEST COVINA  
COMMUNITY FACILITIES DISTRICT NO. 1989-1 (FASHION PLAZA)  
1989 SPECIAL TAX BONDS**

**Dated: March 1, 1990**

**Due: September 1, as shown below**

The Redevelopment Agency of the City of West Covina Community Facilities District No. 1989-1 (Fashion Plaza) 1989 Special Tax Bonds (the "Bonds") are being issued to finance public parking facilities, street and other improvements as further described herein (the "Public Improvements") located in or adjacent to the Redevelopment Agency of the City of West Covina Community Facilities District No. 1989-1 (Fashion Plaza) (the "District"). The District is located in the Central Business District Redevelopment Project Area (the "CBD Project Area") of the Redevelopment Agency of the City of West Covina (the "Agency"). The Public Improvements are being constructed in conjunction with the renovation and expansion of the West Covina Fashion Plaza (the "Shopping Center") that is to be undertaken pursuant to the Owner Participation Agreement dated June 26, 1989 (the "OPA") between the Agency and Sylvan S. Shulman Co./West Covina Associates, a Delaware limited partnership (the "Developer").

Issuance of the Bonds is authorized pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (Sections 53311 *et seq.* of the Government Code of the State of California), a resolution adopted by the Governing Board of the Agency (the "Board") acting as the legislative body of the District, and a Fiscal Agent Agreement approved by resolution of the Board on behalf of the District and the Agency (the "Fiscal Agent Agreement"). The Bonds are payable from and secured by (i) certain proceeds of an annual Special Tax (as defined herein) to be levied on and collected from owners of property located within the District, (ii) certain Other Revenues (as defined herein) payable by the Agency and derived from activities on the Shopping Center Site (as defined herein), and (iii) from certain other funds pledged under the Fiscal Agent Agreement. Except for the Other Revenues and funds pledged pursuant to the Fiscal Agent Agreement, no funds or properties of the Agency shall be pledged to, or otherwise be liable for, the principal of, premium (if any) and interest on the Bonds.

The Bonds are being issued as fully registered bonds in the denomination of \$5,000 or any integral multiple thereof. Interest is payable on March 1 and September 1 (each, an "Interest Payment Date"), commencing September 1, 1990 by check or draft mailed to the owners of the Bonds appearing on the registration books maintained by the Fiscal Agent, Bankers Trust Company of California, National Association, as of the 15th day of the month preceding an Interest Payment Date, or by wire transfer made on such Interest Payment Date upon instructions of any owner of \$1 million or more in aggregate principal amount of Bonds. Principal of and premium, if any, on the Bonds will be payable at the principal corporate trust office of the Fiscal Agent in San Francisco, California.

The Bonds are subject to mandatory and optional redemption as provided herein. See "THE BONDS—Optional Redemption," "Mandatory Redemption From Prepayments," "Mandatory Redemption Upon OPA Termination," and "Mandatory Sinking Payment Redemption" herein.

THE FAITH AND CREDIT OF THE DISTRICT, THE AGENCY, THE CITY OF WEST COVINA, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF IS NOT PLEDGED TO THE PAYMENT OF THE BONDS. EXCEPT FOR THE SPECIAL TAXES, NO OTHER TAXES ARE PLEDGED TO THE PAYMENT OF THE BONDS. EXCEPT FOR THE OTHER REVENUES, NO OTHER REVENUES ARE PLEDGED TO THE PAYMENT OF THE BONDS. THE BONDS ARE NOT GENERAL OR SPECIAL OBLIGATIONS OF THE AGENCY NOR GENERAL OBLIGATIONS OF THE DISTRICT, BUT ARE LIMITED OBLIGATIONS OF THE DISTRICT PAYABLE SOLELY FROM CERTAIN AMOUNTS DEPOSITED BY THE DISTRICT OR THE AGENCY IN THE REVENUE FUND AS MORE FULLY DESCRIBED HEREIN.

See the section of this Official Statement entitled "SPECIAL RISK FACTORS" for a discussion of the risk factors that should be considered, in addition to other matters set forth herein, in evaluating the investment quality of the Bonds.

*The following firm, serving as financial advisor to the Agency and the District, has structured this issue.*

**KELLING, NORTHCROSS & NOBRIGA, INC.**

**MATURITY SCHEDULE\***

**\$ Serial Bonds**

<u>Maturity</u> <u>September 1</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Price</u>	<u>Maturity</u> <u>September 1</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Price</u>
1994	\$	%	%	2000	\$	%	%
1995				2001			
1996				2002			
1997				2003			
1998				2004			
1999				2005			
	\$	,	%	% Term Bonds due September 1, 2010, Price		%	
	\$	,	%	% Term Bonds due September 1, 2022, Price		%	

**(Plus accrued interest from March 1, 1990)**

*The Bonds are offered when, as and if issued, and accepted by the Underwriters, subject to the approval as to their legality by Jones Hall Hill & White, A Professional Law Corporation, San Francisco, California, Bond Counsel, and subject to certain other conditions. Certain legal matters will be passed upon for the Underwriters by Luce, Forward, Hamilton & Scripps, San Diego, California and for the Agency by Burke Williams & Sorensen, Los Angeles, California. It is anticipated that the Bonds will be available for delivery on or about March 1, 1990.*

**Stone & Youngberg**

**Drexel Burnham Lambert  
Incorporated**

**Wedbush Morgan Securities**

Dated: March , 1990.

\* Preliminary, subject to change.

This Preliminary Official Statement and the information contained herein are subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration, qualification or filing under the securities laws of any such jurisdiction.

## THE PROJECT

The West Covina Fashion Plaza (the "Shopping Center") is located immediately south of Interstate 10 (the San Bernardino Freeway) and north of West Covina Parkway between California and Sunset Avenues. The Shopping Center is in the Central Business District Redevelopment Project Area (the "CBD Project Area") of the Agency. The Shopping Center is presently composed of a two-level regional enclosed mall anchored by Bullock's, Broadway and J.C. Penney department stores and satellite restaurant and retail uses. The existing enclosed mall area contains approximately 550,000 square feet composed of approximately 375,000 square feet of mall shops and 175,000 square feet of enclosed mall area. Bullocks contains approximately 150,000 square feet, Broadway contains approximately 137,820 square feet and J.C. Penney contains approximately 194,000 square feet. The Shopping Center also presently includes a strip retail center located on portions of Parcel 1 of the District and on Tracts G and H. See the "DISTRICT BOUNDARY MAP" herein. Pursuant to the OPA the strip center will be acquired and all but a small portion of that strip center will be demolished to make room for the Expansion and May Store.

### The Project

The project to be developed pursuant to the OPA (the "Project") consists of the following components:

- (a) the renovation of the existing mall shop portions of the Shopping Center (the "Renovation");
- (b) the expansion of the enclosed mall and mall shops within the Shopping Center containing approximately 100,000 square feet of additional gross leasable area plus related common area (the "Expansion");
- (c) the construction of a new, two-level May Co. department store containing approximately 140,000 square feet of floor area (the "May Store");
- (d) the "Public Improvements" described below; and
- (e) the acquisition or construction of separate commercial buildings containing approximately 74,000 square feet of gross leasable area, not connected to the mall buildings, that will be acquired and/or developed on portions of the Shopping Center Site (the "Peripheral Developments").

Shopping Center Site means all land within the existing Shopping Center (whether owned by the Developer or an affiliate, the Agency, or the existing major department stores operated by Broadway, Bullock's and J.C. Penney), and, upon completion of the Expansion, May Store and Peripheral Developments, all land on which the Expansion, the May Store and the Peripheral Developments are constructed. Pursuant to the OPA the Developer and/or the Agency intend to (i) acquire the strip retail center located on portions of Parcel 1 of the District and on Tracts G and H, (ii) cause the City of West Covina to abandon and realign California Avenue between West Covina Parkway and Vincent Avenue and the California Avenue turning lanes located between Parcels 1 and 3 of the District, and (iii) acquire the property lying easterly of California Avenue, southerly of the San Bernardino freeway, westerly of Vincent Avenue and northerly of West Covina Parkway. See "DISTRICT BOUNDARY MAP" and "SHOPPING CENTER SITE PLAN MAP" herein.

The Renovation involves the addition of a food court, the refurbishing and redecoration of the enclosed mall, including installation of skylights and additional vertical transportation between mall levels, and construction of redesigned pop-out store fronts for mall tenants. The Renovation began in October, 1989 and is expected to be completed in August, 1990. The total estimated cost of the Renovation is approximately \$17 Million. The Developer has obtained a \$16.3 Million construction loan for the Renovation from Sanwa Bank California that is secured by a subordinate deed of trust on portions of the Shopping Center.

The Expansion and May Store addition will take place on certain land within the District and on a portion of Tracts G and H which are not currently a part of the District. It is anticipated that Tracts G and H will be annexed into the District, as set forth in the covenants of the District and Agency in the Fiscal Agent Agreement. The Peripheral Developments will be located partially within the District and partially outside the District. The Agency has no obligation to cause Peripheral Developments to be annexed into the District. While some of the Peripheral Developments may not be within the District and subject to the levy of Special Taxes, all such Peripheral Developments will be within the Shopping Center Site for the purposes of computing Tax Increment Revenues and Sales Tax Revenues that are pledged to the payment of debt service on the Bonds.

The Agency expects to complete all necessary site acquisitions and conveyance of necessary land to the Developer by December 1, 1990. The Expansion and May Store addition are expected to commence in late 1990 or early 1991 and take 16 to 18 months to complete. Total estimated construction costs are approximately \$60 Million. No commitments for financing the Expansion, the Peripheral Developments or the May Store have been obtained.

The Renovation, Expansion, May Store and Peripheral Developments are collectively referred to herein as the "Development." Upon completion of the Development, the Shopping Center is expected to contain approximately 1.2 Million square feet of building space.

#### The Public Improvements

The Bond proceeds will be used for the acquisition of certain public facilities (the "Public Improvements") including the acquisition of land required for the public facilities and the construction of additional public parking areas on real property to be owned by the Agency, street relocation and realignment, traffic signalization, utility relocation not paid for by affected utilities, and street widening. It is expected that pursuant to a proposed Construction Management Agreement between the Agency and the Developer, the Developer will be retained by the Agency as the construction manager for the development of the Public Improvements. The following table sets forth the estimated use of the Improvement Fund.



TABLE 3  
 Redevelopment Agency of the City of West Covina  
 Community Facilities District No. 1989-1 (Fashion Plaza)

PUBLIC IMPROVEMENTS BUDGET

Land Acquisition	\$26,807,000
Demolition	1,273,000
Public Improvements	5,108,000
	\$33,188,000

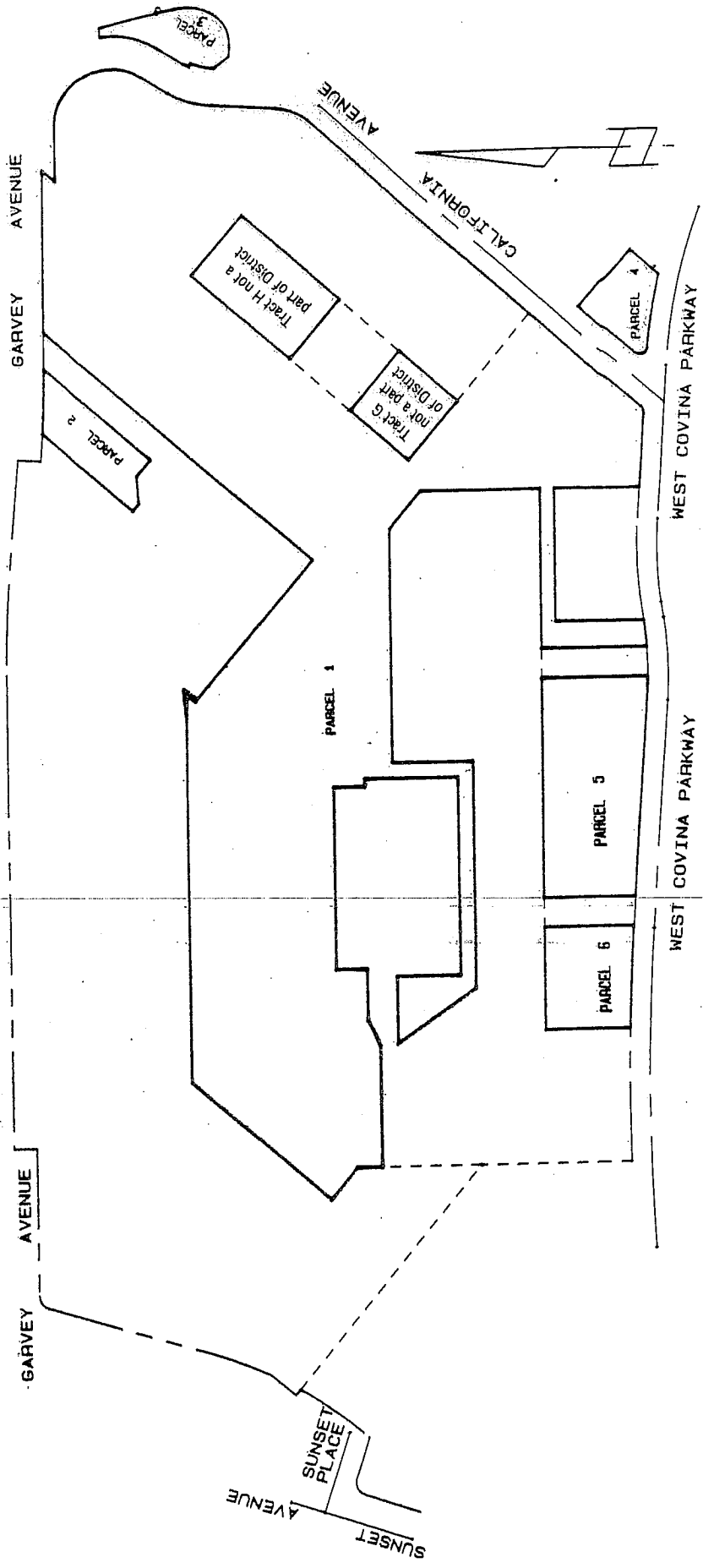
If the Improvement Fund is not completely expended on the above items, the Agency has identified certain other public improvements that will be financed.

**OPA Termination**

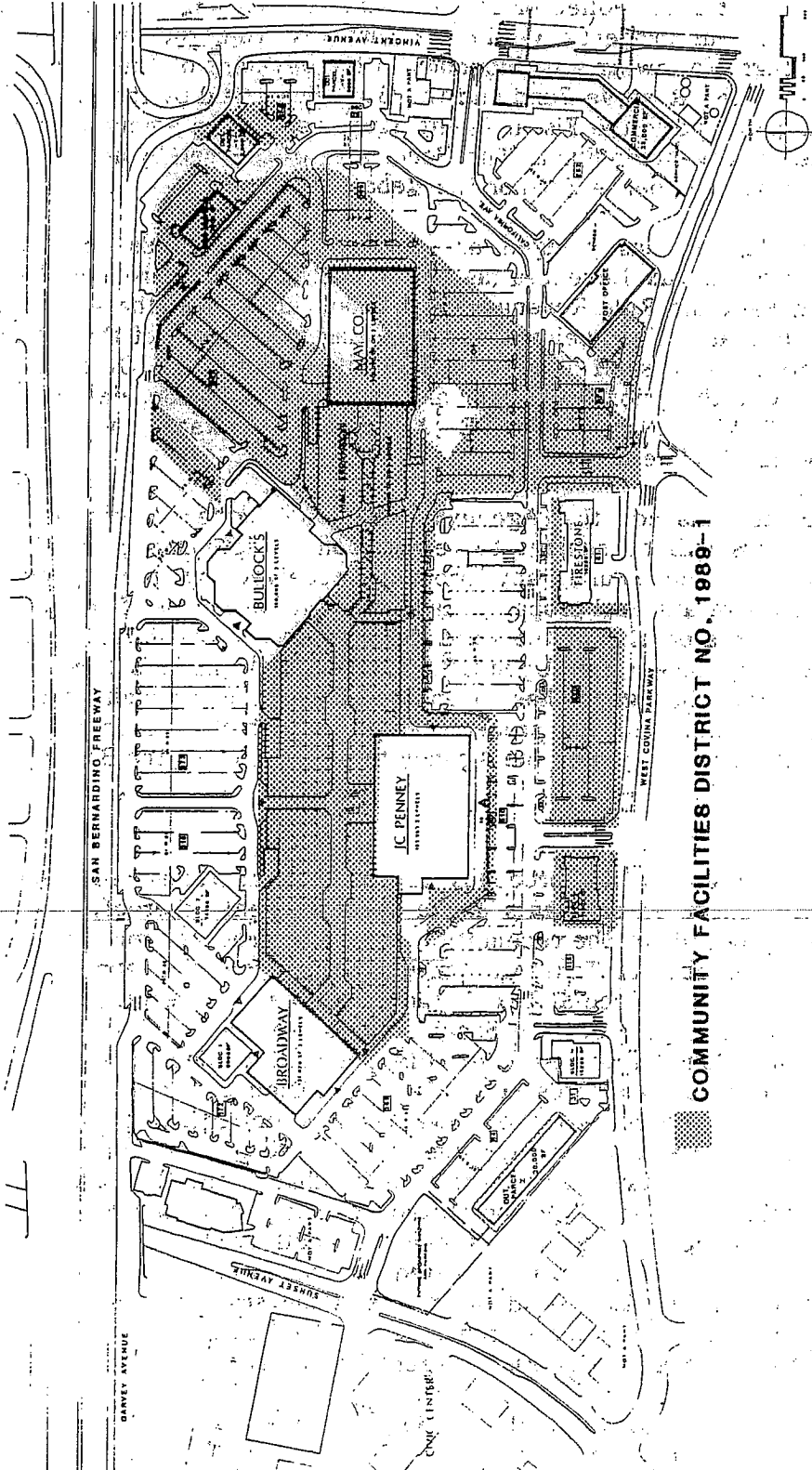
The completion of the Project is subject to certain approvals and conditions precedent to performance contained in the OPA. Prior to the planned conveyance by the Agency to the Developer of land necessary for the Expansion, May Store and Peripheral Developments, the OPA can be terminated by the Developer for any of the following reasons: (i) determination by the Agency not to adopt any required resolutions necessary for the commencement of eminent domain proceedings on certain parcels in the expansion area (the "Expansion Parcels"), (ii) a final determination in eminent domain proceedings affecting any of the Expansion Parcels that the Agency does not have the right to acquire such parcel by eminent domain, (iii) failure of the Agency to acquire all of the Expansion Area (as defined in the OPA) and to convey to the Developer the Developer Parcel, (iv) refusal of the Agency to approve final plans of the Developer, (v) a determination by the Developer not to perform work relating to soils or hazardous materials after receipt by the Developer of a soils or hazardous materials report, and (vi) failure or delay by the Agency to perform any term or provision of the OPA. Prior to the planned conveyance by the Agency to the Developer of land necessary for the Expansion, May Store and Peripheral Developments, the OPA can be terminated by the Agency for any of the following reasons: (i) determination by the Agency not to adopt any required resolutions necessary for the commencement of eminent domain proceedings on the Expansion Parcels, (ii) a final determination in eminent domain proceedings affecting any of the Expansion Parcels that the Agency does not have the right to acquire such parcel by eminent domain, (iii) the Agency disapproves any soils or hazardous materials report received by the Developer based upon the presence of hazardous materials and (iv) failure or delay by the Developer to perform any term or provision of the OPA.

Termination of the OPA prior to completion of the Project will result in mandatory redemption of Bonds from any funds available prior to July 1, 1992, and partial defeasance of the Bonds from any funds available on or after July 1, 1992. See "THE BONDS -- Mandatory Redemption Upon OPA Termination" and "Discharge of Fiscal Agent Agreement" herein. Upon any such redemption or defeasance of Bonds, the pledge of Other Revenues to payment of debt service on the Bonds will be terminated. Thereafter, the Bonds will be secured only by the Special Tax Revenues, amounts held in certain funds pursuant to the Fiscal Agent Agreement and the net proceeds, if any, derived from the sale of property acquired with proceeds of the Bonds. See "SECURITY FOR THE BONDS -- Loss of Pledge of Other Revenues" and "SPECIAL RISK FACTORS -- Termination of OPA and Redemption of Bonds" herein.

DISTRICT BOUNDARY MAP



# SHOPPING CENTER SITE PLAN MAP



COMMUNITY FACILITIES DISTRICT NO. 1989-1

# ATTACHMENT NO. 4 – C

Excerpt of

Third Amendment to and Restatement of  
Construction, Operation and Reciprocal  
Easement Agreement  
(Amended and Restated REA)

Dated October 14, 1993

For:

WESTFIELD PLAZA (MALL)

Attachment No. 4 – C: Excerpt of Amended and Restated REA

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THIRD AMENDMENT TO AND RESTATEMENT OF  
CONSTRUCTION, OPERATION AND RECIPROCAL  
EASEMENT AGREEMENT

THIS THIRD AMENDMENT TO AND RESTATEMENT OF CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT, made and entered into as of the 14 day of OCTOBER, 199<sup>2</sup><sub>6</sub>, by and among CENTERMARK PROPERTIES OF WEST COVINA, INC., a Delaware corporation ("Developer"); CARTER HAWLEY HALE STORES, INC., a Delaware corporation qualified to do business in the State of California, debtor in possession ("Broadway"); BULLOCK'S PROPERTIES CORP., a Delaware corporation qualified to do business in the State of California, debtor in possession ("Bullock's"); J. C. PENNEY PROPERTIES, INC., a Delaware corporation qualified to do business in the State of California ("Penney"); THE MAY DEPARTMENT STORES COMPANY, a New York corporation qualified to do business in the State of California ("May"); and THE REDEVELOPMENT AGENCY OF THE CITY OF WEST COVINA, a public body, corporate and politic, organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California ("Agency"),

W I T N E S S E T H :

WHEREAS, in order to make integrated use of their respective Tracts as a regional shopping center and to provide for other agreements contained therein, Sylvan S. Shulman Company (predecessor in interest to Developer), Broadway, Federated Department Stores, Inc. (predecessor in interest to Bullock's), Penney and Agency entered into a Construction, Operation and Reciprocal Easement Agreement dated as of November 5, 1973, and

and shall Indemnify Bullock's in connection with Developer's exercise of its rights pursuant to said easement, except to the extent that Loss is occasioned by Bullock's active negligence or willful wrongdoing. For purposes of maintenance, Operation, insurance, taxes, repairs, reconstruction and restoration, the Phase II Developer Improvements constructed in the exercise of such easement shall be deemed part of the Developer Tract. The easement granted in this Section 2.4 (b) shall survive the Termination Date and shall not terminate as long as such Developer Improvements are in existence or are in the process of being restored (provided that such restoration has commenced within twelve (12) months from the date of damage or destruction and is diligently pursued to completion).

Section 2.5 Agency Grant of Easements.

(a) Automobile Parking and Access. Agency hereby grants to each of the Parties, for their respective use, and for the use of their respective Permittees, in common with all others entitled to use the same pursuant to this REA, non-exclusive easements in the Agency Tract for ingress to and egress from the Agency Tract and for the passage and parking of vehicles and the passage and accommodation of pedestrians on such respective portions of the Agency Tract as are set aside, maintained and authorized for such use pursuant to the terms of this REA, and for the doing of such other things as are authorized and required to be done on the Agency Tract pursuant to this REA. The easements granted by Agency pursuant to this subparagraph (a) shall survive the Termination Date and continue so long as the Grantee's Store is in existence or is in the process of being restored or replaced (provided that such restoration or replacement has commenced within eighteen (18) months following the date of destruction or demolition). Notwithstanding the foregoing, the easements for access shall be perpetual.

(b) Utilities. Agency hereby grants to each of the Parties non-exclusive easements in the Agency Tract for the installation, operation, flow and passage, use, maintenance,

# ATTACHMENT NO. 4 - D

Excerpt of  
Owner Participation Agreement  
(OPA)

Dated June 26, 1989

For:

WESTFIELD PLAZA (MALL)

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ORIGINAL

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OWNER PARTICIPATION AGREEMENT

by and between the

REDEVELOPMENT AGENCY OF THE CITY OF WEST COVINA

and

SYLVAN S. SHULMAN CO./WEST COVINA ASSOCIATES,  
A Delaware limited partnership

DATED June 26, 1989

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CENTRAL BUSINESS DISTRICT

REDEVELOPMENT PROJECT AREA

DRAFT: June 22, 1989



assigns of the Developer. Whenever the term "Developer" is used herein, such term shall include any other lawful successors in interest of Developer.

#### Section 1.6 Project Description

The project to be developed pursuant to this Agreement (the "Project") consists of the following components:

(a) the renovation (the "Renovation") of certain of the buildings and improvements currently situated on the Developer Tract pursuant to plans dated November 21, 1988;

(b) an expansion (the "Expansion") of the enclosed mall and mall shops within the Shopping Center containing approximately one hundred thousand (100,000) square feet of additional gross leaseable area plus related common area;

(c) the construction of a new, two-level May Co. department store (the "May Store") containing approximately one hundred forty thousand (140,000) square feet of floor area;

(d) the construction on land to be owned by the Agency of additional public surface parking areas, street relocation and realignment, traffic signalization, utility relocation not paid for by affected utilities, and street widening (collectively, the "Public Improvements"); and

(e) the construction of separate commercial buildings containing approximately seventy-four thousand ~~(74,000)~~ to eighty-two thousand ~~(82,000)~~ square feet of gross leaseable area (the "Peripheral Developments"), not connected to the mall buildings, that will be developed by Developer, Shulman or an affiliate of Shulman or third parties on portions of the Shopping Center Site.

The Project, as presently envisioned by the parties, is depicted on a Site Plan dated February 21, 1989, prepared by RTKL & Associates, Inc.

#### Section 1.7 Contract Documents

The Contract Documents which are part of this Agreement, and each of which are incorporated herein by this reference, are as follows:

legal proceedings that affect the acquisition of the Expansion Parcels and an analysis of the issues, both substantive and procedural, that have been raised therein.

#### Section 2.2 Realignment of Public Rights of Way

The Agency shall request the City to initiate such proceedings as may be necessary (a) to realign or abandon and realign, that portion of California Avenue between Garvey Avenue (adjacent to the San Bernardino Freeway) and West Covina Parkway and (b) realign or abandon and realign that portion of South Garvey Avenue between California Avenue and Vincent Avenue (collectively, the "Roadbed Parcels") within the time required for conveyance under Section 2.5. Those portions of right of way abandoned as not required for street purposes shall be formally vacated in accordance with applicable requirements of the California Streets and Highways Code. Concurrently with this Agreement, Agency shall enter into a Cooperation Agreement with City to implement the terms of this Section.

#### Section 2.3 Vacation of I-10 Off-Ramp

The City and the State of California Department of Transportation (the "State") entered into an Agreement dated as of May 28, 1985, captioned "District Agreement No. 3639" (the "DOT Agreement"). Under the terms of the DOT Agreement, the City has certain rights to cause the state to close the California off-ramp and convey the closed off-ramp (the "Off-ramp Parcel") to the City. The Agency agrees that, upon the request of the Developer, it promptly will arrange for City to commence such activities as may be necessary under the DOT Agreement to acquire title to the Off-ramp Parcel within the time provided in Section 2.5 hereof for conveyance of portions of the Expansion Area to Developer. Concurrently with this Agreement, Agency shall enter into a Cooperation Agreement with City to implement the terms of this Section.

#### Section 2.4 Relocation of Existing Tenants

The Agency shall, to the extent required by law, relocate all tenants and other persons in possession (collectively, the "Existing Tenants") of any part of the Expansion Area. Proceeds of the Public Financing shall be used by the Agency for such purpose (except for relocation attributable to the Developer Parcel), provided that all costs of such relocation and any other amounts paid to Existing Tenants shall conform to the budget attached hereto as Exhibit 6. In the event such costs, when added to all

ARTICLE IV  
FINANCING

Section 4.1 Public Financing - General

In order to enhance the financial viability of the Project, the Agency agrees to use its best efforts to provide tax-exempt financing ("Public Financing") for the costs of development described in Section 4.2 of this Agreement. Such Public Financing may be provided through one or more transactions, which will be selected by the Agency and approved by the Developer. Agency agrees not to sell the bonds authorized by the Public Financing until such time as the sale is approved in writing by the Developer in its sole discretion. (Developer's vote approving the Public Financing shall not be construed as an approval of sale of the bonds.) Agency and Developer will expedite the selection and implementation of the Public Financing transactions so that the proceeds therefrom shall be available for land acquisition and other permitted uses at the earliest possible time. The Public Financing shall comply with the parameters described in Section 4.3 of this Agreement and shall be governed by the rules and mechanics stated in Exhibit 9, attached hereto.

Section 4.2 Costs to be Financed

A. The costs of the Project to be financed through the Public Financing shall include the following, with available proceeds applied in the following order of priority:

1. the costs of acquiring all land within the Expansion Area, other than the Developer Parcel, the Purchase Price for which shall be paid by the Developer;

2. all other costs paid by the Agency to acquire the Expansion Area (excluding the Developer Parcel), provided that such costs are approved by Developer pursuant to this Agreement; such costs may include, without limitation, the approved costs paid to Existing Tenants for relocation, goodwill, inventory, fixtures and equipment, and the costs of attorneys' fees and appraisals incurred in acquiring parcels within the Expansion Area through negotiation or eminent domain proceedings;

and (d) the Agency shall have deposited into escrow a Grant Deed for the conveyance of such parcel or parcels within the Developer Parcel to the Developer.

Section 2.7 Use of Parking Facilities.

Concurrently with the sale of the Developer Parcel to Developer, Agency shall execute an amendment to the REA which grants to the parties thereto non-exclusive easements to use the parking facilities of the Public Improvements for automobile parking and vehicular and pedestrian access in common with members of the public entitled to use the same so long as the Reciprocal Easement Agreement for the Shopping Center remains in effect. The parking facilities of the Public Improvements shall be devoted to and available for use as public parking without preference or priority to any person and shall be subject to such reasonable restrictions and regulations as may be permitted by applicable tax laws governing the Public Financing. The Agency shall employ the Developer to initially manage and operate the parking facilities of the Public Improvements in accordance with the Operating Agreement for Parking Facilities, attached hereto as Exhibit 10.

Section 2.8 Funds for Acquisition Costs

The Agency and the Developer contemplate that the funds required for the acquisition of portions of the Expansion Area prior to conveyance of the Developer Parcel to Developer shall be paid out of the proceeds of the Public Financing described in Article VI of this Agreement. If, however, funds are required for land acquisition before proceeds are available from the Public Financing, Developer shall, on a case-by-case basis, determine whether to advance funds prior to the availability of proceeds of the Public Financing. Neither the Agency nor the Developer shall be obligated to advance such funds. The Developer shall be reimbursed out of the proceeds of the Public Financing for funds for property acquisition, if any, advanced under this Section upon conveyance of land to Agency or assignment to Agency of rights to purchase acquired by Developer to Agency provided that the Purchase Price paid by Developer pursuant to Section 2.5.A. shall be deemed to have been used to acquire the Developer Parcel.

Section 2.9 Soils and Environmental Testing

A. Promptly following its approval and execution of this Agreement, Agency shall seek from the owners of parcels within the Expansion Area designated by