

FIRST AMENDMENT TO OWNER PARTICIPATION
AGREEMENT BY AND BETWEEN THE REDEVELOPMENT
AGENCY OF THE CITY OF WEST COVINA AND SYLVAN
S. SHULMAN CO./WEST COVINA ASSOCIATES

DATED: April 9, 1990

THIS FIRST AMENDMENT TO AGREEMENT is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY OF WEST COVINA, a public body corporate and politic (the "Agency") and SYLVAN S. SHULMAN CO./WEST COVINA ASSOCIATES, a Delaware limited partnership, (the "Developer") and is dated and effective as of April 9, 1990. In consideration of the mutual covenants and agreements contained herein, the Agency and the Developer hereby agree as follows:

SECTION 1. This Amendment to Agreement is made with respect to the following facts which are acknowledged as true by each of the parties hereto:

A. On June 26, 1989, the parties hereto entered into that certain agreement entitled "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" ("OPA") for the purpose of redeveloping certain property within the City of West Covina generally known as the West Covina Fashion Plaza.

B. Due to the inability of the parties to relocate the post office from the Site within the time originally contemplated, it is necessary to add other property to the Project to ensure its feasibility. Accordingly, certain property located in the south westerly area of the Shopping Center and currently owned by the Agency shall be redeveloped by the Developer as part of the "Peripheral Developments" as defined in Section 1.6 of the OPA.

C. The OPA anticipated certain events which could alter the form of the development and provided for certain obligations to be carried out by the various parties. Certain of these contingencies have occurred and certain obligations of the parties have been satisfied and, therefore, it is necessary for the parties to confirm these events.

D. Despite the diligent efforts of each of the parties pursuant to the OPA, certain unforeseen delays have occurred in the project without the fault of either party. Therefore, it is necessary to revise certain time deadlines for the development process and to revise certain items on the Schedule of Performance.

SECTION 2. Section 1.6 of the OPA and Paragraph I, Description of Project, of Exhibit No. 5, Scope of Development, shall be amended to provide that the Project, as presently envisioned by the parties, is depicted on a Site Plan dated April 3, 1990, prepared by RTKL & Associates, Inc.

SECTION 3. Exhibit No. 2, Legal Description of Site, is hereby amended to add Assessor's Parcel No. 8474-003-917 to the parcels listed under "Expansion Parcel" and which parcel is legally described as Lot 2 of Parcel Map No. 16045 recorded at Book 173, pages 56 and 57 in the Official Records of Los Angeles County, California subject to the contingency described in Section 2.1.G.

SECTION 4. Section 1.8 of the OPA describes two contingencies relating to (1) approval by all persons with an interest in the Site of the expansion and renovation of facilities on the Site and (2) agreement by Developer and Agency establishing a plan for the relocation of the post office on the Site. The parties hereto acknowledge and agree that all persons with an interest in the Site including, but not limited to, parties to the REA, as defined in the OPA, or holders of any deeds of trust on the Site, who have a right of approval of expansion or renovation of facilities on the Site have in fact approved and consented to the Project described in the OPA and, therefore, Developer shall no longer have the right to terminate the OPA pursuant to Section 7.7A.(10). The parties hereto further acknowledge and agree that the Agency shall acquire fee title to the post office property, Assessor's Parcel No. 8473-8-03, within the Expansion Area and shall convey said property to Developer subject to the post office lease. The Agency shall not be obligated to relocate the post office; provided that if the post office is willing to relocate prior to the expiration of its current lease, the Agency agrees to assist Developer in finding another site for the post office so long as the Agency is not required to bear any part of the cost of acquiring such other site or other cost of relocation, except from the available proceeds of the Public Financing.

SECTION 5. Subparagraph G. is hereby added to Paragraph 2.1 to read as follows:

G. The Agency currently owns the property designated as Assessor's Parcel No. 8474-003-917 which will be part of the Expansion Area. The Agency's cost for acquisition of said parcel shall be the amount of the appraisal made by a qualified independent appraiser agreed to by Developer and the Assistant Executive Director which amount shall be used to calculate the Purchase Price for the Developer Parcel pursuant to Section 2.5. Developer and Agency each agree to be bound by the appraisal made by James Himes of Himes and Himes; provided, however that within fifteen (15) days after Developer's receipt of the appraisal, Developer may elect not to purchase the property by notifying the Agency in writing within said period. If the Developer so elects, the property shall not be part of the Expansion Area. Developer and Agency shall each have the right to discuss the property and present comparable sales to the appraiser prior to preparation of the appraisal.

SECTION 6. Section 2.4 of the OPA is hereby amended to read as follows:

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 except for the post office on property described as Assessor's Parcel No. 8473-8-03. Agency shall not be required to relocate the post office from the property described above; provided that if the post office is willing to relocate prior to the expiration of its current lease, the Agency agrees to assist Developer in finding another site for the post office so long as the Agency is not required to bear any part of the cost of acquiring such other site or other cost of relocation, except from the available proceeds of the Public Financing. 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 other costs to be paid from the proceeds of Public Financing as

of the budget attached hereto as Exhibit 6, Developer shall pay such excess costs upon demand of Agency and prior to the time Agency must use such funds to make payment to a tenant or other person entitled to relocation benefits. It is the mutual objective of the Agency and the Developer to relocate Existing Tenants within the Project, provided that such relocation will substantially reduce or eliminate substantial costs for tenant goodwill and relocation, and will substantially reduce the potential termination of the businesses or the relocation of the businesses of the Existing Tenants to relocations outside of the City of West Covina. To help achieve these objectives, the Developer agrees to provide reasonable preferences in leasing space within the Project to Existing Tenants, so long as: (a) the businesses conducted by the Existing Tenants are not detrimental to the tenant mix within the Project; (b) such Existing Tenants possess the financial capability to perform their obligations as tenants of the Project; and (c) Developer shall not be required to offer lease terms to Existing Tenants which are more favorable than those offered to other prospective tenants in accordance with its established leasing plan for the Project.

SECTION 7. Section 2.5 of the OPA is hereby amended to read as follows:

Section 2.5. Sale of Developer Parcel; Time of Conveyance

A. The Agency shall sell the Developer Parcel to the Developer, and the Developer shall purchase the Developer Parcel from the Agency for an amount (the "Purchase Price") determined as follows, but not less than Seven Million dollars (\$7,000,000.00): The costs expended by the Agency for acquisition of the Expansion Area which are described in clauses 1 through 4 of Section 4.2.A, plus the cost of acquiring the Developer Parcel (including costs of land acquisition, relocation, demolition, fixtures and equipment and goodwill) shall be multiplied by a fraction, the numerator of which is the total land area within the Developer Parcel and the denominator of which is the total land area within the Expansion Area, including the Developer Parcel. If the Purchase Price is greater than Seven Million Dollars, the amount of said

difference shall be spent out of the proceeds of the Public Financing for Public Improvements described in clause 5 of Section 4.2.A.

B. Subject to the terms of the next sentence and of Section 2.6, the Agency shall endeavor to convey fee title to the Developer Parcel to Developer free and clear of all liens, encumbrances and tenancies except those approved pursuant to Section 2.12 as soon as practicable following the Agency's acquisition of the entire Expansion Area, but not later than November 30, 1990. If the Agency is unable to acquire all of the Expansion Area and to convey title (or exclusive possession pursuant to Section 2.6 hereof) to the Developer Parcel within said time period, then the Agency shall give written notice of such fact and an itemized statement of the reasons for such inability to the Developer; in such event, the Agency shall continue to use best efforts to acquire such remaining portions of the Expansion Area and convey the Developer Parcel to Developer at the earliest possible time. If the Agency shall discontinue diligent efforts to acquire, or be unsuccessful in acquiring, all of the Expansion Area within the said time period, then the Developer shall have the right to terminate its obligations under this Agreement pursuant to Section 7.7; provided, however, that Developer's right to terminate this Agreement pursuant to this paragraph shall be suspended so long as it is legally possible for the Agency to acquire all of the Expansion Area and the Agency shall be continuing diligently to take all steps necessary to acquire the Expansion Area.

C. Upon request of Developer and subject to appropriate amendment of Escrow Instructions, Agency shall convey the pad designated for the May Store directly to the entity to own such pad. Such a conveyance shall be deemed to satisfy Agency's obligation under this Section as to such pad.

D. Notwithstanding the provisions of this Section, Agency shall, upon written request of Developer, convey portions of the Developer Parcel to Developer provided that all applicable provisions of this Agreement applicable to the property conveyed have been complied with.

SECTION 8. Section 4.9 of the OPA provides that the *

Agency and the City will use their best efforts to enter into a lease for the rental of 350 park and ride spaces and to obtain the approval of such a lease by the Los Angeles County Transportation Commission. Both parties acknowledge that the lease between the Agency and the City and the approval of the lease by the Los Angeles County Transportation Commission have occurred as required by Section 4.9 of the OPA. The parties hereto further acknowledge that the Agency and the City have entered into a Cooperative Agreement to implement the terms of Section 4.9 as required by said section.

SECTION 9. Section 4.10 of the OPA requires the Agency to adopt a sales tax ordinance and to enter into the necessary agreement with the City for the transfer of the sales tax authority relating to the Site pursuant to Revenue and Taxation Code Section 7206.6. Both parties hereby acknowledge that the Agency has adopted the required sales tax ordinance and has entered into the necessary agreements with the City as required by Section 4.10. Both parties further acknowledge that the City and the Agency have entered into a Cooperative Agreement to implement the terms of Section 4.10.

SECTION 10. Section 7.7 of the OPA is hereby amended to read as follows:

Section 7.7 Termination of Agreement Prior to Conveyance

A. By Developer

Prior to the conveyance of the Developer Parcel to the Developer, the Developer may terminate this Agreement and its obligations hereunder (subject to paragraph D. below) for any of the following reasons:

1. determination by the Agency not to adopt any required Resolution of Necessity respecting the commencement of eminent domain proceedings relating to the Expansion parcels;
2. 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;
3. failure of the Agency to acquire all of

the Expansion Area and to convey to Developer the Developer Parcel as soon as practicable following the Agency's acquisition of the entire Expansion Area, but not later than November 30, 1990 provided, however, that Developer's rights to terminate this Agreement pursuant to this Section 7.7.A.3. shall be suspended during the time Agency is in compliance with the terms of Section 2.5 of this Agreement;

4. refusal of the Agency to approve the plans as finally submitted by the Developer in accordance with Sections 3.2, 3.3 and 3.4;

5. [INTENTIONALLY OMITTED]

6. a determination by the Developer not to perform work relating to soils or to removal of toxic materials or hazardous waste pursuant to Section 2.9(C);

7. [INTENTIONALLY OMITTED]

8. default by the Agency under this Agreement.

SECTION 11. Item No. 12 of Exhibit 3, Schedule of Performance, is hereby amended to read as follows:

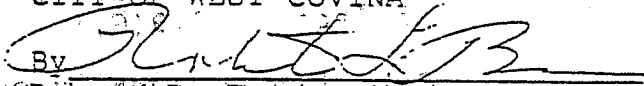
12. Conveyance of Title or Possessory Interest Agency shall convey possession and/or title to Developer of Developers Parcel

As soon as practicable following the Agency's acquisition of the entire Expansion Area, but not later than November 30, 1990 subject to Sections 2.5 and 2.6.

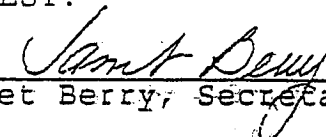
SECTION 12. Except as otherwise provided in this Amendment to Agreement, all other terms of the OPA shall remain in full force and effect.

IN WITNESS WHEREOF, the Agency and the Developer have executed this Amendment to Agreement as of the date first written above.

REDEVELOPMENT AGENCY OF THE
CITY OF WEST COVINA

By 
Robert L. Bacon, Chairperson

ATTEST:


Janet Berry, Secretary

APPROVED AS TO FORM:


Peter M. Thorson, Agency Counsel

SYLVAN S. SHULMAN CO./WEST
COVINA ASSOCIATES

BY SYLVAN S. SHULMAN CO.,
GENERAL PARTNER

By 
Sylvan S. Shulman