

City Clerk
copy

OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT (The "Agreement") is made and entered into this as of the 7th day of November, 1989, by and between

THE REDEVELOPMENT AGENCY OF THE CITY OF LA HABRA, a public body corporate and politic organized under the laws of the State of California, hereinafter referred to as "Agency", and

LA HABRA ASSOCIATES, a California general partnership, hereinafter referred to as "Developer",

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties hereto

1 Developer is the present fee owner of the following property

A Approximately nine hundred seventeen thousand three hundred seventy three (917,373) square feet (approximately

21 06 acres) of real property located at the northeast corner of Imperial Highway and Beach Boulevard, which is the westerly portion of the area commonly known in the past as La Habra Fashion Square This property consists of County Assessor Parcel Numbers 18-381-54 (2 34 acres), 18-381-49 (7 12 acres), 18-381-50, 18-381-51 (7 47 acres) and 18-391-14 (3 16 acres) and is more particularly described on Exhibit 1 attached hereto This property is hereinafter referred to as "Development Parcel No 1"

B Approximately 1 97 acres of real property, located at the northwest corner of Imperial Highway and Idaho Street, which is the easterly portion of the area commonly known in the past as La Habra Fashion Square This property consists of Assessor Parcel 18-391-17 and is more particularly described on Exhibit 2 attached hereto and incorporated herein This property is hereinafter referred to as "Development Parcel No 2"

2 Not owned by Developer and excluded from this Agreement is real property owned and occupied by Bullocks/R H Macys, Inc , ("Bullocks") consisting of approximately 15 39 acres, located on Imperial Highway and between Development Parcel No 1 and Development Parcel No 2 This property is hereinafter referred to as "Development Parcel No 3"

3 All real property described in paragraphs 1 and 2 is located within the City of La Habra ("City") and within the

adopted Delta One Redevelopment Project Area ("Project Area")
The purpose of this Agreement, together with that certain "Development Agreement" (as hereinafter defined) being submitted concurrently to the City for its consideration, is to implement the Redevelopment Plan for the Project Area by providing for the redevelopment of Development Parcel No 1 by construction thereon of a retail center which is more particularly described in the Development Agreement, along with associated parking, landscaping and related improvements (collectively, the "Developer Improvements") The redevelopment of Development Parcel No 1 pursuant to this Agreement is in the vital and best interests of City and Agency and is in accord with the public purposes and provisions of applicable state and local law

4 In recognition of the matters set forth above and the covenants and obligations undertaken by Developer under this Agreement, Agency wishes to facilitate and assist redevelopment of Development Parcel No 1 as more specifically provided below

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND OBLIGATIONS CONTAINED IN THIS AGREEMENT, IT IS HEREBY AGREED AS FOLLOWS:

1 Developer Improvements, Scheduled Dates

In consideration of the Agency's covenants herein contained, Developer hereby agrees to construct and develop or cause to be constructed and developed on Development Parcel No 1 a retail/commercial center (the "Center") consistent with the land use entitlements to be secured by Developer under that certain "Development Agreement Concerning Redevelopment of La Habra Fashion Square", (the "Development Agreement"), to be considered by the Planning Commission of the City and the City following approval of this Agreement by Agency. In accordance with the terms of the Development Agreement, the Center will contain not less than one hundred seventy-five thousand (175,000) square feet of ground floor gross building area and not more than two hundred fourteen thousand (214,000) square feet of ground floor gross building area. The parties to this Agreement acknowledge and agree that, unless the ordinance approving the Development Agreement is adopted not later than December 20, 1989, as such date may be extended in writing by the parties, either party to this Agreement shall have the right to terminate this Agreement upon written notice to the other party.

In connection with construction of the Center, Developer agrees to meet the following deadlines:

A. On or prior to February 1, 1990, Developer shall submit to Agency and City ("Agency/City") a final design for site

layout for the redevelopment of Development Parcel No 1 Unless Agency/City approve otherwise, the final design for site layout shall conform to the "Construction Requirements" and "Applicable Laws" described in the Development Agreement (as such terms are defined in Section 2 of the Development Agreement) So long as the final design for site layout conforms to the Construction Requirements and Applicable Laws described in the Development Agreement, the City Manager/Executive Director shall be authorized to approve the final site design on behalf of the Agency/City even though such design varies from the preliminary site plan attached to the Development Agreement as Exhibit B

B On or prior to the later of (1) March 1, 1990, or (11) thirty (30) days after issuance of the Mello-Roos Bonds described in paragraph 5 below, Developer shall commence the demolition of the existing improvements on Development Parcel No 1 Such demolition shall ultimately include (1) approximately one hundred twenty thousand (120,000) square feet of building currently occupied and used for retail sales purposes by Buffums Department Store plus (11) approximately 115,440 square feet of mall shops located between the existing Buffums and Bullocks Department Stores All of said buildings which are to be demolished and removed are located within Development Parcel No 1 Said demolition and removal of buildings shall be completed on or prior to July 1, 1990, provided, that (in addition to any extension provided by paragraph 16E below) such deadline shall be extended for a period of time equal to the

numbers of days, if any, by which issuance of the Mello-Roos Bonds is delayed after its scheduled date of February 1, 1990

C On or prior to July 1, 1990, Developer shall commence construction of the Developer Improvements in accordance with the terms of the Development Agreement and this Agreement. Said construction shall be completed and available for occupancy by retail businesses on or prior to January 1, 1991. The deadline dates set forth in this paragraph 1C shall be extended (in addition to any extension provided by paragraph 16E below) for a period of time equal to the number of days, if any, by which issuance of the Mello-Roos Bonds is delayed after its scheduled date of February 1, 1990.

2 Use of the Center, Retail Sales

Following redevelopment of the Center, Developer shall, to the extent provided in this paragraph, initially convey (by lease or sale) the right to occupy the first floor of the newly constructed buildings within Development Parcel No 1 to businesses engaged primarily and substantially in retail sales. Any businesses which are primarily service businesses (i.e., not substantially retail sales businesses) shall not exceed a maximum of eight percent (8%) of the total first floor area of all buildings in Development Parcel No 1, and, correspondingly, a minimum of ninety-two (92) percent of the first floor area of all buildings in Development Parcel No 1 shall be leased or sold to

businesses that are primarily retail sales oriented and producing taxable sales Any second floor area constructed in the Center may be used for offices, service businesses, storage and any other legally permitted non-retail businesses

3 Preparation of Site for Redevelopment, Acquisition of Reciprocal Easement Agreement Interest

The parties to this Agreement acknowledge and agree that redevelopment of Development Parcel No 1 will require the extinguishment of that certain Reciprocal Easement Agreement ("REA") entered into between Bullocks (or its predecessor-in-interest) and Developer's predecessor(s)-in-interest with respect to Development Parcel No 1 and Development Parcel No 2 Developer shall use good faith efforts to first negotiate the extinguishment or necessary modification to the REA If, notwithstanding such good faith efforts, Developer is unable to reach a satisfactory resolution with respect to the REA prior to December 1, 1989, then, upon Developer's request, and subject to Agency's conducting a duly noticed public hearing pursuant to California Code of Civil Procedure Section 1245 235 and making the findings set forth in California Code of Civil Procedure Section 1240 030, based upon substantial evidence presented at said hearing and subject to the Agency's discretion, Agency shall cause to be commenced and expeditiously processed to completion the acquisition of the REA interest designated by Developer by and through the use of Agency's power of eminent domain Under

this Agreement, the Agency is under a duty to hold a noticed public hearing within thirty (30) days of Developer's request and give the matter due consideration, but is under no obligation to make any of the findings required by Code of Civil Procedure Section 1240 030. If Agency fails to timely hold such hearing or, following such hearing, elects not to adopt a resolution of necessity, either party to this Agreement may thereafter, upon written notice to the other party, terminate this Agreement. Following initiation of the condemnation process, at Developer's request, Agency shall seek an order for immediate possession of the REA interest. Agency shall not seek such an order absent such request from Developer. Any request by Developer for the use of Agency's eminent domain power with respect to the REA shall either contain Developer's selection of an appraiser and/or legal counsel to service Agency or shall request Agency to make its own such selection or selections.

Developer shall bear all of the expenses incurred by the Agency in acquiring the REA interest, which expenses shall include the cost of title reports and/or litigation guarantees, appraiser's fees and reimbursable costs, deposits necessary to Agency obtaining any final order of condemnation, any such costs paid as and for a settlement of any suit filed by Agency pursuant to this Paragraph 3, and any and all incidental expenses related to any of the foregoing items, but shall not include payment to Agency for any of Agency's own administrative expenses or legal expenses (other than payments to the attorney(s) handling any

condemnation action initiated under this Agreement) No settlement of the condemnation action shall be effected without Developer first providing to Agency Developer's written approval thereof If Developer so directs Agency in writing, Agency shall process an appeal on any judgment entered in a suit filed by Agency pursuant to this Paragraph 3 up to, and including, the United States Supreme Court level If Developer so directs Agency, without limiting Developer's obligation to pay costs as herein provided, Agency shall move to abandon any action commenced pursuant to this Agreement Upon the occurrence of any such abandonment, Developer shall bear any and all costs, expenses and/or damages related thereto, including, but not limited to, any condemnee's recoverable costs and/or recoverable attorney's fees, but excluding any of Agency's own administrative expenses or legal expenses (other than the payments to the attorney(s) handling the condemnation action initiated pursuant to this Agreement)

Upon acquiring any interest pursuant to the eminent domain action referred to above in this Paragraph 3, including, but not limited to, any right of immediate possession, Agency shall forthwith deliver and transfer such interests to Developer

4 Manner and Timing of Payment of Costs By Developer

Developer shall solely bear all costs specified in Paragraph 3 above as therein provided In that regard, other

than with respect to deposits necessary to take immediate possession, deposits reflecting verdicts and sums payable to settle suits, Agency shall on a monthly basis invoice Developer for costs incurred pursuant to Paragraph 3 above Developer shall remit the amount reflected on any such invoice within thirty (30) days of the date of receipt of that invoice Developer shall advance any and all deposits necessary to take immediate possession, deposits reflecting verdicts and sums payable to settle suits Should Developer fail to timely make any such remittance within ten (10) days after receipt of written notice that any amount previously invoiced has not been paid within thirty (30) days of receipt, Agency's obligations to commence or continue to process any action in eminent domain referred to in Paragraph 3 above shall be suspended until all amounts due are paid Any dispute between the parties concerning amounts due shall be resolved by arbitration in accordance with paragraph 16A below

In order to secure Developer's payment of all sums required by this paragraph 4, Developer shall, within three (3) business days after Agency's adoption of a resolution of necessity for condemnation of the REA (and prior to Agency undertaking any further action with respect to condemnation thereof), establish an interest-bearing account (the "Escrow Account") with an escrow holder mutually acceptable to Agency and Developer Pursuant to written instructions acceptable to both Developer and Agency, the Escrow Account shall be irrevocably committed to payment of the sums due under paragraph 4 above until the earlier

of (1) conclusion or abandonment of the condemnation proceeding with respect to the REA interest, or (11) termination of this Agreement. The amount deposited in the Escrow Account shall be equal to the greater of (1) the appraised value of the REA interest determined by a qualified appraiser acceptable to both Agency and Developer or (11) One Hundred Thousand Dollars (\$100,000), provided, that the amount deposited in the Escrow Account shall not, in any case, exceed Three Hundred Thousand Dollars (\$300,000). All amounts payable under this paragraph 4 shall be paid out of the Escrow Account until exhausted. All interest accruing on the account shall be released to Developer not less often than quarterly.

5 Mello-Roos Bond Financing

The parties to this Agreement agree that they shall take all steps necessary to establish a Mello-Roos Community Facilities District ("District") consisting of all or a portion of Development Parcel No 1, and to authorize and cause the issuance of bonds with respect to such District (the "Bonds") in an amount sufficient (1) to cover the cost of issuing said Bonds, any required reserve, and, to the extent permitted under federal law, two (2) years of prefunded interest, and (11) to generate net proceeds of two and one-half million dollars (\$2,500,000). The net proceeds of the Bonds shall be disbursed for acquisition of an improved surface parking area on Development Parcel No 1 (the "Parking Improvements") and such other public improvements

as Developer and Agency may designate. If, because of the requirements of federal law, the issuing authority is required to prefund less than two years of interest, the bond issue shall be appropriately adjusted to generate additional net proceeds equal in amount to the difference between the amount of two years of prefunded interest and the actual amount of prefunded interest (the "Additional Net Proceeds"), and such Additional Net Proceeds shall be disbursed for acquisition of additional Parking Improvements or such other public facilities as the parties may select. The Additional Net Proceeds shall be disbursed together with the initial disbursement of Bond proceeds pursuant to paragraph 7(1) below. The net Bond proceeds shall be disbursed in accordance with and at the times set forth in paragraph 7 below. The obligation to issue the Bonds shall be contingent upon the ability of the parties to conform the Bonds to the following requirements:

(1) The term of the Bonds shall not exceed thirty (30) years;

(11) The net interest cost of the Bonds shall not exceed eight and one-half percent (8.50%), and

(111) The total amount of Bonds to be issued shall not exceed the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000)

The parties shall take all steps necessary to cause the Bonds to be authorized, issued and sold on or before February 1, 1990. If the Bonds are not authorized, issued and sold on or before such date, Developer shall have the right to terminate this Agreement. Such right may be exercised by delivery to the Agency, prior to the sale of the Bonds, of a written notice stating that Developer is electing to terminate this Agreement pursuant to this paragraph. If Developer does not terminate the Agreement pursuant to this paragraph, Agency shall continue to use its best efforts to cause the sale of the Bonds upon the terms set forth above at the earliest possible date.

In connection with the issuance of the Bonds, Developer shall fully cooperate with Agency by providing, in a timely manner, any and all information required by legal counsel for the Agency and bond underwriters and/or consultants. In connection with issuance of the Bonds, Developer and Agency shall reasonably cooperate with each other in preparing and processing any modifications to this Agreement or any agreement or instrument referenced herein or executed pursuant hereto to the extent necessary to enable issuance of the Bonds contemplated by this Agreement.

6 Agency Contribution to Payment of Mello-Roos Bond
Special Tax

In connection with issuance of the Bonds, Agency hereby agrees to and shall be obligated to offset or reduce the resulting Mello-Roos special tax assessment on the Center by the amounts referenced below (collectively, the "Agency Subsidy Amount")

A Property Tax Increment Contribution to Agency
Subsidy Amount

Commencing upon the date on which the Bonds are sold, and continuing thereafter until all of the Bonds (or any refunding thereof) have been paid in full (including all interest, principal and any premium thereon), or until sufficient moneys have been set aside irrevocably for that purpose, the Agency shall remit to a fiscal agent of the issuing agency for the Bonds ("Fiscal Agent"), promptly upon Agency's receipt thereof, one hundred percent (100%) of the property tax increment funds which are generated from Development Parcel No 1 and Development Parcel No 2

Also included in the above-described portion of the Agency Subsidy Amount, and payable to (or retained by) the Fiscal Agent upon the accrual thereof, shall be any interest which

accrues on the Bond proceeds prior to disbursement of all such Bond proceeds pursuant to paragraph 7 below

B Sales Tax Increment Contribution to Agency Subsidy
Amount

In addition to the amounts set forth in A above, the Agency shall remit to the Fiscal Agent, on a calendar quarter basis, an amount equal to Fifty Percent (50%) of the sales tax revenues payable to the City which

(1) Are attributable to taxable sales occurring on Development Parcel No 1 and/or Development Parcel No 2,

(11) Are attributable to taxable sales occurring during the twelve (12) month period commencing on the first day ("Commencement Date") of the first calendar quarter following the initial issuance of certificates of occupancy for seventy-five percent (75%) or more of the new improvements to be constructed pursuant to the Agreement on Development Parcel No 1, or any ensuing twelve month period,

(111) Are in excess of the "Base Amount" (defined below),

(iv) Together with all previous amounts paid to the Fiscal Agent pursuant to this paragraph 6B, do not exceed the cumulative amount of Two Million Fifty-Five Thousand Dollars ("2,055,000), and

(v) Are attributable to taxable sales occurring on or before the twelfth (12th) anniversary of the Commencement Date

If any of the funds described above in this paragraph 6 are not paid when due, the obligation to pay such funds shall thereafter bear interest, until paid, at the rate of the Bank of America, Downtown Main Branch, prime or reference rate plus two percent (2%), or the highest rate permitted by law, whichever is less

The "Base Amount" shall be One Hundred and Thirty Thousand Dollars (\$130,000) for the first twelve month period following the Commencement date For each ensuing twelve month period (a "Sales Tax Year") the "Base Amount" shall be an amount equal to the product of One Hundred and Thirty Thousand Dollars (\$130,000) times a fraction, the numerator of which is the Consumer Price Index [All Urban Consumers] (base year 1982-84 = 100) for the Los Angeles-Anaheim-Riverside CMSA published by the United States Department of Labor's Bureau of Labor Statistics ("CPI") as published for the third (3rd) month prior to the first day of the applicable Sales Tax Year and the denominator of

which is the CPI as published for the third (3rd) month prior to the Commencement Date

If the CPI is changed so that the base is changed from 1982-84 = 100, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the term of this Agreement, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised. If there is no such replacement, then Agency and Developer shall select another price index which is satisfactory to both. If Agency and Developer cannot agree, then such index shall be selected by three arbitrators acting in accordance with the rules of the American Arbitration Association, and such determination shall be final and binding upon both Agency and Developer.

7 Timing of Release of Bond Proceeds

The proceeds of the Bonds, up to the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) shall be disbursed for application to the purpose(s) described above in paragraph 5 in accordance with the following schedule:

(1) Upon close of the sale of the Bonds, the amount of Five Hundred Thousand Dollars (\$500,000)

(11) Upon commencement of demolition of the improvements at the Center to be removed by Developer, an additional Five Hundred Thousand Dollars (\$500,000)

(111) Upon commencement of construction of the Developer Improvements, an additional Five Hundred Thousand Dollars (\$500,000)

(iv) Upon 50% completion of the required Developer Improvements an additional Five Hundred Thousand Dollars (\$500,000)

(v) At such time as Developer is entitled to a Certificate of Completion pursuant to paragraph 15 below, the balance of the Bond proceeds shall be applied to acquisition of the Parking Improvements and other public facilities in accordance with paragraph 5 above. The transfer of an interest in the Parking Improvements to Agency will occur concurrent with disbursement of the last installment of Bond proceeds described above. Such transfer will irrevocably dedicate the Parking Improvements to use for public parking and will, subject to applicable federal tax law requirements, provide for the termination of or the Developer's ability to extinguish such interest concurrent with repayment of the Bonds. Concurrent with transfer of the Parking Improvements interest to Agency, Developer and Agency shall also enter into a maintenance agreement with respect to the

Parking Improvements which obligates the Developer to manage and maintain those improvements at its expense. The maintenance agreement shall be for the maximum duration permitted by applicable federal laws.

Until all Bond proceeds are disbursed for acquisition of the Parking Improvements and other public improvements as contemplated by this Agreement, any undisbursed proceeds shall be retained and invested by the Fiscal Agent in accordance with the Fiscal Agent Agreement and all interest accruing thereon shall be retained by the Fiscal Agent for application in the same manner as the Agency Subsidy Amount.

8 Minimum Development Cost

Developer is anticipated to incur a minimum total development cost of \$27,400,000, including expenditures for land acquisition, property clearance and building demolition, construction of new structures and other costs associated with the redevelopment of Development Parcel No 1.

9 Compliance with Laws

In connection with construction of the Developer Improvements, Developer shall comply with all laws applicable to development of the Center pursuant to the terms of the Development Agreement, including all applicable provisions of the City's

Zoning Code, Building Codes, and all other codes related thereto, the City's Fire Code and Agency's Redevelopment Plan

10 Selection of Tenants

In selecting tenants for the proposed Developer Improvements to be constructed at the Center, Developer shall use its best efforts to secure tenants which will in the aggregate produce a minimum \$43,200,000 in taxable retail sales by the second year of operation including both current and new occupants located within Development Parcel Nos 1 and 2

11 Restrictions on Transfer

The qualifications and identity of Developer are of particular concern to Agency. Prior to completion of the development of the Center, Developer may not assign all or any part of the ownership of Development Parcel No 1 or Developer's responsibility pursuant to this Agreement, without prior written approval of Agency. Agency will not withhold such approval unreasonably. Following a transfer of all of its interest in the Center which is approved by Agency, Developer shall have no further liability under this Agreement. The above prohibition on transfer shall not be applicable after the completion of the Center, and, prior to that time, shall not be applicable to any of the following

A. Any entity or entities in which Developer retains, directly or indirectly, a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management control

B Any transfer resulting from the death or mental or physical incapacity of an individual

C A transfer or assignment in trust for the benefit of a spouse, children, grandchildren, or other family members

D Any mortgage, deed of trust, sale and leaseback or other form of conveyance required in connection with any reasonable method of financing development of the Center

E A sale of the Center or any parcel thereof at foreclosure (or a conveyance thereof in lieu of a foreclosure) by a lender financing construction or operation of the Center

F. A sale or transfer of some or all of Developer's interest in the Center, or any individual parcel thereof, to a lender financing development of the Center

G The conveyance or dedication of portions of the Center to the City, or other appropriate governmental agency, or the granting of easements or permits, to facilitate the development of the Center

H The leasing of any part or parts of a building or structure for occupancy

I The transfer of any of the building pads to owner-occupants

J A transfer to an Affiliate of Developer or to a joint venture between Developer and an institutional investor or employee(s) of Developer in connection with development of the Center

12 Conformance to Redevelopment Plan

Developer covenants and agrees for itself, and its successors-in-interest to the Center or any part thereof, that during construction and thereafter Developer, such successors and such assigns, shall devote the Center to uses in conformance with the Redevelopment Plan for the Project Area. Agency agrees not to amend, modify or change the Redevelopment Plan after the date of this Agreement in a manner that would adversely affect the uses or development permitted on the Center, the restrictions or controls that apply to the Center, or any other aspect of the use and enjoyment of the Center in the manner contemplated by this Agreement, without the prior written consent of the Developer. Amendments to the Redevelopment Plan applying to other property in the Project Area shall not require the consent of Developer.

13 Non-Discrimination

A Developer covenants and agrees for itself, its assigns and every successor-in-interest to the Center or any part thereof, that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, national origin, sex, ancestry, age or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Center, nor shall Developer himself or any person claiming under or through him establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site

B Developer shall refrain from restricting the rental, sale or lease of the Center on the basis of race, color, creed, ancestry, sex, marital status, national origin or age of any person All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses

(1) In deeds "The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation of any person or group of persons on account of race, color, creed, national origin, sex, marital status, age or ancestry in the

sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed The foregoing covenants shall run with the land "

(11) In leases "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all person claiming under or through him, and this lease is made and accepted upon and subject to the following conditions That there be no discrimination against or segregation of any person or group of persons, on account of age, race, color, creed, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use or occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased "

(111) In contracts, "There shall be no discrimination against or segregation of any persons, or group of

persons, on account of race, color, creed, age, national origin, sex, marital status or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land "

C The covenants contained in Paragraphs 12 and 13A and B, above, shall, without regard to technical classification and designation, be binding for the benefit and in favor of Agency, its successors and assigns, and any successor-in-interest to the Center or any part thereof The covenant contained in Paragraph 12 shall remain in effect until August 15, 2021, and the covenants contained in Paragraphs 13A and B shall remain in effect in perpetuity

14 Additional Covenants of Agency

In addition to all other obligations of Agency under this Agreement, Agency agrees that it shall be obligated to make application and that it shall cause the City to make application to the State Department of Transportation (CALTRANS), promptly following the execution of this Agreement, for permission to construct and operate a traffic signal on Imperial Highway at the

proposed main entrance to the Center (to be located approximately midway between Beach Boulevard and Idaho Street) and to construct a left turn pocket in the median on Imperial Highway in order to allow eastbound traffic to enter the Center by left turn at such proposed major entrance Agency agrees to diligently pursue and to cause the City to diligently pursue such application and, even if permission is not received to construct and operate said traffic signal, to separately request permission to construct the above described left turn pocket Promptly following approval of said application, and, in any case, within not more than six (6) months after such approval, Agency and City shall, without cost to Developer, construct, install and cause to be operated said traffic signal and left turn pocket The estimated cost of constructing said traffic signal and left turn pocket is One Hundred and Fifty Thousand Dollars (\$150,000 00)

15 Certificate of Completion

Promptly upon Developer's written request following completion of construction and development of the Developer Improvements for the Center (not including normal and customary tenant improvements inside any such structure) including all parking and landscaping improvements, Agency shall furnish Developer with a Certificate of Completion for the Center Such Certificate of Completion shall be upon such form as Developer may reasonably request and shall be executed and notarized so as to permit it to be recorded in office of the Orange County

recorder Such Certificate of Completion shall constitute, and shall state that its issuance is deemed a conclusive determination of, satisfactory completion of the construction required by this Agreement upon the Center and of full compliance by Developer with the terms hereof with respect to the Center After recordation of such Certificate of Completion, any party owning or thereafter purchasing, leasing or otherwise acquiring any of Developer's interest in the Center shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except as to those portions of this Agreement which specifically state they are binding as to successors to the parties to this Agreement After issuance of a Certificate of Completion, neither Agency nor any other person shall have any rights, remedies or controls that it would otherwise have or be entitled to exercise under this Agreement as a result of a default or breach of any provision of this Agreement by Developer

Agency shall not unreasonably withhold any Certificate of Completion. If Agency refuses or fails to furnish a Certificate of Completion for the Center, after written request from the Developer, Agency shall, within twenty (20) days of such written request, provide Developer with a written statement of all the reasons Agency refused or failed to furnish a Certificate of Completion Any reasons for refusal by Agency not so stated shall be deemed waived by Agency The statement shall also contain a description of the action which Agency requires

Developer to take to obtain a Certificate of Completion If Agency shall have failed to provide such written statement within said twenty (20) day period, Developer shall be conclusively deemed entitled to the Certificate of Completion If the reason for Agency's refusal to issue a Certificate of Completion is confined to the immediate availability of specific items or materials for landscaping or punch list items, Agency shall issue the Certificate of Completion upon the posting of a bond or other reasonable security by Developer in an amount representing the fair value of the work not yet completed

Notwithstanding anything in this paragraph 15 which is or appears to be to the contrary, the executory obligations of Agency under this Agreement, including the obligation to fund the Agency Subsidy Amount pursuant to paragraph 6 above, shall not be terminated, limited or in any way excused by issuance or recordation of the Certificate of Completion and such obligations shall remain enforceable for the period and in accordance with their stated terms

16 General Provisions

A Dispute Resolution It is the desire and intention of the parties hereto to agree upon a mechanism and procedure under which any disputes or disagreements under this Agreement will be resolved in a prompt and expeditious manner Accordingly, any controversy or dispute between the parties arising

out of this Agreement or relating to the interpretation of any term or provision of this Agreement shall be heard in Los Angeles County by a reference pursuant to the provisions of the California Code of Civil Procedure §§ 638 to 645 1, inclusive Each of the parties hereto shall promptly and diligently cooperate with each other and the referee, and shall perform such acts, as may be necessary to obtain a prompt and expeditious resolution of the dispute or controversy in accordance with the terms hereof The parties hereto agree that the referee shall have the power to decide all issues of fact and law and report his decision thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before him The parties shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon If the parties are unable to agree upon a referee within ten (10) days of a written request to do so by either party hereto, then either party hereto may thereafter seek to have one appointed pursuant to California Code of Civil Procedure §§ 638 and 640 The cost of such proceeding shall initially be borne equally by the parties to the dispute However, the prevailing party in such proceeding shall be entitled, in addition to all other costs, to recover its contribution for the cost of such proceeding, including the cost of the referee, as an item of damage and/or recoverable costs

B Effective Agreement

The parties acknowledge that this Agreement and the Development Agreement are intended to grant to Developer the right to proceed with the development of the project pursuant to specified and known criteria and rules and to grant to the Agency and City and the residents of the City benefits which they would otherwise not receive. This Agreement and the Development Agreement shall be binding upon the City, Agency and their successors in accordance with their terms and conditions notwithstanding any subsequent action of the City or Agency, whether taken by ordinance, Resolution, Initiative or otherwise, because by entering into this Agreement and the Development Agreement and relying thereupon, Developer shall have obtained the vested right to require Agency and City to perform pursuant to the terms and conditions in this Agreement as set forth herein and the terms and conditions of the Development Agreement.

C Regulation by Other Public Agencies

It is acknowledged by the parties that other public agencies not within control of the Agency or City possess authority to regulate aspects of the development of the property separately from or jointly with the Agency or City and this Agreement does not limit the authority of such other public agencies.

D Prior Agreements

This Agreement and the Development Agreement set forth the sole and exclusive agreement between the parties and contain all understandings between the parties as of this date. Each of the parties to this Agreement has relied on its own examination of the terms and provisions of this Agreement and the counsel of its own advisors. Any amendment or other modifications to this agreement shall only be effective if placed in writing and executed by all parties.

E Extension of This Agreement

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of ability to acquire the Center due to legal restrictions, governmental restrictions or priority, litigation including eminent domain litigation to acquire the Center, weather-caused delays, inability to secure necessary labor, materials, or tools, delays of any contractors, subcontractors or suppliers, acts of other parties, acts or failure to act of any public or governmental agency or entity or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of

time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause if notice by the party claiming such extension is sent to the other party within ninety (90) days of the commencement of the cause. Otherwise, the extension of time shall commence to run from delivery of the notice of such cause by the party claiming such extension. Times of performance under the Agreement may also be extended through mutual agreement in writing by the Agency and Developer.

F Specific Performance

The parties acknowledge that monetary damages and the remedies available at law are generally inadequate under the present facts, and that specific performance is a particularly appropriate remedy for the enforcement of this Agreement and should be available to both parties based upon the following reasons and facts,

1 The unavailability of monetary damages sufficient to make the parties whole,

2 Due to the size, nature and scope of the project, it may not be practical or possible to restore the property to its original condition once implementation of this Agreement has begun. After such implementation, Developer may be

foreclosed from other choices it may have to utilize the property or portions thereof,

3 The use of the property for the purposes and uses contemplated by this Agreement is unique

G Non-Liability of Agency or City Officials and Employees

No member, official or employee of the Agency or the City shall be personally liable to Developer, or any successor-in-interest, in the event of any default or breach by the Agency or the City or for any amount which may become due to Developer or such successor or on any obligations under the terms of this Agreement

H Conflict of Interest

1 No member, official or employee of Agency shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interest or the interests of any corporation, partnership or association in which he is directly or indirectly interested

2 Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section, shall not include persons to whom fees were paid for professional services if rendered by attorneys, accountants, engineers, architects, development consultants and the like when such fees are considered necessary by Developer.

I Entire Agreement, Waivers and Amendments

1 This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and, together with the Development Agreement, supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

2 All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency and Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Developer.

J. Notices, Demands and Communications Between the Parties

Formal notices, demands and communications between Agency and Developer shall be in writing and given by personal service, reputable overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of Agency and Developer, as set forth below. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Paragraph. Such notices shall be deemed received upon personal service, 24 hours after deposit with reputable overnight courier, or three (3) days after deposit in United States mail, as applicable, in accordance with the above.

To Agency Executive Director
 Redevelopment Agency of the City of
 La Habra
 P O Box 337
 La Habra, CA 90633-0337

To Developer Stephen C Hopkins
 Development Company
 #13 Corporate Plaza, Suite 200
 Newport Beach, CA 92660
 Attn Jeffrey B Armour

With a Copy to Brown, Winfield & Canzoneri
 300 South Grand Avenue
 Suite 1500
 Los Angeles, California 90071
 Attn Dennis S Roy

K Governing Law

This Agreement and the rights and obligations of the parties shall be governed by and interpreted in accordance with the laws of the State of California applicable to contracts made and to be performed within the State of California

L Severability

To the best knowledge and belief of the parties to this Agreement, this Agreement contains no provision that is contrary to any federal, state or local law or to any regulatory requirement or other ruling or regulation of a federal, state or local agency or that would be in breach of the obligations of either or both of the parties hereto under the terms and provisions of any legally binding agreement, however, if any provision of this Agreement, or any part thereof, shall at any time be held to be invalid, in whole or in part, under any applicable federal, state or local law by a court of competent jurisdiction, or by arbitrators or any administrative agency of the federal, state or local government with proper jurisdiction, then such provision or a portion thereof, as appropriate, shall remain in effect only to the extent permitted, and the remaining provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated, unless such invalidated provision is essential to accomplishment of the purposes intended by the parties to this Agreement

M No Waiver of Breach

No delay or omission to exercise any right, power or remedy accruing to either party to this Agreement upon any breach or default of the other party to this Agreement shall impair any right, power or remedy of the nondefaulting party nor shall it be construed to be a waiver of any such breach or default, or acquiescence therein or thereto, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default by either party to this Agreement be deemed to be a waiver of any other breach or default theretofore or thereafter occurring

N Counterparts

This Agreement and any amendment thereto may be executed in one or more counterparts, with the same legally binding effect as if all signatory parties were signatories to the same counterpart. If requested, any signatory party hereto will furnish the other party hereto with a duplicate original counterpart of this Agreement or any amendment thereto, bearing said signatory's signature

O No Partnership

The terms and provisions of this Agreement shall not cause the parties hereto to be construed in any manner whatsoever

as partners, joint venturers or agents of each other in the performance of their respective duties and obligations under this Agreement, or subject either party to this Agreement to any obligation, loss, charge or expense of the other party unless the party to be held responsible has independently contracted with the claimant so as to make it directly responsible for the performance and/or payment, as appropriate, of the pertinent obligation, loss, charge or expense of the other party

P No Presumption Due to Preparation by Counsel

Should any provision of this Agreement require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party thereto who itself or through its agents or counsel prepared the same or caused the same to be prepared, it being agreed that the agents and counsel of all of the parties hereto have participated equally in the negotiation and preparation of this Agreement. The language in all parts of this Agreement shall be in all cases construed simply, fairly, equitably and reasonably, according to its plain meaning and not strictly for or against any of the parties hereto

Q. Successors

The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns

R Remedies Cumulative

No remedy or election hereunder shall be deemed to be exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity

S Estoppels

At the request of any holder or prospective holder of a mortgage or deed of trust, Agency shall, from time to time and upon the request of such holder, timely execute and deliver to such holder a written statement of Agency that no default or breach exists (or would exist with the passage of time, or giving of notice or both) by Developer under this Agreement if such be the case, and certifying as to whether or not Developer has at the date of such certification complied with any obligation of Developer hereunder as to which such holder may inquire. The form of any estoppel letter shall be prepared by the holder or Developer and shall be at no cost to Agency

T Additional Amendment

Agency agrees not to unreasonably withhold approval of any modification or amendment to this Agreement as may be required by the holder or prospective holder of any deed of trust or mortgage encumbering the Center, or any interest therein, provided that such requested modification or amendment shall not materially and adversely affect the rights or duties of Agency hereunder. Agency acknowledges that such amendments may, from time to time, be necessary to induce a lender to loan funds in connection with the development or operation of the Center, and that different lenders may have specific requirements or requests relating to receipt of notice, opportunity to cure, and other similar matters pertaining to its security and its remedies upon a default by Developer. Any such modification or amendment to this Agreement shall be prepared by Developer at no cost to Agency.

U Development Approvals

Agency acknowledges and agrees that the prompt processing of all remaining approvals necessary to enable Developer to improve the Center in the manner contemplated by the Development Agreement, including the subdivision map(s) parcelizing the Center and the building permit(s) authorizing construction of the improvements on the Center, is essential to Developer's economic projections for the Center and the cost to be incurred by

Developer in the redevelopment thereof Accordingly, Agency agrees to cooperate and to cause City to cooperate in the timely processing and review of all such approvals, to meet and confer and to cause the City to meet and confer as often as reasonably necessary to enable Developer to timely proceed with the Center and, if requested by Developer (and at Developer's expense) to cause the City to employ independent plan checker(s) and engineer(s) to expedite processing of maps, plans, approvals and permits

V Performance of Further Acts

Each party to this Agreement agrees to cooperate by performing any further act(s) and by executing and delivering any and all additional document(s) which may be reasonably necessary to carry out the terms and provisions of this Agreement, and each party to this Agreement agrees that it will not act in any manner whatsoever which would hinder, impede, interfere with or prohibit or make more onerous or difficult the performance of the other

party hereto under this Agreement or deny such party of the rights and benefits contemplated by this Agreement

"AGENCY"

REDEVELOPMENT AGENCY OF THE CITY OF LA HABRA

By *J. E. Helms*
Chairman

ATTEST

By *Gayle Garbo*
City Clerk of the City of La Habra

APPROVED AS TO FORM

By *[Signature]*
City Attorney

"AGENCY"

REDEVELOPMENT AGENCY OF THE CITY OF LA HABRA

By *Lee Risner*
Executive Director

"DEVELOPER"

LA HABRA ASSOCIATES

By Hopkins Development Company, L P , a Delaware Limited Partnership, general partner

By Stephen Hopkins Development Company of Newport Beach, general partner

By *[Signature]*
Stephen C Hopkins, President

EXHIBIT 1

Legal Description of Development Parcel

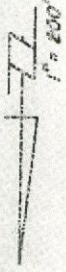
No 1

EXHIBIT 2

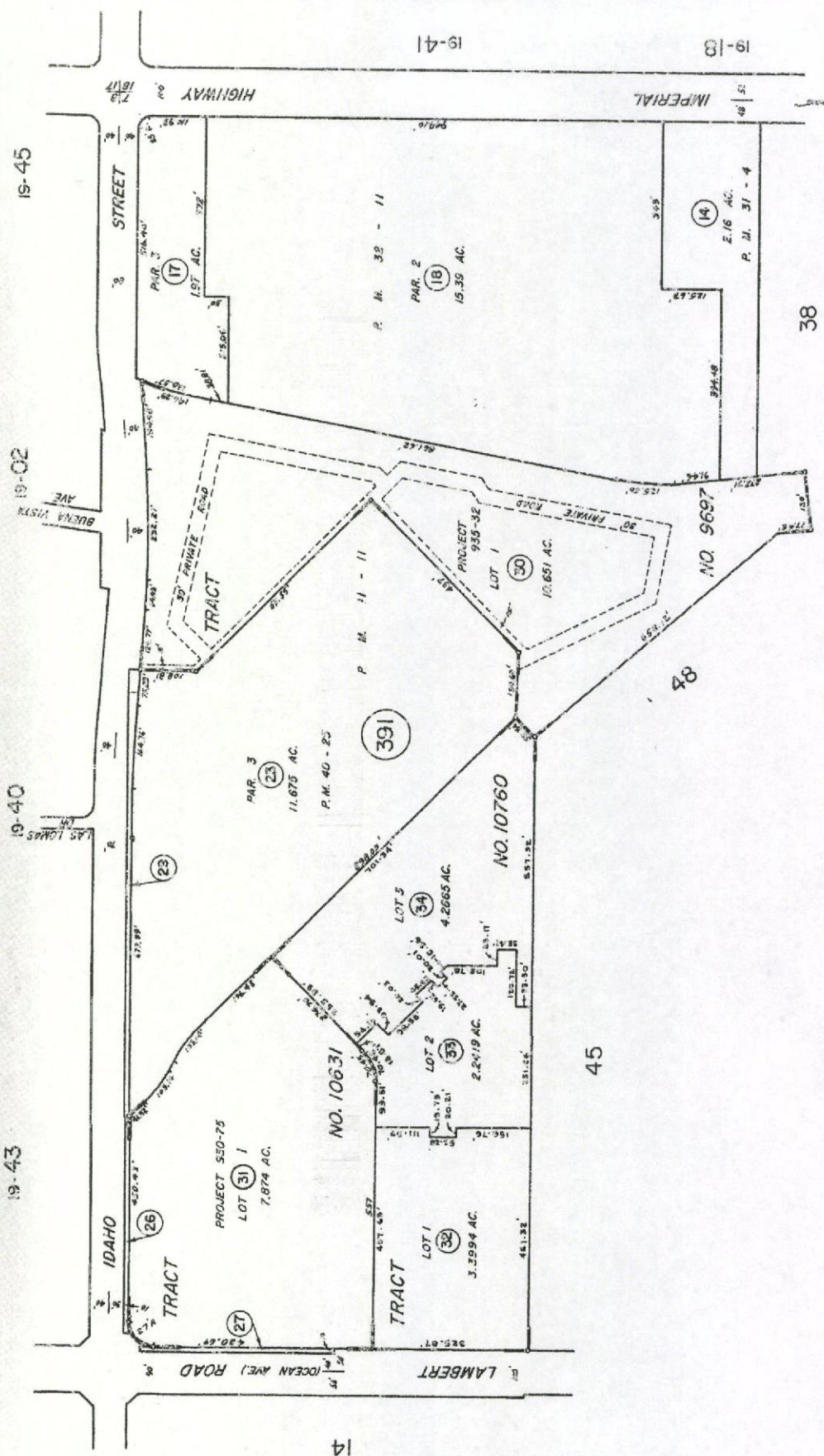
Legal Description of Development Parcel

No 3

19-39



POR. E. 1/2, S.E. 1/4, SEC. 7, T. 3 S., R. 10 W.



19-43

19-40

19-02

19-45

19-41

19-18

MARCH 1959

TRACT NO. 9697
 TRACT NO. 10631
 TRACT NO. 10760
 PARCEL MAPS

NOTE - ASSESSOR'S BLOCK &
 PARCEL NUMBERS
 SHOWN IN CIRCLES

M.M. 412-38, 39
 M.M. 461-21, 22
 M.M. 463-49, 50
 P.M. 32-11, 40-25

ASSESSOR'S MAP
 BOOK 18 PAGE 39
 COUNTY OF ORANGE