

RESOLUTION NO. RA95-11

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
APPROVING & AUTHORIZING EXECUTION OF A SECOND
IMPLEMENTATION AGREEMENT TO OWNER PARTICIPATION AGREEMENT
BETWEEN THE AGENCY AND RICHARD J. WOODLAND & PATRICIA
WOODLAND AND WOODLAND PLAZA II**

WHEREAS, the Redevelopment Agency of the City of El Paso de Robles (the "Agency") is carrying out the Redevelopment Plan (the "Redevelopment Plan") for the Paso Robles Redevelopment Project (the "Redevelopment Project"); and

WHEREAS, the Agency and Woodland Plaza II, a California general partnership (the "Partnership"), and Richard J. Woodland and Patricia D. Woodland, as co-trustees of the Richard J. Woodland and Patricia D. Woodland Trust ("Woodland") (collectively, the "Participant") have heretofore entered into an Owner Participation Agreement, dated July 6, 1993, pursuant to which the Participant agreed to develop and construct a regional shopping center within the boundaries of the Redevelopment Project; and

WHEREAS, the Agency, the Participant and Wal-Mart Stores, Inc., a Delaware corporation ("Wal-Mart") entered into a First Implementation Agreement to Owner Participation Agreement, dated October 12, 1993, to make certain modifications to the Owner Participation Agreement in light of then current conditions and planning decisions (the Owner Participation Agreement and the First Implementation Agreement to Owner Participation Agreement are collectively referred to herein as the "OPA"); and

WHEREAS, in settlement of Case No. CV 0703104 in the Superior Court of San Luis Obispo County regarding the approvals by the City of El Paso de Robles (the "City") for the shopping center, Halferty Development Company, a general partner of the Participant Woodland Plaza II, the City, the petitioners in the action and the attorney to petitioners have entered into a Settlement Agreement, dated August 13, 1993 (the "Settlement Agreement") regarding, among other things, the development of the shopping center; and

WHEREAS, the Participant has completed the development and construction of Phase 1A and a portion of Phase 1B, in accordance with the terms of the OPA: and

WHEREAS, the Agency and the Participant now desire to make further modifications to the OPA in light of current market conditions for retail tenants and the further planning and decisions of the parties as a result of the Settlement Agreement, pursuant to a Second Implementation Agreement to Owner Participation Agreement (the "Second Implementation Agreement") between the Agency and the Participant.

NOW, THEREFORE, THE REDEVELOPMENT AGENCY OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE that the Second Implementation Agreement to Owner Participation Agreement by and between the Agency and the Participant is hereby approved substantially in the form on file with the Agency Secretary, and the Chairman and Secretary of the Agency are authorized to execute the Second Implementation Agreement on behalf of the Agency, subject to such minor, technical and clarifying changes as the Executive Director and Agency Counsel shall determine are necessary or appropriate. The Executive Director of the Agency is hereby authorized and directed to do all other acts and execute all other documents which are necessary or appropriate to carry out the purposes and authority of this Resolution.

PASSED AND ADOPTED the 19th day of December, 1995, by the following roll call vote:

AYES: Heggarty, Iversen, Martin, Picanco, and Macklin
NOES: None
ABSENT: None
ABSTAIN: None



Duane Picanco, Chairman

ATTEST:



Richard J. Ramirez, Secretary

city clerk \opa.r

**SECOND IMPLEMENTATION AGREEMENT
TO
OWNER PARTICIPATION AGREEMENT**

THIS SECOND IMPLEMENTATION AGREEMENT TO OWNER PARTICIPATION AGREEMENT (hereinafter referred to as the "Second Implementation Agreement") is entered into this **19th day of December, 1995**, by and between the **REDEVELOPMENT AGENCY OF THE CITY OF EL PASO DE ROBLES**, a public body, corporate and politic (the "Agency"), **RICHARD J. WOODLAND** and **PATRICIA WOODLAND**, as co-trustees of the **Richard J. Woodland and Patricia Woodland Trust** ("Woodland"), and **WOODLAND PLAZA II**, a California general partnership (the "Partnership"). Woodland and the Partnership are referred to collectively herein as the "Participant".

Recitals

A. The Agency and the Participant have heretofore entered into an Owner Participation Agreement dated July 6, 1993, pursuant to which the Participant agreed to develop and construct a regional shopping center within the boundaries of the Paso Robles Redevelopment Project. The Agency, the Participant and Wal-Mart Stores, Inc., a Delaware corporation ("Wal-Mart") entered into a First Implementation Agreement to Owner Participation Agreement, dated October 12, 1993, to make certain modifications to the OPA in light of current conditions and planning decisions. The Owner Participation Agreement and the First Implementation Agreement to Owner Participation Agreement are referred to collectively herein as the "OPA".

B. In settlement of Case No. CV 073104 in the Superior Court of San Luis Obispo County regarding the approvals by the City of El Paso de Robles for the shopping center, Halferty Development Company, a general partner of the Participant, the City of El Paso de Robles, the petitioners in the action and the attorney to petitioners have entered into a Settlement Agreement, dated August 13, 1993 (the "Settlement Agreement") regarding among other things, the development of the shopping center.

C. The Participant has completed the development and construction of Phase 1A and a portion of Phase 1B, in accordance with the terms of the OPA.

D. The Participant and the Agency now desire to make certain modifications to the OPA in light of current conditions and planning decisions.

Agreements

Section 1. Purpose of this Agreement

The purpose of this Second Implementation Agreement is to effectuate and implement the OPA by making certain changes necessary to reflect current changes in the market conditions for retail tenants and the further planning and decisions of the parties hereto as a result of the Settlement Agreement.

Section 2. Public Infrastructure Improvements

The following provisions shall be added at the end of the first paragraph of Section 204:

“One of the Mello-Roos Improvements is the expansion of the Niblick Bridge, for which Developer’s fees shall be TWO MILLION DOLLARS (\$2,000,000) (as shown on Attachment No. 8) (the “Niblick Bridge Fees”), to be paid in conjunction with the development and construction of Phase 2 of the Retail center. The parties hereto agree that, as a matter of clarification, and notwithstanding any other provision of the OPA to the contrary, Developer shall be required to pay (a) the full amount of the Niblick Bridge Fees of \$2,000,000 and (b) all sums designated for Phase II on Attachment No. 8 (Mello-Roos Improvements) as a condition to obtaining permits for the construction of Phase 2B of the Retail Center (in addition to any other fees that may be required in connection therewith) in the event that Mello-Roos bonds or other financing of such amounts is not arranged.”

Section 3. Certifications Regarding Wal-Mart and Major Retail Anchor Stores

Section 207 is hereby revised to read as follows:

“Within the times established therefor in the Schedule of Performance (Attachment No. 4), the Participant shall submit to the Agency a certification, signed by a responsible officer or general partner of the Participant, certifying that (1) Wal-Mart Stores, Inc.) (Wal-Mart”) has purchased the Phase 1A portion of the Site (the “Wal-Mart Parcel”) (the “Wal-Mart Certification”); (2) the Participant has obtained executed business letters from one of the following:

- (I) not less than two (2) major retail stores of not less than 30,000 square feet each; or
- (ii) two (2) Major Retail Anchor Stores so long as one is at least 20,000 square feet and the other is 40,000 square feet, so that the total aggregate square feet for the Major Retail Anchor Stores is a least 60,000 square feet; or
- (iii) one (1) Major Retail Anchor Store of at least 50,000 square feet (including any potential expansion area) and two (2) retail tenants of at least 10,000 square feet each;

such letters to be in the form usually relied on by retail shopping center developers to purchase or ground lease pads for, and to develop and construct Major Retail Anchor Stores in the locations shown on the Revised Map of the Site (Attachment No. 1) for the “Major Retail Store Certifications”); and (3) the Participant will expeditiously negotiate to conclude the REA (defined in Section 602 hereof) and other final documents with Wal-Mart and such Major Retail Anchor Stores consistent with the provisions of this Agreement.”

Section 4. Scope of Development

Paragraph (b) of Section II.A. of the Scope of Development (Attachment No. 3) shall be revised to read as follows:

“(b) At least two (2) Major Retail Anchor Stores of at least 30,000 square feet each on Building Areas B and D, as shown on the Revised Map of the Site (Attachment No. 1); or (ii) two (2) Major Retail Anchor Stores so long as one is at least 20,000 square feet and the other is 40,000 square feet, so that there are 60,000 square feet in the aggregate; or (iii) one Major Retail Anchor Store of at least 50,000 square feet (including any potential expansion area) and two (2) retail tenants of at least 10,000 square feet each.”

Paragraph (d) of Section II.A. of the Scope of Development (Attachment No. 3) shall be revised to read as follows:

“(d) Five (5) retail and/or restaurant pads, including an automobile service station;”

Paragraphs 2, 3 and 4 of Section II.B of the Scope of Development (Attachment No. 3) shall be revised to read as follows:

“2. Phase 1B shall consist of the expansion of the Wal-Mart store by approximately 20,000 square feet and/or the development of Pads M, N, P and/or Q (as shown on the Revised Map of the Site [Attachment No. 1] and the related parking. As shown on the Revised Map of the Site, the entire Phase 1 portion of the Retail Center includes 805,138 square feet of land.”

“3. Phase 2A shall consist of (I) two (2) Major Retail Anchor Stores of at least 30,000 square feet each on Building Areas B and D, as shown on the Revised Map of the Site (Attachment No. 1); or (ii) two (2) Major Retail Anchor Stores so long as one is at least 20,000 square feet and the other is 40,000 square feet, so that there are 60,000 square feet in the aggregate; or (iii) one Major Retail Anchor Store of at least 50,000 square feet (including any potential expansion area) and two (2) retail tenants of at least 10,000 square feet each. In addition, Phase 2A shall also include retail shops/or restaurants totaling a minimum of 17,000 square feet on Retail 1, 3, 4, and/or 5, as shown on the Revised Map of the Site”.

“4. Phase 2B shall consist of the development of the remaining balance of Phase 2 as shown on the Revised Map of the Site (Attachment No. 1). As shown on the Revised Map of the Site, (Attachment No. 1), the entire Phase 2 portion of the Retail Center includes 548,976 square feet of land.”

Section 5. Map of the Site and Legal Description

The Map of the Site (Attachment No. 1) is hereby amended as approved by the City Planning Commission on February 13, 1995 by Resolution No. 95-038, and replaced in its entirety with “Revised Map of the Site (Attachment No. 1),” attached hereto and by this reference made a part hereof. The Legal Description (Attachment No. 2) is hereby replaced in its entirety with the “Revised Legal Description (Attachment No. 2)”, attached hereto and by this reference made a part hereof.

Section 6. Schedule of Performance

The date for the time for performance of Item 29 in the Schedule of Performance (Attachment No. 4) shall be revised to read as follows:

"Not later than six (6) years after the date of execution of this Agreement by the Agency."

Section 7. Previous Approvals

The following is added to the Previous Approvals (Attachment No. 6) under "Planning Commission Approvals":

"2/13/95	95-038	A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF EL PASO DE ROBLES TO APPROVE FINAL ARCHITECTURAL DETAILS FOR PHASE TWO OF WOODLAND PLAZA II (HALFERTY DEVELOPMENT COMPANY) APN: 09-761-34"
----------	--------	---

Section 8. Force and Effect

Except as modified as amended by this Second Implementation Agreement, all other provisions of the OPA shall remain unchanged and in full force and effect.

Section 9. Counterparts

This Second Implementation Agreement may be executed in any number of counterparts, all of which counterparts, when taken together, shall constitute one and the same Second Implementation Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Second Implementation Agreement as of the date first above written.

"AGENCY"

Dated _____, 1995

REDEVELOPMENT AGENCY OF THE CITY OF EL PASO DE ROBLES

By: _____
Duane Picanco, Chairman

By: _____
Richard J. Ramirez, Secretary

"PARTICIPANT"

Dated _____, 1995

WOODLAND PLAZA II, a California general partnership

By: **Halferty Development Company,
A California corporation, general partner**

By: _____
James L. Halferty

"PARTNERSHIP"

~AND~

Dated _____, 1995

**RICHARD J. WOODLAND and
PATRICIA WOODLAND, co-trustees of the
Richard J. Woodland and Patricia Woodland
Trust, u/d/t dated May 23, 1987, general
partner**

By: _____
Richard J. Woodland

By: _____
Patricia Woodland

"WOODLAND"