MEETING DATE: 04/21/08

AGENDA ITEM: Consideration of *Second Amendment to Participation Agreement Re: 3535 Hayden Avenue*

ATTACHMENTS

SECOND AMENDMENT TO PARTICIPATION AGREEMENT

RE: 3535 HAYDEN AVENUE

This Second Amendment to Participation Agreement ("Second Amendment"), dated April 7, 2008 ("Effective Date"), is made by and among the CULVER CITY REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency"), 3555 HAYDEN PARTNERS, a California limited liability company, as successor in interest to 3555 HAYDEN PARTNERS, a California general partnership ("3555 Hayden"), and FREDERICK N. SMITH ("Smith"), as successor-in-interest to 3535 HAYDEN PARTNERS ("3535 Hayden"). 3555 Hayden, 3535 Hayden, and Smith are collectively referred to herein as the "Smith Parties". This Second Amendment is made with reference to the following facts.

RECITALS

A. Agency, 3535 Hayden and Pittard Design, Inc. a California corporation (doing business as Pittard Sullivan ("PS")) were parties to that certain Participation Agreement dated September 5, 1995 ("Participation Agreement"), whereby Agency loaned PS and 3535 Hayden $190,836.63 (the "Loan") to pay for improvements at 3535 Hayden Avenue which was owned by 3535 Hayden and leased for an eleven (11) year term by PS. The Loan was evidenced by a promissory note, substantially in the form attached to the Participation Agreement as Attachment No. 4 ("Promissory Note"). The repayment for such loan was secured by 3535 Hayden's real property located at 3535 Hayden Avenue, Culver City, California.

B. The terms of the Participation Agreement provided, among other things, that repayment of the Loan interest and principal accrued during the first five (5) years was deferred if PS satisfied certain performance conditions primarily related to payment of minimal gross receipts taxes and continued employment at 3535 Hayden of not less than 75 full-time employees per year. PS satisfied those conditions through March 30, 2001 when it ceased operation, which violated the terms of the Participation Agreement. Under the Participation Agreement, the Loan principal and interest would also be forgiven at the rate of twenty percent (20%) per year if PS continued to lease said property for the next five (5) years and satisfied similar operating conditions relating to its gross receipts taxes and maintaining a certain number of employees.

C. On or about February 29, 2000, Agency and 3535 Hayden together with 3555 Hayden agreed to transfer the Deed of Trust securing repayment of the Loan from 3535 Hayden Avenue to real property located at 3555 Hayden Avenue owned by 3555 Hayden to permit 3535 Hayden to refinance and obtain a permanent loan on its property at 3535 Hayden Avenue.

D. On or about May 22, 2001, the Agency determined that PS ceased doing business at 3535 Hayden Avenue on or about March 30, 2001.

E. The terms of the Participation Agreement give Agency the right to require payment of the Loan or to make other reasonable accommodations to meet the goals and purposes of the Participation Agreement.

F. Smith, as a general partner of 3535 Hayden, assumed all obligations of 3535 Hayden which assumption was approved and acknowledged by Agency in that Amendment to Participation Agreement Re: 3535 Hayden, dated July 17, 2003 ("First Amendment").

G. Smith secured Mediacopy, a California corporation and Infodisc Technology Co., Ltd., a corporation under the laws of the Republic of China ("Mediacopy/Infodisc"), as the replacement tenant for PS at 3535 Hayden Avenue. The term of the lease was for five (5) years commencing January 1, 2003, and ending December 31, 2007.

H. In accordance with the First Amendment, the Loan was extended by two years to twelve years, ending in 2009. The Loan was also to be incrementally forgiven over the remaining seven years provided Mediacopy/Infodisc remained in business on the Site, produced annual gross receipts taxes at prescribed amounts similar to PS and maintained 75 full time employees. The Loan was amended to forgive the accrued interest and the outstanding balance on the Loan was reset back to the original principal amount of $190,836.63. The deed of trust recorded against 3555 Hayden Avenue was reconveyed in consideration for Smith's personal guarantee, pursuant to Section 14 of the First Amendment.

I. Mediacopy/Infodisc filed for bankruptcy in late 2004 and ceased business operations and occupancy of the Site in May 2005 without meeting the conditions of the Participation Agreement, as amended by the First Amendment (collectively, the "Participation Agreement") for years 2003 and 2004. The information necessary to reach this conclusion is confidential and the Agency has relied on the Culver City Treasurer's Office, which advises that the revenue targets were not met for the years 2003 and 2004. The Smith Parties have requested the confidential data from the Agency and have been advised that the City Treasurer's Office will release the data only if the Smith Parties obtain the written consent of Mediacopy/Infodisc.

J. Pursuant to the terms of the Note, the Agency has calculated the outstanding balance of the Loan as of the date of this Second Amendment, including all accrued interest, to be TWO HUNDRED AND SIXTY THREE THOUSAND TWO HUNDRED EIGHTY AND 66/100 DOLLARS ($263,280.66). This determination of the outstanding balance was calculated starting with a principal amount of $190,836.63 (as of the date of the First Amendment) and increased by 7% per annum up to the Effective Date of this Second Amendment.

K. The Smith Parties dispute the Agency's calculations of the outstanding balance of the Loan but are willing to accept same as true provided Agency agrees, in the spirit and purpose of the original Participation Agreement, to expand the definitional scope of the "Site" to include other properties controlled by the Smith in the Hayden Tract which were either vacant or undeveloped as of September 10, 2007.

L. The Agency and the Smith Parties hereby agree that the vacant or undeveloped properties in the Hayden Tract owned or controlled by the Smith Parties as of the September 10, 2007 are set forth in Schedule 'A" attached hereto. The property addresses reflected in Schedule "A" are intended to be included within the definition of "Site" as defined in Section 104 of the Participation Agreement. Schedule A also reflects the Occupancy Date or intended Occupancy Date for prospective tenant whose activities are intended to satisfy the prescribed amount of gross receipts taxes and full time employees.

M. The parties now desire to amend certain provisions of the Participation Agreement and amend and restate the Promissory Note, which the parties believe are in the best interest of themselves and the community.

NOW, THEREFORE, the parties agree as follows:

A. <u>Outstanding Loan Balance</u>. The outstanding balance of the Loan as of the Effective Date of this Second Amendment, including all accrued interest, is TWO HUNDRED

AND SIXTY THREE THOUSAND TWO HUNDRED AND EIGHTY DOLLARS AND 66/100 CENTS ($263,280.66).

B. Amended and Restated Promissory Note. The Amended and Restated Promissory Note, attached hereto as Attachment No. 1, shall supersede and void the Promissory Note.

C. Section 104 of the Participation Agreement is modified at the end thereof by adding the following sentence: In addition to the property and space located at 3535 Hayden, "the Site shall also include the property addresses set forth in Schedule "A" which the Agency and the Smith Parties acknowledge as of the September 10, 2007 were either vacant or undeveloped Hayden Tract properties owned or controlled by the Smith Parties."

D. Section 202 of the Participation Agreement is hereby amended to read in its entirety as follows:

Subject to all of the following, the Smith Parties shall be obligated to repay the Loan, over a fifteen (15) year period, commencing on January 15, 1997:

1. No payments shall be due for the first five (5) years commencing on January 15, 1997; provided that this Agreement and the Lease are in full force and effect and the Smith Parties are not in default of this any terms of this Agreement or in violation of any Federal, State, or city law, rule or regulation, including but not limited to labor or immigration law. If, prior to January 15, 2012, this Agreement or the Lease are not in full force and effect or of the Smith Parties are in default under this Agreement or in violation of any law, rule or regulation (as described above), then the entire amount of the Loan which has been disbursed and all accrued, unpaid and unforgiven interest shall be immediately due and payable by the

Smith Parties to the Agency and any unpaid principal and interest shall continue to accrue interest at the rate of seven (7%) per annum, compounded annually until paid in full. Payments shall applied first to any costs incurred by the Agency to enforce the Smith Parties' payment of the Loan, including but not limited to reasonable attorneys' fees and actual court costs, then to interest on the Loan, and then to principal on the Loan.

2. At the end of each of the remaining five (5) years of the term of the Loan (commencing on January 15, 2008, and ending on January 15, 2012), the annual accrued interest shall be forgiven and any unpaid principal shall be reduced in accordance with Table A, below, subject to the following conditions precedent ("Conditions Precedent") and in accordance with this Section 202.2: (i) the Smith Parties are not under default of this Agreement or in violation of any law, rule or regulation (as described in Section 201.1), (ii) the annual Culver City gross receipts taxes generated from the Site tenants or any successor tenants occupying the Site ("Site Local Tax Revenue") is at least equal to the corresponding amounts listed in Table B, below, and (iii) the tenants occupying the Site employ at least seventy-five (75) full time employees per year.

TABLE A

YEAR	FORGIVEN PRINCIPAL	FORGIVEN INTEREST
2008	$38,172.73	$72,444.03

2009	$38,172.73	$10,686.85
2010	$38,172.73	$ 8,015.14
2011	$38,172.73	$ 5,343.42
2012	$38.172.73	$ 2,671.71

TABLE B

YEAR	SITE LOCAL TAX REVENUE
2007	$37,353.00
2008	$41,092.00
2009	$45,205.00
2010	$49,726.00
2011	$54,699.00

As of July 1, 2008 and each July 1st thereafter through July 1, 2012, Agency shall cause the City's independent auditor to advise the Smith Parties in writing as to whether the Site Local Tax Revenue paid by the tenants that occupy the Property Addresses set forth in Schedule A are below the amounts set forth in Table B ("Independent Confirmation"). Such Independent Confirmation shall disclose the total Site Local Tax Revenue collected for the prior year from all tenants occupying the Site during the prior year but shall ("Collective Site Local Tax Revenue"), but shall not entail the disclosure of the gross annual receipts received or claimed by any one tenant, taxes imposed and/or collected by the City from any one tenant, and/or any confidential information. The Independent Confirmation shall consist, for example, of a simple written statement in the following or equivalent form: "The Collective Site Local Tax Revenue collected by the City for year 2010 is ____________($______.__)."

On or before July 31st immediately following the July 1st Independent Confirmation that the Site Local Tax Revenue is below the applicable amount set forth in Table B, the Smith Parties shall pay the Agency either (1) the Forgiven Principal and Forgiven Interest for said year or, if less, (2) the difference between the Site Local Tax Revenue set forth in Table B for said year and the Collective Site Local Tax Revenue collected by the City in said year. If the Collective Site Local Tax Revenue collected by the City in the year exceeds the Site Local Tax Revenue set forth in Table B for that year, the Interest and Principal for that year shall be forgiven.

Additionally, as of April 30, 2008 and each April 30 thereafter through April 30, 2012, the Smith Parties shall cause an authorized representative of the Smith Parties to deliver a written declaration to the Agency stating whether the total number of employees employed by the tenants occupying the Property Addresses set forth in Schedule A is less than 75.

3. Subject to Section 202.4, if the interest and principal are not forgiven and reduced, respectively, as set forth in Section 202.2, above, any unpaid and unforgiven principal and unforgiven interest shall accrue interest at the rate of seven percent (7%) per annum, compounded annually, until paid in full. Payments shall applied first to any costs incurred by the Agency to

enforce the Smith Parties' payment of the Loan, including but not limited to reasonable attorneys' fees and actual court costs, then to interest on the Loan, and then to principal on the Loan.

E. A new Sections 202.4 is added to Participation Agreement as follows:

4. In the event that (i) an economic crisis is declared by the Federal Reserve or the U.S. Government, or its agencies <u>and</u> (ii) one or more of said agencies impose a moratorium on interest payments applicable to the Loan and/or rental increases that are applicable to tenants occupying the Site ("Economic Crisis Event"), Agency agrees to consider the following procedure: Upon the written notice by the Smith Parties of the occurrence of an Economic Crisis Event, the Agency's Executive Director shall have thirty (30) days to verify said occurrence. In the event that the Economic Crisis Event is confirmed by the Agency's Executive Director, the Agency may, in its sole and absolute discretion, enter into a standstill agreement with Smith Parties whereby, in addition to any other terms and conditions mutually agreed to by the Agency and Smith Parties, the Agency could defer taking any action against the Smith Parties under the Participation Agreement, as amended by the First Amendment and the Second Amendment, until termination of the Economic Crisis Event, or as determined appropriate by the Agency.

F. Notwithstanding any provision stated to the contrary herein, the Smith Parties may apply the number of employees hired and the Site Local Tax Revenue generated from any one or more of the following properties owned and/or operated by the Smith Parties from the Site to satisfy the Conditions Precedent set forth in Section 202.2.

G. By executing this Second Amendment, Smith personally guarantees performance of the "Participation Agreement", as amended by the First Amendment and the Second Amendment (collectively, "the Participation Agreement"), and repayment of the Loan, as evidenced by the Amended and Restated Promissory Note ("Smith Guarantee"). The Smith Guarantee shall secure repayment of the Loan in lieu of a recorded security interest against the Site.

H. Except as expressly set forth herein, the terms and conditions of the Participation Agreement shall remain in full force and effect; provided, however, that in the event of a conflict between this Second Amendment and the Participation Agreement, the Participation Agreement shall be read to give full force and effect to this Second Amendment.

SIGNATURES ON FOLLOWING PAGE

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IN WITNESS WHEREOF, the Agency and Smith Parties have executed this Second Amendment as of the date first written above.

CULVER CITY REDEVELOPMENT AGENCY

By: ______________________________
Jerry Fulwood, Executive Director

Approved as to Form:

____
Agency General Counsel

FREDERICK N. SMITH

By:______________________________
Frederick N. Smith

3555 HAYDEN PARTNERS,
a California limited liability company

By:______________________________
Frederick N. Smith

SCHEDULE A

Participation Agreement
Schedule of Qualifying Hayden Tract Property Sites

Prior Qualifying Properties

3535 Hayden Avenue, All tenants
3555 Hayden Avenue, The Tennis Channel

Added Properties Which Were Vacant as of September 10, 2007

Property Address	Tenant Name	Location	Occupancy Date
3501 Hayden Avenue	Converse	-	4/30/08
3520 Hayden Avenue	Flektor	-	2/8/08
3520 Hayden Avenue	Advantage Fitness	-	5/31/08
8522 National Boulevard	The Point Restaurant	Suite 100-A	9/24/07

ATTACHMENT NO. 1

AMENDED AND RESTATED PROMISSORY NOTE

$263,280.66 **April 7, 2008**

The undersigned, Frederick N. Smith and 3555 Hayden Partners, a California limited liability company ("Borrower"), promise to pay to or order of the Culver City Redevelopment Agency ("Lender"), the principal sum of TWO HUNDRED AND SIXTY THREE THOUSAND AND EIGHTY DOLLARS AND 66/100 CENTS ($263,280.66), together with interest on the unpaid principal balance from time to time outstanding at an annual rate of seven percent (7%), with all principal and interest due and payable on the Maturity Date, defined in Section 2, below. This AMENDED AND RESTATED PROMISSORY NOTE ("Note") shall replace and supersede the Promissory Note executed by Borrower, or Borrower's predecessors in interest, to evidence that certain loan issued to Borrower, or Borrower's predecessors in interest, in the original amount of $190,836.63, pursuant to that certain Participation Agreement, dated September 5, 1995, by and among the Culver City Redevelopment Agency, 3535 Hayden Partners, a California general partnership, and Pittard Design, Inc., a California corporation ("Participation Agreement"). All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Participation Agreement.

This Note shall be subject to the following additional provisions:

1. Security. This Note is unsecured. Smith has personally guaranteed the performance of the Participation Agreement and repayment of the Loan evidenced by this Note, as provided in the Participation Agreement, as amended by that certain Amendment to Participation Agreement Re: 3535 Hayden, dated June 23, 2003, and that certain Second Amendment to Participation Agreement Re: 3535 Hayden Avenue, dated April 7, 2008 (collectively, the "Participation Agreement").

2. Payment. The Loan evidenced by this Note shall be paid in accordance with and on each of the dates set forth in Section 202 of the Participation Agreement ("Maturity Date").

3. Prepayment. This Note may be prepaid, at any time, in whole or in part, without premium or penalty, as long as any principal prepayment is accompanied by a payment of interest accrued to the date of prepayment on the amount prepaid.

4. Application of Payments. Each payment under this Note shall be credited first to interest then due and any remainder to principal.

5. Default. On (a) Borrower's failure to pay any sum, or portion thereof, due under this Note when it becomes due and payable, (b) the occurrence of a default under the Participation Agreement, or (c) any breach of any other promise or obligation in this Note or in any other instrument now or after this date securing the indebtedness evidenced in this Note (collectively, a

Default), then, and in any of such event, Lender may, at its option, declare this Note (including, without limitation, all accrued interest) to be immediately due and payable, regardless of its Maturity Date. Borrower expressly waives notice of the exercise of this option.

6. Costs of Collection. If this Note is not paid when due, whether on the Maturity Date or on acceleration of this Note, Borrower promises to pay all collection costs, including, but not limited to, reasonable attorney fees and court costs, whether or not suit is filed on this Note.

7. Waiver of Presentment. Borrower and all persons liable or to become liable on this Note waive presentment, protest, and demand; notice of protest, demand, and dishonor; and any and all other notices or matters of a like nature.

8. Default Rate of Interest. On the occurrence of a Default under this Note, the entire unpaid principal balance shall then automatically bear interest at an annual rate equal to the lesser of (a) seven percent (7%) per annum or (b) the maximum interest rate allowed by law (the Default Rate).

9. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of California.

10. Usury. All agreements between Borrower and Lender are expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds of this Note, acceleration of maturity of the unpaid principal balance, or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance, or retention of the money to be advanced under this Note exceed the highest lawful rate permissible under applicable usury laws. If, under any circumstances, fulfillment of any provision of this Note or any other agreement pertaining to this Note, after timely performance of such provision is due, shall involve exceeding the limit of validity prescribed by law that a court of competent jurisdiction deems applicable, then, ipso facto, the obligations to be fulfilled shall be reduced to the limit of such validity. If under any circumstances, Lender shall ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under this Note and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under this Note, such excess shall be refunded to Borrower. This provision shall control every other provision of all agreements between Borrower and Lender.

11. Time Is of the Essence. Time is of the essence with respect to all obligations of Borrower under this Note.

SIGNATURES ON NEXT PAGE

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IN WITNESS WHEREOF, Borrower has executed this Amended and Restated Promissory Note as of the date first written above.

Borrower

FREDERICK N. SMITH

By:________________________________
Frederick N. Smith

3555 HAYDEN PARTNERS,
a California limited liability company

By:________________________________
Frederick N. Smith