



BK 0941 PG 284



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16

PARTICIPATION AGREEMENT
AMENDED AND RESTATED

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THIS PARTICIPATION AGREEMENT made and entered into this 4th day of Oct., 1990, by and between OMAHA LIVESTOCK MARKET, INC., a Nebraska corporation (hereinafter called "OLMI") and STOCKYARDS PLAZA, LIMITED PARTNERSHIP, a Nebraska Limited Partnership ("PLAZA").

W I T N E S S E T H:

WHEREAS, OLMI and PLAZA have heretofore entered into a Participation Agreement dated November 29, 1989 and recorded in Book 906 at Page 407, in the Office of the Register of Deeds of Douglas County, Nebraska, covering real property more particularly described on Exhibit "A" attached hereto (the "Premises"), and

WHEREAS, Lot 3 has been heretofore released from the terms of the November 29, 1989 Participation Agreement, and

WHEREAS, said Participation Agreement did not refer to Lot 1 and Lot 2 of the Premises in all of the provisions thereof, and

WHEREAS, it was the intent of the parties, that as part of the consideration for the sale of the Premises to Plaza, that Plaza would enter into a Participation Agreement with OLMI, in order to allow OLMI to participate in the net cash flow received or generated by Plaza, its successors and assigns from the development, leasing, operation, management and sale of all or any portion of the Premises, and

WHEREAS, the parties desire to enter into and executed an amended and restated Participation Agreement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, the parties do hereby agree as follows:

1. Participation Proceeds. PLAZA does hereby agree to pay participation proceeds to OLMI in semi-annual installments on or before the last day of the month following the end of each semi-annual period, commencing July 31, 1990 for the semi-annual period ending June 30, 1990. Participation proceeds shall be equal to ten percent (10%) of the net operating income derived from the operation of Lot 1 and Lot 2 of the Premises for the preceding semi-annual period.

2. Net Operating Income.

- (a) Definition. Net operating income is herein defined as the difference between the total gross receipts from Lot 1 and Lot 2 and the aggregate expenses from Lot 1 and Lot 2. The total gross receipts from Lot 1 and Lot 2 shall include, but shall not be limited to, fixed or guaranteed rentals, percentage rentals, participation rentals, overage rentals, rentals from concessions and garage rentals received by the PLAZA. The term aggregate expenses is herein defined as the total expenses paid by PLAZA for: (i) debt service,

consisting of principal and interest; (ii) real estate taxes; (iii) total property and liability insurance premiums; (iv) water and utility costs; (v) total unreimbursed expenses to prepare any part of Lot 1 and Lot 2 for occupancy by a tenant divided by the number of years in the term of the lease, not including renewal periods; (vi) management expenses; and (vii) building operating expenses including but not limited to salaries, janitorial services, maintenance and repair costs, legal and accounting costs and other reasonable operating expenses. The net cash flow shall include total gross receipts actually received during semi-annual period and aggregate expenses actually paid during semi-annual period irrespective of the period to which any item of gross receipts or aggregate expenses applies, except for semi-annual or annual payments of insurance premiums, real estate taxes and capitalized expenses of preparing Lot 1 and Lot 2 the Premises for occupancy by a tenant, which shall be computed on a pro rata basis each semi-annual period. Expenses shall not include any provision for depreciation or replacement reserve.

- (b) Financial Statements. Each semi-annual payment of participation proceeds shall be accompanied by an unaudited financial statement prepared by PLAZA's chief financial officer or an independent accounting firm engaged by it. Said financial statement shall reflect the net operating income from Lot 1 and Lot 2 as defined in Section 2(a) above.
- (c) Examinations of financial statements. OLMI, at its sole cost and expense, shall have the right to examine the books and records of PLAZA, or other owner of Lot 1 and Lot 2 for the purpose of verifying the amounts of net cash flow reported by the PLAZA or other owner of Lot 1 and Lot 2 on the aforementioned unaudited financial statements. Such examinations shall be conducted by OLMI or any agent of OLMI during normal business hours at the office of PLAZA in the City of Omaha or at such other place in the City of Omaha as may be designated by PLAZA. OLMI hereby agrees to provide at least ten (10) working days prior written notice for each examination and further agrees that there shall be no more than two (2) examinations during any fiscal year. If an examination discloses either an overpayment or an underpayment of any installment of additional participation proceeds, the parties hereby agree to make reimbursement of the amount of the overpayment or underpayment within five (5) days of the conclusion of the examination.

3. Sale Lot 1 and Lot 2 Provisions. If PLAZA sells all or any portion of Lot 1 and/or Lot 2 PLAZA shall pay OLMI a sum equal to ten percent (10%) of the gross sale price of each lot, being the sale price of the lots, or portions of lots less (i) reasonable fees and expenses customarily incidental to the sale of real property including commission (not to exceed seven percent (7%) of the sales price) and paid to unrelated brokers or commission (not to exceed 3.5% of the sales price) paid to an affiliate of PLAZA; (ii) PLAZA's actual land costs allocable to the lot being sold, calculated on the basis of 86 cents per square foot. Upon the sale by PLAZA of Lot 1 and/or Lot 2 and the payment by PLAZA to OLMI of the sums due OLMI under this Paragraph 3, OLMI shall release Lot 1 and/or Lot 2, as the case may be, from further obligation under this Participation Agreement

4. Parties intend debtor/creditor relationship. The parties hereby intend that the relationship created under this instrument be solely that of debtor and creditor. No part of this instrument shall be construed as creating at any time, a partnership, joint venture or any other equity interest in Lot 1 and Lot 2 for the mortgagee.

5. Duration. The duration of this Participation Agreement shall continue, and be in full force and effect, until said Lots have been sold and OLMi has received its participation in the net proceeds received from such sale(s).

6. Binding. The participation provisions hereinabove contained shall run with the land, and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

STOCKYARDS PLAZA, LIMITED PARTNERSHIP,
a Nebraska Corporation
by Stockyards Plaza, Inc. a Nebraska
Corporation, General Partner

By [Signature]
Vice President

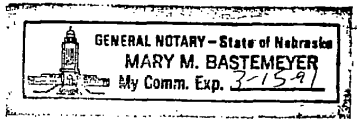
OMAHA LIVESTOCK MARKET, INC.,
A Nebraska Corporation

By [Signature]
President

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

On this 6 day of Sept., 1990, before me, a Notary Public in and for said county, personally came Chris Held Vice President of Stockyards Plaza, Inc. a Nebraska corporation, general partner of Stockyards Plaza, Limited Partnership, known to me to be the identical person who signed the foregoing Participation Agreement and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of said partnership.

WITNESS my hand and notarial seal at Omaha, Nebraska, on the day and year last above written.




[Signature]
Notary Public

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

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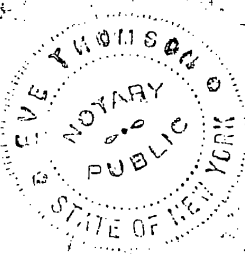
On this 4th day of Oct., 1990, before me, a Notary Public in and for said county, personally came Raymond French, President of Omaha Livestock Market, Inc., a Nebraska corporation, known to me to be the identical person who signed the foregoing Participation Agreement and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of said corporation.

WITNESS my hand and notarial seal at New York, New York, on the day and year last above written.



Notary Public

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EVE THOMSON
Notary Public, State of New York
No. 31-9327500
Qualified in New York County
Commission Expires April 30, 1992

EXHIBIT "A"

Lots 1, 2 and 3, in STOCKYARDS PLAZA II, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.

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BK 941 N _____ C/O _____ FEE 21.50
PG 284-287 N COMP. DEL VK MC
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RECEIVED
Oct 15 1 23 PM '90
GEORGE J. RUSLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NE