



May 11, 2010

SUBJECT: Approval of 2010 Modification Agreement to the Amended and Restated Disposition and Development and Owner Participation Agreement and Related Documents

SUMMARY REPORT

Staff is recommending that the Redevelopment Agency approve the 2010 Modification Agreement to the Amended and Restated Disposition and Development and Owner Participation Agreement and Related Documents.

On April 27, 2004, the Agency selected Fourth Quarter Properties XLVIII, LLC, as the master developer for the City's Downtown Center redevelopment project. After negotiations, Fourth Quarter Properties XLVIII, LLC agreed to a Disposition and Development and Owner Participation Agreement (DDOPA) for redevelopment of the Town Center Mall (Town Center) property with the Sunnyvale Redevelopment Agency (Agency). In early 2006, however, Fourth Quarter defaulted on the DDOPA.

On October 2, 2006, Fourth Quarter Properties requested permission from the Agency to transfer the project to Downtown Sunnyvale Mixed Use, LLC, a partnership of RREEF America III (RREEF) and Sand Hill Property Company. After completing due diligence and verification of RREEF/Sand Hill Property Company's qualifications, the Agency approved transfer of the Project and the Amended and Restated Disposition and Development and Owner Participation Agreement (ARDDOPA) with Downtown Sunnyvale Mixed Use, LLC (DSMU). The ARDDOPA required DSMU, among other things, to: demolish the Mall and the former J.C. Penney building; construct and operate an open-air mixed-use development containing retail, office and residential uses; build, maintain, repair and replace public parking structures; build, maintain, repair and replace designated public streets; and build and maintain a "Redwood Square" of at least 33,000 square feet. The ARDDOPA provided for an exchange of land in equal amounts between the developer and the Agency, such that the Agency will own the land under the public streets and public parking structures.

DSMU commenced demolition and construction in Spring, 2007. ARDDOPA Milestones for starting demolition and excavation, completion of demolition and excavation, and completion of the structural building shells were all met well in advance of due dates. Starting in Fall, 2008, the sub-prime mortgage market collapsed, Lehman Brothers and other financial firms filed for bankruptcy, and

the stock market dropped almost 50%. Retail spending dropped precipitously and retailers cancelled or delayed plans for new stores. The ARDDOPA was amended to extend the opening of new retail stores to December, 2009 and March, 2010, in anticipation that the economy would recover significantly in 2009 and retailers would commit to new stores and leases by mid-2009.

DSMU met its commitments for initial equity contributions to the Project and invested approximately \$220 million of private equity and \$108 million in bank loans in the Project. In February, 2009, DSMU advised the Agency that due to the collapse of the commercial real estate market and corresponding losses in its equity capital, it would not be able to meet the \$108 million loan when due. The lenders extended the due date for the loan and DSMU sought additional capital and equity investors to enable the Project to continue, but DSMU could not raise sufficient capital and the lender filed for foreclosure in October, 2009. The legally-required time period prior to completing foreclosure has passed. The Agency also negotiated in 2009 an Infrastructure Improvements Agreement that allowed for the completion of much of the public infrastructure and the on-time opening of the new Target store. While that work occurred successfully, subsequent ARDDOPA milestones were missed. In October, 2009, the Superior Court appointed L. Gerald Hunt, as Receiver to preserve the value of the Town Center and the Receiver has taken a number of steps to improve and protect the Project.

The Receiver has requested certain modifications to the ARDDOPA it believes are pre-requisites to obtaining a qualified developer to undertake completion of the Project, given the current economic situation, and the Agency has also requested changes to the ARDDOPA. The Receiver and Agency have been negotiating these modifications since December, 2009, and those negotiations have resulted in the proposed 2010 Modification Agreement (MA).

There are a number of significant changes that the MA makes to the ARDDOPA: the Minimum Project size increases; the Developer is required to make aggressive efforts to get a theatre lease by October 31, 2010, and then commence construction; the tax increment Annual Payment is triggered by signed retail leases; the Interim Tax Increment by completion of the theatre; and the Agency share of environmental costs is changed to 50-50 from 85-15. The Developer's obligation is, as soon as reasonably financially feasible, to commence and complete the expanded Minimum Project. The MA requires the Developer to report quarterly to the Agency on its process with leasing and financing efforts. Overall the MA reflects the principle that construction will commence and thereafter be diligently completed as soon as commercially-reasonable financing and leasing commitments have been obtained, rather than an absolute date with a firm construction schedule when construction will recommence. There is a one-time penalty of \$5 million for failure to meet the construction schedule. The transfer provisions permit the lender to foreclose on its security interest and to transfer the Project to a developer that meets

criteria for experience, financial capability and reputation. The MA allows some flexibility regarding retail uses in the two main office buildings, provides for good faith efforts to achieve reasonable cost savings on the remaining infrastructure; requires timely construction of Redwood Square with its surrounding retail; confirms the Project description; and waives current defaults. The proposed MA represents compromises by both the Receiver and the Agency, and provides the basis for investment in and restarting the Project as soon as possible.

Staff recommends that the Agency Board approve the 2010 Modification Agreement to the ARDDOPA. Staff concludes that this approval will provide the best opportunity for the redevelopment of the Downtown Center Project to continue with a new developer, and presents the best opportunity for the successful completion of the Sunnyvale Downtown.

BACKGROUND

Formation of Sunnyvale Redevelopment Agency

The Sunnyvale Redevelopment Agency was established pursuant to provisions of the Community Redevelopment Law of the State of California by a resolution of the City Council on November 19, 1957. The Agency has one redevelopment project – the 184-acre Central Core Redevelopment Project. Under California law, redevelopment agencies have two powers not otherwise available to cities:

- Power to acquire property for the purpose of resale to a private developer, utilizing eminent domain if necessary; and
- Tax increment financing, whereby all increases in property tax (including portions that would normally go to the county, school districts and special districts) flow to the redevelopment agency for the sole purpose of paying back funds borrowed for land acquisition and public infrastructure improvements.

The primary activity of the Agency since its formation has been to assist in the redevelopment of the City's Town Center. On March 1, 1978, the Agency entered into a Construction, Operation and Reciprocal Easement Agreement (REA) with Mall developer Sunnyvale Town Center Associates. (a limited partnership formed by Ernest W. Hahn, Inc.), Macy & Co., and Montgomery Ward; in 1992, the REA was amended to include J.C. Penney. Among the obligations of the Agency, through the REA, was the responsibility to construct the parking deck along Mathilda Avenue.

In 1977, \$16,800,000 of tax allocation bonds were sold to fund the acquisition of property, relocation, demolition and public improvements. Sunnyvale Town Center Associates subsequently purchased a portion of the site from the Agency for \$5,500,000. The bonds were twice refinanced. The current outstanding balance of the bonds is \$6,040,000. The debt service is fully

covered by current tax increment receipts; the debt is scheduled to be retired in 2023.

Also in 1977, two issues of lease revenue bonds totaling \$22,300,000 were sold to construct the parking deck along Mathilda Avenue. These bonds were twice refinanced. The current outstanding balance of the bonds is \$11,620,000. The debt service is fully covered by the Agency's current tax increment receipts; the debt is scheduled to be retired in 2023.

In addition, there is an outstanding loan from the General Fund which is estimated to be \$68 million as of June 30, 2010.

History of the Downtown Area

Town Center Mall opened on September 26, 1979. After years of successful operation, Sunnyvale Town Center Associates decided to sell the property. On July 9, 1998, American Mall Properties (AMP) became the new owner. AMP proposed to expand the Mall, by adding 205,000 square feet of new retail space extending to Mathilda Avenue along the McKinley Avenue alignment (extended); it also proposed to add an entertainment component in the form of a 4000-seat, 20-screen movie theater. On March 11, 1999, the City Council approved the expansion plans of AMP, and on December 3, 1999, the REA was amended to accommodate the AMP expansion plan. A major part of the amendment dealt with a land "swap" between the Agency and the developer, wherein the Agency deeded to the developer 5.33 acres of property, including certain properties fronting on Mathilda Avenue and approximately 1/3 of the parking deck centered roughly along the alignment of McKinley Avenue (extended); the developer deeded to the Agency 4.07 acres of property on the Sunnyvale Avenue side of the property where two new parking structures were planned, and paid the Agency \$1,495,000, for the difference in the amount of land exchanged.

In late 2002, American Mall Properties completed construction of the public parking structure at Sunnyvale and Iowa. AMP was unable to proceed with implementation of the approved project due to financial difficulties. On September 24, 2002, AMP filed for bankruptcy protection. On June 2, 2003, the Chief Building Official ordered that the second level of the parking deck along Mathilda Avenue be closed for safety reasons. Attorneys for AMP immediately filed papers with the Agency, alleging that the Agency was responsible, under the REA and a related Parking Lease Agreement, for the repair and replacement of the parking structure. The Department of Public Works estimated that it would cost \$15 million to replace the deck in kind (because the Agency owns only approximately 2/3 of the structure, its share of the replacement cost would be about \$10 million). Such reconstruction, however, would have been contrary to the desire of the developer and of the City to extend McKinley Avenue into Block 18; the more appropriate replacement of 2,400 parking spaces in an above ground structure would cost more than \$30 million.

On December 2, 2002, in recognition of the many challenges facing the redevelopment of Block 18 (which challenges included multiple ownership of significant parcels within the block, the deteriorated condition of the parking deck, and the bankruptcy and closure of the Mall), the Agency designated all of Block 18 (except for the Bank of the West property) as a Master Development Area, and directed staff to solicit proposals from owners of property in the Master Development Area. One proposal was received from Fourth Quarter Properties XLVIII, LLC. The Agency acted on April 27, 2004, to select Fourth Quarter Properties as Master Developer for the subject site. Staff was directed to negotiate a business agreement whereby the project could be successfully developed.

Disposition, Development and Owner Participation Agreement with Fourth Quarter

In March, 2003, the Agency Executive Director (City Manager) appointed a negotiating team for the Agency. The Agency set forth three major initial parameters or objectives for the negotiations:

1. To minimize risk for the Agency and the City
The Agency did not want a repeat of the situation where the Agency is still paying back loans for the development of a Mall which has since closed.
2. To recreate as much of the historic public street grid as possible
The Agency wanted to integrate the project into the historic downtown by extending public streets through the project, but desired no additional on-going cost to the City for maintenance and repair of the streets and other infrastructure.
3. To get out of the parking business
The Agency wanted no responsibility for building, maintaining, repairing and replacing public parking facilities.

In subsequent meetings with the negotiating team, the Agency added three other parameters or objectives:

4. None of the new sales tax generated by the project and other revenues flowing to the City's General Fund should be committed to the developer to support the project, although the Agency and City were willing to consider investing in the project an amount equal to some portion of the new project-generated secured property tax which flows to the Agency (the "project tax increment").
5. Any increase in project tax increment beyond what is reasonably required should be shared equally between the Agency and the developer.

6. The developer should place underground as much parking as is feasible.

Those negotiations produced the original 2004, Disposition and Development and Owner Participation Agreement with Fourth Quarter Properties. The DDOPA included a site plan for the Town Center Project with specific housing, retail and office requirements and limits that were also reflected in City approval of a Special Development Permit (SDP) for the project. The DDOPA also set out deadlines for the completion of the planning, permitting and construction of the Town Center Project.

Fourth Quarter Default And Preliminary Transfer Approval to RREEF/Sand Hill Property Company

Fourth Quarter Properties made a good-faith effort to meet the DDOPA deadlines through 2005, and completed the scheduled demolition of the damaged parking structure in the fall of 2005. Unfortunately, Fourth Quarter Properties missed subsequent deadlines for the submission of construction plans and commencing construction. The City Attorney issued a Formal Notice of Default and Opportunity to Cure Default on March 8, 2006. Fourth Quarter Properties contended that the missed deadlines were due to events beyond its control and extensive efforts to reach a negotiated cure of the DDOPA defaults were unsuccessful. Consequently, the Redevelopment Agency notified Fourth Quarter Properties on August 9, 2006, that Sunnyvale intended to exercise its right under the DDOPA to purchase the Town Center property owned by Fourth Quarter Properties for fair market value based on the continuing default. Fourth Quarter Properties continued to dispute that it was in default under the DDOPA and litigation would have been required to establish the Sunnyvale Redevelopment Agency's right to purchase the Town Center property.

On October 2, 2006, Fourth Quarter Properties proposed transferring the Town Center Project to a new developer as an alternative to litigation. The DDOPA allowed Fourth Quarter Properties to transfer the project, but only with the written approval of the Redevelopment Agency. Fourth Quarter Properties proposed a transfer of the Town Center Project to RREEF, a large real estate investment trust, which would develop the property in joint venture with Sand Hill Property Company, a local developer. To allow the Redevelopment Agency the ability to adequately evaluate RREEF/Sand Hill, the parties negotiated an Evaluation Agreement. The Evaluation Agreement required both Fourth Quarter Properties and RREEF/Sand Hill to provide information including the transfer agreement, structure of the RREEF/Sand Hill Partnership, management teams, relevant project experience, financial structure and backing, financial spreadsheets, tenant information, and design and construction partners.

February 6, 2007, Amended and Restated Development, Disposition and Owner Participation Agreement with Downtown Sunnyvale Mixed Use LLC

On February 6, 2007, the Redevelopment Agency approved the ARDDOPA. This is the existing legal agreement which provides for the redevelopment of Block 18 of the Downtown Specific Plan.

The main elements of the ARDDOPA that carried over from the 2004 DDOPA were as follows:

- The developer was required to demolish the closed Mall and the former J.C. Penney building. Macy's and Target will remain on their parcels, as will the new parking structure at Sunnyvale and Iowa Avenues. (The Mathilda parking garage was demolished by the prior developer.)
- The developer and the Agency were to exchange land of approximately equal area¹ and equal value. The Agency will obtain fee title to the land where the public parking structures are located (excepting that area of the parking structures over which private residential units are developed), and to all of the land under the new street grid, guaranteeing that the public will have perpetual control over these rights-of-way.
- The developer will build, maintain, repair and replace all parking structures. A minimum of 4,950 parking spaces will be provided (inclusive of the private parking spaces for the residential units), 1,112 of which will be underground.
- The developer will build, maintain, repair and replace all public streets in Block 18. The developer will also construct all sidewalks within the block and along the adjacent streets which bound the block; these sidewalks will be consistent with the Downtown streetscape standards, including new street lights, decorative paving, benches, waste receptacles, and street trees in decorative grates.
- The developer will construct and maintain a "Redwood Plaza" of at least 33,000 square feet around the six heritage redwood trees, and make it available at no cost to the City for public events up to 15 times per year. The square is intended to remain open to the public at all times.
- The developer will establish a private security force to provide security and traffic control for the project, such that the Department of Public

¹ The ownership delineated in the Tentative Map shows that the Agency actually came out slightly ahead in the land swap, with a net increase of approximately 1,860 square feet.

Safety will not be required to provide routine patrol, but will respond to emergencies, crimes in progress and other events that are beyond the scope of routine patrol.

- Upon approval of the City Council of a Special Development Permit, the developer will build, lease and operate a mixed-use, open-air development consisting of approximately 992,000 sq. ft. of retail (including a 2,624-seat movie theater complex, the existing Macy's and new Target store), and 275,000 sq. ft. of office; and will build up to 292 for-sale housing units.
- The developer is required to be supportive of the existing Downtown business community and residents, and to minimize negative impacts of construction activity upon these businesses and residents. The developer is required to make good faith efforts to attract local merchants to lease spaces in the new development. The developer is also required to be supportive of a business improvement or property improvement district, if one is formed to support Downtown businesses, and to work with the Downtown business community in producing special events, programs and advertising to promote the entire Downtown area.
- In consideration for the above and, in particular, for replacing the Agency's Mathilda Avenue parking deck, for placing a substantial amount of the new parking underground, and for constructing, repairing and replacing public streets and other public amenities, the developer will receive annual payments² from the project tax increment. The project tax increment is the increase in secured property tax generated by the development over and above the existing secured property tax (FY 2003-2004 secured tax roll) which comes to the Agency after deduction of required set asides and payments to other taxing entities. The annual payments will be made for each year between the base year of FY 2003-2004 until FY 2025/2026; however, no funds will be payable to the developer until the first year after completion of the portion of the project required for tax increment receipt. The estimated present value of this tax increment in 2004 was approximately \$39.5 million and is now estimated to be in the range of \$12 to \$16 million, with the actual amount dependent on the result of a pending valuation appeal and the completion date of the Project. To protect against an unanticipated windfall to the developer in the event the assessed

² The annual payment will come from the City (by way of lease payments under the Public Parking City Lease) and will be made from revenues the City receives from the Agency for repayment of past City loans to the Agency. By using the existing loans from the City as the vehicle for making the annual payment, the Agency avoids encumbering new debt that would trigger set asides which would reduce the available tax increment. No City General Funds will be used to make the annual payment.

value rises more rapidly than projected, the payments are limited to \$4.5 million/year, plus an amount equal to 50% of any tax increment in excess of this limit.

The ARDDOPA included the preceding elements of the original DDOPA. It also set forth new performance criteria for the developer, in the form of specific milestones. Key milestones were commencement of demolition and excavation by October 15, 2007; substantial completion of demolition and excavation by December 31, 2007; and substantial completion of all structural systems (for Minimum Project) by December 31, 2008. An additional requirement was delivery of completed retail building shells (for then-minimum project) to tenants for tenant improvements by March 31, 2009. The former DDOPA provided that the Agency remedy for default was termination of the agreement or an option to purchase the property at fair market value. An important new provision of the ARDDOPA was the addition of significant financial penalties if the Developer failed to timely complete the milestones and Minimum Project.

As part of the transfer negotiations, DSMU maintained the concept approved in 2004 by the City and Agency for the Downtown Center project while proposing some changes to the layout and allocation of new space. Those changes were recommended where determined consistent with the original project. These changes included new site plan with improved public street layout and circulation; addition of new one-level Target store with associated parking; change in Minimum Project (for receipt of tax increment) to 300,000 square feet of new retail, 130,000 square feet of new office, and 200 housing units; increase in restaurant space from 70,000 square feet to 90,000 square feet; 1,112 fully-underground parking spaces and 4,950 total parking spaces (subject to traffic study); other clarifying and administrative amendments.

DSMU commenced work under the ARDDOPA immediately in March, 2007. Between March 2007 and February 2009, major progress was made on the Town Center, including:

- Completion of all required property transfers, and the filing of Subdivision Map.
- Meeting Milestone 1 for demolition and excavation in advance of the due date.
- Meeting Milestone 2 for completion of demolition and excavation in advance of the due date.
- Meeting Milestone 3 for the completion of building structural steel in advance of the due date.

- Commencement of construction on retail, residential and office square footage that substantially exceeded the Minimum Project definition, and partial or substantial completion of multiple Project buildings.
- Development and ongoing implementation of environmental remediation for the site.
- Meeting requirements for investment of equity capital toward project of approximately \$220 million dollars.

Unfortunately, in approximately Summer, 2008, an unprecedented economic downturn began with over 1 million homes in foreclosure as the result of sub-prime mortgage lending. As these mortgage loan defaults continued, the US Government took control of Fannie Mae and Freddie Mac in September, 2008. On September 14, Bank of America purchased Merrill Lynch when it appeared vulnerable to collapse. On September 15, Lehman Brothers declared bankruptcy and on September 16, the US Government gave an \$85 billion loan to insurer AIG to prevent its collapse. On September 29, 2008, the Dow stock average had a one-day drop of 777 points and the stock markets continued to fall, wiping out trillions of dollars in value in several months. Many economists consider the 2008-2010 financial events to be the worst financial crisis since the Great Depression.

As a result of the declines in the stock market and reduced consumer spending, retailers that had been contemplating opening new stores in 2009, were instead closing existing stores and declining any expansion. In Fall, 2008, DSMU approached the Agency and stated that due to the economic and retail situation it would be impossible to meet the Milestone requiring 150,000 square feet of leased retail space by March, 2009, but that with a reasonable economic recovery, leasing of 110,000 square feet by December 31, 2009, and the additional 40,000 square feet by March, 2010, was feasible. DSMU and the Agency agreed to a First Amendment to the ARDDOPA extending the Milestones for turn-over of retail space to those dates, and allowing some of the residential units to be rented instead of sold for up to 5 years.

While many redevelopment projects in California and nationwide were stopped or cancelled as a result of the global economic crisis, Sunnyvale's Town Center Project continued to move forward with construction. However, in late February 2009, DSMU notified the Agency that its \$108 million loan was due shortly and that because of the major loss in value of its real estate portfolio resulting from the financial crisis it was unable to make its loan payment. DSMU also stated that due to changes in underwriting requirements and lending policies, the banks that had been vying to make construction loans in 2007, were now declining to make a loan for the amount required to complete the Town Center Project. In short, after approximately 7 months during which DSMU attempted to locate additional equity or loans for the Project, it was

unable to do so and in October, 2009, after extensions, the lenders filed a notice initiating foreclosure on the Project (with the exception of the Agency parcels, which are not subject to foreclosure). In October, 2009, the Superior Court appointed L. Gerald Hunt, Receiver in *Wachovia Bank v. Downtown Sunnyvale Residential, et al.*, for the Project and authorized the Receiver to act as the Developer with respect to Sunnyvale Town Center and make all decisions related to the ARDDOPA and the Related Documents.

Significantly, Target was in the process of building its new state-of-the-art store at the Town Center at the time that DSMU ran out of funds. Although Target had independent construction financing, it would not go forward with its store without guarantees from DSMU that the necessary public infrastructure (roads, sidewalks, lighting) would be paid for and in place. DSMU was unable to provide those guarantees so Target was considering stopping construction for several years. Through the intervention of the City Manager and City Attorney, an agreement was reached with DSMU, Target and the Agency that redirected funds due DSMU for environmental reimbursement to completion of the required work for Target, resulting in Target's on-time completion and successful opening and operation in the Town Center.

The Receiver, since being appointed by the Court, has authorized approximately \$9 million in expenditures to protect and improve the Project, has resolved liens against the property, and has worked cooperatively with the Agency and City to address concerns about the Project and to start to locate tenants for the Project.

The Receiver has stated that in order to move the project forward and create opportunity to attract a qualified developer and recommence the Project, the modifications to the ARDDOPA and its Related Documents set forth in the Modification Agreement are critical. Substantial additional investment will be necessary and the modifications to the ARDDOPA are consistent with the overall Project goals, but reflect the changed lending and retail markets since 2007. To this end, the Agency's negotiating team of the City Manager and City Attorney have been meeting with the Receiver and its consultants for several months and reporting to the Agency Board (City Council) for direction and authorization. The Agency has obtained independent consultants' advice confirming the need to modify the ARDDOPA to obtain additional investment.

The Agency's representatives and the Receiver have reached a negotiated agreement on modifications to the ARDDOPA that should enable the restarting and completion of the Project and is consistent with the Agency's overall goals. The Receiver has agreed to the terms in the 2010 Modification Agreement, and it is before the Agency for approval. If approved, the terms and modifications in the 2010 Modification Agreement will be binding on both the Agency and the Receiver.

The major points in the 2010 Modification Agreement (Attachment A) are as follows:

- Interim Improvements to Project completed by June, 2010.
- The Minimum Project is increased to approximately 372,000 square feet of new retail space³, 198 residential units, and approximately 273,000 square feet of new office and a theatre is added to the Minimum Project. It also includes required public improvements, Redwood Square, and the slurry coating and restriping of the current surface lot on Block 6.
- The restart and construction schedule for the Project is based upon the consideration that financing and leasing are prerequisites to successful completion, and that the developer has the obligation to make commercially reasonable efforts to obtain them.
- Retail and Redwood Square will recommence upon executed leases for 75% of retail square footage and approved construction financing. The developer will diligently undertake efforts to lease the theatre by October 31, 2010, and will start the approval and construction process immediately thereafter.⁴ Residential will recommence to be timed with grand opening of retail and approved construction financing. Office shall recommence upon executed leases for 50% of office square footage for each building and approved construction financing. Developer is required to provide quarterly reports on status of financing and leasing efforts to Agency Director.
- After construction recommences, buildings must be completed by end of established construction timetable for each building.
- A one-time penalty of \$5 million dollars for failure to complete buildings by end of construction schedule.
- Block 5 to include theatre as part of Minimum Project. Remainder of the Project completed at discretion of Developer.
- Developer must demonstrate approved construction financing for remainder of each building before recommencing construction.
- Transfer of Project permitted due to foreclosure of security interest, or to transferee developer meeting experience, financial and business reputation standards. Developer to provide initial evidence and Agency

³ subject to flexible uses of retail in office buildings A&C

⁴ Unless Developer can demonstrate that there is no viable sale or lease arrangement possible for theatre at that time.

to review, and may object using commercially reasonable discretion. Disputes resolved by expedited arbitration.

- Tax increment tied to completion and retail leasing of 150,000 square feet of new retail. Interim tax increment is payable at time of completion of theatre if construction schedule met, to provide incentive for accelerated theatre completion.
- Existing defaults at effective date of Modification Agreement waived. Any future defaults subject to cure period and remedies per ARDDOPA. Agency has remedy to terminate Agreement or exercise purchase option, with exception of purchase option if office or theatre purchased by lessee.
- First Amendment allowing rental units cancelled and all residential units to be for-sale.
- Agency to allow flexibility in the timing or phasing for construction of the Below Market Rate housing requirements, as permitted by the City's Affordable Housing Ordinance.
- Either party may terminate Agreement at end of 2015 if Minimum Project not completed. Parties agree to negotiate in good faith if failure to complete is due to failure of economy to recover prior to 2015.
- Environmental remediation costs from date of Receiver's appointment allocated 50-50 between Agency and Developer.

It is important to view these 2010 modifications in a global context, as both the Agency and Receiver agreed to modifications of their respective initial positions in the interest of restarting the Town Center Project as soon as possible and continuing a working partnership that is important to the ultimate success of the Project.

In accordance with Section 33433 of the California Health and Safety Code, the Agency was required to prepare a report to inform the public about the terms of the land transfers proposed as part of the redevelopment agreement. The Agency prepared the required 33433 Report at the time of the proposed land transfer when the DDOPA was adopted in 2004. The land transfers described in the 33433 Report have closed, and no additional land transfers between the Agency and Developer will take place as part of the Modification Agreement.

EXISTING POLICY

Goal 1 Meet the Agency's existing financial and administrative obligations.

- Objective 1.1 Make all current debt service payments on Tax Allocation Bonds.
- Objective 1.2 Make all reimbursements to the City of current year City payments on the Town Center parking garage COPs, and continue to reduce the balance of the 1977 City Loan.
- Objective 1.3 Adequately and timely perform all reporting, accounting, and administrative functions imposed by the CRL and prudent governmental practice including accurate accounting of the housing fund deficit and deficit reduction plan.

Goal 2 Establish the downtown as the cultural, retail, financial and entertainment center of the community, complemented by employment, housing and transit opportunities.

- Objective 2.1 Establish a downtown with Class A office buildings and residential uses around a vibrant retail district with easy parking and public transportation types.
- Objective 2.2 Continue public/private partnerships in the development of office, retail, entertainment, housing, and open space facilities.
- Objective 2.3 Create a unique shopping, dining, entertainment experience in the downtown, combining new restaurants with small shops, major retail stores and theatre with easy, available parking and strong pedestrian connections to other parts of the downtown.
- Objective 2.4 Continue to encourage and nurture private investment in commercial, retail, office and residential developments.
- Objective 2.5 Support special events in the downtown.
- Objective 2.6 Implement the Downtown Specific Plan objectives and support updates to the Specific Plan that reflect the changing economic opportunities.

Goal 3 Implement specific actions such as the provision of public improvements in an attractive and cohesive physical form, which clearly identifies Sunnyvale's downtown.

- Objective 3.1 Complete the priority improvements in phases to the downtown civic plaza.
- Objective 3.2 Facilitate the redevelopment of the Town Center to provide for an open-air, pedestrian-oriented, retail, office, entertainment and residential development.
- Objective 3.3 Complete the priority streetscape projects to facilitate an attractive pedestrian environment and to promote development on adjacent parcels.
- Objective 3.4 Support the redevelopment of the Town and Country site to provide for a retail and residential development with strong pedestrian connections to other parts of the downtown.

Goal 4 Development and implementation of an overall parking strategy that meets the needs of retail, office, housing and visitor demand.

- Objective 4.1 Support an overall short-term and long-term parking strategy for the downtown that encourages transit use, addresses commuter parking and optimizes parking use based on office, retail, and entertainment peaks.
- Objective 4.2 Pursue funding opportunities for additional public parking as needed to support downtown development.

Goal 5 Increase housing opportunities.

- Objective 5.1 Maintain the character and density of single-family neighborhoods surrounding the downtown.
- Objective 5.2 Encourage mixed housing consisting of market rate and affordable housing in appropriate locations including the proposed Town Center redevelopment, the Town and Country area, and transit corridors in or near the downtown.

DISCUSSION

Agency Business Objectives Achieved in the ARDDOPA

The proposed business deal in the ARDDOPA with the changes in the 2010 Modification Agreement continues to achieve the objectives of the Agency. Paramount among these is the minimization of risk to the Agency and the City. Under this agreement, the Agency and the City will borrow no money (no new debt), will construct no streets, parking facilities or other infrastructure, and will assume no additional responsibility for infrastructure maintenance, repair or replacement. The developer assumes:

- Construction cost risk
Because the developer is designing and constructing all improvements, including all public streets and public parking structures, the developer will be responsible for cost overruns.
- Financing risk
Because the developer is financing the construction of all of the improvements, the developer assumes the risk that interest rates and other borrowing terms will become less desirable in the future.
- Performance risk
The amount of secured property tax increment generated by the project is dependent upon the developer's performance in building a center of high value and maintaining that value through proper leasing and operation. Because the annual payments to the developer are based only on the amount of secured tax increment which the project actually generates each year (i.e., the Agency does not guarantee the developer any specific amount), the risk for performance rests with the developer.
- Responsibility for maintenance, repair, and replacement
The agreement places responsibility for maintenance, repair and replacement of the parking facilities and of all of the public streets, sidewalks and street lights upon the developer.

All of the sales tax revenue generated by the development will go to the General Fund. This represents new General Fund revenue for the City of approximately \$1 million per year when the Minimum Project is completed.

The ARDDOPA and 2010 Modification Agreement impose one major financial responsibility upon the Agency and the City: to return to the developer a major portion of the secured property tax increment that the project generates through FY 2025/2026. In 2004, it was estimated that the project would result in a \$4.0 million plus increase in the tax increment received by the Agency each year. The City pledged to return up to \$4,050,000 of the increment received each year to the developer, plus 50% of any tax increment income over that amount, in return for the developer's assumption of all financial responsibility to construct and replace public streets and public parking, much of which would be placed underground at the City's request at

considerable increased cost. In light of the increased cost of construction since 2004, which resulted in a higher assessed value of the project, the 2007 estimate of annual tax increment generated by development of the project was \$4.7 million. To maintain the economic feasibility of the project, the ARDDOPA allowed up to \$4.5 million of the increment received each year to be returned to the developer, resulting in a 2007 present value of \$43 million through 2026. The estimated 2007 present value of the Agency's share was \$1.7 million.⁵

Due to the 2008 economic crisis, and the new timeline for completing the Project, the tax increment projections have changed. The current present value of tax increment is in the range of \$12 to \$16 million⁶ depending upon the timing of completion of the Minimum Project and the Assessor's valuation. Annual payments are not projected to reach the \$4.5 million cap in any year. The current projection is significantly less than the 2004 estimate because the assessed value of the Project is expected to be reduced to reflect the pending assessment appeal, foreclosure on the property, and current economic conditions. Due to the new timeline, the time period during which the Project will be receiving tax increment is also shorter. In addition, pass through payments will increase based upon revised timing relative to the expected triggering of RDA pass through requirements.

Alternative to Approval of 2010 Modification Agreement to ARDDOPA and Related Documents:

If the Agency does not approve the 2010 Modification Agreement, the Project most likely will remain in ongoing default status with a developer (DSMU) who is clearly unable to fund the completion of the Project. The Receiver has stated that the ability to restart the Project with a qualified developer depends on resolution of the defaults and negotiation of modifications that reflect current economic and construction lending realities.

The Agency would have the option, after notice and opportunity to cure, to terminate the ARDDOPA. This option would most likely result in preventing or delaying any restarting of the Project for 3-5 years or more and tie the Agency up in litigation over the status of the partially completed Project.

The Agency could also exercise its right to purchase the Project under the ARDDOPA after notice and opportunity to cure. However, the decrease in commercial property values and the requirement that the \$108 million secured lien be paid off as a condition of purchase would most likely result in the Agency purchasing the property for more than its current value and incurring

⁵ It should be noted that the City also anticipates receiving or has received, as a result of the increased cost and complexity of the project, development impact fees, permit fees and other charges.

⁶ Lower end of the range based upon completion of the Minimum Project in 2015, upper end of the range based upon completion of the Minimum Project in 2012. In addition to the Minimum Project, completion of 100,000 square feet of retail and 94 residential units is assumed.

immediate carrying costs for security, insurance, maintenance and management.

FISCAL IMPACT

Approval by the Agency of the 2010 Modification Agreement to the Amended and Restated Disposition and Development and Owner Participation Agreement requires no expenditure of funds by the City of Sunnyvale General Fund. The Redevelopment Agency will incur the financial obligation of the transfer to the developer of project-generated secured property tax increment between the base year of FY 2003-2004 and FY 2025/2026, up to a cumulative maximum of \$4.5 million per year (if and when reached) and 50% of tax increment above \$4.5 million with the Agency receiving the other 50%. These funds do not exist today, and will become available only when a project is developed and the assessed value increases. These funds will go to the Redevelopment Agency and can be used only to support the Central Core Redevelopment Project.

The completed Minimum Project is estimated to generate \$1 million per year in new sales tax for the City's General Fund. The Developer has also paid, and will pay any balance remaining, one-time construction taxes, permit fees, utility connection fees, impact fees and other charges to the City.

The Project will result in no net increase in infrastructure cost to the City. The developer is required, through the Conditions of Approval of the Special Development Permit, to construct at its cost public streets and sidewalks within the Project, and to improve all affected intersections adjacent to the Project. Sidewalk improvements have been or will be made along Mathilda, Washington, Sunnyvale and Iowa, including enhanced paving, new streetlights, benches, and street trees with ornamental grates. The developer will also be required to repair and replace all streets, utilities and sidewalks within the boundaries of its project.

With regard to ongoing service costs to the City, staff estimates that there will be minimal increases in demand for general City services. The City's utility rates for water, sewer, and refuse will cover all ongoing costs for these services on a full cost recovery basis.

Environmental cleanup issues will require continued funding. The renegotiation of environmental costs from the current tiered 85% Agency share to a permanent 50% share will significantly lower the Agency's potential share of environmental costs and provide for more equitable environmental cost sharing.

ENVIRONMENTAL REVIEW

A Mitigated Negative Declarative (MND) was prepared for the Town Center Mall Redevelopment Project, tiered off the 2003 Final EIR for the Downtown

Improvement Program Update. The MND evaluated site specific environmental impacts of the Special Development Permit and the Disposition and Development and Owner Participation Agreement that were not evaluated in the EIR. The City Council adopted the MND for Fourth Quarter site plan and DDOPA on August 17, 2004. Since the Modification Agreement to the ARDDOPA has substantially the same environmental impacts as the prior plans, will not increase the severity of previously identified impacts, does not demonstrate any substantial changes in circumstances, nor is there new information which would alter the prior analysis, no additional environmental review is required.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Approve Resolution authorizing the Agency Executive to execute the 2010 Modification Agreement and to conform the Amended and Restated Disposition and Development and Owner Participation Agreement and Related Documents.
2. Approve the Resolution authorizing the City Manager to execute the 2010 Modification Agreement and to conform the Amended and Restated Disposition and Development and Owner Participation Agreement and Related Documents.
3. Approve with changes, or do not approve, the Resolutions authorizing the Agency Executive and City Manager to execute the 2010 Modification Agreement and to conform the Amended and Restated Disposition and Development and Owner Participation Agreement and Related Documents.

RECOMMENDATION

Staff recommends Alternative Nos. 1 and 2, approve Resolutions (Attachments B and C) authorizing the Agency Executive and City Manager to execute the 2010 Modification Agreement and to conform the Amended and Restated Disposition and Development and Owner Participation Agreement and Related Documents.

The Council found on August 17, 2004, that the project and the DDOPA were consistent with the goals and objectives of the Implementation Plan for the

Sunnyvale Core Redevelopment Project, as set forth in the Existing Policy section of this report, and made the same findings for the ARDDOPA on February 6, 2007. Staff finds that the Project and 2010 Modification Agreement to the ARDDOPA continue to be consistent with these goals and objectives

Staff also concludes that upon completion of the Minimum Project the development plan reflected in the Modification Agreement will achieve the vision of the 2003 Downtown Specific Plan: to create "an enhanced, traditional downtown serving the community with a variety of destinations in a pedestrian-friendly environment." The isolation of an interior-oriented mall is replaced by an open-air project on public streets which recreate much of the original street grid, thereby integrating the new development with the historic downtown. This redevelopment should have the positive spin-off effect of stimulating substantial redevelopment and property improvements elsewhere in Downtown. The developer has made all of the housing units for-sale, placed approximately 20 percent of the parking underground and agreed to construct Redwood Square as part of the project. The developer has also agreed to take all responsibility for construction, maintenance and replacement of public streets, utilities and parking structures.

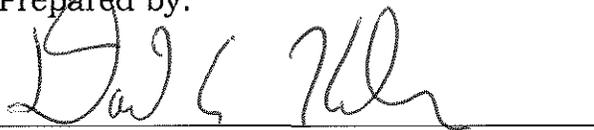
The developer's obligation to construct the public facilities and to complete the rebuilding of a substantial portion of Downtown Sunnyvale, pursuant to the proposed 2010 Modification Agreement, will be financially assisted by payments of Project-generated tax increment. These tax increment funds will be available only when and as the Project is developed. Notwithstanding these limitations and reductions, the Agency engaged real estate and redevelopment consultant Keyser-Marston Associates to evaluate independently if the use of tax increment is warranted and, if so, why. Their independent analysis concluded that the use of tax increment is warranted and their separate report to the Agency will indicate the basis for that conclusion.

The important provisions in the ARDDOPA approved by the Council in 2007 are maintained in the Modification Agreement to the ARDDOPA. The Agency is not required to acquire property or to assume additional debt, and is not guaranteeing to the developer any minimum annual payment. The City is not required to commit monies from the General Fund. The financial, construction, and performance risk is assumed by the developer. When completed, the development will create market and below market rate housing units and generate tax increment funds to be set aside, in accordance with State law, for construction of affordable housing. There is no cost to the City or Agency for construction, maintenance and repair of new infrastructure and parking facilities within the Project boundaries. Cost to the City for infrastructure improvements surrounding the property are less than \$1.0 million. In addition, the City's General Fund will benefit from an estimated \$1 million per year in new sales tax revenue.

The Town Center Project has had recent challenges because of the major changes to lending and retail from 2007 to 2010. Nonetheless, substantial progress has been made on the Project since 2007, and this 2010 Modification Agreement should allow the completion of the Minimum Project and public improvements.

Staff recommends that the Agency adopt Alternatives 1 and 2.

Prepared by:

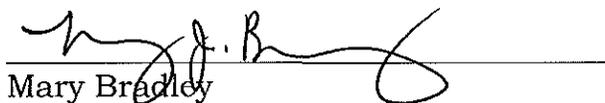


David Kahn
General Counsel, Redevelopment Agency

Reviewed by:

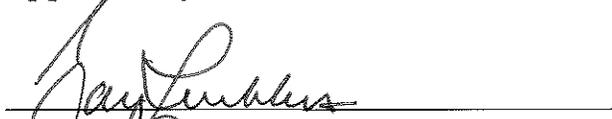


Hanson Hom,
Secretary, Redevelopment Agency



Mary Bradley
Treasurer, Redevelopment Agency

Approved by:



Gary Luebbers
Executive Director, Redevelopment Agency

Attachments:

- A - 2010 Modification Agreement
- B - Resolution of Agency Board approving the 2010 Modification Agreement and authorizing the Executive Director to sign the Agreement.
- C - Resolution of City Council approving the 2010 Modification Agreement and authorizing the Executive Director to sign the Agreement

**2010 MODIFICATION AGREEMENT TO THE AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT OWNER PARTICIPATION AGREEMENT
AND RELATED DOCUMENTS**

This 2010 Modification Agreement is made on or as of this ____ day of May, 2010, by and between the Sunnyvale Redevelopment Agency ("Agency"), a public body, corporate and politic, and L. Gerald Hunt, as Court-Appointed Receiver in Wachovia Bank v. Downtown Sunnyvale Residential, et al., Santa Clara Superior Court Case No. 109-CV-153447, ("Receiver"), for the herein described property who is fully authorized to act as the Developer, (Downtown Sunnyvale Mixed Use, LLC ("DSMU")) with respect to the Sunnyvale Town Center Project.

A. On or about February 6, 2007, the Agency and DSMU, as Developer, entered into that certain Amended and Restated Disposition and Development and Owner Participation Agreement ("ARDDOPA") for the purpose of providing for the redevelopment of the area referred to as the Sunnyvale Town Center ("STC") for retail, residential and office uses and the demolition of certain existing improvements and construction of new public and private improvements all in accordance with the Redevelopment Plan for the Downtown Sunnyvale Redevelopment Project.

B. The conveyances contemplated under the ARDDOPA between the Agency, DSMU, Target and Macy's have successfully closed, all demolition work has been completed in advance of applicable ARDDOPA Milestones, and the STC has been re-subdivided in accordance with final Tract Map No. 9925 recorded on October 1, 2007, Tract Map No. 10007 recorded October 29, 2008, and that certain Lot Line Adjustment recorded October 30, 2008.

C. The initial activities and General Plan amendments contemplated by the ARDDOPA and the predicates to the commencement of construction, and other requirements and conditions of the ARDDOPA have occurred or, as set forth below, been modified.

D. DSMU timely commenced some or all of the Project, but thereafter was unable to meet obligations under the ARDDOPA and First Amendment thereto (together "ARDDOPA") and Related Documents and was subject to the default provisions in the ARDDOPA. Foreclosure procedures commenced and on or about October 5, 2009, Wachovia Bank vs. Downtown Sunnyvale Mixed Use, LLC et al., Santa Clara Superior Court Case No. 109-CV-153447, the Receiver was appointed by the Superior Court of the State of California and the Order Appointing the Receiver was issued ("Order"). Pursuant to the Order, the Receiver has the exclusive authority to do any and all things necessary and appropriate relating to STC and to negotiate with the Agency for and enter into modifications to the ARDDOPA and the Related Documents.

E. Portions of the STC are partially built out as contemplated under the ARDDOPA, but construction and improvements have not been completed. The Agency has determined the modifications contemplated by this Agreement will allow completion of the redevelopment of the STC and the implementation of the Redevelopment Plan and the elimination of the conditions of blight in the area governed by the Redevelopment Plan at the earliest possible date.

F. The Receiver has represented it is impracticable due to, among other things, massive changes in retail, commercial lending and real estate market conditions since the commencement of the Project, to proceed with the Project on the schedule and in the manner outlined in the ARDDOPA and Related Documents. The Agency has concluded that the following 2010 Modification Agreement is in the best interest of the Agency in implementing the Redevelopment Plan.

Therefore, the parties hereby agree to the following modifications and waivers as to the ARDDOPA and Related Documents.

1. Definitions. As used in this Agreement, all initially capitalized terms shall have the same meaning as in the ARDDOPA, except as otherwise defined herein.
 - a. "Buildings A, B, C" etc. mean the buildings and facilities so designated on Exhibit A-1.
 - b. "Completion/Complete" mean (except as otherwise defined in Section 3(e)) for Office uses completion of the core and shell; for Residential and Parking uses issuance of a certificate of occupancy; for Retail uses completion of the shell, excluding store fronts and tenant improvements.
 - c. "Interim Project Improvements" has the meaning set forth in Section 2(b).
 - d. "Minimum Project" has the meaning set forth in Section 2(a).
 - e. "Related Documents" means all documents necessary to implement the Project, including without limitation the OREA (aka the "New REA") (and the related Development Agreement), the Operation and Easement Agreement, Infrastructure Improvements Agreement, the Public Parking Ground Lease, the Public Parking Easement, Public Street and Utility Maintenance Agreement, Penney's Structure Agreement, Public Parking Maintenance Agreement, Integrated Project Agreement, City Approvals and amendments thereto and implementations thereof, Subdivision Agreement, Below Market Rate Developer Agreement – Ownership, Covenant for Easement and Amended and Restated Covenant for Easement, and the building permits.
 - f. "STC" means Sunnyvale Town Center as more particularly depicted on Exhibit A-2 hereto.
2. Modified Project Obligation.
 - a. The Developer obligation to commence and complete the Project is satisfied by commencing and completing the Minimum Project as same is described on Exhibit A and shown on Exhibit A-1. The Agency acknowledges that, except for retail space fronting McKinley Avenue, the space designated for retail use in Buildings A or C may be either relocated, satisfied by any use which activates the pedestrian experience, or used as office space.

- b. Developer has or will diligently complete the Interim Project Improvements described on Exhibit B and complete all such Interim Project Improvements by June 1, 2010.
- c. The remaining Project improvements described in the ARDDOPA and Related Documents shall continue to be vested during the term of the ARDDOPA. Construction of the remaining Project improvements (which are contemplated to occur after completion of the Minimum Project) shall be in Developer's sole discretion, but in all events be consistent with the City Approvals, as same are modified hereby.
- d. All residential units in the Project shall be for-sale units.

3. Schedule.

- a. Developer shall commence the Minimum Project at the time and in the manner set forth on Exhibit C. Once commenced, all construction shall be diligently completed pursuant to the schedule set forth in Exhibit D. The Agency and City, as applicable, will extend the City Approvals and building permits until construction commences and thereafter subject to construction pursuant to the construction schedule.
- b. Developer shall exercise continuing commercially reasonable efforts to facilitate the completion and opening of the Minimum Project. In order to allow the Agency to enforce this obligation, Developer shall provide to the Agency reports concerning the status of Developer's process with respect to leasing efforts, financing commitments and construction progress, and including in such report a copy of the project merchandising plan. Such reporting shall be provided quarterly to the Agency Director. Agency agrees to keep proprietary financial, leasing or similar information designated as such confidential.
- c. If Developer fails to Complete any Minimum Project retail building (or retail portion of an office or residential building) following re-commencement of construction on said building within the time period required for completion of said building pursuant to the schedule set forth in Exhibit D, Developer shall pay to the Agency a one-time payment of Five Million Dollars (\$5,000,000).
- d. As to the theater, upon execution of this 2010 Modification Agreement, Developer shall undertake diligent efforts to obtain a theater lease and operation commitment with a goal of executing such lease by October 31, 2010, and, if so executed, Developer will commence and complete theater construction in accordance with the schedule set forth on Exhibit D unless Developer demonstrates to the Agency's reasonable satisfaction that there is no economically viable lease, ground lease or sale transaction for the timely development of a theater (including, as applicable, that the existing theater lease cannot be modified). The Parties acknowledge that both desire to achieve commencement and completion of the theater building as soon as reasonably possible and, as such, will work together to advance the foregoing dates.

- e. The Minimum Project TIF Date upon which the Annual Payment commences is the date upon which the Completion (defined for of the purpose of this Section 3(e) only as completion of shell and execution of leases providing for tenant's construction of tenant improvements) of no less than One Hundred Fifty Thousand (150,000) square feet of the retail portion of the Minimum Project (excluding from such calculation the square footage of the theater building) shall have occurred. Notwithstanding the foregoing, on the date upon which Completion of the Interim Project Improvements and Completion of the theater has occurred (the "Interim TIF Payment Date"), Agency shall pay to Developer an amount equal to the Interim Project Tax Increment for the fiscal years between 2003-2004 and the fiscal year in which the Interim TIF Payment Date occurs provided the construction schedule in 3(d) is achieved (as such schedule may be extended where economic circumstances require the Interim TIF to achieve an economically viable lease and the earliest reasonably possible theater completion). Otherwise, payment of the Interim TIF shall occur at the same time as Completion of the Minimum TIF Project. Such Interim TIF Payment is subject to the result of any appeals of the property valuation pending or filed by DSMU or the Developer, and any reductions in tax increment to the Agency that result from the appeals shall result in a corresponding reduction in the Interim TIF Payment.
- f. No construction shall commence absent reasonable evidence of adequate financing, subject to Agency reasonable approval, to complete construction of the building in question and required related infrastructure, except as provided in Section 3(e) with respect to the theater.

4. Transferability.

- a. Permitted Transfers shall include (in addition to those currently provided for in the ARDDOPA):
 - (1) Any Transfer resulting from a foreclosure of a Security Financing Interest (or deed in lieu of foreclosure).
 - (2) Any Transfer to a transferee that meets the following criteria as to the use(s) of the portion(s) of the Project proposed to be Transferred: (i) has the experience in and has completed major mixed-use commercial, retail and residential projects of similar size, scope and nature involving a mix of national, regional and local tenants (or applicable experience as to residential only if only a residential portion of the Project is proposed to be transferred), (ii) has adequate financial capacity, including the references of at least two lending institutions with substantial lending experience in California mixed use real estate, to timely commence and complete the construction thereof, (iii) possesses a good business character and reputation, and (iv) has prior development projects and an operating presence in California. Developer shall provide reasonable evidence to the Agency demonstrating the proposed transferee's satisfaction of the foregoing criteria. The Agency shall acknowledge or challenge the proposed transferee's satisfaction of the foregoing criteria within 20

business days after Developer's submittal. During such 20-day review period, Developer and Agency shall respond to inquiries of the other and exchange information as may be requested. If Agency, exercising commercially reasonable discretion, advises Developer that the proposed transferee does not satisfy any of the stated criteria, the Agency shall provide detailed evidence of the same. If Agency fails to respond to Developer's submittal within the 20-day period, the Transfer shall be deemed permitted. Developer shall respond to Agency's evidence of the proposed transferee's failure to satisfy the criteria within 10 business days after receipt of same. If, following submission of Developer's response, the Agency continues to dispute the transferee's satisfaction of the stated criteria and so notifies Developer within 5 business days after receipt of Developer's response, such dispute shall be resolved by expedited arbitration.

- (3) Any Transfer of a portion of the Project for which a Certificate of Occupancy has been issued. (It is contemplated that a Certificate of Completion for each building will be issued as such building is completed.)
 - (4) Any Transfer of less than a fifty percent (50%) ownership interest in Developer.
 - (5) Sales of residential condominium units after issuance of a Certificate of Occupancy for the residential building.
- b. Except as provided below, all other Transfers shall be subject to the Agency's approval, which shall not be unreasonably withheld, conditioned or delayed.
 - c. Except as to Block 6, there are no restrictions on a Transfer of any portion of the Project other than the Minimum Project, unless the Agency, exercising commercially reasonable discretion, shows that the proposed transferee would have a material adverse impact on the Project. Any portions of the Project shall be transferred subject to applicable existing entitlements.
 - d. Provided the Interim Project Improvements have been completed and the Transfer is otherwise permitted, the transferor shall be released from obligations related to the portion(s) of the Project proposed to be Transferred upon such Transfer provided that all unfulfilled or continuing obligations related thereto are assumed by the transferee.
 - e. Notwithstanding the foregoing, the obligations relating to the Public Parking Ground Lease, Public Parking Maintenance Agreement or Public Improvements may only be Transferred with a Transfer of all or substantially all of the retail.
 - f. Add the following sentence at the end of ARDDOPA Section 9.05:
"This Section shall not apply to a Permitted Transferee of property containing an office or theatre use (and including any retail therein) where a right of first refusal, right of first offer or similar right to acquire or lease is in place."

5. Default. All existing events of and defaults of either party occurring prior to the execution of this 2010 Modification Agreement are hereby waived.
6. Residential. Parties agree to negotiate in good faith to seek to achieve modifications to the timing of the obligation to provide below market units if feasible and practicable, subject to the City's affordable housing ordinance.
7. Waivers/Termination.
 - a. Except as required under this 2010 Modification Agreement, the Developer and Agency obligations under the ARDDOPA and Related Documents have been satisfied, modified or waived.
 - b. In addition to any remedies for default available under the Agreement, if the Minimum Project has not been completed by December 31, 2015, then either party may terminate the ARDDOPA as to the applicable remaining Project entitlements and Related Documents (without prejudice to any claims arising prior to such termination); provided, however, if Developer has been proceeding in good faith to obtain financing and leasing commitments contemplated by Exhibit C and failure to complete the Minimum Project is due to financial market conditions beyond the control of the Developer, then the parties shall negotiate in good faith to seek to reach agreement on extension of the termination date to 2020.
8. Infrastructure. Agency and Developer agree the Revised Developer Work and the Contingent Developer Work (as those terms are defined in the Infrastructure Improvements Agreement (the "IIA")) is complete except for minor punch list items, warranty items and the improvements within the area designated 'L' as shown on and described in Exhibit A-2 to the IIA. The parties agree to negotiate in good faith to attempt to achieve reasonable modifications to the scope of the remaining infrastructure (including identification of what infrastructure is necessary for each building or segment of the Project) and fees to reduce infrastructure cost. Agency and Developer also agree that all public infrastructure (including the Public Improvements) required in connection with Buildings A and C has been completed and all conditions to the City Approvals applicable to Buildings A and C have been satisfied or waived.
9. Site Clean-up/Cost Allocations. All Environmental Costs incurred after the appointment of the Receiver on October 5, 2009, shall be allocated on a 50-50 basis between Agency and Developer and otherwise in accordance with ARDDOPA Section 4.09.
10. Arbitration. Any dispute not resolved within 30 days shall be submitted to expedited arbitration except that the existing arbitration provisions in Sections 4.09 and 5.11 in the ARDDOPA shall continue to apply.
11. Miscellaneous.
 - a. The foregoing is subject to applicable third-party consents if and only if expressly required as a predicate to the parties entering into this 2010 Modification

Agreement under the Related Documents. The City of Sunnyvale has concurrently herewith executed Exhibit E hereto.

- b. All obligations (including the time periods related thereto) shall be subject to force majeure events.
 - c. The Agency and Developer shall make additional reasonable modifications to this 2010 Modification Agreement to the extent required by tenants in connection with the leasing of the project provided such modifications are consistent with the appearance and operation of the Project in a first-class manner.
 - d. Except as modified hereby the provisions of the ARDDOPA and Related Documents continue in full force and effect.
 - e. Certificate of Completion for Buildings A or C shall be issued upon completion of construction thereof.
12. Binding Agreement. It is the intention of the parties that this 2010 Modification Agreement be fully binding as to all obligations between them referred to in this 2010 Modification Agreement relating to STC. The Agency and Receiver will enter into such conforming modifications to the ARDDOPA and other conforming modifications or consents to the Related Documents as necessary to implement this Agreement ("Implementing Documents").
13. Notices. Notices shall be by the method and manner set forth in ARDDOPA Section 12.01 except shall be sent to the following:

If to Agency: Sunnyvale Redevelopment Agency
456 W. Olive Avenue
Sunnyvale, California 94088
Attn: Executive Director
Tel: 408.730.7480
Fax: 408.730.7699

If to Developer, Receiver: L. Gerald Hunt, Receiver
c/o Quattro Realty Group, LLC
390 Railroad Avenue, Suite 200
Danville, CA 94526
Tel: 925.314.2712
Fax: 925.314.2701

14. Memorandum of Agreement. The parties will record an appropriate memorandum of this 2010 Modification Agreement.

WHEREFORE, the parties have executed the Agreement on the date first noted above.

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Agency Counsel

SUNNYVALE REDEVELOPMENT AGENCY,
a public body, corporate and politic

By: Gary Leubbers
Its: Executive Director

RECEIVER

L. Gerald Hunt as Court-Appointed Receiver in
Wachovia Bank v. Downtown Sunnyvale
Residential, et al, Santa Clara Superior Court Case
No. 109-CV-153447

EXHIBIT A

MINIMUM PROJECT

Private Improvements¹ (all square footages are approximate and are located in the buildings below as generally depicted on the Site Plan attached as Exhibit A-1)

Retail²

371,800 square feet of new buildings/space for retail use		
Building A ²	23,600 SF	in office building A
Building C ²	17,000 SF	in office building C
Building D	12,100 SF	in residential building D
Building E	37,700 SF	in residential building E
Building F	32,000 SF	in residential building F
Building N	38,100 SF	Target block
Building H	14,000 SF	Floor 1
	13,800 SF	Floor 2
Building I	19,500 SF	Floor 1
	10,500 SF	Floor 2
Building J	32,800 SF	Floor 1
	27,300 SF	Floor 2
Building L	20,700 SF	Floor 1
	14,000 SF	Floor 2
Building T ³	4,700 SF	
	54,000 SF	Theater at grade

Residential

198 residential units
50 units Building D
74 units Building E
74 units Building F

Office²

273,000 SF for the exterior building shell for office use
133,000 SF Office building A
140,000 SF Office building C

Public Improvements⁴

Parking (Approximate)

960 Parking spaces in Parking Facility A

1,688 Parking spaces in Parking Facility B

Other Improvements

Taaffe Street and McKinley Avenue

Murphy Street between Washington and McKinley

Redwood Square (Private Improvement)

All public utilities and other public improvement under and west of Taaffe Street

Slurry coating and restriping of surface parking lot, in its current configuration, on Block 6 of the STC.

¹ The foregoing square footages are established by the most current versions of documents listed below for each building:

- Bldg A: Plans by Kenneth Rodrigues & Partners titled Sunnyvale Town Center Block 2 Building A dated 9-16-08 Bulletin 3R.
- Bldg C: Plans by Kenneth Rodrigues & Partners titled Sunnyvale Town Center Block 2 Building C dated 9-16-08 Bulletin 3R.
- Bldg D: Plans by KTG Y titled Sunnyvale Town Center Package D dated 9-30-08 Bulletin 8.
- Bldg E: Plans by KTG Y titled Sunnyvale Town Center Package E dated 6-19-07 Bulletin 6.
- Bldg F: Plans by KTG Y titled Sunnyvale Town Center Package F dated 9-30-08 Bulletin 8.
- Bldgs H, I, J & L: Plans by RTKL titled Sunnyvale Town Center Block 3 (Bldgs H/I/J/L) dated 9-22-08 1st Arch Bulletin.
- Bldg N: Condominium Plan for Lot 1 of Tract 10007, recorded October 30, 2008.
- Parking Facility A: Plans by Devcon & International Parking Design titled Sunnyvale Town Center Block 1 Parking Structure dated 9-17-08 Bulletin 6.
- Parking Facility B: Plans by Devcon & International Parking Design titled Sunnyvale Town Center Block 2 Parking Structure dated 9-17-08 Bulletin 6.

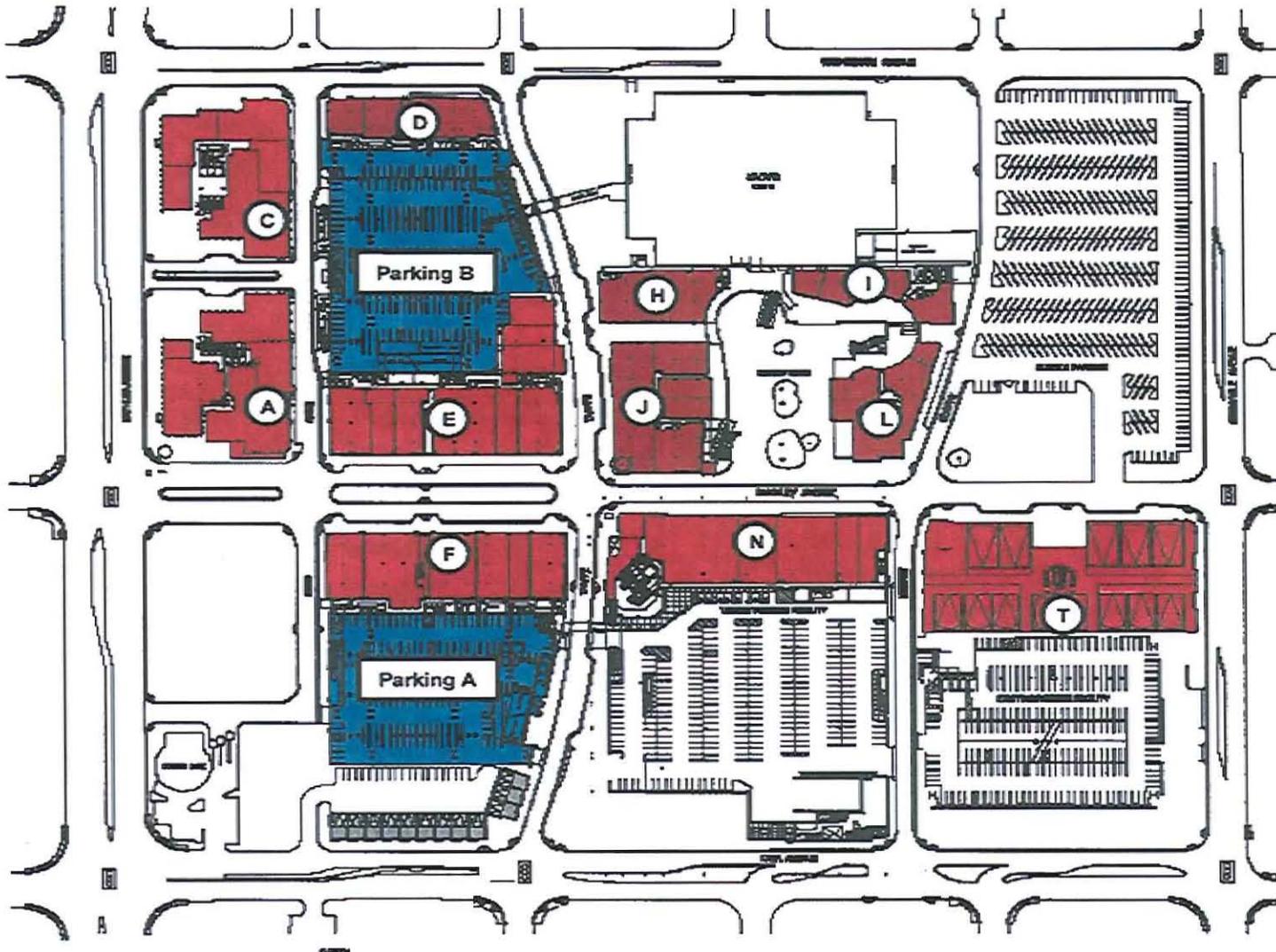
The parties acknowledge that the square footage of the uses constituting the Private Improvements vary between the ARDDOPA and some Related Documents, and as such, agree that the above square footage shall apply for the purposes of the Minimum Project as described in this Modification Agreement.

² Subject to modification pursuant to Section 2(a).

³ Exact square footage of theater building uses subject to modification pursuant to lease negotiations with theater operator.

⁴ Includes all subterranean parking under office and residential buildings.

EXHIBIT A-1 : MINIMUM PROJECT



Retail	Sq. Ft.
Building A	23,600
Building C	17,000
Building D	12,100
Building E	37,700
Building F	32,000
Building N	38,100
Building H	1st floor 14,000
	2nd floor 13,800
Building I	1st floor 19,500
	2nd floor 10,500
Building J	1st floor 32,800
	2nd floor 27,300
Building L	1st floor 20,700
	2nd floor 14,000
Building T	4,700
Theater	54,000
TOTAL	371,800

Residential	Units
Building D	50
Building E	74
Building F	74
TOTAL	198

Office	Sq. Ft.
Building A	133,000
Building C	140,000
TOTAL	273,000

Parking Provided	
Parking Facility A	960
Parking Facility B	1,688
TOTAL	2,648

Ex. A-1

EXHIBIT A-2: SUNNYVALE TOWN CENTER

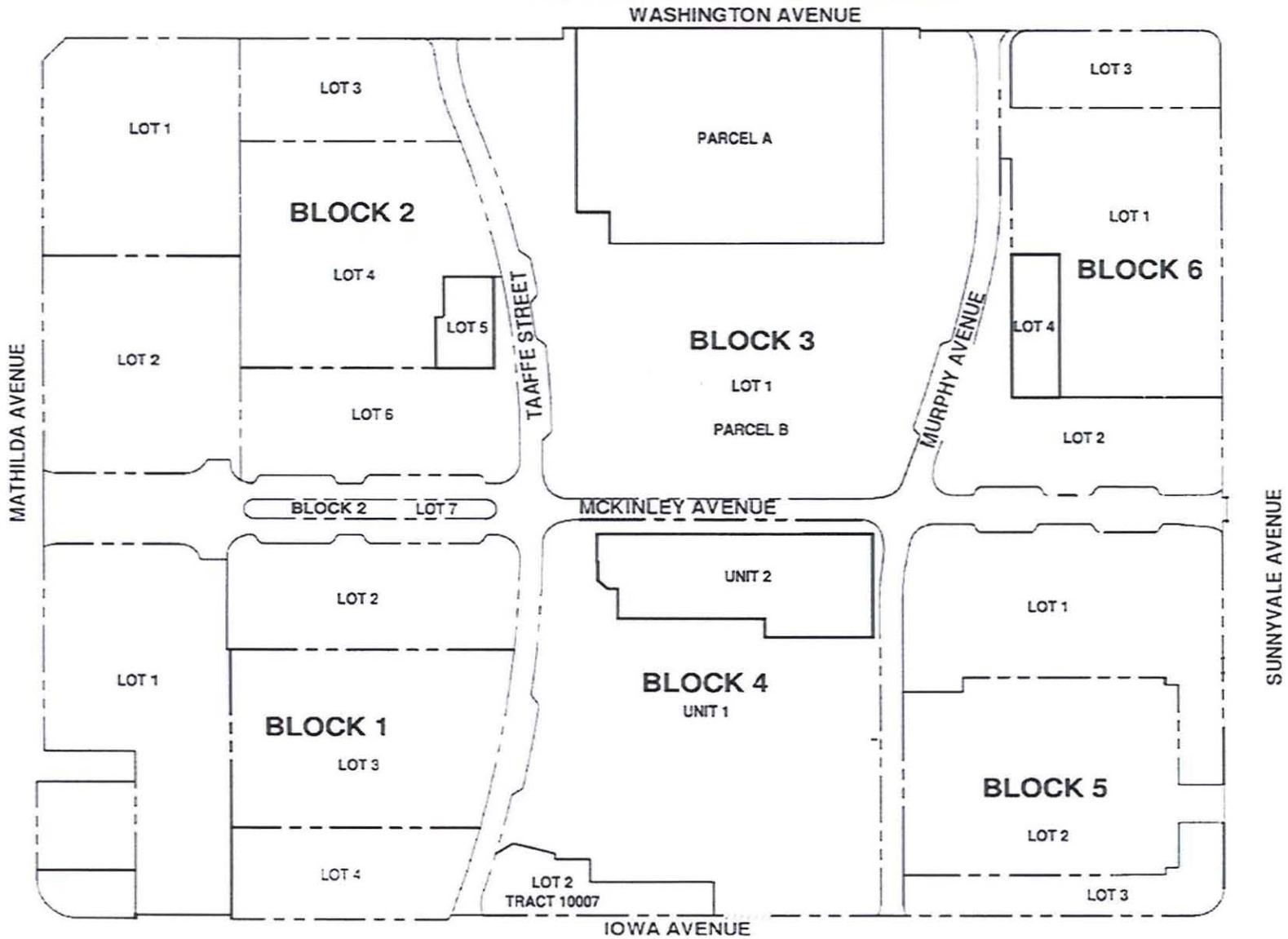


EXHIBIT B

INTERIM PROJECT IMPROVEMENTS

Retail

- See description below by building

Residential (including integrated retail)

Building D

- **Roof** - Repair roof per manufacturer's recommendations. Work required removal of the vertical roofing on the back side of the parapet walls and the contiguous horizontal roofing to 18" out from the parapet. After removal of the roofing materials the subsurface was inspected to verify it was free of moisture and any defects. New roofing was reinstalled per original specifications to maintain the warranty. The sheet metal cap and flashings to be provided for a complete roof system. A few locations at access doors or shaft penetrations will require temporary waterproofing.
- **Exterior Wall** - Shrink wrap the exterior wall, creating a temporary waterproof exterior enclosure for the wood framed multi-family component above the concrete podium first floor structure. Scaffolding is required to support the shrink wrap material and provide a means of attachment that would not damage the existing exterior walls.
- **Retail Level** - Leave the first floor concrete structure open to the elements, secured by the permanent wood construction fence.
- **Misc.** - Remove the man-lift, equipment, and debris upon completion.

Building E

- **Roof** - Repair roof per manufacturer's recommendations and as described for Building D.
- **Exterior Wall** - Complete (except for architectural adornments and upgraded materials) exterior enclosure by completing all balcony components, waterproofing, flashing systems, plaster finishes, and temporarily board up the portion of the wall where the man-lift is located (to be removed, and eventually reinstalled).
- **Retail Level** - Provide finish plaster, excluding glass storefronts and decorative stone tile veneer.
- **Misc.** - Remove the man-lift, scaffolding, equipment, and debris upon completion.

Building F

- **Roof** - Repair roof per manufacturer's recommendations and as described for Building D.
- **Exterior Wall** - Complete (except for architectural adornments and upgraded materials) exterior enclosure by completing all balcony components, waterproofing, flashing systems, plaster finishes, and temporarily board up the portion of the wall where the man-lift is located (to be removed, and eventually reinstalled).
- **Retail Level** - Provide finish plaster, excluding glass storefronts and decorative stone tile veneer.
- **Misc.** - Remove the man-lift, scaffolding, equipment, and debris upon completion.

Office

Building C

- **Roof** - Complete roof.
- **Exterior Wall** - Clean rust, seal panels, and caulk all joints to provide for a fully enclosed building from levels 2 to 5, excepting the lobby area and the ground floor retail.

- **Core Elements** – Board up and shrink wrap shaft openings on the roof. Install the electrical and mechanical services required to allow for the immediate build-out of one elevator that then could be used for vertical transportation during construction. This eliminates the requirement to re-install the manlift.
- **Misc.** - Remove the man-lift, secure roof openings, relocate or cover materials and equipment to protect as best as practical from the weather.

Building A

- **Roof** -Board up and cover the shaft openings as best as possible to minimize water intrusion. As the roof is not installed, openings and the concrete itself will allow water to enter the building. Action is being taken where practical to minimize the impact of the water.
- **Exterior Wall** –Clean, seal and caulk joints of precast panels to keep out as much weather as possible, trying to keep the current metal attachments from rusting further.
- **Core Elements** –Protect the shaft walls from the rain and water intrusion as best possible.
- **Misc.** - Remove the man-lift, relocate or cover materials and equipment to protect as best as practical from the weather.

Infrastructure

- Reimbursement of City in an amount not to exceed \$285,000 for improvements to be performed by City at Murphy Street and Washington Avenue intersection as detailed in March 18, 2010 letter from City Manager to the Receiver.

Other Interim Project Improvements (Completed)

- Interim Signage at interior perimeter roads
- Landscape Enhancement at Blocks T, F1, N1, G and G1

EXHIBIT C

MINIMUM PROJECT SCHEDULE

Retail: (Buildings N, H, I, J and L plus retail portions of A, D, E and F)

Projected Commencement Date: June 2011

The commencement of retail construction shall occur upon 1) executed leases for 75% of the retail square footage and 2) acceptable construction financing as required to complete the applicable portion of the retail project (including shell, tenant improvements, related onsite and offsite Public Improvements (including parking structures as required for occupancy of the related buildings), and Redwood Square as to Buildings H, I, J and L).

Retail-Theater: (Building T)

The commencement of construction shall occur as provided in Section 3(d).

Residential: (Buildings D, E and F)

Projected Commencement Date: October 2011

The commencement of construction on the first residential building shall be 1) timed such that its completion will coincide with the grand opening of the retail space and 2) conditioned upon acceptable financing to facilitate the completion and sale of the applicable buildings and related onsite and offsite Public Improvements (including parking structures as required for occupancy of the related buildings).

Office: (Buildings A and C)

Projected Building C Commencement Date: January 2011

Projected Building A Commencement Date: June 2011

The commencement of office construction shall be not later than the date upon which there are 1) executed leases for 50% of the office square footage as to the applicable office building and 2) acceptable construction financing as required to complete the applicable building (including core, shell, tenant improvements and related onsite and offsite Public Improvements (including parking structures as required for occupancy of the related buildings)).

"Commencement" for the purposes of this Exhibit C means beginning of construction pursuant to an executed construction contract for the applicable building.

EXHIBIT D

SCHEDULE

Once commenced, all construction shall be Completed in accordance with the following schedule:

Office

- Building C – 9 months to Complete
- Building A – 10 months to Complete

Retail

- Building D Retail – 8 months to Complete
- Building E Retail – 7 months to Complete
- Building F Retail – 7 months to Complete
- Building H, I, J, and L Retail – 9 months to Complete
- Theater – 14 months to Complete construction (8 months design/permit in advance of construction)

Residential

- Building D Condos – 11 months to Complete
- Building E Condo - 9 months to Complete
- Building F Condo – 9 months to Complete

Parking Structures

- Parking Facility B – 6 months to Complete
- Parking Facility A – 5 months to Complete

Other

- Redwood Square – 9 months to Complete.
For the purposes of Redwood Square, "Complete" means completion of improvements in accordance with the landscape and streetscape designs approved by the City on July 9, 2007 under Special Development Permit No. 2007-0516, as amended March 10, 2008 by Special Development Permit No. 2008-0097, sufficient to permit its utilization for its intended use.

EXHIBIT E

CONSENT OF THE CITY OF SUNNYVALE

The City of Sunnyvale hereby consents to and agrees to be bound by the 2010 Modification Agreement and to take such actions and to enter into such conforming modifications to Related Documents as necessary to implement the 2010 Modification Agreement.

CITY OF SUNNYVALE

By: _____
Gary Leubbers
City Manager

Date: May ____, 2010

RESOLUTION NO. _____ - 10 RDA**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AGREEMENTS ON BEHALF OF THE AGENCY IN CONNECTION WITH THE REDEVELOPMENT OF THE TOWN CENTER MALL, APPROVING THE 2010 MODIFICATION AGREEMENT AND CONFORMING CHANGES TO THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH SUNNYVALE TOWN CENTER, MAKING CERTAIN FINDINGS, AND AUTHORIZING THE EXECUTIVE DIRECTOR TO TAKE ACTIONS NECESSARY TO IMPLEMENT THE AUTHORIZED AGREEMENTS**

WHEREAS, on or about February 24, 2005, the Redevelopment Agency of the City of Sunnyvale ("Agency") entered into the original Disposition and Development and Owner Participation Agreement ("DDOPA") with Fourth Quarter Properties XLVII, LLC ("Developer") which provided for an exchange of properties between the Agency and Developer, for the construction of new retail, office and residential development on the site of the Town Center Mall ("Center Property" or "Center Project") and for construction of new public parking structures and street improvements on the Center Property; and

WHEREAS, on or about August 17, 2004 the Agency adopted Resolution No. 102-04 RDA approving the DDOPA; on or about February 6, 2007, the Agency adopted Resolution No. 114-07-RA approving the Amended and Restated Disposition and Development and Owner Participation Agreement ("ARDDOPA") with Downtown Sunnyvale Mixed Use, LLC ("DSMU"); on or about April 10, 2007, adopted Resolution No. 118-07-RA approving the First Modification to the ARDDOPA; on or about November 18, 2007, approved the First Amendment to the ARDDOPA; and

WHEREAS, the Agency and City Council fully complied with California Community Redevelopment Law prior to approving those agreements, as set forth in the resolutions referenced above, including holding a noticed public hearing pursuant to Health and Safety Code Section 33433 in connection with consideration of the DDOPA; and

WHEREAS, the Agency Board has independently reviewed and considered the Final Downtown Improvement Program Environmental Impact Report, the tiered Mitigated Negative Declaration and Addenda; has determined that because the plans under the 2010 Modification Agreement have substantially the same environmental impacts, will not increase the severity of previously identified impacts, there are no substantial changes in circumstances, and there is no new information which would alter the prior analysis of other factors requiring additional review under CEQA and accordingly no additional environmental analysis is required for the 2010 Modification Agreement; and

WHEREAS, DSMU completed Milestones 1, 2, and 3 in the ARDDOPA for demolition, excavation and construction of structural steel for the Minimum Project and other buildings, and made substantial progress toward completion of the Project through February, 2009; and

WHEREAS, in Fall 2008, there was a global economic crisis that led to a precipitous decline in the stock market, commercial property values, and retail spending; DSMU was unable to obtain

equity or construction financing to allow completion of the Project pursuant to the ARDDOPA, and the lenders have initiated foreclosure action on the Town Center property owned by DSMU and a Receiver has been appointed by the Superior Court with the authority to negotiate modifications to the ARDDOPA and all related documents; and

WHEREAS, the Agency has considered the 2010 Modification Agreement to the ARDDOPA, and the 2010 Modification Agreement is generally consistent with the entitlements and Project goals approved in the ARDDOPA with some negotiated changes to the Center Project that improve the Center Project and provide the ability to finance and complete the Center Project without materially changing the Agency's or the City's financial commitments to the Center Project; and

WHEREAS, the Agency has considered the evidence before it in connection with this matter including the staff report and testimony to the Agency.

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE THAT:

1. The Agency findings made on August 17, 2004, in Resolution No. 102-04 in support of the DDOPA, and in Resolutions 114-01-RA and 118-07-RA are incorporated and affirmed in support of the 2010 Modification Agreement to the ARDDOPA.

2. The Executive Director of the Agency, or his designee, is authorized to execute, on behalf of the Agency, the 2010 Modification Agreement to the ARDDOPA and any related documents, and to conform the ARDDOPA and Related Documents, and to such other documents and agreements necessary to implement the 2010 Modification Agreement and to conform the ARDDOPA and related documents as the Executive Director and the City Attorney conclude are necessary and appropriate.

3. The Executive Director, or his designee, is authorized to take such actions and execute and conform such documents as are necessary to carry out any of the agreements referenced in this resolution or contemplated by the 2010 Modification Agreement to the ARDDOPA.

4. If necessary, the Agency Secretary is directed to certify to the adoption of this resolution and attach a copy thereof to each deed or other document to be recorded pursuant to the 2010 Modification Agreement.

Adopted by the Redevelopment Agency of the City of Sunnyvale at a regular meeting held on _____, 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Clerk, Redevelopment Agency

Chair of the Redevelopment Agency
of the City of Sunnyvale

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, Redevelopment Agency Counsel

RESOLUTION NO. _____-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS ON BEHALF OF THE CITY IN CONNECTION WITH THE REDEVELOPMENT OF THE TOWN CENTER MALL, APPROVING THE 2010 MODIFICATION AGREEMENT AND CONFORMING CHANGES TO THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH SUNNYVALE TOWN CENTER, MAKING CERTAIN FINDINGS, AND AUTHORIZING THE CITY MANAGER TO TAKE ACTIONS NECESSARY TO IMPLEMENT THE AUTHORIZED AGREEMENTS

WHEREAS, on or about February 24, 2005, the Redevelopment Agency of the City of Sunnyvale ("Agency") entered into the original Disposition and Development and Owner Participation Agreement ("DDOPA") with Fourth Quarter Properties XLVII, LLC ("Developer") which provided for an exchange of properties between the Agency and Developer for the construction of new retail, office and residential development on the site of the Town Center Mall ("Center Property" or "Center Project") and for construction of new public parking structures and street improvements on the Center Property; and

WHEREAS, on or about August 17, 2004, the Agency adopted Resolution 102-04 and the City adopted Resolution No. 135-04 making findings and approving the Disposition and Development and Owner Participation Agreement; on or about February 6, 2007, the Agency adopted Resolution No. 114-07-RDA approving the Amended and Restated Disposition and Development and Owner Participation Agreement ("ARDDOPA") with Downtown Sunnyvale Mixed Use, LLC ("DSMU"); on or about April 10, 2007 adopted Resolution No. 118-07-RDA approving the First Modification to the ARDDOPA; and on or about November 18, 2007, approved the First Amendment to the ARDDOPA; and the City Council adopted Resolution 262-07 on February 6, 2007, approving the ARDDOPA and making findings; and

WHEREAS, the Agency and City fully complied with California Community Redevelopment Law prior to approving those agreements, as set forth in the resolutions referenced above, including holding a noticed public hearing pursuant to Health and Safety Code Section 33433 in connection with consideration of the DDOPA; and

WHEREAS, the Agency Board has independently reviewed and considered the Final Downtown Improvement Program Environmental Impact Report, the tiered Mitigated Negative Declaration and Addenda; has determined that because the plans under the Modification Agreement have substantially the same environmental impacts, will not increase the severity of previously identified impacts, there are no substantial changes in circumstances, and there is no new information which would alter the prior analysis of other factors requiring additional review under CEQA and accordingly no additional environmental analysis is required for the 2010 Modification Agreement; and

WHEREAS, DSMU completed Milestones 1, 2, and 3 in the ARDDOPA for demolition, excavation and construction of structural steel for the Minimum Project and other buildings, and made substantial progress toward completion of the Project through February, 2009; and

WHEREAS, in Fall 2008, there was a global economic crisis that led to a precipitous decline in the stock market, commercial property values, and retail spending; DSMU was unable to obtain equity or construction financing to allow completion of the Project pursuant to the ARDDOPA, and the lenders have initiated foreclosure action on the Town Center property owned by DSMU and a Receiver has been appointed by the Superior Court with the authority to negotiate modifications to the ARDDOPA and all related documents; and

WHEREAS, the City has considered the 2010 Modification Agreement to the ARDDOPA, and the 2010 Modification Agreement is generally consistent with the entitlements and Project goals approved in the ARDDOPA with some negotiated changes to the Center Project that improve the Center Project and provide the ability to finance and complete the Center Project without materially changing the Agency's or the City's financial commitments to the Center Project; and

WHEREAS, the City has considered the evidence before it in connection with this matter, including the staff report and testimony to the Agency.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. The City's findings in Resolutions 135-04 and 262-07 for the DDOPA and ARDDOPA are incorporated and affirmed in support of the 2010 Modification Agreement.

2. The City Manager, or his designee, is authorized to execute, on behalf of the Agency, the 2010 Modification Agreement to the ARDDOPA and any related documents, and to conform the ARDDOPA and Related Documents, and to such other documents and agreements necessary to implement the 2010 Modification Agreement and to conform the ARDDOPA and related documents as the City Manager and the City Attorney conclude are necessary and appropriate.

3. The City Manager, or his designee, is authorized to take such actions and execute and conform such documents as are necessary to carry out any of the agreements referenced in this resolution or contemplated by the 2010 Modification Agreement to the ARDDOPA.

4. If necessary, the City Clerk is directed to certify to the adoption of this resolution and attach a copy thereof to each deed or other document to be recorded pursuant to the 2010 Modification Agreement.

Adopted by the City Council at a regular meeting held on _____, 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney