

**AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT
AND OWNER PARTICIPATION AGREEMENT**

THIS AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT (the "Agreement") is made on or as of this 6th day of February 2007 by and between the Sunnyvale Redevelopment Agency (the "Agency"), a public body, corporate and politic, and Downtown Sunnyvale Mixed Use, LLC, a Delaware Limited Liability Company (the "Developer"), with reference to the following facts:

A. The overall purpose of this Agreement is to provide for redevelopment of the Center Property for new retail, residential and office uses through demolition of existing shopping center improvements and construction of new public and private improvements. "Center Property" and other capitalized terms used in these recitals have the meaning set forth in this Agreement.

B. Pursuant to its authority granted under California law, the Agency has the responsibility to carry out the Redevelopment Plan for the Downtown Sunnyvale Redevelopment Project, which was adopted by Ordinance No. 1796-75 of the City Council of the City of Sunnyvale on November 26, 1975. The redevelopment plan as described and as thereafter from time to time amended is referred to in this Agreement as the "Redevelopment Plan" and is incorporated into this Agreement by reference.

C. The Center Property is within the area governed by the Redevelopment Plan, and consists of several parcels owned, or subject to a right of purchase, by the Agency, City, Macy's, Target, and Developer. Attached as Exhibit A is a map showing the Center Property.

D. On or about February 24, 2005, the Agency entered into the Original DDOPA with Fourth Quarter providing for the redevelopment of the Center Properties. With the consent of the Agency, Fourth Quarter will assign its rights and obligations under the Original DDOPA to Developer upon conveyance of the Developer Parcels to Developer. The Agency and the Developer have entered into this Agreement in order to document certain changes to the Original DDOPA agreed to by the Agency and the Developer. Concurrent with the assignment of the Original DDOPA and conveyance of the Developer Parcels from Fourth Quarter to Developer and pursuant to the terms of section 2.01 of this Agreement, this Agreement shall become effective on the Effective Date.

E. The redevelopment of the Center Property, as contemplated by the Developer, involves demolition of the existing enclosed mall and other buildings and structures on the Developer Parcels and construction of new buildings for retail, office and residential use, new site improvements and new parking structures. Pursuant to the Original DDOPA, a parking structure that was located on the Mathilda Structure Parcels and an adjoining portion of the Developer Parcels was previously demolished.

F. The Agency has determined that redevelopment of the Center Property in the manner contemplated by this Agreement will assist in the implementation of the Redevelopment Plan and the elimination of conditions of blight in the area governed by the Redevelopment Plan

by providing for redevelopment of currently underutilized property for uses consistent with the Downtown Sunnyvale Specific Plan.

G. The purposes of this Agreement are to provide a mechanism for property transfers between the Agency and Developer and for Developer's construction of the Public Improvements and Private Improvements that constitute the Project in accordance with this Agreement and the Redevelopment Plan.

H. The Agency has determined that it is impractical from an architectural, engineering and construction standpoint to separately construct the Public Improvements because of their physical interrelationship with the Private Improvements to be constructed by the Developer, and that the construction of the Public Improvements pursuant to this Agreement would result in a lower public cost and greater benefit than if such Public Improvements were separately bid and constructed by the Agency.

I. The Agency has concluded that the Developer has the necessary capacity to carry out the commitments herein contained and that this Agreement is in the best interests and will materially contribute to the implementation of the Redevelopment Plan.

ARTICLE 1. DEFINITIONS AND EXHIBITS

1.01 Definitions.

The following capitalized terms shall, for purposes of this Agreement, have the meanings set forth in this Section 1.01.

- (a) "Adjustments" is defined in Section 8.02 below.
- (b) "Agency" means the Sunnyvale Redevelopment Agency, a public body, corporate and politic, formed and existing under the Community Redevelopment Law.
- (c) "Agency Conveyance Parcels" means the parcels that the Agency will convey to the Developer at the Closing pursuant to this Agreement; the Agency Conveyance Parcels are established as part of the New Tentative Map.
- (d) "Agency Parcels" means Parcel 1, Parcel 2, Parcel 3 and Parcel 5 on the Current Subdivision Map.
- (e) "Agreement" means this Amended and Restated Disposition and Development and Owner Participation Agreement between the Agency and Developer, as the same may be amended.
- (f) "Air Space Condominium Lot" means a condominium interest which is separated from the underlying land on the Public Parking Parcels.
- (g) "Air Space Parcel" means a parcel shown on the New Tentative Map as an "Air Space Parcel" and includes all of the easements and other agreements between Agency and

Developer that are necessary to construct the Private Improvements that are intended to be constructed on the Air Space Parcel.

(h) "Annual Payment" means the payment to be made to Developer pursuant to Section 8.01 of this Agreement.

(i) "Anticipated Tax Increment" is defined in Section 8.02 below.

(j) "Center Property" means all the property shown on the Current Subdivision Map and consists of the Agency Parcels, the Developer Parcels, the Macy's Parcel, and the Target Parcel.

(k) "Central Core Tax Increment" as used in Section 8.02 below is defined as the total Tax Increment the Agency receives from all the property included in the area governed by the Plan.

(l) "Certificate of Completion" is defined in Section 5.08 below.

(m) "City" means the City of Sunnyvale, a charter city.

(n) "City/Agency Payment Agreement" means the agreement between the City and the Agency that the City and Agency will enter into at the time of the Closing and providing for the City to make certain payments to the Agency as detailed in Section 8.01 below and attached to this Agreement as Exhibit L.

(o) "City Approvals" means the City permits and approvals for the Project consisting of the Special Development Permit 2007-0030 approved on February 6, 2007 (which includes minor changes from the previous special development permit approved in 2004) and the New Tentative Map; Exhibit F to this Agreement contains Special Development Permit except for the New Tentative Map and associated drawings and Exhibit E to this Agreement contains the portion of the New Tentative Map showing the division of the Center Property into lots and blocks.

(p) "Closing" means the close of escrow for the conveyance of the Agency Conveyance Parcels from the Agency to Developer, and for the conveyance of the Developer Conveyance Parcels from Developer to Agency.

(q) "Construction Plans" means the detailed plans, specifications, working drawings, elevations and other information on which Developer and its contractors and subcontractors will rely in constructing the Project.

(r) "Construction Schedule" refers to the schedule for construction of the Project which is attached to this Agreement as Exhibit T.

(s) "Current Subdivision Map" means the subdivision map filed on May 25, 2000 in Book 728 of Maps at pages 6-9 in the Official Records of Santa Clara County, California, which map is attached to this Agreement as Exhibit B.

(t) "Developer" means Downtown Sunnyvale Mixed Use, LLC, a Delaware Limited Liability Company, and its successors and assigns as permitted under Section 6.03 of this Agreement; the members of the Developer as of the Effective Date are an entity directly or indirectly controlled by, controlling of, or under common control with RREEF America REIT III, Inc., and Peter Pau.

(u) "Developer's Additional Phase II Work" is defined in Section 4.09 below.

(v) "Developer Conveyance Parcels" means the parcels that Developer will convey to the Agency at the Closing pursuant to this Agreement; the Developer Conveyance Parcels are established as part of the New Tentative Map.

(w) "Developer's Environmental Reports" is defined in Section 4.09 below.

(x) "Developer Parcels" means the parcels that Fourth Quarter will convey to Developer pursuant to that certain Purchase and Sale Agreement dated October 19, 2006, as amended.

(y) "Downtown Specific Plan" means the Downtown Sunnyvale Specific Plan adopted by the City and dated March 1993, as amended by the amendments adopted by the City on October 14, 2003 and July 13, 2004.

(z) "Effective Date" means the date that Developer obtains fee title to the Developer Parcels from Fourth Quarter.

(aa) "Escrow Holder" means First American Title Company, Redwood City office.

(bb) "Evaluation Agreement" refers to the Evaluation Agreement by and between the Sunnyvale Redevelopment Agency and Fourth Quarter Properties XLVIII, LLC dated October 23, 2006.

(cc) "Existing REA" means the Construction, Operation, and Reciprocal Easement Agreement dated as of March 1, 1978 which is recorded in the Official Records of Santa Clara County as follows: original REA recorded on July 27, 1978 as Document No. 6089790; Amendment No. 1 recorded on September 5, 1980 as Document No. 6826488; Amendment No. 2 recorded on July 26, 1995 as Document No. 12962762; and Amendment No. 3 recorded on May 25, 2000 as Document No. 15261167; the Existing REA governs property relations in the Center Property and will be superseded by the New REA at the Closing.

(dd) "First Class Facility" means a mixed use downtown project meeting the following criteria:

- (1) initially developed with the Minimum Project;
- (2) containing at least 300,000 square feet of floor area for retail uses (excluding the retail stores on the Macy's Parcel and the Target Parcel);

(3) no retail store shall exceed 100,000 square feet of floor area (other than the stores on the Macy's Parcel and the Target Parcel);

(4) the total floor area square footage of all retail stores exceeding 28,000 square feet of floor area each (other than the stores on the Macy's Parcel and the Target Parcel and any movie theater or grocery store) does not exceed 200,000 square feet of floor area;

(5) no retail store advertises that all or substantially all of the goods it sells do not exceed a particular price;

(6) no more than thirty-five percent (35%) of the retail space is rented to manufacturer's outlet stores;

(7) the facilities in the Project are maintained in a first class manner comparable to other similar projects in the San Jose metropolitan area.

(ee) "Fourth Quarter" means Fourth Quarter Properties XLVIII, LLC, a Georgia Limited Liability Company, the developer in contract with the Agency under the Original DDOPA.

(ff) "General Plan Amendment" means an amendment to the City of Sunnyvale General Plan which requests a 150-200 room hotel, and an additional 40,000 square feet of office use on the Center Property; as of the Effective Date, the City had initiated consideration of the General Plan Amendment but has not adopted the General Plan Amendment.

(gg) "Gross Project Tax Increment" as used in Section 8.02 below is defined as the Tax Increment the Agency receives in a fiscal year which Tax Increment is generated from the amount by which the Secured Assessed Value of the Center Property exceeds the 2003-2004 Secured Assessed Value (Seventy Seven Million, Nine Hundred Sixty-three Thousand, One Hundred Seventeen Dollars (\$77,963,117) including increases from sales and reassessment of the property but in no event shall the Gross Project Tax Increment include any taxes that was generated by development of the Center Property that was not contemplated by this Agreement as amended from time to time.

(hh) "Hazardous Materials" means any substance, product, waste, or other material of any nature whatsoever:

(1) which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. section 1801, et seq. ("HMTA"); the Resource Conservation and Recovery Act, 42 U.S.C. section 6901, et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. section 2601, et seq. ("TSCA"); the Clean Air Act, 42 U.S.C. section 7401, et seq. ("CAA"); the Clean Water Act, 33 U.S.C. section 1251, et seq. ("CWA"); the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. section 136 et seq. ("FIFRA"); the Atomic Energy Act of 1954 ("AEA") and Low-Level Radioactive Waste Policy Act ("LLRWPA"), 42 U.S.C. section 2014 et seq.; the Nuclear Waste Policy Act of 1982, 42 U.S.C. section 10101 et seq. ("NWPA"); the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. section 11001 et seq. ("EPCRA"); the

California Hazardous Waste Control Act, Health and Safety Code, Division 20, Chapter 6.5, section 25100 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code, Division 20, Chapter 6.6, section 25249.5 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, Health and Safety Code, Division 20, Chapter 6.8, section 25300 et seq.; California Health and Safety Code, Division 20, Chapter 6.95, section 25501, et seq. ("Hazardous Materials Release Response Plans and Inventory"); or the Porter Cologne Water Quality Control Act, California Water Code section 13000, et seq., all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to or imposing liability (including, but not limited to, response, removal and remediation costs) or standards of conduct or performance concerning any hazardous, extremely hazardous, toxic, dangerous, restricted, or designated waste, substance or material, as now or at any time hereafter may be in effect, or

(2) which is explosive, corrosive, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous to human health or the environment and is regulated by any governmental authority (or by executive or judicial order) as a hazardous material; or

(3) which is or contains oil, gasoline, diesel fuel or other petroleum hydrocarbons; or

(4) which is or contains polychlorinated biphenyls, asbestos, urea formaldehyde foam insulation, radioactive materials; or

(5) which is radon gas.

(ii) "Initial Plans" means the initial elements of the Construction Plans to be prepared and submitted; the contents of the Initial Plans are described in Section 3.05 below.

(jj) "Interim Project Tax Increment" is defined in Section 8.02 below.

(kk) "Macy's" means Sun Town Center Properties Corporation; Macy's owns the Macy's Parcel.

(ll) "Macy's Conveyance Parcel" means the portion of the Macy's Parcel, as shown generally on Exhibit R that may be conveyed to Developer. The Macy's Conveyance Parcel is a small portion of the Macy's Parcel that currently has no building improvements on it. In accordance with Section 2.01(b) the size and configuration of the Macy's Conveyance Parcel may be modified prior to conveyance from Macy's to Developer.

(mm) "Macy's Parcel" means the parcel in the Center Property designated as the Macy's Parcel on the Current Subdivision Map.

(nn) "Macy's Private Improvements" is defined in Section 3.01 below.

(oo) "Mathilda Structures Parcels" means the parcels in the Center Property described as Parcel 3 and Parcel 5 on the Current Subdivision Map.

(pp) "Mathilda Structure Agreement" means the Agreement for Sublease, Operation and Maintenance of Parking Facilities dated March 1, 1978 between the City and Developer's predecessors, as amended; said agreement pertains to Parcel 3 and Parcel 5 as described on the Current Subdivision Map and was recorded on July 27, 1978 in the Official Records of Santa Clara County at Book D842, page 315, amended by the Agreement Regarding Sublease recorded on April 1, 1998 in the Official Records of Santa Clara County as Document No. 14121325, and amended by the Second Amendment to Sublease recorded on May 25, 2000 in the Official Records of Santa Clara as Document No. 15261171.

(qq) "Mathilda Structure Recognition Agreement" means the agreement attached hereto as Exhibit P that the Agency and Developer have executed and recorded on or before the Effective Date.

(rr) "Mello-Roos Bonds" means new or refinanced bonds issued by the City to be secured by and paid from special taxes levied on the non-residential portions of the Private Improvements Parcel.

(ss) "Minimum Project" means a portion of the Project consisting of at least 150,000 square feet of new buildings for retail use, one hundred thirty (130) residential units, one hundred thirty thousand (130,000) square feet for the exterior building shell for office use, parking and other infrastructure necessary for the buildings and uses in the Minimum Project (as dictated by the City Approvals), and the Minimum Public Improvements.

(tt) "Minimum Project TIF Date" means the date on which last of the following have occurred: (i) the City issuing a certificate of occupancy for the Minimum Public Improvements, (ii) completion of the shell for a minimum of three hundred thousand square feet (300,000) of the retail portion of the Project, as evidenced by final City building permit and inspection, (iii) the City issuing a certificate of occupancy for at least two hundred (200) of the residential units in the residential portions of the Project, (iv) the Redwood Plaza Area (referred to as "Redwood Square" in the City Approvals) and (v) completion of the shell for a minimum of one hundred thirty thousand (130,000) square feet of the office portion of the Project, as evidenced by final City building permit inspection and approval.

(uu) "Minimum Public Improvements" means the construction of Taaffe Street, McKinley Avenue west of Murphy Avenue, the Public Parking Structures west of Taaffe Street, and all public utilities and other public improvements under and west of Taaffe Street.

(vv) "New REA" means the new Operation and Reciprocal Easement Agreement for the Center Property that will be developed pursuant to Section 2.03 below; the New REA will govern property relations in the Center Property following the Closing and will replace the Existing REA.

(ww) "New Tentative Map" means the new Tentative Map that Developer caused to be prepared by BKF Engineering, Inc. which was approved by the City on January 29, 2007; the portion of the New Tentative Map showing the division of the Center Property into lots and blocks is attached to this Agreement as Exhibit E.

(xx) "Original DDOPA" means the Disposition and Development and Owner Participation Agreement dated February 24, 2005 by and between the Agency and Fourth Quarter as amended prior to the Effective Date.

(yy) "Penney's Structure" means the parking structure located on Parcel 2, as shown on the Current Subdivision Map.

(zz) "Penney's Structure Agreement" means the Operation and Maintenance Agreement dated May 13, 2000 by and between SLLC and the City and pertaining to the operation and maintenance of the Penney's Structure as it may be amended or replaced pursuant to this Agreement.

(aaa) "Penney's Structure Amendment" means an amendment to the Penney's Structure Agreement to be executed by the Agency and Developer and recorded at the time of the Closing and extending the term of the Penney's Structure Agreement so that it is coterminous with the seventy-five (75) year term of the New REA; the form of the Penney's Structure Amendment is attached to this Agreement as Exhibit O.

(bbb) "Penny's Structure Parcel" means Parcel 2, as shown on the Current Subdivision Map.

(ccc) "Private Improvements" means the portions of the Project to be constructed on the Private Improvements Parcels; the Private Improvements include the retail, office and residential development and related parking and other improvements and are described in detail in Section 3.01 and Exhibit C and Exhibit D.

(ddd) "Private Improvements Parcels" means those parcels to be owned by Developer as shown on the New Tentative Map.

(eee) "Project" means the improvements Developer is to construct pursuant to this Agreement on the Private Improvements Parcel and the Public Improvements Parcel consisting of the Private Improvements and the Public Improvements; the Project is described in Section 3.01 below, and as may be modified pursuant to Section 3.02 below.

(fff) "Project Tax Increment" is defined in Section 8.02 below.

(ggg) "Public Improvements" means the elements of the Project to be constructed on the Public Street Parcels and Public Parking Parcels consisting primarily of certain public parking structures, public streets, and public sidewalks adjacent to the streets bordering the exterior of the Center Property (i.e., Iowa, Sunnyvale, Mathilda, and Washington Streets) as well as the public utility facilities located on the Public Improvement Parcels and Private Improvement Parcels pursuant to easements for those facilities; the Public Improvements are described in detail in Section 3.01 and Exhibit C and Exhibit D.

(hhh) "Public Improvements Parcels" means the Public Street Parcels and the Public Parking Parcels.

(iii) "Public Parking Easement" means the easement the Agency will grant to the City over the Public Parking Parcels providing that the Public Parking Parcels and Public Parking Structures will be used for public parking; the Public Parking Easement is attached to this Agreement as Exhibit K.

(jjj) "Public Parking Ground Lease" means the Public Parking Ground Lease attached to this Agreement as Exhibit M pursuant to which the Developer will own, operate, maintain, insure, repair and replace the Public Parking Structures (other than the Penney's Structure) for a term of seventy-five (75) years.

(kkk) "Public Parking Maintenance Agreement" means the agreement attached to this Agreement as Exhibit U that the Agency and Developer will enter into if the Public Parking Structures are financed using Mello-Roos financing and the Agency owns the Public Parking Structures; the Public Parking Maintenance Agreement provides for Developer to operate, maintain, insure, repair and replace the Public Parking Structures (other than the Penney's Structure) for a term of seventy-five (75) years..

(lll) "Public Parking Parcels" means those parcels to be owned by the Agency and on which the Public Parking Structures will be constructed, as shown on the New Tentative Map; the Public Parking Parcels will be developed with the Public Parking Structures in the Project but specifically exclude the Air Space Parcels and the Air Space Condominium Lots.

(mmm)"Public Parking Purchase Price" means the purchase price for the City's purchase of Public Parking Structures, as determined pursuant to Section 8.07 below.

(nnn) "Public Parking Structures" means the Penney's Structure and the other public parking to be constructed pursuant to this Agreement. The Public Parking Structures will be owned by Developer, or if Mello-Roos financing is used for the Public Parking Structures, owned by the Agency; in either case, the Public Parking Structures will be subject to the Public Parking Easement.

(ooo) "Public Street and Utility Improvements" means the Public Improvements other than the Public Parking Structures; the Public Street and Utility Improvements consist primarily of the streets running through the Project and the sidewalks on the exterior of the Project as well as the public utility facilities located on the Public Improvement Parcels and Private Improvement Parcels pursuant to easements for those facilities.

(ppp) "Public Street and Utility Maintenance Agreement" means the Public Street and Utility Maintenance Agreement attached to this Agreement as Exhibit N pursuant to which the Developer will operate, maintain, insure, repair and replace the Public Street and Utility Improvements for a term of the shorter of ninety-nine (99) years or the term of the New REA.

(qqq) "Public Street Parcels" means those parcels to be owned by the Agency on which the Public Street Improvements will be constructed as shown on the New Tentative Map.

(rrr) "Rebuilt Target Store" is defined in Section 3.01 below.

(sss) "Reconveyance Parcel" means the Air Space Condominium Lots created for the below-grade level of the Public Parking Structures located on Block 1, Lot 3 and Block 2, Lot 4.

(ttt) "Redevelopment Plan" means the Redevelopment Plan for the Downtown Sunnyvale Redevelopment Project which was adopted by Ordinance No. 1796-75 of the City Council of the City on November 26, 1975.

(uuu) "Residential Developer" or "Residential Developers" means Developer or an entity to whom the Developer assigns the rights to develop the residential units in the Project provided such assignment is permitted in accordance with Section 3.10 below.

(vvv) "Second Closing" is defined in Section 4.06 below.

(www) "Secured Assessed Value" means, for a particular fiscal year, the assessed value of the Center Property on the Santa Clara County secured assessment roll plus the assessed value of all possessory interests in the Public Improvement Parcels on the Santa Clara County unsecured assessment roll, if the assessed value of the possessory interest is not on the secured roll.

(xxx) "Target" means Target Stores, Inc.; Target owns the Target Parcel.

(yyy) "Target Parcel" means the parcel in the Center Property designated as the Montgomery Ward Parcel on the Current Subdivision Map. The Target Parcel may be increased in size upon Developer's conveyance of an additional parcel identified as Lot 1, Block 4, on the New Tentative Map to Target to increase the size of the Target Parcel in order to accommodate the Rebuilt Target Store. Upon conveyance of the parcel all parcels owned by Target shall be referred to as the Target Parcel.

(zzz) "Target Private Improvements" is defined in Section 3.01 below.

(aaaa) "Tax Increment" means the taxes paid to and received by the Agency pursuant to Health and Safety Code Section 33670.

(bbbb) "Transfer" is defined in Section 6.01 below.

1.02 Exhibits.

The following exhibits are attached to and incorporated in this Agreement:

Exhibit A	Map Showing Center Property
Exhibit B	Current Subdivision Map
Exhibit C	Developer Project Proposal
Exhibit D	Map Showing Public Improvements and Private Improvements
Exhibit E	New Tentative Map
Exhibit F	City Approvals
Exhibit G	Grant Deed Form

Exhibit H	Title Exceptions for Conveyances to Developer
Exhibit I	Title Exceptions for Conveyances to Agency
Exhibit J	Memorandum of Agreement
Exhibit K	Public Parking Easement
Exhibit L	City/Agency Payment Agreement
Exhibit M	Public Parking Ground Lease
Exhibit N	Public Street and Utility Maintenance Agreement
Exhibit O	Penney's Structure Amendment
Exhibit P	Mathilda Structure Recognition Agreement
Exhibit Q	Agency Property Reports
Exhibit R	Map Showing Macy's Conveyance Parcel
Exhibit S	Fee and Charges Estimate
Exhibit T	Construction Schedule
Exhibit U	Public Parking Maintenance Agreement
Exhibit V	Map Showing Developer Conveyance Parcels and Agency Conveyance Parcels
Exhibit W	Developer Property Reports

ARTICLE 2.
INITIAL PROPERTY ACTIVITIES

2.01 Effective Date and Developer Acquisition of the Parcels.

(a) This Agreement shall become effective upon the Effective Date. If the Developer has not acquired the fee interest in the Developer Parcels by April 15, 2007 or such later date as may be approved by the Executive Director of the Agency for good cause, then the Agency may terminate this Agreement by giving written notice of such termination to Developer and Fourth Quarter. Upon such termination, this Agreement shall have no force or effect and will not have become effective and the Original DDOPA shall remain in effect. At or before the Effective Date, Developer shall pay or cause to be paid all property taxes and special taxes due or owing on the Developer Parcels as of the Effective Date, but excluding any supplementary property taxes that become owing as a result of Developer's acquisition of the Developer Parcels.

(b) Developer shall use all reasonable efforts to enter into a contract with Macy's to purchase the Macy's Conveyance Parcel. Developer shall complete the purchase and obtain fee title to the Macy's Conveyance Parcel no later than the date provided by that purchase contract and shall use commercially reasonable efforts to obtain fee title no later than the date of the Closing. Developer may delay obtaining fee title to the Macy's Conveyance Parcel if reasonably necessary. Developer shall provide the Agency with evidence of obtaining title promptly after having so obtained title. In the event that Developer is unable to purchase the Macy's Conveyance Parcel, the square footage of new development located on the Macy's Conveyance Parcel shall be redistributed to the Developer Parcels and Developer and Agency shall work cooperatively to incorporate such square footage into the Developer Parcels. In the event that Developer is unable to purchase the Macy's Conveyance Parcel, Macy's shall not be permitted to develop the Macy's conveyance parcel independently of the Project.

(c) Developer shall use all reasonable efforts to enter into a contract with Target to accomplish property conveyances between the Developer and Target so as to permit the parcel configuration for the Target Parcel as shown on the New Tentative Map and provide for construction of the Rebuilt Target Store. Developer shall complete the conveyances no later than the date provided by the Target contract and shall use commercially reasonable efforts to accomplish the conveyances no later than the date of the Closing. Developer shall provide the Agency with evidence of the conveyances promptly after they occur. If Developer is unable to enter into such a contract with Target, then Developer shall redesign the Project and seek amendments to the City Approvals to accommodate the existing Target store remaining in place. Agency will use best efforts and cause City to expedite and accommodate consideration of such amendments.

2.02 Assumption of Parking Structure Obligations.

(a) Concurrent with obtaining title to the Developer Parcels, Developer agrees to assume all obligations under the Penney's Structure Agreement. The Penney's Structure Agreement pertains to Parcel 2, as shown on the Current Subdivision Map, and the parking structures on that parcel. The Developer agrees that the Penney's Structure Agreement shall, prior to the Closing, also apply to Parcel 1 as shown on the Current Parcel Map which parcel contains surface parking for temporary use until construction of the Project commences.

(b) With respect to the Mathilda Structure Parcels, concurrent with execution of this Agreement, the Agency and Developer have executed and entered into the Mathilda Structure Recognition Agreement attached to this Agreement as Exhibit P. The Mathilda Structure Recognition Agreement makes certain changes to the Mathilda Structure Agreement. The Mathilda Structure Recognition Agreement and the Mathilda Structure Agreement pertain to Parcel 3 and Parcel 5, and will remain in effect until the Closing.

2.03 Approval of REA.

Prior to the Closing, Developer shall use all reasonable efforts to obtain agreement from all relevant parties including the Agency, Macy's and Target to terminate the Existing REA and replace it with the New REA at the Closing.

ARTICLE 3.
DEVELOPER PREDEVELOPMENT ACTIVITIES

3.01 Description of the Proposed Project.

The Developer desires to undertake the Project consisting of the demolition of the existing improvements on the Private Improvements Parcel and the Public Improvement Parcels (except for the Penney's Structure which will remain) and replacement of those improvements with a new mixed-use development consisting of:

(a) The Private Improvements which include:

(1) approximately 634,000 square feet of buildings for retail use, but excluding the building on the Macy's Parcel and the existing Target Store or Rebuilt Target Store on the Target Parcel, as applicable.

(2) approximately 275,000 square feet of buildings for office use.

(3) approximately 292 for-sale residential units mapped for condominiums.

(4) private surface and structured parking as required by the City Approvals, of which approximately 1112 spaces will be underground (a portion of which may be located in the Public Parking Structures); approximately 110 of the underground parking spaces may be in tandem configuration.

(5) other site improvements including landscaping, walkways, Redwood Plaza, loading areas and driveways.

(b) The Public Improvements which include:

(1) three new public structures which, together with public street and surface parking, private surface and structured parking and the existing Penney's Structure, will provide parking for approximately 4950 cars (which includes the 1112 underground spaces);

(2) public streets, public utility facilities and related improvements.

(3) modifications to the Penney's Structure to accommodate vehicular and pedestrian access and interface issues related to the Private Improvements.

The Project is described and depicted in the Developer Project Proposal attached to this Agreement as Exhibit C and the City Approvals attached to this Agreement as Exhibit F. The map attached to this Agreement as Exhibit D shows the portion of the Project that Developer proposes will constitute the Private Improvements and the portion that will constitute the Public Improvements. Concurrently with approval of this Agreement, the City Council has initiated consideration of the General Plan Amendment. If the General Plan Amendment is approved, and, based on that General Plan Amendment, there is a subsequent amendment to the Downtown Specific Plan and the City Approvals, the development of the Project in accordance with such amendment shall not require an amendment to this Agreement. Instead the Project shall be automatically deemed to refer to the development of the Center Parcels as shown in the City Approvals as so amended.

The Developer may initially elect to undertake to develop and construct less than the entire Project. If Developer so elects, then Developer shall initially develop and construct the Minimum Project pursuant to this Agreement. The Developer also contemplates that the portion of the Project from Murphy Street easterly to Sunnyvale Avenue, shown as Block 5 and Block 6 and Murphy Street on Exhibit E will constitute later phases of the Project that will be constructed

later than the remainder of the Project. The development on Block 5 and Block 6 and Murphy Street shall be undertaken in accordance with the Construction Schedule.

In addition to the Project, third parties desire to undertake projects on the Target Parcel and Macy's Parcel which include:

(a) Target Private Development

The Rebuilt Target Store consisting of approximately 181,000 of building for retail use and private, at-grade parking below the retail building for approximately 337 cars, none of which shall be in tandem configuration. The Developer will use its best efforts to insure that the Rebuilt Target Store is completed at or before the Minimum Project is completed, but Developer is not responsible for those portions of the Rebuilt Target Store that are beyond its control.

(b) Macy's Private Development

Macy's may, at its discretion, construct façade improvements on the Macy's Parcel (the "Macy's Private Improvements").

3.02 City Approvals.

Prior to execution of this Agreement, the City has approved a special development permit, subdivision approval and other City permits and approvals necessary to construct the Project (other than demolition and building permits) which are described in the attached Exhibit F and are referred to in this Agreement as the City Approvals. Developer shall pay all fees and charges imposed by the City in connection with the City Approvals. The attached Exhibit S is a complete list which describes the current City fees and contains an estimate of the amount of the fees for the Project; however, the Agency does not warrant that the actual fees charged will be as set forth in that exhibit.

The Developer acknowledges and agrees that (i) the City Approvals and existing City land use regulations requires that twelve and a half percent (12.5%) of the housing built in the Project be affordable to persons whose income is at or below the moderate income level (ii) that the City Approvals and existing City land use regulations prohibit signs other than those identifying businesses in the Project; (iii) the City Approvals require that the Project have a high-quality design.

Except for the General Plan Amendment and any subsequent changes to the Downtown Specific Plan and City Approvals based on the General Plan Amendment, Developer shall not seek any changes to the City Approvals so as to materially change the Project without the consent of the Agency which consent shall not be unreasonably withheld if the Project, as revised, is consistent with the Downtown Specific Plan and of equal quality and scope to the Project as initially proposed. If the City Approvals are issued subject to conditions requiring changes to the Project, the Agency's consent to such changes shall be deemed to have been given. If the Project is modified as a result of the foregoing, then, for purposes of this Agreement, the "Project" shall refer to the Project as so modified.

3.03 Overview of Real Estate Transactions, Subdivision Approval.

It is anticipated that at the Closing the Agency will convey portions of the Agency Parcels to Developer and Developer will convey portions of the Developer Parcels to the Agency, subject to reconveyance of Air Space Condominium Lots as further described in Section 4.06. Following the Closing, it is anticipated that the real estate structure will be as follows:

(a) Macy's will own the Macy's Parcel (except the Macy's Conveyance Parcel) and Target will own the Target Parcel (as may be reconfigured to accommodate the Rebuilt Target Store).

(b) Developer will own the Private Improvements Parcels and any improvements thereon. Developer's Private Improvement Parcels will include Air Space Parcels as well as the Air Space Condominium Lots located adjacent to or within the Public Parking Structures. The Air Space Condominium Lots will be developed with private parking for residential and/or office use. The Air Space Parcels will be developed with retail and/or office uses.

(c) The Agency will own the Penney's Structure Parcel and the improvements thereon, and Developer will operate the improvements thereon pursuant to the Penney's Structure Agreement.

(d) The Agency will own the other Public Parking Parcels.

(e) The Agency will lease those other Public Parking Parcels to Developer pursuant to the Public Parking Ground Lease attached hereto as Exhibit M. The Ground Lease will be subject to the Public Parking Easement for public parking that the Agency will grant to the City over the Public Parking Parcels.

(f) The Public Parking Ground Lease will provide for Developer to construct the Public Parking Structures (other than the Penney's Structure) and to own, operate and maintain the Public Parking Structures (other than the Penney's Structure) for the term of the Public Parking Ground Lease. The term of the Public Parking Ground Lease is seventy-five (75) years with provisions for negotiation of extensions of the term if, at the time five (5) years prior to expiration of the term, a shopping center is still being operated on the Private Improvement Parcels. Upon the end of the term of the Public Parking Ground Lease, the parking improvements will become the property of the Agency or, at the request of the Agency, will be demolished by the Developer. Alternatively, if the Developer and the Agency choose to utilize new Mello-Roos financing for the Public Parking Structures, then, in accordance with the provisions of Section 8.04 below, the Agency will purchase the Public Parking Structures from the Developer upon completion and enter into the Public Parking Maintenance Agreement

(attached as Exhibit U) with the Developer providing for Developer to operate and maintain the Public Parking Structures.

(g) The Public Parking Parcels will constitute all the parcels where Public Parking Structures are constructed but does not include Air Space Parcels and/or Air Space Condominium Lots located adjacent to or within the Public Parking Structures which constitute Private Improvement Parcels.

(h) The Public Street Parcels and the Public Street and Utility Improvements will be owned by the Agency; the Developer will construct the Public Street and Utility Improvements and operate them pursuant to the Public Street and Utility Maintenance Agreement attached hereto as Exhibit N.

Prior to approval of this Agreement, Developer has received City approval of the New Tentative Map creating the Public Improvement Parcels and the Private Improvement Parcels. The New Tentative Map will, as set forth below, be recorded at the Closing.

In conformance with the New Tentative Map, the Developer shall prepare legal descriptions of the portions of the Agency Parcels that will become the Agency Conveyance Parcels and the portions of the Developer Parcels that will become the Developer Conveyance Parcels. Those conveyances are those necessary to create the Public Improvement Parcels including Public Parking Parcels and the Public Street Parcels to be owned by the Agency and the Private Improvement Parcels to be owned by the Developer. The legal descriptions shall be consistent with the approved New Tentative Map and may be by reference to the parcels on that map. As shown on Exhibit V, the area of Agency Conveyance Parcels is approximately equal to the area of the Developer Conveyance Parcels.

3.04 Tentative Condominium Map and Reconveyance Parcels

In addition to the Air Space Parcels designated on the New Tentative Map, Agency and Developer may elect to implement the Project through the creation, after Closing, of Air Space Condominium Lots for all or part of the underground parking on the Public Parking Parcels to reconvey to Developer as Private Improvement Parcels (the "Reconveyance Parcels"). If Agency and Developer pursue this option, a Tentative Condominium Map shall be submitted and approved prior to Closing and reconveyance of the Reconveyance Parcels to Developer shall occur at the Second Closing upon recordation of the Final Map and the necessary reciprocal easements and the completion of the processes required to create the condominium interests. Agency and Developer agree that Developer shall manage the condominium process and bear all expenses therefore.

3.05 Construction Plans.

(a) The Developer shall prepare Construction Plans for the construction of the Project. The Construction Plans shall be consistent with the City Approvals, the New Tentative

Map and, in the case of the Public Improvements, in conformance with the City's standards for such improvements as set forth in the City Approvals.

(b) The Developer shall prepare and submit the Construction Plans to the City pursuant to Section 3.05 below in phases. The initial submission shall include, at a minimum, complete plans for demolition, excavation and utility installations and may include plans for foundations of buildings and parking structure plans (the "Initial Plans"). The Initial Plans shall be completed and submitted to the City in accordance with the Construction Schedule. Plan check and permitting for the Initial Plans may be incrementalized into smaller projects, specifically shoring plans, excavation plans, utility plans and building foundations and parking structure plans. The Construction Plans remaining to be prepared after the Initial Plans shall be completed and submitted to the City pursuant to this Section 3.05 and in accordance with the Construction Schedule.

(c) Developer may undertake the work for which it has prepared the Initial Plans prior to the Closing. If Developer desires to undertake that work, then prior to undertaking the work, it shall obtain all permits and approvals required by the City or other governmental entities to undertake the work, comply with Section 3.09 with regard to the work being undertaken, and provide the insurance required pursuant to Section 12.07. The Developer shall also prepare and obtain Agency approval of and implement a construction mitigation program containing the elements specified in Section 5.13 below to the extent relevant to the work that the Developer is undertaking. Provided Developer obtains the required permits and approvals and the Agency approval of the construction mitigation program, then, notwithstanding any other provision of this Agreement, Developer shall be permitted to undertake the work described in the Initial Plans prior to the Closing. To the extent that work is on the Agency Parcels, the Agency will provide Developer a right of entry to the Agency Parcels to undertake this work. Developer understands and agrees that if this Agreement is terminated pursuant to Section 9.02 or Section 9.04 below prior to the Closing, then Agency may require Developer to remove any improvements Developer has constructed on the Agency Parcels and restore the Agency Parcels to previous condition including filling any excavations.

(d) The Developer may request that the Agency Executive Director extend for up to an additional ninety (90) days the deadlines set forth in subsection (b) and Section 3.04 for completion and submission to the City of the Initial Plans and for completion and submission to the City of the remaining Construction Plans. The Executive Director shall not withhold approval of such an extension if the extension is reasonably necessary to complete the Initial Plans or the remaining Construction Plans as the case may be.

3.06 Building Permits.

Upon submission of the Initial Plans to the City and upon submission of the remaining Construction Plans to the City, the Developer shall diligently pursue and obtain the building permits for construction of the Project. The applications for building permits shall be consistent with and incorporate the Initial Plans and the Construction Plans and shall be consistent with the City Approvals, the New Tentative Map and, in the case of the Public Improvements, in conformance with the City's standards for such improvements as set forth in the City Approvals.

3.07 Other Permits and Approvals.

At the time Developer applies to the City for building permits, Developer shall also apply for, diligently pursue and obtain any other City or other governmental or utility permits or approvals necessary to construct the Project including but not limited to demolition permits and encroachment permits.

3.08 Evidence of Financing.

At the time Developer applies to the City for building and construction permits based on the Construction Plans, it shall also submit to the Agency evidence reasonably satisfactory to the Agency that Developer has obtained firm commitments of equity and loan funds to construct, complete and operate the Project in accordance with this Agreement. The evidence shall be for the entire Project even though Developer may have completed the Initial Plans and commenced construction of the improvements shown in the Initial Plans. Such evidence shall include the following:

(a) Copies of the agreement or other documents committing the lender and/or equity funds for construction and, if required to obtain construction financing and/or permanent financing; equity funding shall constitute at least twenty percent (20%) of the Project costs.

(b) Financial information concerning lenders and equity investors (if any are required) showing the ability of the lenders and/or equity investors to provide the committed funds.

(c) Project cash flows showing the estimated costs of constructing and developing the Project in accordance with this Agreement, when those costs will be paid and when committed loan and equity funds (if any are required) will be available.

(d) Evidence of leases or lease commitments sufficient to assure the availability of the identified loan and equity funds (if any are required) in accordance with the Project cash flows.

The Agency shall review the evidence of financing and approve or disapprove it in writing within fifteen (15) days following receipt. The Agency shall approve the evidence of financing if it indicates that Developer will have sufficient funds to construct the Project and pay for the Project costs when due. If the Agency disapproves, it shall set forth in detail the reasons for disapproval and Developer shall then have sixty (60) days to submit revised evidence of financing. The Agency shall approve or disapprove the revised evidence of financing within fifteen (15) days following receipt.

Developer and the Agency shall cooperate to retain financial information submitted by Developer as confidential to the extent permitted by law.

3.09 Evidence of Construction Contract.

At the time the Developer obtains building permits for the Project, it shall submit to the Agency an executed contract or contracts with reputable contractors for construction of the Project at a cost consistent with the Project cash flows approved by the Agency pursuant to Section 3.08 above. The construction contracts shall contain the provisions required pursuant to Section 5.06 and Section 5.07 below. Agency review shall be limited to determining if the contract has the provisions required by Section 5.06 and 5.07 below and that the contract amount is consistent with the Project cash flows.

At the time Developer obtains building permits for any portion of the Project, Developer shall deliver to the Agency payment and performance bonds for the full amount of the cost of the Public Improvements necessary to complete such portion of the Project. Such bonds may be provided through Developer's contractors and/or subcontractors. Such bonds shall be from a reputable bonding company or companies licensed to do business in California and shall name the Agency as co-obligee.

3.10 Assumption of Obligations by Residential Developer.

(a) In order to facilitate development of the residential portion of the Project, the Developer may assign its rights and obligations hereunder to a limited liability company, whose managing member is an entity controlled directly or indirectly by Developer. The Agency hereby approves such assignment, provided that such assignment shall be effective upon receipt by the Agency of a copy of a written assignment agreement, wherein the assignee accepts and agrees to assume all of Developer's obligations under this Agreement with respect to the residential portions of the Project. Thereafter, Developer shall promptly notify the Agency of any and all changes whatsoever in the identity of the managing member, of which it or any of its members have been notified or otherwise have knowledge or information.

(b) If, prior to the construction of the residential portion of the Project, Developer desires to select a substitute Residential Developer who is not controlled by Developer, the Developer shall submit to the Agency Executive Director the qualifications of the proposed substitute Residential Developer or Residential Developers for approval. The Executive Director shall not unreasonably withhold approval of the substitute Residential Developer or Residential Developers if the proposed substitutes have the necessary financial capacity and development experience to undertake and complete the development of the residential portion of the Project in accordance with this Agreement.

(c) Developer shall be entitled to separate written notice from the Agency of any default of Residential Developer, and opportunity to cure such default of the Residential Developer, on the same basis as provided in this Agreement with respect to defaults of Developer. In no event shall Developer be in default under this Agreement during any period during which Developer is diligently prosecuting any cure of any default of Residential Developer.

3.11 Submissions for Less Than Entire Project.

Developer intends to construct the Project in phases; however, the first phase shall include the Minimum Project. Developer shall submit to the Agency, in writing, a description of the phasing plan. Said notice and description shall be submitted to the Agency no later than commencement of construction of the Project. The phasing plan shall be consistent with the Construction Schedule, subject to minor modifications approved by the Agency, which approval shall not be unreasonably withheld.

The submissions pursuant to Section 3.05 through Section 3.09 of Construction Plans, applications for building permits, applications for other permits or approvals, and evidence of construction contracts need only pertain to the particular phase of the Project that Developer is undertaking.

Prior to constructing each phase of the Project, the Developer shall satisfy the conditions set forth in Section 3.05 through Section 3.09 above prior to commencing construction of that phase of the Project. Nothing in this Agreement is intended to prevent Developer from later constructing improvements on the Private Improvement Parcels in phases, provided Developer first obtains all City and other governmental approvals and any approvals required under the New REA, or other agreement.

3.12 Leasing Plan and Local Businesses.

(a) Prior to Closing, Developer shall prepare a leasing plan for leasing of the retail space in the Project and submit the plan to the Agency Executive Director for review and comment. The leasing plan shall consider existing businesses throughout downtown as if the entire downtown were included in the leasing plan. Specifically, the leasing plan shall provide for limiting the square footage of restaurant space in the Project to 90,000 square feet as shown in the City Approvals.

(b) Developer acknowledges that leasing some of the retail space in the Project to independently owned local businesses will help to create a character for the Project which is unique to Sunnyvale. To that end, the Agency will provide to Developer a list of local merchants who have established a loyal clientele due to the quality of their merchandise and service and may wish to expand their businesses. Developer shall make good faith efforts to attract such merchants to lease space and to open operations in the Project. Developer shall, upon inquiry by such merchants, make similar offers to merchants already located downtown. Developer shall include provisions for local independently owned businesses in the leasing plan submitted to the Agency for review. Developer may seek assistance of agencies such as the Small Business Development Center in selecting and supporting small businesses to be located in the Project.

ARTICLE 4.
PROPERTY TRANSACTIONS

4.01 Sale and Purchase.

Subject to the terms and conditions of this Agreement, the Agency shall convey the Agency Conveyance Parcels to Developer and Developer shall accept conveyance of the Agency Conveyance Parcels from the Agency, the Developer shall convey the Developer Conveyance Parcels to the Agency and the Agency shall accept conveyance of the Developer Conveyance Parcels from the Developer. If, pursuant to Section 3.04 above, Agency and Developer choose to create Reconveyance Parcels for conveyance from Agency to Developer, the Agency shall convey the Reconveyance Parcels to Developer and Developer shall accept conveyance of the Reconveyance Parcels from the Agency in a Second Closing.

4.02 Opening Escrow.

To accomplish the conveyances contemplated by this Agreement, the parties shall promptly after the execution of this Agreement establish an escrow with the Escrow Holder. On or before the Closing, or Second Closing, the parties shall execute and deliver to Escrow Holder written instructions consistent with this Agreement to consummate the transactions at the Closing or Second Closing.

4.03 Conveyance Consideration.

The Agency shall convey the Agency Conveyance Parcels and Reconveyance Parcels to the Developer in consideration for Developer's performance of its obligations under this Agreement. The Developer shall convey the Developer Conveyance Parcels to the Agency in consideration for the Agency's performance of its obligations under this Agreement.

4.04 Closing Date.

The Closing shall occur within ten (10) days following the date on which Developer and Agency have satisfied all the conditions set forth in Section 2 and Section 3 above and Section 4.11 and Section 4.12 below, but in no event later than September 30, 2007. The Developer may request that the Agency Executive Director extend for up to an additional ninety (90) days the deadlines for Closing set forth in this section. The Executive Director shall not withhold approval of such an extension if the extension is reasonably necessary to accomplish the Closing. If any litigation challenging this Agreement or the Project is pending at the time otherwise set for the Closing, then the Agency and Developer may mutually agree to postpone the deadline for the Closing until the litigation is resolved.

The Second Closing shall occur within ten (10) days following the date on which Developer and Agency have satisfied all the conditions set forth in Section 3.04.

4.05 Conveyances.

The Agency shall convey the Agency Conveyance Parcels and Reconveyance Parcels to Developer by grant deed which shall be in the form set forth in Exhibit G (Grant Deed Form).

The Developer shall convey the Developer Conveyance Parcels to the Agency by grant deed in a form reasonably acceptable to the Agency and Developer.

4.06 Other Closing Documents.

(a) At the Closing, the Agency and Developer shall enter into the Public Parking Ground Lease attached as Exhibit M.

(b) At the Closing, the Agency and Developer shall enter into and record the Public Streets and Utility Maintenance Agreement attached as Exhibit N.

(c) At the time of Closing, the Agency and Developer shall take the steps necessary to terminate the Existing REA and record the New REA so as to make it effective against all the parcels in the Center Property.

(d) At the Closing, the Agency and Developer shall execute and record the Memorandum of Agreement, attached to this Agreement as Exhibit J.

(e) At the Closing, the Agency shall grant the Public Parking Easement to the City and, in consideration therefore, the City and Agency shall enter into the City/Agency Payment Agreement attached to this Agreement as Exhibit L.

(f) At the Closing, the Agency and the Developer shall execute and record the Penney's Structure Amendment.

(g) At the Closing, the Agency and Developer shall execute and record such documents as are necessary to terminate the Mathilda Structure Recognition Agreement and the Mathilda Structure Agreement.

(h) At or before the Closing, as required by the terms of the City Approvals, the Developer and the Agency will grant to the City a covenant of easement pursuant to the provisions of Government code Sections 65870-65875 in order to provide public utility easements to the City.

4.07 Possession.

The Agency shall deliver possession of the Agency Conveyance Parcels and Public Parking Parcels (other than the Penney's Structure Parcel) to Developer at the Closing. The Developer shall deliver possession of the Developer Conveyance Parcels to the Agency at the Closing. At the Closing, the Agency shall also grant to Developer a right of entry onto the Public Street Parcels so as to allow Developer to construct the portion of the Public Improvements to be built on those parcels. The Agency shall deliver possession of the Reconveyance Parcels to Developer at the Second Closing.

4.08 Condition of Title.

(a) The Agency Conveyance Parcels and Reconveyance Parcels shall be conveyed to Developer and the Public Parking Parcels shall be leased to Developer free and clear of all liens, encumbrances, clouds, conditions, and rights of occupancy, except:

- (1) The effect of the Redevelopment Plan.
- (2) The New REA.
- (3) Existing public and private utility easements.
- (4) The exceptions noted in the attached Exhibit H (Title Exceptions for Conveyances to Developer).
- (5) The covenant of easements noted in subsection (f) of Section 4.06 above.
- (6) Any exception created as a result of Developer's commencement of construction on the Agency Parcels prior to the Closing.
- (7) Any other exception accepted by Developer in writing.

(b) The Developer Conveyance Parcels shall be conveyed to the Agency free and clear of all liens, encumbrances, clouds, conditions, and rights of occupancy, except:

- (1) The effect of the Redevelopment Plan.
- (2) The New REA.
- (3) The exceptions shown in the attached Exhibit I (Title Exceptions for Conveyances to Agency).
- (4) Any other exceptions accepted by the Agency in writing.

4.09 Condition of Property; Investigation and Remediation of Hazardous Materials.

(a) Condition of the Property. Except as specified in this Section 4.09 below, Developer shall be solely responsible for and shall bear all the costs of investigation, removal, remediation, monitoring or mitigation of any Hazardous Materials present on, under or emanating from the Public Improvements Parcels and Private Improvements Parcels, or any portion thereof, in soil (including soil vapor) or groundwater, as of Closing. Developer acknowledges that the Agency has provided to Developer the reports regarding the Agency Conveyance Parcels and the Public Improvements Parcels listed in Exhibit Q (Agency Property Reports) to this Agreement and provided Developer the opportunity to inspect and test the Agency Conveyance Parcels and the Public Improvements Parcels (to the extent owned by the Agency and not the Developer or others prior to the Closing). The Agency is making no

representation or warranty of any sort concerning the conditions of the Agency Conveyance Parcels or the Public Improvements Parcels. The Agency acknowledges that the Developer has provided to the Agency the Developer Environmental Reports as listed in Exhibit W to this Agreement.

(b) Duty of Cooperation in Investigation and Remediation of Hazardous Materials.

After Closing, Developer and the Agency shall both have a material duty to cooperate and pursue a unified position, to the extent reasonably feasible, with respect to the investigation, removal and/or remediation of Hazardous Materials on, under or emanating from the Public Improvements Parcels and Private Improvements Parcels, or any portion thereof, in soil (including soil vapor) or groundwater, including, but not limited to, all of the following:

(i) Communications and interactions with local, state and federal agencies with oversight or other regulatory authority over any aspect of the investigation, removal, or remediation of Hazardous Materials on, under or emanating from the Public Improvements Parcels and Private Improvements Parcels, including, but not limited to, the County of Santa Clara, the San Francisco Bay Regional Water Quality Control Board and the Department of Toxic Substances Control (“Environmental Oversight Agencies”).

(ii) Development, obtaining approval from Environmental Oversight Agencies, and implementation of work plans for future investigations of Hazardous Materials on, under or emanating from the Public Improvements Parcels and Private Improvements Parcels.

(iii) Development, obtaining approval from Environmental Oversight Agencies, and implementation of remedial action plans for the cleanup, removal, disposal, and/or remediation of Hazardous Materials on, under or emanating from the Public Improvements Parcels and Private Improvements Parcels.

(iv) Communications and interactions with members of the public and the press with respect to the presence of Hazardous Materials on, under or emanating from the Public Improvements Parcels and Private Improvements Parcels.

(v) Identification of, and recovery of investigation, remediation, and related costs from, third parties who are or may be liable or otherwise responsible for the presence of Hazardous Materials on, under or emanating from the Public Improvements Parcels and Private Improvements Parcels.

As part of this duty, and with the exception of the initial notification discussed later in this paragraph, Developer and its environmental consultants shall have lead responsibility for undertaking items (i) through (iv) above, but shall consult with the Agency and its environmental consultants on a timely basis with respect to all material issues associated with the investigation, removal, and remediation of Hazardous Materials. Such consultation shall include timely requests for, and consideration of, comments and revisions to any draft or proposed investigation work plans, investigation reports or remedial action plans that are to be submitted to Environmental Oversight Agencies.

For the purpose of satisfying any potentially applicable reporting obligation imposed on the Agency by state or federal law, the Agency shall have sole responsibility for undertaking item (i) with respect to the initial notification report to the appropriate Environmental Oversight Agency concerning the presence of Hazardous Materials on, under or emanating from the Public Improvements Parcels and Private Improvements Parcels as of February 7, 2007. The Agency shall provide the initial notification report to Developer for review and comment at least five (5) business days before submittal of the report to the Environmental Oversight Agency, but the timing of submittal of the report shall be at the Agency's sole and absolute discretion. Subject to the foregoing, the Agency shall submit the initial notification report to the Environmental Oversight Agency no later than February 28, 2007. The parties shall work in good faith to resolve any comments that Developer may have concerning the initial notification report. If Developer and the Agency are unable to resolve such concerns prior to the Agency's submittal of such notification to the Environmental Oversight Agency, then Developer reserves the right to provide its own notification to the Environmental Oversight Agency with regard to such matters.

Developer shall have sole responsibility for undertaking item (v) above, which shall be at Developer's sole and absolute discretion. If Developer obtains approval from the Agency prior to undertaking a cost recovery action pursuant to item (v) above, all reasonable legal costs, including attorneys' fees and costs, associated with that action shall be shared equally by Developer and the Agency (unless the parties agree to a different allocation of such costs), but shall not be deemed Environmental Costs pursuant to Section 4.09(c) below. If developer does not obtain such approval from the Agency, Developer shall have sole responsibility for all legal costs, including attorneys' fees and costs, associated with the action.

If, following reasonable discussion, the Developer and the Agency cannot present a unified position to an Environmental Oversight Agency with respect to any issue concerning the investigation, removal action, or remedial action (with the exception of the initial notification report discussed in this Section 4.09(b) above), the Developer and Agency shall work cooperatively to present the diverging positions to the agency for resolution. In the event that the Environmental Oversight Agency declines to hear or otherwise resolve the dispute, the Developer and Agency agree to utilize the dispute resolution procedures set forth in this Section 4.09(d) below to resolve such dispute.

If an oversight agreement is entered into with an Environmental Oversight Agency, the Agency shall be identified as the party responsible for purposes of payment of oversight costs to such agency, in consultation with Developer and subject to the cost allocation set forth in Section 4.09(c) below.

Notwithstanding the foregoing, Developer's obligations to cooperate and consult with the Agency pursuant to this subsection 4.09(b) shall only apply with regard to that portion of the investigation, removal or remedial work for which the Agency is expected to pay a share of Environmental Costs pursuant to subsection 4.09(c) below. In the event the Agency pays its maximum contribution of Environmental Costs specified in subsection 4.09(c) below, Developer shall proceed thereafter in good faith to keep the Agency informed with regard to the remedial actions involving the Public Improvements Parcels and Private Improvements Parcels (including

providing the Agency on a timely basis with copies of reports submitted by Developer to, and correspondence received from, the Environmental Oversight Agency), and shall solicit and consider comments from the Agency with regard to remedial actions that the Developer is considering to implement involving the Public Improvements Parcels and Private Improvements Parcels.

(c) Agency Responsibility for Certain Investigation and Remediation Costs.

Notwithstanding the foregoing, the Agency shall be responsible for paying a certain portion of the costs incurred by Developer and the Agency following February 7, 2007, with respect to investigation, removal, remediation, monitoring, or mitigation of Hazardous Materials on, under, or emanating from the Public Improvements Parcels and Private Improvements Parcels, or any portion thereof, in soil (including soil vapor) or groundwater, and excluding asbestos and urea formaldehyde foam insulation which are present solely in aboveground structures (“Environmental Costs”).

Environmental Costs shall include, without limitation, oversight fees charged by an Environmental Oversight Agency, hazardous waste generator fees or taxes, transportation and disposal costs, and reasonable fees and related costs charged by Developer’s and the Agency’s environmental consultants, attorneys, and their respective agents. Environmental Costs shall also include reasonable costs to install, operate and maintain vapor barriers, passive or active venting systems, indoor air monitoring systems, and groundwater treatment systems (which would be separate and apart from any groundwater remedial systems and which may be necessary for purposes of treating water extracted from dewatering wells that may be required for subsurface structures). Neither party shall be responsible for any costs associated with the other party’s investigation occurring prior to February 7, 2007, including costs incurred thereafter resulting from closure, maintenance, removal, or destruction of permanent or temporary groundwater monitoring wells installed as part of such party’s investigation, unless such wells are approved for use or are otherwise directed to be used in the investigation, removal, remediation, monitoring, or mitigation of Hazardous Materials involving the Public Improvements Parcels and Private Improvements Parcels by an Environmental Oversight Agency.

The Agency shall be responsible for paying fifty (50) percent of reasonable Environmental Costs incurred by Developer and the Agency, up to a maximum of one million dollars (\$1,000,000), provided that such Environmental Costs have been incurred both:

(1) in material compliance with the duty of cooperation specified in Section 4.09(b) above; and

(2) pursuant to an investigation, removal, remediation, monitoring, or mitigation plan or other directive that has been issued or approved by an Environmental Oversight Agency, or in connection with any proposals, work plans and/or associated cost estimates jointly approved by the Agency and Developer.

Unless a different schedule is agreed upon, on a monthly basis the Agency and Developer shall provide one another with invoices and supporting documentation for all Environmental

Costs reasonably incurred by each party, and, on a quarterly basis, Developer shall prepare and submit to the Agency an itemized assessment of all such costs incurred by the Agency and the Developer. The quarterly assessment shall state the total Environmental Costs incurred by the Agency and the Developer since the most recent quarterly summary, the portion of the total Environmental Costs allocable to each party under this section 4.09(c), and the amount due to either party, if any, pursuant to that allocation. If neither party objects to or otherwise disputes the quarterly assessment within thirty (30) days, the assessment shall become final and any payment due under the assessment shall be made within fifteen (15) days thereafter. If either party objects to or otherwise disputes the quarterly assessment within thirty (30) days, the non-disputed portion of such assessment shall become final and any payment due under such assessment shall be made within fifteen (15) days thereafter. The disputed portion of such assessment shall be subject to the dispute resolution procedures set forth in subsection 4.09(d) below.

If Developer receives any recovery from any third party pursuant to subsection 4.09(b)(v) above, within ten days of receipt Developer shall apportion and deliver the proceeds of the recovery as follows:

(1) Developer and the Agency shall each be reimbursed from the recovery proceeds the legal costs incurred by each party in prosecuting the third-party recovery action;

(2) To the extent proceeds from the third-party recovery action exceed the total legal costs of the recovery action and Agency has already paid Environmental Costs, then Developer shall within ten days of receipt pay the Agency fifty (50) percent of the recovery net of legal costs, up to the amount the Agency has paid in Environmental Costs. To the extent that the remainder of such net recovery exceeds the amount Developer has paid in Environmental Costs, such net recovery shall be applied against future Environmental Costs incurred by the Agency and Developer, with fifty percent of such remaining excess net recovery allocated to each of the parties.

The above apportionment of third-party recoveries shall only apply where the legal action generating the recovery was initiated with Agency's approval and costs of suit were shared by Developer and the Agency, as provided in Section 4.09(b) above. In all other instances, Developer shall be entitled to retain all proceeds from the third-party recovery.

(d) Resolution of Environmental Disputes.

If a dispute arises with respect to any matters covered by this Section 4.09, Developer and the Agency shall first use good faith efforts to attempt to resolve the dispute informally. If informal attempts at resolving the dispute are unsuccessful, Developer and the Agency shall participate in a mediation presided over by a mediator that is mutually acceptable to the parties. If the mediation does not resolve the dispute, Developer and the Agency shall participate in an arbitration presided over by an arbitrator or panel of arbitrators that is mutually acceptable to the parties. In any mediation, Developer and the Agency shall bear their own legal costs, including attorneys' fees and costs. The arbitration shall be conducted in accordance with the American

Arbitration Association Rules for Commercial Arbitration. In no event shall Developer or the Agency have the right to file a lawsuit or claim in state or federal court to adjudicate their rights and liabilities with respect to one another under this Section 4.09 unless both Developer and the Agency consent to the filing of such a lawsuit. In any arbitration or lawsuit, the prevailing party shall be awarded its reasonable attorneys' fees and costs and reasonable consultants' fees and costs.

(e) Additional Due Diligence and Cost Sharing Reallocation.

Notwithstanding anything in this Agreement, Developer and the Agency each reserves the right, in its sole and absolute discretion, to conduct additional due diligence (including, without limitation, additional environmental investigation activities) up to the earlier of April 15, 2007 or the Effective Date to assess the nature, extent and potential sources of environmental contamination conditions on, under or emanating from the Public Improvements Parcels and the Private Improvements Parcels. Developer and the Agency each reserves the right to seek a reallocation of the Agency's share and maximum contribution amount of the Environmental Costs specified in subsection 4.09(c) above, and absent the Developer and the Agency mutually agreeing on such reallocation, terminate this Agreement. Upon such termination, this Agreement shall have no force or effect and will not have become effective.

4.10 Costs of Escrow and Closing.

Developer shall, unless paid by others, pay all property taxes including possessory interest taxes but excluding special taxes referred to below whether charged before or after the date of the Closing or Second Closing. The special taxes on the Developer Conveyance Parcels shall be removed from those parcels and transferred to the Private Improvement Parcels. Developer shall bear the cost of title insurance for the conveyances and shall pay any transfer tax on the conveyance of the Agency Conveyance Parcels and Reconveyance Parcels to Developer or other transfers at the Closing and Second Closing. The Agency shall bear the cost of title company document preparation and recordation fees. All other costs of escrow (including the fee of escrow holder), if any, shall be evenly borne by the parties.

4.11 Agency Conditions Precedent.

(a) The obligations of the Agency under this Agreement to convey the Agency Conveyance Parcels to Developer and accept conveyance of the Developer Conveyance Parcels from Developer at the Closing are subject to satisfaction of all relevant conditions set forth in this Section 4.11. The Agency may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing. After the Closing, any such condition that has not been satisfied shall be treated as having been waived in writing. No such waiver shall constitute a waiver by the Agency of any of its rights or remedies if Developer defaults in the performance of any covenant or agreement to be performed by Developer under this Agreement or if Developer breaches any representation or warranty made by Developer in this Agreement.

(b) The conditions set forth in this subsection (b) shall be applicable to the Closing under this Agreement.

(1) At the Closing, Developer shall not be in default in the performance of any covenant or agreement to be performed by Developer under this Agreement.

(2) At the Closing, all representations and warranties made by Developer in this Agreement shall be true and correct as if made on and as of the Closing.

(3) Developer has obtained the building permits and any other permits or approvals necessary to construct the Project that are required to be obtained prior to the Closing pursuant to Sections 3.05, 3.06 and 3.07 above.

(4) The Agency has approved the Developer's evidence of financing pursuant to Section 3.07 above and that financing will be available at and following the Closing to construct the Project in accordance with this Agreement.

(5) The Agency has approved the construction contracts and construction bonds for the Project pursuant to Section 3.09 above.

(6) The actions to be taken pursuant to Sections 2.01 through 2.03 have been completed in compliance with this Agreement.

(7) Title to the Developer Conveyance Parcels is in the condition specified in Section 4.08.

4.12 Developer Conditions Precedent.

(a) The obligations of Developer under this Agreement to convey the Developer Conveyance Parcels to the Agency and to accept conveyance of the Agency Conveyance Parcels from the Agency at the Closing are subject to satisfaction of all of the relevant conditions set forth in this Section 4.12. Developer may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing. After the Closing, any such condition that has not been satisfied shall be treated as having been waived in writing. No such waiver shall constitute a waiver by Developer of any of its rights or remedies if the Agency defaults in the performance of any covenant or agreement to be performed by the Agency or if the Agency breaches any representation or warranty made by the Agency in this Agreement.

(b) The conditions set forth in this subsection (b) shall be applicable to the Closing under this Agreement.

(1) At the Closing, the Agency shall not be in default in the performance of any covenant or agreement to be performed by the Agency under this Agreement.

(2) At the Closing, all representations and warranties made by the Agency in this Agreement shall be true and correct as if made on and as of the Closing.

(3) Title to the Agency Conveyance Parcels and Public Parking Parcels is in the condition specified in Section 4.08.

**ARTICLE 5.
CONSTRUCTION OF IMPROVEMENTS**

5.01 Commencement of Construction.

Developer, for itself, its successors and assigns, hereby covenants and agrees to commence construction of the Project by the Milestone 1 Date.

5.02 Completion of the Improvements.

Developer shall proceed diligently to complete the Minimum Project in accordance with the Construction Schedule attached as Exhibit T. In addition, Developer agrees to achieve completion of the following milestones by the date specified.

Milestone	Description	Date	Additional Notes
Milestone 1	Commencement of excavation and demolition for the Minimum Project.	October 15, 2007.	Commencement of excavation and demolition must be in good faith, with sufficient labor, equipment and materials to achieve completion of demolition and excavation by December 31, 2007.
Milestone 2	Substantial completion of excavation and demolition for the Minimum Project.	December 31, 2007	
Milestone 3	Topping out of structural systems for building shells for Minimum Project	December 31, 2008	Topping out will include substantial completion of structural systems through the roof level.
Milestone 4	Delivery of shell space to retail tenants for the Minimum Project	March 30, 2009	Delivery of shell space will be considered completed when the shell permit has been signed off by the City as complete (excluding PG&E) and shell space has been delivered to retail tenants.

For the purposes of the milestones set forth above, "substantial completion" shall be determined in light of the definition of "substantial completion" in AIA Document A201(1997).

Later phases of the Project in addition to the Minimum Project shall be completed within the times specified in the Construction Schedule.

5.03 Liquidated Damages.

If the Project is not completed in accordance with the Construction Schedule attached as Exhibit T, the Agency and City will suffer loss of tax revenue that would be received if the project was timely completed. Because the parties recognize that these damages would be difficult to calculate and have, therefore, agreed on the following as liquidated damages and not as penalties:

(a) If Developer does not achieve the work required by Milestone 1 described in Section 5.02 above on or before the Milestone 1 Date, Developer shall owe the Agency One thousand dollars (\$1,000) per day until excavation and demolition for the Minimum Project has been commenced. However, if Developer completes the excavation and demolition for the Minimum Project by Milestone 2 Date, the liquidated damages for late commencement of Milestone 1 will be waived.

(b) If the Developer does not complete Milestone 2 described in Section 5.02 above by the Milestone 2 Date, Developer shall owe the Agency Two Thousand Dollars (\$2,000) per day until Milestone 2 has been completed.

(c) If the Developer does not complete Milestone 3 described in Section 5.02 above by the Milestone 3 Date, Developer shall owe Agency Three Thousand (\$3,000) per day until Milestone 3 has been completed.

(d) If the Developer completes Milestone 4 described in Section 5.02 above by the Milestone 4 Date, there shall not be any liquidated damages.. However, if Developer fails to complete Milestone 4 described in Section 5.02 above within sixty (60) days of the Milestone 4 Date, Developer shall owe the Agency Eleven Thousand One Hundred Thirty-Three Dollars and Thirty-Four Cents (\$11,133.34) per day from such date until the earlier of one hundred and twenty (120) days from the Milestone 4 Date or completion of Milestone 4. If Milestone 4 has not been completed within one hundred and twenty (120) days from the Milestone 4 Date, the Developer shall pay City Five Thousand Five Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$5,566. 67) per day from such date until completion of Milestone 4, subject to a maximum amount owed hereunder of Five Million Dollars (\$5,000,000).

If the Developer owes liquidated damages to the Agency pursuant to subsections (a), (b) or (c) of this Section 5.03 but completes Milestone 4 within sixty (60) days of the Milestone 4 Date, then any amount owing under subsections (a), (b) or (c) of this Section 5.03 shall be cancelled.

Unless liquidated damages have previously been paid in full to Agency, liquidated damages due shall be withheld from and shall reduce the initial Annual Payment to Developer pursuant to Section 8.01 below, and if not fully paid by reason of that initial Annual Payment, the subsequent Annual Payments until the liquidated damages due have been fully paid. In the event that the Minimum Project is not completed and, as a result no Annual Payment is due to Developer, Developer shall pay liquidated damages due in full to the Agency.

In the event that liquidated damages are assessed for Milestones 1, 2 and/or 3 and are also assessed for Milestone 4, then any amount owed by the Developer as liquidated damages for Milestones 1, 2 or 3 will reduce the amount owed by Developer as liquidated damages for failure to timely achieve Milestone 4. Liquidated damages are measured in calendar days commencing on and including the day after the applicable Milestone Date and ending on and including the day prior to the day on which completion of the applicable Milestone actually occurs.

In no event shall Developer incur any liquidated damages in the event the failure to meet a milestone is caused by an event described in Section 12.04 and Developer gives notice of that event in the manner and in the time specified in Section 12.04. In addition, in no event shall Developer incur any liquidated damages in the event the failure to meet a milestone is a result of an unreasonable delay on the part of the City in issuing any permits or approvals, or conducting inspections and completing City improvements, necessary for Developer to construct the Minimum Project provided that the Developer has submitted to the City all documentation needed to issue the permits or approvals, and Developer gives notice of the delay in the manner and in the time specified in Section 12.04. The actual number of days of each such noticed delay shall be cumulative and shall be added to all subsequent milestones dates.

5.04 Construction in Accordance with Plans, Macy's Property Lines.

Developer shall construct the Project substantially in accordance with the Construction Plans approved by the City in the course of the approval of the building and construction permits for the Project. In constructing the Project, the Agency and Developer acknowledge and agree that the property lines between the Macy's Parcel and the Private Improvement Parcels and Public Improvement Parcels are shared and shall not be subject to the property line restriction in the adopted building codes for purposes of determining distance from the building to the property lines, allowable wall openings, allowable floor area, utility locations, egress/ingress, and other similar applications.

5.05 Change In Plans.

If Developer desires to make a substantial change in the approved Construction Plans, Developer shall submit the proposed change to the City for any necessary permits, approvals or modifications of previously issued permits or approvals. No such change shall be implemented unless approved by the City in accordance with applicable City standards and codes.

5.06 Fair Employment Opportunity.

The Developer and its contractor(s) and their successors, assigns and subcontractors shall not discriminate against any employee or applicant for employment in connection with the construction of the Project because of race, color, creed, religion, sex, marital status, national origin, gender, disability, sexual orientation or ancestry. Each of the following activities shall be conducted in a non-discriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rate of pay and other forms of compensation; and selection for training including apprenticeship.

Moreover, the Developer shall, using all reasonable efforts, require the contractor(s) and the subcontractors to give preference, to the extent practicable, for employment to those individuals residing within the geographical area governed by the Redevelopment Plan as provided by relevant State law.

5.07 Prevailing Wages; Compliance With Laws.

The Developer shall and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Project as those wages are determined pursuant to Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations and comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations. For the purposes of this Section 5.07, construction of the Project shall include demolition (whether undertaken before or after the Closing) and any predevelopment testing, surveying or other activities that constitute "construction" under Labor Code Section 1720 et. seq. The Developer shall and shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq. Copies of the currently applicable current per diem prevailing wages are available from the City of Sunnyvale Public Works Department, 465 Olive Street, Sunnyvale, California. During the construction of the Project, Developer shall or shall cause the contractor to post at the Center Property the applicable prevailing rates of per diem wages. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Agency) the Agency and the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq. and implementing regulation or comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations in connection with construction of the Project or any other work undertaken on or in connection with the Property. Developer shall require all contractors and subcontractors utilized in the construction of the Project to substantially comply with all applicable federal and state labor laws and regulations relating to the construction of the Project, including but not limited to 8 United States Code Section 1324a (Unlawful Employment of Aliens) and regulations implementing said Code section and laws concerning child labor.

5.08 Certificate of Completion.

Promptly after completion of the construction of the Project in accordance with those provisions of this Agreement relating solely to the obligations of Developer to carry out the construction of the Project, the Agency will provide an instrument so certifying (the "Certificate of Completion"). The Certificate of Completion will not be issued until the Agency has certified completion of the Public Improvements pursuant to Section 5.11 below. The Certificate of Completion shall be conclusive determination that the covenants in this Agreement with respect to the obligations of Developer, its successors and assigns, to carry out the construction of the Project have been met. The Certificate of Completion shall be in such form as will enable it to be recorded among the official records of Santa Clara County. Such certification and determination shall not constitute evidence of compliance with or satisfaction of any obligation

of Developer to any holder of a deed of trust and shall not be deemed a notice of completion under the California Civil Code.

Developer shall also be entitled to a Certificate of Completion pursuant to this Section 5.08 for completion of the various phases of the Project upon completion of each phase, provided that the Developer shall not be entitled to a Certificate of Completion for any phase of the Project until completion of the Minimum Project.

Nothing in this section shall preclude the Developer from obtaining certificates of occupancy from the City for completed buildings or structures in the Project and occupying such buildings or structures even though the Agency has not yet issued a Certificate of Completion pursuant to this section.

5.09 Lien Free Construction.

During construction of the Project, Developer shall take such steps as are necessary to keep the Public Improvement Parcels free of liens or other encumbrances created in connection with Developer's possession of the Public Improvement Parcels and construction of the Public Improvements. If a lien or other encumbrance nevertheless attaches to the Public Improvement Parcels, the Agency may require Developer to take such steps as the Agency determines are reasonably necessary to protect against such lien or encumbrance including, without limitation, requiring Developer to provide the Agency with a bond, letter of credit or other form of security, including bonding over with the Escrow Holder, in an amount equal to one hundred ten percent (110%) of the amount of the lien or encumbrance. The Agency shall not require such steps until the earlier of one hundred twenty (120) days following the date the lien or encumbrance attaches or the date any litigation to enforce the lien or encumbrance is filed.

5.10 Ownership and Transfer of Public Improvements.

During construction of the Public Improvements, said improvements shall be owned by Developer and Developer shall be solely responsible for any taxes or charges arising from the ownership, existence or construction of the Public Improvements or from Developer's possession or occupancy of the Public Improvements Parcel during construction of the Public Improvements. Upon completion of the Public Street and Utility Improvements and Agency certification of completion of the Public Street and Utility Improvements in accordance with Section 5.11 below, the Developer shall transfer ownership of these improvements to the Agency by deed, bill of sale or other conveyance upon which the parties reasonably agree. The Public Parking Structures on the Public Parking Parcels may be purchased by the City pursuant to Section 8.06 below.

5.11 Inspections and Certification of Completion of Public Improvements.

During the course of construction of the Public Improvements, the Developer shall permit Agency and City representatives to have access to the Public Improvements Parcel for the purpose of inspecting the construction of the Public Improvements. If, as a result of those inspections, the City determines that the Public Improvements are not being constructed in accordance with the approved Construction Plans, the Agency or City shall notify Developer

who shall correct, at Developer's sole cost, the work to make it conform to the Construction Plans. When the Public Improvements are completed, the City shall make a final inspection and the City or Agency shall notify Developer within twenty (20) days following completion of the inspection of any items that have not been completed or have not been constructed in accordance with the approved Construction Plans. Developer shall thereafter using all reasonable diligence complete and correct the work at Developer's sole cost. If there is any dispute between the Agency, the City and Developer regarding completion of the Public Improvements or whether the Public Improvements have been constructed in accordance with the approved Construction Plans, the Agency and Developer shall make good faith efforts to resolve the dispute.

If the dispute is not resolved within thirty (30) days, it shall be submitted to arbitration under the Fast Track Construction Arbitration Rules of the American Arbitration Association ("AAA"). The parties will jointly select an arbitrator within thirty (30) days of filing of the demand, and if unable to do so, will be an experienced architect, civil engineer or structural engineer, as applicable, appointed by the AAA in accordance with its rules. The only issue determined by the arbitrator will be whether the Public Improvements have been constructed in accordance with the approved Construction Plans, and if not, what items have not been properly completed. The arbitration shall not displace or stop any action to enforce compliance with Federal, State or City building and construction codes or regulations shall remain subject to normal enforcement actions, regardless of the outcome of the arbitration. In no event shall the arbitration delay or stop work on any other aspect of the Project.

5.12 Relocation Expenses.

If any person or entity is required to move from the Center Property as a result of the Developer's acquisition of a parcel, the Agency shall provide relocation benefits to such person or entity in accordance with law. Promptly following a request by the Agency, Developer shall reimburse the Agency for relocation costs associated with a relocation from Developer Parcels, as well as for reasonable costs incurred by the Agency for any consultants employed to assist with such relocation. The Agency's request for reimbursement shall include the bills and invoices showing in detail the costs for which reimbursement is sought. Developer shall not be required to reimburse Agency for any relocation costs related to any of the Agency Parcels or the Agency Conveyance Parcels.

5.13 Support of Existing Downtown Business During Construction.

(a) Prior to commencement of construction of the Project, Developer shall prepare, and submit to the Agency for approval and thereafter implement, a construction mitigation program designed to minimize the disruption to surrounding businesses and residents during construction. In preparing the program, Developer shall consult with downtown Sunnyvale merchants, residents and property owners. Such program shall contain, at a minimum, the following:

- (1) Plan of travel routes for construction trucks to and from the site.
- (2) Location for sufficient construction worker parking, and if off-site, shuttle service thereto if it is not within easy walking distance.

(3) An enforcement mechanism to insure that construction workers and suppliers do not park in public parking facilities intended for customer parking or on residential streets.

(4) Measures to mitigate the impacts upon operating businesses due to temporary loss of required parking during demolition and construction.

(5) Signs indicating to the public that Macy's, Target and downtown stores are open for business during construction, and signs directing customers to available public parking facilities.

(b) During the planning and construction of the Project and while construction is underway until the entire Project is completed, Developer shall hold meetings with businesses, residents and property owners in downtown as frequently as reasonably necessary (but no less frequent than monthly) to learn of any impacts on them during the prior month and to alert them to construction plans for the coming month. In addition, a website shall be maintained by Developer with a link from the City website to provide accurate and timely information on construction schedules and any potential disruptions to utilities, traffic and parking. Developer shall notify affected merchants, property owners and residents at least two weeks in advance of any planned utility disruption.

(c) During the planning and construction of the Project and until the entire Project is completed, Developer shall designate a coordinator who will be available 24 hours a day, seven days a week, to respond to problems of noise, security, utility disruption, parking violations and traffic problems.

(d) During the demolition and construction of the Project, Developer and its contractors and subcontractors performing work on the Project shall hold regular meetings with a representative or representatives designated by the Agency so as to facilitate the work of the contractors and subcontractors and resolve any ongoing construction issues affecting Downtown merchants and residents.

(e) The Developer shall also comply with the conditions of the City Approvals relating to management of construction.

ARTICLE 6. CHANGES IN DEVELOPER

6.01 Prohibition on Transfers.

For the purposes of this Agreement, a "Transfer" means any voluntary or involuntary sale, transfer, conveyance, assignment or other disposition of fee title to the whole or any part of the Private Improvement Parcels or any assignment of this Agreement, the New REA, Penney's Structure Agreement, the Public Parking Maintenance Agreement, the Public Street and Utility Maintenance Agreement or the Public Parking Ground Lease; a Transfer also includes any voluntary or involuntary sale, transfer, conveyance, assignment or other disposition of the ownership interests in Developer. Except as permitted pursuant to Section 6.03, prior to

issuance of a Certificate of Completion, the Developer shall not engage in a Transfer without the prior written approval of the Agency, which approval may be granted or withheld in the Agency's sole discretion. Following issuance of a Certificate of Completion, the Developer may engage in a Transfer provided the Agency approves the Transfer pursuant to Section 6.04 or Section 6.05. In no event shall the Developer engage in a Transfer which will result in the person or entity with the obligations under the Public Parking Ground Lease or Public Parking Maintenance Agreement not being the owner of all or a substantial portion of the Private Improvements Parcel.

6.02 Effectuation of Transfers.

A transfer approved by the Agency pursuant to Section 6.04 or Section 6.05 or permitted pursuant to Section 6.03 shall be accomplished pursuant to documentation providing for the transferee to undertake and assume the relevant rights and obligations under this Agreement. Unless agreed to otherwise by the Agency, a Transfer shall not relieve Developer of its obligations under this Agreement. Promptly following any Transfer, Developer shall provide to the Agency any information reasonably necessary to determine the Ownership Percentage under Section 8.02 below.

6.03 Certain Permitted Transfers.

Notwithstanding the provisions of Section 6.01, the Developer, without the approval of the Agency pursuant to Section 6.01, may engage in the following Transfers:

- (a) A lease of space in the Private Improvements for occupancy upon completion.
- (b) A security interest or mortgage in the Private Improvements Parcel and/or the Public Parking Construction Lease in connection with the financing approved by the Agency pursuant to Section 3.07 or a security interest or mortgage created after the issuance of a Certificate of Completion.
- (c) Any Transfer occurring following the end of the period that Developer receives Annual Payments pursuant to Section 8.01.
- (d) Any Transfer of less than a fifty percent (50%) interest in Developer occurring after issuance of a Certificate of Completion.

6.04 Transfer After Issuance of Certificate of Completion

(a) If, after issuance of the Certificate of Completion and prior to the end of the period in which Annual Payments are made pursuant to Section 8.01, the Developer proposes a Transfer of all or a substantial portion of the Project, the Developer shall submit in writing a detailed description of the proposed transaction together with detailed information concerning the financial and operational qualifications of the proposed purchaser. Within thirty (30) days following receipt of all of the information required pursuant to the previous sentence, the Agency

Executive Director may approve or disapprove in writing the proposed transaction. Failure to approve or disapprove in the thirty (30) day period shall be deemed approval. The Agency Executive Director shall not unreasonably withhold approval if the proposed transferee has the financial capacity and operational experience to operate the Project as a First Class Facility.

(b) This section shall not apply to any Transfer of any portion of the Private Improvements Parcel that is not initially developed as part of the Minimum Project unless Transfer of that portion of the Private Improvements Parcel is included in a sale of all or substantially all of the Developer's interest in the Project.

6.05 Later Transfers of Parcels for Unbuilt Portions of the Project.

Developer shall not engage in a Transfer of any portion of the Private Improvements Parcel that was not initially developed as part of the Minimum Project without the prior written approval of the Agency, which approval shall not be unreasonably withheld if the transferee has the financial capacity and experience to develop and operate, as a First Class Facility, the portion of the Project to which the Transfer relates.

ARTICLE 7.
REPRESENTATIONS, WARRANTIES, AND COVENANTS

7.01 Agency Representations and Warranties.

The representations and warranties of the Agency in this Section 7.01 are a material inducement for Developer to enter into this Agreement. Developer would not purchase the Property from the Agency without such representations and warranties of the Agency. Such representations and warranties shall survive the Closing on each portion of the Property. The Agency represents and warrants to Developer as of the date of this Agreement as follows:

(a) The Agency is a public body, corporate and politic, formed and existing under the Community Redevelopment Law. The Agency has full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery and performance of this Agreement by the Agency have been duly and validly authorized by all necessary action on the part of the Agency and all required consents and approvals have been duly obtained. This Agreement is a legal, valid and binding obligation of the Agency, enforceable against the Agency in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.

(b) The Agency and City amended the Redevelopment Plan on March 22, 2005 to extend the deadline on redevelopment activities and tax increment receipt and to increase the limit on the amount of Tax Increment the Agency can receive to an amount equal or greater than the amount of Tax Increment the Agency anticipates receiving over the life of the Redevelopment Plan.

7.02 Developer Representations and Warranties.

The representations and warranties of Developer in this Section 7.02 are a material inducement for the Agency to enter into this Agreement. The Agency would not sell the Property or any portion thereof to Developer without such representations and warranties of Developer. Such representations and warranties shall survive the Closings. Developer represents and warrants to the Agency as of the date of this Agreement as follows:

Developer is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Delaware. Developer is duly qualified to do business and is in good standing in the State of California. Developer has full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery and performance of this Agreement by Developer have been duly and validly authorized by all necessary action on the part of Developer and all required consents and approvals have been duly obtained. This Agreement is a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally. The direct and indirect owners of Developer are as set forth in the certificate provided to the Agency at the time of execution of this Agreement.

7.03 Effect of Representations and Warranties.

All representations, warranties and other covenants made by the Agency in this Agreement shall survive the Closing. The Agency shall use its best efforts, in good faith and with diligence, to cause all of the representations and warranties made by the Agency in this Agreement to be true and correct on and as of the Closing. The Agency shall indemnify and defend Developer against and hold Developer harmless from all claims, demands, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees and disbursements, that may be suffered or incurred by Developer if any representation or warranty made by the Agency in this Agreement was untrue or incorrect in any respect when made or that may be caused by any breach by the Agency of any such representation or warranty.

All representations, warranties and other covenants made by Developer in this Agreement shall survive the Closing. Developer shall use its best efforts, in good faith and with diligence, to cause all of the representations and warranties made by Developer in this Agreement to be true and correct on and as of the Closing. Developer shall indemnify and defend the Agency against and hold the Agency harmless from all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements, that may be suffered or incurred by the Agency if any representation or warranty made by Developer in this Agreement was untrue or incorrect in any respect when made or that may be caused by any breach of Developer of any such representation or warranty.

7.04 Hazardous Materials Indemnity and Release.

(a) Indemnity from Developer.

In addition to any other provision of this Agreement, and subject to the right of Developer to obtain reimbursement of Environmental Costs from the Agency pursuant to Section 4.09 above, Developer shall indemnify and hold the Agency and the City harmless from any and all claims, demands, suits, actions, causes of action, liabilities, damages, costs, attorneys' fees, consultants' fees, experts' fees, and losses of every kind, nature and description, whether known or unknown, fixed or contingent (collectively, "Claims") in any way arising from, related to, or connected with:

(i) any release, disposal or discharge of Hazardous Materials by Developer or its agents in, on, under, to, or from the Public Improvements Parcels and Private Improvements Parcels, or

(ii) violation by Developer or its agents of any laws, ordinances, rules, regulations, codes or orders concerning the presence of Hazardous Materials on or under the Public Improvements Parcels and Private Improvements Parcels, or any portion thereof, in soil (including soil vapor) or groundwater,

except to the extent such Claims are attributed to the negligence or willful misconduct of the Agency, the City, or their respective agents. This indemnification provision shall not apply to Claims by third parties arising from or related to the presence of Hazardous Materials on, under or emanating from the Public Improvements Parcels or Private Improvements Parcels. The foregoing indemnification shall survive the termination of the Agreement.

(b) Indemnity from the Agency and the City.

In addition to any other provision of this Agreement, and subject to the right of the Agency to obtain reimbursement of Environmental Costs from Developer pursuant to Section 4.09 above, the Agency and the City shall indemnify and hold Developer harmless from any and all Claims (as defined in subsection 7.04(a) above) in any way arising from, related to, or connected with:

(i) any release, disposal or discharge of Hazardous Materials by the Agency, the City, or their respective agents in, on, under, to, or from the Public Improvements Parcels and Private Improvements Parcels, or

(ii) violation by Agency, the City, or their respective agents of any laws, ordinances, rules, regulations, codes or orders concerning the presence of Hazardous Materials on or under the Public Improvements Parcels and Private Improvements Parcels, or any portion thereof, in soil (including soil vapor) or groundwater,

except to the extent such Claims are attributed to the negligence or willful misconduct of Developer or its agents. This indemnification provision shall not apply to Claims by third parties arising from or related to the presence of Hazardous Materials on, under or emanating from the

Public Improvements Parcels and Private Improvements Parcels. The foregoing indemnification shall survive the termination of the Agreement.

(c) Release by Developer.

Developer, for itself, its beneficiaries, representatives, attorneys, insurers, successors and predecessors-in-interest, assignees, owners, partners, members, employees, directors, agents, subsidiaries, and affiliates, hereby releases and forever discharges the Agency, the City and the officials, employees, agents, and attorneys of the Agency and the City (“Agency and City Released Parties”) from any and all Claims (as defined in subsection 7.04(a) above) that Developer has, ever had, or may have in the future arising out of or relating in any way to the presence of Hazardous Materials on, under or emanating from the Public Improvements Parcels and Private Improvements Parcels, or any portion thereof, in soil (including soil vapor) or groundwater, the investigation or remediation of those Hazardous Materials, or the conduct of the Agency, the City, and Agency and City Released Parties with respect to those Hazardous Materials, including, without limitation, any claims by Developer for costs and expenses, including attorneys’ and consultants’ fees, that Developer incurred or will incur for protection of Developer’s interests with respect to environmental investigation or remediation arising from the environmental condition of the Public Improvements Parcels and Private Improvements Parcels, whether or not caused by the Agency, the City, and Agency and City Released Parties. This release shall not apply:

- (i) to any Claims brought by third parties against Developer, or
- (ii) to the extent that Claims are specifically reserved to Developer in this Agreement, or
- (iii) to Developer’s enforcement of any of Agency’s and City’s obligations under this Agreement.

DEVELOPER SPECIFICALLY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTION OF THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MUTUALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Developer acknowledges that it may later discover claims or facts in addition to or different from those that Developer now knows or believes to exist regarding the presence of Hazardous Materials on or under the Public Improvements Parcels and Private Improvements Parcels, or any portion thereof, in soil (including soil vapor) or groundwater, and that, if known or suspected at the time of executing this Agreement, may have materially affected this settlement. Nevertheless, Developer hereby waives any and all Claims against the Agency and City Released Parties that might arise as a result of such different or additional claims or facts. Developer further acknowledges that Developer has been advised by its own legal counsel

regarding the meaning and effect of this waiver and understands the significance and consequence of its release of the Agency and City Released Parties and this specific waiver of California Civil Code Section 1542. The foregoing release shall survive the termination of the Agreement.

(d) Release by the Agency and the City.

The Agency and the City, for themselves, and their respective beneficiaries, representatives, attorneys, insurers, successors and predecessors-in-interest, assignees, employees, and agents hereby release and forever discharge Developer and its partners, members, employees, agents, and attorneys (“Developer Released Parties”) from any and all Claims (as defined in subsection 7.04(a) above) that the Agency and/or the City have, ever had, or may have in the future arising out of or relating in any way to the presence of Hazardous Materials on, under or emanating from the Public Improvements Parcels and Private Improvements Parcels, or any portion thereof, in soil (including soil vapor) or groundwater, the investigation or remediation of those Hazardous Materials, or the conduct of Developer and Developer Released Parties with respect to those Hazardous Materials, including, without limitation, any claims by the Agency and/or the City for costs and expenses, including attorneys’ and consultants’ fees, that the Agency and/or the City incurred or will incur for protection of the Agency’s and/or the City’s interests with respect to environmental investigation or remediation arising from the environmental condition of the Public Improvements Parcels and Private Improvements Parcels, whether or not caused by Developer and Developer Released Parties. This release shall not apply:

(i) to any Claims brought by third parties against the Agency or the City, or

(ii) to the extent that Claims are specifically reserved to the Agency and/or the City in this Agreement, or

(ii) to the Agency’s and the City’s enforcement of any of Developer’s obligations under this Agreement.

AGENCY AND THE CITY SPECIFICALLY WAIVE THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTION OF THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MUTUALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Agency and the City acknowledge that they may later discover claims or facts in addition to or different from those that the Agency and the City now know or believe to exist regarding the presence of Hazardous Materials on or under the Public Improvements Parcels and Private Improvements Parcels, or any portion thereof, in soil (including soil vapor) or groundwater, and that, if known or suspected at the time of executing this Agreement, may have

materially affected this settlement. Nevertheless, the Agency and the City hereby waive any and all Claims against Developer and Developer Released Parties that might arise as a result of such different or additional claims or facts. The Agency and the City further acknowledge that the Agency and the City have been advised by their own legal counsel regarding the meaning and effect of this waiver and understand the significance and consequence of their release of Developer and Developer Released Parties and this specific waiver of California Civil Code Section 1542. The foregoing release shall survive the termination of the Agreement.

ARTICLE 8.

AGENCY CONSIDERATION AND PARKING STRUCTURE FINANCING

8.01 Annual Payments to Developer.

The Agency shall pay to the Developer the Annual Payment beginning with the fiscal year in which the Minimum Project TIF Date has occurred. The Annual Payment shall be made each year through the 2025-2026 fiscal year. The Annual Payment is in consideration for Developer constructing and operating the Public Improvements.

The Annual Payment shall be payable initially only from the annual revenue the Agency receives pursuant to the agreements between the Agency and City (City/Agency Payment Agreement) providing for the Agency to grant to the City the Public Parking Easement (which annual revenue is equal to the Annual Payment) and any other revenue of the Agency, except that the Annual Payment shall not be payable from Tax Increment, except as provided below. At such time as the Agency has repaid to the City all of the debt of the Agency to the City incurred including interest thereon or if the City is no longer obligated to make payments to the Agency under the City/Agency Payment Agreement, the Agency shall pledge the Project Tax Increment to Developer as security for payment of the Annual Payment and the Annual Payment may be paid from Project Tax Increment. The Agency's obligations under this Section 8.01 including the pledge of the Project Tax Increment shall be subordinate to the pledge of Tax Increment that the Agency has made in connection with any bonds or other debt existing as of the date of this Agreement including debt to the City and shall be subordinate to any future pledge of Tax Increment in connection with issuance of new bonds or other debt, provided that the Agency reasonably determines that it will have sufficient Tax Increment to pay any previously incurred debt (other than debt owing to the City), the new debt proposed to be issued and an amount equal to the Annual Payment.

For the purposes of this Section 8.01, any bonds or other debt that the Agency issues after the date of this Agreement shall be considered bonds or other debt as of the date of this Agreement if the proceeds of such new bonds or other debt are used entirely to refund or repay previously issued bonds or other debt and do not result in any increase in the principal of outstanding Agency bonds.

The Annual Payment shall be made in installments based upon payments by the City under the City/Agency Payment Agreement. Those installments are to be made as follows: The first installment shall be made on or before February 1 of the year for which the Annual Payment is made. The second installment shall be made on or before June 1 of the year for which the Annual Payment is made. These installments will be based on estimates of the Project

Tax Increment for the fiscal year and each installment shall be half of the projected Project Tax Increment for the fiscal year. Within ninety (90) days after the end of the fiscal year, the Agency shall determine the exact amount of the Project Tax Increment for the fiscal year and pay to Developer any balance of the Annual Payment owing. If there was an overpayment to Developer, the overpayment shall be deducted from the first installment of the next year's Annual Payment. Notwithstanding the foregoing, the portion of the first Annual Payment constituting the Interim Project Tax Increment shall be paid promptly following the Minimum Project TIF Date.

8.02 Calculation of Annual Payment.

(a) Except as set forth in subsection (b) of this section, the Annual Payment shall be an amount equal to the Project Tax Increment for the fiscal year for which the Annual Payment is made, except that the first Annual Payment shall also include an amount equal to the Interim Project Tax Increment for the fiscal years between 2003-2004 and the fiscal year for which an Annual Payment is first required pursuant to Section 8.01. The Project Tax Increment for a particular fiscal year shall mean the Gross Project Tax Increment less the Adjustments. The Gross Project Tax Increment shall mean the Tax Increment the Agency receives in that fiscal year which Tax Increment is generated from the amount by which the sum of the Secured Assessed Value of the Center Property exceeds the 2003-2004 Secured Assessed Value, but in no event shall the Gross Project Tax Increment include any taxes that are generated by development of the Center Property in addition to or in excess of the development to be undertaken as part of the Project. The 2003-2004 Secured Assessed Value is Seventy Seven Million, Nine Hundred Sixty-three Thousand, One Hundred Seventeen Dollars (\$77,963.117), increased as set forth in Section 110.1 of the Revenue and Taxation Code between 2003-2004 and the year in which a payment is first required pursuant to Section 8.01. The Interim Project Tax Increment shall be calculated in the same manner as the Project Tax Increment except that there will be no increases as set forth in Section 110.1 of the Revenue and Taxation Code.

The Adjustments for a particular year shall be the amounts the Agency is required by law to pay to other agencies (but excluding any loan payments to the City) or to set aside for particular purposes multiplied by a fraction the numerator of which is the Gross Project Tax Increment and the denominator is the Central Core Tax Increment, provided, however, where an item of Adjustment is not one applied on a pro rata basis to all the Central Core Tax Increment, the Adjustment shall be based on the amount of reduction to the Gross Project Tax Increment that would occur as a result of the Adjustment. The "Central Core Tax Increment" means the total Tax Increment the Agency receives from all the property included in the area governed by the Plan.

No payments shall be made pursuant to this Section 8.02 until the fiscal year in which the Minimum Project TIF Date has occurred.

Notwithstanding the provisions of subsection (a), the Annual Payment shall be reduced as follows: The Annual Payment (as calculated pursuant to subsection (a) above) shall be reduced by the fifty percent (50%) of the amount by which the Project Tax Increment for that year exceeds the Anticipated Tax Increment (as defined below), provided that there shall be no reduction in the Annual Payment if the reason for the Annual Payment

exceeding the Anticipated Tax Increment for the fiscal year in question is the inclusion in the Annual Payment of the Interim Project Tax Increment. The Anticipated Tax Increment shall be Four Million Five Hundred Thousand Dollars (\$4,500,000).

As an example of the reduction pursuant to this subsection (b), assume that the Project Tax Increment for the fifth fiscal year is \$4,900,000. Since the Project Tax Increment of \$4,900,000 in the fifth year exceeds the Anticipated Tax Increment of \$4,500,000, there would be a reduction in the Annual Payment. The reduction would be \$200,000, 50%, of the difference between the Project Tax Increment and the Anticipated Tax Increment calculated as follows:

$$\begin{aligned} \$4,900,000 \text{ minus } \$4,500,000 &= \$400,000 \\ \$400,000 \text{ multiplied by } 50\% &= \$200,000 \end{aligned}$$

(b) Notwithstanding the provisions of subsection (a), the Annual Payment shall be adjusted as follows: If the owner of any of the Center Property (other than the owner of the Macy's Parcel, the owner of the Target Parcel or the owner an individual residential condominium unit that the Developer previously sold) fails to pay property taxes owing on the owner's portion of the Center Property for a particular fiscal year, the proportionate amount of property taxes representing the Tax Increment not paid shall be excluded from Gross Tax Increment for the purposes of calculating the Annual Payment for that year. The exclusion shall be made regardless of the amount of Gross Tax Increment the Agency actually receives. If those property taxes so excluded are subsequently paid, then the Annual Payment for the fiscal year in which the taxes were not paid shall be recalculated taking into account the subsequent payment of property taxes and the additional amount of the Annual Payment shall be promptly paid to the Developer.

(c) If the Gross Project Tax Increment and Central Core Tax Increment are increased as a result of future legislation or action of the State of California, then the Project Tax Increment shall not be increased. If the Gross Project Tax Increment and Central Core Tax Increment are reduced as a result of future legislation or action of the State of California, then the Project Tax Increment shall be reduced accordingly, unless the State of California provides revenue to the Agency or City in lieu of and measured by the reduction in Tax Increment resulting in the reduction of Gross Project Tax Increment and Central Core Tax Increment.

8.03 No Representations.

The Developer understands and agrees that the Agency is making no representation or warranty as to the amount of the Annual Payment and that the amount of the Annual Payment could be reduced as a result of future events, including but not limited to Developer's actions or inactions with respect to the Private Improvement Parcels, Public Parking Parcels and Public Street Parcels, future legislation that limits a reduces the amount of Tax Increment paid to the Agency or requires that Tax Increment be used for specific purposes, or natural disasters or economic downturns that result in reduction of the value of property in the area governed by the Redevelopment Plan, all of which could affect the amount of the Gross Project Tax Increment and Adjustments used to calculate the Project Tax Increment and the Annual Payment.

8.04 Limitation on Offset.

Notwithstanding any other provision of this Agreement, once a Certificate of Completion has been issued there shall be no offset in or termination of the Annual Payment by reason of a default or failure by Developer under this Agreement except as follows: If the Agency concludes that the Developer has failed to operate the Project as a First Class Facility for a continuous period of six (6) months or longer, the Agency may give Developer written notice specifying in detail the failures or conditions giving rise to the notice. If the Developer fails to remedy those failures or conditions within six (6) months following receipt of the notice from the Agency, then the Agency, by written notice to Developer, may cease the Annual Payments. The Agency shall resume payments when the failures or conditions are remedied. If Developer provides to the Agency the name and address of any lender to whom the Annual Payments are pledged or assigned as security, the Agency shall also give that lender the notices provided to Developer pursuant to this section. The Agency shall give any such lender, who so requests in writing, an opportunity to cure failures or conditions specified in the Agency's notice which cure period shall be coterminous with the one provided to Developer under this section plus such additional time as is reasonably necessary to allow such lender to gain possession of the Project or portions thereof to allow the lender to cure the failures or conditions. This provision is also included in the Agency/City Payment Agreement.

8.05 Purchase of Structures.

(a) Upon completion of the Public Parking Structures, or the Public Parking Structures associated with the Minimum Project and then upon completion of each remaining Public Parking Structure, substantially in accordance with the approved Construction Plans, the Agency, the City and Developer, at the discretion of the Developer, shall make good faith and diligent efforts to issue and market Mello-Roos Bonds that will provide sufficient proceeds to purchase the Public Parking Structures (other than the Penney's Structure) for the Public Parking Purchase Price. The Developer understands and agrees that the City's standards require that the ratio for the assessed value for the property against which the Mello-Roos special tax is levied to the amount of the Mello-Roos Bonds must be at least three (3) to one (1) and, as a result, the ability of the City to market bonds that will raise sufficient proceeds to pay the Public Parking Purchase Price is dependent in part on the value of the Private Improvements. The City and Agency will consult with Developer in structuring the Mello-Roos Bond issue. For the purposes of Section 8.06 through 8.09 of this Agreement, the Public Parking Structures shall not include the Penney's Structure.

(b) Assuming the City can issue a sufficient amount of Mello-Roos Bonds to pay the Public Parking Purchase Price, then concurrent or promptly following the City's receipt of the bond proceeds, the City shall pay the Public Parking Purchase Price to the Developer and Developer shall convey the Public Parking Structures to the Agency. The purchase and sale of the Public Parking Structures shall be accomplished pursuant to a purchase agreement reasonably acceptable to Developer and the Agency and approved by the Agency or City's bond counsel for the Mello-Roos Bonds. The Public Parking Ground Lease shall terminate upon the conveyance to the Agency. .

(c) If the City cannot issue an amount of Mello-Roos Bonds sufficient to pay the Public Parking Purchase Price, the parties shall proceed as set forth in subsection (b) above except that the City shall pay only so much of the Public Parking Purchase Price as is available from the Mello-Roos Bonds. If the City pays less than the Public Parking Purchase Price, then, if it becomes feasible in the future for the City to issue and market additional Mello-Roos Bonds to pay the balance of the Public Parking Purchase Price, the City, Agency, and Developer shall make good faith efforts to issue and market those bonds and use the proceeds of the bonds to pay the balance of the Public Parking Purchase Price.

(d) When the Agency purchases the Public Parking Structures, the Agency and Developer shall enter into the Public Parking Maintenance Agreement containing terms for the maintenance, operation, repair, replacement and insurance of the Public Parking Structures with such modifications and additions as are necessary to satisfy requirements of federal tax law applicable to tax-exempt bonds and facilities financed with the proceeds of tax-exempt bonds.

8.06 Public Parking Purchase Price.

(a) The Public Parking Purchase Price shall be the reasonable costs that the Developer incurred for design and construction of the Public Parking Structures and the financing of the cost of the Public Parking Structures including:

- (1) Design, planning, surveying, architectural and engineering fees, costs and expenses, and presentation costs and expenses;
- (2) The cost of labor, equipment, materials and supplies;
- (3) Fees and expenses paid to contractors and subcontractors constructing the Public Parking Structures;
- (4) Legal and accounting costs, fees and expenses;
- (5) Interest, commitment fees, points and other financing costs incurred in arm's length transactions;
- (6) The cost of property, liability, workmen's compensation and other insurance, as well as payment and performance bond costs;
- (7) The cost of permits and licenses, and the costs of obtaining the same;
- (8) Utility relocation costs and expenses and fees for connection to utility systems;
- (9) Site preparation costs including the costs of removal of hazardous materials, if any;

(10) Reasonable costs of Developer overhead allocated to the Public Parking Structures construction;

(11) Any other reasonable hard or soft costs or expenses of the construction of the public Parking Structures reasonably allocated to the Public Parking Structures.

In contracting for the design and construction of the Public Parking Structures, the portion of the costs relating to the Public Parking Structures will be separately and clearly identified to the extent reasonably possible. To the extent that costs relating to the Public Parking Structures cannot be separately charged, such costs shall be allocated between the Public Parking Structures and other improvements on a basis approved by the Agency and City that reasonably allocates costs between the Public Parking Structures and other improvements and satisfies federal tax law so as to assure that the interest on the Mello Roos Bonds will be exempt from federal income tax. The Developer shall submit the proposed method of allocation to the Agency and City for approval prior to commencement of construction.

Within sixty (60) days after completion of the Public Parking Structures, Developer shall deliver to the City and Agency a statement listing the costs for the Public Parking Structure and the basis for allocation of any cost allocated as described in the preceding paragraph. If City disagrees with the accuracy of such statement, the City, within sixty (60) days after delivery thereof, shall advise Developer and Developer shall provide City such additional information as reasonably requested by City to support the accounting or access (with reasonable notice and during regular business hours) to examine Developer's books and records relating to the costs of the Public Parking Structures.

8.07 Cooperation In Mello-Roos Proceedings.

Developer shall cooperate with the City and Agency in the City proceedings necessary to establish the special tax that will be used to pay the debt service on the Mello-Roos Bonds, including consenting to and/or voting in favor of the special tax and other actions.

8.08 Subordination to Obligations under Section 4.09.

The obligation of the Agency to make payments of principal, interest or other amounts on the Agency's existing debt to the City shall be subordinate to the Agency's obligation under Section 4.09 above to reimburse Developer for Environmental Costs.

8.09 Consent of City.

The City has consented to this Agreement and, by that consent, the City agrees to the rights and obligations of the City set forth in Sections 8.01 through 8.08, Section 7.04 of this Agreement, and the City/Agency Payment Agreement. However, the City shall have no other obligations under this Agreement.

ARTICLE 9.
PROVISIONS REGARDING REMEDIES

9.01 Scope of Section.

The provisions of this Section 9: shall govern the parties' remedies under this Agreement.

9.02 No Fault of Parties.

The following event shall constitute a basis for a party to terminate this Agreement:

(a) Despite good faith efforts, Developer is unable to obtain commitments described in Section 2.03 within the time set forth in that section.

Upon occurrence of the above-described event, either party may terminate this Agreement by giving written notice to the other party. Upon termination pursuant to this Section 9.02, neither party shall have any rights or obligations under this Agreement except for indemnities that survive the termination of this Agreement.

9.03 Fault of Agency.

Provided, this Agreement has not been terminated pursuant to Section 9.02 above, the following events shall entitle Developer to take action against the Agency:

(a) The Agency fails to convey the Agency Conveyance Parcels or any portion thereof to Developer when Developer is otherwise entitled to such conveyance under this Agreement.

(b) The Agency fails to accept conveyance of the Developer Conveyance Parcel or any portion thereof within the time specified in this Agreement.

(c) The Agency fails to enter into any agreement the Agency is required to enter into at the Closing, as set forth in Section 4.06, when Developer is otherwise entitled to have the Agency enter into that agreement.

(d) The Agency breaches any other material provision under this Agreement.

Upon occurrence of such an event, the Developer may give the Agency notice of default and an opportunity to cure the default. If, within sixty (60) days following receipt of the notice, the Agency fails to cure the default then the Developer may (i) seek any remedy available at law or equity, or (ii) terminate this Agreement provided that no Closing has occurred.

9.04 Fault of Developer.

Provided this Agreement has not been terminated pursuant to Section 9.02 above, the following events shall entitle the Agency to take action against the Developer:

- (a) The Developer fails to assume the obligations under the Penney's Structures Agreement or enter into the Mathilda Structures Recognition Agreement within the time set forth in Section 2.02.
- (b) The Developer fails to submit Construction Plans to the City within the times specified in Section 3.05.
- (c) The Developer fails to apply for building and construction permits within the time specified in Section 3.06 or thereafter fails to obtain such permits.
- (d) The Developer fails to apply for any permits or approvals described in Section 3.06 within the time set forth in that section or thereafter fails to obtain such permits or approvals.
- (e) The Developer fails to submit evidence of financing within the time specified in Section 3.07 or, having submitted evidence thereof, fails to obtain Agency approval of that evidence.
- (f) The Developer fails to submit construction contracts or bonds required by Section 3.08 within the time set forth in that section.
- (g) The Developer fails to accept conveyance of any portion of the Agency Conveyance Parcels within the time specified in this Agreement.
- (h) The Developer fails to convey the Developer Conveyance Parcels or any portion thereof within the time specified in this Agreement.
- (i) The Developer fails to enter into any agreement the Developer is required to enter into at the Closing, as set forth in Section 4.06.
- (j) The Developer fails to commence construction of the Project within the time specified in Section 5.01 according to the Construction Schedule.
- (k) The Developer suspends construction of the Project for a period of more than sixty (60) days.
- (l) The Developer fails to complete construction of the Project within the time specified in Section 5.02.
- (m) The Developer breaches any other material provision of this Agreement.

Upon the occurrence of such an event, the Agency may give Developer notice of default and an opportunity to cure the default, provided, however, that no notice of default and opportunity to cure need be provided if the default or failure is the one specified in subsection (i) of this section. If, within sixty (60) days following receipt of the notice, the Developer fails to cure the default, or, if the default is not reasonably susceptible to cure within that sixty (60) day period, fails to diligently begins to cure and thereafter diligently prosecutes the cure to

completion, then the Agency may (i) seek any remedy available at law or equity, (ii) terminate this Agreement, or (iii) if applicable, obtain the remedies specified in Section 9.05. In the event of a default or failure pursuant to subsection (i) of this section, the Agency may seek any of the foregoing remedies immediately following the default or failure. Notwithstanding the foregoing, the Agency's remedies for Developer's failure to complete construction of the Project within the time specified in Section 5.02 shall be limited to those remedies specified in Section 5.02 and termination of this Agreement.

9.05 Right to Purchase Private Improvement Parcels.

If, prior to issuance of a Certificate of Completion, there is a default or failure by Developer that is not cured within the time specified in Section 9.04, then in addition to any other remedies available at law or equity, the Agency shall have the right to purchase the portion of the Center Property owned by the Developer at the time of the default or failure. Such option shall be exercised by the Agency giving written notice of purchase to Developer. The purchase price shall be the fair market value of the portion of the Center Property Developer owns, assuming it does not have any rights or advantages under this Agreement, less the amount owing on any liens or encumbrances to which the property purchased is subject.

Within thirty (30) days after providing written notice of purchase, Agency shall make a written offer to purchase. Developer shall accept or counter within fourteen days (14) of receipt of the written offer. If the Developer counters, Agency shall have seven (7) days in which to accept the counter or demand appraisal. If appraisal is demanded by Agency, within 14 (fourteen) days thereafter, Developer and Agency shall each appoint an experienced independent appraiser to value the property to be purchased using the assumptions set forth in this section. The independent appraisers shall issue written appraisals sixty (60) days after appraisal was demanded by the Agency. If a party does not appoint its independent appraiser within the time specified, the purchase price will be the fair market value determined by the appraiser who was appointed.

If the higher of the independent appraisals is no more than one hundred and twenty percent (120%) of the lower appraisal, the purchase price shall be the average of the two appraisals. If the higher appraisal is more than 120% of the lower, then within fourteen (14) days after issuance of their appraisal reports, the two appraisers shall jointly select a third appraiser to determine the purchase price. The purchase price will be determined by the third appraiser based on his or her review of the independent appraisals, but in no event will the purchase price be lower than the lower of the first two appraisals or higher than the higher of the first two appraisals. If the two appraisers are unable to agree on a third appraiser, either party may seek an order from the Superior Court of Santa Clara County appointing the third appraiser. All fees and costs of the third appraiser shall be borne equally by the parties.

The Agency's right to purchase pursuant to this Section 9.05 shall not defect or render invalid any security interest permitted by this Agreement.

ARTICLE 10.
CONTINUING OBLIGATIONS

10.01 Memorandum of Agreement.

At the Closing, the Developer and Agency shall execute and record against the Private Improvements Parcel the Memorandum of Agreement attached to this Agreement as Exhibit J. The Memorandum of Agreement shall be superior to any security interest in the Private Improvements Parcel and Developer shall take such steps as are necessary to insure such priority including arranging for recordation of the Memorandum of Agreement at the time of its acquisition of the Developer Parcels or obtaining subordination agreements from acquisition lenders.

10.02 Purpose of Memorandum.

The Agency and Developer desire to record the Memorandum of Agreement in order to give notice of the continuing obligations under this Agreement including the restrictions on Transfer set forth in Section 6: above, the Agency's right to purchase set forth in Section 9.05, and the covenants set forth in Section 10.03 through 10.07 below.

10.03 Non-Discrimination.

(a) The following shall be included in the grant deed of the Private Improvement Parcels and in any subsequent conveyances of those parcels:

"The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, gender, disability, sexual orientation or ancestry in the sale, lease, sublease, transfer, use occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises so conveyed. The foregoing covenant shall run with the land."

(b) The Developer shall use reasonable efforts to include in any leases for the Project the following:

"The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and

accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, gender, disability, sexual orientation or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself, or any person claiming under or through him or her, establish or permit any such practices or discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants , or vendees in the premises herein leased."

The New REA shall obligate Developer's successors to include such provision in leases for the Project.

10.04 Sale or Lease Resulting in Tax Exemption.

Developer has indicated that it may sell or lease a portion of the Center Property after completion to a tax-exempt entity. Such a sale or lease may reduce the property tax available as increment. If Developer wishes to so sell or lease a portion of the property to a tax-exempt entity, it shall provide notice to the Agency. A condition of any such sale or lease shall be a negotiated one-time in-lieu payment from the Developer to the Agency for the projected reduced tax increment to the agency, if any, resulting from the property being owned or leased by a tax-exempt entity, unless otherwise approved by the Agency Executive Director.

10.05 Downtown Participation.

Developer shall participate in and be supportive of the Sunnyvale downtown business community. In the event a business improvement or property improvement district (the "District") is formed for the downtown, Developer shall not oppose or protest such formation. If the Developer's affirmative vote or consent to the creation of such District is required, Developer shall provide that affirmative vote or consent. The Agency understands that Developer will be providing certain routine maintenance and security functions for the Project at Developer's sole cost and therefore should not be required to pay a portion of the District's costs of providing such routine functions to portions of the downtown area other than the Project. In addition, to the extent the Developer provides maintenance or security functions to portions of the downtown area in addition to the Project, the Developer shall receive a credit for the costs it incurs for all such functions that are provided for the District. Developer shall also work with the downtown business community in producing special events, programs and advertising to promote the entire downtown area. Developer shall maintain signage at pedestrian exists from the Center Property to Washington Street showing the direction to Historic Murphy Avenue.

10.06 City Use of Plazas.

The City and Agency shall be entitled to use the outdoor plaza that is part of improvements on the Private Improvements Parcel (the "Redwood Plaza Area," also referred to

as the "Redwood Square" in the City Approvals) on the terms and conditions hereinafter set forth.

(a) City or Agency may use the Redwood Plaza Area only for special events that are (i) City or Agency sponsored and consistent with a First-Class Facility, and not sponsored by a third party, and (ii) will not interfere with the operations of the occupants of the Project, including but not limited to the operations of the Macy's and Target facilities or the Public Parking Structures. The conditions described in the prior sentence are called the "Redwood Plaza Use Conditions". Any one or more of the parties to the New REA (and the City) shall have the right to enforce compliance with the Redwood Plaza Use Conditions. The City or Agency shall be entitled to such use no more than fifteen (15) days each calendar year. Notice of the intent to schedule a public event in Redwood Plaza (a "Notice") by the Agency or City shall be given to the Plaza Events Committee (as described in subsection (b) below) at least sixty (60) days prior to the applicable event or such shorter period on which the Plaza Events Committee and Agency or City may agree. The Notice shall be in writing, shall be given by a duly authorized representative of the Agency or City and shall contain (i) a certification by such duly authorized representative on behalf of the City or Agency that the Redwood Plaza Use Conditions are satisfied and (ii) a statement describing the planned event in reasonable detail.

(b) Each such Notice shall be promptly reviewed by the Plaza Events Committee, a five-member committee consisting of a representative of the City appointed by the City Manager and representatives of the following private entities or their successors who shall be an employee or manager of each entity whose primary work location is within the Project: the Developer, Macy's, Target, and one other merchant in the Project selected by and representing merchants other than Macy's and Target, which representative should preferably be a local business owner. The Plaza Events Committee shall act to approve or disapprove the Notice within twenty (20) days following receipt of the Notice. The Plaza Events Committee's action to approve or disapprove a Notice shall be taken by majority vote of the members of the committee. If the Plaza Events Committee fails to approve or disapprove the Notice within that twenty day period, the Notice shall be deemed disapproved. The Plaza Event Committee's approval of a Notice shall not be unreasonably withheld except to the extent set forth herein. The Plaza Event Committee shall have the right to disapprove in its sole and absolute discretion a Notice providing for an event contemplated to occur during any national holiday or during the period from November 15 of any calendar year to and including January 10 of the next calendar year or during the fifteen (15) days prior to Easter. Any Plaza Events Committee disapproval may be made if the committee finds, in its sole and absolute discretion, that the event proposed in the Notice is in conflict with another event already planned in the Redwood Plaza or is likely to interfere with the operation of the Project, its tenants and/or the Macy or Target facilities or the Public Parking Structures.

(c) The Agency and City shall plan and operate events at the Redwood Plaza Area so as not to interfere with pedestrian circulation through the Redwood Plaza Area and to stores facing or otherwise adjacent to the Redwood Plaza Area. No area outside the Redwood Plaza Area shall be used in connection with any event (other than any toilets outside such area that may be designated by the Plaza Events Committee) and no portable toilets shall be permitted in the Redwood Plaza Area. The Agency or City shall reimburse Developer for the reasonable costs of all services associated with City or Agency use of the Redwood Plaza Area (including

but not limited to security and common area clean-up) to the extent that the City or Agency does not provide such services. Prior to the occurrence of any event, Agency or City will furnish to the Developer, Macy's and Target Parties evidence of general liability insurance coverage written by a joint powers authority authorized to conduct business in the State of California, such evidence to be in the form of a memorandum of coverage. Such coverage shall not be not less than \$5 million per occurrence with no limitation on the deductible or self-insured retention that the City may use during the contract period. Alternatively, the Agency or City may furnish evidence of a self-insurance program providing coverage as stated above. The Agency or City shall name the Developer as an additional insured on the liability insurance.

(d) Nothing set forth in this section is intended to, or shall be construed so as to, dedicate the Redwood Plaza Area to the public, create any third party beneficiary rights, grant any rights to the City or Agency other than the rights expressly set forth in this section, or grant any rights to the City or Agency for any time periods in excess of the time periods described in this section. The Agency acknowledges and agrees that the Redwood Plaza Area is private, not public, property.

10.07 Policing of Project.

Developer shall provide adequate security and traffic safety for both the Public Improvements Parcels and the Private Improvements Parcel as is necessary to minimize the need of the City to provide routine security and traffic safety patrol for the Project and that is consistent with the New REA. The parties do expect that the City's public safety department would respond to emergencies, crimes in progress and other similar events that are beyond the scope of a routine patrol. In providing for security, Developer shall comply with standards that are reasonably promulgated by the City's Public Safety Department. The provisions of this Section 10.07 shall also be contained in the Public Streets Maintenance Agreement and the Public Parking Maintenance Agreement. Nothing in this Section 10.07 is intended to prevent the City from engaging in any police or security activities it deems necessary to protect the health, safety and welfare of the City or any person.

ARTICLE 11. SECURITY FINANCING INTERESTS

11.01 Security Financing Interest.

The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development. Mortgages, deeds of trust, and other reasonable methods of security are collectively referred to herein as a "Security Financing Interest."

11.02 Holder Not Obligated to Construct.

The holder of any Security Financing Interest is not obligated to construct or complete any improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in conveyances of property from the Agency to Developer be

construed so to obligate such holder. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Private Improvement Parcels or Public Improvement Parcels or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

11.03 Notice of Default and Right to Cure.

Whenever the Agency delivers any notice of default to the Developer under this Agreement, the Agency shall at the same time deliver to each holder of record of any Security Financing Interest a copy of such notice. Each such holder shall (insofar as the rights of the Agency are concerned) have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default.

ARTICLE 12.
GENERAL PROVISIONS

12.01 Notices.

All notices, demands, and communication between the Agency and the Developer shall be in writing and shall be sufficiently given if and shall be deemed given if dispatched by registered or certified mail, postage pre-paid, return receipt requested, delivered personally, or sent by reputable overnight service or sent by facsimile transmission with a copy mailed by first class United States mail to the principal office of the Agency and the Developer as follows:

Agency: Sunnyvale Redevelopment Agency
456 W. Olive Avenue
Sunnyvale, California 94088
Attn: Executive Director
Telephone: 408-730-7480
Facsimile: 408-730-7699

Developer: Downtown Sunnyvale Mixed Use, LLC
c/o RREEF America REIT III, Inc.
101 California Street, 26th Floor
San Francisco, California 94111
Attn: David Wilbur
Telephone: (415) 262-7716
Facsimile: (415) 986-6247

With copies to: Sand Hill Property Company
c/o Peter Pau
Jeff Warmoth
489 South El Camino Real
San Mateo, California 94402
Telephone: (650) 344-1500
Facsimile: (650) 344-0652

Any notice, demand or other communication under this Agreement may be given on behalf of a party by the attorney for such party.

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time designate by notice as provided in this Section 12.01.

12.02 Conflict of Interests.

No member, official or employee of the Agency shall make any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership, association or other entity in which he or she is directly or indirectly interested, except as may be required by law.

12.03 Non-Liability of Agency Officials, Employees and Agents.

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

12.04 Delay.

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation (including litigation challenging this Agreement) unusually severe weather or soils conditions which will necessitate delays; inability to secure necessary labor, materials or tools; delays of any contractor, sub-contractor or supplier; acts of the other party; acts or failure to act of any public or governmental agency or entity (other than the acts or failure to act of the Agency or the City, except as set forth in Section 5.03); or any other causes (other than lack of funds of Developer or Developer's inability to finance any obligation under this Agreement) beyond the control or without the fault of the party claiming an extension of time to perform. The party claiming such extension shall send written notice of the extension to the other within thirty (30) days from the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the Agency and the Developer.

12.05 Hold Harmless.

If any person shall assert any claim against the Agency or the City or their respective officers, employees, agents or contractors on account of injury to person or property alleged to have been caused by reason of the acts of Developer, its agents, employees, representatives, contractors or subcontractors, or with respect to Developer's construction on the Public Improvements Parcels or the Private Improvements Parcels or the use thereof, or inspection or investigation thereof, the Agency shall notify the Developer who shall defend at the Developer's own expense any suit based upon such claim; and if any judgment or claim against the Agency or City or their respective officers, employees, agents or contractors shall be allowed, the Developer shall pay or satisfy such judgment or claim and pay all reasonable costs and expenses in connection therewith. The foregoing indemnity shall survive termination of this Agreement. The foregoing indemnity shall not apply to: (i) any claim for injury to person or property arising from the gross negligence or willful misconduct of the Agency or City or their respective officers, employees, agents or contractors; (ii) to any claim that arises solely by reason of the actions or omissions of an Unrelated Third Party or in connection with the Public Area Parcels or the Parking Parcels; or (iii) any claim that arises solely by reason of the design of the improvements on the Public Improvement Parcels to the extent that the design has been approved by the City and the design element is one normally approved by the City for public facilities. An Unrelated Third Party is a person or entity who is not directly or indirectly an employee, officer, agent, representative, tenant, contractor or subcontractor of the Developer.

12.06 Displaced Tenant Preference.

In accordance with Health & Safety Code Section 33339.5, the Agency may refer to Developer business tenants who have been displaced by Agency activities. If there is space available in the Project for such tenants, the tenant's use is consistent with the other uses in the Project, the New REA and in this Agreement, and the tenant is willing to lease space in the Project at market rents and on terms equivalent to the terms for other tenants in the Project, then

Developer shall give preference to such tenant in leasing over similarly situated prospective tenants who were not displaced by Agency activities.

12.07 Insurance.

During the construction of the Project, Developer or its contractor shall maintain commercial general liability insurance with limits of not less \$10,000,000 combined single limit for bodily injury and property damage and a deductible or self insured retention no greater than \$25,000. Such insurance shall name the Agency and the City as additional insureds, as respects the operations of the Developer and its contractors and shall provide that it may not be cancelled without providing the City with 30 days written notice. The insurance shall apply separately to each insured, have cross-liability and contractual liability endorsements, and waive subrogation against the Agency, City and its employees, consultants and agents. During the course of construction of the Public Improvements, Developer shall maintain comprehensive all risk insurance in the amount of the cost of construction of the Public Improvements which insurance shall name the Agency and City as additional insureds.

12.08 Approvals and Consents.

All consents, approvals, notices or other communications between the parties required under this Agreement shall be given in writing with such consents or approvals not to be unreasonably withheld, delayed or conditioned unless specified otherwise in this Agreement. Any consents, approvals or actions of the Agency may be given by the Executive Director of the Agency or the governing board of the Agency as determined by the Agency. The Agency or Executive Director on behalf of the Agency may extend times for Developer performance or satisfaction of conditions under this Agreement.

12.09 Rights and Remedies Cumulative.

The rights and remedies of the parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

12.10 Real Estate Commissions.

Each party represents and warrants to the other party that it has not dealt with any investment advisor, real estate broker or finder, or incurred any liability for any commission or fee to any investment advisor, real estate broker or finder, in connection with the conveyances under this Agreement, and each party hereby agrees to indemnify, defend and hold harmless the other party from and against any and all claims, liabilities, losses, damages, costs and expenses (including, without limitation, attorneys' fees) arising out of or incurred in connection a party's breach of its representation and warranty under this Section 12.10.

12.11 Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of California.

12.12 Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

12.13 Venue.

Except as provided in Section 5.11, any action brought on this agreement, whether to enforce its provisions, modify or construe its terms, obtain equitable relief or seek damages for its breach, shall be brought in the Superior Court of Santa Clara County.

12.14 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties hereto except that there shall be no transfer of any interest in this Agreement by any of the parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

12.15 Parties Not-Venturers.

Nothing in this Agreement is intended to or does establish the Agency and Developer as partners, co-venturers, or principal and agent with one another.

12.16 Time of the Essence.

In all matters under this Agreement, the parties agree that time is of the essence.

12.17 Complete Understanding of the Parties.

This Agreement consists of the text of the Agreement and the attached Exhibits and constitutes the entire understanding and agreement of the parties with respect to the subject matters of this Agreement. This Agreement supersedes all prior agreements, understandings, offers and negotiations, oral or written, with respect to the subject matters of this Agreement.

12.18 Interpretation.

The Agency and Developer acknowledge that each party and its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection with the transaction contemplated by this Agreement. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement. The defined terms in this Agreement shall apply equally to both the singular and the plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

12.19 Waivers.

No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiver party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

12.20 Amendments.

This Agreement may not be amended or modified except by a written instrument signed by the Agency and Developer.

12.21 Counterparts.

This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.

////

WHEREFORE, the parties have executed this 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: _____

Name: _____

Title: _____

DOWNTOWN SUNNYVALE MIXED
USE, LLC, a Delaware Limited Liability
Company

By: RREEF America REIT III Corp. MM
a Maryland corporation, its manager

By: _____

David M. Wilbur

Its: Vice President

CONSENT OF THE CITY OF SUNNYVALE

The City of Sunnyvale hereby consents to and agrees to be bound by the provisions of Sections 8.01 through 8.08, Section 7.04 of this Agreement, and the City/Agency Payment Agreement. The City shall have no other obligations under this Agreement

CITY OF SUNNYVALE

By:

Name: _____

Title: _____

AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AND OWNER
PARTICIPATION AGREEMENT

by and between

THE SUNNYVALE REDEVELOPMENT AGENCY

and

DOWNTOWN SUNNYVALE MIXED USE, LLC

TABLE OF CONTENTS

Page

ARTICLE 1. DEFINITIONS AND EXHIBITS	2
1.01 Definitions.....	2
1.02 Exhibits.	10
ARTICLE 2. INITIAL PROPERTY ACTIVITIES.....	11
2.01 Effective Date and Developer Acquisition of the Parcels.	11
2.02 Assumption of Parking Structure Obligations.	12
2.03 Approval of REA.	12
ARTICLE 3. DEVELOPER PREDEVELOPMENT ACTIVITIES	12
3.01 Description of the Proposed Project.	12
3.02 City Approvals.	14
3.03 Overview of Real Estate Transactions, Subdivision Approval.....	15
3.04 Tentative Condominium Map and Reconveyance Parcels	16
3.05 Construction Plans.	16
3.06 Building Permits.	17
3.07 Other Permits and Approvals.....	18
3.08 Evidence of Financing.	18
3.09 Evidence of Construction Contract.....	19
3.10 Assumption of Obligations by Residential Developer.....	19
3.11 Submissions for Less Than Entire Project.	20
3.12 Leasing Plan and Local Businesses.	20
ARTICLE 4. PROPERTY TRANSACTIONS.....	21
4.01 Sale and Purchase.	21
4.02 Opening Escrow.....	21
4.03 Conveyance Consideration.	21
4.04 Closing Date.....	21
4.05 Conveyances.	22
4.06 Other Closing Documents.....	22
4.07 Possession.	22
4.08 Condition of Title.....	23
4.09 Condition of Property; Investigation and Remediation of Hazardous Materials.	23
4.10 Costs of Escrow and Closing.	28
4.11 Agency Conditions Precedent.....	28
4.12 Developer Conditions Precedent.....	29
ARTICLE 5. CONSTRUCTION OF IMPROVEMENTS	30
5.01 Commencement of Construction.	30
5.02 Completion of the Improvements.	30

TABLE OF CONTENTS

	<u>Page</u>
5.03	Liquidated Damages. 31
5.04	Construction in Accordance with Plans, Macy's Property Lines..... 32
5.05	Change In Plans. 32
5.06	Fair Employment Opportunity..... 32
5.07	Prevailing Wages; Compliance With Laws. 33
5.08	Certificate of Completion. 33
5.09	Lien Free Construction. 34
5.10	Ownership and Transfer of Public Improvements. 34
5.11	Inspections and Certification of Completion of Public Improvements. 34
5.12	Relocation Expenses. 35
5.13	Support of Existing Downtown Business During Construction. 35
ARTICLE 6. CHANGES IN DEVELOPER 36	
6.01	Prohibition on Transfers. 36
6.02	Effectuation of Transfers. 37
6.03	Certain Permitted Transfers. 37
6.04	Transfer After Issuance of Certificate of Completion 37
6.05	Later Transfers of Parcels for Unbuilt Portions of the Project. 38
ARTICLE 7. REPRESENTATIONS, WARRANTIES, AND COVENANTS 38	
7.01	Agency Representations and Warranties. 38
7.02	Developer Representations and Warranties..... 39
7.03	Effect of Representations and Warranties..... 39
7.04	Hazardous Materials Indemnity and Release..... 40
ARTICLE 8. AGENCY CONSIDERATION AND PARKING STRUCTURE FINANCING... 43	
8.01	Annual Payments to Developer. 43
8.02	Calculation of Annual Payment. 44
8.03	No Representations. 45
8.04	Limitation on Offset..... 46
8.05	Purchase of Structures..... 46
8.06	Public Parking Purchase Price. 47
8.07	Cooperation In Mello-Roos Proceedings..... 48
8.08	Subordination to Obligations under Section 4.09. 48
8.09	Consent of City. 48
ARTICLE 9. PROVISIONS REGARDING REMEDIES..... 49	
9.01	Scope of Section. 49
9.02	No Fault of Parties. 49
9.03	Fault of Agency..... 49
9.04	Fault of Developer. 49
9.05	Right to Purchase Private Improvement Parcels..... 51

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 10. CONTINUING OBLIGATIONS.....	52
10.01 Memorandum of Agreement.....	52
10.02 Purpose of Memorandum.....	52
10.03 Non-Discrimination.....	52
10.04 Sale or Lease Resulting in Tax Exemption.....	53
10.05 Downtown Participation.....	53
10.06 City Use of Plazas.....	53
10.07 Policing of Project.....	55
ARTICLE 11. SECURITY FINANCING INTERESTS	55
11.01 Security Financing Interest.....	55
11.02 Holder Not Obligated to Construct.....	55
11.03 Notice of Default and Right to Cure.....	56
ARTICLE 12. GENERAL PROVISIONS	56
12.01 Notices.....	56
12.02 Conflict of Interests.....	57
12.03 Non-Liability of Agency Officials, Employees and Agents.....	57
12.04 Delay.....	58
12.05 Hold Harmless.....	58
12.06 Displaced Tenant Preference.....	58
12.07 Insurance.....	59
12.08 Approvals and Consents.....	59
12.09 Rights and Remedies Cumulative.....	59
12.10 Real Estate Commissions.....	59
12.11 Applicable Law.....	60
12.12 Severability.....	60
12.13 Venue.....	60
12.14 Binding Effect.....	60
12.15 Parties Not-Venturers.....	60
12.16 Time of the Essence.....	60
12.17 Complete Understanding of the Parties.....	60
12.18 Interpretation.....	61
12.19 Waivers.....	61
12.20 Amendments.....	61
12.21 Counterparts.....	61

TABLE OF CONTENTS

Page

Exhibits

Exhibit A	Map Showing Center Property
Exhibit B	Current Subdivision Map
Exhibit C	Developer Project Proposal
Exhibit D	Map Showing Public Improvements and Private Improvements
Exhibit E	New Tentative Map
Exhibit F	City Approvals
Exhibit G	Grant Deed Form
Exhibit H	Title Exceptions for Conveyances to Developer
Exhibit I	Title Exceptions for Conveyances to Agency
Exhibit J	Memorandum of Agreement
Exhibit K	Public Parking Easement
Exhibit L	City/Agency Payment Agreement
Exhibit M	Public Parking Ground Lease
Exhibit N	Public Street and Utility Maintenance Agreement
Exhibit O	Penney's Structure Amendment
Exhibit P	Mathilda Structure Recognition Agreement
Exhibit Q	Agency Property Reports
Exhibit R	Map Showing Macy's Conveyance Parcel
Exhibit S	Fee and Charges Estimate
Exhibit T	Construction Schedule
Exhibit U	Public Parking Maintenance Agreement
Exhibit V	Map Showing Developer Conveyance Parcels and Agency Conveyance Parcels
Exhibit W	Developer Property Reports