

## EXHIBIT O

### FIRST AMENDMENT TO OPERATION AND MAINTENANCE AGREEMENT ("Penney's Structure Agreement")

This First Amendment is made as of \_\_\_\_\_, 2007 and is an amendment to the Operation and Maintenance Agreement (the "Penney's Structure Agreement") dated as of April 13, 2000 by and between the City of Sunnyvale, a charter city ("City") and Sunnyvale LLC, a California limited liability corporation ("Original Operator") with reference to the following:

A. By assignment from other entities, Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company ("Operator"), has been assigned the rights of the Original Operator under the Penney's Structure Agreement.

B. The City and Operator desire to make certain changes to the Penney's Structure Agreement in order to facilitate the Operator's development of the property adjacent to the parking structure that is the subject of the Penney's Structure Agreement.

THEREFORE, City and Operator agree as follows:

1. Assumption of Obligations. Operator hereby assumes the rights and obligations of the "Operator" under the Penney's Structure Agreement. The City hereby consents to the assignment to Operator of the rights and obligations of the "Operator" under the Penney's Structure Agreement.

2. Scope of Agreement. Operator and City agree that, as set forth in the Amended and Restated Disposition and Development and Owner Participation Agreement dated February \_\_, 2007 (the "DDOPA") between the Operator and the Sunnyvale Redevelopment Agency ("Agency"), the Penney's Structure Agreement shall also apply to Parcel 1, as shown on the Current Parcel Map (as defined in the DDOPA), prior to the Closing, as defined in the DDOPA.

3. Amendment of Section 2. Section 2 of the Penney's Structure Agreement shall be amended so it reads in its entirety as follows:

"Section 2 Term. The term of the Agreement (the "Term") commenced upon the opening in 2001 of the public parking structure on Parcel E to the public for parking and shall continue for a term (i) coterminus with the term of the "Public Parking Ground Lease" that Operator and the Agency will enter into pursuant to the Amended and Restated Disposition and Development and Owner Participation Agreement dated February \_\_, 2007 ("DDOPA") by and between the Agency and Operator, or (ii) if, pursuant to Section 8.05 of the DDOPA, the Public Parking Ground Lease is terminated and replaced by the "Public

Parking Maintenance Agreement" between the Agency and Operator, coterminus with the term of the Public Parking Maintenance Agreement. If the Closing (as defined in the DDOPA) never occurs and, as a result, the Agency and the Operator do not enter into the Public Parking Ground Lease, the Term of this Agreement shall be fifty (50) years from January 1, 2001."

4. No Other Agreement. In all other respects, the Penney's Structure Agreement remains in full force and effect and unamended.

ATTEST:

CITY OF SUNNYVALE

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
CITY ATTORNEY

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