

EXHIBIT N

PUBLIC STREET AND UTILITY MAINTENANCE AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of _____, 200__ (the "Effective Date"), by and between the SUNNYVALE REDEVELOPMENT AGENCY, a public body corporate and politic (the "Agency"), and DOWNTOWN SUNNYVALE MIXED USE, LLC, a Delaware limited liability company (the "Operator").

W I T N E S S E T H:

WHEREAS, the Operator and the Agency have entered into that certain Amended and Restated Disposition and Development and Owner Participation Agreement dated as of _____, 2007 (the "DDA"), pursuant to which the Operator shall construct certain retail, residential, public, and commercial space (the "Development").

WHEREAS, the Operator, the Agency, Sun Town Center Properties, a California corporation, and Target Corporation, a Minnesota corporation, have entered into the Operation and Reciprocal Easement Agreement dated _____, _____, which sets forth certain standards regarding the operation and maintenance of the Development (the "OREA").

WHEREAS, a certain portion of the Development that includes the public streets and the public sidewalks on the exterior of the Development is owned by the Agency and is more particularly described in Exhibit A attached hereto (the "Public Street Parcel").

WHEREAS, there are public utility facilities (the "Utility Facilities") on parcels to be owned by Operator as more particularly described in Exhibit B (the "Private Improvement Parcels") pursuant to easements granted to the City of Sunnyvale and other public entities (the "Utility Easements").

WHEREAS, the Operator and the Agency have agreed that the Operator shall be responsible for the operation and maintenance of the Public Street Parcel and Utility Facilities pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

Section 1. Identification of Property. This Agreement shall affect the Public Street Parcel and the portion of the Private Improvement Parcels where the Utility Easements are located. The improvements that have or will be constructed on the Public Street Parcel and in the Utility Easements are referred to in this Agreement as the "Improvements."

Section 2. Term. The term (the "Term") of this Agreement shall commence on the Effective Date and shall terminate seventy-five (75) years thereafter, unless earlier terminated pursuant to the terms of this Agreement. If, at the end of the Term, the Private Improvement Parcels are still in use as a shopping center, the Agency and the Operator shall consider in good

faith an extension of this Agreement that would provide for the Operator's continued operation and maintenance of the Public Street Parcel and the Utility Facilities.

Section 3. Use.

a. Permitted Uses.

(i) The streets and sidewalks and other facilities located on the Public Street Parcel shall be used in a manner that is consistent with the laws and ordinances governing the use of public streets and sidewalks in the City of Sunnyvale (the "City").

b. Prohibited Uses.

(i) The Operator shall not do or permit to be done in, on or about the Public Street Parcel, nor bring or keep or permit to be brought or kept therein, anything that is prohibited by any insurance policy for the Public Street Parcel, or will materially increase the existing rate of, or cause a cancellation of, or affect any insurance for the Public Street Parcel that Operator is required to maintain pursuant to Section 11.

(ii) The Operator agrees not to knowingly use the Public Street Parcel or permit anything to be done in or about the Public Street Parcel which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation or requirement of duly constituted public authorities now in force or which may hereafter be enacted or promulgated. Operator agrees promptly to comply with all laws, statutes, ordinances, and governmental rules, regulations, or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use, or occupancy of the Public Street Parcel, excluding structural changes not relating to or affecting the condition, use, or occupancy of the Public Street Parcel, or not related to or affected by Operator's improvements or acts.

c. Use of Utility Facilities

The Utility Facilities shall only be used for the purposes specified in the Utility Easements.

d. Hazardous Materials

Operator agrees that during the Term of this Agreement, Operator shall not be in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, soil, water, or environmental conditions on, under or about the Public Street Parcel including, but not limited to, Hazardous Material Laws.

Operator further agrees that during the Term of this Agreement, there shall be no use, presence, disposal, storage, generation, release, or threatened release of Hazardous Materials on, from or under the Public Street Parcel in violation of any Hazardous Material Laws.

Except as otherwise provided in the DDA, Operator shall, at its sole cost and expense, be responsible for the removal and/or remediation (as set forth below) of all toxic or hazardous materials brought upon, maintained or caused to be brought onto the Public Street Parcel. Remediation shall include both structural and non-structural work and encompass inspection, monitoring, testing, contesting, making safe, removing, and otherwise dealing with toxic or hazardous materials. Further, in the event generation, transportation, storage, release, disposal or use of Hazardous Materials in, on, under or about the Public Street Parcel results in (a) contamination of the Public Street Parcel, any soil, subsoil, groundwater, surface water or ambient air, or (b) any loss, injury, damage or contamination of the Public Street Parcel or any other property or injury or death to any persons, then Operator agrees to respond in accordance with the following. Operator agrees (a) to notify Agency immediately of any claim of contamination, contamination, release, loss, injury, damage or death or otherwise, (b) after consultation with and approval by Agency (which approval may be given or withheld in Agency's reasonable discretion), Operator shall, at its sole cost and expense, remove, clean up, repair or revitalize, in full compliance with all Hazardous Material Laws, any resulting contamination, loss, injury, damage or other problem, and (c) to indemnify, defend and hold Agency and City, their board members, officers, agents, servants and employees, harmless for, from and against all resulting claims, suits, actions, causes of action, costs, professional fees, attorneys' fees, liabilities or obligations arising from or connected with any such contamination or loss, injury or damage or otherwise. The provisions of this subsection shall survive termination or expiration of this Agreement and shall continue thereafter.

For the purpose of this Agreement, "Hazardous Materials" means any substance, product, waste, or other material of any nature whatsoever:

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. ("NWP"); 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

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

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

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

which is radon gas.

The term "Hazardous Materials" shall not include the following, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Public Street Parcel, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

Hazardous Materials Laws means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Public Street Parcel or any portion thereof.

e. No Charge for Use. Operator shall not impose or permit the imposition of any charge for the use of the Public Street Parcel and Improvements without Agency's consent. In no event shall Operator be entitled to any compensation or reimbursement from the Agency for the services Operator performs and the obligations Developer incurs under this Agreement. If the Agency permits the imposition of a charge, the proceeds thereof shall be used for actual and direct expenses for operating the Improvements and paid to unrelated third parties. The foregoing shall not prevent charging tenants or owners for utility services provided by the Utility Facilities.

Section 4. Taxes.

a. Payment of Taxes. To the extent that Agency or Operator is assessed real or personal property taxes, general and special assessments, or other charges against the Public Street Parcel or the Improvements or personal property thereon, Operator shall pay such taxes, fees, charges and other governmental impositions prior to delinquency and before any fine, interest or penalty shall become due or be imposed by operations of law for their nonpayment.

b. Prorations. All payments required pursuant to Section 4 shall be prorated on a daily basis for the initial year of this Agreement and for the year in which the Agreement terminates.

c. Proof of Compliance. Operator shall furnish to Agency at least twenty (20) days before the date when any tax, assessment, or charge would become delinquent, receipts or other appropriate evidence establishing their payment. Operator may comply with this requirement by retaining a tax service to notify Agency whether taxes have been paid.

Section 5. Repair, Maintenance and Operation. During the Term of this Agreement, the Operator shall at its own expense operate, repair, and maintain the Public Street Parcel, the Improvements, the Utility Facilities and the Utility Easements in good order, condition and repair and shall pay all costs and expenses of any nature whatsoever of operating and replacing the same. Such costs and expenses shall include, but not be limited to the costs of insurance premiums, maintenance, repairs and replacements (whether of a capital or non-capital nature), compliance with legal requirements, compliance with the OREA, all utilities, and all public charges, taxes and assessments of any nature whatsoever. Neither the City nor Agency shall be under any obligation to pay any cost or expense of any kind or character in connection with or related to the repair, management, operation, maintenance or replacement of the Public Street Parcel, the Improvements, the Utility Facilities or the Utility Easements during the Term of this Agreement. The standards of operation and maintenance of the Public Street Parcel, the Improvements, the Utility Facilities and the Utility Easements required under this Agreement shall include those operation and maintenance requirements applying to the Public Street Parcel, the Improvements, the Utility Facilities and the Utility Easements in the OREA, if any, and the standards of the City generally applicable to other public streets, sidewalks, and utility facilities and easements in Sunnyvale. Operator shall at all times ensure that the provisions of the OREA relating to the operation and maintenance of the Public Street Parcel, the Improvements, the Utility Facilities and the Utility Easements are met to the extent that they apply. In the event the Operator fails to perform the management, maintenance, repair and operation of the Public Street Parcel, the Improvements, the Utility Facilities and the Utility Easements as provided herein or otherwise ensure that the applicable operation and maintenance requirements in the OREA are met, the Agency shall notify Operator in writing of such failure to perform, specifying the respects in which it considers the Operator's performance to be unsatisfactory. Upon the failure of the Operator to improve or to commence and diligently proceed to improve such performance within sixty (60) days after such notice, the Agency shall have the right to undertake or cause to be undertaken such management, maintenance, repair and operational activities in the manner provided in the OREA. In such event, the Operator shall promptly upon demand reimburse the Agency for all reasonable costs and expenses incurred by the Agency for such management, maintenance, repair and operational activities.

Section 6. Policing.

Operator shall provide adequate security and traffic control for the Public Street Parcel and the Improvements as is necessary to minimize the need of the City to provide routine patrol and traffic control for the Public Street Parcels and is consistent with the OREA. The Operator and Agency 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 or traffic control. In providing for security and traffic control, Operator shall comply with the standards reasonably promulgated by the City's public safety department. Nothing in this section is intended to prevent the City from engaging in any police or security activities it deems necessary to protect the health, safety or welfare of the City or any person. The parties shall work with the City's public safety department to provide a means for Operator enforcement for minor infractions so as to facilitate Operator's activities under this Section 6.

Section 7. Permits and Licenses.

Operator shall, at its own expense, also be responsible for obtaining and maintaining any and all governmental permits, licenses and approvals necessary or desirable with respect to the Public Street Parcel, the Improvements, the Utility Facilities and the Utility Easements.

Section 8. Improvements.

a. Existing Improvements. In accordance with the DDA, the Operator shall demolish, reconstruct, repair or replace any existing improvements on the Public Street Parcel.

b. By the Operator. In accordance with the DDA, the Operator shall construct the Improvements. Upon the completion of the Improvements, the Operator may, upon written approval from the Agency, at the Operator's expense, make any addition to or improvements to the Public Street Parcel or Improvements which are consistent with the DDA and the OREA and do not impair the utility thereof for use as public streets or sidewalks and utility facilities. Any such addition shall be performed diligently and in a first-class workmanlike manner by a licensed contractor after obtaining appropriate permits and approvals (including a building permit) from authorized governmental agencies.

c. By the Agency. The Agency shall have the right during the Term of this Agreement, at its own expense, to make or permit to be made, any addition to or improvements to the Public Street Parcel which are now or may hereafter be permitted by law, to attach fixtures, structures or signs thereto, and to place any personal property on or in the Public Street Parcel.

d. Ownership of Improvements. All Improvements constructed on the Public Street Parcel by Operator shall be owned by the Agency. Any additions or alterations to the Improvements shall automatically become part of the Improvements.

Section 9. Policies and Rules. The Operator shall establish and maintain such general policies, rules and regulations for the repair, management, maintenance, operation and use of the Public Street Parcel consistent with the provisions of this Agreement and the OREA and the standards of the City applicable to other public streets and sidewalks as may be necessary and approved by the Agency. Such policies, rules and regulations must be approved by the Agency which approval shall not be unreasonably withheld.

Section 10. Easements for Construction and Utilities. Agency grants the Operator the right to grant to public entities or service corporations, for the purpose of serving only the Public Street Parcel, rights of way or easements on or over the Public Street Parcel for poles, conduits, or both for telephone, electricity, water, sanitary, or storm sewers or both, and for other utilities and municipal or special district services. Grants made pursuant to this section shall be limited to the Term of the Agreement.

Section 11. Insurance.

a. Obligations of Operator. During the Term of this Agreement, the Operator shall at its expense, procure, carry, and maintain in full force and effect in a form acceptable to Agency insurance coverage by the following policies of insurance:

(i) Workers' Compensation Insurance, in accordance with the law;

(ii) Liability Insurance with a minimum combined single-limit coverage of Five Million Dollars (\$5,000,000) on an occurrence basis and Ten Million (\$10,000,000) combined single limit, arising out of or resulting from: (i) personal injury, death, or property damage sustained or alleged to have been sustained by any person for any reason on the Public Street Parcel or as a result of business or activity at the Public Street Parcel; or (ii) personal injury, death, or property damage sustained or alleged to have been sustained by operation, ownership, or use of automobiles, including owned, non-owned, and hired automobiles; provided, however, that such insurance may exclude coverage for 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; any claim that arises solely by reason of the actions or omissions of an Unrelated Third Party (as defined in Section 25) or in connection with the Public Street Parcel; or any claim that arises solely by reason of the design of the improvements on the Public Street Parcel 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.

(iii) Property Insurance insuring the Public Street Parcel against loss or damage by a standard all risk policy (excluding flood and earthquake if insurance for those risks is not available at a commercially reasonable rate) in amounts such that the proceeds of such insurance shall not be less than the full replacement value of the Improvements, or should insurance in such amount not be commercially reasonably available, such lesser amount as may be reasonably acceptable to the Agency. Operator shall only be required to maintain property insurance if such insurance is available to Operator. In the event Operator is unable to maintain such insurance, the Agency or City may maintain such insurance or cause such insurance to be

maintained. The Operator shall reimburse the Agency for any costs it or the City incurs in connection with this subsection (a)(iii).

(iv) Any other insurance required by the OREA or reasonably requested the Agency.

(v) All policies of liability insurance obtained and maintained by Operator in accordance with this section shall name the Agency and the City as additional insureds and shall further provide that the insurance policy so endorsed will be the primary insurance providing coverage for Agency and City.

(vi) All insurance provided under this section shall: (a) be periodically reviewed by the parties for the purpose of mutually increasing the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation; and (b) effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California.

(vii) Operator may use insurance proceeds to fulfill its obligations under Section 12; provided, however, that any proceeds that remain after repair, replacement or reconstruction shall be paid in full to the Agency.

b. Certificates. Certificates of Insurance shall be furnished by Operator to Agency and shall provide that no cancellation, reduction or modification of coverage will occur without thirty (30) days' prior written notice to Agency. In the event Operator does not comply with the requirements of this Section 11, Agency may, at its option, purchase insurance coverage to protect the Agency and the Public Street Parcel and Operator shall reimburse Agency for all reasonable sums paid by Agency under this section within thirty (30) days after written notice is received from Agency of amount expended. Acceptance of insurance certificates by Agency shall not limit or eliminate the duties or responsibilities of Operator set forth in this Agreement.

c. Waiver of Subrogation. Operator releases Agency and the City from any claims for damage to any person or to the Public Street Parcel and the building and other improvements in or to the Public Street Parcel that are caused by or result from risks insured against under any insurance policies carried by Operator and in force at the time of any such damage. Operator shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against Agency or City in connection with any damage covered by any policy.

Section 12. Damage to the Public Street Parcel and Utility Facilities.

a. Damage or Destruction of Improvements or Utility Facilities. In the event that the Improvements or Utility Facilities are damaged by fire or other casualty or event during the Term of this Agreement, Operator shall at Operator's sole cost, within thirty (30) days, commence and diligently pursue to completion the repair, replacement or reconstruction of the Improvements or Utility Facilities.

b. Damage Near End of Term, No Obligation. Unless the OREA provides otherwise, if at any time during the last six (6) years of the Term there is damage or destruction to the Improvements and the cost to repair such damage makes any repair and restoration economically infeasible as reasonably determined by Operator, Operator may, at Operator's option, cancel and terminate this Agreement as of the date of occurrence of such damage by giving written notice to Agency of Operator's election to do so within sixty (60) days after the date of occurrence of such damage. In addition, if there is substantial damage or destruction to the Improvements and, under the OREA, neither the Operator, nor the Agency, nor the City has an obligation to repair or replace the Improvements following the damage or destruction, the Operator may, at Operator's option, cancel and terminate this Agreement as of the date of occurrence of such damage by giving written notice to Agency of Operator's election to do so within sixty (60) days after the date of occurrence of such damage

Section 13. Assignment of Agreement.

Unless otherwise permitted herein, neither this Agreement nor any interest of the Operator herein shall, at any time after the date hereof, without the prior written consent of the Agency, be transferred. A transfer consists of any of the following, whether voluntary or involuntary and whether effected by death, operation of law or otherwise: (i) any assignment, mortgage, pledge, encumbrance, or other transfer of any interest in this Agreement; (ii) any occupancy of any portion of the Public Street Parcel by any persons other than Operator and its employees; and (iii) any changes of ownership in the Operator, including any transfer or fifty percent or more of the interests in Operator including the dissolution, merger, consolidation, or other reorganization of Operator. Notwithstanding the foregoing, the Operator may assign its rights under this Agreement to (i) a lender as security in accordance with Section 21, and (ii) to an entity that is purchasing all or a substantial portion of the retail improvements on the parcels adjacent to the Public Street Parcel, if such assignment is permitted under the DDA or approved by the Agency.

Section 14. Eminent Domain. If all or part of the Public Street Parcel shall be taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with a threat of exercise of such a right, either party hereto shall have the right at its option to terminate this Agreement as of the date possession is taken by the condemning authority, provided, however, that before Operator may terminate this Agreement by reason of taking or appropriation, the taking or appropriation shall be of such an extent and nature as to substantially handicap or impede use of the Public Street Parcel. In accordance with this agreement, no award for any partial or entire taking shall be apportioned, and Operator hereby assigns to Agency any award which may be made in such taking or condemnation, together with any and all rights of Operator now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Agency any interest in or to require Operator to be deemed to give Agency any award made to Operator for the taking of personal property and fixtures belonging to Operator and/or for the interruption of or damage to Operator's business. No temporary taking of the Public Street Parcel and/or of Operator's rights therein or under this Agreement shall terminate this Agreement or give Operator; any award made to Operator by reason of any such temporary taking shall belong entirely to Operator and Agency shall not be entitled to share therein.

Section 15. Surrender. Upon the termination of this Agreement, the Operator agrees that it shall surrender to the Agency the Public Street Parcel and Improvements in good order and condition and in a state of repair that is consistent with prudent use and conscientious maintenance except for reasonable wear and tear, and except for any damage to the Public Street Parcel and Improvements caused by casualty or by a taking as a result of eminent domain proceedings.

Section 16. Liens. Operator shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Operator and shall keep the Public Street Parcel free and clear of all mechanics' and materialmen's liens in connection therewith. The Agency shall have the right to post or keep posted on the Public Street Parcel, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration or repair of the Public Street Parcel by Operator. If any such lien is filed, the Agency may, but shall not be required to, upon written notice to Operator, take such action or pay such amount as may be necessary to remove such lien. Operator shall reimburse Agency for all reasonable sums paid by Agency under this section within thirty (30) days after written notice is received from Agency of the amount expended.

Section 17. Law Governing. This Agreement shall be governed by the laws of the State of California, subject to the waivers, exclusions and provisions herein contained.

Section 18. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

Agency	Sunnyvale Redevelopment Agency 456 West Olive Avenue P.O. Box 3707 Sunnyvale, California 94088-3707 Attention: Executive Director Telephone: (408) 730-9480 Facsimile: (408) 730-7699
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Operator	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
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With a copy to:	Sand Hill Property Company c/o Peter Pau Jeff Warmoth
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489 South El Camino Real
San Mateo, California 94402
Telephone: (650) 344-1500
Facsimile: (650) 344-0652

or at such other address as either party shall later designate for such purpose by written notice to the other party.

Section 19. Waiver. The waiver by either party of any breach by the other of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

Section 20. Default by Operator. If (a) the Operator shall fail to observe or perform any term, covenant or condition contained herein for a period of sixty (60) days after written notice thereof from the Agency to the Operator, or (b) the Operator shall abandon or vacate the Public Street Parcel, or (c) the Operator's interest in this Agreement or any part hereof shall be assigned or transferred without the written consent of the Agency, either voluntarily or by operation of law, or (d) the Operator shall file any petition or institute any proceedings wherein or whereby the Operator asks or seeks or prays to be adjudicated a bankrupt, or to be discharged from any or all of its debts or obligations, or offers to the Operator's creditors to effect a composition or extension of time to pay the Operator's debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization, or for a readjustment of the Operator's debts, or for any other similar relief, then and in any of such events, the Operator shall be deemed to be in default hereunder.

If the Operator should, after notice of such default, fail to remedy any default or commence the correction thereof within sixty (60) days after such notice, or thereafter fails to diligently pursue such correction to completion, then the Agency shall have the right, at its option, without any further demand or notice:

(i) to terminate this Agreement and to re-enter the Public Street Parcel and eject all parties in possession therefrom, in which case this Agreement shall terminate, and the Operator shall have no further rights or claims hereunder; or

(ii) to continue this Agreement in effect, in which case it may enforce all of its rights and remedies hereunder.

In the event the Agency terminates this Agreement as hereinabove provided, the Agency shall be entitled to pursue all rights and remedies available at law or in equity.

The foregoing remedies of the Agency are in addition to and not exclusive of any other remedy of the Agency.

Upon terminating, the Operator shall not hinder the Agency or its designee in taking over the operation of the Public Street Parcel and Improvements.

Section 21. Financing.

a. Operator shall have the right at any time and from time to time to assign this Agreement to the holder of one or more mortgages required for any reasonable and customary method of construction or permanent financing of the improvements on property adjacent to the Public Street Parcel that is subject to the DDA without the Agency's consent, provided that:

(i) The mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions stated in this Agreement and to all rights and interests of Agency except as provided in this Agreement.

(ii) Operator shall give Agency prior notice of any such mortgage, and shall accompany the notice with a true copy of the note and mortgage.

b. Agency shall give any lender, who so requests in writing, an opportunity to cure failures or conditions specified in the Agency's notice of default provided pursuant to Section 20 which cure period shall be coterminous with the one provided to Operator plus such additional time as is reasonably necessary to allow the lender to gain possession of the Operator's rights under this Agreement.

c. The documents evidencing the lender's loan to Operator shall provide that any proceeds from fire or extended coverage insurance for the Improvements shall be used for repair or rebuilding of the Improvements and not to repay part of the outstanding mortgage.

d. The documents evidencing lender's loan to Operator shall contain provisions that all notices of default under the note and mortgage must be sent to Agency and Operator and that Agency shall have the right to cure any default if Operator fails to do so. Agency shall have sixty (60) days in which to cure any default if Operator fails to do so. Neither Agency's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the note or mortgage. If any default is noncurable, it shall not be grounds for foreclosure of the mortgage if Agency, or Operator promptly performs all other provisions of the note and mortgage.

e. On the recording of lender's deed of trust or deeds of trust, Operator shall at Operator's expense, cause to be recorded in the office of the county recorder in Santa Clara County, California, a written request executed and acknowledged by Agency for a copy of all notices of default and all notices of sale under the deed of trust as provided under California Law. Inclusion in the body of lender's deed of trust or deeds of trust of a request for notice having the effect described above shall constitute compliance with this provision.

f. Lender shall not be liable to perform Operator's obligations under this Agreement until the lender acquires Operator's rights by foreclosure. After acquiring Operator's rights by foreclosure, lender shall be liable to perform Operator's obligations only until lender assigns or transfers the Agreement as permitted in Section 13. Lender shall not, however be required to cure Operator's defaults occurring before lender's acquisition of Operator's rights by foreclosure.

Section 22. No Release of Operator. Consent by Agency to any assignment by Operator shall not relieve Operator of any obligation to be performed by Operator under this Agreement, whether occurring before or after such consent or assignment, unless the Agency approves such assignment, and the assignee assumes in writing all obligations of the Operator under this Agreement and the DDA and Agency approves the form of the written assignment. The consent by Agency to any assignment shall not relieve Operator from the obligation to obtain Agency's express written consent to any other assignment except as herein provided. The acceptance of payment by Agency from any other person shall not be deemed to be a waiver by Agency of any provision of this Agreement or to be a consent to any assignment or other transfer. Consent to one assignment or other transfer shall not be deemed to constitute consent to any subsequent assignment or other transfer.

Section 23. Assignment by Agency. The Agency shall have the right to transfer and assign, in whole or in part, all its rights and obligations under this Agreement and in the Public Street Parcel and in such event such transferee shall be deemed to have assumed such obligations and no further liability or obligation shall thereafter accrue against the Agency under this Agreement.

Section 24. Nondiscrimination. The Operator covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that this Agreement 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 sex, marital status, race, color, creed, national origin, ancestry, gender, disability or sexual orientation, in the leasing, subleasing, transferring, use, or enjoyment of the Public Street Parcel herein operated nor shall the Operator itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Operators, lessees, sublessees, sub-Operators, or vendees in the Public Street Parcel herein operated.

The foregoing conditions shall not create any rights in Operator that are not otherwise expressly set forth herein.

Section 25. Indemnification. The City and the Agency shall not be liable at any time for any loss, damage, or injury to the property or person of any person whomsoever at any time occasioned by or arising out of any act or omission of the Operator, or of anyone holding under the Operator or the occupancy or use of the Public Street Parcel, the Improvements or any part thereof by or under the Operator, or directly or indirectly from any state or condition of the

Public Street Parcel or Improvements or any part thereof during the Term of this Agreement except for the willful misconduct or the gross negligence of the City or the Agency.

Notwithstanding anything to the contrary under this Agreement, and irrespective of any insurance carried by the Operator for the benefit of the City and the Agency, the Operator agrees to protect, defend, indemnify and hold the City and the Agency harmless from any and all damages or liabilities of whatsoever nature arising under the terms of this Agreement or arising out of or in connection with the Public Street Parcel or Improvements during the Term of this Agreement. 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 Street Parcel or Improvements; or (iii) any claim that arises solely by reason of the design of the improvements on the Public Street Parcel 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 Operator.

Section 26. Certain Covenants of the Operator. Without limiting Operator's other obligations hereunder, Operator shall not do, or permit or authorize others to do any of the following:

- a. Operate or use the Public Street Parcel or Improvements in any manner or for any purposes other than as herein set forth;
- b. Operate or use the Utility Facilities for any purpose other than the purpose specified in the Utility Easements.
- c. Knowingly or intentionally engage in any act which would, to an ordinarily prudent person in the position of Operator, be reasonably foreseeable to cause material damage to the Public Street Parcel;
- d. Abandon the Public Street Parcel during the Term of this Agreement;
- e. Knowingly use or occupy, or knowingly permit the Public Street Parcel or the Utility Easement, or any parts thereof, to be used or occupied, for any unlawful, disreputable or ultra-hazardous use (including the prohibited or unauthorized use, storage or disposal of hazardous material), or operate or conduct the business of the Public Street Parcel in any manner known to constitute or give rise to a nuisance of any kind;
- f. Make, authorize or permit any material modifications or alterations to the Public Street Parcel or the Utility Facilities or Utility Easement except as expressly authorized by this Agreement;

g. Do anything inconsistent with, or that will cause a default under the OREA; or

h. Enter into or amend any contract or agreement affecting the Public Street Parcel, the Improvement, the Utility Easement or the Utility Facilities that conflicts in any material respect with the terms of this Agreement or that does not contain an express provision that it will terminate automatically upon the expiration or earlier termination of this Agreement.

Section 27. Attorneys' Fees and Court Costs. In the event that either the Agency or the Operator shall bring or commence an action to enforce the terms and conditions of this Agreement or to obtain damages against the other party arising from any default under or violation of this Agreement, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

Section 28. Execution. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement, and it is also understood and agreed that separate counterparts of this Agreement may be separately executed by the Agency and the Operator, all with the same force and effect as though the same counterpart had been executed simultaneously by both the Agency and the Operator.

Section 29. Validity. If any one or more of the terms, provisions, promises, covenants, conditions or option provisions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, conditions and option provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

Section 30. Binding Effect. This Agreement, and the terms, provisions, promises, covenants, conditions and option provisions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 31. No Lease. This Agreement (i) is not a lease and does not grant Operator any real property rights in the Public Street Parcel, and (ii) shall not make Operator an agent for the City or Agency.

Section 32. Estoppel Certificate. Within ten (10) days after delivery of a written request from the Agency to the Operator, the Operator shall execute and deliver to the Agency an estoppel certificate certifying as to such facts with regard to this Agreement and the Public Street Parcel as the Agency may reasonably request from time to time.

Section 33. Conflict. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of the OREA, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

THE SUNNYVALE REDEVELOPMENT
AGENCY

By: _____
Name: _____
Its: _____

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Agency Counsel

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

EXHIBIT A

Legal Description Public Street Parcel

EXHIBIT B