

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS ON BEHALF OF THE CITY IN CONNECTION WITH THE REDEVELOPMENT OF THE TOWN CENTER MALL, APPROVING THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE AND DOWNTOWN SUNNYVALE MIXED USE, LLC IN CONNECTION WITH TOWN CENTER MALL, AND AUTHORIZING THE CITY MANAGER TO TAKE ACTIONS NECESSARY TO IMPLEMENT THE AUTHORIZED AGREEMENTS

WHEREAS, the Redevelopment Agency of the City of Sunnyvale (“Agency”) and the City negotiated on August 17, 2004, certain agreements with Fourth Quarter Properties XLVII, LLC (“Developer”) which provided for an exchange of properties between the Agency and Developer, for construction of new retail, office and residential development on the site of the Town Center Mall (“Center Property” or "Center Project") and for construction of new public parking structures and street improvements on the Center Property; and

WHEREAS, the Agency and City Council fully complied with California Community Redevelopment Law prior to approving those agreements on August 17, 2004, including holding a noticed public hearing pursuant to Health and Safety Code Section 33433 in connection with consideration of the Disposition and Development and Owner Participation Agreement (“DDOPA”); and

WHEREAS, the Agency and the City Council considered the EIR and MND in connection with approval of the DDOPA; and

WHEREAS, pursuant to the DDOPA, the Agency issued a Formal Notice of Default and Opportunity to Cure to Developer on March 8, 2006, and Notice that it was exercising its option under the DDOPA to purchase the Center Property for fair market value on August 9, 2006; and

WHEREAS, on October 2, 2006, the Developer requested Agency approval to transfer the Center Project to a joint venture entity between RREEF and Sand Hill Property Company, and the Agency and Developer agreed to an Evaluation Agreement on October 23, 2006, to conduct a due diligence review of the proposed new developer; and

WHEREAS, after review of the due diligence report the Agency approved the preliminary transfer of the Center Project to RREEF and Sand Hill Property Company subject to conditions, and RREEF and Sand Hill Property Company have formed a joint venture, Downtown Sunnyvale Mixed Use, LLC (“New Developer”), for purposes of completing the Center Project ; and

WHEREAS, the City Council has considered the Amended and Restated Disposition and Development and Owner Participation Agreement (“ARDDOPA”) between the Agency and the New Developer, and the ARDDOPA is generally consistent with the entitlements and terms approved in the DDOPA with some minor negotiated changes to the Center Project that both

improve the Center Project and provide the New Developer the ability to successfully finance the Center Project without materially changing the Agency or the City's financial commitments to the Center Project; and

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

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

1. The City Council findings made on August 17, 2004, in support of the DDOPA are incorporated and affirmed in support of the Amended and Restated Disposition and Development and Owner Participation Agreement.

2. The City Manager, or her designee, is authorized to execute on behalf of the City the City's consent to the DDOPA and to execute on behalf of the City the Public Parking Easement, City/Agency Payment Agreement, and Penney's Structure Amendment, subject to such minor changes to those agreements as the City Manager, or her designee, and the City Attorney conclude are necessary and/or desirable, and subject further to the condition that the New Developer has executed the ARDDOPA on or before April 15, 2007, or such later date approved by the Executive Director of the Agency for good cause.

3. The City Manager, or her designee, is hereby authorized to take such actions and execute such documents as are necessary to carry out the City's obligations or exercise the City's rights under any of the agreements referenced in this resolution.

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

Adopted by the City Council at a regular meeting held on February 6, 2007, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney