



## Oversight Board Meeting: July 21, 2016

**SUBJECT: Approval of the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement for the Sunnyvale Town Center.**

**REPORT IN BRIEF**

The Successor Agency to the Former Redevelopment Agency of the City of Sunnyvale adopted resolutions authorizing the Executive Director to execute the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement (2016 MRADDOPA) and related documents on June 30, 2016. This Agreement updates and amends the 2010 Amended Disposition and Development and Owner Participation Agreement (2010 ADDOPA). The 2016 MRADDOPA has been accepted by STC Venture, LLC who will be acquiring and completing the development of the Sunnyvale Town Center project: STC Venture, LLC is a joint venture consisting of J.P. Morgan Asset Management Fund, Sares Regis Group of Northern California, and Hunter Properties, LLC. Approval of the 2016 MRADDOPA is a precondition for the property transfer to STC Venture, LLC.

This staff report summarizes the key modifications to the 2010 ADDOPA, which includes responding to comments conveyed by Oversight Board members at their study sessions on May 11 and June 20, 2016. The primary comments at the Oversight Board study sessions pertained to the ongoing cost and liability to the Successor Agency and taxing entities for environmental site remediation and the elimination of potential tax increment payments to STC Venture, LLC. The staff reports for these study sessions can be viewed at: <http://sunnyvale.ca.gov/CityGovernment/RSAOversightBoard.aspx>.

It is recommended that the Oversight Board take the following actions:

1. Find for the reasons set forth in **Attachment 2** that the proposed 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement (MRADDOPA) is categorically exempt from environmental review pursuant to CEQA Guidelines Section 15304 and 15305 and that no additional environmental review is necessary as the proposed amendments are within the scope of the previous environmental analysis for the Downtown Program Improvement Update, pursuant to CEQA Guidelines Section 15168(c)(2).
2. Find that the 2016 MRADDOPA reduces the Successor Agency's liabilities, increases the revenues to the taxing entities and therefore is in the best interest of the taxing entities.
3. Adopt the Resolution approving the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement between the

Successor Agency of the Former Redevelopment Agency of the City of Sunnyvale and STC Venture, LLC and related documents. (**Attachments 3, 4 and 5**)

## **BACKGROUND**

The Redevelopment Dissolution Law (AB1x 26 as amended by AB 1484 and as further amended by SB 107) sets certain standards for Oversight Board actions. Health and Safety Code (HSC) Section 34179(i) provides that oversight boards have a fiduciary responsibility to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues.

HSC Section 34181 specifies certain actions that the Oversight Board can direct the Successor Agency to do. These include the disposition of all assets of the former redevelopment agency, ceasing performance and terminating all existing agreements that are not enforceable obligations, transferring housing assets, terminating certain agreements between the dissolved redevelopment agency and a public entity related to the operation of public improvements, and determining whether agreements between the dissolved redevelopment agency and private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities. The modifications to the 2010 ADDOPA most closely fits within the final category of actions (renegotiating agreements to reduce liabilities and increase net revenues to the taxing entities) requiring the Oversight Board's approval. HSC Section 34181(e) provides that the Oversight Board may approve any amendments of these types of agreements if it finds that the amendments would be in the best interest of the taxing entities. A Copy of HSC Section 34181(e) is attached as **Attachment 6**. This is the standard that should guide the Oversight Board in considering the 2016 MRADDOPA.

## **DISCUSSION**

### **Overview**

The Sunnyvale Town Center project is bounded by Mathilda Avenue to the west, Washington Avenue to the north, Sunnyvale Avenue to the east and Iowa Avenue to the south and contains approximately 29 acres, including the public parking parcels owned by the Successor Agency. The existing Macy's and Target parcels are under separate ownership and are not covered by the 2016 MRADDOPA. **Attachment 1** shows the properties covered by the 2016 MRADDOPA.

The 2016 MRADDOPA (**Attachment 4**) supersedes and replaces the 2010 ADDOPA. Key modifications to the 2010 ADDOPA and related documents include the following:

- a) Eliminates the Successor Agency's obligation to pay the Developer tax increment generated by the Development. ;
- b) Reduces the Successor Agency's obligations related to environmental remediation by requiring the Developer to assume the full cost of environmental remediation for the Successor Agency's public parking parcels on Block 6 (Lots 1, 3 and 4) upon conveyance of these parcels to the Developer no later than

October 1, 2022.

- c) Requires the Developer and the Successor Agency to confer on a regular basis to reach agreement on a solution to the environmental remediation costs on Block 5 (Lot 2) which could include the Developer acquiring Lot 2 of Block 5 and the parties obtaining insurance coverage for some of the costs.
- d) Extends the time for the Developer to complete the Minimum Project to December 31, 2020;
- e) Revises the Minimum Project to exclude the two-story retail buildings in Block 3 (Buildings H, I, J and L in Redwood Square), and to include completion of the theater/retail building (Building T) as a two-story structure consistent with the City's land use approvals;
- f) Updates the construction schedule and preconditions for completing the Minimum Project and public improvements;
- g) Updates the terms for liquidated damages if the Minimum Project is not completed within the prescribed timeframe;
- h) Grants an easement to the Developer for the existing Penney's Structure on Block 5 for public parking to serve the theater and downtown businesses; and
- i) Extends the term of the Public Parking Ground Lease from 75 to 99 years for the public parking parcels on Blocks 1, 2 and 6, and allows charging for parking spaces that are designated for the exclusive use of office and residential tenants.

Other terms of the 2010 ADDOPA have been carried forward into the 2016 MRADDOPA without substantive changes. The revisions to the Minimum Project also do not change the total amount of approved retail space within the project. Additionally, the Developer's responsibilities for constructing, operating and maintaining the public improvements do not change. An overview of all of the revisions to the 2010 ADDOPA is listed in **Attachment 7**, and a redlined version of the 2016 MRADDOPA that shows these revisions is provided in **Attachment 8**.

The Successor Agency held a study session on June 28, 2016, and a public hearing on June 30, 2016. The Successor Agency's approval of the 2016 MRADDOPA was segmented into two actions to address Successor Agency Board member conflict issues. The CEQA findings and the two resolutions (Parts A and B) adopted by the Successor Agency are provided in **Attachments 9, 10 and 11**. The Successor Agency agenda report and supporting material are available at:  
<https://sunnyvaleca.legistar.com/MeetingDetail.aspx?ID=493312&GUID=068167B7-2B1C-474D-AFA1-7CAC3685301C&Options=info&Search=>

### **Highlights of 2016 MRADDOPA (Modifications to 2010 ADDOPA)**

#### **Reduction of Successor Agency Liabilities**

##### Section 4.04 – Remediation of Hazardous Materials:

The 2010 ADDOPA splits the environmental remediation costs associated with hazardous waste contamination on Successor Agency owned property on Blocks 5 and

6 equally between the Successor Agency and the Developer. Currently, the primary costs for environmental remediation are for monitoring and operating soil vapor extraction systems (wells) installed on the properties. In recent years, the total annual environmental cost has been approximately \$280,000; however, this cost could fluctuate in future years depending on the remediation work required to address a long term solution to the hazardous contamination issue on the site, such as installation of soil vapor barriers or removal of contaminated soil.

The 2016 MRADDOPA reduces the Successor Agency's liability for environmental remediation costs. Language has been added to Section 4.04 of the 2016 MRADDOPA that the Developer will assume full responsibility for the remediation costs on Block 6 at such time as the Developer accepts conveyance of the Successor Agency owned property in Block 6, but no later than October 1, 2022. The Developer can request conveyance of the Successor Agency owned property in Block 6 prior to October 1, 2022, but the Successor Agency may not be able to convey the Block 6 property to the Developer until October 1, 2022 because the property (along with Lot 2 of Block 5) is currently leased to the City in accordance with a Facility Lease that secures the Certificates of Participation (COPS) issued by the City. If the Developer does request conveyance of the Block 6 property before October 1, 2022, the Successor Agency can delay the conveyance until the property can be released from the Facility Lease. The Facility Lease expires on October 1, 2022, when the COPS are fully repaid and the term can only be extended if the COPS are not paid as of that date and then only until October 1, 2027. As explained below, there is every expectation that the COPS will be repaid no later than October 1, 2022.

The outstanding debt service on the COPS is currently about \$8.6 million and will be fully repaid on October 1, 2022. The City's rent payments under the Facility Lease are the security for the COPS and are used to repay the COPS. The City has consistently made the required annual lease payments directly to the trustee for the COPS as required by the Facility Lease and the COPS. The City's 20 year financial plan includes the COPS debt service payment through October 1, 2022 to ensure that the City has sufficient funds to pay the remaining lease payments no later than October 1, 2022. If the Developer requests conveyance of the Block 6 property before full repayment of the COPS, the Successor Agency may be able to obtain release of the Block 6 property from the Facility Lease prior to full repayment of the COPS but such a release will require the consent of the bondholders and the trustee and the Successor Agency will be required to show that the remaining property included in the Facility Lease (Lot 2 of Block 5) is sufficient to warrant the full lease payment.

The 2016 MRADDOPA will ensure that the Successor Agency's liability for the environmental remediation on Block 6 will be eliminated at the latest on October 1, 2022.

Until the Block 6 lots are conveyed, the Successor Agency and Developer will continue to equally share the cost of environmental remediation pursuant to the terms of the

2016 MRADDOPA, which have been carried over from the 2010 ADDOPA. Once conveyed, the Developer's will continue to be obligated to construct and maintain a public parking structure on these lots. The Developer's obligation to accept conveyance of the Successor Agency Block 6 property is further addressed in the Amended and Restated Covenant to Convey which is provided in **Attachment 4, Exhibit K**.

The 2016 MRADDOPA does not provide a specific solution for the environmental remediation required on Lot 2 of Block 5 (location of the Penney's Structure). However, language has been added to Section 4.04 of the 2016 MRADDOPA acknowledging that the Developer has agreed to confer with the Successor Agency regularly through December 31, 2018 on the ultimate disposition of Lot 2 of Block 5. The timeline for discussions corresponds to expected construction period for the construction and occupancy of the theater building and was set to keep the negotiations moving forwards toward final resolution. Areas to be discussed by the Developer and the Successor Agency will include the earlier conveyance of Block 6 property, potential conveyance of Lot 2 of Block 5 to the Developer, and the Developer assuming a greater portion of the remediation costs and naming the Successor Agency as an additional insured on its insurance policy.

The 2016 MRADDOPA retains provisions of Section 4.04 that call for binding arbitration to resolve disputes related to matters covered by Section 4.04. Generally Section 4.04 addressed the environmental remediation of the property and the disputes covered by the binding arbitration provisions are expected to be related to the remediation of the property. The conveyance of the Block 6 property to the Developer is covered by a separate agreement, the Modified and Restated Covenant to Convey. The binding arbitration provision of Section 4.04 does not extend to the Covenant to Convey so if a dispute were to arise between the Developer and the Successor Agency related to the conveyance of the Block 6 property, the parties would resolve the dispute through litigation unless the parties mutually agreed upon an alternative dispute resolution process.

#### Section 7.04 – Hazardous Material Indemnity and Release

This section is being deleted from the 2016 MRADDOPA as the 2010 ADDOPA states that its hazardous material indemnity and release provisions survive the termination of the 2010 ADDOPA and there is no need to carry this provision forward to the 2016 MRADDOPA. The survival of the Developer's obligation, as well as the mutual Successor Agency's obligation, is memorialized in Section 12.17 of the 2016 MRADDOPA.

#### Section 12.05 – Hold Harmless

Section 12.05 has been amended to require the Developer to indemnify the Successor Agency and the Oversight Board in the event that the approval of the agreement or any implementing actions of the agreement are challenged in court. The Successor Agency is required to cooperate with the Developer in the defense of any such action and if the Successor Agency wants to use separate counsel to defend the Successor Agency, the

Successor Agency may be responsible for those costs under the terms of the indemnification.

Article 8, Sections 8.01-8.09 – Agency Consideration and Parking Structure Financing

The 2016 MRADDOPA deletes the Successor Agency's obligation to pay the future Annual Payment to the Developer from tax increment funds (TIF) generated by the project. Under Article 8 of the 2010 ADDOPA, the former Redevelopment Agency agreed to provide the Annual Payment in consideration for the Developer constructing, operating and maintaining the required public improvements, such as the parking structures and street improvements. Annual Payments were to begin with completion of the defined "Minimum TIF Project" (150,000 square feet of retail space) and would continue to Fiscal Year 2025/26. The source of the payments was to be the tax increment from the increase in assessed property valuation of the Town Center property. In addition, the first Annual Payment was to include all of the TIF generated by the Project since Fiscal Year 2003/04 until the date of the first Annual Payment. The 2010 ADDOPA also requires the Successor Agency to pay to the Developer a one-time payment of all of the tax increment funds generated by the Project since Fiscal Year 2003/04 upon the completion of the exterior walls of Building D, which are complete, and the theater ("Interim Project Tax Increment").

The Developer has agreed to forego the receipt of the Annual Payment and the Interim Project Tax Increment with the understanding that it would be difficult to gain approval of the 2016 MRADDOPA from the Oversight Board and DOF if this liability to the Successor Agency and taxing entities remains in the agreement. Another source of funds is also not available or feasible. Therefore, Article 8 has been deleted entirely from the 2016 MRADDOPA. The deletion of the Annual Payment to the Developer will eliminate a potential cumulative Successor Agency obligation of approximately \$65 million if the Minimum TIF Project was achieved and approximately \$21 million if the Interim Project Tax Increment payment was required upon completion of the theater. This estimate is conservative and the actual potential payment would depend on the actual increase in assessed value of the property at the time payment was triggered.

The 2016 MRADDOPA will continue, however, to obligate the Developer to complete and maintain the public facilities and improvements within the project through other existing agreements that are referenced in the 2016 MRADDOPA (Attachments 1-4 of the 2016 MRADDOPA). Many of these facilities were substantially completed prior to 2010. These completed facilities and the yet-to-be-completed facilities directly benefit the Developer by providing necessary public infrastructure, parking and other improvements to serve the project. The public facilities also facilitate the completion of the Project by providing the parking and other public amenities necessary to attract quality retailers.

Article 8 of the 2010 ADDOPA also allowed the Developer to request that the City and the Agency to issue Mello-Roos Bonds to provide sufficient revenue for the City or Redevelopment Agency to purchase the Public Parking Structures from the Developer

upon completion of these facilities. With the dissolution of redevelopment agencies, the ability of the City or Successor Agency to purchase the Public Parking Structures with Mello-Roos Bonds is not feasible. These provisions have therefore been deleted from the 2016 MRADDOPA.

## **Increase in Revenue to the Taxing Entities**

### Section 5.02 - Minimum Project Commencement and Completion

The 2016 MRADDOPA includes modifications to the scope of the Minimum Project. The amount of Minimum Project retail space (including multiplex movie theater) has been revised from approximately 329,700 square feet to approximately 247,800 square feet (based on the 2007 approved project plans). The primary change pertains to deleting the two-story Redwood Square retail buildings (Building H, I, J and L on Block 3) from the Minimum Project, which represent approximately 127,800 square feet. The market feasibility of these two-story buildings has been questioned, and the Developer is proposing to study alternative development options for Block 3, including redesigning Redwood Square. While these buildings have been removed from the Minimum Project, the 2016 MRADDOPA does not reduce the total amount of planned retail space (remains at 931,385 square feet, including the Macy's and Target stores).

Offsetting the elimination of the Redwood Square buildings from the Minimum Project will be the addition of approximately 60,000 square feet of ground floor retail space in the theater/retail building (Building T on Block 5). This building is currently shown in the City's approved development plans as a two-story building with retail uses on the ground floor and a movie theater on the second level. However, the Minimum Project in the 2010 ADDOPA only requires a one-story theater building. While the 2016 MRADDOPA does not preclude this option, it would require City approval of an amendment to the development plans.

The anticipated Construction Schedule for the revised Minimum Project is outlined in Exhibit B of the 2016 MRADDOPA, which assumes transfer of the property to STC Ventures this summer. The schedule indicates completing the three partially completed the residential units (Buildings D, E and F), the theater/retail building (Building T) and the Penney's Parking Structure by the end of 2018. The schedule also anticipates completing the remaining public improvements (listed in Exhibit B-1) by the end of 2018. Completion of the theater/retail building is dependent on securing lease commitments before construction commences. The Minimum Project retail space in Building D, E, F and N is expected to be phased and completed by December 31, 2020. The 2016 MRADDOPA does not include a schedule for completing the remainder of the project.

### Section 5.03 – Liquidated Damages

The 2010 ADDOPA included a liquidated damages provision that required Developer to pay liquidated damages of \$5 million if the former Developer failed to complete construction of any retail building within the time periods required in Exhibit H of the

2010 ADDOPA, once the Developer recommenced or commenced construction of such retail building. The former Developer never commenced or recommenced construction of any retail building within the project after the effective date of the 2010 ADDOPA so no liquidated damages were owed under the 2010 ADDOPA.

The 2016 MRADDOPA continues to include a provision requiring the Developer to pay the City liquidated damages if the Developer fails to complete the construction of any retail space that is part of the Minimum Project within the time required in Exhibit H to the 2016 MRADDOPA once construction for such retail space has commenced. The parties recognize that the delay in completing the retail portion of the Project would result in lost sales tax revenue to the City and liquidated damages would offset this loss of revenue. While the calculation of the amount of lost revenue is difficult to forecast, the agreement continues to set liquidated damages at five million dollars (\$5,000,000). The liquidated damages requirement is included as a way of keeping the Developer on schedule for the completion of construction of the retail portions of the Project.

The timeframe for completing the retail portions of the Minimum Project once construction has commenced to avoid liquidated damages is described in Exhibit H to the 2016 MRADDOPA. This exhibit has been updated from the version in the 2010 ADDOPA to reflect the new Construction Schedule in Exhibit B, with additional time allowance for unexpected delays. Intermediate dates have been set for completion of project elements, with an anticipated end date of December 31, 2020 for substantial completion of the Minimum Project. Exhibit H outlines preconditions for commencing and completing construction such as securing tenant lease commitments and obtaining required City approvals and building permits. All dates for commencement and completion of construction of the Minimum Project may be extended if unforeseen events occur that are beyond the control of the Developer as set forth in Section 12.04 of the 2016 MRADDOPA.

### **Effects of 2016 MRADDOPA on Taxing Entities**

The proposed amendments to the 2010 ADDOPA included in the 2016 MRADDOPA reduce the liabilities of the Successor Agency, will result in an increase in net revenues to the taxing entities and are in the best interest of the taxing entities.

The 2016 MRADDOPA includes several significant changes that will reduce the liability of the Successor Agency to the Developer. Of greatest significance is the elimination of the Successor Agency's contingent liability to pay the tax increment generated from the project to the Developer if certain milestones are achieved.

The proposed revisions to Section 4.04 of the 2016 MRADDOPA as discussed above respond to the concerns of the Oversight Board by reducing the cost and liability of environmental remediation on the Successor Agency and taxing entities. Coupled with the significant increase in projected property tax revenue from the approval of the 2016 MRADDOPA, which would allow the transfer of the property and completion of the

Sunnyvale Town Center project, the financial benefits to the taxing entities will be substantial. These financial benefits are discussed below.

Increase in Net Revenues to the Taxing Entities:

The 2016 MRADDOPA will result in a significant increase in net revenues to the taxing entities. The elimination of the TIF obligation and the reduction in environmental remediation costs both eliminate the potential for reduction in residual distributions to the taxing entities of property tax increment that would otherwise be allocated for payments required under the 2010 ADDOPA. Additionally, the 2016 MRADDOPA will allow the completion of the Minimum Project by the Sunnyvale Town Center Developer without further delay. Under the 2016 MRADDOPA, the Minimum Project is expected to be substantially completed no later than December 31, 2020. The Minimum Project includes the completion of 198 residential units, approximately 116,000 square feet of additional retail space, the theater/retail building, temporary improvements to Redwood Square, and public parking to serve the project and downtown businesses.

The completion of the Minimum Project is expected to result in a significant increase in property taxes which will benefit the taxing entities. Using conservative assumptions for the value of the improvements to be constructed by the Developer, the completion of the Minimum Project is projected to increase the assessed valuation of the Project over the next ten years by approximately \$3.3 billion (see Table 2 on **Attachment 12** which shows the projected increase in assessed valuation for the Project with completion of the Minimum Project). Taxing entities will see an immediate increase in property tax revenue as transfer of the remaining portions of the project (the office buildings were already transferred in December 2015) is expected to increase the assessed valuation of the project by approximately \$100 million, resulting in an increase in property taxes of \$1 million annually. This is in addition to the \$1.2 million increase in property tax revenue realized in Fiscal Year 2016/17 as a result of the transfer of the office buildings at the end of 2015. Table 1 on **Attachment 12** shows the projected increase in property tax distributions to each of the effected taxing entities through Fiscal Year 2028/29. As shown, the County of Santa Clara can expect an increase in property tax revenue of approximately \$5 million over the next ten year. The Sunnyvale Elementary School District should receive approximately \$7 million in additional revenue and the Fremont Union High School District should receive approximately \$6 million in additional revenue.

**Other Key Provisions of the 2016 MRADDOPA:**

Section 3.10 – Assumption of Obligations by Residential Developer

Section 3.10 of the existing ADDOPA allows the Developer to assign the residential portions of the project to an entity controlled by the Developer without obtaining the Successor Agency's approval and grants authority to the Executive Director to approve the substitution or assignment of any uncompleted residential portion of the project to another Residential Developer. The changes to this section clarify that the transfer of the property from Wells Fargo Bank to STC Ventures, LLC, as acknowledged by the

Successor Agency in December 2015, complies with the requirements of Section 3.10. Other potential changes to the composition of the Developer are addressed in Article 6 of the 2016 MRADDOPA (see discussion below).

### Section 3.12 – Leasing Plan

The requirement for the Developer to submit a Leasing Plan for the retail spaces is carried forward into the 2016 MRADDOPA, but the timing and objectives of the Leasing Plan have been updated. The Leasing Plan is required to be submitted at an early stage (anticipated by January 2017). Release of a revised residential building permit would be contingent on the Developer submitting this plan. The Successor Agency Executive Director has the ability to review and comment on the plan, but does not have approval authority. The goal is to work with the Developer to offer a synergistic blend of high quality retail, restaurant and entertainment establishments that would complement existing downtown businesses, align with community expectations, and create a distinctive identity for downtown Sunnyvale. While the Leasing Plan will not name specific tenants, the desire is to understand early on the Developer's retail strategy for assembling an optimum mix of tenants for the project.

### Article 6 – Changes in Developer

Article 6 of the 2010 ADDOPA allows the Successor Agency to review certain types of transfers of the Developer's interest in the Project but also permits other transfers to occur without Successor Agency review or approval. The 2016 MRADDOPA revised Article 6 to reflect the changed composition of the Developer with the transfer of the project to STC Ventures, LLC. Section 6.01(d) of the 2016 MRADDOPA allows as a permitted transfer that does not require Successor Agency review or approval the removal of either Sares Regis or Hunter Properties from the Developer. But if the Developer wants to substitute or add new members to the Developer entity prior to completing the Minimum Project, the Successor Agency Executive Director must approve the new member. The Executive Director cannot withhold approval of the new member if the reconstituted Developer has the financial ability and development experience to complete the remainder of the Minimum Project. If J. P. Morgan maintains its current equity stake in the Developer, financial capacity is not expected to be an issue.

Article 6 of the 2016 MRADDOPA also allows the Developer to transfer the project to a Developer's Affiliate. The 2016 MRADDOPA introduces the concept of Developer's Affiliate. A Developer's Affiliate is an entity controlled by or under common control with the Developer. Control means that the Developer owns 50 percent or more of the affiliate and has the power to direct the affairs of the affiliate. The Developer can transfer the project to a Developer Affiliate without the consent of the Successor Agency. However, if the Developer's Affiliate contains members that are not currently members of the Developer, the Executive Director would have the ability to review and approve the new members as described above.

Article 6 of the 2016 MRADDOPA prohibits the Developer from transferring its interest in the Public Parking Ground Lease separately from transfer of the property interest except to a property owners association. If the Developer wants to transfer the Public Parking Ground Lease to a property owners association, the Successor Agency, or the City if the Successor Agency has dissolved, has to approve the association formation documents and conditions, covenants and restrictions (CC&Rs) and any amendments to those documents. The Successor Agency, or the City if the Successor Agency has dissolved, needs to ensure that if the Public Parking Ground Lease is transferred, the entity holding the lease is capable of undertaking the obligations to maintain the public parking structures.

#### Section 10.08 – Penney’s Structure

The Successor Agency owns the property upon which the Penney’s Structure is located (Lot 2 of Block 5) and leases the property to the City. The City and the Developer are party to an Operations and Maintenance Agreement that requires the Developer to operate and maintain the Penney’s Structure as a public parking facility.

The Developer has requested that the Successor Agency grant a separate easement to the Developer over the Penney’s Structure, which would continue the Developer’s obligation to use the structure for public parking to benefit the Town Center Project, including the theater/retail building and downtown businesses. The easement will provide certainty that the parking necessary to meet the theater’s needs is available. The form of the Penney’s Structure Easement Agreement is included in the 2016 MRADDOPA as **Attachment 4, Exhibit L**.

#### Public Parking Ground Lease Amendment:

The former Redevelopment Agency and the Developer entered into a Public Parking Ground Lease in 2007, which was subsequently amended in 2010 in conjunction with the 2010 ADDOPA. The Public Parking Ground Lease leases to the Developer the Successor Agency owned properties in Block 1, Block 2 and Block 6, all of which are either developed with public parking (Blocks 1 and 2) or slated for development of public parking (Block 6). The Public Parking Ground Lease grants the Developer a lease of the parking parcels and the right to construct the parking improvements on the parking parcels. The Public Parking Ground Lease also makes the Developer responsible for all costs of maintaining the public parking improvements. The Second Amendment to the Public Parking Ground Lease (**Attachment 5**) extends the term of the Public Parking Ground Lease from an original term of 75 years to 99 years. The Second Amendment also grants the Developer the right to charge for the portions of the below grade parking that are dedicated to the exclusive use of the owners or occupants of those portions of the Sunnyvale Town Center owned or leased for office or residential purposes. The extension of the Public Parking Ground Lease will ensure that private parties will remain responsible for the maintenance and operating costs of the parking structures.

## **ENVIRONMENTAL REVIEW**

The City of Sunnyvale is the lead agency for environmental review of the Sunnyvale Town Center project, while the Successor Agency and Oversight Board are considered Responsible Agencies under the California Environmental Quality Act (CEQA) for approval of the 2016 MRADDOPA. The Successor Agency adopted **Attachment 9** finding that the 2016 MRADDOPA is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15304 and 15305 and that, in addition, no additional environmental review is necessary as the approval of the 2016 MRADDOPA is within the scope of previous environmental analysis for the Downtown Program Improvement Update pursuant to CEQA Guidelines Section 15162. Therefore, the Successor Agency concluded that no additional analysis is required to comply with CEQA. Staff believes that the Oversight Board can make the similar findings when it takes action on the 2016 MRADDOPA. **Attachment 2** provides the findings and analysis for the Oversight Board to support this conclusion.

## **PUBLIC CONTACT**

The Oversight Board meeting was publicly noticed by publication of a notice in the Sunnyvale Sun on July 8<sup>th</sup> and July 15<sup>th</sup> in accordance with Health and Safety Code Section 34181(f) and 33430. Public contact was made by posting the Oversight Board agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the Oversight Board's Web page on the City's Web site. Additionally, a copy of the Oversight Board Agenda packet in the same form as provided to the Oversight Board was submitted to the County Administrative Officer, the County Auditor–Controller and the Department of Finance in compliance with Health and Safety Code Section 34180(j).

## **RECOMMENDATION**

It is recommended that the Oversight Board take the following actions:

1. Find for the reasons set forth in **Attachment 2** that the proposed 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement (MRADDOPA) is categorically exempt from environmental review pursuant to CEQA Guidelines Section 15304 and 15305 and that no additional environmental review is necessary as the proposed amendments are within the scope of the previous environmental analysis for the Downtown Program Improvement Update, pursuant to CEQA Guidelines Section 15168(c)(2).
2. Find that the 2016 MRADDOPA reduces the Successor Agency's liabilities, increases the revenues to the taxing entities and therefore is in the best interest of the taxing entities.
3. Adopt the Resolution approving the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement between the

Successor Agency of the Former Redevelopment Agency of the City of Sunnyvale and STC Venture, LLC and related documents. (**Attachments 3, 4 and 5**)

Prepared by: Hanson Hom, Chief of Downtown Planning  
Approved by: Deanna J. Santana, Successor Agency Executive Director

### **Attachments**

1. Property Boundary Map for 2016 MRADDOPA
2. Oversight Board CEQA Guidelines Findings and Analysis for 2016 MRADDOPA
3. Oversight Board Resolution for Adoption of the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement
4. 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement with Exhibits (as adopted by Successor Agency):
  - Exhibit A: Map Showing Town Center Property
  - Exhibit B: Minimum Project Construction Schedule
  - Exhibit B-1: Minimum Project Public Improvements
  - Exhibit B-2: Map of Minimum Project Area
  - Exhibit E: Memorandum of Agreement
  - Exhibit H: Minimum Project Milestone Dates for Damages
  - Exhibit K: Amended and Restated Covenant to Convey
  - Exhibit L: Penney's Structure Easement Agreement
5. Second Amendment to Public Parking Ground Lease
6. California Health and Safety Code Section 34181(e)
7. Overview of Proposed Changes
8. 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement (redlined version)
9. Successor Agency CEQA Guidelines Findings and Analysis for 2016 MRADDOPA
10. Successor Agency Resolution Adopting 2016 MRADDOPA, Part A
11. Successor Agency Resolution Adopting 2016 MRADDOPA, Part B
12. Projection of Property Tax Revenues



**ATTACHMENT 2**  
**2016 Modified and Restated Amended Disposition and**  
**Development and Owner Participation Agreement**  
**CEQA Findings and Analysis**

**FINDINGS**

1. Pursuant to CEQA Guidelines Section 15051, the City of Sunnyvale is the "Lead Agency" with respect to the Sunnyvale Town Center Project (the "Project") for CEQA purposes. Because the Oversight Board's discretionary action is required to approve the 2016 Modified and Restated Amended Disposition and Development Agreement ("2016 MRADDOPA") associated with the implementation of the Project, it is a "Responsible Agency" for CEQA purposes.
2. At a public hearing on May 23, 2016, the Lead Agency found that the Project is within the scope of previous environmental analysis in accordance with CEQA Guidelines Section 15168(c)(2) and that subsequent environmental review is not required. The Lead Agency further found that no EIR or negative declaration was required for the Project, because it is categorically exempt from CEQA.
3. At a public hearing on June 30, 2016, the Successor Agency of the former Sunnyvale Redevelopment Agency ("Successor Agency"), as a Responsible Agency, considered the environmental effects of the Project in accordance with CEQA Guidelines Section 15096 and found that that no subsequent or supplemental environmental review is required for the Project because none of the conditions described in CEQA Guidelines Section 15168 have occurred. The Successor Agency further found that no EIR or negative declaration was required for the Project, because it is categorically exempt from CEQA.
4. Based upon the testimony and information presented at the Oversight Board hearing on July 21, 2016, including the staff report prepared in advance of the hearing, which is incorporated by reference ("Staff Report"), the Oversight Board has considered the environmental effects of the Project in accordance with CEQA Guidelines Section 15096 and finds that that no subsequent or supplemental environmental review is required for the Project because none of the conditions described in CEQA Guidelines Section 15168 have occurred; therefore, the Oversight Board further finds subsequent environmental review is not required.
5. The Oversight Board further finds that, for the reasons set forth in the Staff Report and the Discussion below, the Project meets each of the required conditions to qualify for a categorical exemption from CEQA as project resulting in minor alterations to land and minor alterations in land use limitations described in Sections 15304 and 15305 of the CEQA Guidelines, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred; therefore, the Oversight Board finds that no EIR or negative declaration need be prepared for the Project because it is categorically exempt from CEQA.

**DISCUSSION**

Adoption of the 2016 MRADDOPA for the Project is considered a "project" for purposes of the California Environmental Quality Act, Public Resources Code § 21000, et seq. ("CEQA"). However, as explained in more detail below, in accordance with CEQA Guidelines Sections 15096(d)(3) and 15168(c)(2), the Project is within the scope of previous environmental analysis,

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and subsequent environmental review is not required. In addition, the Project is categorically exempt from CEQA pursuant to CEQA Guidelines Sections 15304 and 15305, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred. Therefore, no additional analysis is required to comply with CEQA before the Oversight Board takes action regarding the Project.

**Previous Environmental Analysis**

Pursuant to CEQA Guidelines Section 15051, the City of Sunnyvale is the "Lead Agency" with respect to the Project for CEQA purposes. Accordingly, in 2003, the City prepared a Program EIR for the "Downtown Improvement Program Update" project (the "Program EIR"). The Downtown Improvement Program Update included amendments to the General Plan, Downtown Specific Plan and the Downtown Redevelopment Plan to accommodate a build-out of approximately 2,520 residential units, 1.4 million square feet of retail and entertainment uses, 1.3 million square feet of office uses, and 12,240 square feet of public facility uses within a 150-acre area that includes the current Project site. The Program EIR fully analyzed the environmental effects of the Downtown Improvement Program Update, and the City certified the Final Program EIR on June 17, 2003. The Program EIR was modified by an addendum on July 13, 2004 to increase the build-out by an additional 98,000 square feet of office uses and 100 residential units (the "First Addendum").

The following year, the City approved an SDP for the development of approximately 1 million square feet of retail and entertainment uses, 275,000 square feet of office uses, and 292 residential units on the Project site, the impacts of which were analyzed in a Mitigated Negative Declaration tiered off of the Program EIR pursuant to CEQA Guidelines Section 15168(d) (the "2004 MND"). The 2004 MND and site-specific mitigation measures were approved on August 17, 2004. At the same time, the former Sunnyvale Redevelopment Agency (the "Former Agency") adopted a Disposition and Development and Owner Participation Agreement ("DDOPA") that reflected the land use approvals in the SDP and found that the provisions of the DDOPA did not raise any additional impacts beyond those already analyzed in the Program EIR and 2004 MND.

In 2007, the City prepared a second addendum to the Program EIR to analyze the impact of an SDP amendment to increase the office uses permitted on the Project site by an additional 40,000 square feet and adding a 200-room hotel in lieu of an equivalent amount of office space analyzed in the Program EIR (the "Second Addendum"). On February 6, 2007, the City approved the Second Addendum, concluding that the modifications would not result in any significant environmental effects that had not been analyzed in the Program EIR (as modified by the First Addendum) and the 2004 MND. The City approved the SDP amendment, and the Former Agency approved an Amended and Restated Disposition and Development and Owner Participation Agreement ("ARDDOPA") which amended the DDOPA for consistency with the amended SDP. Prior to approving the ARDDOPA, the Former Agency found that the amended provisions did not raise any additional impacts beyond those already analyzed in the Program EIR, 2004 MND and Second Addendum.

Later that year, the City approved an amended SDP for the development of approximately 931,000 square feet of retail and entertainment uses, 315,000 square feet of office uses, 292 residential units, and a 200-room hotel on the Project site pursuant to a third addendum to the

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Program EIR adopted on July 9, 2007 (the "Third Addendum," or collectively with the First and Second Addenda, the "Addenda"). The City concluded that the Third Addendum would not result in any significant environmental effects that had not been analyzed in the Program EIR (as modified by the First and Second Addenda) and the 2004 MND. The City determined that subsequent minor modifications to the SDP for the Project in 2008 were within the scope of the Program EIR (as modified by the Addenda) and the 2004 MND and that none of the conditions specified in CEQA Guidelines Section 15162 requiring subsequent environmental review had occurred.

In 2010, the Former Agency approved an Amended Disposition and Development and Owner Participation Agreement ("ADDOPA") that amended the ARDDOPA. The Former Agency found that the ADDOPA was within the scope of the Program EIR (as modified by the Addenda) and the 2004 MND, and it did not introduce any additional impacts, involve any substantial change in circumstances or involve new information that would require subsequent environmental review.

*Project's Effects Compared to Previous Environmental Analysis*

At public hearings on May 23, 2016 and June 21, 2016, the City approved amendments to the SDP to permit the previously-approved residential units to be developed as rental units instead of for-sale units. The SDP amendment also permitted temporary landscaping and parking improvements to be installed on Redwood Square within the Project site until the full program of previously-approved uses is ready to be developed and imposed minor modifications to the previously-approved land use conditions to reflect the City's current standard conditions of approval and contemporary environmental and infrastructure standards. None of the Project's changes to the SDP modified the height, type, or intensity of the uses previously approved or analyzed in the Program EIR (as modified by the Addenda) and the 2004 MND. Accordingly, the City found that the Project is within the scope of previous environmental analysis in accordance with CEQA Guidelines Section 15168(c)(2) and that subsequent environmental review is not required.

The Project also includes the 2016 MRADDOPA to reflect the land-use changes approved by the City. In addition, the 2016 MRADDOPA includes terms related to the obligations of the Developer to complete a defined "Minimum Project" (which is within the scope of the development authorized under the SDP, as amended) and outlines the responsibilities of the Developer and Successor Agency to construct the Project in accordance with the SDP.

Because the Oversight Board's discretionary action is required to approve the 2016 MRADDOPA, it is a "Responsible Agency" for CEQA purposes. Pursuant to CEQA Guidelines Section 15096(e)(3), a Responsible Agency may not require subsequent environmental review after a Lead Agency prepares an EIR or a Negative Declaration unless the conditions described in CEQA Guidelines Section 15162 have occurred. As explained below, none of the conditions specified in CEQA Guidelines Section 15162 requiring subsequent or supplemental environmental analysis have occurred; therefore, no new environmental analysis is required to comply with CEQA.

Specifically, the Project does not include any substantial changes in the Downtown Improvement Program Update of the previously-approved SDP, and there is no evidence in the record that the Project would result in new significant environmental effects or a substantial

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increase in the severity of previously identified significant effects necessitating major revisions to the Program EIR (as modified by the Addenda) or the 2004 MND. Similarly, there is no evidence in the record that substantial changes have occurred with respect to the circumstances under which the Project is to be undertaken that will require major revisions of the Program EIR (as modified by the Addenda) or the 2004 MND. Finally, there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Program EIR (as modified by the Addenda) and the 2004 MND were adopted, in the record that shows new or considerable different significant effects, mitigation measures, or alternatives than were analyzed in the Program EIR (as modified by the Addenda) and the 2004 MND.

Because no new effects could occur or no new mitigation measures would be required under CEQA Guidelines Section 15162, CEQA Guidelines Section 15096 permits the Oversight Board to adopt the 2016 MRADDOPA as part of the Project, and no new environmental document is required.

### **Categorical Exemptions**

In addition to the fact that no new environmental document is required pursuant to CEQA Guidelines Sections 15096(e)(3) and 15168(c)(2), the Project is also categorically exempt from further CEQA review. Although the 2016 MRADDOPA would not directly address the minor private alterations in the condition of land and vegetation or the minor alterations in land use limitations contemplated as part of the Project, its adoption would delete portions of the ADDOPA that are inconsistent with the physical improvements approved by the City in the SDP and permit those physical changes to occur. Accordingly, pursuant to CEQA Guidelines Section 15304, the Project qualifies for an exemption for minor private alterations in the condition of land and vegetation (a "Class 4 Exemption"), and pursuant to CEQA Guidelines Section 15305, the Project qualifies for an exemption for minor alterations in land use limitations (a "Class 5 Exemption").

#### *Minor Alterations to Land*

A Class 4 Exemption may be used to permit minor alterations to land, which expressly includes new gardening or landscaping and minor temporary use of land having negligible or no permanent effects on the environment, as long as the alterations do not involve the removal of healthy, mature, scenic trees. The Project's proposed temporary improvements to Redwood Square consist of the installation of new landscaping and temporary surface parking that will be removed when the previously-approved uses for the area are ready for development. The proposed placement of temporary landscaping and hardscape within the areas currently occupied by partially-built steel structures constitutes a minor alteration of the condition of land and/or vegetation. In addition, no healthy, mature, scenic trees would be removed or negatively affected by the alterations. Therefore, the Project qualifies for a Class 4 Exemption.

#### *Minor Alterations in Land Use Limitations*

A Class 5 Exemption may be used to permit minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density. The Project site has an average slope of less than 20%, and the Project's proposed

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land use limitation alterations would not affect the land uses or density of development permitted on the site. The proposed alteration to permit rental housing units in place of for-sale housing units does not qualify as a change in land use as that term is used in CEQA Guidelines Section 15305, since the change in the ownership structure does not affect the underlying use in the land. Furthermore, CEQA Guidelines Section 15301(k) explicitly exempts the conversion of rental housing to for-sale housing, which supports the conclusion that modifying a residential land use's form of ownership is not a change that would result in a significant effect to the environment requiring the application of CEQA. Therefore, the Project qualifies for a Class 5 Exemption.

*Exemption Exceptions*

Finally, none of the exceptions to the exemption specified in CEQA Guidelines Section 15300.2 have occurred. Specifically, the Project site is not in a location where it would have any impact on: an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies; scenic highways; or historical resources. There is no evidence in the record that the Project would contribute to a cumulative impact, nor that unusual circumstances would cause the Project to result in a significant effect. Finally, the Project site is not located on a hazardous waste site. Therefore, the exceptions to the exemptions are inapplicable, and no further environmental analysis is required under CEQA.

RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE APPROVING THE 2016 MODIFIED AND RESTATED AMENDED DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH SUNNYVALE TOWN CENTER AND MAKING FINDINGS THAT APPROVING THE AGREEMENTS IS IN THE BEST INTEREST OF THE TAXING ENTITIES AND CATEGORICALLY EXEMPT FROM CEQA.**

WHEREAS, Assembly Bill 1x 26, enacted on June 28, 2011 resulted in the dissolution of all redevelopment agencies in the State of California, including the former Redevelopment Agency of the City of Sunnyvale (the “Former Agency”), effective February 1, 2012; and

WHEREAS, as added by AB1x 26, Health and Safety Code Section 34173(b) provides that the authority, rights, powers, duties and obligations previously vested with the former redevelopment agencies are vested in the successor agencies; and

WHEREAS, AB 1484, enacted on June 27, 2012, amended AB1x 26 (as amended, the “Dissolution Law”) to clarify that successor agencies are separate legal entities from their sponsoring city or county; and

WHEREAS, in accordance with the Dissolution Law, the City of Sunnyvale elected to act as the Successor Agency of the Former Agency (the “Successor Agency”); and

WHEREAS, Health and Safety Code Section 34179(a) provides for the establishment of the Oversight Board to the Successor Agency of the Former Agency (the “Oversight Board”); and

WHEREAS, on or about February 24, 2005, prior to its dissolution, the former Redevelopment Agency of the City of Sunnyvale (“Former Agency”) entered into the original Disposition and Development and Owner Participation Agreement (“DDOPA”) with Fourth Quarter Properties XLVII, LLC (“Original Developer”) which provided for an exchange of properties between the Former Agency and Original Developer, for the construction of new retail, office and residential development (the “Project”) on the site of the former Town Center Mall (“Town Center Property”) and for construction of new public parking structures and street improvements on the Town Center Property pursuant to Resolution No. 102-04 RDA adopted by the Former Agency on or about August 17, 2004; and

WHEREAS, following a default under the DDOPA, the Original Developer transferred the Town Center Property to Downtown Sunnyvale Mixed Use, LLC (“DSMU”) and on or about February 6, 2007, the Former Agency adopted Resolution No. 114-07-RA approving the Amended and Restated Disposition and Development and Owner Participation Agreement (“ARDDOPA”) with DSMU to reflect the change in ownership and update certain terms of the agreement; on or

about April 10, 2007, the Former Agency adopted Resolution No. 118-07-RA approving the First Modification to the ARDDOPA; on or about November 18, 2007, the Former Agency approved the First Amendment to the ARDDOPA;

WHEREAS, on or about May 11, 2010, following foreclosure proceedings against DSMU, the Town Center Property was placed in receivership and the Former Agency adopted Resolution No. 123-10-RA approving the 2010 Modification Agreement to the ARDDOPA with L. Gerald Hunt as Court-Appointed Receiver, which was subsequently documented by the execution of the 2010 Amended Disposition and Development and Owner Participation Agreement (“2010 ADDOPA”) on or about August 2, 2010; and

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

WHEREAS, pursuant to Health and Safety Code Section 34177(i), the Successor Agency is authorized to continue to oversee development of properties until the work is completed or the contractual obligations of the Former Agency can be transferred; and

WHEREAS, on or about November 18, 2015, pursuant to Article 6 of the 2010 ADDOPA, the current owner of the Town Center Property, REDUS SVTC, LLC (Wells Fargo Bank), submitted to the Successor Agency a Notice of Intent to Transfer the Town Center Property to an entity to be formed by J.P. Morgan Asset Management Fund, Sares Regis Group of Northern California, and Hunter Properties, Inc.; and

WHEREAS, on or about December 10, 2015, the Successor Agency, after reviewing reports of its financial and real estate consultants, acknowledged that the proposed transferees satisfied the criteria for transfer set forth in Article 6 of the 2010 ADDOPA, and J.P. Morgan Asset Management Fund, Sares Regis of Northern California, and Hunter Properties, Inc. formed a joint venture, STC Venture, LLC (“New Developer”), for purposes of completing the Project; and

WHEREAS, amendments to the Special Development Permit for the Project were approved by the City of Sunnyvale Planning Commission on May 23, 2016 in two separate actions (Part A and Part B), and upon the appeal of Part A, the Commission’s approval of Part A was upheld by the City Council on June 21, 2016 (the “City Approvals”); and

WHEREAS, at the direction of the Oversight Board, the Successor Agency negotiated the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement (“2016 MRADDOPA”) with the New Developer; and

WHEREAS, the 2016 MRADDOPA is generally consistent with the terms approved in the DDOPA, ARDDOPA, and the 2010 ADDOPA with certain negotiated changes that: extend the time for the New Developer to complete a minimum portion of the Project (the “Minimum Project”); reduce the Successor Agency’s liabilities in connection with certain environmental remediation efforts; accommodate the City Approvals, while removing City obligations from the agreement; revise the definition of the Minimum Project; eliminate the tax increment payments to the New Developer, clarify the liquidated damages clause and the Successor Agency’s enforcement provisions, and incorporate other revisions for clarity; and

WHEREAS, certain documents that further describe the New Developer's responsibility to construct, operate and maintain the public facilities within the Project are referenced in the 2010 ADDOPA and will continue to be referenced in the 2016 MRADDOPA, and other documents attached as exhibits to the 2016 MRADDOPA, (collectively, the "Related Documents"); and

WHEREAS, the Related Documents shall be assigned to, or entered into with, the New Developer with amendments and updates as needed to effectuate the purpose of the 2016 MRADDOPA, and which shall include, without limitation a Public Parking Ground Lease as amended, a Second Amendment to Public Parking Ground Lease, a Modified and Restated Covenant to Convey, and a Block 5 Parking Structure Easement Agreement; and

WHEREAS, on June 30, 2016, the Successor Agency approved the 2016 MRADDOPA and Related Documents in two separate actions (Part A and Part B) and authorized the Successor Agency Executive Director to take actions necessary to implement the 2016 MRADDOPA and Related Documents and to execute the MRADDOPA and Related Documents on behalf of the Successor Agency; and

WHEREAS, the Oversight Board considered the 2016 MRADDOPA and Related Documents at a duly noticed public hearing on July 21, 2016; and

WHEREAS, the Oversight Board has concluded that the 2016 MRADDOPA and Related Documents would facilitate transfer of the Town Center Property and development of the Project, which would result in increased net revenues to taxing entities from the increased property tax revenue that would be generated as the Project develops; and

WHEREAS, the Oversight Board has concluded that the 2016 MRADDOPA and Related Documents would reduce liability by eliminating the tax increment payments to the New Developer; and

WHEREAS, the Oversight Board has concluded that the 2016 MRADDOPA and Related Documents would reduce liability by transferring certain obligations in connection with environmental remediation efforts from the Successor Agency to the New Developer; and

WHEREAS, the Oversight Board has determined that, pursuant to Health and Safety Code 34181(e), the 2016 MRADDOPA proposed amendments to the 2010 ADDOPA are in the best interests of the taxing entities because the 2016 MRADDOPA and Related Documents would reduce the Successor Agency's liabilities and increase net revenues to the taxing entities; and

WHEREAS, pursuant to California Environmental Quality Act ("CEQA") Guidelines Section 15051, the City of Sunnyvale is the "Lead Agency" with respect to the Project for CEQA purposes, and because the Oversight Board's discretionary action is required to approve the 2016 MRADDOPA, it is a "Responsible Agency" for CEQA purposes; and

WHEREAS, at a public hearing on May 23, 2016, the Lead Agency (City of Sunnyvale Planning Commission) found that the Project is within the scope of previous environmental analysis in accordance with CEQA Guidelines Section 15168(c)(2) and that subsequent environmental review is not required, and the Lead Agency further found that no EIR or negative declaration was required

for the Project as it is categorically exempt from CEQA, because the Project would result in minor alterations to land and minor alterations in land use limitations described in Sections 15304 and 15305 of the CEQA Guidelines, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred; and

WHEREAS, the Planning Commission's action on Part A of the Site Development Permit was appealed to City Council and at a public hearing on June May 23, 2016, the Lead Agency (Sunnyvale City Council) found that the Project is within the scope of previous environmental analysis in accordance with CEQA Guidelines Section 15168(c)(2) and that subsequent environmental review is not required, and the Lead Agency further found that no EIR or negative declaration was required for the Project as it is categorically exempt from CEQA, because the Project would result in minor alterations to land and minor alterations in land use limitations described in Sections 15304 and 15305 of the CEQA Guidelines, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred; and

WHEREAS, at a public hearing on June 30, 2016, the Successor Agency, as a Responsible Agency, considered the environmental effects of the Project in accordance with CEQA Guidelines Section 15096 and found that that no subsequent or supplemental environmental review is required for the Project because none of the conditions described in CEQA Guidelines Section 15168 have occurred, and the Successor Agency further found that no EIR or negative declaration was required for the Project, because it is categorically exempt from CEQA; and

WHEREAS, the Oversight Board has independently considered the environmental effects of the Project, and concluded that no subsequent or supplemental environmental review is required for the Project because none of the conditions described in CEQA Guidelines Section 15168 have occurred; and

WHEREAS, the Oversight Board has determined that the Project meets each of the required conditions to qualify for a categorical exemption from CEQA as a project resulting in minor alterations to land and minor alterations in land use limitations described in Sections 15304 and 15305 of the CEQA Guidelines, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred, and therefore, no EIR or negative declaration need be prepared for the Project because it is categorically exempt from CEQA; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE THAT:

1. The Oversight Board finds that, for the reasons set forth in Attachment 2 to the July 21, 2016 staff report, which is incorporated into this Resolution by reference, approval of the 2016 MRADDOPA and Related Documents is categorically exempt from CEQA, and that even if the approval were not categorically exempt, subsequent environmental review would not be required.

2. The Oversight Board hereby approves the 2016 MRADDOPA and the Related Documents substantially in the form on file with the Secretary of the Oversight Board subject to such

changes as may be approved by the Executive Director of the Successor Agency as evidenced by the Executive Director's signature on the 2016 MRADDOPA and the Related Documents.

3. The Oversight Board finds that approving the 2016 MRADDOPA and Related Documents is in the best interests of the taxing entities because the 2016 MRADDOPA would reduce the Successor Agency's liabilities and increase net revenues to the taxing entities.

4. If necessary, the Oversight Board Secretary is directed to certify to the adoption of this Resolution and attach a copy thereof to each deed or other document to be recorded pursuant to the 2016 MRADDOPA and Related Documents.

5. This resolution shall take effect in accordance with Health and Safety Code Section 34179(h).

Adopted by the Oversight Board to the Successor Agency of the former Redevelopment Agency of the City of Sunnyvale at a regular meeting held on July 21, 2016, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:  
RECUSAL:

APPROVED:

---

Chair

2016 MODIFIED AND RESTATED AMENDED DISPOSITION AND DEVELOPMENT  
AND OWNER PARTICIPATION AGREEMENT

by and between

THE SUCCESSOR AGENCY TO THE SUNNYVALE REDEVELOPMENT AGENCY

and

STC VENTURE LLC

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**EXHIBITS**

The following exhibits are attached to this Agreement and, are incorporated by reference into this Agreement:

Exhibit A	Map Showing Sunnyvale Town Center Property
Exhibit B	Construction Schedule for Minimum Project
Exhibit B-1	Minimum Project Public Improvements
Exhibit B-2	Project Map of Minimum Project
Exhibit C	RESERVED
Exhibit D	RESERVED
Exhibit E	Memorandum of Agreement
Exhibit F	RESERVED
Exhibit G	RESERVED
Exhibit H	Minimum Project Milestone Dates
Exhibit I	RESERVED
Exhibit J	RESERVED
Exhibit K	Form of Modified and Restated Covenant to Convey
Exhibit L	Form of Block 5 Parking Structure Easement Agreement

The following Attachments are attached to this Agreement for reference purposes:

Attachment 1	Public Parking Easement
Attachment 2	Public Parking Ground Lease and First and Second Amendments
Attachment 3	Public Street and Utility Maintenance Agreement and First Amendment
Attachment 4	Penney's Structure Agreement, First Amendment

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

THIS 2016 MODIFIED AND RESTATED AMENDED DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT (this “Agreement” or “Modified ADDOPA”) is made on or as of this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the Successor Agency to the Sunnyvale Redevelopment Agency (the “Successor Agency”), a public body, corporate and politic, and STC VENTURE LLC, a Delaware limited liability company (“Developer”) (collectively, the “Parties”), with reference to the following facts:

A. The overall purpose of this Agreement is to provide for the continuation and successful completion of redevelopment of the Sunnyvale Town Center for new retail, residential and office uses through construction of new public and private improvements. “Sunnyvale Town Center” (or “STC”) 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 Successor Agency, as the successor in interest to the Sunnyvale Redevelopment Agency (the “Agency”), succeeded to the rights and obligations of the Agency, and in accordance with California law has the responsibility to complete previously authorized and approved redevelopment activities pursuant to 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 as long as such activities constitute enforceable obligations, as defined in California Health and Safety Code Section 34171. 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 STC is within the area governed by the Redevelopment Plan, and consists of several parcels owned by the Successor Agency, the City, Macy’s, Target, and Developer. Attached as Exhibit A is a map showing the STC.

D. On or about February 6, 2007, the Agency entered into the Amended and Restated Disposition and Development and Owner Participation Agreement with Downtown Sunnyvale Mixed Use LLC (“DSMU”) providing for the redevelopment of the STC and thereafter, on or about November 18, 2008, the parties entered into a First Amendment thereto (together, the “ARDDOPA”). Subsequent to entering into the ARDDOPA, the sub-prime mortgage problems and global turmoil in the lending, retail and commercial lending markets resulted in a major loss of equity capital by DSMU and its inability to meet its financial and development commitments under the ARDDOPA. DSMU halted construction in February 2009 and was in default of its obligations under the ARDDOPA and the holder of the secured financing interest on the property instituted foreclosure proceedings in September 2009.

E. On or about October 5, 2009, L. Gerald Hunt became the Court-Appointed Receiver in *Wachovia Bank v. Downtown Sunnyvale Residential, et al.*, Santa Clara Superior Court Case No. 109-CV-153447, pursuant to an Order Appointing the Receiver (the “Order”).

Following issuance of the Order and other proceedings, the Receiver commenced certain construction on the Project (as defined below).

F. To facilitate the restarting of the Project, on or about May 14, 2010, the Receiver and the Agency entered into that certain 2010 Modification Agreement to the Amended and Restated Disposition and Development Agreement (the “2010 Modification Agreement”).

G. On or about August 2, 2010, the Agency and the Receiver (acting as Developer) entered into the 2010 Amended Disposition and Development and Owner Participation Agreement (the “2010 ADDOPA”) in order to document the changes agreed to in the 2010 Modification Agreement. The 2010 ADDOPA became effective as of May 14, 2010. However, ongoing turmoil in the global financial markets, national economy, and regional and local real estate markets, as well as litigation regarding matters relating to legal ownership of portions of the STC, resulted in unavoidable delays, beyond the control of the parties. Following final resolution of the litigation, REDUS SVTC, LLC acquired title to portions of the STC and began marketing portions of the STC to prospective developers. REDUS SVTC, LLC selected STC Venture LLC, a joint venture formed by affiliates of Sares Regis Group of Northern California, LLC, Hunter Properties, Inc., and an institutional investor advised by J.P. Morgan Asset Management to purchase portions of the STC and become the Developer. The Successor Agency consented to the transfer and assignment to STC Venture LLC pursuant to Section 6 of the 2010 ADDOPA on December 10, 2015.

I. Office Buildings A and C, which received Certificates of Completion from the Successor Agency pursuant to Section 5.08 of the 2010 ADDOPA were sold separately from the remainder of the STC in December 2015.

J. The redevelopment of the STC, as contemplated by this Agreement, involves construction and completion of new buildings for retail, office and residential use, new site improvements and new parking structures. The Agency previously determined (and the Successor Agency has confirmed) that redevelopment of the STC 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 Specific Plan.

K. The State of California enacted ABx1 26 in 2011, eliminating all redevelopment agencies in the State of California effective February 1, 2012. In order to expeditiously wind down the affairs of the Agency, and consistent with the State of California’s Redevelopment Dissolution law set forth in California Health and Safety Code Division 24 Parts 1.8 and 1.85 (the “Redevelopment Dissolution Law”), the Successor Agency seeks to reduce the Successor Agency’s liabilities by eliminating its obligation under the 2010 ADDOPA to provide tax increment financing (“TIF”) payments to Developer upon completion of certain minimum improvements. The Successor Agency acknowledges that the elimination of the TIF payments would take away a binding, important, and previously negotiated-for benefit of Developer. Accordingly, the elimination of the TIF is agreed to by Developer only as consideration for the modifications to Developer’s obligations made by this Agreement.

L. The modifications provided by this Agreement are intended to help the Successor Agency and the City achieve the original vision of the STC as a vibrant, horizontal- and vertical-mixed use community that integrates with the greater downtown Sunnyvale community. These modifications specifically include preserving the same overall development intensity, allowing for-rent or for-sale housing to respond to market conditions, and confirming the appropriate mix of active ground-floor uses to avoid the risk of continued vacancies in the ground floor areas of the Project. Achievement of the original vision of the STC will provide significant benefits to the City and the taxing entities, including substantial increases in the assessed valuation of the Project resulting in increased property tax revenues benefiting the taxing entities.

M. The purposes of this Agreement are to provide for Developer's construction and completion of the Public Improvements and Private Improvements that constitute the Project in accordance with this Agreement and the Redevelopment Plan.

N. The Successor 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 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 Successor Agency.

O. The Successor Agency has concluded that 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) "2010 ADDOPA" is defined in Recital G.

(b) "2010 Modification Agreement" is defined in Recital F.

(c) "AAA" is defined in Section 5.11 below.

(d) "Agency" means the Sunnyvale Redevelopment Agency, a public body, corporate and politic, formed under the Community Redevelopment Law.

(e) "Agreement" means this Modified and Restated ADDOPA as the same may be amended from time to time by mutual agreement of the Parties.

(f) "Air Space Condominium Lot" means a condominium interest which is separate from the underlying land on the Public Parking Parcels.

(g) “Air Space Parcel” means a parcel shown on the Subdivision Map as an “Air Space Parcel” and includes all of the easements and other agreements between the Successor Agency and Developer that are necessary to construct the Private Improvements that are intended to be constructed on the Air Space Parcel.

(h) “ARDDOPA” means the Amended and Restated Disposition and Development and Owner Participation Agreement dated February 6, 2007 by and between the Agency and DSMU as amended prior to the Effective Date.

(i) “Certificate of Completion” is defined in Section 5.08 below.

(j) “City” means the City of Sunnyvale, California, a charter city.

(k) “City Approvals” means the City permits and approvals for the Project, the Subdivision Map, and the Subdivision Agreement, as these permits and approvals may be amended from time to time.

(l) “Completed/Complete/Completion” means for each of the following uses: For office uses, completion of core and shell; for residential and parking uses, issuance of a certificate of occupancy; for Retail uses, completion of the shell, excluding storefronts and tenant improvements.

(m) “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, as they may be amended from time to time by Developer in accordance with City Approvals. All Construction Plans shall at all times be consistent with all the City Approvals.

(n) “Construction Schedule” means the schedule for commencement and completion of construction of the Minimum Project attached as Exhibit B.

(o) “Developer’s Affiliate” means an entity controlled by, controlling or under common control with Developer. For the purposes of this definition, the terms “controls”, “is controlled by” or “is under common control with” mean that the controlling party(ies) (A) owns directly or indirectly fifty percent (50%) or more of the profits, capital, or equity interest of the affiliated entity(ies) and (B) has the direct or indirect power to direct the affairs or management of the affiliated entity(ies), whether by contract, other governing documents or operation of law or otherwise.

(p) “Developer” is defined in the Introductory Paragraph of this Agreement.

(q) “District” is defined in Section 10.05 below.

(r) “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 and all subsequent amendments.

(s) “DSMU” is defined in Recital D.

(t) “Effective Date” means the date on which the Private Improvements Parcels, other than the parcels on which Office Buildings A and C are located, are acquired by Developer.

(u) “Environmental Costs” is defined in Section 4.04 below.

(v) “Environmental Oversight Agencies” is defined in Section 4.04 below.

(w) “Environmental Work” is defined in Section 4.04 below.

(x) “Equity Funding Certification” is defined in Section 3.08 below.

(y) “First Class Facility” means a mixed-use downtown project meeting the following criteria:

(1) developed with the Minimum Project;

(2) 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);

(3) 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;

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

(5) no more than thirty-five percent (35%) of the Retail space is rented to manufacturer’s outlet stores; and

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

(z) “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.

(aa) “Macy’s” means 200 Washington, LLC, and any successor-in-interest; Macy’s owns the Macy’s Parcel.

(bb) “Macy’s Parcel” means the parcel in the STC designated as the Macy’s Parcel on the Subdivision Map.

(cc) “Macy’s Private Improvements” is defined in Section 3.01 below.

(dd) “Minimum Project” means that certain portion of the Project described as the “Minimum Project” in Section 5.02.

(ee) “Notice” is defined in Section 10.06 below.

(ff) “Order” is defined Recital E.

(gg) “OREA” means the Operation and Reciprocal Easement Agreement dated October 28, 2008 which is recorded in the Official Records of Santa Clara County as follows: Inst. 20033381, recorded October 30, 2008, as amended and supplemented from time to time.

(hh) “Parking Entity” is defined in Section 6.01 below.

(ii) “Parties” is defined in the Introductory Paragraph of this Agreement.

(jj) “Penney’s Structure” means the parking structure located on Block 5, as shown on the Subdivision Map.

(kk) “Penney’s Structure Agreement” means the Operation and Maintenance Agreement dated May 13, 2000 as amended by the Penney’s Structure Amendment executed September 28, 2007 by the City and Developer and recorded October 7, 2007 as document number 19602169 extending the term of the Penney’s Structure Agreement so that it is coterminous with the seventy-five (75) year term of the Public Parking Ground Lease, as it may be extended and/or amended from time to time.

(ll) “Private Improvements” means the portions of the Project to be constructed on the Private Improvements Parcels.

(mm) “Private Improvements Parcels” means those parcels owned by Developer.

(nn) “Project” means the improvements Developer has constructed, that are under construction or to be constructed pursuant to this Agreement on the Private Improvements Parcels and the Public Improvements Parcels consisting of the Private Improvements and the Public Improvements and described in Exhibit B, together with all public improvements required by the City Approvals; the Project is described in Section 3.01 below, and as may be modified pursuant to Section 3.02 below.

(oo) “Public Improvements” means the elements of the Project constructed, under construction or to be constructed pursuant to City Approvals 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 Sunnyvale Town Center as well as the public utility facilities located on the Public Improvements Parcels and Private Improvements Parcels pursuant to easements for those facilities.

(pp) “Public Improvements Parcels” means the Public Street Parcels and the Public Parking Parcels.

(qq) “Public Parking Easement” means the easement the Agency granted 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 Attachment 1.

(rr) “Public Parking Ground Lease” means the Public Parking Ground Lease and First and Second Amendments thereto attached to this Agreement as Attachment 2, pursuant to which Developer leases and will operate, maintain, insure, repair and replace the Public Parking Structures (other than the Penney’s Structure) for a term of ninety-nine (99) years, as it may be extended and/or amended from time to time.

(ss) “Public Parking Maintenance Agreement” means the agreement attached to the 2010 ADDOPA as Exhibit I.

(tt) “Public Parking Parcels” means those parcels owned by the Successor Agency and on which the Public Parking Structures are constructed, under construction or to be constructed; the Public Parking Parcels are or will be developed with the Public Parking Structures in the Project but specifically exclude the Air Space Parcels and the Air Space Condominium Lots.

(uu) “Public Parking Structures” means the Penney’s Structure, Parking Facility A and Parking Facility B and the to-be-constructed Parking Facility C located within Block 6. The Public Parking Structures (other than the Penney’s Structure) will be owned by Developer, and are subject to the Public Parking Easement. If Developer elects to construct Parking Facility C, Developer shall bear the full cost of construction.

(vv) “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 Improvements Parcels and Private Improvements Parcels pursuant to easements for those facilities.

(ww) “Public Street and Utility Maintenance Agreement” means the Public Street and Utility Maintenance Agreement and First Amendment thereto attached to this Agreement as Attachment 3, pursuant to which Developer will operate, maintain, insure, repair and replace the Public Street and Utility Improvements for a term of ninety-nine (99) years.

(xx) “Public Street Parcels” means the property designated as “Lot A” on the Subdivision Map.

(yy) “Reconveyance Parcels” 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.

(zz) “Redevelopment Dissolution Law” is defined in Recital K.

(aaa) “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.

(bbb) “Redwood Plaza Area” is defined in Section 10.06 below.

(ccc) “Redwood Plaza Use Conditions” is defined in Section 10.06 below.

(ddd) “Redwood Square” is defined in Section 10.06 below.

(eee) “Related Documents” means all documents necessary to implement the Project, including without limitation the OREA (aka the “New REA”) (and the related Development Agreement), the Operation and Easement Agreement, the Public Parking Ground Lease, the Public Parking Easement, the Public Street and Utility Maintenance Agreement, the Penney’s Structure Agreement, the Public Parking Maintenance Agreement, Integrated Project Agreement, the City Approvals, the Subdivision Agreement, the Below Market Rate Developer Agreement — Ownership, Covenant for Easement, and Amended and Restated Covenant for Easement and the building permits, as such agreements may be amended from time to time.

(fff) “Residential Developer” or “Residential Developers” means Developer or an entity to which Developer assigns the rights to develop the residential units in the Project, provided such assignment is permitted in accordance with Section 3.10 below.

(ggg) “Retail” includes all “retail/commercial” uses authorized by the City Approvals, including, without limitation, restaurants, residential leasing offices and other ground floor retail/commercial uses incidental to and in combination with residential uses.

(hhh) “Security Financing Interest” is defined in Section 11.01 below.

(iii) “Subdivision Agreement” means the Subdivision Agreement by and between the City and Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company, made and entered into on September 28, 2007, as it may be amended from time to time.

(jjj) “Subdivision Map” means on final Tract Map No. 9925 recorded on October 1, 2007, Tract Map No. 10007 recorded October 29, 2008, and that certain Lot Line Adjustment recorded on October 30, 2008 in the Official Records of Santa Clara County, California.

(kkk) “Successor Agency” means the Successor Agency to the Sunnyvale Redevelopment Agency, a public body, corporate and politic, formed by operation of the Redevelopment Dissolution Law, and any and all successors in interest thereto.

(lll) “Sunnyvale Town Center” or “STC” means all the property as shown on the Subdivision Map and Exhibit A including the Macy’s Parcel and the Target Parcel.

(mmm) “Target” means Target Stores, Inc., and any successor-in-interest; Target owns the Target Parcel.

(nnn) “Target Parcel” means the parcel in the STC designated as the Target Parcel on the Subdivision Map.

(ooo) “Target Store” is defined in Section 3.01 below.

(ppp) “Tax Increment” means the taxes paid to and received by the Agency and Successor Agency pursuant to California Health and Safety Code Section 33670.

(qqq) “Third Party Environmental Cleanup Costs” is defined in Section 4.04 below.

(rrr) “Transfer”/“Transferred” is defined in Section 6.01 below.

(sss) “2010 Modification Agreement” is defined in Recital F.

## 1.02 Exhibits.

The following exhibits are attached to this Agreement and incorporated herein. All Exhibits may be amended from time to time, without amending this Agreement.

Exhibit A	Map Showing Sunnyvale Town Center Property
Exhibit B	Construction Schedule for Minimum Project
Exhibit B-1	Minimum Project Public Improvements
Exhibit B-2	Project Map of Minimum Project
Exhibit C	RESERVED
Exhibit D	RESERVED
Exhibit E	Memorandum of Agreement
Exhibit F	RESERVED
Exhibit G	RESERVED
Exhibit H	Minimum Project Milestone Dates
Exhibit I	RESERVED
Exhibit J	RESERVED
Exhibit K	Form of Modified and Restated Covenant to Convey
Exhibit L	Form of Block 5 Parking Structure Easement Agreement

The following Attachments are attached to this Agreement for reference purposes:

- Attachment 1 Public Parking Easement
- Attachment 2 Public Parking Ground Lease and First and Second Amendments
- Attachment 3 Public Street and Utility Maintenance Agreement
- Attachment 4 Penney’s Structure Agreement and First Amendment

## ARTICLE 2. PROPERTY ACTIVITIES

### 2.01 Effective Date.

On or before the Effective Date, Developer shall pay or cause to be paid all property taxes and special taxes due or owing on the Project property as of the Effective Date.

ARTICLE 3.  
DEVELOPER DEVELOPMENT ACTIVITIES

3.01 Description of the Proposed Project.

Developer desires to construct (to the extent not already constructed) the Project consisting of a new mixed-use development:

(a) The Private Improvements, which include:

(1) approximately 634,000 square feet of buildings for Retail use, (including the theater), but excluding the building on the Macy's Parcel and the Target Store. Retail space in Buildings A and C may be either relocated, used for office space, or satisfied by any use which activates the pedestrian experience;

(2) approximately 315,000 square feet of buildings for office use;

(3) approximately 292 residential units, which may be for-sale or for-rent as determined by Developer, consistent with the City Approvals;

(4) private surface and structured parking as required by the City Approvals, of which approximately 1,112 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, the Redwood Plaza Area, loading areas and driveways; and

(6) a hotel of approximately 150,000 square feet composed of approximately 200 rooms.

(b) The Public Improvements, which include:

(1) three Public Parking 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 5,471 cars (which includes the 1,112 underground spaces) based on the current proposed Project. The exact parking count will be established by the City Approvals based on a City-approved professional traffic study;

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

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

The Project is subject to compliance with the City Approvals. Notwithstanding any other provision of this Agreement, Developer's sole construction obligation is to develop and construct the Minimum Project as defined in Section 5.02 and Exhibit B.

Visual depictions of the Project in Exhibit A and Exhibit B-2 are intended for general reference and are not intended to, and do not, depict all individual access points, loading areas or layouts of the Public Improvements and Private Improvements. Accordingly, these visual depictions shall not be used to determine the Project's compliance, or lack thereof, with the terms and requirements of this Agreement. Instead, these Exhibits reflect a reasonable, but conceptual, scenario of how buildout of the Project will occur. Actual development will be governed by the requirements of the City Approvals.

(c) In addition to the Project, third parties desire to undertake or have undertaken projects on the Target Parcel and Macy's Parcel, which include:

(1) Target Private Development.

The Target Store consisting of approximately 181,000 square feet 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.

(2) Macy's Private Development.

Macy's may, at its discretion, construct facade 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 special development permits and other City permits and approvals necessary to construct the Project, provided that nothing herein shall be deemed to limit the City's ability to approve modifications to the City Approvals, upon application from Developer.

Developer acknowledges and agrees that (i) the City Approvals require a specified percentage of the housing built in the Project be affordable to persons whose income is at or below the moderate income level in accordance with an Affordable Housing Developer Agreement to be entered into between Developer and the City; (ii) 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.

3.03 Overview of Real Estate Transactions, Subdivision Approval.

The real estate structure of the Project is as follows:

(a) Macy's owns the Macy's Parcel and Target owns the Target Parcel.

(b) Developer owns the Private Improvements Parcels and any improvements thereon. Developer's Private Improvements Parcels include the 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 Successor Agency owns the Penney's Structure parcel and leases the Penney's Structure Parcel to the City. Developer will operate the improvements thereon pursuant to the Penney's Structure Agreement. Nothing in this Agreement shall be construed to prohibit Developer from leasing the improvements thereon from the City.

(d) The Successor Agency owns the other Public Parking Parcels.

(e) The Successor Agency leases those other Public Parking Parcels to Developer pursuant to the Public Parking Ground Lease attached hereto as Attachment 2. The Public Parking Ground Lease is subject to the Public Parking Easement for public parking that the Agency granted to the City over the Public Parking Parcels.

(f) The Public Parking Ground Lease provides 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. In addition, the Parties intend to negotiate an easement providing for access to, and maintenance of, the central plant located on the roof of Parking Structure B. Upon the end of the term of the Public Parking Ground Lease (as it may be extended or amended from time to time), the parking improvements will become the property of the Successor Agency or its successor-in-interest or, at the request of the Successor Agency, will be demolished by Developer.

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

(h) The Public Street Parcels and the Public Street and Utility Improvements are owned by the City; Developer has or will construct the Public Street and Utility Improvements and operate them pursuant to the Public Street and Utility Maintenance Agreement attached hereto as Attachment 3.

Prior to approval of this Agreement, the Subdivision Map creating the Public Improvements Parcels and the Private Improvements Parcels was recorded.

### 3.04 Condominium Map and Reconveyance Parcels.

In addition to the Air Space Parcels designated on the Subdivision Map, the Successor Agency and Developer may elect to implement the Project through the creation of Air Space Condominium Lots for all or part of the underground parking on the Public Parking Parcels to reconvey to Developer as Private Improvements Parcels (the "Reconveyance Parcels"). If the Successor Agency and Developer pursue this option, a condominium map shall be submitted and approved and reconveyance of the Reconveyance Parcels to Developer shall occur at a 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. The Successor

Agency and Developer agree that Developer shall manage the condominium process and bear all expenses therefore.

3.05 City Approvals and Construction Plans.

Developer shall follow the approved Construction Plans and the City Approvals for the construction of the Project as those City Approvals and/or Construction Plans may be approved by the City and amended from time to time.

3.06 Building Permits.

Developer shall diligently pursue and obtain the building permits for construction of the Minimum Project as and when required in accordance with this Agreement. The applications for building permits shall be consistent with the City Approvals 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. This Agreement may be terminated at the written election of Developer upon Completion of the Minimum Project; provided, however, Developer's obligation to bear the costs of constructing Parking Facility C on Block 6 if Developer elects to commence construction of Parking Facility C shall survive termination.

3.07 Other Permits and Approvals.

At the time Developer applies to the City for building permits, Developer shall also apply for, and diligently seek to obtain, any other City or other governmental or utility permits or approvals necessary to construct the portion of the Project for which the permits are sought, such as, by way of example, demolition permits and encroachment permits.

3.08 Evidence of Financing.

No construction shall commence absent reasonable evidence of adequate financing, subject to the Successor Agency's reasonable approval, to complete construction of the building in question and required related infrastructure, except as provided with respect to the theater.

Such evidence shall include one or more of the following:

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

(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 portion of 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 applicable Project cash flows.

The Successor Agency Executive Director shall review the evidence of financing and approve or disapprove it in writing within fifteen (15) days following receipt. The Successor Agency shall approve the evidence of financing if it indicates that Developer will have sufficient funds to construct the portion of the Project and pay for the costs therefor when due. If the Successor 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 Successor Agency shall approve or disapprove the revised evidence of financing within fifteen (15) days following receipt.

Notwithstanding anything to the contrary provided herein, the requirements of this section shall be deemed conclusively satisfied by a written statement by Developer that construction will be performed using one hundred percent (100%) equity financing (“Equity Funding Certification”) such that no construction financing will be required to complete the construction for which the Equity Funding Certification was issued and that Developer, or a Developer’s Affiliate, has and will maintain during construction and until Completion of the applicable portion of the Project a net worth of at least \$1 billion.

Developer and the Successor Agency shall cooperate to retain financial information submitted by Developer as confidential to the extent permitted by law. These steps shall include, but are not limited to the following: Developer shall identify with specificity any submitted financial documents (including loan and equity financing documents) which Developer wants the Successor Agency to maintain as confidential documents and a statement as to why the request is consistent and complies with the provisions of the California Public Records Act. The Successor Agency shall not disseminate such information and shall take all reasonable steps to maintain such confidentiality unless otherwise required by law. In the event that the Successor Agency obtains a request pursuant to the provisions of the California Public Records Act to disclose any of Developer’s information which the Successor Agency is required to keep confidential pursuant to the terms of this Agreement, the Successor Agency shall provide Developer with prompt written notice thereof and, subject to the time periods imposed by the California Public Records Act for responses to public record requests, shall give Developer a reasonable opportunity to interpose an objection or to seek a protective order, subject to the time limitations. The Parties shall also cooperate with each other and use reasonable efforts to promptly identify any applicable exemptions from disclosure under the California Public Records Act. If a legal action is filed against the Successor Agency seeking to compel disclosure of any information the Successor Agency is required to keep confidential, the Successor Agency shall give prompt notice of the filing of such action to Developer and Developer shall defend and indemnify the Successor Agency and the City from all costs and expenses of such defense, including reasonable attorneys’ fees of the Successor Agency and the City or attorneys’ fees awarded by a court arising out of such action unless Developer waives its right to require that the information be kept confidential.

### 3.09 Evidence of Construction Contract.

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

At the time Developer obtains building permits for any portion of the Project, Developer shall deliver to the Successor 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 Successor Agency and the City as co-obligees.

### 3.10 Assumption of Obligations by Residential Developer.

(a) In order to facilitate development of the residential portion of the Project, Developer may assign its rights and obligations hereunder to one or more Developer's Affiliates. The Successor Agency hereby approves such assignment(s), provided that such assignment(s) shall be effective upon receipt by the Successor 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, including the obligations under the Affordable Housing Developer Agreement with the City. Thereafter, Developer shall promptly notify the Successor Agency of any and all changes whatsoever in the identity of the managing member or general partner of Developer's Affiliate to which the residential portion of the Project is assigned, 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 that is not a Developer's Affiliate, Developer shall submit to the Successor 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, including the development and operation of the below-market rate units consistent with the City Approvals. Any transferee approved by the Successor Agency pursuant to Section 6.01(b) of the 2010 ADDOPA or this Agreement shall be conclusively deemed to satisfy the requirements of this Section 3.10, without regard to whether such approval was given prior to the Effective Date of this Agreement. The assignment of the obligations to develop the residential portions of the Project to a substitute Residential Developer shall not be effective

until such time as Developer submits to the Successor Agency Executive Director an assignment agreement whereby the substitute Residential Developer assumes all of the obligations set forth in this Agreement related to the applicable residential portion of the Project.

(c) Developer shall be entitled to separate written notice from the Successor Agency of any default of the 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 the Residential Developer.

### 3.11 Submissions for Less Than Entire Project.

Developer may construct the Project in phases pursuant to the Construction Schedule. If applicable, Developer shall submit to the Successor Agency, in writing, a description of the phasing plan at the time it determines to proceed with the Project beyond the Minimum Project.

The submissions pursuant to Section 3.05 through Section 3.09 of the 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 commencing constructing each phase of the Project, Developer shall satisfy the conditions set forth in Section 3.05 through Section 3.09 above. Nothing in this Agreement is intended to prevent Developer from constructing improvements on the Private Improvements Parcels in phases, provided Developer first obtains all City Approvals and all other governmental approvals and any other approvals necessary.

### 3.12 Leasing Plan and Local Businesses.

(a) Developer shall prepare a leasing plan for leasing of the Retail space in the Project and submit the plan to the Successor Agency Executive Director for review and comment for the Retail space within Buildings D, E, F, N and T no later than the date set forth in the Construction Schedule (Exhibit B). The leasing plan shall include a description of the following:

- (1) physical conditions and constraints that affect the potential Retail uses;
- (2) anticipated mix, quantity and location of Retail (including restaurants and entertainment uses), including definition of retail districts if applicable;
- (3) proposed phasing plan or strategy for leasing Retail (including restaurants and entertainment space), including the retail districts;
- (4) anticipated quality and types of Retail establishments that will be emphasized and prioritized, particularly merchandise stores; and

- (5) types or categories of Retail uses that will be excluded.

The goal of the leasing plan is to create a First Class Facility that offers a successful blend of high quality Retail (including restaurant and entertainment) establishments. The leasing plan shall strive to create a distinctive identity for downtown Sunnyvale. The leasing plan shall consider existing businesses throughout downtown as if the entire downtown were included in the leasing plan, but shall not be required to name specific tenant / prospective tenant identities. 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. For the purpose of calculating the square footage of restaurants in the leasing plan, restaurants shall include fast food restaurants, but shall exclude enclosed food court uses and “snack bars” within major department stores and any and all of the following uses if located within a grocery / supermarket: bakeries, brew pubs, coffee bars and juice bars, cafes and/or delicatessens or sit down-style restaurants, including the cooking required therefor.

The Successor Agency Executive Director shall review the leasing plan and provide comments to Developer in writing within fifteen (15) days following receipt. Developer agrees to meet with the Successor Agency Executive Director and staff to discuss the Successor Agency comments and to determine if changes to the leasing plan to address the Successor Agency comments are appropriate.

(b) Developer acknowledges that leasing some of the Retail space in the Project to businesses with a regional presence will help to create a distinct character for the Project. 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 in downtown Sunnyvale. Developer shall include provisions for regional businesses in the leasing plan submitted to the Successor Agency for review.

Developer shall exercise continuing commercially reasonable efforts to facilitate the completion and opening of the Minimum Project. In order to allow the Successor Agency to enforce this obligation, Developer shall provide to the Successor Agency reports concerning the status of Developer’s progress with respect to leasing efforts, financing commitments and construction progress, and including in such report a copy of the Project’s merchandising plan. Such reporting shall be provided quarterly to the Successor Agency Executive Director. The Successor Agency agrees to keep proprietary financial, leasing or similar information designated as such confidential to the extent allowed by the California Public Records Act. The Successor Agency’s obligation to keep the information provided by Developer confidential shall be subject to the provisions contained in Section 3.08 related to the California Public Records Act and Developer’s obligation to defend and indemnify the Successor Agency and the City. Developer shall not be obligated to provide any information that would, in Developer’s reasonable business judgment, harm its leasing efforts, including, without limitation, providing the names of prospective tenants or other sensitive financial information.

Commencing with the Effective Date of this Agreement, Developer shall undertake diligent efforts to obtain a theater lease and operation commitment with a goal of executing

such lease within twelve (12) months of the Effective Date, and, if so executed, Developer will commence and complete theater construction in accordance with the schedule set forth in Exhibit B unless Developer demonstrates to the Successor Agency's reasonable satisfaction that there is no economically viable lease, ground lease or sale transaction for the timely development of a theater. The Parties acknowledge that both desire to achieve commencement and completion of the theater building as soon as reasonably possible and, as such, will work together to advance the foregoing dates.

ARTICLE 4.  
PROPERTY TRANSACTIONS AND ENVIRONMENTAL REMEDIATION

4.01 Sale and Purchase.

Developer completed the required property transactions and closings required by ARDDOPA Sections 4.01 and 4.04.

4.02 Conveyances.

All conveyances required by ARDDOPA Section 4.05 have been completed.

4.03 Other Closing Documents.

The Agency and DSMU completed and recorded, as required, all closing documents pursuant to Section 4.06 of the ARDDOPA, as listed below. These documents continue to control the use of the Project.

- 2. (a) Public Parking Ground Lease attached for reference as Attachment 2.
- (b) Public Streets and Utility Maintenance Agreement attached for reference as Attachment 3.
- (c) OREA.
- (d) Public Parking Easement attached for reference as Attachment 1.
- (e) Penney's Structure Agreement attached for reference as Attachment 4.
- (f) Covenant of Easements pursuant to the provisions of Government Code Sections 65870-65875 in order to provide public utility easements to the City, recorded October 30, 2008, Santa Clara County Recorder.

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

(a)Condition of the Property. Except as specified in this Section 4.04, 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 (“Environmental Work”), as of the effective date of the ARDDOPA.

(b) Duty of Cooperation in Investigation and Remediation of Hazardous Materials. After the effective date of the ARDDOPA, Developer and the Successor Agency shall both have a material duty to cooperate and pursue a unified position, to the extent reasonably feasible, with respect to the Environmental Work, 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, litigation, 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, Developer and its environmental consultants shall have lead responsibility for undertaking items (i) through (iv) above, but shall consult with the Successor Agency and its environmental consultants on a timely basis with respect to all material issues associated with the Environmental Work. Such consultation shall include timely requests for, and consideration of, comments and revisions to any draft or proposed investigation work plans, costs of such plans, investigation reports or remedial action plans that are to be submitted to Environmental Oversight Agencies.

Except for any subrogation claim that may be brought on behalf of the Successor Agency, Developer, or their consultants, the Successor Agency shall have sole responsibility for undertaking item (v) above, which shall be at the Successor Agency’s sole and absolute discretion. The Successor Agency shall provide reasonable advance notice to Developer of its plans to undertake a cost recovery action pursuant to item (v) above, and if the Successor

Agency obtains approval from Developer of the Successor Agency's plans to undertake a cost recovery action prior to undertaking such cost recovery action pursuant to item (v) above, all reasonable legal costs, including attorneys' fees and costs, associated with that action shall be deemed Environmental Costs pursuant to Section 4.04(c) below. If Developer does not approve the Successor Agency's plans to undertake such cost recovery action, the Successor Agency shall have sole responsibility for all legal costs, including attorneys' fees and costs, associated with the action. Developer acknowledges that the Agency initiated cost recovery actions against third parties prior to the Effective Date of this Agreement and that the Agency had sole responsibility for the prosecution of those actions, and that Developer was and is not entitled to any environmental cost recovery obtained as a result of those actions except as provided in this Agreement.

If, following reasonable discussion, Developer and the Successor Agency cannot present a unified position to an Environmental Oversight Agency with respect to any issue concerning the Environmental Work, Developer and the Successor 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, Developer and the Successor Agency agree to utilize the dispute resolution procedures set forth in Section 4.04(d) below to resolve such dispute.

An oversight agreement has been entered into with an Environmental Oversight Agency, and the Successor Agency, as the successor to the Agency, has been 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 4.04(c) below. From and after the Successor Agency's conveyance of Lots 1, 3 and 4 of Block 6 Developer shall have the right, but not the obligation, to enter into a new oversight agreement with the Environmental Oversight Agency that supersedes or modifies, in whole or in part, the existing oversight agreement referenced in this paragraph with respect to Lots 1, 3 and 4 of Block 6. From and after the Successor Agency's conveyance, if any, of Lot 2 of Block 5 to Developer, Developer shall have the right, but not the obligation, to enter into an oversight agreement with the Environmental Oversight Agency that supersedes or modifies, in whole or in part, the existing oversight agreement referenced in this paragraph with respect to Lot 2 of Block 5.

The Successor Agency and Developer shall cooperate in any efforts by either party to seek and obtain suitable Hazardous Materials liability protections and/or other assurances from an Environmental Oversight Agency, except that Developer shall not be required to agree to any voluntary regulatory activity or program proposed or requested by the Successor Agency (including, without limitation, proceeding under the Polanco Redevelopment Act, California Health and Safety Code Sections 33459, et seq., or the Site Designation Program, California Health and Safety Code Sections 25260, et seq.) if Developer, in its sole discretion, determines that such activity or program will not meet its needs for the Project.

Developer shall cause its consultants and contractors performing subsurface remedial portions of the Environmental Work to obtain and maintain contractor's pollution liability insurance policy with a limit of at least ten million dollars (\$10,000,000) (per occurrence/aggregate), which shall name the Successor Agency and the City as additional

insureds and shall not contain exclusions for contaminants that are specific to the Project property or are the subject of the Environmental Work.

(c) Successor Agency Responsibility for Certain Investigation and Remediation Costs. Notwithstanding the foregoing, the Successor Agency shall be responsible for paying a certain portion of the Environmental Costs, as defined herein. “Environmental Costs” means any and all commercially reasonable costs incurred by Developer and the Successor Agency, following October 5, 2009, with respect to Environmental Work conducted in material compliance with the duty of cooperation specified in Section 4.04(b) above, and 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 Successor Agency and Developer.

- (i) Environmental Costs shall include, without limitation:
  - (A) oversight fees charged by an Environmental Oversight Agency;
  - (B) hazardous waste generator fees or taxes imposed by statute, regulation, or policy;
  - (C) hazardous waste transportation and disposal costs;
  - (D) fees and related costs charged by Developer’s and the Successor Agency’s environmental consultants, attorneys, and their respective agents, including, without limitation, costs of investigation of potential contributors to the Hazardous Materials on, under or emanating from the Public Improvements Parcels and Private Improvements Parcels;
  - (E) costs to install, operate and maintain soil, soil vapor and groundwater remedial systems, 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);
  - (F) costs associated with abandonment, closure or removal of groundwater monitoring wells and remedial facilities, except to the extent otherwise provided in this Agreement; and
  - (G) costs associated with Claims (as defined in subsection 7.04(a) of the 2010 ADDOPA) threatened or asserted by third parties against Developer, the Successor Agency, the City, or any of them, concerning the 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, including litigation costs, civil penalties, damages awards, or settlement amounts (“Third Party Environmental Cleanup Costs”), provided, however, in the event such Claims are brought against only Developer, or alternatively, against only the Successor Agency and/or the City, then the costs associated with such Claims shall be deemed to

be Third Party Environmental Cleanup Costs only if: (A) notification of such Claims is promptly provided by the party(ies) that received the asserted or threatened Claims to the other party(ies) that did not receive such asserted or threatened Claims, pursuant to Section 12.01 of this Agreement, at the time of receipt, service, and/or knowledge of the Claim at issue, and (B) the parties enter into a written agreement that addresses the parties' respective rights with regard to the defense and settlement of such Claims. Third Party Environmental Cleanup Costs shall not include costs associated with Claims threatened or asserted by third parties concerning any property damage, personal or bodily injury (including death), natural resource damages, diminution in property value, or any toxic tort claim resulting from 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.

(ii) Environmental Costs shall not include:

(A) costs of Developer's, the City's, or the Successor Agency's employee time;

(B) costs and expenses arising from damage to, or destruction of, any improvements on the Public Improvements Parcels and Private Improvements Parcels caused by Developer's negligent performance of the Environmental Work; Developer shall repair or replace, at its sole cost and expense, such damaged or destroyed improvements, thereby returning those improvements to their original condition;

(C) costs associated with asbestos and urea formaldehyde foam insulation present solely in aboveground structures; or

(D) costs associated with the environmental investigation occurring prior to February 7, 2007, including costs incurred thereafter resulting from abandonment, closure, maintenance, removal, or destruction of permanent or temporary groundwater monitoring wells installed as part of that 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.

(iii) Except as provided in subsection (iv) below, as of October 5, 2009, the Successor Agency shall be responsible for paying fifty percent (50%) of the Environmental Costs incurred by Developer and the Successor Agency.

(iv) At such time as the Developer accepts conveyance of the Successor Agency's property in Block 6, the Successor Agency shall no longer be responsible for paying its share of Environmental Costs arising from and after said date for Environmental Work that is applicable to Block 6 only, and Developer's share of Environmental Costs arising from and after said date shall be one hundred percent (100%) for Environmental Work that is applicable to Block 6 only.

Following development of a draft remedial action plan or equivalent document for the site, the Successor Agency and Developer shall cooperate in identifying and negotiating with appropriate insurance underwriters, using an insurance broker of Developer's sole choice, to determine whether it is feasible and economically practical to obtain a cleanup cost cap, remediation stop loss, or other comparable environmental insurance policy that would provide coverage for any or all Environmental Costs. The Successor Agency and Developer shall each decide, in its sole and absolute discretion, whether to jointly obtain such an insurance policy. If the Successor Agency and Developer agree to obtain such a policy jointly, the Successor Agency shall be responsible for payment of 50 percent (50%) of the premium and other costs to obtain such policy, and Developer shall be responsible for payment of 50 percent (50%) of the premium and other costs to obtain such policy. If the parties do not agree to obtain such a joint policy for any reason, or in the event such a policy is obtained and any Environmental Costs are not covered by such policy, the 50-50 allocation shall apply to those Environmental Costs. Nothing in this Agreement shall preclude either the Successor Agency or Developer from obtaining, in its sole discretion and at its sole cost, a cleanup cost cap, remediation stop loss, or other comparable environmental insurance policy that would provide coverage for any or all Environmental Costs.

Unless a different schedule is agreed upon, on a monthly basis the Successor Agency and Developer shall provide one another with invoices and supporting documentation for all Environmental Costs incurred by each party, and, on a quarterly basis, Developer shall prepare and submit to the Successor Agency an itemized assessment of all such costs incurred by the Successor Agency and Developer. The quarterly assessment shall state the total Environmental Costs incurred by the Successor Agency and Developer since the most recent quarterly summary, the portion of the total Environmental Costs allocable to each party under this Section 4.04(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 Section 4.04(d) below. The Environmental Costs specified in subsections 4.04(c)(i)(A) and (c)(i)(B) above shall not be subject to dispute pursuant to this provision.

If the Successor Agency receives any recovery from any third party pursuant to subsection 4.04(b)(v) above, within ten days of receipt, the Successor Agency shall apportion and deliver the proceeds of the recovery as follows:

- (1) Developer and the Successor Agency shall each be reimbursed from the recovery proceeds the legal costs incurred by each party, if any, in prosecuting the third-party recovery action; and
- (2) to the extent proceeds from the third-party recovery action exceed the total legal costs of the recovery action, then the Successor Agency shall, within ten days of receipt, pay to Developer one-half of the recovery net of legal costs, up to the amount Developer has paid in Environmental Costs. To the extent that the remainder of such net recovery exceeds the amount the Successor Agency has paid in Environmental Costs, such net recovery shall be

applied against future Environmental Costs incurred by the Successor Agency and Developer, with the excess net recovery amount allocated to each party's obligations equally.

The above apportionment of third-party recoveries shall only apply where the legal action generating the recovery was initiated with Developer's approval and costs of suit were shared by Developer and the Successor Agency, as provided in Section 4.04(b) above. In all other instances, the Successor Agency 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 4.04, Developer and the Successor 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 Successor Agency shall participate in a mediation presided over by a mediator who is mutually acceptable to the Parties. If the mediation does not resolve the dispute, Developer and the Successor 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 Successor 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 Successor 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 4.04 unless both Developer and the Successor 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) Conveyance of Lots 1, 3, and 4 of Block 6. Upon the earlier of Developer's delivery of written request to the Successor Agency or October 1, 2022, the Successor Agency shall convey Lots 1, 3 and 4 of Block 6 to Developer pursuant to the Modified and Restated Covenant to Convey (a form of which is attached hereto as Exhibit K in substantially final form); *provided, however*, that the Successor Agency may delay the conveyance otherwise required by this subsection for the minimum period necessary to comply with the requirements of the Certificates of Participation (Parking Facility Refunding) Series 1998A and/or that certain Facilities Lease dated as of March 1, 1998 by and between the Redevelopment Agency of the City of Sunnyvale and the City of Sunnyvale, which was recorded as Instrument Number 14120789 in the official records of Santa Clara County.

In addition to the foregoing, the Parties acknowledge and agree that it is in the best interest of both Parties to meet on a regular basis to provide for the ultimate disposition of Lot 2 of Block 5 and determine the feasibility of accelerating the conveyance of Block 6 if mutually agreed to by the Successor Agency and Developer. Accordingly, the Parties hereby agree to meet no less frequently than once every six months until December 31, 2018 (unless otherwise agreed to by both Parties) in order to reach agreement as to the mutually acceptable long-term solution for the final disposition of Lot 2 of Block 5 and determine whether it is feasible to accelerate the conveyance of Lots 1, 3 and 4 of Block 6 (areas for discussion could include, by way of example only, the potential conveyance of Lot 2 of Block 5 to Developer, Developer assuming a greater portion of the Environmental Costs for Lot 2 of Block 5, Developer naming the Agency as an additional insured, and/or accelerating the conveyance of

Lot 1, 3 and 4 Block 6 pursuant to a modified Environmental Cost sharing arrangement) in a manner that will further the protection of public health and safety, streamline the dissolution of the Successor Agency, and (i) reduce liabilities and (ii) increase revenues for the taxing entities. Developer shall reasonably cooperate with the Successor Agency's Executive Director in the preparation of regular reports regarding the status of such meetings. Notwithstanding anything to the contrary contained herein, neither Party shall be obligated to agree to any proposed strategy or proposal, and each Party remains free to determine, in the exercise of its own, subjective business judgment, whether to agree to any proposed strategy or proposal for the disposition of Lot 2 of Block 5.

(f) Decisions Regarding Environmental Work. Notwithstanding anything to the contrary set forth in this Section 4.04, the rights of Successor Agency to have input on, be consulted with respect to or participate in decisions regarding Environmental Work shall immediately terminate as to any Lot, Parcel or Block in which the Successor Agency no longer has a fee ownership interest and the Developer shall thereafter have sole control over any such decisions.

(g) Survival of Termination of the Agreement. Notwithstanding any other provision of this Agreement to the contrary, this Section 4.04 shall survive termination of this Agreement.

#### 4.05 Property Taxes.

Developer shall, unless paid by others, pay all property taxes including possessory interest taxes which it is obligated to pay by applicable law.

### ARTICLE 5. CONSTRUCTION OF IMPROVEMENTS

#### 5.01 Commencement of Construction.

Developer, for itself, its successors and assigns, hereby covenants and agrees to restart and complete construction of the Project as follows:

#### 5.02 Minimum Project Commencement and Completion.

The Minimum Project shall include the following improvements per the City Approvals as further defined in Exhibit B:

(a) Ground floor Retail space consisting of approximately, i.e., within 5% of, 130,200 gross square feet in Buildings A, D, E, F and N.

(b) A multi-plex movie theater of up to 60,000 square feet within Building T and ground floor Retail space of approximately, i.e., within 5% of, gross 58,000 square feet within Building T; provided, however, if a single-story design of Building T is subsequently approved by the City pursuant to an amendment to the City Approvals, no ground floor Retail within Building T shall be required as part of the Minimum Project.

- (c) Office space in Buildings A and C, which has been completed and issued a Certificate of Completion pursuant to Section 5.08.
- (d) 198 residential units in Buildings D, E and F.
- (e) Demolition of steel framing in Block 3 and installation of temporary Redwood Square improvements.
- (f) Parking Facilities A and B and the Penney's Structure.
- (g) Public Improvements as defined in Exhibit B-1.

Developer shall commence the Minimum Project at the time and in the manner set forth in Exhibit B. Once commenced, all construction shall be diligently completed pursuant to the Construction Schedule set forth in Exhibit B.

Notwithstanding any other provision of this Agreement, Developers' obligation is satisfied by commencing and completing the Minimum Project in accordance with Exhibit B, including the Public Improvements set forth in Exhibit B-1. The development of the remainder of the Project shall be in the exercise of Developer's sole discretion.

By way of emphasis, but without limitation, the provisions herein shall be subject to the provisions of Section 12.04. Developer shall not be obligated to commence construction prior to the satisfaction of the "Preconditions to Developer's Obligation to Commence Construction" set forth in Exhibit B. Developer shall have the right, but not the obligation, to Commence construction prior to the satisfaction of the preconditions set forth therein, provided that Developer complies with all other provisions of this Agreement, including (without limitation) Section 3.08. Developer and the Successor Agency acknowledge that both desire to achieve Commencement and Completion of the Minimum Project as soon as reasonably possible and, as such, will work together to advance construction timelines. Construction of the remaining Project improvements (which are contemplated to occur after completion of the Minimum Project) shall be in Developer's sole discretion, but in all events shall be consistent with the City Approvals as they may be modified from time to time.

The right to develop the Minimum Project and remaining Project improvements described in this Agreement and the Related Documents shall continue, except as otherwise provided in the City Approvals.

### 5.03 Liquidated Damages.

Because the Parties recognize that the City and the Successor Agency would suffer loss of sales tax revenue that would be received if a Retail portion of the Project is recommenced and not completed and that these damages would be difficult to calculate, the Parties have, therefore, agreed that, if, after the Effective Date of this Agreement, any Retail building in the Minimum Project is commenced or recommenced and is not Completed within the time set forth in Exhibit H, then Developer shall pay to the City as liquidated damages and not as penalties a one-time liquidated damages payment of five million dollars (\$5,000,000). The Parties acknowledge that

the City is a third-party beneficiary of this provision of the Agreement and shall have rights to enforce this provision as if the City were a party to this Agreement.

In no event shall Developer incur any liquidated damages in the event the failure to Complete 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 Complete 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 subject improvements, provided that Developer has submitted to the City all documentation ordinarily needed by the City 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. If Developer gives notice of a delay pursuant to Section 12.04 on the basis of an unreasonable delay on the part of the City in issuing any permits or approvals and within ten (10) business days of receipt of such notice by the Successor Agency, the City has either (i) issued the permit or approval or (ii) provided Developer with comments on Developer's application or other submission related to the permit or approval indicating the changes that are required in the application or submission in order for the City to issue the permit or approval, no delay shall be deemed to have occurred. The actual number of days of each such noticed delay shall be cumulative and shall be added to all subsequent milestone dates.

Notwithstanding anything set forth above, the Parties agree that as of the Effective Date of this Agreement, Developer is not obligated to pay to the City any liquidated damages for actions or activities related to the 2010 ADDOPA.

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

Developer shall construct the Project substantially in accordance with the Construction Plans, as they may be amended from time to time, and which shall be consistent with all City Approvals. In constructing the Project, the Successor Agency and Developer acknowledge and agree that the property lines between the Macy's Parcel and the Private Improvements Parcels and Public Improvements 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/Completed Improvements.

(a) 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.

In addition, the Parties agree to negotiate in good faith to attempt to achieve reasonable modifications to the scope of the Public Improvements and other improvements

remaining to be done as of the Effective Date of this Agreement (substantial Public Improvements and other improvements having been Completed) including the identification of what Public Improvements and other improvements are necessary for each building or segment of the Project and to reduce fees and costs. The Parties also agree that all public infrastructure (including the Public Improvements) required in connection with Buildings A and C (as same are designated in Exhibit B) have been Completed and all conditions in the City Approvals applicable thereto have been satisfied or waived.

(b) The Parties agree, if necessary, to negotiate in good faith to attempt to achieve a mutually satisfactory solution resulting in an earlier reopening or alternative response for the Penney's Structure, including potential substitution of securities for the Penney's Structure or reopening a portion of the Penney's Structure. The Parties agree to negotiate in good faith to keep the cost of any such action to the minimum necessary. This provision is without prejudice to the Parties' existing rights and obligations under this Agreement and the Related Documents.

#### 5.06 Fair Employment Opportunity.

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, 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 California law.

#### 5.07 Prevailing Wages; Compliance With Laws.

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 California Labor Code Section 1720, et seq. and implementing regulations of the Department of Industrial Relations, to register and maintain such registration with the Department of Industrial Relations in accordance with Labor Code Sections 1725.5 and 1771.1, and comply with the other applicable provisions of Labor Code Section 1720, et seq. and implementing regulations of the Department of Industrial Relations. For the purpose 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. 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 Section 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 Project property the applicable prevailing rates of per diem wages. Developer shall indemnify, hold harmless and defend (with

counsel reasonably acceptable to the Successor Agency) the Successor 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 Section 1720, et seq. and implementing regulations or comply with the other applicable provisions of Labor Code Section 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 U.S.C. Section 1324(a) (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 each building in the Project in accordance with those provisions of this Agreement relating solely to the obligations of Developer to Complete the construction, the Successor Agency will provide an instrument so certifying (the "Certificate of Completion"). The Certificate of Completion shall be conclusive determination that the covenants in this Agreement with respect to the obligations of Developer, as to the portion of the Project for which it is issued, 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. The issuance of a Certificate of Completion shall not be evidence of compliance with the prevailing wage requirements of California law.

Nothing in this section shall preclude 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 Successor Agency has not yet issued a Certificate of Completion pursuant to this section.

#### 5.09 Lien Free Construction.

During construction and Completion of the Project, Developer shall take such steps as are necessary to keep the Public Improvements Parcels free of liens or other encumbrances created in connection with Developer's possession of the Public Improvements Parcels and construction of the Public Improvements. If a lien or other encumbrance nevertheless attaches to the Public Improvements Parcels, the Successor Agency may require Developer to take such steps as the Successor Agency determines are reasonably necessary to protect against such lien or encumbrance including, without limitation, requiring Developer to provide the Successor 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 Successor Agency shall not require such steps until the earlier of one hundred twenty (120) days following the date on which the lien or encumbrance attaches or the date on which 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 Parcels during construction of the Public Improvements. Upon completion of the Public Street and Utility Improvements and issuance of the Successor Agency's Certificate of Completion of the Public Street and Utility Improvements in accordance with Section 5.11 below, Developer shall offer to transfer ownership of these improvements to the City by deed, bill of sale or other conveyance.

#### 5.11 Inspections and Certification of Completion of Public Improvements.

During the course of construction of the Public Improvements, Developer shall permit Successor Agency and City representatives to have access to the Public Improvements Parcels 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, Developer acknowledges that the Successor Agency or City may, but shall not be obligated to, notify Developer of such lack of conforming with the approved Construction Plans. If such notice is provided, Developer shall correct, at Developer's sole cost, the work to make the construction conform to the Construction Plans. When the Public Improvements are completed, Developer shall allow the City to make a final inspection. Provided that the City or Successor Agency notifies 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 Successor 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 Successor 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 (the "AAA"). The Parties will jointly select an arbitrator within thirty (30) days of filing of the demand, and if unable to do so, the arbitrator 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 and 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.

Immediately upon completion of the Public Improvements in accordance with the Construction Plans, the Successor Agency shall issue a Certificate of Completion.

5.12 Support of Existing Downtown Business During Construction.

(a) Developer shall continue to implement the construction mitigation program designed to minimize the disruption to surrounding businesses and residents during construction and expedite construction of the STC and shall comply with the following mitigation program requirements pursuant to the City-approved program:

- (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 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 Sunnyvale 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. Developer acknowledges that the City may provide a link from the City website to Developer's website in order 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 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 Successor Agency so as to facilitate the work of the contractors and subcontractors and resolve any ongoing construction issues affecting Downtown merchants and residents.

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

ARTICLE 6.  
CHANGES IN DEVELOPER

6.01 Requirements for Transfer.

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 Improvements Parcels or any assignment of this Agreement or the Related Documents to any person or entity (except as otherwise expressly provided by the Related Documents). Transfer also includes any voluntary or involuntary sale, transfer, conveyance, assignment or other disposition of any ownership interests in Developer. Except as permitted pursuant to Section 6.03, Developer shall not engage in a Transfer except as to the specifically permitted following Transfers:

(a) Any Transfer resulting from a foreclosure of a Security Financing Interest or deed in lieu of foreclosure.

(b) Any Transfer to a transferee that meets the following criteria as to the use(s) of the portion(s) of the Project proposed to be Transferred: (i) has the experience in and has completed major mixed-use commercial, Retail, residential projects of similar size, scope and nature involving a mix of national, regional and local tenants, (ii) has adequate financial capacity, including the references of at least two lending institutions with substantial lending experience in California mixed-use real estate, to timely commence and complete the construction thereof, (iii) possesses a good business character and reputation, and (iv) has prior development projects and an operating presence in California. Developer shall provide reasonable evidence to the Successor Agency demonstrating the proposed transferee’s satisfaction of the foregoing criteria. The Successor Agency shall acknowledge or challenge the proposed transferee’s satisfaction of the foregoing criteria within 20 business days after Developer’s submittal. During such 20-day review period, Developer and the Successor Agency shall respond to inquiries of the other and exchange information as may be requested. If the Successor Agency, exercising commercially reasonable discretion, advises Developer that the proposed transferee does not satisfy any of the stated criteria, the Successor Agency shall provide detailed evidence of the same. If the Successor Agency fails to respond to Developer’s submittal within the 20-day period, the Transfer shall be deemed permitted. Developer shall respond to the Successor Agency’s evidence of the proposed transferee’s failure to satisfy the criteria within 10 days after receipt of same. If, following submission of Developer’s response, the Successor Agency continues to dispute the transferee’s satisfaction of the stated criteria and so notifies Developer within 5 days after receipt of Developer’s response, such dispute shall be resolved by expedited arbitration.

(c) Any Transfer of any portion of the Project for which a Certificate of Completion has been issued.

(d) Any Transfer resulting from the removal of Sares Regis and/or Hunter Properties as members of Developer provided one or more of the remaining members of Developer assumes the removed member’s interest in Developer and no new

unaffiliated members are admitted to Developer for the purpose of undertaking responsibility for the construction of the Minimum Project.

(e) Any Transfer of a residential condominium unit upon the issuance of a certificate of occupancy for the residential building.

(f) Any Transfer of any portion of the Project (other than the Minimum Project and Block 6), unless the Successor Agency, exercising commercially reasonable discretion, shows that the proposed transferee would have a material adverse impact on the Project.

(g) Any Transfer to a Residential Developer pursuant to Section 3.10.

(h) Any other Transfer to a Developer's Affiliate, except that this subsection (h) shall not apply to any Transfer in which the transferee includes the addition of a new unaffiliated member undertaking responsibility for construction of the Minimum Project.

If Developer, prior to completion of construction of the Minimum Project, desires to add one or more new members, Developer shall submit to the Successor Agency Executive Director the qualifications of Developer, as newly constituted. The Executive Director shall not unreasonably withhold approval of the new member if Developer would, following the addition of the new member(s), have the necessary financial capacity and development experience to undertake and complete the remaining portions of the Minimum Project in accordance with this Agreement and the City Approvals; provided, however, that any Developer controlled by an entity that was reviewed by the Successor Agency in accordance with Section 6.01(b) of the 2010 ADDOPA within the 12-month period occurring immediately prior to the Effective Date of this Agreement shall be conclusively deemed to satisfy the requirements of this Section 6.01.

All other Transfers shall be subject to the Successor Agency's approval, which shall not be unreasonably withheld, conditioned or delayed.

Developer, as Tenant of the Public Parking Ground Lease, shall not transfer its interest in the Public Parking Ground Lease or Public Parking Maintenance Agreement separately from its interest in all or a portion of the Private Improvements Parcels, except to a property owners association or other entity (collectively, the "Parking Entity") reasonably approved by the Successor Agency or the City in the event the Successor Agency has dissolved. In addition to the foregoing, the Successor Agency or the City in the event the Successor Agency has dissolved shall have the right to reasonably approve the formation documents and covenants, conditions and restrictions of the Parking Entity and any amendments to the formation documents and covenants, conditions and restrictions. Any assignment of Developer's interest in the Public Parking Ground Lease and/or the Public Parking Maintenance Agreement separate from its interest in all or a portion of the Private Improvements Parcels shall provide for third-party enforcement rights for the Successor Agency or the City in the event the Successor Agency has dissolved.

6.02 Effectuation of Transfers.

A Transfer approved by the Successor Agency or permitted pursuant to Section 6.01 shall be accomplished pursuant to documentation providing for the transferee to undertake and assume the relevant rights and obligations under this Agreement. If a Transfer is otherwise a Transfer permitted under this Agreement, then the transferor shall be released from all obligations related to the portion(s) of the Project upon such Transfer, provided the remaining obligations of Developer relating thereto are expressly assumed by said transferee. Promptly following any Transfer, Developer shall provide to the Successor Agency any information reasonably necessary to determine the ownership percentage under Section 6.01(d). Any portions of the Project shall be transferred subject to applicable existing entitlements.

6.03 Certain Permitted Transfers.

Notwithstanding the provisions of Section 6.01, Developer, without the approval of the Successor 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 Parcels and/or the Public Parking Ground Lease in connection with the financing approved by the Successor Agency pursuant to Section 3.08 or a security interest or mortgage created after the issuance of a Certificate of Completion.

(c) Any collateral assignment of all or any part of the Private Improvements Parcels, or all or any part of the beneficial ownership interest in Developer.

Transfers authorized by this Section 6.03 shall not be subject to the requirement of Section 6.02.

ARTICLE 7.  
REPRESENTATIONS, WARRANTIES, AND COVENANTS

7.01 Successor Agency Representations and Warranties.

The representations and warranties of the Successor Agency in this Section 7.01 are a material inducement for Developer to enter into this Agreement. The Successor Agency represents and warrants to Developer as of the date of this Agreement as follows:

(a) The Successor Agency is a public body, corporate and politic, formed and existing by operation of the Redevelopment Dissolution Law. The 2010 ADDOPA constitutes an Enforceable Obligation as that term is defined in the Redevelopment Dissolution Law and approved on the Successor Agency's Recognized Obligations Payment Schedule. The execution, delivery and performance of this Agreement by the Successor Agency has been duly and validly authorized by all necessary action on the part of the Successor Agency and all required consents and approvals have been duly obtained. This Agreement is a legal, valid and binding obligation of the Successor Agency, enforceable against the Successor 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. Because this Modified ADDOPA (1) will facilitate an increase in property tax and sales tax revenues by encouraging the timely development of the STC, and (2) will, upon satisfaction of all conditions precedent, eliminate the TIF payments to Developer, it constitutes an amendment to an existing agreement that will reduce liabilities and increase net revenues to the taxing entities, and thus its approval is in the best interests of the taxing entities. Accordingly, this Modified ADDOPA is authorized by the Redevelopment Dissolution Law, including without limitation California Health and Safety Code Section 34181.

#### 7.02 Developer Representations and Warranties.

The representations and warranties of Developer in this Section 7.02 are a material inducement for the Successor Agency to enter into this Agreement. Developer represents and warrants to the Successor Agency as of the date of this Agreement as follows:

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 all of its obligations hereunder. 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 were as set forth in the certificate provided to the Successor 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 Successor Agency in this Agreement shall be continuing covenants. The Successor 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 Successor Agency in this Agreement was untrue or incorrect in any respect when made or that may be caused by any breach by the Successor Agency of any such representation or warranty.

All representations, warranties and other covenants made by Developer in this Agreement shall be continuing covenants. Developer shall indemnify and defend the Successor Agency against and hold the Successor 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 Successor 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 by Developer of any such representation or warranty.

7.04 Hazardous Materials Indemnity and Release

The Hazardous Materials Indemnity and Release set forth in the 2010 ADDOPA survives termination of the 2010 ADDOPA and therefore remains in full force and effect pursuant to the terms of the 2010 ADDOPA

ARTICLE 8.  
RESERVED

ARTICLE 9.  
PROVISIONS REGARDING REMEDIES

9.01 Scope of Section.

The provisions of this Section 9 shall govern the parties' remedies under this Agreement. The parties acknowledge that as of the Effective Date, all existing events of and defaults of either party under the 2010 ADDOPA, ARDDOPA and all Related Documents occurring prior thereto have been satisfied, modified or waived.

9.02 Termination Remedy.

In addition to any remedies for default available under this Agreement, if the Minimum Project has not been Completed by December 31, 2020, then either party may terminate this Agreement as the applicable remaining Project entitlements and Related Documents (to the extent permitted in the applicable Related Documents).

9.03 Fault of Successor Agency.

The following events shall entitle Developer to take action against the Successor Agency:

(a)The Successor Agency breaches any material provision under this Agreement.

Upon occurrence of such an event, Developer may give the Successor Agency notice of default and an opportunity to cure the default. If, within sixty (60) days following receipt of the notice, the Successor Agency fails to cure the default then Developer may seek any remedy available at law or in equity.

9.04 Fault of Developer.

The following events shall entitle the Successor Agency to take action against Developer:

(a)Developer fails to apply for any permits or approvals described in Section 5.02 within the time set forth in Exhibit B or thereafter fails to obtain such permits or approvals.

(b) Developer fails to submit evidence of financing within the time specified in Section 3.08.

(c) Developer fails to submit construction contracts or bonds required by Section 3.09 within the time set forth in that section.

(d) Developer fails to commence construction of the applicable portion of the Project within the time specified in Exhibit B.

(e) Developer suspends construction of the applicable portion of the Project for a period of more than sixty (60) days after it is re-commenced following the Effective Date.

(f) Developer fails to Complete construction of the applicable portion of the Minimum Project within the time specified in this Agreement.

(g) Developer breaches any other material provision of this Agreement.

Upon the occurrence of such an event, the Successor Agency may give Developer notice of default and an opportunity to cure the default. If, within sixty (60) days following receipt of the notice, 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 begin to cure and thereafter diligently prosecute the cure to completion, then the Successor Agency may (i) seek any remedy available at law or in equity, (ii) terminate this Agreement, or (iii) if applicable, obtain the remedies specified in Sections 5.03 and 9.05.

#### 9.05 Right to Purchase Private Improvements Parcels.

If, prior to issuance of a Certificate of Completion, the Minimum Project has not been Completed by December 31, 2020, then in addition to any other remedies available at law or in equity, the City, as a third-party beneficiary under this Agreement, shall have the right to purchase the portion of the Project owned by Developer at the time of the default or failure for which no Certificate of Completion has been issued. Such option shall be exercised by the City giving written notice of purchase to Developer. The purchase price shall be the fair market value of the portion of the Project 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 upon purchase by the City. In no event, however, shall the purchase price be less than the amount owing on any liens or encumbrances to which the property being purchased is subject.

Within thirty (30) days after providing written notice of purchase, the City shall make a written offer to purchase. Developer shall accept or counter within fourteen (14) days of receipt of the written offer. If Developer counters, the City shall have seven (7) days in which to accept the counter or demand appraisal. If appraisal is demanded by the City, within fourteen (14) days thereafter, Developer and the City 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 City. 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 one hundred and twenty percent (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 City's right to purchase pursuant to this Section 9.05 shall not defect or render invalid any security interest permitted by this Agreement.

This Section shall not apply to a permitted transferee of property containing an office or theater use (and including any Retail therein) where a right of first refusal, right of first offer or similar right to acquire or lease is in place.

#### 9.06 Arbitration.

Any dispute not resolved within thirty (30) days shall be submitted to expedited arbitration except that the existing arbitration provisions in Sections 4.04 and 5.11 of this Agreement shall continue to apply.

### ARTICLE 10. CONTINUING OBLIGATIONS

#### 10.01 Memorandum of Agreement.

Currently herewith, Developer and Successor Agency have executed and will record against the Project a revised Memorandum of Agreement. The Memorandum of Agreement shall be superior to any security interest in the Private Improvements Parcels and Developer shall take such steps as are necessary to insure such priority including arranging for recordation of the Memorandum of Agreement or obtaining subordination agreements from acquisition lenders.

#### 10.02 Purpose of Memorandum.

The Successor Agency and Developer agree that the purpose of recording the Memorandum of Agreement is to give notice of the continuing obligations under this Agreement including the restrictions on Transfer set forth in Article 6 above, and the covenants set forth in Sections 10.03 through 10.07 below.

### 10.03 Non-Discrimination.

All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any residential unit within the Project shall contain therein the following language:

(a) In Deeds:

“(1) Grantee herein covenants by and for itself, its successors 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 any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any 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 property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(b) In Leases:

“(1) Lessee herein covenants by and for itself, its successors 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 any basis listed in subdivisions (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, 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, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(c) In Contracts:

“(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivisions (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee 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 of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, and 51.11 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

10.04 RESERVED.

10.05 Downtown Participation.

Developer shall participate in and be supportive of the Sunnyvale downtown business community. The Project is within the boundaries of the Downtown Sunnyvale Business Improvement District (“District”). Developer shall include in all leases entered into for portions of the Project language informing tenants of the District. Developer shall not oppose or protest the annual renewal of the District. The Successor 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 Developer provides maintenance or security functions to portions of the downtown area in addition to the Project, 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 exits from the STC property to Washington Street showing the direction to Historic Murphy Avenue.

#### 10.06 City Use of Plazas.

The City and Successor Agency shall be entitled to use the outdoor plaza that is part of improvements on the Private Improvements Parcels (the "Redwood Plaza Area," also referred to as the "Redwood Square" in the City Approvals) on the terms and conditions hereinafter set forth.

(a) Developer shall only be obligated to allow the City and/or Successor Agency to use the Redwood Plaza Area for special events that are (i) City or Successor 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 OREA (and the City) shall have the right to enforce compliance with the Redwood Plaza Use Conditions. Developer shall allow the City and/or Successor Agency such use a combined total of no more than fifteen (15) days each calendar year. As a precondition to such use, notice of the intent to schedule a public event in Redwood Plaza Area (a "Notice") by the Successor 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 may agree. In order to be effective, the Notice shall be in writing, shall be given by a duly authorized representative of the Successor Agency or City and shall contain (A) a certification by such duly authorized representative on behalf of the City or Successor Agency that the Redwood Plaza Use Conditions are satisfied and (B) 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 Successor Agency appointed by the Executive Director 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 Area or is likely to interfere with the operation of the Project, its tenants and/or the Macy's or Target facilities or the Public Parking Structures.

(c) The Plaza Events Committee shall not approve of an event whose plan and expected operation would reasonably be expected 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. As a precondition of using the Redwood Plaza Area, the Successor Agency or City shall agree to reimburse Developer for the reasonable costs of all services associated with City or Successor Agency use of the Redwood Plaza Area (including but not limited to security and common area cleanup) to the extent that the City or Successor Agency does not provide such services. As a precondition to holding such an event, prior to the occurrence of any event, Successor Agency or City shall agree to, and shall, furnish to Developer, Macy's and Target 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 Successor Agency or City may furnish evidence of a self-insurance program providing coverage as stated above. In order to meet the requirements of this section, Developer shall be named 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 Successor Agency other than the rights expressly set forth in this section, or grant any rights to the City or Successor Agency for any time periods in excess of the time periods described in this section. The Successor 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 Parcels 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.

#### 10.08 Penney's Structure.

Not later than sixty (60) days after the Effective Date of the Agreement, the Successor Agency shall grant and record an easement (on terms and conditions acceptable to the Successor Agency's Executive Director that are consented to in writing by the City and Developer), providing a non-exclusive right to park without charge within that certain parking structure constructed on Lot 2 of Block 5 of Tract 9925, as this structure may be replaced, reconstructed and/or otherwise modified from time to time. Said easement shall be in favor of all the other land within Tract 9925, including, without limitation, Lots 1 and 3 of Block 5 of Tract 9925 (commonly known as "Building T" and "Building T-1"). This easement shall be interpreted so as to provide parking rights that survive independently of the OREA, but shall be consistent with the terms and conditions of the OREA during all times that the OREA remains in effect. By way of emphasis, and without limitation as to any other remedies available to enforce this or any other provision of this Agreement, and in recognition of the fact that monetary damages are not an adequate remedy for Developer if the Successor Agency is determined to be in default of this Section 10.08, Developer shall have the right to seek specific performance to enforce this Section 10.08. The form of easement is attached hereto in substantially final form as Exhibit L.

### 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." Developer shall not, prior to the issuance of any Certificate of Completion for any portion of the Project, place a Security Financing Interest on such portion of the Project that exceeds the amount necessary to finance the acquisition of such portion of the Project and/or construction of the Private Improvements on such portion of the Project, together with any related Public Improvements, and for associated costs and expenses (including financing costs) based upon reasonable documentation submitted to the Successor Agency pursuant to Section 3.09 for such portion of the Project.

##### 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 Successor Agency to Developer be construed so to obligate such holder. However, nothing in this Agreement shall be deemed to



With a copy to: Sunnyvale Acquisition LLC  
c/o J.P. Morgan Investment  
Management Inc.  
2029 Century Park East, Suite 4150  
Los Angeles, California 90067  
Attention: David Ridley

With a copy to: Hunter/Storm, LLC  
10121 Miller Avenue, Suite 200  
Cupertino, California 95014  
Attention: Derek K. Hunter, Jr.  
Telephone: 408-255-4100

With a copy to: Hunter/Storm, LLC  
10121 Miller Avenue, Suite 200  
Cupertino, California 95014  
Attention: Curtis Leigh  
Telephone: 408-255-4100

With a copy to: Sares Regis Group of Northern  
California, LLC  
901 Mariners Island Boulevard, Suite  
700  
San Mateo, California 94404  
Attention: Mark R. Kroll  
Telephone: 650-377-5702

With a copy to: Sares Regis Group of Northern  
California, LLC  
901 Mariners Island Boulevard, Suite  
700  
San Mateo, California 94404  
Attention: Lauren Boro  
Telephone: 650-377-5722

With a copy to: Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue, Suite 4900  
Los Angeles, California 90071  
Attention: Amy R. Forbes, Esq.  
Telephone: 213-229-7151  
Facsimile: 213-229-6151

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 to time designate by notice as provided in this Section 12.01.

12.02 Conflict of Interests.

No member, official or employee of the Successor Agency shall make any decision relating to this 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 Successor Agency Officials, Employees and Agents.

No member, official, employee or agent of the Successor Agency or City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the Successor Agency or for any amount, which may become due to Developer or successor or on any obligation under the terms of this Agreement. No employee, official, or agent of Developer shall be liable to the Successor Agency in the event of any default or breach or for any amount which may become due to the Successor 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, delays of action, or failure to act of any public or governmental agency; acts, delays of action or failure to act of any entity that is a party to any Related Document; 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. Times of performance under this Agreement may also be extended in writing by the Successor Agency and Developer. The actual number of days of each delay shall be cumulative and shall be added to all applicable times of performance provided by this agreement, including all exhibits hereto, and including the time frames for performance set forth in Section 9.05. The extension of time for delay pursuant to this Section 12.04 shall be from the time the Party claiming the extension provides written notice to the other Party in accordance with Section 12.01 of the event that gave rise to such period of delay which notice shall specify the Construction Schedule dates that are being extended. The extension of time shall continue until the date that the cause for the extension no longer exists or is no longer applicable at which time Developer and the Successor Agency Executive Director shall adjust the applicable Construction Schedule dates in accordance with the extension period claimed in the written notice; provided, however any request or claim for extensions pursuant to this Section 12.04 for a cumulative period in excess of four (4) years shall only be granted by the mutual agreement of both Parties.

#### 12.05 Hold Harmless.

In addition to any other provision of this Agreement, if any person shall assert any claim against the Successor 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 Successor Agency shall notify Developer who shall defend at Developer's own expense any suit based upon such claim; and if any judgment or claim against the Successor Agency or City or their respective officers, employees, agents or contractors shall be allowed, 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 Successor 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 Public Parking Parcels; or (iii) any claim that arises solely by reason of the design of the improvements on the Public Improvements 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 Developer.

The Developer shall defend, with counsel reasonably approved by the Successor Agency, indemnify and hold harmless the Successor Agency, the Oversight Board and their officer, employees from any claim, action or proceeding against the Successor Agency to attack, set aside, void or annul this Agreement or any subsequent approvals implementing this Agreement. If the Developer is required to defend the Successor Agency, the Successor Agency shall have the right to approve any and all settlements proposed by the Developer, which approval shall not be unreasonably withheld, conditioned or delayed. The Successor Agency shall promptly notify the Developer of any such claim, action or proceeding. The Successor Agency may elect to be represented by separate counsel in any action at its sole cost and expense, except as set forth below. The Successor Agency shall cooperate in the Developer's defense. If for any reason the Developer does not elect to defend any action to attack, set aside, void or annul the approval of this Agreement or any subsequent actions taken in accordance with this Agreement, the Successor Agency shall have no obligation to mount a defense to any such action. The Successor Agency's sole remedy for the Developer's failure to comply with the obligation set forth in this Section 12.05 shall be termination of this Agreement.

The Developer and the Successor Agency shall enter into a joint defense agreement and/or indemnification agreement specifying the terms of this indemnification, including provisions for reimbursement for Successor Agency costs associated with the Successor Agency's cooperation with the Developer's defense, advance deposit by the Developer of funds with the Successor Agency to pay for Successor Agency's costs incurred cooperating in the Developer's defense, reimbursement from the Developer to pay for the Successor Agency's separate litigation counsel if mutually agreed upon by the Successor Agency and the Developer, and any other matters agreed to by the parties.

#### 12.06 Displaced Tenant Preference.

In accordance with California Health and Safety Code Section 33339.5, the Successor Agency may refer to Developer business tenants who have been displaced by Successor 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 OREA 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 Successor 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. Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A-:VII, unless otherwise acceptable to the City of Sunnyvale. Such insurance shall name the Successor Agency and the City as additional insureds, as respects the operations of Developer and its contractors and shall provide that it may not be cancelled without providing the City with thirty (30) days' written notice. The insurance shall apply separately to each insured, have cross-liability and contractual liability endorsements, and waive subrogation against the Successor 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 Successor 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 Successor Agency may be given by the Executive Director of the Successor Agency or the governing board of the Successor Agency as determined by the Successor Agency. The Successor Agency or Executive Director on behalf of the Successor Agency may extend times for Developer performance or satisfaction of conditions under this Agreement. Following the approval of this Agreement by the Successor Agency, the rights and obligations of the Successor Agency under this Agreement and the Related Documents to which the Successor Agency is a party, shall be administered by Successor Agency Executive Director without the need for further approval of the Successor Agency Governing Board.

#### 12.09 Rights and Remedies Cumulative.

Except as provided herein, 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 to 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 Sections 4.04 and 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 Successor 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 and Agreement to Terminate 2010 ADDOPA.

Except as to the Related Documents (as same may be modified from time to time in accordance with their terms), this Agreement consists of the text of this Agreement and the attached Exhibits and constitutes the entire understanding and agreement of the parties with respect to the subject matter of this Agreement. Upon the Effective Date of this Agreement, the Parties agree that the 2010 ADDOPA shall be terminated and be of no further force and effect, except as otherwise provided in the 2010 ADDOPA. This Agreement supersedes all prior agreements, understandings, offers and negotiations, oral or written, with respect to the subject matters of this Agreement, including but not limited to the 2010 ADDOPA, except for those provisions which are explicitly noted as surviving termination of the 2010 ADDOPA, including without limitation Section 7.04 of the 2010 ADDOPA relating to Hazardous Materials Indemnity and Release. The Exhibits are expressly made a part of this Agreement, to the extent explicitly stated herein.

12.18 Interpretation.

The Successor 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 Successor 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:

SUCCESSOR AGENCY,  
a public body, corporate and politic:

\_\_\_\_\_  
Successor Agency Secretary

\_\_\_\_\_  
Deanna J. Santana  
Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Successor Agency Counsel

DEVELOPER:

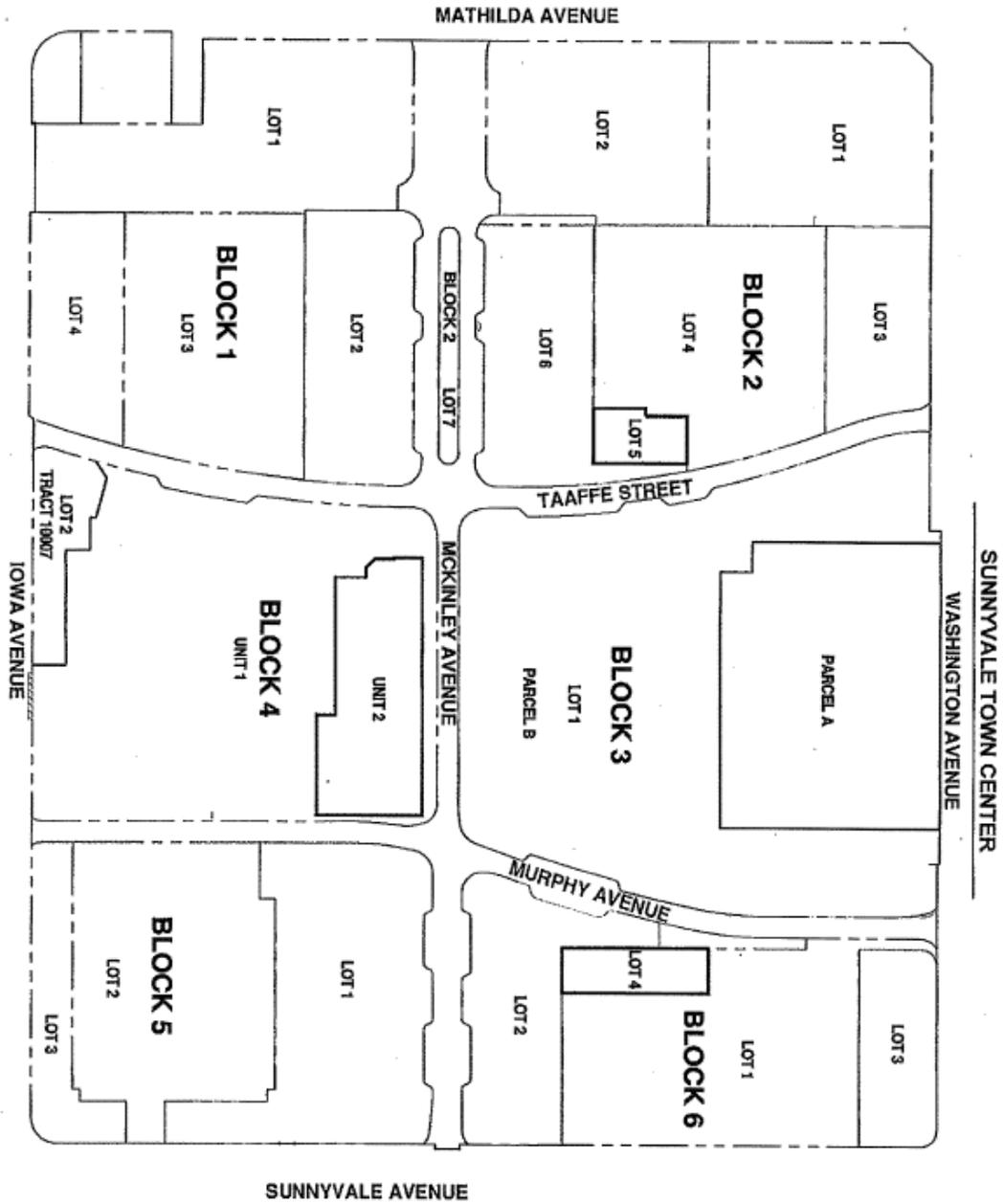
STC VENTURE LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
[TO BE INSERTED]

# Exhibit A

## Map Showing Sunnyvale Town Center Property



## Exhibit B

### Construction Schedule for Minimum Project

Description	Estimated Date	Action to Commence or Complete	Preconditions
<b>OFFICE (approximately 273,000 SF)</b>			
Building A - 133,000 SF Building C - 140,000 SF	Completed	Office shell and tenant improvements	
<b>RESIDENTIAL (198 multi-family units)</b>			
Building D - 50 units Building E - 74 units Building F - 74 units	December 31, 2016	Developer submits supplemental addendum to existing building permits or revised building permit application and plans, whichever is applicable, to complete residential units	SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016
	June 1, 2017	Developer commences construction; Developer may, but shall not be obligated to, commence early work to complete repairs or complete partially installed building components prior to submitting supplemental addendum or revised building permit application	1) City issues building permits 30 days prior to start date (coordinate with permits for "fascia and base" ground floor Retail improvements) 2) City approves affordable housing developer agreement 3) City receives Retail Leasing Plan for Minimum Project
	June-December 2018	Developer completes construction	City approves residential occupancy of Buildings D, E and F
<b>BLOCK 3 (Redwood Square)</b>			
Buildings H, I, J and L	January 1, 2017	Developer applies for demolition permit	SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016
	March 1, 2017	Developer commences building demolition	City issues demolition permit
	June 1, 2017	Developer completes building demolition	City approves demolition work

Temporary Redwood Square and Parking Lot Improvements	March 1, 2017	Developer submits detailed improvement plans	SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016
	July 1, 2017	Developer commences construction	City approves improvement plans 30 days prior to start date
	November 1, 2017	Developer completes improvements	City approves improvements
<b>THEATER/GROUND FLOOR RETAIL (approximately, i.e., within 5% of, 117,600 gross square feet, including a theater with up to 2,950 seats)</b>			
Building T	November 1, 2016	Developer submits building permit application and plans for building "shell and core"	SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016
	April 1, 2017	Developer commences construction of building foundation or "shell and core"	Developer obtains lease commitments from theater tenant and ground floor tenant City issues foundation or building permit 30 days prior to start date
	July 1, 2017	Developer submits building permit application and plans for theater tenant improvements	<i>Note: may be combined with permit and plans for building "shell and core"</i>
	September 1, 2018	Developer completes building "shell and core"	City finalizes "shell and core" permit
	November 1, 2018	Developer completes theater tenant improvements and theater opens	City approves building occupancy City approves occupancy of Penney's Structure
<b>RETAIL (approximately, i.e., within 5% of, gross 130,200 sf)</b>			
Building A	Completed	Tenant improvements	Currently occupied by office tenants
Building D Building E Building F Building N	January 1, 2017	Developer submits: 1) Retail Leasing Plan for Minimum Project; 2) Tenant Design Criteria Manual; 3) Master Sign Program	SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016 <i>Note: Retail Leasing Plan to be received by City before issuance of revised building permit for residential buildings</i>

	March 1, 2017	Developer submits building permit applications and plans for "fascia and base" Retail improvements	City approves Tenant Design Criteria Manual
	June 1, 2017	Developer commences construction of "fascia and base" Retail improvements	City issues building permits 30 days prior to start date (coordinate with issuance of residential permits)
	June-December 2018	Developer completes "fascia and base" Retail improvements	City finals building permits (coordinate with completion of residential units)
	June 2017 - December 2020	Developer/tenants submit building permit applications and plans for Minimum Project storefront and core Retail improvements	Developer obtains lease commitments from Retail tenants City issues building permits
<b>PARKING</b>			
Parking Facilities A and B	January 1, 2017	Developer submits revised building permit applications and plans to complete parking structure, if needed	SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016
	June 1, 2017	Developer commences construction	City issues building permits 30 days prior to start date
	June-December 2018	Developer completes parking structures, including dynamic parking supply system	City approves final occupancy (precondition for occupancy of Buildings D and E)
Penney's Structure	January 1, 2017	Developer submits revised building permit application and plans to complete parking structure	SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016
	June 1, 2017	Developer commences construction	City issues building permit 30 days prior to start date
	November 1, 2018	Developer completes parking structure, including dynamic parking supply system	City approves final occupancy (precondition for occupancy of Building T)
<b>PUBLIC IMPROVEMENTS</b>			
Public Improvements (see list below)	November 1, 2016	Developer submits revised public improvements plans	SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016

	March 1, 2017	Developer commences with construction of public improvements	City approves revised public improvement plans and bonds (with phasing plan and construction management plan) 30 days prior to start date
	November 1, 2018	Developer completes all public improvements	City issues Notice of Completion (multiple notices if phased improvements)

## **EXHIBIT B-1**

### **Minimum Project Public Improvements**

The Public Improvements required to be constructed as part of the 2016 MRADDOPA Minimum Project will be as set forth below in this Exhibit B-1. Separate from the 2016 MRADDOPA Minimum Project requirements, Developer is obligated to implement Public Improvements as set forth in improvement plans for the Subdivision Agreement for Tract No. 9925, as the improvement plans may be revised from time to time by the City of Sunnyvale and the Developer, and the conditions of approvals for the Project and those improvements required as mitigation by the certified Environmental Impact Report for the Project. The improvement plans for the Subdivision Agreement for Tract No. 9925 additionally sets forth the construction phasing schedule.

#### **PUBLIC IMPROVEMENTS:**

Washington Avenue between Mathilda and Sunnyvale:

- a) Washington/Mathilda traffic signal and intersection improvements
- b) Traffic Signals (new or modifications): Washington/Taaffe, Washington/Murphy, Washington/Sunnyvale
- c) Taaffe to Sunnyvale street improvements

Mathilda Avenue between Washington and Iowa:

- a) Mathilda/McKinley traffic signal and intersection improvements
- b) Mathilda/Iowa traffic signal and decorative crosswalks
- c) Bikes lanes east side Mathilda
- d) Traffic signal interconnect
- e) Bank of the West Sanitary sewer lateral

Iowa Avenue between Mathilda and Sunnyvale:

- a) Iowa/Taaffe traffic signal and decorative crosswalks
- b) Traffic Signals (new or modifications): Iowa/Murphy (unless otherwise determined unnecessary by the City), Iowa/Sunnyvale
- b) Median islands, restriping and roadway reconstruction

Murphy Avenue: extension to McKinley, including utilities

McKinley Avenue between Taaffe and Sunnyvale:

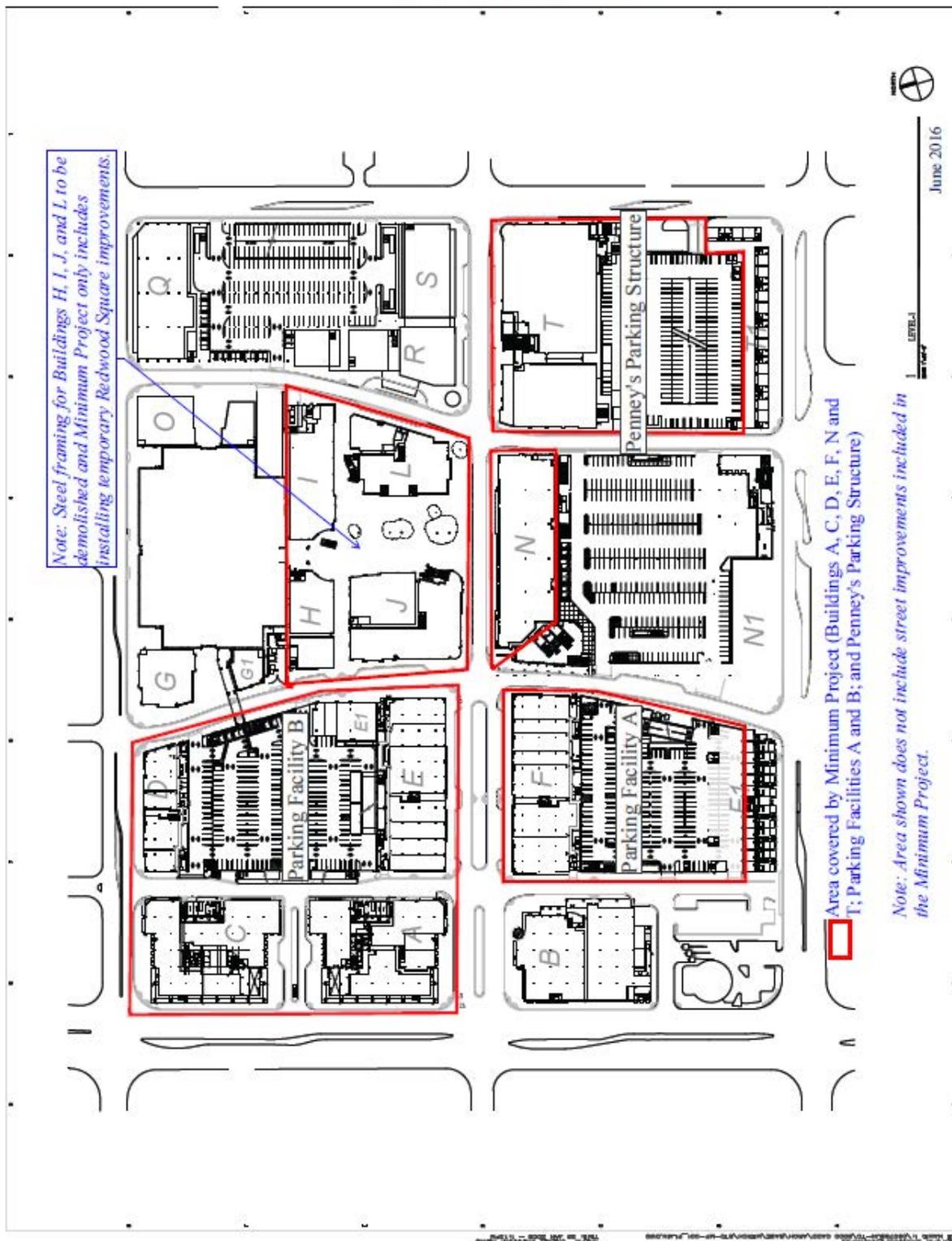
- a) Street improvements
- b) Sunnyvale/McKinley traffic signal

Sunnyvale Avenue between Washington and Iowa:

- a) Median islands and restriping

Neighborhood gateway improvements

## Exhibit B-2 Minimum Project Map



**Exhibit C**  
**RESERVED**

**Exhibit D**  
**RESERVED**

**Exhibit E**

Memorandum of Agreement

**Exhibit E**

Recording Requested by:

*Successor Agency to the Sunnyvale  
Redevelopment Agency*

When Recorded Mail to:

**Agency General Counsel  
Office of Sunnyvale City Attorney  
City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale, CA 94086**

DOCUMENT WILL BE RETURNED TO  
NAME & ADDRESS IDENTIFIED ABOVE

No fee for recording per Government Code § 27383

(Above Space for Recorder's Use Only)

**MEMORANDUM OF 2016 MODIFIED AND RESTATED AMENDED DISPOSITION  
AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT**

THE SUCCESSOR AGENCY TO THE SUNNYVALE REDEVELOPMENT AGENCY, a public body, corporate and politic (“Successor Agency”) \_\_\_\_\_ (“Developer”), have entered into that certain Modified and Restated Amended Disposition and Development and Owner Participation Agreement (the “Modified ADDOPA”), dated as of \_\_\_\_\_, concerning the redevelopment of the Sunnyvale Town Center property situated in the City of Sunnyvale, County of Santa Clara, State of California, more particularly described in Exhibit A attached hereto (the “Project”).

The Modified ADDOPA amends in its entirety the rights and obligations of the parties to the 2010 Amended Disposition and Development and Owner Participation Agreement (“2010 ADDOPA”) which implemented the 2010 Modification Agreement to the Amended and Restated Disposition and Development and Owner Participation Agreement, a memorandum of which was recorded as Document No. 20717738 on May 20, 2010 in the Official Records, and which amended, restated and superseded in its entirety the Amended and Restated Disposition and Development Agreement and Owner Participation Agreement, a memorandum of which was recorded as Document No. 19602163 on October 1, 2007 in the records of the Santa Clara County Recorder (the “Official Records”). The Modified ADDOPA includes, but is not limited to the following:

1. Developer’s obligations to construct and the timing of construction of the Project.
2. The termination of the Successor Agency’s enforceable obligation to release Tax Increment funds to Developer upon satisfaction of certain conditions.
3. Developer’s ability to and criteria for the transfer of all or portions of the property within the Project.
4. Allocation of responsibility among Developer and the Successor Agency for Environmental Costs.
5. An obligation to refrain from discrimination on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the conveyance, leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Project.
6. An obligation to participate in certain downtown Sunnyvale activities.
7. An obligation to obtain the consent of the Successor Agency for certain transfers of the property within the Project.
8. An obligation to permit the Successor Agency or City of Sunnyvale to make use of certain plazas in the Project.
9. An obligation to provide certain levels of security for the Project.
10. Modification of the rights of the Successor Agency to exercise certain remedies in the event that there is an uncured default or failure by Developer under the Modified ADDOPA prior to issuance of a certificate of completion.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, the parties agree as follows:

1. This Memorandum is recorded to provide constructive notice of the rights and obligations of Successor Agency and Developer under the Modified ADDOPA. All the terms and conditions of the Modified ADDOPA are incorporated herein by reference as if fully set forth.

2. In the event of any conflict between the terms and conditions of the Modified ADDOPA and this Memorandum, the terms of the Modified ADDOPA shall control.

3. This Memorandum may be executed in counterparts, each of which shall constitute an original hereof, and all of which taken together shall constitute one and the same agreement.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum effective as of \_\_\_\_\_, 20\_\_.

“AGENCY”

“DEVELOPER”

SUCCESSOR AGENCY TO THE  
SUNNYVALE REDEVELOPMENT  
AGENCY, a Public Body, Corporate and  
Politic

[\_\_\_\_\_]

By: \_\_\_\_\_  
Deanna J. Santana, Executive  
Director

By: \_\_\_\_\_  
[\_\_\_\_\_]

Approved As To Form  
John Nagel, Successor Agency General  
Counsel  
Date: \_\_\_\_\_

## **Exhibit A**

### **Legal Description**

All that certain real property situated in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

#### **Block 1**

- Lot 1, Block 1, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 2, Block 1, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 3, Block 1, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 4, Block 1, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

#### **Block 2**

- Lot 1, Block 2, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 2, Block 2, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 3, Block 2, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 4, Block 2, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 5, Block 2, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 6, Block 2, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 7, Block 2, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

#### **Block 3**

Parcel 113 of a lot line adjustment recorded October 30, 2000 Series 20033369 Santa Clara County

#### **Block 4**

- Lot 2, Block 3, Tract 10007 entitled "Sunnyvale Town Center", filed October 29, 2008 in Book 828 of Maps at Pages 15 to 16 of the Official Records of Santa Clara County,
- Unit 2 of a Condominium Plan for Lot 1, Tract 10007 Recorded October 30, 2008 Series 20033370 'Official Records of Santa Clara County,

**Block 5**

- Lot 1, Block 5, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 2, Block 5, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 3, Block 5, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

**Block 6**

- Lot .1, Block 6, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 2, Block 6, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 3, Block 6, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 4, Block 6, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

## EXHIBIT H

### MINIMUM PROJECT MILESTONE DATES FOR DAMAGES

#### I. Commencement

**Office:** Buildings A and C

Construction of both buildings received a Certificate of Completion prior to adoption of Modified and Restated ADDOPA.

**Ground Floor Retail Spaces:** Buildings D, E, F and N

Projected Commencement Date for storefront improvements: June 2017

Precondition: Commencement obligation is conditioned on Developer securing tenant lease commitments for 65 percent of the Minimum Project Retail space and City issuance of building permits and other applicable approvals.

**Retail-Theater:** Building T and Penney's Structure (also pursuant to Section 3.12)

Projected Commencement Date for building: May 2017

Projected Commencement Date for parking structure: November 2017

Precondition: Commencement obligation is conditioned on Developer securing lease commitments from theater tenant and ground floor Retail tenants and City issuance of building permits and other applicable approvals.

**Redwood Square:** Temporary parking lot and landscaping improvements

Projected Commencement Date for demolition of steel structures: March 2017

Projected Commencement Date for parking lot and landscaping: July 2017

Precondition: Commencement obligation for demolition of steel structures is conditioned on Developer obtaining a City demolition permit. Commencement obligation for temporary parking lot and landscaping improvements is conditioned on City approval of the demolition work, and issuance of all required permits for construction of the temporary parking lot and landscaping.

“Commencement Date” for the purposes of this Exhibit H means beginning of construction pursuant to an executed construction contract for the applicable building.

## **II. Completion**

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

**Office:** Buildings A and C  
Completed

**Ground Floor Retail Spaces:** Buildings D, E, F and N  
Completion of 75 percent of storefront improvements in the Minimum Project: 42 months after Commencement Date or no later than December 31, 2020

**Retail-Theater:** Building T and Penney's Structure  
Completion of building: 24 months after Commencement Date  
Completion of parking structure: 16 months after Commencement Date

**Redwood Square:** Temporary parking lot and landscaping improvements  
Demolition of steel structures: 3 months after Commencement Date  
Completion of parking lot and landscaping: 6 months following City approval of completed demolition work or Commencement Date, whichever occurs later

"Completed" for the purposes of Exhibit H means City approves any building occupancy or City finals the building permit for the applicable building, whichever occurs first.

**EXHIBIT I**

RESERVED

**EXHIBIT J**

RESERVED

**EXHIBIT K**

Form of Modified and Restated Covenant to Convey

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Recording Requested by  
Successor Agency to the Redevelopment Agency of the City of Sunnyvale  
456 W. Olive Avenue  
Sunnyvale, CA 94807

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**And When Recorded Mail to:**

**City Attorney's Office  
Successor Agency to the Sunnyvale Redevelopment Agency  
456 West Olive Avenue  
Sunnyvale, CA 94086**

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Project No: SDP 2007-0030  
Tract Map 9925

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**AMENDED AND RESTATED COVENANT TO CONVEY**

WHEREAS, this Amended and Restated Covenant to Convey dated \_\_\_\_\_, 2016 between the SUCCESSOR AGENCY TO THE SUNNYVALE REDEVELOPMENT AGENCY (the "Successor Agency"), a public body corporate and politic, and STC Venture LLC, a Delaware limited liability company (the "Developer"), concerns the real property described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, on or about February 6, 2007, the Sunnyvale Redevelopment Agency (the "Agency"), the Successor Agency's predecessor in interest, entered into the Amended and Restated Disposition and Development and Owner Participation Agreement ("ARDDOPA") with Downtown Sunnyvale Mixed Use LLC ("DSMU"), Developer's predecessor in interest, providing for the redevelopment of the Sunnyvale Town Center; and

WHEREAS, on October 1, 2007 a subdivision map was recorded at Book 818 Pages 45 through 55, inclusive, to reflect the subdivision of land known as Tract No. 9925, known as the Sunnyvale Town Center ("the Subdivision Map"); and

WHEREAS, the predecessors in interest to the Successor Agency and the Developer exchanged certain real property pursuant to the ARDDOPA, and one of the parcels, depicted as Lot 4 located within Block 6 of the Subdivision Map, was owned by Developer's predecessor in interest and was the site of a former dry cleaner facility and Lot 4 and adjacent parcels are currently the subject of environmental remediation efforts; and

WHEREAS, pursuant to the ARDOPPA and its successor agreements, that certain Public Access and Parking Easement by and between the Successor Agency and the City of Sunnyvale dated as of September 28, 2007, and that certain Facilities Lease dated as of March 1, 1998 by and between the Agency and the City, which was recorded as Instrument Number 14120789 in the official records of Santa Clara County ("Facilities Lease"), Lot 1, 3 and 4 of Block 6 the Subdivision Map ("Lots 1, 3 and 4") are intended to be used for a parking facility dedicated solely to public parking and do not generate revenues in excess of reasonable maintenance costs of the properties, and thus constitute a parking facility that may be transferred to a public

jurisdiction pursuant to existing agreements relating to the construction of the property under the State of California's redevelopment dissolution law; and

WHEREAS, pursuant to the ARDDOPA, DSMU, RREEF America, LLC, a Delaware limited liability company, and the Sunnyvale Redevelopment Agency and the Sunnyvale Redevelopment Agency entered into that certain Covenant to Reconvey, dated September 28, 2007, and recorded as Instrument Number 19602171 ("Original Covenant"), which provided that "if Lot 4 is not developed within ten years from the recording of the Subdivision Map, as evidenced by a Certificate of Occupancy for Block 6, then the RDA may require that the surface area beneath the airspace parcel shown on Lot 4 within Block 6 shall be reconveyed to the Developer and Developer shall accept the reconveyance from the RDA. Lot 4 is depicted on the Map as an 'airspace parcel', thus the reconveyance of the surface and subsurface area to the RDA may be conveyed to the public agency without amendment to the subdivision map to a public agency"; and

WHEREAS, Developer and the Successor Agency have entered into the 2016 Modified And Restated Amended Disposition And Development and Owner Participation Agreement (the "2016 MRADDOPA"), dated as of even date herewith, in order to, among other purposes, reduce the Successor Agency's liabilities and obligations under the successor agreements to the ARDDOPA by, among other methods, limiting the liability of the Successor Agency to pay its share of the costs of environmental remediation now occurring on Lots 1, 3 and 4, and benefit taxing entities by eliminating the Successor Agency's obligation to make tax increment financing payments to Developer and by dramatically increasing property tax and other revenues to the taxing entities; and

WHEREAS, as an integral component of the overall negotiation between Developer and the Successor Agency, and consistent with the purposes of the 2016 MRADDOPA, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, (1) Successor Agency agrees to, on behalf of itself and all of its predecessors, successors, and assigns, and hereby does remise, release, acquit, waive, and forever discharge Developer's obligation under the Original Covenant, and (2) Successor Agency and Developer each agree, on behalf of themselves and all of their predecessors, successors, and assigns, that upon the earlier of Developer's delivery of a written request to the Successor Agency, or October 1, 2022, the Successor Agency shall convey Lots 1, 3 and 4 to Developer, and Developer shall accept the reconveyance from the Successor Agency; and

WHEREAS, this Amended and Restated Covenant to Convey is entered into for the exclusive benefit of the Successor Agency and Developer and is expressly not intended to be for the benefit of any other person or entity, and no such other Person shall be deemed a third party beneficiary of this Amended and Restated Covenant to Convey;

NOW, THEREFORE, (1) the Original Covenant is hereby superseded in its entirety and is of no further force and effect; and (2) Lots 1, 3 and 4 are hereby subject to the covenant that upon the earlier of October 1, 2022, or Developer's delivery of a written request to the Successor Agency that the Successor Agency convey Lots 1, 3 and 4 to Developer, the Successor Agency shall promptly convey Lots 1, 3 and 4 to Developer at no further cost to Developer, and Developer shall accept the conveyance from the Successor Agency; provided, however, that the

Successor Agency may delay the conveyance otherwise required by this covenant for the minimum period necessary to comply with the requirements of the Certificates of Participation (Parking Facility Refunding) Series 1998A and/or the Facilities Lease.

This Amended and Restated Covenant to Convey shall be recorded in the office of the Santa Clara County Recorder. Upon recordation, the burdens of the Covenant shall be binding upon all successors in interest to the real property described in Exhibit "A," and the benefits of the Covenant shall inure to all successors in interest to the real property.

This Amended and Restated Covenant to Convey shall not be modified or released without the prior approval of the Successor Agency and the Developer in the manner required by applicable law.

**IN WITNESS WHEREOF**, Successor Agency and Developer have executed and issued this Amended and Restated Covenant to Convey as of the date first written above.

**SUCCESSOR AGENCY TO THE  
SUNNYVALE REDEVELOPMENT  
AGENCY,**  
a public body corporate and politic

By: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Successor Agency Counsel

**STC VENTURE LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Santa Clara )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name of notary)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Santa Clara )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name of notary)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature\_\_\_\_\_

(Seal)

**Exhibit A**

**Real Property Legal Description**

REAL PROPERTY IN THE CITY OF SUNNYVALE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Lots 1, 3 and 4 of Block 6, as said lots and block are shown on the Map of Tract No. 9925, filed for record in the Office of the Recorder of the County of Santa Clara, California on October 1, 2007 in Book 818 of Maps at Pages 45 through 55, inclusive.

**EXHIBIT L**

Form of Block 5 Parking Structure Easement Agreement

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Gibson Dunn & Crutcher LLP  
333 South Grand Avenue, 49th Floor  
Los Angeles, California 90071  
Attention: Amy R. Forbes, Esq.

MAIL CONFORMED COPY TO

Secretary  
Successor Agency of the Former  
Redevelopment Agency of the City of  
Sunnyvale  
456 W. Olive Avenue  
Sunnyvale, California 94088

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

### **FORM OF EASEMENT AGREEMENT**

This EASEMENT AGREEMENT (this "Agreement") is made as of \_\_\_\_\_, 2016, by and between the Successor Agency to the Sunnyvale Redevelopment Agency, a public entity formed pursuant to California Health and Safety Code Sections 34170 et seq. ("Successor Agency") and STC Venture LLC, a Delaware limited liability company ("Developer") (each, a "Party" and collectively, the "Parties") with reference to the following facts:

WHEREAS, the Successor Agency owns that certain real property, identified as Lot 2 of Block 5 of Tract 9925 and more particularly described on Exhibit A attached hereto and incorporated herein (the "Property"), which is located within a mixed-use development bounded by Iowa Avenue, Mathilda Avenue, Washington Avenue, and Sunnyvale Avenue and commonly known as the Sunnyvale Town Center ("Sunnyvale Town Center"), all within the City of Sunnyvale ("City"), State of California;

WHEREAS, the Property is currently developed with a parking garage variously referred to as the Penney's Structure, the Existing Parking Structure and Parking Deck 5, and which, for purposes of this Easement Agreement, shall be known as the "Block 5 Parking Structure";

WHEREAS, the Property and other adjacent parcels within the Sunnyvale Town Center are subject to that certain Operation and Reciprocal Easement Agreement by and among Macy's Department Stores, Inc. ("Macy's"), an Ohio corporation, Target Corporation, a Minnesota corporation ("Target"), Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company, and Developer's predecessor in interest ("Project Developer"), and the Sunnyvale Redevelopment Agency, a public body, corporate and politic ("Redevelopment Agency"),

recorded October 30, 2008, as Instrument No. 20033381; as supplemented, amended and assigned from time to time (the “OREA”);

WHEREAS, the Property is subject to that certain Operation and Maintenance Agreement dated April 13, 2000 by and between the City and Project Developer’s predecessor in interest, as amended from time to time (“OMA”), which provides for the ongoing repair, maintenance and operation of the Block 5 Parking Structure, and requires that the Block 5 Parking Structure be used to provide parking on a non-exclusive basis for members of the general public and subject to other conditions set forth in the OMA;

WHEREAS, Section 2.01 of the OREA provides that each of the Successor Agency (as successor the Redevelopment Agency), Developer (as successor to the Project Developer), and Target established reciprocal non-exclusive parking easements over each of their respectively owned parcels for the benefit of all parcels within the Sunnyvale Town Center, subject to the terms and conditions set forth in the OREA;

WHEREAS, concurrent with this Agreement the Parties are entering into a Modified and Restated Amended Disposition and Development and Owner Participation Agreement (“2016 MRADDOPA”) in order to reduce liabilities to the taxing entities and provide for the continuation and successful completion of development of the Sunnyvale Town Center for new retail, residential and office uses, which development will provide significant benefits to the City and the taxing entities including substantial increases in the assessed valuation of the Project resulting in increased property tax revenues benefiting the taxing entities;

WHEREAS, as acknowledged in the 2016 MRADDOPA, securing permanent parking rights in, on, over and under the Property for the benefit of parcels within the Sunnyvale Town Center (as more particularly described on Exhibit B attached hereto and incorporated herein), including without limitation, Building T within Block 5 of Tract 9925 (“Block 5 Projects”) and the office buildings located along Mathilda Avenue, is critical to achieving the completion and economic success of the Sunnyvale Town Center, for the benefit of the public, taxing entities, the City and the Developer; and

WHEREAS, the Parties acknowledge that the Block 5 Parking Structure does not currently meet all current health and safety requirements and that, therefore, additional construction work and maintenance will likely be required before the Block 5 Parking Structure can be used for public parking purposes;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Easements.**

(a) The Successor Agency hereby grants and conveys to the Developer, and to each of its affiliates, successors and assigns, invitees, guests, licensees, agents, representatives, employees, residents, guests, tenants, occupants, and vendors (including, without limitation, the tenants, lessees, occupants and vendors of the Block 5 Projects **and the other parcels set forth in Exhibit B**), a non-exclusive, irrevocable, easement appurtenant, in, on, over and under the Property for parking purposes and for vehicular and pedestrian ingress and egress related to the

parking purposes provided by this Agreement, for the benefit of the Block 5 Projects as well as the other parcels set forth in Exhibit B within the Sunnyvale Town Center and for public parking purposes generally, subject to the conditions set forth below.

(b) During the term of this Agreement, Developer, at Developer's sole cost and expense, shall cause the Block 5 Parking Structure to be operated, repaired and maintained in good order, condition and repair, consistent with the requirements of the OMA and the OREA, as each may be amended or superseded by mutual agreement of the Parties from time to time. If the Developer is different from the Operator designated pursuant to the OMA, the Operator under the OMA shall be solely responsible for the operation, repair and maintenance obligations set forth in this section 1(b). The Successor Agency hereby grants and conveys to the Developer (and the Operator under the OMA) a non-exclusive easement appurtenant, in, on, over, under and across the Property for the purpose of operating, maintaining, repairing, replacing and/or otherwise accessing the Block 5 Parking Structure (and/or any replacement structures), it being understood and agreed nothing contained herein shall be construed or deemed an affirmative obligation on the part of the Successor Agency or the Developer to construct, reconstruct or cause to be constructed or reconstructed the Block 5 Parking Structure in excess of, or different than, the requirements of the OMA and the OREA, as each may be amended or superseded by mutual agreement of the Parties from time to time.

**2. Relocation/Modification; Blockage.** Notwithstanding anything to the contrary contained herein, this Agreement shall not be construed as preventing the Developer and its successors and assigns, from maintaining, redesigning or reconstructing the Block 5 Parking Structure and all other improvements on the Property from time to time ("Construction Work"), and restricting the easement rights granted by Section 1 above to the extent reasonably necessary or helpful to implement such Construction Work so long as vehicular and pedestrian ingress and egress are available after such Construction Work is completed. Any reconstruction or modification of the Block 5 Parking Structure shall be subject to the approval of the Successor Agency and the City prior to the Successor Agency's dissolution and after the dissolution of the Successor Agency subject to the approval of the City, which approvals shall not be unreasonably withheld.

**3. Conditions.** Developer and/or the operator of the Block 5 Parking Structure (as it may be replaced, reconstructed or otherwise modified from time to time) may impose conditions, regulations and terms for use of the facilities (including, without limitation, time limits), to the extent such conditions, regulations and terms are not otherwise prohibited by the OREA and the OMA. Developer shall provide to the Successor Agency or the City in the event the Successor Agency has dissolved for its approval or disapproval any such conditions, regulations and terms for the use of the facilities at least thirty (30) days prior to implementing any such conditions, regulations or terms. The Successor Agency or the City in the event the Successor Agency has dissolved shall either reasonably approve or disapprove the conditions, regulations and terms within thirty (30) days of receipt.

**4. Condition of Property.** The Successor Agency is making no representations to the Developer as to the condition of the Property and its suitability for the uses for which this easement is granted. Developer is taking the Property as granted in this Easement in "AS IS" condition without representation or warranty.

5. **Term.** The term of this Agreement shall continue for a period of ninety-nine (99) years from the date hereof unless the Agreement is modified, amended or terminated in accordance with the terms herein. Following expiration of the OMA pursuant to Section 2 of the OMA, Developer may terminate this Agreement by provision of not less than sixty (60) days' written notice to the Successor Agency.

6. **Insurance Requirements.** Nothing herein shall abrogate the Developer's obligations to provide insurance covering the Property as required in the OMA and the OREA, or limit or waive the Developer's indemnification obligations under the OMA.

7. **Notices.** All notices required or permitted to be or delivered hereunder or in connection with the transactions contemplated hereby shall be in writing and shall be served on the parties at the following address:

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

With a copy to: Goldfarb & Lipman LLP  
1300 Clay Street, Eleventh Floor  
Oakland, California 94612  
Attn: Karen Tiedemann, Esq.  
Facsimile No.:  
E-Mail: ktiedemann@goldfarbblipman.com

With a copy to: City of Sunnyvale  
456 W. Olive Avenue  
Sunnyvale, California 94088  
Attn: City Manager

Developer: Sunnyvale Acquisition LLC  
c/o J.P. Morgan Investment Management Inc.  
2029 Century Park East, Suite 4150  
Los Angeles, California 90067  
Attention: Morgan M. Lingle

With a copy to: Sunnyvale Acquisition LLC  
c/o J.P. Morgan Investment Management Inc.  
2029 Century Park East, Suite 4150  
Los Angeles, California 90067  
Attention: Lauren Graham

With a copy to: Sunnyvale Acquisition LLC  
c/o J.P. Morgan Investment Management Inc.  
2029 Century Park East, Suite 4150  
Los Angeles, California 90067  
Attention: David Ridley

With a copy to: Hunter/Storm, LLC  
10121 Miller Avenue, Suite 200  
Cupertino, California 95014  
Attention: Derek K. Hunter, Jr.  
Telephone: 408-255-4100

With a copy to: Hunter/Storm, LLC  
10121 Miller Avenue, Suite 200  
Cupertino, California 95014  
Attention: Curtis Leigh  
Telephone: 408-255-4100

With a copy to: Sares Regis Group of Northern California, LLC  
901 Mariners Island Boulevard, Suite 700  
San Mateo, California 94404  
Attention: Mark R. Kroll  
Telephone: 650-377-5702

With a copy to: Sares Regis Group of Northern California, LLC  
901 Mariners Island Boulevard, Suite 700  
San Mateo, California 94404  
Attention: Lauren Boro  
Telephone: 650-377-5722

With a copy to: Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue, Suite 4900  
Los Angeles, California 90071  
Attention: Amy R. Forbes, Esq.  
Telephone: 213-229-7151  
Facsimile: 213-229-6151

Any such notices shall be sent by (a) a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such courier, or (b) facsimile or e-mail transmission, in which case notice shall be deemed delivered upon electronic verification that transmission to recipient was completed. The above addresses and facsimile numbers may be changed by written notice to the other party; provided that no notice of a change of address or facsimile number shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

8. **Amendments.** Except as expressly set forth herein, this Agreement shall remain unmodified and in full force and effect and cannot be amended, modified or supplemented except by written consent of the Parties (or their respective successors or assigns).

9. **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement, or affecting the validity or enforceability of any of the terms or provisions of this Agreement.

10. **Counterparts.** This Agreement may be executed in one or more counterparts, with the same force and effect as though all the parties executing such counterparts had executed but one instrument. Signature and/or acknowledgment pages may be detached from such counterparts and attached to this Agreement to physically form one legally effective document for recording purposes.

11. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of law rules.

12. **Existing Easement Agreement.** The parties hereto acknowledge that the OREA continues in effect and that this Agreement is intended to be consistent with the provisions of the OREA. Notwithstanding the foregoing, in the event of any inconsistency between the terms of the OREA and the terms of this Agreement, the terms of this Agreement shall govern and control in all respects.

13. **No Agency.** Nothing in this Agreement creates the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

14. **Estoppel Certificates.** Each party hereto upon the written request of the other party covenants to execute, acknowledge and deliver, without charge and within fifteen (15) days following such request, an estoppel certificate certifying that this Agreement is in full force and effect and that the other party is not in default hereunder (or stating such default(s), if any are claimed), and setting forth such other information as may reasonably be requested and is true and correct.

15. **Subordinate Documentation.** Nothing contained herein prohibits the recording by either party of additional easements, covenants, conditions or restrictions applicable to such party's property only, so long as the same are subordinate to and not conflict with this Agreement.

16. **Further Assurances.** The parties hereto shall execute all further instruments and perform such further acts which are or may become reasonably necessary to effectuate and to carry out the purposes contemplated by this Agreement.

17. **Agreement Runs with the Land.** This Agreement shall be binding upon the parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by

operation of law or in any manner whatsoever. All of the provisions of this Agreement shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California, and the burdens and benefits shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors (by merger, consolidation, or otherwise), assigns, devisees, administrators, representatives, and lessees. Notwithstanding the foregoing, the power to terminate this Agreement pursuant to Section 5 of this agreement (“Power of Termination”) shall be held by the Developer as defined in the opening paragraph of this Agreement or such entity as Developer shall assign such Power of Termination to; provided, however, if Developer or a Developer’s Affiliate (as defined in the 2016 MRADDOPA) no longer holds any ownership interest in the Benefitted Parcels set forth in Exhibit B and the Developer or a Developer’s Affiliate has not assigned the Termination Rights to a specified entity, the Power of Termination shall be held by the owner of Lot 1 of Block 5 of Tract 9925 filed for record in the Office of the Recorder of the County of Santa Clara, California on October 1, 2007 in Book 818 of Maps at Pages 45 through 55, inclusive.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date and year first written above.

SUCCESSOR AGENCY TO THE  
SUNNYVALE REDEVELOPMENT  
AGENCY, a Public Body, Corporate and  
Politic

By: \_\_\_\_\_  
Deanna J. Santana, Executive Director

APPROVED AS TO FORM

By: \_\_\_\_\_

John A. Nagel

Successor Agency Attorney

[SIGNATURES CONTINUE ON NEXT PAGE]

**DEVELOPER:**

“DEVELOPER”

**STC VENTURE LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

**STATE OF CALIFORNIA** )

**COUNTY OF \_\_\_\_\_** )

On \_\_\_\_\_, 2016, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**Exhibit A**

**Legal Description of the Property**

Real Property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Lot 2, Block 5, as said lot and block are shown on the Map of Tract 9925, filed for record in the Office of the Recorder of the County of Santa Clara, California on October 1, 2007 in Book 818 of Maps at Page 45-55, inclusive.

## Exhibit B

### Legal Description of the Benefitted Parcels

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SUNNYVALE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

**PARCEL ONE:**

Lot 1, Block 1; Lots 1, 2, 5 and 7, Block 2; Lot 1, Block 5; Lots 2, 3, and 4, Block 6, as said lots and blocks are shown on the Map of Tract No. 9925, filed for record in the Office of the Recorder of the County of Santa Clara, California on October 1, 2007 in Book 818 of Maps at Pages 45 through 55, inclusive.

**PARCEL TWO:**

Lot 1, Block 6, as said lots and blocks are shown on the Map of Tract No. 9925, filed for record in the Office of the Recorder of the County of Santa Clara, California on October 1, 2007 in Book 818 of Maps at Pages 45 through 55, inclusive.

**PARCEL THREE:**

Unit 2, as shown on the Condominium Plan entitled "Condominium Plan for Lot 1, Tract 10007 Sunnyvale Town Center", recorded on October 30, 2008 as Document No. 20033370 of the Santa Clara County Official Records (the "Condominium Plan"), and as further described in the "Commercial Condominium Declaration of Covenants, Restrictions and Easements for Lot 1, Tract No. 10007 of the Sunnyvale Town Center" (the "Declaration"), recorded on October 30, 2008, as Document No. 20033371 in the Santa Clara County Official Records.

**PARCEL FOUR:**

Being all of Lot 1, Block 3, as shown on Map of Tract No. 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 45 through 55 inclusive, records of Santa Clara County, and a portion of Parcel 6, as shown on that certain Parcel Map, filed July 3, 1978 in Book 421 of Maps at:

Pages 46 and 47, Records of said County, more particularly described as follows: Beginning at the Northeast corner of said Parcel 6, said corner being also a point of the

Southwesterly line of Washington Avenue, as shown on said Parcel Map (421 M 46-47);  
Thence leaving said corner and along the Southwesterly line of said Washington  
Avenue, North 75° 07' 24" West, 44.43 feet;

Thence leaving said Southwesterly line, and parallel with the Southeasterly line of said  
Parcel 6,

South 14° 52' 00" West, 281.14 feet to a point on the Southwesterly line of said Parcel  
6;

Thence along said Southwesterly line of said Parcel 6, North 75° 08' 00" West, 325.52  
feet;

Thence leaving said Southwesterly line, the following Three (3) courses:

1. North 14° 52' 00" East, 40.87 feet;

2. North 75° 08' 00" West, 38.65 feet;

3. Parallel with the Northwesterly line of said Parcel 6, North 14° 52' 00" East, 240.33  
feet to

said Southwesterly line of Washington Avenue:

Thence along the general Southwesterly line of said Washington Avenue, the following  
three (3)

courses:

1. North 75° 07' 24" West, 15.41 feet;

2. South 14° 52' 00" West, 15.00 feet;

3. North 75° 07' 24" West, 125.55 feet to a point on the Southeasterly line of Taaffe  
Street, as

shown on said Map of Tract No. 9925, said point being also the beginning of a non-  
tangent

curve, concave to the Southeast, having a radius of 29.50 feet, from which a radial line  
bears

South 57° 21' 36" East;

Thence leaving said point and along the general Southeasterly line of Taaffe Street, the  
following

twenty-one (21) courses;

1. Southwesterly, along said curve, through a central angle of 21° 14' 53" and an arc  
length of

10.94 feet to the beginning of a compound curve, concave to the East, having a radius  
of 286.50

feet;

2. Southeasterly, along said curve, through a central angle of 18° 03' 33" and an arc  
length of

90.30 feet to the beginning of a reverse curve, concave to the West, having a radius of  
1163.50

feet;

3. Southerly and Southwesterly, along said curve, through a central angle of  $09^{\circ} 04' 54''$  and an arc length of 184.42 feet to the beginning of a reverse curve, concave to the Northeast, having a radius of 4.50 feet;

4. Southeasterly, along said curve, through a central angle of  $44^{\circ} 21' 18''$  and an arc length of 3.48 feet;

5. South  $41^{\circ} 56' 26''$  East 11.52 feet to the beginning of a curve to the right, having a radius of 5.50 feet;

6. Southeasterly, along said curve, through a central angle of  $45^{\circ} 06' 05''$  and an arc length of 4.33 feet to the beginning of a compound curve, concave to the West, having a radius of 1174.50 feet;

7. Southerly and Southwesterly, along said curve, through a central angle of  $02^{\circ} 08' 23''$  and an arc length of 43.86 feet to the beginning of a compound curve, concave to the Northwest, having a radius of 5.50 feet;

8. Southwesterly, along said curve, through a central angle of  $45^{\circ} 06' 05''$  and an arc length of 4.33 feet;

9. South  $50^{\circ} 24' 07''$  West, 11.52 feet to the beginning of a curve to the left, having a radius of 4.50 feet;

10. Southwesterly, along said curve, through a central angle of  $44^{\circ} 21' 18''$  and an arc length of 3.48 feet to the beginning of a reverse curve, concave to the West, having a radius of 1163.50 feet;

11. Southwesterly, along said curve, through a central angle of  $01^{\circ} 58' 46''$  and an arc length of 40.20 feet to the beginning of a reverse curve, concave to the Northeast, having a radius of 4.50

feet;

12. Southeasterly, along said curve, through a central angle of  $44^{\circ} 21' 18''$  and an arc length of 3.48 feet;

13. South  $36^{\circ} 19' 43''$  East, 11.52 feet to the beginning of a curve to the right, having a radius of 5.50 feet;

14. Southeasterly, along said curve, through a central angle of  $45^{\circ} 06' 05''$  and an arc length of 4.33 feet to the beginning of a compound curve, concave to the Northwest, having a radius of 1174.50 feet;

15. Southwesterly, along said curve, through a central angle of  $05^{\circ} 23' 15''$  and an arc length of 110.44 feet to the beginning of a compound curve, concave to the Northwest, having a radius of 5.50 feet;

16. Southwesterly, along said curve, through a central angle of  $45^{\circ} 06' 06''$  and an arc length of 4.33 feet;

17. South  $59^{\circ} 15' 43''$  west, 11.52 feet to the beginning of a curve to the left, having a radius of 4.50 feet;

18. Southwesterly, along said curve, through a central angle of  $44^{\circ} 20' 10''$  and an arc length of 3.48 feet;

19. South  $14^{\circ} 55' 33''$  West, 31.93 feet to the beginning of a curve to the left, having a radius of 89.50 feet;

20. Southwesterly, along said curve, through a central angle of  $12^{\circ} 44' 06''$  and an arc length of 19.89 feet to the beginning of a compound curve, concave to the Northeast, having a radius of 29.50 feet;

21. Southeasterly, along said curve, through a central angle of  $77^{\circ} 19' 22''$  and an arc length of

39.81 feet to a point on the Northeasterly line of McKinley Avenue, as shown on said Map of Tract No. 9925;

Thence along said Northeasterly line of McKinley Avenue, the following three (3) courses:

1. South  $75^{\circ} 07' 55''$  East, 345.65 feet to the beginning of a curve to the left, having a radius of 149.50 feet;

2. Northeasterly, along said curve, through a central angle of  $10^{\circ} 47' 42''$  and an arc length of 28.17 feet to the beginning of a compound curve, concave to the Northwest, having a radius of 29.50 feet;

3. Northeasterly, along said curve, through a central angle of  $58^{\circ} 38' 27''$  and an arc length of 30.19 feet to a point on the Northwesterly line of Murphy Avenue, as shown on said Map of Tract No. 9925 and being the beginning of a compound curve, concave to the Northwest having a radius of 1953.50 feet;

Thence along said Northwesterly line of Murphy Avenue, the following thirteen (13) courses:

1. Northeasterly, along said curve, through a central angle of  $01^{\circ} 50' 40''$  and an arc length of 62.89 feet to the beginning of a compound curve, concave to the Southwest, having a radius of 4.50 feet;

2. Northwesterly, along said curve, through a central angle of  $60^{\circ} 18' 29''$  and an arc length of 4.74 feet;

3. North  $26^{\circ} 43' 13''$  West, 6.90 feet to the beginning of a curve to the right, having a radius of 5.50 feet;

4. Northerly and Northeasterly, along said curve, through a central angle of  $59^{\circ} 47' 08''$  and an arc length of 5.76 feet to the beginning a reverse curve, concave to the Northwest, having a radius of 1942.50 feet;

5. Northeasterly, along said curve, through a central angle of  $03^{\circ} 14' 29''$  and an arc length of 109.89 feet to the beginning of a reverse curve, concave to the Southeast, having a radius of 5.50 feet;
6. Northeasterly, along said curve, through a central angle of  $56^{\circ} 56' 09''$  and an arc length of 5.47 feet;
7. North  $86^{\circ} 55' 35''$  East, 7.65 feet to the beginning of a curve to the left, having a radius of 4.50 feet;
8. Northeasterly, along said curve, through a central angle of  $57^{\circ} 18' 18''$  and an arc length of 4.50 feet to the beginning of a compound curve, concave to the Northwest, having a radius of 1953.50 feet;
9. Northeasterly, along said curve, through a central angle of  $02^{\circ} 35' 04''$  and an arc length of 88.12 feet to the beginning of a compound curve, concave to the Northwest, having a radius of 486.50 feet;
10. Northeasterly, along said curve, through a central angle of  $12^{\circ} 10' 01''$  and an arc length of 103.31 feet;
11. North  $14^{\circ} 52' 12''$  East, 159.80 feet to the beginning of a curve to the left, having a radius of 181.50 feet;
12. Northeasterly, along said curve, through a central angle of  $12^{\circ} 55' 16''$  and an arc length of 40.93 feet to the beginning of a non-tangent curve, concave to the Southwest, having a radius of 29.50 feet, from which a radial line bears North  $87^{\circ} 53' 52''$  West;
13. Northwesterly, along said curve, through a central angle of  $32^{\circ} 36' 45''$  and an arc length of 16.79 feet to a point on the Southwesterly line of Washington Avenue:

Thence leaving said point and along said general Southwesterly line of said Washington Avenue,  
the following two (2) courses:

1. North 75° 07' 24" West, 55.35 feet;

2. North 14° 52' 00" East, 3.00 feet to the Point of Beginning.

Being the same parcel shown as Adjusted Parcel B on the Certificate of Compliance (Lott Line Adjustment) recorded October 30, 2008 as Instrument No. 20033369.

**PARCEL FIVE:**

Lot 2, as shown on the Map of Tract 10007 filed for record in the Office of the Recorder of the County of Santa Clara, California on October 29, 2008, in Book 828 of Maps at Pages 15 and 16.

**PARCEL SIX:**

Units A, B-1 and B-2, as shown on the Condominium Plan entitled "Condominium Plan, Building D, Lot 3, Block 2 - Tract No. 9925, Sunnyvale Town Center, 818 Map 45-55", recorded

on January 9, 2009 as Document No. 20087685 of the Santa Clara County Official Records (the

"Building D Condominium Plan"), and as further described in the "Declaration of Covenants,

Restrictions and Easements for Building D, Lot 3, Block 2 of the Sunnyvale Town Center" (the

"Building D Declaration"), recorded January 9, 2009 as Document No. 20087688, Official

Records.

**PARCEL SIX - A:**

An undivided tenancy-in-common interest in the building common area as described in the

"Building D Condominium Plan" and the "Building D Declaration".

**PARCEL SIX - B:**

All easements and rights stated as granted as an appurtenance to Units A, B-1 and B-2 including,

without limitation non-exclusive easements for the use and enjoyment of the Joint Use Elements

granted as an appurtenance to said units, all as stated and provided in the "Building D Declaration".

**PARCEL SEVEN:**

Units A, B-1 and B-2, as shown on the Condominium Plan entitled "Condominium Plan,

Building E, Lot 6, Block 2 - Tract No. 9925, Sunnyvale Town Center, 818 Map 45-55", recorded on January 9, 2009 as Document No. 20087686 of the Santa Clara County Official Records (the "Building E Condominium Plan") and as further described in the "Declaration of Covenants, Restrictions and Easements for Building E, Lot 6, Block 2 of the Sunnyvale Town Center" (the "Building E Declaration"), recorded January 9, 2009 as Document No. 20087689, Official Records.

**PARCEL SEVEN - A:**

An undivided tenancy-in-common interest in the building common area as described in the "Building E Condominium Plan" and the "Building E Declaration".

**PARCEL SEVEN - B:**

All easements and rights stated as granted as an appurtenance to Units A, B-1 and B-2 including, without limitation non-exclusive easements for the use and enjoyment of the Joint Use Elements granted as an appurtenance to said units, all as stated and provided in the "Building E Declaration".

**PARCEL EIGHT:**

Units A, B-1 and B-2, as shown on the Condominium Plan entitled "Condominium Plan, Building F, Lot 2, Block 1 - Tract No. 9925, Sunnyvale Town Center, 818 Map 45-55", recorded on January 9, 2009 as Document No. 20087687 of the Santa Clara County Official Records (the "Building F Condominium Plan") and as further described in the "Declaration of Covenants, Restrictions and Easements for Building F, Lot 2, Block 1 of the Sunnyvale Town Center" (the "Building F Declaration"), recorded January 9, 2009 as Document No. 20087690, Official Records.

**PARCEL EIGHT - A:**

An undivided tenancy-in-common interest in the building common area as described in the "Building F Condominium Plan" and the "Building F Declaration".

**PARCEL EIGHT - B:**

All easements and rights stated as granted as an appurtenance to Units A, B-1 and B-2 including, without limitation non-exclusive easements for the use and enjoyment of the Joint Use Elements granted as an appurtenance to said units, all as stated and provided in the "Building F Declaration".

**PARCEL NINE:**

Unit C, as shown on the Condominium Plan entitled "Condominium Plan, Building D, Lot 3, Block 2 - Tract No. 9925, Sunnyvale Town Center, 818 Map 45-55", recorded on January 9, 2009 as Document No. 20087685 of the Santa Clara County Official Records (the "Building D Condominium Plan"), and as further described in the "Declaration of Covenants, Restrictions and Easements for Building D, Lot 3, Block 2 of the Sunnyvale Town Center" (the "Building D Declaration"), recorded January 9, 2009 as Document No. 20087688, Official Records.

**PARCEL NINE - A:**

An undivided tenancy-in-common interest in the building common area as described in the "Building D Condominium Plan" and the "Building D Declaration".

**PARCEL NINE - B:**

Exclusive Easements for the use and enjoyment of the Exclusive Use Elements that are designated on the "Condominium Plan", which are granted as an appurtenance to Unit C as stated and provided in the "Building D Declaration".

**PARCEL NINE - C:**

All easements and rights stated as granted as an appurtenance to Unit C, including, without limitation non-exclusive easements for the use and enjoyment of the Joint Use Elements granted as an appurtenance to Unit C, all as stated and provided in the "Building D Declaration".

**PARCEL TEN:**

Unit C, as shown on the Condominium Plan entitled "Condominium Plan, Building E, Lot 6, Block 2 - Tract No. 9925, Sunnyvale Town Center, 818 Map 45-55", recorded on January 9, 2009 as Document No. 20087686 of the Santa Clara County Official Records (the "Building E

Condominium Plan”) and as further described in the “Declaration of Covenants, Restrictions and Easements for Building E, Lot 6, Block 2 of the Sunnyvale Town Center” (the “Building E Declaration”), recorded January 9, 2009 as Document No. 20087689, Official Records.

**PARCEL TEN - A:**

An undivided tenancy-in-common interest in the building common area as described in the “Building E Condominium Plan” and the “Building E Declaration”.

**PARCEL TEN - B:**

Exclusive Easements for the use and enjoyment of the Exclusive Use Elements that are designated on the “Condominium Plan”, which are granted as an appurtenance to Unit C as stated and provided in the “Building E Declaration”.

**PARCEL TEN - C:**

All easements and rights stated as granted as an appurtenance to Unit C, including, without limitation non-exclusive easements for the use and enjoyment of the Joint Use Elements granted as an appurtenance to Unit C, all as stated and provided in the “Building E Declaration”.

**PARCEL ELEVEN:**

Unit C, as shown on the Condominium Plan entitled “Condominium Plan, Building F, Lot 2, Block 1 - Tract No. 9925, Sunnyvale Town Center, 818 Map 45-55”, recorded on January 9, 2009 as Document No. 20087687 of the Santa Clara County Official Records (the “Building F Condominium Plan”) and as further described in the “Declaration of Covenants, Restrictions and Easements for Building F, Lot 2, Block 1 of the Sunnyvale Town Center” (the “Building F Declaration”), recorded January 9, 2009 as Document No. 20087690, Official Records.

**PARCEL ELEVEN - A:**

An undivided tenancy-in-common interest in the building common area as described in the “Building E Condominium Plan” and the “Building F Declaration”.

**PARCEL ELEVEN - B:**

Exclusive Easements for the use and enjoyment of the Exclusive Use Elements that are designated on the “Condominium Plan”, which are granted as an appurtenance to Unit C as stated and provided in the “Building F Declaration”.

**PARCEL ELEVEN - C:**

All easements and rights stated as granted as an appurtenance to Unit C, including, without limitation non-exclusive easements for the use and enjoyment of the Joint Use Elements granted as an appurtenance to Unit C, all as stated and provided in the "Building F Declaration".

**PARCEL TWELVE:**

Lot 4, Block 1, as shown on the Map of Tract No. 9925, filed for record in the Office of the Recorder of the County of Santa Clara, California on October 1, 2007 in Book 818 of Maps at Pages 45 through 55, inclusive.

**PARCEL THIRTEEN:**

Lot 3, block 5, as shown on the Map of Tract No. 9925, filed for record in the Office of the Recorder of the County of Santa Clara, California on October 1, 2007 in Book 818 of Maps at Pages 45 through 55, inclusive.

**ATTACHMENT 1**

Public Parking Easement

**ATTACHMENT 2**

Public Parking Ground Lease and First and Second Amendments

[To Be Inserted]

**ATTACHMENT 3**

Public Street and Utility Maintenance Agreement and First Amendment

**ATTACHMENT 4**

Penney's Structure Agreement, First Amendment

**ATTACHMENT 5**

**SECOND AMENDMENT TO PUBLIC PARKING GROUND LEASE  
Sunnyvale Town Center**

**by and between**

**SUCCESSOR AGENCY TO THE SUNNYVALE REDEVELOPMENT AGENCY**  
a public body, corporate and politic

and

**STC VENTURE LLC**  
a Delaware Limited Liability Company

**SECOND AMENDMENT TO PUBLIC PARKING GROUND LEASE**  
**Sunnyvale Town Center**

This Second Amendment to the Public Parking Ground Lease (“Second Amendment”) is entered into as of \_\_\_\_\_, 2016 by and between the Successor Agency to the Sunnyvale Redevelopment Agency, a public body, corporate and politic (“Landlord”) and STC Venture LLC, a Delaware limited liability company (“New Tenant”) (each a “Party” and collectively the “Parties”) with respect to the following:

A. The former Sunnyvale Redevelopment Agency and Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company (“DSMU”) entered into that certain Public Parking Ground Lease dated September 28, 2007, and recorded October 1, 2007, as Document Number 19602167 in the Official Records of the County of Santa Clara, California (“Public Parking Ground Lease”).

B. DSMU commenced construction of portions of the redevelopment of certain property located in the City of Sunnyvale, California commonly known as the Sunnyvale Town Center (“Development”). However, with respect to certain agreement relating to the financing of the Development, foreclosure proceedings were instituted by Wachovia Bank, National Association as Administrative Agent (“Lender”), pursuant to Case Number 109CV153447, Superior Court of the State of Santa Clara (“Receivership Proceeding”);

C. L. Gerald Hunt (“Receiver”) was appointed as Receiver for property owned or leased by DSMU by the Superior Court of California, County of Santa Clara pursuant to an order appointing the Receiver entered as of October 5, 2009;

D. Pursuant to his authority as Receiver, and concurrently with Agency and Receiver’s entry into that certain 2010 Amended Disposition And Development and Owner Participation Agreement (“2010 ADDOPA”), Receiver entered into that certain First Amendment to the Public Parking Ground Lease on August 2, 2010, and recorded on August 3, 2010 as Document Number 19602167 (“First Amendment”).

E. REDUS SVTC, LLC, a Delaware limited liability company (“Assignor”) is successor-in-interest to Receiver by operation of law and now plans to assign and transfer its interest in the Public Parking ground Lease to the New Tenant.

F. The Public Ground Lease is in full force and effect and has not been modified, except as specifically stated above in Recital D.

G. Concurrently herewith, the Landlord and New Tenant are entering into a modification to the 2010 ADDOPA in order to, among other purposes, reduce liabilities and increase net revenues to the taxing entities. The Parties to the Second Amendment desire to amend the Public Parking Ground Lease as set forth in this Agreement. Capitalized terms used in this Second Amendment and not otherwise defined shall have the meanings assigned to them in the Public Parking Ground Lease.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Assumption of Obligations. New Tenant hereby assumes the rights and obligations of the “Tenant” under the Public Parking Ground Lease. The City hereby consents to the transfer and assignment to the New Tenant of the rights and obligations of the “Tenant” under the Public Parking Ground Lease.

2. Amendment of Article 1(b). Article 1(b) of the Public Parking Ground Lease shall be amended so it reads in its entirety as follows:

“(b) Term. Beginning on the Effective Date, and ending at 11:59 P.M. on the day preceding the ninety-ninth (99th) anniversary of the Effective Date, unless terminated earlier pursuant to the terms of this Lease. If, as of the date five (5) years before the end of the Term, the Property (as defined in the 2010 ADDOPA) is still in use as a mixed-use project, then either Party may request in writing of the other party a renewal of this Lease. If such request is made, the parties shall negotiate in good faith for a renewal of this Lease for an additional period of not less than ten (10) years.

3. Permitted Use. Section 6.1(a) of the Lease (as that section was amended by the First Amendment) is hereby further amended by adding the following sentence to the end of such Section:

Notwithstanding any other provision to the contrary, Tenant shall be allowed, at its sole business discretion, to impose or permit the imposition of charges within those certain portions of the Improvements constructed below the ground level of the Property and dedicated to the exclusive use of the owners or occupants of those portions of the Sunnyvale Town Center owned or leased for office or residential purposes.

4. Miscellaneous.

a. The Public Parking Ground Lease, as amended by this Second Amendment, shall continue in full force and effect, and all of the terms, conditions and provisions of the Public Parking Ground Lease, as amended by the First Amendment and this Second Amendment, shall remain in full force and effect and hereby ratified and confirmed.

b. This Second Amendment may be signed in two or more counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument.

c. Each Party represents and warrants to each other Party that the person signing on behalf of such Party has been duly authorized to enter into this Second Amendment.

d. This Second Amendment is effective as of \_\_\_\_\_, 2016

e. Capitalized terms used in this Second Amendment and not otherwise defined shall have the meanings assigned to them in the Public Parking Ground Lease.

f. This Amendment contains the entire agreement of the Parties with respect to the subject matter hereof. It is understood that there are no oral agreements between the Parties affecting the Public Parking Ground Lease as amended by the First Amendment and this Second Amendment.

**[SIGNATURE PAGES APPEAR ON FOLLOWING PAGES]**

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Second Amendment as of the date and year first written above.

“LANDLORD”

**SUCCESSOR AGENCY TO THE SUNNYVALE  
REDEVELOPMENT AGENCY**, a Public Body,  
Corporate and Politic

By: \_\_\_\_\_  
Deanna J. Santana, Executive Director

APPROVED AS TO FORM

By: \_\_\_\_\_

John A. Nagel

Successor Agency Attorney

[SIGNATURES CONTINUE ON NEXT PAGE]

“NEW TENANT”

**STC VENTURE LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

**State of California**

**HEALTH AND SAFETY CODE**

**Section 34181**

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34181. The oversight board shall direct the successor agency to do all of the following:

(a) (1) Dispose of all assets and properties of the former redevelopment agency; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, parking facilities and lots dedicated solely to public parking, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset. Disposal shall be done expeditiously and in a manner aimed at maximizing value. Asset disposition may be accomplished by a distribution of income to taxing entities proportionate to their property tax share from one or more properties that may be transferred to a public or private agency for management pursuant to the direction of the oversight board.

(2) "Parking facilities and lots dedicated solely to public parking" do not include properties that generate revenues in excess of reasonable maintenance costs of the properties.

(b) Cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations.

(c) Transfer housing assets pursuant to Section 34176.

(d) Terminate any agreement, between the dissolved redevelopment agency and any public entity located in the same county, obligating the redevelopment agency to provide funding for any debt service obligations of the public entity or for the construction, or operation of facilities owned or operated by such public entity, in any instance where the oversight board has found that early termination would be in the best interests of the taxing entities.

(e) Determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities.

(f) All actions taken pursuant to subdivisions (a) and (c) shall be approved by resolution of the oversight board at a public meeting after at least 10 days' notice to

the public of the specific proposed actions. The actions shall be subject to review by the department pursuant to Section 34179 except that the department may extend its review period by up to 60 days. If the department does not object to an action subject to this section, and if no action challenging an action is commenced within 60 days of the approval of the action by the oversight board, the action of the oversight board shall be considered final and can be relied upon as conclusive by any person. If an action is brought to challenge an action involving title to or an interest in real property, a notice of pendency of action shall be recorded by the claimant as provided in Title 4.5 (commencing with Section 405) of Part 2 of the Code of Civil Procedure within a 60-day period.

(Amended by Stats. 2015, Ch. 325, Sec. 15. (SB 107) Effective September 22, 2015.)

**Successor Agency to the Former Sunnyvale Redevelopment Agency  
Sunnyvale Town Center  
2016 MRADDOPA Overview  
Updated June 30, 2016**

The Sunnyvale Town Center project is regulated by an owner participation agreement under the authority granted by California redevelopment law. The current owner participation agreement for the project is the 2010 Amended Disposition and Development Agreement (2010 ADDOPA). In connection with a potential transfer of the property from the current owner to STC Ventures, LLC, a joint venture consisting of J.P. Morgan Asset Management Fund, Sares Regis Group of Northern California, and Hunter Properties, Inc. (collectively, Developer), the Successor Agency (Agency) has been asked to approve a 2016 Modified and Restated Amended Disposition and Development Agreement (2016 MRADDOPA).

The City of Sunnyvale previously approved land use entitlements for the project, and the 2016 MRADDOPA would make the owner participation agreement consistent with the City's most recent Special Development Permit, along with terms and conditions governing the Successor Agency's and the Developer's responsibilities with respect to developing the Sunnyvale Town Center project. Specifically, the 2010 ADDOPA is proposed to be amended to:

- Eliminate the tax-increment financing payments (TIF) to the Developer;
- Strengthen liquidated damages clause and clarify the Successor Agency's enforcement provisions;
- Accommodate the City's recent land use approvals, while removing City obligations from the agreement;
- Reflect the Developer's multi-entity composition; and
- Incorporate other revisions for clarity.

The table on the following pages summarizes key provisions from the 2010 ADDOPA and the proposed 2016 MRADDOPA, and it provides a brief rationale for the proposed changes. In addition, a "redline" comparison of the 2010 ADDOPA and the 2016 MRADDOPA is included as a separate attachment to RTC in order for the Board to review the exact changes every proposed modification would implement to the 2010 ADDOPA.

Section Number and Title	2010 ADDOPA Provisions	2016 MRADDOPA Provisions	Rationale
<b>Article 1. Definitions and Exhibits</b>			
<b>1.01 Definitions</b>	<ul style="list-style-type: none"> <li>Includes defined terms related to the TIF</li> </ul>	<ul style="list-style-type: none"> <li>Removes defined terms related to the TIF</li> </ul>	<ul style="list-style-type: none"> <li>Developer's right to the TIF has been eliminated, so no defined terms are necessary</li> </ul>
	<ul style="list-style-type: none"> <li>No reference to Developer's Affiliate</li> </ul>	<ul style="list-style-type: none"> <li>Definition of Developer's Affiliate added</li> </ul>	<ul style="list-style-type: none"> <li>New defined term needed to reflect Developer's multi-entity structure</li> </ul>
	<ul style="list-style-type: none"> <li>No definition of Retail</li> </ul>	<ul style="list-style-type: none"> <li>Definition of Retail added</li> </ul>	<ul style="list-style-type: none"> <li>Term was used throughout the document; definition consistent with City Approvals added for clarity</li> </ul>
<b>1.02 Exhibits</b>	<ul style="list-style-type: none"> <li>Includes multiple City documents as Exhibits</li> </ul>	<ul style="list-style-type: none"> <li>City documents removed from agreement</li> <li>Adds schedule of Milestone Dates, forms of Covenant to Reconvey and Parking Structure Easement</li> </ul>	<ul style="list-style-type: none"> <li>Some City documents relate to City regulatory functions and are not subject to Successor Agency approval</li> <li>New exhibits reflect proposed new terms discussed in subsequent sections</li> </ul>
<b>Article 2. Property Activities</b>			
<b>2.02 Assumption of Parking Structure Obligations</b>	<ul style="list-style-type: none"> <li>Requires Developer to assume obligations under Penny's Parking Structure Agreement</li> </ul>	<ul style="list-style-type: none"> <li>Provision deleted</li> </ul>	<ul style="list-style-type: none"> <li>Obligation satisfied previously and is no longer necessary</li> </ul>

Section Number and Title	2010 ADDOPA Provisions	2016 MRADDOPA Provisions	Rationale
<b>Article 3. Developer Development Activities</b>			
<b>3.01 Description of the Proposed Project</b>	<ul style="list-style-type: none"> <li>Summarizes proposed project</li> </ul>	<ul style="list-style-type: none"> <li>Summarizes proposed project</li> </ul>	<ul style="list-style-type: none"> <li>Modifications reflect completed buildings and changes in City Approvals</li> </ul>
<b>3.02 City Approvals</b>	<ul style="list-style-type: none"> <li>Describes City Approvals and requires the Developer to pay certain City fees related to the Project and the parties to negotiate the timing of the construction of the below market rate housing</li> </ul>	<ul style="list-style-type: none"> <li>Deletes provisions related to City fees and language regarding negotiating timing of development of below market rate housing</li> </ul>	<ul style="list-style-type: none"> <li>The City fees and the timing of the below market rate housing construction are subjects addressed by the City Approvals</li> </ul>
<b>3.06 Building Permits</b>	<ul style="list-style-type: none"> <li>Includes provision extending building permit term</li> </ul>	<ul style="list-style-type: none"> <li>Removes language regarding building permit extensions and adds language allowing Developer to terminate the 2016 MRADDOPA upon completion of the Minimum Project</li> </ul>	<ul style="list-style-type: none"> <li>The Successor Agency does not have authority to extend building permits, so this provision can be removed</li> <li>The 2010 ADDOPA provides that construction of the Project beyond the Minimum Project is at the discretion of the Developer; proposed language clarifies that Developer can terminate agreement upon completion of Minimum Project</li> </ul>
<b>3.08 Evidence of Financing</b>	<ul style="list-style-type: none"> <li>Requires evidence of outside financing to complete improvements</li> </ul>	<ul style="list-style-type: none"> <li>Retains 2010 ADDOPA Provisions</li> <li>Permits developer to satisfy finance evidence with Equity Funding Certificate</li> </ul>	<ul style="list-style-type: none"> <li>Permits Developer to self-fund the Project, in recognition of J.P. Morgan's financial capabilities and development expertise</li> </ul>

Section Number and Title	2010 ADDOPA Provisions	2016 MRADDOPA Provisions	Rationale
<b>3.10 Assumption of Obligations by Residential Developer</b>	<ul style="list-style-type: none"> <li>Allows the Developer to assign the residential portions of the project to an entity controlled by the Developer without obtaining the Successor Agency's approval</li> <li>Grants authority to the Executive Director to approve the substitution or assignment of any uncompleted residential portion of the project to another Residential Developer with the necessary financial capacity and development experience</li> </ul>	<ul style="list-style-type: none"> <li>Retains 2010 ADDOPA Provisions</li> <li>Specifies that the Affordable Housing Developer Agreement is included in this Provision</li> <li>Specifies that Article 6 transfers satisfy Article 3</li> </ul>	<ul style="list-style-type: none"> <li>Clarifies that the Successor Agency's consent to the transfer of the property to STC Ventures as approved in December complies with the requirements of Section 3.10 and conforms with the City Approvals</li> </ul>
<b>3.12 Leasing Plan and Local Businesses</b>	<ul style="list-style-type: none"> <li>Requires Developer to submit Retail Leasing Plan to Successor Agency for review</li> </ul>	<ul style="list-style-type: none"> <li>Retains 2010 ADDOPA Provisions</li> <li>Adds detail about Leasing Plan Contents</li> <li>Specifies procedure for Executive Director to review and comment</li> </ul>	<ul style="list-style-type: none"> <li>Clarifies Successor Agency's expectations regarding Leasing Plan and better-defines process for Developer and Successor Agency collaboration on attracting Retail tenants</li> </ul>
<b>Article 4. Property Transactions and Environmental Remediation</b>			
<b>4.04 Condition of Property; Investigation and Remediation of Hazardous Materials</b>	<ul style="list-style-type: none"> <li>Splits the cost of environmental remediation evenly between Successor Agency and the Developer</li> </ul>	<ul style="list-style-type: none"> <li>Provides for transfer of Lots 1, 3 and 4 of Block 6 to Developer no later than October 1, 2022</li> <li>Relieves Successor Agency</li> </ul>	<ul style="list-style-type: none"> <li>Proposed language reduces Successor Agency's liability while providing a mechanism to fund ongoing environmental remediation</li> </ul>

Section Number and Title	2010 ADDOPA Provisions	2016 MRADDOPA Provisions	Rationale
		of environmental remediation costs on Block 6 upon transfer <ul style="list-style-type: none"> <li>Creates obligation to regularly meet and confer with goal of reaching agreement as to final disposition of Lot 2 of Block 5 and potential to convey Lots 1, 3 and 4 of Block 6 earlier than October 1, 2022</li> </ul>	on Block 6 <ul style="list-style-type: none"> <li>Provides a framework for ongoing discussion regarding reduction of Successor Agency liabilities and ongoing remediation associated with Lot 2 of Block 5</li> </ul>
<b>Article 5. Construction of Improvements</b>			
<b>5.02 Minimum Project Commencement and Completion</b>	<ul style="list-style-type: none"> <li>Defines the Minimum Project to include a Theater, Retail buildings (including 2-story Retail buildings on Redwood Square), residential, office uses, parking facilities A and B, and public improvements</li> </ul>	<ul style="list-style-type: none"> <li>Redefines the Minimum Project to require a Theater with Retail consistent with the City Approvals, Retail buildings other than at Redwood Square, temporary improvements to Redwood Square, residential use, parking facilities A and B, the Penney's parking structure, and public improvements</li> </ul>	<ul style="list-style-type: none"> <li>Reflects current thinking that 2-story retail buildings as previously configured and approved for Redwood Square are not feasible</li> <li>Permits immediate demolition of steel structures at Redwood Square and replacement with temporary landscaping and parking amenities</li> <li>Moves some Retail planned for Redwood Square to Theater building</li> <li>Reflects fact that office uses have already been completed</li> </ul>
<b>5.03 Liquidated Damages</b>	<ul style="list-style-type: none"> <li>Requires payment of \$5 million from Developer to</li> </ul>	<ul style="list-style-type: none"> <li>Retains 2010 ADDOPA Provisions</li> </ul>	<ul style="list-style-type: none"> <li>Schedule for payment of liquidated damages updated</li> </ul>

Section Number and Title	2010 ADDOPA Provisions	2016 MRADDOPA Provisions	Rationale
	<p>Successor Agency if construction of any retail building in the Minimum Project begins but is not completed with a specified timeframe</p>	<ul style="list-style-type: none"> <li>• Clarifies commencement dates that trigger obligation to pay liquidated damages if construction commences but is not completed</li> <li>• Explicitly acknowledges tolling period for specified events out of the parties' control that extend time for performance without requiring liquidated damages payments from Developer</li> </ul>	<p>to reflect current projected construction timeline</p> <ul style="list-style-type: none"> <li>• Other clarifications make administering and enforcing liquidated damages as a remedy a less-subjective process</li> </ul>
<p><b>Article 6. Changes in Developer</b></p>			
<p><b>6.01 Requirements for Transfer</b></p>	<ul style="list-style-type: none"> <li>• Automatically permits transfers of less than 50% interest in Developer</li> </ul>	<ul style="list-style-type: none"> <li>• Automatically permits Developer to remove minority members as long as the remaining members assume the removed member's duties and no new entities are brought in to replace the removed member</li> </ul>	<ul style="list-style-type: none"> <li>• Because the Developer is composed of multiple entities with J.P. Morgan owning more than a 50% interest, the 2010 ADDOPA would permit J.P. Morgan to bring in new development team members without the Successor Agency's approval</li> <li>• The proposed language limits the Developer's ability to automatically make changes to its structure to only the three entities the Successor Agency consented to as part of the Article 6 process</li> </ul>

Section Number and Title	2010 ADDOPA Provisions	2016 MRADDOPA Provisions	Rationale
	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• Permits transfer to Developer's Affiliates</li> </ul>	<ul style="list-style-type: none"> <li>• Change to allow internal transfers between the three entities consented to by the Successor Agency and the entities they control to better accommodate multi-entity ownership structure</li> </ul>
	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• Requires Executive Director Approval to add new unaffiliated members to the Developer entity</li> </ul>	<ul style="list-style-type: none"> <li>• New language authorizes the Executive Director to review and approve new members of the Developer entity to confirm that any new member has the financial capacity and development experience to complete the remainder of the Minimum Project</li> </ul>
	<ul style="list-style-type: none"> <li>• Prohibits the Developer from transferring its interest in the Public Parking Ground Lease separately from transfer of substantially all of the retail portion of the Property</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibits the Developer from transferring its interest in the Public Parking Ground Lease separately from transfer of the property interest except to a property owners association</li> <li>• Gives the Successor Agency approval rights over the association formation documents and conditions, covenants and restrictions</li> </ul>	<ul style="list-style-type: none"> <li>• The Successor Agency desires a mechanism to ensure that an interested party has responsibility for parking maintenance, but the 2010 ADDOPA language reflects single owner-operator structure with respect to parking</li> <li>• Proposed provisions retain protection for Successor Agency while permitting Developer to transfer maintenance obligations to</li> </ul>

Section Number and Title	2010 ADDOPA Provisions	2016 MRADDOPA Provisions	Rationale
			an entity approved by the Successor Agency
<b>Article 7 Representations, Warranties, and Covenants</b>			
<b>7.01 Successor Agency Representations and Warranties</b>	<ul style="list-style-type: none"> <li>Includes representations from the Former Redevelopment Agency regarding the Developer's purchase of the property from the Former Redevelopment Agency and regarding the Former Redevelopment Agency's Legal Authority</li> </ul>	<ul style="list-style-type: none"> <li>Includes representations regarding the Successor Agency's legal authority and removes language related to the TIF</li> </ul>	<ul style="list-style-type: none"> <li>Revisions needed to reflect fact that the Former Redevelopment Agency previously transferred the property, that the Successor Agency is governed by different statutes from the Former Redevelopment Agency, and that the Developer has agreed to give up any claim to the TIF</li> </ul>
<b>7.04 Hazardous Material Indemnity and Release</b>	<ul style="list-style-type: none"> <li>Includes division of obligations between the Developer, the Former Redevelopment Agency, and the City</li> </ul>	<ul style="list-style-type: none"> <li>Deletes section in its entirety</li> </ul>	<ul style="list-style-type: none"> <li>2010 ADDOPA indemnity provisions survive termination and are not needed to be repeated in 2016 MRADDOPA</li> </ul>
<b>Article 8 Agency Consideration and Parking Structure Financing</b>			
<b>8.01 through 8.09</b>	<ul style="list-style-type: none"> <li>Describes obligations associated with TIF payment to Developer</li> <li>Includes obligation for former Redevelopment Agency and City to issue Mello Roos bonds to fund acquisition of the parking structures at the discretion of</li> </ul>	<ul style="list-style-type: none"> <li>Deleted in its entirety</li> </ul>	<ul style="list-style-type: none"> <li>Because the Developer is agreeing to give up any claim to the TIF, the provisions of Article 8 are not needed</li> <li>The Developer is also agreeing to forego the option of requiring the City and the Successor Agency to issue</li> </ul>

Section Number and Title	2010 ADDOPA Provisions	2016 MRADDOPA Provisions	Rationale
	the Developer		Mello Roos bonds to acquire the parking structures
<b>Article 9 Provisions Regarding Remedies</b>			
<b>9.02 Termination Remedy</b>	<ul style="list-style-type: none"> <li>Gives parties ability to terminate agreement, but not if the Former Redevelopment Agency fails to make TIF payments</li> </ul>	<ul style="list-style-type: none"> <li>Retains parties' termination power if the Minimum Project is not substantially completed by the end of 2020</li> </ul>	<ul style="list-style-type: none"> <li>Changes are proposed to remove references to the TIF and to reflect the updated schedule</li> </ul>
<b>9.05 Right to Purchase Private Improvement Parcels</b>	<ul style="list-style-type: none"> <li>Gives the Former Redevelopment Agency the right to purchase the property if default continues uncured</li> </ul>	<ul style="list-style-type: none"> <li>Reallocates right to purchase to City as a third-party beneficiary to the agreement</li> </ul>	<ul style="list-style-type: none"> <li>Changes reflect dissolution of Former Redevelopment Agency while protecting City's rights</li> </ul>
<b>Article 10 Continuing Obligations</b>			
<b>10.03 Non-Discrimination</b>	<ul style="list-style-type: none"> <li>Includes non-discrimination covenants to be included in conveyance of property from the Former Redevelopment Agency to the Developer</li> </ul>	<ul style="list-style-type: none"> <li>Includes non-discrimination covenants to be included in any future conveyance of property, including leases</li> </ul>	<ul style="list-style-type: none"> <li>Changes reflect fact that property has already been transferred to the Developer and incorporate most recent non-discrimination language from State law</li> </ul>
<b>10.04 Sale or Lease Resulting in Tax Exemption</b>	<ul style="list-style-type: none"> <li>Discusses what happens to TIF if portions of the property are sold or leased to a tax-exempt entity</li> </ul>	<ul style="list-style-type: none"> <li>Deleted in its entirety</li> </ul>	<ul style="list-style-type: none"> <li>Because the Developer would not have any claim to the TIF, these provisions are not needed in the 2016 MRADDOPA</li> </ul>
<b>10.08 Penney's Structure</b>	<ul style="list-style-type: none"> <li>Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>Describes provisions of a separate easement agreement granting the Developer an easement over the Penney's</li> </ul>	<ul style="list-style-type: none"> <li>Language proposed to clarify and reaffirm the easements provided in the Operation and Reciprocal</li> </ul>

Section Number and Title	2010 ADDOPA Provisions	2016 MRADDOPA Provisions	Rationale
		structure to use the structure for public parking to benefit the Town Center and downtown businesses.	Easement Agreement that currently exists, to explicitly include parking for the theater building
<b>Article 11 Security Financing Interests</b>			
<b>11.01 Security Financing Interest</b>	<ul style="list-style-type: none"> <li>• Defines Security Financing Interest as a mortgage, deed of trust, and any other reasonable method of security for real estate financing</li> </ul>	<ul style="list-style-type: none"> <li>• Retains 2010 ADDOPA provisions</li> <li>• Adds restriction on Security Financing Interests prior to issuance of a Certificate of Completion</li> </ul>	<ul style="list-style-type: none"> <li>• Reflects Developer's expressed intent to self-finance the project and limits ability for new lenders to take a security interest in the property</li> </ul>
<b>Article 12 General Provisions</b>			
<b>12.04 Delay</b>	<ul style="list-style-type: none"> <li>• Allows for extension of time for performance of either parties obligations resulting from forces outside of the parties' control</li> </ul>	<ul style="list-style-type: none"> <li>• Retains 2010 ADDOPA provisions</li> <li>• Adds language clarifying types of events that temporarily excuse performance and how long extension may last</li> </ul>	<ul style="list-style-type: none"> <li>• Language intended to clarify obligations and simplify administration in the event of an unexpected and unavoidable delay</li> </ul>
<b>12.05 Hold Harmless</b>	<ul style="list-style-type: none"> <li>• Requires Developer to indemnify Former Redevelopment Agency in the event a property or personal injury related to the Developer's construction activity</li> </ul>	<ul style="list-style-type: none"> <li>• Expands the indemnification requirement to include third party challenges to the MRADDOPA and includes the Successor Agency and the Oversight Board</li> <li>• Requires the Successor to cooperate with the Developer in the defense of any such action</li> </ul>	<ul style="list-style-type: none"> <li>• Broadens the scope of the indemnity to cover additional areas of challenge</li> </ul>

~~2010~~2016 MODIFIED AND RESTATED AMENDED DISPOSITION AND DEVELOPMENT  
AND OWNER PARTICIPATION AGREEMENT

by and between

THE SUCCESSOR AGENCY TO THE SUNNYVALE REDEVELOPMENT AGENCY

and

~~L. GERALD HUNT, AS COURT-APPOINTED RECEIVER IN  
WACHOVIA BANK V. DOWNTOWN SUNNYVALE RESIDENTIAL, ET AL.,  
SANTA CLARA SUPERIOR COURT CASE NO. 109-CV-153447  
STC VENTURE LLC~~

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**EXHIBITS**

The following exhibits are attached to [this Agreement](#) and, [are](#) incorporated ~~in~~ [by reference into](#) this Agreement:

- Exhibit A      Map Showing Sunnyvale Town Center Property
- Exhibit B      [Construction Schedule for Minimum Project Description Attachment](#)

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The following Attachments are attached to this Agreement for reference purposes:

- Attachment 1 Public Parking Easement
- Attachment 2 Public Parking Ground Lease and First Amendment and Second Amendments
- Attachment 3 Public Street and Utility Maintenance Agreement and First Amendment
- Attachment 4 Penney's Structure Agreement, First Amendment

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

THIS ~~2010~~2016 MODIFIED AND RESTATED AMENDED DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT (~~the~~this “Agreement” or “Modified ADDOPA”) is made on or as of this \_\_\_\_ day of ~~August, 2010~~, 2016 by and between the Successor Agency to the Sunnyvale Redevelopment Agency (the “Successor Agency”), a public body, corporate and politic, and ~~L. Gerald Hunt, as { Court Appointed Receiver in Wachovia Bank v. Downtown Sunnyvale Residential, et al., Santa Clara Superior Court Case No. 109 CV 153447, }~~ (“Receiver”), ~~for the herein described property who is fully authorized to act as the~~ STC VENTURE LLC, a Delaware limited liability company (“Developer”) (collectively, with respect to the Sunnyvale Town Center Project, the “Parties”), with reference to the following facts:

A. The overall purpose of this Agreement is to provide for the continuation and successful completion of redevelopment of the Sunnyvale Town Center for new retail, residential and office uses through construction of new public and private improvements. “Sunnyvale Town Center” (or “STC”) 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 AgencySuccessor Agency, as the successor in interest to the Sunnyvale Redevelopment Agency (the “Agency”), succeeded to the rights and obligations of the Agency, and in accordance with California law has the responsibility to ~~carry out~~complete previously authorized and approved redevelopment activities pursuant to 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~~1975 as long as such activities constitute enforceable obligations, as defined in California Health and Safety Code Section 34171. 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 STC is within the area governed by the Redevelopment Plan, and consists of several parcels owned by the Successor Agency, the City, Macy’s, Target, and Developer. Attached as Exhibit A is a map showing the STC.

D. On or about February 6, 2007, the Agency entered into the Amended and Restated Disposition and Development and Owner Participation Agreement with Downtown Sunnyvale Mixed Use LLC (“DSMU”) providing for the redevelopment of the STC and thereafter, on or about November 18, 2008, the parties entered into a First Amendment thereto (together, the “ARDDOPA”). Subsequent to entering into the ARDDOPA, the sub-prime mortgage problems and global turmoil in the lending, retail and commercial lending markets resulted in a major loss of equity capital by DSMU and its inability to meet its financial and development commitments under the ARDDOPA. ~~It~~DSMU halted construction in February 2009 and was in default of its obligations under the ARDDOPA and the holder of the secured financing interest on the property instituted foreclosure proceedings in September, 2009.

E. On or about October 5, 2009, ~~the Receiver was appointed by the Superior Court of the State of California and~~ L. Gerald Hunt became the Court-Appointed Receiver in Wachovia Bank v. Downtown Sunnyvale Residential, et al., Santa Clara Superior Court Case No. 109-CV-153447, ]pursuant to an Order Appointing the Receiver ~~was issued (the “Order”). Pursuant to~~ Following issuance of the Order and other proceedings, the Receiver ~~has~~ commenced certain construction on the Project (as defined below).

F. ~~It is in~~ To facilitate the ~~best interest~~ restarting of the ~~Agency that construction on the Project be restarted and completed as soon as possible. To advance this goal~~ Project, on or about May 14, 2010, the Receiver and the Agency entered into that certain 2010 Modification Agreement to the Amended and Restated Disposition and Development Agreement (~~the “2010 Modification Agreement”~~).

G. ~~The parties contemplate rights and obligations under this Agreement shall be transferred to a Developer as provided herein. The Agency and the Developer have~~ On or about August 2, 2010, the Agency and the Receiver (acting as Developer) entered into this ~~the 2010 Amended Disposition and Development and Owner Participation Agreement (the “2010 ADDOPA”)~~ in order to document the changes agreed to in the 2010 Modification Agreement ~~This Agreement is.~~ The 2010 ADDOPA became effective as of May 14, 2010. However, ongoing turmoil in the global financial markets, national economy, and regional and local real estate markets, as well as litigation regarding matters relating to legal ownership of portions of the STC, resulted in unavoidable delays, beyond the control of the ]parties. Following final resolution of the litigation, REDUS SVTC, LLC acquired title to portions of the STC and began marketing portions of the STC to prospective developers. REDUS SVTC, LLC selected STC Venture LLC, a joint venture formed by affiliates of Sares Regis Group of Northern California, LLC, Hunter Properties, Inc., and an institutional investor advised by J.P. Morgan Asset Management to purchase portions of the STC and become the Developer. The Successor Agency consented to the transfer and assignment to STC Venture LLC pursuant to Section 6 of the 2010 ADDOPA on December 10, 2015.

I. Office Buildings A and C, which received Certificates of Completion from the Successor Agency pursuant to Section 5.08 of the 2010 ADDOPA were sold separately from the remainder of the STC in December 2015.

~~HJ.~~ The redevelopment of the STC, as contemplated by this Agreement, involves construction and completion ~~of construction~~ of new buildings for retail, office and residential use, new site improvements and new parking structures. The Agency has ~~previously~~ determined (and the Successor Agency has confirmed) that redevelopment of the STC 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 Specific Plan.

K. The State of California enacted ABx1 26 in 2011, eliminating all redevelopment agencies in the State of California effective February 1, 2012. In order to expeditiously wind down the affairs of the Agency, and consistent with the State of California’s Redevelopment Dissolution law set forth in California Health and Safety Code Division 24 Parts 1.8 and 1.85 (the

“Redevelopment Dissolution Law”), the Successor Agency seeks to reduce the Successor Agency’s liabilities by eliminating its obligation under the 2010 ADDOPA to provide tax increment financing (“TIF”) payments to Developer upon completion of certain minimum improvements. The Successor Agency acknowledges that the elimination of the TIF payments would take away a binding, important, and previously negotiated-for benefit of Developer. Accordingly, the elimination of the TIF is agreed to by Developer only as consideration for the modifications to Developer’s obligations made by this Agreement.

L. The modifications provided by this Agreement are intended to help the Successor Agency and the City achieve the original vision of the STC as a vibrant, horizontal- and vertical-mixed use community that integrates with the greater downtown Sunnyvale community. These modifications specifically include preserving the same overall development intensity, allowing for-rent or for-sale housing to respond to market conditions, and confirming the appropriate mix of active ground-floor uses to avoid the risk of continued vacancies in the ground floor areas of the Project. Achievement of the original vision of the STC will provide significant benefits to the City and the taxing entities, including substantial increases in the assessed valuation of the Project resulting in increased property tax revenues benefiting the taxing entities.

M. The purposes of this Agreement are to provide for Developer’s construction and completion of the Public Improvements and Private Improvements that constitute the Project in accordance with this Agreement and the Redevelopment Plan.

N. The Successor 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 Successor Agency.

O. The Successor 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) “Adjustments2010 ADDOPA” is defined in Recital G.
- (b) “2010 Modification Agreement” is defined in Recital F.
- (c) “AAA” is defined in Section 8.025.11 below.

(d) ~~(b)~~ “Agency” means the Sunnyvale Redevelopment Agency, a public body, corporate and politic, formed ~~and existing~~ under the Community Redevelopment Law.

(e) ~~(c)~~ “Agreement” means this ~~2010 Amended Disposition and Development and Owner Participation Agreement between the Agency, and Developer, Modified and Restated ADDOPA~~ as the same may be amended from time to time by mutual agreement of the Parties.

(f) ~~(d)~~ “Air Space Condominium Lot” means a condominium interest which is ~~separated~~ separate from the underlying land on the Public Parking Parcels.

(g) ~~(e)~~ “Air Space Parcel” means a parcel shown on the Subdivision Map as an “Air Space Parcel” and includes all of the easements and other agreements between the Successor Agency and Developer that are necessary to construct the Private Improvements that are intended to be constructed on the Air Space Parcel.

~~(f) — “Annual Payment” means the payment to be made to Developer pursuant to Section 8.01 of this Agreement.~~

~~(g) — “Anticipated Tax Increment” is defined in Section 8.02 below.~~

(h) “ARDDOPA” means the Amended and Restated Disposition and Development and Owner Participation Agreement dated February 6, 2007 by and between the Agency and DSMU as amended prior to the Effective Date.

~~(i) — “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.~~

(i) ~~(j)~~ “Certificate of Completion” is defined in Section 5.08 below.

(j) ~~(k)~~ “City” means the City of Sunnyvale, California, a charter city.

~~(l) — “City/Agency Payment Agreement” means the agreement dated as of February 6, 2007 between the City and the Agency attached to this Agreement as Exhibit F.~~

(k) ~~(m)~~ “City Approvals” means the City permits and approvals for the Project ~~attached as Exhibit D, the Subdivision Map, and the Subdivision Agreement attached as Exhibit C,~~ as these permits and approvals may be amended from time to time.

(l) ~~(n)~~ “Completed/Complete” ~~mean (except as to the Interim TIF Payment Date as defined in the definition thereof)/Completion” means~~ for each of the following uses: For office uses, completion of core and shell; for residential and parking uses, issuance of a certificate of occupancy; for ~~retail~~ Retail uses, completion of the shell, excluding ~~store fronts~~ storefronts and tenant improvements.

(m) ~~(m)~~ “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, as they may be amended from time to time by Developer in accordance with City Approvals. All Construction Plans shall at all times be consistent with all the City Approvals.

(n) ~~(n)~~ “Construction Schedule” means the schedule for commencement and completion of construction of the Minimum Project attached as Exhibit HB.

~~(q) — “Contingent Developer Work” has the meaning given in the Infrastructure Improvement Agreement.~~

(o) “Developer’s Affiliate” means an entity controlled by, controlling or under common control with Developer. For the purposes of this definition, the terms “controls”, “is controlled by” or “is under common control with” mean that the controlling party(ies) (A) owns directly or indirectly fifty percent (50%) or more of the profits, capital, or equity interest of the affiliated entity(ies) and (B) has the direct or indirect power to direct the affairs or management of the affiliated entity(ies), whether by contract, other governing documents or operation of law or otherwise.

~~(p) (p) “Developer” means the Receiver acting as Developer pursuant to the Order or an entity meeting the standards in Article 6 as to and to whom the portions of the Project and is defined in the Introductory Paragraph of this Agreement is Transferred.~~

(q) “District” is defined in Section 10.05 below.

(r) ~~(s)~~ “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 and all subsequent amendments.

(s) “DSMU” is defined in Recital D.

(t) ~~”~~ “Effective Date” means ~~May 14, 2010,~~ the date on which the Private Improvements Parcels, other than the parcels on which Office Buildings A and C are located, are acquired by Developer.

(u) “Environmental Costs” is defined in Section 4.04 below.

(v) “Environmental Oversight Agencies” is defined in Section 4.04 below.

(w) “Environmental Work” is defined in Section 4.04 below.

(x) “Equity Funding Certification” is defined in Section 3.08 below.

(y) ~~(u)~~ “First Class Facility” means a mixed use downtown project meeting the following criteria:

- (1) developed with the Minimum Project;
- (2) no ~~retail~~Retail store shall exceed 100,000 square feet of floor area (other than the stores on the Macy’s Parcel and the Target Parcel);
- (3) the total floor area square footage of all ~~retail~~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;
- (4) no ~~retail~~Retail store advertises that all or substantially all of the ~~goods~~ it sells do not exceed a particular price;
- (5) no more than thirty-five percent (35%) of the ~~retail~~Retail space is rented to manufacturer’s outlet stores; and
- (6) the facilities in the Project are maintained in a first class manner comparable to other similar projects in the San Jose metropolitan area.

~~(v) — “Gross Project Tax Increment” as used in Section 8.02 below is defined as the Tax Increment the Agency receives in a fiscal year in which Tax Increment is generated from the amount by which the Secured Assessed Value of the Project property exceeds the Project property portion of the 2003-2004 Secured Assessed Value (Seventy Seven Million, Nine Hundred Sixty three Thousand, One Hundred Seventeen Dollars (\$77,963,117.00)) 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 Sunnyvale Town Center other than the Project, or that was not contemplated by this Agreement as amended from time to time.~~

(z) ~~(w)~~ “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~~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~~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~~2014, et seq.; the Nuclear Waste Policy Act of 1982, 42 U.S.C. section ~~10101~~10101, et seq. (“NWP”); the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. section ~~11001~~11001, et seq. (“EPCRA”); the California Hazardous Waste Control Act, Health and Safety Code, Division 20, Chapter 6.5, section ~~25100~~25100, et seq.; the California Safe Drinking Water and

Toxic Enforcement Act, Health and Safety Code, Division 20, Chapter 6.6, section ~~25249.5~~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.

~~(x) —“Infrastructure Improvement Agreement” means that certain agreement dated July 17, 2009 between Agency, City, Developer and Target for the completion of public infrastructure.~~

~~(y) —“Interim Project Improvements” means construction of Building D (as described on Exhibit B) exterior walls in accordance with Construction Plans, excluding the first floor retail area which shall be secured by a wood construction fence until retail completed.~~

~~(z) —“Interim Project Tax Increment” is defined in Section 8.02 below.~~

~~(aa) —“Interim TIF Payment Date” means the date upon which the Interim Project Improvements and completion of the theater (as identified on Exhibit H) have occurred.~~

(aa) ~~(bb)~~ “Macy’s” means ~~Sun Town Center Properties Corporation~~200 Washington, LLC, and any successor-in-interest; Macy’s owns the Macy’s Parcel.

(bb) ~~(ee)~~ “Macy’s Parcel” means the parcel in the STC designated as the Macy’s Parcel on the Subdivision Map.

(cc) ~~(dd)~~ “Macy’s Private Improvements” is defined in Section 3.01 below.

~~(ee) —“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 Parcels.~~

~~(dd)~~ ~~(ff)~~ “Minimum Project” means that certain portion of the Project described on Exhibit B. ~~(gg)~~ “Minimum Project TIF Date” means the date on which the following have occurred: ~~(i) Completion of no less than 150,000 square feet of the retail portion of the Project, as evidenced by final City building permit and inspection, and evidence of execution of leases with retail tenants for said 150,000 square feet providing for tenant’s construction of tenant improvements and (ii) completion of the Redwood Plaza Area (referred to as “Redwood Square” in the City Approvals) as the “Minimum Project” in Section 5.02.~~

~~(hh)~~ “Minimum Public Improvements” means the improvements which are part of the Minimum Project and are set forth on Exhibit B.

(ee) “Notice” is defined in Section 10.06 below.

(ff) “Order” is defined Recital E.

(gg) ~~(ii)~~ “OREA” means the Operation and Reciprocal Easement Agreement dated October 28, 2008 which is recorded in the Official Records of Santa Clara County as follows: Inst. 20033381, recorded October 30, 2008, as amended and supplemented from time to time.

(hh) “Parking Entity” is defined in Section 6.01 below.

(i i) “Parties” is defined in the Introductory Paragraph of this Agreement.

(j j) “Penney’s Structure” means the parking structure located on Block 5, as shown on the Subdivision Map.

(k k) “Penney’s Structure Agreement” means the Operation and Maintenance Agreement dated May 13, 2000 as amended by the Penney’s Structure Amendment executed September 28, 2007 by the AgencyCity and Developer and recorded ~~at the time of the Closing and~~ October 7, 2007 as document number 19602169 extending the term of the Penney’s Structure Agreement so that it is coterminous with the seventy-five (75) year term of the Public Parking Ground Lease, as it may be extended and/or amended from time to time.

(l l) “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.~~

(m m) “Private Improvements Parcels” means those parcels owned by Developer.

(n n) “Project” means the improvements Developer has constructed, that are under construction or to be constructed pursuant to this Agreement on the Private Improvements ~~Parcel~~ Parcels and the Public Improvements ~~Parcel~~ Parcels consisting of the

Private Improvements and the Public Improvements and described ~~on Exhibits C and D in Exhibit B, together will all public improvements required by the City Approvals;~~ the Project is described in Section 3.01 below, and as may be modified pursuant to Section 3.02 below.

~~(oo) —“Project Tax Increment” is defined in Section 8.02 below.~~

(oo) ~~(pp)~~ “Public Improvements” means the elements of the Project constructed, under construction or to be constructed pursuant to City Approvals 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 Sunnyside Town Center as well as the public utility facilities located on the Public ~~Improvement~~Improvements Parcels and Private ~~Improvement~~Improvements Parcels pursuant to easements for those facilities; ~~the Public Improvements are described in the Subdivision Agreement, the Infrastructure Improvement Agreement and Exhibit D.~~

(pp) ~~(qq)~~ “Public Improvements Parcels” means the Public Street Parcels and the Public Parking Parcels.

(qq) ~~(rr)~~ “Public Parking Easement” means the easement the Agency granted 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 Attachment 1.

(rr) ~~(ss)~~ “Public Parking Ground Lease” means the Public Parking Ground Lease and First ~~Amendment and Second Amendments~~ thereto attached to this Agreement as Attachment 2, pursuant to ~~Which the~~which Developer leases and will operate, maintain, insure, repair and replace the Public Parking Structures (other than the Penney’s Structure) for a term of ~~seventy five (75)~~ninety-nine (99) years, as it may be extended and/or amended from time to time.

(ss) ~~(tt)~~ “Public Parking Maintenance Agreement” means the agreement attached to ~~this Agreement~~the 2010 ADDOPA as Exhibit I.

(tt) ~~(uu)~~ “Public Parking Parcels” means those parcels owned by the Successor Agency and on which the Public Parking Structures are constructed, under construction or to be constructed; the Public Parking Parcels are or will be developed with the Public Parking Structures in the Project but specifically exclude the Air Space Parcels and the Air Space Condominium Lots.

~~(vv) —“Public Parking Purchase Price” means the purchase price for the City’s purchase of Public Parking Structures, as determined pursuant to Section 8.06 below.~~

(uu) ~~(ww)~~ “Public Parking Structures” means the Penney’s Structure, Parking Facility A and Parking Facility B and the ~~other public parking to to-be~~ constructed pursuant to this Agreement. Parking Facility C located within Block 6. The Public Parking Structures (other than the Penney’s Structure) 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 and are subject to the Public Parking Easement. If Developer elects to construct Parking Facility C, Developer shall bear the full cost of construction.

(vv) ~~(xx)~~ “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~~Improvements Parcels and Private ~~Improvement~~Improvements Parcels pursuant to easements for those facilities.

(ww) ~~(yy)~~ “Public Street and Utility Maintenance Agreement” means the Public Street and Utility Maintenance Agreement and First Amendment thereto attached to this Agreement as Attachment 3, 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 OREA.~~

(xx) ~~(zz)~~ “Public Street Parcels” means the property designated as “Lot A” on the Subdivision Map.

(yy) ~~(aaa)~~ “Reconveyance ~~Parcel~~Parcels” 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.

(zz) “Redevelopment Dissolution Law” is defined in Recital K.

(aaa) ~~(bbb)~~ “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.

(bbb) “Redwood Plaza Area” is defined in Section 10.06 below.

(ccc) “Redwood Plaza Use Conditions” is defined in Section 10.06 below.

(ddd) “Redwood Square” is defined in Section 10.06 below.

(eee) ~~(eee)~~ “Related Documents” means all documents necessary to implement the Project, including without limitation the OREA (aka the “New REA”) (and the related Development Agreement), the ~~Operation and Easement~~Agreement, Infrastructure Improvements Agreement, the Public Parking Ground Lease, the Public Parking Easement, ~~the~~ Public Street and- Utility Maintenance Agreement, ~~Penny~~the Penney’s Structure Agreement, ~~the~~ Public Parking Maintenance Agreement, Integrated Project Agreement, ~~the~~ City Approvals, ~~the~~ Subdivision Agreement, ~~the~~ Below Market Rate Developer Agreement — Ownership, Covenant for Easement, and Amended and Restated Covenant for Easement and the building permits, as such agreements may be amended from time to time.

(fff) ~~(ddd)~~ “Residential Developer” or “Residential Developers” means Developer or an entity to ~~whom the~~which Developer assigns the rights to develop the residential units in the Project, provided such assignment is permitted in accordance with Section 3.10 below.

(ggg) ~~(eee)~~ “Revised Developer Work” has the meaning given in the Infrastructure Improvement Agreement. “Retail” includes all “retail/commercial” uses authorized by the City Approvals, including, without limitation, restaurants, residential leasing offices and other ground floor retail/commercial uses incidental to and in combination with residential uses.

(hhh) “Security Financing Interest” is defined in Section 11.01 below.

(iii) ~~(fff)~~ “Secured Assessed Value” means, for a particular fiscal year, the assessed value of the STC 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. “Subdivision Agreement” means the Subdivision Agreement by and between the City and Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company, made and entered into on September 28, 2007, as it may be amended from time to time.

(jjj) ~~(ggg)~~ “Subdivision Map” means ~~the~~on final Tract Map No. 9925 recorded on October 1, 2007, Tract Map No. 10007 recorded October 29, 2008, and that certain Lot Line Adjustment recorded on October 30, 2008 in the Official Records of Santa Clara County, California.

(kkk) “Successor Agency” means the Successor Agency to the Sunnyvale Redevelopment Agency, a public body, corporate and politic, formed by operation of the Redevelopment Dissolution Law, and any and all successors in interest thereto.

(lll) ~~(hhh)~~ “Sunnyvale Town Center” or “STC” means all the property as shown on the Subdivision Map and Exhibit A including the Macy’s Parcel and the Target Parcel.

(mmm) ~~(iii)~~ “Target” means Target Stores, Inc., and any successor-in-interest; Target owns the Target Parcel.

(nnn) ~~(jjj)~~ “Target Parcel” means the parcel in the STC designated as the Target Parcel on the Subdivision Map.

~~(kkk)~~ “Target Private Improvements” is defined in Section 3.01 below.

(ooo) ~~(HH)~~ “Target Store” is defined in Section 3.01 below.

(ppp) ~~(mmm)~~ “Tax Increment” means the taxes paid to and received by the Agency and Successor Agency pursuant to California Health and Safety Code Section 33670.

(qqq) “Third Party Environmental Cleanup Costs” is defined in Section 4.04 below.

(rrr) ~~(nnn)~~ “Transfer”/“Transferred” is defined in Section 6.01 below.

(sss) ~~(ooo)~~ “2010 Modification Agreement” is defined in Recital F.

#### 1. 02 Exhibits.

The following exhibits are attached to this Agreement and incorporated ~~in~~herein. All Exhibits may be amended from time to time, without amending this Agreement.

- Exhibit A Map Showing Sunnyvale Town= Center Property
- Exhibit B Construction Schedule for Minimum Project~~Description~~  
Attachment
- Exhibit B-1 Minimum Project Map  
AttachmentPublic Improvements
- Exhibit B-2 Project Map of Minimum Project ~~Map~~
- Exhibit C Subdivision AgreementRESERVED
- Exhibit D City Permits and ApprovalsRESERVED
- Exhibit E Memorandum of Agreement
- Exhibit F City/Agency Payment AgreementRESERVED
- Exhibit G Fee and Charges EstimateRESERVED
- Exhibit H Minimum Project Schedule for Commencement and Completion of  
ConstructionMilestone Dates
- Exhibit I PublicRESERVED
- Exhibit J RESERVED
- Exhibit K Form of Modified and Restated Covenant to Convey
- Exhibit L Form of Block 5 Parking ~~Maintenance~~Structure Easement Agreement

The following Attachments are attached to this Agreement for reference purposes:

- Attachment 1 Public Parking Easement
- Attachment 2 Public Parking Ground Lease and First Amendmentand Second  
Amendments
- Attachment 3 Public Street and Utility Maintenance Agreement ~~and First Amendment~~
- Attachment 4 Penney’s Structure Agreement and First Amendment

ARTICLE 2.  
PROPERTY ACTIVITIES

2.01 Effective Date.

~~This Agreement is effective on May 14, 2010.~~ At On or before the Effective Date, Developer shall pay or cause to be paid all property taxes and special taxes due or owing on the Project property as of the Effective Date.

~~2.02 — Assumption of Parking Structure Obligations.~~

~~Developer has assumed all obligations under the Penney's Structure Agreement. The Penney's Structure Agreement pertains to Block 5, Lot 2, as shown on the Subdivision Map, and the parking structures on that parcel.~~

ARTICLE 3.  
DEVELOPER DEVELOPMENT ACTIVITIES

3.01 Description of the Proposed Project.

~~The~~ Developer desires to construct (to the extent not already constructed) the Project consisting of a new mixed-use development:

(a) The Private Improvements, which include:

(1) approximately 634,000 square feet of buildings for ~~retail~~ Retail use, (including the theater), but excluding the building on the Macy's Parcel and the Target Store. Retail space in Buildings A and C may be either relocated, used for office space, or satisfied by any use which activates the pedestrian experience.;

(2) approximately 315,000 square feet of buildings for office use.;

(3) approximately 292 ~~for sale~~ residential units ~~mapped for condominiums~~, which may be for-sale or for-rent as determined by Developer, consistent with the City Approvals;

(4) private surface and structured parking as required by the City Approvals, of which approximately ~~1112~~ 1,112 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, the Redwood Plaza Area, loading areas and driveways. and

(6) a hotel of approximately 150,000 square feet composed of approximately 200 rooms.

(b) The Public Improvements, which include:

(1) three ~~new public structures~~ Public Parking 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 5,471 cars (which includes the ~~1121,112~~ underground spaces) based on the current proposed ~~project~~ Project. The exact parking count will be established by the ~~Special Development Permit~~ City Approvals based on a City-approved professional traffic study;

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

and

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

The Project is ~~set forth on Exhibit B and is~~ subject to compliance with the City Approvals ~~as set forth on Exhibits C and D~~. Notwithstanding ~~the foregoing, the~~ [any other provision of this Agreement,] Developer's sole construction obligation is to develop and construct the Minimum Project ~~pursuant to this Agreement as defined in Section 5.02 and Exhibit B~~.

Visual depictions of the Project in Exhibit A and Exhibit B-2 are intended for general reference and are not intended to, and do not, depict all individual access points, loading areas or layouts of the Public Improvements and Private Improvements. Accordingly, these visual depictions shall not be used to determine the Project's compliance, or lack thereof, with the terms and requirements of this Agreement. Instead, these Exhibits reflect a reasonable, but conceptual, scenario of how buildout of the Project will occur. Actual development will be governed by the requirements of the City Approvals.

(c) In addition to the Project, third parties desire to undertake or have undertaken projects on the Target Parcel and Macy's Parcel, which include:

(1) Target Private Development.

The Target Store consisting of approximately 181,000 square feet of building for ~~retail~~ Retail use and private, at-grade parking below the ~~retail~~ Retail building for approximately 337 cars, none of which shall be in tandem configuration.

(2) Macy's Private Development.

Macy's may, at its discretion, construct facade 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 special development permits, ~~the Subdivision Agreement~~ and other City permits and approvals necessary to construct the Project ~~which are described in the attached Exhibits C and D. Developer shall pay all unpaid and due remaining fees and charges imposed by the City in connection with the City Approvals. The attached Exhibit G is a complete list which describes the City fees and contains an estimate of the~~

~~amount of the fees. For the Project as estimated on February 6, 2007, and all such fees for the portion of the Project for which building permits have been issued have been paid. The Agency does not warrant that the actual fees charged will be as set forth in that exhibit., provided that nothing herein shall be deemed to limit the City's ability to approve modifications to the City Approvals, upon application from Developer.~~

~~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%) require a specified percentage of the housing built in the Project be affordable to persons whose income is at or below the moderate income level in accordance with an Affordable Housing Developer Agreement to be entered into between Developer and the City; (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. The parties also agree to negotiate in good faith to seek to achieve modifications to the timing of the obligation to provide below market units, if feasible and practicable, and in all events subject to the City's affordable housing ordinance in effect as of the Effective Date.~~

~~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.

The real estate structure of the Project is as follows:

(a) Macy's owns the Macy's Parcel and Target owns the Target Parcel.

(b) Developer owns the Private Improvements Parcels and any improvements thereon. Developer's Private ~~Improvement~~Improvements Parcels include the 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~~Retail and/or office uses.

(c) The Successor Agency owns the Penney's Structure parcel and leases the Penney's Structure Parcel to the City. Developer will operate the improvements thereon pursuant to the Penney's Structure Agreement. Nothing in this Agreement shall be construed to prohibit Developer from leasing the improvements thereon from the City.

~~(d) (e) The Agency owns 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~~The Successor Agency owns the other Public Parking Parcels.

(e) The Successor Agency leases those other Public Parking Parcels to Developer pursuant to the Public Parking Ground Lease attached hereto as Attachment 2. The Public Parking Ground Lease is subject to the Public Parking Easement for public parking that the Agency granted to the City over the Public Parking Parcels.

(f) The Public Parking Ground Lease provides 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.~~In addition, the Parties intend to negotiate an easement providing for access to, and maintenance of, the central plant located on the roof of Parking Structure B. Upon the end of the term of the Public Parking Ground Lease (as it may be extended or amended from time to time), the parking improvements will become the property of the Successor Agency or its successor-in-interest or, at the request of the Successor 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 8.05 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 D) with the Developer providing for Developer to operate and maintain the Public Parking Structures.~~Developer.

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

(h) The Public Street Parcels and the Public Street and Utility Improvements ~~will be~~are owned by the Agency~~City~~; ~~the~~ Developer has or will construct the Public Street and Utility Improvements and operate them pursuant to the Public Street and Utility Maintenance Agreement attached hereto as Attachment 3.

Prior to approval of this Agreement, the Subdivision Map creating the Public ~~Improvement~~Improvements Parcels and the Private ~~Improvement~~Improvements Parcels was recorded.

### 3.04 Condominium Map and Reconveyance Parcels.

In addition to the Air Space Parcels designated on the Subdivision Map, the Successor Agency and Developer may elect to implement the Project through the creation 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~~Improvements Parcels (the "Reconveyance Parcels"). If the Successor Agency and Developer pursue this option, a Condominium

~~Map~~condominium map shall be submitted and approved and reconveyance of the Reconveyance Parcels to Developer shall occur at a 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. The Successor Agency and Developer agree that Developer shall manage the condominium process and bear all expenses therefore.

### 3. 05 City Approvals and Construction Plans.

~~The~~ Developer shall follow the approved Construction Plans and the City Approvals for the construction of the Project, ~~except as amendments to those~~ City Approvals and/or Construction Plans may be approved by the City and amended from time to time.

### 3. 06 Building Permits.

~~The~~ Developer shall diligently pursue and obtain the building permits for construction of the Minimum Project as and when required in accordance with this Agreement. The applications for building permits ~~shall be consistent with and incorporate the approved Construction Plans and~~ shall be consistent with the City Approvals 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. ~~The City shall extend the City Approvals and building permits until construction commences and thereafter subject to construction pursuant to the construction schedule, unless the Agency or Developer exercises a right of termination of this Agreement~~ This Agreement may be terminated at the written election of Developer upon Completion of the Minimum Project; provided, however, Developer's obligation to bear the costs of constructing Parking Facility C on Block 6 if Developer elects to commence construction of Parking Facility C shall survive termination.

### 3. 07 Other Permits and Approvals.

At the time Developer applies to the City for building permits, Developer shall also apply for, and diligently seek to obtain, any other City or other governmental or utility permits or approvals necessary to construct the portion of the Project for ~~with which the permit is sought including but not limited to~~ permits are sought, such as, by way of example, demolition permits and encroachment permits.

### 3. 08 Evidence of Financing.

No construction shall commence absent reasonable evidence of adequate financing, subject to the Successor Agency's reasonable approval, to complete construction of the building in question and required related infrastructure, except as provided with respect to the theater.

Such evidence shall include one or more of 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 cost of completing the Project or portion of the Project for which financing is required.

(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 portion of 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 applicable Project cash flows.

The Successor Agency Executive Director shall review the evidence of financing and approve or disapprove it in writing within fifteen (15) days following receipt. The Successor Agency shall approve the evidence of financing if it indicates that Developer will have sufficient funds to construct the portion of the Project and pay for the costs ~~therefore~~therefor when due. If the Successor 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 Successor Agency shall approve or disapprove the revised evidence of financing within fifteen (15) days following receipt.

Notwithstanding anything to the contrary provided herein, the requirements of this section shall be deemed conclusively satisfied by a written statement by Developer that construction will be performed using one hundred percent (100%) equity financing (“Equity Funding Certification”) such that no construction financing will be required to complete the construction for which the Equity Funding Certification was issued and that Developer, or a Developer’s Affiliate, has and will maintain during construction and until Completion of the applicable portion of the Project a net worth of at least \$1 billion.

Developer and the Successor Agency shall cooperate to retain financial information submitted by Developer as confidential to the extent permitted by law. These steps shall include, but are not limited to the following: Developer shall identify with specificity any submitted financial documents (including loan and equity financing documents) which Developer wants the Successor Agency to maintain as confidential documents and a statement as to why the request is consistent and complies with the provisions of the California Public Records Act. The Successor Agency shall not disseminate such information and shall take all reasonable steps to maintain such confidentiality unless otherwise required by law. In the event that the Successor Agency obtains a request pursuant to the provisions of the California Public Records Act to disclose any of Developer’s information which the Successor Agency is required to keep confidential pursuant to the terms of this Agreement, the Successor Agency shall provide Developer with prompt written notice thereof and, subject to the time periods imposed by the California Public Records Act for responses to public record requests, shall give Developer a reasonable opportunity to interpose an objection or to seek a protective order, subject to the time limitations. The Parties shall also cooperate with each other and use reasonable efforts to promptly identify any applicable exemptions from disclosure under the California Public Records Act. If a legal action is filed against the Successor Agency seeking to compel disclosure of any information the Successor

Agency is required to keep confidential, the Successor Agency shall give prompt notice of the filing of such action to Developer and Developer shall defend and indemnify the Successor Agency and the City from all costs and expenses of such defense, including reasonable attorneys' fees of the Successor Agency and the City or attorneys' fees awarded by a court arising out of such action unless Developer waives its right to require that the information be kept confidential.

### 3. 09 Evidence of Construction Contract.

At the time ~~the~~ Developer obtains building permits for the applicable portion of the Project, ~~#Developer~~ shall submit to the Successor Agency an executed contract or contracts with reputable contractors for construction of the applicable portion of the Project at a cost consistent with the applicable cash flows approved by the Successor 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. The Successor Agency's review shall be limited to determining if the contract has the provisions required by ~~Section~~Sections 5.06 and 5.07 below and that the contract amount is consistent with the applicable Project cash flows.

At the time Developer obtains building permits for any portion of the Project, Developer shall deliver to the Successor 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 Successor Agency and the City as co-~~obligee~~obligees.

### 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 one or more~~ Developer's Affiliates. The Successor Agency hereby approves such assignment(s), provided that such assignment(s) shall be effective upon receipt by the Successor 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, including the obligations under the Affordable Housing Developer Agreement with the City. Thereafter, Developer shall promptly notify the Successor Agency of any and all changes whatsoever in the identity of the managing member or general partner of Developer's Affiliate to which the residential portion of the Project is assigned, 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 that~~ is not ~~controlled by a~~ Developer's Affiliate, ~~the~~ Developer shall submit to the Successor 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, including the development and operation of the below-market rate units consistent with the City Approvals. Any transferee approved by the Successor Agency pursuant to Section 6.01(b) of the 2010 ADDOPA or this Agreement shall be conclusively deemed to satisfy the requirements of this Section 3.10, without regard to whether such approval was given prior to the Effective Date of this Agreement. The assignment of the obligations to develop the residential portions of the Project to a substitute Residential Developer shall not be effective until such time as Developer submits to the Successor Agency Executive Director an assignment agreement whereby the substitute Residential Developer assumes all of the obligations set forth in this Agreement related to the applicable residential portion of the Project.

(c) Developer shall be entitled to separate written notice from the Successor Agency of any default of the 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 the Residential Developer.

### 3. 11 Submissions for Less Than Entire Project.

Developer may construct the Project in phases pursuant to the Construction Schedule. If applicable, Developer shall submit to the Successor Agency, in writing, a description of the phasing plan at the time it determines to proceed with the Project beyond the Minimum Project.

The submissions pursuant to Section 3.05 through Section 3.09 of the 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 commencing 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 constructing improvements on the Private ~~Improvement~~ Improvements Parcels in phases, provided Developer first obtains all City Approvals and all other governmental approvals and any other approvals ~~required under the OREA, or other agreement~~ necessary.

### 3. 12 Leasing Plan and Local Businesses.

(a) Developer shall prepare a leasing plan for leasing of the ~~retail~~ Retail space in the Project and submit the plan to the Successor Agency Executive Director for review and comment ~~no later than December 31, 2010~~ for the Retail space within Buildings D, E, F, N and T no later than the date set forth in the Construction Schedule (Exhibit B). The leasing plan shall include a description of the following:

(1) physical conditions and constraints that affect the potential Retail  
uses;

(2) anticipated mix, quantity and location of Retail (including restaurants and entertainment uses), including definition of retail districts if applicable;

(3) proposed phasing plan or strategy for leasing Retail (including restaurants and entertainment space), including the retail districts;

(4) anticipated quality and types of Retail establishments that will be emphasized and prioritized, particularly merchandise stores; and

(5) types or categories of Retail uses that will be excluded.

The goal of the leasing plan is to create a First Class Facility that offers a successful blend of high quality Retail (including restaurant and entertainment) establishments. The leasing plan shall strive to create a distinctive identity for downtown Sunnyvale. The leasing plan shall consider existing businesses throughout downtown as if the entire downtown were included in the leasing plan, but shall not be required to name specific tenant / prospective tenant identities. 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. For the purpose of calculating the square footage of restaurants in the leasing plan, restaurants shall include fast food restaurants, but shall exclude enclosed food court uses and “snack bars” within major department stores and any and all of the following uses if located within a grocery / supermarket: bakeries, brew pubs, coffee bars and juice bars, cafes and/or delicatessens or sit down-style restaurants, including the cooking required therefor.

The Successor Agency Executive Director shall review the leasing plan and provide comments to Developer in writing within fifteen (15) days following receipt. Developer agrees to meet with the Successor Agency Executive Director and staff to discuss the Successor Agency comments and to determine if changes to the leasing plan to address the Successor Agency comments are appropriate.

(b) Developer acknowledges that leasing some of the ~~retail~~Retail space in the Project to ~~independently owned local~~ businesses with a regional presence will help to create a distinct 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 in downtown Sunnyvale. Developer shall include provisions for ~~local independently owned~~regional businesses in the leasing plan submitted to the Successor 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.~~

Developer shall exercise continuing commercially reasonable efforts to facilitate the completion and opening of the Minimum Project. In order to allow the Successor Agency to enforce this obligation, Developer shall provide to the Successor Agency reports concerning the status of Developer’s ~~process~~progress with respect to leasing efforts, financing commitments

and construction progress, and including in such report a copy of the ~~project~~Project's merchandising plan. Such reporting shall be provided quarterly to the Successor Agency Executive Director. The Successor Agency agrees to keep proprietary financial, leasing or similar information designated as such confidential to the extent allowed by the California Public Records Act. The Successor Agency's obligation to keep the information provided by Developer confidential shall be subject to the provisions contained in Section 3.08 related to the California Public Records Act and Developer's obligation to defend and indemnify the Successor Agency and the City. Developer shall not be obligated to provide any information that would, in Developer's reasonable business judgment, harm its leasing efforts, including, without limitation, providing the names of prospective tenants or other sensitive financial information.

Commencing with the ~~effective date~~Effective Date of this Agreement, Developer shall undertake diligent efforts to obtain a theater lease and operation commitment with a goal of executing such lease ~~by October 31, 2010,~~within twelve (12) months of the Effective Date, and, if so executed, Developer will commence and complete theater construction in accordance with the schedule set forth ~~on~~in Exhibit HB unless Developer demonstrates to the Successor Agency's reasonable satisfaction that there is no economically viable lease, ground lease or sale transaction for the timely development of a theater ~~(including, as applicable, that the existing theater lease cannot be modified)~~. The ~~parties~~Parties acknowledge that both desire to achieve commencement and completion of the theater building as soon as reasonably possible and, as such, will work together to advance the foregoing dates.

#### ARTICLE 4.

#### PROPERTY TRANSACTIONS AND ENVIRONMENTAL REMEDIATION

##### 4.01 Sale and Purchase.

Developer completed the required property transactions and closings required by ARDDOPA Sections 4.01 and 4.04.

##### 4.02 Conveyances.

All conveyances required by ARDDOPA Section 4.05 have been completed.

##### 4.03 Other Closing Documents.

The Agency and DSMU completed and recorded, as required, all closing documents pursuant to Section 4.06 of the ARDDOPA, as listed below. These documents continue to control the use of the Project.

(a) Public Parking Ground Lease attached for reference as Attachment 2.

(b) Public Streets and Utility Maintenance Agreement attached for reference as Attachment 3.

(c) OREA.

(d) Public Parking Easement attached for- reference as Attachment 1.

~~(e) City/Agency Payment Agreement attached as Exhibit F.~~

(e) ~~(f)~~ Penney's Structure Agreement attached for reference as Attachment 4.

(f) ~~(g) The~~ Covenant of Easements pursuant to the provisions of Government Code Sections 65870-65875 in order to provide public utility easements to the City, recorded October 30, 2008, Santa Clara County Recorder.

4. 04 Condition of Property; Investigation and Remediation of Hazardous Materials.

(a) Condition of the Property. Except as specified in this Section ~~4.04~~ below, 4.04, 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 ("Environmental Work"), as of the ~~Effective Date~~ effective date of the ARDDOPA.

(b) Duty of Cooperation in Investigation and Remediation of Hazardous Materials. After the ~~Effective Date~~ effective date of the ARDDOPA, Developer and the Successor Agency shall both have a material duty to cooperate and pursue a unified position, to the extent reasonably feasible, with respect to the Environmental Work, 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, litigation, 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, Developer and its environmental consultants shall have lead responsibility for undertaking items (i) through (iv) above, but shall consult with the Successor Agency and its environmental consultants on a timely basis with respect to all material issues associated with the Environmental Work. Such consultation shall include timely requests for, and consideration of, comments and revisions to any draft or proposed investigation work plans, costs of such plans, investigation reports or remedial action plans that are to be submitted to Environmental Oversight Agencies.

Except for any subrogation claim that may be brought on behalf of the Successor Agency, Developer, or their consultants, the Successor Agency shall have sole responsibility for undertaking item (v) above, which shall be at the Successor Agency's sole and absolute discretion. The Successor Agency shall provide reasonable advance notice to Developer of its plans to undertake a cost recovery action pursuant to item (v) above, and if the Successor Agency obtains approval from Developer of the Successor Agency's plans to undertake a cost recovery action prior to undertaking such cost recovery action pursuant to item (v) above, all reasonable legal costs, including attorneys' fees and costs, associated with that action shall be deemed Environmental Costs pursuant to Section 4.04(c) below. If Developer does not approve the Successor Agency's plans to undertake such cost recovery action, the Successor Agency shall have sole responsibility for all legal costs, including attorneys' fees and costs, associated with the action. Developer acknowledges that ~~the Agency has~~ initiated cost recovery actions against third parties prior to the Effective Date of this Agreement and that ~~the Agency has had~~ sole responsibility for the prosecution of those actions, and that ~~Agency Developer was and is solely not~~ entitled to any ~~and all~~ environmental cost recovery obtained as a result of those actions except as provided in this Agreement.

If, following reasonable discussion, ~~the~~ Developer and the Successor Agency cannot present a unified position to an Environmental Oversight Agency with respect to any issue concerning the Environmental Work, ~~the~~ Developer and the Successor 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 the Successor Agency agree to utilize the dispute resolution procedures set forth in ~~this~~ Section 4.04(d) below to resolve such dispute.

An oversight agreement has been entered into with an Environmental Oversight Agency, and the Successor Agency, as the successor to the Agency, has been 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 4.04(c) below. From and after the Successor Agency's conveyance of Lots 1, 3 and 4 of Block 6 Developer shall have the right, but not the obligation, to enter into a new oversight agreement with the Environmental Oversight Agency that supersedes or modifies, in whole or in part, the existing oversight agreement referenced in this paragraph with respect to Lots 1, 3 and 4 of Block 6. From and after the Successor Agency's conveyance, if any, of Lot 2 of Block 5 to Developer, Developer shall have

the right, but not the obligation, to enter into an oversight agreement with the Environmental Oversight Agency that supersedes or modifies, in whole or in part, the existing oversight agreement referenced in this paragraph with respect to Lot 2 of Block 5.

The Successor Agency and Developer shall cooperate in any efforts by either party to seek and obtain suitable Hazardous Materials liability protections and/or other assurances from an Environmental Oversight Agency, except that Developer shall not be required to agree to any voluntary regulatory activity or program proposed or requested by the Successor Agency (including, without limitation, proceeding under the Polanco Redevelopment Act, California Health and Safety Code Sections ~~33459~~33459, et seq., or the Site Designation Program, California Health and Safety Code Sections ~~25260~~25260, et seq.) if Developer, in its sole discretion, determines that such activity or program will not meet its needs for the Project.

Developer shall cause its consultants and contractors performing subsurface remedial portions of the Environmental Work to obtain and maintain contractor's pollution liability insurance policy with a limit of at least ten million dollars (\$10,000,000) (per occurrence/aggregate), which shall name the Successor Agency and the City as additional insureds and shall not contain exclusions for contaminants that are specific to the PropertyProject property or are the subject of the Environmental Work.

(c) Successor Agency Responsibility for Certain Investigation and Remediation Costs. Notwithstanding the foregoing, the Successor Agency shall be responsible for paying a certain portion of the Environmental Costs, as defined herein. "Environmental Costs" means any and all commercially reasonable costs incurred by Developer and the Successor Agency, following October 5, 2009, with respect to Environmental Work conducted in material compliance with the duty of cooperation specified in Section 4.04(b) above, and 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 Successor Agency and Developer.

(i) Environmental Costs shall include, without limitation:

- (A) ~~all~~ oversight fees charged by an Environmental Oversight Agency; •
- (B) ~~all~~ hazardous waste generator fees or taxes imposed by statute, regulation, or policy;
- (C) hazardous waste transportation and disposal costs;
- (D) fees and related costs charged by Developer's and the Successor Agency's environmental consultants, attorneys, and their respective agents, including, without limitation, costs of investigation of potential contributors to the Hazardous Materials on, under or emanating from the Public Improvements Parcels and Private Improvements Parcels;

(E) costs to install, operate and maintain soil, soil vapor and groundwater remedial systems, 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);

(F) costs associated with abandonment, closure or removal of groundwater monitoring wells and remedial facilities, except to the extent otherwise provided in this Agreement; and

(G) costs associated with Claims (as defined in subsection 7.04(a) below of the 2010 ADDOPA) threatened or asserted by third parties against Developer, the Successor Agency, the City, or any of them, concerning the 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, including litigation costs, civil penalties, damages awards, or settlement amounts (“Third Party Environmental Cleanup Costs”), provided, however, in the event such Claims are brought against only Developer, or alternatively, against only the Successor Agency and/or the City, then the costs associated with such Claims shall be deemed to be Third Party Environmental Cleanup Costs only if: (A) notification of such Claims is promptly provided by the party(ies) that received the asserted or threatened Claims to the other party(ies) that did not receive such asserted or threatened Claims, pursuant to Section 12.01 of this Agreement, at the time of receipt, service, and/or knowledge of the Claim at issue, and (B) the parties enter into a written agreement that addresses the parties’ respective rights with regard to the defense and settlement of such Claims. Third Party Environmental Cleanup Costs shall not include costs associated with Claims threatened or asserted by third parties concerning any property damage, personal or bodily injury (including death), natural resource damages, diminution in property value, or any toxic tort claim resulting from 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.

(i i) Environmental Costs shall not include:

(A) costs of Developer’s, the City’s, or the Successor Agency’s employee time;

(B) costs and expenses arising from damage to, or destruction of, any improvements on the Public Improvements Parcels and Private Improvements Parcels caused by Developer’s negligent performance of the Environmental Work; Developer shall repair or replace, at its sole cost and expense, such damaged or destroyed improvements, thereby returning those improvements to their original condition;

(C) costs associated with asbestos and urea formaldehyde foam insulation present solely in aboveground structures; or

(D) costs associated with the environmental investigation occurring prior to February 7, 2007, including costs incurred thereafter resulting from

abandonment, closure, maintenance, removal, or destruction of permanent or temporary groundwater monitoring wells installed as part of that 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.

(iii) ~~As~~Except as provided in subsection (iv) below, as of October 5, 2009, the Successor Agency shall be responsible for paying fifty ~~(50)~~ percent (50%) of the Environmental Costs incurred by Developer and the Successor Agency.

(iv) At such time as the Developer accepts conveyance of the Successor Agency's property in Block 6, the Successor Agency shall no longer be responsible for paying its share of Environmental Costs arising from and after said date for Environmental Work that is applicable to Block 6 only, and Developer's share of Environmental Costs arising from and after said date shall be one hundred percent (100%) for Environmental Work that is applicable to Block 6 only.

Following development of a draft remedial action plan or equivalent document for the site, the Successor Agency and Developer shall cooperate in identifying and negotiating with appropriate insurance underwriters, using an insurance broker of Developer's sole choice, to determine whether it is feasible and economically practical to obtain a cleanup cost cap, remediation stop loss, or other comparable environmental insurance policy that would provide coverage for any or all Environmental Costs. The Successor Agency and Developer shall each decide, in its sole and absolute discretion, whether to jointly obtain such an insurance policy. If the Successor Agency and Developer agree to obtain such a policy jointly, the Successor Agency shall be responsible for payment of 50 percent (50%) of the premium and other costs to obtain such policy, and Developer shall be responsible for payment of 50 percent (50%) of the premium and other costs to obtain such policy. If the parties do not agree to obtain such a joint policy for any reason, or in the event such a policy is obtained and any Environmental Costs are not covered by such policy, the 50-50 allocation shall apply to those Environmental Costs. Nothing in this Agreement shall preclude either the Successor Agency or Developer from obtaining, in its sole discretion and at its sole cost, a cleanup cost cap, remediation stop loss, or other comparable environmental insurance policy that would provide coverage for any or all Environmental Costs.

Unless a different schedule is agreed upon, on a monthly basis the Successor Agency and Developer shall provide one another with invoices and supporting documentation for all Environmental Costs incurred by each party, and, on a quarterly basis, Developer shall prepare and submit to the Successor Agency an itemized assessment of all such costs incurred by the Successor Agency and ~~the~~ Developer. The quarterly assessment shall state the total Environmental Costs incurred by the Successor Agency and ~~the~~ Developer since the most recent quarterly summary, the portion of the total Environmental Costs allocable to each party under this ~~section~~Section 4.04(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~~Section 4.04(d) below. The Environmental Costs specified in subsections 4.04(c)(i)(A) and (c)(i)(B) above shall not be subject to dispute pursuant to this provision.

If the Successor Agency receives any recovery from any third party pursuant to subsection 4.04(b)(v) above, within ten days of receipt, the Successor Agency shall apportion and deliver the proceeds of the recovery as follows:

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

(2) ~~To~~to the extent proceeds from the third-party recovery action exceed the total legal costs of the recovery action ~~and Developer has already paid Environmental Costs in one or more Tiers~~, then the Successor Agency shall, within ten days of receipt, ~~reimburse the pay to~~ Developer ~~the appropriate percent one-half~~ of the recovery net of legal costs, ~~in accordance with the Tiers~~, up to the amount Developer has paid in Environmental Costs. To the extent that the remainder of such net recovery exceeds the amount the Successor Agency has paid in Environmental Costs, such net recovery shall be applied against future Environmental Costs incurred by the Successor Agency and Developer, with the ~~appropriate percent of such remaining excess net recovery amount~~ allocated to each ~~of the parties in accordance with the Tiers party's obligations equally~~.

The above apportionment of third-party recoveries shall only apply where the legal action generating the recovery was initiated with Developer's approval and costs of suit were shared by Developer and the Successor Agency, as provided in Section 4.04(b) above. In all other instances, the Successor Agency 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 4.04, Developer and the Successor 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 Successor Agency shall participate in a mediation presided over by a mediator ~~that who~~ is mutually acceptable to the ~~parties~~Parties. If the mediation does not resolve the dispute, Developer and the Successor Agency shall participate in an arbitration presided over by an arbitrator or panel of arbitrators that is mutually acceptable to the ~~parties~~Parties. In any mediation, Developer and the Successor 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 Successor 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 4.04 unless both Developer and the Successor Agency consent to the filing of such a lawsuit. In any arbitration or lawsuit, the prevailing ~~party~~Party shall be awarded its reasonable attorneys' fees and costs and reasonable consultants' fees and costs.

(e) Conveyance of Lots 1, 3, and 4 of Block 6. Upon the earlier of Developer's delivery of written request to the Successor Agency or October 1, 2022, the Successor Agency shall convey Lots 1, 3 and 4 of Block 6 to Developer pursuant to the Modified and Restated Covenant to Convey (a form of which is attached hereto as Exhibit K in substantially final form); provided, however, that the Successor Agency may delay the conveyance otherwise required by this subsection for the minimum period necessary to comply with the requirements of the Certificates of Participation (Parking Facility Refunding) Series 1998A and/or that certain Facilities Lease dated as of March 1, 1998 by and between the Redevelopment Agency of the City of Sunnyvale and the City of Sunnyvale, which was recorded as Instrument Number 14120789 in the official records of Santa Clara County.

In addition to the foregoing, the Parties acknowledge and agree that it is in the best interest of both Parties to meet on a regular basis to provide for the ultimate disposition of Lot 2 of Block 5 and determine the feasibility of accelerating the conveyance of Block 6 if mutually agreed to by the Successor Agency and Developer. Accordingly, the Parties hereby agree to meet no less frequently than once every six months until December 31, 2018 (unless otherwise agreed to by both Parties) in order to reach agreement as to the mutually acceptable long-term solution for the final disposition of Lot 2 of Block 5 and determine whether it is feasible to accelerate the conveyance of Lots 1, 3 and 4 of Block 6 (areas for discussion could include, by way of example only, the potential conveyance of Lot 2 of Block 5 to Developer, Developer assuming a greater portion of the Environmental Costs for Lot 2 of Block 5, Developer naming the Agency as an additional insured, and/or accelerating the conveyance of Lot 1, 3 and 4 Block 6 pursuant to a modified Environmental Cost sharing arrangement) in a manner that will further the protection of public health and safety, streamline the dissolution of the Successor Agency, and (i) reduce liabilities and (ii) increase revenues for the taxing entities. Developer shall reasonably cooperate with the Successor Agency's Executive Director in the preparation of regular reports regarding the status of such meetings. Notwithstanding anything to the contrary contained herein, neither Party shall be obligated to agree to any proposed strategy or proposal, and each Party remains free to determine, in the exercise of its own, subjective business judgment, whether to agree to any proposed strategy or proposal for the disposition of Lot 2 of Block 5.

(f) Decisions Regarding Environmental Work. Notwithstanding anything to the contrary set forth in this Section 4.04, the rights of Successor Agency to have input on, be consulted with respect to or participate in decisions regarding Environmental Work shall immediately terminate as to any Lot, Parcel or Block in which the Successor Agency no longer has a fee ownership interest and the Developer shall thereafter have sole control over any such decisions.

(g) Survival of Termination of the Agreement. Notwithstanding any other provision of this Agreement to the contrary, this Section 4.04 shall survive termination of this Agreement.

#### 4.05 Property Taxes.

Developer shall, unless paid by others, pay all property taxes including possessory interest taxes which it is obligated to pay by applicable law.

ARTICLE 5.  
CONSTRUCTION OF IMPROVEMENTS

5. 01 Commencement of Construction.

Developer, for itself, its successors and assigns, hereby covenants and agrees to restart and complete construction of the Project as follows:

5. 02 Minimum Project Commencement/ and Completion of the Improvements.

The Minimum Project shall include the following improvements per the City Approvals as further defined in Exhibit B:

(a) Ground floor Retail space consisting of approximately, i.e., within 5% of, 130,200 gross square feet in Buildings A, D, E, F and N.

(b) A multi-plex movie theater of up to 60,000 square feet within Building T and ground floor Retail space of approximately, i.e., within 5% of, 58,000 gross square feet within Building T; provided, however, if a single-story design of Building T is subsequently approved by the City pursuant to an amendment to the City Approvals, no ground floor Retail within Building T shall be required as part of the Minimum Project.

(c) Office space in Buildings A and C, which has been completed and issued a Certificate of Completion pursuant to Section 5.08.

(d) 198 residential units in Buildings D, E and F.

(e) Demolition of steel framing in Block 3 and installation of temporary Redwood Square improvements.

(f) Parking Facilities A and B and the Penney's Structure.

(g) Public Improvements as defined in Exhibit B-1.

Developer shall commence the Minimum Project at the time and in the manner set forth in Exhibit HB. Once commenced, all construction shall be diligently completed pursuant to the Construction Schedule set forth in Exhibit H. ~~The Agency and City, as applicable, will extend the City Approvals and building permits until construction commences and thereafter subject to construction pursuant to the Construction Schedule B.~~

Notwithstanding any other provision of this ~~agreement, the Agreement~~, Developers' obligation is satisfied by commencing and completing the Minimum Project in accordance with Exhibit H-B, including the Public Improvements set forth in Exhibit B-1. The development of the remainder of the Project shall be in the exercise of ~~the~~ Developer's sole discretion.

~~The following chart summarizes certain aspects of the Developer's obligation as to the specified portions of the Minimum Project. In the event of a conflict between the following and Exhibit H, Exhibit H shall control.~~

Description	Date	Conditions
Interim Project Improvements	December 1, 2010	As defined, Building D exterior.
Theater (Building T) as shown on <u>Exhibit H</u> .	Developer shall commence construction of the theater no later than July 1, 2011 unless Developer demonstrates to the reasonable satisfaction of Agency that there is no economically viable lease, ground lease or sale transaction for the timely development of a theater with this start date.	Obligation to Commence construction is conditioned upon execution of a theater lease by October 31, 2010 and acceptable construction financing to complete the theater building (including core, shell, tenant improvements and related on and offsite improvements)
Retail—Commencement of completion of Minimum Project retail (Buildings N, H, I, J and L and retail portions of A, D, E and F) as shown on <u>Exhibit H</u> .	Projected commencement date June 2011	Commencement of retail construction shall occur upon 1) executed leases for 75% of the retail square footage and 2) acceptable financing as required to complete the applicable portion of the retail project (including shell, tenant improvements and related on and offsite improvements)
Residential (Buildings D, E and F) as shown on <u>Exhibit H</u> .	Projected commencement date October 2011	Commencement of construction on the first residential building shall be 1) timed such that its completion will coincide with the grand opening of the retail space and 2) conditioned on acceptable financing for the completion and sale of the building. The remaining residential buildings shall be completed in accord with the construction schedule.
Office (Buildings A and C) as shown on <u>Exhibit H</u> .	Projected Commencement Date January 2011	Commencement date of office construction shall be not later than the date on which there are 1) executed leases for 50% of the office square footage for the applicable office building and 2) acceptable construction

		financing as required to complete the applicable building (including core, shell, tenant improvements and related on and offsite improvements)
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~~{ The right to develop the Minimum Project and remaining Project improvements described in this Agreement and } { Related Documents shall continue } to be vested during the term of this Agreement and Related Documents. The timing, construction, use, occupancy, density and intensity of use shall be as set forth in this Agreement~~ By way of emphasis, but without limitation, the provisions herein shall be subject to the provisions of Section 12.04. Developer shall not be obligated to commence construction prior to the satisfaction of the “Preconditions to Developer’s Obligation to Commence Construction” set forth in Exhibit B. Developer shall have the right, but not the obligation, to Commence construction prior to the satisfaction of the preconditions set forth therein, provided that Developer complies with all other provisions of this Agreement, including (without limitation) Section 3.08. Developer and the Successor Agency acknowledge that both desire to achieve Commencement and Completion of the Minimum Project as soon as reasonably possible and, as such, will work together to advance construction timelines. Construction of the remaining Project improvements (which are contemplated to occur after completion of the Minimum Project) shall be in Developer’s sole discretion, but in all events shall be consistent with the City Approvals; as same are they may be modified hereby from time to time.

~~[The right to develop the Minimum Project and remaining Project improvements described in this Agreement and ]the [Related Documents shall continue],~~ except as otherwise provided in the City Approvals.

### 5.03 Liquidated Damages.

Because the ~~parties~~ Parties recognize that the City and the Successor Agency would suffer loss of sales tax revenue that would be received if a ~~retail~~ Retail portion of the Project is recommenced and not completed; and that these damages would be difficult to calculate, the ~~parties~~ Parties have, therefore, agreed that, if, ~~once commenced, any retail~~ after the Effective Date of this Agreement, any Retail building in the Minimum Project ~~(or retail portion of an office or retail building)~~ is commenced or recommenced and is not Completed within the time set forth in Exhibit H, then ~~the~~ Developer shall pay to the Agency ~~the~~ City as liquidated damages and not as penalties a one-time liquidated damages payment of five million dollars (\$5,000,000). The Parties acknowledge that the City is a third-party beneficiary of this provision of the Agreement and shall have rights to enforce this provision as if the City were a party to this Agreement.

~~Unless liquidated damages have previously been paid in full to Agency, if due, 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, if any, in full to the Agency.~~

In no event shall Developer incur any liquidated damages in the event the failure to Complete 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 Complete 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 subject improvements, provided that ~~the~~ Developer has submitted to the City all documentation ordinarily needed by the City 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. If Developer gives notice of a delay pursuant to Section 12.04 on the basis of an unreasonable delay on the part of the City in issuing any permits or approvals and within ten (10) business days of receipt of such notice by the Successor Agency, the City has either (i) issued the permit or approval or (ii) provided Developer with comments on Developer's application or other submission related to the permit or approval indicating the changes that are required in the application or submission in order for the City to issue the permit or approval, no delay shall be deemed to have occurred. The actual number of days of each such noticed delay shall be cumulative and shall be added to all subsequent ~~milestones~~milestone dates.

Notwithstanding anything set forth above, the Parties agree that as of the Effective Date of this Agreement, Developer is not obligated to pay to the City any liquidated damages for actions or activities related to the 2010 ADDOPA.

#### 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, as they may be amended from time to time, and which shall be consistent with all City Approvals.~~ In constructing the Project, the ~~Successor~~ Agency and Developer acknowledge and agree that the property lines between the Macy's Parcel and the Private ~~Improvement~~Improvements Parcels and Public ~~Improvement~~Improvements 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/Completed Improvements.

(a) 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.

~~The City and Agency acknowledge that the Revised Developer Work and the Contingent Developer Work is complete except for minor punch list items, warranty items and the improvements within the areas designated as area "IL" on Exhibit A-2 to the Infrastructure Improvement Agreement. In addition, the parties~~In addition, the Parties agree to negotiate in good faith to attempt to achieve reasonable modifications to the scope ~~to~~of the Public Improvements and

other improvements remaining to be done as of the Effective Date of this Agreement (substantial Public Improvements and other improvements having been ~~completed~~Completed) including the identification of what Public Improvements and other improvements are necessary for each building or segment of the Project and to reduce fees and costs. The ~~parties~~Parties also agree that all public infrastructure (including the Public Improvements) required in connection with Buildings A and C ( as same are designated ~~on~~in Exhibit B) have been ~~completed~~Completed and all conditions in the City Approvals applicable thereto have been satisfied or waived.

(b) The ~~parties~~Parties agree, if necessary, to negotiate in good faith to attempt to achieve a mutually satisfactory solution resulting in an earlier reopening or alternative response for the Penney's Structure, including potential substitution of securities for the Penney's Structure or reopening a portion of the Penney's Structure. The ~~parties~~Parties agree to negotiate in good faith to keep the cost of any such action to the minimum necessary. This provision is without prejudice to the ~~parties~~Parties' existing rights and obligations under this Agreement and the Related Documents.

#### 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~~California 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 California Labor Code ~~Sections 1720~~Section 1720, et ~~seq.~~seq. and implementing regulations of the Department of Industrial Relations ~~and, to register and maintain such registration with the Department of Industrial Relations in accordance with Labor Code Sections 1725.5 and 1771.1, and~~ comply with the other applicable provisions of Labor Code ~~Sections 1720~~Section 1720, et ~~seq.~~seq. and implementing regulations of the Department of Industrial Relations. For the purpose of this Section 5.07, construction of the Project shall include demolition (whether undertaken before or after the ~~Closing~~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~~Section 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 Project property the applicable prevailing rates of per diem wages. Developer shall

indemnify, hold harmless and defend (with counsel reasonably acceptable to the Successor Agency) the Successor 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~~Section 1720, et seq. and implementing ~~regulation~~regulations or comply with the other applicable provisions of Labor Code ~~Sections 1720~~Section 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~~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~~U.S.C. Section 1324(a) (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 each building ~~and related improvements (and as to Buildings A and C as shown on Exhibit B for the buildings alone)~~ in the Project in accordance with those provisions of this Agreement relating solely to the obligations of Developer to Complete the construction, the Successor Agency will provide an instrument so certifying (the "Certificate of Completion"). ~~Except as provided as to Buildings A and C, { a Certificate of Completion } will not be issued until the Agency has certified completion of the related 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, as to the portion of the Project for which it is issued, 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. The issuance of [ a Certificate of Completion ] shall not be evidence of compliance with the prevailing wage requirements of California law.

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 Successor Agency has not yet issued a Certificate of Completion pursuant to this section.

#### 5. 09 Lien Free Construction.

During construction and Completion of the Project, Developer shall take such steps as are necessary to keep the Public ~~Improvement~~Improvements Parcels free of liens or other encumbrances created ~~in~~ connection with Developer's possession of the Public ~~Improvement~~Improvements Parcels and construction of the Public Improvements. If a lien or other encumbrance nevertheless attaches to the Public ~~Improvement~~Improvements Parcels, the Successor Agency may require Developer to take such steps as the Successor Agency determines are reasonably necessary to protect against such lien or encumbrance including, without limitation, requiring Developer to provide the Successor 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 Successor Agency shall not require such steps until the earlier of one hundred twenty (120) days following the date on which the lien or encumbrance attaches or the date on which 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~~Parcels during construction of the Public Improvements. Upon completion of the Public Street and Utility Improvements and issuance of the Successor Agency ~~certification of completion's~~ Certificate of Completion of the Public Street and Utility Improvements in accordance with Section 5.11 below, ~~the~~ Developer shall offer to transfer ownership of these improvements to the Agency~~City~~ 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 8.05 below.~~

#### 5. 11 Inspections and Certification of Completion of Public Improvements.

During the course of construction of the Public Improvements, ~~the~~ Developer shall permit Successor Agency and City representatives to have access to the Public Improvements ~~Parcel~~Parcels 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~~ Developer acknowledges that the Successor Agency or City may, but shall not be obligated to, notify Developer ~~who~~ of such lack of conforming with the approved Construction Plans. If such notice is provided, Developer shall correct, at Developer's sole cost, the work to make ~~the construction~~ conform to the Construction Plans. When the Public Improvements are completed, Developer shall allow the City ~~shall~~ to make a final inspection ~~and. Provided that~~ the City or Successor Agency ~~shall notify~~ notifies 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 Successor 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 Successor 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 (the "AAA"). The ~~parties~~Parties will jointly select an arbitrator within thirty (30) days of filing of the demand, and if unable to do so, the arbitrator 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~~federal, state or City building and construction codes or regulations and 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.

Immediately upon completion of the Public Improvements in accordance with the Construction Plans, the Successor Agency shall issue a Certificate of Completion.

5. 12 Support of Existing Downtown Business During Construction.

(a) Developer shall continue to implement the construction mitigation program designed to minimize the disruption to surrounding businesses and residents during construction and expedite construction of the STC and shall comply with the following mitigation program requirements pursuant to the City-approved program.:

- (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 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 Sunnyvale 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~~. Developer acknowledges that the City may provide a link from the City website to Developer's website in order 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 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 Successor 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 Requirements for Transfer.

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~~Improvements Parcels or any assignment of this Agreement or the Related Documents to any person or entity (except as otherwise expressly provided by the Related ~~Document~~Documents). Transfer also includes any voluntary or involuntary sale, transfer, conveyance, assignment or other disposition of ~~the~~any ownership interests in Developer. Except as permitted pursuant to Section 6.03, ~~the~~ Developer shall not engage in a Transfer except as to the specifically permitted following Transfers:

(a) Any Transfer resulting from a foreclosure of a Security Financing Interest or deed in lieu of foreclosure.

(b) Any Transfer to a transferee that meets the following criteria as to the use(s) of the portion(s) of the Project proposed to be Transferred: (i) has the experience in and has completed major mixed-use commercial, ~~retail~~Retail, residential projects of similar size, scope and nature involving a mix of national, regional and local tenants, (ii) has adequate financial capacity, including the references of at least two lending institutions with substantial lending experience in California mixed use real estate, to timely commence and complete the construction thereof, (iii) possesses a good business character and reputation, and (iv) has prior development projects and an operating presence in California. Developer shall provide reasonable evidence to the Successor Agency demonstrating the proposed transferee’s satisfaction of the foregoing criteria. The Successor Agency shall acknowledge or challenge the proposed transferee’s satisfaction of the foregoing criteria within 20 business days after Developer’s submittal. During such 20-day review period, Developer and the Successor Agency shall respond to inquiries of the other and exchange information as may be requested. If the Successor Agency, exercising commercially reasonable discretion, advises Developer that the proposed transferee does not satisfy any of the stated criteria, the Successor Agency shall provide detailed evidence of the same. If the Successor Agency fails to respond to Developer’s submittal within the 20-day period, the Transfer shall be deemed permitted. Developer shall respond to the Successor Agency’s evidence of the proposed transferee’s failure to satisfy the criteria within 10 days after receipt of same. If, following submission of Developer’s response, the Successor Agency continues to dispute the transferee’s satisfaction

of the stated criteria and so notifies Developer within 5 days after receipt of Developer's response, such dispute shall be resolved by expedited arbitration.

(c) Any Transfer of any portion of the Project for which a Certificate of Completion has been issued.

~~(d) Any Transfer of a portion of the Project for which a Certificate of Completion has been issued resulting from the removal of Sares Regis and/or Hunter Properties as members of Developer provided one or more of the remaining members of Developer assumes the removed member's interest in Developer and no new unaffiliated members are admitted to Developer for the purpose of undertaking responsibility for the construction of the Minimum Project.~~

~~(d) Any Transfer of less than a fifty percent (50%) ownership interest in Developer.~~

(e) Any Transfer of a residential condominium unit upon the issuance of a: ~~{ Certificate of Occupancy }~~ certificate of occupancy for the residential building.

(f) ~~Except as to Block 6 (as same is shown on Exhibit A), any~~ Any Transfer of any portion of the Project ( other than the Minimum Project and Block 6), unless the Successor Agency, exercising commercially reasonable discretion, shows that the proposed transferee would have a material adverse impact on the Project.

(g) Any Transfer to a Residential Developer pursuant to Section 3.10.

(h) Any other Transfer to a Developer's Affiliate, except that this subsection (h) shall not apply to any Transfer in which the transferee includes the addition of a new unaffiliated member undertaking responsibility for construction of the Minimum Project.

If Developer, prior to completion of construction of the Minimum Project, desires to add one or more new members, Developer shall submit to the Successor Agency Executive Director the qualifications of Developer, as newly constituted. The Executive Director shall not unreasonably withhold approval of the new member if Developer would, following the addition of the new member(s), have the necessary financial capacity and development experience to undertake and complete the remaining portions of the Minimum Project in accordance with this Agreement and the City Approvals; provided, however, that any Developer controlled by an entity that was reviewed by the Successor Agency in accordance with Section 6.01(b) of the 2010 ADDOPA within the 12-month period occurring immediately prior to the Effective Date of this Agreement shall be conclusively deemed to satisfy the requirements of this Section 6.01.

All other Transfers shall be subject to the Successor Agency's approval, which shall not be unreasonably withheld, conditioned or delayed.

~~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 substantially all of the retail portion of the Project.~~ Developer, as Tenant of the Public Parking Ground Lease, shall not transfer its interest in the Public Parking Ground Lease or Public Parking Maintenance Agreement separately from its interest in all or a portion of the Private Improvements Parcels, except to a property owners association or other entity (collectively, the “Parking Entity”) reasonably approved by the Successor Agency or the City in the event the Successor Agency has dissolved. In addition to the foregoing, the Successor Agency or the City in the event the Successor Agency has dissolved shall have the right to reasonably approve the formation documents and covenants, conditions and restrictions of the Parking Entity and any amendments to the formation documents and covenants, conditions and restrictions. Any assignment of Developer’s interest in the Public Parking Ground Lease and/or the Public Parking Maintenance Agreement separate from its interest in all or a portion of the Private Improvements Parcels shall provide for third-party enforcement rights for the Successor Agency or the City in the event the Successor Agency has dissolved.

#### 6.02 Effectuation of Transfers.

A Transfer approved by the Successor Agency or permitted pursuant to ~~Sections~~Section 6.01 ~~or 6.03~~ shall be accomplished pursuant to documentation providing for the transferee to undertake and assume the relevant rights and obligations under this Agreement. If a Transfer is otherwise a Transfer permitted under this Agreement, then the transferor shall be released from all obligations related to the portion(s) of the Project upon such Transfer, provided the remaining obligations of ~~the~~ Developer relating thereto are expressly assumed by said ~~Transferee~~transferee. Promptly following any Transfer, Developer shall provide to the Successor Agency any information reasonably necessary to determine the ownership percentage under Section 6.01(d). Any portions of the Project shall be transferred subject to applicable existing entitlements.

#### 6.03 Certain Permitted Transfers.

Notwithstanding the provisions of Section 6.01, ~~the~~ Developer, without the approval of the Successor 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~~Parcels and/or the Public Parking ~~Construction~~Ground Lease in connection with the financing approved by the Successor Agency pursuant to Section 3.08 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.~~

(c) Any collateral assignment of all or any part of the Private Improvements Parcels, or all or any part of the beneficial ownership interest in Developer.

Transfers authorized by this Section 6.03 shall not be subject to the requirement of Section 6.02.

ARTICLE 7.  
REPRESENTATIONS, WARRANTIES, AND COVENANTS

7. 01 Successor Agency Representations and Warranties.

The representations and warranties of the Successor 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 Successor Agency represents and warrants to Developer as of the date of this Agreement as follows:

(a) The Successor Agency is a public body, corporate and politic, formed and existing ~~under by operation of the Community Redevelopment Law. The Agency has full power and authority to enter into this Agreement and to perform this Agreement~~ Redevelopment Dissolution Law. The 2010 ADDOPA constitutes an Enforceable Obligation as that term is defined in the Redevelopment Dissolution Law and approved on the Successor Agency's Recognized Obligations Payment Schedule. The execution, delivery and performance of this Agreement by the Successor Agency ~~have~~has been duly and validly authorized by all necessary action on the part of the Successor Agency and all required consents and approvals have been duly obtained. This Agreement is a legal, valid and binding obligation of the Successor Agency, enforceable against the Successor 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. Because this Modified ADDOPA (1) will facilitate an increase in property tax and sales tax revenues by encouraging the timely development of the STC, and (2) will, upon satisfaction of all conditions precedent, eliminate the TIF payments to Developer, it constitutes an amendment to an existing agreement that will reduce liabilities and increase net revenues to the taxing entities, and thus its approval is in the best interests of the taxing entities. Accordingly, this Modified ADDOPA is authorized by the Redevelopment Dissolution Law, including without limitation California Health and Safety Code Section 34181.

~~(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 Successor 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 Successor Agency as of the date of this Agreement as follows:

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~~all of its obligations hereunder. 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 were as set forth in the certificate provided to the Successor Agency at the time of execution of ~~the ARDDOPA~~this Agreement.

#### 7. 03 Effect of Representations and Warranties.

All representations, warranties and other covenants made by the Successor Agency in this Agreement shall ~~survive the Closing~~be continuing covenants. The Successor 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 Successor Agency in this Agreement was untrue or incorrect in any respect when made or that may be caused by any breach by the Successor Agency of any such representation or warranty.

All representations, warranties and other covenants made by Developer in this Agreement shall ~~survive the Closing~~be continuing covenants. Developer shall indemnify and defend the Successor Agency against and hold the Successor 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 Successor 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~~by Developer of any such representation or warranty.

#### 7. 04 ~~Hazardous Materials Indemnity and Release.~~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 4.04 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, or~~

~~(iii) — breach of this Agreement,~~

~~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 this 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 4.04 above, the Agency and the City shall jointly and severally 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, or~~

~~(iii) — breach of this Agreement,~~

~~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 this 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 to:~~

~~(i) — any Claims brought by third parties against Developer, excluding any Claims the costs of which are deemed to be Third Party Environmental Cleanup Costs pursuant to Section 4.04(c)(i)(G) of this Agreement; or~~

~~(ii) — the extent that Claims are specifically reserved to Developer in this Agreement; or~~

~~(iii) — 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 MATERIALLY 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 this 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 beneficiaries, representatives, attorneys, insurers, successors and predecessors in interest, assignees, owners, partners; members, employees, directors, agents, subsidiaries, and affiliates ("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 to:~~

~~(i) — any Claims brought by third parties against the Agency or the City, excluding any Claims the costs of which are deemed to be Third Party Environmental Cleanup Costs pursuant to Section 4.04(c)(i)(G) of this Agreement; or~~

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

~~(iii) — 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 MATERIALLY 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 this 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 required 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 the ARDOPPA 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 30 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 for any reason including a decrease in the Secured Assessed Value in a prior year, 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 on or before the date of the second installment payment following the~~

~~Minimum Project TIF Date minus any deficit to the Project Tax Increment caused by a decrease in the Secured Assessed Value below the established Secured Assessed Value base for the Project.~~

~~Notwithstanding the foregoing, upon the occurrence of the Interim TIF Payment Date, the Agency shall pay to Developer an amount equal to the Interim Project Tax Increment for the fiscal years between 2003-2004 and the fiscal year in which the Interim TIF Payment Date arises; provided the theater schedule, as same may be extended pursuant to this Agreement, contemplated in Exhibit H has been achieved. If the Interim TIF Payment Date is not achieved, the payment of such amounts shall occur at the same time as otherwise contemplated for the Annual Payment. Such Interim TIF Payment is subject to the result of any appeals of the property valuation pending or filed by DSMU or the Developer, and any reductions in tax increment to the Agency that result from the appeals shall result in a corresponding reduction in the Interim TIF Payment.~~

#### 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 Project property exceeds the 2003-2004 Secured Assessed Value. The tax increment calculation shall be based on the one percent (1%) maximum tax levy. In no event shall the Gross Project Tax Increment include any taxes that are generated by development of the Sunnyvale Town 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 of the Sunnyvale Town Center property is Seventy Seven Million, Nine Hundred Sixty three Thousand, One Hundred Seventeen Dollars (\$77,963,117.00), 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 and the amount paid shall be reduced by any and all Interim TIF paid pursuant to the Interim TIF Payment Date.~~

~~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. In addition, in the event that the Secured Assessed Value of the Project property for any fiscal year is less than the 2003-04 Secured Assessed Value of the Project property; the reduction in Tax Increment resulting from that in the 2003-04 fiscal year shall be considered an Adjustment to the Project Tax Increment for the next fiscal year(s) in~~

which the Secured Assessed Value exceeds the 2003-04 Secured Assessed Value until an amount equal to the amount of said reduction is recaptured.

No payments shall be made pursuant to this Section 8.02 until the fiscal year in which the Minimum Project TIF Date has occurred and the Secured Assessed Value of the Project exceeds the established base value of the Project, except as to payments due on the Interim Project TIF Date.

(b) — 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:

$$\$4,900,000 \text{ minus } \$4,500,000 = \$400,000$$

$$\$400,000 \text{ multiplied by } 50\% = \$200,000$$

Notwithstanding the provisions of subsection (a), the Annual Payment shall be adjusted as follows: If the owner of any of the STC 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 STC 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 4.04.~~

~~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 4.04 above to reimburse Developer for Environmental Costs.~~

~~8.09~~ Consent of City:

~~The City of Sunnyvale hereby consents to and agrees to be bound by the applicable provisions of Article 3, Sections 5.05, 5.08, 5.10, 5.11, 5.12 and 7.04, Articles 8, 10 and 12 of this 2010 ADDOPA, and City/Agency Payment Agreement. However, the City shall have no other obligations under this Agreement.~~

The Hazardous Materials Indemnity and Release set forth in the 2010 ADDOPA survives termination of the 2010 ADDOPA and therefore remains in full force and effect pursuant to the terms of the 2010 ADDOPA

~~ARTICLE 8, ARTICLE 9.~~  
RESERVED

ARTICLE 9.  
PROVISIONS REGARDING REMEDIES

9. 01 Scope of Section.

The provisions of this Section 9 shall govern the parties' remedies under this Agreement. The parties acknowledge that as of the Effective Date, all existing events of and defaults of either party under the 2010 ADDOPA, ARDDOPA and all Related Documents occurring prior thereto have been satisfied, modified or waived.

9. 02 Termination Remedy.

In addition to any remedies for default available under this Agreement, if the Minimum Project has not been ~~completed~~Completed by December 31, ~~2015, 2020~~, then either party may terminate this Agreement as ~~to~~ the applicable remaining Project entitlements and Related Documents (to the extent permitted in the applicable Related Documents) ~~but not, if same has arisen, as to any Agency obligation to make the Annual Payment based on the portion of the Project completed at the time of termination (without prejudice to any claims arising prior to such termination); provided, however, if Developer has been proceeding in good faith to obtain financing and leasing commitments contemplated by this Agreement and failure to complete the Minimum Project is due to financial market conditions { beyond the control of the } Developer, then the parties shall negotiate in good faith to seek to reach agreement on extension of the termination date to 2020.~~

9. 03 Fault of Successor Agency.

The following events shall entitle Developer to take action against the Successor Agency:

- (a) The Successor Agency breaches any material provision under this Agreement.

Upon occurrence of such an event, ~~the~~ Developer may give the Successor Agency notice of default and an opportunity to cure the default. If, within sixty (60) days following receipt of the notice, the Successor Agency fails to cure the default then ~~the~~ Developer may seek any remedy available at law or in equity.

#### 9.04 Fault of Developer.

The following events shall entitle the Successor Agency to take action against ~~the~~ Developer:

- (a) ~~The~~ Developer fails to apply for any permits or approvals described in Section ~~3.06~~5.02 within the time set forth in ~~that section~~Exhibit B or thereafter fails to obtain such permits or approvals.
- (b) ~~The~~ Developer fails to submit evidence of financing within the time specified in Section ~~3.08 or, having submitted evidence thereof, fails to obtain Agency approval of that evidence.~~3.08.
- (c) ~~The~~ Developer fails to submit construction contracts or bonds required by Section 3.09 within the time set forth in that section.
- (d) ~~The~~ Developer fails to commence construction of the applicable portion of the Project within the time specified in ~~this Agreement~~Exhibit B.
- (e) ~~The~~ Developer suspends construction of the applicable portion of the Project for a period of more than sixty (60) days after it is re-commenced ~~pursuant to this Agreement~~following the Effective Date.
- (f) ~~The~~ Developer fails to ~~complete~~Complete construction of the applicable portion of the Minimum Project within the time specified in this Agreement.
- (g) ~~The~~ Developer breaches any other material provision of this Agreement.

Upon the occurrence of such an event, the Successor 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 ~~begin~~begin to cure and thereafter diligently ~~prosecutes~~prosecute the cure to completion, then the Successor Agency may (i) seek any remedy available at law or in equity, (ii) terminate this Agreement, or (iii) if applicable, obtain the remedies specified in ~~Section 9.05.~~ Notwithstanding the foregoing, the Agency's remedies for Developer's failure to complete construction of the of a retail building shall be limited to the remedies specified in Section 5.03, but only as to the building for which Developer has paid the \$5 million penalty. Sections 5.03 and 9.05.

9.05 Right to Purchase Private ~~Improvement~~Improvements 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, the Minimum Project has not been Completed by December 31, 2020,~~ then in addition to any other remedies available at law or in equity, the AgencyCity, as a third-party beneficiary under this Agreement, shall have the right to purchase the portion of the Project owned by ~~the~~ Developer at the time of the default or failure for which no Certificate of Completion has been issued. Such option shall be exercised by the AgencyCity giving written notice of purchase to Developer. The purchase price shall be the fair market value of the portion of the Project 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 upon purchase by the City. In no event, however, shall the purchase price be less than the amount owing on any liens or encumbrances to which the property being purchased is subject.

Within thirty (30) days after providing written notice of purchase, Agencythe City shall make a written offer to purchase. Developer shall accept or counter within fourteen ~~days~~ (14) days of receipt of the written offer. If ~~the~~ Developer counters, Agencythe City shall have seven (7) days in which to accept the counter or demand appraisal. If appraisal is demanded by Agencythe City, within ~~14~~ (fourteen) (14) days thereafter, Developer and Agencythe City 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 AgencyCity. 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 one hundred and twenty percent (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 AgencyCity's right to purchase pursuant to this Section 9.05 shall not defect or render invalid any security interest permitted by this Agreement.

This Section shall not apply to a ~~Permitted Transferee~~permitted transferee of property containing an office or theater use (and including any ~~retail~~Retail therein) where a right of first refusal, right of first offer or similar right to acquire or lease is in place.

9.06 Arbitration.

Any dispute not resolved within thirty (30) days shall be submitted to expedited arbitration except that the existing arbitration provisions in Sections 4.04 and 5.11 ~~in~~of this Agreement shall continue to apply.

ARTICLE 10.  
CONTINUING OBLIGATIONS

10.01 Memorandum of Agreement.

Currently herewith, ~~the~~ Developer and Successor Agency have executed and will record against the Project a revised Memorandum of Agreement. The Memorandum of Agreement shall be superior to any security interest in the Private Improvements ~~Parcel~~Parcels and Developer shall take such steps as are necessary to insure such priority including arranging for recordation of the Memorandum of Agreement or obtaining subordination agreements from acquisition lenders.

10.02 Purpose of Memorandum.

The Successor Agency and Developer agree that the purpose of recording the Memorandum of Agreement is to give notice of the continuing obligations under this Agreement including the restrictions on Transfer set forth in Article 6 above, ~~the Agency's right to purchase set forth in Section 9.05,~~ and the covenants set forth in ~~Section~~Sections 10.03 through 10.07 below.

10.03 Non-Discrimination.

All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any residential unit within the Project shall contain therein the following language:

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

~~“The grantee~~(1) Grantee herein covenants by and for ~~himself or herself, his or her heirs, executors, administrators, itself, its successors~~ 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~~any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use ~~occupancy, tenure,~~ occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any 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 property herein conveyed. [The foregoing covenant shall run with the land.]”

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(b) In Leases:

“(1) Lessee herein covenants by and for itself, its successors 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 any basis listed in subdivisions (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein ~~conveyed, leased~~ nor shall the ~~grantee~~ lessee or any person claiming under or through ~~him or her~~ the lessee, 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, ~~subtenants~~, or vendees in the premises ~~so conveyed. {The foregoing covenant shall run with the land.}~~”herein leased.

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

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(c) In Contracts:

~~“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 (1) 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, on account of any basis listed in subdivisions (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein leased property nor shall the lessee himself, transferee or any person claiming under or through him or her, the transferee 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, sublessees, subtenants, sublessees or vendees in of the premises herein leased.” land.~~

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

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, and 51.11 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

10. 04 ~~Sale or Lease Resulting in Tax Exemption~~.RESERVED.

~~Developer has indicated that it may sell or lease a portion of the Project 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, The Project is within the boundaries of the Downtown Sunnyvale Business Improvement District (“District”).~~ Developer shall include in all leases entered into for portions of the Project language informing tenants of the District. 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 annual renewal of the District. The Successor 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~~ exits from the STC property to Washington Street showing the direction to Historic Murphy Avenue.

#### 10. 06 City Use of Plazas.

The City and Successor Agency shall be entitled to use the outdoor plaza that is part of improvements on the Private Improvements ~~Parcel~~ Parcels (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~~ Developer shall only be obligated to allow the City and/or Successor Agency ~~may to~~ use the Redwood Plaza Area ~~only~~ for special events that are (i) City or Successor 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.” ~~Anyone~~ Any one or more of the parties to the ~~New REA~~ OREA (and the City) shall have the right to enforce compliance with the Redwood Plaza Use Conditions. ~~The Developer shall allow the~~ City and/or Successor Agency ~~shall be entitled to~~ such use a combined total of no more than fifteen (15) days each calendar year. ~~Notice~~ As a precondition to such use, notice of the intent to schedule a public event in Redwood Plaza Area (a “Notice”) by the Successor 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~~ In order to be effective, the Notice shall be in writing, shall be given by a duly authorized representative of the Successor Agency or City and shall contain ~~(iA)~~ a certification by such duly authorized representative on behalf of the City or Successor Agency that the Redwood Plaza Use Conditions are satisfied and ~~(iiB)~~ 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 Successor Agency appointed by the City Manager Executive Director 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 Area or is likely to interfere with the operation of the Project, its tenants and/or the Macy's 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~~ Plaza Events Committee shall not approve of an event whose plan and expected operation would reasonably be expected 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~~ As a precondition of using the Redwood Plaza Area, the Successor Agency or City shall agree to reimburse Developer for the reasonable costs of all services associated with City or Successor Agency use of the Redwood Plaza Area (including but not limited to security and common area ~~clean-up~~ cleanup) to the extent that the City or Successor Agency does not provide such services. ~~Prior~~ As a precondition to holding such an event, prior to the occurrence of any event, Successor Agency or City ~~will~~ shall agree to, and shall, furnish to ~~the~~ Developer, Macy's and Target 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 Successor Agency or City may furnish evidence of a self-insurance program providing coverage as stated above. ~~The Agency or City shall name the~~ In order to meet the requirements of this section, Developer shall be named 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 Successor Agency other than the rights expressly set

forth in this section, or grant any rights to the City or Successor Agency for any time periods in excess of the time periods described in this section. The Successor 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~~ Parcels 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.

#### 10.08 Penney’s Structure.

Not later than sixty (60) days after the Effective Date of the Agreement, the Successor Agency shall grant and record an easement (on terms and conditions acceptable to the Successor Agency’s Executive Director that are consented to in writing by the City and Developer), providing a non-exclusive right to park without charge within that certain parking structure constructed on Lot 2 of Block 5 of Tract 9925, as this structure may be replaced, reconstructed and/or otherwise modified from time to time. Said easement shall be in favor of all the other land within Tract 9925, including, without limitation, Lots 1 and 3 of Block 5 of Tract 9925 (commonly known as “Building T” and “Building T-1”). This easement shall be interpreted so as to provide parking rights that survive independently of the OREA, but shall be consistent with the terms and conditions of the OREA during all times that the OREA remains in effect. By way of emphasis, and without limitation as to any other remedies available to enforce this or any other provision of this Agreement, and in recognition of the fact that monetary damages are not an adequate remedy for Developer if the Successor Agency is determined to be in default of this Section 10.08, Developer shall have the right to seek specific performance to enforce this Section 10.08. The form of easement is attached hereto in substantially final form as Exhibit L.

### 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.” Developer shall not, prior to the issuance of any Certificate of Completion for any portion of the Project, place a Security Financing Interest on such portion of the Project that exceeds the amount necessary to finance the acquisition of such



~~390 Railroad Avenue, Suite 200~~  
~~Danville, CA. 94526~~  
~~Tel.: 925 314 2712~~  
~~Fax: 925 314 2701: \_\_\_\_\_ Sunnyvale~~  
Acquisition LLC  
c/o J.P. Morgan Investment Management  
Inc.  
2029 Century Park East, Suite 4150  
Los Angeles, California 90067  
Attention: Morgan M. Lingle

With a copy to: \_\_\_\_\_ Sunnyvale Acquisition LLC  
c/o J.P. Morgan Investment Management  
Inc.  
2029 Century Park East, Suite 4150  
Los Angeles, California 90067  
Attention: Lauren Graham

With a copy to: \_\_\_\_\_ Sunnyvale Acquisition LLC  
c/o J.P. Morgan Investment Management  
Inc.  
2029 Century Park East, Suite 4150  
Los Angeles, California 90067  
Attention: David Ridley

With a copy to: \_\_\_\_\_ Hunter/Storm, LLC  
10121 Miller Avenue, Suite 200  
Cupertino, California 95014  
Attention: Derek K. Hunter, Jr.  
Telephone: 408-255-4100

With a copy to: \_\_\_\_\_ Hunter/Storm, LLC  
10121 Miller Avenue, Suite 200  
Cupertino, California 95014  
Attention: Curtis Leigh  
Telephone: 408-255-4100

With a copy to: \_\_\_\_\_ Sares Regis Group of Northern  
California, LLC  
901 Mariners Island Boulevard, Suite  
700  
San Mateo, California 94404  
Attention: Mark R. Kroll  
Telephone: 650-377-5702

With a copy to: Sares Regis Group of Northern California, LLC  
901 Mariners Island Boulevard, Suite 700  
San Mateo, California 94404  
Attention: Lauren Boro  
Telephone: 650-377-5722

With a copy to: Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue, Suite 4900  
Los Angeles, California 90071  
Attention: Amy R. Forbes, Esq.  
Telephone: 213-229-7151  
Facsimile: 213-229-6151

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 to time designate by notice as provided in this Section 12.01.

#### 12. 02 Conflict of Interests.

No member, official or employee of the Successor Agency shall make any decision relating to this 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 Successor Agency Officials, Employees and Agents.

No member, official, employee or agent of the Successor 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 Successor 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 Successor Agency in the event of any default or breach or for any amount which may become due to the Successor 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, delays of action, or failure to act of any public or governmental agency ~~or entity (other than the~~; acts, delays of action or failure to act of ~~the Agency or the City, except as set forth in Section 5.03)~~ any entity that is a party to any Related Document; 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 Successor Agency and ~~the~~ Developer. The actual number of days of each delay shall be cumulative and shall be added to all applicable times of performance provided by this agreement, including all exhibits hereto, and including the time frames for performance set forth in Section 9.05. The extension of time for delay pursuant to this Section 12.04 shall be from the time the Party claiming the extension provides written notice to the other Party in accordance with Section 12.01 of the event that gave rise to such period of delay which notice shall specify the Construction Schedule dates that are being extended. The extension of time shall continue until the date that the cause for the extension no longer exists or is no longer applicable at which time Developer and the Successor Agency Executive Director shall adjust the applicable Construction Schedule dates in accordance with the extension period claimed in the written notice; provided, however any request or claim for extensions pursuant to this Section 12.04 for a cumulative period in excess of four (4) years shall only be granted by the mutual agreement of both Parties.

#### 12.05 Hold Harmless.

In addition to any other provision of this Agreement, if any person shall assert any claim against the Successor 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 Successor 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 Successor 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 Successor 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 ~~f21~~ or the Public Parking Parcels; or (iii) any claim that arises solely by reason of the design of the improvements on the ~~Public Improvement~~ Improvements 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.

The Developer shall defend, with counsel reasonably approved by the Successor Agency, indemnify and hold harmless the Successor Agency, the Oversight Board and their officer,

employees from any claim, action or proceeding against the Successor Agency to attack, set aside, void or annul this Agreement or any subsequent approvals implementing this Agreement. If the Developer is required to defend the Successor Agency, the Successor Agency shall have the right to approve any and all settlements proposed by the Developer, which approval shall not be unreasonably withheld, conditioned or delayed. The Successor Agency shall promptly notify the Developer of any such claim, action or proceeding. The Successor Agency may elect to be represented by separate counsel in any action at its sole cost and expense, except as set forth below. The Successor Agency shall cooperate in the Developer's defense. If for any reason the Developer does not elect to defend any action to attack, set aside, void or annul the approval of this Agreement or any subsequent actions taken in accordance with this Agreement, the Successor Agency shall have no obligation to mount a defense to any such action. The Successor Agency's sole remedy for the Developer's failure to comply with the obligation set forth in this Section 12.05 shall be termination of this Agreement.

The Developer and the Successor Agency shall enter into a joint defense agreement and/or indemnification agreement specifying the terms of this indemnification, including provisions for reimbursement for Successor Agency costs associated with the Successor Agency's cooperation with the Developer's defense, advance deposit by the Developer of funds with the Successor Agency to pay for Successor Agency's costs incurred cooperating in the Developer's defense, reimbursement from the Developer to pay for the Successor Agency's separate litigation counsel if mutually agreed upon by the Successor Agency and the Developer, and any other matters agreed to by the parties.

#### 12. 06 Displaced Tenant Preference.

In accordance with California Health & Safety Code Section 33339.5, the Successor Agency may refer to Developer business tenants who have been displaced by Successor 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 OREA 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 Successor 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. Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A-:VII, unless otherwise acceptable to the City of Sunnyvale. Such insurance shall name the Successor 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 thirty (30) days' written notice. The insurance shall apply separately to each insured, have cross-liability and contractual liability endorsements, and waive subrogation against the Successor 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 Successor 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 Successor Agency may be given by the Executive Director of the Successor Agency or the governing board of the Successor Agency as determined by the Successor Agency. The Successor Agency or Executive Director on behalf of the Successor Agency may extend times for Developer performance or satisfaction of conditions under this Agreement. ~~The Executive Director may specifically extend the time to achieve the contemplated construction schedule for the theater as set forth on Exhibit H where economic circumstances require the Interim TLF to achieve an economically viable lease and the earliest possible theater completion~~ Following the approval of this Agreement by the Successor Agency, the rights and obligations of the Successor Agency under this Agreement and the Related Documents to which the Successor Agency is a party, shall be administered by Successor Agency Executive Director without the need for further approval of the Successor Agency Governing Board.

#### 12. 09 Rights and Remedies Cumulative.

~~The~~ Except as provided herein, 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 to 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 Sections ~~5.114.04~~ and ~~4.04,5.11~~, 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 Successor 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 and Agreement to Terminate 2010 ADDOPA.

Except as to the Related Documents (as same may be modified ~~pursuant to the 2010 Modification Agreement~~from time to time in accordance with their terms), this Agreement consists of the text of this Agreement and the ~~—~~attached Exhibits and constitutes the entire understanding and agreement of the parties with respect to the subject ~~matters of this Agreement~~matter of this Agreement. Upon the Effective Date of this Agreement, the Parties agree that the 2010 ADDOPA shall be terminated and be of no further force and effect, except as otherwise provided in the 2010 ADDOPA. This Agreement supersedes all prior agreements, understandings, offers and negotiations, oral or written, with respect to the subject matters of this Agreement, including but not limited to the 2010 ADDOPA, except for those provisions which are explicitly noted as surviving termination of the 2010 ADDOPA, including without limitation Section 7.04 of the 2010 ADDOPA relating to Hazardous Materials Indemnity and Release. The Exhibits are expressly made a part of this Agreement, to the extent explicitly stated herein.

12. 18 Interpretation.

The Successor 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 Successor 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:  
~~REDEVELOPMENT~~SUCCESSOR AGENCY,

SUNNYVALE

AGENCY, a public body, corporate and \_\_\_\_\_

politic:

\_\_\_\_\_  
Successor Agency Secretary

\_\_\_\_\_  
~~Gary Luebbers~~Deanna J. Santana

Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Successor Agency Counsel

~~RECEIVER;~~DEVELOPER:

STC VENTURE LLC,  
a Delaware limited liability company

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

~~By: \_\_\_\_\_~~

~~Name: \_\_\_\_\_~~

~~Its: \_\_\_\_\_~~

By: \_\_\_\_\_

Michael Parker  
Authorized Agent for the  
Receivership Estate  
[TO BE INSERTED]

**Exhibit A**

**Map Showing Sunnyvale Town Center Property**

**Exhibit B**

Construction Schedule for Minimum Project

<u>Description</u>	<u>Estimated Date</u>	<u>Action to Commence or Complete</u>	<u>Preconditions</u>
<b><u>OFFICE (approximately 273,000 SF)</u></b>			
<u>Building A - 133,000 SF</u> <u>Building C - 140,000 SF</u>	<u>Completed</u>	<u>Office shell and tenant improvements</u>	
<b><u>RESIDENTIAL (198 multi-family units)</u></b>			
<u>Building D - 50 units</u> <u>Building E - 74 units</u> <u>Building F - 74 units</u>	<u>December 31, 2016</u>	<u>Developer submits supplemental addendum to existing building permits or revised building permit application and plans, whichever is applicable, to complete residential units</u>	<u>SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016</u>
	<u>June 1, 2017</u>	<u>Developer commences construction; Developer may, but shall not be obligated to, commence early work to complete repairs or complete partially installed building components prior to submitting supplemental addendum or revised building permit application</u>	<u>1) City issues building permits 30 days prior to start date (coordinate with permits for "fascia and base" ground floor Retail improvements)</u> <u>2) City approves affordable housing developer agreement</u> <u>3) City receives Retail Leasing Plan for Minimum Project</u>
	<u>June-December 2018</u>	<u>Developer completes construction</u>	<u>City approves residential occupancy of Buildings D, E and F</u>
<b><u>BLOCK 3 (Redwood Square)</u></b>			
<u>Buildings H, I, J and L</u>	<u>January 1, 2017</u>	<u>Developer applies for demolition permit</u>	<u>SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016</u>
	<u>March 1, 2017</u>	<u>Developer commences building demolition</u>	<u>City issues demolition permit</u>
	<u>June 1, 2017</u>	<u>Developer completes building demolition</u>	<u>City approves demolition work</u>

<u>Temporary Redwood Square and Parking Lot Improvements</u>	<u>March 1, 2017</u>	<u>Developer submits detailed improvement plans</u>	<u>SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016</u>
	<u>July 1, 2017</u>	<u>Developer commences construction</u>	<u>City approves improvement plans 30 days prior to start date</u>
	<u>November 1, 2017</u>	<u>Developer completes improvements</u>	<u>City approves improvements</u>
<b><u>THEATER/GROUND FLOOR RETAIL (approximately, i.e., within 5% of, 117,600 gross square feet, including a theater with up to 2,950 seats)</u></b>			
<u>Building T</u>	<u>November 1, 2016</u>	<u>Developer submits building permit application and plans for building "shell and core"</u>	<u>SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016</u>
	<u>April 1, 2017</u>	<u>Developer commences construction of building foundation or "shell and core"</u>	<u>Developer obtains lease commitments from theater tenant and ground floor tenant City issues foundation or building permit 30 days prior to start date</u>
	<u>July 1, 2017</u>	<u>Developer submits building permit application and plans for theater tenant improvements</u>	<i>Note: may be combined with permit and plans for building "shell and core"</i>
	<u>September 1, 2018</u>	<u>Developer completes building "shell and core"</u>	<u>City finals "shell and core" permit</u>
	<u>November 1, 2018</u>	<u>Developer completes theater tenant improvements and theater opens</u>	<u>City approves building occupancy City approves occupancy of Penney's Structure</u>
<b><u>RETAIL (approximately, i.e., within 5% of, gross 130,200 sf)</u></b>			
<u>Building A Building C</u>	<u>Completed</u>	<u>Tenant improvements</u>	<u>Currently occupied by office tenants</u>
<u>Building D Building E Building F Building N</u>	<u>January 1, 2017</u>	<u>Developer submits: 1) Retail Leasing Plan for Minimum Project; 2) Tenant Design Criteria Manual; 3) Master Sign Program</u>	<u>SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016</u> <i>Note: Retail Leasing Plan to be received by City before issuance of revised building permit for residential buildings</i>

	<u>March 1, 2017</u>	<u>Developer submits building permit applications and plans for "fascia and base" Retail improvements</u>	<u>City approves Tenant Design Criteria Manual</u>
	<u>June 1, 2017</u>	<u>Developer commences construction of "fascia and base" Retail improvements</u>	<u>City issues building permits 30 days prior to start date (coordinate with issuance of residential permits)</u>
	<u>June-December 2018</u>	<u>Developer completes "fascia and base" Retail improvements</u>	<u>City finals building permits (coordinate with completion of residential units)</u>
	<u>June 2017 - December 2020</u>	<u>Developer/tenants submit building permit applications and plans for Minimum Project storefront and core Retail improvements</u>	<u>Developer obtains lease commitments from Retail tenants</u> <u>City issues building permits</u>
<b><u>PARKING</u></b>			
<u>Parking Facilities A and B</u>	<u>January 1, 2017</u>	<u>Developer submits revised building permit applications and plans to complete parking structure, if needed</u>	<u>SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016</u>
	<u>June 1, 2017</u>	<u>Developer commences construction</u>	<u>City issues building permits 30 days prior to start date</u>
	<u>June-December 2018</u>	<u>Developer completes parking structures, including dynamic parking supply system</u>	<u>City approves final occupancy (precondition for occupancy of Buildings D and E)</u>
<u>Penney's Structure</u>	<u>January 1, 2017</u>	<u>Developer submits revised building permit application and plans to complete parking structure</u>	<u>SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016</u>
	<u>June 1, 2017</u>	<u>Developer commences construction</u>	<u>City issues building permit 30 days prior to start date</u>
	<u>November 1, 2018</u>	<u>Developer completes parking structure, including dynamic parking supply system</u>	<u>City approves final occupancy (precondition for occupancy of Building T)</u>
<b><u>PUBLIC IMPROVEMENTS</u></b>			
<u>Public Improvements (see list below)</u>	<u>November 1, 2016</u>	<u>Developer submits revised public improvements plans</u>	<u>SDP amendments and Modified and Restated ADDOPA take effect by July 30, 2016</u>

	<u>March 1, 2017</u>	<u>Developer commences with construction of public improvements</u>	<u>City approves revised public improvement plans and bonds (with phasing plan and construction management plan) 30 days prior to start date</u>
	<u>November 1, 2018</u>	<u>Developer completes all public improvements</u>	<u>City issues Notice of Completion (multiple notices if phased improvements)</u>

## EXHIBIT B-1

### Minimum Project Public Improvements

The Public Improvements required to be constructed as part of the 2016 MRADDOPA Minimum Project will be as set forth below in this Exhibit B-1. Separate from the 2016 MRADDOPA Minimum Project requirements, Developer is obligated to implement Public Improvements as set forth in improvement plans for the Subdivision Agreement for Tract No. 9925, as the improvement plans may be revised from time to time by the City of Sunnyvale and the Developer, and the conditions of approvals for the Project and those improvements required as mitigation by the certified Environmental Impact Report for the Project. The improvement plans for the Subdivision Agreement for Tract No. 9925 additionally sets forth the construction phasing schedule.

#### PUBLIC IMPROVEMENTS:

##### Washington Avenue between Mathilda and Sunnyvale:

- a) Washington/Mathilda traffic signal and intersection improvements
- b) Traffic Signals (new or modifications): Washington/Taaffe, Washington/Murphy, Washington/Sunnyvale
- c) Taaffe to Sunnyvale street improvements

##### Mathilda Avenue between Washington and Iowa:

- a) Mathilda/McKinley traffic signal and intersection improvements
- b) Mathilda/Iowa traffic signal and decorative crosswalks
- c) Bikes lanes east side Mathilda
- d) Traffic signal interconnect
- e) Bank of the West Sanitary sewer lateral

##### Iowa Avenue between Mathilda and Sunnyvale:

- a) Iowa/Taaffe traffic signal and decorative crosswalks
- b) Traffic Signals (new or modifications): Iowa/Murphy (unless otherwise determined unnecessary by the City), Iowa/Sunnyvale
- b) Median islands, restriping and roadway reconstruction

##### Murphy Avenue: extension to McKinley, including utilities

##### McKinley Avenue between Taaffe and Sunnyvale:

- a) Street improvements
- b) Sunnyvale/McKinley traffic signal

##### Sunnyvale Avenue between Washington and Iowa:

- a) Median islands and restriping

##### Neighborhood gateway improvements

**Exhibit B-2**

Exhibit C

RESERVED

Exhibit D  
RESERVED

**Exhibit E**

**Memorandum of Agreement**

**Exhibit E**

Recording Requested by:

Successor Agency to the Sunnyvale  
Redevelopment Agency

When Recorded Mail to:

Agency General Counsel

Office of Sunnyvale City Attorney

City of Sunnyvale

456 West Olive Avenue

Sunnyvale, CA 94086

DOCUMENT WILL BE RETURNED TO

NAME & ADDRESS IDENTIFIED ABOVE

No fee for recording per Government Code § 27383

(Above Space for Recorder's Use Only)

**MEMORANDUM OF 2016 MODIFIED AND RESTATED AMENDED DISPOSITION  
AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT ~~AND~~  
CONSENT OF THE CITY OF SUNNYVALE**

~~The City of Sunnyvale hereby consents to and agrees to be bound by the applicable provisions of Article 3, Sections 5.05, 5.08, 5.10, 5.11, 5.12 and 7.04, Articles 8, 10 and 12 of the 2010 ADDOPA, and City/Agency Payment Agreement. The city shall have no other obligations under this Agreement.~~

THE SUCCESSOR AGENCY TO THE SUNNYVALE REDEVELOPMENT AGENCY, a public body, corporate and politic (“Successor Agency”) (“Developer”), have entered into that certain Modified and Restated Amended Disposition and Development and Owner Participation Agreement (the “Modified ADDOPA”), dated as of \_\_\_\_\_, concerning the redevelopment of the Sunnyvale Town Center property situated in the City of Sunnyvale, County of Santa Clara, State of California, more particularly described in Exhibit A attached hereto (the “Project”).

The Modified ADDOPA amends in its entirety the rights and obligations of the parties to the 2010 Amended Disposition and Development and Owner Participation Agreement (“2010 ADDOPA”) which implemented the 2010 Modification Agreement to the Amended and Restated Disposition and Development and Owner Participation Agreement, a memorandum of which was recorded as Document No. 20717738 on May 20, 2010 in the Official Records, and which amended, restated and superseded in its entirety the Amended and Restated Disposition and Development Agreement and Owner Participation Agreement, a memorandum of which was recorded as Document No. 19602163 on October 1, 2007 in the records of the Santa Clara County Recorder (the “Official Records”). The Modified ADDOPA includes, but is not limited to the following:

1. \_\_\_\_\_ Developer’s obligations to construct and the timing of construction of the Project.
2. \_\_\_\_\_ The termination of the Successor Agency’s enforceable obligation to release Tax Increment funds to Developer upon satisfaction of certain conditions.
3. \_\_\_\_\_ Developer’s ability to and criteria for the transfer of all or portions of the property within the Project.
4. \_\_\_\_\_ Allocation of responsibility among Developer and the Successor Agency for Environmental Costs.
5. \_\_\_\_\_ An obligation to refrain from discrimination on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the conveyance, [~~leasing, subleasing, transferring~~], ~~use, occupancy, tenure~~, use, occupancy, tenure or enjoyment of the Project.
6. \_\_\_\_\_ An obligation to participate in certain downtown Sunnyvale activities.
7. \_\_\_\_\_ An obligation to obtain the consent of the Successor Agency for certain transfers of the property within the Project.
8. \_\_\_\_\_ An obligation to permit the Successor Agency or City of Sunnyvale to make use of certain plazas in the Project.
9. \_\_\_\_\_ An obligation to provide certain levels of security for the Project.

10. Modification of the rights of the Successor Agency to exercise certain remedies in the event that there is an uncured default or failure by Developer under the Modified ADDOPA prior to issuance of a certificate of completion.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, the parties agree as follows:

1. This Memorandum is recorded to provide constructive notice of the rights and obligations of Successor Agency and Developer under the Modified ADDOPA. All the terms and conditions of the Modified ADDOPA are incorporated herein by reference as if fully set forth.

2. In the event of any conflict between the terms and conditions of the Modified ADDOPA and this Memorandum, the terms of the Modified ADDOPA shall control.

3. This Memorandum may be executed in counterparts, each of which shall constitute an original hereof, and all of which taken together shall constitute one and the same agreement.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum effective as of \_\_\_\_\_, 20\_\_.

“AGENCY”

SUCCESSOR AGENCY TO THE  
SUNNYVALE REDEVELOPMENT  
AGENCY, a Public Body, Corporate and  
Politic

By: \_\_\_\_\_  
Deanna J. Santana, Executive Director

“DEVELOPER”

[ \_\_\_\_\_ ]

By: \_\_\_\_\_  
\_\_\_\_\_  
[ \_\_\_\_\_ ]

Approved As To Form  
John Nagel, Successor Agency General  
Counsel  
Date: \_\_\_\_\_

## Exhibit A

### Legal Description

All that certain real property situated in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

#### Block 1

Lot 1, Block 1, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 2, Block 1, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 3, Block 1, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 4, Block 1, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

#### Block 2

Lot 1, Block 2, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 2, Block 2, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 3, Block 2, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 4, Block 2, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 5, Block 2, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 6, Block 2, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 7, Block 2, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

#### Block 3

Pareel 113 of a lot line adjustment recorded October 30, 2000 Series 20033369 Santa Clara County

#### Block 4

Lot 2, Block 3, Tract 10007 entitled “Sunnyvale Town Center”, filed October 29, 2008 in Book 828 of Maps at Pages 15 to 16 of the Official Records of Santa Clara County.

Unit 2 of a Condominium Plan for Lot 1, Tract 10007 Recorded October 30, 2008 Series 20033370 ‘Official Records of Santa Clara County.

**Block 5**

Lot 1, Block 5, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 2, Block 5, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 3, Block 5, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

**Block 6**

Lot .1, Block 6, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 2, Block 6, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 3, Block 6, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 4, Block 6, Tract 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

**EXHIBIT H**  
**MINIMUM PROJECT MILESTONE DATES**  
**FOR DAMAGES**

**I. Commencement**

**Office: Buildings A and C**

Construction of both buildings received a Certificate of Completion prior to adoption of Modified and Restated ADDOPA.

**Ground Floor Retail Spaces: Buildings D, E, F and N**

Projected Commencement Date for storefront improvements: June 2017

Precondition: Commencement obligation is conditioned on Developer securing tenant lease commitments for 65 percent of the Minimum Project Retail space and City issuance of building permits and other applicable approvals.

**Retail-Theater: Building T and Penney's Structure (also pursuant to Section 3.12)**

Projected Commencement Date for building: May 2017

Projected Commencement Date for parking structure: November 2017

Precondition: Commencement obligation is conditioned on Developer securing lease commitments from theater tenant and ground floor Retail tenants and City issuance of building permits and other applicable approvals.

**Redwood Square: Temporary parking lot and landscaping improvements**

Projected Commencement Date for demolition of steel structures: March 2017

Projected Commencement Date for parking lot and landscaping: July 2017

Precondition: Commencement obligation for demolition of steel structures is conditioned on Developer obtaining a City demolition permit. Commencement obligation for temporary parking lot and landscaping improvements is conditioned on City approval of the demolition work, and issuance of all required permits for construction of the temporary parking lot and landscaping.

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

## **II. Completion**

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

**Office: Buildings A and C**  
Completed

**Ground Floor Retail Spaces: Buildings D, E, F and N**  
Completion of 75 percent of storefront improvements in the Minimum Project: 42 months after Commencement Date or no later than December 31, 2020

**Retail-Theater: Building T and Penney's Structure**  
Completion of building: 24 months after Commencement Date  
Completion of parking structure: 16 months after Commencement Date

**Redwood Square: Temporary parking lot and landscaping improvements**  
Demolition of steel structures: 3 months after Commencement Date  
Completion of parking lot and landscaping: 6 months following City approval of completed demolition work or Commencement Date, whichever occurs later

"Completed" for the purposes of Exhibit H means City approves any building occupancy or City finalizes the building permit for the applicable building, whichever occurs first.

**EXHIBIT I**

**RESERVED**

**EXHIBIT J**

~~CITY OF SUNNYVALE~~

**RESERVED**

**EXHIBIT K**

**Form of Modified and Restated Covenant to Convey**

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Recording Requested by  
Successor Agency to the Redevelopment Agency of the City of Sunnyvale  
456 W. Olive Avenue  
Sunnyvale, CA 94807

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And When Recorded Mail to:

City Attorney's Office  
Successor Agency to the Sunnyvale Redevelopment Agency  
456 West Olive Avenue  
Sunnyvale, CA 94086

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Project No: SDP 2007-0030  
Tract Map 9925

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**AMENDED AND RESTATED COVENANT TO CONVEY**

WHEREAS, this Amended and Restated Covenant to Convey dated \_\_\_\_\_, 2016 between the SUCCESSOR AGENCY TO THE SUNNYVALE REDEVELOPMENT AGENCY (the "Successor Agency"), a public body corporate and politic, and STC Venture LLC, a Delaware limited liability company (the "Developer"), concerns the real property described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, on or about February 6, 2007, the Sunnyvale Redevelopment Agency (the "Agency"), the Successor Agency's predecessor in interest, entered into the Amended and Restated Disposition and Development and Owner Participation Agreement ("ARDDOPA") with Downtown Sunnyvale Mixed Use LLC ("DSMU"), Developer's predecessor in interest, providing for the redevelopment of the Sunnyvale Town Center; and

WHEREAS, on October 1, 2007 a subdivision map was recorded at Book 818 Pages 45 through 55, inclusive, to reflect the subdivision of land known as Tract No. 9925, known as the Sunnyvale Town Center ("the Subdivision Map"); and

WHEREAS, the predecessors in interest to the Successor Agency and the Developer exchanged certain real property pursuant to the ARDDOPA, and one of the parcels, depicted as Lot 4 located within Block 6 of the Subdivision Map, was owned by Developer's predecessor in interest and was the site of a former dry cleaner facility and Lot 4 and adjacent parcels are currently the subject of environmental remediation efforts; and

WHEREAS, pursuant to the ARDOPPA and its successor agreements, that certain Public Access and Parking Easement by and between the Successor Agency and the City of Sunnyvale dated as of September 28, 2007, and that certain Facilities Lease dated as of March 1, 1998 by and between the Agency and the City, which was recorded as Instrument Number 14120789 in the official records of Santa Clara County ("Facilities Lease"), Lot 1, 3 and 4 of Block 6 the Subdivision Map ("Lots 1, 3 and 4") are intended to be used for a parking facility dedicated solely to public parking and do not generate revenues in excess of reasonable maintenance costs of the

properties, and thus constitute a parking facility that may be transferred to a public jurisdiction pursuant to existing agreements relating to the construction of the property under the State of California's redevelopment dissolution law; and

WHEREAS, pursuant to the ARDDOPA, DSMU, RREEF America, LLC, a Delaware limited liability company, and the Sunnyvale Redevelopment Agency and the Sunnyvale Redevelopment Agency entered into that certain Covenant to Reconvey, dated September 28, 2007, and recorded as Instrument Number 19602171 ("Original Covenant"), which provided that "if Lot 4 is not developed within ten years from the recording of the Subdivision Map, as evidenced by a-[Certificate of Occupancy] for Block 6, then the RDA may require that the surface area beneath the airspace parcel shown on Lot 4 within Block 6 shall be reconveyed to the Developer and Developer shall accept the reconveyance from the RDA. Lot 4 is depicted on the Map as an 'airspace parcel', thus the reconveyance of the surface and subsurface area to the RDA may be conveyed to the public agency without amendment to the subdivision map to a public agency"; and

WHEREAS, Developer and the Successor Agency have entered into the 2016 Modified And Restated Amended Disposition And Development and Owner Participation Agreement (the "2016 MRADDOPA"), dated as of even date herewith, in order to, among other purposes, reduce the Successor Agency's liabilities and obligations under the successor agreements to the ARDDOPA by, among other methods, limiting the liability of the Successor Agency to pay its share of the costs of environmental remediation now occurring on Lots 1, 3 and 4, and benefit taxing entities by eliminating the Successor Agency's obligation to make tax increment financing payments to Developer and by dramatically increasing property tax and other revenues to the taxing entities; and

WHEREAS, as an integral component of the overall negotiation between Developer and the Successor Agency, and consistent with the purposes of the 2016 MRADDOPA, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, (1) Successor Agency agrees to, on behalf of itself and all of its predecessors, successors, and assigns, and hereby does remise, release, acquit, waive, and forever discharge Developer's obligation under the Original Covenant, and (2) Successor Agency and Developer each agree, on behalf of themselves and all of their predecessors, successors, and assigns, that upon the earlier of Developer's delivery of a written request to the Successor Agency, or October 1, 2022, the Successor Agency shall convey Lots 1, 3 and 4 to Developer, and Developer shall accept the reconveyance from the Successor Agency; and

Gary Luebbbers

WHEREAS, this Amended and Restated Covenant to Convey is entered into for the exclusive benefit of the Successor Agency and Developer and is expressly not intended to be for the benefit of any other person or entity, and no such other Person shall be deemed a third party beneficiary of this Amended and Restated Covenant to Convey;

NOW, THEREFORE, (1) the Original Covenant is hereby superseded in its entirety and is of no further force and effect; and (2) Lots 1, 3 and 4 are hereby subject to the covenant that upon the earlier of October 1, 2022, or Developer's delivery of a written request to the Successor Agency that the Successor Agency convey Lots 1, 3 and 4 to Developer, the Successor Agency

shall promptly convey Lots 1, 3 and 4 to Developer at no further cost to Developer, and Developer shall accept the conveyance from the Successor Agency; provided, however, that the Successor Agency may delay the conveyance otherwise required by this covenant for the minimum period necessary to comply with the requirements of the Certificates of Participation (Parking Facility Refunding) Series 1998A and/or the Facilities Lease.

This Amended and Restated Covenant to Convey shall be recorded in the office of the Santa Clara County Recorder. Upon recordation, the burdens of the Covenant shall be binding upon all successors in interest to the real property described in Exhibit "A," and the benefits of the Covenant shall inure to all successors in interest to the real property.

This Amended and Restated Covenant to Convey shall not be modified or released without the prior approval of the Successor Agency and the Developer in the manner required by applicable law.

IN WITNESS WHEREOF, Successor Agency and Developer have executed and issued this Amended and Restated Covenant to Convey as of the date first written above.

**SUCCESSOR AGENCY TO THE  
SUNNYVALE REDEVELOPMENT  
AGENCY,**  
a public body corporate and politic

By: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Successor Agency Counsel

**STC VENTURE LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California \_\_\_\_\_ )  
County of Santa Clara \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name of notary)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California \_\_\_\_\_ )  
County of Santa Clara \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name of notary)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**Exhibit A**

**Real Property Legal Description**

REAL PROPERTY IN THE CITY OF SUNNYVALE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Lots 1, 3 and 4 of Block 6, as said lots and block are shown on the Map of Tract No. 9925, filed for record in the Office of the Recorder of the County of Santa Clara, California on October 1, 2007 in Book 818 of Maps at Pages 45 through 55, inclusive.

**EXHIBIT L**

**Form of Block 5 Parking Structure Easement Agreement**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Gibson Dunn & Crutcher LLP

333 South Grand Avenue, 49th Floor

Los Angeles, California 90071  
Attention: Amy R. Forbes, Esq.

MAIL CONFORMED COPY TO

Secretary

Successor Agency of the Former  
Redevelopment Agency of the City of  
Sunnyvale

456 W. Olive Avenue

Sunnyvale, California 94088

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**FORM OF EASEMENT AGREEMENT**

This EASEMENT AGREEMENT (this "Agreement") is made as of \_\_\_\_\_, 2016, by and between the Successor Agency to the Sunnyvale Redevelopment Agency, a public entity formed pursuant to California Health and Safety Code Sections 34170 et seq. ("Successor Agency") and STC Venture LLC, a Delaware limited liability company ("Developer") (each, a "Party" and collectively, the "Parties") with reference to the following facts:

WHEREAS, the Successor Agency owns that certain real property, identified as Lot 2 of Block 5 of Tract 9925 and more particularly described on Exhibit A attached hereto and incorporated herein (the "Property"), which is located within a mixed-use development bounded by Iowa Avenue, Mathilda Avenue, Washington Avenue, and Sunnyvale Avenue and commonly known as the Sunnyvale Town Center ("Sunnyvale Town Center"), all within the City of Sunnyvale ("City"), State of California;

WHEREAS, the Property is currently developed with a parking garage variously referred to as the Penney's Structure, the Existing Parking Structure and Parking Deck 5, and which, for purposes of this Easement Agreement, shall be known as the "Block 5 Parking Structure";

WHEREAS, the Property and other adjacent parcels within the Sunnyvale Town Center are subject to that certain Operation and Reciprocal Easement Agreement by and among Macy's Department Stores, Inc. ("Macy's"), an Ohio corporation, Target Corporation, a Minnesota corporation ("Target"), Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company, and Developer's predecessor in interest ("Project Developer"), and the Sunnyvale Redevelopment Agency, a public body, corporate and politic ("Redevelopment Agency"), recorded October 30, 2008, as Instrument No. 20033381; as supplemented, amended and assigned from time to time (the "OREA");

WHEREAS, the Property is subject to that certain Operation and Maintenance Agreement dated April 13, 2000 by and between the City and Project Developer's predecessor in interest, as amended from time to time ("OMA"), which provides for the ongoing repair, maintenance and operation of the Block 5 Parking Structure, and requires that the Block 5 Parking Structure be used to provide parking on a non-exclusive basis for members of the general public and subject to other conditions set forth in the OMA;

WHEREAS, Section 2.01 of the OREA provides that each of the Successor Agency (as successor the Redevelopment Agency), Developer (as successor to the Project Developer), and Target established reciprocal non-exclusive parking easements over each of their respectively owned parcels for the benefit of all parcels within the Sunnyvale Town Center, subject to the terms and conditions set forth in the OREA;

WHEREAS, concurrent with this Agreement the Parties are entering into a Modified and Restated Amended Disposition and Development and Owner Participation Agreement ("2016 MRADDOPA") in order to reduce liabilities to the taxing entities and provide for the continuation and successful completion of development of the Sunnyvale Town Center for new retail, residential and office uses, which development will provide significant benefits to the City and the taxing entities including substantial increases in the assessed valuation of the Project resulting in increased property tax revenues benefiting the taxing entities;

WHEREAS, as acknowledged in the 2016 MRADDOPA, securing permanent parking rights in, on, over and under the Property for the benefit of parcels within the Sunnyvale Town Center (as more particularly described on Exhibit B attached hereto and incorporated herein), including without limitation, Building T within Block 5 of Tract 9925 ("Block 5 Projects") and the office buildings located along Mathilda Avenue, is critical to achieving the completion and economic success of the Sunnyvale Town Center, for the benefit of the public, taxing entities, the City and the Developer; and

WHEREAS, the Parties acknowledge that the Block 5 Parking Structure does not currently meet all current health and safety requirements and that, therefore, additional construction work and maintenance will likely be required before the Block 5 Parking Structure can be used for public parking purposes;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Easements.**

(a) The Successor Agency hereby grants and conveys to the Developer, and to each of its affiliates, successors and assigns, invitees, guests, licensees, agents, representatives, employees, residents, guests, tenants, occupants, and vendors (including, without limitation, the tenants, lessees, occupants and vendors of the Block 5 Projects and the other parcels set forth in Exhibit B), a non-exclusive, irrevocable, easement appurtenant, in, on, over and under the Property for parking purposes and for vehicular and pedestrian ingress and egress related to the parking purposes provided by this Agreement, for the benefit of the Block 5 Projects as well as the other parcels set forth in Exhibit B within the Sunnyvale Town Center and for public parking purposes generally, subject to the conditions set forth below.

(b) During the term of this Agreement, Developer, at Developer's sole cost and expense, shall cause the Block 5 Parking Structure to be operated, repaired and maintained in good order, condition and repair, consistent with the requirements of the OMA and the OREA, as each may be amended or superseded by mutual agreement of the Parties from time to time. If the Developer is different from the Operator designated pursuant to the OMA, the Operator under the OMA shall be solely responsible for the operation, repair and maintenance obligations set forth in this section 1(b). The Successor Agency hereby grants and conveys to the Developer (and the Operator under the OMA) a non-exclusive easement appurtenant, in, on, over, under and across the Property for the purpose of operating, maintaining, repairing, replacing and/or otherwise accessing the Block 5 Parking Structure (and/or any replacement structures), it being understood and agreed nothing contained herein shall be construed or deemed an affirmative obligation on the part of the Successor Agency or the Developer to construct, reconstruct or cause to be constructed or reconstructed the Block 5 Parking Structure in excess of, or different than, the requirements of the OMA and the OREA, as each may be amended or superseded by mutual agreement of the Parties from time to time.

**2. Relocation/Modification; Blockage.** Notwithstanding anything to the contrary contained herein, this Agreement shall not be construed as preventing the Developer and its successors and assigns, from maintaining, redesigning or reconstructing the Block 5 Parking Structure and all other improvements on the Property from time to time ("Construction Work"), and restricting the easement rights granted by Section 1 above to the extent reasonably necessary or helpful to implement such Construction Work so long as vehicular and pedestrian ingress and egress are available after such Construction Work is completed. Any reconstruction or modification of the Block 5 Parking Structure shall be subject to the approval of the Successor Agency and the City prior to the Successor Agency's dissolution and after the dissolution of the Successor Agency subject to the approval of the City, which approvals shall not be unreasonably withheld.

**3. Conditions.** Developer and/or the operator of the Block 5 Parking Structure (as it may be replaced, reconstructed or otherwise modified from time to time) may impose conditions, regulations and terms for use of the facilities (including, without limitation, time limits), to the extent such conditions, regulations and terms are not otherwise prohibited by the OREA and the

OMA. Developer shall provide to the Successor Agency or the City in the event the Successor Agency has dissolved for its approval or disapproval any such conditions, regulations and terms for the use of the facilities at least thirty (30) days prior to implementing any such conditions, regulations or terms. The Successor Agency or the City in the event the Successor Agency has dissolved shall either reasonably approve or disapprove the conditions, regulations and terms within thirty (30) days of receipt.

**4. Condition of Property.** The Successor Agency is making no representations to the Developer as to the condition of the Property and its suitability for the uses for which this easement is granted. Developer is taking the Property as granted in this Easement in “AS IS” condition without [representation or warranty].

**5. Term.** The term of this Agreement shall continue for a period of ninety-nine (99) years from the date hereof unless the Agreement is modified, amended or terminated in accordance with the terms herein. Following expiration of the OMA pursuant to Section 2 of the OMA, Developer may terminate this Agreement by provision of not less than sixty (60) days’ written notice to the Successor Agency.

**6. Insurance Requirements.** Nothing herein shall abrogate the Developer’s obligations to provide insurance covering the Property as required in the OMA and the OREA, or limit or waive the Developer’s indemnification obligations under the OMA.

**7. Notices.** All notices required or permitted to be or delivered hereunder or in connection with the transactions contemplated hereby shall be in writing and shall be served on the parties at the following address:

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

With a copy to: Goldfarb & Lipman LLP  
1300 Clay Street, Eleventh Floor  
Oakland, California 94612  
Attn: Karen Tiedemann, Esq.  
Facsimile No.:  
E-Mail: ktiedemann@goldfarblipman.com

With a copy to: City of Sunnyvale  
456 W. Olive Avenue  
Sunnyvale, California 94088  
Attn: City Manager

~~APPROVED AS TO FORM:~~

Developer: Sunnyvale Acquisition LLC  
c/o J.P. Morgan Investment Management Inc.  
2029 Century Park East, Suite 4150  
Los Angeles, California 90067  
Attention: Morgan M. Lingle

With a copy to: Sunnyvale Acquisition LLC  
c/o J.P. Morgan Investment Management Inc.  
2029 Century Park East, Suite 4150  
Los Angeles, California 90067  
Attention: Lauren Graham

---

With a copy to: Sunnyvale Acquisition LLC  
c/o J.P. Morgan Investment Management Inc.  
2029 Century Park East, Suite 4150  
Los Angeles, California 90067  
David Kahn Attention: David Ridley

~~City Attorney~~

With a copy to: Hunter/Storm, LLC  
10121 Miller Avenue, Suite 200  
Cupertino, California 95014  
Attention: Derek K. Hunter, Jr.  
Telephone: 408-255-4100

With a copy to: Hunter/Storm, LLC  
10121 Miller Avenue, Suite 200  
Cupertino, California 95014  
Attention: Curtis Leigh  
Telephone: 408-255-4100

With a copy to: Sares Regis Group of Northern California, LLC  
901 Mariners Island Boulevard, Suite 700  
San Mateo, California 94404  
Attention: Mark R. Kroll  
Telephone: 650-377-5702

With a copy to: Sares Regis Group of Northern California, LLC  
901 Mariners Island Boulevard, Suite 700

San Mateo, California 94404  
Attention: Lauren Boro  
Telephone: 650-377-5722

With a copy to: Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue, Suite 4900  
Los Angeles, California 90071  
Attention: Amy R. Forbes, Esq.  
Telephone: 213-229-7151  
Facsimile: 213-229-6151

Any such notices shall be sent by (a) a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such courier, or (b) facsimile or e-mail transmission, in which case notice shall be deemed delivered upon electronic verification that transmission to recipient was completed. The above addresses and facsimile numbers may be changed by written notice to the other party; provided that no notice of a change of address or facsimile number shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

**8. Amendments.** Except as expressly set forth herein, this Agreement shall remain unmodified and in full force and effect and cannot be amended, modified or supplemented except by written consent of the Parties (or their respective successors or assigns).

**9. Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement, or affecting the validity or enforceability of any of the terms or provisions of this Agreement.

**10. Counterparts.** This Agreement may be executed in one or more counterparts, with the same force and effect as though all the parties executing such counterparts had executed but one instrument. Signature and/or acknowledgment pages may be detached from such counterparts and attached to this Agreement to physically form one legally effective document for recording purposes.

**11. Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of law rules.

**12. Existing Easement Agreement.** The parties hereto acknowledge that the OREA continues in effect and that this Agreement is intended to be consistent with the provisions of the OREA. Notwithstanding the foregoing, in the event of any inconsistency between the terms of the OREA and the terms of this Agreement, the terms of this Agreement shall govern and control in all respects.

**13. No Agency.** Nothing in this Agreement creates the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

**14. Estoppel Certificates.** Each party hereto upon the written request of the other party covenants to execute, acknowledge and deliver, without charge and within fifteen (15) days following such request, an estoppel certificate certifying that this Agreement is in full force and effect and that the other party is not in default hereunder (or stating such default(s), if any are claimed), and setting forth such other information as may reasonably be requested and is true and correct.

**15. Subordinate Documentation.** Nothing contained herein prohibits the recording by either party of additional easements, covenants, conditions or restrictions applicable to such party's property only, so long as the same are subordinate to and not conflict with this Agreement.

**16. Further Assurances.** The parties hereto shall execute all further instruments and perform such further acts which are or may become reasonably necessary to effectuate and to carry out the purposes contemplated by this Agreement.

**17. Agreement Runs with the Land.** This Agreement shall be binding upon the parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California, and the burdens and benefits shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors (by merger, consolidation, or otherwise), assigns, devisees, administrators, representatives, and lessees. Notwithstanding the foregoing, the power to terminate this Agreement pursuant to Section 5 of this agreement ("Power of Termination") shall be held by the Developer as defined in the opening paragraph of this Agreement or such entity as Developer shall assign such Power of Termination to; provided, however, if Developer or a Developer's Affiliate (as defined in the 2016 MRADDOPA) no longer holds any ownership interest in the Benefitted Parcels set forth in Exhibit B and the Developer or a Developer's Affiliate has not assigned the Termination Rights to a specified entity, the Power of Termination shall be held by the owner of Lot 1 of Block 5 of Tract 9925 filed for record in the Office of the Recorder of the County of Santa Clara, California on October 1, 2007 in Book 818 of Maps at Pages 45 through 55, inclusive.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date and year first written above.

SUCCESSOR AGENCY TO THE  
SUNNYVALE REDEVELOPMENT  
AGENCY, a Public Body, Corporate and  
Politic

By: \_\_\_\_\_  
Deanna J. Santana, Executive Director

APPROVED AS TO FORM

By: \_\_\_\_\_

John A. Nagel  
Successor Agency Attorney

[SIGNATURES CONTINUE ON NEXT PAGE]

**DEVELOPER:**

**“DEVELOPER”**

**STC VENTURE LLC,**

a Delaware limited liability company

By: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

**STATE OF CALIFORNIA** \_\_\_\_\_ )

**COUNTY OF** \_\_\_\_\_ )

On \_\_\_\_\_, 2016, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**Exhibit A**

**Legal Description of the Property**

Real Property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Lot 2, Block 5, as said lot and block are shown on the Map of Tract 9925, filed for record in the Office of the Recorder of the County of Santa Clara, California on October 1, 2007 in Book 818 of Maps at Page 45-55, inclusive.

**Exhibit B**

**Legal Description of the Benefitted Parcels**

**THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SUNNYVALE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:**

**PARCEL ONE:**

Lot 1, Block 1; Lots 1, 2, 5 and 7, Block 2; Lot 1, Block 5; Lots 2, 3, and 4, Block 6, as said lots and blocks are shown on the Map of Tract No. 9925, filed for record in the Office of the Recorder of the County of Santa Clara, California on October 1, 2007 in Book 818 of Maps at Pages 45 through 55, inclusive.

**PARCEL TWO:**

Lot 1, Block 6, as said lots and blocks are shown on the Map of Tract No. 9925, filed for record in the Office of the Recorder of the County of Santa Clara, California on October 1, 2007 in Book 818 of Maps at Pages 45 through 55, inclusive.

**PARCEL THREE:**

Unit 2, as shown on the Condominium Plan entitled “Condominium Plan for Lot 1, Tract 10007 Sunnyvale Town Center”, recorded on October 30, 2008 as Document No. 20033370 of the Santa Clara County Official Records (the “Condominium Plan”), and as further described in the “Commercial Condominium Declaration of Covenants, Restrictions and Easements for Lot 1, Tract No. 10007 of the Sunnyvale Town Center” (the “Declaration”), recorded on October 30, 2008, as Document No. 20033371 in the Santa Clara County Official Records.

**PARCEL FOUR:**

Being all of Lot 1, Block 3, as shown on Map of Tract No. 9925 entitled “Sunnyvale Town Center”, filed October 1, 2007 in Book 818 of Maps at Pages 45 through 55 inclusive, records of Santa Clara County, and a portion of Parcel 6, as shown on that certain Parcel Map, filed July 3, 1978 in Book 421 of Maps at:

Pages 46 and 47, Records of said County, more particularly described as follows: Beginning at the Northeast corner of said Parcel 6, said corner being also a point of the Southwesterly line of Washington Avenue, as shown on said Parcel Map (421 M 46-47);

Thence leaving said corner and along the Southwesterly line of said Washington Avenue, North 75° 07' 24" West, 44.43 feet;

Thence leaving said Southwesterly line, and parallel with the Southeasterly line of said Parcel 6,

South 14° 52' 00" West, 281.14 feet to a point on the Southwesterly line of said Parcel 6;  
Thence along said Southwesterly line of said Parcel 6, North 75° 08' 00" West, 325.52 feet;

Thence leaving said Southwesterly line, the following Three (3) courses:

1. North 14° 52' 00" East, 40.87 feet;

2. North 75°08 00" West, 38.65 feet;

3. Parallel with the Northwesterly line of said Parcel 6, North 14° 52' 00" East, 240.33 feet to

said Southwesterly line of Washington Avenue;

Thence along the general Southwesterly line of said Washington Avenue, the following three (3) courses:

1. North 75° 07' 24" West, 15.41 feet;

2. South 14° 52' 00" West, 15.00 feet;

3. North 75° 07' 24" West, 125.55 feet to a point on the Southeasterly line of Taaffe Street, as

shown on said Map of Tract No. 9925, said point being also the beginning of a non-tangent

curve, concave to the Southeast, having a radius of 29.50 feet, from which a radial line bears

South 57° 21' 36" East;

Thence leaving said point and along the general Southeasterly line of Taaffe Street, the following twenty-one (21) courses:

1. Southwesterly, along said curve, through a central angle of 21° 14' 53" and an arc length of

10.94 feet to the beginning of a compound curve, concave to the East, having a radius of 286.50

feet;

2. Southeasterly, along said curve, through a central angle of 18° 03' 33" and an arc length of

90.30 feet to the beginning of a reverse curve, concave to the West, having a radius of 1163.50

feet;

3. Southerly and Southwesterly, along said curve, through a central angle of 09° 04' 54" and an arc length of 184.42 feet to the beginning of a reverse curve, concave to the Northeast, having a radius of 4.50 feet;

4. Southeasterly, along said curve, through a central angle of 44° 21' 18" and an arc length of 3.48 feet;

5. South 41° 56' 26" East 11.52 feet to the beginning of a curve to the right, having a radius of 5.50 feet;

6. Southeasterly, along said curve, through a central angle of 45° 06' 05" and an arc length of 4.33 feet to the beginning of a compound curve, concave to the West, having a radius of 1174.50 feet;

7. Southerly and Southwesterly, along said curve, through a central angle of 02° 08' 23" and an arc length of 43.86 feet to the beginning of a compound curve, concave to the Northwest, having a radius of 5.50 feet;

8. Southwesterly, along said curve, through a central angle of 45° 06' 05" and an arc length of 4.33 feet;

9. South 50° 24' 07" West, 11.52 feet to the beginning of a curve to the left, having a radius of 4.50 feet;

10. Southwesterly, along said curve, through a central angle of 44° 21' 18" and an arc length of 3.48 feet to the beginning of a reverse curve, concave to the West, having a radius of 1163.50 feet;

11. Southwesterly, along said curve, through a central angle of 01° 58' 46" and an arc length of 40.20 feet to the beginning of a reverse curve, concave to the Northeast, having a radius of 4.50 feet;

12. Southeasterly, along said curve, through a central angle of 44° 21' 18" and an arc length of 3.48 feet;

13. South 36° 19' 43" East, 11.52 feet to the beginning of a curve to the right, having a radius of 5.50 feet;

14. Southeasterly, along said curve, through a central angle of 45° 06' 05" and an arc length of 4.33 feet to the beginning of a compound curve, concave to the Northwest, having a radius of 1174.50 feet;

15. Southwesterly, along said curve, through a central angle of 05° 23' 15" and an arc length of 110.44 feet to the beginning of a compound curve, concave to the Northwest, having a radius of 5.50 feet;

16. Southwesterly, along said curve, through a central angle of 45° 06' 06" and an arc length of 4.33 feet;

17. South 59° 15' 43" west, 11.52 feet to the beginning of a curve to the left, having a radius of 4.50 feet;

18. Southwesterly, along said curve, through a central angle of 44° 20' 10" and an arc length of 3.48 feet;

19. South 14° 55' 33" West, 31.93 feet to the beginning of a curve to the left, having a radius of 89.50 feet;

20. Southwesterly, along said curve, through a central angle of 12° 44' 06" and an arc length of 19.89 feet to the beginning of a compound curve, concave to the Northeast, having a radius of 29.50 feet;

21. Southeasterly, along said curve, through a central angle of 77° 19' 22" and an arc length of 39.81 feet to a point on the Northeasterly line of McKinley Avenue, as shown on said Map of

Tract No. 9925;

Thence along said Northeasterly line of McKinley Avenue, the following three (3) courses:

1. South 75° 07' 55" East, 345.65 feet to the beginning of a curve to the left, having a radius of 149.50 feet;

2. Northeasterly, along said curve, through a central angle of 10° 47' 42" and an arc length of 28.17 feet to the beginning of a compound curve, concave to the Northwest, having a radius of 29.50 feet;

3. Northeasterly, along said curve, through a central angle of 58° 38' 27" and an arc length of 30.19 feet to a point on the Northwesterly line of Murphy Avenue, as shown on said Map of Tract No. 9925 and being the beginning of a compound curve, concave to the Northwest having a radius of 1953.50 feet;

Thence along said Northwesterly line of Murphy Avenue, the following thirteen (13) courses:

1. Northeasterly, along said curve, through a central angle of 01° 50' 40" and an arc length of 62.89 feet to the beginning of a compound curve, concave to the Southwest, having a radius of 4.50 feet;

2. Northwesterly, along said curve, through a central angle of 60° 18' 29" and an arc length of 4.74 feet;

3. North 26° 43' 13" West, 6.90 feet to the beginning of a curve to the right, having a radius of 5.50 feet;

4. Northerly and Northeasterly, along said curve, through a central angle of 59° 47' 08" and an arc length of 5.76 feet to the beginning a reverse curve, concave to the Northwest, having a radius of 1942.50 feet;

5. Northeasterly, along said curve, through a central angle of 03° 14' 29" and an arc length of

109.89 feet to the beginning of a reverse curve, concave to the Southeast, having a radius of 5.50 feet;

6. Northeasterly, along said curve, through a central angle of 56° 56' 09" and an arc length of 5.47 feet;

7. North 86° 55' 35" East, 7.65 feet to the beginning of a curve to the left, having a radius of 4.50 feet;

8. Northeasterly, along said curve, through a central angle of 57° 18' 18" and an arc length of 4.50 feet to the beginning of a compound curve, concave to the Northwest, having a radius of 1953.50 feet;

9. Northeasterly, along said curve, through a central angle of 02° 35' 04" and an arc length of 88.12 feet to the beginning of a compound curve, concave to the Northwest, having a radius of 486.50 feet;

10. Northeasterly, along said curve, through a central angle of 12° 10' 01" and an arc length of 103.31 feet;

11. North 14° 52' 12" East, 159.80 feet to the beginning of a curve to the left, having a radius of 181.50 feet;

12. Northeasterly, along said curve, through a central angle of 12° 55' 16" and an arc length of 40.93 feet to the beginning of a non-tangent curve, concave to the Southwest, having a radius of 29.50 feet, from which a radial line bears North 87° 53' 52" West;

13. Northwesterly, along said curve, through a central angle of 32° 36' 45" and an arc length of 16.79 feet to a point on the Southwesterly line of Washington Avenue;

Thence leaving said point and along said general Southwesterly line of said Washington Avenue, the following two (2) courses:

1. North 75° 07' 24" West, 55.35 feet;

2. North 14° 52' 00" East, 3.00 feet to the Point of Beginning,  
Being the same parcel shown as Adjusted Parcel B on the Certificate of Compliance (Lott  
Line  
Adjustment) recorded October 30, 2008 as Instrument No. 20033369.

**PARCEL FIVE:**

Lot 2, as shown on the Map of Tract 10007 filed for record in the Office of the Recorder of  
the  
County of Santa Clara, California on October 29, 2008, in Book 828 of Maps at Pages 15  
and 16.

**PARCEL SIX:**

Units A, B-1 and B-2, as shown on the Condominium Plan entitled "Condominium Plan,  
Building D, Lot 3, Block 2 - Tract No. 9925, Sunnyvale Town Center, 818 Map 45-55",  
recorded  
on January 9, 2009 as Document No. 20087685 of the Santa Clara County Official  
Records (the  
"Building D Condominium Plan"), and as further described in the "Declaration of  
Covenants,  
Restrictions and Easements for Building D, Lot 3, Block 2 of the Sunnyvale Town Center"  
(the  
"Building D Declaration"), recorded January 9, 2009 as Document No. 20087688, Official  
Records.

**PARCEL SIX - A:**

An undivided tenancy-in-common interest in the building common area as described in  
the  
"Building D Condominium Plan" and the "Building D Declaration".

**PARCEL SIX - B:**

All easements and rights stated as granted as an appurtenance to Units A, B-1 and B-2  
including  
without limitation non-exclusive easements for the use and enjoyment of the Joint Use  
Elements  
granted as an appurtenance to said units, all as stated and provided in the "Building D  
Declaration".

**PARCEL SEVEN:**

Units A, B-1 and B-2, as shown on the Condominium Plan entitled "Condominium Plan,  
Building E, Lot 6, Block 2 - Tract No. 9925, Sunnyvale Town Center, 818 Map 45-55",  
recorded  
on January 9, 2009 as Document No. 20087686 of the Santa Clara County Official  
Records (the

“Building E Condominium Plan”) and as further described in the “Declaration of Covenants, Restrictions and Easements for Building E, Lot 6, Block 2 of the Sunnyvale Town Center” (the “Building E Declaration”), recorded January 9, 2009 as Document No. 20087689, Official Records.

**PARCEL SEVEN - A:**

An undivided tenancy-in-common interest in the building common area as described in the “Building E Condominium Plan” and the “Building E Declaration”.

**PARCEL SEVEN - B:**

All easements and rights stated as granted as an appurtenance to Units A, B-1 and B-2 including, without limitation non-exclusive easements for the use and enjoyment of the Joint Use Elements granted as an appurtenance to said units, all as stated and provided in the “Building E Declaration”.

**PARCEL EIGHT:**

Units A, B-1 and B-2, as shown on the Condominium Plan entitled “Condominium Plan, Building F, Lot 2, Block 1 - Tract No. 9925, Sunnyvale Town Center, 818 Map 45-55”, recorded on January 9, 2009 as Document No. 20087687 of the Santa Clara County Official Records (the “Building F Condominium Plan”) and as further described in the “Declaration of Covenants, Restrictions and Easements for Building F, Lot 2, Block 1 of the Sunnyvale Town Center” (the “Building F Declaration”), recorded January 9, 2009 as Document No. 20087690, Official Records.

**PARCEL EIGHT - A:**

An undivided tenancy-in-common interest in the building common area as described in the “Building F Condominium Plan” and the “Building F Declaration”.

**PARCEL EIGHT - B:**

All easements and rights stated as granted as an appurtenance to Units A, B-1 and B-2 including, without limitation non-exclusive easements for the use and enjoyment of the Joint Use Elements granted as an appurtenance to said units, all as stated and provided in the “Building F Declaration”.

**PARCEL NINE:**

Unit C, as shown on the Condominium Plan entitled "Condominium Plan, Building D, Lot 3, Block 2 - Tract No. 9925, Sunnyvale Town Center, 818 Map 45-55", recorded on January 9, 2009 as Document No. 20087685 of the Santa Clara County Official Records (the "Building D Condominium Plan"), and as further described in the "Declaration of Covenants, Restrictions and Easements for Building D, Lot 3, Block 2 of the Sunnyvale Town Center" (the "Building D Declaration"), recorded January 9, 2009 as Document No. 20087688, Official Records.

**PARCEL NINE - A:**

An undivided tenancy-in-common interest in the building common area as described in the "Building D Condominium Plan" and the "Building D Declaration".

**PARCEL NINE - B:**

Exclusive Easements for the use and enjoyment of the Exclusive Use Elements that are designated on the "Condominium Plan", which are granted as an appurtenance to Unit C as stated and provided in the "Building D Declaration".

**PARCEL NINE - C:**

All easements and rights stated as granted as an appurtenance to Unit C, including, without limitation non-exclusive easements for the use and enjoyment of the Joint Use Elements granted as an appurtenance to Unit C, all as stated and provided in the "Building D Declaration".

**PARCEL TEN:**

Unit C, as shown on the Condominium Plan entitled "Condominium Plan, Building E, Lot 6, Block 2 - Tract No. 9925, Sunnyvale Town Center, 818 Map 45-55", recorded on January 9, 2009 as Document No. 20087686 of the Santa Clara County Official Records (the "Building E Condominium Plan") and as further described in the "Declaration of Covenants, Restrictions and Easements for Building E, Lot 6, Block 2 of the Sunnyvale Town Center" (the "Building E Declaration"), recorded January 9, 2009 as Document No. 20087689, Official Records.

**PARCEL TEN - A:**

An undivided tenancy-in-common interest in the building common area as described in the

“Building E Condominium Plan” and the “Building E Declaration”.

**PARCEL TEN - B:**

Exclusive Easements for the use and enjoyment of the Exclusive Use Elements that are designated on the “Condominium Plan”, which are granted as an appurtenance to Unit C as stated and provided in the “Building E Declaration”.

**PARCEL TEN - C:**

All easements and rights stated as granted as an appurtenance to Unit C, including, without limitation non-exclusive easements for the use and enjoyment of the Joint Use Elements granted as an appurtenance to Unit C, all as stated and provided in the “Building E Declaration”.

**PARCEL ELEVEN:**

Unit C, as shown on the Condominium Plan entitled “Condominium Plan, Building F, Lot 2, Block 1 - Tract No. 9925, Sunnyvale Town Center, 818 Map 45-55”, recorded on January 9, 2009 as Document No. 20087687 of the Santa Clara County Official Records (the “Building F Condominium Plan”) and as further described in the “Declaration of Covenants, Restrictions and Easements for Building F, Lot 2, Block 1 of the Sunnyvale Town Center” (the “Building F Declaration”), recorded January 9, 2009 as Document No. 20087690, Official Records.

**PARCEL ELEVEN - A:**

An undivided tenancy-in-common interest in the building common area as described in the “Building E Condominium Plan” and the “Building F Declaration”.

**PARCEL ELEVEN - B:**

Exclusive Easements for the use and enjoyment of the Exclusive Use Elements that are designated on the “Condominium Plan”, which are granted as an appurtenance to Unit C as stated and provided in the “Building F Declaration”.

**PARCEL ELEVEN - C:**

All easements and rights stated as granted as an appurtenance to Unit C, including, without limitation non-exclusive easements for the use and enjoyment of the Joint Use Elements granted as an appurtenance to Unit C, all as stated and provided in the “Building F Declaration”.

**PARCEL TWELVE:**

Lot 4, Block 1, as shown on the Map of Tract No. 9925, filed for record in the Office of the Recorder of the County of Santa Clara, California on October 1, 2007 in Book 818 of Maps at Pages 45 through 55, inclusive.

**PARCEL THIRTEEN:**

Lot 3, block 5, as shown on the Map of Tract No. 9925, filed for record in the Office of the Recorder of the County of Santa Clara, California on October 1, 2007 in Book 818 of Maps at Pages 45 through 55, inclusive.

**ATTACHMENT 1**

**Public Parking Easement**

**ATTACHMENT 2**

Public Parking Ground Lease and First and Second Amendments

[To Be Inserted]

**ATTACHMENT 3**

**Public Street and Utility Maintenance Agreement and First Amendment**

**ATTACHMENT 4**

**Penney's Structure Agreement, First Amendment**

PAGES 1-65 OF ADDOPA (2010).DOCX

**ATTACHMENT 9**  
**2016 Modified and Restated Amended Disposition and Development and**  
**Owner Participation Agreement (MRADDOPA)**  
**Successor Agency CEQA Guidelines Findings and Analysis**

**FINDINGS**

1. Pursuant to CEQA Guidelines Section 15051, the City of Sunnyvale is the "Lead Agency" with respect to the Sunnyvale Town Center Project (the "Project") for CEQA purposes. Because the Successor Agency's discretionary action is required to approve the MRADDOPA, it is the "Responsible Agency" for CEQA purposes.
2. At a public hearing on May 23, 2016, the Lead Agency found that the Project is within the scope of previous environmental analysis in accordance with CEQA Guidelines Section 15168(c)(2) and that subsequent environmental review is not required. The Lead Agency further found that no EIR or negative declaration was required for the Project, because it is categorically exempt from CEQA.
3. Based upon the testimony and information presented at the Successor Agency hearing on June 30, 2016, including the staff report prepared in advance of the hearing, which is incorporated by reference ("Staff Report"), and upon review and consideration of the environmental documentation prepared, including but not limited to the Program EIR for the "Downtown Improvement Program Update" certified on June 17, 2003 as amended and the Special Development Permit MND adopted on August 17, 2004, which are incorporated by reference, the Successor Agency has considered the environmental effects of the Project in accordance with CEQA Guidelines Section 15096 and finds that that no subsequent or supplemental environmental review is required for the Project because none of the conditions described in CEQA Guidelines Section 15168 have occurred; therefore, the Successor Agency further finds subsequent environmental review is not required.
4. The Successor Agency finds that, for the reasons set forth in the Staff Report, the Project meets each of the required conditions to qualify for a categorical exemption from CEQA as project resulting in minor alterations to land and minor alterations in land use limitations described in Sections 15304 and 15305 of the CEQA Guidelines, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred; therefore, the Successor Agency finds that no EIR or negative declaration need be prepared for the Project because it is categorically exempt from CEQA.

**DISCUSSION**

Adoption of the Modified and Restated Amended Disposition and Development and Owner Participation Agreement (MRADDOPA) for the Sunnyvale Town Center Project (the "Project") is considered a "project" for purposes of the California Environmental Quality Act, Public Resources Code § 21000, et seq. ("CEQA"). However, as explained in more detail below, in accordance with CEQA Guidelines Sections 15096(d)(3) and 15168(c)(2), the Project is within the scope of previous environmental analysis, and subsequent environmental review is not required. In addition, the Project is categorically exempt from CEQA pursuant to CEQA Guidelines Sections 15304 and 15305, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred. Therefore, no additional analysis is required to comply with CEQA before the Successor Agency takes action regarding the Project.

**ATTACHMENT 9**  
**2016 Modified and Restated Amended Disposition and Development and**  
**Owner Participation Agreement (MRADDOPA)**  
**Successor Agency CEQA Guidelines Findings and Analysis**

**Previous Environmental Analysis**

Pursuant to CEQA Guidelines Section 15051, the City of Sunnyvale is the "Lead Agency" with respect to the Project for CEQA purposes. Accordingly, in 2003, the City prepared a Program EIR for the "Downtown Improvement Program Update" project (the "Program EIR"). The Downtown Improvement Program Update included amendments to the General Plan, Downtown Specific Plan and the Downtown Redevelopment Plan to accommodate a build-out of approximately 2,520 residential units, 1.4 million square feet of retail and entertainment uses, 1.3 million square feet of office uses, and 12,240 square feet of public facility uses within a 150-acre area that includes the current Project site. The Program EIR fully analyzed the environmental effects of the Downtown Improvement Program Update, and the City certified the Final Program EIR on June 17, 2003. The Program EIR was modified by an addendum on July 13, 2004 to increase the build-out by an additional 98,000 square feet of office uses and 100 residential units (the "First Addendum").

The following year, the City approved an SDP for the development of approximately 1 million square feet of retail and entertainment uses, 275,000 square feet of office uses, and 292 residential units on the Project site, the impacts of which were analyzed in a Mitigated Negative Declaration tiered off of the Program EIR pursuant to CEQA Guidelines Section 15168(d) (the "2004 MND"). The 2004 MND and site-specific mitigation measures were approved on August 17, 2004. At the same time, the former Sunnyvale Redevelopment Agency (the "Former Agency") adopted a Disposition and Development and Owner Participation Agreement ("DDOPA") that reflected the land use approvals in the SDP and found that the provisions of the DDOPA did not raise any additional impacts beyond those already analyzed in the Program EIR and 2004 MND.

In 2007, the City prepared a second addendum to the Program EIR to analyze the impact of an SDP amendment to increase the office uses permitted on the Project site by an additional 40,000 square feet and adding a 200-room hotel in lieu of an equivalent amount of office space analyzed in the Program EIR (the "Second Addendum"). On February 6, 2007, the City approved the Second Addendum, concluding that the modifications would not result in any significant environmental effects that had not been analyzed in the Program EIR (as modified by the First Addendum) and the 2004 MND. The City approved the SDP amendment, and the Former Agency approved an Amended and Restated Disposition and Development and Owner Participation Agreement ("ARDDOPA") which amended the DDOPA for consistency with the amended SDP. Prior to approving the ARDDOPA, the Former Agency found that the amended provisions did not raise any additional impacts beyond those already analyzed in the Program EIR, 2004 MND and Second Addendum.

Later that year, the City approved an amended SDP for the development of approximately 931,000 square feet of retail and entertainment uses, 315,000 square feet of office uses, 292 residential units, and a 200-room hotel on the Project site pursuant to a third addendum to the Program EIR adopted on July 9, 2007 (the "Third Addendum," or collectively with the First and Second Addenda, the "Addenda"). The City concluded that the Third Addendum would not result in any significant environmental effects that had not been analyzed in the Program EIR (as modified by the First and Second Addenda) and the 2004 MND. The City determined that subsequent minor modifications to the SDP for the Project in 2008 were within the scope of the Program EIR (as modified by the Addenda) and the 2004 MND and that none of the conditions

**ATTACHMENT 9**  
**2016 Modified and Restated Amended Disposition and Development and**  
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specified in CEQA Guidelines Section 15162 requiring subsequent environmental review had occurred.

In 2010, the Former Agency approved an Amended Disposition and Development and Owner Participation Agreement ("ADDOPA") that amended the ARDDOPA. The Former Agency found that the ADDOPA was within the scope of the Program EIR (as modified by the Addenda) and the 2004 MND, and it did not introduce any additional impacts, involve any substantial change in circumstances or involve new information that would require subsequent environmental review.

*Project's Effects Compared to Previous Environmental Analysis*

At public hearings on May 23, 2016 and June 21, 2016, the City approved amendments to the SDP to permit the previously-approved residential units to be developed as rental units instead of for-sale units. The SDP amendment also permitted temporary landscaping and parking improvements to be installed on Redwood Square within the Project site until the full program of previously-approved uses is ready to be developed and imposed minor modifications to the previously-approved land use conditions to reflect the City's current standard conditions of approval and contemporary environmental and infrastructure standards. None of the Project's changes to the SDP modified the height, type, or intensity of the uses previously approved or analyzed in the Program EIR (as modified by the Addenda) and the 2004 MND. Accordingly, the City found that the Project is within the scope of previous environmental analysis in accordance with CEQA Guidelines Section 15168(c)(2) and that subsequent environmental review is not required.

The Project also includes of an amendment to the ADDOPA (the "MRADDOPA") to reflect the land-use changes approved by the City. In addition, the MRADDOPA includes terms related to the obligations of the Developer to complete a defined "Minimum Project" (which is within the scope of the development authorized under the SDP, as amended) and outlines the responsibilities of the Developer and Successor Agency to construct the Project in accordance with the SDP.

Because the Successor Agency's discretionary action is required to approve the MRADDOPA, it is the "Responsible Agency" for CEQA purposes. Pursuant to CEQA Guidelines Section 15096(e)(3), a Responsible Agency may not require subsequent environmental review after a Lead Agency prepares an EIR or a Negative Declaration unless the conditions described in CEQA Guidelines Section 15162 have occurred. As explained below, none of the conditions specified in CEQA Guidelines Section 15162 requiring subsequent or supplemental environmental analysis have occurred; therefore, no new environmental analysis is required to comply with CEQA.

Specifically, the Project does not include any substantial changes in the Downtown Improvement Program Update of the previously-approved SDP, and there is no evidence in the record that the Project would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects necessitating major revisions to the Program EIR (as modified by the Addenda) or the 2004 MND. Similarly, there is no evidence in the record that substantial changes have occurred with respect to the circumstances under which the Project is to be undertaken that will require major revisions of the Program EIR (as modified by the Addenda) or the 2004 MND. Finally, there is no new information of

**ATTACHMENT 9**  
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substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Program EIR (as modified by the Addenda) and the 2004 MND were adopted, in the record that shows new or considerable different significant effects, mitigation measures, or alternatives than were analyzed in the Program EIR (as modified by the Addenda) and the 2004 MND.

Because no new effects could occur or no new mitigation measures would be required under CEQA Guidelines Section 15162, CEQA Guidelines Section 15096 permits the Successor Agency to adopt the MRADDOPA as part of the Project, and no new environmental document is required.

### **Categorical Exemptions**

In addition to the fact that the Project is within the scope of the Program EIR pursuant to CEQA Guidelines Sections 15096(e)(3) and 15168(c)(2), the Project is also categorically exempt from further CEQA review. Although the MRADDOPA would not directly address the minor private alterations in the condition of land and vegetation or the minor alterations in land use limitations contemplated as part of the Project, its adoption would delete portions of the ADDOPA that are inconsistent with the physical improvements approved by the City in the SDP. However, pursuant to CEQA Guidelines Section 15304, the Project qualifies for an exemption for minor private alterations in the condition of land and vegetation (a "Class 4 Exemption"), and pursuant to CEQA Guidelines Section 15305, the Project qualifies for an exemption for minor alterations in land use limitations (a "Class 5 Exemption").

#### *Minor Alterations to Land*

A Class 4 Exemption may be used to permit minor alterations to land, which expressly includes new gardening or landscaping and minor temporary use of land having negligible or no permanent effects on the environment, as long as the alterations do not involve the removal of healthy, mature, scenic trees. The Project's proposed temporary improvements to Redwood Square consist of the installation of new landscaping and temporary surface parking that will be removed when the previously-approved uses for the area are ready for development. The proposed placement of temporary landscaping and hardscape within the areas currently occupied by partially-built steel structures constitutes a minor alteration of the condition of land and/or vegetation. In addition, no healthy, mature, scenic trees would be removed or negatively affected by the alterations. Therefore, the Project qualifies for a Class 4 Exemption.

#### *Minor Alterations in Land Use Limitations*

A Class 5 Exemption may be used to permit minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density. The Project site has an average slope of less than 20%, and the Project's proposed land use limitation alterations would not affect the land uses or density of development permitted on the site. The proposed alteration to permit rental housing units in place of for-sale housing units does not qualify as a change in land use as that term is used in CEQA Guidelines Section 15305, since the change in the ownership structure does not affect the underlying use in the land. Furthermore, CEQA Guidelines Section 15301(k) explicitly exempts the conversion of rental housing to for-sale housing, which supports the conclusion that modifying a residential

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land use's form of ownership is not a change that would result in a significant effect to the environment requiring the application of CEQA. Therefore, the Project qualifies for a Class 5 Exemption.

*Exemption Exceptions*

Finally, none of the exceptions to the exemption specified in CEQA Guidelines Section 15300.2 have occurred. Specifically, the Project site is not in a location where it would have any impact on: an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies; scenic highways; or historical resources. There is no evidence in the record that the Project would contribute to a cumulative impact, nor that unusual circumstances would cause the Project to result in a significant effect. Finally, the Project site is not located on a hazardous waste site. Therefore, the exceptions to the exemptions are inapplicable, and no further environmental analysis is required under CEQA.

**RESOLUTION NO. 105-16-RSA**

**A RESOLUTION OF THE SUCCESSOR AGENCY OF THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE APPROVING SPECIFIED SECTIONS OF THE 2016 MODIFIED AND RESTATED AMENDED DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT, PART A AND RELATED DOCUMENTS IN CONNECTION WITH SUNNYVALE TOWN CENTER, AUTHORIZING THE EXECUTIVE DIRECTOR TO TAKE ACTIONS NECESSARY TO IMPLEMENT THE AUTHORIZED AGREEMENTS AND TO EXECUTE AGREEMENTS ON BEHALF OF THE SUCCESSOR AGENCY IN CONNECTION WITH THE PROJECT, MAKING FINDINGS AND RECOMMENDING THAT THE OVERSIGHT BOARD FIND THAT APPROVING THE AGREEMENTS IS IN THE BEST INTEREST OF THE TAXING ENTITIES AND CATEGORICALLY EXEMPT FROM CEQA, AND RECOMMENDING THAT THE OVERSIGHT BOARD APPROVE SPECIFIED SECTIONS OF THE 2016 MODIFIED AND RESTATED AMENDED DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT, PART A AND RELATED DOCUMENTS IN CONNECTION WITH SUNNYVALE TOWN CENTER**

WHEREAS, Assembly Bill 1X 26, enacted on June 28, 2011 resulted in the dissolution of all redevelopment agencies in the State of California, including the former Redevelopment Agency of the City of Sunnyvale (the "Former Agency"), effective February 1, 2012; and

WHEREAS, as added by ABx1 26, Health and Safety Code Section 34173(b) provides that the authority, rights, powers, duties and obligations previously vested with the former redevelopment agencies are vested in the successor agencies; and

WHEREAS, AB 1484, enacted on June 27, 2012, amended ABx1 26 (as amended, the "Dissolution Law") to clarify that successor agencies are separate legal entities from their sponsoring city or county; and

WHEREAS, in accordance with the Dissolution Law, the City of Sunnyvale elected to act as the Successor Agency to the Former Agency (the "Successor Agency"); and

WHEREAS, on or about February 24, 2005, prior to its dissolution, the former Redevelopment Agency of the City of Sunnyvale ("Former Agency") entered into the original Disposition and Development and Owner Participation Agreement ("DDOPA") with Fourth

Quarter Properties XLVII, LLC (“Original Developer”) which provided for an exchange of properties between the Former Agency and Original Developer, for the construction of new retail, office and residential development (the “Project”) on the site of the former Town Center Mall (“Town Center Property”) and for construction of new public parking structures and street improvements on the Town Center Property pursuant to Resolution No. 102-04 RDA adopted by the Former Agency on or about August 17, 2004; and

WHEREAS, following a default under the DDOPA, the Original Developer transferred the Town Center Property to Downtown Sunnyvale Mixed Use, LLC (“DSMU”) and on or about February 6, 2007, the Former Agency adopted Resolution No. 114-07-RA approving the Amended and Restated Disposition and Development and Owner Participation Agreement (“ARDDOPA”) with DSMU to reflect the change in ownership and update certain terms of the agreement; on or about April 10, 2007, the Former Agency adopted Resolution No. 118-07-RA approving the First Modification to the ARDDOPA; on or about November 18, 2007, the Former Agency approved the First Amendment to the ARDDOPA;

WHEREAS, on or about May 11, 2010, following foreclosure proceedings against DSMU, the Town Center Property was placed in receivership and the Former Agency adopted Resolution No. 123-10-RA approving the 2010 Modification Agreement to the ARDDOPA with L. Gerald Hunt as Court-Appointed Receiver, which was subsequently documented by the execution of the 2010 Amended Disposition and Development and Owner Participation Agreement (“2010 ADDOPA”) on or about August 2, 2010; and

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

WHEREAS, pursuant to Health and Safety Code Section 34177(i), the Successor Agency is authorized to continue to oversee development of properties until the work is completed or the contractual obligations of the Former Agency can be transferred; and

WHEREAS, on or about November 18, 2015, pursuant to Article 6 of the 2010 ADDOPA, the current owner of the Town Center Property, REDUS SVTC, LLC (Wells Fargo Bank), submitted to the Successor Agency a Notice of Intent to Transfer the Town Center Property to an entity to be formed by J.P. Morgan Asset Management Fund, Sares Regis Group of Northern California, and Hunter Properties, Inc.; and

WHEREAS, on or about December 10, 2015, the Successor Agency, after reviewing reports of its financial and real estate consultants, acknowledged that the proposed transferees satisfied the criteria for transfer set forth in Article 6 of the 2010 ADDOPA, and J.P. Morgan Asset Management Fund, Sares Regis of Northern California, and Hunter Properties, Inc. formed a joint venture, STC Venture, LLC (“New Developer”), for purposes of completing the Project; and

WHEREAS, amendments to the Special Development Permit for the Project were approved by the City of Sunnyvale Planning Commission on May 23, 2016 in two separate actions (Part A and Part B), and upon the appeal of Part A, the Commission's approval of Part A was upheld by the City Council on June 21, 2016 (the "City Approvals"); and

WHEREAS, the Successor Agency has considered the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement, with the exception of Sections 5.03 and 8.01 through 8.04, ("2016 MRADDOPA, Part A") between the Successor Agency and the New Developer, and the 2016 MRADDOPA, Part A is generally consistent with the terms approved in the DDOPA, ARDDOPA, and the 2010 ADDOPA with certain negotiated changes that: extend the time for the New Developer to complete a minimum portion of the Project (the "Minimum Project"); reduce the Successor Agency's liabilities in connection with certain environmental remediation efforts; accommodate the City Approvals, while removing City obligations from the agreement; revise the definition of the Minimum Project; and incorporate other revisions for clarity; and

WHEREAS, certain documents that further describe the New Developer's responsibility to construct, operate and maintain the public facilities within the Project are referenced in in the 2010 ADDOPA and will continue to be referenced in the 2016 MRADDOPA, Part A, and other documents attached are as exhibits to the 2016 MRADDOPA, Part A (collectively, the "Related Documents"); and

WHEREAS, the Related Documents shall be assigned to, or entered into with, the New Developer with amendments and updates as needed to effectuate the purpose of the 2016 MRADDOPA, Part A, and which shall include, without limitation a Public Parking Ground Lease as amended, a Second Amendment to Public Parking Ground Lease, a Modified and Restated Covenant to Convey, and a Block 5 Parking Structure Easement Agreement; and

WHEREAS, the Successor Agency has concluded that the 2016 MRADDOPA, Part A and Related Documents would facilitate transfer of the Town Center Property and development of the Project, which would result in increased net revenues to taxing entities, both from the transfer tax collected at the time of sale and the increased property tax revenue that would be generated as the Project develops; and

WHEREAS, the Successor Agency has concluded that the 2016 MRADDOPA, Part A and Related Documents would reduce liability by transferring certain obligations in connection with environmental remediation efforts to the New Developer; and

WHEREAS, pursuant to California Environmental Quality Act ("CEQA") Guidelines Section 15051, the City of Sunnyvale is the "Lead Agency" with respect to the Project for CEQA purposes, and because the Successor Agency's discretionary action is required to approve the 2016 MRADDOPA, Part A, it is the "Responsible Agency" for CEQA purposes; and

WHEREAS, at a public hearing on May 23, 2016, the Lead Agency (Planning Commission) found that the Project is within the scope of previous environmental analysis in accordance with CEQA Guidelines Section 15168(c)(2) and that subsequent environmental

review is not required, and the Lead Agency further found that no EIR or negative declaration was required for the Project as it is categorically exempt from CEQA, because the Project would result in minor alterations to land and minor alterations in land use limitations described in Sections 15304 and 15305 of the CEQA Guidelines, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred; and

WHEREAS, the Planning Commission's action on Part A of the Site Development Permit was appealed to City Council and at a public hearing on June May 23, 2016, the Lead Agency (City Council) found that the Project is within the scope of previous environmental analysis in accordance with CEQA Guidelines Section 15168(c)(2) and that subsequent environmental review is not required, and the Lead Agency further found that no EIR or negative declaration was required for the Project as it is categorically exempt from CEQA, because the Project would result in minor alterations to land and minor alterations in land use limitations described in Sections 15304 and 15305 of the CEQA Guidelines, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred; and

WHEREAS, the Successor Agency has independently reviewed and considered the environmental documentation including but not limited to the Program EIR for the "Downtown Improvement Program Update" certified on June 17, 2003 as amended and the Special Development Permit MND adopted on August 17, 2004, and concluded that approval of the 2016 MRADDOPA, Part A and Related Documents is within the scope of previous environmental analysis and that no subsequent or supplemental environmental review is required for the Project because none of the conditions described in CEQA Guidelines Section 15168 have occurred; and

WHEREAS, the Successor Agency has determined that the Project meets each of the required conditions to qualify for a categorical exemption from CEQA as a project resulting in minor alterations to land and minor alterations in land use limitations described in Sections 15304 and 15305 of the CEQA Guidelines, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred, and therefore, no EIR or negative declaration need be prepared for the Project because it is categorically exempt from CEQA; and

WHEREAS, Health and Safety Code Section 34179(a) provides for the establishment of the Oversight Board of the Successor Agency to Former Agency (the "Oversight Board"); and

WHEREAS, the Successor Agency is now requesting that the Oversight Board find that, pursuant to Health and Safety Code 34181(e), the 2016 MRADDOPA, Part A's proposed amendments to the 2010 ADDOPA are in the best interests of the taxing entities because the 2016 MRADDOPA, Part A and Related Documents would reduce the Successor Agency's liabilities and increase net revenues to the taxing entities; and

WHEREAS, the Successor Agency further requests that the Oversight Board approve the 2016 MRADDOPA, Part A and Related Documents; and

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

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

1. The Former Agency findings in Resolutions 102-04-RA, 114-01-RA, 118-07-RA, and 123-10-RA are incorporated and affirmed in support of this Resolution.
2. The Successor Agency finds that, for the reasons set forth in Attachment 5 to the June 28, 2016 staff report, which is incorporated into this Resolution by reference, approval of the 2016 MRADDOPA, Part A and Related Documents is categorically exempt from CEQA, and that even if the approval were not categorically exempt, subsequent environmental review would not be required.
3. The Successor Agency hereby approves the 2016 MRADDOPA, Part A and the Related Documents substantially in the form on file with the Secretary of the Successor Agency subject to such changes as may be approved by the Executive Director of the Successor Agency as evidenced by the Executive Director's signature on the 2016 MRADDOPA, Part A and the Related Documents.
4. The Successor Agency finds that approving the 2016 MRADDOPA, Part A and Related Documents is in the best interests of the taxing entities because the 2016 MRADDOPA, Part A would reduce the Successor Agency's liabilities and increase net revenues to the taxing entities. Accordingly, the Successor Agency requests the Oversight Board find that the 2016 MRADDOPA, Part A is in the best interests of the taxing entities and approve the 2016 MRADDOPA, Part A and Related Documents.
5. To the extent authorized by and consistent with Dissolution Law, the Executive Director of the Successor Agency, or her designee, is authorized to execute, on behalf of the Successor Agency, the 2016 MRADDOPA, Part A and any Related Documents, and to conform the 2016 MRADDOPA, Part A and Related Documents to such other documents and agreements necessary to implement the 2016 MRADDOPA, Part A and Related Documents as the Executive Director and the Successor Agency Attorney conclude are necessary and appropriate.
6. To the extent authorized by and consistent with Dissolution Law, the Executive Director, or her designee, is authorized to take such actions as are necessary to carry out any of the agreements referenced in this Resolution or contemplated by the 2016 MRADDOPA, Part A and Related Documents.
7. If necessary, the Successor Agency Secretary is directed to certify to the adoption of this Resolution and attach a copy thereof to each deed or other document to be recorded pursuant to the 2016 MRADDOPA, Part A and Related Documents.

Adopted by the Successor Agency of the former Redevelopment Agency of the City of Sunnyvale at a regular meeting held on June 30, 2016, by the following vote:

AYES: HENDRICKS, GRIFFITH, MARTIN-MILIUS  
NOES: MEYERING  
ABSTAIN: NONE  
ABSENT: DAVIS  
RECUSAL: LARSSON

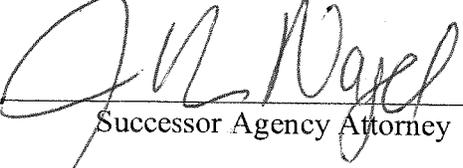
ATTEST:

APPROVED:

  
\_\_\_\_\_  
Successor Agency Secretary  
(SEAL)

  
\_\_\_\_\_  
Successor Agency Chair

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Successor Agency Attorney

**RESOLUTION NO. 106-16-RSA**

**A RESOLUTION OF THE SUCCESSOR AGENCY OF THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE APPROVING SPECIFIED SECTIONS OF THE 2016 MODIFIED AND RESTATED AMENDED DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT, PART B, AUTHORIZING THE EXECUTIVE DIRECTOR TO TAKE ACTIONS NECESSARY TO IMPLEMENT THE AUTHORIZED AGREEMENT AND TO EXECUTE THE AGREEMENT ON BEHALF OF THE SUCCESSOR AGENCY, MAKING FINDINGS AND RECOMMENDING THAT THE OVERSIGHT BOARD FIND THAT APPROVING THE AGREEMENT IS IN THE BEST INTEREST OF THE TAXING ENTITIES AND CATEGORICALLY EXEMPT FROM CEQA, AND RECOMMENDING THAT THE OVERSIGHT BOARD APPROVE SPECIFIED SECTIONS OF THE 2016 MODIFIED AND RESTATED AMENDED DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT, PART B IN CONNECTION WITH SUNNYVALE TOWN CENTER**

WHEREAS, Assembly Bill 1X 26, enacted on June 28, 2011 resulted in the dissolution of all redevelopment agencies in the State of California, including the former Redevelopment Agency of the City of Sunnyvale (the "Former Agency"), effective February 1, 2012; and

WHEREAS, as added by ABx1 26, Health and Safety Code Section 34173(b) provides that the authority, rights, powers, duties and obligations previously vested with the former redevelopment agencies are vested in the successor agencies; and

WHEREAS, AB 1484, enacted on June 27, 2012, amended ABx1 26 (as amended, the "Dissolution Law") to clarify that successor agencies are separate legal entities from their sponsoring city or county; and

WHEREAS, in accordance with the Dissolution Law, the City of Sunnyvale elected to act as the Successor Agency to the Former Agency (the "Successor Agency"); and

WHEREAS, on or about February 24, 2005, prior to its dissolution, the former Redevelopment Agency of the City of Sunnyvale ("Former Agency") entered into the original Disposition and Development and Owner Participation Agreement ("DDOPA") with Fourth Quarter Properties XLVII, LLC ("Original Developer") which provided for an exchange of properties between the Former Agency and Original Developer, for the construction of new

retail, office and residential development (the “Project”) on the site of the former Town Center Mall (“Town Center Property”) and for construction of new public parking structures and street improvements on the Town Center Property pursuant to Resolution No. 102-04 RDA adopted by the Former Agency on or about August 17, 2004; and

WHEREAS, following a default under the DDOPA, the Original Developer transferred the Town Center Property to Downtown Sunnyvale Mixed Use, LLC (“DSMU”) and on or about February 6, 2007, the Former Agency adopted Resolution No. 114-07-RA approving the Amended and Restated Disposition and Development and Owner Participation Agreement (“ARDDOPA”) with DSMU to reflect the change in ownership and update certain terms of the agreement; on or about April 10, 2007, the Former Agency adopted Resolution No. 118-07-RA approving the First Modification to the ARDDOPA; on or about November 18, 2007, the Former Agency approved the First Amendment to the ARDDOPA;

WHEREAS, on or about May 11, 2010, following foreclosure proceedings against DSMU, the Town Center Property was placed in receivership and the Former Agency adopted Resolution No. 123-10-RA approving the 2010 Modification Agreement to the ARDDOPA with L. Gerald Hunt as Court-Appointed Receiver, which was subsequently documented by the execution of the 2010 Amended Disposition and Development and Owner Participation Agreement (“2010 ADDOPA”) on or about August 2, 2010; and

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

WHEREAS, pursuant to Health and Safety Code Section 34177(i), the Successor Agency is authorized to continue to oversee development of properties until the work is completed or the contractual obligations of the Former Agency can be transferred; and

WHEREAS, on or about November 18, 2015, pursuant to Article 6 of the 2010 ADDOPA, the current owner of the Town Center Property, REDUS SVTC, LLC (Wells Fargo Bank), submitted to the Successor Agency a Notice of Intent to Transfer the Town Center Property to an entity to be formed by J.P. Morgan Asset Management Fund, Sares Regis Group of Northern California, and Hunter Properties, Inc.; and

WHEREAS, on or about December 10, 2015, the Successor Agency, after reviewing reports of its financial and real estate consultants, acknowledged that the proposed transferees satisfied the criteria for transfer set forth in Article 6 of the 2010 ADDOPA, and J.P. Morgan Asset Management Fund, Sares Regis of Northern California, and Hunter Properties, Inc. formed a joint venture, STC Venture, LLC (“New Developer”), for purposes of completing the Project; and

WHEREAS, amendments to the Special Development Permit for the Project were approved by the City of Sunnyvale Planning Commission on May 23, 2016 in two separate

actions (Part A and Part B), and upon the appeal of Part A, the Commission's approval of Part A was upheld by the City Council on June 21, 2016 (the "City Approvals"); and

WHEREAS, the Successor Agency has considered Sections 5.03 and 8.01 through 8.04 of the 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement ("2016 MRADDOPA, Part B") between the Successor Agency and the New Developer, and the 2016 MRADDOPA, Part B is generally consistent with the terms approved in the DDOPA, ARDDOPA, and the 2010 ADDOPA with certain negotiated changes that eliminate the tax increment payments to the New Developer and strengthen the liquidated damages clause and clarify the Successor Agency's enforcement provisions; and

WHEREAS, the Successor Agency has concluded that the 2016 MRADDOPA, Part B would facilitate transfer of the Town Center Property and development of the Project, which would result in increased net revenues to taxing entities, both from the transfer tax collected at the time of sale and the increased property tax revenue that would be generated as the Project develops; and

WHEREAS, the Successor Agency has concluded that the 2016 MRADDOPA, Part B would reduce liability by eliminating the tax increment payments to the New Developer; and

WHEREAS, pursuant to California Environmental Quality Act ("CEQA") Guidelines Section 15051, the City of Sunnyvale is the "Lead Agency" with respect to the Project for CEQA purposes, and because the Successor Agency's discretionary action is required to approve the 2016 MRADDOPA, Part B, it is the "Responsible Agency" for CEQA purposes; and

WHEREAS, at a public hearing on May 23, 2016, the Lead Agency (Planning Commission) found that the Project is within the scope of previous environmental analysis in accordance with CEQA Guidelines Section 15168(c)(2) and that subsequent environmental review is not required, and the Lead Agency further found that no EIR or negative declaration was required for the Project as it is categorically exempt from CEQA, because the Project would result in minor alterations to land and minor alterations in land use limitations described in Sections 15304 and 15305 of the CEQA Guidelines, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred; and

WHEREAS, the Planning Commission's action on Part A of the Site Development Permit was appealed to City Council and at a public hearing on June May 23, 2016, the Lead Agency (City Council) found that the Project is within the scope of previous environmental analysis in accordance with CEQA Guidelines Section 15168(c)(2) and that subsequent environmental review is not required, and the Lead Agency further found that no EIR or negative declaration was required for the Project as it is categorically exempt from CEQA, because the Project would result in minor alterations to land and minor alterations in land use limitations described in Sections 15304 and 15305 of the CEQA Guidelines, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred; and

WHEREAS, the Successor Agency has independently reviewed and considered the environmental documentation including but not limited to the Program EIR for the "Downtown

Improvement Program Update” certified on June 17, 2003 as amended and the Special Development Permit MND adopted on August 17, 2004, and concluded that approval of the 2016 MRADDOPA, Part B and Related Documents is within the scope of previous environmental analysis and that no subsequent or supplemental environmental review is required for the Project because none of the conditions described in CEQA Guidelines Section 15168 have occurred; and

WHEREAS, the Successor Agency has determined that the Project meets each of the required conditions to qualify for a categorical exemption from CEQA as a project resulting in minor alterations to land and minor alterations in land use limitations described in Sections 15304 and 15305 of the CEQA Guidelines, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred, and therefore, no EIR or negative declaration need be prepared for the Project because it is categorically exempt from CEQA; and

WHEREAS, Health and Safety Code Section 34179(a) provides for the establishment of the Oversight Board of the Successor Agency to Former Agency (the “Oversight Board”); and

WHEREAS, the Successor Agency is now requesting that the Oversight Board find that, pursuant to Health and Safety Code 34181(e), the 2016 MRADDOPA, Part B’s proposed amendments to the 2010 ADDOPA are in the best interests of the taxing entities because the 2016 MRADDOPA, Part B would reduce the Successor Agency’s liabilities and increase net revenues to the taxing entities; and

WHEREAS, the Successor Agency further requests that the Oversight Board approve the 2016 MRADDOPA, Part B; and

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

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

1. The Former Agency findings in Resolutions 102-04-RA, 114-01-RA, 118-07-RA, and 123-10-RA are incorporated and affirmed in support of this Resolution.
2. The Successor Agency finds that, for the reasons set forth in Attachment 5 to the June 28, 2016 staff report, which is incorporated into this Resolution by reference, approval of the 2016 MRADDOPA, Part B is categorically exempt from CEQA, and that even if the approval were not categorically exempt, subsequent environmental review would not be required.
3. The Successor Agency hereby approves the 2016 MRADDOPA, Part B substantially in the form on file with the Secretary of the Successor Agency subject to such changes as may be approved by the Executive Director of the Successor Agency as evidenced by the Executive Director’s signature on the 2016 MRADDOPA, Part B.

4. The Successor Agency finds that approving the 2016 MRADDOPA, Part B is in the best interests of the taxing entities because the 2016 MRADDOPA, Part B would reduce the Successor Agency's liabilities and increase net revenues to the taxing entities. Accordingly, the Successor Agency requests the Oversight Board find that the 2016 MRADDOPA, Part B is in the best interests of the taxing entities and approve the 2016 MRADDOPA, Part B.

5. To the extent authorized by and consistent with Dissolution Law, the Executive Director of the Successor Agency, or her designee, is authorized to execute, on behalf of the Successor Agency, the 2016 MRADDOPA, Part B, and to conform the 2016 MRADDOPA, Part B to such other documents and agreements necessary to implement the 2016 MRADDOPA, Part B as the Executive Director and the Successor Agency Attorney conclude are necessary and appropriate.

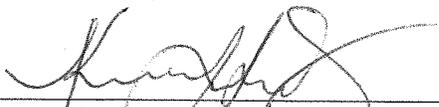
6. To the extent authorized by and consistent with Dissolution Law, the Executive Director, or her designee, is authorized to take such actions as are necessary to carry out any of the agreements referenced in this Resolution or contemplated by the 2016 MRADDOPA, Part B.

7. If necessary, the Successor Agency Secretary is directed to certify to the adoption of this Resolution and attach a copy thereof to each deed or other document to be recorded pursuant to the 2016 MRADDOPA, Part B.

Adopted by the Successor Agency of the former Redevelopment Agency of the City of Sunnyvale at a regular meeting held on June 30, 2016, by the following vote:

AYES: HENDRICKS, LARSSON, GRIFFITH, MARTIN-MILIUS  
NOES: MEYERING  
ABSTAIN: NONE  
ABSENT: DAVIS  
RECUSAL: NONE

ATTEST:

  
\_\_\_\_\_  
Successor Agency Secretary  
(SEAL)

APPROVED:

  
\_\_\_\_\_  
Successor Agency Chair

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Successor Agency Attorney

## ATTACHMENT 12 - Projection of Property Tax Revenues

Table 1 -Property Tax Revenue by Taxing Entity From Sunnyvale Town Center based on MRADDOPA Minimum Project Build Out (Fiscal Years 2015/16 -2028/29)

Taxing Agency	Share of Property Tax	Existing Property Tax Revenues	Revenue Based on Development of Minimum Project in accordance with MRADDOPA	Increase
Santa Clara County General	0.1576541	\$9,239,320	\$14,436,534	\$5,197,214
City of Sunnyvale	0.1275762	\$7,476,605	\$11,682,273	\$4,205,668
Sunnyvale Elementary	0.2165361	\$12,690,101	\$19,828,415	\$7,138,314
Fremont Union High	0.1868963	\$10,953,060	\$17,114,270	\$6,161,211
Foothill-DeAnza Community College	0.0713456	\$4,181,210	\$6,533,184	\$2,351,974
County School Service	0.0363866	\$2,132,437	\$3,331,955	\$1,199,518
Midpeninsula Regional Open Space District	0.0174424	\$1,022,212	\$1,597,217	\$575,005
SCVWD-N Central	0.0101585	\$595,339	\$930,223	\$334,884
SCVWD-District	0.0018383	\$107,734	\$168,335	\$60,601
El Camino Hospital	0.0197965	\$1,160,174	\$1,812,784	\$652,610
Bay Area Air Quality Management District	0.0020723	\$121,447	\$189,762	\$68,315
SCVWD State Water Project	0.0054761	\$320,927	\$501,452	\$180,525
SCVWD-Zone W-4	0.0014115	\$82,721	\$129,252	\$46,531
Education Revenue Augmentation Fund	0.1454094	\$8,521,720	\$13,315,276	\$4,793,556
<b>Total</b>		<b>\$58,605,006</b>	<b>\$91,570,933</b>	<b>\$32,965,928</b>

**Table 2 -TOWN CENTER PROJECTED ASSESSED VALUATION INCREASE FROM MINIMUM PROJECT**

<b>Fiscal Year</b>	<b>Existing</b>	<b>Minimum Project Build Out</b>
2015/16	\$252,268,795	\$252,268,795
2016/17	\$382,023,549	\$382,023,549
2017/18	\$389,664,020	\$512,023,549
2018/19	\$397,457,300	\$612,023,549
2019/20	\$405,406,446	\$682,023,549
2020/21	\$413,514,575	\$694,206,481
2021/22	\$421,784,867	\$706,633,071
2022/23	\$430,220,564	\$719,308,193
2023/24	\$438,824,975	\$732,236,817
2024/25	\$447,601,475	\$745,424,014
2025/26	\$456,553,504	\$758,874,955
2026/27	\$465,684,575	\$772,594,914
2027/28	\$474,998,266	\$786,589,273
2028/29	\$484,498,231	\$800,863,519

**Total                    \$5,860,501,142    \$9,157,094,228**

**Increase    \$3,296,593,086**