



RESOLUTION NO. \_\_\_\_

**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 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 \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:  
RECUSAL:

ATTEST:

APPROVED:

\_\_\_\_\_  
Successor Agency Secretary  
(SEAL)

\_\_\_\_\_  
Successor Agency Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
Successor Agency Attorney