

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.

~~H. By letter dated December 18, 2015, the Successor Agency also acknowledged that there had been delays beyond the parties’ control, and agreed that performance under the 2010 ADDOPA would be extended until at least June 30, 2016 to permit the transfer of the Project to STC Venture LLC and the renegotiation of the 2010 ADDOPA to facilitate Project development.~~

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 ~~to _____ on _____~~ 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.

- Agreement.
- (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.

(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 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.

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

(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 Parcels and the Public Improvements Parcels consisting of the Private Improvements and the Public Improvements and described 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.

(o o) “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.

(j j j) “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.

(k k k) “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.

(l l l) “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.

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

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

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

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

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

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

(s s s) “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) ~~1-~~physical conditions and constraints that affect the potential Retail uses;

(2) ~~2-~~anticipated mix, quantity and location of Retail (including restaurants and entertainment uses), including definition of retail districts if applicable;

(3) ~~3-~~proposed phasing plan or strategy for leasing Retail (including restaurants and entertainment space), including the retail districts;

(4) ~~4-~~anticipated quality and types of Retail establishments that will be emphasized and prioritized, particularly merchandise stores; and

(5) ~~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.

(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.

Section 4.04 is subject to continuing negotiation with the Developer in an effort to address concerns raised by the Oversight Board to the Successor Agency regarding the Successor Agency's ongoing environmental costs.

(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.

(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.

(i i i) ~~As~~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 July 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) ~~(e)~~ 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) a) Ground floor Retail space consisting of approximately 144,300 square feet in Buildings A, D, E, F and N.

(b) b)——A multi-plex movie theater of up to 60,000 square feet within Building T and ground floor Retail space of approximately 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) c) Office space in Buildings A and C, which has been completed and issued a Certificate of Completion pursuant to Section 5.08.

(d) d)——198 residential units in Buildings D, E and F.

(e) e) Demolition of steel framing in Block 3 and installation of temporary Redwood Square improvements.

(f) f) Parking Facilities A and B and the Penney's Structure.

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

(h) ~~(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 permit or authorize any such holder to devote the Private Improvements Parcels or Public Improvements Parcels or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

11. 03 Notice of Default and Right to Cure.

Whenever the Successor Agency delivers any notice of default to Developer under this Agreement, the Successor Agency shall at the same time deliver to each holder of record of any Security Financing Interest a copy of such notice. Each such holder shall (insofar as the rights of the Successor Agency are concerned) have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default.

ARTICLE 12.
GENERAL PROVISIONS

12. 01 Notices.

All notices, demands, and communication between the Successor Agency and Developer shall be in writing and shall be sufficiently given if and shall be deemed given if dispatched by registered or certified mail, postage pre-paid, return receipt requested, delivered personally, or sent by reputable overnight service or [to the extent that a facsimile number is provided below.](#)

sent by facsimile transmission with a copy mailed by first class United States mail to the principal office of the Successor Agency and Developer as follows:

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

Developer: ~~[TO BE INSERTED]~~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 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 or the Sunnyvale Successor Agency Oversight Board. Any matter to be approved by the Successor Agency shall be deemed approved, and any action to be taken by the Successor Agency shall be deemed taken, upon the written approval by the by the Successor Agency Executive Director (or his or her designee).~~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

~~[TO BE INSERTED]~~

By: _____

Name: _____

Its: _____

By: _____
[TO BE INSERTED]

Exhibit A

Map Showing Sunnyvale Town Center Property

Exhibit B

Construction Schedule for Minimum Project

Exhibit B

Construction Schedule for Minimum Project

Exhibit B			
Minimum Project			
Construction Schedule			
Description	Estimated Date	Action to Commence or Complete	Preconditions
OFFICE (approximately 273,000 SF)			
Building A - 133,000 SF Building C - 140,000 SF	Completed	Office shell and tenant improvements	
RESIDENTIAL (198 multi-family units)			
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
BLOCK 3 (Redwood Square)			
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
THEATER/GROUND FLOOR RETAIL (approximately 117,600 square feet, including a theater with up to 2,950 seats)			
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 finals "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
RETAIL (approximately 144,300 sf)			
Building A - Building C -	Completed	Tenant improvements	Currently occupied by office tenants
Building D - Building E - Building F - Building N - SUB-TOTAL -	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
PARKING			
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)
PUBLIC IMPROVEMENTS			
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

Project Map of Minimum Project

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

~~MINUMUM~~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

~~EXIBIT~~ EXHIBIT J

RESERVED

EXHIBIT K

Form of Modified and Restated Covenant to Convey

EXHIBIT L

Form of Block 5 Parking Structure Easement Agreement

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