ATTACHMENT 7

MGO Advisory Services

December 9, 2015

**City of Sunnyvale**

Independent Evaluation Report on

Article 6 Criteria

Developer Experience and Reputational Review, and Assessment of Developer Financial Capacity

# Executive Summary

### Why the Review was Conducted

Macias Gini & O'Connell LLP (MGO) was contracted by the City of Sunnyvale (City) to perform due diligence requirements and procedures for the potential transition of the Sunnyvale Town Center project from Wells Fargo Bank to a new developer. Specifically, MGO was to perform financial analysis and compliance with Article 6 of the Amended Disposition and Development and Owner Participation Agreement (ADDOPA). For purposes of this report, our financial analysis and compliance review is referred to as a Review.

The purpose of this review is to assist the City in acknowledging or challenging the developer based on the Article 6 criteria. Specifically, Article 6 defines four criteria for review of proposed transfers that are subject to the City/Successor Agency review (see attached Exhibit 1):

i. Has 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.

In order for the City to conduct its Article 6 review, Wells Fargo Bank and/or Transferee are required to provide reasonable evidence to the City/Agency demonstrating that the proposed Transferee satisfies the above four criteria. It should be noted that for purposes of our review, we combined criteria i and iv since the components of such criteria are similar in nature. In addition, it should also be noted that due to the relatively short time-frame for the City to respond to the proposed developer, the methodology and tasks MGO performed were developed between MGO and the City staff (with input from the City's independent peer review consultant, Keyser Marston) prior to our knowledge of the proposed structure that would be presented by Wells Fargo Bank to the City. As a result, it was necessary to modify some of the tasks and related methodology of our review due to the nature of the proposed structure of the proposed developer.

### Proposed Developer Partnership Structure

The proposed developer is a to-be-formed limited liability joint venture (LLJV) [the "Developer"] between affiliates of Sares Regis Group of Northern California ("SRGNC"), Hunter Properties, Inc. ("Hunter"), and an institutional investor advised by J.P. Morgan Asset Management ("JPM") [a wholly-owned subsidiary of the JPMorgan Chase Bank Commingled Pension Trust Fund (the Fund)]. J.P. Morgan intends to acquire the office buildings, and the separate to-be-formed LLJV intends to complete development of the residential and retail portions of the Sunnyvale Town Center project (the Project).

Based on information received from J.P. Morgan, the J.P. Morgan Fund (through its subsidiaries) will comprise 100% of the equity in the office buildings and 95% or more of the equity investment in the residential and retail portions of the Project. The Fund's entire investment is allocated to the transaction and will be funded as costs are expensed. JPM will own a 95% or greater ownership interest in the joint venture and will possess decision-making authority.

**What the Review Found**

MGO's General Conclusions

Due to the relatively short time-frame for the City to respond to the proposed developer, the methodology and tasks MGO performed were developed between MGO and the City staff (with input from the City's independent peer review consultant, Keyser Marston) prior to our knowledge of the proposed structure that would be presented by Wells Fargo Bank to the City. As a result, it was necessary to modify some of the tasks and related methodology of our review due to the nature of the proposed structure of the proposed developer. In addition, through the City, MGO provided a data request of evidence which was initially transmitted through Wells Fargo Bank to the proposed developer. It should be noted that Wells Fargo and the Proposed Developer (including all proposed partners), generally responded to most of the information requested. However, some information was not available, considered confidential, proprietary, or information that the Developer felt would be subject to future negotiations with the City. As a result, MGO pursued alternative methods and/or requested alternative information to perform our analysis and research which helped in forming our conclusions that, based on our professional judgement, and as outlined in this report under our methodology and related results for each element of the Article 6 criteria, the proposed developer satisfies the criteria of Article 6, as outlined in this report, subject to any further follow-up the City may choose to perform.

Developer Experience, Presence, and Reputation Results

We found the two developer partners' strengths complement each other well, along with the financial backing of the significant equity investment/ownership with JP Morgan. Overall, we found that collectively, SRGNC and Hunter have experience completing major mixed-use commercial, retail and residential projects involving primarily national, and, to a lesser extent, regional and local tenants (see attached Exhibit 2: Detailed information on Developer Experience). The scope of these various projects are not analogous with the Sunnyvale Town Center project but demonstrate the various mix that comprise the development.

Specifically, in comparison to Sunnyvale Town Center, SRGNC's mixed-use residential/commercial developments have a significantly larger residential component, whereas Hunter's mixed-use office/commercial projects have a significantly larger office component. For the three projects submitted by SRGNC for our review (to meet Article 6 criteria i and iv), two comprised of a lower level of commercial and upper level residential mixed used project as projected for the Sunnyvale Town Center. However, collectively, both developer partners demonstrate the various mix that comprises the Sunnyvale Town Center development.

We found each of the developers to have substantial experience operating in California, as well as both maintain strong reputational standing within the community and real estate industry. SRGNC reportedly excels in the upfront planning and an ability to communicate and negotiate with those outside their immediate team, e.g., other owners, their agents, various levels of government. Hunter has shown particular strength constructing commercial and office buildings and working well with the community.

Financial Capacity Analysis Results

Our assessment of the proposed equity owner of the Sunnyvale Town Center project, JP Morgan, more specifically the JPMCB Strategic Property Fund (the Fund), we found has more than sufficient assets to fund the projected cost to acquire and complete the initial phases of the Project. Specifically, as of June 30, 2015, the Fund's net assets contains 50 times the projected cost to acquire and complete the initial phases of the Project.

In addition to analyzing the Fund, based on the proposed to-be-formed LLJV, we also reviewed the financial condition of the development partners (which informed us about their financial capacity) and determined both SRGNC and Hunter have exhibited strong fiscal strength. Our review of financial indicators shows they have sufficient financial capacity to meet their obligations throughout the development.

# Background

**Professional Standards, Qualifications, and Engagement Team**

*Professional Standards*

We conducted our review in accordance with the American Institute of Certified Public Accountants (AICPA)'s standards for consulting services. Those standards require that we undertake only those professional services that the member or the member's firm can reasonably expect to be completed with professional competence, exercise due professional care in the performance of professional services, adequately plan and supervise the performance of professional services, and obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed. Our work was conducted between October 7 and December 8, 2015.

*MGO Firm History and Organizational Structure*

Founded in 1987, Macias Gini & O'Connell LLP (MGO) is a statewide certified public accounting and business management firm with offices in Sacramento, Walnut Creek, Oakland, Los Angeles, Newport Beach, and San Diego with 20 partners and a staff of over 250 professionals. MGO serves a wide variety of industries from our eight offices. This diversity of experience coupled with the firm's relentless focus on attracting and developing top talent has helped to earn MGO national recognition for thought leadership from both the profession and industry regulators.

The firm offers a diverse array of audit assurance, tax, advisory, and business management services to clients ranging from startup companies to middle-market public and private companies, the world's largest public pension system, and California's largest local governments.

MGO's State and Local Government Practice is one of the largest in the country and offers unmatched resources in serving this highly complex sector, including serving the City of

Sunnyvale, over the past three years, as the City's independent Certified Public Accountant for external financial reporting requirements in accordance with professional accounting standards.

*The MGO Engagement Team*
The MGO team working on this engagement included the following team members:

- **Scott Johnson**, Partner, leads MGO's State and Local Government Advisory Services. Prior to joining MGO, Mr. Johnson's career spanned over 29 years of high-level organizational management and leadership experience. He has led multi-billion dollar operations for local government agencies in various capacities. He is nationally recognized as a leader in managing municipal finances, investments, debt, and budgets. He and his team have received numerous state and national awards for excellence. Mr. Johnson is a Certified Public Accountant (CPA) and a Chartered Global Management Accountant (CGMA). He has also served on state-wide boards and is a Past-President of the California Society of Municipal Finance Officers (CSMFO). He is also a member of numerous national and state associations.
- **Ric Jazaie** served as Senior Project Manager on this engagement. Mr. Jazaie has over 16 years of hands-on operational, financial, public accounting and law enforcement experience, including progressive auditing and investigating leadership experience. He is an experienced internal auditor, fraud investigator, computer forensics auditor, and law enforcement investigator. Mr. Jazaie's areas of expertise include litigation support, auditing, and investigations at federal, state and local government organizations (as well as medium sized privately-held companies). He has served as an FBI Special Agent, law enforcement officer, internal audit director, and a seasoned auditor. Among other certifications, Mr. Jazaie is a Certified Public Accountant (CPA), Certified Fraud Examiner (CFE), Certified in Financial Forensics (CFF), and a private investigator (PI). Mr. Jazaie led the backgrounding efforts on this engagement.
- **Greta MacDonald** served as a Consultant Manager on this engagement focusing on the financial capacity analysis. Ms. MacDonald has a Master's in Public Administration (MPA), a Bachelors of Economics, and over 15 years of experience reviewing performance and financial analysis, including her assignment for the past seven years assessing the eligibility of non-profit health providers and colleges for state bond loan funds issued by the State Treasurer. She has spent 14 years with the firm managing and directing engagements for both public and private sector entities. Her professional skills include financial analysis, compliance audits, performance and internal auditing, program evaluations, statistical manipulation and analysis, information management reviews, and evaluations of financial management processes.
- **Linda Morine** served as a Consultant Manager on this engagement focusing on the development-related aspects of Article 6 criteria. Ms. Morine has a Masters of Public Affairs (MPA) and a BA in Political Science. With 27 years of experience in analysis of programs and procedures, fiscal management and budgeting, research, and compliance, she has specialized knowledge of land entitlement/development review processes and environmental compliance and has served as a consultant to numerous local government clients. She assisted in the fieldwork by collecting and reviewing data, performing procedures, analyzing data, and identifying conclusions and observations.

MGO presents the following information received and/or analyzed, as of December 8, 2015, on whether requirements were met for transfer in accordance with the following provisions of Article 6 – Changes in Developer, as documented in the following procedures, methodology, and analysis.

# Analysis

**Developer Experience Review (i) and (iv)**

Article 6 Criteria: 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, (iv) Developer has prior experience with projects and operating experience in California.

Methodology:

- MGO reviewed the Developer's website, performed online research to obtain pictures, addresses and other evidence of their previously completed mixed-use and major commercial development projects, (due to time constraints, we focused on built and approved projects) noting the number of total developments and their locations.
- We also utilized other methods in evaluating and assessing the projects such as interviews and reviews of planning/development documents at various cities in which projects are located.
- Lastly, MGO requested references from at least three clients (projects), within the last five years, with a focus on mixed-use projects of equal scale/similar size to Town Center.

**Results:**

**SRGNC**

SRGNC is a relatively large company that works in both northern and southern California. Three projects reviewed involve a mix of national, regional and local tenants. They have a strong background in residential (both single family and multiple family housing) and office/R&D developments. In the San Francisco bay area, they have developed and built several multi-use residential, commercial projects. The adjacent commercial portions feature major, national businesses and the retail located within the multi-use buildings is often local, personal services businesses.

Interviews with references indicate SRGNC's work on Pilgrim Triton in Foster City demonstrated their experience completing a mixed-use commercial, retail, residential project. The residential is larger in scope, whereas the completed, as well as the eventual commercial/retail, is and will be notably smaller in size than Sunnyvale Town Center. The retail built thus far does fit with the mixed-use residential-commercial.

SRGNC was reported to have the ability to bring together owners/their agents with differing interests and negotiate solutions for multiple-year issues. For example, for the Pilgrim Triton project in Foster City, some of the initial owners' original intentions were to sell immediately and invest nothing in the future development. Instead, SRGNC convinced them to stay and pay transportation/traffic costs even though the agreed-upon staggered payback schedule was not to those owners' benefit and they would not receive the first reimbursement payments.

**Hunter**

Hunter Properties is a smaller organization with a focus on Silicon Valley. Our review found that they have a proven experience and track record developing and managing major commercial and office projects, and scope involving a mix of national regional and local tenants. In addition, our interviews with references indicate they are known for their ability to work well with the local community. For example, based on input from references, even under adverse circumstances, Hunter practices active listening and maintains their professionalism and friendly relations. In addition, they are noted for their problem-solving abilities, which makes them successful at complex projects. In particular, references pointed to their work with the City of San Jose on the FMC project. This project has four different bond issues, hazardous materials challenges, CalTrain constraints, as well as other development project hurdles.

Please see Exhibit 2: for detailed information on each developer's experience.

**Financial Capacity Analysis (ii)**

Article 6 Criteria: 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: (iii) Developer 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 (developer entity and all individual principles of the entity).

**Methodology:**

- MGO applied general review and analysis techniques of financial statements to calculate limited financial ratios as summarized above to assess the JPMCB Strategic Property Fund, and its current liquidity and cash flow. We also reviewed self-reported cash position, and leverage in order to determine its capacity to fund the Sunnyvale Town Center project.
- MGO collected the most recent quarterly statement from the equity partner, JPMorgan, to assess the financial strength of the JPMCB Strategic Property Fund, which, according to the information received from the proposed developers, will provide the majority of the assets for the property purchase and related project costs.
- MGO then assessed the financial condition of the two proposed partners (Hunter and SRGNC) for the Sunnyvale Town Center project, by reviewing three years of income statements, balance sheets and statements of cash flows for both entities. We reviewed the most recent statements to date (2015) for Hunter and SRGNC, we also reviewed the most recent past two years of financial statement data (2013 and 2014), to assess the immediate past and current financial condition of the proposed partners in order to provide the City with a snapshot of the partners' fiscal strength through a financial ratio analysis.
- We also requested two references from each developer's financial institution to ensure longstanding and favorable relationships existed.

**Proposed Financing Structure:**

In accordance with the data submission from the proposed developer team, the Proposed Developer shall be a to-be formed limited liability joint venture (LLJV) [the "Developer"] between affiliates of Sares Regis Group of Northern California ("SRGNC"), Hunter Properties, Inc. ("Hunter"), and an institutional investor advised by J.P. Morgan Asset Management ("JPM").

Based on the proposed developer's data submission, the majority equity owner of the Sunnyvale Town Center project will be the JPMCB Strategic Property Fund (the Fund). The office property will be solely owned by JPM. The balance of the real estate; the residential, retail and excess land, will be owned by the to-be-formed LLJV. Per data received by the proposed developer, the contemplated transaction is expected to be funded with 95 percent equity provided by JPMorgan.

**JP Morgan Financial Capacity Analysis:**

The JPMCB Strategic Property Fund (the Fund) owns and seeks improved real estate projects with stabilized occupancies that produce a relatively high level of current income combined with moderate appreciation potential. The Fund's investment portfolio focuses on attractive office, retail, residential and industrial investments with high-quality physical improvements, excellent locations, and competitive positions within their markets.

The Fund is a Commingled Pension Trust Fund of JPMorgan Chase Bank, N.A.. The Fund is established and maintained by JPMorgan Chase Bank, N.A. under a declaration of trust. The Fund is not required to file a prospectus or registration statement with the SEC, and accordingly, neither is available. The Fund is available only to certain qualified retirement and governmental plans and is not offered to the general public. Units of the funds are not bank deposits and are not insured or guaranteed by any bank, government entity, the FDIC or any other type of deposit insurance.

The Fund Overview:

Investment characteristics

- Focus on attractive stabilized investments with high quality physical improvements
- Larger assets which have consistently outperformed
- Excellent location factors, with dominant competitive market positions
- Stronger growth demographics
- High quality income stream
- Risk and return expectations
- Managed to a low beta risk profile
- Holding period 5-10 years
- Portfolio leverage 25% to 30% total portfolio
- Operating cash target 3% of total net asset value

Investments as of September 30, 2015

- 105 office buildings
- 131 industrial buildings
- 24,898 apartment units in 76 complexes
- 11 super regional and regional malls
- 200+ neighborhood and community retail centers
- 7 lifestyle and urban centers

## Ratio Analysis of Proposed Developer

Financial analysis is important to boards, managers, lenders, and stakeholders who make judgment on the financial health of an organization. Ratio analysis, which uses data from the financial statements, allows for an assessment of an organization's fiscal health and strength. Careful judgment must be taken when interpreting financial ratios. On their own, financial ratios do not always provide a complete picture of the organization's performance. However, when used in conjunction with other quantitative and qualitative measures, it can provide valuable insights into the organization's operations. The ratios that follow for the proposed developers provide a snapshot of each entity's financial condition/capacity. For each ratio computed, we included the definition, how it is calculated, and outcome of the ratio, industry target rates and the result of the ratio.

**Table 1.0: JP Morgan Fund**

| Ratios | Calculation | Ratio | Target | Result |
|---|---|---|---|---|
| **Liquidity Ratios** | | | | |
| Current Ratio | Current assets / Current liabilities | 33.2 | >1.0 | The fund has 33 times the level of assets compared to current liabilities and is well-positioned to pay obligations as they become due. Additionally the fund has sufficient cash (liquidity) to quickly cover liabilities. |
| **Cash Flow Analysis** | | | | |
| Cash Flow from Operations to Total Liabilities (or cash flow to debt) | Cash Flow from Operations / Total Liabilities | 1099.0 | >2.0 | Cash flows generated from operations are over 1,000 times the level of total liabilities, meaning the fund is generating a high level of cash flows. |

## Additional Information on the Fund:

Based on research conducted, we found two examples in which two U.S. pension funds have chosen to invest in the JP Morgan Strategic Property Fund despite facing a wait of more than a year before the committed funds will be requested, which highlights the demand for core real estate exposure among institutional investors in the U.S.

Our research also found, based on a report issued by Aon Hewitt, an independent investment consultant, that the fund has been one of the best performing U.S. core[1] open-ended funds over the medium and long term, according to their report. In addition, documents prepared by Aon Hewitt show that annualized returns for the past five and 10 years were in the top quartile among its peers in the National Council of Real Estate Investment Fiduciaries Open-end Diversified Core Equity Index (NFI-ODCE) Index.

1 Core funds offer a range of strategies across sectors and geographies but tend to share similar characteristics. A core fund is one which invests typically in income producing real estate investments. It will mainly employ low levels of leverage and will have no, or very low, exposure to real estate development. In general, a core fund generates a high proportion of its return through rental income.

## Detailed Results: JPM

Based on our research and information provided by the proposed developer to MGO, J.P. Morgan Asset Management ("JPM") will be the equity partner and the majority equity owner (95%) of the Sunnyvale Town Center project. Our analysis indicates that the JPMCB Strategic Property Fund (the Fund) - has significant assets available and a leveraged portfolio ratio which indicate more than sufficient financial capacity to timely commence and complete the construction thereof. The fund contains assets at a level over 50 times the projected cost to acquire and complete the initial phases of the Project. We also noted positive and increasing cash flows from prior periods indicating steady growth, a low level of liabilities (debt), and overall financial strength indicating it can pay obligations as they become due.

In scoping the methodology prior to knowing the structure of a proposed developer, MGO and the City originally anticipated receiving five years of financial data from the proposed developer. However, given the proposed structure and the very strong equity interest from the JP Morgan Fund, we determined five years of financial data was not warranted and instead we conducted other analysis as noted above. It should be noted, however, that MGO's independent research indicates the Fund has been in existence since 1998, and as of June 30, 2015, the Fund has experienced a 46 percent increase in net assets[2] since 2011. Source: JPMCB Strategic Property Fund, Annual Report, 2011 obtained through internet search.

### Developer Financial Capacity and Condition Assessment

To assess the financial condition of the two proposed partners for the Sunnyvale Town Center project, we reviewed at least three years of income statements, balance sheets and statement of cash flows for both Hunter and SRGNC. We reviewed the most recent statements to date (2015 and 2014) for Hunter and SRGNC, respectively, and their most recent past two years of financial statement data (2013 and 2012) to assess the immediate past and current financial condition of the proposed partners, in order to provide the City with a snapshot of the partners' fiscal strength.

## Detailed Results- Proposed Partners

Hunter:

Our ratio analysis for Hunter is reported below based on the 2015 financial statements[3]. We found Hunter to have a favorable financial condition and strength. Our ratio analysis indicates high levels of liquidity, and that the company demonstrates their ability to generate profits from shareholder's investments. The bulk of their asset funding is coming from equity rather than debt and has a high level of cash flow to cover its liabilities many times over. See Table 2.0 below for specifics.

[2] Net assets are value of the fund's assets minus its liabilities.

[3] We reviewed financial data/statements and tax return for prior two years and observed continued improvement in financial capacity.

**Table 2.0: Hunter Properties, Inc. Financial Ratio Analysis**

| Ratios | Calculation | 2015 Results | Target | Ratio Definition and Results |
|---|---|---|---|---|
| Current Ratio | Current assets / Current liabilities | 482.5 times | >1.0 | Measures liquidity and the ability of the company to cover obligations as they become due. The company has 4.83 times the amount of current assets compared to its current liabilities. |
| Net profit margin (net income) | Net profit after taxes/Net sales | 67.5% | Positive | The company is highly profitable with a 67.5% profit margin. |
| Return on Equity | (Net income – taxes – interest) / Shareholders' equity | 2.0% | Higher the better – | Higher the better – the firm generates $2 for every $100 invested by shareholders. |
| Debt to Equity | Total Liabilities / Shareholders' Equity | 7.2% | Low | A lower debt to equity ratio usually implies a more financially stable business. |
| Debt to Asset | Liabilities / Assets | .067 | <1 | A low ratio indicates that the bulk of asset funding is coming from equity and that there are sufficient assets to cover its liabilities – the firm has $6.7 in liabilities for every $100 in assets. |
| Cash Flow from Operations to Total Liabilities (or cash flow to debt) | Cash Flow from Operations / Total Liabilities (Avg. two years) | 58.2% | >.20 | At least 58.2 percent of the company's operating cash flows are available to cover its total liabilities. |

SRGNC:

Our ratio analysis is reported below based on the 2014 financial statements of SRGNC and its affiliates. We found that the entity is highly profitable and experiencing growth.

Based on our review of the company's financial statements, we found the company to have a favorable financial condition and strength. Our ratio analysis indicates high levels of liquidity, and that the company demonstrates their ability to generate profits from shareholders' investments. The bulk of their asset funding is coming from equity rather than debt. Further, the entities have a high level of cash flow to cover its liabilities. See table 3.0 below for results.

**Table 3.0: SRGNC and affiliates - Financial Ratio Analysis**

| Ratios | Calculation | 2014 Results | Target | Ratio Definition and Results |
|---|---|---|---|---|
| Current Ratio | Current assets / Current liabilities | 601.3% | >1.0 | Measures liquidity (available cash and assets that can easily be converted to cash) therefore improving the ability of the company to cover obligations as they become due. |
| Net profit margin (net income) | Net profit after taxes/Net sales | 15.8% | Positive. | The company is profitable with a 15.8% profit margin. |
| Return on Equity | (Net income – taxes – interest) / Shareholders' equity | 15.9% | Higher the better | The company generate positive growth for each dollar invested by shareholders. Return on equity is favorable. |
| Debt to Equity | Total Liabilities / Shareholders' Equity | 32.6% | Low. | A lower debt to equity ratio usually implies a more financially stable business. Shows stability. |
| Debt to Asset | Liabilities / Assets | 24.6% | <1 | A low ratio indicates that the bulk of asset funding is coming from equity. Strong; most assets are funded by equity. |
| Cash Flow from Operations to Total Liabilities (or cash flow to debt) | Cash Flow from Operations / Total Liabilities (Avg. two years) | 59.6% | > .20 | Shows cash flow within a year that could cover total annual liabilities. Healthy -generating $60 for every $100 in liabilities. |

## Developer Reputation Review (iii)

Article 6 Criteria: 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: (iii) Developer possesses good business character and reputation.

Methodology: To assess whether the developer (transferee) possesses a good business character and reputation, we requested documentary or testimonial evidence on the following:

- Obtained references from at least three clients (cities), within the last five years, with a focus on mixed-use projects of equal scale/similar size to Town Center.
- Secretary of State information was collected to ensure the firm is registered, to identify the LLC structure and partnership information, and to ensure there are no pending legal actions against the firm. This information was contained in the Secretary of State's files, which we reviewed electronically.
- Contacted Department of Consumer Affairs, Contractor's Licensing Board (if applicable) to ensure there are no pending disciplinary actions against the firm. Had we discovered judgments, we would have obtained a copy, case number, claim, and final disposition.
- Performed a background check, including any criminal and civil actions against the principles;
- Interviewed one current or previous colleague or client over the past five years for each developer (a total of two) to obtain an understanding of the firm's character and reputation; obtained references from eight colleagues or clients with projects of equal scale/similar size to Town Center.
- Contacted each firm's financial institutions and identify any potential negative relationship between the bank and the firm;
- Performed a review of county court records in the Bay area and Silicon Valley region for possible negative history of the principles under review, such as pending litigation and/or prior lawsuits ending in a settlement against the principles in areas where projects were identified in previous projects above.
- Identified CEQA challenges and reported on the outcomes. (See Exhibit 2, Matrix on project details for each developer)
- Conducted an online search of publicly available resources for negative and harmful information for and/or against the firm.

### Results

Our background investigation of SRGNC and Hunter, as well as their principles, indicated clean backgrounds for both respective companies, both met the good business character and reputation. See table 4.0 below for detailed results of our background checks and investigation.

As of the date of this report, we continue to work on obtaining one of Hunter Properties' principles background investigation report. Neither SRGNC nor Hunter are licensed by the Department of Consumer Affairs' Contractor's License Board. Instead, however, both firms are licensed by the California Department of Real Estate.

**Table 4.0: Background Check Components, Validation and Results**

| Background Check Component | Hunter | SRGNC |
|---|---|---|
| **Secretary of State** | **Entity Number:** C1617642<br>**Status:** ACTIVE<br>**Agent for Service of Process:** DEREK K HUNTER JR | **Entity Number:** C3735952<br>**Status:** ACTIVE<br>**Agent for Service of Process:** KENNETH M COATSWORTH |
| **Department of Consumer Affairs** | **Hunter Properties, LLC:** No information found.<br>Derek Hunter: No information found.<br>Edward Storm: No information found. | **SRGNC, Inc.:** No information found.<br>Robert W. Wagner: Inconclusive. There are many contractors with this name.<br>Mark Kroll: License #731316 (Cancelled) |
| **Department of Real Estate** | CA Dept. of Real Estate License ID: 01206045<br>Derek Hunter: 00824850<br>Edward Storm: 00414721 | CA Dept. of Real Estate License ID: 01151815<br>Robert Wagner: 01504140 (Possible Match, License Expired)<br>Mark Kroll: 00359045 |
| **Internet Open Searches** | No negative reporting was observed<br>Deke Hunter: We did not observe any negative reporting.<br>Edward Storm: Inconclusive. This name is popular and the information did not tie back to this principal. | This business is not BBB accredited. Did not observe negative comments.<br>Robert W. Wagner: Inconclusive.<br>Mark Kroll: We did not observe any negative reporting. |
| **Financial Institution – Letters of Reference indicating positive relationship** | Comerica<br>Wells Fargo | Comerica (other financial institution could not oblige reference check due to their internal policies) |

**Professional Standards Statement**

The following language is included in accordance with professional standards for non-audit and/or non-examination engagements.

The sufficiency of the procedures as outlined in this report is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described in the report either for the purpose for which this report has been requested or for any other purpose. Because the procedures as outlined in this report do not constitute an examination or audit, we will not express an opinion as such and we have no obligation to perform any procedures beyond those listed in this report. If, however, as a result of the procedures or through other means, matters come to our attention that cause us to believe that the Proposed Developer does not meet the requirements outlined in this report and are not presented in accordance with the Article 6 requirements, we will disclose those matters in this memorandum. Such disclosures, if any, may not include all matters which might have come to our attention had we performed additional procedures or an examination.

This report is intended solely for the use of the City of Sunnyvale and its Successor Agency, and is not intended to be and should not be used by anyone for purposes other than defined by our procedures.

Macias Gini & O'Connell LLP

Walnut Creek, California
December 9, 2015

## Exhibit 1: Article 6 Text

A. Article 6 of the Amended Disposition and Development and Owner Participation Agreement (ADDOPA) for the Sunnyvale Town Center Project requires the Successor Agency to consent, subject to certain criteria, to transfer of the Project to a new developer. Specifically, Article 6 provides in relevant part:

"ARTICLE 6.

CHANGES IN DEVELOPER

6.01 Requirements for Transfer.

For the purposes of this Agreement, a "Transfer" means any voluntary or involuntary sale, transfer, conveyance, assignment or other disposition of fee title to the whole or any part of the Private Improvement Parcels or any assignment of this Agreement or the Related Documents (except as otherwise expressly provided by the Related Document). Transfer also includes any voluntary or involuntary sale, transfer, conveyance, assignment or other disposition of the ownership interests in Developer. Except as permitted pursuant to Section 6.03, the Developer shall not engage in a Transfer except as to the specifically permitted following Transfers:

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

(b) Any Transfer to a transferee that meets the following criteria as to the use(s) of the portion(s) of the Project proposed to be Transferred: (i) has the experience in and has completed major mixed-use commercial, retail, 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 Agency demonstrating the proposed transferee's satisfaction of the foregoing criteria. The 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 Agency shall respond to inquiries of the other and exchange information as may be requested. If Agency, exercising commercially reasonable discretion, advises Developer that the proposed transferee does not satisfy any of the stated criteria, the Agency shall provide detailed evidence of the same. If Agency fails to respond to Developer's submittal within the 20-day period, the Transfer shall be deemed permitted. Developer shall respond to 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 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-f omitted.]”

**Exhibit 2: Detailed information on Developer Experience**

**2.1: Hunter Properties**

| Name<br>Location/Address | Residential Units | Retail/<br>Commercial sf | Developer's description<br>(if different or unverified) | Tenant description & Initial Property Management Firm | Other |
|---|---|---|---|---|---|
| Village Oaks<br>5630-5770 Cottle Rd.<br>San Jose<br><br>South San Jose, near Blossom Hill. Bounded by Cottle Rd., Great Oaks Parkway, Raleigh Rd. and Charlotte Dr. | Built (almost):<br>234 units (probably condos)<br>The Haven@ Cottle Station | Entitlement, appear built:<br>308,000 sf<br>Done<br><br>Additional Entitlement/not built:<br>5,000 sf | Entitlement<br>248 rsdtl units<br><br>Retail<br>368,000 sf | Anchors: Target, Safeway, Four larger general merchandise including Marshalls, Ulta Beauty;<br><br>5 buildings commercial service along Cottle Rd., including, Chase, Bank of America;<br><br>4 buildings – primarily small restaurants off main street, within development/parking lot<br><br>Applebee's Rstn in rectangular lot along Charlotte Dr. & Raleigh Rd. (not Hunter Properties)<br><br>**Property Manager** Hunter Properties, Inc. | |
| @ First<br>4180 North First<br>San Jose<br><br>(northern border is Hwy 237, North First St. & Holger Way) | N/A | Retail<br>180,000 to 230,000 sf | Office<br>800,000 sf<br><br>Retail<br>181,000 sf<br><br>Hotels – 300 Room | Major Corporate campus for Brocade Communication Systems<br><br>Hyatt House hotel<br>Courtyard Marriot hotel<br><br>Smaller offices – Fidelity Investments, Chase Mortgage | (1) |

| | | | | | |
|---|---|---|---|---|---|
| | | | | Retail: CVS, Verizon, full and fast/small restaurants<br><br>**Property Manager** Hunter Properties, Inc. | |
| Almaden Ranch<br>San Jose<br><br>Almaden Expressway & Cherry Ave. | N/A | Under construction Entitlement: 350,000 to 425,000 sf | Entitlement: App 390,000 sf<br><br>Hotel -125 rooms | Anchors: Bass Pro Shops, Expect 5 major tenants, City is discussing entertainment/theatre for this site.<br><br>**Property Manager:** Arcadia Companies | CEQA |
| Old Town Los Gatos<br>50 University Ave<br>Los Gatos | N/A | Complete, Hunter/Storm owned and participated in 1990s renovation. | 109,110 sf | Significant turnover since Hunter/Storm participation. Former Anchor tenants included Borders<br><br>**Property Manager**: unknown | |

<u>Notes:</u>

(1) Attorney Linda Callon of the legal firm Berliner Cohen worked on behalf of Hunter Properties during establishment of land use entitlements from the City of San Jose. The firm was listed as a contact for the Vesting Tentative Map and Conditional Use Permit (Permit# 2007 029384 AO, Reference# CP07-070) and possibly others.

a) Retail/Commercial square footage are from entitlement documents, City websites, or in the case of Almaden Ranch, an approximate range from the San Jose Economic Development department.

**Background and Additional Analysis of Hunter Properties' sample projects**

Village Oaks

The 25 acres that make up the Village Oaks shopping center were originally part of a former 300 plus acres IBM disk drive factory site. Hunter/Storm Properties and PLLP bought the property from Hitachi Global Storage Technologies, Inc., in March 2012. The project does not qualify as mixed use although a residential complex (app. 250 condo units on a 5 plus acre lot) with an Applebee's restaurant is being built, which is within the same rectangle of roads outlining the shopping center. Hunter Properties is not involved with development of this housing or the restaurant.

@ First

This ambitious development facing CA Highway 237 consists of a large Brocade Communication Systems office complex of multiple towers, parking garage, surrounded by two hotels, extensive retail, including a Target. The office/commercial project does not include mixed-use residential/commercial and the office square footage exceeds currently entitled Sunnyvale Town Center.

Almaden Ranch

This project is being built on an undeveloped property located near Almaden Expressway and Hwy 85. The development is a commercial/retail, not a mixed-use development. It is still too early to comment on the project, which is still being built. An anchor tenant, Bass Pro, does occupy a building. San Jose Economic Development department stated that there has been discussion with Hunter Properties about the possibility of building a theatre at the site.

### 2.2 Sares Regis

| Name Location/Address | Residential Units | Retail/ Commercial sf | Developer's description (if different or unverified) | Tenant description & Initial Property Management Firm. | Other |
|---|---|---|---|---|---|
| The Crossing at San Bruno<br>1101 National Ave.<br>San Bruno<br><br>Adjacent to El Camino Real and I-380 interchange | Built:<br>1,063 multi-family units<br>835 multi-family rental<br>228 senior rental units<br>Done | Built:<br>12,250 sf<br>Done<br><br>Entitlement:<br>150 room hotel<br>Under review | 900[4] multi-family | Restaurant (Jacks), plus 4 commercial in 1 building. Supercuts, Scottrade, European Wax Works, Patelco Credit Union<br><br>**Property Manager**: Sares Regis Group | PF<br>BMR<br>PA |
| Pilgrim Triton, The Plaza (Phase A)<br>1 Plaza View Ln., Foster City<br><br>SR 92 to northwest, Foster City Lagoon to northeast, East Hillsdale Blvd. to south and east, and Foster City Blvd. to southwest | Entitlement for all phases:<br>730 units<br><br>Phase A is built (by Sares Regis):<br>307 units<br>Done | Entitlement all Phases:<br>296,000 sf<br><br>Phase A is built (by Sares Regis):<br>10,057 sf<br>Done | Entitlement for entire project of 4 phases:<br>30,000 sf retail<br><br>Not clear whether this is in the 296,000 sf. | Personal services (hair salon), coffee/food stores, and a pending restaurant on ground floor of residential.<br><br>Total of 5-6 businesses with 1 to 2 vacancies.<br><br>**Property Manager**: Sares Regis Group | PF<br>CEQA<br>BMR<br>PA |
| Colonnade<br>4750 El Camino Real<br>Los Altos | Built:<br>167 apartment units<br>38 townhouse units<br>Done | 7,000 sf<br><br>Done | Barre 3 | Vitamin Shoppe, other building (occupant not confirmed), and pending seafood restaurant<br><br>**Property Manager**: Sares Regis Group | |

[4] Sares Regis provided unit info regarding residential as 900 multi-family units. The discrepancy may be due to changes from the built versus the original entitlement or they may have only given residential units for the buildings they actually built.

Key:
PF = Some public financing was used for the development project.
CEQA = California Environmental Quality Act (CEQA) - Significant CEQA issues associated with the development project
PA = Public Amenities
BMR = Below Market Residential

**Background and Additional Analysis of Sares Regis' Sample Projects**

The Crossings

The Crossings is a twenty (20) acres development project located on a former 52 acre navy site. Specific plan for the entire U.S. Naval site was developed through a community planning process and adopted in 2001, amended in 2001, 2005, and 2015. Demolition of Naval Administrative facility and construction began in 2002, and was mostly completed in 2012 of high density residential, some commercial, other, as well as roads/utilities. Almost all has been built, except for pending hotel, which is now in the development review process after years of no action.

Extensive CEQA work including an Environmental Impact Report (EIR), two addendums, and a Supplemental Navy EIR, although issues encountered are not known at this point.

The first phase, consisting of two of the residential buildings or 485 rental apartment units, was financed through tax-exempt bond sales.

Pilgrim Triton

This is a 20.75 acre site, former light industrial site of small, single story, concrete tilt ups that had reached the end of their useful life. The City wanted to retain and expand business opportunities while pursuing new housing, particularly hoping the development would help them meet their Housing requirements. Project consists of four phases at various stages of development and construction. There were originally four owners, some who wanted to develop and some who wanted to sell.

Complicated CEQA work was required including an EIR. There were significant traffic impacts resulting in large traffic fees for the entire project. The first developer who was responsible for Phase 1 and others, but definitely not the entire project, paid these fees. The Cooperation Agreement ensures this developer will be paid back. First developer obligated to traffic improvement costs of $1.144 million for off-site traffic improvements and $1.450 million for Triton Drive widening.

Redevelopment monies (housing set-aside) were paid to the developer (Northwestern Mutual Life) for construction of the affordable housing in Phase 1, The Plaza.  None of the other three phases received redevelopment benefits.  There were no more Redevelopment Agency monies for other portions.

The Colonnade

No details regarding the project's historic and ownership background, as well as CEQA issues, potential public funding, below market rate housing, or other details are known at this time.  The City of Los Altos did not respond to MGO requests for data on the Colonnade project and Sares Regis.  Online information found was promotional or for potential, future residents.