

REPORT

**To the Honorable Mayor and City Council
And the Redevelopment Agency Board
From the City Manager and the Executive Director**

January 26, 2004

Subject

Assignment and Assumption Agreement for Amended and Restated Disposition and Development Agreement for Downtown Retail-Cinema and Parking Project.

Recommendation

Approve an Assignment and Assumption Agreement (Assignment Agreement) with the City of Redwood City, the Redevelopment Agency, BHV Innisfree Ventures I, LLC, and On Broadway Redwood City, LLC, (an entity comprised of BHV Innisfree Ventures I, LLC, developers of the project, and Buchanan Urban Investors, LLC) for the Amended and Restated Disposition and Development Agreement for the Downtown Retail-Cinema and Parking Project and authorize the City Manager and the Redevelopment Agency Executive Director to execute same.

Background

On December 9, 2002, the City Council and Redevelopment Agency approved an Amended and Restated Disposition and Development Agreement (DDA) with BHV Innisfree Ventures I, LLC (BHV Innisfree) for development of the Downtown Retail-Cinema and Parking Project (executed January 8, 2003).

Per Section 903 of the DDA, the BHV Innisfree may assign its rights under the DDA to a joint venture, limited liability company (LLC), partnership or corporation provided that 1) the new entity agrees to assume in writing all of the assignor's obligations with respect to the project, 2) the assignor owns at least 50% interest in the new entity, and 3) the developer retains primary responsibility for development of the project.

Investment for the retail-cinema portion of the project (On Broadway) has been provided by BHV Innisfree, as well as Buchanan Urban Investors, LLC on behalf of their investor capital, California Public Employee Retirement System (CalPers).

A new LLC, to be known as On Broadway Redwood City, LLC has been formed to act as the entity that will hold the interests of the two parties mentioned above. For purposes of this assignment agreement, BHV Innisfree will be assigning its interest to On Broadway Redwood City, LLC. BHV Innisfree will hold at least a 50% interest in the new entity and will continue to act as the responsible party for the development of the project.

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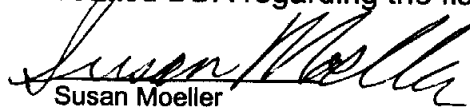
Alternatives


1. Do not authorize the City and Agency to enter into the Assignment and Assumption Agreement. In this case, the developer may have to seek alternate investment sources.
2. Direct staff to seek alternative solutions.


Fiscal Impact

There will be no change in the Amended and Restated DDA regarding the fiscal impact.


Patricia J. Webb
Economic Development Coordinator


Susan Moeller
Redevelopment Manager


Bruce Liedstrand
Community Development Director


Ed Everett
City Manager

Attachments:
Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT**(Amended and Restated Disposition & Development Agreement for the Downtown Retail-Cinema and Parking Project)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment Agreement") is made and entered into this ____ day of _____, 2004, by and between the Redevelopment Agency of the City of Redwood City, a public body, corporate and politic ("Agency"), the City of Redwood City, a charter city and municipal corporation ("City") (collectively "City/Agency"), BHV Innisfree Ventures I, LLC, a California limited liability company, in which Cinema Square, LLC, a California limited liability company and Blake Hunt Ventures I, LLC, a California limited liability company, are the sole members ("Assignor") and On Broadway Redwood City, LLC, a California limited liability company, in which BHV Innisfree Ventures I, LLC and Buchanan Urban Investors, LLC, are the sole members ("Assignee") and is made with reference to the following facts:

RECITALS

A. On January 8, 2003, the City/Agency and Assignor entered into that certain Amended and Restated Disposition and Development Agreement for a Downtown Retail-Cinema and Parking Project (the "DDA").

B. Section 903 of the DDA permits Assignor to assign its rights under the DDA to a joint venture, limited liability, company, partnership or corporation without first obtaining City/Agency prior approval, if 1) such joint venture, limited liability, company, partnership or corporation agrees in writing with the City/Agency to assume all of Assignor's obligations with respect to the portion of the Project Site so assigned; 2)

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Assignor owns at least fifty percent (50%) interest in joint venture, limited liability, company, partnership or corporation at its formation; and 3) Assignor retains primary responsibility for development of the Project Site.

C. Assignor desires to assign its interest in the DDA to Assignee. Further, Assignee desires to accept assignment of Assignor's interest in the DDA and City/Agency consents to the assignment of the interest in the DDA from Assignor to Assignee.

D. At Assignee's formation Assignor owned, and currently owns, at least fifty (50) percent of Assignee and will retain primary responsibility for development of the Project Site, as that term is defined in the DDA

NOW THEREFORE, incorporating the above recitals and in consideration of the covenants and obligations set forth herein, the parties hereto agree as follows:

1. Assignment. Assignor hereby assigns to Assignee all of Assignor's rights and obligations in the Project Site and in the DDA.

2. Assumption. Assignee hereby assumes all of Assignor's rights and obligations in the Project Site and in the DDA.

3. City/Agency Consent. City/Agency hereby agrees and consents to the assignment of all of Assignor's rights and obligations in the Project Site and in the DDA to Assignee.

4. General Terms and Conditions. The following general terms and conditions shall apply to this Assignment Agreement.

4.1 Counterparts. This Assignment Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall

constitute one and the same instrument.

4.2. Successors and Assigns. It is mutually understood and agreed that this Assignment Agreement shall be binding upon City/Agency, Assignor and Assignee and their respective successors. Neither this Assignment Agreement nor any part hereof may be assigned by Assignee without the prior consent of City/Agency.

4.3. Governing Law. This Assignment Agreement shall be governed by, interpreted under, and construed and enforced in accordance with, the laws of the State of California.

4.4. Venue. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Assignment Agreement shall be tried in a court of competent jurisdiction in the County of San Mateo, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

4.5. Notices. Service of any notices, bills, invoices or other documents required or permitted under this Assignment Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

City of Redwood City
1017 Middlefield Road
Redwood City, CA 94063
Attn: City Manager

Redwood City Redevelopment Agency
1017 Middlefield Road
Redwood City, CA 94063
Attn: Redevelopment Manager

Cinema Square, LLC
2656 Bridgeway, Suite 200
Sausalito, CA 94965
Attn: David Irmer

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BHV Innisfree Ventures I, LLC
411 Hartz Avenue, Suite 200
Danville, CA 94526
Attn: Bradley Blake

On Broadway Redwood City, LLC
620 Newport Center Drive, Suite 950
Newport Beach, CA 92660
Attn: Timothy J. Ballard

4.6. Nondiscrimination. During the term of this Assignment Agreement, the parties shall comply with the state and federal laws regarding non-discrimination.

4.7 Authority. The parties executing this Assignment Agreement on behalf of City/Agency, Assignor and Assignee each represent and warrant that they have the legal power, right and actual authority to bind the City/Agency, Assignor and Assignee, respectively, to the terms and conditions hereof.

4.8 Severability. Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this Assignment Agreement shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and in part, in this Assignment Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Assignment Agreement and shall not affect any other provision, term, condition, covenant, and/or restriction, of this Assignment Agreement and the remainder of this Assignment Agreement shall continue in full force and effect.

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4.9 Effective Date. This Assignment Agreement shall be effective upon the date and year first above written.

CITY: CITY OF REDWOOD CITY,
a charter city and municipal corporation
of the State of California

By _____
Ed Everett, City Manager

Attest:

Patricia Howe, City Clerk

AGENCY: REDWOOD CITY REDEVELOPMENT AGENCY
a public body, corporate and politic

By: _____
Susan F. Moeller, Redevelopment Manager

Attest:

Patricia Howe, Agency Secretary

ASSIGNOR: BHV INNISFREE VENTURES I, LLC
a California limited liability corporation
By: CINEMA SQUARE, LLC,
a California limited liability company,
its Managing Member

By: _____

By: Blake Hunt Ventures I, LLC
a California limited liability company,
its Managing Member

By: _____

[SIGNATURES TO FOLLOW]

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ASSIGNEE:

On Broadway Redwood City, LLC

By: BHV INNISFREE VENTURES I, LLC
a California limited liability corporation

By: CINEMA SQUARE, LLC,
a California limited liability company,
its Managing Member

By: _____

By: Blake Hunt Ventures I, LLC
a California limited liability company,
its Managing Member

By: _____

By: Buchanan Urban Investors, LLC
a California limited liability company

By: _____