

(RA-97-103)

REDEVELOPMENT AGENCY OF

THE CITY OF SAN DIEGO

RESOLUTION NO. 2771

ADOPTED ON JULY 15, 1997

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO APPROVING AN ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN OLIVER McMILLAN FOURTH AVENUE, LTD. ("ASSIGNOR"), A CALIFORNIA LIMITED PARTNERSHIP, THOMAS M. McMILLAN AND DOROTHY K. McMILLAN, CO-TRUSTEES OF THE THOMAS M. AND DOROTHY K. McMILLAN FAMILY TRUST UTD 6/29/89 ("ASSIGNEE") AND THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO.

WHEREAS, the Redevelopment Agency of The City of San Diego (the "Agency") is engaged in activities necessary to carry out and implement the Redevelopment Plan for Horton Plaza Redevelopment Project; and

WHEREAS, in furtherance of the Redevelopment Plan for Horton Plaza Redevelopment Project (the "Redevelopment Plan"), the Agency and HSD/Horton Associates, a California general partnership ("HSD/Horton"), entered into that certain Second Amended Disposition and Development Agreement dated November 2, 1981, as amended by the Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Implementation Agreements and the Third Amendment to Disposition and Development Agreement (collectively referred to herein as the "Original Agreement"); and

WHEREAS, pursuant to the Original Agreement, the Agency conveyed to HSD/Horton certain real property in the City of San Diego, County of San Diego, State of California, described in the Original Agreement (the "Property"); and

WHEREAS, the Agency, Assignor, and HSD/Horton then entered into that certain Disposition and Development Agreement dated August 24, 1988, as amended by the First Implementation Agreement dated June 8, 1990, the Second Implementation Agreement dated June 25, 1991, and the Third Implementation Agreement dated March 15, 1993 (collectively referred to herein as the "DDA") to provide for the development of the Property; and

WHEREAS, pursuant to the Third Implementation Agreement, HSD/Horton sold the Property to Assignor; and

WHEREAS, pursuant to the DDA, the Agency made a loan to Assignor in the approximate amount of \$2,736,745 (the "Agency Loan"), to assist Assignor finance the development of the Property. The Agency Loan is evidenced by a promissory note dated as of June 9, 1993 (the "Note") and secured by a Subordinated Deed of Trust with Assignment of Rents dated as of June 9, 1993, recorded in the San Diego County Recorder's Office on June 14, 1993, as Document Number 1993-0374214 (the "Agency Deed of Trust"). Pursuant to the Note and Agency Deed of Trust, Assignor agreed to pay interest on the Agency Loan out of the annual gross revenues from the Property, after deducting annual operating expenses and debt service; and

WHEREAS, pursuant to the DDA, Assignor and Agency entered into that certain Payment Agreement dated as of June 9, 1993, recorded in the San Diego County Recorder's Office on June 14, 1993, as Document Number 1993-0374211 (the "Payment Agreement"), providing for certain continuing payments to the Agency; and

WHEREAS, pursuant to the DDA, Assignor and Agency entered into that certain Agreement Affecting Real Property dated as of June 9, 1993, recorded in the San Diego County Recorder's Office on June 14, 1993, as Document Number 1993-0374213 (the "Agreement Affecting Real Property"); and

WHEREAS, the Note, the Agency Deed of Trust, the Payment Agreement, and the Agreement Affecting Real Property, and all agreements and instruments incorporated therein, are incorporated herein by this reference, and shall be referred to collectively herein as the "Agency Instruments"; and

WHEREAS, the Agency Instruments are subordinate to the certain Deed of Trust, Assignment of Rents, and Fixture Filing (the "Senior Trust Deed") dated June 9, 1993, securing the obligation evidenced by a Note Secured by Deed of Trust (Floating Rate Note), dated June 9, 1993, made payable to Union Bank in the stated principal amount of \$4,800,000 (the "Union Note") and a

Note Secured by Deed of Trust (Floating Rate Note) made payable to Horton/HSD in the stated principal amount of \$700,000 (the "HSD Note"), executed by Assignor, as trustor, to Union Bank, as trustee, for the benefit of Union Bank, as Agent for itself and HSD/Horton, as co-beneficiaries, and recorded in the San Diego County Recorder's Office June 14, 1993 as Instrument No. 1993-0374209. Union Bank has assigned all of its rights under the Union Note and the Senior Trust Deed to Lennar U.S. Partners Limited Partnership, a Delaware limited partnership, formerly known as MS West Limited Partnership ("Lender"); NOW, THEREFORE,

BE IT RESOLVED, by the Redevelopment Agency of The City of San Diego, as follows:

1. That the proposed Assignment and Assumption Agreement on the terms and conditions thereof is hereby approved.

2. That the Executive Director of the Agency (or designee) is hereby authorized to execute the implementation of the Assignment and Assumption Agreement on behalf of the Agency. A copy of the Assignment and Assumption Agreement, when executed by the Agency, shall be placed on file in the office of the Secretary to the Agency as Document No. D-02771.

APPROVED: CASEY GWINN, General Counsel

By

Allisyn L. Thomas  
Deputy General Counsel

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