

(RA-98-96)

REDEVELOPMENT AGENCY OF

THE CITY OF SAN DIEGO

RESOLUTION NO. 2864

ADOPTED ON JULY 21, 1998

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO AUTHORIZING THE EXECUTIVE DIRECTOR TO APPROVE AN ASSIGNMENT OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE AGENCY AND HSD/HORTON ASSOCIATES TO WESTFIELD AMERICA, INC. (OR AFFILIATE), SUBJECT TO CERTAIN TERMS AND CONDITIONS.

WHEREAS, the Redevelopment Agency of The City of San Diego (the "Agency"), and HSD Horton Associates, a California general partnership (the "Developer"), have previously entered into a Second Amended Disposition and Development Agreement dated November 2, 1981, as amended by the Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Implementation Agreements, and the Third Amendment to Disposition and Development Agreement dated October 17, 1982 (collectively, the "Agreement"), for which TrizecHahn Centers, Inc., a California corporation ("Hahn"), also remains responsible; and

WHEREAS, the Agency has previously issued its Certificate of Completion pertaining to all property covered by the Agreement, except Parcel S-2 as defined in the Tenth Implementation Agreement; and

WHEREAS, the Developer now proposes to sell the property covered by the original Agreement (including Parcel S-2) to Westfield America, Inc., a Missouri corporation (the "Purchaser"), or an affiliate; and

WHEREAS, pursuant to the Agreement, the Developer has requested that the Agency consent to the assignment of the Agreement (which remains in effect with respect to Parcel S-2), and the transfer of Parcel S-2, in connection with its sale of the larger property to the Purchaser, or an affiliate, and that the Developer and Hahn thereafter be released from their obligations thereunder; and

WHEREAS, the Agency has determined that it is in the best interest of the City, and the public purposes of carrying out the remainder of the redevelopment under the Agreement, that the Agreement be assigned, and Parcel S-2 be transferred, to the Purchaser, or an affiliate, consistent with certain terms and conditions as herein set forth; NOW, THEREFORE,

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

1. The Agency hereby authorizes the Executive Director of the Agency (or designee) to approve an assignment of the Agreement, and the transfer of Parcel S-2, to the Purchaser, or an affiliate, subject to the following conditions:

a. The assignment to the Purchaser, or an affiliate, and the assumption of all obligations and liabilities with respect thereto, shall be accomplished by documentation satisfactory to the Executive Director (or designee) and legal counsel to the Agency.

b. Such assignment and assumption shall be effected concurrently with closing of the sale of the larger property to the Purchaser, or an affiliate.

c. If the Agreement is assigned, and Parcel S-2 transferred, to an affiliate of the Purchaser, the Purchaser shall guarantee the performance of the affiliate under the Agreement by instrument satisfactory to the Executive Director (or designee) and legal counsel to the Agency.

d. Under the above conditions, the Developer and Hahn may be released from their future obligations and liabilities under the Agreement.

e. In connection with the sale, the Purchaser, or its affiliate (with the Purchaser as guarantor) shall acknowledge its assumption of obligations and liabilities under the Payment Agreement recorded October 18, 1982, with respect to the larger property, and the First, Second, and Third Amendments and Supplements thereto, as well as under the Lease Agreement pertaining to the Lyceum Theatre and any

similar instruments implementing the original Agreement which remain in effect.

f. Any mortgage or other security holder, or holder of any other encumbrance, affecting the property, as required by the Executive Director (or designee), shall acknowledge that their interests are subject and subordinate to the Agreement, and shall acknowledge their status with respect to the above referenced Payment Agreement, Lease Agreement, or other such implementing instruments, comparable to such status held by predecessor holders prior to the sale of the larger property.

2. The Executive Director (or designee) is hereby authorized, on behalf of the Agency, to sign all documents necessary and appropriate to carry out and implement this Resolution, and to administer the implementation of the Resolution on behalf of the Agency.

APPROVED: CASEY GWINN, General Counsel

By

Allisyn L. Thomas
Deputy General Counsel

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