



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 6/28/05
AGENDA ITEM 6
WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Blue Rock Country Club Project - Approval of assignment and assumption agreements from Hayward 1900 to StoneBrae, L.P. and HSBC Realty Credit Corp.

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution approving the Assignment and Assumption Agreement for the Blue Rock County Club project from Hayward 1900, Inc., to StoneBrae, L.P., and the Assignment Agreement from StoneBrae, L.P. to HSBC Realty Credit Corporation (USA).

DISCUSSION:

The City Council approved the Development Agreement for the Blue Rock Country Club project with developer, Hayward 1900, Inc., in April 1998. The Development Agreement provides that Hayward 1900 must obtain the consent of the City prior to assigning its rights under the agreement. Hayward 1900's parent company has formed a new entity, StoneBrae, L.P., and is requesting approval of an assignment and assumption of the Development Agreement by StoneBrae. StoneBrae is a limited partnership, wholly owned by YCS Nevada, Incorporated, its general partner, and Hayward 1900, its limited partner. Both YCS Nevada and Hayward 1900 are wholly owned subsidiaries of the same parent company. The new entity was created to align the ownership name with the project name, for tax purposes and for ease of financing. A letter from Steve Miller requesting the assignment and describing the new entity is attached as Exhibit A.

As is common with projects of this magnitude, StoneBrae is requesting that the City consent to the assignment of the Development Agreement from StoneBrae to HSBC Realty Credit Corporation (USA) for the purpose of obtaining the requisite financing for the project. A letter from Paul Yuen, the Chief Financial Officer of YCS Nevada, as managing partner of StoneBrae, requesting the assignment is attached as Exhibit B. The Assignment Agreement is for purposes of obtaining project financing only. The Development Agreement was first assigned by Hayward 1900 to HSBC in December, 2004, for financing purposes. StoneBrae is in the process of obtaining a new loan and this assignment to HSBC is necessary to provide additional security to the bank for this next round of project financing. As before, it is anticipated that StoneBrae will perform all of the obligations of the Development Agreement. The Assignment Agreement does not grant HSBC any present rights under the Development Agreement. In the event of default by StoneBrae, HSBC will step into the position of StoneBrae as an "Owner," as that term is defined in the Development Agreement. In the event that HSBC assumes title to the Blue Rock

property, through foreclosure or otherwise, HSBC shall assume all the obligations of the "Owner" under the Development Agreement. Should HSBC subsequently seek to transfer its rights under the Development Agreement to a successor developer, the consent of the City Council is required, although that consent cannot be unreasonably withheld. To that end the Assignment Agreement proposes criteria for a successor developer, if the occasion arises. To qualify for future assignment, the successor developer must have at least seven years of experience in real estate development, the financial capability to purchase the property, and previous experience developing a project of the scope of that envisioned for Blue Rock, with a satisfactory history of performance. With these assurances in place, staff recommends approval of the Assignment Agreement.



Jesús Armas, City Manager

Attachments: Exhibit A: Letter from Steve Miller with Assignment and Assumption Agreement enclosed
Exhibit B: Letter from Paul Yuen with Assignment Agreement enclosed
Draft Resolution

HAYWARD 1900, Inc.

June 21, 2005

Mr. Jesus Armas
City Manager
City of Hayward
777 B Street
Hayward, CA 94541-4214

Re: Stonebrae Residential and Golf Community

Dear Jesus:

Hayward 1900, Inc. hereby formally requests that the City of Hayward consent to the assignment of the Development Agreement between Hayward 1900 and the City of Hayward to StoneBrae L.P. and the assumption by StoneBrae L.P. of all of the owner's obligations thereunder. Enclosed is an original Assignment of Development Agreement with provision for the City's acknowledgment of its consent to the assignment.

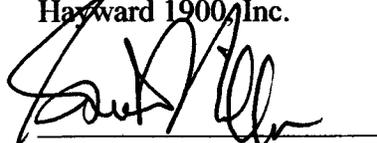
StoneBrae L.P. is a Delaware limited partnership in which YCS Nevada, Incorporated is the sole general partner and Hayward 1900, Inc. is the sole limited partner. Both YCS Nevada and Hayward 1900 are owned 100% by the same parent company. Consequently, there is no change in the ownership of the project, but merely a change in the form of holding ownership.

We elected to form a new entity and to transfer the property to that entity for several reasons. First, a limited partnership as a pass-through entity for tax purposes is a more advantageous form of holding real estate than is a corporation. Second, we wanted to align the ownership name with the new name and image for the project. As you are aware, the "Blue Rock" name was confusingly similar to a real estate development in the Vallejo area and potentially violated trademarks held by others. Finally, and most importantly, our lenders have made it clear that they will be more willing to loan additional construction funds to a new entity which does not have Hayward 1900's history of litigation pertaining to the project or any other contingent liabilities.

We appreciate very much your and the council's consideration of our request. I would be more than happy to answer any further questions you or any of the council members may have.

Very truly yours,

Hayward 1900, Inc.



Steven Miller

Enclosure
W02-SF:FJS\61458446.1

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO

STONEBRAE L.P.
170 Maiden Lane, Suite 800
San Francisco, CA 94108
Attention: Paul W. Yuen

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT AND ASSUMPTION
OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of _____, 2005, between HAYWARD 1900, INC., a California corporation ("Assignor"), and STONEBRAE L.P., a Delaware limited partnership ("Assignee").

WHEREAS, Assignor owns approximately 1,600 acres of land (the "Land") in the City of Hayward (the "City"), County of Alameda, California, in an area commonly known as the Walpert Ridge. Assignor has secured from the City and other governmental agencies, certain development rights which would enable Assignor to construct on the Land a residential master planned community, a golf course and an elementary school, all commonly known as the Blue Rock Project (the "Project"). Assignor has commenced construction of the Project.

WHEREAS, Assignor and the City have entered into that certain Blue Rock Country Club Project Development Agreement, dated April 8, 1998, and recorded April 16, 1998 as instrument no. 98128317 in the Office of the Alameda County Recorder (the "Development Agreement") in connection with the development by Assignor of the Project.

WHEREAS, the ultimate owners of Assignor (the "Owners") have formed Assignee (which is also entirely owned by the Owners) for the purpose of owning, further developing, constructing and selling the Project, and satisfying all legal obligations associated with the ownership and development of the Project.

WHEREAS, as of the Effective Date (defined below), Assignor intends to convey, transfer and assign to Assignee all real and personal property owned by Assignor in connection with the Project, subject to obtaining the consent of the City to the assignment of the Development Agreement as provided herein.

WHEREAS, Assignor and Assignee accordingly desire to enter into this Agreement, in order to transfer all of Assignor's right, title and interest in the Development Agreement to Assignee, and to cause Assignee to assume all of Assignor's obligations and liabilities associated with the Development Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. Assignment. As of the Effective Date, Assignor, without recourse and without representation or warranty, hereby assigns, transfers, and conveys to Assignee all of Assignor's right, title and interest in, under and to the Development Agreement.

2. Assumption. As of the Effective Date, Assignee hereby accepts the foregoing assignment of the Development Agreement, and hereby assumes all of the obligations and liabilities of Assignor, of any nature whatsoever and whenever arising, under or relating to the Development Agreement (collectively, the "Assumed Obligations"), and agrees to perform all of such obligations and liabilities and to be bound by the terms and conditions thereof.

3. Consent. Pursuant to Section 6 of the Development Agreement, the ability of Assignor to assign the Development Agreement to Assignee is subject to the City's written consent (the "Consent"). Accordingly, Assignor's conveyance of the Development Agreement to Assignee, and Assignee's assumption of the Assumed Obligations, shall be expressly conditioned upon Assignor first obtaining and delivering to Assignee the original Consent duly executed by the City. The Consent shall be evidenced by the countersignature of a counterpart of this Assignment by an authorized representative of the City in the manner provided below.

4. Effectiveness. This Agreement shall become effective on the date (the "Effective Date") that is the later to occur of (1) _____, 2005; or (2) the date upon which the City has executed the Consent.

5. General.

5.1 This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior and current understandings and agreements, whether written or oral.

5.2 No term or provision of this Agreement may be amended, waived or terminated orally, but only by an instrument signed by the parties hereto.

5.3 This Agreement may be executed in one or more counterparts. Each set of executed counterparts shall be an original. Executed counterparts may be delivered by facsimile transmission.

5.4 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

5.5 If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions hereof will not be affected or impaired in any way.

5.6 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ASSIGNOR:

HAYWARD 1900, INC.,
a California corporation

By: _____
Name: Paul W. Yuen
Title: Director

By: _____
Name: Steven E. Miller
Title: President

ASSIGNEE:

STONEBRAE L.P.,
a Delaware limited partnership

By: YCS Nevada, Incorporated,
a Nevada corporation,
its General Partner

By: _____
Name: _____
Title: _____

The City hereby confirms that the Development Agreement remains in full force and effect, and consents to the assignment of the Development Agreement by Hayward 1900, Inc. to Stonebrae L.P..

City of Hayward, a political subdivision of the State of California

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____



S T O N E B R A E
C O U N T R Y C L U B

June 21, 2005

Mr. Jesus Armas
City Manager
City of Hayward
777 B Street
Hayward, CA 94541

Re: Stonebrae Country Club

Dear Jesus:

Stonebrae L.P., as the successor to Hayward 1900, Inc., hereby formally requests that the City Council approve the enclosed Assignment of the Development Agreement to HSBC Realty Credit Corporation (USA), as agent for itself and two other banks making a construction loan to Stonebrae. The Assignment is being requested solely for financing purposes and will be effective only if and when Stonebrae defaults on its loan obligations to the lenders.

HSBC Realty Credit Corporation (USA) is a subsidiary of HSBC Bank (formerly Hong Kong and Shanghai Bank), which is based in London and is the second largest global banking institution. The loan is being made jointly by three banks (including HSBC) and will be administered by HSBC's branch located in San Francisco. Hayward 1900 has previously borrowed approximately \$42 million from HSBC Bank to finance a portion of the project costs. That loan is secured by the land constituting the project and an assignment of the Development Agreement on exactly the same terms now being proposed, which assignment was approved by the City Council. In order to finance the final grading, installation of the roads, utilities and other infrastructure, certain off-site improvements and the construction of the elementary school, Stonebrae is entering into a new loan in the approximate amount of \$100 million, which will include the existing indebtedness of approximately \$42 million. As a condition of the loan, HSBC requires a new assignment of all development approvals, including the Development Agreement.

Under the terms of the Assignment, HSBC will have no right to exercise any of the Owner's rights under the Development Agreement and will not be responsible for performance of any of the Owner's obligations unless and until there is a default under the terms of the loan. Stonebrae will continue to exercise all of the Owner's rights and to be responsible for performance of all of the Owner's obligations. If there is a foreclosure or HSBC otherwise takes ownership of the property on behalf of the lender group, it agrees, in the Assignment, to then perform all of the Owner's obligations under the Development Agreement. If HSBC, on

Mr. Jesus Armas
June 21, 2005
Page 2

behalf of the lenders, takes title to the property and then sells the property to a third party, that third party must be approved by the City of Hayward in order to get the benefits of the Development Agreement. Certain criteria for the City's reasonable approval of a successor developer are set forth in the Assignment.

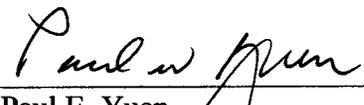
As noted above, the terms of the Assignment are exactly the same as those of the Assignment previously approved by the City Council, except for the references to HSBC as agent for the lender group, references to the Construction Loan Agreement for the new loan and a reference to the loan to value ratio required by the terms of the Credit Agreement rather than a fixed loan to value ratio of 42.86%. The new loan requires a loan to value ratio equal to 60% of the value of lots then subject to binding sales contracts and 43% of the value of the remaining property in its "as is" condition. The change reflects the increased amount of the loan and the value created by the finished lots.

We appreciate very much the Council's timely consideration of our request and look forward to a favorable response.

Very truly yours,

STONEBRAE L.P.

By: YCS Nevada, Incorporated

By: 
Paul E. Yuen
Chief Financial Officer

Enclosure
W02-SF:FJS\61458455.1

ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT OF DEVELOPMENT AGREEMENT, dated as of June ____, 2005 (this "Assignment"), is made between **STONEBRAE L.P.**, a Delaware limited partnership ("Borrower"), and **HSBC REALTY CREDIT CORPORATION (USA)**, a Delaware corporation ("HSBC") acting in its capacity as agent (HSBC in such capacity, together with its successors and assigns in such capacity, "Agent") for the ratable benefit of HSBC, acting in its individual capacity, and any other co-lenders as may exist from time to time (collectively, with HSBC, "Lender").

As security for the due and punctual payment of each sum now or hereafter due from Borrower to Lender, and for the due and punctual performance of each and every obligation now or hereafter existing of Borrower to Lender, under or in connection with the Loan made pursuant to the provisions of that certain Construction Loan Agreement dated June ____, 2005, by and between Borrower and Lender (as modified, amended, restated or supplemented from time to time, the "Credit Agreement"), the Note (as defined in the Credit Agreement) and other documents evidencing the Loan (collectively the "Loan Documents"), Borrower hereby assigns to Lender, as additional collateral, all of Borrower's right, title and interest in and to that certain Blue Rock Country Club Project Development Agreement dated as of April 8, 1998, by and between Hayward 1900, Inc. ("Hayward 1900"), and the City of Hayward (the "City"), recorded on April 16, 1998, in Official Records of Alameda County as Instrument No. 98128317 (the "Development Agreement").

Borrower represents and warrants that Borrower is the sole and true holder of the owner rights under the Development Agreement, that Borrower has not assigned or granted a security interest therein to anyone other than Lender and no other lien or encumbrance of any kind or nature exists against Borrower's interest in the Development Agreement, and that Borrower's interest therein is not subject to any claim, setoff, defense or deduction. Borrower agrees that Borrower shall not further assign (except in connection with a transfer of the Project permitted under the terms of the Credit Agreement) or encumber the Development Agreement and, subject to such limitation, this Assignment shall be binding on and inure to the benefit of the respective assigns and successors in interest of Borrower and Lender.

Neither this Assignment nor any action or actions on the part of Agent or Lender shall constitute an assumption by Agent or Lender of any obligations under the Development Agreement, and Borrower shall continue to be liable for all obligations thereunder, Borrower hereby agreeing to perform each and all of Borrower's material obligations under the Development Agreement and to enforce performance by the City of each and every material obligation to be performed by the City. Borrower hereby agrees to indemnify and hold Agent and Lender free and harmless for, from and against any loss, cost, liability or expense (including without limitation attorneys' and accountants' fees) resulting from any failure of Borrower so to perform, excluding liability or expenses arising from the gross negligence or willful misconduct of Agent or Lender. Borrower hereby agrees to comply with all the terms of the Development Agreement and to take such steps and to perform such acts as may be necessary or desirable to secure the City's

performance under the Development Agreement. Upon Lender or any third party's acquisition of title to the Property (through foreclosure, deed in lieu thereof, or otherwise), Lender, or such third party purchaser, hereby agrees to perform each and all obligations under the Development Agreement arising during the period of time that Lender or such third party holds title to the Property.

Following any Event of Default, Agent, on behalf of Lender, shall have the right at any time (but shall have no obligation) to take in its name, Lender's name or in the name of Borrower or otherwise such action as Agent may at any time and from time to time determine to be necessary to cure any default under the Development Agreement or to protect the rights of Borrower or Lender thereunder. Agent shall incur no liability if any action taken by it or in its behalf in good faith, pursuant to the foregoing, shall prove to be in whole or in part inadequate or invalid, and Borrower agrees to hold Agent and Lender free and harmless from and against any loss, costs, liability, or expense (including without limitation attorneys' and accountants' fees) to which Agent or Lender may become exposed, or which Agent or Lender may incur, in exercising any of its rights under this Assignment, excluding loss, cost, liability or expense resulting from the gross negligence or willful misconduct of Agent or Lender.

Borrower hereby irrevocably constitutes and appoints Agent as Borrower's true and lawful attorney-in-fact, after the occurrence and during the continuance of an Event of Default under the Credit Agreement, to enforce in Borrower's name or in Agent's or Lender's name or otherwise all rights of Borrower under the Development Agreement. It is hereby recognized that the power of attorney herein granted is coupled with an interest and shall not be revocable.

As additional security for the payment of all obligations of Borrower to Lender under the Loan Documents, Borrower hereby assigns and transfers to Lender, and hereby covenants and contracts to assign and transfer to Lender, all of Borrower's right, title and interest in and to any other or future contracts related to the Property and construction of the Improvements to be entered into between Borrower and the City.

This Assignment is for security purposes only. Neither Agent nor Lender shall have any right under this Assignment to enforce the Development Agreement, and Borrower shall retain the right to enforce the Development Agreement, until either (i) an Event of Default (as defined under the Credit Agreement) has occurred, Agent has filed a Notice of Default, Agent has commenced foreclosure proceedings on behalf of Lender and Agent has obtained the appointment of a receiver to take possession of the Property, or (ii) Lender has otherwise acquired title to the Property (either case hereinafter referred to as a "Foreclosure Event"). So long as no Foreclosure Event has occurred Borrower shall have the right, upon notice to Agent, to enter into such amendments of the Development Agreement as Borrower deems, in the exercise of its reasonable business judgment, to be in the best interests of the Project, without Agent approval so long as any such amendment does not result in (i) a termination of the Development Agreement, or (ii) a decrease in the value of the Project such that the ratio of outstanding principal of the Loan to the appraised value of the Project will be greater than any loan to value ratio required at any time by the terms of the Credit Agreement.

Upon the occurrence of a Foreclosure Event, Lender may, at its election and without further notice to Borrower, succeed to and proceed to enforce all of the rights, interests and remedies of Borrower under the Development Agreement, and/or, subject to the terms set forth in the attached consent from the City of Hayward, reassign its right, title and interest in the Development Agreement to any person or entity in Lender's discretion upon notice to the Borrower but without any requirements for Borrower's consent.

The exercise of any rights under this Assignment shall not be deemed to cure or waive any default under the Credit Agreement or other Loan Documents, or waive, modify or affect any notice of default under the Credit Agreement or other Loan Documents or invalidate any act done pursuant to such notice.

THIS ASSIGNMENT IS AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

This Assignment is referred to in and is entitled to the benefit of the Credit Agreement of even date herewith. **Upon reconveyance of the Deed of Trust securing Borrower's obligations under the Loan Documents, this Assignment shall automatically terminate and be of no further force and effect. Notwithstanding the foregoing, Lender hereby agrees to execute, at Borrower's expense, such documents as may be reasonably required to further evidence such termination.**

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement.

This Assignment may be executed in one or more counterparts, all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Borrower and Lender have executed this Assignment as of the date set forth above.

BORROWER:

STONEBRAE L.P., a Delaware limited partnership

By: YCS Nevada, Incorporated, a Nevada corporation, its General Partner

By: _____
Name: _____
Title: _____

LENDER:

HSBC REALTY CREDIT CORPORATION
(USA), a Delaware corporation

By: _____
Name:
Its:

CONSENT

The City hereby consents to the foregoing Assignment of Development Agreement and agrees as follows:

1. Prior to Lender's acquisition of title to the Property, the City agrees that in the event of a breach by Borrower of any of the terms and conditions of the Development Agreement, the City will give written notice to Agent of such breach. Agent shall have the option, but shall not be obligated, to remedy or cure said breach within ninety (90) days from the receipt of such notice of breach, or such longer time as is reasonably necessary to cure such default if the same cannot reasonably be cured within said ninety (90) days, including, if it is necessary for Lender to acquire title to the Property in order to cure such default, such time as may be necessary for Lender to acquire title to the Property through foreclosure or otherwise.

2. The City hereby acknowledges that it has consented to the transfer of the interests and obligations of Hayward 1900, Inc., to Borrower and that Borrower is currently the recognized "Owner" under the Development Agreement. The City hereby consents to the assignment to Lender of the Borrower's rights as the "Owner" under the Development Agreement, such assignment to be effective upon such time as Lender shall acquire title to the Property through foreclosure or otherwise, and thereafter Lender shall have the right to act as the "Owner" under the Development Agreement.

3. Any further assignment of the Development Agreement to a third party who acquires title to the property directly from Lender or through a foreclosure of the property by Lender (in either case, a "Successor Assignee") shall be subject to the City's consent in accordance with Section 6.1 of the Development Agreement. For purposes of the City's consent under Section 6.1 of the Development Agreement, a Successor Assignee shall be deemed "willing and capable" of complying with the terms and conditions of the Development Agreement if such Successor Assignee satisfies the following criteria:

(i) Successor Assignee shall be a real estate developer or real estate development company with not less than seven (7) years of experience in the development field; and

(ii) Successor Assignee shall have either (i) the financial capability to purchase the Property for a price of not less than \$30,000,000 (such capability may partially include loan financing), or (ii) a financial status comparable to or better than Stonebrae L.P., as Stonebrae L.P.'s financial status exists as of the date of this Consent;

(iii) Successor Assignee shall have previously developed or participated in the development of at least one project of similar scope, quality and nature as that proposed by Borrower and envisioned in the Development Agreement; and

(iv) if determined by the City to be relevant at the time, the Successor Assignee has no record of (a) a material violation of City of Hayward ordinances or ordinances of other

local jurisdictions, (b) a default under any development agreement entered into with the City or other local jurisdiction with respect to any material obligation thereunder, or (c) a material violation of or default under any City development/construction related requirement or mandate; in the event the City rejects a proposed Successor Assignee on this basis of a prior material violation, it shall adopt written findings setting forth the specific grounds for the rejection.

The City shall have the right to establish such alternative tests of "willing and capable" as it may reasonably choose to apply to a Successor Assignee who does not meet the foregoing test.

The foregoing is Consent is provided this ____ day of June, 2005.

CITY OF HAYWARD, a municipal corporation

By: _____
Name: _____
Its: _____

ATTEST: _____

APPROVED AS TO FORM:

City Attorney

APPROVED AS TO FORM:

City Clerk

[Signature continued on next page]

ACKNOWLEDGED AND AGREED TO BY THE UNDERSIGNED:

HSBC REALTY CREDIT CORPORATION (USA), a
Delaware corporation

By: _____

Name:

Its:

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**RESOLUTION APPROVING THE ASSIGNMENT AND
ASSUMPTION AGREEMENTS FOR THE BLUE ROCK
COUNTRY CLUB PROJECT**

BE IT RESOLVED that the City Council of the City of Hayward hereby consents to the Assignment and Assumption Agreement for the Blue Rock Country Club project from Hayward 1900, Inc., to StoneBrae, L.P., and the Assignment Agreement from StoneBrae, L.P., to HSBC Realty Credit Corporation (USA), in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2005

ADOPTED BY THE FOLLOWING VOTE:

**AYES: CITY COUNCIL:
MAYOR:**

NOES: CITY COUNCIL:

ABSTAIN: CITY COUNCIL:

ABSENT: CITY COUNCIL:

**ATTEST: _____
City Clerk of the City of Hayward**

APPROVED AS TO FORM:

City Attorney of the City of Hayward