

ITEM 3

OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY

DATE ISSUED: 08/02/2012

SUBJECT: Adoption of a Resolution to Approve a Settlement Agreement related to the Mercado Property in the Barrio Logan Community of San Diego.

CONTACT/PHONE NUMBER: David Graham /236-6980

DESCRIPTIVE SUMMARY OF ITEM:

Adoption of a Resolution to Approve a Settlement Agreement with C. Samuel Marasco, LandGrant Development Unlimited, Mercado Alliance, LLC, and American Contractors Indemnity Company to settle all claims related to the Mercado Property in the Barrio Logan Community of San Diego.

STAFF RECOMMENDATION:

Approve proposed action.

DISCUSSION:

The Property

In 1996, the City of San Diego (City) purchased a fee simple interest in certain property bounded by Crosby Street on the north, Cal Trans Coronado Bay Bridge Right-of-Way and Chicano Park on the south, National Avenue on the east and Main Street on the west (the "Mercado Property"). The City subsequently transferred the Mercado Property to the Redevelopment Agency of the City of San Diego (Former RDA) for redevelopment. As discussed below, the Former RDA transferred the Mercado Property to Mercado Alliance, LLC (Mercado Alliance) in 2003 and took back the property in 2006. In 2010, the Former RDA transferred the Mercado Property to Shea Mercado, LLC (not a party to this agreement) for redevelopment purposes.

The Mercado Disposition and Development Agreement

On November 12, 2000, the Former RDA entered into a disposition and development agreement (DDA) with Mercado Alliance, LLC, which obligated the Former RDA to transfer the Mercado Property to Mercado Alliance, and obligated Mercado Alliance to develop the property consistent with the DDA. The DDA contains a right of reverter provision, which allowed the Former RDA to take back the Mercado Property under certain circumstances ("Reversion Provision"). The DDA also contains a provision which governs rights to cost reimbursement in the event of a reversion ("Reimbursement Provision").

On September 8, 2003, the Former RDA transferred the Mercado Property to Mercado Alliance. On May 2, 2006, after Mercado Alliance failed to commence development, the Former RDA exercised its rights under the Reversion Provision and caused an Exercise of Power of Termination to be recorded on the Property, thereby taking back the Mercado Property.

First Lawsuit

On May 12, 2006, the Former RDA filed a Complaint against Mercado Alliance for breach of contract and other claims in the San Diego Superior Court (Case No. GIC 865872). On August 30, 2006, Mercado Alliance filed a Cross Complaint, and on January 23, 2007, Mercado Alliance

filed a First Amended Cross-Complaint alleging 13 causes of action including breach of contract, declaratory relief related to the recorded Exercise of Power of Termination, and quiet title.

On September 25, 2006, Mercado Alliance applied for an injunction to enjoin the Former RDA from interfering with Mercado Alliance's alleged ownership of the Mercado Property. On February 22, 2007, the Court granted an injunction in favor of Mercado Alliance and against the Former RDA, but required Mercado Alliance to post an undertaking in the amount of \$100,000.

The Former RDA filed a motion for summary adjudication on all claims in Mercado Alliance's First Amended Cross-Complaint, except on the trespass cause of action. On May 29, 2007, the Court granted the Former RDA's motion for summary adjudication in its entirety. On June 12, 2007, the Court dissolved the injunction. On May 12, 2008, after the Former RDA dismissed its claims and after Mercado Alliance dismissed its trespass claim, the Court entered Judgment. Mercado Alliance appealed the Judgment, and on December 2, 2009, the Court of Appeal, Fourth Appellate District, dismissed the appeal.

Second Lawsuit

Thereafter, Mercado Alliance continued to hold itself out as the owner of the Mercado Property and also recorded trust deeds against the property in favor of LandGrant Development Unlimited (LandGrant), a company controlled by C. Samuel Marasco (Marasco).

The Former RDA filed a new action on June 8, 2010, in the San Diego Superior Court (Case No. 37-2010-00093850-CU-OR-CTL). On October 28, 2010, the Former RDA filed a Second Amended Complaint to quiet title and for slander of title against LandGrant, Mercado Alliance, Marasco. The Second Amended Complaint also included a claim for recovery on the surety bond against Mercado Alliance and the surety, American Contractors Indemnity Company ("American Contractors").

On February 16, 2012, the Successor Agency (as the successor party to the Former RDA in the litigation) filed a motion for summary adjudication, seeking to quiet title and to cancel the deeds of trust recorded on the Mercado Property. On April 20, 2012, the Court granted the Successor Agency's motion for summary adjudication in its entirety. The remaining causes of action are for recovery of surety bond against Mercado and American Contractors and slander of title against LandGrant, Mercado Alliance and Marasco.

The Settlement Agreement

The proposed settlement agreement ("Agreement") resolves all outstanding disputes related to the Mercado Property. The main deal points are as follows:

1. LandGrant, Mercado Alliance and Marasco agree to waive any rights they may have to appeal the ruling on the Successor Agency's motion for summary adjudication in Case No. 37-2010-00093850-CU-OR-CTL quieting title in the Mercado Property.
2. LandGrant, Mercado Alliance and Marasco agree to forego any and all claims they may have under the DDA or Grant Deed, including any claim for reimbursement under the Reimbursement Provision.
3. The Parties agree that the Agreement settles any and all claims having anything to do whatsoever with the Mercado Property and that none of the parties except for the Successor Agency has any interest in the Mercado Property.

4. American Contractors agrees to pay the Successor Agency fifty thousand dollars (\$50,000) in full settlement of the Agency's claim for the recovery of the \$100,000 undertaking in Case No. GIC 865872.

5. The Successor Agency agrees to dismiss the recovery of surety bond and slander of title causes of action with prejudice.

On July 31, 2012, the San Diego City Council (the Successor Agency's board) approved the Agreement in closed session. It is uncertain, in light of restrictive language in Assembly Bill x1 26 (AB 26) and Assembly Bill 1484 (AB 1484), whether the Successor Agency has the legal authority to execute the Agreement without the approval of the Oversight Board and the State Department of Finance (DOF), even though the Successor Agency is receiving, not paying, funds under the Agreement. Therefore, Successor Agency staff respectfully requests that the Oversight Board approve the Agreement. Upon the Oversight Board's approval, the item would be presented by Successor Agency staff to the DOF for review and approval or deemed approval in accordance with AB 26 and AB 1484 (collectively, the RDA Dissolution Laws).

Reasons for Approval of Settlement Agreement

The Agreement constitutes a sensible, global resolution of long-standing disputes among the interested parties. The Agreement is designed to avoid the considerable legal expense, allocation of resources, and uncertainty associated with protracted litigation of the disputes. The Agreement will allow the Successor Agency to collect \$50,000 on an outstanding claim, to dispense with any potential claim for reimbursement by Mercado Alliance under the DDA, and to conserve the Successor Agency's limited resources and funds, all for the benefit of local taxing entities. Accordingly, the Agreement is consistent with the fiscal objectives of the RDA Dissolution Laws.

David Graham
Office of the Mayor

Jay Goldstone
Chief Operating Officer

Attachment: Settlement Agreement

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is entered into as of the last date of execution of the Agreement, by and between plaintiff the Redevelopment Agency of the City of San Diego and its Successor Agency, the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic (“Plaintiff” or the “Agency”)¹, and LandGrant Development Unlimited (“LandGrant”), a California corporation; Mercado Alliance, LLC (“Mercado Alliance”), a California limited liability company; C. Samuel Marasco, III (“Marasco”), an individual; and American Contractors Indemnity Company (“American Contractors”), a California corporation (each hereinafter a “Party” and collectively “the Parties”).

A. In 1996, the City of San Diego purchased a fee simple interest in certain property bounded by Crosby Street on the north, Cal Trans Coronado Bay Bridge Right-of-Way and Chicano Park on the south, National Avenue on the east and Main Street on the west (the “Property”).

B. On November 12, 2000, the Agency entered into a Disposition and Development Agreement (“DDA”) with Mercado Alliance, which obligated the Agency to transfer the Property to Mercado Alliance, and obligated Mercado Alliance to develop the property consistent with the DDA.

C. The DDA contains a right of reverter provision, which allowed the Agency to take back the Property under certain circumstances (“Reversion Provision”). The DDA also contains a provision which governs rights to cost reimbursement in the event of a reversion (“Reimbursement Provision”).

D. On September 8, 2003, Agency staff transferred the Property to Mercado Alliance. The conveyance was pursuant to the grant deed dated September 5, 2003, and recorded as instrument 2003-1094033 on September 8, 2003 (“Grant Deed”).

E. On May 2, 2006, the Agency exercised its rights under the Reversion Provision and caused an Exercise of Power of Termination to be recorded on the Property. The document is recorded as instrument 2006-0309466.

F. On May 12, 2006, the Agency filed a Complaint against Mercado Alliance for breach of contract and other claims in the San Diego Superior Court (Case No. GIC 865872).

G. On August 30, 2006, Mercado Alliance filed a Cross Complaint in Case No. GIC 865872, and on January 23, 2007, Mercado Alliance filed a First Amended Cross-Complaint alleging 13 causes of action including breach of contract, declaratory relief related to the recorded Exercise of Power of Termination, and quiet title.

¹ Plaintiff Redevelopment Agency dissolved as of February 1, 2012 and was succeeded by the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic.

H. On September 25, 2006, Mercado Alliance applied for an injunction to enjoin the Agency from interfering with Mercado Alliance's alleged ownership of the Property.

I. On February 22, 2007, the Court granted an injunction related to the Property in favor of Mercado Alliance and against the Agency. The Court required Mercado Alliance to post an undertaking in the amount of \$100,000. LandGrant, Mercado Alliance, and Marasco were required to post \$100,000 as collateral for issuance of the bond. American Contractors holds the \$100,000 pursuant to the terms of an indemnity agreement and collateral security agreement by and between American Contractors on the one hand and LandGrant, Mercado Alliance, and Marasco on the other hand.

J. The Agency filed a motion for summary adjudication on all claims in Mercado Alliances First Amended Cross-Complaint except on the trespass cause of action. On May 29, 2007, the Court granted the Agency's motion for summary adjudication in its entirety which resolved the issue of ownership of the Property in favor of the Agency.

K. On June 8, 2007, defendants Mercado Alliance, LandGrant, and Marasco caused a Trust Deed to be recorded on the Property. The document is recorded as instrument 2007-0388994. The Trust Deed describes Mercado Alliance as the owner of the Property.

L. On June 12, 2007, the Court dissolved the injunction in Case No. GIC 865872.

M. On May 12, 2008, after the Agency dismissed its claims and after Mercado Alliance dismissed its trespass claim, the Court entered Judgment in Case No. GIC 865872.

N. Mercado Alliance appealed the Judgment, and on December 2, 2009, the Court of Appeal, Fourth Appellate District, dismissed the appeal. The Judgment for Case No. GIC 865872 is final.

O. The Agency filed a new action on June 8, 2010, in the San Diego Superior Court (Case No. 37-2010-00093850-CU-OR-CTL). On October 28, 2010, the Agency filed a Second Amended Complaint against LandGrant, Mercado Alliance, Marasco, American Contractors, International Practice Group, PC ("IPG"), First American Title Insurance Company ("First American"), and "All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Interest in The Property Described in The Complaint Adverse to Plaintiff's Title, or Any Cloud Upon Plaintiff's Title Thereto" alleging causes of action for (1) slander of title against LandGrant, Mercado Alliance, Marasco, and IPG; (2) cancellation of instrument against LandGrant, Mercado Alliance, Marasco, IPG, and First American; (3) recovery on surety bond against Mercado and American Contractors; (4) quiet title against all defendants except American Contractors; and (5) declaratory relief against LandGrant, Mercado Alliance, Marasco, First American, and IPG (presently the operative complaint).

P. On June 15, 2010, defendants Mercado Alliance, LandGrant, and Marasco caused another Trust Deed to be recorded on the Property. The document is recorded as instrument 2010-0299772. The second Trust Deed names Mercado Alliance as the Trustor; First American is named as the Trustee; and IPG is named as the beneficiary.

Q. On February 16, 2012, Plaintiff filed a motion for summary adjudication in Case No. 37-2010-00093850-CU-OR-CTL to adjudicate the second cause of action for "cancellation of deed" to cancel the June 8, 2007, and the June 15, 2010 trust deeds; the fourth cause of action for quiet title; and the fifth cause of action for declaratory relief regarding title to the Property and the effect of the recordation of the Exercise of Power of Termination referenced above in ¶ E.

R. On April 20, 2012, the Court issued a minute order granting the Agency's motion for summary adjudication in its entirety.

S. On April 24, 2012, pursuant to a Stipulation by and between the Agency and IPG, the Court entered Judgment in Case No. 37-2010-00093850-CU-OR-CTL in favor of the Agency and against IPG on the following causes of action in the Second Amended Complaint: the second cause of action for cancellation of instrument; the fourth cause of action for quiet title; and the fifth cause of action for declaratory relief. The Judgment states that the Trust Deed recorded against the Property as instrument 2010-0299772 has no legal force and effect and is cancelled and that IPG has no interest in the Property and has never had an interest in the Property.

T. The sole remaining causes of action in Case No. 37-2010-00093850-CU-OR-CTL are (1) recovery of surety bond against Mercado and American Contractors and (2) slander of title against LandGrant, Mercado Alliance and Marasco.

U. The Parties hereto seek to resolve the recovery of surety bond and slander of title claims in this Agreement. The Parties also seek to settle any claims that may arise from the DDA and Grant Deed including, but not limited to, a claim for reimbursement under the Reimbursement Provision.

NOW THEREFORE, in consideration of the forgoing and for good and valuable consideration, the Parties hereby agree as follows:

1.0 LandGrant, Mercado Alliance and Marasco waive any rights they may have to appeal the ruling on the Agency's motion for summary adjudication in Case No. 37-2010-00093850-CU-OR-CTL.

2.0 LandGrant, Mercado Alliance and Marasco agree to forego any and all claims they may have under the DDA or Grant Deed, including any claim for reimbursement under the Reimbursement Provision.

3.0 The Parties agree that this Agreement settles any and all claims having anything to do whatsoever with the Property and that none of the parties except for the Agency has any interest in the Property.

4.0 American Contractors shall pay Plaintiff the total sum of fifty thousand dollars (\$50,000) in full settlement of the Agency's claim for the recovery of the \$100,000 undertaking in Case No. GIC 865872. American Contractors agrees to withhold no more than \$23,125 to cover premiums, fees, and costs, and further agrees to return the remaining amount (at least \$26,875) to Marasco. Said sum payable to Marasco shall be made payable to C. Samuel Marasco and mailed to C. Samuel Marasco 1601 N. Sepulveda Blvd. Suite 648, Manhattan

Beach CA, 90266. American Contractors agrees to send the check within ten days of the final necessary governmental approval.

5.0 The Agency agrees to dismiss the recovery of surety bond and slander of title causes of action with prejudice.

6.0 LandGrant, Mercado Alliance and Marasco shall assist the Agency to remove and/or void any clouds on the Property's title, including but not limited to the June 8, 2007, and June 15, 2010, trust deeds.

7.0 The Agency does not agree to any term in this Agreement unless and until the Agency Board approves this Agreement, and unless and until the Agreement is approved by any other governing body that is required by law to approve the Agreement.

8.0 Release.

8.1 The Parties hereby release and forever discharge each other from any and all claims, debts, damages, liabilities, demands, obligations, costs, expenses, attorney fees, disputes, actions and causes of action of every nature, whether known or unknown, suspected or unsuspected, which each Party may now hold or have, or at any heretofore owned or held, or may now hold against each other as a result of the subject of the current litigation (Case No. 37-2010-00093850-CU-OR-CTL) or previous litigation (Case No. GIC 865872), including, but not limited to those claims set forth in the current or previous litigation, all of which are incorporated herein fully by reference.

8.2 The Parties acknowledge that there is a risk that, subsequent to the execution of this Agreement, the Parties could incur injury, loss, damage, costs, attorneys' fees, or expenses, which are in some way caused by or connected with the persons, entities, matters, and/or issues referred to herein, or which are unknown and unanticipated at the time this Agreement is executed, or which are not presently capable of being ascertained. Nevertheless, the Parties acknowledge this Agreement has been negotiated and agreed upon in light of that realization and, therefore, enter into this Agreement with full knowledge and recognition of the above stated possibilities.

8.3 Wherefore, the Parties specifically waive their rights under California Civil Code section 1542. Section 1542 provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

9.0 Miscellaneous Provisions.

9.1 Compromise of Disputed Claims. This Agreement is a compromise of disputed claims and shall never at any time or for any purpose be considered an admission of any liability or responsibility on the part of any Party; nor shall the furnishing of any consideration for the execution of this Agreement constitute or be construed as an admission of any liability whatsoever by either Party.

9.2 Integration. The undersigned, and each of them, acknowledge and represent that no promise or inducement not expressed in this Agreement has been made in connection with this Agreement. This Agreement contains the entire agreement and understanding between the Parties as to the subject matter of this Agreement and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the Parties hereto relating to the terms and conditions of this Agreement that are not fully expressed herein.

9.3 Waiver and Amendment. No provision of this Agreement, or breach of any provision, can be waived except in writing. Any waiver by the Agency must be formally approved by the Agency Board. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. This Agreement may be amended, modified or rescinded only in writing signed by all Parties to this Agreement.

9.4 Interpretation and Intent. This Agreement is the result of arms-length negotiations by the Parties, each of whom had their own counsel. Accordingly, all Parties hereto acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one Party or another, or the attorneys for one Party or another. No provision of this Agreement shall be interpreted against any Party because that Party, or their legal representative, may have drafted that provision.

9.5 Additional Documents. The Parties each agree to sign any additional documents which are reasonably necessary to carry out the purpose and intent of this Agreement.

9.6 Benefit and Burden. This Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parent companies, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, plaintiffs, and/or persons or entities connected with each of them, including, without limitation, their insurers, sureties, attorneys, consultants and experts.

9.7 Governing Law. This Agreement has been executed in the State of California, and shall be interpreted and enforced under California law. Venue for any action related to this Agreement shall be in San Diego County.

9.8 Costs. The Parties agree to bear their own costs and attorney fees in Case No. 37-2010-00093850-CU-OR-CTL, except as discussed above in paragraph 4.0.

9.9 Attorney's Fees Arising Out of Enforcement of Agreement. In the event any action or proceeding is brought to enforce this Agreement, the prevailing Party shall be entitled to the reasonable fees, out-of-pocket expenses, and costs of attorneys and experts against the non-prevailing Party, in addition to all other relief to which that Party may be entitled.

9.10 Warranty of Authority. Each of the signatories hereto represents and warrants that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign. Each Party hereto agrees to defend, indemnify, and hold harmless the other Parties hereto against all claims, suits, actions and demands, including

necessary expenses of investigation and reasonable attorneys' fees and costs, arising out of claims that its signatory was not competent or so authorized to execute this Agreement.

9.11 No Assignment. Each Party represents and warrants that it has not assigned or transferred any claims or rights released herein, and that it is the sole owner of that claim.

9.12 Signatures. This Agreement may be signed in counterparts. Signatures transmitted by facsimile shall be deemed to be originals.

9.13 Representation by Counsel. The undersigned and each of them acknowledge and represent that they are affecting this compromise and settlement and are executing this Agreement after having received full legal advice as to their rights from an attorney of their choice.

9.14 Agreement Voluntarily. The undersigned and each of them acknowledge and represent that they have read this Agreement in its entirety, understand all of its terms and provisions, and sign this Agreement voluntarily and of their own free will, knowing that it is a legally binding document and with the intent to be bound hereby.

9.15 Notices. All notices given pursuant to this Agreement or law shall be written. Notices shall be delivered with all delivery or postal charges prepaid. Notices may be given personally; by facsimile; by United States first-class mail; by United States certified or registered mail; or by other recognized overnight service. Notices shall be deemed received on the date of personal delivery or facsimile transmission; on the date shown on a signed return receipt or acknowledgment of delivery; or, if delivery is refused or notice is sent by regular mail, seventy-two (72) hours after deposit. Until a Party gives notice of a change, notices shall be sent to:

For LandGrant, Mercado Alliance, and Marasco: C. Samuel Marasco, III
LandGrant Development
1601 N. Sepulveda Blvd., Unit #648
Manhattan Beach, CA 90266

For American Contractors: Tracy A. Stevenson
Colin K. McCarthy
Lanak & Hanna, PC
625 the City Drive South, Suite 190
Orange, CA 92868

For the Agency: Jan I. Goldsmith, City Attorney
c/o Glenn T. Spitzer, DCA
Office of the San Diego City Attorney
1200 Third Ave., Suite 1100
San Diego, CA 92101

9.16 Signatures. This agreement may be signed by the parties at different times and different places. Facsimile and PDF signatures have the same force and effect as original signatures.

[Signatures to follow]

IN WITNESS WHEREOF, the Parties acknowledge and confirm their acceptance of this Agreement by signing below:

LandGrant Development Unlimited

Dated: _____, 2012

By: _____

Its: _____

* * * * *

Mercado Alliance, LLC

Dated: _____, 2012

By: _____

Its: _____

* * * * *

C. Samuel Marasco, III

Dated: _____, 2012

* * * * *

American Contractors Indemnity Company

Dated: _____, 2012

By: _____

Its: _____

* * * * *

**Redevelopment Agency of the City of San Diego and its
Successor Agency, the City of San Diego, solely in its
capacity as the designated successor agency to the
Redevelopment Agency of the City of San Diego, a
former public body, corporate and politic**

Dated: _____, 2012

By: _____

Its: _____

APPROVED as to form and content:

**LandGrant Development Unlimited, Mercado Alliance,
LLC, C. Samuel Marasco, III**

Dated: _____, 2012

C. Samuel Marasco, III, Esq.
Attorney for LandGrant, Mercado Alliance, and Marasco

* * * * *

Lanak & Hanna, PC

Dated: _____, 2012

Tracy A. Stevenson, Esq.
Attorney for American Contractors

* * * * *

**Office of the City of San Diego Attorney – Civil
Litigation Division**

Dated: _____, 2012

Glenn T. Spitzer, Esq.
Attorney for Agency

OVERSIGHT BOARD RESOLUTION NUMBER OB-2012-20

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE SETTLEMENT AGREEMENT AND RELEASE RELATED TO THE MERCADO PROPERTY

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego; and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26), the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, in 2010, the Former RDA filed litigation in the San Diego Superior Court, designated as Case No. 37-2010-00093850-CU-OR-CTL (Litigation), asserting causes of action to quiet title and for slander of title against LandGrant Development Unlimited (LandGrant), Mercado Alliance, LLC (Mercado Alliance), C. Samuel Marasco (Marasco), related to certain property within the Barrio Logan community of San Diego bounded by Crosby Street on the north, Cal Trans Coronado Bay Bridge Right-of-Way and Chicano Park on the south, National Avenue on the east, and Main Street on the west (Mercado Property); and

WHEREAS, the Former RDA also asserted a cause of action in the Litigation for recovery of a surety bond against Mercado Alliance and American Contractors Indemnity Company (American Contractors), given that the court in previous litigation (Case No. GIC 865872) had required the defendants to post a bond for \$100,000 as a condition of an injunction order related to the Mercado Property; and

WHEREAS, on February 16, 2012, the Successor Agency filed a motion for summary adjudication in the Litigation, seeking to quiet title to the Mercado Property and to cancel certain instruments that had been recorded on the Mercado Property; and

WHEREAS, on April 20, 2012, the court granted the Successor Agency's motion, thereby leaving only two active causes of action, including (1) recovery of surety bond against Mercado and American Contractors and (2) slander of title against LandGrant, Mercado Alliance and Marasco; and

WHEREAS, the Successor Agency and LandGrant, Mercado Alliance, Marasco, and American Contractors have negotiated a proposed Settlement Agreement and Release (Settlement Agreement) to resolve the remaining causes of action in the Litigation and also to resolve Mercado Alliance's claim for reimbursement under an earlier disposition and development agreement between Mercado Alliance and the Former RDA; and

WHEREAS, on July 31, 2012, the Successor Agency's board (i.e., the San Diego City Council) approved the Successor Agency's execution of the Settlement Agreement, a copy of which is attached to the Staff Report accompanying this item.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board that the Settlement Agreement is hereby approved.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on August ___, 2012.

Chair, Oversight Board