

#### **ITEM 4**

### **OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY**

**DATE ISSUED:** 05/25/2012

**SUBJECT:** Adoption of a Resolution to Approve the Settlement Agreement and Release for Acquisition of the 528-542 14<sup>th</sup> Street Property

**CONTACT/PHONE NUMBER:** David Graham/236-6980

#### **DESCRIPTIVE SUMMARY OF ITEM:**

Adoption of a resolution to approve the Settlement Agreement and Release (“Settlement Agreement”) between the City of San Diego (“City”), the Successor Agency, and Hon, LLLP (“Hon”), a Colorado limited liability limited partnership, for the Successor Agency’s acquisition of and settlement of litigation related to the real property located at 528-542 14th Street in San Diego, California 92101, and to authorize the expenditure of an amount not to exceed Three Million Eight Hundred Fifty Thousand Dollars (\$3,850,000) for payments required by the Settlement Agreement and for demolition needed to eliminate dilapidated and unsafe conditions on that property.

#### **STAFF RECOMMENDATION:**

Approve proposed action.

#### **BACKGROUND:**

In 2004 the former Redevelopment Agency of the City of San Diego (“Former RDA”) began the process of assembling a redevelopment site (“Site”) of up to approximately 40,000 square feet on the south side of Market Street between 13th and 14th streets in the East Village neighborhood of downtown San Diego, for the purpose of constructing affordable housing units and possible mixed-use development (see Attachment 1, Site Map).

One parcel associated with the assemblage of the Site is the real property located at 528-542 14<sup>th</sup> Street (“Parcel”), comprised of approximately 10,000 square feet of land. When assembled with adjacent properties previously acquired by the Former RDA, the Parcel’s acquisition would create a total assembly to date of approximately 37,000 square feet of land. The Parcel’s existing structures are in a substandard and dilapidated condition, thereby necessitating their demolition. Similarly, the balance of the Site is in a substandard and dilapidated condition. The Former RDA had been attempting to acquire the Parcel through voluntary negotiations with the owner, Hon.

In 2005 and through a separate agreement, the Former RDA paid the Parcel’s tenant, Healthcare Services Inc. (“Tenant”), \$600,000 for relocation, fixtures, furniture and equipment (FF&E), and goodwill benefits, and the Tenant agreed to vacate the Parcel within one year. At that time, the Tenant assigned its leasehold interest in the Parcel to the Former RDA, but continued to pay rent directly to Hon for a period of time. Tenant has since ceased paying rent but remains on the Parcel, and City and Successor Agency staff are working with legal counsel to determine an appropriate date for Tenant’s eviction.

In May 2011, the Former RDA and City were named as defendants in litigation (Case No.: 37-2011-00090762-CU-OR-CTL) brought by Hon, based on allegations of inverse condemnation/pre-condemnation damages, and for breach of contract (unpaid rent) resulting from a lease with the Tenant.

In January 2012, the parties engaged in mediation, which resulted in agreement on terms whereby the City or the Successor Agency would acquire the Parcel from Hon and settle all litigation in exchange for a payment of \$3,700,000 ("Settlement Payment"). The Settlement Payment is allocated as follows: \$2,400,000 to real property acquisition and \$1,300,000 to legal settlement. The Settlement Agreement was authorized by the City Council and Board of Directors of the Former RDA in closed session on January 31, 2012. Successor Agency staff determined that an additional \$150,000 would be necessary to cover closing and post acquisition costs associated with the demolition of the Parcel's existing structures to improve the condition of the Parcel and prevent future liability to the City and Successor Agency, for a total of \$3,850,000 in Settlement Agreement-related costs.

The initial path for approval was for the City to approve and implement the Settlement Payment and acquisition of the Parcel. Pursuant to the Cooperation Agreement for Payment of Costs Associated With Certain Redevelopment Agency Funded Projects ("Cooperation Agreement") entered into between the City and the Former RDA on February 28, 2011, the City is authorized to acquire the Parcel utilizing Low and Moderate Income Housing Funds and Unrestricted Funds as provided in Item #354 of Exhibit 1 of the Cooperation Agreement.

On April 10, 2012, in recognition of the City taking the lead to move forward with the Settlement Agreement actions, the City Council authorized the Chief Financial Officer to expend the not-to-exceed amount of \$3,850,000 from Cooperation Agreement funds for the payment of the Settlement Payment, closing costs, and costs of demolition. The Mayor executed the Settlement Agreement soon thereafter (see Attachment 2, Settlement Agreement and Release).

Also on April 10, 2012, the City Council, in its capacity as the Board of the Successor Agency, approved an updated version of the Initial Draft of the First Recognized Obligation Schedule ("ROPS 1"), reflecting payments toward enforceable obligations from January 1, 2012 through June 30, 2012. The Settlement Payment, closing costs, and costs of demolition are included as a project/debt obligation within ROPS 1 (see Form A, page 9 of 73, item 6). The total amount of \$3,850,000 would be funded as follows: \$2,550,000 (acquisition, closing and demolition) from FY2012 20% Set-Aside Low and Moderate Income Housing Bond Funds, and \$1,300,000 (legal settlement) from FY2012 Unrestricted 80% Tax Increment Funds of the Centre City Redevelopment Project. ROPS 1 was also approved conditionally by the Oversight Board on April 25, 2012.

The City and Successor Agency received a letter dated April 20, 2012, from the California State Controller (CSC) demanding the immediate reversal of all asset transfers from the Former RDA to the City that occurred after January 1, 2011. As the Cooperation Agreement was approved and entered into in February 2011, the CSC order to reverse asset transfers adds uncertainty to

the use of those funds by the City to proceed with the Settlement Payment and acquisition of the Parcel. Therefore, it is now more appropriate for the Successor Agency to take the lead in moving forward with the Settlement Agreement actions.

**DISCUSSION:**

In accordance with the provisions of the ABx1 26 (“AB 26”), the Oversight Board is being requested to approve the Settlement Agreement and to authorize the expenditure by the Successor Agency of an amount not to exceed Three Million Eight Hundred Fifty Thousand Dollars (\$3,850,000) for the Settlement Payment, closing costs, and costs of demolition.

There are several advantages in approving the Settlement Agreement as opposed to continuing to defend the litigation, including:

1. Although the Successor Agency contests the litigation’s allegations, the outcome of the litigation is uncertain. The Successor Agency faces substantial potential liability and could be subjected to significant monetary exposure if the litigation is allowed to continue. The Settlement Agreement allows the Successor Agency to extract itself from the litigation and minimize its potential liability and exposure to the risk and expense associated with protracted litigation.
2. Further, the Settlement Agreement is seen as the best option to help preserve the Successor Agency’s assets and minimize its liabilities as required under AB 26 Section 34169(d).
3. The acquisition of the Parcel contributes to a larger assembled site (bringing the total land area to approximately 37,000 square feet), thus potentially increasing the future development opportunities and value of the entire site.
4. Finally, approval enables the removal of the Tenant, which has been compensated to relocate but remains on the Parcel in dilapidated and overcrowded structures.

With the Oversight Board’s approval of the Settlement Agreement and expenditure, the Successor Agency will submit written notification to the State Department of Finance (DOF) and CSC. Following the AB 26-mandated review period by DOF (expected to be three business days after notification submission for DOF to provide notice of intent to review, and then potentially an additional 10 calendars days for the DOF review/approval), and assuming there is no unresolved objection(s) by DOF, the item will be submitted to the Successor Agency for authorization of the expenditure. In accordance with the Settlement Agreement terms and an extension recently agreed-upon by its parties, the deadline for completion of the settlement transaction is June 25, 2012.

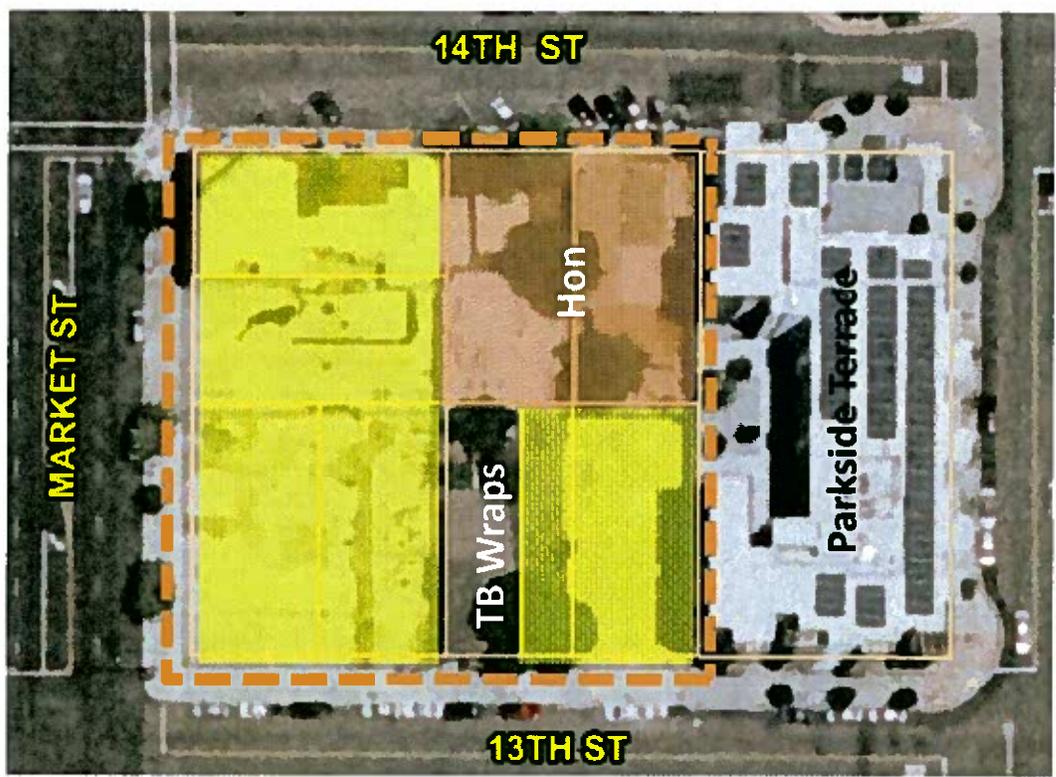
David Graham  
Office of the Mayor

Jay Goldstone  
Chief Operating Officer

Attachment 1: Site Map  
Attachment 2: Settlement Agreement and Release

# ATTACHMENT 1

## Site Map



Subject Parcel



City/Agency-  
Owned Parcels



40,000 SF Site

ORIGINAL

# 113  
4/10

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into as of the last date of execution of this Agreement, by and between the Plaintiff, Hon, LLLP, a Colorado Limited Liability Limited Partnership ("Plaintiff"), and Defendants, the City of San Diego, a municipal corporation ("City"), and 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 ("Successor Agency"). City and Successor Agency may hereinafter be referred to collectively as "Defendants", and each entity listed above may hereinafter be referred to individually as "Party" and collectively as "the Parties". This Agreement is made with reference to the facts set forth below:

RECITALS

A. WHEREAS, on or about May 4, 2011 Plaintiff filed a Complaint against Defendants for and as captioned "Breach of Contract (Lease) and Pre-Condemnation Damages (Klopping)" regarding its property located at 528-542 14<sup>th</sup> Street, San Diego, CA (APN: 535-152-09 & 10 (hereinafter the "Subject Property")). This action is titled Hon, LLLP v. The Redevelopment Agency of the City of San Diego and the City of San Diego (San Diego County Superior Court Case No.: 37-2011-00090762-CU-OR-CTL (hereinafter the "Litigation")). The Defendants filed their Answers denying Plaintiff's allegations and in addition the RDA filed a cross-complaint against Healthcare Services, Inc., a California corporation ("Cross-Defendant") for, inter alia, indemnification and breach of contract. These actions are currently pending in the Superior Court of California in and for the County of San Diego; and,

B. WHEREAS, in or about 2005, the former Redevelopment Agency of the City of San Diego (Former RDA), in connection with a Development Agreement, considered the acquisition of the Subject Property for a public redevelopment project consisting of a mixed use residential and commercial project including affordable housing (hereinafter the "Project"). Pursuant thereto the Former RDA entered into a settlement agreement in 2005 with Plaintiff's tenant, Healthcare Services, Inc., paying for costs for relocation, FF&E and business goodwill based on Healthcare's representations that it had a suitable relocation site to which it would move. Healthcare operates a drug rehabilitation program and halfway house for California Prison Inmates, which made its relocation unusual. At or about the same time, the Former RDA via the Centre City Development Corporation (CCDC), because of liability exposure concerns, entered into an assignment of the lease with the consent of Plaintiff and Healthcare. CCDC administered the management of the lease and the possible acquisition of the Subject Property on behalf of the Former RDA. For reasons unknown to Defendants, Healthcare Services did not relocate and remained in possession of the Subject Property after the one year time period included in the 2005 settlement agreement. Healthcare continued making rent payments directly to Plaintiff, but began failing to pay full rent in or about April 2010. Subsequent to Healthcare's default, Plaintiff submitted a claim to the Former RDA and the City for back rent due as tenant and, eventually, filed the lawsuit that is the subject of this Agreement.

C. WHEREAS, on or about January 24, 2011, the Parties engaged in a 9 hour mediation ("Mediation") with attorney Michael J. Roberts presiding; and,

D. WHEREAS, as a result of the Mediation the Parties have agreed to settle all claims alleged or which could have been alleged in the Complaint on the terms and conditions specifically set forth in this Agreement . On January 31, 2012, the City Council of the City of San Diego and the Board of Directors of the Former RDA approved the settlement of the Litigation on the primary terms included herein.

E. WHEREAS, the parties have agreed as part of this Agreement that the cross-complaint now pending against Healthcare Services shall not be affected by this Agreement or its sub-parts.

F. WHEREAS, in entering into this Agreement, the Parties represent and warrant that this Agreement is being entered into in order to settle the Litigation. The Parties each expressly deny and expressly dispute any liability or that they engaged in any wrongful conduct whatsoever or any conduct which can be construed or lead to the award of civil damages concerning the claims asserted in the Litigation. Nothing in this Agreement shall be construed as an admission of liability, directly or indirectly, on the part of any party to this Agreement. The Parties dispute the appropriate date of valuation for the Subject Property, as well as the actual fair market value of the Subject Property, which is believed to be between \$2.8 million and \$4.1 million based on recent appraisals. The Parties also dispute the value of the claims in the Litigation. This Agreement reflects a compromise among the Parties as to the value of the Subject Property and the claims in the Litigation.

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

### TERMS

With respect to the Litigation between the Parties referenced in Paragraph "A" (Recitals) the following pertains:

1. Settlement Amount The City and/or the Successor Agency, shall pay Plaintiff, without deduction or offset, the sum of Three Million, Seven Hundred Thousand Dollars (\$3,700,000) ("Settlement Payment") as payment for the Subject Property and further in settlement of any and all claims, known or unknown, asserted by Plaintiff against Defendants. Effective upon receipt of the Settlement Payment, Plaintiff releases all claims, known or unknown, against Defendants, including but not limited to pre-condemnation damages, inverse condemnation, claims for any and all money damages of whatever kind and nature, including rental damages (both "holdover" and standard monthly rental claims) and any other claim for damages against the Defendants, as described in more detail below. In consideration of receipt of the Settlement Payment,

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Plaintiff shall transfer title to the Subject Property to the City or the Successor Agency as described in more detail below.

The City's exposure in the Litigation is alleged to be as a result of actions taken by the Former RDA and its employees and agents during the years 2005 through 2012. The City intends to make the Settlement Payment using Low and Moderate Income Housing Funds or other Redevelopment Funds provided by the Former RDA to the City pursuant to the Cooperation Agreement for Payment of Costs Associated with Certain Redevelopment Agency Funded Projects, and will acquire title to the Subject Property under the terms of this Agreement. However, in the event that the Cooperation Agreement is invalidated or terminated, or the Low and Moderate Income Housing Funds or other Redevelopment Funds to be used by the City for the Settlement Payment are transferred to the Successor Agency, the Successor Agency will make the Settlement Payment using the Low and Moderate Income Housing Funds or other Redevelopment Funds, and will acquire the Subject Property under the terms of this Agreement.

1.1.1. Assignment of rental claims and causes of action. As a material part of the consideration for receipt of the Settlement Payment, and effective upon such receipt in accordance with the terms hereof, Plaintiff assigns and transfers all of its rights and/or causes of action it has or may have against Cross Defendant, Healthcare Services, for any and all rental claims of any kind and nature and/or any other damage claims it may have to the Defendants.

1.1.2. Effective upon receipt of the Settlement Payment in accordance with the terms hereof, Plaintiff waives and releases any and all claims, known or unknown, it alleges it has and/or may have against the Defendants and CCDC as referenced in Plaintiff's Complaint and/or arising out of Plaintiff's legal relationship between Healthcare Services, Inc., the Subject Property and all Defendants and CCDC.

1.1.3. This is a complete and total settlement of any and all of Plaintiff's claims against Defendants and CCDC.

1.1.4. No Pledge of City's General Fund or Assets. All Parties acknowledge and agree that to the extent the City or Successor Agency have any financial obligations pursuant to this Agreement, such financial obligation is and shall be a special limited obligation, payable solely from Low and Moderate Income Housing Funds or other Redevelopment Funds transferred from the Former RDA to the City or the Successor Agency, and is not and shall not be a pledge of or obligation payable through the City's general fund or any of the City's other assets. Accordingly, nothing in this Agreement shall require or be deemed to require the City to expend or commit to expend monies from its general fund or from any of its assets other than Low and Moderate Income Housing Funds or other Redevelopment Funds transferred from the Former RDA to satisfy any of the obligations set forth in this Agreement.

2. Plaintiff's Obligations. Plaintiff further agrees, effective upon receipt of the Settlement Payment in accordance with the terms of this Agreement, to waive any and all interest on any rental claims and/or pre-condemnation claims and damages and any and all costs and attorney fees of any kind and nature. Upon execution of this Agreement and the payment of the Settlement Payment in accordance with the terms and conditions of this Agreement, Plaintiff shall execute and deliver to Defendants a signed Request for Dismissal with Prejudice of the litigation and action referenced herein as to all of the Defendants. A copy of the form of dismissal is attached hereto as Exhibit "A." The Defendants will, upon resolution of their cross complaint against Cross-Defendant "Healthcare Services, Inc.," either by trial, settlement or otherwise, file the dismissal with the court. Upon delivery of the Request for Dismissal to Defendants Plaintiff will have no further rights with respect to the prosecution of the litigation and/or any of the matters referenced and/or raised in such case.

3. Security Deposit. Defendants shall not be entitled to any credits or offsets to the Settlement Payment, and Plaintiff shall retain and keep any security deposit now held by Plaintiff, which was received from Healthcare Services upon entering into the Lease referenced herein.

4. Cross-Complaint. The Successor Agency's cross-complaint against Healthcare Services, Inc. shall remain unaffected by this settlement agreement and the delivery of any dismissal to Defendants (City and the Successor Agency). Plaintiff, as indicated above, is assigning and transferring to Defendants all of the rights it may have against Healthcare Services, Inc. and/or its successors and assigns, which assignment shall only become effective upon receipt by Plaintiff, without deduction or offset, of the Settlement Payment, in accordance with the terms and conditions of this Agreement. The form of the Assignment is attached hereto as Exhibit "B."

5. Transfer of Property. Escrow shall be opened with the escrow holder upon the execution of this Agreement by all parties for the transfer of the Subject Property to the City of San Diego solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego; the property will be transferred free and clear of all encumbrances or liens (other than those caused by RDA or the City), but subject to non-delinquent real property taxes, and subject to the occupancy and or tenancy of persons in possession other than Plaintiff. Real Property taxes will be prorated to the close of escrow. The City shall cause a duly executed copy of this Agreement to be delivered to escrow and thereby open the escrow within ten (10) business days of its execution by all parties hereto. The Parties acknowledge that the City will not execute this Agreement until final passage of a City Council resolution encumbering the funds has occurred. The Subject Property's purchase price is included in this settlement and shall be paid by the City or the Successor Agency, which payment shall be made by deposit in Escrow at least one business day prior to the Close of Escrow, which shall be within thirty (30) days of opening, but in no event later than May 24, 2012, unless mutually extended by written agreement of the parties. There are no contingencies, except as expressly set forth in this agreement, and the Subject Property shall be taken by the City as is, with all faults, without representation or warranty as to its condition,

occupancy, zoning, entitlements, or suitability for any use or purpose, and subject to the possession of Healthcare or its subtenants. Title to the Subject Property shall vest in the City or the Successor Agency, according to the terms set forth in Paragraph 1 above, immediately upon close of escrow. Plaintiff shall convey title to the Subject Property using the form of Grant Deed attached hereto as Exhibit "C." The Parties shall promptly at the escrow holder's request execute such additional escrow instructions as are reasonably required to consummate the transaction contemplated by this Agreement and not inconsistent with this Agreement.

Notwithstanding any other term or provision of this Agreement, it is acknowledged and agreed that City has represented that Low and Moderate Income Housing Funds or other Redevelopment Funds have been budgeted and set aside and are available to pay the Settlement Payment as hereinabove set forth, and absent such representation Plaintiff would not enter into this Agreement. If for any reason City or the Successor Agency has not paid the Settlement Payment as herein provided on or before May 24, 2012, unless mutually extended by written agreement of the parties, Plaintiff may at its sole option pursue any legal or equitable remedy provided by law including but not limited to judicial enforcement under Code of Civil Procedure Section 664.6, or immediately rescind this agreement and cause the case to be restored to civil active status and a trial date rescheduled as soon as reasonably practicable. However, in all circumstances, delivery of the Settlement Payment by the City or Successor Agency will be subject to the provisions of Section 1 above.

#### RELEASES

1. Release of Claims in Complaint. Effective upon receipt of the Settlement Payment in accordance with the terms hereof, Plaintiff, the Defendants and CCDC hereby release and forever discharge each other from any and all claims, debts, damages, liabilities, demands, obligations, costs, expenses, attorneys fees, disputes, actions and causes of action of every nature, whether known or unknown, suspected or unsuspected, which any of the parties may now hold or have, or at any heretofore owned or held, or may now hold against the other parties or the as a result of the claims asserted by Plaintiff against Defendants in the Litigation, all of which are incorporated herein fully by reference.
2. General Release. Except for the obligations stated in this Agreement, and effective upon receipt of the Settlement Payment in accordance with the terms hereof, each of the parties,, on behalf of itself and on behalf of any affiliated entity or any person or entity claiming through it, hereby releases each of the other parties, the Successor Agency, CCDC, and the City, and the members, officers, managers, partners, affiliated entities, and councilpersons, from any and all claims, contracts, damages, liabilities, injuries, obligations or causes of action of any kind or nature, and whether known or unknown, ["Claims"] existing as of the date of this Agreement as well as all Claims arising out of or relating to the Litigation, the Project or the Subject Property.
3. Plaintiff's Acknowledgement of Risks. Each of the parties acknowledges there is a risk that, subsequent to the execution of this Agreement, any of the parties could incur

~~injury, loss, damage, costs, attorneys' fees, or expenses, or discover defects or faults or materially adverse conditions pertaining to the Subject Property, 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.~~

In entering into this Agreement, the Parties, and each of them, recognize that no facts or representations are ever absolutely certain. The Parties acknowledge that they are aware that they may, after execution of this Agreement, discover facts different from or in addition to those they now know or believe to be true with respect to the liabilities, actions or causes of action to be released. Accordingly, each party assumes the risk of any incomplete disclosure or mistake. If any party should subsequently discover that any fact it relied upon in entering into this Agreement was untrue, or that any understanding of the facts or of the law was incorrect, such party shall not be entitled to set aside this Agreement by reason thereof. This Agreement is intended to be final and binding between the Parties hereto, and is further intended to be effective as a final accord and satisfaction between the Parties, regardless of any claims of misrepresentation, promise made without the intention of performing it, concealment of fact, mistake of fact or law, or any other circumstance whatsoever. Each party relies on the finality of this Agreement as a material factor inducing that party's execution of this Agreement. Each of the parties has had the benefit and advice of independent legal counsel on the provisions of this Agreement and therefore, enters into this Agreement with full knowledge and recognition of the foregoing stated possibilities.

4. Section 1542 Waiver. 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 or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The Parties acknowledge that this Release constitutes a release of unknown claims and hereby knowingly and intentionally waive Section 1542 and all unknown Claims which could have been raised by either of the Parties against the other, including those they did not know of or suspect to exist in their favor at the time of execution of this Release. It is the intent of the Parties to forever settle and remise any and all claims whatsoever associated with the Litigation, the Property, including without limitation all Claims that RDA, the City, or Plaintiff may have, acquire, or later discover against the other party. The Defendants and the City assume any and all risk of defects, faults or problems with the Subject Property, whether patent or latent, known or unknown, disclosed or undisclosed.

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## MISCELLANEOUS PROVISIONS

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1. 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. The terms set forth in this Agreement, as well as those set forth in the Purchase and Sale Agreement contain the entire agreement and understanding between the Parties related to the subject matter of this Agreement and the Complaint. This Agreement, along with the Purchase and Sale Agreement are intended to be the 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.
2. Merger. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it, and it supersedes all prior contemporaneous agreements, representations, and understandings of the Parties.
3. Waiver and Amendment. No provision of this Agreement or escrow instructions respectively, can be waived except in writing. 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 and escrow instructions may be amended, modified, or rescinded only in writing signed by all Parties to this Agreement, and only when approved by the Agency Board.
4. Time of Essence. Time is expressly declared to be of the essence in this Agreement, and of every provision in which time is an element, if any.
5. Captions. Paragraph titles and captions contained in this Agreement are inserted as a matter of convenience and for reference, and are not a substantive part of this Agreement.
6. 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.
7. 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.
  - 7(a). Side Letter. At the request of Plaintiff, the RDA, the City, and the City as successor Agency shall provide a "side" letter to Plaintiff for its use in any interactions with any taxing authority and for no other purpose. Plaintiff expressly agrees that this letter shall not be used by Plaintiff and/or its representatives, agents, assignees, employees, and/or successors in interest, in and/or for any litigation or administrative proceeding other than the purpose stated herein.

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Plaintiff, its agents, employees, assigns and/or successors in interest agree that this side letter will not be used or referenced in any lawsuit or claim by Chris LaFornara or Margaret LaFornara against the RDA, the City, CCDC and/or the City as successor agency. A copy of the side letter is attached as Exhibit D hereto, and shall be delivered to Plaintiff, signed by the authorized representative of the City, prior to the close of escrow, the delivery of which is a condition precedent to the effectiveness of the releases herein provided by Plaintiff.

8. Benefit and Burden. This Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, trustees, 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, defendants, and/or persons or entities connected with each of them, including, without limitation, their insurers, sureties, attorneys, consultants and experts.
9. 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.
10. Waiver of Costs Arising Out of the Lawsuit. The Parties agree to waive any and all claims for any and all costs and attorney's fees accrued prior to and as of the date this Agreement is executed.
11. 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.
12. 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.
13. No Admission. This Agreement is a negotiated compromise of disputed claims. Nothing herein shall be deemed or construed to be an admission of liability by the Parties or a concession of fault in respect to any of the allegations made or which could have been made by in the Litigation.
14. No Assignment. Each Party represents and warrants that it has not assigned or transferred any claims released herein, and that it is the sole owner of that claim.

15. Signatures. This Agreement may be signed in counterparts. Signatures transmitted by facsimile shall be deemed to be originals if followed promptly by first-class mail delivery

16. 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.

17. 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.

18. No Reliance On Other Party. The undersigned and each of them acknowledge and represent that they are affecting this compromise and settlement and are executing this Agreement (i) after they and their respective legal counsel had the opportunity to and did conduct an independent investigation of the relevant facts; and (ii) without relying on representation made by the other Party or the other Party's attorney.

19. Severability. Even if a court holds one or more parts of this Agreement ineffective, invalid, or void, all remaining provisions shall remain valid.

20. 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 PLAINTIFF:

Steven McKinley, Esq.  
Freeland, McKinley & McKinley  
P.O. Box 9580  
Rancho Santa Fe, California 92067

FOR DEFENDANTS:

Jan I. Goldsmith, City Attorney  
c/o Joe Allen, DCA  
Office of the San Diego City Attorney  
1200 Third Ave. Suite 1100  
San Diego, CA 92101

Donald W. Detisch  
Special Counsel to the Successor Agency  
THE LAW OFFICE OF DON DETISCH

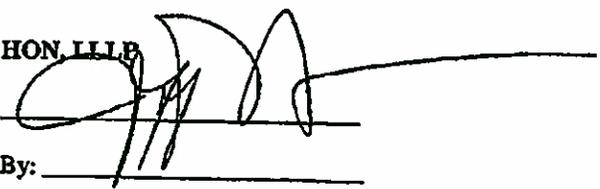
1010 Second Avenue, Suite 1810  
San Diego, CA 92101

IN WITNESS THEREOF, the undersigned have executed this Agreement as follows:

[SIGNATURES CONTINUED ON NEXT PAGE]

PLAINTIFF:

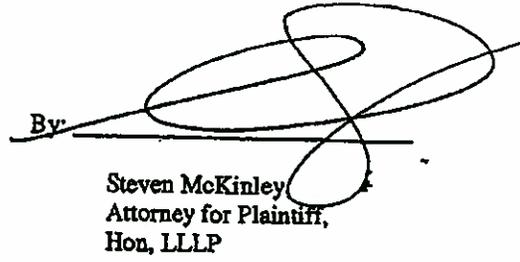
Dated: APR 12, 2012

HON. LLLP  
  
By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

Dated: 4/2/2012

By:   
Steven McKinley  
Attorney for Plaintiff,  
Hon. LLLP

DEFENDANTS:

Dated: 4-12-12

CITY OF SAN DIEGO, A  
Municipal Corporation,

By:   
Jerry Sanders,  
Mayor

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: \_\_\_\_\_

By: \_\_\_\_\_  
Jerry Sanders,  
Mayor

[SIGNATURES CONTINUED ON NEXT PAGE]

APPROVED AS TO FORM:

Dated: 4/2/12

By:   
Nate Slegers, Esq. *for*  
Jan I Goldsmith, Esq.  
Donald R. Worley, Esq.  
Joseph L. Allen, Esq.  
Office of the City Attorney  
1200 Third Avenue,  
Suite 1000  
San Diego, CA 92101  
Attorney's for Defendant,  
City of San Diego

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Steven A. McKinley (SBN:89656)</b> <b>Freeland, McKinley &amp; McKinley</b> P.O. Box 9580 Rancho Santa Fe, CA 92067 TELEPHONE NO.: 858-832-8367 FAX NO. (Optional): 858-832-8974 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>Hon, LLLP</b>		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>San Diego</b> STREET ADDRESS: <b>330 West Broadway</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>San Diego, CA 92101</b> BRANCH NAME: <b>Hall of Justice</b>		
PLAINTIFF/PETITIONER: <b>Hon, LLLP</b> DEFENDANT/RESPONDENT: <b>Redevelopment Agency of the City of San Diego</b>		
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify) : <b>Inverse Condemnation/Breach of Contract</b>		CASE NUMBER: <b>37-2011-00090762-CU-OR-CTL</b>
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -		

1. TO THE CLERK: Please dismiss this action as follows:

a. (1)  With prejudice (2)  Without prejudice

b. (1)  Complaint (2)  Petition

(3)  Cross-complaint filed by (name):

on (date):

(4)  Cross-complaint filed by (name):

on (date):

(5)  Entire action of all parties and all causes of action

(6)  Other (specify):\*

2. (Complete in all cases except family law cases.)

Court fees and costs were waived for a party in this case. (This information may be obtained from the clerk. If this box is checked, the declaration on the back of this form must be completed).

Date:

Steven A. McKinley

(TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

\*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

(SIGNATURE)

Attorney or party without attorney for:

Plaintiff/Petitioner    Defendant/Respondent  
 Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*

Date:

Donald W. Detisch

(TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

\*\* If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

(SIGNATURE)

Attorney or party without attorney for:

Plaintiff/Petitioner    Defendant/Respondent  
 Cross-Complainant

(To be completed by clerk)

4.  Dismissal entered as requested on (date):

5.  Dismissal entered on (date):

as to only (name):

6.  Dismissal not entered as requested for the following reasons (specify):

7. a.  Attorney or party without attorney notified on (date):

b.  Attorney or party without attorney not notified. Filing party failed to provide  
 a copy to be conformed    means to return conformed copy

Date:

Clerk, by \_\_\_\_\_

, Deputy

EXHIBIT "A"

PLAINTIFF/PETITIONER: Hon, LLLP	CASE NUMBER:
DEFENDANT/RESPONDENT: Redevelopment Agency of the City of San Diego	37-2011-00090762-CU-OR-CTL

**Declaration Concerning Waived Court Fees**

The court has a statutory lien for waived fees and costs on any recovery of \$10,000 or more in value by settlement, compromise, arbitration award, mediation settlement, or other recovery. The court's lien must be paid before the court will dismiss the case.

1. The court waived fees and costs in this action for (name):
2. The person in item 1 (check one):
  - a.  is not recovering anything of value by this action.
  - b.  is recovering less than \$10,000 in value by this action.
  - c.  is recovering \$10,000 or more in value by this action. (If item 2c is checked, item 3 must be completed.)
3.  All court fees and costs that were waived in this action have been paid to the court (check one):  Yes  No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME OF  ATTORNEY  PARTY MAKING DECLARATION)

\_\_\_\_\_  
(SIGNATURE)

**ASSIGNMENT OF RENT**

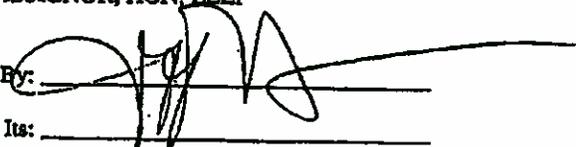
1. **Assignment.** For value received, Assignor, Hon LLLP, a Colorado Limited Liability Limited Partnership, hereby assigns and transfers to Assignee, CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic, any and all rents, holdover rents, back rents, interest, costs, attorneys fees, expenses due and to become due, know or unknown, under the terms of that certain lease, assignment of lease, first amendment to lease and sublease referred to collectively and below as the "lease," copies of which will be made available in Escrow, by and between HON LLLP, as lessor and plaintiff, and Healthcare Services, Inc. as lessee and the RDA of the City of San Diego for the lease of the following described property: 528-542-544 14th Street, San Diego, California (APNs: 535-152-09 &10).

2. **No Assignment of Assignor's Obligations.** Assignor does not assign to Assignee any of Assignor's obligations under the lease, and shall fulfill or perform each and every condition or covenant of the lease by the Assignor, as Lessor, to be fulfilled or performed.

3. **Hon LLLP v. RDA of the City of San Diego.** This assignment is made in connection with the herein referenced lawsuit and is intended to completely and finally transfer any and all rights to rents of any kind due and/or to become due pursuant to the lease that was entered into by and between Hon LLLP and Healthcare Services, Inc. The settlement of this litigation by the parties by and between Hon LLLP and the RDA of the City of San Diego, The City of San Diego both as a successor agency to the RDA of the City of San Diego and as a municipal corporation and the Centre City Development Corporation is a complete and total resolution of the matter. Any and all rental claims against of these entities from any source are hereby being transferred and released.

Executed at \_\_\_\_\_, California, on APRIL 2, 2012.

ASSIGNOR, HON, LLLP

By:  \_\_\_\_\_

Its: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**Exhibit "B"**

Recording Requested by:

City Real Estate Assets Dept.

After Recording Mail to:

Office of the City Clerk  
City of San Diego  
Mail Station 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
NO DOCUMENTARY TAX DUE - R & T 11922  
Presented for record by the CITY OF SAN DIEGO

APN 535-152-09 & 10  
Property Address: 528 14<sup>th</sup> Street  
Second Address: 542-544 14<sup>th</sup> Street  
San Diego, CA 92101

### GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

**HON, LLLP, A Colorado Limited Liability Limited Partnership**

HEREBY GRANTS (S) To 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, in the County of San Diego, State of California, all right, title and interest in and to that real property situated in the City of San Diego County of San Diego, State of California, described as follows:

**LOTS "T" & "J" IN BLOCK 104, HORTON'S ADDITION IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, according to map thereof on file in the office of the County Recorder of San Diego County.**

This is to certify that the interest in the real property conveyed by this instrument to the City of San Diego, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of San Diego pursuant to authority conferred by Resolution No. 250320, adopted by the council of the City of San Diego on October 1, 1979, and the grantee consents to recordation thereof by its duly authorized officer.

\_\_\_\_\_  
\_\_\_\_\_

Dated \_\_\_\_\_ By \_\_\_\_\_  
James F. Barwick, Director

**Exhibit "C"**

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March 14, 2012

Steven McKinley, Esq.  
FREELAND MCKINLEY & MCKINLEY  
P.O. Box 9580  
Rancho Santa Fe, CA 92067

**Re: 528-542 14<sup>th</sup> Street, San Diego, California (APN# 535-152-09 & 10)  
for Hon LLLP's EXCLUSIVE USE ONLY**

Dear Mr. McKinley:

In response to your request for a written acknowledgment regarding the status of this matter the following is provided. This information is provided solely for the use of your client and is to remain confidential and not used in any other litigation and/or administrative proceeding. It's clearly not to be used in the LaFornara v. RDA, lawsuit # 37-2011-00086995.

We are pleased that your client, Hon LLLP, a Colorado Corporation and the Redevelopment Agency, have been able to reach concurrence on the Settlement Agreement which included, acquisition of your clients real property identified as 528-542 14<sup>th</sup> Street, San Diego, California (APN 535-152-09 & 10) and related claims.

If such an agreement hadn't been reached, staff would have recommended to its board that it make a discretionary decision granting authority to initiate an eminent domain action for the acquisition of said property be initiated.

We look forward to the immediate execution of the Settlement Agreement, and the timely transfer of the property.

Sincerely,

Jeff Graham

**EXHIBIT "D"**

RESOLUTION NUMBER R- 307353

DATE OF FINAL PASSAGE APR 10 2012

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING AN ACQUISITION SETTLEMENT AGREEMENT AND RELEASE BETWEEN THE CITY AND HON, LLLP, A COLORADO LIMITED LIABILITY LIMITED PARTNERSHIP.

WHEREAS, the former Redevelopment Agency of the City of San Diego (Agency) began the process of assembling a redevelopment site (Site) of up to approximately 40,000 square feet on the south side of Market Street between 13th and 14th Streets in the East Village district for the purpose of constructing affordable housing units and possible mixed-use development; and

WHEREAS, certain litigation arose regarding the real property located at 528-542 14<sup>th</sup> Street in San Diego, California 92101 (Parcel), comprised of approximately 10,000 square feet of land associated with the assemblage of the Site; and

WHEREAS, the City and the Agency entered into that certain "Cooperation Agreement for Payment of Costs Associated with Certain Redevelopment Agency Funded Projects" dated February 28, 2011 (Cooperation Agreement), for payment of costs associated with certain Agency-funded projects, and which gives the City authority to acquire the Parcel utilizing Agency Low and Moderate Income Housing Funds and Unrestricted Funds as provided in Item #354 of Exhibit 1 to the Cooperation Agreement; and

WHEREAS, the acquisition of the Parcel will be added to adjacent properties previously acquired by the Agency to bring the Site assembled to date to approximately 37,000 square feet; and

WHEREAS, the Site is in a substandard and dilapidated condition, and redevelopment of the property would eliminate considerable blight that presently exists thereon; and

WHEREAS, a proposed Acquisition Settlement Agreement and Release (Settlement Agreement) has been negotiated to settle certain litigation related to the Parcel on terms deemed by the Mayor to be in the best interests of the City; and

WHEREAS, the Settlement Agreement was authorized in Closed Session on January 31, 2012, by unanimous vote, with Councilmember DeMaio absent; and

WHEREAS, the cost to comply with the Settlement Agreement will require the expenditure of \$3.7 million, and the cost to perform demolition needed to render the Parcel usable for the purposes for which it is being acquired is \$150,000; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego that the Chief Financial Officer is authorized to expend an amount not to exceed One Million Three Hundred Thousand Dollars (\$1,300,000) from Fund No. 400703 and Two Million Five Hundred and Fifty Thousand from Fund No. 200650, for a total expenditure of Three Million Eight Hundred Fifty Thousand Dollars (\$3,850,000) for payments required by the Acquisition Settlement Agreement and Release (Settlement Agreement) between the City and Hon, LLLP, a Colorado limited liability limited partnership, on file in the Office of the San Diego City Clerk as Document No.

307353, and to perform demolition needed to render the real property located at

528-542 14<sup>th</sup> Street in San Diego, California 92101, usable for the purposes for which it is being  
acquired pursuant to the Settlement Agreement.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Nathan Slegers  
Deputy City Attorney

BLL:NS:mcm  
03/28/2012  
Or.Dept: Real Estate Assets Dept.  
Doc. No. 337757

I hereby certify that the foregoing Resolution was passed by the Council of the City of  
San Diego, at this meeting of 4/10/2012

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 4.10.12  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on April 10, 2012, by the following vote:

**YEAS:** LIGHTNER, FAULCONER, GLORIA, YOUNG, DEMAIO, ZAPF,  
EMERALD, & ALVAREZ.

**NAYS:** NONE.

**NOT PRESENT:** NONE.

**RECUSED:** NONE.

AUTHENTICATED BY:

**JERRY SANDERS**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)

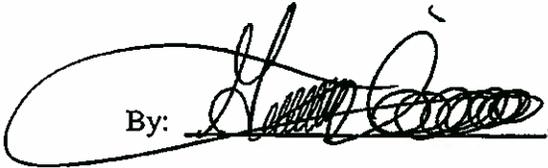
By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of  
RESOLUTION NO. R-307353, approved by the Mayor of The City of San Diego,  
California on April 10, 2012.

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)

By:  Deputy

OVERSIGHT BOARD RESOLUTION NUMBER OB-2012-10

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE  
CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR  
AGENCY APPROVING THE SETTLEMENT AGREEMENT  
AND RELEASE FOR ACQUISITION OF THE PROPERTY  
LOCATED AT 528-542 14<sup>TH</sup> STREET.

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, the Former RDA began the process of assembling a redevelopment site (Site) of up to approximately 40,000 square feet on the south side of Market Street between 13th and 14th Streets in the East Village district for the purpose of constructing affordable housing units and possible mixed-use development; and

WHEREAS, certain litigation arose regarding the real property located at 528-542 14<sup>th</sup> Street in San Diego, California 92101 (Parcel), comprised of approximately 10,000 square feet of land associated with the assemblage of the Site; and

WHEREAS, a Settlement Agreement and Release (Settlement Agreement) has been negotiated to settle certain litigation related to the Parcel and allow the acquisition of the Parcel by the Successor Agency; and

WHEREAS, the Parcel will be added to adjacent properties previously acquired by the Former RDA to bring the Site assembled to date to approximately 37,000 square feet; and

WHEREAS, the Settlement Agreement was authorized by the City Council and the Board of the Former RDA in a joint Closed Session on January 31, 2012, by unanimous vote, with Councilmember DeMaio absent; and

WHEREAS, the Settlement Agreement will require the expenditure of \$3.7 million, and the costs to close the settlement and acquisition transaction and to perform demolition needed to remove substandard, dilapidated and unsafe conditions from the Parcel are \$150,000, for a total expenditure of \$3.85 million.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

1. The Settlement Agreement is hereby approved.
2. The expenditure of an amount not to exceed Three Million Eight Hundred Fifty Thousand Dollars (\$3,850,000) for payments required by the Settlement Agreement, closing costs, and demolition is hereby authorized.

**PASSED AND ADOPTED** by the Oversight Board at a duly noticed meeting of the Oversight Board held on May \_\_\_\_, 2012.

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Chair, Oversight Board