

RESOLUTION NO. 2012 – 22

RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE
COMMUNITY DEVELOPMENT COMMISSION AS
THE NATIONAL CITY REDEVELOPMENT AGENCY AUTHORIZING
THE SUCCESSOR AGENCY TO ACCEPT GRANT DEEDS, EXECUTE DOCUMENTS
INCLUDING A SETTLEMENT AGREEMENT, AND
PERFORM ACTIONS IN SETTLEMENT OF LITIGATION

WHEREAS, on July 19, 2005, the Community Development Commission of the City of National City (“CDC”), the Parking Authority, and ARE Holdings, LLC (“ARE”), entered into a Disposition and Development Agreement (“DDA”) in furtherance of the redevelopment of certain real property located between 11th and 12th Street in National City, bordering National City Boulevard on the east and Roosevelt Avenue on the west for a residential and retail mixed-use project; and

WHEREAS, on October 15, 2010, ARE filed a lawsuit against the CDC and the Parking Authority in the Superior Court of the State of California, identified as Case No. 37-2010-00102387-CU-BC-CTL, arising out of obligations and covenants under the DDA; and

WHEREAS, on February 14, 2011, the CDC and the Parking Authority filed a cross-complaint against ARE, and named as additional cross-defendants related entities Parking Company and PCAM, LLC, under the theory of “alter ego” arising out of obligations and covenants under the DDA; and

WHEREAS, on February 17, 2012, the Court sustained the CDC’s and Parking Authority’s demurrer to the First Amended Complaint of ARE without leave to amend. The above-referenced action herein is referred to as the “Litigation.”

WHEREAS, unrelated to the Litigation, pursuant to Assembly Bill X1 26 (Chapter 5, Statutes 2011, First Extraordinary Session), as modified by the Supreme Court in *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, all redevelopment agencies were dissolved by February 1, 2012, and all assets, properties, contracts, leases, records, buildings, and equipment of the former redevelopment agency were transferred to the control of the Successor Agency; and

WHEREAS, on January 10, 2012, the City Council adopted Resolution No. 2012-15, pursuant to Part 1.8 of the Health and Safety Code, electing the City to serve as the Successor Agency to the Community Development Commission as the National City Redevelopment Agency upon dissolution of the Community Development Commission of the City of National City under Assembly Bill X1 26; and

WHEREAS, without admitting any liability or fault, each of the parties to the Litigation desire to enter a Settlement Agreement (attached hereto as Exhibit A) to resolve all aspects of the Litigation among themselves and to terminate the DDA; and

WHEREAS, under the terms of the Settlement Agreement, the Successor Agency shall execute and accept title to each of the parcels being conveyed to the Successor Agency, and authorize the Chairman, or his designee, to perform such acts to and execute such other documents as are necessary to settle the litigation and to acquire title insurance concerning the parcels being acquired, in accordance with title company procedures and policies.

WHEREAS, the Successor Agency approved the Settlement Agreement at a meeting held on November 18, 2012 by adoption of Successor Agency Resolution No. 2012-___; and

WHEREAS, pursuant to Health and Safety Code section 34171(d)(1) sub-divisions (D) and (F), settlements of litigation are considered enforceable obligations of the Successor Agency.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency hereby approves the Settlement Agreement; and

BE IT FURTHER RESOLVED that the Oversight Board authorizes the Chairman of the Successor Agency to execute and accept title to each of the parcels being conveyed to the Successor Agency; and

BE IT FURTHER RESOLVED that the Chairman of the Successor Agency, or his designee, are hereby authorized to perform such acts to and execute such other documents as are necessary to settle the litigation and to acquire title insurance concerning the parcels being acquired, in accordance with title company procedures and policies; and

BE IT FURTHER RESOLVED that the obligations of the Successor Agency contained in the Settlement Agreement shall, if and when required by law, be included in the Successor Agency's future Recognized Obligations Payment Schedules. If desired by the Successor Agency, the Successor Agency is hereby authorized, without further need for Oversight Board approval, to amend the Third ROPS to include the Settlement Agreement.

BE IT FURTHER RESOLVED that The Oversight Board, in furtherance of its fiduciary duties to the taxing entities and the holders of enforceable obligations, hereby finds that the Settlement Agreement is in the best interest of the taxing entities and the holders of the enforceable obligations because the Settlement Agreement assists in the efficient winding down of the affairs of the Successor Agency. Continued protracted litigation creates uncertainty and may result in increased costs and delay; and

BE IT FURTHER RESOLVED that The Oversight Board has also determined (to the extent it is required to do so) that approval of the Settlement Agreement is not a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because the Settlement Agreement is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines; and

BE IT FURTHER RESOLVED that notice of this Resolution shall be transmitted to the Department of Finance by electronic means and shall take effect at the time provided in Health and Safety Code Section 34179(h).

BE IT FURTHER RESOLVED that The Oversight Board Secretary and/or Successor Agency Secretary shall certify to the adoption of this Resolution.

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December 19, 2012

The foregoing resolution was duly and regularly adopted at a regular meeting of the Oversight Board for the Successor Agency to Redevelopment Agency for the City of National City held on the 19th day of December, 2012, by the following vote:

Ayes:

Noes:

Absent:

Abstain:



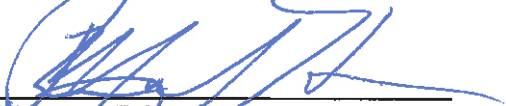
Ron Morrison, Chairman

ATTEST:



Brad Raulston, Executive Director
Secretary to the Oversight Board

APPROVED AS TO FORM:



Michael R.W. Houston
Cummins & White, LLP
Oversight Board Counsel