

RESOLUTION NO. 3-2013
Adopted February 11, 2013

AUTHORIZING A STIPULATION FOR ASSUMPTION OF REAL PROPERTY SUBLEASE WITH BENITO S. SOLIS (THE "DEBTOR") BASED ON THE BEST INTERESTS OF THE TAXING ENTITIES BECAUSE IT ALLOWS DEBTOR TO CONTINUE SUBLEASING A RESTAURANT SPACE ON PIERS 38/40 PROVIDED THAT DEBTOR AGREES TO CERTAIN MODIFICATIONS TO DEBTOR'S EXISTING SUBLEASE, INCLUDING ELIMINATING THE OPTION PERIOD AND CHANGING THE PAYMENT PLAN FOR \$24,700 (AS OF JANUARY 31, 2013) IN BACK RENT OWED, AS PART OF A LARGER BANKRUPTCY PLAN ASSOCIATED WITH DEBTOR'S CHAPTER 13 BANKRUPTCY FILING IN U.S. BANKRUPTCY COURT, NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION, CASE NO. 11-34325 TEC. (DISCUSSION AND ACTION) (RESOLUTION NO. 3-2013)

WHEREAS, The Port of San Francisco ("Port") and the former Redevelopment Agency of the City and County of San Francisco ("SFRA") entered into an approximately 58-year term lease, dated March 30, 1992, for premises at Piers 38 and 40 at the Port of San Francisco (the "Lease"); and,

WHEREAS, Under the Lease, SFRA operated the premises primarily as a restaurant space, using proceeds to maintain the restaurant space and pay rent to the Port on other land the SFRA leased from the Port; and,

WHEREAS, The SFRA entered into a sublease, dated April 7, 2010, with Benito S. Solis and Carmen Solis, dba Carmen's Restaurant ("Carmen's Restaurant") for the operation of a restaurant in approximately 1,600 square feet of bulkhead space and 525 square feet of outdoor seating area at Piers 38, and the use of a storage locker for dry goods at Pier 40 (the "Sublease"). The term of the Sublease is from April 7, 2010 to April 6, 2013 and allows an additional two-year option to extend the term in the SFRA's Executive Director's sole discretion. The Sublease requires Carmen's Restaurant to pay monthly rent of \$1,600 per month for the first year, and \$1,800 per month for the second and third years, plus any annual percentage rent (the greater of the monthly rent or 8% of adjusted gross sales from food sales and 10% of adjusted gross sales on other retail-related sales); and,

WHEREAS, From 1984-2002, Carmen's Restaurant had leased space from the Port at 998 Fourth Street. Carmen's Restaurant moved from that location to its current location when construction on the Fourth Street bridge commence. Initially, the construction of the bridge was anticipated to last approximately two years. Accordingly, Carmen's Restaurant entered into its first sublease with the SFRA for space at Piers 38/40 in 2002 for a period of two years. The bridge construction continued beyond two years, leading to extensions of the 2002 sublease to May 2006. In 2006 after the construction was completed, the 2002 sublease was extended again until the end of May 2009 because Carmen's Restaurant did not have the capital required to reoccupy its former location. Carmen's Restaurant continued on a month-to-month basis after May 2009 until it entered into the Sublease; and,

- WHEREAS, When Mr. and Mrs. Solis entered into the Sublease, they owed \$37,000 in back rent on its pre-existing sublease. The Sublease, therefore, required payment of the back rent in monthly installments of \$600; and,
- WHEREAS, In 2011, Carmen's Restaurant fell further behind in back rent, such that on June 30, 2011, it owed \$41,500; and,
- WHEREAS, On December 2, 2011, Mr. and Mrs. Solis filed for Chapter 13 bankruptcy in the U.S. Bankruptcy Court, Northern District of California. Since filing for bankruptcy, Mrs. Solis passed away, leaving Mr. Solis as the sole debtor in the matter ("Debtor"). On February 21, 2012, Debtor filed its Amended Chapter 13 Plan ("Amended Plan"), setting forth its plans for payment of creditors. The Successor Agency filed an objection to the Confirmation of the Amended Plan, primarily based on the Amended Plan's proposal to pay outstanding amounts to the Successor Agency over a period of 60 months, which exceeded the remaining term of the Sublease; and,
- WHEREAS, Following the Objection to Confirmation of the Amended Plan, the Successor Agency and the Port have been negotiating with Debtor for a payment plan that would provide maximum payment to the Successor Agency and provide greater assurance that Carmen's Restaurant would not have any rights to the premises after the April 7, 2013 termination date. The Port has been involved in the negotiations because of the merger of interest under Board of Supervisors Resolution No. 11-12 (now superseded by AB 1484), and as the landlord to the Successor Agency and potential successor in interest to the Sublease and premises; and,
- WHEREAS, Under California Health & Safety Code Section 34181(e) the Oversight Board has authority to direct the Successor Agency to determine whether any agreement with a private party may be terminated or renegotiated to reduce liability and increase net revenues to the taxing entities and may approve amendments or terminations to those agreement if it finds that the amendment or termination would be in the best interest of the taxing entities; and,
- WHEREAS, The Successor Agency has negotiated a Stipulation for Assumption of Real Property Sublease (the "Stipulation") with the Debtor which the Successor Agency believes provides the greatest opportunity of receiving any payment of back rent without extending the Sublease. Without the Stipulation, the Successor Agency is not assured of receiving any additional payments from the Debtor or of attaining assurance from the Debtor that its rights to the premises will terminate on April 7, 2012. The Stipulation is attached to this Resolution as Exhibit A; and,
- WHEREAS, The Stipulation allows the Debtor to assume the Sublease (as amended by the Stipulation) under an Amended Plan, lifts the automatic bankruptcy stay as to enforcement of the Sublease, provides a release of liability by Debtor and includes other provisions to protect the Successor Agency and City during the bankruptcy process; and,
- WHEREAS, Under the Stipulation, the Debtor agrees to an arrearage amount of \$30,700, and agrees that such amount may be paid in monthly installments of \$1,500 during the term of the Sublease and any holdover period. Based on these requirements, if there is no holdover past April 7, 2013, the Successor Agency would not receive the full amount of the arrearage; however, the premises could be relet to a more economically viable tenant; and,

WHEREAS, The Stipulation amends the Sublease by eliminating any right to an extension, providing that the Sublease expires on April 7, 2013 and shortening the notice period for termination of any holdover period by either party; and,

WHEREAS, The Stipulation also provides that Debtor would not be eligible to submit a response to a future request for proposal for the premises of the Sublease unless it has paid all amounts owed under the Sublease as of the date of the request for proposal; and,

WHEREAS, The Stipulation has been executed by the Debtor, but is subject to approval by the Oversight Board before being approved by the Court and incorporated into the Amended Plan; and, now therefore, be it

RESOLVED, That this Board approves the Stipulation and authorizes the Executive Director to execute the Stipulation on behalf of the Successor Agency, in the form attached as Exhibit A.

I hereby certify that the foregoing resolution was adopted by the Oversight Board at its meeting of February 11, 2013.

Natasha Jones

Board Secretary

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12 SAN FRANCISCO ACTING BY AND
13 THROUGH THE PORT
14 COMMISSION

15 UNITED STATES BANKRUPTCY COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 BENITO S. SOLIS, and
19 CARMEN F. SOLIS,
20 dba Carmen's Restaurant,
21 Debtors.

22 Chapter 13
23 Case No. 11-34325 TEC
24 STIPULATION FOR ASSUMPTION OF
25 REAL PROPERTY SUBLEASE

26 This Stipulation (the "Stipulation") is made by and between the Successor Agency to the
27 San Francisco Redevelopment Agency of the City and County of San Francisco ("Successor
28 Agency"), and Benito S. Solis, the above-referenced Debtor¹ ("Debtor"), with respect to the
following facts:

29 A. The Debtor leases the business premises located at Pier 38/40, San Francisco,
30 California pursuant to a written sublease dated April 7, 2010 (the "Sublease"), a copy of which is
31 attached hereto as Exhibit A. The Sublessor under the Sublease was the San Francisco
32 Redevelopment Agency but is now the Successor Agency.

33 B. Debtors filed their Chapter 13 bankruptcy case on December 2, 2011. On
34 February 21, 2012 the Debtors filed their Amended Chapter 13 Plan (the "Plan"). The Successor
35 Agency filed its objection to the Plan.

36 C. The Debtor agrees and admits that as of August 22, 2012, the arrearages under the

37
38 ¹Carmen F. Solis passed away in May 2012.

1 Sublease totaled \$30,700.00 (the "Arrearage").

2 D. Debtor wishes to assume the Sublease.

3 NOW, THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:

4 Subject to the approval of the Bankruptcy Court and the OVERSIGHT BOARD of the
5 Successor Agency,

6 1. Debtor shall provide the Port with documentation by November 30, 2012
7 demonstrating that no Annual Percentage Rent under Paragraph 3.5 of the Sublease is due and
8 owing for the years 2010 and 2011.

9 2. Provided that the Debtor timely provides the Port with the documentation specified
10 in Paragraph 1, the Successor Agency consents to the assumption of the Sublease by the Debtor
11 through an amended plan solely upon the following terms and conditions:

12 a. The Arrearage shall constitute the cure amount due under Bankruptcy Code
13 Section 365(b)(A) and shall be paid in full but may be paid in monthly installments of \$1,500 per
14 month during the term of the Sublease and any holdover period, and will constitute an allowed
15 administrative claim.

16 b. The Automatic Stay of Bankruptcy Code Section 362(a) shall be modified
17 and terminated so that it will not apply to the Sublease (including Debtors' possession of the
18 premises covered by the Sublease) or any default thereunder, and the Successor Agency (or its
19 successors, transferees, and assigns) may enforce, by any means authorized, all of its rights and
20 remedies under the Sublease and applicable law, including but not limited to, terminating the
21 Sublease, evicting the Debtors and obtaining possession and control of the premises covered by
22 the Sublease by filing and prosecuting unlawful detainer proceedings, and/or proceeding under
23 California law to dispose of any personal property left at the premises. The 14-day stay described
24 in Bankruptcy Rule 4001 shall be waived.

25 c. The Sublease shall be amended as follows:

26 1. Paragraph 2.2 of the Sublease shall be deleted. Debtor
27 acknowledges and agrees that the term of the Sublease expires on April 6,
28 2013 and there shall be no extension option; and

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2. Paragraph 2.4 shall be amended so that the 90 day notice period is changed to 60 days.

d. Debtor and Debtor’s bankruptcy estate hereby agree to fully and forever release and discharge the Successor Agency and the City and County of San Francisco, including the Port, and their respective predecessors, successors and assigns and the present and former directors, employees, representatives, agents, attorneys, and each of them, from any and all claims, actions, causes of action, liabilities, damages, demands, attorneys’ fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise or are related to the Sublease or claims, obligations or payments thereunder.

Debtors and Debtor’s bankruptcy estate expressly waive all rights under California Civil Code section 1542 which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO THE 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 DEBTOR.

e. The terms of this Stipulation shall be incorporated into an amended plan to be filed by Debtor in the case and any such plan shall not modify or affect the provisions of this Stipulation. To the extent this Stipulation conflicts with the terms of any plan, the language and terms of this Stipulation shall control. The amended plan must include all of the terms of this Stipulation and the plan and form of order confirming the plan must be approved in writing by the Successor Agency.

f. This Stipulation and the order thereon shall be binding upon any Chapter 7 trustee appointed or elected in the bankruptcy case.

g. In no event shall the Debtor be eligible to submit a bid on a Request for Proposal by the Port or the Successor Agency (“RFP”) for the premises covered by the Sublease unless the Debtor has paid all amounts due and owing under the Sublease as of the date of the RFP.

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Dated: _____, 2012

THE SUCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

By: _____

Its _____

Dated 1-19-12, 2012

By: *Benito S. Solis*
BENITO S. SOLIS