MEMORANDUM

TO: Oversight Board

FROM: Tiffany Bohee, Executive Director

SUBJECT: Authorizing a Stipulation for Assumption of Real Property Sublease with Benito S. Solis (the “Debtor”) which 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)

EXECUTIVE SUMMARY

The Successor Agency to the former San Francisco Redevelopment Agency (the “Successor Agency”) continues to ground lease much of the land and buildings along the waterfront between Pier 38 and the ballpark from the Port of San Francisco (the “Port”). A portion of this Port-owned property is subleased to Carmen and Benito Solis (the “Debtor” or “Subtenant”), who operate Carmen’s Restaurant in about 1,600 square feet of space on Piers 38/40 (the “Sublease”) in the Rincon Point-South Beach Redevelopment Project Area.

The Debtor has struggled financially for years at this location and filed for Chapter 13 bankruptcy protection in December 2011. Since that time, the Port and the Successor Agency have been negotiating with the Debtor about the future of the premises and a payment plan for back rent owed the Successor Agency totaling $24,700 (as of January 31, 2013).

Before the Oversight Board’s consideration today is the agreement reached between the Port, Successor Agency staff, and the Debtor. Per state dissolution law, the Oversight Board has the ultimate authority to direct Successor Agency staff to amend agreements with private parties, such as the Debtor’s sublease, if those amendments are in the best interests of the taxing entities. See Cal. Health & Safety Code § 34181 (e) (authorizing an oversight board to direct a successor agency to “approve any amendments to [any contracts, agreements or other arrangements between the dissolved redevelopment agency and any private parties] if [the oversight board] finds that amendments ... would be in the best interests of the taxing entities.”) In this case, staff believes the proposed sublease modifications are in the best interest of the taxing entities.

\(^1\) Under the Redevelopment Dissolution Law, Successor Agencies do have the authority to amend contracts and enter into new obligations if they are “in compliance with an enforceable obligation that existed prior to June 28, 2011.” Cal. Health & Safety Code § 34177.3 (a).
The agreement is detailed in the attached Stipulation for Assumption of Real Property Sublease (the “Stipulation”), which sets forth the conditions under which the Debtor can continue to operate in the premises legally (See Attachment A). The details of the Stipulation are discussed later in this memorandum, but its key points include (1) payments to the Successor Agency of at least $1,500 a month toward the $24,700 owed as long as the Debtor operates in the space legally, and (2) elimination of the Sublease’s two-year option period. As a result, the Sublease will terminate on April 6, 2013, with a possible holdover period at the sole discretion of either the Successor Agency or the Port, whichever is controlling the property at that time.

This matter was presented to the Successor Agency Commission on February 5, 2013 as an informational item. Commissioner Mondejar expressed sadness that the Debtor was not able to pay his back rent and was about to lose his sublease. She wanted the Oversight Board to know how much the Debtor’s restaurant has meant to the Filipino-American community and the historic nature of Debtor’s establishment on the waterfront.

The Debtor signed the Stipulation on November 19, 2012. The larger bankruptcy plan, which includes the Stipulation, is scheduled to be heard before the bankruptcy court on February 20, 2013.

Staff recommends authorizing the Executive Director to execute the Stipulation.

DISCUSSION

From 1984 to 2002, the Subtenant occupied space owned by the Port at 998 Fourth Street on Wharf 62, a small pier located off the south side of the Fourth Street bridge, to operate its business, Carmen’s Restaurant. The Subtenant moved from this location in the fall of 2002 when construction began on the Fourth Street bridge as part of the City of San Francisco’s Third Street light rail project.

To accommodate the Subtenant, the former San Francisco Redevelopment Agency (“SFRA”) entered into a temporary interim sublease agreement (Resolution No. 160-2002) for about 1,600 square feet of space the SFRA leased from the Port on Piers 38/40 until the Subtenant could return to the Port’s Wharf 62 location. The SFRA (and now the Successor Agency) leases much of the waterfront between Pier 38 and the ballpark from the Port.

For a number of reasons, the Subtenant could not return to the Port’s Wharf 62 location and the interim sublease agreement with the SFRA had to be extended two times in 2004 and 2006 (Resolution Nos. 58-2004 and 60-2006). The interim sublease agreement continued on a month-to-month basis until April 2010, when the SFRA and the Subtenant entered into a new sublease agreement (the “Sublease”) for the same space on Piers 38/40. At that time, the Subtenant owed the SFRA $37,700 in back rent. As a result, the Sublease called for the Subtenant to pay an additional $600 a month until the outstanding amount of $37,700 was paid. The Sublease included a three-year term (ending on April 6, 2013) with one option to extend the Sublease for an additional two years.
Bankruptcy Filing

Over the last several years, the Subtenant has struggled financially and was never able to pay off the outstanding back rent amount. In fact, as of June 30, 2011, the back rent owed the SFRA had increased to $41,500. At that time, the Subtenant agreed in a letter to make monthly payments of $1,200 a month toward that amount beginning in October 2011. However, on December 2, 2011, the Subtenant was forced to file for Chapter 13 bankruptcy protection in the U.S. Bankruptcy Court, Northern District of California.

Over the last several months, the Successor Agency and the Port have been negotiating with the Debtor over the terms for Debtor’s continued occupancy of the premises. The key negotiating points were (1) a payment plan that maximized the money received by the Successor Agency and (2) a shortened term that maximized the Port’s and/or the Successor Agency’s opportunity to lease the space to a rent-paying tenant. The Port has been involved in the negotiations because the Port is the property owner and will assume full control of the premises once the Successor Agency terminates the Successor Agency’s underlying ground lease with the Port.

As of August 2012, the Debtor agreed that a total of $30,700 in back rent was owed to the Successor Agency. Since that time (through January 2013), the Debtor has paid $6,000 toward that amount, leaving $24,700 still to be paid.

Terms of Bankruptcy Stipulation (Proposed Modifications to Sublease)

The agreement reached between the Port, Successor Agency staff, and the Debtor is detailed in the attached Stipulation, which sets forth the conditions under which the Debtor can continue to operate in the premises legally. The following describes the key proposed modifications to the Sublease:

- **Elimination of Option Period.** The Debtor has agreed to give up the two-year option to extend the Sublease beyond April 6, 2013. As a result, the Sublease will terminate on April 6, 2013. However, the Debtor may occupy the premises on a month-to-month basis beyond this date (the “Holdover Period”) at the sole discretion of the Successor Agency or the Port, whichever is in control of the property. The Stipulation also requires the Successor Agency or the Port, whichever is in control of the property, to give the Debtor 60 days’ advance notice before terminating the Holdover Period (instead of the 90 days’ advance notice required in the Sublease). It is the Port’s desire to do a new solicitation for this space as soon as possible to get a market-rent-paying tenant into the premises.

- **Payment Plan.** In the Stipulation, the Debtor agreed that a total of $30,700 in back rent was owed to the Successor Agency as of August 2012. Since that time, the Debtor has paid $6,000 toward that amount, leaving $24,700 still to be paid. The Debtor can pay that amount all at once or in increments, but at a minimum must pay the Successor Agency $1,500 a month. The monthly payments will continue through the term of the Sublease and any Holdover Period. To pay the Successor Agency in full, the Tenant will need to make 16.5 monthly payments. Depending on the Debtor’s payments and the length of the Holdover Period, the Successor Agency may not receive full payment. Any
payments received are categorized as unrestricted Successor Agency income and will be used to defray Successor Agency administrative costs. These funds will reduce future draws of property tax increment.

- **Eligibility for New Tenancy.** The Debtor has agreed that it will not be eligible to submit a response to any future request for proposals from the Port for the Piers 38/40 premises unless the entire $24,700 still owed to the Successor Agency has been paid.

The Stipulation also allows the Debtor to assume the Sublease (as amended by the Stipulation) under an amended bankruptcy plan and lifts the automatic bankruptcy stay preventing the enforcement of the Sublease. It also includes provisions that protect the Successor Agency and the City and County of San Francisco from any claims the Debtor may file related to the Sublease. A copy of the Stipulation is attached to this memorandum as **Attachment A**.

Staff believes the terms contained in the Stipulation are in the best interest of the taxing entities. Without the Stipulation, the Successor Agency is not likely to receive any additional payments from the Subtenant. Furthermore, with the Stipulation, Subtenant is agreeing that Subtenant’s rights to the premises will terminate on April 6, 2013. In addition, outside bankruptcy counsel has advised the Port and the Successor Agency that a better deal from the bankruptcy court is unlikely.

The representative for the Subtenant, Benito Solis, signed the Stipulation on November 19, 2012 (His wife and business partner, Carmen Solis, passed away in May 2012).

**CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The Stipulation includes provisions for rent to be paid to the Successor Agency, which are activities that would not directly have a significant effect on the environment and are exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3).

*(Originated by Tracie Reynolds, Manager of Real Estate and Development Services)*

![Signature]

Tiffany Bohée
Executive Director

Attachment A: Stipulation
ATTACHMENT A
Stipulation
United States Bankruptcy Court
Northern District of California
San Francisco Division

Benito S. Solis, and Carmen F. Solis,
dba Carmen's Restaurant,

Debtors.

Chapter 13
Case No. 11-34325 TEC

Stipulation for Assumption of Real Property Sublease

This Stipulation (the "Stipulation") is made by and between the Successor Agency to the San Francisco Redevelopment Agency of the City and County of San Francisco ("Successor Agency"), and Benito S. Solis, the above-referenced Debtor\(^1\) ("Debtor"), with respect to the following facts:

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

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

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

\(^1\)Carmen F. Solis passed away in May 2012.
Sublease totaled $30,700.00 (the “Arrearage”).

D. Debtor wishes to assume the Sublease.

NOW, THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:

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

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

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

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

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

   c. The Sublease shall be amended as follows:

      1. Paragraph 2.2 of the Sublease shall be deleted. Debtor acknowledges and agrees that the term of the Sublease expires on April 6, 2013 and there shall be no extension option; and
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.
THE SUCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

By: ______________________________

Its. ______________________________

By: ______________________________

BENITO S. SOLIS

Dated: __________, 2012