

RESOLUTION NO. SA 17-05

**A RESOLUTION OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION APPROVING SETTLEMENT AGREEMENTS IN CASE ENTITLED *MAYANS DEVELOPMENT INC., ET AL. V. SUCCESSOR AGENCY, ET AL.***

WHEREAS, this case arose from the owner participation agreement (“OPA”) entered into between the Commerce Community Development Commission (“Commission”) and Mayans Development, Inc. (“Mayans”) in 2004. The purpose of the OPA was for Mayans to develop affordable housing within the City. To achieve that purpose, the Commission agreed to sell approximately 3.7 acres to Mayans at a greatly reduced price; and

WHEREAS, unbeknownst to the Commission, Mayans created a company called Los Jardines, a Nevada LLC, and attempted to have OPA-properties transferred to that entity, which constituted a breach of the OPA. The Commission did not know about that breach until the litigation began. By that time, the Commission was succeeded by the Successor Agency to the Commerce Community Development Commission (“Successor Agency”). Upon investigation, the Successor Agency also discovered other breaches of the OPA, including a failure to build affordable homes as contemplated under the OPA; and

WHEREAS, in October 2013, the Department of Toxic Substances Control (“DTSC”) discovered contaminants on properties located at the northeast corner of S. Eastern Ave. and Triggs St. (“Eastern-Triggs Site”), which were part of the OPA and formerly occupied by the Specific Plating electroplating operation. The parties met on several occasions to discuss varying responsibilities under the OPA and obligations regarding necessary clean-up. In an effort to expedite remediation, the Successor Agency made a generous offer to Mayans/Los Jardines to take the contaminated property and settle all disputes. Mayans/Los Jardines rejected that offer and sued the City of Commerce and the Successor Agency; and

WHEREAS, the Successor Agency then filed a cross-complaint against Mayans and Los Jardines, alleging numerous contractual breaches. Mayans/Los Jardines were seeking to have the Successor Agency and City pay millions of dollars in costs and damages. Ultimately, the parties proceeded to a bench trial on October 2-3, 2014 relating to Mayans’/Los Jardines’ declaratory relief cause of action. After almost a year of post-trial briefing and hearings, the Court ruled in favor of the city-entities in all important regards, determining that Mayans violated the OPA in its attempted assignment of rights to Los Jardines, that Los Jardines had no rights under the OPA, and that neither Mayans nor Los Jardines had any ownership rights to any of the undeveloped OPA properties, among other things; and

WHEREAS, the Successor Agency subsequently amended its cross-complaint to add a cause of action for quiet title – seeking title to all undeveloped properties. The Successor Agency named Banco Popular North America (“Banco Popular”) as a party because it had an outstanding deed of trust on the Gage-Watcher properties. The Successor Agency sought to invalidate that deed of trust for purposes of its quiet title cause of action; and

WHEREAS, following the Court’s statement of decision and other rulings, the parties entered into mediation in an attempt to resolve the litigation. Mediation was successful in that

the parties came to a resolution pending approvals of the Successor Agency, City, Oversight Board, and DOF. The proposed settlement is as follows: the parties will enter into a stipulated judgment ruling in favor of the Successor Agency as to the quiet title cause of action; Successor Agency will take title to the Eastern-Triggs property, as it is in the chain of title for that site; the City will pay a total of \$425,000 to obtain the Gage-Watcher sites, including the site purchased by Los Jardines from a private party; the Successor Agency will deed the remaining Gage-Watcher sites to the City, so it can achieve its objectives of providing a service or facility to the public, including possible affordable housing; as a result of the foregoing, the Successor Agency can be released from any payment or liability under the lawsuit; Los Jardines shall satisfy all outstanding amounts on the Gage-Watcher properties under the deed of trust held by Banco Popular; and

WHEREAS, the Successor Agency is proposing a separate agreement with Banco Popular to deal with dismissal of that party upon reconveyance of the subject properties; and

WHEREAS, the settlement agreements presented with this resolution make clear the parties' rights and obligations as part of the settlement. The Successor agency has reviewed the subject agreements.

NOW, THEREFORE, THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The recitals set forth above are true and correct and are incorporated by reference herein.

Section 2. The agreement between the Successor Agency, City of Commerce, Mayans Development Inc., Los Jardines a Nevada LLC, and Banco Popular North America is hereby APPROVED.

Section 3. The agreement between the Successor Agency and Banco Popular North America is hereby APPROVED.

Section 4. The secretary to the Successor Agency is directed to forward this resolution to the Oversight Board for consideration and approval, whereupon the Oversight Board shall forward any approving resolution to the Department of Finance for consideration and approval.

PASSED, APPROVED AND ADOPTED this 15<sup>th</sup> day of August 2017.

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Oralia Rebollo, Chairperson

ATTEST:

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Lena Shumway, Secretary