

Memorandum

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: August 22, 2012

Reference No.: 4.5
Action Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Mark L. Weaver
Acting Chief
Division of Right of Way
and Land Surveys

Subject: **ROBERTI BILL PROPERTY RE-PURCHASE – LEZCANO**

RECOMMENDATION:

The California Department of Transportation (Department) recommends that the California Transportation Commission (Commission) approve the Settlement Agreement (Agreement) entered into with Timothy J. Yoo, the Chapter 7 Trustee (Trustee) for the bankruptcy estate of Celestino and Amire Lezcano (Buyer) to re-purchase the property located at 2525 Mayberry Street in the city of Los Angeles.

BACKGROUND:

The Department sold the above property to Buyer subject to Government Code Section 54235 more commonly known as the Roberti Bill. The Director's Deed was recorded on May 14, 1984; the 30 year restrictions terminate on May 14, 2014. Unbeknownst to the Department, Buyer transferred this property on two occasions in early 2009 in violation of Paragraph 5(H) of the Right to Purchase Agreement (RTPA).

On July 9, 2010, Buyer filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. A Complaint for Denial of Discharge was filed by the Trustee based on the allegations that the Buyer had made false statements concerning the ownership and transfer of real property within the past five years.

A Complaint for Avoidance of Fraudulent Transfer and Recovery was filed by the Trustee who sought a judicial determination voiding the transfer and recovering the property or its value for the benefit of the Buyer's bankruptcy estate.

The Department filed a claim with the Federal Bankruptcy Court (Court) in March of 2010 to purchase the property from the Buyer, pursuant to the provisions of the RTPA. The Department and the Trustee executed an Agreement in May of 2012 with the terms and conditions regarding the purchase of the property. Section 4 of this Agreement stipulates that the Commission approves the Agreement. Once that has occurred, the Agreement will be submitted to the Court for approval which will then issue the order to sell the property to the State of California. The Department will re-purchase the property using the current annual Right of Way capital allocation.

Attachment:
Exhibit A: Settlement Agreement

SETTLEMENT AGREEMENT

1. **PARTIES:** The parties to this Settlement Agreement (the "Agreement") are Timothy J. Yoo, the Chapter 7 Trustee (the "Trustee") for the bankruptcy estate of Amire Lezcano and Celestino Lezcano, and the State of California, Department of Transportation (the "State").

2. **RECITALS:** This Agreement is made with reference to the following facts:

a. On or about May 14, 1984, Amire Lezcano and Celestino Lezcano (the "Debtors") acquired the residential real property commonly known as 2525 Mayberry Street, Los Angeles, California 90026 (the "Property"). The Debtors acquired the Property from the State pursuant to the terms of a Right to Purchase Agreement dated February 9, 1984 ("RTPA").

b. Pursuant to the RTPA, the Debtors purchased the Property for the sum of \$21,204. The fair market value of the Property at the time of the sale to the Debtors was \$79,000. However, Government Code Section 54237 requires state-owned surplus single family residences to be sold at a discount to families of low or moderate income. Debtors obtained title to the Property under this program.

c. In exchange for being able to purchase the Property for below market value, the Debtors were required to abide by certain covenants contained in the Agreement, including the requirement that Debtors obtain the consent of the State prior to encumbering, selling or transferring the Property.

d. On or about March 2, 2009, the Debtors transferred the Property to their living trust.

e. On or about April 7, 2009, the Debtors transferred the Property to their daughters, Caridad Lezcano and Barbara Lezcano.

f. The State did not consent to Debtors' transfer of the Property to their living trust, and then to their daughters. Thus, the State asserts that these transfers violated the RTPA. As a result, the State further asserts that it is required to repurchase the Property from the Debtors.

g. On July 9, 2010, the Debtors filed a voluntary bankruptcy petition under Chapter 7 of the Bankruptcy Code. The case is pending before the United States Bankruptcy Court for the Central District of California (hereinafter "Bankruptcy Court") as In re Amire Lezcano and Celestino Lezcano, Case No. 2:10-bk-27541-BR.

h. The State contends that the Debtors failed to timely and properly notify the State of this filing for bankruptcy in accord with the RTPA.

i. The Trustee contends that the Property may be administered for the benefit of the bankruptcy estate.

j. It is the intention of the Trustee and the State to settle their disputes concerning the Property.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and for valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

3. PAYMENT TO ESTATE

a. The State shall make the total payment of \$58,235.58 (the "Payment") to the estate which shall be allocated as follows: the cost to repurchase the "Property" from the bankruptcy estate (\$46,615.53), the total amount of all of the unpaid mortgage balance (approximately \$7,620.05), the reasonable title fees and costs, and California property taxes, and the anticipated legal cost associated with delivering the Property to the State free of any occupancy (not to exceed \$4,000.00). The Property shall be entirely vacated by any of its residents and/or non-residents, pursuant to Section 6 below. With the funds identified herein, the estate shall pay the mortgage company all of the remaining outstanding unpaid balance. The State shall handle title fees and costs through its own vendor.

b. The Payment shall be made the later of (i) 120 days of entry of the Bankruptcy Court order approving this Agreement and from the actual date of receipt of two original filed stamped certified conformed copies of such order to the State's Attorney, Alexander Prieto, Deputy Attorney, Legal Division, California Department of Transportation, 100 South Main Street, Suite 1300, Los Angeles, California 90012-3702, or (ii) delivery of possession of the Property entirely vacated by any of its residents and/or non-residents, pursuant to Section 6 below.

c. Any unused funds, i.e., from the unpaid mortgage balance and unused legal costs, including fees, in delivering the Property to the State free of any/all occupancy shall be returned to the State within ninety (90) days of receipt of the funds by the Trustee and the trustee shall provide the State with an accounting of the expended funds within that same ninety (90) day period of time. The Payment shall be made by check payable to: "Right of Way Division, California Department of Transportation, District 7" and mailed to the following address:

Attention: Paul Lalmond, Sr. Right of Way Agent
Right of Way Division
California Department of Transportation
100 South Main Street, 3rd Floor
Los Angeles, California 90012

d. The Trustee shall timely execute a completed State of California "Payee Data Form" and any related documents.

e. The State shall take the "Property" free from any/all encumbrances, debts, liens, claims, and obligations, as a result of this Bankruptcy.

f. The Payment shall be made by check payable to "Timothy J. Yoo, Chapter 7 Trustee" and mailed to the following address:

Carmela T. Pagay
Attorney for Trustee
Levene, Neale, Bendet, Yoo & Brill L.L.P.
800 S. Figueroa Street, Suite 1260
Los Angeles, California 90017

4. APPROVAL BY THE COURT

After the parties herein approve this Agreement, it shall then be submitted to the California Transportation Commission for its approval. Only after the California Transportation Commission has approved this entire Agreement, it may then be submitted by the Trustee for an order approving this Agreement before the Bankruptcy Court. Within five business days after the Bankruptcy Court order approving this same Agreement has been entered, the Trustee shall then provide the State with two original certified filed stamped conformed copies of the Bankruptcy Court's order.

5. BREACH OF AGREEMENT

If, for any reason, the State fails to timely deliver the Payment to the Trustee as required herein, the State consents that the Trustee is authorized to proceed with the marketing and sale of the Property for the exclusive benefit of the bankruptcy estate, free of any obligations under the RTPA.

6. QUITCLAIM DEED

Upon delivery of the Payment to the Trustee as required herein, the Trustee shall provide the State with a quitclaim deed transferring the estate's right, title, and interest in the Property to the State. At that time, the Property shall be completely and entirely vacated by the Debtors and any/all other persons who may reside at the Property. The State acknowledges that the Property is being transferred on an "as is" basis.

7. RELEASES

Subject to the terms and conditions of this Agreement, the Trustee hereby releases the State from all of the estate's claims concerning the Property, and the State hereby releases the Trustee and the Debtors' estate from all claims concerning the Property.

The State shall take the "Property" free from any/all claims, encumbrances, debts, liens, claims, and obligations, as a result of this Bankruptcy.

8. SETTLEMENT

This Agreement affects the settlement of claims which are denied and contested and nothing contained herein shall be construed as an admission by any party hereto of any liability of any kind to any other party. Each of the parties hereto denies any liability in connection with any claim and intends merely to avoid litigation and buy its peace.

9. REPRESENTATIONS AND WARRANTIES

Each of the parties to this Agreement represents, warrants, and agrees as to itself as follows:

a. Each party hereto represents that he has full authority and capacity to execute this Agreement on her/his/their own behalf.

b. No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and each party does not rely upon any statement, representation or promise of any other party (or of any officer, agent, employee, representative, or attorney for the other party), in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.

c. Each party to this Agreement has made such investigation of the facts pertaining to this settlement and this Agreement and of all the matters pertaining thereto as it deems necessary.

d. Each party has read this Agreement and understands the contents hereof.

e. In entering into this Agreement and the settlement provided for herein, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this Agreement was untrue, or that any fact was concealed from it, or that its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including, without limitation on the generality of the foregoing, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding between the parties

hereto, regardless of any claims of misrepresentation, promise made without the intention to performing, concealment of fact, mistake of fact or law, or of any other circumstance whatsoever.

f. The parties will execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.

g. Each term of this Agreement is contractual and not merely a recital.

h. It is within the contemplation of each of the parties to this Agreement that each of them may have claims for relief or causes of action for malicious prosecution or abuse of process in connection with the filing of claims for relief, causes of action, counterclaims or cross-complaints in the adversary proceedings and matters undertaken in connection therewith. It is the intention of the parties to this Agreement to release any such claims, to deny that any malicious prosecution of actions or abuse of process has occurred, and to represent and agree that the filing of all claims for relief, causes of action, counterclaims, or cross-complaints in the foregoing civil action, was done pursuant to the advice of legal counsel and upon probable cause.

10. MISCELLANEOUS

a. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

b. This Agreement is the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Agreement may be amended only by an agreement in writing and executed by the parties herein or their respective authorized agent.

c. Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party.

d. In the event of litigation relating to this Agreement, the prevailing party shall be entitled to attorneys' fees.

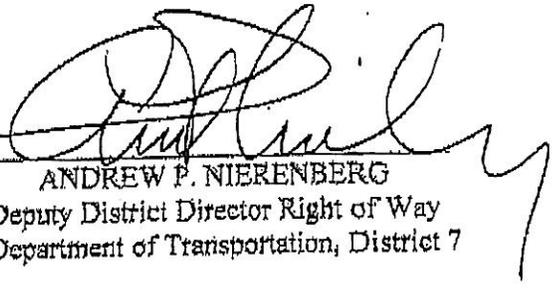
e. This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart (including facsimile and electronic signatures) shall be deemed an original, and, when taken together with other signed counterparts, shall

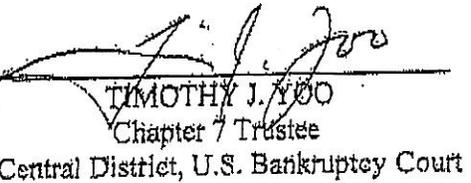
constitute one Agreement, which shall be binding upon and effective as to all parties.

f. The parties hereto agree that the United States Bankruptcy Court for the Central District of California shall have sole and exclusive jurisdiction, sitting without a jury, to hear and determine disputes that arise under or on account of this Agreement.

g. If any of the provisions of this Agreement are held by the court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall nonetheless continue in full force and effect without being impaired or invalidated in any way.

This Agreement, consisting of six (6) pages, is made and entered into in the City of Los Angeles, County of Los Angeles, State of California, United States of America.

Dated: May 24, 2012 
ANDREW P. NIERENBERG
Deputy District Director Right of Way
Department of Transportation, District 7

Dated: April 25, 2012 
TIMOTHY J. YOO
Chapter 7 Trustee
Central District, U.S. Bankruptcy Court