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December 17, 2007

Shirley Concolino
Sacramento City Clerk
915 I. St, First Floor
Sacramento, CA 95814

Re: *Public Hearing on December 18, 2007 at 2:00 p.m.*

Dear Ms. Concolino:

Enclosed herewith please find the objection letter and related Exhibits of Moe Mohanna. Please distribute these to each Board Member for their consideration prior to the hearing to condemn the property interests on the 700 and 800 Block of K Street to be held today at 2:00 p.m.

Thank you for your assistance with this matter. If you have any questions, please feel free to contact me at (408) 836-5309.

Very truly yours,

GERALD HOULIHAN

GH:mr



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December 17, 2007

Honorable Chair & Members of the Board of the
Sacramento Housing & Redevelopment Agency
915 I Street
Sacramento, CA 95814

Re: *Proposed Resolution of Necessity to Acquire Real Property on the
700 and 800 Blocks of K Street*

Dear Honorable Chair and Members of the Board:

Our firm represents Moe Mohanna and his interest in Urban Innovation, LLC ("Owners"), whose properties are the subject of the proposed Resolution of Necessity that is under consideration. The pertinent facts, as well as the Owners' objections to the proposed taking of their property, follows.

FACTUAL STATEMENT

For more than two decades, property owner Moe Mohanna has been in the process of redeveloping the 700 Block and 800 Block properties the Agency seeks to condemn - by buying old, dilapidated buildings, fixing them up with his own sweat and savings, and leasing spaces. (Exh. 1, Decl. of Moe Mohanna, ¶¶ 3, 4, and 7.) As part of this process, Mohanna has associated with businessmen John Lambeth and Bill Tucker and forged additional relationships with local banks, who have loaned him and his business associates the funds needed to rehabilitate these properties. (Exh. 1, Decl. of Moe Mohanna, ¶15.)



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The Owners accomplished this with no help (and no subsidy) from the City of Sacramento or the Redevelopment Agency. Indeed, the Agency significantly impeded the property owners' efforts by failing to take any reasonable measures to cure the alleged blight in the surrounding neighborhood. A key obstacle to improving the area is the presence of the Greyhound bus station nearby, but the Agency has failed to take any measures to relocate the station.

Nevertheless, the Owners moved ahead, using initiative, industry, and their own resources.

It took the Owners over 20 years to assemble ownership interests in five buildings on the 700 Block of K Street (712, 716, 718, 724, and 726 K Street). The Owners were now ready to proceed with further developing of the 700 Block – with their own money, and no subsidy of taxpayers' funds. They developed a plan for revitalizing the block, lined up a lender willing to finance the project (*Bank of the West*), and forged a relationship with a prominent real estate brokerage firm (*Terranomics*) to bring in unique, urban retailers.

Included in the Exhibits binder are recent photographs of the 700 Block properties (Exhibit 15) and an artist's rendering of how those properties would potentially look after the Owners' project is completed. (Exh. 2.) The photos of the successful rehabilitation projects completed by the Owners are provided to provide concrete examples of their ability to complete projects of this nature. (Exh. 15.)

Soon after the Owners acquired the last piece of the puzzle, the Agency struck. Redevelopment Agency officials told the Owners that the Agency intended to take away the Owners' buildings and turn around and give them (with a sizable chunk of taxpayers' money) to another private entity, Zeiden Properties. In fact, before the Agency even acquired these 700 Block buildings, it entered into a DDA with Zeiden Properties, promising to deliver them to Zeiden Properties. (Exh. 3.) That DDA is still alive and well, and City and Agency officials have recently advised us that they have every intention of delivering those properties to Zeiden Properties because the Agency is "legally obligated" to give them to Zeiden Properties.

Agency employees told the Owners that unless they agreed to transfer their five buildings on the 700 Block to the Agency, the Agency would take them forcibly, through eminent domain. (Exh. 1, Decl. of Moe Mohanna, ¶8.) Faced with this threat, on April 18, 2006, the Owners signed a Land Exchange Agreement (hereafter "LEA") that states in "Recital I" that the Owners are submitting to "the threat of eminent domain."¹ (Exh. 4.)

Under the LEA, the Owners agreed to swap, "value for value", their five buildings on the 700 Block of K Street for four and one-half buildings and some vacant land on the 800 Block of K Street (800, 802, 812, and 816 K Street, and 809 & 815 L Street). (LEA, Recital B.)

The LEA required the Agency to deliver the 800 Block buildings to the Owners with "no material adverse change in the physical condition" of the buildings (Paragraph 4.5(b)).

When the LEA was signed, the 800 Block buildings were in good shape. (Exh. 1, Decl. of Moe Mohanna, ¶11.) But after the LEA was signed, the Agency failed to protect these buildings. The 812 K Street building was left unattended, which enabled transients to live there and gain access to the 810 K Street building – which was already owned by Mohanna. They set 810 K Street on fire. (Exh. 1, Decl. of Moe Mohanna, ¶11.) Over Mohanna's objection, the Agency then demolished both the 802 K Street Building and the 812 K Street building. During this demolition by the City, a crane damaged the 816 K Street building, destroying a portion of the roof, walls and rear of the building. The City then closed the 816 K Street building as dangerous. (Exh. 1, Decl. of Moe Mohanna, ¶11.)

Then the Agency demanded that the Owners accept one uninhabitable building and two piles of rubble – producing \$0 income - in exchange for the Owners' well-maintained, income-producing buildings that the Owners had redeveloped with their own sweat and savings – so the Agency could turn around and deed these properties to another private entity, Zeiden Properties.

¹ The LEA is actually one of a series of Agreements making up the Land Assembly Agreement including the Saca Team Exclusive Negotiation Agreement, Saca Team Right of First Negotiation, Option Agreement, and Owner Participation Agreement which the Board has previously approved.

Thereafter the Agency chose to interfere with the Owners' relationship with their tenants. The Agency hired a relocation company to harass Defendants' tenants with notices falsely asserting that the Agency already had title, which caused the tenants to vacate their premises. This has cost the Owners over \$40,000 in lost rents, every month. (Exh. 1, Decl. of Moe Mohanna, ¶14.)

When the Owners refused to accept rubble for buildings, the Agency sued for specific performance. The Agency then filed a *lis pendens* against the five 700 Block buildings. Once one of Mohanna's key lenders (*WestAmerica Bank*) learned of this, it notified Mohanna that it would "cease all real estate transactions with you and your partners" until the matter is resolved. (Exh. 1, Decl. of Moe Mohanna, ¶16.)

Judge McMaster granted the Owners' motion to expunge the Agency's *lis pendens*, finding that the Agency could not prevail in its lawsuit:

A condition of the Land Exchange Agreement is that Real Parties receive 'value for value' in the exchange of the 800 block of parcels. However, due to the November 2006, fire at the building at 810 K Street, and the subsequent demolition of three of the buildings on the 800 block, the Agency is unable to comply with the 'no material adverse change' requirement, as the buildings are no longer standing an undamaged.

Judge McMaster then granted the Owners' motion for \$42,000 in attorney's fees, finding that the Agency *never had a substantial justification to believe* that it could have won the lawsuit:

Plaintiff Agency asserts that it had a substantial justification for filing the *lis pendens*, as the defendants had not notified the Agency, prior to filing the motion to expunge, that provision that it considered the Nov. 2006 fire and subsequent

demolition of the buildings to be a 'material adverse change in the physical condition. Instead, the Agency assumed that as the defendants were responsible for future demolition of the buildings of the 800 block, the fire did not alter their intent to perform under the contract.

However, the contract provisions do not require defendants to commence redevelopment of the 800 block at any specific time. Further, Defendants should be able to control when and if the buildings on property agreed to be conveyed to them are destroyed. The Agency knew or should have known, when the fire and demolitions occurred that it constituted a 'material adverse change in the physical condition' in the real properties.

The Agency then asked the Court of Appeal to overturn Judge McMaster's ruling, but the Court denied the Agency's Petition.

After the Agency kept losing their legal battles, the Mayor agreed to negotiate. The Owners wanted to keep their 700 Block buildings, but the Mayor said "That's for Zeiden, not for you", and demanded that the Owners accept the 800 Block rubble. To help the City, the Owners tried to come up with a satisfactory proposal. They presented a plan for a beautiful complex of retail and housing on the 800 Block. The City insisted that the plan be scaled down, and the Owners complied. The City insisted that an experienced urban developer be brought in, and the Owners complied. The developer needs financial assistance, and the City Manager said the City might help. The Owners and the City Manager are now working on the details, and have another meeting with the City Manager set for early January.

At the same time, the Agency slapped the Owners with a notice that it means to take the 700 Block and 800 Block properties by eminent domain. The Owners had submitted to the City's demands, negotiations have been going well, and now the Agency threatens to take the property by force.

The Agency apparently believes that the threat of eminent domain will put additional pressure on the Owners to accept the Agency's negotiation terms. The Owners were so offended by the Agency's tactic that they considered breaking off negotiations, but they have not done so. Because of the Agency's tactic, however, the Owners now consider all options – including their retention of the 700 Block properties – to be back on the table.

At this point, if these negotiations are to succeed, the Agency will have to show some sign of good faith before the Owners can trust them. The Board's defeat of this proposed Resolution Authorizing Acquisition by Power of Eminent Domain (hereinafter "Resolution") would be a helpful step in that direction.

Objection No 1: The proposed Taking Violates the Underlying Purposes of California Redevelopment Law.

Despite the Agency's attempt to cast this as a condemnation necessary to eliminate blight, the facts belie such a characterization, especially as it concerns the 700 Block. Prior to the Agency's unreasonable interference with the Owners' tenants, all of the Owners' buildings on the 700 Block had been renovated and most of them leased. (Exh. 6.) Additionally, the properties at 700 and 704 K Street were tenanted by Men's Wearhouse and Joe Sun until the Agency terminated their leases. Ironically, the property at 708 K Street that has undergone the least rehabilitation belongs to Zeiden Properties. Yet, this property is not to be condemned. To the extent the current vacancies constitute blight, this is blight manufactured by this Agency and cannot be relied on in justifying the proposed taking.² (Exhibit 13.)

How the City can justify earmarking for "redevelopment" the portion of the 700 block that has been restored and tenanted is hard to fathom. The only reasonable conclusion is that the Agency's actions are aimed at substituting the existing ownership and tenants for new ownership and tenants. This conclusion is reinforced by the fact that all of the buildings in the 700 Block are historical and are being retained for a retail use in their current configuration by Zeiden Properties, pursuant to the DDA executed on June 13, 2006.

² A sample of the letter sent to all of the Owners' tenants is found at Exhibit 13 and to economize on space Owners have not included every letter to every tenant which are basically identical to Exhibit 13.

Thus, the Agency is, in effect, not eliminating blight, but rather is favoring one type of owner and tenant at the expense of the existing owners and tenants. This is an abuse of the powers of redevelopment and has been expressly rejected in California. The California Supreme Court has warned that "[p]ublic agencies and courts both should be chary of the use of the [redevelopment] act unless, ... there is a situation where the blight is such that it constitutes a real hindrance to the development of the city and cannot be eliminated or improved without public assistance. It never can be used just because the public agency considers that it can make a better use or planning of an area than its present use or plan." *Sweetwater Valley Civic Ass'n. v. City of National City* (1976) 18 Cal. 3d 270, 278 (citation omitted). Or stated otherwise, "[o]ne man's land cannot be seized by the Government and sold to another man merely in order that the purchaser may build upon it a better house or a house which better meets the Government's idea of what is appropriate or well designed." *Redevelopment Agency v. Hayes* (1954) 122 Cal.App.2d 777, 793.

This condemnation proposes to do precisely what the California Supreme Court has stated is improper.

Objection No 2: The Properties Are Not In Need of Condemnation to Relieve Blight

A public agency may acquire property through eminent domain only when redevelopment cannot be accomplished by private enterprise alone. Health and Safety Code §§ 33037(b), 33342.

The Owners' twenty year history of successful rehabilitation and tenanting of its properties on K Street without any Agency funding is ample evidence that redevelopment can be accomplished without the condemnation of the properties. Moreover, all of the properties on the 700 Block have been upgraded and consistently tenanted, indicating the viability of the block without Agency intervention. The lone exception was 726 K Street which was renovated and about to be leased by an established retailer, Sheikh Shoes, until Agency staff objected to this tenant.

Also, the Owners' properties on the 700 Block are not blighted. Each has been renovated and, until the Agency interjected itself, was fully tenanted. To

the extent that the Owners' Properties on the 700 Block were blighted at the time the Downtown Redevelopment Plan was adopted, that blight was eliminated by the Owners' renovation of the properties, which were approved by the Agency from 1985 to 2004. Approval of the Owners' earlier renovations by the Agency is proof that the current buildings and uses are in conformance with the Merged Downtown Sacramento Redevelopment Plan, since Section 324 of the Plan requires the Agency review all development plans to insure that all projects are consistent with the Plan. (See Exhibit 15 for photos and layouts of the buildings.) There have been no new blight studies or findings to alter the fact that these buildings are in full compliance with the Downtown Redevelopment Plan. Thus there is no authority to condemn. *Boelts v. City of Lake Forest* (2005) 127 Cal.App.4th 116.

Nor can the Agency make a good faith argument that the properties at 700, 704 and 708 K Street are so blighted that assemblage is required. All of these buildings have seen significant investment and did not have high vacancy rates prior to the Agency's relocation efforts. (See sample at Exh. 13.)

The staff memo attempting to rationalize this condemnation relies heavily on generalized crime statistics and regurgitates, without analysis, buzz words related to redevelopment and blight. Such conclusory language is insufficient to support this Resolution. *County of Riverside v. City of Murrieta* (1998) 65 Cal.App.4th 616, 627.

The crime analysis is deeply flawed and cannot be relied upon. First, many of the incidents are alcohol related, but none of the Owners' properties were engaged in the sale of alcohol. Next, it encompasses an area far larger than the Owners' properties, including the Greyhound station as well as properties owned but left vacant by the Agency. There is no indication, that the crime took place on the Owners' properties or areas within the Owners' control. It is unreasonable to single out one set of Owners in the neighborhood for problems beyond their control.

The staff memo justifies the taking on the assertion that the property is underutilized and not economically viable. Justification for this assertion is completely absent, as the properties were fully tenanted before the Agency undertook its relocation activities and were generating \$40,000.00 per month in

rents until the Agency wrongfully evicted the tenants. There is also an assertion that the parcels are of an inadequate size for the current marketplace. This assertion is contrary to Health and Safety Code section 33031(a)(2), which was recently amended to eliminate this rationale from serving as a blight factor. Additionally, the irregular shapes and sizes of the parcels by themselves is legally insufficient to justify condemnation. This assertion that the size and shape of the parcels frustrates proper use also is factually inaccurate as the buildings in their current size and configuration were leased at competitive rents.

Furthermore, the 700 Block has had a history of national tenants, including Burger King, Hallmark and Men's Warehouse, which contradicts the naked assertion by the staff that the structures did not meet current retail standards. Even if the interiors of the buildings were outdated, this is not a structural issue and hardly requires intervention by the Agency to eliminate. By virtue of owning contiguous parcels, the Owners have the flexibility of modifying the internal walls to accommodate large retail tenants as necessary. And with the \$3.8 million in financing from the *Bank of the West* (Exh.5), coupled with \$3 million available in cash, the Owners can update the interiors of the buildings as required by new tenants. In fact, the Owners are doing it with their own resources and not requiring the Agency spend \$28 Million in tax dollars (\$20 Million for land acquisition, \$4 Million subsidy to Zeiden Properties, \$4 Million streetscape expenditure to meet Zeiden Properties' demands).

The vacancy analysis contained in the Staff Report (Attachment 2) is misleading and, in some instances, completely false. The August 2007 vacancy information is corrupted by the fact that the Agency created the vacancies by improperly relocating the tenants. (Exh.13.) Additionally, the vacancy information for 712, 714, 718, 720, 722, and 724 K Street is wrong. The spaces had much lower vacancy rates than indicated. (Exh. 6.) As for 726 K Street, Sheikh Shoes would have leased the space in 2004 but Agency Staff objected.

The vacancy information is also completely misleading as to the 800 Block properties. Most of the 800 Block is raw land being assembled for development which by definition precludes having tenants. Moreover, the Owners have demolished the unsafe buildings pursuant to the City's codes and demands.

Attachment 9 to the Staff Memo details building code violations and is also completely misleading as it gives the incorrect impression that all of the buildings failed to meet code. In fact, the violations only relate to three buildings and two of those buildings have been demolished (806 K Street and 1109 8th Street). In other words, these are not current violations.

The report for 806 K Street details violations that predated the Owners' purchase of the building in 2004. And the report for 712 K Street deals with a tenant's disregard for City codes and has nothing to do with the Owners or the structural integrity of the building.

In reality, the Owners' buildings were operational and leased out. These tenants had valid business licenses from the City of Sacramento. Moreover, the buildings were subject to ongoing inspections by the Health Department and Fire Department and consistently passed muster.

The Agency staff has failed to offer any objective evidence to support its asserted rationales for the need for this condemnation. Unsubstantiated assertions coupled with recitation of the Health and Safety Code sections without any analysis or studies to support the assertions is not substantial evidence to support this resolution.

Objection No. 3: The Proposed Taking Violates Health and Safety Code §33339

Health and Safety Code §33339 requires, "Every redevelopment plan shall provide for participation in the redevelopment of property in the project area by the Owners of all or part of such property if the Owners agree to participate in the redevelopment plan adopted by the legislative body for the area."

The Owners have expressed their willingness and ability to participate in any redevelopment proposal that the Agency develops for the 800 Block, provided the development makes economic sense. The Agency has represented to the Owners that it wants to continue working with the Owners to develop the 800 Block, yet it is attempting to condemn the Owners' interest in this Block. This condemnatory action is inconsistent with the Agency's

representation. Moreover, the Agency is treating property owners in a dissimilar manner, as the Agency is not condemning Zeiden Properties' parcels on the 700 Block, even though the Agency alleges it is not predetermined to any course of action.

The Agency's pre-occupation with Zeiden Properties having ownership of the 700 Block coupled with the Agency's inability to formally commit to insuring an equal value exchange relating to the 800 Block development has resulted in the Owners being short changed of their owner participation rights on the 700 Block. The Owners were never given a real opportunity to submit development plans for the 700 Block, even though a majority of the property is under the Owners' control. (Exhs. 7, 8, 9, and 10.) The Agency has not met its "duty of reasonableness and good faith" required by law. *Fellom v. Redevelopment Agency* (1958) 157 Cal.App.2d 243, 250.

The Owners wish to exercise their owner participation rights and develop the entire block. To that end, they have assembled an experienced development team: *Howard S. Wright Constructors* for construction expertise as it relates to structural issues and tenant improvements, *Terranomics* to handle the recruitment of national and unique urban retailers, and *Bank of the West* to provide up to \$3.8 million in financing. (Exh. 5.) Additionally, the Owners have \$3 million in cash available to them. The Owners are ready, willing and able to make the retail plan envisioned by the Agency come to fruition, and section 33339 requires this Board to work with the Owners to accomplish it.

Objection No. 4: The Proposed Taking Violates Health and Safety Code §33394 and Section 309 of the Merged Downtown Sacramento Redevelopment Plan

Health and Safety Code §33394 provides:

Without the consent of an owner, an agency shall not acquire any real property on which an existing building is to be condemned on its present site and in its present form and use unless such building requires structural alteration, improvement, modernization or

rehabilitation, or the site or lot on which the building is situated requires modification in size, shape or use or it is necessary to impose upon such property any of the standards , restrictions and controls of the plan and the owner fails or refuses to agree to participate in the redevelopment plan pursuant to Sections 33339, 33345, 33380 and 33381.

See also *Redevelopment Agency v Herrold* (1978) 86 CA3d 1024.

The Agency Project calls for the existing buildings to remain and the existing use to remain retail which brings this proposed taking squarely within the prohibition of HS&C section 33394. This same prohibition is contained in section 309 of the Amended Downtown Redevelopment Plan.

The Staff memo of 12/11/2007 states that the only modifications considered by the approved project are those necessary to "meet current retail standards." The "modifications" necessary to reach current retail standards are cosmetic and constitute nothing more than tenant improvements. These "modifications" are insufficient to excuse compliance with Health and Safety Code Section 33394.

Moreover, the Owners have always been willing to participate in the redevelopment plan and have already complied, as their actions are consistent with and in furtherance of the Merged Downtown Redevelopment Area. They have already undertaken and completed the structural rehabilitation of the buildings in the 700 Block. The historical significance of the buildings precludes any major modifications by any developer, including Zeiden Properties. Any additional modification is dependent on tenant needs, and the Owners have the expertise and financial wherewithal to make modifications as necessary and negotiated with each tenant.

The fact that the Owners' plans and actions are consistent with the Merged Downtown Project area is established by section 324 of the Amended Redevelopment Plan which expressly requires that the development plans be reviewed by the Agency to determine consistency with the Redevelopment Plan. Since this review was undertaken, the approvals granted, the permits issued,

and the renovations completed, there can be no question that the 700 Block has been rehabilitated and is consistent with the Redevelopment Plan.

Objection No. 5: The Agency's Proposed Resolution to Condemn These Parcels is Invalid for Failure to Comply With its Own Redevelopment Plan, Implementation Plan, and Rules for Owner Participation.

State law requires that this Agency's actions be consistent with the Merged Downtown Redevelopment Plan, the Five Year Implementation plan, and the adopted Rules for Owner Participation and Preference. (*Redevelopment Agency of the City of Berkeley v. City of Berkeley* (1978) 80 Cal.App.3d 158, 171.) The proposed resolutions are invalid because the resolutions directly conflict with the above referenced documents. This condemnation is also contrary to the policies and objectives outlined in the "Economic Development Strategy Framework" adopted on April 18, 2000.

Objection No. 6: The Property Is Not Being Taken for A Public Use, But Rather To Transfer Property From One Private Individual To Another

Here, the Agency claims that is necessary to condemn the subject property and transfer it to Zeiden Properties in order to redevelop this allegedly blighted property. However, as shown in Objection No. 1 and 2, the property is not blighted, and as shown in Objection No. 3, there is no need for condemnation in this instance. However, that is exactly what the Agency intends to do. It is quite clear that the Agency seeks to acquire these properties to transfer to Zeiden Properties by any means necessary. The Agency intends to take the Owners' properties not for a public use, but for the private use of another private entity who has curried favor with the Agency and conspired with the Agency to institute this pretextual taking. It has long been accepted that the sovereign may not take the property of *A* for the sole purpose of transferring it to another private party *B*, even though *A* is paid just compensation. *Kelo v. City of New London* (2005) 545 U.S. 469, 477.

There is no legitimate public purpose for the Agency to condemn the properties and to transfer them to Zeiden Properties for "redevelopment." The

reality is that the existing buildings are remaining and will be largely unchanged, due to the historical significance of the structures. The use of the buildings are currently retail and there is no proposal to change that use. Thus this is a naked transfer of one owner's retail locations to another owner for use as a retail location. Such a transfer is for private benefit and is illegal. *99 Cents Store v. City of Lancaster Redevelopment Agency* (C.D. Cal. 2001) 237. F Supp. 2d 1123.

Objection No. 7: The Agency has Predetermined That The Property Is To Be Condemned

It is clear from the record that the Agency has predetermined that it will be condemning the properties for the purpose of transferring them to Zeiden Properties, and that the hearing set for December 18, 2007, will be for the sole purpose of rubber-stamping this existing commitment. See *Redevelopment Agency v Norm's Slauson* (1985) 173 CA3d 1121, 1129 (Court found that hearing on resolution of necessity was a sham, because the Agency had already entered into an agreement with a developer whereby the property was to be transferred to the developer).

The Development and Disposition Agreement (DDA), exclusive right to negotiate, and Option Agreement between the Agency and Zeiden Properties, coupled with all the actions the Agency has taken to fulfill its obligations under these agreements indicate that the Agency has boxed itself in financially and contractually in such a manner that precludes it from judiciously considering the pro and cons of this condemnation. In fact, the memo in support of this Resolution justifies the necessity of the taking on the grounds that the "approved redevelopment project on the 700 and 800 blocks *requires* Agency control of the Subject Properties to progress further". (Page 8, Section 5.) Additionally, Agency staff has continually insisted that the Agency is contractually obligated to assemble and transition the properties to Zeiden Properties. (Exh. 7, 8, 9, and 10.) In fact, the Agency attorney specifically told the Owners that the Agency is legally committed to provide the buildings to Zeiden Properties and, that the Agency is unwilling to hold the hearings necessary to modify that commitment (Decl. of Moe Mohanna, ¶18).

The Agency decision to commit resources to relocate the light rail station and fund the streetscape improvements is further evidence that the Agency has already committed to Zeiden Properties. The record is clear that both actions were instigated by Zeiden Properties and those steps are in furtherance of the implementation of the Zeiden Properties' DDA. (Exh. 10.)

A review of the history of the Owners' interaction with Agency over the last four years leads to the conclusion that there has been a concerted effort to hand the property to Zeiden Properties. (Exhs. 7, 8, 9, 10 and 11.) This obsession with Zeiden Properties has tainted the whole process and precludes the owners from receiving a fair hearing on this matter.

Tellingly, the Agency is not condemning the building owned by Zeiden Properties, even though this is the building that has undergone the least rehabilitation. The only reason to not condemn Zeiden Properties is that the Agency has already determined that the Owners' properties will be used to meet the Agency obligations under the DDA with Zeiden Properties. Also, the Staff memo in support of the Resolution specifically relies upon the CEQA exemption determination for the Zeiden Properties DDA to justify CEQA compliance for this taking. It is obvious that this assemblage is for the sole purpose of handing it over to Zeiden Properties pursuant to the existing DDA and the Board has already exercised its discretion.

**Objection No. 8: The Project Does Not Satisfy The Requirement of
Greatest Public Good and Least Private Injury**

Section 1240.030 provides the power of eminent domain may be exercised only if all of the following are established:

- (a) The public interest and necessity require the project.
- (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and
- (c) The property sought to be acquired is necessary for the project.

As set forth above, the Agency cannot establish that the public interest and necessity require the taking and the redevelopment of the 700 Block by Zeiden Properties. Rather, this is a taking to transfer non-blighted property from one owner to another for the exact same use and no legitimate reason. There is no legal necessity for favoring or preferring one owner over another. Nor is there legal necessity for preferring one type of tenant over another.

Nor can the Agency establish that the project is planned or located in the manner that will be most compatible with the greatest public good and least private injury, or that the taking of the 700 Block is necessary for the project. There are locations all over the Redevelopment Area where the land is vacant or buildings are in need of rehabilitation, where Zeiden Properties can build a retail project. The Agency has failed to analyze any other location. These other locations would not require the condemnation of refurbished, viable retail properties that were fully tenanted prior to the Agency's unlawful forced relocation of the tenants. The private harm in this case far outweighs the public gain, since the same retail use in the same buildings is going to remain. There will be no new retail opportunities created by this project only the transfer of existing retail space to a different owner.

Objection No. 9: The Precondemnation Offer Does Not Meet The Statutory Requirements

Government Code §7267.2 sets forth the requirements for a precondemnation offer. The statute requires that the public entity provide the owner with a written statement of and summary of the basis for the amount it established as just compensation.

The Staff Memo indicates that the offer to purchase was made in August 2007. The only offer made was a contingent one, made with the intent to settle other litigation. (Exh. 12.)

An offer made pursuant to Government Code Section 7267.2 relates only to the property condemned. In this case, the Agency states the offer is intended to settle its breach of contract action and requires Mr. Mohanna to release "any claims he may have regarding lost rental income on the [identified properties], and any other claim related to [these] properties or agreements [concerning the

700 Block].” The lost rents relate to improper precondemnation conduct of the Agency through its relocation agent in cancelling leases between Mr. Mohanna and his tenants. The appraisals for the properties sought to be condemned do not include any compensation for loss of such rents although Agency Staff has represented to Mr. Mohanna that the Agency is responsible to do so. A contingent offer does not satisfy the statutory requirements and a valid offer has not been made.

Government Code §7267.2 requires the offer of compensation be made under specified circumstances and be accompanied by a statement and summary of the basis of the appraisal upon which the offer is made. This is not an empty requirement. The Agency is required to “make every reasonable effort to acquire expeditiously real property by negotiation.” (Govt. Code §7267.1(a).) In order for the owner to evaluate the adequacy of the agency's offer and to respond to it, he must be apprised of the basis for the appraisal. For that very purpose, effective the first of last year, the Legislature changed the requirements of the appraisal summary statement to set forth more information to aid the owner in this process. Another objective was to counter the use by agencies of stale appraisals using faulty data and reasoning to support unduly low appraisal values.

There are numerous faults with the appraisal summary statements that were delivered with the offers in this case. Without going into each and every defect, the major defects make the appraisals and their methodology both suspect and inadequate. In some respects they do not comply with the requirements of the statute at all. The statute requires that:

The written statement and summary shall contain detail sufficient to indicate clearly the basis for the offer, including, but not limited to, all of the following information:

(1) The date of valuation, highest and best use, and applicable zoning of property.

(2) The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value.

(3) Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.

Here, all of the appraisal summaries lack the specification of the date of valuation. They purport to support the valuation with two charts of sales data that contain no fewer than 30 errors involving such material matters as parcel size, building size, current use, location, condition, age and income. The properties were inspected in 2005 and some were not fully inspected. Tenancies changed in some instances in the two year interim between the appraisal inspection and the date of the report. The income data that is provided and apparently used in the income approach to valuation are not supported by any data at all. There is no rental survey provided. Most notably, the bulk of sales data is derived from sales of property that in many cases is not comparable. Without a date of value specified in the appraisal summary, it cannot be determined whether they are sufficiently close in time to be relevant.

These are not minor, technical violations of statute. They are central to a proper valuation. They are absolutely necessary to enable the owner to evaluate the offers and to respond to them. Moreover, there is absolutely no analysis included in the summaries that leads from the raw data, erroneous as it is, to the conclusion of value. For example, despite the absence of income data, there is no indication as to how the appraiser capitalized the net income to reach an indicated value of the subject properties. Finally, this offer does not include lost rent on the 700 Blocks resulting from the Agency's inappropriate relocation activities.

In short, the Agency must make a finding that "the offer required by Section 7267.2 of the Government Code has been made to the owner...of record." Based on the record in these proceedings, the offers and the appraisal summary statements upon which they are based, do not support such a finding. As set forth in *City of San Jose v Great Oaks Water Co.* (1987) 192 CA3d 1005, 1013, "[t]he provisions of Government Code §7267.2 are not merely discretionary guidelines, but mandatory requirements which must be observed by any public entity planning to initiate eminent domain proceedings through a resolution of necessity." The precondemnation offers herein fail to meet those

mandatory requirements and lack the good faith, care and accuracy required by law.

Objection No. 10: The Agency Has Failed To Comply With CEQA.

Environmental review under the California Environmental Quality Act (Pub.Res.Code §§21000-21177) ("CEQA") is an essential prerequisite to an eminent domain action. *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 594. A condemnor's failure to comply with CEQA requires dismissal of the eminent domain action. *Id.*; see also *City of San Jose v. Great Oaks Water Co.* supra, 192 Cal.App.3d at 1017-1018, (FN. 5), where the court held the Legislature specifically intended that any environmental review required by CEQA be included among the prerequisites to condemnation proceedings for public projects pursuant to CCP §1250.360 subd. (h).

The Resolution of Necessity as it is proposed fails to comply with the California Environmental Quality Act. Public Resources Code §§21000, et seq. The staff report in support of the December 11, 2007 City Council meeting agenda item (hereafter "Staff Report") acknowledges that no project-specific CEQA review has been performed, instead resting compliance on the programmatic EIR for the Merged Downtown Redevelopment Plan, upon an as-yet uncertified, project EIR for the 800 Block and upon exemptions to CEQA cited in the adoption of the Zeiden Properties' DDA on June 13, 2006. Relying on a yet to be completed and certified EIR to condemn a property is prohibited as "CEQA compliance should be completed prior to acquisition of a site for a public project." 14 Cal. Code Reg. Section 15400.

None of the environmental review cited in the Staff Report constitutes compliance with CEQA. Such compliance is required under before adoption of the resolution of necessity.

A fundamental threshold flaw with the proposed resolution's CEQA compliance is the lack of a project description. The CEQA analysis relied upon by the Agency simply does not apply to the proposed taking of two entire blocks of City property for the vague purpose of assembling them for redevelopment.

Nor does it discuss assembling the properties of all owners except Zeiden Properties which is located in the interior portion of the block.

A proper project description is vital to CEQA's effectiveness. See especially Guidelines §15125(e). Without knowing what the project is, it is impossible to analyze, describe and mitigate its environmental impacts.

The Resolution of Necessity simply provides that the Redevelopment Agency will take possession of two full blocks on downtown Sacramento's K Street. The Zeiden Properties' DDA is not part of that action—according to the Redevelopment Agency Staff Report. Nor is this uncertified, uncompleted EIR for 800 Block development a part of the project—that effort has been repeatedly shut down by the Redevelopment Agency in negotiations with property owners. None of the redevelopment plan documents or supporting environmental review discusses taking the two full blocks merely to sit on them.

A project EIR for a redevelopment plan may satisfy CEQA requirements. Public Resources Code §21090; *Citizens for Responsible Equitable Environmental Development (CREED) v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 613-614. But the 2005 redevelopment EIR does not identify a project seizing two full City blocks without a plan to relieve the blight that would result. Nor does the redevelopment plan or its various amendments discuss such a project. Rather the emphasis of the redevelopment plan is to work with existing Owners to improve properties, not seize them wholesale by eminent domain.

The 2005 programmatic EIR for the redevelopment area cannot support the resolution, when substantial evidence exists that specific environmental impacts will occur from this action. Significant changes have occurred that require additional environmental review beyond that conducted for any programmatic redevelopment EIR for the Merged Downtown area. These changes include:

1. The planned Railyards development, with its potential for increasing blight, urban decay, and traffic impacts to K Street;

2. The increased vacancies on K Street caused by acquisition of occupied and tenanted buildings by the Redevelopment Agency and City of Sacramento, including the Woolworth building and others which have sat vacant for years after being acquired for "redevelopment."

3. The failure of Zeiden Properties to produce any potential lessees as required under the Disposition and Development Agreement, potentially protracting blight if transferred to Zeiden Properties;

4. The vacancies caused by the Redevelopment Agency's premature eviction of many businesses from the 700 Block, creating a new blight by the perception of urban decay in the area. Two entire blocks held indefinitely by the Redevelopment Agency will create a new, significant, and unanalyzed cumulative impact;

5. Decline of the Westfield Downtown Mall, which would be accelerated by the vacancy of Z Gallery to the 700 Block and the adoption of the Railyards development project, contributing to the cumulative potential for urban decay created by the proposed resolution;

6. The continued presence of the Greyhound bus depot on L Street, which was not previously analyzed;

Potential urban decay of K Street resulting from the Railyards development has been addressed by the "Urban Decay Assessment," prepared by Keyser Marston Associates, Inc., August 14, 2007 for the Railyards Project Draft Environmental Impact Report. As noted in the Keyser Marston study (page 14):

"If the proposed Railyards is built, it would add approximately 1.5 million sq. ft., or nearly double the amount of existing retail space currently existing in the four concentrated locations within Downtown Sacramento. As shown on Table 6a, the retail space planned for the Railyards by 2015 would represent approximately 26% of total existing, under construction and planned inventory in the Downtown;

by 2025, the Railyards project would represent an estimated 32% of the Downtown retail inventory.” (Emphasis added.)

The Keyser Marston study describes K Street Mall as follows (page 14):

“K Street Mall (est. 132,000 sq.ft.), a pedestrian/light rail mall, currently with a large amount of vacancy as it is in transition; city plans call for transformation of the area to a higher-end retail, restaurant/entertainment downtown destination for both residents and visitors. An additional 450,000 sq.ft. of new retail space are under construction or planned in this area;”

The Railyard urban decay study compared two other similar projects, the 2.5 million square-foot Gateway project in Salt Lake City and the smaller, 400,000 square-foot Bay Street in Emeryville. While highlighting positive or mitigated impacts of the large-scale developments near to established or decaying downtowns, the study notes:

“Despite these positive indicators, a study by the University of Utah concluded that the opening of Gateway did impact the downtown malls in the following ways:

Gateway captured a share of their retail sales dollars. (According to one interviewee, the project has ‘sucked a lot of retail, office, and cultural energy out of downtown.’)

“Brokers interviewed also confirmed that some existing retail tenants did relocate from three separate Main Street locations in the downtown: from inside the downtown malls, from other Main Street buildings, and also from inside mall but with street frontage.”

"Office tenants also either have migrated or were targeted by Gateway."

Thus the proposed Railyard project provides substantial evidence of potentially significant cumulative environmental impacts from accelerated urban decay. With ongoing vacancies already existing as a result of Redevelopment Agency acquisition of property on K Street, this potential impact constitutes a grave threat to the viability of any K Street redevelopment scheme.

Compounding the cumulative urban decay impact, the Railyard project would result in significantly higher traffic volumes. The traffic impact study in the Railyard EIR does not address impacts on K Street and the streets that feed it. The proximity of the proposed Railyard project and the volumes of traffic it would create present substantial evidence of new, potentially significant environmental impacts never analyzed in the redevelopment area environmental documents.

In addition to these changes are specific environmental impacts from high-rise development of the 800 Block, as raised in the unfinished EIR started by the City for the 800 block but not certified. Because the resolution of necessity specifically envisions such high-rise development for the 800 block, those impacts should be addressed before the approval of the site acquisition for such a project.

Finally, the proposed taking and the spending of tax increment money to finance the compensation for the taking would violate other state and City policies and ordinances, including those requiring provision of low income housing.

Objection No. 11: Abuse of Process

The Agency's actions to date have been an abuse of process. The Agency has conspired with Zeiden Properties to maneuver the Owners off of the 700 Block and the Agency's actions have all been in furtherance of turning the property over to Zeiden Properties. The Agency has afforded the Owners no true opportunity to keep their property and develop it, but rather has thrown up road blocks at every turn, and then blamed the Owners for failing to surrender its property. Yet the portion of the 700 Block under the Owners' control has

been redeveloped and was tenanted to a far greater level than the Agency has been able to accomplish in the properties it has acquired in the neighborhood. Owners remain willing to commit to making the improvements necessary to make their portion of 700 Block a unique urban retail destination. But the Agency says no, we are giving your property to someone else who requires a large City subsidy.

Objection No. 12: Failure to Negotiate in Good Faith For 800 Block

The Staff Report states that negotiations are continuing for Mr. Mohanna's development of the 800 Block. To adopt a resolution of condemnation on the Owners' 800 Block properties does not advance negotiations. Rather, it stands as a hammer over the Owners, compromising the negotiations. The decision to ignore the terms of the contractual agreements and institute eminent domain proceedings constitutes a breach of the implied contract of good faith and fair dealing. *U.S. Trust Co. of New York v. New Jersey* (1977) 431 U.S. 1, 25.

Further, there is no urgency to "move to condemnation", which Staff states is a "last resort", unless the Agency has secretly decided that Zeiden Properties is to receive the 800 Block property as well. The Agency's focus should be on firming up the details with the Owners on the development of the 800 Block, since this provides a solution to both Blocks without condemnation.

Objection No. 13: Agency Does Not Have the Authority to Condemn Personal Property and the Agency is Estopped From Condemning the Owners' Property in this Instance

The proposed Agency action has the effect of condemning its own contract which is in violation of CCP Section 1240.110(b), Health and Safety Code Section 33391(b) and the Contract Clause of the U.S. Constitution. The contracts between the parties are by their terms personal property and cannot be condemned. Thus, the Agency lacks the requisite statutory authority to undertake this proposed condemnation and is acting in excess of its authority, which constitutes an abuse of discretion.

The Agency has previously threatened eminent domain against the owners' properties and opted to enter into numerous contractual arrangements in lieu of eminent domain. By doing so, the Agency has waived its rights to acquire these properties by eminent domain instead of the contracts it signed. In addition, the Owners have expended large amounts of money preparing to carry out the terms of these Agreements. Having induced the Owners to sign the Agreements by threatening to use eminent domain the City is now estopped from attempting to condemn rather than honor its contractual obligations.

CONCLUSION

The reality is that Zeiden Properties covets the property of these Owners. This is unfair as the Owners have spent 20 years renovating it and building it back up. Zeiden Properties is no knight in shining armor for the City of Sacramento. Zeiden Properties could have chosen numerous completely vacant blocks upon which to build its project. But rather than add to what was already being done by the current Owners, Zeiden Properties approached the Agency about condemning a block that was already established and viable, because Zeiden Properties wants this location. The reality is the Agency is spending \$28 Million to retain the exact same retail use, the exact same buildings, the exact same square footage, and only switching owners. This is not appropriate under the state or federal constitutions nor is it permitted by California Redevelopment Law.

For these reasons, the Resolutions of Necessity should not be adopted. To do so in light of the facts and objections constitutes a gross abuse of discretion.

Very truly yours,



NORMAN E. MATTEONI

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enc.