



**Supplemental Material
Received at the Meetings of
City Council
Redevelopment Agency
Housing Authority
Financing Authority
For**

December 18, 2007

Item #31: (Redevelopment Agency) Resolution of Necessity to Acquire Real Property Known as 712, 716, 718, 724, 726, 806, 810 and 816 K Street and 1109 8th Street

- a. Documents for the record submitted by Leslie Fritzsche the Downtown Redevelopment Manager:
 - 1. 2005 Proposals from Zeiden Team and Evergreen/Fisher/Mohanna Team
 - 2. Zeiden Option Agreement (to allow Agency purchase)
 - 3. Building Permit Information
 - 4. Letters Rejecting Offers for Just Compensation
 - 5. K Street Retail Space History
- b. "Statement of Opposition" document submitted to the City Council from Kelly Smith attorney on the Mohanna legal team.

Item #37: Green Building Program

- a. Letter submitted to the City Council from Kari Bryski with McMartin Realty and Qworkz Consulting.

EXHIBIT B
ZEIDEN OPTION AGREEMENT

**EXHIBIT B:
ZEIDEN OPTION AGREEMENT
700/800 K STREET**

This Option Agreement ("Agreement") is entered into on April 18, 2006 (the "Effective Date") by and between Redevelopment Agency of the City of Sacramento a public body, corporate and politic (the "Agency") and Zeiden Properties, LLC, a California limited liability company ("Zeiden") who agree as follows. Capitalized terms not defined in this Agreement shall have the meaning set forth in the Land Assembly Agreement between the parties hereto and others, as of the date hereof.

1. General

1.1. Properties

1.1.1. Agency Acquisition Parcels – 700 Block. Those properties commonly known as Assessor's Parcel Nos. 0006-096-02, 006-096-03, 006-096-10 and 006-096-24 ("Agency Acquisition Parcels").

1.1.2. Zeiden Transfer Parcel. The property commonly known as Assessor's Parcel Nos. 006-098-07 and more particularly described in Attachment 1 attached hereto and incorporated by reference herein (the "Zeiden Transfer Parcel").

1.1.3. Zeiden Parcels. The property commonly known as Assessor's Parcel No. 006-096-04, 006-096-18 and 006-096-19 described in Attachment 2 attached hereto and incorporated by reference herein (the "Zeiden Parcels").

1.1.4. Saca Transfer Parcels. Those properties commonly known as Assessor's Parcel Nos. 006-0096-005, 006-0096-006, 006-0096-007, 006-0096-008, and 006-0096-009 (the "Saca Team Transfer Parcels").

1.2. Purpose. The purpose of this Agreement is set forth the specific terms, covenants and conditions of the proposed transfer of the Zeiden Transfer Parcel to the Agency by Zeiden.

1.3. Limits of this Agreement. This Agreement does not convey or grant any rights in any property or to develop any property, any vested rights, any entitlements or approvals, or any rights to financial assistance, or to any other right unless it is clearly and specifically stated in this Agreement.

2. First Option Agreement

2.1. Grant of First Option. Zeiden hereby grants to the Agency an exclusive option to acquire fee title interest in the Zeiden Transfer Parcel on the terms and conditions set forth in this Agreement ("First Option"). The First Option is unrelated to the Zeiden DDA. The Second Option (contained in Section 6.1) is a separate option that is dependent on the parties failing to timely enter into the Zeiden DDA.

2.2. First Option Term. The term of the First Option shall commence on the Effective Date and terminate upon the earlier occurrence of either expiration of the Exclusive Negotiation Agreement between the Agency and Zeiden for development of the 700 Block as of the date hereof, (the "Zeiden ENA") or termination of the Zeiden ENA by Zeiden in accordance with provisions of the Zeiden ENA, (the "First Option Term"), unless modified in writing by the parties to this Agreement.

2.3. Exercise of First Option. In order to provide Zeiden with sufficient time to close the escrow hereunder, at least thirty (30) days prior to exercising the First Option, Agency agrees to provide a written notice ("Pre-Exercise Notice") to Zeiden of its intent to exercise the First Option; provided, however, the delivery of the Pre-Exercise Notice shall not create any obligation to exercise the First Option. Thereafter, Agency shall have the right to exercise the First Option at any time during the First Option Term, but not sooner than thirty (30) days following the delivery of the Pre-Exercise Notice. The First Option shall be exercised by delivering to Zeiden and Escrow Holder a written notice ("Exercise Notice") stating that Agency is exercising such Option.

2.4. Termination of First Option. The First Option shall immediately and automatically terminate if the First Option Term expires.

2.5. Conditions Precedent to Exercise of First Option. The exercise of the First Option shall only be effective if the following conditions precedent have been met:

- (a) The First Option Term shall not have expired;
- (b) This Agreement shall not have been terminated;

- (c) Agency shall not be in default under this Agreement;
- (d) Agency shall be in a position to deliver fee title to the Saca Team Transfer Parcels to Zeiden;
- (e) Agency shall be in position to deliver fee title to the Agency Acquisition Parcels – 700 Block to Zeiden under the terms and conditions of a Disposition and Development Agreement for development of the 700 Block (the “Zeiden DDA”).

2.6. Conditions of Title. The Agency has received and reviewed a preliminary report issued by Stewart Title of Sacramento (the “Preliminary Report”) with respect to the Zeiden Transfer Parcel, including copies of all documents, whether recorded or unrecorded, referred to in the Preliminary Report. The Agency has reviewed the legal description and any identified exceptions which appear in the Preliminary Report, and agrees to accept fee title to the Zeiden Transfer Parcel subject to Zeiden eliminating those title matters identified by the Agency as disapproved title matters and accepting those title exceptions, if any, the Agency has identified as approved title matters (collectively the “Conditions of Title – Zeiden Transfer Parcel”) as set forth in Attachment 4 to this Agreement.

2.7. Inspections and Studies. From a period commencing upon the Effective Date and ending 30 days thereafter, Agency and Saca Team shall have the right to conduct any and all inspections, investigations, tests and studies (including, without limitation, investigations with regard to soils, seismic and geologic reports) with respect to the Zeiden Transfer Parcel under the terms and conditions of a Right of Entry Agreement to be executed by and between the Agency, Zeiden and Saca Team (the “Right of Entry Agreement”) in a form attached hereto as Attachment 3.

3. Transfer Following Exercise of the First Option pursuant to Section 2.3

3.1. Transfer of Zeiden Transfer Parcel

3.1.1. Transfer. Upon Close of Escrow, Zeiden agrees to convey fee title to Agency, and Agency agrees to accept fee title from Zeiden of the Zeiden Transfer Parcel, on the terms and conditions set forth in this Agreement.

3.1.2. Purchase Price. Zeiden agrees to convey the Zeiden Transfer Parcel to Agency at a price equal to the sum of \$1,413,000, plus \$7850, per month for the period beginning on January 1, 2006 and ending on Close of Escrow. The Parties intend to negotiate

and reach agreement on the Zeiden DDA, and if so the Zeiden DDA shall supersede this Agreement in regard to the purchase price of the Zeiden Transfer Parcel.

3.1.3. Terms and Conditions. Zeiden agrees to convey the Zeiden Transfer Parcel based on the following terms and conditions:

3.1.3.1. Environmental Conditions. The Zeiden Transfer Parcel to be conveyed to the Agency in an "as-is" condition, with no warranty expressed or implied by Zeiden, including without limitation, the presence of hazardous material contamination or the condition of the soil, its geology, or its suitability for development.

Agency shall remediate all Hazardous Substances on the Zeiden Transfer Parcel as and to the extent required by any federal, state, or local agency having jurisdiction regarding Hazardous Substances standards or remediation and as may be necessary to avoid incurring liability or further liability under any federal, state, or local law or regulation. If the cost to remediate such Hazardous Substances is reasonably estimated to exceed One Hundred Thousand Dollars (\$100,000), Agency may elect to terminate this Agreement. Zeiden has the right, but not the obligation, at its sole discretion to pay the difference between the Agency not to exceed cost and the actual cost of the subject remediation.

3.1.3.2. Occupants/Leases. The Agency shall be responsible for compliance with the Agency relocation policy and the relocation of eligible persons and/or businesses pursuant to California State law. During the term of this Agreement, Zeiden shall not enter into any lease, use, or occupancy agreement for the Zeiden Transfer Parcel without the prior written consent of the Agency.

3.1.3.3. Improvements. The Zeiden Transfer Parcel shall be conveyed with the existing building, structure, and improvements remaining in tact without modification.

4. Escrow

4.1. Opening of Escrow. Agency and Zeiden shall open an escrow (the "Escrow") with Escrow Holder, for the Zeiden Transfer Parcel. The Agency and Zeiden agree to execute and deliver to Escrow Holder, within fourteen (14) days from the Effective Date of this Agreement, all escrow instructions necessary to consummate the transaction contemplated by this Agreement. Any such instructions shall not conflict with, amend or supersede any portion of this Agreement. If there is any inconsistency between such instructions and this Agreement, this Agreement shall control.

4.2. Closing of Escrow. For the purpose of this Agreement, Close of Escrow shall be defined as the date that the Grant Deed for the transfer of the Zeiden Transfer Parcel is recorded in the Official Records of Sacramento County. The Close of Escrow shall occur no earlier than thirty (30) days, after delivery of the Exercise Notice.

4.3. Conditions of Title. Upon Close of Escrow, the Zeiden Transfer Parcel shall be conveyed to Agency by the Zeiden by Grant Deed, in the form customarily used by Escrow Holder in Sacramento County but including the anti-discrimination provisions required by and consistency with the Merged Downtown Redevelopment Plan (the "Grant Deed"), subject to (a) a lien to secure payment of real estate taxes and assessments, not delinquent; (b) the lien of supplemental taxes, not delinquent; (c) all matters affecting the Zeiden Transfer Parcel created by or with the written consent of Agency; and (d) the exceptions to title approved and/or accepted by Agency as described in Attachment 4 to this Agreement (the "Approved Conditions of Title").

4.4. Title Policy. Title to the Zeiden Transfer Parcel shall be evidenced by a title company mutually acceptable to Agency and Zeiden, issuing an California Land Title Association ("CLTA") Owner's Policy of Title Insurance, with such endorsements as are reasonably required by Agency in an amount equal to the appraised value of the Zeiden Transfer Parcel, showing title to the Zeiden Transfer Parcel vested in Agency subject only to Approved Conditions of Title (the "Title Policy").

4.5. Conditions to Close of Escrow – Zeiden Transfer Parcel. The Close of Escrow and Zeiden's obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction of the following conditions (or Agency's waiver thereof):

(a) Title Insurance. As of the Close of Escrow, a title company shall have issued or shall have committed to issue the Title Policy to Agency on the Zeiden Transfer Parcel;

(b) Material Adverse Change. As of the Close of Escrow, there shall be no material adverse change in the physical condition of the Zeiden Transfer Parcel from the condition of the Zeiden Transfer Parcel on the Effective Date. In addition, there shall be no material adverse change in the condition of title from that approved by Agency herein;

(c) Representations and Warranties. All representations and warranties made by Zeiden to Agency in this Agreement shall be true and correct as of the Close of Escrow;

(d) No Default. Agency shall not be in default of this Agreement at the Close of Escrow; and

(e) Escrow Deposits. Agency shall have delivered into escrow all of the items required of Agency and within the time periods, as set forth in this Agreement.

4.6. Failure of Condition to Close of Escrow. In the event any of the conditions set forth in Section 4.5. are not timely satisfied or waived by the appropriate benefited party, for a reason other than the default of Agency or Zeiden respectively, or false or incorrect representations and warranties of Agency or Zeiden, respectively, the Agency or Zeiden, respectively, may terminate this Agreement and the parties shall have no further obligations hereunder.

4.7. Costs and Fees. The Agency and Zeiden shall each pay an equal share of the escrow costs including, but not limited to Escrow Holder fees; costs of preparing, executing and acknowledging any deeds or other instruments required to convey title, the CLTA policy of title insurance, and transfer fees related to the Close of Escrow; provided that the Agency shall pay the cost of any survey, and any additional title insurance or endorsements. The provisions of this Section 4.7 may be superseded by the Zeiden DDA.

4.8. Deposits to Escrow.

4.8.1 Deposits by Agency. At least five (5) business days prior to Close of Escrow, Agency shall deposit with Escrow Holder the following documents and funds.

(a) Costs and Expenses. Agency shall deposit or cause to be deposited with Escrow Holder, in good funds, the purchase price, and the amounts necessary to pay Agency's share of the escrow and title costs for such closing in accordance with Section 4.7.

4.8.2 Deposits by Zeiden. At least five (5) business days prior to Close of Escrow, Zeiden shall deposit or cause to be deposited with Escrow Holder:

(a) Grant Deed. The Grant Deed, duly executed and acknowledged in recordable form by Zeiden, conveying fee title to the Zeiden Transfer Parcel to Agency;

(b) FIRPTA Certificate. A certification, acceptable to Escrow Holder duly executed by Zeiden under penalty of perjury, setting forth Zeiden's address and federal tax identification number in accordance with and/or for the purpose of the provisions of Sections

7701 and 1445, as may be amended, of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder; and

(c) Costs and Expenses. Zeiden shall deposit or cause to be deposited with Escrow Holder, in good funds, the amounts necessary to pay Zeiden's share of the escrow and title costs for such closing in accordance with Section 4.7.

4.9. Prorations.

4.9.1 Taxes/Assessments. All non-delinquent real estate taxes and assessments on the Zeiden Transfer Parcel shall be prorated as of 11:59 p.m. on the day prior to the Close of Escrow based on the actual current tax bill, but if such tax bill has not yet been received by Zeiden by the Close of Escrow, then the current year's taxes shall be deemed to be one hundred two percent (102%) of the amount of the previous year's tax bill for the Zeiden Transfer Parcel. All supplemental taxes billed after the Close of Escrow for periods prior to the Close of Escrow shall be paid promptly by Zeiden to Agency.

4.9.2 Other Expenses. All other expenses for the Zeiden Transfer Parcel shall be prorated as of 11:59 p.m. on the day prior to the Close of Escrow between the parties based upon the latest available information.

4.9.3 Corrections. If any errors or omissions are made regarding adjustments and prorations as set forth herein, whether caused by incomplete information or otherwise, the parties shall make the appropriate corrections promptly upon discovery thereof. If any estimates are made at the Close of Escrow regarding adjustments or prorations, the party making such adjustment shall make the appropriate correction promptly when accurate information becomes available. Any corrected adjustment or proration shall be paid in cash to the party entitled thereto.

4.10 Review of Documents and Materials. Within ten (10) business days following the Effective Date, Zeiden shall deliver to Agency and to the Saca Team, at Zeiden's sole cost and expense, the documents and materials in Zeiden's, or its agents' or employees' possession referenced in Attachment 5 to this Agreement. No representation is made with respect to any of the documents and materials referenced in Attachment 5, excepting any misrepresentation or omission of matters known by Zeiden prior to the Close of Escrow.

5. Representations and Warranties

5.1. Zeiden Representations and Warranties. Except as set forth in Attachment 6 to this Agreement Zeiden warrants and represents to Agency that as of the date hereof and on the Close of Escrow the following (the "Zeiden Representations and Warranties"):

(a) Authority. Zeiden has the legal power, right and authority to enter into this Option Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby;

(b) Environmental Hazards. To the best of Zeiden's knowledge without inquire, there is no contamination, hazardous waste, toxic substance or petroleum based products in existence on or below the surface of the Zeiden Transfer Parcel, including, without limitation, contamination of the soil, subsoil or ground water, which constitutes a violation of any law, rule or regulation of any governmental entity having jurisdiction thereof. Zeiden agrees that Agency may make inquires of governmental or quasi-governmental entities regarding such matters, without liability to Zeiden for the outcome of such discussions;

(c) Requisite Action. All requisite action (corporate, trust, partnership or otherwise) has been taken by Zeiden, and no consent of any shareholder, creditor, investor, or, to the best of Zeiden's actual knowledge, judicial or administrative body, or other party is required in connection with the entering into this Option Agreement, the instruments referenced herein and the consummation of the transactions contemplated hereby;

(d) Conflicting Instruments. Neither the execution and delivery of this Option Agreement and documents referenced herein, nor the occurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Option Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Agency is a party or which affect the Zeiden Transfer Parcel;

(e) Defects of Title. To the best of Zeiden's knowledge without inquire, with the exceptions hereinafter stated, Zeiden is not aware of any physical defects in the Zeiden Transfer Parcel, or defect or limitation in legal title to, or legal marketability of, the Zeiden Transfer Parcel. Exceptions are those matters disclosed in the Preliminary Title Report, or

which are disclosed by Zeiden in writing to the Agency or which are approved Conditions of Title.

(f) Compliance with Laws. To the best of Zeiden's knowledge without inquire, Zeiden has received no notice and has no knowledge of any violation of any applicable law, ordinance, rule, regulation or requirement of any governmental agency, body or subdivision affecting or relating to the Zeiden Transfer Parcel, including, without limitation, any subdivision, building, use or environmental law, ordinance, rule, requirement or regulation;

(g) Condemnation. To the best of Zeiden's knowledge without inquire, Zeiden is not aware of any pending or threatened proceedings in eminent domain or otherwise which would affect the Zeiden Transfer Parcel or any other portion thereof;

(h) Leases. Except as set forth in this Option Agreement, Zeiden is not aware of any leases or other agreements (whether oral or written) affecting or relating to the rights of any party with respect to the possession of the Zeiden Transfer Parcel or any portion thereof which will be in effect after the Close of Escrow.

(i) Documents. To the best of Zeiden's knowledge without inquire, all documents delivered to Agency by Zeiden pursuant to this Agreement are true and correct copies of originals, and any and all information supplied to Agency by Zeiden in accordance with this Agreement is true and accurate;

(j) Assessments. To the best of Zeiden's knowledge without inquire, Zeiden is not aware of any intended public improvements which will result in any charge being levied or assessed against the Zeiden Transfer Parcel or any delinquent taxes, assessment (special, general or otherwise), or bonds of any nature affecting the Zeiden Transfer Parcel, or any portion thereof;

(k) No Prior Transfers. Zeiden has not previously sold, transferred or conveyed the Zeiden Transfer Parcel or any part thereof, and Zeiden has not entered into any executory contracts for the sale of the Zeiden Transfer Parcel (other than this Agreement), nor do there exist any rights of first refusal or options to purchase the Zeiden Transfer Parcel or any part thereof;

(l) Truthfulness at Close of Escrow. The representations and warranties of Zeiden set forth in this Option Agreement are true on the Effective Date, and

Zeiden shall notify Agency in writing prior to the Close of Escrow if any representations or warranties become untrue prior to Close of Escrow.

5.2. Investigations and As-Is Sale. Agency acknowledges that, except as expressly otherwise set forth in this Agreement that prior to delivering an Exercise Notice in accordance herewith, Agency will have made any and all investigations of the Zeiden Transfer Parcel that it deems necessary and is accepting fee title to the Zeiden Transfer Parcel based upon its own respective investigations and agrees to accept fee title to the Zeiden Transfer Parcel subject only to the Approved Conditions of Title set forth in Section 4.5 and the Zeiden Representations and Warranties set forth in Section 5 of this Agreement.

6. Agency's Second Option to Acquire Zeiden Parcels

6.1. Agency Acquisition. If Agency and Zeiden fail to reach agreement on the Zeiden DDA within the "Negotiation Period" set forth in the Zeiden ENA, as extended by mutual agreement of Agency and Zeiden, then the Agency shall have the option to acquire the Zeiden Parcels (APN 006-096-04, 006-096018 and 006-096-19) and the Zeiden Transfer Parcels ("Second Option").

6.2. Second Option Term. The Agency shall have ninety (90) days from the expiration of "Negotiation Period" set forth in the Zeiden ENA (the "Agency Acquisition Term") to complete the acquisition of the Zeiden Parcels, and the Zeiden Transfer Parcel unless extended by mutual written agreement of the parties.

6.3. Purchase Price. The purchase price for the Zeiden Parcels shall be the sum of \$1,525,000 and \$6380 per month for the period beginning on January 1, 2006 and ending on Close of Escrow. The purchase price for the Zeiden Transfer Parcels is set for in Section 3.1.2.

6.4 Terms, Conditions and Provisions. All of the escrow and title terms, conditions and provisions set forth in this Agreement as related to the transfer of the Zeiden Transfer Parcel to Agency following exercise of the First Option shall also apply to the Second Option.

7. Miscellaneous

7.1. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by electronic facsimile or by overnight mail and shall

be deemed received upon the earlier of: (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, on the date of posting by the United States Post Office, (iii) if given by electronic facsimile or by overnight mail, when received by the other party. Notices shall be given at the following addresses:

If to Zeiden: Zeiden Properties, LLC
 1855 West 139th Street
 Gardena, California 90249
 Attention: Joseph Zeiden

With copy to: Richard Hyde
 1100 N Street, Suite 100
 Sacramento, California 95814

If to Agency: Redevelopment Agency of the City of Sacramento
 1030 15th Street, Suite 250
 Sacramento, California 95814
 Attention: Leslie Fritzsche, Economic Development Department

With copy to: Redevelopment Agency of the City of Sacramento
 630 I Street
 Sacramento, California 95814
 Attention: David Levin, Legal Department

To Escrow Holder: First American Title Company
 2200 Douglas Blvd., Suite 220A
 Roseville, California, 95661
 Attention: Carolyn Hunt

Notice of change of address shall be given by written notice in the manner described in this section.

7.2. No Commissions. Neither the Agency nor Zeiden or any of its members are not obligated by this Agreement, or otherwise to pay commissions or brokerage fees or any similar or related fee or charge to any party on account of this Agreement or on account of any action taken pursuant to this Agreement. Each party understands that the other party may have separate agreements regarding commissions which do not affect or pertain to another party in this transaction. Zeiden agrees to hold the Agency harmless from and to defend the Agency against any claim for any such commission, fee or charge or any other costs related thereto arising from any action or omission of Zeiden, its officers, agents or employees. Agency agrees to hold Zeiden harmless from and to defend Zeiden against any claim for any such commission, fee or charge or any other costs related thereto arising from any action or omission of Agency, its officers, agents or employees.

7.3. Assignment. This Agreement is not assignable by either party in whole or part without the prior written consent of the other party.

7.4. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

7.5. Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act except for those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

7.6. Survival of Obligations. Notwithstanding any provision of this Agreement, the covenants, representations, warranties, hold harmless, defense and indemnification obligations

made by each party herein shall survive (1) the Close of Escrow and shall not merge into the Grant Deed and the recordation thereof and (2) the earlier termination and/or cancellation of this Agreement.

7.7. Professional Fees. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other party arising out of this Agreement, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including actual attorneys' fees, accounting and engineering fees, and any other professional fees resulting therefrom.

7.8. Force Majeure. If either party's performance under this Agreement is interrupted or delayed by any occurrence not occasioned by the conduct of either party to this Agreement, whether that occurrence is an act of God or public enemy, or whether the occurrence is caused by war, riot, rain or storm, earthquake, other natural forces, moratoriums, unavailability of material or labor, or by the acts of anyone not party to this Agreement, then the party whose performance is being delayed shall be excused from any further performance for whatever period of time the delay occurs; provided, however, the other party's performance shall also be delayed to the extent it is contingent upon the delaying party's performance of its obligations.

7.9. Entire Agreement. This Agreement (including all Exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto and lawful assignees.

7.10. Time of Essence. Agency and Zeiden hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

7.11. Relationship of the Parties. Nothing contained in this Agreement shall be deemed or construed by the parties to create the relationship of principal and agent, a partnership, joint venture nor any other association between Agency and Zeiden.

7.12. Construction. Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to sections, subsections are to this Agreement.

7.13. Governing Law. The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

7.14. Days of Week/Time. If any date for performance herein falls on a Saturday, Sunday or holiday, as defined in Section 6700 of the California Government Code, the time for such performance shall be extended to 5:00 p.m. on the next business day.

7.15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

7.16. Recordation of Memorandum. On the Effective Date, Agency and Zeiden agree to execute, acknowledge and deliver to each other, a Memorandum of Option, which shall be in the form attached herein as Attachment 6, which records against the Zeiden Transfer Parcel in the Official Records of Sacramento County. Simultaneous with any termination of the Option or this Agreement, Zeiden shall deliver to Escrow Holder a quitclaim deed and irrevocable escrow instructions directing Escrow Holder to record such quitclaim deed against the Zeiden Transfer Parcel removing the applicable Memorandum of Option from title immediately.

7.17. Attachments. Each of the attachments attached hereto is incorporated into and made a part of this Agreement as though fully set forth herein.

Attachment 1: Description of Zeiden Transfer Parcel

Attachment 2: Description of Zeiden Parcels

Attachment 3: Right of Entry Agreement

Attachment 4: Conditions of Title – Zeiden Transfer Parcel

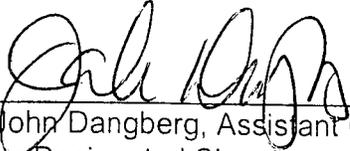
Attachment 5: Documents and Materials – Zeiden Transfer Parcel

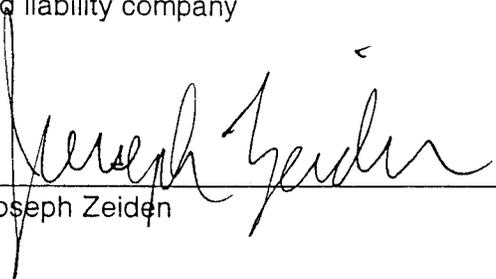
Attachment 6: Memorandum of Option

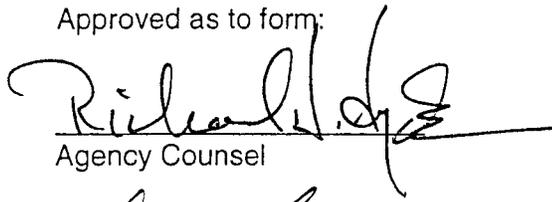
IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth above..

AGENCY: REDEVELOPMENT AGENCY OF
THE CITY OF SACRAMENTO

ZEIDEN: ZEIDEN PROPERTIES, LLC, a California
limited liability company

By: 
John Dangberg, Assistant City Manager
as Designated Signatory

By: 
Joseph Zeiden

Approved as to form:

Agency Counsel


Approved as to form:
Richard Hyde
By: _____
Counsel

ATTACHMENT 1:
DESCRIPTION OF ZEIDEN TRANSFER PARCEL

Legal Descriptions

Zeiden Transfer Parcel

1.

The East ½ of Lot 2 in the Block Bounded by 8th and 9th and "K" and "L" Streets of the City of Sacramento, according to the Official plat thereof.

Excepting therefrom all oil, mineral, gas, geothermal steam, casinghead gas, asphalt and other hydrocarbons and chemical gas now or hereafter found, situated or located in all or any portion of the lands described herein lying more than five hundred feet (500') below the surface thereof, together with the right to slant drill for and remove all or any of said gas, oil, casinghead gas, asphalt and other hydrocarbons or chemical gas lying below a depth of more than five hundred feet (500') below the surface thereof including the right to grant leases for all or any of said purposes, but without any right whatsoever to enter upon the surface of said lands or any portion thereof within five hundred feet (500') vertical distance below the surface thereof, as reserved by Zeiden Properties LLC, in Book 20050531, Page 2234, Official Records.

APN: 006-0098-007

ATTACHMENT 2:
DESCRIPTION OF ZEIDEN PARCELS

Legal Descriptions

Zeiden Parcels

1.

The West ½ of Lot 2, in the block bounded by "7th" and "8th", "K" and "L" Streets of the City of Sacramento, according to the official map or plat of said City.

APN: 006-0096-004

2.

Beginning at a point on the Northerly or outer face of a building wall, from which the Northerly corner common to Lots 1 and 2 in the block bounded by "K" and "L", "7th" and "8th" Streets of the City of Sacramento, according to the official plat thereof, bears South 19°31'30" West 0.74 feet and the intersection of the center line of "K" Street with the center line of "7th" Street, as established by the City Engineer of the City of Sacramento, bears North 19°31'30" East 39.26 feet to the center line of "K" Street and thence North 70°29'30" West 120.84 feet along said center line; thence from said point of beginning, South 19°31'30" West 0.74 feet to the Northerly corner common to said Lots 11 and 2; thence continuing South 19°31'30" West 160.26 feet along the line common to said Lots 1 and 2 to the Southerly corner common thereto; thence North 70°28'40" West 1.26 feet along the Southerly line of said Lot 1; thence North 19°03' East 0.02 feet to the Southwest corner of a brick building; thence along the Westerly face of the wall of said building, following the offsets therein, the following seventeen courses: North 19°03' East 19.24 feet; North 19°32' East 27.52 feet; North 19°03' East 6.21 feet; North 70°28' West 0.36 feet; North 19°04' East 1.20 feet; South 70°28' East 0.37 feet; North 19°26' East 21.50 feet; North 70°28' West 0.36 feet; North 20°52' East 1.80 feet; South 70°28' East 0.36 feet; North 20°10' East 9.11 feet; North 70°28' West 0.37 feet; North 19°32' East 14.40 feet; North 20°57'10" East 19.11 feet; North 19°30'35" East 39.56 feet; South 70°31' East 0.57 feet; North 19°31'30" East 1.35 feet to a Northwest corner of said building; thence South 70°29' East 0.69 feet to the point of beginning.

Excepting therefrom that portion of said realty lying within the exterior boundaries of the South 40 feet of Lot 1, in the block bounded by "X" and "L", "7th" and "8th" Streets of the city of Sacramento.

APN: 006-0096-018

Legal Descriptions

3.

The South 40 feet of Lot 1 in the block bounded by "7th" and "8th", "K" and "L" Streets of the City of Sacramento, according to the official Map or Plat of said City.

APN: 006-0096-019

NOTE REGARDING PERMIT INFORMATION

According to City's Development Services Department if the permit shows "finaled" it means that it passed inspection and was cleared or "finaled" by a city inspector. If it shows "closed" it means that a final inspection was never done, either the work was never done, it wasn't completed, or the property owner or contractor never requested one. The files are then closed due to inactivity.

Report Date: Mon Oct 08 2007 14:16:04

\$\$agencyid\$\$: 'SACRAMENTO'
 AA_Report: 'BLD_address_range'
 house_beg: 712
 house_end: 712
 street_name: 'K%'

Address	Application #	Current Status	StatusDate	Issued	Finalied	Valuation	Work Description	Microfilm/Disk Reference
712 K ST	'0215302	Closed		11/25/2002		\$2,000.00	CONVERT PART OF CLOTHING STORE TO SMALL CONVENIENCE STORE	Other DIGITALLY IMAGED DISK #616 Microfilm: Cart: 1301 Frame: 89 FCAC
712 K ST	'P5914	Finalied		7/31/1987	11/19/1987	\$25,000.00		1812 . Microfilm: Cart: X30 Frame: 1166 FCAC: 18F1
712 K ST	'P6505	Finalied		8/21/1987	8/27/1987	\$1,300.00		Microfilm: Cart: X27 Frame: 182 FCAC 18F1 . Microfilm: Cart: X26 Frame: 1390 FCAC: 18C1
712 K ST	'P7552	Finalied		9/28/1987	10/2/1987	\$3,500.00		Microfilm: Cart: X28 Frame: 1700 FCAC. 18Q1 . Microfilm: Cart: X28 Frame: 1349 FCAC: 18F1
712 K ST	'S13894	Finalied		9/30/1987	5/18/1989	\$210.00	SIGN	Microfilm: Cart: X28 Frame: 1699 FCAC S1 . Microfilm: Cart: X65 Frame: 1450 FCAC: F1
712 K ST	'S17634	Closed		12/8/1994		\$0.00	SIGN	Microfilm: Cart: X200 Frame: 878 FCAC X1 . Microfilm: Cart: X200 Frame: 878 FCAC: X1

Report Date: Mon Oct 08 2007 14:16:57

\$\$agencyid\$\$: 'SACRAMENTO'
 AA_Report: 'BLD_address_range'
 house_beg: 716
 house_end: 716
 street_name: 'K%'

Address	Application #	Current Status	Status Date	Issued	Finalized	Valuation	Work Description	Microfilm/Disk Reference
716 K ST	'944734	Closed		6/3/1994		\$12,000.00		Microfilm: Cart: X208 Frame: 1491 FCAC 18C7, Microfilm: Cart: X221 Frame: 356 FCAC: 18X1
716 K ST	'944972	Closed		6/9/1994		\$39,000.00		Microfilm: Cart: 1726 Frame: 95 FCAC 18C3, Microfilm: Cart: X260 Frame: 102 FCAC: 18X1
716 K ST	'947487	Closed		8/19/1994		\$300.00		Microfilm: Cart: X192 Frame: 2145 FCAC 18Z3
716 K ST	'9511734	Finalized		12/6/1995	12/21/1995	\$2,500.00		Microfilm: Cart: X225 Frame: 923 FCAC 18F1, Microfilm: Cart: X223 Frame: 1879 FCAC: 18Z9
716 K ST	'957001	Finalized		8/2/1995	10/31/1995	\$5,000.00		Microfilm: Cart: 1770 Frame: 8 FCAC 18I2 , Microfilm: Cart: X223 Frame: 1040 FCAC: 18F1
716 K ST	'9902884	Closed		4/5/1999		\$400.00	REFACE PROJECTING SIGN 20 SF	Microfilm: Cart: 2241 Frame: 116-119 FCAC: Q1
716 K ST	'9902886	Closed		4/5/1999		\$260.00	RECOVER AWNING W/SIGNAGE 25 SF	
716 K ST	'S18113	Closed		10/3/1995		\$0.00		Microfilm: Cart: X221 Frame: 1802 FCAC X1, Microfilm: Cart: X221 Frame: 1802 FCAC: X1
716 K ST	'S18114	Closed		10/3/1995		\$0.00		Microfilm: Cart: X221 Frame: 1804 FCAC X1, Microfilm: Cart: X221 Frame: 1804 FCAC: X1
716 K ST	'S18672	Finalized		1/17/1996	1/17/1996	\$0.00		Microfilm: Cart: X226 Frame: 1769 FCAC F1, Microfilm: Cart: X226 Frame: 1769 FCAC: F1
716 K ST	'9902354	Finalized		1999		\$100.00	REMOVE 5' FT COUNTER SPACE & INSTALL ONE ELECT. OUTLET, DENNIS LYNCH LEASE AGREEMENT IN PERMIT JACKET	

Report Date: Mon Oct 08 2007 14:17:21

\$\$agencyid\$\$: 'SACRAMENTO'
 AA_Report: 'BLD_address_range'
 house_beg: 718
 house_end: 718
 street_name: 'K%'

Address	Application #	Current Status	Status Date	Issued	Finalized	Valuation	Work Description	Microfilm/Disk Reference
718 K ST	'0518799	Finalized		12/1/2005	10/19/2006	\$999.00	ENTERTAINMENT - REPAIRS AS PER PERMIT CORRECTION NOTICE ADD ADDITIONAL FIRE SPRINKLER HEADS PER FIRE DEPARTMENT CORRECTION NOTICE DATED 11/30/05 REF FINALED PERMIT #0518799	
718 K ST	'0600099	Issued		1/4/2006		\$1,500.00		

Report Date: Mon Oct 08 2007 14:17:43

\$\$agencyid\$\$: 'SACRAMENTO'
 AA_Report: 'BLD_address_range'
 house_beg: 724
 house_end: 724
 street_name: 'K%'

Address	Application #	Current Status	Status Date	Issued	Finalized	Valuation	Work Description	Microfilm/Disk Reference
724 K ST	02000045	Closed		1/2/2002		\$38,000.00	REMOVE ABANDONED ELECTRICAL, ELECTRICAL REPAIRS. REPAIR 1 HR RATED CEILING. ALL WORK SUBJECT TO FIELD INSPECTIONS	
724 K ST	02000045	Finalized		9/9/2003	9/15/2005	\$366,000.00	COT ELECTRICAL PANEL BOX & MINOR ELEC REPAIRS	

Report Date: Mon Oct 08 2007 14:26:20

\$\$agencyid\$\$: 'SACRAMENTO'
AA_Report: 'BLD_address_range'
house_beg: 726
house_end: 726
street_nam: 'K%'

Address	Application #	Current Status	StatusDate	Issued	Finald	Valuation	Work Description	Microfilm/Disk Reference
---------	---------------	----------------	------------	--------	--------	-----------	------------------	--------------------------

726 K ST
No records after 2003

Report Date: Mon Oct 08 2007 14:18:35

AgencyID\$: 'SACRAMENTO'
 AA_Report: 'BLD_address_range'
 house_beg: 806
 house_end: 806
 street_name: 'K'

Address	Application #	Current Status	Status Date	Issued	Finished	Valuation	Work Description	Microfilm/Disk Reference
806 K ST	0504841	Finished	5/23/2007	4/12/2005	5/18/2005	\$50,000.00	To demolish two story, commercial structure, approx. 20,000 sq ft total, of masonry, concrete and wood construction. The first floor, from Kst to alleyway (approx 35'x160') shall remain to assure min damage to adjoining property. The first floor at south west corner of 8th st. (approx. 60'x60') shall be removed to depth of basement. Note: Contractor is responsible for the removal of all concrete flatwork, trash, debris, junk and any materials containing asbestos. All work must be performed in accordance with Summary/Recommendations of the Environmental and the approval of the Sacramento Air Quality Board. The lot shall be free of inorganic materials to a depth of the existing basement & first floor (as noted above). Contractor is responsible for all security fencing, street/sidewalk barricades and dust control during the demolition process. Contractor is responsible to call for all required inspections.	
806 K ST	COM-0701642	Finished	5/23/2007	1/31/2007	5/23/2007	\$5,000.00	DEMO OF A FIRE DAMAGED COMMERCIAL SLAB	

Report Date: Mon Oct 08 2007 14:18:08

\$\$agencyid\$\$: 'SACRAMENTO'
AA_Report: 'BLD_address_range'
house_beg: 810
house_end: 810
street_name: 'K%'

Address	Application #	Current Status	StatusDate	Issued	Finald	Valuation	Work Description	Microfilm/Disk Reference
810 K ST	'COM-0618968	Finald	3/28/2007	12/8/2006	3/28/2007	\$80,000.00	DEMO OF COMMERCIAL STRUCTURE	

Report Date: Mon Oct 08 2007 14:19:03

\$\$agencyid\$\$ 'SACRAMENTO'
 AA_Report: 'BLO_address_range'
 house_beg: 816
 house_end: 816
 street_name: 'K%'

Address	Application #	Current Status	StatusDate	Issued	Finished	Valuation	Work Description	Microfilm/Disk Reference
816 K ST	933778	Finald		5/17/1983	5/28/1983	\$986.00		Microfilm Cart X160 Frame 1303 FCAC 18P5
816 K ST	K3669	Finald		3/13/1989	3/13/1989	\$0.00		Microfilm Cart X61 Frame 1631 FCAC F1
816 K ST	S11022	Finald		6/23/1983	3/13/1989	\$0.00		Microfilm Cart X61 Frame 1631 FCAC F1
816 K ST	S11023	Finald		6/24/1983	3/13/1989	\$0.00		Microfilm Cart 814 Frame 444 FCAC S 1

\$\$agencyid\$\$: 'SACRAMENTO'
 AA_Report: 'BLD_address_range'
 house_beg: 1109
 house_end: 1109
 street_name: '8%'

Address	Application #	Current Status	StatusDate	Issued	Finalized	Valuation	Work Description	Microfilm/Disk Reference
1109 8TH ST	0403977	Expired				\$0.00	URM WALL SHORING H-000026065-To demolish two story, commercial structure, approx. 2,400 sq. ft total, of masonry, concrete and wood construction. Contractor must remove the following materials as requested by the preservation director: 1) The sidewalk needs to be preserved including the prism lights and under sidewalk structure and street walls. 2) The upper story facade, including supporting "I" beam, exterior wall, bay window projection and secondary window. 3) Grecian key iron trim on the street level facade. 4) Interior claw-foot bathtub(s). 5) All brick needs to be individually cleaned, palletized and stored. Note: Contractor is responsible for the removal of all concrete flatwork, trash, debris, junk and any materials containing asbestos. All work must be performed in accordance with Summary/Recommendations of the asbestos report provided by ESS Environmental and the approval of the Sacramento Air Quality Board. The lot shall be free of inorganic materials to a depth of the existing basement. Contractor is responsible for all security fencing, street/sidewalk barricades and dust control.	
1109 8TH ST	0504837	Finalized		4/12/2005	12/15/2005	\$25,000.00		
1109 8TH ST	110517	Finalized		3/29/1982	3/30/1982	\$0.00		Microfilm: Cart: 708 Frame: 0235 FCAC 2. Microfilm: Cart: 716 Frame: 0252 FCAC F1
1109 8TH ST	L2225	Closed		9/27/1984		\$0.00		Microfilm: Cart: X61 Frame: 985 FCAC 18X1, Microfilm: Cart: 950 Frame: 0059 FCAC: 1, Microfilm: Cart: 952 Frame: 0401 FCAC: 1



Robert D. Swanson
Attorney at Law
rswanson@boutindentino.com

September 4, 2007

**CONFIDENTIAL SETTLEMENT COMMUNICATION
PURSUANT TO EVIDENCE CODE SECTION 1152**

Via Facsimile and U.S. Mail

James B. Gilpin, Esq.
Best Best & Krieger LLP
400 Capitol Mall, Suite 1600
Sacramento, California 95814

Re: *Redevelopment Agency of the City of Sacramento v. Saca Development, LLC, et al.*
Sacramento Superior Court Case No. 07AS00636

Dear Mr. Gilpin:

This is in response to your confidential settlement offer of August 3, 2007 to Urban Innovation Partners, LLC and 726 K Street, LLC. We hereby reject the offer. We remain, however, open to further good faith discussions and we sincerely hope that we can resolve this lawsuit amicably.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rob Swanson", is written over the typed name.

Robert D. Swanson
RDS:cmb

cc: clients
Myron Moskovitz



Robert D. Swanson
Attorney at Law
rswanson@boutindentino.com

September 4, 2007

**CONFIDENTIAL SETTLEMENT COMMUNICATION
PURSUANT TO EVIDENCE CODE SECTION 1152**

Via Facsimile and U.S. Mail

James B. Gilpin, Esq.
Best Best & Krieger LLP
400 Capitol Mall, Suite 1600
Sacramento, California 95814

Re: *Redevelopment Agency of the City of Sacramento v. Saca Development, LLC, et al.*
Sacramento Superior Court Case No. 07AS00636

Dear Mr. Gilpin:

This is in response to your confidential settlement offer of August 3, 2007 to Moe Mohanna. We hereby reject the offer. We remain, however, open to further good faith discussions and we sincerely hope that we can resolve this lawsuit amicably.

Very truly yours,

Robert D. Swanson
RDS:cmb

cc: clients
Myron Moskovitz

K Street Retail Space History

K Street	Aug-94		Aug-96		Aug-98		Aug-99		Aug-02	
	Tenant	Square Feet	Tenant	Square Feet	Tenant	Square Feet	Tenant	Square Feet	Tenant	Square Feet
700	Men's Warehouse	4,000	Men's Warehouse	4,000	Men's Warehouse	4,000	Men's Warehouse	4,000	Men's Warehouse	4,000
704	Joe Sun	4,800	Joe Sun	4,800	Joe Sun	4,800	Joe Sun	4,800	Joe Sun	4,800
710	Records	6,400	Records	6,400	Records	6,400	Records	6,400	Records	6,400
712	Current	4,800	Serlof & Co. Men's Clothie	2,400						
714	<i>Current</i>	Luggage	2,000	Vacant	2,000	Sub Q Perceing	2,000	Sub Q Perceing	2,000	Sub Q Perceing
714	<i>Current</i>	Saga Sushi Terryaki	400	Saga Sushi Terryaki						
716	Buger King	4,800	Arby's	4,800	Vacant	4,800	Flourchild's Pizza	4,800	Morelia's Taqueria	4,800
718	Vacant	6,400	Funk City	6,000	Funk City	6,000	Comic & Cornix	6,000	Comic & Cornix	6,000
720	<i>Vacant</i>	STC Watch & Clock Shop	400	STC Watch & Clock Shop						
722	Kim's Lunch and Minimart	2,400	Yummy Choice	2,400						
724	Blouse House	2,400	Getta Clue	2,400	Vacant	2,400	Vacant	2,400	Coast2Coast	2,400
726	Tower	3,200	Tower	3,200	Tower Outlet	3,200	Vacant	3,200	Vacant	3,200
730	Makoto Records	1,600	Vacant	1,600	K Mini Mart	1,600	K Mini Mart	1,600	K Mini Mart	1,600
701A	<i>No Kiosk</i>	Java Stop	600	Java Stop	900	Java Stop	900	Java Stop	900	Java Stop
701B	<i>No Kiosk</i>	Sac Tix	300	<i>Java Stop</i>	7,000	Starbucks	1,200	Starbucks	3,200	Emmas
717	Vacant	7,000	Vacant	7,000	Vacant	7,000	Starbucks	1,200	Starbucks	3,200
723	Emmas	3,200	Emmas	3,200	Emmas	3,200	Emmas	3,200	Emmas	3,200
725	Garcia Y Vega	2,800	Garcia Y Vega	2,800	Garcia Y Vega	2,800	Garcia Y Vega	2,800	Garcia Y Vega	2,800
727	Dr Eugene Koury Optometr	1,400	Kelvin Sue Optometry	1,400						
729	Cheung's Trading	1,400	Cheung's Trading	1,400	Cheung's Trading	1,400	Cheung's Trading	1,400	Cheung's Trading	1,400
731	American Savings	5,600	American Savings	5,600	Washington Mutual	5,600	Vacant	5,600	INS	5,600
801	Sacramento Baking Compa	1,600	Sacramento Baking Compa	1,600	Sacramento Baking Compa	1,600	Sacramento Baking Compa	1,600	Vacant	1,600
801	Renaissance Roma	4,800	Renaissance Roma	4,800	Renaissance Roma	4,800	Vacant	4,800	Vacant	4,800
801	Vacant	2,300	Vacant	2,300	Vacant	2,300	Vacant	2,300	Vacant	2,300
831	River City Bank	4,000	River City Bank	4,000	River City Bank	4,000	River City Bank	4,000	Rite Aid	4,000
800	Vacant	1,600	Vacant	1,600	Vacant	1,600	Vacant	1,600	Vacant	1,600
802	JNJ Jewlery/Capitol Gifts	1,600	JNJ Jewlery/Capitol Gifts	1,600	JNJ Jewlery/Capitol Gifts	1,600	JNJ Jewlery/Capitol Gifts	1,600	JNJ Jewlery/Capitol Gifts	1,600
804	Togo's	1,600	Togo's	1,600	Togo's	1,600	Togo's	1,600	Vacant	1,600
806	Vacant	10,000	Vacant	10,000	Vacant	10,000	Vacant	10,000	Vacant	10,000
810	Mountain & Surf	3,200	Mountain & Surf	3,200	Mountain & Surf	3,200	Mountain & Surf	3,200	Mountain & Surf	3,200
812	Casablanca	6,400	Casablanca	6,400	Casablanca	6,400	Casablanca	6,400	Casablanca	6,400

K Street Retail Space History

K Street	Aug-94		Aug-96		Aug-98		Aug-99		Aug-02	
	Tenant	Square Feet	Tenant	Square Feet	Tenant	Square Feet	Tenant	Square Feet	Tenant	Square Feet
816	Vacant	2,000	Vacant	2,000	Jordans Communications	2,000	Vacant	2,000	Vacant	
818	Aladdin Travel	1,200	Aladdin Travel	1,200	Regional Transit Center	1,200	Regional Transit Center	1,200	Regional Transit Center	
826	State Dept. of Rehab	12,800	State Dept. of Rehab	12,800	Department of Pesticides	12,800	Department of Pesticides	12,800	Vacant	
901	LA Bou	1,600	LA Bou	1,600	LA Bou	1,600	LA Bou	1,600	LA Bou	
905	Motophoto	1,000	Vacant	1,000	Coastal Web Online	1,000	Pac Bell Cellular	1,000	Pac Bell Cellular	
907	Seirra Club Store	1,000	Downtown Service Center	1,000	Vacant	1,000	Vacant	1,000	Vacant	
911	Taco Bell	5,280	Taco Bell	5,280	CA Fresh Burrito	5,280	CA Fresh Burrito	5,280	CA Fresh Burrito	
911.5	Keys	45	Keys	45	Keys	45	Keys	45	Keys	
913	The Flower Station	3,520	Subway	3,520	Subway	3,520	Subway	3,520	Subway	
915	Bento House	3,520	Bento House	3,520	Bento House	3,520	Bento House	3,520	Bento House	
919	McDonalds	4,000	McDonalds	4,000	McDonalds	4,000	Vacant	4,000	Golden Rice Bowl	
921	Vacant	3,200	K Mini	3,200	K Mini	3,200	K Mini	3,200	K Mini	
923	Mike's Tailoring & Clothing	3,200	Mike's Tailoring & Clothir	3,200	Mike's Tailoring & Clothir	3,200	Mike's Tailoring & Clothir	3,200	Mike's Tailoring & Clothir	
925	Farley's	3,000	Farley's	3,000	Farley's	3,000	Farley's	3,000	Farley's	
931	Famous Footwear	5,000	Famous Footwear	5,000	Famous Footwear	5,000	Vacant	5,000	Hana's	
900	Nicholson's Hallmark	5,600	Vacant	5,600	Comics & Comix	2,800	Vacant	5,600	River City Bank	
	<i>Nicholson's Hallmark</i>		<i>Vacant</i>		<i>Vacant</i>	<i>2,800</i>	<i>Vacant</i>		<i>Quirno's</i>	
910	Vacant	7,500	Vacant	7,500	AQUA	7,500	AQUA	7,500	AQUA	
916	Petries Plus	4,800	Vacant	4,800	On Time Fashions	4,800	On Time Fashions	4,800	On Time Fashions	
920	Payless Shoe Source	4,800	Payless Shoe Source	4,800	Payless Shoe Source	4,800	Payless Shoe Source	4,800	Nails, Tanning Galore	
924	Clothesime	4,800	Vacant	4,800	Choice Casual	4,800	Choice Casual	4,800	Choice Casual	
930	1st Interstate	11,200	Home Savings	11,200	Home Savings	11,200	Washington Mutual	11,200	Washington Mutual	
1001	G. Rossi	1,500	Pro Photo	1,500	Pro Photo	1,500	Pro Photo	1,500	Copy Place	
1001	La Boheme	2,500	La Boheme	2,500	La Boheme	2,500	La Boheme	2,500	La Boheme	
1011	Frederick Horst Jewelers	1,440	World of Beauty	1,440	World of Beauty	1,440	World of Beauty	1,440	Manstrupal Records	
1013	The Crest	20,160	The Crest	20,160	The Crest	20,160	The Crest	20,160	The Crest	
1019	Vacant	8,100	Vacant	8,100	Vacant	2,356	Vacant	2,356	The Crest Café	
1021	<i>Vacant</i>		<i>Vacant</i>		<i>Terryaki Express</i>	<i>2,170</i>	<i>Terryaki Express</i>	<i>2,170</i>	<i>Terryaki Express</i>	
1023	<i>Vacant</i>		<i>Vacant</i>		<i>Blimpie's</i>	<i>2,170</i>	<i>Blimpie's</i>	<i>2,170</i>	<i>Blimpie's</i>	
1031	A Shot of Class	12,800	A Shot of Class	12,800	A Shot of Class	12,800	A Shot of Class	12,800	Pyramid Brewery	
1000	Woolworths	16,960	Woolworths	16,960	Footlocker	16,960	Footlocker	16,960	Vacant	
1012	Payless Drugs	13,280	Payless Drugs	13,280	RiteAid	13,280	RiteAid	13,280	Vacant	
1016	On Time Fashion	4,000	On Time Fashion	4,000	Vacant	4,000	Capitol Clothing	4,000	Capitol Clothing	

K Street Retail Space History

K Street	Aug-94		Aug-96		Aug-98		Aug-99		Aug-02	
	Tenant	Square Feet	Tenant	Square Feet	Tenant	Square Feet	Tenant	Square Feet	Tenant	Square Feet
1020	Hit or Miss	6,400	Hit or Miss	6,400	Hit or Miss	6,400	Hit or Miss	6,400	Hit or Miss	6,400
1022	Dress Barn	6,400	Vacant	6,400	Vacant	6,400	Vacant	6,400	Harvest Market	6,400
1026	Fresh Cut	1,600	Fresh Cut	1,600	Fresh Cut	1,600	Fresh Cut	1,600	Fresh Cut	1,600
1028	Dr. Jack Shearer Optometris	1,600	Dr. Jack Shearer Optometri	1,600	Dr. Todd Adair Optometric	1,600	Dr. Todd Adair Optometri	1,600	Dr. Todd Adair Optometric	1,600
1030	Espresso Metro	3,200	Espresso Metro	3,200	Espresso Metro	3,200	Espresso Metro	3,200	Espresso Metro	3,200
1001	The Cathedral of the Blesses	34,880	The Cathedral of the Bless	34,880	The Cathedral of the Bless	34,880	The Cathedral of the Bless	34,880	The Cathedral of the Bless	34,880
1121	Diocese of Sac. Education &	3,520	Vacant	3,520	Vacant	3,520	Vacant	3,520	The Cathedral of the Bless	3,520
1131	City Picnic	4,000	City Picnic	4,000	A Piece of the Apple	4,000	A Piece of the Apple	4,000	Subway	4,000
1177	Quorum	4,000	Vacant	4,000	Marilyn's	4,000	Marilyn's	4,000	Marilyn's	4,000
1100	CA State Assoc. of Countie	4,000	CA State Assoc. of Counti	4,000	CA State Assoc. of Counti	4,000	CA State Assoc. of Counti	4,000	CA State Assoc. of Counti	4,000
1110	CA Land Title	4,000	CA Land Title	4,000	CA Land Title	4,000	CA Land Title	4,000	CA Land Title	4,000
1110	Vacant	3,000	Vacant	3,000	Vacant	3,000	Vacant	3,000	Vacant	3,000
1130	Bank of America	32,000	Bank of America	32,000	Bank of America	32,000	Bank of America	32,000	Bank of America	32,000
1201	Vacant	1,400	1201 K Lounge	1,400	Vacant	1,400	Gallagher's	1,400	Gallagher's	1,400
1201	L'Italiano	4,000	1201 K Restaurant	4,000	Vacant	4,000	Broiler	4,000	Broiler	4,000
1215	Senor Burrito	400	Vacant	400	Vacant	31,600	IMAX	16,000	IMAX	16,000
1217	The Pot Sticker	2,000	The Pot Sticker	2,000	Vacant	IMAX	ESQUIRE GRILL	6,000	ESQUIRE GRILL	6,000
1221	Vacant	29,200	Vacant	29,200	Vacant	6,030	Esquire Grill	6,000	Esquire Grill	6,000
1200	Vacant	6,030	Indivisual Eyes/Sun Spex	6,030	Indivisual Eyes/Sun Spex	6,030	Indivisual Eyes/Sun Spex	6,030	Indivisual Eyes/Sun Spex	6,030
1200	Sticks	3,015	Sticks	2,000	Sticks	2,000	Sticks	2,000	Sticks	2,000
1200	Shinjyu Jewelry	3,015	Shinjyu Jewelry	1,000	Shinjyu Jewelry	1,000	Shinjyu Jewelry	1,000	Shinjyu Jewelry	1,000
1200	Joy of Cookies	3,015	Joy of Cookies	1,000	Joy of Cookies	1,000	Joy of Cookies	1,000	Vacant	1,000
1200	Café Dolce	3,015	Café Dolce	2,000	Café Dolce	2,000	Café Dolce	2,000	Café Dolce	2,000
1200	Blondie's	3,015	Laura DuPriest Salon	2,000	Laura DuPriest Salon	2,000	Laura DuPriest Salon	2,000	Laura DuPriest Salon	2,000
1200	Artists' Contemporary Galler	1,500	Artists' Contemporary Galle	1,500	Artists' Contemporary Galle	1,500	Artists' Contemporary Gall	1,500	Kbar	1,500
1200	The Crate	2,000	The Crate	2,000	The Crate	2,000	The Crate	2,000	Kbar	2,000
1200	Upper Crust Pizza	2,000	Upper Crust Pizza	2,000	Upper Crust Pizza	2,000	Upper Crust Pizza	2,000	Upper Crust Pizza	2,000
Total:	84	444,510	89	438,335	88	436,931	88	421,531	90	
Vacancies:	14	87,730	19	102,820	17	90,176	19	52,776	14	
	16.7%	19.7%	21.3%	23.5%	19.3%	20.6%	21.6%	12.5%	15.6%	

THE SMITH FIRM

ATTORNEYS

1541 Corporate Way, Suite 100
Sacramento, CA 95831
T 916.442.2019 ■ F 916.442.0220
www.thesmithfirm.com

December 7, 2007

BY FAX AND MAIL

Mayor Heather Fargo
Members of the Sacramento City Council
and Redevelopment Agency of the City of Sacramento
915 I Street, 5th Floor
Sacramento, CA 95814

RE: Resolution of Necessity to Acquire Real Property Known as 718 K Street (APN #006-0096-007; Statement of Opposition

Dear Mayor Fargo, Councilmembers and Boardmembers:

Our firm represents 718 K Street, LLC, which owns real property located at 718 K Street, Sacramento, CA. On November 23, 2007, our client received a letter notifying it that, on December 11, 2007, the Redevelopment Agency of the City of Sacramento (“Redevelopment Agency”) would hold a hearing on whether to adopt a resolution of necessity authorizing the condemnation of its property. Our client strongly opposes the resolution. The following are 718 K Street LLC's objections adoption of the proposed resolution and to the proposed taking of its property.

BACKGROUND

The property at 718 K Street was never vacant until 2006, when the Redevelopment Agency of the City of Sacramento evicted the tenants there.

It took the property 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 proceeded with redeveloping 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, and forged relationships with Terranomics, a prominent land-use consulting firm, and a property developer, Howard S. Wright Co., to bring in high-end retailers.

But the City of Sacramento and its Redevelopment Agency (hereafter the City) was already colluding with a private schemer, Joe Zeiden of Zeiden Properties LLC (“Zeiden”). The City decided then and there, prior to 2005, to take the property and give it to Zeiden.

The tool to implement this plan was the Downtown Sacramento Partnership, a public agency often claiming private party rights, run by special interests and developers largely on the redevelopment money dole.¹ The bag-lady was Wendy Hoyt. Hoyt was under contract by the City and Zeiden

¹ Such self-dealing insiders include Lloyd Harvego, the current chair of DSP, who a little over a year ago received \$6 million in City redevelopment money to benefit his Orleans Hotel in Old Sacramento. Kip Blewett, the incoming DSP chair has received more than \$10 million from the City for his hotel redevelopment at 10th and J streets.

simultaneously. Through Hoyt and other go-betweens, the City arranged for Zeiden to purchase properties on the 700 and 800 blocks, giving him the cover to enter into owner participation proposals required by the City for those blocks.

Prior to the request for proposals in 2005, the City and Zeiden had already agreed that Zeiden would get the properties and further redevelopment subsidy for a total of more than \$24 million in redevelop fund giveaways. According to testimony of the Redevelopment Agency's chief negotiator, John Dangberg, the Agency is "legally obligated" to give the properties to Zeiden.

Agency officers told the property 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.

Faced with this threat, on April 18, 2006, the property owners signed a Land Exchange Agreement that states in "Recital I" that the property owners are submitting to "the threat of eminent domain."

Under the Land Exchange Agreement, the property 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 and 815 L Street).

The Land Exchange Agreement required the Agency to deliver the 800 Block buildings to the property owners with "no material adverse change in the physical condition" of the buildings (Paragraph 4.5(b)).

When the Land Exchange Agreement was signed, the 800 Block buildings were in good shape. But after the Land Exchange Agreement 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.

Over objection by the 700 Block owners, the Agency then demolished both the 802 K Street Building and the 812 K Street building. During this demolition, 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.

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

Then Agency chose to interfere with the property owners' relationship with their tenants. The Agency hired a 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 property owners over \$40,000 in lost rents, every month.

When the property owners refused to accept rubble for buildings, the Agency sued them 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.

Judge Loren E. McMaster of the Sacramento County Superior Court granted the property 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 undamaged.”

The Judge McMaster then granted the property 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, the Mayor agreed to negotiate. The property owners wanted to keep their 700 Block buildings, but the Mayor said “That’s for Zeiden, not for you”, and demanded that the property owners accept the 800 Block rubble. To help the City, the property 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 property owners complied. The City insisted that an experienced urban developer be brought in, and the property owners complied. The developer needs financial assistance, and the City Manager said the City might help. The property owners and the City Manager are now working on the details, and have another meeting with the City Manager set for early January.

Then the Agency slapped the property owners with a notice that it intends to take the 700 Block properties by eminent domain. The property owners had submitted to the City’s demands, negotiations have been going well, and now the Agency threatens to take the property by force.

STATEMENT OF OPPOSITION

This conduct by the Agency, the City, its employees, agents and contractors is a violation of 718 K Street LLC's statutory and constitutional property rights. The action will foster blight not reduce it and the spending of tax increment money to acquire the property is invalid. Therefore 718 K Street LLC opposes the proposed Resolution of Necessity with the following objections.

1. Downtown Sacramento Partnership, its Officials, The City of Sacramento, its Redevelopment Agency and Officials Violated California Government Code §§ 1090, 87100 and 54950 et seq.

City officials, with the active consent of City elected officials including Mayor Heather Fargo, used contracts with consultant Wendy Hoyt and other intermediaries to effectively pay City funds to Zeiden. Zeiden's contracts with Hoyt were used to fund DSP activities. DSP activities in turn were used as political props for the redevelopment funding self dealing with DSP members.

This conspiracy thus violates Government Code §1090 and other laws intended to police government corruption.

Concerning Gov. Code §1090, one court ruled: "Its object is to 'remove or limit the *possibility* of any personal influence, either directly or indirectly, which might bear on an official's decision as well as to void contracts which are actually obtained through fraud or dishonest conduct.'" *Finnegan v. Schrader* (2001) 91 Cal.App.4th 572, 579.

Agreements already made by the City and Redevelopment Agency are evidence of this influence, as is the pernicious influence of a coterie of self-dealing downtown developer insiders such as Hoyt, Dave Taylor, Kip Blewett and Lloyd Harvego.²

Violations resulting from the failure to disclose conflicts include violation of City and State campaign financing disclosures, including but limited to Title Chapter 2.13 of Title 2 of the City ordinances, and the state's Brown Act.

2. It Is Not Necessary to Condemn the Property to Relieve Blight

Pursuant to Health and Safety Code §§ 33037(b) and 33342, a public agency may only take property through eminent domain when redevelopment cannot be accomplished by private enterprise alone. Here, there is no question that the redevelopment of the K Street Mall can be accomplished without the exercise of eminent domain. Indeed, the overriding method of such redevelopment, as stated in the Agency's own redevelopment plan for the area, is the encouragement and assistance to private property owners in such effort.

The unsubsidized success of such efforts have been apparent even as the Agency has created vacancy after vacancy on the 700 and 800 blocks of K Street in recent years. New tenants have replaced those evicted by the Agency. Texas Mexican Restaurant, on Eighth at K Street, has reopened and even expanded after being evicted in 2006.

² Dave Taylor has been a perennial downtown development insider, active on the DSP or through associates. He has contributed \$10,000 to oppose the 2006 eminent domain reform initiative.

The best evidence that the condemnation of 718 K Street is unnecessary is that it was thriving before the Agency kicked out all its tenants. Indeed, commercial activity at the building was growing. The first floor was occupied by a rent-paying comics and collectibles business, as it had been for many years. The second floor was filled by a prospering tattoo shop, a tenant for more than four years with no plans to leave. The third floor had been remodeled as office and show room space. The basement of the building had been remodeled into a juice bar in a cooperative venture between the owner and the operator. The juice bar featured weekend live music entertainment for several months but while being strongly encouraged not to open because of the Agency's redevelopment schemes, the juice bar was closed by the City shortly before all the tenants of the building were served with notices to vacate in August of 2006.

The same can be said for the other 700 Block properties sought to be seized. 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. 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 718 K Street is so blighted that assemblage is required. It and the other buildings sought to be seized have seen significant investment and did not have high vacancy rates prior to the Agency's relocation efforts.

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 and 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 crimes cited took place on at 718 K Street or areas within the owners' control. Moreover, the increase in crime in recent years correlates directly to the time frame when the Agency forced the vacancies in the buildings. Thus, much of this alleged blight has been manufactured by the actions or inactions of this Agency and cannot serve as substantial evidence to support this resolution.

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. (AB 782) This assertion also is factually inaccurate as the buildings in their current size and configuration were leased at very 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 are outdated, this is not a structural issue and hardly requires intervention by the Agency to eliminate. The owner of 718 K Street has already participated with other owners on the block to update the interiors of the buildings as required by new tenants. The fact that the 700 Block owners are updating with their own resources and not requiring free buildings and a \$4 million subsidy from the Agency contradicts any notion that the properties are not viable without assemblage by the Agency.

The Agency staff has failed to offer any objective evidence to support its asserted rationales for the need for this condemnation. Recitation of the Health and Safety Code sections without any analysis or studies to support the assertions cannot provide the objective rationale.

The revitalization of K Street has occurred at the grass roots level. Private parties have expended their time, talents, and money to make the K Street mall a more vibrant and successful area than it once was. It is important to note that this revitalization occurred—and in fact is still occurring—without the use of public money. The 718 K Street owners remain ready, willing, and able to re-tenant the building and continue the revitalization they began.

Accordingly, the property at 718 K Street does not need to be condemned to relieve the alleged blight. See Health and Safety Code §33030 defining blight.

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.”

Here, 718 K Street LLC has always been ready, willing, and able to participate in the Redevelopment Plan for the Merged Downtown Redevelopment Project Area, which is the redevelopment plan adopted by the legislative body for this area. Even as the Agency and City were tearing down the 800 Block buildings, the 700 Block property owners, including 718 K Street LLC, attempted to forge a redevelopment plan with the Agency and the City. Even as the City filed its breach of contract lawsuit against 718 K Street LLC and the 700 Block property owners, the owners were seeking City approval for a private redevelopment plan. Every time the property owners seek to participate they are slapped down by the Agency and the City.

It has become apparent that the Agency simply wants to take the 700 and 800 block properties for itself or for its pre-ordained developers. The evidence is clear that this was always the Agency's plan.

While the Redevelopment Agency refuses to allow 718 K Street LLC to participate in the further development of the area, it bends over backwards to help other developers with property in the area. Specifically, the Redevelopment Agency has agreed to provide Zeiden Properties, LLC with massive grants to subsidize development of the area.

Worse still, the Redevelopment Agency foreclosed any possibility of 718 K Street LLC being able to participate in the redevelopment of its property by deciding that the redevelopment of the area should be completed by Zeiden Properties, LLC. The Staff Report supporting the proposed Resolution of Necessity makes clear that this is still the case—that it is still obligated to give the property to Zeiden.

4. The Proposed Taking Violates Health and Safety Code §33394

Health and Safety Code §33394 provides as follows:

“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 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.”

As noted above, 718 K Street has none of the defects required for condemnation under §33394. The property was fully functioning and fully occupied with rent-paying tenants. As is conceded by the Agency, the building and most of those on the 700 Block have historic designation. They cannot be altered without complying with historic preservation guidelines and standards. In fact, the preservation of the historical quality of the block is a stated objective of the Agency’s redevelopment plans.

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. 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 owner of 718 K Street has joined with other 700 Block owners to exercise their owner participation rights and develop the entire block. To that end they have assembled a competent 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; *Bank of the West* to provide up to \$3.8 million in financing. 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.

718 K Street LLC has neither failed nor refused to agree to participate in the redevelopment

plan as set forth above. As such, the taking of 718 K Street would be a violation of Health and Safety Code §33394.

5. The Property is Not Being Taken for a Public Use, But Rather To Transfer It From One Private Entity to Another, a Constitutional Violation and a Violation of CCP §1250.360(b)

The proposed taking would be a violation of California Code of Civil Procedure §1250.360(b). The property is being taken from an owner which has spend years maintaining and operating the property only to give it to another private owner. The record evidencing this fact is extensive. The Redevelopment Agency intends to give the property to Zeiden Properties LLC. Zeiden Properties LLC will do nothing different with the property except have more public dollars given to attract tenants with subsidies. As such, this is not a public use, but a subsidized private use, accomplished with the illegal seizure of the property by the government.

The taking for transfer to Zeiden is pretextual and therefore unconstitutional under the Fifth Amendment of the U.S. Constitution, and illegal under California's redevelopment law. Courts have repeatedly emphasized that such pretextual takings remain illegal and unconstitutional.

While the U.S. Supreme Court in *Kelo v. City of New London* (2005) 454 U.S. 2655, upheld the taking of property for redevelopment, both the majority opinion and the impassioned dissent of Justice O'Connor emphasized that the use of eminent domain as a pretext for transferring property to a private interest will not be tolerated.

“[T]ransfers intended to confer benefits on particular, favored private entities, and with only incidental or pretextual public benefits, are forbidden by the Public Use Clause.” *Id.* at page 490.

The U.S. Supreme Court's *Kelo* ruling cited with favor such California decisions as *99 Cents Store v. City of Lancaster Redevelopment Agency* (2001) 237 F.Supp.2d 1123 as authority prohibiting such abuse of government power. See also *Cottonwood Christian Center v. Cypress Redevelopment Agency* (2002) 218 F.Supp.2d 1203.

Thus the pretextual taking planned by the Agency in the proposed resolution here is a violation of U.S. constitutional law including the Fifth and Fourteenth Amendments. While the existence of a redevelopment plan is frequently foisted as cover such pretextual takings, it is patent on the record here that the purpose of the resolution of necessity is and always has been simply to take the property from one owner to give it to another private entity, with little that could possibly change as a result.

6. The Issue of Whether to Condemn 718 K Street LLC Has Been Predetermined

It is clear from the records that the Agency has already decided that it will be condemning 718 K Street and transferring it to Zeiden Properties, LLC, and that the hearing set for December 11, 2007 will be for the sole purpose of rubber-stamping this decision. See *Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal 3d 1121, 1129.

In *Slauson*, the 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. These facts are parallel to those here. The Agency has always intended to

give the 700 Block to Zeiden. It has a DDA with him. Agency officials have testified that they intend to give Zeiden the 700 Block property.

Glaring evidence that the taking of property proposed is not to assemble parcels but to give them to Zeiden is that none of the parcels already owned by Zeiden on the 700 or 800 blocks are included in the resolution of necessity proposed.

Such predetermined action is a violation of California redevelopment and eminent domain law and the resolution should be denied on this basis.

7. The Project Does Not Accomplish the Greatest Public Good with the Least Private Injury.

California Code of Civil Procedure §1240.030 provides that 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 discussed above, the Redevelopment Agency cannot establish that the public interest and necessity require the taking and redevelopment of the shopping center by Zeiden Properties, LLC. Rather, this is a taking to transfer non-blighted property from one owner to another for no legitimate reason.

Nor can the Redevelopment 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 718 K Street will achieve the elimination of blight in any way. Indeed, the record is clear that the taking would simply add to the vacancies already created by previous acquisition of properties by the Agency and the City all along K Street.

8. The Offer by the Agency is Invalid.

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.

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.” (Gov. 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, is 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, and 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.

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 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.

9. The Agency Has Failed to Comply With CEQA

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 DDA on June 13, 2006.

None of the environmental review cited in the Staff Report constitutes compliance with CEQA. Such compliance is required before adoption of the resolution of necessity. CCP §1250.360(h). Adoption of the resolution is opposed by 718 K Street LLC without CEQA compliance.

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.

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 DDA is not part of that action—according to the Redevelopment Agency Staff Report. Nor is 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. Neither does the redevelopment plan for the area, nor do its various amendments discuss such a project. Rather the emphasis of the redevelopment plan is to work with existing property owners to improve properties, not seize them wholesale by eminent domain.

Nor can the 2005 programmatic EIR for the redevelopment area support the resolution, when substantial evidence exists that specific environmental impacts will occur from this action. Significant changes have occurred which 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 LLC to produce any potential lessees as required under its Disposition and Development Agreement, potentially protracting blight if transferred to Zeiden;

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, never 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 as stated in the Railyard EIR slated for certification at the same December 11, 2007 as the Resolution of Necessity here. The traffic impact study in the Railyard EIR does not address impacts on the K Street and the streets that feed it. However, 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.

10. Abuse of Process

The Redevelopment Agency's conduct to date has constituted an abuse of process. The Agency has not given 718 K Street LLC the opportunity to keep its property and develop it, but rather has thrown up road blocks at every turn, and then blamed 718 K Street LLC for failing to move faster on the redevelopment plan for the K Street Mall. This has been a conscious failure to seek to avoid eminent domain in good faith as required by statute.

The record submitted by all other owners are joined with this opposition of 718 K Street and incorporated by reference.

Thank you.

Sincerely,



KELLY T. SMITH
The Smith Firm
Attorneys for 718 K Street LLC