



**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 8<sup>th</sup> 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 139<sup>th</sup> 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 15<sup>th</sup> 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

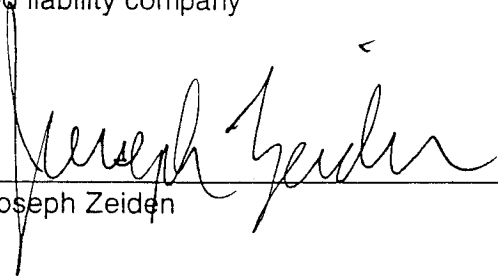
Attachment 6: Memorandum of Option

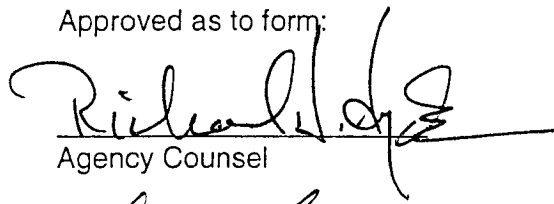

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth above..

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 8<sup>th</sup> and 9<sup>th</sup> 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 "7<sup>th</sup>" and "8<sup>th</sup>", "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", "7<sup>th</sup>" and "8<sup>th</sup>" 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 "7<sup>th</sup>" 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", "7<sup>th</sup>" and "8<sup>th</sup>" 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 "7<sup>th</sup>" and "8<sup>th</sup>", "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	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

\$\$agencyid\$\$: 'SACRAMENTO'  
 AA\_Report: 'BLD\_address\_range'  
 house\_beg: 716  
 house\_end: 716  
 street\_name: 'K%'

Address	Application #	Current Status	StatusDate	Issued	Finalied	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	Finalied		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	Finalied		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	Finalied		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	Finalied		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	StatusDate	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.	
718 K ST	'0600099	Issued		1/4/2006		\$1,500.00	ADD ADDITIONAL FIRE SPRINKLER HEADS PER FIRE DEPARTMENT CORRECTION NOTICE DATED 11/30/05 REF. FINALED PERMIT #0518799	

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	'0200045	Closed		1/2/2002		\$38,000.00	REMOVE ABANDONED ELECTRICAL, ELECTRICAL REPAIRS, REPAIR 1 HR RATED CEILING. ALL WORK SUBJECT TO FIELD INSPECTIONS	
<del>724 K ST</del> N/A	<del>'9549849</del>	<del>Finalized</del>		<del>9/9/2003</del>	<del>9/15/2005</del>	<del>\$266,000</del>	<del>C/O ELECTRICAL PANEL BOX &amp; MINOR ELEC REPAIRS</del>	

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
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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	StatusDate	Issued	Finalied	Valuation	Work Description	Microfilm/Disk Reference
806 K ST	'0504841	Finalied	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 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 & 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	Finalied	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\_nam: '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 14:19:01

Agency: SACRAMENTO  
 AA\_Report: 'BLD\_address\_range'  
 house\_beg: 816  
 house\_end: 816  
 street\_name: 'K'

Address	Application #	Current Status	Status Date	Issued	Finished	Valuation	Work Description	Microfilm/Disk Reference
816 K ST	933778	Finished		5/17/1983	5/28/1983	\$996.00		Microfilm Cart X160 Frame 1303 FCAC
816 K ST	K3669	Finished		3/13/1989	3/13/1989	\$0.00		Microfilm Cart X61 Frame 1631 FCAC F1
816 K ST	S11022	Finished		6/23/1983	3/13/1989	\$0.00		Microfilm Cart X61 Frame 1631 FCAC F1
816 K ST	S11023	Finished		6/24/1983	3/13/1989	\$0.00		Microfilm Cart 814 Frame 444 FCAC S
								Microfilm Cart X164 Frame 173 FCAC 18F1
								Microfilm Cart X61 Frame 1631 FCAC F1
								Microfilm Cart 814 Frame 443 FCAC S
								Microfilm Cart X61 Frame 1631 FCAC F1
								Microfilm Cart X61 Fra

\$\$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 Z. Microfilm: Cart: 716 Frame: 0252 FCAC F1 Microfilm: Cart: X61 Frame: 985 FCAC 18X1, Microfilm: Cart: 950 Frame: 0059 FCAC: I, Microfilm: Cart: 952 Frame: 0401 FCAC: I
1109 8TH ST	'L2225	Closed		9/27/1984		\$0.00		



**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,

Robert D. Swanson  
RDS:cmb

cc: clients  
Myron Moskovitz



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

September 4, 2007

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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		Aug-04	
	Tenant	Square Feet	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	2,000	Vacant	2,000
818	Aladdin Travel	1,200	Aladdin Travel	1,200	Regional Transit Center	1,200	Regional Transit Center	1,200	Regional Transit Center	1,200	Regional Transit Center	1,200
826	State Dept. of Rehab	12,800	State Dept. of Rehab	12,800	Department of Pesticides	12,800	Department of Pesticides	12,800	Vacant	12,800	Vacant	12,800
901	LA Bou	1,600	LA Bou	1,600	LA Bou	1,600	LA Bou	1,600	LA Bou	1,600	LA Bou	1,600
905	Motophoto	1,000	Vacant	1,000	Coastal Web Online	1,000	Pac Bell Cellular	1,000	Pac Bell Cellular	1,000	Vacant	1,000
907	Seitra Club Store	1,000	Downtown Service Center	1,000	Vacant	1,000	Vacant	1,000	Vacant	1,000	Vacant	1,000
911	Taco Bell	5,280	Taco Bell	5,280	CA Fresh Burrito	5,280	CA Fresh Burrito	5,280	CA Fresh Burrito	5,280	Taqueria Los Gallos	5,280
911.5	Keys	45	Keys	45	Keys	45	Keys	45	Keys	45	Physic	45
913	The Flower Station	3,520	Subway	3,520	Subway	3,520	Subway	3,520	Subway	3,520	Subway	3,520
915	Bento House	3,520	Bento House	3,520	Bento House	3,520	Bento House	3,520	Bento House	3,520	Ostria	3,520
919	McDonalds	4,000	McDonalds	4,000	McDonalds	4,000	Vacant	4,000	Golden Rice Bowl	4,000	Golden Rice Bowl	4,000
921	Vacant	3,200	K Mini	3,200	K Mini	3,200	K Mini	3,200	K Mini	3,200	K Mini	3,200
923	Mike's Tailoring & Clothing	3,200	Mike's Tailoring & Clothim	3,200	Mike's Tailoring & Clothim	3,200	Mike's Tailoring & Clothim	3,200	Mike's Tailoring & Clothir	3,200	Mike's Tailoring & Cloth	3,200
925	Farley's	3,000	Farley's	3,000	Farley's	3,000	Farley's	3,000	Farley's	3,000	Vacant	3,000
931	Famous Footwear	5,000	Famous Footwear	5,000	Famous Footwear	5,000	Vacant	5,000	Hana's	5,000	Hana's	5,000
900	Nicholson's Hallmark	5,600	Vacant	5,600	Comics & Cornix	2,800	Vacant	5,600	River City Bank	5,600	River City Bank	5,600
	<i>Nicholson's Hallmark</i>		<i>Vacant</i>		<i>Vacant</i>		<i>Vacant</i>		<i>Quizno's</i>		<i>Quizno's</i>	
910	Vacant	7,500	Vacant	7,500	AQUA	7,500	AQUA	7,500	AQUA	7,500	AQUA	7,500
916	Petries Plus	4,800	Vacant	4,800	On Time Fashions	4,800	On Time Fashions	4,800	On Time Fashions	4,800	DeRow & Sharma	4,800
920	Payless Shoe Source	4,800	Payless Shoe Source	4,800	Payless Shoe Source	4,800	Payless Shoe Source	4,800	Nails, Tanning Galore	4,800	Nails, Tanning Galore	4,800
924	Clothesime	4,800	Vacant	4,800	Choice Casual	4,800	Choice Casual	4,800	Choice Casual	4,800	Vacant	4,800
930	1st Interstate	11,200	Home Savings	11,200	Home Savings	11,200	Washington Mutual	11,200	Washington Mutual	11,200	Washington Mutual	11,200
1001	G. Rossi	1,500	Pro Photo	1,500	Pro Photo	1,500	Pro Photo	1,500	Copy Place	1,500	Copy Place	1,500
1001	La Boheme	2,500	La Boheme	2,500	La Boheme	2,500	La Boheme	2,500	La Boheme	2,500	La Boheme	2,500
1011	Frederick Horst Jewelers	1,440	World of Beauty	1,440	World of Beauty	1,440	World of Beauty	1,440	Marsupial Records	1,440	Fresh Cut	1,440
1013	The Crest	20,160	The Crest	20,160	The Crest	20,160	The Crest	20,160	The Crest	20,160	The Crest	20,160
1019	Vacant	8,100	Vacant	8,100	Vacant	2,356	Vacant	2,356	The Crest Café	2,356	The Crest Café	2,356
1021	<i>Vacant</i>		<i>Vacant</i>		<i>Terryaki Express</i>		<i>Terryaki Express</i>		<i>Terryaki Express</i>		<i>Terryaki Express</i>	
1023	<i>Vacant</i>		<i>Vacant</i>		<i>Blimpie's</i>		<i>Blimpie's</i>		<i>Blimpie's</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	12,800	Pyramid Brewery	12,800
1000	Woolworths	16,960	Woolworths	16,960	Footlocker	16,960	Footlocker	16,960	Vacant	16,960	Vacant	16,960
1012	Payless Drugs	13,280	Payless Drugs	13,280	RiteAid	13,280	RiteAid	13,280	Vacant	13,280	Vacant	13,280
1016	On Time Fashion	4,000	On Time Fashion	4,000	Vacant	4,000	Capitol Clothing	4,000	Capitol Clothing	4,000	Vacant	4,000

# K Street Retail Space History

K Street	Aug-94		Aug-96		Aug-98		Aug-99		Aug-02		Aug-04	
	Tenant	Square Feet	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	Vacant	6,400
1022	Dress Barn	6,400	Vacant	6,400	Vacant	6,400	Vacant	6,400	Harvest Market	6,400	Vacant	6,400
1026	Fresh Cut	1,600	Fresh Cut	1,600	Fresh Cut	1,600	Fresh Cut	1,600	Fresh Cut	1,600	Vacant	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 Optometri	1,600	Dr. Todd Adair Optometh	1,600
1030	Espresso Metro	3,200	Espresso Metro	3,200	Espresso Metro	3,200	Espresso Metro	3,200	Espresso Metro	3,200	Ambrosia Café	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	The Cathedral of the Ble	34,880
1121	Diocese of Sac. Education &	3,520	Vacant	3,520	Vacant	3,520	Vacant	3,520	Cathedral Museum	3,520	Cathedral Museum	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	Subway	4,000
1177	Quorum	4,000	Vacant	4,000	Marilyn's	4,000	Marilyn's	4,000	Marilyn's	4,000	Marilyn's	4,000
1100	CA State Assoc. of Countrie	4,000	CA State Assoc. of Countri	4,000	CA State Assoc. of Countri	4,000	CA State Assoc. of Counti	4,000	CA State Assoc. of Counti	4,000	CA State Assoc. of Coun	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	CA Land Title	4,000
1110	Vacant	3,000	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	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	Gallagher's	1,400
1201	L'Italiano	4,000	1201 K Restaurant	4,000	Vacant	4,000	Broiler	4,000	Broiler	4,000	Broiler	4,000
1215	Senor Burrito	400	Vacant	400	Vacant	31,600	IMAX	16,000	IMAX	16,000	IMAX	16,000
1217	The Pot Sticker	2,000	The Pot Sticker	2,000	Vacant	IMAX	IMAX	16,000	IMAX	16,000	IMAX	16,000
1221	Vacant	29,200	Vacant	29,200	Vacant	6,000	Esquire Grill	6,000	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	Indivisual Eyes/Sun Spex	6,030
1200	Sticks	3,015	Sticks	2,000	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	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	Vacant	1,000
1200	Café Dolce	3,015	Café Dolce	2,000	Café Dolce	2,000	Café Dolce	2,000	Café Dolce	2,000	Café Dolce	2,000
1200	Blondies	3,015	Laura DuPriest Salon	2,000	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	Kbar	1,500
1200	The Crate	2,000	The Crate	2,000	The Crate	2,000	The Crate	2,000	Kbar	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	Upper Crust Pizza	2,000
<b>Total:</b>	<b>84</b>	<b>444,510</b>	<b>89</b>	<b>438,335</b>	<b>88</b>	<b>436,931</b>	<b>88</b>	<b>421,531</b>	<b>90</b>	<b>438,731</b>	<b>90</b>	<b>438,731</b>
<b>Vacancies:</b>	14	87,730	19	102,820	17	90,176	19	52,776	14	46,100	24	101,380
	16.7%	19.7%	21.3%	23.5%	19.3%	20.6%	21.6%	12.5%	15.6%	10.5%	26.7%	23.1%

# 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, 5<sup>th</sup> 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.<sup>1</sup> The bag-lady was Wendy Hoyt. Hoyt was under contract by the City and Zeiden

<sup>1</sup> 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 10<sup>th</sup> 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 redevelopment 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 an 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.<sup>2</sup>

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.

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<sup>2</sup> 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.4<sup>th</sup> 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.4<sup>th</sup> 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.

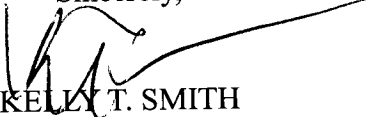
Finally, the proposed taking and the spending of tax increment money to finance the compensation for the taking would violate other state and City policies and ordinances, including those requiring provision of low income housing.

#### **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



**APPENDIX N**  
**URBAN DECAY STUDY**

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**DRAFT**

**SACRAMENTO RAILYARDS:  
URBAN DECAY ASSESSMENT**

*Prepared for:*  
*PBS&J/  
City of Sacramento*

*Prepared by:*  
*Keyser Marston Associates, Inc.*

August 14, 2007

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## **INTRODUCTION**

This urban decay assessment has been prepared pursuant to Keyser Marston Associates (KMA), Inc.'s contract with PBS&J as part of PBS&J's preparation of the Environmental Impact Report (EIR) for the Sacramento Railyards Specific Plan. The analysis of urban decay impacts, through a series of recent court decisions, has been determined to be within the purview of the California Environmental Quality Act (CEQA). Accordingly, KMA was retained by PBS&J and the City of Sacramento to evaluate the existing retail economic conditions of the Sacramento market and to assess whether the development of the proposed Railyards project might create impacts severe and substantial enough to result in urban decay in existing retail concentrations considered most vulnerable to negative impact. These vulnerable areas were agreed with the City and PBS&J to be the Downtown, where four retail concentrations: the Westfield Plaza, Old Sacramento, K-Street Mall, and Midtown Corridor.

The focus of this urban decay assessment is on the retail/entertainment component of the proposed Railyards project, as described in the Specific Plan. For the purpose of the assessment and consistent with the intent of the court decisions, "urban decay" is defined as the closure of retail and other stores in the surrounding area as a result of market competition and disinvestment - leaving decaying building shells in a state of sustained vacancy, long-term abandonment, repeated property damage, and/or deteriorated conditions that significantly impair the proper and safe use of the real estate. Properties in areas with higher than normal market vacancies and which have been empty and/or unused for at least three years or more are assumed to be in prolonged or sustained vacancies. An example in Sacramento would be the K-Street Mall, which has suffered urban decay – and is only now being transformed by coordinated public/private investment back to a state of economic vitality.

## **SECTION I. PROPOSED DEVELOPMENT**

### **A. Overall Concept**

The Sacramento Railyards project, as proposed by the developer/applicant, Thomas Enterprises, Inc., would redevelop approximately 240 acres of an older industrial area at the northwest edge of the Central Business District in downtown Sacramento into a transit-oriented, mixed use development consisting of high-density for-sale and rental housing, complemented by unique cultural opportunities, office, hotel, retail and entertainment uses, and parks and urban plazas, as defined in the Railyards Specific Plan. The development goal of the Railyards is to create an extension to the city's downtown with an activated ground floor retail and a walkable environment.

At build-out, the area is expected to contain an estimated 10,000 to 12,501 residential units, up to 1.38 million square feet of retail/entertainment space (1.54<sup>1</sup> million square feet if the additional .15 million square feet of retail in the historic and cultural component of the Central Shops district is included), 2.83 million square feet of office space, .48 million square feet of historic and cultural space (.33 million square feet if the .15 million square feet of retail space is excluded from this component), 1,100 hotel rooms, and approximately 41.2 acres of parks and open space.<sup>2</sup>

Per the Specific Plan and the applicant's representation, the build-out scenario would be accommodated in five distinct, thematic districts, as briefly summarized below and illustrated on the accompanying map:

- *Depot District:* This district is the connection point of the Railyards site to the downtown, and home of the new Sacramento Intermodal Transit Facility (SITF), a major regional transportation hub and its accompanying transit supportive uses, adjacent office, and ground floor retail uses. The retail component is designed to draw shoppers into the Railyards and create a better link with the Downtown. The historic Southern Pacific Railroad Depot building will be preserved and designed as a focal point of the SITF. It should be noted that while the Depot District is included in the Specific Plan, the development of the SITF parcels are the City's responsibility.
- *Central Shops:* This area represents the historic core of the Railyards, consisting of seven restored and renovated historic brick railyard buildings from the original Central Pacific Railyard constructed between 1868 and 1917 and includes the proposed Museum of Railroad Technology, an expansion of the existing State Railroad Museum in Old Sacramento. Another regional draw is envisioned to be the California Academy of

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<sup>1</sup> Totals may not be equal due to rounding.

<sup>2</sup> Totals for specific land use components, however, may vary differ due to mixed usage (i.e., cultural facilities with ground floor retail/restaurants) and allowance in the development program for possible use conversions (i.e., from office space to residential units) depending on the market at the time of implementation.

the Arts, which is intended to offer a number of performance and display venues, including a 1,600 seat theater for theater and arts groups in the region, and a number of arts educational programs that would be resident at the site. The district will also contain a mixture of shops, museum, jazz clubs, galleries, restaurants and a farmer's market integrated into the historic Central Shops buildings.

- *West End:* This district links the entire Railyards project to the Sacramento River with pedestrian-oriented streets and provides a range of entertainment, cultural, and retail activities that add to the regional draw of the Railyards area. The area is characterized by three key elements:
  - Camille Lane, which cuts across the district and provides access to the entire length of the district, is an urban mixed use street featuring a 24-hour pedestrian-friendly "European" neighborhood feel with ground floor retail and entertainment venues with housing, office and college classrooms above;
  - Lifestyle retail and entertainment venues in the central portion of the district, integrated by a network of pedestrian alleys and plazas, with restaurants, bars and nightclubs; and
  - An approximately 200,000 square foot Bass Pro store on its northwest edge.
- *East End:* This district will be a new residential neighborhood that captures the spirit of the city's traditional open space-oriented neighborhoods with a linear urban park. It will provide an urban open space where residents can gather to walk, exercise and relax. Retail opportunities in this area, which include a significant ground floor component, will be neighborhood serving.
- *Riverfront District:* This area is the location where the Railyards site connects to the waterfront, with restaurants, a hotel, housing, parks and open space, featuring water views.

## **B. Retail Leasing**

As envisioned, the 1.38 million square feet retail and entertainment space in the Railyards project (or 1.54 of million square feet if the additional .15 million square feet of retail space in the historic and cultural component is included) would be distributed in the five above districts. Although there will likely be a mix of different retail tenant types in each of the five districts, it is anticipated that:

- *Comparison Retail* (defined as Apparel, General Merchandise, Home Furniture/ Furnishings, and Specialty Retail) and *Eating and Drinking uses* (inclusive of nightclubs, sports bars, restaurants and other entertainment establishments serving food and drinks;

excludes museums, theaters, and other performance arts venues) would be concentrated primarily in the West End and Central Shops District;

- *Convenience Retail* (Food and Drugs Stores) and *Services* (e.g., dry cleaners, beauty salons, shoe repair, banks, etc.) would dominate in the Depot and East End Districts.

For the purpose of this analysis, KMA has assumed that the retail uses are located primarily on the street level, although it is possible that some of the retail uses may be located on the second floor. Typically, second floor uses such as entertainment and eating & drinking tend to work better than retail stores on the upper levels. However, as the vertical layout of the envisioned retail spaces has not yet been defined for the proposed program, no second floor retail uses are assumed.

The location of the proposed uses by districts within the Railyards are shown on Table 1 and summarized below:

**Table 1a  
Retail Entertainment Program  
Sacramento Railyards**

<i>(In Sq. Ft.)</i>	<u>West End</u> <sup>3</sup>	<u>Central Shops</u> <sup>4</sup>	<u>Riverfront</u>	<u>Depot</u>	<u>East End</u>	<b>Total</b> (Incl. Central Shops)	<i>% of Total</i>
Comparison Retail	605,000	35,000	--	--	--	640,000	42%
Eating & Drinking	405,000	63,000	15,000	24,000	25,000	532,000	34%
Convenience Retail/Services	53,000	56,000	--	133,000	125,000	367,000	24%
<b>Total (Incl. Central Shops Retail)</b>	<b>1,063,000</b>	<b>154,000</b>	<b>15,000</b>	<b>157,000</b>	<b>150,000</b>	<b>1,539,000</b>	<b>100%</b>
<i>% of Total</i>	69%	10%	1%	10%	10%	100%	
<b>Total (Excl. Central Shops Retail)</b>	<b>1,063,000</b>	--	<b>15,000</b>	<b>157,000</b>	<b>150,000</b>	<b>1,385,000</b>	
<i>% of Total</i>	77%	--	1%	11%	11%	100%	

<sup>3</sup> Given that no breakdown of retail versus entertainment space was provided by applicant for the West End, it is assumed that approximately 5% of the total retail sq.ft. would be Services, and the remainder allocated to Eating & Drinking and Comparison Retail, which would include the 200,000 sq.ft. Bass Pro store.

<sup>4</sup> According to information provided by the applicant, 154,000 sq.ft. of additional space would be available for additional food and beverage (63,000 sq.ft.), retail shops (35,000 sq.ft.), and a market (56,000 sq.ft.) The California Academy of the Arts facility (100,000 sq.ft.) would also be a key anchor in the Central Shops District .

*Comparison Retail.* As shown, of the total 1.54 million square feet of retail and entertainment space (including the additional retail opportunities in Historic/Cultural uses) proposed for the

Railyards, approximately 42%, or about 640,000 square feet, would be Comparison Retail. An estimated 605,000 square feet are assumed to be located in the West End, with the remainder, or 35,000 square feet, located in the Central Shops District.

The 605,000 square feet allocation of Comparison Retail space in the West End is based on an assessment by KMA and the City of the retail concepts identified in the Specific Plan for the five districts – as the applicant has not provided breakdown estimates of the retail space by type (i.e., Comparison Retail, Eating and Drinking, and Convenience Retail/Services.) Thus, for the purpose of this analysis, KMA has assumed that 5%<sup>3</sup> (or approximately 53,000 square feet) of the total retail space in West End would be Services, located primarily between 5<sup>th</sup> and 7<sup>th</sup> streets. Another 405,000 square feet would be Eating and Drinking space to complement the historic/cultural activities envisioned for the neighboring Central Shops District. The remaining, or roughly 605,000 square feet, of the retail space in the West End would be Comparison Retail. The applicant has represented that it has commitment from a Bass Pro store for an estimated 200,000 square feet and has indicated that an additional 300,000 to 400,000 square feet are targeted for large format anchor tenants (as yet unnamed). Less than 100,000 square feet of the remaining Comparison Retail space in the West End, therefore, would be non-anchored, small shop space.

*Eating and Drinking.* Approximately 34%, or 532,000 square feet, of the 1.54 million square feet retail/entertainment space in the Railyards is assumed to be Eating and Drinking – with the bulk of the space again in the West End and the remainder scattered in the other four districts. As envisioned in the Specific Plan, the space would be tenanted by restaurants, nightclubs and other food/entertainment venues.

*Convenience Retail & Services.* The remaining 24%, or 367,000 square feet, would be Convenience Retail and Services, serving residents in the Railyards and nearby neighborhoods. West End would likely have a predominant mix of Services such as banks, beauty salons and dry cleaners, while the Depot and the East End would also include more Convenience Retail stores, such as a grocery store and/or a pharmacy.

### **C. Implementation/Phasing**

As noted above, at least three major, regional destination facilities are proposed for the Railyards Project: a relocated Sacramento Intermodal Transit Facility, the Museum of Railroad Technology, and the California Academy of the Arts, although these facilities are not certainties as they are highly funding-dependent. The three major anchors, which are anticipated to attract large numbers of transit riders and visitors to the Railyards, will require a significant level of non-developer funding (i.e., preliminarily estimated to be in the range of \$500 million or more.) Thus, the implementation of the proposed Railyards concept as embodied in the Specific Plan will be heavily dependent on the ability of the project to secure the necessary capital for the construction of these essential components. In addition, given the dynamic real estate market

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<sup>3</sup> Approximately 5% of space in a shopping center is typically services.

and the estimated 20-year build-out horizon, it must be assumed that actual implementation results will vary from the program and the phasing described herein.

In light of the need to secure capital funding as discussed above and in recognition of the complexity of the project, KMA has modified for the purpose of this urban decay analysis the applicant's estimated phasing schedule to allow for a slightly longer project funding and construction process in the initial phases (Phases 1 and 2) and a shorter timeframe for the later phases when the project has matured (Phases 3 and 4). Construction is assumed to start in 2009/10, with a two- to three-year lag for each subsequent phase. Each phase of the project is assumed to be stabilized (high tenant occupancy and mature level of sales), which typically is expected to occur by the second or third year after construction completion. Completion of the entire project is targeted for 2025, as shown on Table 1 and Exhibit A, and summarized below:

**Table 1b**  
**Projected Railyards Project Program and Timeline**  
**Sacramento Railyards**

	Total Retail Sq. Ft. (Incl. Cental <u>Shops Retail</u> )	Total Retail Sq. Ft. (Excl. Central <u>Shops Retail</u> )	Construction <u>Start</u>	<u>Opening</u>	Stabilized <u>Year</u>
Phases 1A & 1B	1,109,300 <sup>5</sup>	955,300	2009 -10	2011-14	2015
Phase 2	264,500	264,500	2015	2017	2018
Phase 3	40,000	40,000	2018	2020	2021
Phase 4	<u>125,000</u>	<u>125,000</u>	2022	2024	2025
Total	1,538,800	1,384,800			

<sup>5</sup> The higher estimated includes approximately 154,000 sq.ft. of additional retail/entertainment opportunities in the historical/cultural component of the Central Shops District (e.g., museum shops and cafes), as represented by the applicant.

## **SECTION II. PROJECTED MARKET POTENTIAL/SALES REQUIREMENTS (2015, 2025)**

This section summarizes the projected market potential and sales requirement analysis for the retail and eating and drinking components envisioned at the Railyards. The analytical approach basically involves a five-step process: 1) definition of retail trade areas, 2) identification of market support segments for the specific retail concepts, 3) projection of total expenditure retail potential for the specific categories of retail uses proposed, 4) competitive supply and projected retail sales requirements, and 5) projection of net retail expenditure potential based on a comparison of total expenditure potential with projected retail sales requirements for existing and planned retail centers in the trade areas. The projected potential/sales requirement comparison is prepared for two points in time: Year 2015 (at the end of Phase I) - when a substantial percentage of the total retail and eating and drinking space proposed have been built and the operation has stabilized, and Year 2025 (at the end of Phase IV) - when 100% of the proposed retail and eating and drinking space has been completed as proposed and stabilized.

It should be noted that the 200,000 sq.ft. Bass Pro store, which is being planned for the Railyards, is a one-of-kind destination and currently has no competition in the Sacramento region. As such, it would be a major tourist attraction as well as a regional retail store. This is reinforced by the developer/applicant's projection of 2 to 4 million visitors to the store annually. However, plans for another Bass Pro store in the city of Manteca (approximately an hour's drive to the Railyards site) have recently been announced. If built, the Manteca Bass Pro store could reduce the Railyards store's anticipated draw of shoppers from the regional trade area.

### **A. Trade Area Definitions**

Different types of retail uses draw from different trade areas for market support. According to Urban Land Institute's (ULI's) Shopping Center Development Handbook (1999), the *primary trade area* is defined as the "geographical area from which the center derives its largest share of repeat sales. This geographical area typically extends to 1 to 1½-mile for a neighborhood center, 3 to 5 miles for a community center and 8 to 12 miles for a regional mall." An estimated 70% to 80% of the center's regular customers are anticipated to be drawn from this area. The Handbook also states that some newer specialty centers like entertainment centers may draw from even larger trade areas, such as an entire metropolitan area. The *secondary trade area*, which can extend 3 to 7 miles beyond the primary trade area, depending on the center's type and size and the competition, is estimated to generate 15% to 20% of the total sales of an average shopping center. The broadest area from which customers can be drawn is the *tertiary or fringe trade area*. It may represent a small but significant share of the center's customers – particularly from large, specialty center, downtown centers and entertainment centers – and can extend 15 miles or more beyond the primary trade area.

Based on the retail and entertainment concepts represented by the applicant for the proposed Railyards and the above ULI's trade area definitions, it is anticipated that the *Comparison Retail and Eating and Drinking* components at the proposed project can potentially draw from a

regional trade area of approximately 30 miles radius from the subject site. This Regional Trade Area (RTA) is the catchment area for residents seeking a specific market that fits and appeals to their retail needs. For the purpose of this assessment, the boundaries of this area is defined as extending north to almost Marysville, east to the Sierra foothills, south to Lodi, and west to Vacaville. It includes generally the City of Sacramento and the nearby cities of Davis, West Sacramento, and Woodland, and the farther out suburban communities of Lincoln, Rocklin, Roseville, Citrus Heights, Folsom, Elk Grove, Vacaville, Dixon and portions of unincorporated Sacramento, Placer, Solano, Sutter and Yolo counties, as shown in Map 1.

The bulk of the sales for the proposed Railyards project, however, is expected to be drawn from the closer-in, urbanized area (or the primary trade area) within the larger regional trade area. This Primary Trade Area (PTA) is an approximately 10 to 15-mile oval-shaped polygon around the Railyards (inclusive of Downtown Sacramento), extending generally to the cities of Davis and Woodland to the west and midway between the subject site and the cities of Elk Grove to the south, Folsom to the east, and Roseville to the north. (See Map 2.) The boundaries of this trade area are delineated by the location of major existing or planned competitive centers, such as the Roseville Galleria and the Folsom Palladio, which are expected to “split” the market with the proposed Comparison Retail and Eating and Drinking uses envisioned at the Railyards. This is the area, which, according to ULI, is where the majority of a regional retail center’s sales can be expected to be drawn.

For the purpose of this assessment, the remainder of the sales for the proposed Railyards Comparison Retail and Eating and Drinking are assumed to be drawn from the rest of the RTA (defined as the secondary/tertiary trade areas per ULI). This area encompasses basically the suburban communities and the unincorporated area of the counties within the RTA as referenced above.

Thus, the overall trade area defined for the Comparison Retail and Eating and Drinking uses at the Railyards is the RTA, which includes the PTA (and Downtown Sacramento), as shown on Map 1.

For *Convenience Retail and Services* proposed at the Railyards, the primary trade area is defined as the Downtown (DT), the boundaries of which are consistent with those defined by the City’s for its Central Business District: an area bounded by the Sacramento River on the west and north, I-50 on the south, I-5 on the west to I-80 on the east, as shown on Map 3. This area includes four major retail concentrations: Westfield Plaza, Old Sacramento, K-Street Mall and Midtown. The Downtown would be the primary trade area for the Convenience Retail and Services at the Railyards as the types of uses envisioned, i.e., grocery stores/markets, drug stores, resident-serving services, typically draw the bulk of their market support from an area approximately 1 to 1½-mile radius from the subject site.

Following is a description of the demographic characteristics of these trade areas:

*1. Comparison Retail and Eating and Drinking*

*Regional Trade Area (RTA)* – Market support in the larger metropolitan area has grown considerably in the last decade, reflecting the expansion of the Greater Sacramento region, driven particularly by fast-growing cities such as Elk Grove and Roseville. As shown on Table 2, the RTA population increased 18% between 2000 and 2007, from 1.7 million to about 2.0 million. It is projected to continue growing at a faster rate than the State as a whole in the next two decades, with population projected to reach 2.3 million by 2015 and 2.7 million by 2025. Average per capita income of residents in this regional trade area is estimated at \$26,900.

*Primary Trade Area (PTA)* – The estimated 2007 resident population in the closer-in trade area, or the PTA, is slightly over 1.0 million, an 11% increase over the 2000 population of 970,000. This trade area is projected to grow modestly – to 1.2 million residents by 2015 and nearly 1.4 million by 2025. The average per capita income within the PTA is similar to that for Downtown, at approximately \$23,300. This area is expected to generate the bulk of sales support for the proposed project.

*2. Convenience Retail*

*Downtown Sacramento (DT)* - As shown on Table 2, the residential population in the Downtown is estimated by Claritas, a U.S. Census-based data source, at about 33,347 for 2007, an approximately 5% increase from 2000. However, there are an estimated 4,700 residential units under construction or being planned in the Downtown, plus an additional 10,000 to 12,000 units proposed for the Railyards alone. Thus, assuming these units are realized, the residential population in Downtown Sacramento could potentially increase from its 2007 total of 33,347 to an estimated 44,347 by 2015 and to 77,347 by 2025, an increase of 11,000 and 44,000 residents respectively. The household size for the Downtown population is estimated at 2.1 persons per household, which is smaller than that for the City of Sacramento overall; based on the experiences in other downtowns, in-town households tend to be heavily comprised of singles, childless couples and empty-nesters. The estimated 2007 per capita income of Downtown residents is in the range of \$23,200.

**B. Market Support Segments**

The following four major segments of the market would be logical targets for the proposed retail and entertainment complex at the Railyards:

- Residents (Downtown, Primary Trade Area, Regional Trade Area). As shown on Table 3, an estimated total of 2.3 million and 2.7 million total residents are projected in these three trade areas, respectively, for 2015 and 2025. Of the approximately 2.3 million total residents projected for 2015, an estimated 44,000 residents would be located in the Downtown; approximately 1.2 million additional residents in the PTA, and the remainder of approximately 1.1 million residents in the RTA. For 2025, the number of total residents is projected to increase to 2.7 million, with the largest gain expected Downtown – 77,000

residents. An additional 1.3 million and 1.4 million are projected to locate, respectively, in the PTA and RTA. (Source: Claritas, extrapolated by KMA based on trends and/or known residential developments – such as in the Downtown.)

- Downtown Office Employees. Based on information from the Downtown Sacramento Partnership (DSP) and Sacramento Area Council of Governments (SACOG), the total number of office employees in Downtown Sacramento is estimated to be in the range of 91,000 by 2015, increasing to 106,000 by 2025. These estimates were adjusted downwards by approximately 50% to 46,000 and 53,000, respectively, for 2015 and 2025 to avoid double-counting of employees who may also be trade area residents. (See Table 3.)
- Downtown Visitors. According to data provided by DSP, a total of 4.6 million visitors attended various downtown events and attractions in 2005. In the absence of any more definitive statistical data, an adjustment of 50% reduction has also been made to this total to eliminate multiple visits to events/venues by the same visitor(s) and to avoid overlaps with the trade area resident and employee counts above. As shown on Table 3, an estimated 2.4 million visitors to Downtown Sacramento is projected for 2015, rising to approximately 2.7 million visitors for 2025. These projections are in the same range as the 2 to 4 million annual visitors per year projected by the applicant for the proposed Bass Pro store at the Railyards.
- Special Use-Generated Visitors (i.e., to museums, playhouse, other live-performance venues). As shown on Table 3, an estimated 175,000 are projected to be visitors to the proposed Museum of Railroad Technology. This number is extrapolated from the estimates in the 2000 Market Overview study prepared by the CA State Railroad Museum and Foundation. The projected 500,000 annual attendees (2015) and 700,000 attendees (2025) to the entertainment venues envisioned for the Railyards, such as a playhouse, live-performances, etc., are an estimate for the purpose of this analysis only as the precise number of attendees will be contingent upon the size and nature of the entertainment offered at the proposed project. This level of project information is not yet available with a high degree of certainty.

For the *Convenience Retail and Service* uses proposed at the Railyards, Downtown residents would be the primary segment of market support. Other downtown segments, such as downtown employees and visitors, are expected to represent secondary support for the local retail uses proposed.

For *Comparison Retail and Eating and Drinking*, residents in the Primary Trade Area (inclusive of Downtown) would be the primary market support segments. Others, including residents from the Regional Trade Area, downtown employees and visitors, and visitors generated by the special uses, are anticipated to represent secondary and tertiary support for the comparison retail and eating and drinking entertainment uses envisioned at the Railyards.

### **C. Projected Total Retail Expenditure Potential**

The projection of per capita and total market demand is based on an assessment of each support segment's expenditure pattern for the selected types of retail goods and the projected growth of the segments to 2015 and 2025, as shown on Tables 4a and b and Table 5a and b. These assumptions and the analytical results for the selected types of retail and entertainment uses proposed at the Railyards are summarized as follows:

#### *1. Comparison Retail Expenditure Potential*

Based on the taxable retail sales from the State Board of Equalization (SBE), residents in the state spent an average of 14.5%, or about \$3,700, of their 2005 per capital income on Comparison Retail goods (Apparel, General Merchandise excluding Drugs, Specialty Retail, and Home Furnishings and Appliances). Downtown employees are estimated to spend in the range of \$1,600 per year and Downtown Visitors expenditures are estimated to spend approximately \$34 per day for this category of retail goods<sup>4</sup>. (See Tables 4a and b.)

Assuming the above patterns, the total Comparison Retail expenditure potential available from all the market segments is projected to be in the range of \$9.2 billion, as shown on Table 5a, for 2015. Over 98% of this total, or approximately \$9.0 billion would be generated from trade area residents. An additional \$60 million are projected to be generated from Downtown Employees, \$83 million from Downtown visitors and the remainder, or about \$11 million from Special-Uses in the Railyards. The total Comparison Retail expenditure potential is projected to increase to \$12.1 billion by 2025, as shown on Table 5b.

#### *2. Eating and Drinking Expenditure Potential*

Similarly, taxable retail sales from the State Board of Equalization indicates that the average California resident spent 4.9%, or about \$1,300, in 2005 on Eating and Drinking. Downtown employees are estimated to spend in the range of \$1,800 per year and Downtown Visitors expenditures are estimated to spend approximately \$23 per day for this category of retail goods. (See Tables 4a and b.)

Assuming these spending patterns, the total expenditure potential available from all the market segments for Eating and Drinking is projected to be about \$3.2 billion, as shown on Table 5a, for 2015. Of this total, approximately \$3.1 billion are expected to be generated from trade area residents. An additional \$69 million are projected to be generated from Downtown Employees, \$56 million from Downtown visitors and the remainder, or about \$8 million from Special-Uses in the Railyards. The total Eating and Drinking expenditure potential is projected to grow to \$4.2 billion by 2025 (See Table 5b.)

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<sup>4</sup> These estimates are based on industry publications, such as the 2004 Office Worker Spending Patterns from the International Council of Shopping Centers, Dean Runyan Associates and Smith Travel Research reports, adjusted to 2007.

*3. Convenience Retail and Services Expenditure Potential*

Given that not all sales are typically taxable in grocery and drug stores, SBE's taxable sales data were adjusted to reflect total Convenience Retail sales. Based on this adjustment (at 30% for Food and 65% for Drugs stores), the average resident in the state spent about 8.2%, or \$2,100, in 2005 on Convenience Retail goods. Services, such as beauty salons, shoe repairs, dry cleaners, banks, etc., do not generally generate any meaningful levels of retail sales or their sales are included in other retail categories; they also tend to represent only a small portion, i.e., around 5%, of total retail space in a center. Thus, expenditure potential for Services is not include in this analysis. (See Tables 4a and b.)

Assuming the spending patterns above, the total Convenience Retail expenditure potential projected from all the Downtown market support segments (Downtown residents, office workers and visitors) for is projected to be about \$141 million, as shown on Table 5a for 2015. Of this total, approximately \$91 million would be generated from Downtown residents, \$42 million from Downtown Employees, and \$7 million from Downtown visitors. Of just these three segments, the total expenditure potential is projected to increase to \$242 million by 2025 for Convenience Retail (See Table 5b.)

*4. Aggregated Expenditure Potential*

In summary, the aggregated expenditure potential available to Downtown Sacramento from the four segments of support (applicable trade area residents, downtown employees and visitors, including special uses generated visitors) is projected to be \$12.6 billion for 2015 and \$16.6 billion for 2025, as summarized below:

<b><u>Projected Total Expenditure Potential</u></b>	<b><u>Estimated 2015</u></b>	<b><u>Projected 2025</u></b>
<b>Comparison Retail</b>		
Trade Area Residents	\$ 9,056 M	\$11,890 M
Downtown Office Workers	\$ 60 M	\$ 74 M
Downtown Visitors	\$ 83 M	\$ 106 M
Special Use Generated	<u>\$ 11 M</u>	<u>\$ 17 M</u>
Total RTA (Incl. DT, PTA) <sup>5</sup>	\$ 9,211 M	\$12,088 M
<b>Eating and Drinking</b>		
Trade Area Residents	\$ 3,092 M	\$ 4,055 M
Downtown Office Workers	\$ 69 M	\$ 90 M
Downtown Visitors	\$ 56 M	\$ 70 M
Special Use Generated	<u>\$ 8 M</u>	<u>\$ 11 M</u>
Total RTA (Incl. DT, PTA) <sup>5</sup>	\$ 3,225 M	\$ 4,226 M
<b>Convenience Retail/Services</b>		
Downtown Residents	\$ 91 M	\$ 176 M
Downtown Office Workers	\$ 42 M	\$ 58 M
Downtown Visitors	<u>\$ 7 M</u>	<u>\$ 8 M</u>
Total Downtown <sup>5</sup>	\$ 141 M	\$ 242 M

**D. Competitive Supply**

Given that there is no database for a comprehensive inventory of existing retail space in the City of Sacramento as well as in the PTA and RTA, KMA has estimated competitive supply based on information provided by the City, PBS&J, DSP, the applicant, and industry publication on known existing, under construction, and planned retail projects in the three trade areas: Downtown, PTA and RTA. Projects which are in early planning or conceptual stage with no known specifics, such as the Stone Lock project in West Sacramento and the proposed expansion at Arden Fair in Sacramento, have not been included at this time. The assumptions on the size and timing of existing, under-construction, and planned major retail projects (typically 500,000 square feet) or more outside of Downtown) are shown on Table 6a. Additional centers,<sup>6</sup> such as less directly competitive and/or smaller centers (i.e., under 500,000 square feet outside of Downtown in the remainder of the PTA or RTA) are aggregated on Worksheet 1. These totals are further adjusted on Tables 6a and b by a 25% allowance for other retail not listed, such as stand alone, upper-level, and/or scattered retail uses and/or retail in smaller centers/cities/unincorporated county areas.

<sup>5</sup> Totals may not equal due to rounding.

<sup>6</sup> Provided by applicant, amended by KMA based on additional/updated project information available.

## 1. Downtown

As shown, there are an estimated 2.1 million square feet of competitive supply existing in the Downtown, with over 1.7 million concentrated in four major retail areas within Downtown (Westfield Plaza, Old Sacramento, K-Street Mall, and Midtown Corridor) as of 2007. The salient retail characteristics of each of these areas are briefly described below:

- *Westfield Downtown Plaza* (est. 981,000 sq.ft.), a 2-level, regional retail center now anchored by Macy's and a multi-plex cinema. Plans have been proposed for an approximately 332,000 sq.ft. (or 110,000 sq. ft. of net new space after renovation of existing center) expansion, with a Target store and an upscale grocer. Residents comprised the major market support segment for this center;
- *Old Sacramento* (est. 410,000 sq.ft.), a visitor-oriented, historic-themed center, comprised mainly of restaurants/entertainment and small specialty retail shops;
- *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;
- *Midtown Corridor* (est. 150,000 sq.ft.), a local retail district which has emerged alongside the large number of new housing units recently been built in the area, it is anchored by small neighborhood restaurants/bars and one-of-a-kind boutiques. Another 50,000 sq.ft. of retail have been proposed for the Corridor.

A 25% allowance, or approximately 418,000 sq.ft., is estimated for the rest of the retail (i.e., not in the four concentrated locations) in the remainder of Downtown.

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.

## 2. Remainder of PTA

Outside of Downtown, there are an additional 9.8 million square feet of retail, of which an estimated 7.7 million square feet are in 10 existing retail centers, with the largest being the 1.1 million square foot Arden Fair. Other centers are Natomas Marketplace, Sacramento Gateway – Promenade and the Village, Florin Town Center, County Club Plaza, Country Club Plaza, Southgate (Sacramento), Riverpoint Marketplace (West Sacramento), and Woodland Gateway

Center. In addition, approximately 3.1 million square feet of retail are estimated for the remainder of the PTA. This additional space includes retail uses located in smaller centers and uses not located in centers, as shown on Worksheet 1.

On the PTA level (inclusive of Downtown), the proposed Railyards project would represent only about 7% of the total 2015 PTA inventory of existing, under-construction and planned retail space and 9% of the 2025 PTA inventory, as shown on Table 6a.

### *3. Remainder of RTA*

There is anticipated to be another 9.1 million square feet of competitive retail space existing in the remainder of the Trade Area, as summarized in Table 6a. The most competitive would be the approximately 1.0 million sq.ft. Roseville Galleria, a Nordstrom-anchored, upper-end center and the 1.2 million sq.ft. Sunrise Mall in Citrus Heights, an older traditional department-store anchored retail center, as the least comparable.

However, over 5.0 million sq.ft. of new retail space are being planned in the remainder of the RTA, including expansions of the existing Roseville Galleria and Sunrise Mall and development of new centers in outlying communities such as Elk Grove (Laguna Ridge and the Promenade), Folsom (Palladio), Rocklin (Rocklin Crossing), and an yet unnamed regional mall south of Highway 50. An additional 9.6 million square feet of smaller retail centers and an allowance for other retail are estimated to be located in the rest of the RTA (See Table 6a.)

Thus, for the RTA (inclusive of PTA and DT), the proposed Railyards project, if built, would constitute only a small percentage of the total retail space in the region: in the range of 3% by 2015 and 4% by 2025.

### *4. Allocation by Retail Types*

The estimated retail space inventory in Table 6a are also broken down by the same retail components (Comparison Retail, Eating and Drinking, and Convenience Retail and Services) as those proposed for the Railyards. These breakdowns are estimated based on square footage of retail space use information available for a specific project or, if such information is not readily available, on KMA's estimates, taking into account the type of retail project (if known) and/or by typical space usage within specific types of shopping centers. For example, typical space use in traditional comparison shopping centers is approximately 80% Comparison Retail, 15% Eating and Drinking, and 5% Services. In a lifestyle retail center, the space allocation tends to be lower in Comparison Retail (about 67%) and Services (about 4%), and higher in Eating and Drinking (i.e., 29%). Thus, centers for which the space usage is unknown are broken down based on typical rates as above.

These breakdowns are shown on Tables 6b, c, and d and summarized below (excluding and including the Railyards):

<b><u>Competitive Retail Supply</u></b> <b><u>(Excluding the Railyards)</u></b>	<b><u>Estimated 2007</u></b>	<b><u>Projected 2015</u></b>	<b><u>Projected 2025</u></b>
Total			
Downtown	2.1 M Sq.Ft.	3.1 M Sq.Ft.	3.2 M Sq.Ft.
Total PTA (Incl. DT)	9.8 M Sq.Ft.	15.2 M Sq.Ft.	15.3 M Sq.Ft.
Total RTA (Incl. DT, PTA)	18.9 M Sq.Ft.	33.3 M Sq.Ft.	33.4 M Sq.Ft.
Comparison Retail			
Downtown	1.4 M Sq.Ft.	2.2 M Sq.Ft.	2.3 M Sq.Ft.
Total PTA (Incl. DT)	7.9 M Sq.Ft.	11.8 M Sq.Ft.	11.9 M Sq.Ft.
Total RTA (Incl. DT, PTA)	15.2 M Sq.Ft.	26.2 M Sq.Ft.	26.3 M Sq.Ft.
Eating and Drinking			
Downtown	0.5 M Sq.Ft.	0.8 M Sq.Ft.	0.8 M Sq.Ft.
Total PTA (Incl. DT)	1.8 M Sq.Ft.	2.6 M Sq.Ft.	2.6 M Sq.Ft.
Total RTA (Incl. DT, PTA)	3.1 M Sq.Ft.	5.4 M Sq.Ft.	5.4 M Sq.Ft.
Convenience Retail & Services			
Downtown	.1 M Sq.Ft.	.2 M Sq.Ft.	.2 M Sq.Ft.
<b><u>(Including the Railyards)</u></b>			
Total			
Downtown	2.1 M Sq.Ft.	4.2 M Sq.Ft.	4.8 M Sq.Ft.
Total PTA (Incl. DT)	9.8 M Sq.Ft.	16.3 M Sq.Ft.	16.8 M Sq.Ft.
Total RTA (Incl. DT, PTA)	18.9 M Sq.Ft.	34.4 M Sq.Ft.	35.0 M Sq.Ft.
Comparison Retail			
Downtown	1.4 M Sq.Ft.	2.7 M Sq.Ft.	2.9 M Sq.Ft.
Total PTA (Incl. DT)	7.9 M Sq.Ft.	12.3 M Sq.Ft.	12.5 M Sq.Ft.
Total RTA (Incl. DT, PTA)	15.2 M Sq.Ft.	26.7 M Sq.Ft.	26.9 M Sq.Ft.
Eating and Drinking			
Downtown	0.5 M Sq.Ft.	1.2 M Sq.Ft.	1.3 M Sq.Ft.
Total PTA (Incl. DT)	1.8 M Sq.Ft.	3.0 M Sq.Ft.	3.2 M Sq.Ft.
Total RTA (Incl. DT, PTA)	3.1 M Sq.Ft.	5.8 M Sq.Ft.	5.9 M Sq.Ft.
Convenience Retail & Services			
Downtown	.1 M Sq.Ft.	.3 M Sq.Ft.	.5 M Sq.Ft.

5. *Estimated Sales (2007) and Projected Sales Requirements (2015 and 2025)*

Tables 7a, b and c provide sales estimates for the competitive retail supply identified on Tables 6b, c, and d. The purpose of these estimates is to quantify the total retail sales requirement for the competitive retail supply for comparison with the estimated total expenditure potential within the respective trade areas for the selected types of retail uses. The sales requirement estimates are based on the following: *(Note, for confidentiality purpose, sales for specific projects are not shown.)*

- For major Sacramento retail projects – The sales estimates for 2007 are based on 2006 taxable sales data provided by the City (escalated at 1% per year for real appreciation to 2007). All 2007 sales are escalated at 1% per year for real appreciation to 2015 and 2025.
- For sales in the remainder of the PTA and RTA outside of the major projects identified, the 2005 taxable sales from the State Board of Equalization for the cities within the trade areas are used if available. As in the inventory of retail space, a 25% allowance is included in the sales estimates to account for retail sales outside of cities (i.e., in unincorporated areas) and for sales in localities where no SBE taxable sales breakdowns are available (e.g., Galt, Cameron Park and Lincoln.)
- For projects for which existing sales are not available, the estimated 2007 sales are based on average per square foot sales requirement in the range of \$250/sq.ft. for Comparison Retail, \$350/sq.ft. Eating and Drinking, and \$325/sq.ft. for Convenience Retail, or average sales per store for existing space as published in industry publications (as noted next, higher averages would be expected of new space.)
- For projects which are anticipated to be completed by 2015 and 2025, target industry averages (\$350/sq.ft., \$450/sq.ft. and \$425/sq.ft.) are used to project future sales requirements. The average target sales requirements for new space are typically higher than those for existing stores as they reflect sales at presumably newer and more efficient facilities, which generally translate to higher cost requirements for market entry.

The sales requirement assumptions for the remainder of PTA and RTA are shown on Worksheets 2 and 3 in the Appendix of this report.

The target sales for the proposed Railyards project are shown on Table 8. As shown, the project is expected to have total sales requirements in the range of \$428 million by 2015, comprised of an estimated \$198 million would be for Comparison Retail, \$185 million would be for Eating & Drinking and \$45 million would be for Convenience Retail. A nominal amount is estimated for Services. By 2025, the total target sales requirement is projected to reach \$669 million, with \$256 million in Comparison Retail, \$271 million for Eating & Drinking/Entertainment, and \$142 million for Convenience Retail.

The aggregation of the estimated and projected sales for the selected retail categories (excluding and including the target sales requirements for the proposed Railyards) is shown on Tables 7a, b, and c, and summarized as follows:

<b><u>Estimate/Projected Retail Sales Requirements (\$0M)</u></b>	<b><u>Estimated 2007 Sales</u></b>	<b><u>Projected 2015 Sales Reqmts</u></b>	<b><u>Projected 2025 Sales Reqmts</u></b>
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**(Excluding the Railyards)**

Comparison Retail			
Downtown	\$ 170 M	\$ 480 M	\$ 530 M
Total PTA (Incl. DT)	\$2,780 M	\$ 4,520 M	\$ 4,890 M
Total RTA (Incl. DT, PTA)	\$5,250 M	\$ 9,780 M	\$10,810 M

Eating and Drinking			
Downtown	\$ 120 M	\$ 260 M	\$ 280 M
Total PTA (Incl. DT)	\$1,070 M	\$ 1,600 M	\$1,760 M
Total RTA (Incl. DT, PTA)	\$1,720 M	\$ 2,960 M	\$3,270 M

Convenience Retail & Services			
Downtown	\$30 M	\$60 M	\$70 M

**(Including the Railyards)**

Comparison Retail			
Downtown	\$ 170 M	\$ 680 M	\$ 750 M
Total PTA (Incl. DT)	\$2,780 M	\$ 4,710 M	\$ 5,210 M
Total RTA (Incl. DT, PTA)	\$5,250 M	\$ 9,980 M	\$11,030 M

Eating and Drinking			
Downtown	\$ 120 M	\$ 440 M	\$ 560 M
Total PTA (Incl. DT)	\$1,070 M	\$ 1,780 M	\$2,040 M
Total RTA (Incl. DT, PTA)	\$1,720 M	\$3,150 M	\$3,540 M

Convenience Retail & Services			
Downtown	\$30 M	\$110 M	\$210 M

**E. Projected Net Retail Expenditure Potential (Projected Total Potential Comparison with Projected Sales Requirements)**

The purpose of estimating the net expenditure potential (the comparison of the total expenditure potential projected generated from the applicable market segments with existing and projected sales requirements projected for the selected categories of retail) is to assess whether sufficient retail market support exist within the respective trade areas relative to the projected retail sales requirements of the existing, under-construction and planned supply.

The net expenditure potential is calculated by subtracting the projected sales requirements (shown on Tables 7a, b, and c) from the total estimated expenditure potential (shown on Tables 5a and b) for the specific retail categories. The results are summarized on Tables 9a (excluding target sales requirements from the proposed Railyard project) and 9b (including target sales requirements from the proposed Railyard project). The net expenditure potential is projected for 2015 (the year of projected substantial Railyards retail completion and stabilization) and 2025 (the year of projected 100% Railyards retail completion and stabilization). As shown, the net potential available in the respective trade areas with and without the Railyards is projected as follows:

***Projected Net Expenditure Potential***

<b><u>(Total Potential minus Sales Reqmts) (\$0M)</u></b>	<b><u>Estimated 2015</u></b>	<b><u>Projected 2025</u></b>
<i>(Excluding the Railyards – Table 9a)</i>		
Comparison Retail		
Total PTA (Incl. DT)	\$ 1 M	\$ 680 M
Total RTA (Incl. DT, PTA)	(\$ 580 M)	\$ 1,250 M
Eating and Drinking		
Total PTA (Incl. DT)	\$ 30 M	\$ 270 M
Total RTA (Incl. DT, PTA)	\$ 260 M	\$ 940 M
Convenience Retail & Services		
Downtown	\$ 80 M	\$170 M
 <i>(Including the Railyards – Table 9b)</i>		
Comparison Retail		
Total PTA (Incl. DT)	(\$ 180 M)	\$ 500 M
Total RTA (Incl. DT, PTA)	(\$ 770 M)	\$1,060 M
Eating and Drinking		
Total PTA (Incl. DT)	(\$ 150 M)	\$ 10 M
Total RTA (Incl. DT, PTA)	\$ 80 M	\$ 680 M
Convenience Retail & Services		
Downtown	\$ 30 M	\$ 30 M

**1. Analytic Findings**

As shown above, the analytical findings of KMA's market assessment indicate the following:

**a. Excluding the Railyards (Table 9a.)**

- *Comparison Retail* – Assuming real growth of existing retail center sales at 1% per year and the projected Comparison Retail sales requirements of known under-construction and planned projects in the PTA and RTA (inclusive of Downtown), the results of the net potential analysis indicates that there is projected to be sufficient support for Comparison Retail growth in the PTA in both 2015 and 2025. However, in the larger regional trade

area due to the addition of a number of new retail projects in the outlying communities, such as Elk Grove and Rocklin, the sales requirement will likely exceed the expenditure potential available in the RTA by 2015. By 2025, however, growth of the key market segments (residents, office workers and visitors) is projected to be sufficient to support future Competitive Retail supply as currently known in both the PTA and RTA.

- *Eating and Drinking and Convenience Retail and Services* – The analysis indicates that there is ample opportunity for the continued addition of new Eating and Drinking and Convenience Retail and Services in their respective trade areas (PTA and RTA for Eating and Drinking, Downtown for Convenience Retail and Services) in both 2015 and 2025.

b. Including the Railyards (Table 9b.)

- *Comparison Retail* – With the inclusion of the proposed Railyards, supply is expected to exceed demand in both the PTA and RTA by 2015, due to the introduction of a number of major retail projects into the trade areas. By 2025, however, growth of the key market segments (residents, office workers and visitors) is expected to be sufficient to support future Competitive Retail supply in both the PTA and RTA.
- *Eating and Drinking* – Supply is projected to exceed demand slightly in the PTA in 2015, but is anticipated to be in balance with demand by 2025. In the larger RTA, overall, market growth is expected to be able to support both the 1% real sales growth of the existing Eating and Drinking supply and the sales requirements of new additions to the inventory in both 2015 and 2025.
- *Convenience Retail* – As in the case of Convenience Retail excluding the projected Railyards project, the potential for Convenience Retail Downtown is expected to be sufficient to meet the sales requirements of the existing and new supply in the Downtown in both 2015 and 2025.

### **SECTION III. ECONOMIC IMPACT LESSONS LEARNED FROM TWO SELECTED RETAIL PROJECTS**

In order to better understand the economic impacts which may result from the introduction of a major new shopping center into an existing central business area, two specific case studies were analyzed. The first is the Gateway Center (650,000 sq.ft.) in Downtown Salt Lake City; the second is Bay Street (400,000 sq.ft. + expansion) in the City of Emeryville. Both these projects are significant retail and entertainment developments introduced into a weakening retail location. Thus, the economic environment at the time the Gateway and Bay Street were introduced has similarities to that of Downtown Sacramento – with Downtown Sacramento having the added advantage of being poised for an upturn with a number of new projects proposed or planned in the area. For this reason, the lessons learned from these two case studies have relevancy in terms of assessing the possibility that the proposed Railyards project will cause urban decay in Downtown Sacramento.

#### **A. Gateway, Salt Lake City**

The Gateway is a \$375 million mixed use development that was completed in November 2001. The project was centered on the historic Pacific rail depot in the 650-acre Gateway District, a once vibrant and prosperous area that has become forgotten and neglected older industrial, warehousing, and transportation area west of downtown. In 1998, the Depot District Redevelopment Project was created to revitalize the area in anticipation of the 2002 Olympic Games, leading to the development of the Gateway project. Following is a summary of the project profile, the similarities and differences between the Sacramento Railyards and the Salt Lake City Gateway projects, the lessons learned from Gateway's experience and their implications for the Railyards.

##### *1. Project Profile*

The total project is a 2.5 million sq.ft. mixed use development, located on a 40-acre site in the Gateway District. Covering three whole blocks, the project includes approximately 650,000 sq.ft. of retail/entertainment uses, consisting of about 590,000 sq.ft. of retail and eating and drinking, plus a 60,000 sq.ft. 12-screen theater. Other components of the project include 3 Class A office buildings, a renovated train depot, cultural attractions (e.g., Children's Museum), a public plaza, parking, 500 residential units and a hotel. This open-air center was conceived as a major urban destination, with retail tenants that are largely national chains that had not previously been in the Salt Lake City market.

The project is located approximately a mile from two existing retail centers along South Temple Street, the historic major retail street in the Downtown Salt Lake City: the 622,000 sq.ft. Crossroads Plaza, which at the time that Gateway was introduced, was anchored by Nordstrom's and a Mervyn's, and the ZCMI Center Mall, which was anchored by a Macy's. (These two malls have since closed and are being merged into a new center – City Creek Center.) The Gateway is visually and physically separated from these other centers by the Delta

Center and the Salt Palace Convention Center. It is also about a block away from the intermodal hub and a 44-mile commuter rail and light rail station, which are expected to be completed by 2008. South of the site is the Pierpoint Art District, including a Farmer's Market and a concentration of new restaurants. Northeast of the site is the Utah State Capitol.

## *2. Similarities and Differences between Railyards and Gateway*

- Both the Gateway and the proposed Railyards projects were conceived as a catalyst project to stimulate the revitalization of Downtown. The Gateway was envisioned as an intervention element that could potentially stem the hemorrhaging of retail dollars to the malls and big boxes in the suburbs and reverse the downward economic "spiral" in downtown Salt Lake City, which has yet to recover from recession of the late 1990's. The Railyards is envisioned as an injection element that could accelerate and fuel the upward momentum of a downtown that is on the verge of a renaissance – as evidenced by the scores of new development under construction, planned or proposed for the downtown.
- Like the Gateway, the Railyards project, as proposed, includes a mix of offices, a renovated depot building, cultural facilities, public open spaces and housing. However, the Gateway's retail and entertainment component (650,000 sq.ft.) is substantially smaller than the 1.4 million sq.ft. contemplated for the Railyards.
- The Railyard will also locate in similar urban context as the Gateway, that is, in the proximity of major competitive retail concentrations, existing cultural facilities, the State capitol, public plazas, possibly an arena, a farmer's market, and an intermodal center. The Gateway is an isolated, stand-alone project. This isolation from the retail focus of the historic downtown on South Temple Street and Main Street is further reinforced by the City's large downtown blocks (660' x 660'), wide streets, and extreme weathers – all of which discourages pedestrian flow. The Railyards, on the other hand, is represented by the applicant as within walking distance to most of the existing retail and cultural facilities in Downtown Sacramento.
- In the case of both developments, their large scale, retail tenancy, and downtown location raised concerns about potential impacts on existing retailers. In Salt Lake City, both the Crossroads Plaza and ZCMI Center were becoming functionally and physically obsolete when Gateway was introduced. In the case of Sacramento, the Westfield Downtown Plaza appears to be currently under-achieving, but is planning a major repositioning.

## *3. Before and After Gateway*

- According to Salt Lake City's economic development staff, Gateway is now thriving (particularly after the closure of the two malls, Crossroad Plaza and CZMI). Sales have grown every year since it opened in 2001, tenant turnover has been modest, its theater

and restaurants have been very popular; its planetarium and Children's Museum have attracted visitors from the metro area. Light rail line is being extended along the center and further west to the Amtrak station, where a new intermodal hub is planned. Gateway is more popular with suburban residents and has a suburban design/suburban aesthetic (akin to an open air mall).

- According to a June 2005 report prepared for The Downtown Alliance, economic conditions in Salt Lake's Central Business District have improved between 2002 and 2005, for example:
  - The CBD have not only recovered the 1,200 jobs lost during the recession, but showed a net job gain of about 295 jobs in 2005.
  - No new office space has been developed in the CBD since 2001; however, office vacancy rates have declined recently (Class A vacancy rate is estimated by city staff at less than 2%), accompanied by announcements of plans for three new office buildings totaling over 600,000 sq.ft.
  - CBD retail sales have increased by 12% or \$81 million between 2001 and 2004, the second best year ever for downtown.
- 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. Fidelity Investments, a relocate from Main Street, is an anchor tenant at new office building constructed at Gateway. Morgan Stanley is cited as another tenant that relocated.
  - Retail vacancies have been noted along Main Street. However, some of the spaces appeared to have been converted to other/non-retail uses, such as offices and financial services.
- Although there was also significant concern expressed by those interviewed in Salt Lake City regarding the potential impacts of the Gateway development, the consensus is that the two downtown malls were on the slide anyway and that Gateway has generated

some positive results; for instance, it has spurred new residential and restaurant developments in the CBD.

- There is also general feeling from those interviewed that ultimately the competition is good for downtown, i.e., by forcing the owner (LDS) of the existing malls to reposition the malls, which has been long overdue. As evidence of this competition, the older Crossroads and the ZCMI centers are now being combined and updated into a new 900,000 sq.ft. City Creek Center, anchored to Nordstrom, Macy, and a new 150,000 sq.ft. Dillards, to better compete for the retail dollars downtown.

#### *4. Lessons Learned (Implications for Sacramento Railyards)*

When a major project is introduced into a weak retail environment, special efforts will need to be made to protect and preserve the existing retail. Examples include the following:

- To prevent Gateway from luring away existing tenants in the CBD, specific clauses were included in the Gateway's development agreement with the City to specify that, for the first four years, existing Main Street merchants would make up no more than 10% of the retailers at the Gateway or occupy more than 10% of the retail space. (Originally, the agreement specified no tenants over 90,000 sq.ft.). Violations of this clause would cost the developer a portion of the \$18 million reimbursements that the City was allocating for public roads and sidewalks constructed by the developer. To comply with these provisions, the Gateway developers aggressively sought new tenants unique to Salt Lake Area and Utah in general – so that they are “not just creating another shopping center”. Similar types of strategies can be developed by the City of Sacramento to discourage the cannibalization of tenants from existing retail concentrations Downtown by the Railyards.
- In addition, there has to be a willingness to invest significantly in the downtown. For example, LDS has announced that the Church is planning to invest \$1.0 billion into merging the two malls into the new City Creek Center. Dillard has committed to locating a store in the new Center. A new office tower is being constructed in the downtown. Additional new office and residential developments have been proposed. The Salt Lake Chamber and Downtown Alliance unveiled a vision for the Downtown that, if realized, would result in about \$2 billion dollar of investment within a 10-block area of Downtown in the next 5 years.

These efforts should reduce the possibility of urban decay occurring and could result in a stronger CBD in the longer term.

#### **B. Bay Street, Emeryville**

Opened in late 2002, Bay Street is an eclectic urban village, consisting of a mix of life style retail, residential, hotel, and entertainment uses connecting three city blocks in the City of

Emeryville. Located adjacent to I-80, north of the IKEA store on Shellmound Street, the area was once occupied by heavy industrial operations. The City of Emeryville invested over \$27 million to assemble the property, remediate the soil, and select a developer for the project. Following is a summary of the project profile, the similarities and differences between the Sacramento Railyards and the Emeryville Bay Street projects, the lessons learned from Bay Street's experience and their implications for the Railyards.

### *1. Project Profile*

The project is an open-air, mixed use development on 26 acres in Downtown Emeryville, consisting of 400,000 sq.ft. of retail and entertainment, 346 residential units, a 230-room hotel, a 16-screen Cineplex and a 2000-car parking garage. Covering three whole city blocks, the project represents the first lifestyle center in the East Bay. Instead of a traditional department store, it has a 3,300-seat stadium seating cinema, a Barnes and Noble bookstore, Old Navy, and a collection of eateries and retailers. Other components of the project include approximately 3.8 million square feet of Class A office space, a renovated train depot, and a public plaza. The development is linked by a Main Street over 3-city blocks.

This open-air center was conceived as a major urban destination, with retail tenants that are largely national chains, such as Chico, Abercrombie & Fitch, Aerosoles, Ann Taylor Loft, Talbot, Williams-Sonoma, and Coach, that had not previously been in the close-in East Bay market.

The project is located approximately a mile from three existing retail centers along the I-80 corridor: Powell Street Plaza (a 170,000 sq.ft. promotional center), Emeryville Marketplace (190,000 sq.ft. complex with a public market, a 12-screen UA theater, a book store, and other retail/entertainment), and East Bay Bridge Center (a 397,000 sq.ft. power center). Bay Street is also adjacent to a 275,000 sq.ft. IKEA store, which opened in 2000. It is also located within a mile of the Amtrak Station.

A second phase of Bay Street, with a hotel and additional residential and retail use, is being planned. As envisioned, the new retail would include a mid- to upscale department store and/or a mix 10,000± sq. ft. stores, totaling in the usage of 82,000 to 100,000 sq. ft. Completion and occupancy of the second phase is targeted for 2010/2011.

### *2. Similarities and Differences between Railyards and Bay Street*

- Whereas the Railyards is envisioned as an injection element for accelerating the renaissance of Downtown Sacramento, Bay Street was viewed as opportunity to help continue the economic revitalization of the City that has significantly transformed a heavy industrial-based economy into one fueled by high technology/biotechnology. Bay Street is envisioned to further enhance the dramatic regional shoppers draw and retail recovery begun by the newly opened IKEA store and the original Powell Street Plaza.

- The proposed Railyards project and the Bay Street development both include a mix of offices, a major transit station, public open spaces and housing. However, Bay Street's retail and entertainment component (400,000 sq.ft. to 500,000 sq.ft. with expansion) is substantially smaller (30% to 40%) than the 1.3 million sq.ft. contemplated for the Railyards.
- The Railyard will also locate in similar urban context as Bay Street, that is, in close proximity to competitive retail concentrations, theaters, a public market and a major transit facility.
- In the case of both developments, their large scale, retail tenancy, and downtown location raised concerns about potential impacts on existing retailers. In Emeryville, the nearby Powell Street Plaza and Emeryville Marketplace were becoming a bit dated. In the case of Sacramento, as noted above, the Westfield Downtown Plaza appears to be under-achieving but is poised for an expansion.

### 3. *Before and After Bay Street*

- Bay Street appears to be successful as an expansion of the center is being planned. Since 2002 (when the project was completed), apparel sales in the City have nearly doubled, increasing from \$2.6 million to over \$5.0 million, and are continuing to grow every year. There have been some tenant turnovers, which, according to the city staff interviewed, is expected for a new center until it reaches stability. The 16-screen AMC cinema and restaurants reportedly are doing well – especially on weekends. As a lifestyle center, the retail at Bay Street was initially targeted more towards the affluent East Bay communities, but now has also become a shopping attraction for San Francisco customers.
- According to city staff interviewed in Emeryville, the three major nearby centers (Powell Street Plaza, Emeryville Marketplace, East Bay Bridge) are doing well. Store closures that have occurred at Powell Street Plaza were the result of corporate decisions unrelated to Bay Street: Copeland Sports (purchased by Sports Authority) Diamond Jewelers and Tower Records (chain liquidations). These vacated spaces have been successfully released. Vacancy at the Emeryville Marketplace has been typical of small business/entrepreneurs. The only discernable impact was on the older and smaller 12-screen UA Theater. However, it has recovered sufficiently to renew its lease at the Marketplace.
- Overall, the city staff's impression is that there was no significant economic impact on existing retailer concentrations nearby as a result of the Bay Street project (other than a worsening of the traffic congestion in the area – the cause of which extends way beyond Bay Street alone). In fact, there were a number of positive developments, such as an increase in pedestrian activities due to both the retail and the housing projects above.

The impression of Emeryville city staff is that the Bay Street project has opened up the market and brought additional people to Emeryville.

*4. Lessons Learned (Implications for Sacramento Railyards)*

Given the strong demand in both Emeryville and Sacramento, the parallels that can be drawn from the Bay Street project to improve the proposed Railyards' probability of success and minimize potential negative impacts on vulnerable existing retail in the Downtown are as follows:

- Bay Street is a much smaller retail center, i.e., 30% to 40% smaller than the 1.3 million sq. ft. proposed for the Railyards project. As such, the smaller amount of retail space created less of an impact on the existing retail.
- Bay Street introduced a upscale, lifestyle retail concept which is differentiated from the promotional retail at Powell Street Plaza, the public market at Emeryville Marketplace and the power center anchors at East Bay Bridge. As a result of this special niche, there has been no relocation of tenants from the existing centers to Bay Street and its leasing plan is not likely to conflict with those of the other centers. By reinforcing the different retail niches, Emeryville anticipates that the city will more likely be able to sustain its future retail growth. Similarly, the proposed Railyards project will need define its own niche in the Sacramento retail market to minimize potential negative impacts on vulnerable retail areas in the Downtown and to increase the overall retail draw of Downtown Sacramento (so that "the whole becomes greater than its parts".)

#### **SECTION IV: CONCLUSIONS/IMPLICATIONS**

The salient conclusions of the market analysis and the implications for urban decay resulting from the proposed Railyard project are as follows:

- **With or without the proposed Railyards project, the results of the net expenditure potential analysis are as follows:**
  - Projected Comparison Retail sales requirements in the RTA will likely be greater than projected total Comparison Retail expenditure potential in the trade area by 2015 as known projects under construction or planned are completed, but will be less than projected demand growth by 2025 as projected population and employment growth in the trade area catches up with projected future supply;
  - Projected Eating and Drinking and Convenience Retail market demand growth is expected to exceed future Eating and Drinking and Convenience Retail supply in the RTA by both 2015 and 2025; thus opportunities appear to exist for continued growth in these two categories of retail in the future.
  
- **The imbalance in projected Comparison Retail sales requirements and projected potential in the RTA in 2015 will likely have a negative impact on existing, under-construction and planned retail in the trade area.** The extent and nature of the negative impacts on individual existing developments will depend on the relative strength of existing and planned Comparison Retail locations within the RTA - including the four retail concentrations Downtown (Westfield Plaza, Old Sacramento, K-Street Mall, and Midtown Corridor).
  
- **This imbalance between future Comparison Retail supply and future demand is expected to be corrected as market growth (of residents, office employees and visitors) in the Comparison Retail trade areas catches up with sales requirement in the longer term, i.e., by 2025 – unless additional supply continues to be added to exceed projected demand.**
  
- **KMA's judgement is that, until future Comparison Retail market growth is sufficient to support future sales requirement, the more vulnerable retail locations in the trade area may experience an interim period of economic instability that could potentially lead to vacancies, which, if unmitigated, could be prolonged.** Prolonged vacancies (assumed to be space left empty and unused for three or more years), combined with a lack of investment and/or building maintenance, could ultimately lead to decaying building shells in long-term abandonment and/or in deteriorated conditions that significantly impair the proper and safe use of the real estate, or "urban decay" as defined in recent court decisions, and, for example, as has occurred in past years on sections of K Street in Downtown Sacramento.

- **However, with a coordinated public and private strategy, Downtown Sacramento has already demonstrated its ability to eliminate vacancy by having space evolve to uses that are supported by the market.** Through aggressive public and private investment, there are now renovations and/or conversions of existing buildings, which, when completed, will reinforce the competitiveness of Downtown and forestall or eliminate vacancies. For example, Westfield Plaza is undergoing plans to add a Target and an upscale grocer to its mix to better position the shopping center in the competitive Downtown retail market. These changes are also occurring on a smaller scale and on a scattered basis in the Downtown, such as the conversion of rental office spaces to office condominiums at 13<sup>th</sup>/I Street, automotive-based retail spaces to restaurant/residential mixed use along 16<sup>th</sup> Street, and warehouse to residential, retail and office in the R Street corridor in Downtown Sacramento. In most cases, these projects have been undertaken with a combination of private and public investments.
  
- **Thus, to avoid and/or minimize the negative effects that could potentially lead to prolonged vacancies as a result of the imbalance between future Comparison Retail supply and demand in the years around 2015, there needs to be an intensive and coordinated public and private strategy and investments to protect and preserve the more vulnerable retail locations in the Downtown.** The commitment of significant public and private dollars is likely to be necessary given the higher costs of developing in the downtown relative to the suburbs. For retail concentrations Downtown to remain competitive with those in the suburbs and/or the farther-out trade areas, this strategy should include at minimum the following:
  - Reinforcement and enhancement of the differentiated retail offerings of the four retail concentrations in the Downtown, i.e., repositioned regional shopping center for Westfield Plaza, specialty retail and eating and drinking/entertainment for K-Street Mall, visitor-oriented retail for Old Sacramento, and neighborhood-oriented retail/eating and drinking for Midtown Corridor.
  - Identification of a special, unrepresented retail niche for the proposed Railyards project to create a separate identity and destination to minimize overlaps with the other four existing retail concentrations in the Downtown.
  - Development of physical linkages between the proposed Railyards project and other retail concentrations in the Downtown to create retail synergy and a large draw for the Downtown so that, again like Bay Street in Emeryville, the “whole is larger than its parts.”
  - Development of a significant amount of private and public amenities, such as parks, plaza, and streetscapes, and the infrastructure needed to support future improvements in the Downtown so that it can truly become a desirable and attractive “place-to-be” for residents and visitors alike.
  - Continued development of new residential projects in the Downtown to transform the area into both a vibrant and attractive retail destination and living/working community in the Greater Sacramento region.

**SECTION V. CAVEATS AND LIMITATIONS**

1. The analysis contained in this document is based principally on the development program and implementation schedule represented by the applicant and the Sacramento Railyards Specific Plan. The demographic data were obtained from secondary sources such as the U.S. Census, state and local government, planning agencies, real estate brokers, and other third parties, such as Claritas. While KMA believes that these sources are reliable, we cannot guarantee their accuracy.
2. The analysis assumes that the economy will not experience any major and sudden market fluctuations and that it will continue to improve from its current conditions – albeit at a slow rate.
3. The findings are based on economic rather than political considerations. Therefore, they should be construed neither as a representation nor opinion that government approvals for development can be secured.
4. Market feasibility is not equivalent to financial feasibility; other factors apart from the level of demand for a land use are of crucial importance in determining feasibility. These factors include the cost of acquiring sites, relocation burdens, traffic impacts, remediation of toxics (if any), and mitigation measures required through the approval process.
5. Development opportunities are assumed to be achievable during the specified time frame. A change in development schedule requires that the conclusions contained herein be reviewed for validity.
6. The analysis, opinions, recommendations and conclusions of this document are KMA's informed judgment based on market and economic conditions as of the date of this report. Due to the volatility of market conditions and complex dynamics influencing the economic conditions of the building and development industry, conclusions and recommended actions contained herein should not be relied upon as sole input for final business decisions regarding current and future development and planning.

TABLE 1.  
PROJECTED RAILYARDS RETAIL BUILD-OUT  
SACRAMENTO RAILYARDS PROJECT  
SACRAMENTO, CA

ESTIMATED RETAIL MIX	(At Build-Out) <sup>1</sup>										Ph. 4 2025			
	Ph. 1A 2012	2013	2014	Ph. 1B 2015	2016	2017	Ph. 2 2018	2019	2020	Ph. 3 2021		2022	2023	2024
<b>Comparison Retail</b>														
West End	200,000			315,000 <sup>2</sup>			90,000 <sup>2</sup>							
Central Shops	(Bass Pro)			35,000 <sup>3</sup>										
Riverfront District	0			0										
Depot District	0			0										
East End	0			0										
Subtotal Comparison Retail	200,000	0	0	350,000	0	0	90,000	0	0	0	0	0	0	0
Cumulative	200,000	200,000	200,000	550,000	550,000	550,000	640,000	640,000	640,000	640,000	640,000	640,000	640,000	640,000
<b>Eating &amp; Drinking<sup>2</sup></b>														
West End				315,000 <sup>3</sup>			90,000 <sup>3</sup>							
Central Shops				63,000 <sup>4</sup>						15,000				
Riverfront District				0										
Depot District <sup>5</sup>				0										
East End <sup>5</sup>				0										
Subtotal E&D	24,000	0	0	378,000	0	0	90,000	0	0	15,000	0	0	0	25,000
Cumulative	24,000	24,000	24,000	402,000	402,000	402,000	492,000	492,000	492,000	507,000	507,000	507,000	507,000	532,000
<b>Convenience Retail/Services</b>														
West End				34,100 <sup>3</sup>			18,500 <sup>3</sup>							
Central Shops				56,000 <sup>4</sup>										
Riverfront District				0										
Depot District <sup>5</sup>				0										
East End <sup>5</sup>				0										
Subtotal Convenience Retail	67,200	0	0	90,100	0	0	84,500	0	0	25,000	0	0	0	100,000
Cumulative	67,200	67,200	67,200	157,300	157,300	157,300	241,800	241,800	241,800	266,800	266,800	266,800	266,800	366,800
<b>GRAND TOTAL</b>														
West End	200,000			664,100			198,500			0				0
Central Shops	0			154,000			0			0				0
Riverfront District	0			0			0			15,000				0
Depot District <sup>5</sup>	91,200			0			66,000			0				0
East End <sup>5</sup>	0			0			0			25,000				0
TOTAL (Incl. Central Shops) <sup>4</sup>	291,200	0	0	818,100	0	0	264,500	0	0	40,000	0	0	0	125,000
<b>CUMULATIVE</b>	291,200	291,200	291,200	1,109,300	1,109,300	1,109,300	1,373,800	1,373,800	1,373,800	1,413,800	1,413,800	1,413,800	1,413,800	1,538,800
TOTAL (Excl. Central Shops)	291,200	0	0	664,100	0	0	264,500	0	0	40,000	0	0	0	125,000
<b>CUMULATIVE</b>	291,200	291,200	291,200	955,300	955,300	955,300	1,219,800	1,219,800	1,219,800	1,259,800	1,259,800	1,259,800	1,259,800	1,384,800
TOTAL (Excl. Central Shops and Bass Pro Store)	91,200	0	0	664,100	0	0	264,500	0	0	40,000	0	0	0	125,000
<b>CUMULATIVE</b>	91,200	91,200	91,200	755,300	755,300	755,300	1,019,800	1,019,800	1,019,800	1,059,800	1,059,800	1,059,800	1,059,800	1,184,800

1 Based on applicant's proposed phasing, modified to allow slightly longer initial periods for securing funding and approvals.  
2 Includes nightclubs, sportsbar, etc., which serve food and/or beverage. Does not include entertainment venues, such as theaters, performing arts centers, etc.  
3 As no breakdown of space by retail types was provided by applicant, West End space is assumed to include approximately 5% for Services, with the remainder in E&D.  
4 and Comparison Retail (including 200,000 sq. ft. Bass Pro store.)  
5 Includes additional retail opportunities under Historic/Cultural uses in the Railyards program, as represented by applicant.  
6 Assumes approximately 15% in E&D and remainder in Convenience Retail/Services - per city staff.