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11 STAND FOR SAN JOSE, EILEEN HANNAN,
12 MICHELLE BRENOT, ROBERT BROWN, KAREN
13 SHIREY, FRED SHIREY, and ROBERT SHIELDS

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF SANTA CLARA

16 _____
17 STAND FOR SAN JOSE; EILEEN
18 HANNAN; MICHELLE BRENOT;
19 ROBERT BROWN; KAREN SHIREY;
20 FRED SHIREY; and ROBERT SHIELDS,
21
22 Petitioners and Plaintiffs,
23
24 v.
25
26 CITY OF SAN JOSE; CITY COUNCIL OF
27 THE CITY OF SAN JOSE; SUCCESSOR
28 AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY OF SAN JOSE;
SUCCESSOR AGENCY OVERSIGHT
BOARD; DIRIDON DEVELOPMENT
AUTHORITY; DOES 1 through 10,
inclusive,
Respondents and Defendants.

ATHLETICS INVESTMENT GROUP LLC;
DOES 11 through 20, inclusive,
Real Parties in Interest.

Case No. 111-CV-214196; related to and
consolidated with
Case No. 113-CV-250372

VERIFIED SECOND AMENDED
PETITION FOR WRIT OF
MANDAMUS AND COMPLAINT
FOR DECLARATORY RELIEF AND
INJUNCTIVE RELIEF AND FOR
ATTORNEY'S FEES

[Health & Safety Code §§ 34161, et
seq. (Community Redevelopment
Law); San Jose Municipal Code § 4.95
(Public Vote for Sports Facility); Pub.
Res. Code §§ 21167, 21168, and
21168.5 (California Environmental
Quality Act); C.C.P. § 526a (Illegal
Sale of Public Property); C.C.P.
§§ 1085 and 1094.5]

ENDORSED

2014 MAR 11 P 1:54

David H. Yamassa, Clerk of the Superior Court
County of Santa Clara, California

By _____
Deputy Clerk

J. CAO-NGUYEN

FILED BY FAX

1 2. Respondents have pursued a baseball stadium project on public land for a
2 number of years, including the grant to AIG in 2011 of an exclusive Option Agreement to
3 buy six parcels of property in the Diridon Station Area of San Jose (the “Diridon Property”
4 or “Property”) at a price that is now more than a 75% discount to fair market value. In
5 refusing to comply with State and local law rendering the Option Agreement unauthorized
6 and unenforceable, Respondents have abused their powers and violated their legal duties.

7 3. Beginning in or about 2005, the San Jose Redevelopment Agency spent
8 \$25 million in tax-increment funds to acquire the various parcels that make up the Diridon
9 Property, and commenced environmental review for a potential ballpark project on the
10 Property. In 2010, the City represented that there would be additional environmental
11 review “when we have a project” and promised a public vote “prior to . . . making any
12 decision as to a potential ballpark.”

13 4. In an effort to avoid State legislation proposed in 2011 to dissolve
14 redevelopment agencies and require sale of property owned by redevelopment agencies
15 such as the Diridon Property for core municipal purposes, the City and the Redevelopment
16 Agency formed the DDA as a joint powers authority and then transferred the Diridon
17 Property to the DDA at no cost. After the Redevelopment Dissolution Law came into
18 effect, the City and others filed a legal challenge in the California Supreme Court. On
19 November 8, 2011, two days before arguments in the Supreme Court, the City Council and
20 the DDA, in joint session, voted to encumber the Diridon Property with the Option
21 Agreement to sell the Property to AIG. By encumbering the Property with an option
22 granted to a private party, Respondents hoped to avoid the re-transfer of the property
23 mandated by the Redevelopment Dissolution Law, even if the Supreme Court upheld the
24 law.

25 5. Under the Option Agreement, the DDA would sell the Diridon Property to
26 AIG at far less than its market value. The Property, originally acquired for \$25 million and
27 appraised at \$14 million at the time the Option Agreement was approved, was listed as
28 having a 2013 book value of approximately \$29 million in the State Controller’s Report.

1 Under the Option Agreement, the Property would be sold to AIG for only \$6.9 million for a
2 private ballpark use. Taxing entities that would receive distributions from the Successor
3 Agency upon a legitimate sale of the Property—free from the encumbrance of the Option
4 Agreement—would lose approximately \$22 million under the Option Agreement.

5 6. The State Controller’s Report concluded that the transfer of the Property to
6 the DDA was unauthorized, and it ordered the City and the DDA to transfer the Property
7 back to the Successor Agency. Failing in their duty to comply with the Redevelopment
8 Dissolution Law and the State Controller’s Report, Respondents have now taken actions to
9 transfer less than the full fee interest, and instead have transferred the Property to the
10 Successor Agency “subject” to the Option Agreement. At the June 18, 2013 joint City
11 Council/DDA/Successor Agency meeting, the DDA adopted Resolution No. 111.1, and the
12 Successor Agency adopted Resolution No. 7021, each providing that the Diridon Property
13 be transferred to the Successor Agency “*subject to the terms and provisions of the Option*
14 *Agreement . . .*” (emphasis added). At that time the City Council also adopted Resolution
15 No. 76738 authorizing the transfer, but did not address the Option Agreement or require the
16 transfer to be unencumbered. Thereafter, on June 27, 2013, the Oversight Board failed in
17 its legal duty to overturn the Successor Agency’s acceptance of the Property subject to the
18 Option Agreement. At the August 13, 2013 joint Council/DDA/Successor Agency meeting,
19 the DDA adopted Resolution No. 112.1, and the Successor Agency adopted Resolution No.
20 7022, each providing that 645 Park Avenue, part of the Diridon Property, be transferred to
21 the Successor Agency “*subject to the terms and provisions of the Option Agreement . . .*”
22 (emphasis added). In addition to violating the Redevelopment Dissolution Law and the
23 State Controller’s Report, Respondents undertook no effort at any of these meetings to
24 comply with CEQA or to hold a public vote before taking their actions in purportedly
25 continuing the validity of the Option Agreement for purposes of a Ballpark Project.

26 7. In the course of further actions taken by Respondents in the period following
27 August 2013 and continuing through February 2014, in connection with processing and
28 adopting the Successor Agency’s Long Range Property Management Plan (“LRPMP”),

1 Respondents continued to maintain the validity of the Option Agreement in violation of the
2 Redevelopment Dissolution Law and the State Controller’s Report, despite their mandatory
3 duty of law to terminate the Option Agreement.

4 8. Accordingly, this petition and complaint seeks a writ of mandate and
5 declaratory relief adjudging that Respondents’ transfer of the Diridon Property subject to
6 the Option Agreement was unauthorized, contrary to law, void, and of no legal effect;
7 setting aside Respondents’ transfer of the Diridon Property to the extent it remains subject
8 to the Option Agreement; ordering that Respondents transfer the entire fee interest
9 exclusive of and not subject to the Option Agreement, as required under the Redevelopment
10 Dissolution Law; and permanently enjoining Respondents from the sale of the Diridon
11 Property to AIG pursuant to the Option Agreement.

12 **PARTIES**

13 9. Petitioner and Plaintiff SFSJ is an unincorporated coalition, including
14 residents and taxpayers in San Jose and the County of Santa Clara, formed and dedicated to
15 addressing the risks to the environment and financial issues posed by the Ballpark Project.
16 Members of SFSJ reside and/or work in San Jose and Santa Clara County, including the
17 area of the proposed Ballpark Project, and will be affected by the Project’s significant
18 environmental impacts. SFSJ’s members are beneficially interested in the City’s public
19 planning and environmental review processes, and seek to promote the public interest by
20 ensuring that environmental issues critical to taxpayers, jobs, local businesses and
21 neighborhoods are put first as the City evaluates proposed development projects that have
22 the potential to significantly affect the environment and the downtown area. SFSJ and its
23 members seek to ensure that before the Diridon Property is sold to a private party for a
24 ballpark use, the City’s elected decision-makers—as well as the voting public—have all of
25 the environmental information required under CEQA and other information necessary to
26 make informed decisions for the sale of public lands and downtown development. SFSJ
27 members are interested as citizens and taxpayers in making sure that San Jose and its
28 agencies protect and promote the public interest by complying with State and local laws,

1 including CEQA, San Jose Municipal Code § 4.95, and the Redevelopment Dissolution
2 Law. In 2010-2011, SFSJ submitted numerous written and oral comments to Respondents
3 setting forth their environmental and other objections to the Ballpark Project. In June 2013,
4 SFSJ submitted written and oral comments to Respondents setting forth objections to the
5 Successor Agency's determination that the Diridon Property should be accepted subject to
6 the Option Agreement and Respondents' treatment of the Option Agreement as a
7 continuing and enforceable obligation; and urging the Oversight Board to review and
8 overturn the Successor Agency's determination that the Diridon Property be accepted
9 subject to the Option Agreement.

10 10. Petitioner and Plaintiff Eileen Hannan ("Petitioner Hannan") is a resident,
11 voter, property owner, and taxpayer in the City of San Jose, and seeks to protect her
12 interests and the interests of those similarly situated in San Jose. Petitioner Hannan is
13 employed in San Jose, commutes in and around the City, and uses freeways and roadways
14 on a regular basis that will be impacted by the Ballpark Project. Petitioner Hannan is a
15 member and supporter of SFSJ, with similar interests and concerns as those alleged in
16 paragraph 8 above. Petitioner Hannan is beneficially interested in and affected by the
17 City's planning and environmental review processes, and seeks to promote the public
18 interest by ensuring that environmental issues critical to taxpayers, jobs, local businesses
19 and neighborhoods are considered in accordance with law; and that the City's elected
20 decision-makers, as well as the voting public, have all of the environmental information
21 required under CEQA and other information necessary to make informed decisions for the
22 sale of public lands for downtown development. Petitioner Hannan seeks through this
23 petition and complaint to protect the public interest by ensuring that San Jose and its
24 agencies comply with State and local laws, including CEQA, San Jose Municipal Code
25 § 4.95, and the Redevelopment Dissolution Law.

26 11. Petitioner and Plaintiff Michelle Brenot ("Petitioner Brenot") is a resident,
27 voter, property owner, and taxpayer in the City of San Jose, and seeks to protect her
28 interests and the interests of those similarly situated in San Jose. Petitioner Brenot lives in

1 downtown San Jose, commutes from and around the City, and uses freeways and roadways
2 on a regular basis that will be impacted by the Ballpark Project. Petitioner Brenot is a
3 member and supporter of SFSJ, with similar interests and concerns as those alleged in
4 paragraph 8 above. Petitioner Brenot is beneficially interested in and affected by the City's
5 planning and environmental review processes, and seeks to promote the public interest by
6 ensuring that environmental issues critical to taxpayers, jobs, local businesses and
7 neighborhoods are considered in accordance with law; and that the City's elected decision-
8 makers, as well as the voting public, have all of the environmental information required
9 under CEQA and other information necessary to make informed decisions for the sale of
10 public lands for downtown development. Petitioner Brenot seeks through this petition and
11 complaint to protect the public interest by ensuring that San Jose and its agencies comply
12 with State and local laws, including CEQA, San Jose Municipal Code § 4.95, and the
13 Redevelopment Dissolution Law.

14 12. Petitioner and Plaintiff Robert Brown ("Petitioner Brown") is a resident of
15 Santa Clara County, residing in Los Gatos, and employed in San Jose in proximity to the
16 proposed Ballpark Project site. Among other things, Petitioner Brown commutes to and
17 around San Jose, and uses freeways and roadways on a regular basis that will be adversely
18 impacted by the Ballpark Project. Petitioner Brown is beneficially interested in and
19 affected by the City's planning and environmental review processes, and seeks to promote
20 the public interest by ensuring that environmental issues critical to taxpayers, jobs, local
21 businesses and neighborhoods are considered in accordance with law; and that the City's
22 elected decision-makers, as well as the voting public, have all of the environmental
23 information required under CEQA and other information necessary to make informed
24 decisions for the sale of public lands for downtown development. Petitioner Brown seeks
25 through this petition and complaint to protect the public interest by ensuring that San Jose
26 and its agencies comply with State and local laws, including CEQA, San Jose Municipal
27 Code § 4.95, and the Redevelopment Dissolution Law.

28

1 13. Petitioner and Plaintiff Karen Shirey (“Petitioner Karen Shirey”) is a
2 resident, voter, property owner, and taxpayer in the City of San Jose, and seeks to protect
3 her interests and the interests of those similarly situated in the City. Petitioner Karen Shirey
4 resides in San Jose, and uses freeways and roadways on a regular basis that will be
5 impacted by the Ballpark Project. Petitioner Karen Shirey is a member and supporter of
6 SFSJ, with similar interests and concerns as those alleged in paragraph 8 above. Petitioner
7 Karen Shirey is beneficially interested in and affected by the City’s planning and
8 environmental review processes, and seeks to promote the public interest by ensuring that
9 environmental issues critical to taxpayers, jobs, local businesses and neighborhoods are
10 considered in accordance with law; and that the City’s elected decision-makers, as well as
11 the voting public, have all of the environmental information required under CEQA and
12 other information necessary to make informed decisions for the sale of public lands for
13 downtown development. Petitioner Karen Shirey seeks through this petition and complaint
14 to protect the public interest by ensuring that San Jose and its agencies comply with State
15 and local laws, including CEQA, San Jose Municipal Code § 4.95, and the Redevelopment
16 Dissolution Law.

17 14. Petitioner and Plaintiff Fred Shirey (“Petitioner Fred Shirey”) is a resident,
18 voter, property owner, and taxpayer in the City of San Jose, and seeks to protect his
19 interests and the interests of those similarly situated in the City. Petitioner Fred Shirey
20 resides in San Jose, and uses freeways and roadways on a regular basis that will be
21 impacted by the Ballpark Project. Petitioner Fred Shirey is a member and supporter of
22 SFSJ, with similar interests and concerns as those alleged in paragraph 8 above. Petitioner
23 Fred Shirey is beneficially interested in and affected by the City’s planning and
24 environmental review processes, and seeks to promote the public interest by ensuring that
25 environmental issues critical to taxpayers, jobs, local businesses and neighborhoods are
26 considered in accordance with law; and that the City’s elected decision-makers, as well as
27 the voting public, have all of the environmental information required under CEQA and
28 other information necessary to make informed decisions for the sale of public lands for

1 downtown development. Petitioner Fred Shirey seeks through this petition and complaint
2 to protect the public interest by ensuring that San Jose and its agencies comply with State
3 and local laws, including CEQA, San Jose Municipal Code § 4.95, and the Redevelopment
4 Dissolution Law.

5 15. Petitioner and Plaintiff Robert Shields (“Petitioner Shields”) is a resident,
6 voter, property owner, and taxpayer in the City of San Jose, and seeks to protect his
7 interests and the interests of those similarly situated in the City. Petitioner Shields resides
8 in San Jose, and uses freeways and roadways on a regular basis that will be impacted by the
9 Ballpark Project. Petitioner Shields is a member and supporter of SFSJ, with similar
10 interests and concerns as those alleged in paragraph 8 above. Petitioner Shields is
11 beneficially interested in and affected by the City’s planning and environmental review
12 processes, and seeks to promote the public interest by ensuring that environmental issues
13 critical to taxpayers, jobs, local businesses and neighborhoods are considered in accordance
14 with law; and that the City’s elected decision-makers, as well as the voting public, have all
15 of the environmental information required under CEQA and other information necessary to
16 make informed decisions for the sale of public lands for downtown development. Petitioner
17 Shields seeks through this petition and complaint to protect the public interest by ensuring
18 that San Jose and its agencies comply with State and local laws, including CEQA, San Jose
19 Municipal Code § 4.95, and the Redevelopment Dissolution Law.

20 16. Respondent and Defendant City of San Jose is a charter city organized under
21 the constitution and laws of the State of California. Among other things, the City was
22 identified as the Lead Agency for the Ballpark Project in a Notice of Preparation for the
23 2010 SEIR, dated November 17, 2009, and in a Notice of Determination for approval of the
24 Option Agreement and sale of the Diridon Property for the Ballpark Project, dated
25 November 8, 2011. The City is principally responsible pursuant to CEQA for conducting a
26 legally-sufficient environmental review for the Ballpark Project, including preparation of
27 environmental documents (a) that accurately describe the Project, the environmental
28 baseline, and the potentially significant impacts of the Project; and (b) that evaluate

1 mitigation measures and/or alternatives to lessen or avoid any significant impacts. The
2 City, acting through the City Council and other agencies, is also responsible for approving
3 the Project in reliance on adequate environmental review under CEQA and in compliance
4 with all other applicable State and local laws, including the Redevelopment Dissolution
5 Law and San Jose Municipal Code § 4.95.

6 17. Respondent and Defendant City Council is the duly-elected legislative body
7 of the City charged by law with a number of legal duties in respect to the Ballpark Project,
8 including complying with the requirements of CEQA and the San Jose Municipal Code.
9 The City Council is one of the decision-making agencies within the City for the sale of the
10 Diridon Property to AIG subject to the Option Agreement, and is responsible, in part, for
11 the actions and decisions of Respondents in approving the Ballpark Project at issue herein.

12 18. Respondent and Defendant Successor Agency to the Redevelopment Agency
13 of the City of San Jose is responsible for overseeing the winding down of redevelopment
14 activity at the local level under the Redevelopment Dissolution Law, including managing
15 redevelopment projects currently underway, making payments on enforceable obligations,
16 and disposing of redevelopment assets and properties. On January 24, 2012, pursuant to the
17 Redevelopment Dissolution Law legislation (AB X1 26 as amended by AB 1484), the City
18 of San Jose elected to be the Successor Agency to the Redevelopment Agency of the City
19 of San Jose. The Redevelopment Agency was officially dissolved as of February 1, 2012.

20 19. Respondent and Defendant Oversight Board of the Successor Agency to the
21 Redevelopment Agency of the City of San Jose supervises the work of the Successor
22 Agency. In the exercise of its oversight duties, the Oversight Board is required to ensure
23 that the Successor Agency complies with the Redevelopment Dissolution Law, and has a
24 fiduciary responsibility to the local agencies that would benefit from property tax
25 distributions from the former redevelopment project area.

26 20. Respondent and Defendant DDA is a joint powers authority created by the
27 City and the Redevelopment Agency in March 2011 for the purpose, among others, of
28 holding title to the Diridon Property upon transfer from the Redevelopment Agency in an

1 effort to avoid the effects of the proposed changes to the Redevelopment Dissolution Law.
2 The DDA was a party to the Option Agreement as approved in joint session with the City
3 Council on November 8, 2011. As heretofore alleged, the Option Agreement granted AIG
4 an option to purchase the Diridon Property from the DDA, subject to certain conditions,
5 including that the Property may be used only for a private ballpark and incidental uses.

6 21. Petitioners are unaware of the true names of Respondents and Defendants
7 sued as Does 1 through 10, inclusive. Petitioners are informed and believe, and on that
8 basis allege, that Respondents Does 1-10, inclusive, are individuals, entities or agencies
9 with authority to approve and/or with an interest in the Ballpark Project. When the true
10 identities and capacities of these Respondents have been determined, Petitioners will, with
11 leave of Court if necessary, amend this petition and complaint to insert such identities and
12 capacities.

13 22. Petitioners are informed and believe, and on that basis allege, that Real Party
14 in Interest AIG is an entity associated in some manner with the Oakland Athletics baseball
15 club. Among other things, AIG is the entity to whom the DDA granted the exclusive option
16 to purchase the Diridon Property as alleged herein.

17 23. Petitioners are unaware of the true names of Real Parties in Interest sued as
18 Does 11 through 20, inclusive. Petitioners are informed and believe, and on that basis
19 allege, that Real Party in Interest Does 11-20, inclusive, are individuals, entities or agencies
20 with authority to approve and/or with an interest in the Ballpark Project. When the true
21 identities and capacities of these Real Parties in Interest have been determined, Petitioners
22 will, with leave of Court if necessary, amend this petition and complaint to insert such
23 identities and capacities.

24 **JURISDICTION AND VENUE**

25 24. This Court has jurisdiction over this proceeding pursuant to Code of Civil
26 Procedure §§ 1085 and 1094.5, Public Resources Code §§ 21168 and 21168.5, and Article
27 VI, § 10 of the California Constitution.

28

1 actions of the Successor Agency and the Oversight Board in respect to said re-transfer,
2 which actions are now the subject of the instant petition and complaint. On August 9, 2013,
3 the Court ordered that the November 8, 2013 trial date be vacated and that the instant case
4 and the prior case be consolidated.

5 **The State Controller’s Order That Respondents Reverse the Transfer**
6 **of the Diridon Property and Return it to the Successor Agency**

7 29. Health & Safety Code § 34161 provides that “commencing on the effective
8 date of this part, no agency shall incur new or expand existing monetary or legal obligations
9 except as provided in this part. All of the provisions of this part shall take effect and be
10 operative on the effective date of the act adding this part.” The effective date of the act
11 adding Health & Safety Code, division 24, parts 1.8 (Restrictions on Redevelopment
12 Agency Operations) and 1.85 (Dissolution of Redevelopment Agencies and Designation of
13 Successor Agencies) was June 28, 2011. Part 1.8’s purpose is to preserve redevelopment
14 agency assets and revenues for use by “local governments to fund core governmental
15 services including police and fire protection services and schools” (Health & Safety Code
16 § 34167(a), emphasis added) that do not include a private ballpark.

17 30. Commencing on the effective date of the new Redevelopment Dissolution
18 Law, redevelopment agencies were “unauthorized and shall not take any action to incur
19 indebtedness, including . . . [p]ledge or encumber, for any purpose, any of its revenues or
20 assets,” which include real property. Health & Safety Code § 34162(a)(6). “Any actions
21 taken that conflict with this section [§ 34162] are void from the outset and shall have no
22 force or effect.” *Id.* § 34162(b). As of the same date, an agency further “shall not have the
23 authority to, and shall not . . . [e]nter into contracts with, incur obligations, or make
24 commitments to, any entity, whether governmental, tribal, or private, or any individual or
25 groups of individuals for any purpose”; “[d]ispose of assets” including real property; or
26 “[t]ransfer, assign, vest, or delegate any of its assets.” *Id.* § 34163(b), (d), (f). During the
27 same time period, agencies are further prohibited from approving, directing or causing the
28

1 approval of any program, project, or expenditure where approval is not required by law and
2 from providing or committing to provide financial assistance. *Id.* § 34164(d), (m).

3 31. With respect to any transfers of redevelopment agency assets, Health &
4 Safety Code § 34167.5 provides:

5 “Commencing on the effective date of the act adding this part, the
6 Controller shall review the activities of redevelopment agencies in
7 the state to determine whether an asset transfer has occurred after
8 January 1, 2011, between the city or county, or city and county that
9 created a redevelopment agency or any other public agency, and the
10 redevelopment agency. If such an asset transfer did occur during
11 that period and the government agency that received the assets is not
12 contractually committed to a third party for the expenditure or
13 encumbrance of those assets, to the extent not prohibited by state and
14 federal law, the Controller shall order the available assets to be
15 returned . . . on or after October 1, 2011, to the successor agency . . .
16 Upon receiving that order from the Controller, an affected local
17 agency shall, as soon as practicable, reverse the transfer and return
18 the applicable assets to the . . . successor agency . . . The Legislature
19 hereby finds that a transfer of assets by a redevelopment agency
20 during the period covered in this section is deemed not to be in the
21 furtherance of the Community Redevelopment Law and is thereby
22 unauthorized.”

23 32. In March 2011, the San Jose Redevelopment Agency transferred the Diridon
24 Property to the DDA in violation of these provisions of the Redevelopment Dissolution
25 Law. The DDA then entered into the Option Agreement with AIG as of November 8, 2011,
26 again in violation of the Redevelopment Dissolution Law.

27 33. These actions by Respondents were subject to the authority and review of
28 the State Controller. On or about March 21, 2013, the Successor Agency received the State
Controller’s Report concluding the prior transfer of the Diridon Property by the
Redevelopment Agency was not an allowable transaction: “Pursuant to H&S Code section
34167.5, a redevelopment agency may not transfer assets to a city, county, city and county,
or any other public agency after January 1, 2011. Those assets should be turned over to the
Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e). .
.” State Controller’s Report at 6.

34. The Controller thus ordered that the Diridon Property be returned to the
Successor Agency: “The agencies named [], as recipients of the unallowable asset

1 transfers, are ordered to immediately reverse the transfers and to turn over the assets . . . to
2 the Successor Agency.” State Controller’s Report at 3 (emphasis added). The Controller
3 rejected Respondents’ argument that the Property was timely and “contractually
4 committed” to AIG: “The [Diridon Property assets] were not contractually committed to a
5 third party prior to June 28, 2011. . . . *Ibid.* at 6 (emphasis added). Because the transfer
6 was unauthorized and ordered to be reversed, it was void *ab initio* and never became
7 enforceable or had legal effect. The Controller directed the Successor Agency, upon return
8 of the property, to properly dispose of it in accordance with Health & Safety Code
9 §§ 34177(d), (e) and 34181(a). *Ibid.* at 8, 11.

10 **Respondents’ Continued Violation of State and Local Law**

11 35. Notwithstanding the State Controller’s Order, and the clear force and effect
12 of the Redevelopment Dissolution Law as alleged above, the agenda for the June 18, 2013
13 Joint City/DDA/Successor Agency meeting recommended that the DDA adopt a resolution
14 authorizing the Executive Director to transfer the Property back to the Successor Agency,
15 with the illegal condition that the Property be “subject to the terms and provisions of the
16 Option Agreement.” Agenda at 28.

17 36. On June 18, 2013, the City Council (Resolution No. 76738) and the DDA
18 (Resolution No. 111.1) approved the re-transfer by the DDA of certain properties and assets
19 identified by the State Controller’ Report, including the Diridon Property, back to the
20 Successor Agency. However, the DDA resolved that the Property would not be transferred
21 free and clear of the encumbrance of the invalid Option Agreement, but rather “subject to”
22 and encumbered by the Option Agreement, as if the Option Agreement constituted a
23 continuing and binding encumbrance on the Property. The Successor Agency in its
24 resolution mimicked the DDA and authorized the acceptance of the Property “subject to”
25 the terms and provisions of the Option Agreement (Resolution No. 7021). In addition, prior
26 to these actions, Respondents took no action to comply with CEQA or to provide for a
27 public vote, even though their actions constituted separate and additional public agency
28 approvals of the Ballpark Project.

1 37. On June 27, 2013, the Oversight Board included an agenda item to discuss
2 the asset transfers update report including the re-transfer of the Diridon Property from the
3 DDA to the Successor Agency “subject to” the Option Agreement. Through their counsel,
4 Petitioners appeared at the meeting and submitted written and oral comments in opposition
5 to the re-transfer of the Property subject to the Option Agreement. Despite a mandatory
6 duty under the Redevelopment Dissolution Law and the State Controller’s Report to review
7 and reverse the actions of the Successor Agency in accepting the re-transfer of the Property
8 encumbered by the Option Agreement with AIG, the Oversight Board refused to take any
9 action on the re-transfer.

10 38. On August 13, 2013, the DDA (Resolution No. 112.1) approved the re-
11 transfer of 645 Park Avenue, part of the Diridon Property, back to the Successor Agency.
12 However, the DDA resolved that the Property would not be transferred free and clear of the
13 encumbrance of the invalid Option Agreement, but rather “subject to” and encumbered by
14 the Option Agreement, as if the Option Agreement constituted a continuing and binding
15 encumbrance on the Property. The Successor Agency in its resolution mimicked the DDA
16 and authorized the acceptance of the Property “subject to” the terms and provisions of the
17 Option Agreement (Resolution No. 7022). Through their counsel, Petitioners appeared at
18 the meeting and submitted written comments in opposition to the re-transfer of 645 Park
19 Avenue subject to the Option Agreement. In addition, prior to these actions, Respondents
20 took no action to comply with CEQA or to provide for a public vote, even though their
21 actions constituted separate and additional public agency approvals of the Ballpark Project.

22 39. On August 30, 2013, the State Department of Finance (“DOF”) issued a
23 Finding of Completion to the Successor Agency under Health & Safety Code § 34179.7.
24 Pursuant to Health & Safety Code § 34191.5(b), within six months after receiving a Finding
25 of Completion, the Successor Agency must prepare and submit to the Oversight Board and
26 the DOF a LRPMP addressing the disposition and use of the real properties of the former
27 RDA. Under Health & Safety Code § 34191.5(c)(2) each property of the former RDA is
28 required to be listed in one of four categories: (1) retained for a governmental purpose;

1 (2) retained to fulfill an enforceable obligation; (3) retained for future development; or
2 (4) for sale. The Successor Agency had originally proposed to retain the Property for
3 governmental use, but abandoned that designation of the Property before the initial draft
4 LRPMP was released. In September 2013, the Successor Agency issued the initial draft
5 LRPMP proposing to retain the Diridon Property to “fulfill an enforceable obligation.” On
6 October 10, 2013, the Successor Agency first presented the draft LRPMP to the Oversight
7 Board.

8 40. Through their counsel, Petitioners submitted a series of letters and appeared
9 at multiple meetings of the Oversight Board, from October 2013 through February 2014,
10 objecting to the listing of the Diridon Property as a property to fulfill an enforceable
11 obligation. Members of the Oversight Board expressed concerns about whether the Option
12 Agreement was enforceable. For example, on January 9, 2014, Board Member Ochoa
13 questioned the validity of the Option Agreement because it was entered into after the
14 Redevelopment Dissolution Law came into effect.

15 41. Oversight Board members also expressed concerns about the extension of
16 the Option Agreement beyond November 8, 2013. For example, on January 30, 2014,
17 Board Member Snow expressed concern that there was no notice to the Oversight Board of
18 the exercise of the extension. The City Attorney responded that AIG sent a letter to the
19 Successor Agency on September 26, 2013, purporting to extend the Option Agreement for
20 an additional year. Petitioners are informed and believe, and thereon allege, that there is no
21 evidence or information that the Oversight Board considered or consented to the extension.
22 Furthermore, as Petitioners stated in public comments to Respondents, there could be no
23 valid extension of the Option Agreement under the Redevelopment Dissolution Law. *See*
24 *infra*, paragraph 50.

25 42. In February 2014, on the eve of the approval of the draft LRPMP by the
26 Oversight Board, the Successor Agency revised the LRPMP to list the Diridon Property as
27 property to be retained for future development, omitting all references to the Option
28 Agreement or its enforceability. On February 13, 2014, the Oversight Board approved the

1 LRPMP subject to final revision of certain language unrelated to the Diridon Property. On
2 February 25, 2013, Petitioners submitted a letter to the Oversight Board, asking it again to
3 reject the Option Agreement as unenforceable and to list the Diridon Properties as
4 properties for sale in the LRPMP. That same day, the Successor Agency submitted the
5 LRPMP to DOF at the direction of the Oversight Board.

6 43. Under the Redevelopment Dissolution Law, “[i]f a city...wishes to *retain*
7 any properties or other assets for future redevelopment activities...it must reach a
8 compensation agreement with the other taxing entities to provide payments to them in
9 proportion to their shares of the base property tax, as determined pursuant to Section 34188,
10 for the value of the property *retained*.” Health & Safety Code § 34180(f)(1) (emphasis
11 added). The approved LRPMP does not include any compensation agreement with respect
12 to the Diridon Properties that Respondent have retained for future development. In fact, the
13 LRPMP confirms that no compensation agreement has been reached, and Respondents will
14 only “negotiate and execute” such an agreement in connection with the subsequent “transfer
15 of the properties [by] the Successor Agency.” The Redevelopment Dissolution Law
16 requires the compensation agreement for the Successor Agency to “retain” the property
17 through the LRPMP, not in connection with some later transfer of the property to a third
18 party at an indefinite future date.

19 **FIRST CAUSE OF ACTION**

20 **(Writ of Mandate – Violation of Mandatory Duty**

21 **Under Redevelopment Law)**

22 44. Petitioners incorporate herein by reference the allegations contained in
23 paragraphs 1 through 43, inclusive.

24 45. Before the Successor Agency received a Finding of Completion from the
25 DOF under Health & Safety Code § 34179.7, it was required to “[d]ispose of assets and
26 properties of the former redevelopment agency as directed by the oversight board;
27 provided, however, that the oversight board may instead direct the successor agency to
28 transfer ownership of certain assets pursuant to subdivision (a) of Section 34181.” Health

1 & Safety Code § 34177(e). Under Health & Safety Code § 34181(a), the Oversight Board
2 “shall direct the successor agency” to “[d]ispose of all assets and properties of the former
3 redevelopment agency.” Such disposal “shall be done expeditiously and in a manner aimed
4 at maximizing value.” *Id.*

5 46. After the Successor Agency received a Finding of Completion from the DOF
6 under Health & Safety Code § 34179.7, the Successor Agency was required to sell any
7 properties not specifically retained for governmental use, future development or to fulfill an
8 enforceable obligation. Health & Safety Code § 34191.5(c)(2). The Successor Agency also
9 must “expeditiously wind down the affairs of the redevelopment agency” (Health & Safety
10 Code § 34177(h)) and preserve the revenue and assets of the former RDA for core
11 governmental services. *See* Health & Safety Code § 34167(a).

12 47. Furthermore, the Oversight Board was and is required to direct the Successor
13 Agency to “[c]ease performance in connection with and terminate all existing agreements
14 that do not qualify as enforceable obligations.” Health & Safety Code § 34181(b). The
15 Option Agreement does not qualify as an enforceable obligation pursuant to the
16 Redevelopment Dissolution Law or any other law as heretofore alleged. *See, e.g.,* Health &
17 Safety Code §§ 34179.5(b)(2) and 34171.

18 48. Both the Successor Agency and the Oversight Board failed to comply with,
19 and have violated, these mandatory duties imposed under the Redevelopment Dissolution
20 Law. The Redevelopment Agency’s original transfer of the Diridon Property to the DDA
21 in March 2011, and the subsequent grant of an Option Agreement on the Property by the
22 DDA in November 2011, were unauthorized actions taken in violation of the
23 Redevelopment Dissolution Law. Health & Safety Code § 34167.5. Pursuant to the State
24 Controller’s Report and Health & Safety Code § 34167.5, the transfer of the Property to the
25 DDA was void *ab initio* and the DDA had no authority to enter into the Option Agreement.
26 A private party such as AIG obtains no rights in an Option Agreement approved by public
27 agencies contrary to requirements of law. Furthermore, the re-transfer of the Property back
28 to the Successor Agency, purportedly subject to the Option Agreement, fails to fulfill the

1 primary purpose of the Redevelopment Dissolution Law: to preserve and dispose of
2 redevelopment assets and revenues for use by local governments to fund core government
3 services, such as fire protection, police and schools. Instead, the Option Agreement would
4 help a private party develop and fund a private ballpark project at a price far below fair
5 market value, thwarting the purpose of the Redevelopment Dissolution Law.

6 49. Accordingly, Respondents have breached a mandatory duty to provide for
7 the transfer and disposition of the Diridon Property without the encumbrance of the Option
8 Agreement. The Successor Agency has a duty to sell the Diridon Property unencumbered
9 by the Option Agreement while the Oversight Board has a continuing duty to direct the
10 Successor Agency to terminate the Option Agreement because it is an unenforceable
11 obligation.

12 50. In addition, as of November 8, 2013, the Option Agreement expired by its
13 terms. Under Health & Safety Code § 34177.3(a), “Successor agencies shall lack the
14 authority to, and shall not, create new enforceable obligations under the authority of the
15 Community Redevelopment Law (Part 1 (commencing with Section 33000)) or begin new
16 redevelopment work, except in compliance with an enforceable obligation that existed prior
17 to June 28, 2011.” To the extent the Successor Agency consented to extension of the
18 Option Agreement, it would have created a new obligation for the Successor Agency post-
19 June 28, 2011 and is thus void. Even if the extension were allowed under the
20 Redevelopment Dissolution Law, whether or not to “consent” to an extension (under
21 section 2(A) of the Option Agreement) was a discretionary act and thus required, among
22 other things, notice and public hearing, compliance with the California Environmental
23 Quality Act, compliance with San Jose Municipal Code § 4.95 (public vote requirement for
24 sports facility), and review and approval by the Oversight Board, and none of these things
25 occurred. Thus, the Option Agreement and the extension should be adjudged invalid and
26 unenforceable, and an injunction should be issued to prevent the sale and transfer of the
27 Diridon Property to AIG under the Option Agreement.

28

1 fraction of its fair market value, a public vote was required before the Option Agreement
2 could be approved. By re-transferring the Diridon Property still subject to the Option
3 Agreement without a prior public vote, Respondents again failed to obey a mandatory duty
4 required by law. The purported extension of the Option Agreement by the Successor
5 Agency was also in violation of the public vote requirement.

6 58. Accordingly, the Option Agreement should be adjudged invalid and an
7 injunction should be issued to prevent the sale and transfer of the Diridon Property to AIG
8 pursuant to the Option Agreement.

9 59. Other than the relief sought herein, Petitioners lack any plain, speedy, or
10 adequate remedy at law, and their interests will be irreparably harmed if the Diridon
11 Property remains subject to the terms and conditions of the Option Agreement in whole or
12 in part.

13 **THIRD CAUSE OF ACTION**

14 **(Violation of CEQA, Pub. Res. Code § 21000, *et seq.*)**

15 60. Petitioners incorporate herein by reference the allegations contained in
16 paragraphs 1 through 59, inclusive.

17 61. To the extent that Respondents were vested with any discretion in the re-
18 transfer of the Diridon property under the requirements of the Redevelopment Dissolution
19 Law and the State Controllers' Report, they were required first to comply with CEQA by
20 preparing and certifying a legally adequate EIR for the Ballpark Project.

21 62. SFSJ commented in its June 26, 2013 and August 12, 2013 letters to the
22 Oversight Board and Successor Agency that Respondents' actions in re-transferring the
23 Diridon Property to the Successor Agency subject to the Option Agreement required the
24 Successor Agency first to comply with CEQA. However, Respondents' actions and
25 resolutions adopted on June 18, 2013 and August 13, 2013, fail to provide for any
26 compliance with CEQA.

27

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1 63. In addition, to the extent that Respondents were vested with any discretion
2 in consenting to an extension of the Option Agreement, they were required to first comply
3 with CEQA by preparing and certifying a legally adequate EIR for the Ballpark Project.

4 64. SFSJ commented in its February 11, 2014 letter to the Oversight Board that
5 Respondents' actions in consenting to an extension of the Option Agreement required the
6 Successor Agency first to comply with CEQA. However, Respondents' actions and
7 resolutions adopted on February 13, 2014 failed to do so.

8 65. Respondents may not rely on the previous 2007 EIR and 2010 SEIR
9 prepared for the Ballpark Project for any of the above-referenced actions because they are
10 inadequate as a matter of law, as alleged in Case No. 111-CV-214196.

11 66. SFSJ submitted written and oral comments to the Oversight Board and
12 Successor Agency objecting to Respondents' lack of, and inadequacy of, prior
13 environmental review.

14 67. Petitioners have provided written notice of the commencement of this action
15 to Respondents, in compliance with CEQA § 21167.5, and have included a copy of that
16 notice and proof of service as Exhibit A hereto.

17 68. Petitioners have served the Attorney General with a copy of this petition,
18 along with a notice of its filing, in compliance with CEQA § 21167.7, and have included
19 the notice and proof of service as Exhibit B hereto.

20 69. Petitioners do not have a plain, speedy, or adequate remedy at law and will
21 suffer irreparable injury due to the ensuing environmental damage that will be caused by
22 implementation of the Ballpark Project, and Respondents' violations of CEQA and other
23 laws, unless this Court grants the requested writ of mandate and injunctive relief requiring
24 Respondents to set aside the transfer of the Property subject to the Option Agreement and
25 other actions as alleged herein.

26 70. By failing to conduct the required environmental review under CEQA,
27 Respondents committed a prejudicial abuse of discretion, failed to proceed in the manner
28 required by law, and failed to support their actions and approvals with substantial evidence.

1 **FOURTH CAUSE OF ACTION**

2 **(Violation of C.C.P. § 526a and Common Law Taxpayer Claim —**
3 **Unauthorized and Illegal Expenditure and Use of Property)**

4 71. Petitioners incorporate herein by reference the allegations contained in
5 paragraphs 1 through 70, inclusive.

6 72. Code of Civil Procedure § 526a authorizes an action to obtain a judgment,
7 restraining and preventing any illegal expenditure of or injury to public funds or property.
8 The common law also recognizes a taxpayer action on similar grounds.

9 73. In approving the Option Agreement for sale of the Diridon Property for a
10 fraction of its fair market value, and in retransferring the Diridon Property to the Successor
11 Agency subject to that agreement, Respondents acted unlawfully and in violation of the
12 Redevelopment Dissolution Law, San Jose Municipal Code § 4.95, and CEQA, as
13 heretofore alleged. Accordingly, the Option Agreement for the sale of the Diridon Property
14 to AIG constitutes an unauthorized and illegal expenditure, use and transfer of the Property.

15 74. The approval of the Option Agreement, and the retransfer of the Diridon
16 Property subject to that agreement, should be set aside and an injunction should be issued to
17 prevent Respondents from carrying out, implementing or consummating the Option
18 Agreement, or from otherwise selling or transferring the Diridon Property to AIG for the
19 Ballpark Project.

20 75. Other than the relief sought herein, Petitioners lack any plain, speedy, or
21 adequate remedy at law, and Petitioners' interests will be irreparably harmed if the Diridon
22 Property remains subject to the terms and conditions of the Option Agreement in whole or
23 in part.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Petitioners pray for judgment as set forth below:

- 26 A. For a writ of mandate or peremptory writ issued under seal of this Court and
27 directing Respondents to:
28

- 1 1. Set aside their transfer of the Property to the Successor Agency to the
2 extent that the transfer and Property remain subject to the Option
3 Agreement;
4 2. Transfer the Property to the Successor Agency free and clear of the
5 Option Agreement;
6 3. Refrain from granting any further approval for the sale or disposition
7 of the Diridon Property to AIG for use as a ballpark, including
8 encumbering the Property with the Option Agreement, unless and
9 until Respondents comply fully with the requirements of San Jose
10 Municipal Code § 4.95 and CEQA as directed by this Court.
11 B. For a declaratory judgment stating that Respondents' transfer of the Property
12 subject to the Option Agreement is void, invalid, and of no legal effect.
13 C. For entry of a preliminary and/or permanent injunction prohibiting
14 Respondents from carrying out, implementing or consummating the Option
15 Agreement, and prohibiting Respondents from otherwise selling or
16 transferring the Diridon Property to AIG for the Ballpark Project.
17 D. For an award to Petitioners' of their fees and costs, including reasonable
18 attorneys' fees, as authorized by Code of Civil Procedure § 1021.5, and any
19 other applicable provisions of law.

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1 E. For such other legal and equitable relief as this Court deems appropriate and
2 just.

3 Dated: March 3, 2014.

4 PILLSBURY WINTHROP SHAW PITTMAN LLP
5 RONALD E. VAN BUSKIRK
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11 By



12 Ronald E. Van Buskirk
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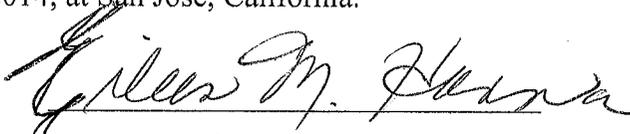
VERIFICATION

I, Eileen M. Hannan, declare:

I am a resident, voter, taxpayer, and property owner in the City of San Jose, and a member and supporter of Stand for San Jose. I have read the foregoing SECOND AMENDED VERIFIED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF AND FOR ATTORNEY'S FEES and know its contents, and state that the matters alleged in the petition and complaint are true to the best of my personal knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28 day of February, 2014, at San Jose, California.



Eileen Hannan

1 Case No. 111-CV-214196; related to and consolidated with Case No. 113-CV-250372

2 PROOF OF SERVICE BY MAIL

3 I, Rita Breaux, the undersigned, hereby declare as follows:

4 1. I am over the age of 18 years and am not a party to the within cause. I am
5 employed by Pillsbury Winthrop Shaw Pittman LLP in the City of San Francisco, California.

6 2. My business address is Four Embarcadero Center, 22nd Floor, San Francisco,
7 California 94111. My mailing address is P.O. Box 2824, San Francisco, California 94126.

8 3. I am familiar with Pillsbury Winthrop Shaw Pittman LLP's practice for
9 collection and processing of correspondence for mailing with the United States Postal
10 Service; in the ordinary course of business, correspondence placed in interoffice mail is
11 deposited with the United States Postal Service with first class postage thereon fully
12 prepaid on the same day it is placed for collection and mailing.

13 4. On March 11, 2014, at Four Embarcadero Center, 22nd Floor, San Francisco,
14 California, I served a true copy of the attached document titled exactly **VERIFIED**
15 **SECOND AMENDED PETITION FOR WRIT OF MANDAMUS AND**
16 **COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF AND**
17 **FOR ATTORNEY'S FEES** by placing it in an addressed, sealed envelope clearly labeled
18 to identify the person being served at the address shown below and placed in interoffice
19 mail for collection and deposit in the United States Postal Service on that date following
20 ordinary business practices:

21 Nora Frimann, Esq.
22 Ardell Johnson, Esq.
23 Office of the City Attorney
24 200 East Santa Clara Street, 16th Floor
San Jose, CA 95113

Geoff L. Robinson, Esq.
Perkins Coie LLP
Four Embarcadero Center
Suite 2400
San Francisco, CA 94111

25 I declare under penalty of perjury that the foregoing is true and correct.

26 Executed this 11th day of March, 2014, at San Francisco, California.

27
28 
Rita Breaux