



AGENDA REPORT

DATE: January 31, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA: (1) DEMANDING REPAYMENT OF LOANS MADE BY THE CITY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION; (2) DEMANDING THAT THE COMMISSION TRANSFER FUNDS AND ASSETS TO THE CITY IN THE EQUIVALENT AMOUNT OF THE OUTSTANDING LOAN AND INTEREST PAYMENT BALANCES; AND (3) DECLARING THE CITY'S INTENT TO HOLD SUCH FUNDS AND ASSETS IN TRUST UNTIL THE VALIDITY OF THE PROVISIONS OF AB 1X 26 THAT PURPORT TO INVALIDATE SUCH CITY LOAN OBLIGATIONS IS FULLY AND FINALLY ADJUDICATED BY THE COURTS

RECOMMENDATION:

Approve and adopt the Resolution and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

The Creation of the Commerce Community Development Commission

On March 14, 1974, the City Council of the City of Commerce adopted Ordinance No. 206, which established the City of Commerce Redevelopment Agency (the "Agency"). On November 3, 1992, the City Council adopted Ordinance No. 467, which created the Commerce Community Development Commission (the "Commission"). The Commission is the successor-in-interest to the Agency and has, since its creation, been authorized to and has been implementing the City of Commerce's (the "City") redevelopment plans and has been engaged in activities necessary or appropriate to carry out the California Community Redevelopment Law (*Health & Safety Code* Sections 33000, *et seq.*) (the "CRL") within the City.

The Commission Loan Nos. 1 through 6

The City has previously loaned certain amounts of money to the Agency/Commission that was required in order to enable the Agency/Commission to pursue its redevelopment project goals, to assist in funding administrative and other expenses necessary for the implementation of the redevelopment plans, and for the purchase of properties required to implement the City's redevelopment programs.

Loan Agreement No. 1

On June 16, 1986, the City Council approved Resolution No. 86-20, which approved a loan to the Agency of One Hundred Thousand Dollars (\$100,000) at a rate of 7.5% per annum ("Loan No. 1") to assist the Agency in defraying expenses in connection with carrying out budgeted projects for the Agency. Loan No. 1 was reported annually on the

Commission's annual Statement of Indebtedness report filed with the County of Los Angeles.

On April 19, 2011, pursuant to Resolution No. 11-30, the City approved and ratified Redevelopment Fund Loan Agreement No. 1 with the Commission. That Agreement documented the numerous transactions between the City and the Commission related to Loan No. 1 that had already been documented by the above-referenced resolutions, but did not create any new debt.

As of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 1 was One Hundred Thousand Dollars (\$100,000), plus unpaid interest in the amount of Seven Thousand Five Hundred (\$7,500); a total of One Hundred Seven Thousand Five Hundred Dollars (\$107,500).

Loan Agreement No. 2

On March 3, 1992, the Agency adopted Resolution No. 181, which requested a loan from the City in the amount of Six Million Five Hundred Thousand Dollars (\$6,500,000), with an interest rate of 7.5% per annum, for the payment of administrative expenses and overhead by the Agency in Project Area No. 1. On March 3, 1992, the City Council adopted Resolution No. 92-11, which approved a loan from the City to the Agency in the amount of Six Million Five Hundred Thousand Dollars (\$6,500,000), with an interest rate of 7.5% per annum for the payment of administrative expenses and overhead by the Agency in Project Area No. 1 ("Loan No. 2").

The Commission requested numerous extensions from the City for the repayment of Loan No. 2. [Commission Resolution Nos. 194, 213, 231 and 249] The City agreed to the requested repayment extensions. [City Council Resolution Nos. 93-11, 94-5 and 95-09].

In March of 1997, the Commission made a \$500,000 principal payment to the City on the Loan, thus lowering the principal due to Six Million Dollars (\$6,000,000).

The Commission requested additional extensions from the City for the repayment of the remaining balance of Loan No. 2. [Commission Resolution Nos. 265, 283, 308, 320, 338, 351, 369, 381, 393, 406, 418, 428 and 449]. The City agreed to the additional extension requests. [City Council Resolution Nos. 98-11, 00-18, 01-18, 02-12, 03-16, 04-19, 05-15, 06-7, 07-16, 08-10, 09-25 and 10-15].

Loan No. 2 was reported annually on the Commission's annual Statement of Indebtedness report filed with the County of Los Angeles.

On April 19, 2011, pursuant to Resolution No. 11-31, the City approved and ratified Redevelopment Fund Loan Agreement No. 2 with the Commission. That Agreement documented the numerous transactions between the City and the Commission related to Loan No. 2 that had already been documented by the above-referenced resolutions, but did not create any new debt.

As of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 2 was Six Million Dollars (\$6,000,000), plus unpaid interest in the amount of \$450,000; a total of Six Million, Four and Fifty Dollars (\$6,450,000).

Loan Agreement No. 3

On November 2, 1999, the Commission adopted Resolution No. 301, which requested a loan from the City in the amount of Five Million Dollars (\$5,000,000), with an interest rate of 7.5% per annum over the term of the loan for the payment of administrative expenses and overhead by the Commission in Project No. 4. On November 2, 1999, the City Council adopted Resolution No. 99-31, which approved a loan from the City to the

Commission in the amount of Five Million Dollars (\$5,000,000) with an interest rate of 7.5% per annum over the term of the loan (“Loan No. 3”).

The Commission requested extensions from the City for the repayment of Loan No. 3. [Commission Resolution Nos. 315, 337, 348, 387, 402, 413, 424, 438 and 464]. The City agreed to the extension requests. [City Council Resolution Nos. 00-42, 01-49, 04-54, 05-38, 06-34, 07-41, 08-43, 09-70 and 10-80]. Loan No. 3 was reported annually on the Commission’s annual Statement of Indebtedness report filed with the County of Los Angeles.

On April 19, 2011, pursuant to Resolution No. 11-32, the City approved and ratified Redevelopment Fund Loan Agreement No. 3 with the Commission. That Agreement documented the numerous transactions between the City and the Commission related to the Loan No. 3 that had already been documented by the above-referenced resolutions, but did not create any new debt.

As of January 31, 2012, the total amount of debt owed to the City’s General Fund by the Commission as a result of Loan No. 3 was Five Million Dollars (\$5,000,000), plus unpaid interest in the amount of \$375,000; a total of Five Million, Three Hundred and Seventy Five Dollars (\$5,375,000).

Loan Agreement No. 4

On April 16, 2002, the City Council approved a loan in the amount of Five Million Seven Hundred Thousand Dollars (\$5,700,000) at an interest rate of 6.5% per annum (“Loan No. 4”) for the Commission’s purchase of the Stahl Trust Property. Loan No. 4 is being addressed separately because it involves additional issues peculiar to that transaction.

Loan Agreement No. 5

On June 16, 1986, the City Council approved a loan to the Agency of Six Hundred Thousand Dollars (\$600,000) at a rate of 7.5% per annum (“Loan No. 5”) for the payment of administrative expenses and overhead by the Agency in Project Area No. 1.

As of January 31, 2012, the total amount of debt owed to the City’s General Fund by the Commission as a result of Loan No. 5 was Six Hundred Thousand Dollars (\$600,000), plus unpaid interest in the amount of \$45,000; a total of Six Hundred and Forty-Five Dollars (\$645,000).

Loan Agreement No. 6

On June 18, 2002, the Commission adopted Resolution No. 343, which requested a loan from the City in the amount of Four Hundred Thousand Dollars (\$400,000), with an interest rate of 6.5% per annum over the term of loan for the payment of administrative expenses and overhead by the Commission in Project Area No. 4. On June 18, 2002, the City Council adopted Resolution No. 02-27, which approved a loan from the City to the Commission in the amount of Four Hundred Thousand Dollars (\$400,000), with an interest rate of 6.5% per annum over the term of the loan (“Loan No. 6”).

As of January 31, 2012, the total amount of debt owed to the City’s General Fund by the Commission as a result of Loan No. 6 was Four Hundred Thousand Dollars (\$400,000), plus unpaid interest in the amount of \$30,000; a total of \$430,000 Dollars (\$430,000).

The City is investigating whether a number of other loans made to the Agency/Commission have been paid off in full.

The State Terminates Redevelopment Agencies and Invalidates the City’s Loan Agreements by Passage of AB 26

On June 15, 2011, the California Legislature approved Assembly Bill 1X 26 (“AB 26”) and Assembly Bill 1X 27 (“AB 27”), the bills were signed by the Governor on June 28, 2011. AB 26 and AB 27 added Parts 1.8, 1.85 and 1.9 of Division 24 to the California *Health & Safety Code*. Part 1.85 of the *Health & Safety Code*, which is contained in AB 26, requires all redevelopment agencies to dissolve as of October 1, 2011, and provides for the establishment of a successor entity to administer the enforceable obligations of the redevelopment agency. Part 1.8 of the *Health & Safety Code*, which is also contained in AB 26, restricts activities of redevelopment agencies to meeting their enforceable obligations, preserving assets and meeting other goals in the interim period prior to dissolution. AB 27 provided cities with the option of opting out of AB 26 by adopting an ordinance that would allow their redevelopment agencies to participate in a “Voluntary Alternative Redevelopment Program” that would require certain annual remittances to the Los Angeles County Auditor-Controller. On August 1, 2011, the City Council of the City of Commerce determined that it would proceed under AB 27.

Pursuant to AB 26, each former redevelopment agency’s “successor agency” will be required to, among other obligations, provide payment from the transferred assets for the “enforceable obligations” of the former redevelopment agency. After such enforceable obligation payments, the successor agency remits the balance of any unencumbered funds of the former redevelopment agency to the local county auditor-controller. *Health & Safety Code* §§ 34170- 34191. Such “enforceable obligations” are defined in *Health & Safety Code* § 34171. *Health & Safety Code* § 34171(d)(2) provides that, once a redevelopment agency is dissolved, that agency’s “enforceable obligations” do not include “any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency.” There are only two exceptions to this exclusion: (1) written agreements entered into at the time of issuance of “indebtedness obligations”, if those agreements were entered on or before December 31, 2010, and solely for the purpose of securing or repaying those defined indebtedness obligations; and (2) loan agreements between a redevelopment agency and its sponsoring community that were entered into within two years after the agency was established.” All other “agreements, contracts or arrangements” between cities and their redevelopment agencies are voided and unenforceable.

As a result of *Health & Safety Code* § 34171(d)(2), over \$18 Million in loans that were made by the City to the Commission are purportedly void and of no effect. The City and the Commission agree that the legislative invalidation of such loans is grossly unfair to the City’s constituents and that such actions undermine fundamental notions of contract law and appear to ignore the basic fact that the City and the Commission are separate legal entities.

The Legal Challenges to AB 26 and AB 27

After AB 26 and AB 27 were enacted, the League of California Cities, the California Redevelopment Association and the cities of San Jose and Union City filed a petition with the California Supreme Court, entitled *California Redevelopment Association, et al. v. Matosantos, et al.* Case No. S194861, challenging the constitutionality of AB 26 and AB 27.

On September 26, 2011, the City and several other cities also filed a complaint, in the case of *City of Cerritos, et. al. v. State of California, et. al.*, Case No. 34-2011-80000952. Among other things, the *Cerritos* lawsuit the validity of *Health & Safety Code* § 34171(d)(2), which was enacted by AB 26, because it violates the Contract Clauses of the state and federal constitutions by voiding city/redevelopment agency loans.

On December 29, 2011, the Supreme Court upheld the constitutionality of AB 26 in the *Matosantos* case, but determined that AB 27 was unconstitutional. Pursuant to AB 26 (*Health & Safety Code* § 34172(a)(1)) and the Supreme Court’s decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012. The Supreme Court did not address the issue of

whether AB 26 violates the Contract Clauses of the state and federal constitutions by voiding city/redevelopment agency loans. That issue will be adjudicated in the *Cerritos* lawsuit.

ANALYSIS:

The City and the Commission are Considered Separate Legal Entities

It is important to understand one basic concept before considering the potential invalidity of *Health & Safety Code* § 34171(d)(2): the City and the Commission are, as a matter of law, considered separate public entities. This concept is critical in understanding that the City had actual contractual rights that were impaired by AB 26, and that the loans it agreed to and made to the Commission were not merely intra-agency accounting transfers.

The authority to establish a redevelopment agency and the authority for a redevelopment agency to function as an agency, adopt a redevelopment plan, and implement the plan, were granted by the CRL. See, *Health & Safety Code* § 3300, *et seq.* Redevelopment agencies are governmental entities that exist by virtue of state law and are separate and distinct from the communities in which they exist. *Health & Safety Code* § 33100 states, “[t]here is in each community a public body, corporate and politic, known as the redevelopment agency of the community.” *Health & Safety Code* § 33125 states, “[a]n agency may: (a) Sue and be sued... (c) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers.” See also, *Andrews v. City of San Bernardino* (1959) 175 Cal.App.2d 459, 462 – redevelopment agencies are creations of the state. General law cities, such as Commerce, on the other hand, exist by virtue of an entirely different body of law. *Government Code* § 34102 states: “[c]ities organized under the general law shall be ‘general law cities.’”

In *Pacific States Enterprises, Inc. v. the City of Coachella* (1993) 13 Cal.App.4th 1414, the Appellate Court affirmed a trial court’s order granting a motion for dismissal on the basis that the appellant (a developer) did not have a valid contract with the City of Coachella and could not assert valid cause of action for breach of contract. The Appellate Court stated:

When a ‘dual capacity legislative body’ acts as the governing board of a redevelopment agency, it is the redevelopment agency which is acting by and through that legislative body; and when that same legislative body acts as the governing body of the ‘community’ (i.e., the city) over which it exercises local governmental powers, it is the ‘community’ which is acting by and through the legislative body. The redevelopment agency and the ‘community’ are *not* one and the same governmental entities. The redevelopment agency, by state law, exists ‘in each community’ with certain limited powers and functions... it is not the same entity as the community *within which* it exists.

(Emphasis in original.) *Id.* at 1425.

The Commission was established as the successor to the Agency. [City of Commerce Ordinance No. 467; *Health & Safety Code* § 34112] The Agency and the Commission both had the power to sue, to be sued and to make and execute contracts and other instruments necessary or convenient to the exercise of their powers. *Health & Safety Code* § 33125. They were both considered separate and distinct public entities from the City itself. *Pacific States* at 1425.

Health & Safety Code § 34171(d)(2) Appears to Illegally Impair the City’s Loan Agreements with the Agency/Commission

The United States and California Constitutions both limit the power of a state to modify its own contracts and the contracts of others under their respective “contract clauses.” *Olson v. Cory* (1980) 27 Cal. 3d 532; U.S. Const., art. I, sec. 10; Cal. Const. art. I, § 9. However, not all impairment of a contractual right runs afoul of the contract clause.

“Although the Contract Clause appears literally to proscribe any impairment... the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula.” Thus, a finding that there has been a technical impairment is merely a preliminary step in resolving the more difficult question of whether that impairment is permitted under the Constitution. An attempt must be made to reconcile the strictures of the contract clause with the essential attributes of sovereign power. For example, minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation. *Vales v. Cory* (1983) 139 Cal.App.3d 773, 789 (quoting from *United States Trust Co. v. New Jersey* (1977) 431 US 1).

The courts consider four factors when determining whether the legislative impairment of vested contract rights violates the constitution: (1) whether the enactment serves the basic interests of society, (2) there is an emergency justification for the enactment, (3) the enactment is appropriate for the emergency, and (4) the enactment is designed as a temporary measure, during which time the vested contract rights are not lost but merely deferred for a brief period, interest running during the temporary deferment. *Home Building and Loan Assn. v. Blaisdell* (1934) 290 US 398. See also *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109; *Sonoma County Public Employees v. County of Sonoma* (1980) 23 Cal.3d 296.

In *United States Trust Co.* the Court considered the state of New Jersey’s repeal of an express covenant that assured bond holders that monies pledged as security for repayment would not be used to subsidize rail passenger transportation, was enacted. The Court noted that while parties to a contract may rely on the continued existence of adequate statutory remedies for enforcing their agreement they are unlikely to expect that state law will remain entirely static. Thus, a reasonable modification of statutes governing contract remedies is much less likely to upset expectations than a law adjusting the express terms of an agreement. The Court concluded that the repeal of the covenant in that case was a severe contract impairment. The Court then applied the four factors set forth above to determine if the impairment could pass constitutional scrutiny. The Court determined that the impairment was neither necessary to achieve the states’ plan to encourage private automobile users to shift to public transportation nor reasonable in light of changed circumstances. Total repeal of the covenant was not essential, since the states’ plan could have been implemented with a less drastic modification of the covenant. The Court therefore held that the repeal of the express covenant constituted a violation of the contracts clause. *Id.*

The repeal of the express covenant in *Untied States Trust Co.* represents a much lesser impairment provision than *Health & Safety Code* § 34171(d)(2). The statute voids the City’s Commission loan collection rights in their entirety. The contract impairment in this case is obviously severe. Consequently, the State of California would have to show that the impairment represents a necessary modification under the fiscal emergency set forth in AB 26 and that its goals were not achievable by any lesser modification. *Id.*

In *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, the Board of Administration of the California Public Employees’ Retirement System (“PERS”) filed suit regarding legislation that changed the payment schedule for state employer financing of the California Public Employees’ Retirement Fund (“PERF”) to “annually, 12 months in arrears” (*Government Code* § 20822). The Board argued that such a change violated the constitutional right to be free of impairment of contracts. The Court of Appeal held that the PERS members had a contractual right to an actuarially sound retirement system and that the “in arrears” financing established by § 20822 constituted an unconstitutional impairment of contract.

The state argued that the defense of justification and necessity applied. The Court held that, even if it were assumed that the record justified a finding of a fiscal emergency, the statute was enacted without actuarial input from PERS and without indication that considered thought was given to possible mitigating measures, or to the possibility of

alternative, less drastic means of accomplishing the goal of budget balancing. Thus, the necessity defense failed. *Id.*

Wilson also involved a far lesser “contract impairment” than the extinguishment of the City’s loan repayment rights in this case. As in *Wilson*, the State of California will assert the necessity defense in this case. The court would have to consider whether there was no other “less drastic means” of achieving the goal of budget balancing other than voiding these loan obligations. The State would have to demonstrate that the fiscal emergency was so drastic as to justify the extreme act of wiping out entire multi-million dollar contract obligations. Notably, the fourth factor considered when assessing the necessity defense is whether the enactment “is designed as a temporary measure, during which time the vested contract rights are not lost but merely deferred for a brief period, interest running during the temporary deferment.” *Wilson, supra*, at 1155. *Health & Safety Code* § 34171(d)(2) permanently prevents the cities from enforcing their redevelopment agency loan rights. Thus, it appears that the impairment is unlawful in violation of both federal and state Constitutions’ contract clauses.

It should be noted that *United States Trust Co.* (1976) 431 U.S. 1, 22, n. 19 provides, “*Blaisdell* suggested further limitations that have since been subsumed in the overall determination of reasonableness. The legislation sustained in *Blaisdell* was adopted pursuant to a declared emergency in the State and strictly limited in duration. Subsequent decisions struck down state laws that were not so limited. *W.B. Worthen Co. v. Thomas*, 292 U.S. 426, 432-434 (1934) (relief not limited as to “time, amount, circumstances, or need”); *Treigle v. Acme Homestead Ass.*, 297 U.S. 189, 195 (1936) (no emergency or temporary measure). Later decisions abandoned these limitations as absolute requirements. *Veix v. Sixth Ward Building & Loan Assn.*, 310 U.S., 32, 39-40 (1940) (emergency need not be declared and relief measure need not be temporary); *East New York and Savings Bank v. Hahn*, 326 U.S. 230 (1945) (approving 10th extension of one-year mortgage moratorium). Undoubtedly the existence of an emergency and the limited duration of a relief measure are factors to be addressed in determining the reasonableness of an impairment, but they cannot be regarded as essential in every case.

The City’s Entitlement to an Equitable Lien or Constructive Trust on the Properties

Subject to certain exceptions, the City is entitled an equitable lien in property to secure payment of monies owed to the City when it would be inequitable to force the City to lose the opportunity to recover monies that it is owed. This is distinguished from a constructive trust where the monies to be secured are usually related to the property interest on which the trust is to be imposed.

An equitable lien is created by operation of law as a charge against specific property belonging to another. As with any other type of lien, an equitable lien gives the plaintiff/lien holder the right to foreclose on, or in some way utilize, the subject property as payment for an amount owed to the plaintiff by the defendant.

Even if the parties did not attempt to formally document the security interest in writing an equitable lien may be imposed on specific property for the benefit of the claimant if the parties intended that the property stand as security for a debt or obligation. See cases cited in *Grappo v. Coventry Fin. Corp.* (1991) 235 CA3d 496, 509). The crucial factor is that the parties intend that the debt be secured by the specific property. *Lentz v. Lentz* (1968) 267 CA2d 891, 894.

When a debtor intends to pay a debt from the sale of real property and the court finds that the parties intended that the property be used as security for the debt, the claimant may obtain an equitable lien on the property even if the property was not sold. In *Dodd v Cantwell* (1960) 179 CA2d 727, the court found that the parties intended that a ranch secure an obligation to pay wages to plaintiffs, who worked for the owners for over 30 years without pay in reliance on the promise by the owners that the plaintiffs would be paid when the ranch was sold. The owners never sold the ranch, but instead gave it to

their niece who fired the plaintiffs without paying them their owed wages. The court imposed an equitable lien on the property for the value of the services rendered because it was the express intent of the parties that the ranch be security for the debt. The court found that the plaintiffs relied on the owners' promise.

A constructive trust is an equitable restitutionary remedy like an equitable lien. Constructive trusts are specifically authorized by *Civil Code* §§2223 and 2224. Under §2223, a person who wrongfully detains property is an involuntary trustee thereof for the benefit of the owner. Under § 2224 a person who gains property by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act is an involuntary trustee of the property for the benefit of the one who would otherwise have had it, unless that person has some other and better right to it.

In this case, the City and Commission's goal was to pursue projects that were beneficial to the City and its' constituents. The City and the Commission envisioned and sought to place potential projects on the properties. The City and the Commission both understood that the City expected repayment and/or that the properties identified in Exhibit "A" would be available to secure repayment of the loans. Based on the case law, the City's efforts as an interim remedy is persuasive. The ultimate disposition of the assets will depend on the *Cerritos litigation*, but the constructive trust and equitable lien cases certainly support the transfer and protection efforts while the case is pending.

CONCLUSION:

If the cities in the *Cerritos* case prevail on the impairment of contract argument, such provisions would be declared unconstitutional and would be null and void. It would be grossly unfair to the City and its constituents for the monies owed to never be paid back. Such a scenario would obviously not have been acceptable to the City when the loans were made. The City believes that it is entitled to repayment and, therefore, must demand and pursue it from the Commission.

The total amount owed by the Commission to the City for Loan Nos. 1 through 6, not including Loan No. 4, is \$13,007,500. The Commission also owes the City \$5,700,000 for Loan No. 4 that was provided by the City, so that the Commission could purchase the Stahl Trust Property; Loan No. 4 is being addressed in a separately.

The City believes that, because it provided the Commission with the funds that allowed the Commission to pay for the properties identified in Exhibit "A", that the City is the true and equitable owner of the properties. The City recognizes that *Health & Safety Code* § 34163(d) and (f) provide that the Commission shall not have the authority to transfer any of its assets to any entity, including the "community." The City also recognizes that *Health & Safety Code* § 34171(d)(2) provides that loan agreements entered into between the City and their redevelopment agencies are not considered valid contractual obligations and are considered under that section to be void. The City nevertheless believes that this provision in AB 26 constitutes an unconstitutional impairment of the contract(s) that it made with the Commission for the loan. The City also believes that, due to the fact that the Commission used City General Fund Revenues for the purchase of the properties that have never been repaid, the City is the true and equitable owner of the properties.

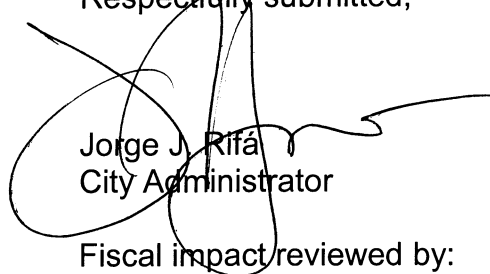
The City is concerned that if the properties are allowed to be sold by the Commission's successor agency, before the validity of *Health & Safety Code* § 34171(d)(2) can be finally decided in the *Cerritos* case, the City's ability to recover the amount of the loans will be severely compromised. The City does not desire to ignore the requirements of AB 26, but desires to assure that it is not unnecessarily harmed if the courts ultimately determine that *Health & Safety Code* § 34171(d)(2) is not valid. Therefore, the City staff recommends that the City demand that the Commission transfer title to the properties identified in Exhibit "A" to the City and that the City commit to hold the Property in trust, and to take action consistent with maintaining the value of said properties, until the issue of the validity of *Health & Safety Code* § 34171(d)(2) is fully and finally adjudicated.

A much more thorough analysis of the contract impairment issue will be conducted by counsel in the *Cerritos* case. At this time, however, it is apparent that the City, and all other cities challenging this provision, have a valid and good faith basis to argue and believe that *Health & Safety Code* § 34171(d)(2), enacted by AB 26, is unconstitutional. Whether the court will ultimately agree with the cities is another matter. Nevertheless, if the Commission disposes of all its assets, including the subject properties, and the cities are eventually successful in their arguments, the City may still never be able to recover the monies loaned to the Commission. Such a scenario would be the worst case for all of the parties involved, including the State, which would certainly not desire to have the cities suffer as a result of an unconstitutional provision in AB 26. On the other hand, if the cities lose the argument, the City has committed to holding the subject properties in trust and taking action consistent with maintaining the value of these assets. Thus, it would seem prudent for the Commission to comply with the City's request under the condition that such asset be held in trust until the litigation is complete and, if *Health & Safety Code* § 34171(d)(2) is upheld, that such asset be disposed of according to AB 26.¹

FISCAL IMPACT:


As stated above, the Commission owes the General City \$19,135,060 (Principal Balance of \$17,800,000 and Interest Balance of \$1,335,000) for Fiscal Year 2011-12. This amount is inclusive of Loan No. 4 (\$5,700,000 provided to the Commission for the purchase of the Stahl Trust Property); although it is being addressed separately. As a result of AB26, the City has understandably demanded repayment and is requesting that the Commission turn over the properties that were bought, in large part, with City funds. The Commission believes that the City's claim to the properties identified in Exhibit "A" is legitimate and that, in all fairness, the City is the true and rightful owner of the properties.

Respectfully submitted,



Jorge J. Rifa
City Administrator

Fiscal impact reviewed by:



Vilko Domic
Finance Director

Approved as to form



Eduardo Olivo
City Attorney

¹ It should be noted that the City Council will confer with the City Attorney in closed session regarding the consequences of the proposed course of action and that the proposed decision is a "business decision" that will be considered and taken with the understanding of the uncertainties connected therewith.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA:
(1) DEMANDING REPAYMENT OF LOANS MADE BY THE CITY TO THE COMMERCE
COMMUNITY DEVELOPMENT COMMISSION; (2) DEMANDING THAT THE
COMMISSION TRANSFER FUNDS AND ASSETS TO THE CITY IN THE EQUIVALENT
AMOUNT OF THE OUTSTANDING LOAN AND INTEREST PAYMENT BALANCES; AND
(3) DECLARING THE CITY'S INTENT TO HOLD SUCH FUNDS AND ASSETS IN TRUST
UNTIL THE VALIDITY OF THE PROVISIONS OF AB 1X 26 THAT PURPORT TO
INVALIDATE SUCH CITY LOAN OBLIGATIONS IS FULLY AND FINALLY ADJUDICATED
BY THE COURTS

WHEREAS, on March 14, 1974, the City Council adopted Ordinance No. 206, which established the City of Commerce Redevelopment Agency (the "Agency"); and

WHEREAS, on November 3, 1992, the City Council adopted Ordinance No. 467, which created the Commerce Community Development Commission (the "Commission"); and

WHEREAS, pursuant to the California *Health & Safety Code*, the Commission is the successor-in-interest to the Agency and has, since its creation, been authorized to and has been implementing the City of Commerce's (the "City") redevelopment plans; and

WHEREAS, the Commission is engaged in activities necessary or appropriate to carry out the California Community Redevelopment Law (*Health & Safety Code* Sections 33000, et seq.) within the City; and

WHEREAS, the City has previously loaned certain amounts of money to the Agency/Commission that was required in order to enable the Agency/Commission to pursue its redevelopment project goals, to assist in funding administrative and other expenses necessary for the implementation of the redevelopment plans, and for the purchase of properties required to implement the City's redevelopment programs; and

Loan No. 1

WHEREAS, on June 16, 1986, the City Council approved Resolution No. 86-20, which approved a loan to the Agency of One Hundred Thousand Dollars (\$100,000) at a rate of 7.5% per annum ("Loan No. 1") to assist the Agency in defraying expenses in connection with it carrying out budgeted projects for the Agency; and

WHEREAS, Loan No. 1 was reported annually on the Commission's annual Statement of Indebtedness report filed with the County of Los Angeles; and

WHEREAS, on April 19, 2011, pursuant to Resolution No. 11-30, the City approved and ratified Redevelopment Fund Loan Agreement No. 1 with the Commission. That Agreement documented the past transaction between the City and the Commission related to Loan No. 1 that had already been documented by the above-referenced resolution, but did not create any new debt; and

WHEREAS, as of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 1 was One Hundred Thousand Dollars (\$100,000), plus unpaid interest in the amount of Seven Thousand Five Hundred (\$7,500); a total of One Hundred Seven Thousand Five Hundred Dollars (\$107,500); and

Loan No. 2

WHEREAS, on March 3, 1992, the Agency adopted Resolution No. 181, which requested a loan from the City in the amount of Six Million Five Hundred Thousand Dollars (\$6,500,000), with an interest rate of 7.5% per annum, for the payment of administrative expenses and overhead by the Agency in Project Area No. 1; and

WHEREAS, on March 3, 1992, the City Council adopted Resolution No. 92-11, which approved a loan from the City to the Agency in the amount of Six Million Five Hundred Thousand Dollars (\$6,500,000), with an interest rate of 7.5% per annum for the

payment of administrative expenses and overhead by the Agency in Project Area No. 1 ("Loan No. 2"); and

WHEREAS, the Commission requested numerous extensions from the City for the repayment of Loan No. 2. [Commission Resolution Nos. 194, 213, 231 and 249] The City agreed to the requested repayment extensions. [City Council Resolution Nos. 93-11, 94-5 and 95-09]; and

WHEREAS, in March of 1997, the Commission made a \$500,000 principal payment to the City on the Loan, thus lowering the principal due to Six Million Dollars (\$6,000,000); and

WHEREAS, the Commission requested additional extensions from the City for the repayment of the remaining balance of Loan No. 2. [Commission Resolution Nos. 265, 283, 308, 320, 338, 351, 369, 381, 393, 406, 418, 428 and 449] The City agreed to the additional extension requests. [City Council Resolution Nos. 98-11, 00-18, 01-18, 02-12, 03-16, 04-19, 05-15, 06-7, 07-16, 08-10, 09-25 and 10-15]; and

WHEREAS, Loan No. 2 was reported annually on the Commission's annual Statement of Indebtedness report filed with the County of Los Angeles; and

WHEREAS, on April 19, 2011, pursuant to Resolution No. 11-31, the City approved and ratified Redevelopment Fund Loan Agreement No. 2 with the Commission. That Agreement documented the numerous transactions between the City and the Commission related to the Loan No. 2 that had already been documented by the above-referenced resolutions, but did not create any new debt; and

WHEREAS, of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 2 was Six Million Dollars (\$6,000,000), plus unpaid interest in the amount of \$450,000; a total of Six Million, Four and Fifty Dollars (\$6,450,000); and

Loan No. 3

WHEREAS, on November 2, 1999, the Commission adopted Resolution No. 301, which requested a loan from the City in the amount of Five Million Dollars (\$5,000,000), with an interest rate of 7.5% per annum over the term of the loan for the payment of administrative expenses and overhead by the Commission in Project Area No. 4; and

WHEREAS, on November 2, 1999, the City Council adopted Resolution No. 99-31, which approved a loan from the City to the Commission in the amount of Five Million Dollars (\$5,000,000), with an interest rate of 7.5% per annum over the term of the loan ("Loan No. 3"); and

WHEREAS, the Commission requested extensions from the City for the repayment of Loan No. 3. [Commission Resolution Nos. 315, 337, 348, 387, 402, 413, 424, 438 and 464] The City agreed to the additional extension requests. [City Council Resolution Nos. 00-42, 01-49, 04-54, 05-38, 06-34, 07-41, 08-43, 09-70 and 10-80]; and

WHEREAS, Loan No. 3 was reported annually on the Commission's annual Statement of Indebtedness report filed with the County of Los Angeles; and

WHEREAS, on April 19, 2011, pursuant to Resolution No. 11-32, the City approved and ratified Redevelopment Fund Loan Agreement No. 3 with the Commission. That Agreement documented the numerous transactions between the City and the Commission related to the Loan No. 3 that had already been documented by the above-referenced resolutions, but did not create any new debt; and

WHEREAS, of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 3 was Five Million Dollars (\$5,000,000), plus unpaid interest in the amount of \$375,000; a total of Five Million, Three Hundred and Seventy Five Dollars (\$5,375,000); and

Loan No. 4

WHEREAS, on April 16, 2002, the City Council approved a loan in the amount of Five Million Seven Hundred Thousand Dollars (\$5,700,000) at an interest rate of 6.5% per annum ("Loan No. 4") for the Commission's purchase of the Stahl Trust Property. Loan No. 4 is being addressed separately because it involves additional issues peculiar to that transaction; and

Loan No. 5

WHEREAS, on June 16, 1986, the City Council approved a loan to the Agency of Six Hundred Thousand Dollars (\$600,000) at a rate of 7.5% per annum ("Loan No. 5") for the payment of administrative expenses and overhead by the Agency in Project Area No. 1; and

WHEREAS, of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 5 was Six Hundred Thousand Dollars (\$600,000), plus unpaid interest in the amount of \$45,000; a total of Six Hundred and Forty-Five Dollars (\$645,000) and

Loan No. 6

WHEREAS, on June 18, 2002, the Commission adopted Resolution No. 343, which requested a loan from the City in the amount of Four Hundred Thousand Dollars (\$400,000), with an interest rate of 6.5% per annum over the term of loan for the payment of administrative expenses and overhead by the Commission in Project Area No. 4; and

WHEREAS, on June 18, 2002, the City Council adopted Resolution No. 02-27, which approved a loan from the City to the Commission in the amount of Four Hundred Thousand Dollars (\$400,000), with an interest rate of 6.5% per annum over the term of the loan ("Loan No. 6"); and

As of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 6 was Four Hundred Thousand Dollars (\$400,000), plus unpaid interest in the amount of \$30,000; a total of \$430,000 Dollars (\$430,000); and

WHEREAS, the City is investigating whether a number of other loans made to the Agency/Commission have been paid off in full; and

WHEREAS, the goal of the City and the Commission was to pursue projects that were beneficial to the City and its' constituents. The City and the Commission envisioned and sought to purchase properties and pursue projects with the Commission's use of the City loan funds. The City and the Commission both understood that the City expected repayment and/or that the properties that were purchased with the City's loan funds would be available to secure repayment of the loans; and

WHEREAS, the Commission has always understood that it owed the loan proceeds to the City; and

WHEREAS, the City and its' constituents will be significantly damaged if the Commission failed to honor its commitment to repay the loans from the City; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed companion bills, Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27"), requiring that each redevelopment agency in the State be dissolved as of October 1, 2011, unless the community that created it enacted an ordinance committing it to making certain payments pursuant to AB 27; and

WHEREAS, after AB 26 and AB 27 were enacted, the League of California Cities, the California Redevelopment Association and the cities of San Jose and Union City filed a petition with the California Supreme Court, entitled *California Redevelopment Association, et al. v. Matosantos, et al.*, Case No. S194861, challenging the constitutionality of AB 26 and AB 27; and

WHEREAS, *Health & Safety Code* § 34171(d)(2), enacted by AB 26, purports to invalidate the loans that were made by the cities to their redevelopment agencies. Pursuant to AB 26, such loan payments are not considered “enforceable obligations.” The cities are therefore not able to enforce millions of dollars of loans made to their redevelopment agencies from the cities’ general fund; and

WHEREAS, on September 26, 2011, the City and several other cities filed a complaint, in the case of *City of Cerritos, et. al. v. State of California, et. al.*, Case No. 34-2011-80000952. Among other things, the *Cerritos* lawsuit attacks the validity of AB 26, specifically *Health & Safety Code* § 34171(d)(2), because it violates the Contract Clauses of the state and federal constitutions by voiding city/redevelopment agency loans; and

WHEREAS, on December 29, 2011, the Supreme Court upheld the constitutionality of AB 26, but determined that AB 27 was unconstitutional. Pursuant to AB 26 (*Health & Safety Code* § 34172(a)(1)) and the Supreme Court’s decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012; and

WHEREAS, the cities involved in the *Cerritos* litigation filed an amicus brief with the Supreme Court in order to advise the Court of the additional issues that were raised in that litigation. However, the Supreme Court specifically stated that it was not addressing such issues in the *Matosantos* decision. Therefore, the issue of the invalidity of *Health & Safety Code* § 34171 (d) (2) will be determined by the court in the *Cerritos* case; and

WHEREAS, the City hereby demands that the Commission repay the loans, with interest, or transfer title to properties owned by the Commission that will at least provide the City with some assets that will account for some of the outstanding debt obligations. The City has reviewed the Commission-owned properties and hereby requests and demands that the Commission agree to immediately transfer to the City the properties identified in Exhibit “A” which is attached hereto and incorporated herein by reference; and

WHEREAS, the current total fair market value of the properties identified in Exhibit “A”, based on an analysis by the Commission’s consultants, is \$ _____; and

WHEREAS, the City recognizes that *Health & Safety Code* § 34163(d) and (f) provide that the Commission shall not have the authority to transfer any of its assets to any entity, including the “community.” The City also recognizes that *Health & Safety Code* § 34171(d)(2) provides that loan agreements entered into between the City and their redevelopment agencies are not considered valid contractual obligations and are void. The City nevertheless believes that this provision in AB 26 constitutes an unconstitutional impairment of the contract(s) that it made with the Commission for the loans; and

WHEREAS, the City is concerned that if the properties identified in Exhibit “A” are allowed to be sold by the Commission’s successor agency before the validity of *Health & Safety Code* § 34171(d)(2) can be finally decided in the *Cerritos* case, the City’s ability to recover the amount of the loans will be severely compromised; and

WHEREAS, the City does not desire to ignore the requirements of AB 26, but desires to assure that it is not unnecessarily harmed if the courts ultimately determines that *Health & Safety Code* § 34171(d)(2) is not valid. Therefore, the City hereby commits to hold the properties identified in Exhibit “A” in trust until the issue of the validity of *Health & Safety Code* § 34171(d)(2) is fully and finally adjudicated.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COMMERCE AS FOLLOWS:

SECTION 1: The City Council hereby finds and determines that the recitals contained hereinabove are true and correct.

SECTION 2: The City Council hereby requests and demands that the Commerce Community Development Commission immediately execute a Grant Deed transferring fee title to each of the properties identified in Exhibit “A” to the City of Commerce.

SECTION 3: The City hereby promises and commits to holding the properties in trust and to taking action that will be consistent with maintaining the value of the properties until the validity of *Health & Safety Code* § 34171(d)(2) is determined by the courts. If the courts determine that § 34171 (d)(2) is invalid, the City will maintain ownership of the properties and determine if any additional amounts are owed by the Commission's successor agency, or if the City owes any monies to the successor agency. The City will seek such additional amounts owed to it, or pay any amounts owed by the City. If, on the other hand, the courts determine that § 34171 (d)(2) is valid and the City has no continuing legitimate claim to the properties, the City will take action to immediately transfer title to the properties as required by the law.

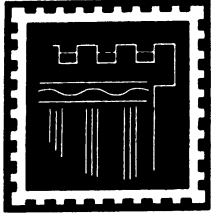
SECTION 4: The City Clerk shall certify to the passage of this resolution, and thereupon and thereafter the same shall be in full force and effect.

PASSED, APPROVED AND ADOPTED this 31st day of January, 2012.

Joe Aguilar, Mayor

ATTEST:

Linda Kay Olivieri, MMC, City Clerk



COMMERCE
COMMUNITY
DEVELOPMENT
COMMISSION

AGENDA REPORT

DATE: January 31, 2012

TO: HONORABLE COMMUNITY DEVELOPMENT COMMISSION

FROM: EXECUTIVE DIRECTOR

SUBJECT: A RESOLUTION OF THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION: (1) ACKNOWLEDGING THE CITY OF COMMERCE'S DEMAND FOR REPAYMENT OF LOANS MADE BY THE CITY TO THE COMMISSION; AND (2) AUTHORIZING THE TRANSFER OF COMMISSION FUNDS AND ASSETS TO THE CITY IN THE EQUIVALENT AMOUNT OF THE OUTSTANDING LOAN AND INTEREST PAYMENT BALANCES WITH THE UNDERSTANDING THAT THE CITY WILL HOLD SUCH FUNDS AND ASSETS IN TRUST UNTIL THE VALIDITY OF THE PROVISIONS OF AB 1 X 26 THAT PURPORT TO INVALIDATE SUCH CITY LOAN OBLIGATIONS IS FULLY AND FINALLY ADJUDICATED BY THE COURTS

RECOMMENDATION:

Approve and adopt the Resolution and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

The Creation of the Commerce Community Development Commission

On March 14, 1974, the City Council of the City of Commerce adopted Ordinance No. 206, which established the City of Commerce Redevelopment Agency (the "Agency"). On November 3, 1992, the City Council adopted Ordinance No. 467, which created the Commerce Community Development Commission (the "Commission"). The Commission is the successor-in-interest to the Agency and has, since its creation, been authorized to and has been implementing the City of Commerce's (the "City") redevelopment plans and has been engaged in activities necessary or appropriate to carry out the California Community Redevelopment Law (*Health & Safety Code Sections 33000, et seq.*) (the "CRL") within the City.

The Commission Loan Nos. 1 through 6

The City has previously loaned certain amounts of money to the Agency/Commission that was required in order to enable the Agency/Commission to pursue its redevelopment project goals, to assist in funding administrative and other expenses necessary for the implementation of the redevelopment plans, and for the purchase of properties required to implement the City's redevelopment programs.

Loan Agreement No. 1

On June 16, 1986, the City Council approved Resolution No. 86-20, which approved a loan to the Agency of One Hundred Thousand Dollars (\$100,000) at a rate of 7.5% per annum ("Loan No. 1") to assist the Agency in defraying expenses in connection with carrying out budgeted projects for the Agency. Loan No. 1 was reported annually on the

Commission's annual Statement of Indebtedness report filed with the County of Los Angeles.

On April 19, 2011, pursuant to Resolution No. 11-30, the City approved and ratified Redevelopment Fund Loan Agreement No. 1 with the Commission. That Agreement documented the numerous transactions between the City and the Commission related to Loan No. 1 that had already been documented by the above-referenced resolutions, but did not create any new debt.

As of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of the Loan No. 1 was One Hundred Thousand Dollars (\$100,000), plus unpaid interest in the amount of Seven Thousand Five Hundred (\$7,500); a total of One Hundred Seven Thousand Five Hundred Dollars (\$107,500).

Loan Agreement No. 2

On March 3, 1992, the Agency adopted Resolution No. 181, which requested a loan from the City in the amount of Six Million Five Hundred Thousand Dollars (\$6,500,000), with an interest rate of 7.5% per annum, for the payment of administrative expenses and overhead by the Agency in Project Area No. 1. On March 3, 1992, the City Council adopted Resolution No. 92-11, which approved a loan from the City to the Agency in the amount of Six Million Five Hundred Thousand Dollars (\$6,500,000), with an interest rate of 7.5% per annum for the payment of administrative expenses and overhead by the Agency in Project Area No. 1 ("Loan No. 2").

The Commission requested numerous extensions from the City for the repayment of Loan No. 2. [Commission Resolution Nos. 194, 213, 231 and 249] The City agreed to the requested repayment extensions. [City Council Resolution Nos. 93-11, 94-5 and 95-09].

In March of 1997, the Commission made a \$500,000 principal payment to the City on the Loan, thus lowering the principal due to Six Million Dollars (\$6,000,000).

The Commission requested additional extensions from the City for the repayment of the remaining balance of Loan No. 2. [Commission Resolution Nos. 265, 283, 308, 320, 338, 351, 369, 381, 393, 406, 418, 428 and 449]. The City agreed to the additional extension requests. [City Council Resolution Nos. 98-11, 00-18, 01-18, 02-12, 03-16, 04-19, 05-15, 06-7, 07-16, 08-10, 09-25 and 10-15].

Loan No. 2 was reported annually on the Commission's annual Statement of Indebtedness report filed with the County of Los Angeles.

On April 19, 2011, pursuant to Resolution No. 11-31, the City approved and ratified Redevelopment Fund Loan Agreement No. 2 with the Commission. That Agreement documented the numerous transactions between the City and the Commission related to Loan No. 2 that had already been documented by the above-referenced resolutions, but did not create any new debt.

As of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 2 was Six Million Dollars (\$6,000,000), plus unpaid interest in the amount of \$450,000; a total of Six Million, Four and Fifty Dollars (\$6,450,000).

Loan Agreement No. 3

On November 2, 1999, the Commission adopted Resolution No. 301, which requested a loan from the City in the amount of Five Million Dollars (\$5,000,000), with an interest rate of 7.5% per annum over the term of the loan for the payment of administrative expenses and overhead by the Commission in Project Area No. 4. On November 2, 1999, the City Council adopted Resolution No. 99-31, which approved a loan from the City to the

Commission in the amount of Five Million Dollars (\$5,000,000) with an interest rate of 7.5% per annum over the term of the loan ("Loan No. 3").

The Commission requested extensions from the City for the repayment of Loan No. 3. [Commission Resolution Nos. 315, 337, 348, 387, 402, 413, 424, 438 and 464]. The City agreed to the extension requests. [City Council Resolution Nos. 00-42, 01-49, 04-54, 05-38, 06-34, 07-41, 08-43, 09-70 and 10-80]. Loan No. 3 was reported annually on the Commission's annual Statement of Indebtedness report filed with the County of Los Angeles.

On April 19, 2011, pursuant to Resolution No. 11-32, the City approved and ratified Redevelopment Fund Loan Agreement No. 3 with the Commission. That Agreement documented the numerous transactions between the City and the Commission related to the Loan No. 3 that had already been documented by the above-referenced resolutions, but did not create any new debt.

As of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 3 was Five Million Dollars (\$5,000,000), plus unpaid interest in the amount of \$375,000; a total of Five Million, Three Hundred and Seventy Five Dollars (\$5,375,000).

Loan Agreement No. 4

On April 16, 2002, the City Council approved a loan in the amount of Five Million Seven Hundred Thousand Dollars (\$5,700,000) at an interest rate of 6.5% per annum ("Loan No. 4") for the Commission's purchase of the Stahl Trust Property. Loan No. 4 is being addressed separately because it involves additional issues peculiar to that transaction.

Loan Agreement No. 5

On June 16, 1986, the City Council approved a loan to the Agency of Six Hundred Thousand Dollars (\$600,000) at a rate of 7.5% per annum ("Loan No. 5") for the payment of administrative expenses and overhead by the Agency in Project Area No. 1.

As of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 5 was Six Hundred Thousand Dollars (\$600,000), plus unpaid interest in the amount of \$45,000; a total of Six Hundred and Forty-Five Dollars (\$645,000).

Loan Agreement No. 6

On June 18, 2002, the Commission adopted Resolution No. 343, which requested a loan from the City in the amount of Four Hundred Thousand Dollars (\$400,000), with an interest rate of 6.5% per annum over the term of loan for the payment of administrative expenses and overhead by the Commission in Project Area No. 4. On June 18, 2002, the City Council adopted Resolution No. 02-27, which approved a loan from the City to the Commission in the amount of Four Hundred Thousand Dollars (\$400,000), with an interest rate of 6.5% per annum over the term of the loan ("Loan No. 6").

As of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 6 was Four Hundred Thousand Dollars (\$400,000), plus unpaid interest in the amount of \$30,000; a total of \$430,000 Dollars (\$430,000).

The State Terminates Redevelopment Agencies and Invalidates the City's Loan Agreements by Passage of AB 26

On June 15, 2011, the California Legislature approved Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27"), the bills were signed by the Governor on June 28, 2011. AB 26 and AB 27 added Parts 1.8, 1.85 and 1.9 of Division 24 to the California *Health & Safety Code*. Part 1.85 of the *Health & Safety Code*, which is contained in AB

26, requires all redevelopment agencies to dissolve as of October 1, 2011, and provides for the establishment of a successor entity to administer the enforceable obligations of the redevelopment agency. Part 1.8 of the *Health & Safety Code*, which is also contained in AB 26, restricts activities of redevelopment agencies to meeting their enforceable obligations, preserving assets and meeting other goals in the interim period prior to dissolution. AB 27 provided cities with the option of opting out of AB 26 by adopting an ordinance that would allow their redevelopment agencies to participate in a “Voluntary Alternative Redevelopment Program” that would require certain annual remittances to the Los Angeles County Auditor-Controller. On August 1, 2011, the City Council of the City of Commerce determined that it would proceed under AB 27.

Pursuant to AB 26, each former redevelopment agency’s “successor agency” will be required to, among other obligations, provide payment from the transferred assets for the “enforceable obligations” of the former redevelopment agency. After such enforceable obligation payments, the successor agency remits the balance of any unencumbered funds of the former redevelopment agency to the local county auditor-controller. *Health & Safety Code* §§ 34170- 34191. Such “enforceable obligations” are defined in *Health & Safety Code* § 34171. *Health & Safety Code* § 34171(d)(2) provides that, once a redevelopment agency is dissolved, that agency’s “enforceable obligations” do not include “any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency.” There are only two exceptions to this exclusion: (1) written agreements entered into at the time of issuance of “indebtedness obligations”, if those agreements were entered on or before December 31, 2010, and solely for the purpose of securing or repaying those defined indebtedness obligations; and (2) loan agreements between a redevelopment agency and its sponsoring community that were entered into within two years after the agency was established.” All other “agreements, contracts or arrangements” between cities and their redevelopment agencies are voided and unenforceable.

As a result of *Health & Safety Code* § 34171(d)(2), over \$18 Million in loans that were made by the City to the Commission are purportedly void and of no effect. The City and the Commission agree that the legislative invalidation of such loans is grossly unfair to the City’s constituents and that such actions undermine fundamental notions of contract law and appear to ignore the basic fact that the City and the Commission are separate legal entities.

The Legal Challenges to AB 26 and AB 27

After AB 26 and AB 27 were enacted, the League of California Cities, the California Redevelopment Association and the cities of San Jose and Union City filed a petition with the California Supreme Court, entitled *California Redevelopment Association, et al. v. Matosantos, et al.* Case No. S194861, challenging the constitutionality of AB 26 and AB 27.

On September 26, 2011, the City and several other cities also filed a complaint, in the case of *City of Cerritos, et. al. v. State of California, et. al.*, Case No. 34-2011-80000952. Among other things, the *Cerritos* lawsuit the validity of *Health & Safety Code* § 34171(d)(2), which was enacted by AB 26, because it violates the Contract Clauses of the state and federal constitutions by voiding city/redevelopment agency loans.

On December 29, 2011, the Supreme Court upheld the constitutionality of AB 26 in the *Matosantos* case, but determined that AB 27 was unconstitutional. Pursuant to AB 26 (*Health & Safety Code* § 34172(a)(1)) and the Supreme Court’s decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012. The Supreme Court did not address the issue of whether AB 26 violates the Contract Clauses of the state and federal constitutions by voiding city/redevelopment agency loans. That issue will be adjudicated in the *Cerritos* lawsuit.

ANALYSIS:

The City and the Commission are Considered Separate Legal Entities

It is important to understand one basic concept before considering the potential invalidity of *Health & Safety Code* § 34171(d)(2): the City and the Commission are, as a matter of law, considered separate public entities. This concept is critical in understanding that the City had actual contractual rights that were impaired by AB 26, and that the loans it agreed to and made to the Commission were not merely intra-agency accounting transfers.

The authority to establish a redevelopment agency and the authority for a redevelopment agency to function as an agency, adopt a redevelopment plan, and implement the plan, were granted by the CRL. See, *Health & Safety Code* § 3300, *et seq.* Redevelopment agencies are governmental entities that exist by virtue of state law and are separate and distinct from the communities in which they exist. *Health & Safety Code* § 33100 states, “[t]here is in each community a public body, corporate and politic, known as the redevelopment agency of the community.” *Health & Safety Code* § 33125 states, “[a]n agency may: (a) Sue and be sued... (c) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers.” See also, *Andrews v. City of San Bernardino* (1959) 175 Cal.App.2d 459, 462 – redevelopment agencies are creations of the state. General law cities, such as Commerce, on the other hand, exist by virtue of an entirely different body of law. *Government Code* § 34102 states: “[c]ities organized under the general law shall be ‘general law cities.’”

In *Pacific States Enterprises, Inc. v. the City of Coachella* (1993) 13 Cal.App.4th 1414, the Appellate Court affirmed a trial court’s order granting a motion for dismissal on the basis that the appellant (a developer) did not have a valid contract with the City of Coachella and could not assert valid cause of action for breach of contract. The Appellate Court stated:

When a ‘dual capacity legislative body’ acts as the governing board of a redevelopment agency, it is the redevelopment agency which is acting by and through that legislative body; and when that same legislative body acts as the governing body of the ‘community’ (i.e., the city) over which it exercises local governmental powers, it is the ‘community’ which is acting by and through the legislative body. The redevelopment agency and the ‘community’ are *not* one and the same governmental entities. The redevelopment agency, by state law, exists ‘in each community’ with certain limited powers and functions... it is not the same entity as the community *within which* it exists.

(Emphasis in original.) *Id.* at 1425.

The Commission was established as the successor to the Agency. [City of Commerce Ordinance No. 467; *Health & Safety Code* § 34112] The Agency and the Commission both had the power to sue, to be sued and to make and execute contracts and other instruments necessary or convenient to the exercise of their powers. *Health & Safety Code* § 33125. They were both considered separate and distinct public entities from the City itself. *Pacific States* at 1425.

Health & Safety Code § 34171(d)(2) Appears to Illegally Impair the City’s Loan Agreements with the Agency/Commission

The United States and California Constitutions both limit the power of a state to modify its own contracts and the contracts of others under their respective “contract clauses.” *Olson v. Cory* (1980) 27 Cal. 3d 532; U.S. Const., art. I, sec. 10; Cal. Const. art. I, § 9. However, not all impairment of a contractual right runs afoul of the contract clause. “Although the Contract Clause appears literally to proscribe any impairment... the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula.” Thus, a finding that there has been a technical impairment is merely a preliminary step in resolving the more difficult question of whether that

impairment is permitted under the Constitution. An attempt must be made to reconcile the strictures of the contract clause with the essential attributes of sovereign power. For example, minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation. *Vales v. Cory* (1983) 139 Cal.App.3d 773, 789 (quoting from *United States Trust Co. v. New Jersey* (1977) 431 US 1).

The courts consider four factors when determining whether the legislative impairment of vested contract rights violates the constitution: (1) whether the enactment serves the basic interests of society, (2) there is an emergency justification for the enactment, (3) the enactment is appropriate for the emergency, and (4) the enactment is designed as a temporary measure, during which time the vested contract rights are not lost but merely deferred for a brief period, interest running during the temporary deferment. *Home Building and Loan Assn. v. Blaisdell* (1934) 290 US 398. See also *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109; *Sonoma County Public Employees v. County of Sonoma* (1980) 23 Cal.3d 296.

In *United States Trust Co.* the Court considered the state of New Jersey's repeal of an express covenant that assured bond holders that monies pledged as security for repayment would not be used to subsidize rail passenger transportation, was enacted. The Court noted that while parties to a contract may rely on the continued existence of adequate statutory remedies for enforcing their agreement they are unlikely to expect that state law will remain entirely static. Thus, a reasonable modification of statutes governing contract remedies is much less likely to upset expectations than a law adjusting the express terms of an agreement. The Court concluded that the repeal of the covenant in that case was a severe contract impairment. The Court then applied the four factors set forth above to determine if the impairment could pass constitutional scrutiny. The Court determined that the impairment was neither necessary to achieve the states' plan to encourage private automobile users to shift to public transportation nor reasonable in light of changed circumstances. Total repeal of the covenant was not essential, since the states' plan could have been implemented with a less drastic modification of the covenant. The Court therefore held that the repeal of the express covenant constituted a violation of the contracts clause. *Id.*

The repeal of the express covenant in *United States Trust Co.* represents a much lesser impairment provision than *Health & Safety Code § 34171(d)(2)*. The statute voids the City's Commission loan collection rights in their entirety. The contract impairment in this case is obviously severe. Consequently, the State of California would have to show that the impairment represents a necessary modification under the fiscal emergency set forth in AB 26 and that its goals were not achievable by any lesser modification. *Id.*

In *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, the Board of Administration of the California Public Employees' Retirement System ("PERS") filed suit regarding legislation that changed the payment schedule for state employer financing of the California Public Employees' Retirement Fund ("PERF") to "annually, 12 months in arrears" (*Government Code § 20822*). The Board argued that such a change violated the constitutional right to be free of impairment of contracts. The Court of Appeal held that the PERS members had a contractual right to an actuarially sound retirement system and that the "in arrears" financing established by § 20822 constituted an unconstitutional impairment of contract.

The state argued that the defense of justification and necessity applied. The Court held that, even if it were assumed that the record justified a finding of a fiscal emergency, the statute was enacted without actuarial input from PERS and without indication that considered thought was given to possible mitigating measures, or to the possibility of alternative, less drastic means of accomplishing the goal of budget balancing. Thus, the necessity defense failed. *Id.*

Wilson also involved a far lesser “contract impairment” than the extinguishment of the City’s loan repayment rights in this case. As in *Wilson*, the State of California will assert the necessity defense in this case. The court would have to consider whether there was no other “less drastic means” of achieving the goal of budget balancing other than voiding these loan obligations. The State would have to demonstrate that the fiscal emergency was so drastic as to justify the extreme act of wiping out entire multi-million dollar contract obligations. Notably, the fourth factor considered when assessing the necessity defense is whether the enactment “is designed as a temporary measure, during which time the vested contract rights are not lost but merely deferred for a brief period, interest running during the temporary deferment.” *Wilson, supra*, at 1155. *Health & Safety Code* § 34171(d)(2) permanently prevents the cities from enforcing their redevelopment agency loan rights. Thus, it appears that the impairment is unlawful in violation of both federal and state Constitutions’ contract clauses.

It should be noted that *United States Trust Co.* (1976) 431 U.S. 1, 22, n. 19 provides, “*Blaisdell* suggested further limitations that have since been subsumed in the overall determination of reasonableness. The legislation sustained in *Blaisdell* was adopted pursuant to a declared emergency in the State and strictly limited in duration. Subsequent decisions struck down state laws that were not so limited. *W.B. Worthen Co. v. Thomas*, 292 U.S. 426, 432-434 (1934) (relief not limited as to “time, amount, circumstances, or need”); *Treigle v. Acme Homestead Ass.*, 297 U.S. 189, 195 (1936) (no emergency or temporary measure). Later decisions abandoned these limitations as absolute requirements. *Veix v. Sixth Ward Building & Loan Assn.*, 310 U.S., 32, 39-40 (1940) (emergency need not be declared and relief measure need not be temporary); *East New York and Savings Bank v. Hahn*, 326 U.S. 230 (1945) (approving 10th extension of one-year mortgage moratorium). Undoubtedly the existence of an emergency and the limited duration of a relief measure are factors to be addressed in determining the reasonableness of an impairment, but they cannot be regarded as essential in every case.

The City’s Entitlement to an Equitable Lien or Constructive Trust on the Properties

Subject to certain exceptions, the City is entitled an equitable lien in property to secure payment of monies owed to the City when it would be inequitable to force the City to lose the opportunity to recover monies that it is owed. This is distinguished from a constructive trust where the monies to be secured are usually related to the property interest on which the trust is to be imposed.

An equitable lien is created by operation of law as a charge against specific property belonging to another. As with any other type of lien, an equitable lien gives the plaintiff/lien holder the right to foreclose on, or in some way utilize, the subject property as payment for an amount owed to the plaintiff by the defendant.

Even if the parties did not attempt to formally document the security interest in writing an equitable lien may be imposed on specific property for the benefit of the claimant if the parties intended that the property stand as security for a debt or obligation. See cases cited in *Grappo v. Coventry Fin. Corp.* (1991) 235 CA3d 496, 509). The crucial factor is that the parties intend that the debt be secured by the specific property. *Lentz v. Lentz* (1968) 267 CA2d 891, 894.

When a debtor intends to pay a debt from the sale of real property and the court finds that the parties intended that the property be used as security for the debt, the claimant may obtain an equitable lien on the property even if the property was not sold. In *Dodd v Cantwell* (1960) 179 CA2d 727, the court found that the parties intended that a ranch secure an obligation to pay wages to plaintiffs, who worked for the owners for over 30 years without pay in reliance on the promise by the owners that the plaintiffs would be paid when the ranch was sold. The owners never sold the ranch, but instead gave it to their niece who fired the plaintiffs without paying them their owed wages. The court imposed an equitable lien on the property for the value of the services rendered because

it was the express intent of the parties that the ranch be security for the debt. The court found that the plaintiffs relied on the owners' promise.

A constructive trust is an equitable restitutionary remedy like an equitable lien. Constructive trusts are specifically authorized by *Civil Code* §§2223 and 2224. Under §2223, a person who wrongfully detains property is an involuntary trustee thereof for the benefit of the owner. Under § 2224 a person who gains property by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act is an involuntary trustee of the property for the benefit of the one who would otherwise have had it, unless that person has some other and better right to it.

In this case, the City and Commission's goal was to pursue projects that were beneficial to the City and its' constituents. The City and the Commission envisioned and sought to place potential projects on the properties. The City and the Commission both understood that the City expected repayment and/or that the properties identified in Exhibit "A" would be available to secure repayment of the loans. Based on the case law, the City's efforts as an interim remedy is persuasive. The ultimate disposition of the assets will depend on the *Cerritos litigation*, but the constructive trust and equitable lien cases certainly support the transfer and protection efforts while the case is pending.

CONCLUSION:

The proposed resolution may be considered somewhat controversial. The action by the Commission would contradict the express language of AB 26 and would be subject to attack. On the other hand, if the cities in the *Cerritos* case prevail on the impairment of contract argument, such provisions would be declared unconstitutional and would be null and void. The Commission certainly recognizes that the loans were valid and that it would be grossly unfair to the City and its constituents for the monies owed to never be paid back. That was never the intent of the Commission and would obviously not have been acceptable to the City when the loans were made.

The total amount owed by the Commission to the City for Loan Nos. 1 through 6, not including Loan No. 4, is \$13,007,500. The Commission also owes the City \$5,700,000 for Loan No. 4 that was provided by the City, so that the Commission could purchase the Stahl Trust Property; Loan No. 4 is being addressed in a separately. The City has understandably demanded repayment and is requesting that the Commission turn over the properties that were bought, in large part, with City funds. The Commission believes that the City's claim to the properties identified in Exhibit "A" is legitimate and that, in all fairness, the City is the true and rightful owner of the properties.

The Commission believes that, because it provided the City with the funds that allowed the Commission to pay for the properties identified in Exhibit "A", that the City is the true and equitable owner of the properties. The Commission recognizes that *Health & Safety Code* § 34163(d) and (f) provide that the Commission shall not have the authority to transfer any of its assets to any entity, including the "community." The Commission also recognizes that *Health & Safety Code* § 34171(d)(2) provides that loan agreements entered into between the City and their redevelopment agencies are not considered valid contractual obligations and are considered under that section to be void. The Commission nevertheless believes that this provision in AB 26 constitutes an unconstitutional impairment of the contract(s) that it made with the City for the loans.

Therefore, the City staff recommends that the City demand that the Commission transfer title to the properties identified in Exhibit "A" to the City and that the City commit to hold the Property in trust, and to take action consistent with maintaining the value of said properties, until the issue of the validity of *Health & Safety Code* § 34171(d)(2) is fully and finally adjudicated.

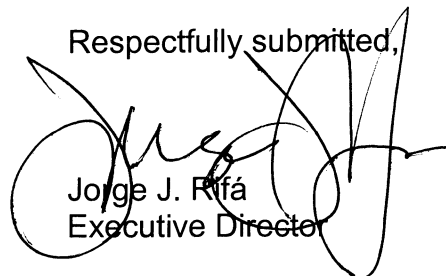
A much more thorough analysis of the contract impairment issue will be conducted by counsel in the *Cerritos* case. At this time, however, it is apparent that the City, and all other cities challenging this provision, have a valid and good faith basis to argue and

believe that *Health & Safety Code* § 34171(d)(2), enacted by AB 26, is unconstitutional. Whether the court will ultimately agree with the cities is another matter. Nevertheless, if the Commission disposes of all its assets, including the subject properties, and the cities are eventually successful in their arguments, the City may still never be able to recover the monies loaned to the Commission. Such a scenario would be the worst case for all of the parties involved, including the State, which would certainly not desire to have the cities suffer as a result of an unconstitutional provision in AB 26. On the other hand, if the cities lose the argument, the City has committed to holding the subject properties in trust and taking action consistent with maintaining the value of these assets. Thus, it would seem prudent for the Commission to comply with the City's request under the condition that such asset be held in trust until the litigation is complete and, if *Health & Safety Code* § 34171(d)(2) is upheld, that such asset be disposed of according to AB 26.¹

FISCAL IMPACT:

As stated above, the Commission owes the General City \$19,135,060 (Principal Balance of \$17,800,000 and Interest Balance of \$1,335,000) for Fiscal Year 2011-12. This amount is inclusive of Loan No. 4 (\$5,700,000 provided to the Commission for the purchase of the Stahl Trust Property); although it is being addressed separately. As a result of AB26, the City has understandably demanded repayment and is requesting that the Commission turn over the properties that were bought, in large part, with City funds. The Commission believes that the City's claim to the properties identified in Exhibit "A" is legitimate and that, in all fairness, the City is the true and rightful owner of the properties.

Respectfully submitted,



Jorge J. Rifa
Executive Director

Approved as to form



Eduardo Olivo
Commission Counsel

Fiscal impact reviewed by:



Vilko Domic
Finance Director

¹ It should be noted that the Commission will confer with Commission Counsel in closed session regarding the consequences of the proposed course of action and that the proposed decision is a "business decision" that will be considered and taken with the understanding of the uncertainties connected therewith.

RESOLUTION NO. _____

A RESOLUTION OF THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION:
(1) ACKNOWLEDGING THE CITY OF COMMERCE'S DEMAND FOR REPAYMENT OF
LOANS MADE BY THE CITY TO THE COMMISSION; AND (2) AUTHORIZING THE
TRANSFER OF COMMISSION FUNDS AND ASSETS TO THE CITY IN THE
EQUIVALENT AMOUNT OF THE OUTSTANDING LOAN AND INTEREST PAYMENT
BALANCES WITH THE UNDERSTANDING THAT THE CITY WILL HOLD SUCH FUNDS
AND ASSETS IN TRUST UNTIL THE VALIDITY OF THE PROVISIONS OF AB 1X 26
THAT PURPORT TO INVALIDATE SUCH CITY LOAN OBLIGATIONS IS FULLY AND
FINALLY ADJUDICATED BY THE COURTS

WHEREAS, on March 14, 1974, the City Council adopted Ordinance No. 206, which established the City of Commerce Redevelopment Agency (the "Agency"); and

WHEREAS, on November 3, 1992, the City Council adopted Ordinance No. 467, which created the Commerce Community Development Commission (the "Commission"); and

WHEREAS, pursuant to the California *Health & Safety Code*, the Commission is the successor-in-interest to the Agency and has, since its creation, been authorized to and has been implementing the City of Commerce's (the "City") redevelopment plans; and

WHEREAS, the Commission is engaged in activities necessary or appropriate to carry out the California Community Redevelopment Law (*Health & Safety Code* Sections 33000, et seq.) within the City; and

WHEREAS, the City has previously loaned certain amounts of money to the Agency/Commission that was required in order to enable the Agency/Commission to pursue its redevelopment project goals, to assist in funding administrative and other expenses necessary for the implementation of the redevelopment plans, and for the purchase of properties required to implement the City's redevelopment programs; and

Loan No. 1

WHEREAS, on June 16, 1986, the City Council approved Resolution No. 86-20, which approved a loan to the Agency of One Hundred Thousand Dollars (\$100,000) at a rate of 7.5% per annum ("Loan No. 1") to assist the Agency in defraying expenses in connection with it carrying out budgeted projects for the Agency; and

WHEREAS, Loan No. 1 was reported annually on the Commission's annual Statement of Indebtedness report filed with the County of Los Angeles; and

WHEREAS, on April 19, 2011, pursuant to Resolution No. 11-30, the City approved and ratified Redevelopment Fund Loan Agreement No. 1 with the Commission. That Agreement documented the past transaction between the City and the Commission related to Loan No. 1 that had already been documented by the above-referenced resolution, but did not create any new debt; and

WHEREAS, as of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 1 was One Hundred Thousand Dollars (\$100,000), plus unpaid interest in the amount of Seven Thousand Five Hundred (\$7,500); a total of One Hundred Seven Thousand Five Hundred Dollars (\$107,500); and

Loan No. 2

WHEREAS, on March 3, 1992, the Agency adopted Resolution No. 181, which requested a loan from the City in the amount of Six Million Five Hundred Thousand Dollars (\$6,500,000), with an interest rate of 7.5% per annum, for the payment of administrative expenses and overhead by the Agency in Project Area No. 1; and

WHEREAS, on March 3, 1992, the City Council adopted Resolution No. 92-11, which approved a loan from the City to the Agency in the amount of Six Million Five Hundred Thousand Dollars (\$6,500,000), with an interest rate of 7.5% per annum for the

payment of administrative expenses and overhead by the Agency in Project Area No. 1 ("Loan No. 2"); and

WHEREAS, the Commission requested numerous extensions from the City for the repayment of Loan No. 2. [Commission Resolution Nos. 194, 213, 231 and 249] The City agreed to the requested repayment extensions. [City Council Resolution Nos. 93-11, 94-5 and 95-09]; and

WHEREAS, in March of 1997, the Commission made a \$500,000 principal payment to the City on the Loan, thus lowering the principal due to Six Million Dollars (\$6,000,000); and

WHEREAS, the Commission requested additional extensions from the City for the repayment of the remaining balance of Loan No. 2. [Commission Resolution Nos. 265, 283, 308, 320, 338, 351, 369, 381, 393, 406, 418, 428 and 449] The City agreed to the additional extension requests. [City Council Resolution Nos. 98-11, 00-18, 01-18, 02-12, 03-16, 04-19, 05-15, 06-7, 07-16, 08-10, 09-25 and 10-15]; and

WHEREAS, Loan No. 2 was reported annually on the Commission's annual Statement of Indebtedness report filed with the County of Los Angeles; and

WHEREAS, on April 19, 2011, pursuant to Resolution No. 11-31, the City approved and ratified Redevelopment Fund Loan Agreement No. 2 with the Commission. That Agreement documented the numerous transactions between the City and the Commission related to the Loan No. 2 that had already been documented by the above-referenced resolutions, but did not create any new debt; and

WHEREAS, of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 2 was Six Million Dollars (\$6,000,000), plus unpaid interest in the amount of \$450,000; a total of Six Million, Four and Fifty Dollars (\$6,450,000); and

Loan No. 3

WHEREAS, on November 2, 1999, the Commission adopted Resolution No. 301, which requested a loan from the City in the amount of Five Million Dollars (\$5,000,000), with an interest rate of 7.5% per annum over the term of the loan for the payment of administrative expenses and overhead by the Commission in Project Area No. 4; and

WHEREAS, on November 2, 1999, the City Council adopted Resolution No. 99-31, which approved a loan from the City to the Commission in the amount of Five Million Dollars (\$5,000,000) with an interest rate of 7.5% per annum over the term of the loan ("Loan No. 3"); and

WHEREAS, the Commission requested extensions from the City for the repayment of Loan No. 3. [Commission Resolution Nos. 315, 337, 348, 387, 402, 413, 424, 438 and 464] The City agreed to the additional extension requests. [City Council Resolution Nos. 00-42, 01-49, 04-54, 05-38, 06-34, 07-41, 08-43, 09-70 and 10-80]; and

WHEREAS, Loan No. 3 was reported annually on the Commission's annual Statement of Indebtedness report filed with the County of Los Angeles; and

WHEREAS, on April 19, 2011, pursuant to Resolution No. 11-32, the City approved and ratified Redevelopment Fund Loan Agreement No. 3 with the Commission. That Agreement documented the numerous transactions between the City and the Commission related to the Loan No. 3 that had already been documented by the above-referenced resolutions, but did not create any new debt; and

WHEREAS, of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 3 was Five Million Dollars (\$5,000,000), plus unpaid interest in the amount of \$375,000; a total of Five Million, Three Hundred and Seventy Five Dollars (\$5,375,000); and

Loan No. 4

WHEREAS, on April 16, 2002, the City Council approved a loan in the amount of Five Million Seven Hundred Thousand Dollars (\$5,700,000) at an interest rate of 6.5% per annum ("Loan No. 4") for the Commission's purchase of the Stahl Trust Property. Loan No. 4 is being addressed separately because it involves additional issues peculiar to that transaction; and

Loan No. 5

WHEREAS, on June 16, 1986, the City Council approved a loan to the Agency of Six Hundred Thousand Dollars (\$600,000) at a rate of 7.5% per annum ("Loan No. 5") for the payment of administrative expenses and overhead by the Agency in Project Area No. 1; and

WHEREAS, of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 5 was Six Hundred Thousand Dollars (\$600,000), plus unpaid interest in the amount of \$45,000; a total of Six Hundred and Forty-Five Dollars (\$645,000) and

Loan No. 6

WHEREAS, on June 18, 2002, the Commission adopted Resolution No. 343, which requested a loan from the City in the amount of Four Hundred Thousand Dollars (\$400,000), with an interest rate of 6.5% per annum over the term of loan for the payment of administrative expenses and overhead by the Commission in Project Area No. 4; and

WHEREAS, on June 18, 2002, the City Council adopted Resolution No. 02-27, which approved a loan from the City to the Commission in the amount of Four Hundred Thousand Dollars (\$400,000), with an interest rate of 6.5% per annum over the term of the loan ("Loan No. 6"); and

WHEREAS, of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of Loan No. 6 was Four Hundred Thousand Dollars (\$400,000), plus unpaid interest in the amount of \$30,000; a total of \$430,000 Dollars (\$430,000); and

WHEREAS, the City is investigating whether a number of other loans made to the Agency/Commission have been paid off in full; and

WHEREAS, the goal of the City and the Commission was to pursue projects that were beneficial to the City and its' constituents. The City and the Commission envisioned and sought to purchase properties and pursue projects with the Commission's use of the City loan funds. The City and the Commission both understood that the City expected repayment and/or that the properties that were purchased with the City's loan funds would be available to secure repayment of the loans; and

WHEREAS, the Commission has always understood that it owed the loan proceeds to the City; and

WHEREAS, the City's and its' constituents will be significantly damaged if the Commission failed to honor its commitment to repay the loans from the City; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed companion bills, Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27"), requiring that each redevelopment agency in the State be dissolved as of October 1, 2011, unless the community that created it enacted an ordinance committing it to making certain payments pursuant to AB 27; and

WHEREAS, after AB 26 and AB 27 were enacted, the League of California Cities, the California Redevelopment Association and the cities of San Jose and Union City filed a petition with the California Supreme Court, entitled *California Redevelopment Association, et al. v. Matosantos, et al.*, Case No. S194861, challenging the constitutionality of AB 26 and AB 27; and

WHEREAS, *Health & Safety Code* § 34171(d)(2), enacted by AB 26, purports to invalidate the loans that were made by the cities to their redevelopment agencies. Pursuant to AB 26, such loan payments are not considered “enforceable obligations.” The cities are therefore not able to enforce millions of dollars of loans made to their redevelopment agencies from the cities’ general fund; and

WHEREAS, on September 26, 2011, the City and several other cities filed a complaint, in the case of *City of Cerritos, et. al. v. State of California, et. al.*, Case No. 34-2011-80000952. Among other things, the *Cerritos* lawsuit attacks the validity of AB 26, specifically *Health & Safety Code* § 34171(d)(2), because it violates the Contract Clauses of the state and federal constitutions by voiding city/redevelopment agency loans; and

WHEREAS, on December 29, 2011, the Supreme Court upheld the constitutionality of AB 26, but determined that AB 27 was unconstitutional. Pursuant to AB 26 (*Health & Safety Code* § 34172(a)(1)) and the Supreme Court’s decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012; and

WHEREAS, the cities involved in the *Cerritos* litigation filed an amicus brief with the Supreme Court in order to advise the Court of the additional issues that were raised in that litigation. However, the Supreme Court specifically stated that it was not addressing such issues in the *Matosantos* decision. Therefore, the issue of the invalidity of *Health & Safety Code* § 34171 (d) (2) will be determined by the court in the *Cerritos* case; and

WHEREAS, the City hereby demands that the Commission repay the loans, with interest, or transfer title to properties owned by the Commission that will at least provide the City with some assets that will account for some of the outstanding debt obligations. The City has reviewed the Commission-owned properties and hereby requests and demands that the Commission agree to immediately transfer to the City the properties identified in Exhibit “A” which is attached hereto and incorporated herein by reference; and

WHEREAS, the current total fair market value of the properties identified in Exhibit “A”, based on an analysis by the Commission’s consultants, is \$ _____; and

WHEREAS, the City has demanded repayment of the above referenced loans and that the Commission transfer the properties to the City because the City’s general Fund monies were used to purchase said properties and/or the City desires some assurance that it will be repaid for the loans. The City also asserts that it is the true and equitable owner of the properties; and

WHEREAS, the Commission recognizes that *Health & Safety Code* § 34163(d) and (f) provide that the Commission shall not have the authority to transfer any of its assets to any entity, including the “community.” The Commission also recognizes that *Health & Safety Code* § 34171(d)(2) provides that loan agreements entered into between the City and their redevelopment agencies are not considered valid contractual obligations and are void. The Commission nevertheless believes that this provision in AB 26 constitutes an unconstitutional impairment of the contract(s) that it made with the City for the loans. The Commission also believes that, due to the fact that the Commission used City General Fund Revenues for the purchase of the properties that have never been repaid, the City is the true and equitable owner of the properties; and

WHEREAS, the City has agreed that it will hold the properties in trust and will take to continue to maintain and preserve the assets and their value until the issue of the validity of *Health & Safety Code* § 34171(d)(2) is fully and finally adjudicated; and

WHEREAS, based on the above and the City’s commitment to hold the properties in trust until the legal issues are fully and finally litigated, the Commission has determined that it will transfer the properties identified in Exhibit “A” to the City as requested.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION AS FOLLOWS:

SECTION 1: The Commerce Community Development Commission hereby finds and determines that the recitals contained hereinabove are true and correct.

SECTION 2: The Commission Chairperson is hereby authorized to execute a grant deeds and/or quitclaim deeds transferring title to the properties identified in Exhibit "A" to the City of Commerce. Commission staff is instructed to record the deeds with the County of Los Angeles Recorder's Office.

SECTION 3: The Commission Secretary shall certify to the passage of this resolution, and thereupon and thereafter the same shall be in full force and effect.

PASSED, APPROVED AND ADOPTED this 31st day of January, 2012.

Joe Aguilar, Chairperson

ATTEST:

Jorge J. Rifá, Secretary

RESO (CDC – RDA LOAN AGMTS) – 01-31-2012.DOC



AGENDA REPORT

DATE: January 31, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA: (1) DEMANDING THAT THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION RETURN/TRANSFER REAL PROPERTY KNOWN AS THE STAHL TRUST PROPERTY FOR WHICH THE CITY LOANED THE COMMISSION FIVE MILLION SEVEN HUNDRED THOUSAND DOLLARS IN ORDER TO BE ABLE TO PURCHASE SAID PROPERTY; AND (2) DECLARING THE CITY'S INTENT TO HOLD THE PROPERTY IN TRUST UNTIL THE VALIDITY OF THE PROVISIONS OF AB 1X 26 THAT PURPORT TO INVALIDATE CITY LOAN OBLIGATIONS IS FULLY AND FINALLY ADJUDICATED BY THE COURTS

RECOMMENDATION:

Approve and adopt the Resolution and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

The Creation of the Commerce Community Development Commission

On March 14, 1974, the City Council of the City of Commerce adopted Ordinance No. 206, which established the City of Commerce Redevelopment Agency (the "Agency"). On November 3, 1992, the City Council adopted Ordinance No. 467, which created the Commerce Community Development Commission (the "Commission"). The Commission is the successor-in-interest to the Agency and has, since its creation, been authorized to and has been implementing the City of Commerce's (the "City") redevelopment plans and has been engaged in activities necessary or appropriate to carry out the California Community Redevelopment Law (*Health & Safety Code Sections 33000, et seq.*) (the "CRL") within the City.

The Commission Requests 5.7 Million from the City in Order to Purchase the Stahl Property

On April 25, 2002, the Commission entered into an agreement with Commerce Enterprises, LLC for the purchase of property commonly known as the Stahl Trust Property, located at Washington Boulevard and Telegraph Road (the "Property"). The Commission wanted to purchase the Property because it believed it was suitable for a project that would be consistent with the Commission's goals and objectives pursuant to the CRL.

However, the Commission did not have enough money to pay the purchase price. Therefore, on April 16, 2002, pursuant to Resolution No. 339, the Commission requested a loan from the City of Five Million Seven Hundred Thousand Dollars (\$5,700,000). The Commission requested that the Loan be required by the City to be repaid within 6

months. On April 16, 2002, pursuant to Resolution No. 02-15, the City Council approved a loan to the Commission in the amount of Five Million Seven Hundred Thousand Dollars (\$5,700,000), at an interest rate of 6.5% per annum, so that it could purchase the Property (the "Loan"). Once the funds were delivered to the Commission, they were deposited into escrow and the Commission took ownership of the Property.

Since the purchase of the Property, the Commission has requested numerous extensions from the City for the repayment of the Loan. [Commission Resolution Nos. 349, 368, 379, 404, 423, 429 and 450] The City agreed to the requested Loan repayment extensions. [City Council Resolution Nos. 04-8, 05-6, 07-12, 08-31, 09-26 and 10-24] The Loan was reported annually on the Commission's annual Statement of Indebtedness report filed with the County of Los Angeles.

On April 19, 2011, the City approved and ratified Redevelopment Fund Loan Agreement No. 4 with the Commission. That Agreement documented the numerous transactions between the City and the Commission related to the Loan that had already been documented by the above-referenced resolutions, but did not create any new debt.

As of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of the Loan was Five Million Seven Hundred Thousand Dollars (\$5,700,000), plus unpaid interest in the amount of Five Hundred Sixty Two Thousand Five Hundred Dollars (\$562,500); a total of Six Million Two Hundred Sixty Two Thousand Five Hundred Dollars (\$6,262,500).

The City's and its' constituents will be significantly damaged if the Commission fails to honor its commitment to repay the Loan.

The State Terminates Redevelopment Agencies and Invalidates the City's Loan Agreements by Passage of AB 26

On June 15, 2011, the California Legislature approved Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27"); the bills were signed by the Governor on June 28, 2011. AB 26 and AB 27 added Parts 1.8, 1.85 and 1.9 of Division 24 to the California *Health & Safety Code*. Part 1.85 of the *Health & Safety Code*, which is contained in AB 26, requires all redevelopment agencies to dissolve as of October 1, 2011, and provides for the establishment of a successor entity to administer the enforceable obligations of the redevelopment agency. Part 1.8 of the *Health & Safety Code*, which is also contained in AB 26, restricts activities of redevelopment agencies to meeting their enforceable obligations, preserving assets and meeting other goals in the interim period prior to dissolution. AB 27 provided cities with the option of opting out of AB 26 by adopting an ordinance that would allow their redevelopment agencies to participate in a "Voluntary Alternative Redevelopment Program" that would require certain annual remittances to the Los Angeles County Auditor-Controller. On August 1, 2011, the City Council of the City of Commerce determined that it would proceed under AB 27.

Pursuant to AB 26, each former redevelopment agency's "successor agency" will be required to, among other obligations, provide payment from the transferred assets for the "enforceable obligations" of the former redevelopment agency. After such enforceable obligation payments, the successor agency remits the balance of any unencumbered funds of the former redevelopment agency to the local county auditor-controller. *Health & Safety Code* §§ 34170- 34191. Such "enforceable obligations" are defined in *Health & Safety Code* § 34171. *Health & Safety Code* § 34171(d)(2) provides that, once a redevelopment agency is dissolved, that agency's "enforceable obligations" do not include "any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency." There are only two exceptions to this exclusion: (1) written agreements entered into at the time of issuance of "indebtedness obligations", if those agreements were entered on or before December 31, 2010, and solely for the purpose of securing or

repaying those defined indebtedness obligations; and (2) loan agreements between a redevelopment agency and its sponsoring community that were entered into within two years after the agency was established.” All other “agreements, contracts or arrangements” between cities and their redevelopment agencies are voided and unenforceable.

As a result of *Health & Safety Code* § 34171(d)(2), over \$18 Million in loans that were made by the City to the Commission are purportedly void and of no effect. The City and the Commission agree that the legislative invalidation of such loans is grossly unfair to the City’s constituents and that such actions undermine fundamental notions of contract law and appear to ignore the basic fact that the City and the Commission are separate legal entities.

The Legal Challenges to AB 26 and AB 27

After AB 26 and AB 27 were enacted, the League of California Cities, the California Redevelopment Association and the cities of San Jose and Union City filed a petition with the California Supreme Court, entitled *California Redevelopment Association, et al. v. Matosantos, et al.* Case No. S194861, challenging the constitutionality of AB 26 and AB 27.

On September 26, 2011, the City and several other cities also filed a complaint, in the case of *City of Cerritos, et. al. v. State of California, et. al.*, Case No. 34-2011-80000952. Among other things, the *Cerritos* lawsuit the validity of *Health & Safety Code* § 34171(d)(2), which was enacted by AB 26, because it violates the Contract Clauses of the state and federal constitutions by voiding city/redevelopment agency loans.

On December 29, 2011, the Supreme Court upheld the constitutionality of AB 26 in the *Matosantos* case, but determined that AB 27 was unconstitutional. Pursuant to AB 26 (*Health & Safety Code* § 34172(a)(1)) and the Supreme Court’s decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012. The Supreme Court did not address the issue of whether AB 26 violates the Contract Clauses of the state and federal constitutions by voiding city/redevelopment agency loans. That issue will be adjudicated in the *Cerritos* lawsuit.

ANALYSIS:

The City and the Commission are Considered Separate Legal Entities

It is important to understand one basic concept before considering the potential invalidity of *Health & Safety Code* § 34171(d)(2): the City and the Commission are, as a matter of law, considered separate public entities. This concept is critical in understanding that the City had actual contractual rights that were impaired by AB 26, and that the loans it agreed to and made to the Commission were not merely intra-agency accounting transfers.

The authority to establish a redevelopment agency and the authority for a redevelopment agency to function as an agency, adopt a redevelopment plan, and implement the plan, were granted by the CRL. See, *Health & Safety Code* § 3300, *et seq.* Redevelopment agencies are governmental entities that exist by virtue of state law and are separate and distinct from the communities in which they exist. *Health & Safety Code* § 33100 states, “[t]here is in each community a public body, corporate and politic, known as the redevelopment agency of the community.” *Health & Safety Code* § 33125 states, “[a]n agency may: (a) Sue and be sued... (c) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers.” See also, *Andrews v. City of San Bernardino* (1959) 175 Cal.App.2d 459, 462 – redevelopment agencies are creations of the state. General law cities, such as Commerce, on the other

hand, exist by virtue of an entirely different body of law. *Government Code* § 34102 states: “[c]ities organized under the general law shall be ‘general law cities.’” In *Pacific States Enterprises, Inc. v. the City of Coachella* (1993) 13 Cal.App.4th 1414, the Appellate Court affirmed a trial court’s order granting a motion for dismissal on the basis that the appellant (a developer) did not have a valid contract with the City of Coachella and could not assert valid cause of action for breach of contract. The Appellate Court stated:

When a ‘dual capacity legislative body’ acts as the governing board of a redevelopment agency, it is the redevelopment agency which is acting by and through that legislative body; and when that same legislative body acts as the governing body of the ‘community’ (i.e., the city) over which it exercises local governmental powers, it is the ‘community’ which is acting by and through the legislative body. The redevelopment agency and the ‘community’ are *not* one and the same governmental entities. The redevelopment agency, by state law, exists ‘in each community’ with certain limited powers and functions... it is not the same entity as the community *within which* it exists.

(Emphasis in original.) *Id. at* 1425.

The Commission was established as the successor to the Agency. [City of Commerce Ordinance No. 467; *Health & Safety Code* § 34112] The Agency and the Commission both had the power to sue, to be sued and to make and execute contracts and other instruments necessary or convenient to the exercise of their powers. *Health & Safety Code* § 33125. They were both considered separate and distinct public entities from the City itself. *Pacific States at* 1425.

Health & Safety Code § 34171(d)(2) Appears to Illegally Impair the City’s Loan Agreements with the Agency/Commission

The United States and California Constitutions both limit the power of a state to modify its own contracts and the contracts of others under their respective “contract clauses.” *Olson v. Cory* (1980) 27 Cal. 3d 532; U.S. Const., art. I, sec. 10; Cal. Const. art. I, § 9. However, not all impairment of a contractual right runs afoul of the contract clause. “Although the Contract Clause appears literally to proscribe any impairment... the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula.” Thus, a finding that there has been a technical impairment is merely a preliminary step in resolving the more difficult question of whether that impairment is permitted under the Constitution. An attempt must be made to reconcile the strictures of the contract clause with the essential attributes of sovereign power. For example, minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation. *Vales v. Cory* (1983) 139 Cal.App.3d 773, 789 (quoting from *United States Trust Co. v. New Jersey* (1977) 431 US 1).

The courts consider four factors when determining whether the legislative impairment of vested contract rights violates the constitution: (1) whether the enactment serves the basic interests of society, (2) there is an emergency justification for the enactment, (3) the enactment is appropriate for the emergency, and (4) the enactment is designed as a temporary measure, during which time the vested contract rights are not lost but merely deferred for a brief period, interest running during the temporary deferment. *Home Building and Loan Assn. v. Blaisdell* (1934) 290 US 398. See also *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109; *Sonoma County Public Employees v. County of Sonoma* (1980) 23 Cal.3d 296.

In *United States Trust Co.* the Court considered the state of New Jersey’s repeal of an express covenant that assured bond holders that monies pledged as security for repayment would not be used to subsidize rail passenger transportation, was enacted.

The Court noted that while parties to a contract may rely on the continued existence of adequate statutory remedies for enforcing their agreement they are unlikely to expect that state law will remain entirely static. Thus, a reasonable modification of statutes governing contract remedies is much less likely to upset expectations than a law adjusting the express terms of an agreement. The Court concluded that the repeal of the covenant in that case was a severe contract impairment. The Court then applied the four factors set forth above to determine if the impairment could pass constitutional scrutiny. The Court determined that the impairment was neither necessary to achieve the states' plan to encourage private automobile users to shift to public transportation nor reasonable in light of changed circumstances. Total repeal of the covenant was not essential, since the states' plan could have been implemented with a less drastic modification of the covenant. The Court therefore held that the repeal of the express covenant constituted a violation of the contracts clause. *Id.*

The repeal of the express covenant in *United States Trust Co.* represents a much lesser impairment provision than *Health & Safety Code § 34171(d)(2)*. The statute voids the City's Commission loan collection rights in their entirety. The contract impairment in this case is obviously severe. Consequently, the State of California would have to show that the impairment represents a necessary modification under the fiscal emergency set forth in AB 26 and that its goals were not achievable by any lesser modification. *Id.*

In *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, the Board of Administration of the California Public Employees' Retirement System ("PERS") filed suit regarding legislation that changed the payment schedule for state employer financing of the California Public Employees' Retirement Fund ("PERF") to "annually, 12 months in arrears" (*Government Code § 20822*). The Board argued that such a change violated the constitutional right to be free of impairment of contracts. The Court of Appeal held that the PERS members had a contractual right to an actuarially sound retirement system and that the "in arrears" financing established by § 20822 constituted an unconstitutional impairment of contract.

The state argued that the defense of justification and necessity applied. The Court held that, even if it were assumed that the record justified a finding of a fiscal emergency, the statute was enacted without actuarial input from PERS and without indication that considered thought was given to possible mitigating measures, or to the possibility of alternative, less drastic means of accomplishing the goal of budget balancing. Thus, the necessity defense failed. *Id.*

Wilson also involved a far lesser "contract impairment" than the extinguishment of the City's loan repayment rights in this case. As in *Wilson*, the State of California will assert the necessity defense in this case. The court would have to consider whether there was no other "less drastic means" of achieving the goal of budget balancing other than voiding these loan obligations. The State would have to demonstrate that the fiscal emergency was so drastic as to justify the extreme act of wiping out entire multi-million dollar contract obligations. Notably, the fourth factor considered when assessing the necessity defense is whether the enactment "is designed as a temporary measure, during which time the vested contract rights are not lost but merely deferred for a brief period, interest running during the temporary deferment." *Wilson, supra*, at 1155. *Health & Safety Code § 34171(d)(2)* permanently prevents the cities from enforcing their redevelopment agency loan rights. Thus, it appears that the impairment is unlawful in violation of both federal and state Constitutions' contract clauses.

It should be noted that *United States Trust Co.* (1976) 431 U.S. 1, 22, n. 19 provides, "*Blaisdell* suggested further limitations that have since been subsumed in the overall determination of reasonableness. The legislation sustained in *Blaisdell* was adopted pursuant to a declared emergency in the State and strictly limited in duration. Subsequent decisions struck down state laws that were not so limited. *W.B. Worthen Co. v. Thomas*, 292 U.S. 426, 432-434 (1934) (relief not limited as to "time, amount,

circumstances, or need”); *Treigle v. Acme Homestead Ass.*, 297 U.S. 189, 195 (1936) (no emergency or temporary measure). Later decisions abandoned these limitations as absolute requirements. *Veix v. Sixth Ward Building & Loan Assn.*, 310 U.S., 32, 39-40 (1940) (emergency need not be declared and relief measure need not be temporary); *East New York and Savings Bank v. Hahn*, 326 U.S. 230 (1945) (approving 10th extension of one-year mortgage moratorium). Undoubtedly the existence of an emergency and the limited duration of a relief measure are factors to be addressed in determining the reasonableness of an impairment, but they cannot be regarded as essential in every case.

The City’s Entitlement to an Equitable Lien or Constructive Trust on the Property

Subject to certain exceptions, the City is entitled an equitable lien in property to secure payment of monies owed to the City when it would be inequitable to force the City to lose the opportunity to recover monies that it is owed. This is distinguished from a constructive trust where the monies to be secured are usually related to the property interest on which the trust is to be imposed.

An equitable lien is created by operation of law as a charge against specific property belonging to another. As with any other type of lien, an equitable lien gives the plaintiff/lien holder the right to foreclose on, or in some way utilize, the subject property as payment for an amount owed to the plaintiff by the defendant.

Even if the parties did not attempt to formally document the security interest in writing an equitable lien may be imposed on specific property for the benefit of the claimant if the parties intended that the property stand as security for a debt or obligation. See cases cited in *Grappo v. Coventry Fin. Corp.* (1991) 235 CA3d 496, 509). The crucial factor is that the parties intend that the debt be secured by the specific property. *Lentz v. Lentz* (1968) 267 CA2d 891, 894.

When a debtor intends to pay a debt from the sale of real property and the court finds that the parties intended that the property be used as security for the debt, the claimant may obtain an equitable lien on the property even if the property was not sold. In *Dodd v Cantwell* (1960) 179 CA2d 727, the court found that the parties intended that a ranch secure an obligation to pay wages to plaintiffs, who worked for the owners for over 30 years without pay in reliance on the promise by the owners that the plaintiffs would be paid when the ranch was sold. The owners never sold the ranch, but instead gave it to their niece who fired the plaintiffs without paying them their owed wages. The court imposed an equitable lien on the property for the value of the services rendered because it was the express intent of the parties that the ranch be security for the debt. The court found that the plaintiffs relied on the owners' promise.

A constructive trust is an equitable restitutionary remedy like an equitable lien. Constructive trusts are specifically authorized by *Civil Code* §§2223 and 2224. Under §2223, a person who wrongfully detains property is an involuntary trustee thereof for the benefit of the owner. Under § 2224 a person who gains property by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act is an involuntary trustee of the property for the benefit of the one who would otherwise have had it, unless that person has some other and better right to it.

In this case, the City and Commission’s goal was to pursue projects that were beneficial to the City and its’ constituents. The City and the Commission envisioned and sought to place a sports arena and other potential projects on the Property. Such efforts were not successful. Nevertheless, the City and the Commission both understood that if such a project could not be built, that the City expected repayment and/or that the Property would be available to secure repayment of the Loan. Based on the case law, the City’s efforts as an interim remedy is persuasive. The ultimate disposition of the assets will

depend on the *Cerritos litigation*, but the constructive trust and equitable lien cases certainly support the transfer and protection efforts while the case is pending.

CONCLUSION:

If the cities in the *Cerritos* case prevail on the impairment of contract argument, such provisions would be declared unconstitutional and would be null and void. It would be grossly unfair to the City and its constituents for the monies owed to never be paid back. Such a scenario would obviously not have been acceptable to the City when the loans were made. The City believes that it is entitled to repayment and, therefore, must demand and pursue it from the Commission.

The current fair market value of the Property, based on an analysis by the Commission's consultants, is \$9,189,792. The Commission also owes the City for additional loans in an amount exceeding Thirteen Million Dollars (\$13,000,000).

The City believes that, because it paid for the Property and the Commission would not have been able to purchase the Property without the City's funds, that the City is the true and equitable owner of the Property. The City recognizes that *Health & Safety Code* § 34163(d) and (f) provide that the Commission shall not have the authority to transfer any of its assets to any entity, including the "community." The City also recognizes that *Health & Safety Code* § 34171(d)(2) provides that loan agreements entered into between the City and their redevelopment agencies are not considered valid contractual obligations and are considered under that section to be void. The City nevertheless believes that this provision in AB 26 constitutes an unconstitutional impairment of the contract(s) that it made with the Commission for the Loan. The City also believes that, due to the fact that the Commission used City General Fund Revenues for the purchase of the Property that have never been repaid, the City is the true and equitable owner of the Property.

The City is concerned that if the Property is allowed to be sold by the successor agency to the Commission, before the validity of *Health & Safety Code* § 34171(d)(2) can be finally decided in the *Cerritos* case, the City's ability to recover the amount of the Loan will be severely compromised. The City does not desire to ignore the requirements of A 26, but desires to assure that it is not unnecessarily harmed if the courts ultimately determine that *Health & Safety Code* § 34171(d)(2) is not valid. Therefore, the City staff recommends that the City demand that the Commission transfer title to the Property back to the City and that the City commit to hold the Property in trust until the issue of the validity of *Health & Safety Code* § 34171(d)(2) is fully and finally adjudicated.

A much more thorough analysis of the contract impairment issue will be conducted by counsel in the *Cerritos* case. At this time, however, it is apparent that the City, and all other cities challenging this provision, have a valid and good faith basis to argue and believe that *Health & Safety Code* § 34171(d)(2), enacted by AB 26, is unconstitutional. Whether the court will ultimately agree with the cities is another matter. Nevertheless, if the Commission disposes of all its assets, including the Property, and the cities are eventually successful in their arguments, the City may still never be able to recover the monies loaned to the Commission or accomplish the return of the Stahl Trust Property. Such a scenario would be the worst case for all of the parties involved, including the State, which would certainly not desire to have the cities suffer as a result of an unconstitutional provision in AB 26. On the other hand, if the cities lose the argument, the City has committed to holding the Stahl Trust Property in trust. Thus, it would seem prudent for the Commission to comply with the City's request under the condition that such asset be held in trust until the litigation is complete and, if *Health & Safety Code* § 34171(d)(2) is upheld, that such asset be disposed of according to AB 26.¹

¹ It should be noted that the City Council will confer with the City Attorney in closed session regarding the consequences of the proposed course of action and that the proposed decision is a "business decision" that will be considered and taken with the understanding of the uncertainties connected therewith.

FISCAL IMPACT:

On April 19, 2011, the Commission approved and ratified Redevelopment Fund Loan Agreement No. 4 with the City. That Agreement documented the numerous transactions between the City and the Commission related to the Loan that had already been documented by, but did not create any new debt.

As of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of the Loan was Five Million Seven Hundred Thousand Dollars (\$5,700,000), plus unpaid interest in the amount of Five Hundred Sixty Two Thousand Five Hundred Dollars (\$562,500); a total of Six Million Two Hundred Sixty Two Thousand Five Hundred Dollars (\$6,262,500). The Commission has always understood that it owed the Loan proceeds to the City and that the City and its' constituents would be significantly damaged if the Commission failed to repay the Loan.

Respectfully submitted



Jorge J. Rifá
City Administrator

Approved as to form



Eduardo Olivo
City Attorney

Fiscal Impact reviewed by:



Vilko Domic
Director of Finance

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA:
(1) DEMANDING THAT THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION RETURN/TRANSFER REAL PROPERTY KNOWN AS THE STAHL TRUST PROPERTY FOR WHICH THE CITY LOANED THE COMMISSION FIVE MILLION SEVEN HUNDRED THOUSAND DOLLARS IN ORDER TO BE ABLE TO PURCHASE SAID PROPERTY;
AND (2) DECLARING THE CITY'S INTENT TO HOLD THE PROPERTY IN TRUST UNTIL THE VALIDITY OF THE PROVISIONS OF AB 1X 26 THAT PURPORT TO INVALIDATE CITY LOAN OBLIGATIONS IS FULLY AND FINALLY ADJUDICATED BY THE COURTS

WHEREAS, on March 14, 1974, the City Council of the City of Commerce (the "City") adopted Ordinance No. 206, which established the City of Commerce Redevelopment Agency (the "Agency"); and

WHEREAS, on November 3, 1992, the City Council adopted Ordinance No. 467, which created the Commerce Community Development Commission (the "Commission"). The Commission is the successor-in-interest to the Agency and has, since its creation, been implementing the City's redevelopment plans and has been engaged in activities necessary or appropriate to carry out the California Community Redevelopment Law (*Health & Safety Code Sections 33000, et seq.*) (the "CRL") within the City; and

WHEREAS, on April 25, 2002, the Commission entered into an agreement with Commerce Enterprises, LLC for the purchase of property commonly known as the "Stahl Trust Property," located at Washington Boulevard and Telegraph Road, in the City of Commerce (the "Property"); and

WHEREAS, the Commission desired to purchase the Property because it believed it could be used for a project that would benefit the City's constituents and be consistent with the Commission's goals and objectives pursuant to the City's redevelopment plans and the CRL; and

WHEREAS, the Commission did not have sufficient funds available to pay the Seven Million Five Hundred Thousand Dollars (\$7,500,000) purchase price for the Property. Therefore, on April 16, 2002, pursuant to Resolution No. 339, the Commission requested a loan from the City in the amount of Five Million Seven Hundred Thousand Dollars (\$5,700,000), so that the Commission could pay for the Property. The Commission requested that the Loan be required to be repaid within 6 months; and

WHEREAS, on April 16, 2002, pursuant to Resolution No. 02-15, the City Council approved the loan requested by the Commission in the amount of Five Million Seven Hundred Thousand Dollars (\$5,700,000), at an interest rate of 6.5% per annum (the "Loan") for the purchase of the Property (the "Loan"); and

WHEREAS, the Commission deposited the Loan proceeds received from the City into escrow and was thus able to complete the purchase of the Property; and

WHEREAS, the Commission would not have been able to complete the purchase of the Property without the City's approval of the Loan; and

WHEREAS, since the purchase of the Property, the Commission has requested numerous extensions from the City for the repayment of the Loan. Such requests were documented in Resolution Nos. 349, 368, 379, 404, 423, 429 and 450; and

WHEREAS, the City agreed to provide the Commission with the requested extensions. The City's agreement to provide the extensions were documented in Resolution Nos. 04-8, 05-6, 07-12, 08-31, 09-26 and 10-24; and

WHEREAS, the Loan was reported annually on the Commission's annual Statement of Indebtedness report filed with the County of Los Angeles; and

WHEREAS, on April 19, 2011, the City approved and ratified Redevelopment Fund Loan Agreement No. 4 with the Commission. The Agreement documented the numerous transactions between the City and the Commission related to the Loan that had already

been documented by the above-referenced resolutions, but did not create any new debt; and

WHEREAS, as of January 31, 2012, the total amount of debt owed to the City's General Fund by Commission as a result of the Loan, was Five Million Seven Hundred Thousand Dollars (\$5,700,000), plus unpaid interest in the amount of Five Hundred Sixty Two Thousand Five Hundred Dollars (\$562,500); a total of Six Million Two Hundred Sixty Two Thousand Five Hundred Dollars (\$6,262,500); and

WHEREAS, the goal of the City and the Commission was to pursue projects that were beneficial to the City and its' constituents. The City and the Commission envisioned and sought to place a sports arena and other potential projects on the Property. Such efforts were not successful. Nevertheless, the City and the Commission both understood that if such a project could not be built, that the City expected repayment and/or that the Property would be available to secure repayment of the Loan; and

WHEREAS, the Commission has always understood that it owed the Loan proceeds to the City and that the City and its' constituents would be significantly damaged if the Commission failed to honor its commitment to repay the Loan; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed companion bills, Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27"), requiring that each redevelopment agency in the State be dissolved as of October 1, 2011, unless the community that created it enacted an ordinance committing it to making certain payments pursuant to AB 27; and

WHEREAS, after AB 26 and AB 27 were enacted, the League of California Cities, the California Redevelopment Association and the cities of San Jose and Union City filed a petition with the California Supreme Court, entitled *California Redevelopment Association, et al. v. Matosantos, et al.* Case No. S194861, challenging the constitutionality of AB 26 and AB 27; and

WHEREAS, *Health & Safety Code* § 34171(d)(2), enacted by AB 26, purports to invalidate the loans that were made by the cities to their redevelopment agencies. Pursuant to AB 26, such loan payments are not considered "enforceable obligations." The cities are therefore not able to enforce millions of dollars of loans made to their redevelopment agencies from the cities' general fund; and

WHEREAS, on September 26, 2011, the City and several other cities filed a complaint, in the case of *City of Cerritos, et. al. v. State of California, et. al.*, Case No. 34-2011-80000952. Among other things, the *Cerritos* lawsuit attacks the validity of AB 26, specifically *Health & Safety Code* § 34171(d)(2), because it violates the Contract Clauses of the state and federal constitutions by voiding city/redevelopment agency loans; and

WHEREAS, on December 29, 2011, the Supreme Court upheld the constitutionality of AB 26, but determined that AB 27 was unconstitutional. Pursuant to AB 26 (*Health & Safety Code* § 34172(a)(1)) and the Supreme Court's decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012; and

WHEREAS, the cities involved in the *Cerritos* litigation filed an amicus brief with the Supreme Court in order to advise the Court of the additional issues that were raised in that litigation. However, the Supreme Court specifically stated that it was not addressing such issues in the *Matosantos* decision. Therefore, the issue of the invalidity of *Health & Safety Code* § 34171 (d) (2) will be determined by the court in the *Cerritos* case; and

WHEREAS, the current fair market value of the Property, based on an analysis by the Commission's consultants, is \$9,189,792; and

WHEREAS, the Commission also owes the City for additional loans in an amount exceeding Thirteen Million Dollars (\$13,000,000); and

WHEREAS, the City believes that, because it paid for the Property and the Commission would not have been able to purchase the Property without the City's funds,

that the City is the true and equitable owner of the Property; and

WHEREAS, the City hereby demands that the Commission transfer title to the Property back to the City; and

WHEREAS, the City recognizes that *Health & Safety Code* § 34163(d) and (f) provide that the Commission shall not have the authority to transfer any of its assets to any entity, including the "community." The City also recognizes that *Health & Safety Code* § 34171(d)(2) provides that loan agreements entered into between the City and their redevelopment agencies are not considered valid contractual obligations and are void. The City nevertheless believes that this provision in AB 26 constitutes an unconstitutional impairment of the contract(s) that it made with the Commission for the Loan. The City also believes that, due to the fact that the Commission used City General Fund Revenues for the purchase of the Property that have never been repaid, the City is the true and equitable owner of the Property; and

WHEREAS, the City is concerned that if the Property is allowed to be sold by the successor agency to the Commission before the validity of *Health & Safety Code* § 34171(d)(2) can be finally decided in the *Cerritos* case, that the City's ability to recover the amount of the Loan will be severely compromised; and

WHEREAS, the City does not desire to ignore the requirements of AB 26, but desires to assure that it is not unnecessarily harmed if the courts ultimately determine that *Health & Safety Code* § 34171(d)(2) is not valid. Therefore, the City hereby commits to hold the Property in trust until the issue of the validity of *Health & Safety Code* § 34171(d)(2) is fully and finally adjudicated.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COMMERCE AS FOLLOWS:

SECTION 1: The City Council hereby finds and determines that the recitals contained hereinabove are true and correct.

SECTION 2: The City Council hereby requests and demands that the Commerce Community Development Commission immediately execute a Grant Deed transferring fee title to the Stahl Trust Property to the City of Commerce.

SECTION 3: The City hereby promises and commits to holding the Property in trust and to taking action that will be consistent with maintaining the value of the Property until the validity of *Health & Safety Code* § 34171(d)(2) is determined by the courts. If the courts determine that § 34171 (d)(2) is invalid, the City will maintain ownership of the Property and determine if any additional amounts are owed by the Commission's successor agency or if the City owes any monies to the successor agency. The City will seek such additional amounts owed to it, or pay any amounts owed by the City. If, on the other hand, the courts determine that § 34171 (d)(2) is valid and the City has no continuing legitimate claim to the Property, the City will take action to immediately transfer title to the Property as required by the law.

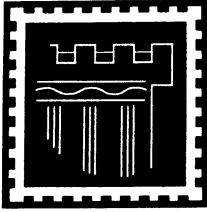
SECTION 4: The City Clerk shall certify to the passage of this resolution, and thereupon and thereafter the same shall be in full force and effect.

PASSED, APPROVED AND ADOPTED this 31st day of January, 2012.

Joe Aguilar, Mayor

ATTEST:

Linda Kay Olivieri, MMC, City Clerk



COMMERCE
COMMUNITY
DEVELOPMENT
COMMISSION

AGENDA REPORT

DATE: January 31, 2012

TO: HONORABLE COMMUNITY DEVELOPMENT COMMISSION

FROM: EXECUTIVE DIRECTOR

SUBJECT: A RESOLUTION OF THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION: (1) ACKNOWLEDGING THE CITY OF COMMERCE'S DEMAND FOR RETURN/TRANSFER OF REAL PROPERTY KNOWN AS THE STAHL TRUST PROPERTY, FOR WHICH THE CITY LOANED THE COMMISSION FIVE MILLION SEVEN HUNDRED THOUSAND DOLLARS IN ORDER TO BE ABLE TO PURCHASE SAID PROPERTY; AND (2) AUTHORIZING THE TRANSFER OF SAID PROPERTY WITH THE UNDERSTANDING THAT THE CITY WILL HOLD IT IN TRUST UNTIL THE VALIDITY OF THE PROVISIONS OF AB 1X 26 THAT PURPORT TO INVALIDATE CITY LOAN OBLIGATIONS IS FULLY AND FINALLY ADJUDICATED BY THE COURTS

RECOMMENDATION:

Approve and adopt the Resolution and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

The Creation of the Commerce Community Development Commission

On March 14, 1974, the City Council of the City of Commerce adopted Ordinance No. 206, which established the City of Commerce Redevelopment Agency (the "Agency"). On November 3, 1992, the City Council adopted Ordinance No. 467, which created the Commerce Community Development Commission (the "Commission"). The Commission is the successor-in-interest to the Agency and has, since its creation, been authorized to and has been implementing the City of Commerce's (the "City") redevelopment plans and has been engaged in activities necessary or appropriate to carry out the California Community Redevelopment Law (*Health & Safety Code Sections 33000, et seq.*) (the "CRL") within the City.

The Commission Requests 5.7 Million from the City in Order to Purchase the Stahl Property

On April 25, 2002, the Commission entered into an agreement with Commerce Enterprises, LLC for the purchase of property commonly known as the Stahl Trust Property, located at Washington Boulevard and Telegraph Road (the "Property"). The Commission wanted to purchase the Property because it believed it was suitable for a project that would be consistent with the Commission's goals and objectives pursuant to the CRL.

However, the Commission did not have enough money to pay the purchase price. Therefore, on April 16, 2002, pursuant to Resolution No. 339, the Commission requested a loan from the City of Five Million Seven Hundred Thousand Dollars (\$5,700,000). The Commission requested that the Loan be required by the City to be repaid within 6

months. On April 16, 2002, pursuant to Resolution No. 02-15, the City Council approved a loan to the Commission in the amount of Five Million Seven Hundred Thousand Dollars (\$5,700,000), at an interest rate of 6.5% per annum, so that it could purchase the Property (the "Loan"). Once the funds were delivered to the Commission, they were deposited into escrow and the Commission took ownership of the Property.

Since the purchase of the Property, the Commission has requested numerous extensions from the City for the repayment of the Loan. [Commission Resolution Nos. 349, 368, 379, 404, 423, 429 and 450] The City agreed to the requested Loan repayment extensions. [City Council Resolution Nos. 04-8, 05-6, 07-12, 08-31, 09-26 and 10-24] The Loan was reported annually on the Commission's annual Statement of Indebtedness report filed with the County of Los Angeles.

On April 19, 2011, the Commission approved and ratified Redevelopment Fund Loan Agreement No. 4 with the City. That Agreement documented the numerous transactions between the City and the Commission related to the Loan that had already been documented by the above-referenced resolutions, but did not create any new debt.

As of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of the Loan was Five Million Seven Hundred Thousand Dollars (\$5,700,000), plus unpaid interest in the amount of Five Hundred Sixty Two Thousand Five Hundred Dollars (\$562,500); a total of Six Million Two Hundred Sixty Two Thousand Five Hundred Dollars (\$6,262,500). The Commission has always understood that it owed the Loan proceeds to the City and that the City and its' constituents would be significantly damaged if the Commission failed to repay the Loan.

The State Terminates Redevelopment Agencies and Invalidates the City's Loan Agreements by Passage of AB 26

On June 15, 2011, the California Legislature approved Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27"); the bills were signed by the Governor on June 28, 2011. AB 26 and AB 27 added Parts 1.8, 1.85 and 1.9 of Division 24 to the California *Health & Safety Code*. Part 1.85 of the *Health & Safety Code*, which is contained in AB 26, requires all redevelopment agencies to dissolve as of October 1, 2011, and provides for the establishment of a successor entity to administer the enforceable obligations of the redevelopment agency. Part 1.8 of the *Health & Safety Code*, which is also contained in AB 26, restricts activities of redevelopment agencies to meeting their enforceable obligations, preserving assets and meeting other goals in the interim period prior to dissolution. AB 27 provided cities with the option of opting out of AB 26 by adopting an ordinance that would allow their redevelopment agencies to participate in a "Voluntary Alternative Redevelopment Program" that would require certain annual remittances to the Los Angeles County Auditor-Controller. On August 1, 2011, the City Council of the City of Commerce determined that it would proceed under AB 27.

Pursuant to AB 26, each former redevelopment agency's "successor agency" will be required to, among other obligations, provide payment from the transferred assets for the "enforceable obligations" of the former redevelopment agency. After such enforceable obligation payments, the successor agency remits the balance of any unencumbered funds of the former redevelopment agency to the local county auditor-controller. *Health & Safety Code* §§ 34170- 34191. Such "enforceable obligations" are defined in *Health & Safety Code* § 34171. *Health & Safety Code* § 34171(d)(2) provides that, once a redevelopment agency is dissolved, that agency's "enforceable obligations" do not include "any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency." There are only two exceptions to this exclusion: (1) written agreements entered into at the time of issuance of "indebtedness obligations", if those agreements were entered on or before December 31, 2010, and solely for the purpose of securing or repaying those defined indebtedness obligations; and (2) loan agreements between a redevelopment agency and its sponsoring community that were entered into within two years after the agency was established." All other "agreements, contracts or

arrangements” between cities and their redevelopment agencies are voided and unenforceable.

As a result of *Health & Safety Code* § 34171(d)(2), over \$18 Million in loans that were made by the City to the Commission are purportedly voided and of no effect. The City and the Commission agree that the legislative invalidation of such loans is grossly unfair to the City’s constituents and that such actions undermine fundamental notions of contract law and appear to ignore the basic fact that the City and the Commission are separate legal entities.

The Legal Challenges to AB 26 and AB 27

After AB 26 and AB 27 were enacted, the League of California Cities, the California Redevelopment Association and the cities of San Jose and Union City filed a petition with the California Supreme Court, entitled *California Redevelopment Association, et al. v. Matosantos, et al.* Case No. S194861, challenging the constitutionality of AB 26 and AB 27.

On September 26, 2011, the City and several other cities also filed a complaint, in the case of *City of Cerritos, et. al. v. State of California, et. al.*, Case No. 34-2011-80000952. Among other things, the *Cerritos* lawsuit attacks the validity of AB 26, specifically *Health & Safety Code* § 34171(d)(2), because it violates the Contract Clauses of the state and federal constitutions by voiding city/redevelopment agency loans.

On December 29, 2011, the Supreme Court upheld the constitutionality of AB 26 in the *Matosantos* case, but determined that AB 27 was unconstitutional. Pursuant to AB 26 (*Health & Safety Code* § 34172(a)(1)) and the Supreme Court’s decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012. The Supreme Court did not address the issue of whether AB 26 violates the Contract Clauses of the state and federal constitutions by voiding city/redevelopment agency loans. Thus, this issue will be adjudicated in the *Cerritos* lawsuit.

ANALYSIS:

The City and the Commission are Considered Separate Legal Entities

It is important to understand one basic concept before considering the potential invalidity of *Health & Safety Code* § 34171(d)(2): the City and the Commission are, as a matter of law, considered separate public entities. This concept is critical in understanding that the City had actual contractual rights that were impaired by AB 26, and that the loans it agreed to and made to the Commission were not merely intra-agency accounting transfers.

The authority to establish a redevelopment agency and the authority for a redevelopment agency to function as an agency, adopt a redevelopment plan, and implement the plan, were granted by the Community Redevelopment Law of the State of California. See, *Health & Safety Code* § 3300, *et seq.* Redevelopment agencies are governmental entities which exist by virtue of state law and are separate and distinct from the communities in which they exist. *Health & Safety Code* § 33100 states, “[t]here is in each community a public body, corporate and politic, known as the redevelopment agency of the community.” *Health & Safety Code* § 33125 states, “[a]n agency may: (a) Sue and be sued... (c) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers.” See also, *Andrews v. City of San Bernardino* (1959) 175 Cal.App.2d 459, 462 – redevelopment agencies are creations of the state. General law cities, such as Commerce, on the other hand, exist by virtue of an entirely different body of law. *Government Code* § 34102 states: “[c]ities organized under the general law shall be ‘general law cities.’”

In *Pacific States Enterprises, Inc. v. the City of Coachella* (1993) 13 Cal.App.4th 1414, the Appellate Court affirmed a trial court's order granting a motion for dismissal on the basis that the appellant (a developer) did not have a valid contract with the City of Coachella and could not assert valid cause of action for breach of contract. The Appellate Court stated:

When a 'dual capacity legislative body' acts as the governing board of a redevelopment agency, it is the redevelopment agency which is acting by and through that legislative body; and when that same legislative body acts as the governing body of the 'community' (i.e., the city) over which it exercises local governmental powers, it is the 'community' which is acting by and through the legislative body. The redevelopment agency and the 'community' are *not* one and the same governmental entities. The redevelopment agency, by state law, exists 'in each community' with certain limited powers and functions... it is not the same entity as the community *within which* it exists.

(Emphasis in original.) *Id. at 1425.*

The Commission was established as the successor to the Agency. [City of Commerce Ordinance No. 467; *Health & Safety Code* § 34112] The Agency and the Commission both had the power to sue, to be sued and to make and execute contracts and other instruments necessary or convenient to the exercise of their powers. *Health & Safety Code* § 33125. They were both considered separate and distinct public entities from the City itself. *Pacific States at 1425.*

Health & Safety Code § 34171(d)(2) Appears to Illegally Impair the City's Loan Agreements with the Agency/Commission

The United States and California Constitutions both limit the power of a state to modify its own contracts and the contracts of others under their respective "contract clauses." *Olson v. Cory* (1980) 27 Cal. 3d 532.

The contract clause of the federal and state Constitutions (U.S. Const., art. I, sec. 10; Cal. Const. art. I, sec. 9) limit the power of a state to modify its own contracts with other parties, as well as contracts between other parties. However, not all impairment of a contractual right runs afoul of the contract clause. "Although the Contract Clause appears literally to proscribe any impairment... the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula." Thus, a finding that there has been a technical impairment is merely a preliminary step in resolving the more difficult question of whether that impairment is permitted under the Constitution. An attempt must be made to reconcile the strictures of the contract clause with the essential attributes of sovereign power. For example, minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation. *Vales v. Cory* (1983) 139 Cal.App.3d 773, 789 (quoting from *United States Trust Co. v. New Jersey* (1977) 431 US 1).

The courts consider four factors when determining whether the legislative impairment of vested contract rights violates the constitution: (1) whether the enactment serves the basic interests of society, (2) there is an emergency justification for the enactment, (3) the enactment is appropriate for the emergency, and (4) the enactment is designed as a temporary measure, during which time the vested contract rights are not lost but merely deferred for a brief period, interest running during the temporary deferment. *Home Building and Loan Assn. v. Blaisdell* (1934) 290 US 398. See also *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109; *Sonoma County Public Employees v. County of Sonoma* (1980) 23 Cal.3d 296.

In *United States Trust Co.* the Court considered the state of New Jersey's repeal of an express covenant that assured bond holders that monies pledged as security for repayment would not be used to subsidize rail passenger transportation, was enacted. The Court noted that while parties [to a contract] may rely on the continued existence of

adequate statutory remedies for enforcing their agreement they are unlikely to expect that state law will remain entirely static. Thus, a reasonable modification of statutes governing contract remedies is much less likely to upset expectations than a law adjusting the express terms of an agreement. The Court concluded that the repeal of the covenant in that case was a severe contract impairment. The Court then applied the four factors set forth above to determine if the impairment could pass constitutional scrutiny. The Court held that the repeal of the express covenant constituted a violation of the contracts clause. The Court determined that the impairment was neither necessary to achieve the states' plan to encourage private automobile users to shift to public transportation nor reasonable in light of changed circumstances. Total repeal of the covenant was not essential, since the states' plan could have been implemented with a less drastic modification of the covenant. *Id.*

The repeal of the express covenant in *Untied States Trust Co.* represents a much lesser impairment provision than *Health & Safety Code § 34171(d)(2)*. In this case, the statute voids the City's Commission loan collection rights in their entirety. The contract impairment in this case is obviously severe. Consequently, the State of California would have to show that the impairment represents a necessary modification under the fiscal emergency set forth in AB 26 and that its goals were not achievable by any lesser modification. *Id.*

In *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, the Board of Administration of the California Public Employees' Retirement System ("PERS") filed suit regarding legislation that changed the payment schedule for state employer financing of the California Public Employees' Retirement Fund ("PERF") to "annually, 12 months in arrears" (*Government Code § 20822*). The Board argued that such a change violated the constitutional right to be free of impairment of contracts. The Court of Appeal held that the PERS members had a contractual right to an actuarially sound retirement system and that the "in arrears" financing established by § 20822 constituted an unconstitutional impairment of contract.

The state argued that the defense of justification and necessity applied. The Court held that, even if it were assumed that the record justified a finding of a fiscal emergency, the statute was enacted without actuarial input from PERS and without indication that considered thought was given to possible mitigating measures, or to the possibility of alternative, less drastic means of accomplishing the goal of budget balancing. Thus, the necessity defense failed. *Id.*

Wilson involved a far lesser "contract impairment" than the extinguishment of the City's loan repayment rights in this case. As in *Wilson*, the State of California will assert the necessity defense in this case. The court would have to consider whether there was no other "less drastic means" of achieving the goal of budget balancing other than voiding these loan obligations. The State would have to demonstrate that the fiscal emergency was so drastic as to justify the extreme act of wiping out entire multi-million dollar contract obligations. Notably, the fourth factor considered when assessing the necessity defense is whether the enactment "is designed as a temporary measure, during which time the vested contract rights are not lost but merely deferred for a brief period, interest running during the temporary deferment." *Wilson, supra*, at 1155. *Health & Safety Code § 34171(d)(2)* permanently prevents the cities from enforcing their redevelopment agency loan rights. Thus, it appears that the impairment is unlawful in violation of both federal and state Constitutions' contract clauses.

It should be noted that *United States Trust Co.* (1976) 431 U.S. 1, 22, n. 19 provides, "*Blaisdell* suggested further limitations that have since been subsumed in the overall determination of reasonableness. The legislation sustained in *Blaisdell* was adopted pursuant to a declared emergency in the State and strictly limited in duration. Subsequent decisions struck down state laws that were not so limited. *W.B. Worthen Co. v. Thomas*, 292 U.S. 426, 432-434 (1934) (relief not limited as to "time, amount, circumstances, or need"); *Treigle v. Acme Homestead Ass.*, 297 U.S. 189, 195 (1936) (no emergency or temporary measure). Later decisions abandoned these limitations as

absolute requirements. *Veix v. Sixth Ward Building & Loan Assn.*, 310 U.S., 32, 39-40 (1940) (emergency need not be declared and relief measure need not be temporary); *East New York and Savings Bank v. Hahn*, 326 U.S. 230 (1945) (approving 10th extension of one-year mortgage moratorium). Undoubtedly the existence of an emergency and the limited duration of a relief measure are factors to be addressed in determining the reasonableness of an impairment, but they cannot be regarded as essential in every case.

The City's Entitlement to an Equitable Lien or Constructive Trust on the Property

Subject to certain exceptions, the City is entitled an equitable lien in property to secure payment of monies owed to the City when it would be inequitable to force the City to lose the opportunity to recover monies that it is owed. This is distinguished from a constructive trust where the monies to be secured are usually related to the property interest on which the trust is to be imposed.

An equitable lien is created by operation of law as a charge against specific property belonging to another. As with any other type of lien, an equitable lien gives the plaintiff/lien holder the right to foreclose on, or in some way utilize, the subject property as payment for an amount owed to the plaintiff by the defendant.

Even if the parties did not attempt to formally document the security interest in writing an equitable lien may be imposed on specific property for the benefit of the claimant if the parties intended that the property stand as security for a debt or obligation. See cases cited in *Grappo v. Coventry Fin. Corp.* (1991) 235 CA3d 496, 509). The crucial factor is that the parties intend that the debt be secured by the specific property. *Lentz v. Lentz* (1968) 267 CA2d 891, 894.

When a debtor intends to pay a debt from the sale of real property and the court finds that the parties intended that the property be used as security for the debt, the claimant may obtain an equitable lien on the property even if the property was not sold. In *Dodd v Cantwell* (1960) 179 CA2d 727, the court found that the parties intended that a ranch secure an obligation to pay wages to plaintiffs, who worked for the owners for over 30 years without pay in reliance on the promise by the owners that the plaintiffs would be paid when the ranch was sold. The owners never sold the ranch, but instead gave it to their niece who fired the plaintiffs without paying them their owed wages. The court imposed an equitable lien on the property for the value of the services rendered because it was the express intent of the parties that the ranch be security for the debt. The court found that the plaintiffs relied on the owners' promise.

A constructive trust is an equitable restitutionary remedy like an equitable lien. Constructive trusts are specifically authorized by *Civil Code* §§2223 and 2224. Under §2223, a person who wrongfully detains property is an involuntary trustee thereof for the benefit of the owner. Under § 2224 a person who gains property by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act is an involuntary trustee of the property for the benefit of the one who would otherwise have had it, unless that person has some other and better right to it.

In this case, the City and Commission's goal was to pursue projects that were beneficial to the City and its' constituents. The City and the Commission envisioned and sought to place a sports arena and other potential projects on the Property. Such efforts were not successful. Nevertheless, the City and the Commission both understood that if such a project could not be built, that the City expected repayment and/or that the Property would be available to secure repayment of the Loan. Based on the case law, the City's efforts as an interim remedy is persuasive. The ultimate disposition of the assets will depend on the *Cerritos litigation*, but the constructive trust and equitable lien cases certainly support the transfer and protection efforts while the case is pending.

CONCLUSION:

The proposed resolution may be considered somewhat controversial. The action by the Commission would contradict the express language of AB 26 and would be subject to attack. On the other hand, if the cities in the *Cerritos* case prevail on the impairment of contract argument, such provisions would be declared unconstitutional and would be null and void. The Commission certainly recognizes that the loans were valid and that it would be grossly unfair to the City and its constituents for the monies owed to never be paid back. That was never the intent of the Commission and would obviously not have been acceptable to the City when the loans were made. In fact, the Commission was never able to complete the project for which it purchased the Property. The City has understandably demanded repayment and is requesting that the Commission turn over the Property that was bought, in large part, with City funds. The Commission believes that the City's claim to this Property is legitimate and that, in all fairness, the City is the true and rightful owner of the Property.

The type of thorough analysis of the contract impairment issue will be conducted by counsel in the *Cerritos* case. At this time, however, it is apparent that the City, and all other cities challenging this provision, have a valid and good faith basis to argue and believe that *Health & Safety Code* § 34171(d)(2), enacted by AB 26, is unconstitutional. Whether the court will ultimately agree with the cities is another matter. Nevertheless, if the Commission disposes of all its assets, including the Property, and the cities are eventually successful in their arguments, the City may still never be able to recover the monies loaned to the Commission or the Stahl Trust Property. Such a scenario would be the worst case for all of the parties involved, including the State, which would certainly not desire to have the cities suffer as a result of an unconstitutional provision in AB 26. On the other hand, if the cities lose the argument, the City has committed to holding the assets and Stahl Trust Property in trust. Thus, it would seem prudent for the Commission to comply with the City's request under the condition that such assets be held in trust until the litigation is complete and, if *Health & Safety Code* § 34171(d)(2) is upheld, that such assets be disposed of according to AB 26.¹

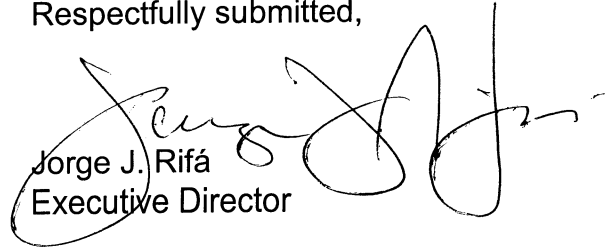
FISCAL IMPACT:

On April 19, 2011, the Commission approved and ratified Redevelopment Fund Loan Agreement No. 4 with the City. That Agreement documented the numerous transactions between the City and the Commission related to the Loan that had already been documented by, but did not create any new debt.

As of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of the Loan was Five Million Seven Hundred Thousand Dollars (\$5,700,000), plus unpaid interest in the amount of Five Hundred Sixty Two Thousand Five Hundred Dollars (\$562,500); a total of Six Million Two Hundred Sixty Two Thousand Five Hundred Dollars (\$6,262,500). The Commission has always understood that it owed the Loan proceeds to the City and that the City and its' constituents would be significantly damaged if the Commission failed to repay the Loan.

¹ It should be noted that the Commission will confer with Commission Counsel in closed session regarding the consequences of the proposed course of action and that the proposed decision is a "business decision" that will be considered and taken with the understanding of the uncertainties connected therewith.

Respectfully submitted,



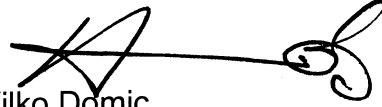
Jorge J. Rifá
Executive Director

Approved as to form



Eduardo Olivo
Commission Counsel

Fiscal impact reviewed by,



Vilko Domic
Finance Director

RESOLUTION NO. _____

A RESOLUTION OF THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION:
(1) ACKNOWLEDGING THE CITY OF COMMERCE'S DEMAND FOR RETURN/TRANSFER OF REAL PROPERTY KNOWN AS THE STAHL TRUST PROPERTY, FOR WHICH THE CITY LOANED THE COMMISSION FIVE MILLION SEVEN HUNDRED THOUSAND DOLLARS IN ORDER TO BE ABLE TO PURCHASE SAID PROPERTY; AND (2) AUTHORIZING THE TRANSFER OF SAID PROPERTY WITH THE UNDERSTANDING THAT THE CITY WILL HOLD IT IN TRUST UNTIL THE VALIDITY OF THE PROVISIONS OF AB 1X 26 THAT PURPORT TO INVALIDATE CITY LOAN OBLIGATIONS IS FULLY AND FINALLY ADJUDICATED BY THE COURTS

WHEREAS, on March 14, 1974, the City Council of the City of Commerce (the "City") adopted Ordinance No. 206, which established the City of Commerce Redevelopment Agency (the "Agency"); and

WHEREAS, on November 3, 1992, the City Council adopted Ordinance No. 467, which created the Commerce Community Development Commission (the "Commission"). The Commission is the successor-in-interest to the Agency and has, since its creation, been implementing the City's redevelopment plans and has been engaged in activities necessary or appropriate to carry out the California Community Redevelopment Law (*Health & Safety Code Sections 33000, et seq.*) (the "CRL") within the City; and

WHEREAS, on April 25, 2002, the Commission entered into an agreement with Commerce Enterprises, LLC for the purchase of property commonly known as the "Stahl Trust Property," located at Washington Boulevard and Telegraph Road, in the City of Commerce (the "Property"); and

WHEREAS, the Commission desired to purchase the Property because it believed it could be used for a project that would benefit the City's constituents and be consistent with the Commission's goals and objectives pursuant to the City's redevelopment plans and the CRL; and

WHEREAS, the Commission did not have sufficient funds available to pay the Seven Million Five Hundred Thousand Dollars (\$7,500,000) purchase price for the Property. Therefore, on April 16, 2002, pursuant to Resolution No. 339, the Commission requested a loan from the City in the amount of Five Million Seven Hundred Thousand Dollars (\$5,700,000), so that the Commission could pay for the Property. The Commission requested that the Loan be required to be repaid within 6 months; and

WHEREAS, on April 16, 2002, pursuant to Resolution No. 02-15, the City Council approved the loan requested by the Commission in the amount of Five Million Seven Hundred Thousand Dollars (\$5,700,000), at an interest rate of 6.5% per annum (the "Loan") for the purchase of the Property (the "Loan"); and

WHEREAS, the Commission deposited the Loan proceeds received from the City into escrow and was thus able to complete the purchase of the Property; and

WHEREAS, the Commission would not have been able to complete the purchase of the Property without the City's approval of the Loan; and

WHEREAS, since the purchase of the Property, the Commission has requested numerous extensions from the City for the repayment of the Loan. Such requests were documented in Resolution Nos. 349, 368, 379, 404, 423, 429 and 450; and

WHEREAS, the City agreed to provide the Commission with the requested extensions. The City's agreement to provide the extensions were documented in Resolution Nos. 04-8, 05-6, 07-12, 08-31, 09-26 and 10-24; and

WHEREAS, the Loan was reported annually on the Commission's annual Statement of Indebtedness report filed with the County of Los Angeles; and

WHEREAS, on April 19, 2011, the Commission approved and ratified

Redevelopment Fund Loan Agreement No. 4 with the City. The Agreement documented the numerous transactions between the City and the Commission related to the Loan that had already been documented by the above-referenced resolutions, but did not create any new debt; and

WHEREAS, as of January 31, 2012, the total amount of debt owed to the City's General Fund by the Commission as a result of the Loan was Five Million Seven Hundred Thousand Dollars (\$5,700,000), plus unpaid interest in the amount of Five Hundred Sixty Two Thousand Five Hundred Dollars (\$562,500); a total of Six Million Two Hundred Sixty Two Thousand Five Hundred Dollars (\$6,262,500); and

WHEREAS, the goal of the City and Commission was to pursue projects that were beneficial to the City and its' constituents. The City and the Commission envisioned and sought to place a sports arena and other potential projects on the Property. Such efforts were not successful. Nevertheless, the City and the Commission both understood that if such a project could not be built, that the City expected repayment and/or that the Property would be available to secure repayment of the Loan; and

WHEREAS, the Commission has always understood that it owed the Loan proceeds to the City and that the City and its' constituents would be significantly damaged if the Commission failed to honor its commitment to repay the Loan; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed companion bills, Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27"), requiring that each redevelopment agency in the State be dissolved as of October 1, 2011, unless the community that created it enacted an ordinance committing it to making certain payments pursuant to AB 27; and

WHEREAS, after AB 26 and AB 27 were enacted, the League of California Cities, the California Redevelopment Association and the cities of San Jose and Union City filed a petition with the California Supreme Court, entitled *California Redevelopment Association, et al. v. Matosantos, et al.* Case No. S194861, challenging the constitutionality of AB 26 and AB 27; and

WHEREAS, *Health & Safety Code* § 34171(d)(2), enacted by AB 26, purports to invalidate the loans that were made by the cities to their redevelopment agencies. Pursuant to AB 26, such loan payments are not considered "enforceable obligations." The cities are therefore not able to enforce millions of dollars of loans made to their redevelopment agencies from the cities' general fund; and

WHEREAS, on September 26, 2011, the City and several other cities filed a complaint, in the case of *City of Cerritos, et. al. v. State of California, et. al.*, Case No. 34-2011-80000952. Among other things, the *Cerritos* lawsuit attacks the validity of AB 26, specifically *Health & Safety Code* § 34171(d)(2), because it violates the Contract Clauses of the state and federal constitutions by voiding city/redevelopment agency loans; and

WHEREAS, on December 29, 2011, the Supreme Court upheld the constitutionality of AB 26, but determined that AB 27 was unconstitutional. Pursuant to AB 26 (*Health & Safety Code* § 34172(a)(1)) and the Supreme Court's decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012; and

WHEREAS, the cities involved in the *Cerritos* litigation filed an amicus brief with the Supreme Court in order to advise the Court of the additional issues that were raised in that litigation. However, the Supreme Court specifically stated that it was not addressing such issues in the *Matosantos* decision. Therefore, the issue of the invalidity of *Health & Safety Code* § 34171 (d) (2) will be determined by the court in the *Cerritos* case; and

WHEREAS, the current fair market value of the Property, based on an analysis by the Commission's consultants, is \$9,189,792; and

WHEREAS, the Commission also owes the City for additional loans in an amount exceeding Thirteen Million Dollars (\$13,000,000); and

WHEREAS, the City has demanded repayment of the Loan and that the Commission transfer the Property back to the City because the City's general Fund monies were used to purchase the Property. The City asserts that it is the true and equitable owner of the Property; and

WHEREAS, the Commission recognizes that *Health & Safety Code* § 34163(d) and (f) provide that the Commission shall not have the authority to transfer any of its assets to any entity, including the "community." The Commission also recognizes that *Health & Safety Code* § 34171(d)(2) provides that loan agreements entered into between the City and their redevelopment agencies are not considered valid contractual obligations and are void. The Commission nevertheless believes that this provision in AB 26 constitutes an unconstitutional impairment of the contract(s) that it made with the City for the Loan. The Commission also believes that, due to the fact that the Commission used City General Fund Revenues for the purchase of the Property that have never been repaid, the City is the true and equitable owner of the Property; and

WHEREAS, the City has agreed that it will hold the Property in trust and will take to continue to maintain and preserve the asset and its value until the issue of the validity of *Health & Safety Code* § 34171(d)(2) is fully and finally adjudicated; and

WHEREAS, based on the above and the City's commitment to hold the Property in trust until the legal issues are fully and finally litigated, the Commission has determined that it will return the Property to the City as requested.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION AS FOLLOWS:

SECTION 1: The Commerce Community Development Commission hereby finds and determines that the recitals contained hereinabove are true and correct.

SECTION 2: The Commission Chairperson is hereby authorized to execute a Grant Deed transferring fee title to the Stahl Trust Property to the City of Commerce. Commission staff is instructed to record the Grant Deed with the County of Los Angeles Recorder's Office.

SECTION 3: The Commission Secretary shall certify to the passage of this resolution, and thereupon and thereafter the same shall be in full force and effect.

PASSED, APPROVED AND ADOPTED this 31st day of January, 2012.

Joe Aguilar, Chairperson

ATTEST:

Jorge Rifa, Secretary