

STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

IN THE MARION COUNTY SUPERIOR COURT  
CIVIL DIVISION  
CAUSE NO.

CLARKE KAHLO and HOWARD ELDER )  
(on their own behalf and on behalf of the )  
taxpayers of Marion County-Indianapolis), )  
 )  
Plaintiffs, )

vs. )

CITY OF INDIANAPOLIS, METROPOLITAN )  
DEVELOPMENT COMMISSION and the )  
INDIANA SPORTS CORPORATION, )  
 )  
Defendants. )

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FILED

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JUL 23 2008

Elizabeth A. White  
CLERK OF THE MARION CIRCUIT COURT

**PLAINTIFFS' CLASS ACTION COMPLAINT**

Come now the Plaintiffs, Clarke Kahlo and Howard Elder, who state as follows:

**I. INTRODUCTION**

1. This is a class action complaint for declaratory and injunctive relief based on the illegal and unauthorized modification of a 1985 redevelopment contract between the City of Indianapolis and the Indiana Sports Corporation which modification resulted in the taxpayers of the City of Indianapolis not receiving the benefit of approximately \$6 million dollars upon the sale of the Pan Am Plaza lot from the Indiana Sports Corporation to KRG/CP Pan Am Plaza, LLC.

**II. PARTIES**

- 2. Clarke Kahlo and Howard Elder are Marion County-Indianapolis residents and taxpayers.
- 3. Defendant City of Indianapolis has consolidated city and county government.
- 4. The Metropolitan Development Commission of Marion County Indiana is a quasi-governmental entity authorized by the Indiana General Assembly for the purpose of helping to develop property needing redevelopment within Marion County, Indiana.

5. Defendant Indiana Sports Corporation is a not for profit corporation, organized under the laws of the state of Indiana and with an office in Indianapolis, Indiana.

### III. CLASS ACTION ALLEGATIONS

6. Plaintiffs bring this action on their own behalf and on behalf of a class of those similarly situated pursuant to Trial Rule 23.

7. That class is defined as:

All taxpayers of Marion County - Indianapolis.

8. The requirements of Trial Rule 23(A) of the Indiana Rules of Trial Procedure are met with regard to the putative class, specifically:

a. Marion County-Indianapolis taxpayers number literally in the hundreds of thousands, thus making joinder impractical.

b. The question of whether the 2007 modification of the 1985 Redevelopment Agreement was illegal and the failure to require the Indiana Sports Corporation to pay millions of dollars pursuant to the 1985 Redevelopment Agreement applies to all members of the class.

c. The claim of the representative party is typical of those of the class.

d. The representative party will fairly and adequately protect the interests of the class in this litigation.

9. Further, the requirements of Rule 23(B)(1) are satisfied as the members of the identified class adjudicating these matters individually would create the possibility of inconsistent interpretation and varying adjudications of the factual and legal questions raised.

10. The requirements of Rule 23(B)(3) are satisfied as the questions of law or fact common to members of the class predominate over matters affecting only individual members of the class.

### IV. FACTS

11. During the mid 1980s, the City County Council authorized the issuance of million of dollars in bonds so that the City could purchase, for redevelopment purposes, privately-owned lots

in the city block of Indianapolis known as Square 88. Square 88 is bound by Georgia Street on the north, Louisiana Street on the south, Capitol Avenue on the west and Illinois Street on the east.

12. On June 27th, July 25th and August 19th, 1985, as well as other dates, the City purchased lots in the city block known as Square 88.

13. On December 26, 1985, the City of Indianapolis, on behalf of its Department of Metropolitan Development, conveyed by Warranty Deed the Square 88 lots to the Indiana Sports Corporation.

14. In conjunction with that conveyance, on December 26, 1985, the City of Indianapolis entered into an agreement with the Indiana Sports Corporation entitled "Project Agreement for Private Redevelopment of Square 88." The agreement was signed by David Carley, then Director of the Department of Metropolitan Development, and Michael L. Browning<sup>1</sup>, then Vice President of the Indiana Sports Corporation.

15. Pursuant to Section 1.2 of that agreement, the only cost<sup>2</sup> to the Sports Corporation for the Square 88 lots was a restriction on the use of a portion of the Square 88 property as set forth in Section 2.8 of the 1985 Agreement, namely that the Sports Corporation build and maintain<sup>3</sup> an 88,000 square feet public plaza, commonly known as "Pan Am Plaza."

16. Section 2.8 also contained a buy out provision that allowed the Sports Corporation to extinguish this restrictive covenant after 20 years, if the Sports Corporation paid to the City \$3,000,000 adjusted by the Consumer Price Index to the date of the extinguishment, which adjusted by the CPI to today's date would be approximately \$6,000,000.

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<sup>1</sup> Browning's company subsequently developed many of the lots in Square 88.

<sup>2</sup> Earlier in 1985, the Sports Corporation did pay \$50,000 in earnest money to the City for the Square 88 lots. However, pursuant to the Redevelopment Agreement, the Sports Corporation was to receive \$45,000 of that earnest money back at December 26, 1985 closing and the remaining \$5,000 upon completion of the public plaza.

<sup>3</sup> Although the 1985 agreement was silent regarding the responsibility for maintenance of the Pan Am Plaza, the Sports Corporation did assume that responsibility for years. Only within the last few years was the plaza allowed to fall into disrepair and turned off the fountain.

17. On December 19, 2007, the Metropolitan Development Commission passed Resolution No. 07-R-70 to amend the 1985 Agreement so that the plaza covenant would be reduced to 10,000 square feet.

18. The one-page resolution failed to note that the original restrictive covenant that was being reduced to 10,000 square feet was originally 88,000 square feet.

19. The resolution also failed to note that the modification of the 1985 agreement would cost the taxpayers of Marion County-Indianapolis approximately Six Million Dollars (\$6,000,000).

20. Resolution No. 07-R-70 passed on a voice vote at the December 19, 2007 meeting of the Metropolitan Development Commission in a batch vote along with several other resolutions. There was no information or argument publicly offered in support of or against Resolution No. 07-R-70.

21. On December 18, 2007, Maury Plambeck, Director of the Department of Metropolitan Development executed a document entitled "Amendment to Project Agreement for Private Redevelopment of Square 88."

22. That on December 20, 2007, Susan Williams, President of the Indiana Sports Corporation, executed the document amending the 1985 agreement. The document was subsequently recorded in the Marion County Recorder's Office.

23. The effect of the 2007 amendment was to allow the Indiana Sports Corporation on April 1, 2008 to sell the Pan Am Plaza lot to KRG/CP Pan Am Plaza, LLC without paying the City of Indianapolis approximately \$6 million for the early extinguishment of the 1985 restrictive covenant, the only "cost" the Indiana Sports Corporation had to pay for acquiring the Square 88 lots in 1985.

24. According to published reports, the Sports Corporation has put the money from the sale of Pan Am Plaza into a trust to pay for future operations of the corporation.

25. Although the Lot 88 properties are no longer held by the Sports Corporation as redeveloper, the original bonds used to acquire the Square 88 lots have not been paid off, but have instead been consolidated into the bonds the City used to purchase the property for the Circle City Mall.

26. Marion County-Indianapolis taxpayers continue to pay to service the debt on the 1985 Square 88 property.

**COUNT I - VIOLATION OF STATUTORY PROCESS FOR MODIFYING  
REDEVELOPMENT AGREEMENT**

27. The Defendants wholly failed to follow the procedural requirements for modifying a redevelopment agreement under Indiana law as set forth in IC 36-7-15.1 et. seq.

28. Contrary to IC 36-7-15.1-9, the outgoing administration of Mayor Bart Peterson did not bring the issue of whether to approve the Metropolitan Development Commission's<sup>4</sup> Resolution modifying the 1985 agreement to the Indianapolis City-County Council for approval or disapproval following the Commission's December 19, 2007 approval of the Resolution.

29. Following council approval of the Commission's resolution, Indiana law, namely IC 36-7-15.1-10 and IC 36-7-15.1-10.5, required that there be notice of the proposal to modify the redevelopment plan, information on the change provided to the public, a public hearing on the change and an opportunity for the public to remonstrate or object to the change.

30. Pursuant to the procedural requirements set forth in Rhetorical Paragraph 21, the Commission is to take "final action determining the public utility and benefit of the proposed project or other actions to be taken under the resolution, and confirming, modifying or rescinding the resolution." See IC 36-7-15.1-10(d). No such "final action" was ever taken by the Commission.

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<sup>4</sup> Mayor Peterson had been defeated in the 2007 election by present Mayor Gregory Ballard.

**COUNT II - VIOLATION OF REQUIREMENT FOR COUNCIL APPROVAL PRIOR TO DISPOSAL OF CITY PROPERTY**

31. Further, the City of Indianapolis and not the Metropolitan Development Commission owned the restrictive covenant to the Pan Am Plaza. As that interest was in excess of \$50,000, IC 36-1-11-3, requires that the City-County Council approve the decision to vacate 78,000 square feet of the Pan Am Restrictive covenant and to forego payment of millions of dollars pursuant to the original 1985 agreement.

**V. PRAYER FOR RELIEF**

Plaintiffs, on behalf of themselves and the party they represent, request the following relief:

A. This litigation be certified as class action pursuant to Rule 23(b) of the Indiana Rules of Civil Procedure and that the undersigned counsel be appointed pursuant to Rule 23(g) of the Indiana Rules of Civil Procedure.

B. The Court declare that the Metropolitan Development Commission did not have the authority to authorize the Department of Metropolitan Development to amend the 1985 redevelopment agreement when it passed Resolution No. 07-R-70 on December 19, 2007.

C. The Court declare that the City of Indianapolis and its Department of Metropolitan Development acted without authority in executing the 2007 Amendment to the 1985 Redevelopment Agreement without following the required statutory procedure.

D. Indiana Sports Corporation be ordered to pay to the Indianapolis taxpayers \$6 million dollars for the early extinguishment of the Pan Am Plaza restrictive covenant.

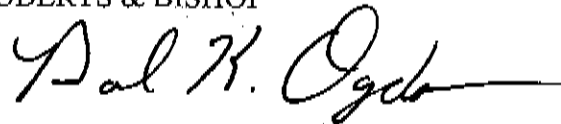
E. The Court order the money recovered paid into a fund for the purpose of reimbursing said funds to the taxpayers of Marion County-Indianapolis.

F. The money be returned to Plaintiffs in the form of reduction of the city's current debt load on the property purchased by the city to build the Circle Centre Mall, which debt includes 1985 debt from the Square 88 purchases, or in some other fashion approved by the court.

G. The Plaintiff's counsel be awarded reasonable attorney's fees and expenses from the fund recovered for the benefit of the class under this section.

Respectfully submitted,

ROBERTS & BISHOP



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