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February 14, 2022

Ms. Karla Nieman
El Paso City Attorney
niemankm@elpasotexas.gov

Mr. Mark Osborn
Attorney at Law
mark.osborn@kempsmith.com

RE: Demolition by Neglect of Buildings within the Downtown Arena Footprint (MPC)
by the City of El Paso, Texas ("City")

Dear Counsel:

Please be advised that Francis S. Ainsa Jr. and I represent Dr. Max Grossman in his lawsuit styled *Max Grossman v. City of El Paso* pending in the 384th District Court under Cause No. 2017-DCV2528. The District Court's decisions denying Dr. Grossman's application for a temporary injunction and denying the City's plea to the jurisdiction were appealed to the Eighth Court of Appeals, which granted Dr. Grossman's temporary injunction and denied the City's plea to the jurisdiction. You will recall that after discussions regarding the form of a temporary injunction that would preclude the City from demolishing the buildings in Duranguito, the parties entered into a Rule 11 Agreement, a copy of which is attached. The purpose of the Rule 11 Agreement is to prevent the City from demolishing the buildings in Duranguito until and unless the Texas Supreme Court grants its petition for review and decides that the City's plea to the jurisdiction should have been granted by the District Court.

On November 9, 2021, the City Council voted unanimously to adopt the following two resolutions:

"To direct the City Manager or designee to hire a consultant such as architects, urban designers, engineers, and to include studies such as an economic impact analysis and programming operations and execute all contracts and amendments to develop the following information: project concept; partnership opportunity guidelines including public-private partnership specifications; and financial model to include estimate of capital costs and operating costs which is in compliance with all court rulings and legal decisions, to incorporate preservation of historic buildings and to preserve historic character and to direct staff to come back to Council with recommendations on how to safeguard damaged buildings and options for funding sources in ways to align with a temporary restraining order."

Ms. Karla Nieman; and
Mr. Mark Osborn
Re: Duranguito-Building Neglect
February 14, 2022
Page 2 of 3

"That the City Manager and the City Attorney be authorized to engage in discussions to identify various options for a resolution of the ongoing litigation included but not limited to the lawsuit entitled Max Grossman vs. City of El Paso, 8th Court of Appeals, Case #08-19-00272-CV, Matter No. 17-1001-171.001.001."

More than three months have now passed, and the City has not taken any steps to begin discussions with Dr. Grossman that could lead to settlement of the pending lawsuit. Especially disturbing is the fact that the City Council has taken no action to protect the buildings in Duranguito from damage caused by the elements or from potential damage from vagrants. According to the *El Paso Times* (January 4, 2021), "[City Manager] Gonzalez said because of the ongoing legal battle between the city and Max Grossman, alongside residents of the neighborhood, the city would have to have an agreement in place for city officials 'to feel comfortable' to do anything regarding the buildings." Mr. Gonzalez has made other statements to that effect.

You will recall that the City of El Paso issued a demolition permit to the owners of those buildings in 2017, and on September 12, 2017, JMR Demolition sent in heavy equipment and began to demolish the buildings, puncturing holes in five of them. It took an emergency court order from the Eighth Court of Appeals to enjoin the demolition. The subject area was subsequently fenced off and has been neglected ever since. At least one of the buildings, "the Mansion," has holes in its roof due to the City's failure to protect it from weather. Since 2017, the buildings in Duranguito have continued to suffer damage from the elements. Water from rainstorms and snow has put some of the buildings in structural danger.

Also, without proper corrective action these buildings also pose a potential fire hazard. The fact that a tenement building across from the Arena Footprint burned last August, coupled with the recent destruction by fire of the De Soto Hotel, places the City on notice that the same fate could befall these buildings at the hands of trespassers and arsonists. These buildings are extremely vulnerable. The City's staff has twice presented to the City Council plans for reinforcing and sealing the buildings. Their first attempt was rejected, and a second effort last week failed to be put to a vote.

The purpose of the Rule 11 Agreement is to prevent the City from taking action under its permit issued by the Texas Historical Commission that would result in demolition of the buildings in Duranguito. Now the City appears to have decided to allow the buildings in Duranguito to be demolished by the elements by neglecting to take any protective action as recommended by City staff.

The City's failure to protect the buildings in Duranguito is a violation of the Rule 11 Agreement.

On December 22, 2021 the City filed a petition for review with the Texas Supreme Court, which has not acted as of today. If the Texas Supreme Court orders full briefing and sets the case for oral argument, it could take up to the summer of 2023 before the case is finally decided. While

Ms. Karla Nieman; and
Mr. Mark Osborn
Re: Duranguito-Building Neglect
February 14, 2022
Page 3 of 3

the case remains pending before the Texas Supreme Court, the unprotected buildings will suffer continued damage, and some may very well collapse.

We stand ready to begin discussions regarding what the City wants in order “to feel comfortable,” as indicated by the City Manager, before undertaking any action to protect the buildings. If the City continues to drag its feet and not engage in this process, we will have no alternative but to initiate further legal proceedings to protect the buildings during the pendency of the City’s petition for review.

Thus, our client hereby requires the following in order to commence an amicable resolution of the above in order to avoid the expense and time of further litigation:

1. A meeting with the City in order to commence negotiations for an agreement to safeguard the subject buildings within ten (10) business days of today’s date.
2. An agreement with regard to the above be reached and executed within twenty (20) business days of today’s date; and that corrective action of all violations of City Code pertaining to these buildings be completed by March 25, 2021.

With appreciation for your consideration of the above, I remain,

Very truly yours,


Carlos Eduardo Cárdenas

cc: Dr. Max Grossman
Mr. Frank Ainsa

Enclosure: as stated

CAUSE NO. 2017-DCV2528

MAX GROSSMAN,

Plaintiff,

vs.

CITY OF EL PASO

Defendant.

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IN THE DISTRICT COURT OF

OF EL PASO COUNTY, TEXAS

384th JUDICIAL DISTRICT

PLAINTIFF'S NOTICE OF FILING RULE 11

TO: Defendant City of El Paso, by and through its attorney of record, Mr. Mark Osborn, Kemp Smith LLP, 221 N. Kansas, Suite 1700, El Paso, Texas 79901.

Pursuant to *Texas Rules of Civil Procedure* 11, Plaintiff hereby notifies you that the attached Rule 11 Agreement has been filed among the papers in the official file of the above styled and numbered case

Respectfully submitted,

Carlos Eduardo Cárdenas
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BY:



CARLOS EDUARDO CÁRDENAS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 20th day of December 2021, a true and correct copy of the foregoing instrument was served upon all counsel of record via email through the Texas E-File Portal in accordance with the *Texas Rules of Civil Procedure* 21 (a) (1) and (2).



CARDENAS
CARLOS EDUARDO CÁRDENAS



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December 18, 2021

Mark N. Osborn
Kemp Smith LLP
221 N. Kansas, Suite 1700
El Paso, Texas 79901

Re: No. 2017-DCV2528; *Max Grossman v. City of El Paso*, in the 384th District Court of El Paso County, Texas

Dear Mr. Osborn:

This letter sets out our agreement to be filed in the above-styled proceeding pursuant to Rule 11, Texas Rules of Civil Procedure. Unless the City and Max Grossman subsequently enter into a written agreement otherwise, the City will not proceed under its THC permit until 30 days after the mandate issues at the conclusion of the current appeals.

AGREED:

A handwritten signature in black ink, appearing to read 'Lisa Hobbs', is written over a horizontal line.

Lisa Bowlin Hobbs
Counsel for Max Grossman

A handwritten signature in black ink, appearing to read 'Mark Osborn', is written over a horizontal line.

Mark N. Osborn
Counsel for the City of El Paso