UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DANIEL GOLDSTEIN, JERRY CAMPBELL, as the putative administrator of the estate of OLIVER ST. CLAIR STEWART and in his individual capacity, THE GELIN GROUP, LLC, CHADDERTON'S BAR AND GRILL INC., d/b/a FREDDY'S BAR AND BACKROOM, MARIA GONZALEZ, JACKIE GONZALEZ, YESENIA GONZALEZ, HUDA MUFLEH-ODEH, JAN AKHTAR, and DAVID SHEETS,

Plaintiffs,

- against -

GEORGE E. PATAKI, CHARLES A. GARGANO, NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT CORPORATION, BRUCE C. RATNER, JAMES P. STUCKEY, FOREST CITY ENTERPRISES, INC., FOREST CITY RATNER COMPANY, RATNER GROUP, INC., BR FCRC, LLC, BR LAND, LLC FCR LAND, LLC, BROOKLYN ARENA, LLC, ATLANTIC YARDS DEVELOPMENT COMPANY, LLC, MICHAEL BLOOMBERG, DANIEL DOCTOROFF, ANDREW M. ALPER, JOSHUA SIREFMAN, CITY OF NEW YORK and NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION ,

Defendants.

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06-CV-

COMPLAINT

Plaintiffs, by their attorneys, for their Complaint allege, upon knowledge as to themselves and otherwise upon information and belief, as follows:

PRELIMINARY STATEMENT

1. This action seeks to enjoin the unconstitutional exercise of the power of eminent domain to seize plaintiffs' private properties and transfer them to an influential private developer. This conduct by officials of the State of New York, acting in concert with local officials and the private developer, violates plaintiffs' rights, privileges, and immunities under the United States Constitution, as amended, specifically the Takings, Equal Protection and Due Process Clauses in the Fifth and Fourteenth Amendments.

2. This is a case about a conscious effort to circumvent community input and the lawful processes of open government; about the misuse of government's power to take property by eminent domain; and, ultimately, about a betrayal of public trust in service of the interests of a private developer. At the behest of defendant developer Bruce Ratner, defendants Governor Pataki and Mayor Bloomberg have agreed to allow Ratner and his companies to build the single largest multi-use real estate development in the history of the City of New York in the heart of Central Brooklyn (the "Project").[1] This deal was struck without first creating a comprehensive development plan or so much as considering a single alternative to Ratner's plan for development of the area, without a true competitive bidding process, and without a process to allow for meaningful community input. In the process, defendants, acting in concert, will seize over 120 tax lots of private property – plaintiffs' property – for the benefit of the private developer who conceived this scheme and whose interest is to maximize his company's profits.

3. The exercise of eminent domain to seize plaintiffs' property in this case is not only unconstitutional; it is unnecessary. Development in this section of Brooklyn can be done successfully and profitably without taking a single piece of privately owned land. Defendants' decision to take plaintiffs' properties serves only one purpose: to allow Ratner to build a Project of unprecedented size, and thus to reap a profit that defendants, tellingly, have

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[1] The Project is known as the Atlantic Yards Arena and Redevelopment Project (the "Project"). As currently proposed, it is a publicly subsidized, mixed-use redevelopment project that would cover 22 acres of land in and around the Metropolitan Transportation Authority's (the "MTA"'s) Vanderbilt Yards, including the active rail yard, bus depot, city streets, two city properties and 68 other privately owned parcels totaling 123 tax lots. It includes a sports arena accommodating up to 20,500 persons; 16 high-rise apartment and office towers – ranging from approximately 18 to 60 stories – and containing 8.8 million square feet of residential, office and commercial space; and a 180-room hotel. The proposed project extends over 22 acres and is comprised of 6,860 housing units and approximately 600,000 square feet of office space. At least 4,610 of the housing units would be market rate.

thus far refused to disclose. This is not merely favoritism of a particular developer in the classic sense – although it is that; here, the "favored" developer in fact is driving and dictating the process, with government officials at all levels obediently falling into line. This is precisely what the Fifth Amendment's Takings Clause forbids.

4. In order to meet the constitutional requirements of the Takings Clause, government may seize private property through the power of eminent domain *only* if the taking is for public use. The taking of plaintiffs' properties here violates that stricture because the Project itself was conceived by Ratner, and is being driven by his needs, motives, and vision, not those of the public at large. Far from emerging from a legitimate democratic process where the public interest is identified and articulated by its elected representatives, and the community at-large through mechanisms such as the City Charter-mandated Uniform Land Use Review Process, here the Project is the product of a developer's dream – and a conscious effort to bypass City procedures mandating meaningful local review, planning, democratic oversight and community input. Far from an open process, the "review" and approval for this mammoth Project has been largely, if not solely, the province of the Empire State Development Corporation ("ESDC"), an entity wholly controlled by Pataki; *public* input and review has been a sham. The decision to approve the Project and the taking of plaintiffs' properties has already been made.

5. The outcome has never been in doubt. Within days, the Project will be approved by ESDC. Shortly thereafter, plaintiffs' properties will be taken from them – absent the intervention of this Court. For the Fifth Amendment's "public use" requirement to be anything more than an empty incantation, defendants must be stopped.

PARTIES

Plaintiffs

6. Plaintiff Daniel Goldstein owns a condominium apartment located at 636 Pacific Street. Mr. Goldstein has owned and lived in the apartment since 2003 when the building opened to residents. Title to Mr. Goldstein's condominium will be seized by defendants to make way for the Project.

7. Plaintiff Jerry Campbell owns and lives in the residential property located at 495 Dean Street. The estate of Mr. Campbell's grandfather, Oliver St. Clair Stewart, owns the residential property located at 493 Dean Street. Mr. Campbell is the putative administrator of his grandfather's estate. Mr. Campbell has one tenant. Mr. Campbell and/or members of Mr. Campbell's family have owned the two buildings for thirty-eight years. Title to the two properties will be seized by defendants to make way for the Project.

8. Plaintiff The Gelin Group LLC ("Gelin"), is a New York limited liability company that owns a one family residence located at 491 Dean Street. The Gelin Group's Managing Member, John Gelin and his wife, Ioana Sarbu, reside in the property which they recently renovated. Title to the property will be seized by defendants as part of the Project.

9. Plaintiff Chadderton's Bar and Grill Inc. d/b/a Freddy's Bar and Backroom ("Freddy's"), a New York corporation owns a seven-year commercial lease for the property located at 483-4855 Dean Street. The President of Freddy's is Frank Yost. Mr. Yost has owned the business for ten years. Freddy's (which dates back to the pre-prohibition era) was recently selected as one of Esquire Magazines Best Bars in America. Freddy's property rights, and thus its business, will be lost to make way for the Project.

10. Plaintiffs Goldstein, Campbell, the estate of Oliver St. Clair Stewart, Gelin and Freddy's are collectively referred to as the "Real Property Plaintiffs."

11. Plaintiff Maria Gonzalez is a rent-stabilized tenant who lives at 812 Pacific Street, Apartment 1L, Brooklyn, NY 11217 together with her husband and son. She has lived in the building for the past 33 years and Mr. Gonzalez has acted as the superintendent for the same number of years. Ms. Gonzalez and her husband currently hold an unexpired rent-stabilized lease which, but for the use of eminent domain, would be renewable upon its expiration in November 2008.

12. Plaintiff Jackie Gonzalez is a rent-stabilized tenant who lives at 812 Pacific Street, Apartment 3L, Brooklyn, NY 11217 together with her spouse and two minor children, aged three and five years old. She has lived in the building for the past two and a half years. Ms. Gonzalez currently holds an unexpired rent-stabilized lease which, but for the use of eminent domain, would be renewable upon its expiration in October 2007.

13. Plaintiff Yesenia Gonzalez is a rent-stabilized tenant who lives at 812 Pacific Street, Apartment 4L, Brooklyn, NY 11217 together with her eleven year old son. She has lived in the building for the past five years. Ms. Gonzalez currently holds an unexpired rent-stabilized lease which, but for the use of eminent domain, would be renewable upon its expiration in March 2008.

14. Plaintiff Huda Mufleh-Odeh is a tenant who lives at 481 Dean Street, Apartment 2, Brooklyn, NY 11217 together with her husband, Ismail, and two sons aged four and six years. She is pregnant and due to give birth in November 2006. The Odehs have a two-year lease for their apartment from their landlord, Naseer Ahmed, which does not expire until June 2007. They have lived in their apartment for the past eight years.

15. Plaintiff Jan Akhtar is a tenant who has lived at 481 Dean Street, Apartment 3, Brooklyn, NY 11217, together with her nine children who range in age from eight years to 23 years old, for the past 12 years. Ms. Akhtar has a two-year lease from her landlord, Naseer Ahmed, which does not expire until October 31, 2007.

16. Plaintiff David Sheets is a rent-stabilized tenant who has lived at 479 Dean Street, Apartment 1, Brooklyn, NY 11217 for the past eight years. Mr. Sheets's building was recently purchased in May 2006 by FCRC entity the "Atlantic Yards Development Sub A, LLC." The building at 479 Dean Street is subject to so-called "friendly taking" through a transfer of the property from FCRC to the state ESDC which would result in the displacement of all the building's currently rent-stabilized tenants.

17. Plaintiffs Maria Gonzalez, Jackie Gonzalez, Yesenia Gonzalez, Huda Mufleh-Odeh, Jan Akhtar and David Sheets are collectively referred to as "the Tenant Plaintiffs."

Defendants

18. Defendant George E. Pataki (the "Governor") is the Governor of the State of New York, acting in his official capacity as an employee, agent, and servant of the State, within the scope of his employment, and as a policy-maker with respect to State agencies, State development corporations and public authorities under his control, including without limitation the New York Urban Development Corporation doing business as the Empire State Development Corporation ("ESDC"), and the Metropolitan Transportation Authority ("MTA"). The Governor's principal place of business is the State Capitol Building, Albany, New York. The Governor is sued in his official and individual capacities.

19. Defendant Charles A. Gargano ("Gargano") is the "Development Czar" for the State of New York, holding numerous posts, including without limitation, Chairman of

defendant New York State Urban Development Corporation d/b/a Empires State Development Corporation ("ESDC"), acting in his official capacity as an employee, agent, and servant of the State, within the scope of his employment, and as a policy-maker with respect to State public benefit corporations and public authorities under his control, including without limitation the ESDC. Gargano's principal place of business is 633 Third Ave., New York, New York. Gargano is sued in his official and individual capacities.

20. Defendant New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC") is a corporate governmental agency of the State, constituting a political subdivision and public benefit corporation. ESDC is wholly controlled by defendants Pataki and Gargano. It consists of nine directors. The Superintendent of Banks serves as a director as does the Chairman of the New York State Science and Technology Foundation. The remaining seven directors are appointed by defendant Pataki, as is the Chairman, defendant Gargano. It has its principal place of business at 633 Third Ave., New York, New York.

21. Defendants Pataki, Gargano and ESDC are collectively referred to as the "State Defendants."

22. Defendant Bruce C. Ratner ("Ratner") is President and Chief Executive Officer of "FCRC" as defined below. Ratner's principal place of business is 1 Metrotech Center North, Brooklyn, New York.

23. Defendant Forest City Enterprises, Inc. ("FCE"), is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1100 Terminal Tower, Cleveland, Ohio. Among other things, FCE does business in the State of New York and is a corporate parent to, and/or affiliate with, many of the entities

involved in the Project, and may now, or soon, be the successor in interest to some or all of the entities that comprise "FCRC" as defined below.

24. Defendant Forest City Ratner Companies, holds itself out as a corporation organized and existing under the laws of the State of New York with its principal place of business at 1 Metrotech Center North. Among other things, Forest City Ratner Companies is responsible for the Project.

25. Ratner Group, Inc., is a corporation organized and existing under the laws of the State of New York with its principal place of business at 1 Metrotech Center North. Ratner Group, Inc. holds itself out as a principal in Forest City Ratner Companies, and as such is directly involved in the Project.

26. BR FCRC, LLC, is a limited liability company organized and existing under the laws of the State of New York with its principal place of business at 1 Metrotech Center North. BR FCRC, LLC, holds itself out as a principal in Forest City Ratner Companies, and as such is directly involved in the Project.

27. Brooklyn Arena, LLC, holds itself out to be a limited liability company organized and existing under the laws of the State of New York having an office at Forest City Ratner Companies at 1 Metrotech Center North. Brooklyn Arena, LLC, holds itself out as the arena developer for the Project.

28. Atlantic Yards Development Co. LLC, holds itself out to be a limited liability company organized and existing under the laws of the State of New York having an office at Forest City Ratner Companies at 1 Metrotech Center North. Atlantic Yards Development Co. LLC holds itself out as the project developer for the Project.

29. BR LAND, LLC is a limited liability company organized and existing under the laws of the State of New York with its principal place of business at 1 Metrotech Center North. BR LAND, LLC, holds itself out as a principal in Atlantic Yards Development Co. LLC, and as such is directly involved in the Project.

30. FCR LAND, LLC is a limited liability company organized and existing under the laws of the State of New York with its principal place of business at 1 Metrotech Center North. FCR LAND, LLC, holds itself out as a principal in Atlantic Yards Development Co. LLC, and as such is directly involved in the Project.

31. Defendant James P. Stuckey ("Stuckey") is Executive Vice-President of "FCRC" and President of the Atlantic Yards Development Group of FCRC, charged with responsibility over the Project. Stuckey's principal place of business is 1 Metrotech Center North, Brooklyn, New York.

32. Defendants Bruce C. Ratner, James P. Stuckey, Forest City Enterprises, Inc., Forest City Ratner Companies, Ratner Group, Inc., BR FCRC, LLC, Brooklyn Arena LLC, Atlantic Yards Development Co. LLC, BR LAND, LLC and FCR LAND, LLC are hereinafter referred to collectively as "FCRC".

33. Defendant New York City Economic Development Corporation ("EDC") is a not-for-profit development corporation organized and existing under the laws of the State of New York, having its principal place of business at 110 William Street, New York, New York 10038.

34. Defendant City of New York ("City") is a municipality organized and existing under the laws of the State of New York. At all times relevant hereto, defendant City, acting through Mayor Bloomberg, Deputy Mayor Doctoroff, Andrew Alper, Joshua Sirefman and

EDC, was responsible for the policy, practice, supervision, implementation, and conduct of all matters relating to this complaint, including the appointment, training, supervision, and conduct of all employees. In addition, at all relevant times, defendant City was responsible for ensuring that City personnel obey the Constitution and laws of the United States and of the State of New York.

35. Defendant Michael Bloomberg is the Mayor of the City of New York, acting in his official capacity as an employee, agent, and servant of the City, within the scope of his employment, and as a policy-maker with respect to the City agencies under his control, including EDC. The Mayor's principal place of business is City Hall, New York, New York 10007. The Mayor is sued in his official and individual capacities.

36. Defendant Daniel L. Doctoroff is a Deputy Mayor of the City of New York in charge of economic development and rebuilding, acting in his official capacity as an employee, agent, and servant of the City, within the scope of his employment, and as a policy-maker with respect to the City agencies under his control, including EDC. Defendant Doctoroff is sued in his official and individual capacities.

37. During part of the period giving rise to plaintiffs' claims defendant Andrew M. Alper was the President of EDC, acting in his official capacity as an agent, and servant of the City, within the scope of his employment, and as a policy-maker with respect to EDC. Defendant Alper is sued in his official and individual capacities.

38. Defendant Joshua Sirefman was the acting President of EDC, acting in his official capacity as an agent, and servant of the City, within the scope of his employment, and as a policy-maker with respect to EDC. Defendant Sirefman is sued in his official and individual capacities.

39. Defendants EDC, City of New York, Bloomberg, Doctoroff, Alper and Sirefman are hereinafter referred to collectively as the "City Defendants."

JURISDICTION AND VENUE

40. Plaintiffs bring this action pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C. § 2201, to redress the deprivation under color of state law of the plaintiffs' rights under the Fifth and Fourteenth Amendments to the United States Constitution. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a).

41. Venue is proper pursuant to 28 U.S.C. § 1391 because a majority of the parties reside in this judicial district, and because a significant portion of the events or omissions giving rise to plaintiffs' claim occurred in this district as well.

FACTS

42. The Project consists of 16 towers, ranging from approximately eighteen stories to sixty stories, and a sports arena. As currently proposed, the Project contains 8.6 million square feet, with 6,860 residential units and approximately 600,000 square feet of office space. The Project covers approximately twenty-two acres which is currently comprised of the MTA's 8.5-acre active rail yard and bus depot, city streets, two city properties and sixty-eight privately-owned parcels totaling 123 tax lots.

43. Defendants have declared that the Project is a "land use improvement project" and a "civic project" within the meaning of the New York State Urban Development

Corporation Act ("UDCA"). This declaration is a prerequisite to ESDC wielding its eminent domain power in furtherance of the Project under state law.

44. The site of the Project – bounded generally by Atlantic Avenue to the North, Dean Street to the South, Fourth Avenue to the West, and Vanderbilt Avenue to the East – was not designated for economic development by any government body. It was not chosen for redevelopment by the City of New York; it was not chosen by ESDC. The site was selected by FCRC, a collection of the private entities through which Ratner does business.

A. The Project's Inception

45. FCRC is not new to Brooklyn. Over the past 15 years, FCRC has developed two major commercial sites in downtown Brooklyn – the Metrotech Center, where FCRC is headquartered and, directly adjacent to the proposed project site, the Atlantic Terminal Mall and the Atlantic Center Mall (in which the ESDC is a tenant paying market rate rent to its landlord FCRC).

46. Directly south of the Atlantic Terminal Mall is an area which FCRC has been interested in developing for residential and commercial use for many years.

47. By the summer of 2002, FCRC had developed plans for the Project – plans which centered on several huge commercial and residential buildings and an indoor sports arena – and were ready to quietly approach City officials for support. Support came, virtually immediately; by the end of that summer, Mayor Bloomberg and his deputy for economic development, Daniel Doctoroff, were on board.

48. Only one element – a key part of FCRC's planned public relations effort to garner support for the Project – was missing: a professional sports team to occupy the arena. Within a year, FCRC had made an offer to buy the New Jersey Nets and announced that it

planned to move the team to a new arena that it would build in Brooklyn, along with the single largest residential and commercial real estate development in City history.

49. On December 11, 2003, with both Governor Pataki and Mayor Bloomberg already lined up behind it, FCRC announced the Project – a $2.5 billion "Atlantic Yards" development project, which at that point contemplated sixteen towers, 2.1 million square feet of commercial space and 4,500 residential units.[2]

50. At the time, Ratner stated that "just" 100 residents, all within a single block, would have to be ousted and moved to make way for the Project. Later, a spokesperson for FCRC backed away from Ratner's number, calling it a "guesstimate" and stating that a precise number would only be known once the condemnation process began.

B. The "Takings Area"

51. The proposed footprint for the Project is comprised of two separate sections: one where the land is owned principally by the Metropolitan Transit Authority ("MTA") and the other where it is held principally by private parties. Nearly half of the Project site's acreage is comprised of a portion of the Atlantic Terminal Urban Renewal Area ("ATURA") designated by New York City in 1968, which contains the MTA Vanderbilt rail

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[2]Since the initial announcement, the plan has been revised at least twice. On or about May 2005, defendant Stuckey announced that FCRC had revised its publicly stated plans for the Project. FCRC's "revised" plan for the Project increased the overall estimated price-tag from $2.5 billion to $3.5 billion, increased the height of some of the towers, increased the overall density, decreased the amount of office space and increased the number of residential housing units. And, on or about September 16, 2005, the Draft Scope of Analysis for Environmental Review was released. The document revealed a significant reduction in office space (and thus a two-thirds reduction in the claimed jobs that went with the space), an addition of 2800 luxury condominiums, and revealed that the one acre park on the arena roof would now be private not public as FCRC initially claimed.

yards. The remainder of the footprint is privately held land – mostly residential and commercial buildings, some seventy parcels in all. It is this second area where defendants will resort to taking plaintiffs' properties by eminent domain (the "Takings Area").

52. The Takings Area, where each of the plaintiffs' properties is located, is not part of the ATURA.

53. Although the ATURA has undergone ten amendments (the most recent approved by the City Council in April 2004), its boundaries have never been expanded to include the Takings Area.

54. And, in the 38-year history of the ATURA, the City of New York has never declared that the Takings Area was "blighted" and has never designated it for redevelopment.

55. Indeed, far from being "blighted," the Takings Area rests smack in the middle of some of the most valuable real estate in Brooklyn. In the decade preceding the unveiling of Defendants' Project, most of the Takings Area was re-zoned, permitting adaptive reuse of existing manufacturing buildings, and luxury condominiums were being built in and around the Project's footprint. Since then, and until FCRC announced the Project and began buying up and warehousing buildings in the area, the neighborhood was flourishing; attracting all manner of City dwellers and commercial enterprises to the townhouses and low rise industrial buildings typical of the area.

56. Now, three years after the Project was announced, defendants self-servingly contend that the Takings Area is "blighted" and in need of redevelopment. If there is stagnation in any part of the Takings Area, it is the result of the Project itself: following the Project's announcement in 2003, FCRC, using the threat of eminent domain, has aggressively

purchased property in the Takings Area, cleared out buildings, and left them empty while it moves forward with the Project and the condemnation of plaintiffs' properties.

57. In its fervor to purchase as much property as possible within the Takings Area, FCRC has repeatedly warned reluctant property owners that they only have two choices; sell to FCRC or wait until FCRC takes their property by eminent domain.

58. The threatened and actual seizure of plaintiffs' properties in the Takings Area is a transparent effort to co-opt the government's power of eminent domain in order to expand a private development and maximize the profits it generates.

59. The ATURA could easily be redeveloped without involving the Takings Area; and a large mixed-use residential and commercial complex could be built without taking a single piece of private property by eminent domain.

60. Defendants' contention that this is an "economic development project" and that the seizure of land in the Takings Area is necessary to further that purpose is simply false.

C. The Role of State and Local Government

61. The New York City Council is *the* elected local legislative body of the City of New York; its fifty-one members, separately and as a group, are the voice of the people in this City. The City Council sets all zoning and land-use rules.

62. New York City's fifty-nine Community Boards provide a forum for the voices of ordinary people to be heard at the neighborhood level whenever major land use questions arise under the Uniform Land Use Review Procedure ("ULURP") of the City Charter.

63. For this Project, however – the largest single-source development in City history – neither the City Council nor the affected Community Boards will have any meaningful voice. By executive fiat, at both the state and local levels, these processes have been bypassed.

64. In December 2003, FCRC and Mayor Bloomberg announced that the Project would be developed by FCRC in concert with ESDC, and would thus bypass City review altogether, including ULURP.

65. The decision to designate ESDC as the sponsor of the Project allowed defendants to bypass the normal City land use approval process and to ignore the limitations of the City zoning code. FCRC could thereby construct a project many times exceeding the size permitted in the zoning code – without rezoning – and to include uses, such as the arena in proximity to residences that would otherwise not be permitted.

66. On or about February 18, 2005, defendants memorialized much of their agreement in a Memorandum of Understanding ("MOU") between the State (through ESDC), the City and FCRC, including their plan to bypass all meaningful local community review of the project by designating ESDC as the lead agency.

67. On the same day, a second memorandum of understanding was executed by ESDC, the City and FCRC. The second MOU was withheld from the public until approximately six months later when it was produced in response to a Freedom of Information Law request. The second MOU described the Project and designated ESDC as the lead agency for development in the ATURA, thus bypassing, as had been done for the Project as a whole, all local power to pass on zoning changes or transfers of unused development rights.

68. Both MOUs contained economic benefits to FCRC that are atypical. Under the first MOU, FCRC will receive a raft of special discretionary benefits not available as-

of-right to real estate developers, including $200 million in capital contributions from the City and State, low-cost financing for the arena, extra property tax savings, a low-cost lease, and the guaranteed transfer of private property through eminent domain. The second MOU secured for FCRC a virtually unfettered right to develop certain parcels in the ATURA, including areas *outside the Project,* without interference by the City.

D. The Sham Bid Process for the Railyards

69. In order for the Project to move ahead, FCRC had to secure from the MTA the right to develop the Vanderbilt Rail Yard properties (which are located within the ATURA and used by the Long Island Railroad). This was never a significant obstacle. Prior to September 2003, the MTA repeatedly stated and confirmed that FCRC had in fact obtained the rights to build over the MTA rail yards.

70. But in and around September 2003, the MTA thought better of its prior disclosures concerning its deal with FCRC and retracted them. On or about February 24, 2005, the MTA went so far as to execute a "letter agreement" with FCRC that made it appear as if a final agreement on the sale of the MTA's property to FCRC had not yet been reached – although, in fact, such an arrangement had long been secured.

71. On or about May 25, 2005, intent on creating the appearance of an open bidding process (even though the outcome was predetermined), the MTA released a request for proposals ("RFP") for purchase of the development rights to the rail yards with a deadline of July 6, 2005 for proposals.

72. The sham RFP was profoundly biased in favor of FCRC. Whereas FCRC had been working on its (pre-approved) proposal for purchase of the railyards *with* the MTA and other State officials for more than two years, the RFP gave everyone else forty-two days to

generate proposals. Among other things, the RFP required proposers to submit a twenty-year profit and loss statement *(pro forma)*.

73. FCRC submitted a formal bid to develop over the railyards, offering to pay the MTA $50 million, $164.5 million less than the appraised value of $214.5 million. Notably, FCRC failed to submit a profit and loss projection as the RFP required.

74. Surprisingly given the short turnaround time, a second bidder for the property emerged, Extell Development Company, a large and highly reputable real estate developer. The Extell bid was for $150 million, was much smaller in scale than FCRC's, and did not require the taking of any private property by eminent domain. Extell even submitted the required twenty-year profit and loss statement and in its bid proposed to go through ULURP and a vote by the City Council. The MTA refused to meet with Extell to answer technical questions prior to the submission deadline, even though they had spent several years working with FCRC to perfect the technical aspects of their proposal. The MTA also refused to meet with Extell after the bids were submitted.

75. Extell was never in the running. On July 27, 2005, consistent with its prior understanding with FCRC, and notwithstanding the overall superiority of the Extell bid, the MTA Board voted on a pre-prepared motion to grant FCRC the exclusive right to negotiate the terms of sale agreement with the MTA over the course of forty-five days.

76. This outcome was what defendants had planned all along. Approximately forty-five days later, on September 14, 2005, the MTA and FCRC formally announced that FCRC would pay $100 million for the rights to the site, still well below the appraised value and below the Extell bid. When the lone dissenting MTA Board member, Mitch Pally, asked for an

explanation, MTA Board Chair Peter Kalikow replied, "I'm not going to be beholden by that appraisal, it's just some guy's idea of what those yards are worth."

77. Prior to the vote, defendant Doctoroff wrote to the MTA Board and declared that the City would only commit its financial resources to the FCRC Project.

78. In violation of the terms of the RFP, FCRC never provided the MTA with its projected profits from the Project. When pressed by a reporter to reveal FCRC's anticipated profits, defendant Stuckey claimed that profit numbers would emerge only *after* the Project was completed. Stuckey defended FCRC's right to make money remarking: "It is, after all, America".

E. The Patina of Public Participation

79. On or about July 24, 2006, ESDC issued a Notice of Public Hearing to comply with State environmental and eminent domain laws. The hearing was scheduled thirty days later (the minimum allowed under state law) on August 23, 2006. Defendants attempted to curb the number of persons who would attend and object to the Project by setting the notice period and the hearing date during a time of year when many New Yorkers are away for summer vacation and the local community boards are in recess.

80. The hearing was held, as scheduled, on August 23, 2006. Many people wishing to attend could not get in and most wishing to speak were not allowed to do so. Property owners who came in response to the public notice were not allowed to testify orally.

81. Defendants also scheduled a community forum for September 12, 2006. Focused again on avoiding opposition, defendants picked the one date for the forum when people who are involved in politics and oppose the Project would likely be consumed by other matters – Primary Election Day.

82. The final deadline for public comment on the Project was September 29, 2006.

83. In the next few days, ESDC will announce that FCRC has passed every aspect of the review process.

84. The condemnation and seizure of plaintiffs' properties will follow quickly thereafter.

F. The Pretext

85. Defendants have attempted to justify the taking of private property for the benefit of a private party on four main grounds: (1) the Project will result in a net economic benefit to the City and State; (2) the taking is necessary to eliminate urban blight; (3) that the Project will create significant affordable housing; and (4) the Project will create thousands of new jobs. These alleged "public benefits" are either wildly exaggerated or simply false. At best, the public benefits that the Project offers are incidental; at worst, they are non-existent.

1. Pretext #1: Net Economic Benefit

86. Defendants' calculation of the net economic benefit to the City and State rests upon a faulty premise: that the net benefit can be calculated without regard to the attendant public costs that the Project imposes. Once the costs are factored in, the net economic benefit is either negligible or non-existent.

87. The basis for defendants' claim that the Project will be economically beneficial is a document referred to by ESDC as an "independent economic impact analysis." ESDC claims that this independent analysis demonstrates that there would be a $1.4 billion net gain in tax revenues. Until last week, ESDC refused to disclose any aspect of the "independent economic impact analysis."

88. What is clear is that the costs of the Project to the public are not disclosed, much less accounted for, by ESDC or FCRC. These public costs include, without limitation: costs for the taking of plaintiffs' property by eminent domain, direct subsidies, tax breaks, tax abatements, below market value land, triple tax free bonds, a blank check called "extraordinary infrastructure costs," the cost of moving public utilities and housing subsidies.[3]

89. At least one organization, the Council of Brooklyn Neighborhoods (CBN), quantifies the public cost missing from defendants' economic analysis at $600 million. Because an additional $138 million will need to be spent to build new schools to handle the current "insufficient capacity" acknowledged in the DEIS, a calculation of net economic benefit must add that amount to the cost side of the ledger – boosting the unaccounted shortfall to $738 million. Add to that approximately $76 million, in "qualitative" costs incurred based on factors such as traffic, shadows and increased air pollution and the total CBN figure reaches more than $800 million.

90. Other organizations have calculated the unaccounted for public costs at nearly $2 billion without the cost of housing subsidies.

91. Other unaccounted public costs, include: (1) paying to build the requisite platform over the rail yard as there is no evidence that this will be paid for by FCRC; (2) the Payments in Lieu of Taxes (PILOTs) which will not be paid to the City of New York, but rather will be used by ESDC to cover the bonds for the arena and debt service; and (3) the failure to allow that the City share in the arena profits which instead belong exclusively to FCRC.

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[3] These costs to the public are, of course, also benefits for FCRC.

92. The picture is even more bleak if one isolates and examines the alleged *raison d'etre* of the Project, the sports arena. According to the Independent Budget Office of New York City (IBO), the sports arena will bring in less than $1 million per year in new tax revenue for the City over thirty years – even assuming that a large percentage of current New Jersey based fans will come to the new arena in Brooklyn. If that percentage is lower, as it likely will be, the arena will be a money loser for the City of New York.

93. Once these costs, along with the economic impact and the environmental impacts on traffic, public transportation, health and security are tallied, defendants' claim of $1.4 billion in revenue for the public becomes untenable.

2. Pretext #2: The Elimination of Blight

94. Defendants assert that the taking of plaintiffs properties is necessary to eliminate "blight" in the Takings Area. This assertion is a classic *post-hoc* justification – a pretext with no basis in fact.

95. When the Project was unveiled in the fall of 2003, the elimination of blight in the Takings Area was never raised as a justification for the taking of private property, or for the development of the Project in general. This was not an oversight born of early enthusiasm over the Project: the City of New York has never declared the Takings Area blighted despite 38 years of opportunity to do so, and neither of the two MOUs between the City, the State, and FCRC so much as reference "blight" as a basis for government action or otherwise.

96. As the Project drew greater scrutiny, however, defendants commissioned a "Blight Study" of the area to be performed by a company called AKRF. FCRC paid for the study.

97. AKRF is the antithesis of an independent consultant. On information and belief, each and every time AKRF has been retained to study a project in conjunction with an environmental review in New York City, it has drawn conclusions that favored the proposed project. This blight study was no exception.

98. The conditions that the AKRF Blight Study found to be "blighted" in fact are a direct result of the Project itself and the attendant non-enforcement and neglect by the City of New York, the New York City Department of Transportation, the MTA and FCRC, as well as property warehousing by FCRC.

99. Even accepting the six characteristics of blight described by AKRF for each lot in the Blight Study, only 27% of the 73 parcels examined, at most, could be considered blighted.

100. Only 19% of the Takings Area blocks and tax lots could be considered "blighted"; and that 19% is owned entirely by FCRC. None of the "blighted" properties is owned by the plaintiffs.

101. Prior to the December 2003 unveiling of the Project, there were a total of fifteen vacant tax lots out of 123, or just 12% of the study area. A little less than three years later, there are now ninety total vacant tax lots out of 123 total tax lots or 73%. Eighty-eight of the ninety total vacant tax lots or 98% of the vacant tax lots are owned by FCRC. Eighty-three of FCRC's eighty-eight vacant tax lots were either demolished and thus made vacant or ignored and kept vacant by FCRC.

102. The increase in vacant tax lots between December 2003 and October 1, 2006 is a staggering 600%. This increase is squarely attributable to defendants own conduct.

3. Pretext #3: Significant Increase In Affordable Housing

103. Fundamentally, the Project is comprised of luxury housing – apartments that will sell and rent at market rates to households earning more than $113,400. At least 69%, or 4,610, of the Project's proposed housing units will be market rate, luxury units. And the remaining "affordable" units are not guaranteed.

104. Defendants assert that 2,250, or 31%, of the total of 6,860 housing units in the Project will be "affordable," meaning that their rents will be set at 30% of the median income for the income band for which the housing is reserved. But just 550 of those units – roughly a quarter of the affordable units and approximately 5% of the total units planned – are slated to be in the first of two phases of construction (Phase One).

105. The remaining 1,700 affordable units are supposed to be built in Phase Two, but that is not guaranteed both because no firm timetable exists for Phase Two construction and because there is no existing legally enforceable obligation that mandates the construction of affordable housing. In this sense, at least, the addition of affordable units to the neighborhood is both minimal and uncertain.

106. Viewed from the perspective of residents' income, the affordable units proposed from the Project will not remotely offset the impact of the luxury housing.

107. As a result of the Project, in the DEIS study area, there will be a 7% decrease in the proportion of households earning between $21,270 and $28,360; a 6% decrease in the proportion of households earing between $29,069 and $35,450; and a 16% decrease in the proportion of households earning between $42,540 and $70,900. By contrast, the Project will increase by 53%, the number of households earning over $113,00 per year.

108. All of this is directly attributable to Project's definition of "affordable." Nearly 90% of the Project's housing will be priced for household incomes above Brooklyn's median income. Nearly 85% of the units will exclude households with an income of less than $56,000, which is the New York City public housing eligibility maximum for a four-person family.

109. No units will be available for household's earning $21,000 or less.

110. Nearly half of the units described as "affordable" are slated for household incomes between $71,000 and $113,000.

111. The Project has reserved 64% of its units for household incomes above $113,440, whereas in the area within a 3/4 mile radius of the Project only 11% of the residential units are priced above $113,400.

112. In addition to the risks facing tenants in the project's footprint, the DEIS anticipates that approximately 3,000 people are potentially at risk of involuntary displacement due to the Atlantic Yards project.

4. Pretext #4: Job Creation

113. Defendants assert that the Project will create new jobs in two categories: temporary construction jobs, as the Project is built; and permanent office jobs, as its commercial space is rented out. Defendants' claims as to both categories are grossly distorted and demonstrably untrue.

114. First, defendants claim that the Project will generate 15,000 construction jobs. This is grossly misleading. In the first place, FCRC is not referring to new jobs for 15,000 construction workers, but to the number of job *years,* guessing that there will be one construction job for 1,500 persons per year for ten years. Secondly, *any* project to develop the

rail yard on a similar scale (*e.g.*, the Extell project) would generate a significant number of job years – even if it would not require the taking of plaintiffs' properties. Accordingly, the creation of these job years does not justify the taking of plaintiffs' property.

115. Defendants have also claimed that the Project will create 2,500 office jobs.[4] Upon scrutiny, however, it was revealed that this is actually the creation of commercial rentals for FCRC that will create *space* for 2,500 office jobs. And it appears that most of those jobs are not "new" jobs at all, but simply retained positions.

116. Defendants have also guessed that the arena would generate 400 new jobs. According to defendant Stuckey, however, the current employees in New Jersey would have the first right to these jobs due to existing union rules. Accordingly, to some degree at the least, even most of these jobs are not likely to be new will be occupied not by New Yorkers, but by commuters from New Jersey.

G. Benefit to FCRC

117. While there is no question that FCRC will profit enormously from the Project, the magnitude of that profit cannot be identified at this time because FCRC has refused to provide this information.

118. FCRC refused to provide the 20 year pro forma financial projections required by the MTA's RFP. Similarly, FCRC has not disclosed the 30 year pro forma financial projections that it is required to provide in the MOU it signed with the City and State.

119. Notwithstanding defendants refusal to provide this information, FCRC's profit has been conservatively estimated at a billion dollars ($1,000,000,000).

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[4] Defendants initially claimed that the Project would produce 10,000 new office jobs. Over time, this number has been reduced by nearly 75%.

120. FCRC's profit will certainly be greater than the public return, if any.

121. The overwhelming majority of the financial risk will be borne by the public, not FCRC.

H. Friendly Takings

122. In addition to the hostile seizure of plaintiffs' properties, defendants will also execute a number of friendly takings. The friendly takings consist of defendants acquiring, without objection, title to FCRC's own properties, presumably after paying "just compensation" as required by the Fifth Amendment.

123. As it happens, however, these FCRC properties have tenants, like the plaintiff residing at 479 Dean Street, that are protected from eviction without cause by State rent laws.

124. Absent defendants scheme to take FCRC property through condemnation, FCRC would be unable to demolish its buildings and evict these tenants without first providing relocation and compensation under the Emergency Tenant Protection Regulations ("TPR") and the Rent Stabilization Code ("RSC"). See TPR §2504.4(f) and RSC §2524.5(a)(2).

125. Without a friendly taking, landlords who are demolishing rent-stabilized buildings must obtain approval from the State Division of Housing and Community Renewal and must either offer replacement housing at the same rent, a stipend to cover the anticipated difference in rents for a six year period, or some combination of those two options. See 9 N.Y.C.R.R. § 2524.5(2).

126. Thus, in one fell swoop, the friendly taking will allow FCRC (i) to avoid the rent laws and their "onerous" relocation requirements, (ii) to evict all tenants without any cause or justification, and (iii) to line its pockets with additional funds from the public fisc.

FIRST CAUSE OF ACTION
(42 U.S.C. § 1983/Takings Clause)

127. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth at length herein.

128. The Takings Clause of the Fifth Amendment to the United States Constitution, prohibits the government, and those acting in concert with the government, from taking private property unless the taking is for a "public use."

129. By taking plaintiffs' property and giving it to FCRC, defendants intend to benefit FCRC.

130. FCRC is the primary beneficiary of the taking of plaintiffs' properties.

131. The public does not benefit from the taking of plaintiffs' properties.

132. Alternatively, insofar as the public derives any benefit from the taking of plaintiffs' properties, it is secondary and incidental to the benefit that inures to FCRC.

133. Defendants' desire to confer a private benefit to FCRC was a substantial, motivating factor, in defendants' decision to seize plaintiffs' property and transfer it to FCRC.

134. As set forth above, among other indicia that the taking of plaintiffs' properties is being done to benefit FCRC, without limitation, are:

(A) the Project was wholly conceived by FCRC;

(B) absent FCRC's persistence in pursuing the Project, there would be no development at the site that would require the condemnation of plaintiff's property;

(C) not a single alternative plan (much less multiple plans) was considered before the determination to proceed with the Project;

(D) not a single alternative private developer (much less multiple developers) was considered before the determination to proceed with FCRC;

(E) the beneficiary of the land transfer by eminent domain was known long before the determination to proceed;

(F) there was no meaningful community or local input before (or even after) the decision to proceed;

(G) the Project is not the product of a carefully considered development plan;

(H) the environmental impact of the Project was not studied before the determination to proceed;

(I) the social ramifications of the Project were not considered before the determination to proceed;

(J) there was no independent consultant or team of consultants who evaluated the Project before the determination to proceed;

(K) there was no finding that the Project was consistent with the overall development goals of the City and State before the determination to proceed;

(L) there was no finding that the area to be condemned was blighted before the determination to proceed;

(M) New York City is not struggling to rebound from an economic depression;

(N) Brooklyn is not struggling to rebound from an economic depression;

(O) the substantial public financing and incentives provided for the program were not put in place *before* the developer was known;

(P) the economic benefits, if any, to be realized from the Project are *de minimus*; and

(Q) many of the procedural protections in place to prevent development without local and community input and approval were bypassed.

135. Defendants' claims of public benefit are a pretext to justify a private taking.

136. As set forth above, among other indicia that defendants' claims of public benefit are a pretext, without limitation, are:

(A) the Project will not actually create more jobs;

(B) the Project will not generate a net economic benefit for the community or the City or any gain will be *de minimus;*

(C) the Project will not materially increase available affordable housing; and

(D) the area slated for condemnation is not blighted.

137. Defendants' decision to take plaintiffs' property, as detailed above, deprived plaintiffs of rights, remedies, privileges and immunities guaranteed to every citizen of the United States, in violation of 42 U.S.C. § 1983, including, but not limited to, rights guaranteed by the Takings Clause of the Fifth Amendment to the United States Constitution.

138. In addition, upon information and belief, defendants conspired among themselves to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. § 1983, and by the Fifth Amendment to the United States Constitution, and took numerous overt steps in furtherance of such conspiracy, or failed to prevent others from depriving plaintiffs of their constitutional rights, as set forth above.

139. Defendants acted at all times under color of law.

140. Defendants acted under pretense and color of state law and with the exception of the FCRC defendants, in their individual and official capacities and within the scope of their respective employments as government employees or agents. The non-FCRC defendants acted beyond the scope of their jurisdiction, without authority of law, and abused their powers.

141. The FCRC defendants acted at all times in concert with the other defendants.

142. All defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. § 1983, and by the Fifth Amendment to the United States Constitution.

143. As a direct and proximate consequence of defendants' unconstitutional actions and abuse of authority, plaintiffs have suffered actual damages, in forms including, without limitation, out of pocket losses and expenditures, lost past and future earnings, mental anguish, pain and suffering.

144. Unless defendants are enjoined from taking plaintiffs' properties through the use of eminent domain plaintiffs will suffer great and irreparable harm.

SECOND CAUSE OF ACTION
(42 U.S.C. § 1983/Equal Protection)

145. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth at length herein.

146. The Fourteenth Amendment to the United States Constitution prohibits the government, and those acting in concert with the government, from subjecting an individual to adverse or differential treatment without a rational basis.

147. By selecting plaintiffs' properties to be taken for the purpose of conferring a benefit, here the plaintiffs' property, to FCRC, defendants have targeted plaintiffs for adverse treatment for no rational purpose.

148. Conferring a benefit upon FCRC under the circumstances detailed above is not rational.

149. Elevating the status of one citizen or group of citizens, here FCRC, by mistreating plaintiffs is also prohibited by the Equal Protection Clause.

150. By singling out plaintiffs, for unequal, adverse, treatment, and selecting FCRC as the recipient of irrational largess, defendants deprived plaintiffs of rights, remedies, privileges and immunities guaranteed to every citizen of the United States, in violation of 42 U.S.C. § 1983, including, without limitation, rights guaranteed by the Fourteenth Amendment to the United States Constitution.

151. In addition, upon information and belief, defendants conspired among themselves to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. § 1983, and by the Fourteenth Amendment to the United States Constitution, and took numerous overt steps in

furtherance of such conspiracy, or failed to prevent others from depriving plaintiffs of their constitutional rights, as set forth above.

152. Defendants acted at all times under color of law.

153. Defendants acted under pretense and color of state law and with the exception of the FCRC defendants, in their individual and official capacities and within the scope of their respective employments as government employees or agents. The non-FCRC defendants acted beyond the scope of their jurisdiction, without authority of law, and abused their powers.

154. The FCRC defendants acted at all times in concert with the other defendants.

155. All defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. § 1983, and by the Fourteenth Amendment to the United States Constitution.

156. As a direct and proximate consequence of defendants' unconstitutional actions and abuse of authority, plaintiffs have suffered actual damages, in forms including, without limitation, out of pocket losses and expenditures, lost past and future earnings, mental anguish, pain and suffering.

157. Unless defendants are enjoined from taking plaintiffs' properties through the use of eminent domain plaintiffs will suffer great and irreparable harm.

THIRD CAUSE OF ACTION
(42 U.S.C. § 1983/Procedural Due Process)

158. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth at length herein.

159. At all times relevant hereto, plaintiffs had a valuable property interest in their real property, condominium, commercial lease or and status as rent stabilized tenants.

160. By engaging in the scheme set forth above, including without limitation, by: (1) circumventing local and community review and local zoning regulations; (2) failing to provide sufficient time to meaningfully respond between the release of the Draft Environmental Impact Statement and the hearing on August 23, 2006; (3) failing to provide a hearing that allowed plaintiffs to meaningfully state their objections; and (4) at all times providing an empty, meaningless, process, with a pre-determined outcome – defendants impermissibly denied plaintiffs of their property interest without due process of law and conspired among themselves to do so (taking numerous steps in furtherance thereof), or failed to prevent others from doing so.

161. Defendants acted at all times under color of law.

162. Defendants acted under pretense and color of state law and with the exception of the FCRC defendants, in their individual and official capacities and within the scope of their respective employments as government employees or agents. The non-FCRC defendants acted beyond the scope of their jurisdiction, without authority of law, and abused their powers.

163. The FCRC defendants acted at all times in concert with the other defendants.

164. All defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. § 1983, and by the Fourteenth Amendment to the United States Constitution.

165. As a direct and proximate consequence of defendants' unconstitutional actions and abuse of authority, plaintiffs have suffered actual damages, in forms including, without limitation, out of pocket losses and expenditures, lost past and future earnings, mental anguish, pain and suffering.

166. Unless defendants are enjoined from taking plaintiffs' properties through the use of eminent domain plaintiffs will suffer great and irreparable harm.

WHEREFORE, judgment should be entered as follows:

A. Declaring that defendants' condemnation of plaintiffs' properties violates the Takings Clause of the Fifth Amendment to the United States Constitution;

B. Declaring that the defendants' violated plaintiffs right to due process of law;

C. Declaring that defendants' condemnation of plaintiffs' properties violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

D. Temporarily, preliminarily and permanently enjoining defendants from condemning or taking, and from taking any steps to condemn or take, plaintiffs' properties;

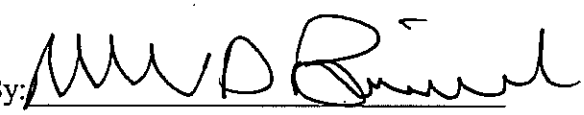
E. Awarding compensatory damages against all defendants and punitive damages against all defendants except the City of New York;

F. Awarding plaintiffs' attorney fees and other reasonable expenditures, together with the costs and expenses of this action pursuant to 42 U.S.C. § 1988; and

G. Granting plaintiffs such other and further relief as the Court may deem just and proper.

Dated: October 26, 2006
New York, New York

EMERY CELLI BRINCKERHOFF
& ABADY LLP

By: 

Matthew D. Brinckerhoff (MB-3552)
Andrew G. Celli, Jr. (AGC-3598)

75 Rockefeller Plaza, 20th Floor
New York, New York 10019
(212) 763-5000

Counsel for Real Property Plaintiffs

YOUNG SOMMER WARD RITZENBERG
BAKER & MOORE LLC

By: Jeffrey S. Baker
(application for admission forthcoming)

Executive Woods
Five Palisades Drive
Albany, New York 12205
(518) 438-9907

Co-Counsel for Real Property Plaintiffs

SOUTH BROOKLYN LEGAL SERVICES

By: Jennifer Levy /s/
Jennifer Levy (JL-1681)

John C. Gray, Jr.
South Brooklyn Legal Services
105 Court Street
Brooklyn, New York 11201
(718) 237-5000

Attorneys for Tenant Plaintiffs