

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of

DEVELOP DON'T DESTROY BROOKLYN; et al.,

Petitioners - Plaintiffs

For a Judgment Pursuant to Article 78 of the CPLR and
Declaratory Judgment

- against -

URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT
CORPORATION; et al.,

Respondents - Defendants

AFFIDAVIT OF HENRY P. WEINSTEIN

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

Henry P. Weinstein, being duly sworn, deposes and says:

1. I am the president and sole shareholder of Pacific Carlton Development Corp. ("Pacific Carlton") and 535 Carlton Realty, Inc., real estate development concerns developing and managing properties in Brooklyn, New York. I respectfully submit this affidavit in support of the Article 78 proceeding brought by Develop Don't Destroy Brooklyn and its co-petitioners to challenge the approvals issued by the Empire State Development Corporation ("ESDC") in connection with the proposed Atlantic Yards project (the "Project").

2. Pacific Carlton has significant holdings in and about the site for the Project. One such holding is 754 Pacific Street, a six-story office building at the intersection of Pacific Street and Carlton Avenue (Block 1129, Lot 13). The property has substantial development potential, in part because the high ceilings of the premises and its industrial

structure are conducive to producing loft style apartments of a type that are readily marketable. Moreover, in 2003, the area was experiencing a resurgence of interest and was gentrifying rapidly, providing a ready market for upscale housing.

3. In or about October, 1999, I leased 754 Pacific Street to a developer named Shaya Boymelgreen for a 48½ year term. I did not convey all right and title in the property to Boymelgreen – I retained an interest in the property. Based on express provisions in the lease, it was clear that Boymelgreen leased the property with the intention of developing luxury rental apartments.

4. At first, it appeared that Boymelgreen intended to go forward with his plans, and on September 25, 2002, Boymelgreen filed a plan proposing to convert the premises from factory to residential space. (See NYC Department of Buildings (“DOB”) Job Overview, appended hereto as Exhibit A.) But inexplicably (and notwithstanding the property’s enormous development potential), on May 26, 2005, Boymelgreen withdrew his application. (See NYC DOB Application Data form for premises, appended hereto as Exhibit B.) Since then, Boymelgreen has kept the property in an undeveloped state by making multiple filings with the DOB, all while doing nothing to refile a conversion plan and advance construction. See Exhibit A (reflecting pre- and post-withdrawal filings).

5. On or about March 2, 2006 – within a day of Boymelgreen’s sale of the Ward Bakery property to Forest City Ratner (“FCR”) – Boymelgreen purported to convey his leasehold interest in 754 Pacific Street to FCR. (The purported March 2, 2005 Option, Assignment and Assumption of the 754 Pacific Street lease is appended hereto as Exhibit C; the March 3, 2006 deed convening the Ward Bakery to FCR is appended hereto as Exhibit D.) Under the terms of our lease, Boymelgreen was not permitted to convey his interest in the property to a third party without my authorization, which Boymelgreen did not seek, and I did

not grant. I notified through my attorney's Goldstein, Goldstein, Rikon & Gottlieb, P.C. by Mr. Michael Rikon the Empire State Development Corp. and the tenant. (see exhibit H). After quite some time had passed and not having heard back from The E.S.D.C. I initiated an action in New York State Supreme Court to confirm my rights in the property and invalidate the purported transfer.

6. Remarkably, FCR has held itself out as controlling 754 Pacific Street, even though (i) the purported transfer was unauthorized, and (ii) Boymelgreen only had a partial interest to convey, and could not have given FCR control of the property even if I had authorized the transfer. FCR also held itself out as controlling two other parcels I own (Block 1129, Lots 5 and 6). I advised the ESDC at the ESDC's scoping hearing on October 20, 2005 that FCR did not control these parcels. The transcript of my testimony from the said hearing is appended hereto as Exhibit E.

7. On March 1, 2007, New York State Supreme Court confirmed that the purported transfer of Boymelgreen's rights in the property to FCR was an illegal assignment, which the Court voided. (The Court's opinion is appended hereto as Exhibit F.)

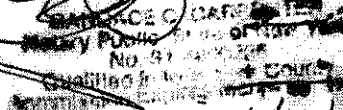
8. Because of the property's tremendous development potential, I have decided to develop 754 Pacific Street myself. Although subject to modification of my plans, I currently intend to develop a ten-story building on the site of 754 Pacific Street and two adjoining parking lots that I own (Block 1129, Lots 4, 5 and 6) with 3 stories of mixed use space and 7 stories of hotel space. I have already obtained DOB approval of the plans for the project (appended hereto as Exhibit G), and am in the process of obtaining the necessary permits for the project.


Henry P. Weinstein

Sworn to before me this

2nd day of May 2007





6/2/07

EXHIBIT A

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FAQs | Glossary Apr 30, 2007



[CLICK HERE TO SIGN UP FOR BUILDINGS NEWS](#)

NYC Department of Buildings
Job Overview

Premises: 754 PACIFIC STREET BROOKLYN

BIN: 3330630 Block: 1

To start overview at new date, select Month: Day: Year:

FILE DATE	JOB #	DOC #	JOB TYPE	FLOOR	JOB STATUS	STATUS DATE	LIC #	APPLICANT	FI
02/11/2000	<u>300997312</u>	01	A2	CEL	J P/E DISAPPROVED	02/11/2000		KALMAN	ASH
JOB WITHDRAWN 05262005 INSTALLATION OF PARTITION AND PLUMBING. NO CHANGE I									
09/26/2000	<u>301135885</u>	01	A2	ROF	X SIGNED OFF	09/25/2001		BUTLER	MOI
INSTALING TELECOMMUNICATIONS CABINETS AND ANTENNAS ON ROOF IN									
11/27/2000	<u>301135885</u>	02	A2	ROF	P APPROVED	09/25/2001		BUTLER	MOI
POST APPROVAL AMENDMENT FOR 01									
12/05/2000	<u>301135885</u>	03	A2	ROF	G PAA FEE DUE	12/05/2000		BUTLER	MOI
DOC WITHDRAWN 12142000									
07/09/2001	<u>301196257</u>	01	A2	001	X SIGNED OFF	01/30/2007		RENEAUD	TYM
Construct interior partitions; install new plumbing fixtures and related p									
09/25/2002	<u>301378818</u>	01	A1	BAS	J P/E DISAPPROVED	10/01/2002		Kalman	Mar
JOB WITHDRAWN 05262005 Propose to convert existing factory to residential									
03/16/2005	<u>301912429</u>	01	A2	006	R PERMIT-ENTIRE	01/06/2007		Cetra	Tyrr
Construct interior partitions on 6th floor as per plans.									
03/21/2005	<u>301919440</u>	01	A1	CEL	J P/E DISAPPROVED	04/18/2005		Cetra	Tort
JOB WITHDRAWN 05262005 Propose to convert existing factory to office build									
04/04/2005	<u>301916602</u>	01	A2	006	Q PERMIT-PARTIAL	04/21/2005		Athwal	Tyrr
Install new plumbing fixtures and mechanical units on the 6th floor.									
04/05/2005	<u>301926012</u>	01	A2	006	X SIGNED OFF	10/12/2006		Athwal	Tyrr
Add and remove sprinkler heads on 6th floor.									
07/14/2005	<u>301196257</u>	02	A2	001	P APPROVED	04/25/2006		ATHWAL	TYM
POST APPROVAL AMENDMENT FOR 01									

07/14/2005	301976930	01	A1	CEL	P APPROVED	04/26/2007	SHEIERMA	Wei
Change of use with the stated occupancy of ninety (90) people. No work don								
07/18/2005	301976878	01	A2	CEL	R PERMIT-ENTIRE	10/20/2005	Athwal	Wei
Install new boilers as shown on plans filed herewith.								
07/18/2005	301926012	02	A2	006	G PAA FEE DUE	07/18/2005	Athwal	Tyr
DOC WITHDRAWN 10272005								
07/25/2005	301916602	02	A2	006	P APPROVED	10/24/2005	Athwal	AFF
POST APPROVAL AMENDMENT FOR 01								
10/17/2005	302024930	01	A2	CEL	R PERMIT-ENTIRE	04/04/2006	Berman	Bae
INSTALLATION OF A INDIVIDUALLY CODED INTERIOR FIRE ALARLM SYSTEM WITH SPR								
10/27/2005	301976878	02	A2	CEL	P APPROVED	11/03/2005	Athwal	Wei
POST APPROVAL AMENDMENT FOR 01								
10/28/2005	301926012	03	A2	006	P APPROVED	10/28/2005	Athwal	Tyr
POST APPROVAL AMENDMENT FOR 01								
01/12/2006	302029766	01	A2	LOB	R PERMIT-ENTIRE	01/06/2007	SHTEIERM	Tyr
Herewith filing lobby and 5th floor build out of partitions. Floors 2 -								
03/20/2006	301916602	03	A2	006	P APPROVED	03/20/2006	Athwal	Tyr
POST APPROVAL AMENDMENT FOR 01								
12/28/2006	302288361	01	A2	CEL	P APPROVED	12/28/2006	Levin	Klei
JOB WITHDRAWN 02202007 Installation of standpipe system to existing sprink								
01/17/2007	302296192	01	A2	CEL	R PERMIT-ENTIRE	01/26/2007	Reneaud	Tyr
Adding tamper switch cellar thru 6th floor, water flow switch in cellar,								
02/23/2007	302296192	02	A2	CEL	D A/P ENTIRE	02/27/2007	Reneaud	Tyr
POST APPROVAL AMENDMENT FOR 01								
03/31/2007	302029766	02	A2	LOB	D A/P ENTIRE	04/27/2007	SHTEIERM	Tyr
POST APPROVAL AMENDMENT FOR 01								
03/31/2007	301912429	02	A2	006	D A/P ENTIRE	04/27/2007	Cetra	Tyr
POST APPROVAL AMENDMENT FOR 01								

If you have any questions please review these [Frequently Asked Questions](#), the [Glossary](#), or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.

EXHIBIT B

Declaration: **Page:** **Reel:**
Little 'E' Restrictions: N/A **Adult Establishment:** N **Landmark:** N

Job Description:

Propose to convert existing factory to residential dwelling units as shown. Filed for zoning review only at this time.

Plans Submitted: ZO - AR
Occupancy Classification: **Existing:** COM - COMMERCIAL BUILDINGS - OLD CODE **MULT DWELL:** HCA
Proposed: J-2 - RESIDENTIAL APT HOUSE
Construction Classification: **EXIST OLD CODE:** 1 **PROP NON-COMB:** 1-B

Zoning District: M1-1 - LIGHT MANUFACTURING DISTRICT (HIGH PERFORMANCE)
Special District: NONE
Street Status: PUBLIC - LEGAL WIDTH 70
Map No.: 016c

Building Dimension:	No. Stories: 6	Street Frontage:
	Height: 78	Dwelling Units: 59
Total Gross Area of Building:		Fill:
Site Area Characteristics:	FIRE DIST.	
Open Spaces:	Plaza:	Arcade:
	Parking:	Loading Berths:
	Parking Spaces:	Loading Berths:
Fire Protection Equipment:	SD:	
	SP:	
	FA:	

Metes and Bounds:

Beginning at a point on the **SOUTHWEST** side of Pacific Street
 Distant 120 Ft. **SOUTHEAST** of the corner formed by the intersection of Carlton Avenue and Pacific Street
RUNNING THENCE SW 88 . 33 FT. **THENCE SE 21 FT.**
RUNNING THENCE NE 42 FT. **THENCE SE 20 . 08 FT.**
RUNNING THENCE SW 0 . 25 FT. **THENCE SE 22 FT.**
RUNNING THENCE SW 13 . 83 FT. **THENCE SE 7 . 50 FT.**
ULT. NO. OF STORIES 6

Owner: PARTNERSHIP **Non-Profit Flag:** N
 Boymelgreen Shaya officer
 752 Pacific LLC 700 Pacific Street 212 964 - 7900
 Brooklyn NY 11217
OCCUPANCY CERTIFICATION: N
OCCUPANCY NOTIFICATION: N

Comments for Document 01:

*continued - SW 7.83'; SE 19.33'; NE 9.83'; SE 8.33'; SW 8.83'; SE 71.75';
NE 110.00'; NW 170.00'

OWNER REQUEST WITHDRAWAL OF APPLICATION

[Items Required](#) | [Plumbing Insp](#) | [Forms Received](#) | [Schedule A](#) | [Schedule B](#) | [All Permits](#) | [Document Overview](#)
[Plan Exam Overview](#) | [Fee / Accounting Overview](#) | [C/O Application Summary](#)
[Virtual Job Folder](#) |

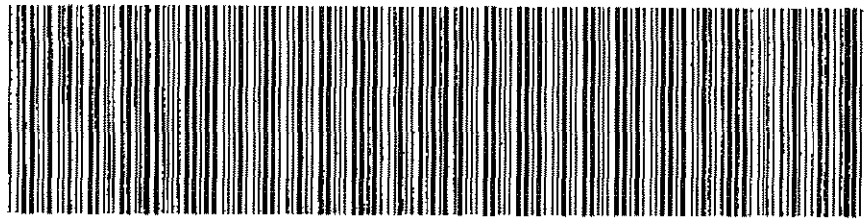
If you have any questions please review these [Frequently Asked Questions](#), the [Glossary](#), or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.

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EXHIBIT C

**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**

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RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 7

Document ID: 2006031100149001 **Document Date:** 03-02-2006 **Preparation Date:** 03-11-2006
Document Type: ASSIGNMENT OF LEASE
Document Page Count: 6

PRESENTER:
 NEW YORK LAND SERVICES /
 COMMONWEALTH LAND TITLE INS. CO.
 630 THIRD AVENUE
 NEW YORK, NY 10017
 212-490-2277
 TITLE NO. 03NYK9214-A51-A53

RETURN TO:
 FRIED, FRANK, HARRIS, SHRIVER &
 JACOBSON LLP
 ATTN: STEPHEN LEFKOWITZ, ESQ.
 ONE NEW YORK PLAZA
 NEW YORK, NY 10004

PROPERTY DATA

Borough	Block	Lot	Unit	Address
BROOKLYN	1129	13	Entire Lot	750 PACIFIC STREET
Property Type: COMMERCIAL REAL ESTATE				

CROSS REFERENCE DATA

BROOKLYN Year: 2000 **Reel:** 4772 **Page:** 583

PARTIES

PARTY 1:
 752 PACIFIC, LLC
 535 DEAN STREET, SUITE 908
 BROOKLYN, NY 11217

PARTY 2:
 AY 535 CARLTON, LLC
 C/O FOREST CITY RATNER COMPANIES, ONE
 METROTECH CENTER NORTH
 BROOKLYN, NY 11201

FEES AND TAXES

Mortgage			Recording Fee: \$	67.00
Mortgage Amount:	\$	0.00	Affidavit Fee: \$	0.00
Taxable Mortgage Amount:	\$	0.00	NYC Real Property Transfer Tax Filing Fee:	
Exemption:			\$	165.00
TAXES: County (Basic):	\$	0.00	NYS Real Estate Transfer Tax:	
City (Additional):	\$	0.00	\$	15,300.00
Spec (Additional):	\$	0.00		
TASF:	\$	0.00		
MTA:	\$	0.00		
NYCTA:	\$	0.00		
Additional MRT:	\$	0.00		
TOTAL:	\$	0.00		



**RECORDED OR FILED IN THE OFFICE
OF THE CITY REGISTER OF THE
CITY OF NEW YORK**

Recorded/Filed 03-14-2006 12:05
City Register File No.(CRFN):
 2006000142132

Annette McMill

City Register Official Signature

NYC HPD Affidavit in Lieu of Registration Statement

Assignment and Assumption of Lease B

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (this "Assignment"), made as of March 2, 2006, by and between 752 PACIFIC, LLC a New York limited liability company, having an office at 535 Dean Street, Suite 908, Brooklyn, New York 11217 ("Assignor"), and AY 535 CARLTON, LLC, a New York limited liability company, having an office c/o Forest City Ratner Companies, One MetroTech Center North, Brooklyn, New York, 11201 ("Assignee").

WITNESSETH:

WHEREAS, Assignor is the tenant under that certain lease (the "Lease") dated October 27, 1999, by and between Pacific Carlton Development Corp., as landlord, and Assignor, as tenant, to property known as 752-766 Pacific Street, Brooklyn, New York, comprising Block 1129, Lot 13, on the Tax Map of Kings County, City and State of New York, as more particularly described in Exhibit B attached hereto;

WHEREAS, A memorandum of the Lease was recorded on February 18, 2000 in Reel 4772, page 583;

WHEREAS, Assignor and Assignee are parties to a certain Option Agreement, dated as of March 31, 2005, by and between Assignor and Pacific Street Park Corp., a New York corporation, as optionors, and Assignee, as optionee, whereby Assignor granted an irrevocable option to Assignee to acquire all of Assignors' right, title and interest in and to the Lease; and

WHEREAS, Assignor desires to assign to Assignee all of Assignor's right, title and interest as tenant under the Lease, and Assignee desires to assume all of Assignor's obligations and liabilities under the Lease, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of TEN (10) DOLLARS and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignment. Effective as of the date hereof, Assignor hereby sells, transfers and assigns to Assignee all of Assignor's right, title and interest in and to the Lease.

2. Assumption. Assignee hereby accepts the foregoing assignment, and Assignee hereby assumes the due performance of all of the obligations of Assignor under the Lease, including any accrued obligations as of the date hereof.

3. Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.


4. Governing Law. This Assignment shall be governed by the laws of the State of New York, without regard to its choice of law principals.

5. Duplicate Originals, Counterparts. This Assignment may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment.

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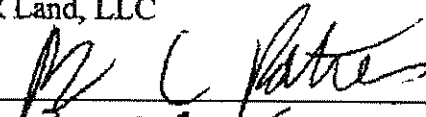
IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above set forth.

ASSIGNOR:
752 PACIFIC, LLC

By: 
Name: *Jeshayahu Boymergreen*
Title: *Managing Member*

ASSIGNEE:
AY 535 CARLTON, LLC

By Atlantic Yards Development Company, LLC
By FCR Land, LLC
By BR Land, LLC

By: 
Name: *Bruce C. Carter*
Title: *President*

STATE OF)

State of New York)
COUNTY OF Kings)

) ss.:
)

On the 31 day of March in the year 2005 before me, the undersigned, personally appeared Jeshayahu Boymelgreen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

Signature and Office of individual taking acknowledgment



STATE OF New York)
COUNTY OF Kings)

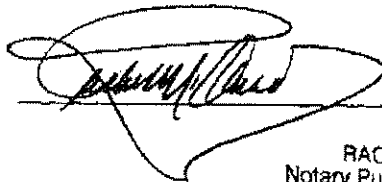
) ss.:
)

SEAL

RACHEL M. HARARI
Notary Public
No. 02HA4827875
Qualified in Nassau County
Commission Expires December 31, 2006

On the 31 day of March in the year 2005 before me, the undersigned, personally appeared Daniel C. Lopez, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

Signature and Office of individual taking acknowledgment



AFTER RECORDING RETURN TO:

Stephen Lefkowitz, Esq.
Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, NY 10004

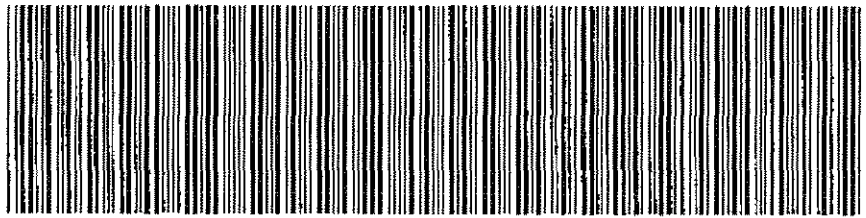
SEAL

RACHEL M. HARARI
Notary Public, State of New York
No. 02HA4827875
Qualified in Nassau County
Commission Expires December 31, 2006

EXHIBIT D

**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**

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RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 7

Document ID: 2006030902394001 Document Date: 03-03-2006 Preparation Date: 03-09-2006
Document Type: DEED
Document Page Count: 6

PRESENTER:
NEW YORK LAND SERVICES /
COMMONWEALTH LAND TITLE INS. CO.
630 THIRD AVENUE
NEW YORK, NY 10017
212-490-2277
TITLE NUMBER: 03NYK9214A54/A55

RETURN TO:
FRIED, FRANK, HARRIS, SHRIVER &
JACOBSON LLP
ATTN: STEPHEN LEFKOWITZ, ESQ.
ONE NEW YORK PLAZA
NEW YORK, NY 10004

PROPERTY DATA

Borough	Block	Lot	Unit	Address
BROOKLYN	1129	25	Entire Lot	800 PACIFIC STREET
Property Type: COMMERCIAL REAL ESTATE				

Borough	Block	Lot	Unit	Address
BROOKLYN	1129	54	Entire Lot	546 VANDERBILT AVENUE
Property Type: COMMERCIAL REAL ESTATE				

CROSS REFERENCE DATA

CRFN _____ or Document ID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES

GRANTOR/SELLER:
800 PACIFIC LLC
752 PACIFIC STREET
BROOKLYN, NY 11238

GRANTEE/BUYER:
PACIFIC VANDERBILT DEVELOPMENT COMPANY,
LLC
ONE METROTECH CENTER NORTH
BROOKLYN, NY 11201

FEEES AND TAXES

Mortgage		
Mortgage Amount:	\$	0.00
Taxable Mortgage Amount:	\$	0.00
Exemption:		
TAXES: County (Basic):	\$	0.00
City (Additional):	\$	0.00
Spec (Additional):	\$	0.00
TASF:	\$	0.00
MTA:	\$	0.00
NYCTA:	\$	0.00
Additional MRT:	\$	0.00
TOTAL:	\$	0.00

Recording Fee: \$	70.00
Affidavit Fee: \$	0.00
NYC Real Property Transfer Tax Filing Fee:	\$ 165.00
NYS Real Estate Transfer Tax:	\$ 180,000.00

**RECORDED OR FILED IN THE OFFICE
OF THE CITY REGISTER OF THE
CITY OF NEW YORK**

Recorded/Filed 03-17-2006 15:20
City Register File No.(CRFN):
2006000154011



Annette M. Hill

City Register Official Signature

NYC HPD Affidavit in Lieu of Registration Statement

DEED

THIS INDENTURE, made as of the 3rd day of March, 2006 between 800 PACIFIC LLC, a New York limited liability company, having an office at 752 Pacific Street, Brooklyn, New York 11238 ("Grantor") and PACIFIC VANDERBILT DEVELOPMENT COMPANY, LLC, a New York limited liability company, having an office at One Metro Tech Center North, Brooklyn, New York 11201 ("Grantee").

WITNESSETH:

That Grantor, in consideration of Ten Dollars (\$10.00) and other valuable consideration paid by Grantee, does hereby grant and release unto Grantee, the heirs or successors and assigns of Grantee forever, all of its right, title and interest in and to those two (2) parcels of land located in the City and State of New York, and known as 774-802 Pacific Street, Brooklyn, New York and 546-550 Vanderbilt Avenue, Brooklyn, New York, as more particularly described on Exhibit A-1 and Exhibit A-2 annexed hereto and made a part hereof, together with any buildings and improvements located thereon (collectively, the "Premises").

Together with all right, title and interest, if any, of Grantor in and to any streets and roads abutting the Premises to the center lines thereof; and

Together with the appurtenances and all the estate and rights of Grantor in and to the Premises.

TO HAVE AND TO HOLD the Premises herein granted unto Grantee, the heirs or successors and assigns of Grantee, forever.

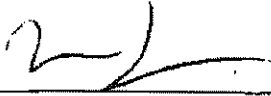
AND Grantor, in compliance with Section 13 of the Lien Law, covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvements at the Premises and will apply the same first to the payment of the cost of the improvements before using any part of the total of the same for any other purpose.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Grantor has duly executed this deed the day and year first above written.

GRANTOR:

800 PACIFIC LLC

By: 
Name:
Title:

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 27 day of February in the year 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Shaya Baymelgreen personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

RINA BATASH
NOTARY PUBLIC-STATE OF NEW YORK
No. 01BA6129419
Qualified in Queens County
Commission Expires June 20, 2009



EXHIBIT A-1

Legal Description

ALL THAT CERTAIN PLOT, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

Tax Lot 25
PARCEL A

BEGINNING at a point on the southerly side of Pacific Street, distant 186 feet 2 inches westerly from the corner formed by the intersection of the westerly side of Vanderbilt Avenue and the southerly side of Pacific Street;

RUNNING THENCE at right angles to Pacific Street and in a southerly direction, 80 feet 4-3/4 inches to an old farm or division line;

THENCE along said farm or division line in a southwesterly direction, 37 feet 7-1/2 inches;

THENCE westerly parallel with Pacific Street, 1 foot 5-1/4 inches;

THENCE southerly, again at right angles to Pacific Street, 5 feet;

THENCE westerly parallel with Pacific Street, 43 feet 6 inches;

THENCE northerly, again at right angles to Pacific Street, 5 feet through a party wall to the center line of the block;

THENCE westerly along the center line of the block, 72 feet 2 inches;

THENCE southerly at right angles to Pacific Street, 110 feet to the northerly side Dean Street;

THENCE westerly along the northerly side of Dean Street, 150 feet;

THENCE northerly at right angles to the northerly side of Dean Street, 110 feet to the center line of the block;

THENCE easterly along the center line of the block, 1 foot 6 inches;

THENCE northerly at right angles to the southerly side of Pacific Street, 110 feet to the southerly side of Pacific Street;

THENCE easterly along the southerly side of Pacific Street, 288 feet 10 inches to the point or place of BEGINNING.

PARCEL B

BEGINNING at a point on the northerly side of Dean Street, distant 254 feet 4 inches westerly from the corner formed by the intersection of the northerly side of Dean Street with the westerly side of Vanderbilt Avenue;

RUNNING THENCE northerly at right angles to the northerly side of Dean Street and through a party wall, 110 feet to the center line of the block;

THENCE westerly along the center line of the block 72 feet 2 inches;

THENCE southerly, again at right angles to the Dean Street, 110 feet to the northerly side of Dean Street;

THENCE easterly along the northerly side of Dean Street, 72 feet 2 inches to the point or place of BEGINNING.

EXHIBIT A-2

Legal Description

ALL THAT CERTAIN PLOT, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

(Tax Lot 54)

BEGINNING at the corner formed by the intersection of the westerly side of Vanderbilt Avenue with the northerly side of Dean Street;

RUNNING THENCE northerly along the westerly side of Vanderbilt Avenue 60 feet;

THENCE westerly parallel with Dean Street, 78 feet 10 inches;

THENCE northerly parallel with Vanderbilt Avenue, 39 feet 4 inches;

THENCE westerly parallel with Dean Street, 10 feet 8 inches;

THENCE northwesterly in a straight line, 46 feet 8 inches to a point distant 131 feet 11 inches northerly from the northerly side of Dean Street measured along a line drawn with and distant 122 feet 10 inches westerly from the westerly side of Vanderbilt Avenue;

THENCE southerly along said last mentioned parallel line, 41 feet 11 inches;

THENCE westerly parallel with Dean Street, 88 feet;

THENCE southerly parallel with Vanderbilt Avenue, 90 feet to the northerly side of Dean Street;

THENCE easterly along the northerly side of Dean Street, 210 feet 10 inches to the point or place of BEGINNING.

Bargain and Sale Deed

800 PACIFIC LLC

to

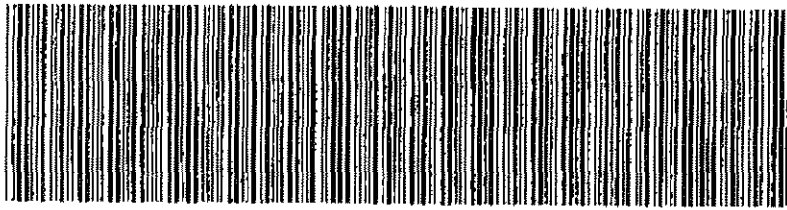
PACIFIC VANDERBILT DEVELOPMENT COMPANY, LLC

Tax Map Designation

County: Kings
Block: 1129
Lots: 25 and 54
Properties: 774-802 Pacific Street
546-550 Vanderbilt Avenue
Brooklyn, New York

RECORD AND RETURN TO:
Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, NY 10004
Attention: Stephen Lefkowitz, Esq.

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2006030902394001001S90EA

SUPPORTING DOCUMENT COVER PAGE

PAGE 1 OF 1

Document ID: 2006030902394001

Document Date: 03-03-2006

Preparation Date: 03-09-2006

Document Type: DEED

ASSOCIATED TAX FORM ID: 2006022200276

SUPPORTING DOCUMENTS SUBMITTED:

RP - 5217 REAL PROPERTY TRANSFER REPORT

Page Count

5

FOR CITY USE ONLY

C1. County Code C2. Date Deed Recorded / /
 Month Day Year

C3. Book OR C4. Page

C5. CRFN



REAL PROPERTY TRANSFER REPORT

STATE OF NEW YORK
STATE BOARD OF REAL PROPERTY SERVICES

RP - 5217NYC

(Rev 1/2002)

PROPERTY INFORMATION

1. Property Location 800 PACIFIC STREET BROOKLYN 11238
STREET NUMBER STREET NAME BOROUGH ZIP CODE

2. Buyer Name PACIFIC VANDERBILT DEVELOPMENT COMPANY, LLC
LAST NAME / COMPANY FIRST NAME

3. Tax Billing Address Indicate where future Tax Bills are to be sent if other than buyer address (at bottom of form)
LAST NAME / COMPANY FIRST NAME

4. Indicate the number of Assessment Roll parcels transferred on the deed 2 # of Parcels OR Part of a Parcel

5. Deed Property Size FRONT FEET X DEPTH OR ACRES

6. Seller Name 800 PACIFIC LLC
LAST NAME / COMPANY FIRST NAME

4A. Planning Board Approval - N/A for NYC
 4B. Agricultural District Notice - N/A for NYC

Check the boxes below as they apply:

6. Ownership Type is Condominium

7. New Construction on Vacant Land

9. Check the box below which most accurately describes the use of the property at the time of sale:

A One Family Residential C Residential Vacant Land E Commercial G Entertainment / Amusement I Industrial
 B 2 or 3 Family Residential D Non-Residential Vacant Land F Apartment H Community Service J Public Service

SALE INFORMATION

10. Sale Contract Date 3 / 31 / 2005
Month Day Year

11. Date of Sale / Transfer 3 / 3 / 2006
Month Day Year

12. Full Sale Price \$ 4,500,000.00
(Full Sale Price is the total amount paid for the property including personal property. This payment may be in the form of cash, other property or goods, or the assumption of mortgages or other obligations.) Please round to the nearest whole dollar amount.

13. Indicate the value of personal property included in the sale

14. Check one or more of these conditions as applicable to transfer:

A Sale Between Relatives or Former Relatives
 B Sale Between Related Companies or Partners in Business
 C One of the Buyers is also a Seller
 D Buyer or Seller is Government Agency or Lending Institution
 E Deed Type not Warranty or Bargain and Sale (Specify Below)
 F Sale of Fractional or Less than Fee Interest (Specify Below)
 G Significant Change in Property Between Taxable Status and Sale Dates
 H Sale of Business is Included in Sale Price
 I Other Unusual Factors Affecting Sale Price (Specify Below)
 J None

ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill

15. Building Class E, 9 16. Total Assessed Value (of all parcels in transfer)

17. Borough, Block and Lot / Roll Identifier(s) (If more than three, attach sheet with additional Identifier(s))
 BROOKLYN 1129 25 BROOKLYN 1129 54

CERTIFICATION

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and I understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

BUYER

BUYER SIGNATURE DATE

STREET NUMBER STREET NAME (AFTER SALE)

CITY OR TOWN STATE ZIP CODE

BUYER'S ATTORNEY

LAST NAME FIRST NAME

718 923-8551
AREA CODE TELEPHONE NUMBER

SELLER

SELLER SIGNATURE DATE

CERTIFICATION

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

BUYER

BUYER'S ATTORNEY

BUYER SIGNATURE		DATE	LAST NAME		FIRST NAME
STREET NUMBER		STREET NAME (AFTER SALE)		718	923-8551
CITY OR TOWN		STATE	ZIP CODE	TELEPHONE NUMBER	
			SELLER		
			SELLER SIGNATURE		DATE

FOR CITY USE ONLY

C1. County Code _____ C2. Date Deed Recorded _____
 Month Day Year
 C3. Book _____ C4. Page _____
 OR
 C5. CRFN _____



REAL PROPERTY TRANSFER REPORT
 STATE OF NEW YORK
 STATE BOARD OF REAL PROPERTY SERVICES
RP - 5217NYC
(Rev. 11/2005)

PROPERTY INFORMATION

1. Property Location: 800 PACIFIC STREET, BROOKLYN, 11238
STREET NUMBER STREET NAME BOROUGH ZIP CODE

2. Buyer Name: PACIFIC VANDERBILT DEVELOPMENT COMPANY, LLC
LAST NAME / COMPANY FIRST NAME

3. Tax Billing Address: _____
Indicate where future Tax Bills are to be sent (if other than buyer address (at bottom of form))
LAST NAME / COMPANY FIRST NAME

4. Indicate the number of Assessment Roll parcels transferred on the deed: 2 # of Parcels OR Part of a Parcel
 4A. Planning Board Approval - N/A for NYC
 4B. Agricultural District Notice - N/A for NYC
 Check the boxes below as they apply:
 5. Ownership Type is Condominium
 7. New Construction on Vacant Land

5. Deed Property Size: 800 PACIFIC LLC
FRONT FEET X DEPTH OR ACRES

8. Seller Name: _____
LAST NAME / COMPANY FIRST NAME

9. Check the box below which most accurately describes the use of the property at the time of sale:

A One Family Residential C Residential Vacant Land E Commercial G Entertainment / Amusement I Industrial
 B 2 or 3 Family Residential D Non-Residential Vacant Land F Apartment H Community Service J Public Service

SALE INFORMATION

10. Sale Contract Date: 3 / 31 / 2005
Month Day Year

11. Date of Sale / Transfer: 3 / 1 / 2006
Month Day Year

12. Full Sale Price \$: 4,500,000.00
(Full Sale Price is the total amount paid for the property including personal property. This payment may be in the form of cash, other property or goods, or the assumption of mortgages or other obligations.) Please round to the nearest whole dollar amount.

13. Indicate the value of personal property included in the sale: _____

14. Check one or more of these conditions as applicable to transfer:
 A Sale Between Relatives or Former Relatives
 B Sale Between Related Companies or Partners in Business
 C One of the Buyers is also a Seller
 D Buyer or Seller is Government Agency or Lending Institution
 E Deed Type not Warranty or Bargain and Sale (Specify Below)
 F Sale of Fractional or Less than Fee Interest (Specify Below)
 G Significant Change in Property Between Taxable Status and Sale Date
 H Sale of Business is included in Sale Price
 I Other Unusual Factors Affecting Sale Price (Specify Below)
 J None

ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill

15. Building Class: E, 9 16. Total Assessed Value (of all parcels in transfer): _____

17. Borough, Block and Lot / Roll Identifier(s) (If more than three, attach sheet with additional identifier(s))
 BROOKLYN 1129 25 | BROOKLYN 1129 54

CERTIFICATION

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and I understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

BUYER
 see attached signature page 2/27/06
 BUYER SIGNATURE DATE
 1 Metrotech Center North
 STREET NUMBER STREET NAME (AFTER SALE)
 Brooklyn N.Y. 11201
 CITY OR TOWN STATE ZIP CODE

BUYER'S ATTORNEY
 Golub Lawrie
 LAST NAME FIRST NAME
 718 923-8551
 AREA CODE TELEPHONE NUMBER
 800 Pacific LLC SELLER
 SELLER SIGNATURE DATE 2/27/06

CERTIFICATION

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

BUYER			BUYER'S ATTORNEY	
<i>see attached signature pages</i>	<i>2/27/06</i>		<i>Golub</i>	<i>Laurie</i>
<small>BUYER SIGNATURE</small>	<small>DATE</small>		<small>LAST NAME</small>	<small>FIRST NAME</small>
<i>One</i>	<i>Metrotech Center North</i>		<i>718</i>	<i>923-8551</i>
<small>STREET NUMBER</small>	<small>STREET NAME (AFTER SALE)</small>		<small>AREA CODE</small>	<small>TELEPHONE NUMBER</small>
<i>Brooklyn</i>	<i>NY</i>	<i>11201</i>	<i>800 Pacific LLC</i>	<i>SELLER</i>
<small>CITY OR TOWN</small>	<small>STATE</small>	<small>ZIP CODE</small>	<small>SELLER SIGNATURE</small>	<small>DATE</small>

SIGNATURE PAGE TO NEW YORK CITY
REAL PROPERTY TRANSFER REPORT (FORM RP-5217NYC)

GRANTEE:

PACIFIC VANDERBILT DEVELOPMENT
COMPANY, LLC, a New York limited
liability company

By: Atlantic Yards Development
Company, LLC

By: FCR Land, LLC

By: BR Land, LLC

By: 
Name:
Title:

Sworn to and subscribed
to before me this
27th day of February 2006


Notary Public

JODIEANN NELSON
Notary Public, State of New York
No. 01NE8128309
Qualified in Kings County
Commission Expires May 2, 2009

SEAL

EXHIBIT E

receive the funding necessary to participate more meaningfully in this process.

MS. CANDACE CARPONTER: CBN looks forward to continuing to represent the Brooklyn communities that would be impacted by the proposed Atlantic Yards throughout the EIS process and hopes that we can count on the ESDC to be a thoughtful and considerate partner who will take seriously its responsibilities to the community in its decisions regarding the proposed development of the Atlantic Yards.

Thank you.

(Audience participation.)

THE HEARING OFFICER: Thank you, Mr. Palazzo and Ms. Carponter.

The next speaker is Henry Weinstein.

(Audience participation.)

MR. HENRY WEINSTEIN: Good evening, everyone.

I just want to give a letter out to a few of our elected officials that are sitting here.

Good evening, ladies and gentlemen

I'm here this evening to bring to your attention a material and gross misstatement contained in the proposed Atlantic Yards Redevelopment Draft Scope of Analysis.

A VOICE: Louder.

MR. HENRY WEINSTEIN: Although my attorneys have written to ESDC over ten days ago to advise you of this completely false and fraudulently conceived statement, we have still not received any acknowledgement or reply.

I've given you copies of my letter.

FCRC has maliciously claimed to have control of three properties which I own for over twenty years. FCRC claims on page nine of this statement, which is the subject of tonight's hearing, that they absolutely control these three properties.

I have not made any agreement with FCRC regarding these three properties.

(Audience participation.)

MR. HENRY WEINSTEIN: This wholly false statement effectively is trying to pull the wool over the eyes of this venue and others who would read this document and accept as truth its lying contents.

I find it to be incredible that large organizations, such as FCRC, would misrepresent such an important issue.

My attorneys and other experts are investigating this slander and encumbrance which FCRC has placed on my property. I am here today to demand an answer.

I don't know how this impacts the environment, but can only assume that if lies and treachery are obviously being used to approve this project, then every material fact in the statement is suspect.

(Audience participation.)

MR. HENRY WEINSTEIN: It seems to me that this study has a very limited scope and needs to be greatly expanded.

I demand a full investigation of these misstatements and ask for a prompt answer to my letter.

Thank you.

(Audience participation.)

THE HEARING OFFICER: Thank you, Mr. Weinstein.

Heloise Gruneberg.

MS. HELOISE GRUNEBERG: Good evening.

My name is Heloise Gruneberg, President of Brooklyn Vision Foundation, Inc., a civic organization dedicated to let the voice of the community be heard.

We fully support the statement read by the Council of Brooklyn Neighborhoods and we look forward to their written testimony and the results of the

EXHIBIT F

At an IAS Term, Part 42 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 1st day of March, 2007.

PRESENT:

HON. IRA B. HARKAVY,

Justice.

-----X
752 PACIFIC LLC, et ano.,

Index No. 32819/03

Plaintiffs,

- against -

PACIFIC CARLTON DEVELOPMENT CORP., et ano.,

Defendants.
-----X

The following papers numbered 1 to 9 read on this motion:

Papers Numbered

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

1-2, 3-4

Opposing Affidavits (Affirmations) _____

Reply Affidavits (Affirmations) _____

6, 7

_____ Affidavits (Affirmations) _____

Other Papers: Memoranda of Law; Transcript of Proceedings

5, 8, 9

Upon the foregoing papers, defendants Pacific Carlton Development Corp. (Pacific Development) and 535 Carlton Avenue Realty Corp. (Carlton Realty) (collectively "defendants" or "landlords") move for an order: (1) pursuant to CPLR 3211 (a) (7), dismissing plaintiffs' first cause of action for failure to state a claim, (2) pursuant to CPLR 3212, granting defendants partial summary judgment on their third and fourth counterclaims against plaintiffs, (3) pursuant to CPLR

6314, vacating the *Yellowstone* injunction issued on September 11, 2003 and modified in May 2006, (4) pursuant to RPAPL 221, restoring defendants to possession of the subject premises, and (5) pursuant to RPAPL 601, awarding defendants the fair market rental value of plaintiffs' use of the subject premises. Plaintiffs 752 Pacific LLC (752 Pacific) and Pacific Street Park Corp. (Pacific Street) cross-move for an order, pursuant to CPLR 3212, granting summary judgment against defendants on plaintiffs' first and third causes of action and dismissing defendants' third and fourth counterclaims.

Background

The instant motion and cross motion arise from the allegedly improper assignment of two commercial leases to AY 535 Carlton, LLC ("AY Carlton"), a company associated with the proposed Atlantic Yards development project in Brooklyn.

On October 27, 1999, Pacific Development, as landlord, entered into a long-term commercial lease agreement with 752 Pacific for a six-story building located in Brooklyn, and Carlton Realty, as landlord, entered into a similar long-term commercial lease agreement with Pacific Street for a parking lot also located in Brooklyn (collectively "the leases"). In addition, on the same date, Jeshayahu Boymelgreen executed a personal agreement in which he "irrevocably and unconditionally guarantee[d] to Landlord payment when due . . . of any and all Obligations to the Landlord" which accrued within the first six years of the leases.

Each of the leases requires the tenant to obtain the written consent of the landlord before assigning the lease, providing, in relevant part:

"Without the written consent of Landlord first had and received in each instance, which consent shall not be unreasonably withheld or delayed, neither this Lease nor the interest of Tenant hereunder shall be sold, mortgaged, encumbered,

assigned or otherwise transferred . . . nor shall Tenant sublet the Premises except for Space Leases. . . .

“[In addition], [a]t the time of any assignment or subletting, this Lease must be in full force and effect without any breach or default thereunder on the part of the Tenant. . . .

“Tenant’s failure to comply with all of the provisions and conditions of this Article and all of the subsections hereof shall (whether or not Landlord’s consent is required), at Landlord’s option, render any purported assignment or subletting null and void and of no force and effect” (Article 14).

Each lease also specifies that the tenant’s sole remedy in the case of the landlord’s unreasonable refusal to consent is to seek to compel consent by providing, in pertinent part:

“Whenever Landlord is required hereunder not to act unreasonably or not to unreasonably withhold or delay its consent or approval, Tenant’s sole remedy for Landlord’s failure to act reasonably shall be an equitable action for specific performance and under no circumstances shall Landlord be liable for any damages due to such failure” (Section 30.06).

The leases define an unauthorized assignment, among other things, as an event of default, providing that a default occurs when:

“This Lease or the estate of Tenant hereunder shall be transferred or shall pass to or devolve upon any person or party whether by operation of law or otherwise, except in a manner herein permitted” (Section 22.01 [c]).

In the case that a defined event of default occurs, the leases allow the landlords to terminate the leases upon written notice to the tenants:

“If an Event of Default shall occur (other than under 22.01 (a) or (b) [nonpayment of rent]), Landlord, at any time thereafter, may at its option give written notice to Tenant stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice (which shall be no earlier than 5 days after the mailing of said notice), and upon the date specified in such notice, this Lease and the term hereby demised, and all rights of the Tenant under this Lease shall expire and terminate as if that date were the date herein definitely fixed for the termination of the term of this Lease, and Tenant shall quit and surrender the Premises but Tenant shall remain liable as hereinafter provided” (Section 22.02).

On or around August 27, 2003, landlords sent plaintiffs a Notice of Default and Demand for Indemnification outlining several alleged defaults by plaintiffs, including subletting the use of the roof and failing to pay additional security. Plaintiffs thereafter brought the instant action, by summons and order to show cause, seeking, among other things, a *Yellowstone* injunction tolling plaintiffs' time to cure.¹ On September 11, 2003, a temporary restraining order ("TRO") was issued, granting plaintiffs' request for a *Yellowstone* injunction, which prohibited landlords from terminating the leases, interfering with plaintiffs' tenancies, or attempting to recover possession of the premises.

In November 2003, the parties, seeking to resolve their dispute without litigation, stipulated that plaintiffs' motion by order to show cause would be marked off the calendar. However, the stipulation also provided that the TRO would be continued, that plaintiffs would continue to pay the fixed monthly rent, and that either party could restore the motion by written notice.

Approximately a year and a half later, on March 31, 2005, Pacific Street and 752 Pacific entered into an option agreement with AY Carlton giving it an irrevocable option to acquire all of each tenant's rights, title and interest in its lease. The option agreement notes that an "affiliate" of AY Carlton "intends to be the master developer [] of the proposed 'Atlantic Yards Project,'" a development project in Brooklyn associated with Bruce Ratner and the Forest City Ratner Companies. Also on March 31, 2005, the tenants each executed an assignment of their respective leases to AY Carlton, pursuant to the option agreement. The assignment agreements were allegedly placed in escrow, and a memorandum of the option agreements was recorded with the City Register.

¹ "A *Yellowstone* injunction maintains the status quo so that a commercial tenant, when confronted by a threat of termination of its lease, may protect its investment in the leasehold by obtaining a stay tolling the cure period so that upon an adverse determination on the merits the tenant may cure the default and avoid a forfeiture" (*Graubard Mollen Horowitz Pomeranz & Shapiro v 600 Third Ave. Assoc.*, 93 NY2d 508, 514 [1999]; see also *First Nat. Stores, Inc. v Yellowstone Shopping Ctr., Inc.*, 21 NY2d 630 [1968]).

The tenants did not seek written permission from the landlords to enter into these agreements.

The landlords allege that, on May 18, 2005, they met with Forest City Ratner's vice-president, James Stuckey, who "made [] a verbal offer to buy defendants' properties – which FCRC [Forest City Ratner Companies] refused to confirm in writing – coupled with the threat that, if defendants did not reach an agreement with FCRC, then ESDC [the Empire State Development Corporation] would take defendants' properties by eminent domain."² Thereafter, on or around October 3, 2005, the landlords sent a letter to the tenants indicating that the landlords had learned of the option agreement and asking to be provided with "full copies of the agreements entered into with the optionee."

On or around February 20, 2006, Pacific Street and 752 Pacific each sent a letter, dated February 16, 2006, to the landlords seeking written consent to assign their leases to AY Carlton. Attached to the letters were new assignment agreements, which they asked the landlords to countersign. The letters assert that AY Carlton is an affiliate of Forest City Ratner Companies and state that "upon acquiring a leasehold title to the Property, Assignee desires to finance and grant a mortgage lien on such leasehold interest." The letters provide little further information regarding the assignment; however, they state that "If you have any questions or requests for any additional information, please let us know."

The February 16th request letters were addressed and sent to an address in Brooklyn. However, in August 2000, the landlords had sent written notice to the tenants that the landlords' mailing address had changed to an address in Cedarhurst, New York. The landlords claim that they did not receive the request letters until March 10, 2006, due to this mistake.

² Plaintiffs deny that they made any "threats" or raised the issue of condemnation.

Meanwhile, on March 2, 2006, the tenants chose to execute the assignments, which were then recorded on March 14, 2006. The tenants do not dispute that they executed the assignments without the landlords' written consent, nor do they assert that they made any attempt (other than the request letters) to contact the landlords before executing the assignments. Instead, AY Carlton states that, "Not having received any response to their joint request for the Landlords' consent, and confident that there is no reasonable basis for an objection by the Landlords to the assignments, the Assignors and the Assignee effectuated the assignments on March 2, 2006."³

On or around March 21, 2006, the landlords sent tenants a letter noting their February 16th letter requests. The landlords' letter states that the tenants had not provided "all pertinent information required to make a proper request." The letter asks for various information and documents, including financial statements for AY Carlton and Forest City Ratner Companies, the proposed financing and mortgage, a copy of any personal guarantee with which AY Carlton proposed to replace Mr. Boymelgreen's, and the plans for the use of the two premises. The letter further states that, "Meanwhile, you may not effectuate any such sale or assignment of the Leases, or financing and a mortgage lien thereupon, unless and until you receive the Landlords' written consent."

On March 22, 2006, defendants moved, by order to show cause, to restore this action and vacate the TRO. (In May 2006, the parties stipulated to restore the action to the calendar and to modify the TRO to the extent of allowing defendants to serve plaintiffs with notices related to the lease agreements.)

³ Similarly, in their complaint, plaintiffs allege that "Having received no response from the Landlords [to their February 16th letters], on March 2, 2006, the Tenants and the Assignee closed their transaction. The assignment and assumption agreements were released from the escrow, delivered to the Assignee and, on March 14, 2006, recorded in the office of the City Register of the City of New York."

On or around May 1, 2006, AY Carlton wrote to the landlords, informing them that the assignments had already been executed and providing responses to the landlords' request for information. Among other things, AY Carlton "decline[d] to provide" the financial statements of either AY Carlton or Forest City Ratner Companies, and stated that it no longer intended to finance the properties. The letter also asserted that, "[b]y its terms, Mr. Boymelgreen's guarantee does not apply to any obligations of the Assignors" that arise after the first six years of the leases (*i.e.*, after November 1, 2005), while Mr. Boymelgreen "presumably" remains responsible for any obligations accruing before that time. Thus, AY Carlton concluded, "Under these circumstances, there is no reason why the Assignors or the Assignee should be expected to provide the Landlords with a new guarantee to replace that of Mr. Boymelgreen." As for the future plans for the premises, the letter states that:

"The Assignee [AY Carlton] and FCR [Forest City Ratner] hope to reach a mutually acceptable agreement with the Landlords for the acquisition of the Landlords' fee interest in these two properties. The Assignee and FCR hope that these properties will be incorporated in the proposed Atlantic Yards Arena and Redevelopment Project (the "Project"), and that the Landlords' interests in the properties either will be acquired by an affiliate of FCR pursuant to agreement or, upon completion of the public approval process in accordance with applicable law, by the Empire State Development Corporation pursuant to its powers of eminent domain. Until that occurs, it is the Assignee's intention to operate the properties lawfully and in accordance with the Ground Leases. No decisions have been made as to the operation of these properties in the event that the Project is not approved, except that the Assignee will take all reasonable steps necessary to ensure that they are operated lawfully and in accordance with the Ground Leases."

On or about June 9, 2006, the landlords sent a letter to the tenants stating that "the Landlords hereby decline to consent to your sale and assignment of the Leases to [AY Carlton]. . . for the reasons set forth in their . . . order to show cause [motion papers] dated March 22, 2006." On or around June 16, 2006, the landlords sent notices of termination to each of the tenants. The notices

state that the tenants violated the leases by assigning the leases without the landlords' written consent "and without first complying with the conditions set forth in Article 14.03 [requiring, among other things, that there be no existing default or breach of the lease by the tenant at the time of any assignment]." The notices further state that the landlords were exercising their option, under Sections 22.01(c) and 22.02, to terminate the leases effective as of June 23, 2006, and requiring the tenants to vacate and surrender possession of the premises on or before that date. Simultaneously, the landlords served each tenant with a notice to cure, alleging various other defaults on each of the properties.

On or about July 14, 2006, plaintiffs served a complaint upon defendants. Plaintiffs' first cause of action seeks a judgment declaring that: the tenants are not in default, the landlords' refusal to consent to the assignments of the leases is unreasonable and in violation of the leases, and the notices of termination are null and void. That cause of action also seeks to enjoin the landlords to consent to the assignments and to award the tenants compensatory damages. As part of that cause of action, the complaint asserts that AY Carlton has "assured the Landlords that it is financially responsible, as it is affiliated with both Forest City Ratner, a major real estate development and management business, and Forest City Enterprises, Inc., a publicly traded corporation with assets of \$7.3 billion as of January 31, 2005 (according to its Form 10-K) and a market capitalization of \$4.9 billion as of April 27, 2006." The complaint further alleges that the landlords are only withholding their consent "to increase the value of their fee interests in the properties in negotiations with Forest City Ratner or in contemplation of a condemnation by ESDC [Empire State Development Corporation]." In addition the plaintiffs state that "[n]otwithstanding the unreasonableness of the Landlords' refusal to consent to the assignments, the Tenants and the Assignee would be willing and

able to cancel and unwind the assignments in the event that the courts determined that the assignments were improper.” The second and third causes of action deal with the other alleged events of default contained in the notices to cure.

On or about August 7, 2006, defendants answered the complaint and brought seven counterclaims against plaintiffs. The third and fourth counterclaims seek, among other things, a judgment stating that plaintiffs violated their leases and are in default based upon the assignment of the leases, and an order vacating the *Yellowstone* injunction and awarding defendants “fair market rental value of [plaintiffs’] use and occupancy of the [premises] in an amount to be determined at trial from and after March 2 or June 23, 2006, whichever date the Court deems just and proper, plus interest.”

On or about September 18, 2006, defendants brought the instant motion, by order to show cause, asking the court: (1) to dismiss plaintiff’s first cause of action for failure to state a claim, (2) to grant partial summary judgment on defendants’ third and fourth counterclaims “declaring that the plaintiffs’ assignment of their respective leases without defendants’ prior written consent constituted violations and defaults” of the leases, (3) to vacate the *Yellowstone* injunction issued in September 2003 and modified in May 2006, (4) to restore defendants to possession of the premises and eject plaintiffs, and (5) to award defendants fair market rental value from and after either March 2 or June 23, 2006. On or about October 17, 2006, plaintiffs cross-moved for summary judgment: (1) granting plaintiffs’ first cause of action, (2) dismissing defendants’ third and fourth counterclaims, and (3) granting plaintiffs’ third cause of action, which seeks to compel defendant Carlton Realty to consent to the demolition of a free-standing wall.

The Parties’ Contentions

Defendants argue that plaintiffs violated Section 14.01 of the leases by assigning the leases to AY Carlton (in both 2005 and 2006) without having first obtained the landlords' written consent. In particular, they note that the contract language explicitly states that "[w]ithout the written consent of the Landlord *first* had and received in each instance," the tenants shall not assign their interests in the leases (emphasis added). Defendants further contend that said violation is a default of the leases pursuant to Section 22.01 (c), which defines the transference of plaintiff's interest in the lease in an unauthorized manner as an event of default. They also assert that plaintiffs had no right to cure that default pursuant to Section 22.02, which gives the landlords the option to terminate the leases, upon written notice to tenants, for a defined event of default. Defendants thus argue that the assignments constituted an incurable default, and so the *Yellowstone* injunction should be vacated and the leases terminated (*see e.g. Zona, Inc. v Soho Centrale, L.L.C.*, 270 AD2d 12, 14 [2000] [unauthorized lease assignment constituted incurable default]; *Pergament Home Ctrs., Inc. v Net Realty Holding Trust*, 171 AD2d 736, 737 [1991] [*Yellowstone* injunction properly denied where tenant had no ability to cure improper lease assignment]).

Moreover, defendants argue that they reasonably withheld consent to the assignments. They contend that the February 16th letter requests were "bereft of any facts upon which defendants could be expected to decide whether to consent to the requests." In addition, defendants argue that withholding consent was reasonable because: (1) plaintiffs were already in default under the Leases based upon the allegations made in this case prior to the assignments, (2) the proposed assignee was a "shell corporation," (3) plaintiffs failed to provide financial documents for the proposed assignee, and (4) defendants could "reasonably object to the nature of the proposed occupancy, to wit: a means concocted by plaintiffs and Ratner to diminish defendants' property value in anticipation of a buyout

or condemnation.” Defendants contend that these reasons constitute objective factors justifying their withholding of consent to the assignments (*see e.g. 8902 Corp. v Helmsley-Spear, Inc.*, 23 AD3d 316, 316 [2005] [withholding consent could not be considered unreasonable where plaintiffs failed to provide required financial information]; *Forty Four Eighteen Joint Venture v Rare Medium, Inc.*, 18 AD3d 237, 238 [2005] [consent to assignment reasonably withheld because tenant’s rent was in arrears]; *Sayed v Rapp*, 10 AD3d 717, 720 [2004] [consent to assignment reasonably withheld where proposed use of premises was materially different from use specified in lease]; *200 Eighth Ave. Rest. Corp. v Daytona Holding Corp.*, 293 AD2d 353, 353 [2002] [withholding consent reasonable where, among other things, tenant failed to timely provide financial information regarding proposed assignee])).

Defendants also note that the February 16th letter requests did not ask the defendants to respond by any particular time. They further assert that the letters’ envelopes were postmarked February 20th, and that, as the leases state that all notices and requests are deemed served on the third business day following mailing, the requests would not have been considered served until February 23rd, and that plaintiffs executed their assignments only a week later, on March 2nd. In addition, defendants allege that as of March 2, 2006, they had not, in fact, received the letters because tenants sent them to a prior address despite defendants’ written notice of the address change six years previously.

Finally, defendants contend that “even if” the tenants honestly believed that the landlords were unreasonably withholding or delaying consent, they had no right to choose to execute the assignments. Instead, they argue that the tenants’ sole remedy was to bring an action for specific performance, as outlined in Section 30.06, which provides that:

“Whenever Landlord is required hereunder not to act unreasonably or not to unreasonably withhold or delay its consent or approval, Tenant’s sole remedy for Landlord’s failure to act reasonably shall be an equitable action for specific performance and under no circumstances shall Landlord be liable for any damages due to such failure.”

Thus, the landlords argue that tenants’ assignments were a violation of the leases and that they are not entitled to seek damages based upon the landlords’ failure to consent, whether or not that withholding of consent was reasonable, and so plaintiffs’ first cause of action must be dismissed.

In their opposition and cross motion, plaintiffs argue that the landlords unreasonably withheld their consent to the assignments in violation of the lease agreements, and that “it is manifest that the Landlords never have had any intention of consenting to the assignments” and that the landlords’ objective is not to protect their properties but “to enhance the condemnation award to which [they] will be entitled if ESDC condemns these two parcels.” In addition, plaintiffs argue that, even if the landlords had a reasonable basis for withholding their consent, plaintiffs’ default in assigning the leases is curable and not a reason for terminating the leases. Finally, plaintiffs contest the landlords’ allegations of other defaults under the leases.

In support of their contention that the assignments were permitted, plaintiffs note that, in order for a landlord’s withholding of consent to be considered reasonable, it must be based upon objective factors, such as the assignee’s financial responsibility and identity or business character, the legality of the proposed use, and the nature of the occupancy (*see e.g. Sayed*, 10 AD3d at 720; *Kruger v Page Mgt. Co.*, 105 Misc 2d 14, 23 [1980]). Plaintiffs assert that based upon these factors, defendants’ consent was unreasonably withheld.

First, plaintiffs assert that AY Carlton is financially responsible because it is an “affiliate” of Forest City Ratner and Forest City Enterprises, Inc., which are both financially stable companies.

Moreover, they note that, under the terms of the leases, the tenants would remain financially responsible, and so the assignments would not “diminish” the landlords’ financial position but would, instead, “enhance it dramatically.” Second, plaintiffs contend that AY Carlton has “assured the Landlords in writing” that it will operate the premises lawfully and in conformity with the leases “until such time (if ever) as the Landlords’ fee interests are acquired consensually.” They further note that Section 20.01 allows the premises to be used for “any lawful use.”

Based upon the above, plaintiffs argue that “the Assignee easily qualifies as a suitable tenant, and the Landlords’ refusal to consent to the assignments is unreasonable as a matter of law” (*see e.g. Giordano v Miller*, 288 AD2d 181, 182 [2001] [consent to assignment unreasonably withheld where landlord demanded a fee for consent]; *Astoria Bedding, Mr. Sleeper Bedding Ctr., Inc. v Northside Partnership*, 239 AD2d 775, 776 [1997] [consent to assignment unreasonably withheld based upon proposed use different from tenant’s use required in lease]; *Hunan 7 (N.Y.C.) v Ding*, 216 AD2d 356, 357 [1995] [consent to assignment unreasonably withheld based upon non-rent related defaults where lease did not condition consent upon plaintiff’s performance of the lease]; *Ontel Corp. v Helasol Realty Corp.*, 130 AD2d 639, 640 [1987] [“subjective concerns and personal desires” were not reasonable basis for withholding consent to assignment]; *Filmways, Inc. v 477 Madison Ave., Inc.*, 36 AD2d 609, 609 [1971] [consent to sublet unreasonably withheld where subtenant was bound in writing to “each and every provision” of the prime lease], *affd* 30 NY2d 597, 598 [1972]).

In addition, plaintiffs argue that defendants’ proffered reasons for withholding their consent are merely “disingenuous pretexts” and that the record shows that the landlords’ principal, Henry Weinstein, “would never consent to the assignments given his stated opposition to the Atlantic Yards Project and his obvious interest in terminating the Ground Leases to enhance the value of his fee

interests.” The plaintiffs thus argue that the landlords are actually basing their refusal to consent upon their “private agenda” (*cf. e.g. Am. Book Co. v Yeshiva Univ. Dev. Found., Inc.*, 59 Misc 2d 31, 36 [1969] [commercial landlord’s refusal of assignment to Planned Parenthood based upon philosophical objections unreasonable]).

Moreover, plaintiffs assert that they made a good faith effort to obtain the landlords’ written consent and that they did not know that the landlords had not received plaintiffs’ letter requests at the time they executed the assignments. They argue that their error in mailing the requests to the wrong address was excusable and that thus a forfeiture of their leaseholds “would be completely inequitable and unsupportable” (*cf. e.g. J.N.A. Realty Corp. v Cross Bay Chelsea, Inc.*, 42 NY2d 392, 402 [1977] [tenant entitled to equitable relief from forfeiture despite inadvertent failure to give required notice to renew]).

In addition, plaintiffs argue that, even if the landlords had a reasonable basis to withhold consent, the unauthorized assignment is curable. In support of that contention, they note that Section 14.03 (h) of the leases state that:

“Tenant’s failure to comply with all of the provisions and conditions of this Article and all of the subsections hereof shall (whether or not Landlord’s consent is required), at Landlord’s option, render any purported assignment or subletting null and void and of no force and effect.”

Thus, plaintiffs argue that if the landlords’ consent was reasonably withheld, the assignment was “null and void” and so there was no event of default as the tenants’ interest did not “transfer[] or . . . pass to or devolve upon any person or party” as defined in Section 22.01(c). Moreover, plaintiffs assert that they are “ready and willing to comply with § 14.03(h) and reverse the assignments if it is determined by the courts that the assignments

are improper.” Accordingly, plaintiffs dispute the landlords’ contention that the default is incurable. Plaintiffs also argue that *Zona*, 270 AD2d 12, and *Pergament*, 171 AD2d 736, are distinguishable herein in that *Zona* the tenant did not seek the landlord’s consent at all and could not dissolve the assignment, and in *Pergament*, the tenant refused to provide the landlord with any financial information and did not offer to cure until after the motion court had rendered an adverse decision.

Discussion

Where the terms of a written contract are clear and unambiguous, the courts will enforce it according to its terms (see *W.W.W. Assoc. v Giancontieri*, 77 NY2d 157, 160 [1990]; *Automotive Mgt. Group, Ltd. v SRB Mgt. Co., Inc.*, 239 AD2d 450, 451 [1997]). The leases in question here clearly and unambiguously required tenants to “first” obtain the written consent of the landlords before any assignment of the leases. Notwithstanding that provision, the tenants chose to execute the assignments to AY Carlton, even though they had not received the written consent of the landlords. Indeed, the tenants chose to execute the assignments less than two weeks after sending their letter requests, before they received any response from the landlords, without trying to contact the landlords. The tenants’ assignment was clearly not permitted by the leases. Pursuant to Section 20.01(c), any assignment not made in a manner “permitted” by the contract is defined as an event of default. Finally, pursuant to Section 20.02, the landlords had the option to terminate the leases upon notice for any such defined event of default. The landlords have served the requisite notices in this

case. Thus, defendants have demonstrated that they are entitled to a judgment declaring that the assignments were improper and that the leases have been terminated.

Plaintiffs' argument otherwise are unavailing. For example, plaintiffs allege that the landlords' withholding consent was unreasonable. However, according to the clear terms of the leases, plaintiffs were required to obtain consent prior to assigning the leases, regardless of the reasonableness of withholding consent. Additionally, it is not clear that the landlords' withholding was unreasonable as a matter of law. First, the initial requests themselves provided virtually no information about the assignments, and so the landlords were justified in seeking additional information (*see e.g. 8902 Corp.*, 23 AD3d at 316 [consent to assignment not unreasonably withheld where tenant failed to provide required financial information]; *200 Eighth Ave. Rest. Corp.*, 293 AD2d at 353 [withholding consent reasonable where, among other things, tenant failed to timely provide financial information regarding proposed assignee]).

Moreover, even after plaintiffs responded, they refused, among other things, to provide specific financial information about AY Carlton itself, instead simply asserting that AY Carlton is "affiliated" with larger companies. Similarly, the proposed use of the premises—namely, demolition—would constitute a material change in use. As plaintiffs themselves note, financial responsibility and proposed use of the premises are both objective factors that landlords can use in determining whether to consent to an assignment (*see e.g. Sayed*, 10 AD3d at 720 [consent not unreasonably withheld based on materially different

proposed used]; *Kruger*, 105 Misc 2d at 23 [financial responsibility and proposed use constitute objective factors]).

Similarly, plaintiffs' argument that they are entitled to cure the improper assignment is not supported by the terms of the leases. The leases clearly and unambiguously give the landlords the option to terminate the leases in the event of a default. When the landlords chose to do so, the default became incurable (*see e.g. Zona*, 270 AD2d at 14 [finding tenant's unauthorized assignment to be an incurable default]). Plaintiffs' argument that there was no default because there was no transference of their interests is unpersuasive. Plaintiffs base this argument upon Section 14.03 (h), which states that an improper assignment may be rendered "null and void." However, that section also states that rendering the assignments null and void is "at Landlord's option." In this instance, the landlords did not choose to exercise this option. And, to the extent that plaintiffs argue that an improper assignment is automatically null and void, and thus not an event of default, that argument would render Section 22.01 (c), defining any unauthorized assignment as an event of default, meaningless.

Furthermore, if the tenants believed that the landlords were unreasonably withholding, or even delaying, their consent, the leases provided a specific and sole remedy; namely, to institute an "equitable action for specific performance" pursuant to Section 30.06 of the leases. The tenants chose not to utilize that option and so they cannot now try to cure their default in another manner. Moreover, the court notes that the tenants did not offer to undo the assignments until defendants brought the instant motion (*cf. e.g. Pergament*, 171 AD2d

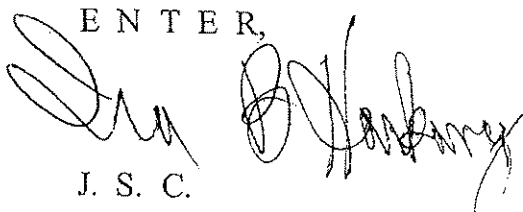
at 737 [Yellowstone injunction properly denied where, among other things, tenant did not indicate desire to cure until after an adverse court decision]).

Thus, the defendants have demonstrated that they should be awarded summary judgment on their third and fourth counterclaims, that plaintiffs' first cause of action should be dismissed, and that the *Yellowstone* injunction should be vacated. As to plaintiffs' third cause of action, and the other alleged defaults, the record indicates that there are disputed issues of fact, and so summary judgment is denied as to those issues.

Conclusion

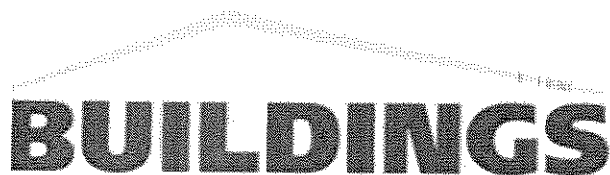
Accordingly, defendants' motion is granted to the extent that (1) plaintiffs' first cause of action is dismissed, (2) defendants are awarded partial summary judgment under their third and fourth counterclaims to the extent that the assignments to AY Carlton are declared in violation of the leases, and the leases are declared terminated, and (3) the *Yellowstone* injunction, issued in September 2003 and modified in May 2006, is vacated. Defendants' motion is otherwise denied. Plaintiffs' cross motion is denied in its entirety.

This constitutes the decision and order of the court.

ENTER,

J. S. C.

IRA B. HARKAVY
Justice of the Supreme Court

EXHIBIT G



CLICK HERE TO SIGN UP FOR BUILDINGS NEWS

NYC Department of Buildings

Application Data

Address: 750 PACIFIC STREET BROOKLYN
 Document No: 302255976

Document: 01 OF 1

Filed At: 750 PACIFIC STREET
 Job Type: NB - NEW BUILDING
 BIN: 3823506 Block: 1129 Lot: 6

[Items Required](#) | [Plumbing Insp](#) | [Forms Received](#) | [Schedule A](#) | [Schedule B](#) | [All Permits](#) | [Document Overview](#)
[Plan Exam Overview](#) | [Fee / Accounting Overview](#) | [C/O Application Summary](#) | [C/O Preview](#)
[Virtual Job Folder](#)

Location: Block: 1129 Lot(s): 6 BIN: 3823506 C.B.No: 314
 Apt No: Use: OTHER
 RANGE OF FLOORS: 001 THRU 010

Work Types Submitted: OT
 Description: GC

Current Applicant of Record: ARMANDO PORTO Phone: 631-831-0746
 A PORTO RAECTS
 111 SOUTH CENTRE AVE, New York, NY 11570

Professional Title: RA License Number: 209341

14 Applicant of Record: NOT APPLICABLE Phone:

Building Representative: FEKETE/MEI HERSHY/PEIXIA Phone: 718-599-1559
 BUILDERS ASSISTANCE CORP
 366 BROADWAY, BROOKLYN, NY 11211

Last Action: PLAN EXAM - APPROVED 12/22/2006 (P)

e-Filed: 11/16/2006 Date Filed: 11/20/2006
 Fees: STANDARD Estimated Total Cost: \$0.00 PC Filed: Y

Additional Considerations:

Directive 14: N	Old Code: N	Quality Housing: N	Site Safety: N
Infill Zoning: N	Loft Review: N	Single Room Occupancy: N	
Declaration:	Page:	Reel:	
Little 'E' Restrictions: N/A	Adult Establishment: N	Landmark: N	

b Description:

Plans Submitted: ZO - AR
Occupancy Classification: Existing: MULT DWELL: HAEB
Proposed: J-1 - RESIDENTIAL (HOTELS)
Construction Classification: PROP NON-COMB: 1-C

Zoning District: M1-1 - LIGHT MANUFACTURING DISTRICT (HIGH PERFORMANCE)
Special District: NONE
Sheet Status: PUBLIC
Map No.: 016C
null

Building Dimension:	No. Stories: 10	Street Frontage:
	Height: 119	Dwelling Units:
Total Gross Area of Building:	114,893 Sq. Ft.	Fill: ONSITE
Site Area Characteristics:		
Open Spaces:	Plaza:	Arcade:
	Parking:	Loading Berths:
	Parking Spaces:	Loading Berths:
Fire Protection Equipment:	SD:	
	SP:	
	FA:	

Setbacks and Bounds:

beginning at a point on the NORTH side of CARLTON AVENUE
DISTANT Ft. NORTHWEST of the corner formed by the intersection of CARLTON AVENUE and PACIFIC STREET
JUNNING THENCE SW 166 . 50 FT. THENCE E 20 FT.
JUNNING THENCE E 100 FT. THENCE N 120 FT.
JUNNING THENCE N 46 . 50 FT. THENCE NW 120 FT.
TOTAL NO. OF STORIES 10

Owner: CORPORATION **Non-Profit Flag:** N
VEINSTEIN HENRY PRESIDENT
PACIFIC CARLTON DEVELOPMENT CORP 37 MAPLE AVENUE 516 655 - 7431
CEDARHURST NY 11516
OCCUPANCY CERTIFICATION: N
OCCUPANCY NOTIFICATION: N

CORPORATION:

VEINSTEIN HENRY SECRETARY
7 MAPLE AVENUE CEDARHURST NY 11516 516 655 - 7431

Comments for Document 01:

GENERAL CONSTRUCTION OF A NEW 10-STORY BUILDING AND MERGE THE ZONING
LOTS ONLY BUT TAX LOTS 4,5, & 6 TO REMAIN.

[Plan Exam Overview](#) | [Fee / Accounting Overview](#) | [C/O Application Summary](#)
[Virtual Job Folder](#) |

u have any questions please review these [Frequently Asked Questions](#), the [Glossary](#), or call the 311 Citizen Service Center by dialing
or (212) NEW YORK outside of New York City.

[BIS Menu](#) | Application Data

EXHIBIT H

GOLDSTEIN, GOLDSTEIN, RIKON & GOTTLIB, P.C.

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PHILIP A. SANCHEZ*
JOSHUA H. RIKON
JONATHAN M. HOUGHTON**

MICHAEL J. GOLDSTEIN
OF COUNSEL

GARY BRANDLER
LEGAL ASSISTANT

*ALSO ADMITTED IN CT & MA
**ALSO ADMITTED IN MA

C

RE: ATLANTIC YARDS ARENA AND REDEVELOPMENT PROJECT
Pacific Carlton Development Corp. and 535 Carlton Avenue Realty Corp.
Block 1129, Lots 5, 6 and 13

October 7, 2005

O

Atlantic Yards
c/o Planning & Environmental Review
Empire State Development Corporation
633 Third Avenue
New York, New York 10017

Dear Sir/Madam:

P

I represent the owners of the property referenced as Block 1129, Lots 5, 6 and 13, which appear at Table 2 of the Draft Scope of Analysis for an Environmental Impact Statement, which is the subject of the public hearing on October 18, 2005. In the document, it is noted "the building located on Lot 13 of Block 1129 is currently vacant. However, under an agreement between FCRC, which controls the 30 a year ground lease for the property, and the party from whom FCRC purchased the lease rights, the building will soon be re-tenant-in-use as an office building until the property is needed for Phase II of the proposed project development." This is a false and misleading statement. The leases between my clients and the tenant of said property specifically required approval of any sub-lease or any related agreements. My client has not received a request for permission to sub-lease and certainly has not approved any sub-lease of the building. It is extremely unlikely knowing the sophistication of Forest City Ratner that such a statement would be made unintentionally or in error. I cannot fathom how a option or sub-lease could be entered into without reading the underlying leases.

Y

Atlantic Yards
October 7, 2005
page 2

The statement contained within the Draft Scope of Analysis is in error and, furthermore, is intentionally misleading. We request that this matter be investigated and corrected. Further, the allegation contained within the scoping document may be actionable as a slander on the title that my clients hold to the property.

Please make the immediate investigation and correct this error.

Very truly yours,

**GOLDSTEIN, GOLDSTEIN, RIKON &
GOTTLIEB, P.C.**

By: _____
Michael Rikon

MR/lg
cc/Henry Weinstein
via Fax (516) 908-6161

GOLDSTEIN, GOLDSTEIN, RIKON & GOTTLIEB, P.C.

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80 PINE STREET, 32ND FLOOR
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212 422-4000

FAX 212 422-4687
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MICHAEL J. GOLDSTEIN
OF COUNSEL
GARY BRANDLER
LEGAL ASSISTANT

*ALSO ADMITTED IN CT & MA
**ALSO ADMITTED IN MA

October 3, 2005

Certified Return Receipt Requested

Mr. Jeshayahu Boymelgreen
Pacific Street Park Corp.
535 Dean Street
Brooklyn, New York 11217

Re: Lease dated October 27, 1999
Block 1129, Lots 5, 6 and 13, Brooklyn

Dear Mr. Boymelgreen:

We represent 535 Carlton Avenue Realty Corp., the landlord in the above referenced lease.

It has been brought to my client's attention that the tenant has granted an option to the property and that a memorandum of the option agreement has been filed of record against the property.

Upon receipt of this letter, you are forthwith to provide the undersigned with full copies of the agreements entered into with the optionee.

Very truly yours,

**GOLDSTEIN, GOLDSTEIN, RIKON &
GOTTLIEB, P.C.**

By: 

Michael Rikon

MR/lg
cc/Groman Ross & Tishman P.C.
via Certified Mail Return Receipt Requested
cc/Henry Weinstein
via Fax (516) 908-6161
0:\COMMON\NEWBUSIN\236\Boymelgreen\Jeshayahu_04.rpd