

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
December 6, 2016
Part of
Public Record

Finance Docket No. 36078

JAMES RIFFIN – PETITION FOR DECLARATORY ORDER

REPLY OF FOREST CITY RATNER COMPANIES & G&S INVESTORS

James Riffin has made a long career of abusing the Board's processes in the hopes of personal gain. But his latest antics have reached a new low. The Petition for Declaratory Order he filed in this proceeding ("Petition") is a last-ditch effort to avoid dismissal of a federal court case he filed against Forest City Ratner Companies ("Forest City")¹ and G&S Investors ("G&S") in an effort to block construction of a new development on the site of a shopping center in Jersey City, New Jersey. Construction would not be blocked because of any real intent to operate a railroad on the shopping center site—rather, the purpose is to inflict harm on the community and innocent third parties in the hope that Mr. Riffin could extract a financial windfall in exchange for allowing construction to proceed.

This is not a hypothesis about Mr. Riffin's intentions. It is a plan he described in his own words.² And he has claimed that he has been promised compensation if

¹ Mr. Riffin misnamed the Forest City entity as Forest City Ratner Companies. FCRG, LLC is the actual name of the co-investor.

² See James Riffin Memorandum to Bruce Nagel (attached as Exhibit 1). Exhibit 1 was previously presented to the Board as Exhibit G to a Motion for Sanctions filed in Docket No. AB-167 (Sub-No. 1189X) on September 15, 2016.

his plan is successful.³ The Board should not exercise its discretion to allow Mr. Riffin to continue to abuse the Board's processes in the hopes of personal gain. While Mr. Riffin claims that he filed this Petition to "resolve a controversy," to "reduce/eliminate uncertainty," and to "reduce/eliminate future litigation," the truth is the opposite. Pet. ¶ 1. Mr. Riffin has filed this Petition in an attempt to create controversy, to stir up uncertainty, and to revive his own meritless litigation.

The Board should reject this improper petition expeditiously to remove the cloud of uncertainty that Mr. Riffin is trying to generate over a valuable redevelopment project that is broadly supported by the community. Forest City and G&S respectfully request that the Board reject the Petition within 60 days of this filing.

I. Background

Forest City and G&S Investors are working to redevelop a shopping center known as Metro Plaza in Jersey City, New Jersey. Metro Plaza has been used as a shopping center for decades, with tenants consisting of a Pep Boys, Shoprite, Bed Bath & Beyond, and a BJ's Warehouse. With the support of the City of Jersey City and State of New Jersey, Forest City and G&S are in the process of redeveloping Metro Plaza by erecting 12 multi-story structures, one of which is a 35-story apartment building currently under construction at the former location of the Pep Boys. The new project—Hudson Exchange West—will incorporate new residential, retail, and green space into the downtown waterfront area, and the first phase will

³ See Gregg Wasser Certification (attached as Exhibit 2).

set aside 20% of new residential units in the building under construction for affordable housing. It will represent the first large-scale mixed income project in Jersey City in over 20 years.

The project has strong support from Jersey City, the State of New Jersey, and local officials. The Mayor of Jersey City has called the project “one of our administration’s highest economic development priorities” because it “represents the first phase of a landmark redevelopment at Harsimus Cove that will redefine that area for years to come.”⁴ The Mayor expressed a desire to “see[] this catalytic project proceed” and noted that it is “the critical first step in the broader Harsimus Cove Redevelopment Plan.” *Id.* Moreover, the Board of Commissioners of the Jersey City Redevelopment Agency has specifically found the redevelopment project to “be in the best interests of the City’s inhabitants.”⁵

The project also has major support at the State level. The New Jersey Economic Development Authority approved a \$40 million State Economic Redevelopment and Growth Tax Credit Incentive Grant to support construction.⁶

Before Metro Plaza was a shopping center, a portion of this property was part of a Conrail rail yard. However, Metro Plaza contains no rail infrastructure, includes no potential rail shippers, and has been used as a commercial shopping

⁴ Exhibit 3 at 1 (Letter from Mayor Fulop to N.J. Economic Development Authority, Feb. 18, 2015).

⁵ See Exhibit 4 at 2 (Resolution of Board of Commissioners of Jersey City Redevelopment Agency).

⁶ See Exhibit 5 (Letter from New Jersey Economic Development Authority to G&S, Oct. 6, 2015).

center since 1994. The property's current use, as the Mayor describes it, is an "underutilized big box retail site." Exhibit 3 at 1. Forest City and G&S are the first developers to begin the transformation of the space into "thousands of residential units, over 300,000 square feet of retail, and 2.5 acres of open space" in what will be "a vibrant 24/7 live, work, and play environment." *Id.*

Threatening this redevelopment plan is James Riffin, who in August 2016 filed suit against Forest City and G&S Investors in New Jersey District Court, claiming that the former rail yard at the site of Metro Plaza was actually the site of several lines of railroad subject to STB jurisdiction and that Mr. Riffin had the right to stop all construction to preserve "rail assets." *See Riffin v. Forest City Ratner Cos. et al.*, No. 16-cv-04433-ES-JAD (D.N.J. filed July 20, 2016). As detailed below, a memorandum drafted by Mr. Riffin himself suggests that his purpose for bringing this lawsuit was not to preserve the nonexistent "rail assets" at a shopping center but actually to impede a widely supported public project so as to force a settlement that would personally benefit Mr. Riffin financially. *See Exhibit 1 and infra* at 9-10.

In defending the lawsuit, Defendants argued, among other things, that Mr. Riffin had no property interest or cognizable injury that could give him standing to sue.⁷ Mr. Riffin claimed that he had standing to sue because he was a potential

⁷ Defendants' Reply Brief in Further Support of Their Motion to Dismiss the Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6) at 5, *Riffin v. Forest City Ratner Cos. et al.* (filed Sept. 14, 2016) ("Defendants' Reply Brief").

OFA purchaser in the Harsimus Cove Abandonment Proceeding⁸ and that this status created a property right that allowed him to enjoin all construction at Metro Plaza. Defendants argued to the contrary that a notice of intent to file an OFA created no property rights that would provide Mr. Riffin with standing in District Court.⁹

That dispute was rendered moot, however, when Mr. Riffin's misconduct caused Administrative Law Judge Dring to dismiss Mr. Riffin from the abandonment proceeding.¹⁰ Judge Dring's dismissal thus eliminated the only fact Mr. Riffin had cited as a basis for having standing. As a last ditch effort to salvage his complaint, Mr. Riffin filed the instant Petition on the eve of a November 17, 2016 motions hearing in the federal court case. He then argued at the motions hearing that the Petition was grounds for the court to stay proceedings rather than to dismiss his case outright. Despite Mr. Riffin's attempted surprise tactics, the Court nevertheless dismissed Mr. Riffin's action without prejudice, with leave to refile upon the conclusion of any proceedings before the STB.

⁸ The Harsimus Cove Abandonment Proceeding is pending as *Consol. Rail Corp. – Abandonment Exemption – in Hudson Cty., NJ*, Docket No. AB 167 (Sub-No. 1189X); *CSX Transp. Inc. – Discontinuance of Serv. Exemption – In Hudson Cty., NJ*, Docket No. AB 55 (Sub-No. 686X); *Norfolk S. Ry. Co. – Discontinuance of Serv. Exemption – in Hudson Cty., NJ*, Docket No. AB 290 (Sub-No. 306X).

⁹ Defendants' Reply Brief at 6.

¹⁰ Order, *Consol. Rail Corp. – Abandonment Exemption – In Hudson Cty., NJ*, Docket AB 167 (Sub-No. 1189X) (served Oct. 24, 2016).

II. The Board Should Deny Mr. Riffin's Petition For Declaratory Order.

The Board should deny Mr. Riffin's Petition for Declaratory Order for two reasons. First, the Board should not grant a petition that is plainly intended to be an attempted end-run around Judge Dring's order dismissing Mr. Riffin from the abandonment proceeding. Second, the Board should not open a proceeding brought solely for the purpose of extracting some financial leverage. Mounting evidence shows that Mr. Riffin's actions are motivated by hopes of a financial windfall in a "settlement agreement" (Pet. ¶ 50), not any real commitment to rail service on property that has been used for nonrail purposes for decades. He has indicated that he expects to receive a share of any settlement in the Harsimus Cove Abandonment, and his own memorandum shows that he planned to bring suit to interfere with the Metro Plaza construction as a means to extract a settlement favorable to Mr. Riffin and his claimed allies. The Board should not allow Mr. Riffin to abuse its processes to achieve these ends.

A. The Board should not grant a petition for declaratory order that is an end run around Judge Dring's order dismissing Mr. Riffin from the abandonment proceeding.

This Petition for Declaratory Order is a patently improper attempt to sidestep Judge Dring's October 24, 2016 order dismissing Mr. Riffin from the abandonment proceeding and forbidding him from filing any more pleadings except an appeal of that dismissal.¹¹ Mr. Riffin's attempt to open another docket to litigate issues already presented in the abandonment proceeding violates those orders.

¹¹ Order, *Consol. Rail Corp. – Abandonment Exemption – In Hudson Cty., NJ*, Docket AB 167 (Sub-No. 1189X) (served Oct. 24, 2016).

The Board has no cause to open a parallel proceeding simply because Mr. Riffin's own misconduct caused him to be dismissed from the abandonment proceeding.¹² Mr. Riffin cannot be allowed to circumvent Judge Dring's Order simply by raising the same issues in a new proceeding.

While Mr. Riffin's Petition is not a model of clarity, it is clear enough that many of the issues he seeks to litigate here are within the scope of the pending Harsimus Cove Abandonment proceeding. His basic assertion appears to be that the Harsimus Cove Yard properties at the end of the Harsimus Cove Embankment (*i.e.*, east of Marin Boulevard) were actually the locus of multiple lines of railroad (not nonjurisdictional yard tracks), and that certain other nearby properties (including a city street) also are actually lines of railroad under the Board's jurisdiction.

On the merits, of course, yard tracks are a quintessential example of the sort of ancillary track for which abandonment authority is not required.¹³ And in any event, the Harsimus Cove Abandonment proceeding already encompasses any Conrail rail lines that existed east of Marin. While Conrail has always maintained that no rail lines existed east of Marin Boulevard, its notice of abandonment explicitly sought abandonment of both the Embankment and any railroad right-of-

¹² See *id.* at 2 (finding that Mr. Riffin had failed to respond to discovery requests and orders from Judge Dring to comply with those requests and that Mr. Riffin's "deportment suggests evasiveness, deliberate obtuseness, faulty memory, and mental reservation").

¹³ See 49 U.S.C. § 10906; *Nicholson v. ICC*, 711 F.2d 364 (D.C. Cir. 1983) (rail yard used for switching and not main or branch line and therefore not subject to ICC jurisdiction); *Nicholson v. Mo. Pac. R.R. Co.*, 366 I.C.C. 69, 73 (1992) (noting that ICC was not aware of any case in which construction of a yard was found to require ICC approval and that "in the few instances in which it has been raised, yard track has been found clearly exempt").

way that existed east past Marin Boulevard. Conrail explained that it was doing so out of an abundance of caution.¹⁴

Accordingly, the core questions and controversies that Mr. Riffin asks the Board to consider in his Petition are already encompassed in the abandonment proceeding. The fact that Mr. Riffin's misconduct has caused him to be ejected from that proceeding certainly creates no reason for the Board to open a new proceeding to consider those same questions.

B. *The Board should not open a proceeding that has been brought for an improper purpose.*

Because opening a declaratory order proceeding is a discretionary act by a Board that has limited resources, the Board does not open such proceedings unless some important controversy or uncertainty could be resolved by a proceeding.¹⁵ Mr. Riffin is bringing this Petition not to resolve uncertainty or controversy, but to create them. The Board should not allow Mr. Riffin to proceed any further with this improper tactic.

¹⁴ Supplemental Environmental and Historic Report at 4, *Consol. Rail Corp.—Abandonment Exemption—In Hudson County, NJ*, Docket No. AB 167 (Sub-No. 1189X) (filed Feb. 26, 2009) (“[T]o avoid any debate about the issue, Conrail is seeking abandonment of all of Harsimus Branch property that Conrail was deeded that could be claimed to be a line of railroad.”).

¹⁵ See 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 (the Board has discretionary authority to issue a declaratory order to eliminate a controversy or remove uncertainty). The Board has recently refused to issue a number of Petitions for Declaratory Order. See, e.g., Order, *Tesoro Ref. & Mktg. Co., LLC – Petition for Declaratory Order*, Docket No. FD 36041 (served Nov. 14, 2016) (denying request to issue a declaratory order); Order, *Nw. Pac. R.R. Co. – Petition for Declaratory Order*, Docket No. FD 35977 (served April 25, 2016) (declining to issue a declaratory order).

The Hudson Exchange West project is broadly supported by all stakeholders. It is being built on former yard property—not a former rail line—which has been used for nonrail purposes for decades. There was never any uncertainty or controversy about the site until Mr. Riffin arrived on the scene. Mr. Riffin’s Petition does not raise any legitimate issue not already before the Board in another proceeding. Accordingly, there is no controversy or uncertainty for the Board to resolve, and the Board should not grant Mr. Riffin’s Petition.

Moreover, there is good reason to believe that Mr. Riffin is not operating in good faith. Mr. Riffin has indicated that he is motivated by the hope of extracting a share of a financial settlement. For example, Mr. Riffin has claimed that he had some arrangement with the LLCs involved in the abandonment Embankment property, under which Mr. Riffin would receive a portion of any settlement. *See* Exhibit 2. As Mr. Wasser attests, Mr. Riffin told Mr. Wasser that “he had told Mr. Hyman that he wanted 5% of whatever monetary recovery the LLCs might obtain through the resolution of their dispute with Jersey City and Conrail.” *Id.* at 2.

Furthermore, documents produced in discovery (and appended to public pleadings) include a November 21, 2015 memo from Mr. Riffin outlining a plan in which he would seek an injunction to halt construction at Hudson Exchange West pending an OFA that he would then “lift” in exchange for a favorable financial settlement for Mr. Riffin and the Hyman LLCs. *See* Exhibit 1. In this Memo, Mr. Riffin lays out the “Ultimate Goal” as “[p]ersuad[ing] Conrail to negotiate a settlement with Steve Hyman, Jersey City, Riffin and Wasser/Forest City.” *Id.* at 1.

The “Path to Goal” Mr. Riffin foresaw was to “Enjoin Wasser/Forest City from development of the Metro Plaza property,” after which Mr. Riffin would “agree to lift injunction, providing Conrail negotiates an acceptable settlement.” *Id.*

And most tellingly, Mr. Riffin’s Petition was filed as a last-ditch effort to establish standing in his district court action after Mr. Riffin was dismissed from the abandonment proceeding (for failure to comply with discovery asking him to disclose any coordination with Mr. Hyman or the LLCs). Mr. Riffin was dismissed from the abandonment proceeding on October 24, 2016. On November 17, 2016, Mr. Riffin was scheduled to appear at a motions hearing in the district court matter, to argue against a motion to dismiss that proceeding due to Mr. Riffin’s lack of standing. The night before that oral hearing—November 16, 2016—Mr. Riffin filed his Petition for Declaratory Order with the Board. Mr. Riffin knew that without some proceeding before the Board he would undoubtedly be found to lack standing in district court. So, on November 17, he argued that the Petition was a new basis for his standing. While the district court nevertheless dismissed the proceeding, Mr. Riffin’s tactic in filing this Petition is clear: it is an attempt to create yet another legal hook in the hopes of prolonging this litigation and securing a share of a financial settlement.

Mr. Riffin’s interference with this development project appears to be unending. In a recent letter to Magistrate Judge Dickson in the district court, Mr. Riffin states that he “expects much litigation” and states that “[if] the STB declines to institute a declaratory order proceeding, Riffin will then file a Complaint in the

Special Court, asking the Special Court to determine what was conveyed to Conrail.”¹⁶

The Board should not let itself be manipulated by Mr. Riffin to open a proceeding that has no purpose but to serve his admitted goal of interfering with a valuable redevelopment project in the hope of a financial settlement to his benefit.

III. The Board Should Deny Mr. Riffin’s Petition Expeditiously.

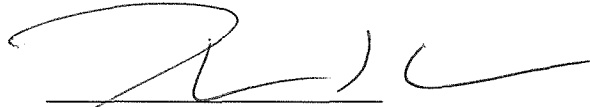
For the above reasons, Mr. Riffin’s petition should be denied. Moreover, the Board should deny the petition expeditiously. While Mr. Riffin’s baseless litigation has not yet succeeded in his goal of blocking development of Hudson Exchange West, those litigation efforts have created unnecessary distractions and uncertainty. Following phase 1, in 2017 Forest City and G&S Investors plan to immediately proceed with the next phase of the project. In total there are planned to be twelve mixed-use towers in the overall development plan. The project will deliver billions of dollars of total economic activity, thousands of construction jobs and much-needed affordable housing for the City and region.

It is critical for the STB to dispel any uncertainty created by Mr. Riffin’s meritless petition soon so that Forest City and G&S Investors can finalize planning and proceed with the next phase of the project. As they pursue this critical redevelopment project, Forest City and G&S Investors are entitled to be free as soon as possible from the specter of Mr. Riffin’s vexatious and frivolous claims and from

¹⁶ Motion for Leave to File a Reply to Defendant’s November 29, 2016 Letter to Judge Dickson at 3, *Riffin v. Forest City Ratner Cos. et al.* (filed Nov. 30, 2016) (emphasis omitted).

his threat to have construction enjoined. Forest City and G&S Investors request that the Board dispel this uncertainty as soon as possible by denying Mr. Riffin's petition within 60 days of this filing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Matthew J. Warren', is written over a horizontal line.

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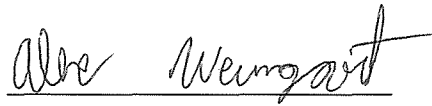
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Counsel to Forest City Ratner Companies and G&S Investors

Dated: December 6, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December, I caused a copy of the foregoing Reply to Petition for Declaratory Order to be served by first class mail or more expeditious method upon the service list for this proceeding.

A handwritten signature in cursive script, reading "Alec Weingart", is written over a horizontal line.

Alec Weingart

Exhibit 1

to

Reply of Forest City Ratner Companies & G&S Investors

Finance Docket No. 36078

JAMES RIFFIN – PETITION FOR DECLARATORY ORDER

Subject: Fw: letter to bruce nagel
From: Eric Strohmeier (esstrohmeyer@yahoo.com)
To: c.montange@frontier.com;
Date: Monday, June 13, 2016 2:53 PM

This this the email I called you about.

Eric

On Saturday, November 21, 2015 10:21 PM, jim riffin <jimriffin@yahoo.com> wrote:

Hyman talked to Nagel today. He has some interest. This is what I sent to him.

Attachments

- STB NJ AB 167 1189 L-1 to Nagel 11-21-15.pdf (103.64KB)

FROM: James Riffin P.O. Box 4044 Timonium, MD 21094 (443) 414-6210
jimriffin@yahoo.com

TO: Bruce Nagel Nagel Rice 103 Eisenhower Parkway Roseland, NJ 07068
Bnagel@naglerice.com (973) 18-0400

DATE: Saturday November 21, 2015

RE: Steve Hyman's Embankment properties.

Hudson Exchange West [Metro Plaza] Property bounded by Marin Blvd on the West,
2nd Street on the South, Light Rail on the East, Gangemi (6th St) on the North.
Bought by / owned by: **Gregg Wasser** G& S Investors.
Being developed by: **Forest City Ratner** Companies of NY, NY.

ULTIMATE GOAL: Persuade Conrail to negotiate a settlement with Steve Hyman, Jersey City,
Riffin and Wasser / Forest City.

PATH TO GOAL: Enjoin Wasser / Forest City from development of the Metro Plaza property.
Wasser / FC sue Conrail for \$800 million. I agree to lift injunction,
providing Conrail negotiates an acceptable settlement.

ACCEPTABLE Settlement: **Conrail** deeds to Hyman the 12 acres +/- West / North of Newark
Avenue. Conrail gives Hyman \$5 million in cash. Conrail gives Riffin: The segment of
the Harsimus from Marion Junction (1/2 mile west of Journal Square) to where the Harsimus
leaves the PATH r/w; The Harsimus rr easement from Waldo Street to the Light Rail line;
The D&H's Terminal Rights at Oak Island; Use of the Bayonne Industrial Track; Trackage
rights from Jersey City to: Lakehurst, NJ, Manville, NJ, Oak Island Terminal, Bound Brook,
NJ. Norfolk Southern gives Riffin trackage rights to Scranton, PA. CSX gives Riffin
trackage rights to Belle Mead, NJ. Conrail, NS, CSX, give Riffin some surplus locomotives,
open hopper and covered hopper cars, LP tank cars.

Jersey City grants development rights on the Embankment and Conrail's 12 acres

Hyman grants to Jersey City 3 Embankment tops, for park purposes.

Hyman gets a percentage interest in the Embankment / Conrail's 12 acres development.

Forest City gets to be the developer for the Embankment and Conrail's 12 acres.

Three high-rises are built on 3 Embankments. More high-rises are built on Conrail's 12
acres. A monorail is built connecting Journal Square / the hi-rises / Light rail.

Solar cells are installed on all hi-rises. Natural gas fuel cells provide electricity and some
water for the hi-rises.

LEGAL ARGUMENTS: Status quo of RR r/w subject to Offer of Financial Assistance
("OFA"), must be maintained, until OFA process has been completed. (Cannot change the
nature, status of r/w.) Cannot build on RR r/w, until OFA process has run its course. (See
Vicksburg, MS Glass Road decision.) Riffin granted right to file an OFA. (See November

2, 2015 STB decision.) Riffin has equitable title to RR r/w. Riffin has standing to sue in U.S. District Court to enjoin Forest City Ratner from building on RR r/w. (Federal question involved.)

Wasser / FC can sue Conrail per 49 U.S.C. 11704(b). [Carrier liable for damages sustained by a person as a result of an act or omission of that carrier in violation of the Interstate Commerce Act.] Conrail failed to follow dictates of 49 U.S.C. 10903. [Sold / abandoned line without prior STB authority.] Wasser / FC damaged. Can sue in U.S. District Court. [See 11704(c)(1).] Wasser / FC get attorney fees. [See 11704 (d)(3).]

Even though Conrail sold the real estate under the Harsimus line of railroad, per 49 U.S.C. 10903, 11901, and 11906, Conrail could not lawfully sell the 'line of railroad' easement impressed on the real estate under the Harsimus line of railroad, without STB authority. Nor could Wasser buy the line of railroad / easement impressed on the Harsimus line of railroad. See 49 U.S.C. 10901(a)(4).

Therefore, Conrail still 'owns' the Harsimus line of railroad easement impressed on the Metro Plaza real estate, and 'owned' that railroad easement in 2009, when Conrail filed to abandon the Harsimus line of railroad.

Lines of Railroad

A track, and the right-of-way associated with the track, can become a "line of railroad" two ways:

- A. The Interstate Commerce Commission ("ICC") / Surface Transportation Board ("STB") can expressly authorize its creation. See 49 U.S.C. 10901(a) (1) and (2). [New construction (2), or the extension of an existing line of railroad into new territory, over newly constructed track, or over existing non-line of railroad track owned by another carrier (1).]
- B. If a non- 'line of railroad' track (such as a yard, spur, switching, passing track):
 - a. **Is used** for the movement of **'through'** rail cars (as opposed to 'local' traffic)
AND
 - b. **Is used** to carry rail cars to **more than one shipper**. See *Effingham* and Texas Steel mill case.

Once a track becomes a 'line of railroad,' it remains a 'line of railroad,' until such time that abandonment authority is granted, and exercised. See *Kalo Brick* and *Texas / Mexican RR* cases.

Non line-of-railroad track **can be** converted into a 'line of railroad' track. See *Effingham*.

A 'line-of-railroad' track **cannot** be converted into non- line of railroad (Excepted) track. (It first must be abandoned (as a line of railroad).

"Excepted" track

Non- 'line of railroad' track is known as **"excepted"** track. See 49 U.S.C. 10906. Excepted track is subject to the exclusive jurisdiction of the STB. However, it is **not regulated** by the STB. That is, it can be sold, removed, or installed / removed, **without** prior STB authority.

Line Codes 1420 and 1440

Line Codes 1420 (Passaic and Harsimus) and 1440 (Hudson Street Industrial Track), were conveyed to Conrail on **April 1, 1976, pursuant to the Final System Plan ("FSP")**. Only those two "lines of railroad" were **conveyed** to Conrail via the FSP. The FSP also conveyed to Conrail all tracks and rail assets / properties, associated with those two line codes. **But NOT as "lines of railroad."**

Line Code 1440 was the **Hudson Street Industrial Track**. It started in the Harsimus Cove Yard. It traversed south, down Hudson Street, to Essex street, then went West, in the bed of Essex street. It served at least seven shippers, the largest shipper being the Colgate Company.

Line Code 1420 was the United New Jersey Railroad and Canal Company's **Passaic and Harsimus Branch**. It originally started at Exchange Place (MP 0.0), on the Hudson River. (At the East end of present day Columbus Blvd.) When it was built (in **1867**), it followed the bed of the present day Columbus Blvd, to the present-day PATH maintenance-of-way facility (bounded by Columbus Blvd on the South) [**MP 1.0**]. It then paralleled the PATH right-of-way, to Harrison (Kearny), NJ. [To MP 7.0.]

The original Passiac and Harsimus Branch carried **both** passenger and freight rail traffic. In **1871**, the Pennsylvania Railroad ("**PRR**") leased the Passiac and Harsimus Branch for 999 years. In **1901** the PRR decided to **re-route** freight traffic along 6th Street. It built an elevated line from the Jersey City Cemetery (on Newark Avenue, East of Waldo Street), parallel to, and adjacent to, 6th Street, to the Harsimus Cove Yard. The portion of the elevated line between Brunswick Street and present day Marin Blvd (**formerly Henderson Street**), was called **The Embankment**.

As of **1905**, all Passiac and Harsimus **freight traffic** was routed over The Embankment. All Passenger traffic was routed down the original Passiac and Harsimus Branch (down present-day Columbus Blvd).

In the 1960's, the PRR decided to **cease passenger** service on the Passiac and Harsimus Branch. In **1961**, the PRR **abandoned** the segment of the original Passiac and Harsimus that traversed over present-day Columbus Blvd. (Abandoned its Passenger Line, **from MP 0.0** (Exchange Place) **to MP 1.0** (Columbus at Brunswick.) Freight traffic continued to move over

the Embankment segment.

On **April 1, 1976**, the assets of the Penn Central and the United New Jersey Railroad and Canal Company, were conveyed to Conrail via the Final System Plan. See FSP p. 282. Line Codes 1420 and 1440 were expressly conveyed to Conrail. Only that portion of Line Code 1420 that was between MP 1.0 (original Passiac and Harsimus at Columbus and Brunswick) and MP 7.0 (Harrison / Kearny, NJ), was conveyed to Conrail. (Remember, in 1961, the PRR abandoned that segment between MP 0.0 and MP 1.0, when the PRR abandoned its passenger service.)

Line Codes 1420 and 1440 included all rail assets associated with those two line codes, such as yard, spur, passing and switching tracks, and all real estate associated with those two line codes.

Prior to Conrail's acquisition of the Passiac and Harsimus **freight** line of railroad, (Line Code 1420), all freight traffic traversed over the Embankment tracks, to the Harsimus Cove Freight Yard. Shortly after Conrail acquired Penn Central's Jersey City rail assets, Conrail named the Embankment right-of-way, the **Harsimus Branch**.

The Harsimus Branch, as it crossed Marin Blvd, had **six tracks**. Historic aerials (1954 and 1966), and the Valuation Maps for the Harsimus Cove Yard, show the location, and uses, of the six tracks that crossed Marin Blvd.:

Track One: The northern-most track went to two shippers on the north side of the pier that today is an extension of 6th Street ("**Pier**") [**Elk Warehouse and Chicago Shippers.**]

Track Two: The second track down went to the car float at the end of the Pier.

Track Three: The third track down went to the south side of the Pier. Bulk commodities (such as coal) were off-loaded from rail cars to barges anchored to the south side of the pier.

Track Four: Went to three more car floats south of the Pier.

Track Five: Went around the northern part of the Harsimus Cove Yard, and connected to the Hudson Street Industrial Track. It also was used to route cars to the **William J. Morris** Company, a freight consolidator that had bought 24 acres of the water-front portion of the Harsimus Yard in 1973 / 1974.

Track Six: Went around the southern part of the Harsimus Cove Yard. It connected to the track that served shippers located along Provost Street. A number of spur tracks branched off this track, and served warehouses along the East side of Marin Blvd, between Second Street and Fifth Street.

1979

A 1979 aerial map of the Harsimus Cove Yard depicts only two tracks crossing Marin Blvd: Tracks Two and Three.

Track Two was used to serve shippers located on the Pier: Elk Warehouse, Chicago Shippers, and the barges being loaded on the south side of the Pier. The car float at the end of the Pier, was no longer in use.

Track Three was interconnected to Tracks Two, Four, Five and Six. It was used to service William J. Morris, Manischewitz, and shippers located adjacent to the Hudson Street Industrial track.

Rail Traffic in 1984 / 1974

For the 12-month period ending September 30, 1984, the following shippers received the following number of rail cars:

	1984	1974
	<u>Carloads</u>	<u>Carloads</u>
Elk Warehouse:	364	
Chicago Shippers:	1,403	
Wm. J. Morris:	186	4,938
U. S. Packing:	?	6,991
Manischewitz:	35	
Hudson Street Industrial Track Shippers:		
Colgate:	1,068	
Refined Onyx:	107	
'B' Line Trucking:	41	

LINES OF RAILROAD IN 1976

On **August 9, 2007**, the STB, in FD 34818, held that the Embankment Segment [between MP 0.0 (Waldo Street) and MP 0.88 (West side of Marin Blvd)] was conveyed to Conrail via the FSP as Line Code 1420, and was conveyed to Conrail as a "line of railroad."

As stated above, Excepted track (yard, spur, switching, passing track) can be, and will be, as an operation of law, converted into "Lines of Railroad," if they are used for "through" rail traffic, and are used to serve more than one shipper.

Even though neither the STB nor the Special Court expressly held that the Harsimus Branch (Line Code 1420) **East** of Marin Blvd. was a 'line of railroad' when Conrail acquired the Harsimus / Line Code 1420 in 1976, Conrail is judicially estopped from arguing that the Harsimus / Line Code 1420 East of Marin Blvd **is not** a 'line of railroad.' (Jersey City only asked the STB and Special Court to rule on the status of the Harsimus / Line Code 1420 between

Waldo Street and the West side of Marin Blvd.) Conrail's abandonment petition says the Harsimus / Line Code 1420, lies between MP 0.0 (Waldo Street) and MP 1.36 (East of Washington Street). Conrail, in a separate pleading, says MP 0.88 is at the West side of Marin Blvd. So there must be 0.47 miles of Line Code 1420 'line of railroad' East of the West side of Marin Blvd. That means the Harsimus / Line Code 1420 'line of railroad' continues across the Metro Plaza property.

Conrail's 1988 ZTS charts identify the track traversing the Embankment, as Track 215. (200 series tracks are 'lines of railroad.'). Within the Harsimus Cove Yard, track 210 (Hudson Street Industrial Track), branches off of track 215. Track 215 then divides into tracks 731, 732 and 733, which tracks service "William J. Morris." (A freight consolidator, who bought two parcels from Penn Central in 1973 (10 ac, Parcel 'A') / 1974 (14 Ac, Parcel 'B'). See 3144 / 361 (May 11, 1973) and 3165 / 1 (May 29, 1974)

By 1979, only two of the six tracks that crossed Marin Blvd, were being used by Conrail. Those two tracks interconnected with the former Tracks One to Six. The segments of former Tracks One to Six that were in the Harsimus Cove Yard, were used to serve the shippers on the north side of the Pier (Elk Warehouse / Chicago Shippers, served via **Tracks One and Two**), the barges on the south side of the Pier (served via **Track Three**), William J. Morris (served via **Track Five**), and the Hudson Street Industrial Track (served via **Tracks Five and Six**).

Whether Tracks One to Six were **conveyed** to Conrail as lines of railroad, is irrelevant. What is relevant, is how Conrail **used** Tracks One to Six.

Conrail **used** Tracks One to Six for the movement of **through** traffic to **more than one shipper**. Conrail's **use** of Tracks One to Six caused Tracks One to Six to become "lines of railroad."

Once a track becomes a 'line of railroad,' it stays a 'line of railroad,' until abandonment authority is obtained, and exercised. See *The Atchison, Topeka and Santa Fe Railway Company – Abandonment Exemption – In Lyon County, KS*, Docket No. AB-52 (Sub-No. 71X), slip op. at 5 (ICC Served June 17, 1991). ["Because this track was clearly part of a rail line at one time, we find that it cannot be converted into an exempt spur ... solely through the railroad's unilateral decision to change its use of the track segment over time."]

On the 1979 Aerial, and on the Val Map for the Harsimus Cove Yard, Tracks One, Two and Three can be seen going due East from Marin Blvd, to the Pier on the water front. That puts a 'line of railroad' north of the Pep Boys site. Tracks Five and Six can be seen going diagonally across the Metro Plaza land. Spur tracks can be seen branching off of these 'main line' 'lines of railroad.

Yard tracks can be seen branching off the diagonal 'lines of railroad.' Yard tracks, and the land under yard tracks, can potentially be abandoned / sold, without STB approval. (So long as no OFA is filed to acquire the 'line of railroad' adjacent to those yard tracks. Under the OFA process, land adjacent to the line of railroad being abandoned, can also be acquired, even if it has

previously been sold. See *Railroad Ventures*.)

On **August 19, 1985**, Conrail sold the 18-acre parcel where Metro Plaza is currently located, to **National Bulk Carriers**. See Liber 3468, folio 64. On page 65 of that deed, Conrail reserved a **permanent 50-foot wide easement along the entirety of the northern boundary of the parcel sold to National Bulk Carriers, to be used for continued rail operations.**

Conrail never has sought, nor received, authority to abandon that rail easement. Consequently, it still exists.

On p. 66 of the National Bulk Carriers' deed, Conrail reserved a **temporary easement** to continue serving shippers William J. Morris and Manischewitz. Since the easement was being used to serve two shippers, the easement was being used as a 'line of railroad.' And once a 'line of railroad,' always a 'line of railroad.' Consequently, even though Conrail characterized the easement as being 'temporary,' it in fact was a 'permanent' easement, since it was a 'line of railroad' easement. See *Atchison, Topeka and Santa Fe Railway Company – Abandonment Exemption – In Lyon County, KS*, Docket No. AB-52 (Sub-No. 71X), ICC served June 17, 1991.

PRESENT DEVELOPMENT

Forest City's **first** hi-rise **is being built** (construction started 9-3-15) on the Pep Boys site. Forest City's **second** hi-rise **is to be built** further south, (construction to start in 2016-2017) clearly on the diagonal 'line of railroad' right-of-way.

Conrail, and Forest City, would try to argue that the Pep Boys land was lawfully sold to National Bulk, due to it being Yard tracks, and that the Pep Boys land is no longer subject to the STB's jurisdiction.

However, the National Bulk deed expressly reserves a 50-foot wide easement across the northern boundary of the National Bulk property (which is the northern boundary of Forest City's property).

The National Bulk deed also reserves 'temporary' easements across the center portion of the National Bulk / Metro Plaza property, which Riffin will argue, still exist, since they are 'lines of railroad' easements, which have never been abandoned.

Riffin's strategy

Riffin desires to stop **all** construction, including construction on the Pep Boys site. To do that, it must be established that the Pep Boys site is still subject to the STB's jurisdiction, and is still subject to the OFA process.

Argument: Pep Boys site is still subject to STB jurisdiction

Most Powerful Argument

Riffin's most powerful argument, is that the National Bulk deed expressly reserved a 50-foot wide easement across the northern boundary of the Metro Plaza parcel. Where Forest City is presently driving piles, is clearly within that 50-foot wide easement.

Riffin's second argument, is that the 'temporary' easement was not 'temporary.' Because the easement was used to serve more than one shipper, the easement was used as a 'line of railroad,' which has never been abandoned.

Riffin's third argument:

A 'line of railroad' includes the land adjacent to the 'line of railroad' tracks. A line of railroad's tracks can be placed anywhere within the line of railroad's right-of-way.

The land between the outer-most tracks within a railroad right-of-way, is a part of the 'line of railroad' right-of-way.

Per *Iowa Terminal*, *Railroad Ventures*, and *Boston & Maine*, an OFA offeror can acquire, in an OFA proceeding, land adjacent to a line of railroad's right-of-way, **which land was acquired by the railroad when it acquired the line of railroad**, so long as the adjacent land is 'needed for operation of the line of railroad.'

Land that was 'sold' prior to filing an abandonment petition, can still be acquired via the OFA process, so long as the land is 'needed for continued freight rail service.' (See *Railroad Ventures*, *Boston & Maine*.) [The STB / a court, can order the land be reconveyed back to Conrail. That is not a good option. The OFA purchase price would be the land's present fair market value. The STB / a court, can find that Conrail retained a rail easement over the underlying real estate. A much better option. Rail easements have a Net Liquidation Value of Zero Dollars. The owner of a rail easement has the right to exclusive possession of the full width of the rail easement, to the center of the earth, and to the heavens.]

The Pep Boys land is 'needed for continued freight rail service.' A 'wye' is needed at the East End of the Harsimus, in order to turn trains around. The top of the 'wye' needs to be adjacent to, and parallel to, the Light Rail tracks. The northern-most leg of the 'wye,' needs to traverse over the Pep Boys site. The southern-most leg of the 'wye,' will follow the southern-most line of railroad track, to the southern-most Eastern corner of the Metro Plaza parcel. The land in-between the 'wye' legs, is needed for spur track.

SITE PLANS

Riffin has a number of graphics. The first is a graphic prepared by the STB. The yellow line shows where the STB believes the Harsimus right-of-way is located.

The second graphic has a 'black box' on it. That box is where Metro Plaza is located.

The third graphic is a 'google earth' aerial of the Metro Plaza site. I have scaled the STB's right-of-way graphic onto the google earth graphic. I have also indicated where Forest City has erected a construction fence around its construction site. The building depicted in the upper right-hand corner of the Metro Plaza parcel, within the area enclosed within the construction fence, was the Pep Boys building. The building was demolished in August, 2015. Forest City's first hi-rise is to be built on the foot print of the former Pep Boys building.

Historic aerials can be found at: www.historicaerials.com

Once on the historicaerials' web site, type in the 'search' box: "6th street jersey city, nj"

Put your cursor on the picture, left click and hold your mouse, then move the mouse an inch or so up and to your left. The picture will move, allowing you to view more to the East and South. Look for a baseball field. That is at the corner of Marin Blvd and 6th Street. The Metro Plaza parcel lies East of Marin Blvd, between 2nd street and 6th street.

Zoom in to 30 m or 50 meters.

Click on the following years: 2013. (A fair image of what the site looked like in 2013.)

2004. A good color image of the site in 2004.

1995: Shows Metro Plaza just after it was built.

1994: Shows Metro Plaza and Washington Blvd being built.

1987: Fair image showing yard tracks.

1979: Good color image showing yard tracks and line of railroad, with catenary pole
Shadows. Shows what the Harsimus Cove Yard looked like just after Conrail
acquired it in 1976.

1966: Fair image showing the yard in 1966.

1954. Good Black & white image of the yard in 1954.

1931: Very poor image of the yard in 1931.

Mr. Cassera: I have asked Ted Cassera, a NJ land surveyor, to survey the four corners of the Metro Plaza parcel, bounded by Marin Blvd, 2nd street, the Light Rail, and 6th Street. I asked him to depict: The construction fence, location of BJ's and Bed Bath and Beyond. And the corners of any excavation / construction. I will provide him with information permitting him to depict where the Harsimus line of railroad right-of-way is located, and where the proposed wye is to be located. On Tuesday, November 17, 2015, aerial photographs of the Metro Plaza site were taken. These aerial photographs will have the boundary lines and lines of railroad overlayed on them.

Mr. Kahn: I have asked Fritz Kahn to read the *Iowa Terminal*, *Railroad Ventures*, and *Boston & Maine* cases, plus the Vicksburg Glass Road Bridge case. I have asked him to prepare an argument supporting my thesis that there were four tracks associated with the Harsimus line of

railroad, as it crossed Marin Blvd, going East. One line of railroad track continued due East, where 6th Street presently exists, to the water front. Two lines of railroad tracks, went across the Metro Plaza parcel on a diagonal. The land between the outer-most line of railroad tracks, is all a part of the Harsimus line of railroad right-of-way, and is needed for 'continued freight rail service' (As a wye, to turn trains around.)

Mr. Kahn is the former General Counsel for the ICC. He was an ICC staff attorney from 1959 to 1971, when he became General Counsel. He remained General Counsel until January, 1976. That makes him an 'expert' on railroad law.

If you would like, I will send to you copies of the Glass Road Bridge case, and the November 2, 2015 STB decision giving me the right to file an OFA, and a copy of the *Iowa Terminal, Railroad Ventures*, and *Boston & Maine* cases. I also have copies of the deeds to the Metro Plaza parcel.

After you read all of this, ask yourself the question: What is the likelihood that I would be successful in getting a federal judge to declare that I have equitable title to the railroad lines of railroad that traverse the Metro Plaza parcel? What is the likelihood I could get an injunction to stop all construction until the OFA process is completed?

What is the likelihood that Forest City would sue Conrail? And that Forest City's suit against Conrail would induce Conrail to negotiate a settlement? (Which is the ultimate goal.)

Exhibit 2

to

Reply of Forest City Ratner Companies & G&S Investors

Finance Docket No. 36078

JAMES RIFFIN – PETITION FOR DECLARATORY ORDER

Before the Surface Transportation Board

STB Docket No. AB -167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION - ABANDONMENT EXEMPTION - IN HUDSON
COUNTY, NJ

STB Docket No. AB-55 (Sub-No.686X)

SXC TRANSPORTATION, INC. - DISCONTINUANCE OF SERVICE EXEMPTION - IN
HUDSON COUNTY, NJ

STB Docket No. AB-290 (Sub-No.306X)

NORFOLK SOUTHERN RAILWAY COMPANY - DISCONTINUANCE OF SERVICE
EXEMPTION - IN HUDSON COUNTY, NJ

Certification of Gregg Wasser

I, Gregg Wasser, being of full age, do hereby certify as follows:

1. I am the President of Jersey City Associates Inc., the General Partner of G&S Investors/Jersey City, L.P., which is a member of GS FC Jersey City Pep 1, LLC ("GS FC Jersey City"). I make this Certification in support of the Motion on Behalf of City of Jersey City et al for Sanctions against James Riffin for Failure to Respond to Discovery (Document) Requests.

2. On July 20, 2016, I attended a meeting with Steven Hyman at my office in New York City. I understood Mr. Hyman to be speaking to me on behalf of his wife and certain limited liability companies that she controls (the "Hyman LLCs"). I further understood that the Hyman LLCs are engaged in the dispute with Consolidated Rail Corporation ("Conrail") and the City of Jersey City, New Jersey ("Jersey City"), that is the subject matter of this action before the Surface Transportation Board.

3. During my meeting with Mr. Hyman, he stated to me that there was someone from out of town whom I should meet or words to that effect. Shortly thereafter, James Riffin appeared at my office without an appointment or any other notice and joined the meeting at Mr. Hyman's behest.

4. I understood Mr. Riffin to be an individual who had previously written to GS FC Jersey City threatening to file a lawsuit relating certain alleged rail rights.

5. When I spoke to Mr. Riffin, I asked him why he was at my office. In response, he stated he had told Mr. Hyman that he wanted 5% of whatever monetary recovery the LLCs might obtain through the resolution of their dispute with Jersey City and Conrail. Mr. Hyman then permitted Mr. Riffin to present to me an argument on why Conrail should pay the Hyman LLCs to settle the dispute. Consequently, I understood that Mr. Hyman had agreed to pay to Mr. Riffin 5% of whatever recovery the Hyman LLCs might receive.

6. Also on July 20, 2016, Mr. Riffin filed a Complaint for Declaratory Order in the United States District Court for the District of New Jersey, captioned *James Riffin v. Forest City Ratner Companies, G&S Investors/Jersey City, L.P., G&S Metro Plaza LLC, GS FC Jersey City Pep I Urban Renewal LLC, and GS FC Jersey City Pep II Urban Renewal LLC*, Civil Action No. 16-cv-04433 ES-JAD. A true copy of that Complaint for Declaratory Order is attached hereto as Exhibit A.

I certify that the foregoing statements made by me are true. I understand that any of the foregoing statements made by me are willfully false I am subject to punishment.

Dated: October 18, 2016



GREGG WASSER

Exhibit 3

to

Reply of Forest City Ratner Companies & G&S Investors

Finance Docket No. 36078

JAMES RIFFIN – PETITION FOR DECLARATORY ORDER



STEVEN M. FULOP
MAYOR OF JERSEY CITY

CITY OF JERSEY CITY
OFFICE OF THE MAYOR

CITY HALL | 280 GROVE STREET | JERSEY CITY, NJ 07302
P: 201 547 5500 | F: 201 547 5442



STEVEN M. FULOP
MAYOR OF JERSEY CITY

February 18, 2015

Mr. Timothy Lizura
President & COO
New Jersey Economic Development Authority
P.O. Box 990
Trenton, NJ 08625

Reference: Forest City, 430 Marin Boulevard, Jersey City, NJ

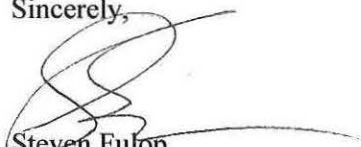
Dear Mr. Lizura:

I am writing in support of Forest City's application for a residential Economic Redevelopment and Growth (ERG) grant (applicant "GS FC Jersey City Pep 1, LLC") for the first phase of its Harsimus Cove (aka Hudson Exchange West) Redevelopment. This project is one of our administration's highest economic development priorities and represents the first phase of a landmark redevelopment at Harsimus Cove that will redefine that area for years to come.

The Harsimus Cove Redevelopment project will benefit the City in numerous and significant ways. First, this project is the critical first step in the broader Harsimus Cove Redevelopment Plan, which envisions thousands of residential units, over 300,000 square feet of retail, and 2.5 acres of open space as it will redevelop what is now an underutilized big box retail site into a vibrant 24/7 live, work, and play environment and will reconnect this section of our waterfront to the City's existing street grid, second and very important for our administration, Forest City has committed to reserve 20% of its residential units in this first phase for workforce (moderate income) housing, a critical group of Jersey City residents for whom affordable housing options are scarce. Finally, the Harsimus Cove project will be a significant economic development engine, both during construction and in its continued operations. The \$200+ million project is expected to produce 300 on-site construction jobs and over 15 permanent jobs from property management.

Our Administration is in active conversation with Forest City regarding the project. The residential ERG grant will play a critical role in bridging the current financing gap of this important project. Please do not hesitate to contact me for any follow-up related to our support for the Harsimus Cove project. We look forward to the NJ EDA's favorable review of Forest City's application and to seeing this catalytic project proceed.

Sincerely,



Steven Fulop
MAYOR



STEVEN M. FULOP
MAYOR OF JERSEY CITY

CITY OF JERSEY CITY OFFICE OF THE MAYOR

CITY HALL | 280 GROVE STREET | JERSEY CITY, NJ 07302
P: 201 547 5500 | F: 201 547 5442



STEVEN M. FULOP
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February 18, 2015

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President & COO
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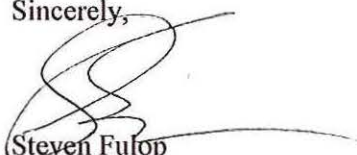
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Our Administration is in active conversation with Forest City regarding the project. The residential ERG grant will play a critical role in bridging the current financing gap of this important project. Please do not hesitate to contact me for any follow-up related to our support for the Harsimus Cove project. We look forward to the NJ EDA's favorable review of Forest City's application and to seeing this catalytic project proceed.

Sincerely,



Steven Fulop
MAYOR

Exhibit 4

to

Reply of Forest City Ratner Companies & G&S Investors

Finance Docket No. 36078

JAMES RIFFIN – PETITION FOR DECLARATORY ORDER

Reso No. 15-09- 3

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE JERSEY CITY REDEVELOPMENT AGENCY APPROVING A REDEVELOPMENT AGREEMENT WITH GS FC JERSEY CITY PEP I URBAN RENEWAL, LLC IN THE HARSIMUS COVE STATION REDEVELOPMENT AREA

WHEREAS, by Resolution of the Board of Commissioners of the Jersey City Redevelopment Agency (the "Agency") dated April 21, 2015, GS FC Jersey City Pep I Urban Renewal, LLC was designated as Redeveloper ("Redeveloper") for the construction of a mixed-use development within the Harsimus Cove Station Redevelopment Area, for Block 11603, Lot 3; and

WHEREAS, per Resolution No. 06-09-07 the Board of Commissioners authorized the execution of an Eighth Amendment to the Redevelopment Agreement consenting to the designation of GS FC Jersey City Pep 1, LLC ("Joint Ventures") as Redevelopers with respect to their respective Phases, and the assignment by G&S and assumption by such Joint Ventures of all of the rights and obligations of G&S as Redeveloper under the Redevelopment Agreement, and

WHEREAS, under the Eighth Amendment, the Agency consented to the assignment and assumption of the Redevelopment Agreement from the Joint Venture to GS FC Jersey City Pep 1 Urban Renewal, LLC, an urban renewal entity which will assume the Redevelopment Agreement with respect to such Phase, on the terms and conditions set forth in the Redevelopment Agreement; and

Reso No. 15-09-

3

WHEREAS, the Agency hereby confirms that all prerequisites to the assignment and assumption of the Redevelopment Agreement have been satisfied or waived by the Agency; and

WHEREAS, after review and consideration of the Redeveloper's proposal Agency staff has determined that the designation of Redeveloper as a redeveloper within the meaning of the Redevelopment Law and the undertaking of a Project in furtherance of redeveloping the Area would be in the best interests of the City's inhabitants; and

WHEREAS, the execution of a Redevelopment Agreement and any future related agreements are required in order to implement the project; and

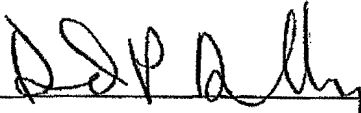
WHEREAS, the project will be constructed in accordance with the terms and conditions of the Redevelopment Agreement and the Redevelopment Plan.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Jersey City Redevelopment Agency that:

- 1) the above recitations are incorporated herein as if set forth at length; and
- 2) approval of the Redevelopment Agreement and authorization to execute the Redevelopment Agreement and/or any related documents in substantially the format attached hereto with GS FC Jersey City Pep I Urban Rnewal, LLC is hereby granted; and

Reso No. 15-09- 3

- 3) The Chairman, Vice Chairman and/or Secretary are hereby authorized to execute any and all documents necessary to effectuate this resolution subject to the review of Agency Counsel.


Secretary

Certified to be a true and correct copy of a Resolution of the Board of Commissioners of the Jersey City Redevelopment Agency adopted at their Regular Meeting of September 15, 2015

RECORD OF COMMISSIONERS VOTE				
NAME	AYE	NAY	ABSTAIN	ABSENT
Diane Coleman	✓			
Evelyn Farmer	✓			
Erma Greene	✓			
Rolando R. Lavarro, Jr.	✓			
Timothy N. Mansour				✓
John D. Petkanas				✓
Russell Verducci	✓			

L:\AGENDA\SEPT-2015\Forest City Execute RDA.res.wpd

Exhibit 5

to

Reply of Forest City Ratner Companies & G&S Investors

Finance Docket No. 36078

JAMES RIFFIN – PETITION FOR DECLARATORY ORDER



October 6, 2015

Via email and regular mail

jonathangertman@forestcity.net

Jonathan Gertman, Development Manager
GS FC Jersey City Pep 1 Urban Renewal, LLC
c/o Forest City Residential Group
1 MetroTech Center North
Brooklyn, NY 11201

Re: GS FC Jersey City Pep 1 Urban Renewal,
LLC
State Economic Redevelopment and
Growth Tax Credit Incentive Grant

Dear Mr. Gertman:

Your State Economic Redevelopment and Growth Tax Credit Incentive Grant of ("ERG Tax Credit Grant") approved on June 9, 2015 ("Approval Date") is hereby awarded subject to the terms and conditions of the New Jersey Economic Stimulus Act, P.L. 2009, c. 90 (the "Act"), as amended; the ERG Program regulations, N.J.A.C. 19:31-4.1 et seq., subject to final amendments to the regulations; and the terms and conditions set forth below. This Approval Letter does not purport to summarize the entire Act and regulations and is subject to same. No act or omission by or on behalf of the Authority shall be deemed as a waiver to any of the terms and conditions contained in this letter. Such a waiver may be made only by an instrument in writing duly executed by an authorized representative of the Authority.

RECIPIENT:

GS FC Jersey City Pep 1 Urban Renewal,
LLC

QUALIFIED RESIDENTIAL PROJECT:	New construction of a 35 story building containing 421 residential units, 10,126 square feet of ground level retail space, a 144,253 square foot parking garage containing 264 parking spaces and a publicly accessible plaza located at 430 Marin Boulevard, Jersey City, New Jersey (the "Project").
RECIPIENT'S CAPITAL INVESTMENT:	At application, estimated to be \$222,634,000.
RECIPIENT'S ELIGIBLE CAPITAL INVESTMENT:	At application, estimated to be \$203,657,000.
ERG TAX CREDIT GRANT AMOUNT:	Total ERG Tax Credit Grant amount not to exceed 19.64% of Recipient's actual Eligible Capital Investment in the Qualified Residential Project, up to a maximum of \$40,000,000. The ERG Tax Credit Grant shall be used in 10% increments over a period of ten years. *
ERG TAX CREDIT GRANT ELIGIBILITY PERIOD:	Ten (10) years commencing in the year that the tax credit certificate is first certified by the Authority as having met the conditions set forth herein.
RECEIPT OF TAX CREDIT CERTIFICATE FEE:	One time non-refundable fee of \$200,000 paid to the Authority which amount represents 0.5% of the approved tax credit (\$40,000,000), not to exceed \$300,000, due upon issuance of tax credit certificate.

*

The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the business does not take more than one-tenth of its approved credit amount in any tax period.

ANNUAL REVIEW FEE:

Annual non-refundable fee of \$2,500 paid to the Authority at the time Recipient submits its annual report required to receive a letter of compliance from the Authority.

**TAX CREDIT TRANSFER FEE,
IF APPLICABLE:**

A non-refundable transfer fee of \$2,500. All transfers must be for not less than \$25,000 in tax credits.

ADDITIONAL FEES:

In addition, pursuant to the Authority's rules and regulations, modification fees are due when the Authority is requested to consider a modification to an existing transaction.

**DEADLINE FOR SUBMISSION OF
TEMPORARY CERTIFICATE OF OCCUPANCY: July 28, 2018**

**DEADLINE FOR SUBMISSION OF
DOCUMENTATION FOR APPROVAL OF
AMOUNT OF TAX CREDIT:**

No later than 12 months after the submission of the temporary certificate of occupancy.

CONDITIONS TO MAINTAINING APPROVAL:

In order to maintain the award of the Grant, the Recipient must submit the following information to the Authority:

i) On or before June 9, 2016;

1. A copy of site plan approval from Jersey City permitting the development of the Project.
2. Executed copies of financing commitments for all funding sources regarding the Project consistent with the information provided by Recipient to the Authority.
3. Copies of all required State and federal government permits for the redevelopment Project and copies of all local planning and zoning board approvals that are required for the redevelopment Project.

4. A representation from the municipality in which the Project is located that the Project adheres to all affordable housing requirements of the State of New Jersey that are in place either at the time the Project receives municipal site plan approvals or, if no site plan approval is required, prior to the commencement of construction, including, but not limited to NJSA 52:27D-329.9 (b).

5. Documentation evidencing that Recipient has control of the site of the Qualified Residential Project received by the Authority (1, 2, 3, 4 and 5 are collectively "Progress Information"); and

ii) On or before December 9, 2015 and every six months thereafter until completion of the Project an update of the status of the Project ("Project Status Updates").

iii) A current tax clearance certificate for the Recipient not more than 180 days old.

Unless otherwise determined by the Authority in its sole discretion, failure by Recipient to submit the required Progress Information and Progress Status Updates in a form acceptable to the Authority by the end of business, 5 p.m., on the indicated dates will result in immediate expiration of the Authority's approval of the ERG Tax Credit Grant, without further action by the Authority.

In addition, Authority approval is based on the public financial support and equity set forth in your application. Substantive changes in public financial support or equity must be reviewed and approved by the Authority.

Within 60 days of receipt of the submission of the Progress Information and Project Status Updates, the Authority will inform the Recipient whether the documentation submitted is sufficient to maintain award of the ERG Tax Credit Grant.

CONDITIONS TO RECEIPT OF TAX CREDIT CERTIFICATE:

A temporary certificate of occupancy for the Project must be submitted to the Authority by July 28, 2018. Within 120 days of completion of the capital investment requirements, but no later than twelve months after the submission of the temporary certificate of occupancy, Recipient must submit the following in order to receive a tax credit certificate ("Tax Credit Certificate Documents");

1. Issuance of a certificate of occupancy.
2. A certification by a certified public accountant acceptable to the Authority stating the total amount of Recipient's capital investment and total amount of eligible capital investment in the Project.

3. All construction contracts regarding the Project must contain additional language as set forth in Authority Affirmative Action Addendum to Construction Contract. In addition, the general contractor must include said language in all subcontracts. Regulations, forms, and guidance documents (including an Affirmative Action and Prevailing Wage program summary) are available at www.njeda.com/affirmativeaction.
4. Covenant by the Recipient, that it will comply with all applicable law, and specifically, that the Project will comply with (i) the Authority's prevailing wage requirements as set forth in N.J.S.A. 34:1B-5.1, (ii) the Authority's affirmative action requirements as set forth in N.J.S.A. 34:1B-5.4, (iii) and follow the green building standards adopted by the Authority ("Green Building Requirements"), (iv) the Conflicts of Interest Law as set forth in N.J.S.A. 52:13D-12 et seq., (v) requirements of the Americans with Disabilities Act of 1990, 42 U.S.A. Sec. 12101 et seq. and implementing regulations, and (vi) requirements of all applicable New Jersey environmental laws. **FAILURE TO COMPLY WITH THE ABOVE IS AN EVENT OF DEFAULT AND MAY RESULT IN THE EXPIRATION OF THE AUTHORITY'S APPROVAL OF THE TAX CREDIT AWARD.**
5. Prior to the commencement of construction, Recipient will submit to the Authority for its approval a plan to meet the Green Building Requirements ("Green Building Plan"). Failure to submit the Green Building Plan within the indicated time frame may lead to forfeiture of the ERG Tax Credit Grant. When construction is completed, as a condition to receipt of the award, Recipient will be required to submit a certification from a licensed engineer that the project has adhered in all material respects to the Green Building Plan.
6. Documentary evidence that a deed restriction has been recorded against each residential component of the Qualified Residential Project which requires that all residential units remain residential units until the expiration of the ERG Tax Credit Grant Eligibility Period.
7. A current tax clearance certificate for the Recipient from the Division of Taxation not more than 180 days old.
8. Evidence that the Project complies with N.J.A.C. 19:31-4.8(b)(17) which requires an administrative agent to monitor the project for the term of the grant.

Upon a determination by the Authority that the Tax Credit Certificate Documents are acceptable, the Authority shall notify the Director of the Division of Taxation and a tax credit certificate will be issued to Recipient. Once the tax credit certificate is issued, the Recipient may use 1/10 of the tax credit to offset its tax liability in each tax privilege period for a period of ten tax privilege periods with applicable carry forward provisions, beginning with liability that arises in the tax privilege period in which the Authority certifies that the conditions to receipt of the tax credit certificate have been met, subject to the conditions set forth below.

The credit amount for any tax period ending twelve months after the submission of the temporary certificate of occupancy during which the Tax Credit Certificate Documents remain unapproved shall be forfeited, although credit amounts for the remainder of the years in the 10 year credit period shall remain available to the Recipient.

CONDITIONS TO USE OF TAX CREDIT CERTIFICATE:

After receipt of the Tax Credit Certificate, on an annual basis, within 120 days after the end of its tax privilege period, the Authority must receive the information ("Annual Report") as described below. Upon satisfactory review of all information submitted in the Annual Report, the Authority will issue a letter of compliance to each holder of a tax credit certificate or tax credit transfer certificate **that has submitted a valid tax clearance certificate to the Authority.** No Tax Credit Certificate or tax credit transfer certificate will be valid without the letter of compliance issued for the relevant tax privilege period. The Annual Report shall include the following:

1. Documentary evidence that the deed restriction required above under "Conditions to Receipt of Tax Certificate" continues to be recorded against each residential component.
2. Evidence that the residential units of the Qualified Residential Project are not being used for non-residential purposes. Such evidence may include, but is not restricted to, rental receipts, municipal records, and/or certification by a MAI appraiser or government official.
3. A certification that the configuration and allocation of low and/or moderate income residential units in the Project have not changed from the date of Approval.

Failure to submit the Annual Report with the information required above will result in forfeiture of any annual tax credits to be received by the Recipient or tax credit transferee unless the Authority determines that there are extenuating circumstances excusing the Recipient or tax credit transferee from the timely filing required. The Authority reserves the right to audit any of the representations made and documents submitted in the Annual Report.

If the letter of compliance is not issued, the Recipient or its transferee shall forfeit its annual credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation has been reviewed and approved by the Authority pursuant to which it will issue a letter of compliance, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

Indemnification; Insurance:

Recipient covenants and agrees to indemnify and hold harmless the Authority, the State of New Jersey, the Department of the Treasury and the Division of Taxation and their respective members, agents, officers employees and servants ("Indemnified Parties") from all losses, claims, damages, liabilities, and costs whatsoever (including all costs, expenses and reasonable counsel fees incurred in investigating and defending such losses and claims, etc.), brought by any person or entity, and caused by, related to, arising or purportedly arising out of, or from:

(i) the condition, use, possession, conduct, management, construction, and financing of the Qualified Residential Project or the Recipient's Leasehold; (ii) the performance by Recipient of its obligations pursuant to the terms and conditions of the grant of the ERG tax credits, as set forth in this Approval Letter or in any document by which the Recipient transfers its credits; (iii) any loss, damage or injury to, or death of, any person occurring at or about or resulting from, the operations of the Qualified Residential Project or the Recipient's Leasehold; and (iv) any damage or injury to property of the recipient or to the agents, servants, employees or co-employees of the recipient, caused by the negligence, gross negligence or willful misconduct of any person, except for: losses, claims, damages, liabilities and costs arising from the gross negligence or willful misconduct of the Indemnified Parties. These Indemnification provisions shall survive the expiration or termination of the ERG Tax Credit Grant.

To effectuate the purposes of the Indemnification provisions set forth above, Recipient shall obtain sufficient coverage under its commercial general liability insurance policy to cover not only its own liability, but also, any liability which might arise under the Indemnification provisions against the Indemnified Parties to the extent such liability is insurable under a commercial general liability insurance policy. Recipient shall include the Indemnified Parties as additional insureds in any liability insurance coverage for the Qualified Residential Project. Recipient shall promptly provide evidence of such insurance to the Authority upon request. Failure of Recipient to retain such coverage and/or provide evidence of same to the Authority will result in either the Authority cancelling an existing letter of compliance or not issuing a letter of compliance.

The liability of the Authority, the Department of the Treasury and the Division of Taxation, and their directors and employees shall be subject to all provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

General:

Tax clearance certificates are issued by the Division of Taxation. To apply to receive a tax clearance certificate, a Recipient must complete and submit the Application for Business Assistance Tax Clearance ("Application") to the Authority together with a check in the amount of \$75 made payable to the Division of Taxation. The Authority requires that a valid tax clearance certificate no more than 180 days old is on file with the Authority from the time of Recipient's application through the date that the Tax Credit Certificate is issued. During this period the Authority will renew the tax clearance certificate on behalf of the Recipient and will notify Recipient when a new Application together with the fee must be submitted. In addition, a current tax clearance certificate must be submitted with each Annual Report. If a tax clearance certificate is not issued by the Division of Taxation and submitted to the Authority, the Recipient will have failed to meet the Conditions of Approval and/or Conditions of Receipt/or Use of Tax Credit Certificate. In the Authority's discretion, this may result in the expiration of the Authority's approval of the tax credit award and/or delay or non-issuance of a Tax Credit Certificate/Letter of Compliance.

The Recipient and Authority shall be governed by the provisions of N.J.S.A. 52:27D-489a et seq. and all applicable regulations. Any term not defined in this Approval Letter shall have the meaning set forth at N.J.A.C. 19:31-4 et seq.

Counsel to the Authority must be satisfied with respect to the legality, validity, binding effect and enforceability of all instruments, agreements, and documents used to effect and consummate the transactions contemplated herein. All documentation shall be in form and substance satisfactory to the Authority.

The interests of the Recipient and the Authority are or may be different and may conflict. The Authority's attorney represents only the Authority and does not represent the Recipient in this transaction. The Recipient, therefore, is advised to employ an attorney licensed to practice in the State of New Jersey, of the Recipient's own choice to represent the Recipient's interest in this transaction.

The Authority, at its option, may announce and publicize the project contemplated hereunder, by means and media selected by the Authority.

It is specifically understood and agreed that this Grant is *cross-defaulted* with any existing loan, participation or guarantee agreement and any future loan, participation or guarantee agreement provided by the Authority, State of New Jersey and/or its authorities to the Recipient, G & S Investors and/ or Forest City Enterprises. This Grant is not cross-defaulted with any incentive or award of tax credits received by Recipient, G & S Investors and/ or Forest City Enterprises from the Authority , the State of New Jersey and/or its authorities except to the extent that the incentive or award of tax credits was awarded for the Qualified Residential Project described herein.

The Authority is not liable for damages resulting from the issuance, non-issuance, or use of the tax credits. There is no guarantee that legislation will not be enacted that would cause further changes to the State Economic Redevelopment and Growth Tax Credit Incentive Grant program, N.J.S.A. 52:27D-489a et seq. (the "Act"). This Approval Letter does not purport to summarize the entire Act and regulations and is subject to same.

This Approval Letter shall expire and the Authority shall have no further obligation or liability hereunder if this letter and the Notice of Affirmative Action/Prevailing Wage and Green Building Requirements form is not signed, completed and returned on or before October 21,2015.

In the event that the items listed in the "Conditions to Maintaining Approval" section of this Approval Letter are not provided by dates indicated herein, as applicable, the Authority's obligation to provide the grant hereunder shall expire without further action by the Authority unless an extension has been requested in writing prior to such dates by the Recipient and approved by the Authority in its sole discretions, prior to such dates. A fee of \$750 is charged for each extension requested.

We appreciate your interest in expanding operations and creating housing opportunities in New Jersey. We look forward to assisting in your Project. If you should have any questions, please contact me at 609-858-6753, dlawyer@njeda.com or Michael Conte at 973-855-3449 or mconte@njeda.com.

This approval letter should be signed and returned to Jo Ann Walls, Administrative Assistant, at jwalls@njeda.com and P.O. Box 990, Trenton, New Jersey 08625 (regular mail) or 36 West State Street, Trenton, New Jersey 08625 (overnight mail).

[SIGNATURE PAGE FOLLOWS]

NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY

By: _____

David A. Lawyer
Director of Credit and Real Estate
Underwriting

TREASURER OF THE STATE OF NEW JERSEY

By: _____

Robert A. Romano
Acting State Treasurer

RLC

C: D. Wong
S. Quattro
J. McIntyre
L. Coane
M. Maurio
S. Greitz
E. Altson (El-Rhonda.Alston@treas.state.nj.us)

ACCEPTED AND AGREED THIS
10 DAY OF OCT, 2015

GS FC JERSEY CITY PEP 1 URBAN RENEWAL, LLC

By: _____

Name: ABE NAPAOSTGL

Title: VP



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
INTERNAL PROCESS MANAGEMENT DEPARTMENT
OFFICE OF AFFIRMATIVE ACTION
NJEDA WEB www.njeda.com/affirmativeaction
NJEDA EMAIL affirmativeaction@njeda.com
NJEDA PHONE (973) 855-3447

NOTICE REGARDING AFFIRMATIVE ACTION/PREVAILING
WAGE AND GREEN BUILDING REQUIREMENTS

PROJECT NUMBER: P40590
PROJECT NAME: GS FC Jersey City Pep 1 Urban Renewal, LLC

THIS PROJECT MAY BE SUBJECT TO NJEDA AFFIRMATIVE ACTION/PREVAILING WAGE AND GREEN BUILDING REQUIREMENTS. THE TERM CONSTRUCTION INCLUDES ANY CONSTRUCTION, RECONSTRUCTION, DEMOLITION, ALTERATION, REPAIR WORK, RENOVATION, OR CONSTRUCTION/RENOVATION WORK RELATED TO THE INSTALLATION OF EQUIPMENT. IN ADDITION, IF THIS PROJECT IS AN INCENTIVE PROJECT IT MAY BE SUBJECT TO GREEN BUILDING REQUIREMENTS. WE ENCOURAGE YOU TO VISIT www.njeda.com/affirmativeaction AND www.njeda.com/urbantransithub.com TO LEARN MORE ABOUT THESE REQUIREMENTS. PLEASE CONTACT YOUR BUSINESS DEVELOPMENT OFFICER SHOULD YOU HAVE ANY QUESTIONS OR CONCERNS.

TYPE OF ASSISTANCE: State Economic Redevelopment and Growth Tax Credit Incentive Program AMOUNT: \$40,000,000

CUSTOMER CONTACT INFORMATION, INCLUDING EMAIL
AND MAILING ADDRESS FROM COMMITMENT/ APPROVAL LETTER:

jonathangertman@forestcity.net
Jonathan Gertman, Development Manager
GS FC Jersey City Pep 1 Urban Renewal, LLC
c/o Forest City Residential Group
1 MetroTech Center North
Brooklyn, NY 11201

CUSTOMER PHONE NUMBER FROM APPLICATION: 718-923-8537

COMPLETE AND RETURN THIS FORM WITH COMMITMENT/APPROVAL LETTER

CUSTOMER CONTACT PERSON FOR AA/PW:

NAME: ~~ABE~~ JON GERTMAN
ADDRESS: 1 METRO TECH
BROOKLYN, NY 11201
PHONE NUMBER: 718-923-8537

EMAIL ADDRESS: JONATHAN GERTMAN@FORESTCITY.NET

CHECK WHICH STATEMENTS APPLY AND COMPLETE DATES:

☒ DATE CONSTRUCTION IS EXPECTED TO BEGIN: 10/26/15

☐ DATE CONSTRUCTION STARTED _____

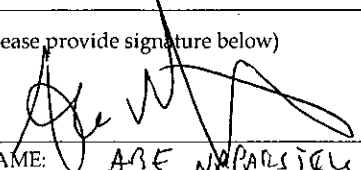
☒ SIGNED CONSTRUCTION CONTRACT WHICH INCLUDES
NJEDA AA/PW REQUIRED LANGUAGE 10/28/15

☐ THIS PROJECT DOES NOT INCLUDE CONSTRUCTION.

☐ ESTIMATED # OF TOTAL CONSTRUCTION JOBS 350

☐ OTHER: NONE OF THE BOXES ABOVE APPLY BECAUSE: (EXAMPLES OF EXPLANATIONS MAY INCLUDE: 1) HAVE NOT SELECTED A GENERAL CONTRACTOR; OR 2) HAVE NOT SELECTED A LOCATION).

(Please provide signature below)


NAME: ABE NARANSICH
TITLE: JP