

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

NEW GOLD EQUITIES CORP. and
BLDG MANAGEMENT CO., INC.,

Plaintiffs,

-versus-

CITY OF JERSEY CITY, A Municipal
Corporation of the State of New Jersey, et als

Defendants.

Index No.:

05-cv-03561-DRD-SDW

Civil Action

CONSENT ORDER FOR CONSOLIDATION OF STATE ACTIONS
FINAL SETTLEMENT, INJUNCTION, AND DISMISSAL OF ALL
ACTIONS WITH PREJUDICE

NEW GOLD EQUITIES CORP. and
BLDG MANAGEMENT CO., INC.,
Plaintiffs,

v.

CITY OF JERSEY CITY, A Municipal
Corporation of the State of New Jersey;
et als.,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
Docket No.: HUD-L-4995-04

Civil Action

FILED
JUL 13 2006
MAURICE J. GALLIPOLI, A.J.S.C.

CONSOLIDATED WITH

NEW GOLD EQUITIES CORP. and
BLDG MANAGEMENT CO., INC.,
Plaintiffs,

v.

CITY OF JERSEY CITY, A
Municipal Corporation of the
State of New Jersey, et als

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
Docket No.: HUD-L-6105-04

Civil Action

and

NEW GOLD EQUITIES CORP. and :
BLDG MANAGEMENT CO., INC., :

Plaintiffs, :

v. :

CITY OF JERSEY CITY, A :
Municipal Corporation of the :
State of New Jersey, :

Defendant :

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
Docket No.: HUD-L-2625-05

Civil Action

and

NEW GOLD EQUITIES CORP. and :
BLDG MANAGEMENT CO., INC., :

Plaintiffs, :

v. :

CITY OF JERSEY CITY, A :
Municipal Corporation of the :
State of New Jersey, et als :

Defendants. :

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
Docket No.: HUD-L-4296-05

Civil Action

and

NEW GOLD EQUITIES CORP. and :
BLDG MANAGEMENT CO., INC., :

Plaintiffs, :

v. :

CITY OF JERSEY CITY, A :
Municipal Corporation of the :
State of New Jersey, et als :

Defendants. :

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
Docket No.: HUD-L-5179-05

Civil Action

1. This matter comes before the Court in the Civil Action filed in the United States District Court for the District of New Jersey as captioned above, or one or more of the actions filed in the Superior Court, Law Division, Hudson County, as captioned above and to be consolidated therein, for purposes of settlement, pursuant to this Order. All parties to these actions have agreed to the terms of this Order as evidenced by the consent of their attorneys whom they have authorized to give consent without reservation.

2. The Purposes of this Settlement include:

a. The full and expeditious development of the Properties of Plaintiffs in the manner provided herein through high quality architectural design.

b. Significant contribution to the establishment of an arts district through the provision of 120 artists' work/live studios, the provision of space for galleries and other arts related and retail spaces, among other efforts.

c. The construction of affordable housing units within the project,

d. An increase in financial benefits to Jersey City through an increase in tax revenues, affordable housing contributions, construction and permanent jobs, and the development of new businesses, among others.

e. The redevelopment of the unsafe structures at 111 First Street and the provision of safe, sound and secure space consistent with the provisions hereof and the character of the warehouse district of Jersey City.

f. The cessation of litigation against the City, its agencies, officers and others with the elimination of the burdens such litigation may impose.

g. The advancement of the redevelopment of an important area in Jersey City in a first class manner.

3. Each of the actions to be taken to implement the agreement and settlement of the parties, as more fully set forth below, have been fully considered by the parties as a means to accomplish the Purposes of this Settlement, and each party involved in such action has concluded that for their individual, institutional or governmental interests that such actions are fully appropriate, proper and in conformance with law and the obligations and duties of the respective parties.

4. In Order to provide for a certain end to litigation by the Parties each party to this Order waives its rights to challenge it by direct appeal or collateral action and shall not participate in or support any such appeal or challenge either directly or indirectly. Should any portion of this Order be later held to be invalid or unenforceable as a matter of law through an action brought by any third party, the parties further agree that such provision shall then be modified to best effectuate the intentions and agreement of the parties as reflected herein. Should any provision be so modified, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Order as written.

IN RESPECT OF THE FOREGOING, IT IS HEREBY ORDERED AS FOLLOWS:

CONSOLIDATION OF STATE ACTIONS

5. All matters pending in the Superior Court of New Jersey under the captions listed in **Exhibit A** are consolidated with the matter of *New Gold Equities, v. City of Jersey City, et al., Docket Number HUD-L-4995-04* for purposes of settlement.

Any further proceedings with respect to those matters shall be brought under that docket number.

EXISTING BUILDINGS

6. The existing buildings and structures at 111 First Street have been evaluated by an independent, third party engineering firm selected by the Mediator in the course of the mediation of these matters and based upon that evaluation the Parties have agreed that the appropriate course of action available to accomplish the Settlement is as set forth in this Order. Therefore, the development of the property at 111 First Street shall be in accord with the following:

a. The facade shall be reconstructed utilizing the original bricks to the extent possible and with the needed modifications in order to accomplish the uses shown on the drawing in **Exhibit B** entitled "First Floor Plan" and with the design and appearance as shown in the two renderings in **Exhibit B**.

b. The base shall contain 120 artists' work/live units that shall have the design components outlined in Section VIII, E of **Exhibit G**.

c. The base shall cover the entire existing lot with the first and second levels of the base to contain a minimum of approximately 16,000 gross square feet of space allocated to art galleries and a minimum of approximately 52,000 gross square feet of space allocated to retail, cabaret and restaurant uses.

7. In anticipation of the commencement of the work provided for herein and in order to maintain safety and security at the site and to accomplish the Purposes of Settlement, Plaintiffs shall be permitted to commence salvage of the reusable bricks from

the existing structure at 111 First Street and the removal of other portions of the structure. In order to preserve the usable original bricks from the structure, Plaintiffs will not utilize large wrecking or demolition equipment as part of the salvage effort; however, certain mechanical equipment may be used as necessary as part of the salvage process. Plaintiffs shall be permitted to secure the site by fencing and other necessary means to insure safety of the public and the work to be performed, and shall be further permitted to store salvaged bricks on site at either 111 or 110 First Street until needed for the reconstruction. The City Construction Code Official and all other City Officials shall expeditiously review and approve applications properly completed and submitted by Plaintiffs for such activities and shall cooperate with Plaintiffs in good faith in respect to these activities. Bay Street shall remain closed during the work adjacent thereto. Plaintiffs shall be permitted to discontinue all services and utilities to the Structures and shall be required to take no further actions to maintain them, or perform any remedial work on the structures at 111 First Street except as specifically provided in this Order. No historic designation or other requirements for historic preservation or restoration shall be applied to either of Plaintiffs' properties by the City or any of its agencies.

DESIGN OF 111 FIRST STREET SUPERSTRUCTURE

8. Plaintiffs and the City have agreed that Plaintiffs may construct a Superstructure above the five story Base structure at 111 First Street ("Superstructure"). The Superstructure shall be designed within the following parameters:

- a. Residential uses and amenities only that shall not exceed 710 dwelling units, plus necessary mechanical and penthouse facilities with a gross residential floor area not to exceed 900,000 square feet.

b. A height not to exceed 550 feet excluding the five story base and all rooftop structures, mechanical penthouses and architectural features.

9. Plaintiffs and the City have further agreed that Plaintiffs shall utilize a world class architect for the Superstructure and that all parties will permit the architect maximum creative design opportunity. The architect will be either David M. Childs, FAIA, a Consulting Design Partner at Skidmore, Owings & Merrill or Rem Koolhaas and his firm, Office of Metropolitan Architecture (“OMA”). The resumes are attached at **Exhibit D.** (“Architect”).

10. The Architect shall produce a design concept consistent with the zoning provisions agreed to by the Parties in this Order such that the design of the entire development proposed for 111 First Street shall be considered a conforming use under those provisions of the zoning provisions agreed to by the parties and the Municipal Land Use Law.

11. The design produced by the selected Architect must be approved by and meet the requirements of Plaintiffs and the implementation of the final design and the engagement of the Architect will be within the sole control of Plaintiffs. Upon Plaintiffs’ approval, it shall be submitted to the City. The City shall acknowledge to Plaintiffs in writing receipt of the design submitted within 10 days of its actual receipt. Within 30 days of receipt of the Plaintiffs’ submission of the design, or earlier if possible, the City, through the Mayor or his designee, shall in writing either concur with the design or provide specific reasons for its non-concurrence. Failure to give written notice of non-concurrence to the initial design, delivered by hand or fax to Plaintiffs within thirty (30) days shall be conclusive that the design submitted is accepted. Plaintiffs will attempt to

address any reason for non-concurrence by the City promptly in a good faith effort to reach a mutually acceptable design and agree to mediate and arbitrate any specific good faith objection to the design in accordance with the provisions of this paragraph. In such mediation and arbitration the parties shall consider any design changes proposed by the Architect in response to the City's objection to the original design. Should the City raise objection to the design the parties shall mediate their dispute promptly and in good faith for a period of ninety (90) days utilizing the services of the Mediator who has been engaged for the mediation resulting in the present settlement. In the event that such mediation does not produce agreement on the design, each party shall pick one arbitrator. The two arbitrators selected by the parties shall join the Mediator who shall serve as chairman of an arbitration panel to hear and decide the matter under the laws of arbitration of the State of New Jersey. In such arbitration, the arbitrators shall adhere to the Purposes of Settlement and the terms of this Order.

12. Upon approval of the design concept under the provisions of the foregoing paragraph, the design shall be incorporated as and constitute the provisions of **Exhibit E** to this Order. Plaintiffs shall then prepare plans for site plan approval for submission to the Jersey City Planning Board and the Planning Board Secretary shall acknowledge the receipt of such plans in writing by receipt to Plaintiffs.

DESIGN OF 110 FIRST STREET

13. Plaintiffs and the City have agreed to plans for the structure to be constructed upon the vacant lot at 110 First Street. Those plans are attached at **Exhibit F**. They include the following essential elements of the Settlement and provide for the Purposes of Settlement as follows:

- a. Residential uses and amenities that shall not exceed 345 dwelling units, with a gross residential floor area of 360,000 square feet.
- b. The base is to be eleven stories with a height of approximately 100 feet above existing grade and cover the entire existing lot, utilizing to the degree practicable the same kinds of brick as utilized in the Base Structure at 111 First Street.
- c. The first floor of the base is to be allocated to lobby space for the structure, gallery, retail, restaurant, mechanical equipment, parking, garage access, loading docks and similar uses necessary for the operation of the overall structure. These plans are the agreed upon plans for this structure, subject to the provisions of this Order. The remaining levels of the base are to be utilized for residential apartments, parking and mechanical uses.
- d. The garage portion of the base shall be enclosed such that it shall have the appearance of the walls of an occupied building and shall be consistent with the design and materials of the other two elevations. It shall not have the appearance of an open walled parking garage. The parties understand that such design will require the mechanical ventilation of the garage for purposes of building code compliance.
- e. A portion of the first floor on the easterly side of the structure, adjacent to property owned by another developer, is to be allocated to restaurant use that will provide views of the adjacent sculpture garden. On the Eastern elevation of the base, above the restaurant and facing the sculpture garden, Plaintiffs shall provide a section of the facade of fifty (50) by sixty (60) feet in

dimension for the permanent display of durable public art. The Plaintiffs shall select the art through competition open to qualified artists or direct commission and in their selection shall consult with the Mayor or his designee for design in such selection in good faith. The final selection of the art for this space shall be in the discretion of Plaintiffs.

f. A superstructure for residential use with a footprint of not greater than fifty percent of the lot area, including the adjacent property in the preceding sub-paragraph, and a height not to exceed 350 feet, including all rooftop structures, mechanical penthouses and architectural features.

CHANGES TO PLANS

14. The plans provided for as **Exhibits B, C, E and F** contain the essential elements of the agreement of the parties as to the plans for the development of 111 and 110 First Street. The City shall not unilaterally require any modifications, deletions, additions, supplements, further details or other changes to those plans, whether by ordinance or otherwise, except for changes essential to protect the public safety due to field conditions or statutory code compliance. Plaintiffs agree not to materially change the design of the final plans in **Exhibits B, C, E and F** except as specifically provided for herein, but they shall, however, be permitted to make such minor changes during the construction process as may be necessary to proceed unimpeded with the marketing and development of their Properties and to facilitate and implement the final designs reflected in **Exhibits B, C, E and F**. By way of example, and not by way of limitation, Plaintiffs shall be permitted to make minor interior changes to commercial spaces in order to meet tenant requirements, to change interior partitions or designs, including the combination or

division of interior units, and to change materials or construction methods from those originally proposed so long as such changes do not materially affect the exterior designs of any structure and otherwise satisfy building code requirements. Notwithstanding this prohibition on unilateral changes, the parties may agree in writing signed by both parties to other modifications of the plans at any time, but requests by one party to any other shall not cause nor permit any delay in any action required by this Order or in the implementation thereof.

AMENDMENTS TO THE POWERHOUSE REDEVELOPMENT PLAN

15. In order to achieve and implement the Settlement, the City has agreed to amend the present Power House Arts Redevelopment Plan which will, *inter alia*, create a zone within the Powerhouse Arts District for Plaintiffs' properties, "the Powerhouse Arts Residence District" (hereinafter "the zone"). The development in this zone will be governed by the provisions contained in this Settlement and Consent Order which are to be enacted as part of a re-adoption of said Plan in its entirety and without other amendment applicable to Plaintiffs' properties. This agreement was made in order to achieve settlement among the parties, at a meeting of the City Council, open to the public and in accordance with all statutory procedural requirements. The implementation of the settlement requires further proceedings of the City Council to adopt the provisions of **Exhibit G** to be taken promptly at the next available session, open to the public and noticed according to all requirements of law. As part of this agreement, the City Council has acknowledged that this Consent Order and the *Amended Powerhouse Arts District Redevelopment Plan* contained in **Exhibit G**, if adopted by the City Council at a public meeting open to the public and properly noticed according to law, are the sole

requirements and obligations for Plaintiffs as related to developing their properties. The provisions of the amendment are acknowledged by the City and all parties to be consistent with the City's prior redevelopment studies of Plaintiffs' properties under the provisions of the Local Housing Redevelopment Law, N.J.S.A. 40A:12A-1. *et seq.*, and are an appropriate redevelopment response to the presently existing conditions of the area.

16. The *Amended Powerhouse Arts District Redevelopment Plan* at **Exhibit G** has been reviewed by the Planning Board of Jersey City in Executive Session with the advice of its counsel and planning staff in consideration of settlement and the entering of this Order. The Planning Board has found the contents of **Exhibit G** to be proper and in accordance with law, principles of sound planning, consistent with the Master Plan of the City of Jersey City and otherwise appropriate for implementation as a settlement in this matter without reservation. It has made these findings by proper resolution at a public hearing and authorized the execution of this Settlement and Consent Order in all respects on its behalf.

17. The *Amended Powerhouse Arts District Redevelopment Plan* at **Exhibit G** has been reviewed by the City Council of Jersey City in Executive Session with the advice of its counsel and the recommendations of the Planning Board and planning staff in consideration of settlement and the entering of this Order. The City Council has found all amendments to the Powerhouse Arts District Redevelopment Plan to be proper and in accordance with law, principles of sound planning, consistent with the Master Plan of the City of Jersey City and otherwise appropriate for implementation as a settlement in this matter without reservation.

18. Notwithstanding any provision of the Amended Powerhouse Arts Redevelopment Plan, attached as **Exhibit G** to this Stipulation and Consent Order, Plaintiffs shall be entitled to construct the development called for in the Exhibits hereto and shall receive deviations and relief from any provision of the ordinances of the City of Jersey City, including the provisions of **Exhibit G**, which are in conflict with the terms of this Stipulation and Consent Order. Examples of such deviations from **Exhibit G** include, but are not limited to, the ground floor use requirements contained in Section VII-C and VII-H, which require certain percentages of the buildings to be devoted to uses which are inconsistent with the square footages necessary to residential development and contained in the Plans annexed at **Exhibits B & F** to this Consent Order; the lot coverage and sidewalk width requirements for development, which conflict with the agreement to replicate the building at 111 First Street on its current footprint; the ground floor height specification, which the Plans at **Exhibit F** do not meet by eight inches; and, provisions concerning parking requirements of the PAD which are inconsistent with the Plans for each building as contained in the Exhibits.

SUBMISSION AND APPROVAL OF PLANS

19. Plaintiffs may submit and proceed with plans for development of 110 and 111 First Street as it may determine in its sole discretion. However, in proceeding, it shall commence the development of the base of 111 First Street as a priority commensurate with the need to address the existing conditions of the buildings.

20. Upon receipt of New Gold's plans and applications for development, Jersey City shall expedite review of such plans and respond as to any item omitted which

is required to be submitted pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, *et seq*

21. Provided that the plans and application are in accord with this Order, the Planning Board shall hear and approve New Gold's application(s) for preliminary and final site plan approval, together with any variations or other relief required herein, without condition at its next available meeting after submission by Plaintiffs of its applications. Plaintiffs shall secure all other required permits and approvals required under the State Uniform Construction Code, or other permits and approvals required by law.

22. The City shall publish notice of its approval(s) promptly so as to comply with the provisions of the Municipal Land Use Law and begin the period for appeals by Action in lieu of Prerogative Writs. In the event of any appeal of an approval of Plaintiffs' plans, no party subject to this Order shall initiate, support or participate in such action in any manner except to oppose it and support the approvals granted to Plaintiffs.

23. In the event any such appeal is filed it shall be consolidated into this consolidated action and the provisions of this settlement and Order shall be made part of the record in such action and no party to the present action shall take any action or position contrary to the terms and conditions of this Order, it being the intent of the parties hereto that this matter be resolved in accordance with the terms of settlement provided for herein. The parties subject to this Order shall cooperate with Plaintiffs in defense of the approvals in all respects and shall take all reasonable steps to expedite the proceedings.

24. New Gold and Jersey City have agreed that Jersey City's current ordinance setting fees for development applications shall not apply and have agreed to separately enter into the Stipulation at **Exhibit H** in settlement of an action brought by New Gold against Jersey City. That stipulation shall be entered in settlement of that action in accordance with the terms of the stipulation and the provisions as to fees in that stipulation shall control all fees for development applications required pursuant to this Order. The approval of New Gold's development applications shall not be subject to the jurisdiction of the City Historic Preservation Commission in any respect.

SUPPORT FOR ARTS IN JERSEY CITY

25. In lieu of any other financial obligation or requirement for affordable housing, marketing, or the control of purchases of the 120 artists' work/live studios at 111 First Street, on one half of those units (60), Plaintiffs will offer a discount in the initial purchase price in the amount of thirty percent (30%) from its offering sale price for the same or similar units to only those artists who are certified by the City. The initial offering price shall be the price established in the initial condominium offering registration, which offering will contain a restriction, for a period of five years after purchase, prohibiting resale to anyone who is not a Certified Artist and be approved by the New Jersey Department of Community Affairs and established by a licensed real estate broker approved by both Plaintiffs and the City.

26. In order to advance the purposes of an arts district and provide incentives for the establishment of an arts community in the City, Plaintiffs have agreed to making, either directly, or to cause to be made by another party, a contribution to the Jersey City Museum and the Loew's Theater in the total amount of \$1,000,000 to be allocated

between those two uses as the City shall advise at the time of contribution. This contribution shall be made in three (3) phases: (1) \$334,000 shall be paid upon the enactment of the ordinance amending the Powerhouse Arts District Redevelopment Plan; (2) \$333,000 shall be paid upon site plan approval for the development of 111 First Street and (3) \$333,000 shall be paid upon the issuance of the Construction Permit for the development at 111 First Street. This donation, in addition to the permanent public art located on the facade of 110 First Street and the use of a world class architect for the design of 111 First Street shall fully satisfy the provisions of Section VI-A(8) of the Amended Powerhouse Arts District Redevelopment Plan annexed as **Exhibit G**.

AFFORDABLE HOUSING

27. The City has agreed with Plaintiffs that it is obligated to provide for a number of low and moderate income available units as a result of Plaintiffs' development on an 8-1 ratio equal to one ninth of the total number of residential units. Based upon the plans which call for 1,055 residential apartment units, the base number of new dwelling units is 1055 and the required number of affordable units is 117. Of those one half should be provided within the development. Half of all affordable units shall be available to low income individuals and the other half shall be available to moderate income individuals.

28. A minimum of one half of the units (i.e. 59) will be built at either 111 or 110 First Street. Plaintiffs have preliminarily determined that of these 59 units, 19 will be incorporated into the design of 110 First Street and 40 will be incorporated into the design of 111 First Street. The location of the units is subject to the final designs.

29. The other half of the units (i.e. 58) will not be built on site but Plaintiffs shall either

a. make a monetary contribution in the amount of \$150,000 per unit in respect of those units allocated proportionally to 110 and 111 First Street in the proportions set in the foregoing paragraph for the construction of on-site units. It is agreed between Plaintiffs and the City that as of the date of this Order, the monetary contribution amount is \$150,000, which shall be the maximum amount which Plaintiffs will be required to contribute per unit. The total maximum contribution shall be \$8,700,000 and it shall be apportioned between 110 and 111 First Street in the same proportion as the affordable units to be built at each location; or

b. In lieu of such contribution, as set forth in paragraph a, Plaintiffs may provide some or all of such units off site through gut renovation of an existing structure or new construction, to add to the affordable housing stock in the City, provided that such units meet COAH standards and provided that the locations of such units be fixed and acceptable to the City at the time of site plan approval for 110 and 111 First Streets, respectively.

30. This Order shall serve as the sole affordable housing agreement between the Plaintiffs and the City as to the number of units to be provided and the other obligations specifically set forth above. In the administration of such units for their rental, lease, purchase and occupancy, the requirements of the regulations of the New Jersey Council on Affordable Housing and the affordability controls of the Housing Mortgage Finance Agency shall apply, but such obligations shall not be construed to govern the number, size, nor location of units beyond any specific provision of this Stipulation and Consent Order.

**DISMISSAL OF ACTIONS, VIOLATIONS, FINES, PENALTIES
AND ADMINISTRATIVE PROCEEDINGS WITH PREJUDICE**

31. Upon the approval and execution of this Consent Order by all parties and the Courts, the actions captioned in the respective courts shall be dismissed WITHOUT PREJUDICE. All parties agree that the actions required to be taken by the City of Jersey City and its Planning Board are integral and essential substantive components of this Settlement and Consent Order. Those actions subsequent to the formal approval at public hearings by the Council and Planning Board by resolution of this Settlement and Consent Order are:

a. The adoption by the City Council of the zoning provisions called for herein through amendment to the Power House Arts Redevelopment Plan after its approval by the Jersey City Planning Board with the requisite public hearings and the execution of the necessary amendatory ordinance by the Mayor.

b. The hearing and approval of Plaintiffs' development applications for 111 and 110 First Street by the Jersey City Planning Board pursuant to this Order and the amended redevelopment plan.

32. The City Council, Planning Board and Mayor have each considered these actions and have concluded that they can be properly taken by them in fulfillment of the terms of this Settlement and Consent Order and that they will conduct all necessary hearings in proper manner, upon proper notice, all as required by law as per the principles enunciated in *Whispering Woods at Bamm Hollow, Inc. Middletown Planning Board*, 220 N.J. Super. 161 (Law Div. 1987); *Warner Company v. Sutton*, 274 N.J. Super 464 (app. Div. 1994) and cases thereafter.

33. It is understood and agreed by all parties that the actions and grants of approvals to Plaintiffs required under this Settlement and Consent Order are an integral and essential part of the settlement, without which prejudice will not attach to the dismissal of Plaintiffs' actions.

34. Upon the later of either the expiration of the time for appeals without any appeal being taken from the last to occur of the actions of the Mayor, City Council and Planning Board called for in paragraph 31, or the termination by final, non-appealable order of any litigation or challenge brought to appeal such actions, or otherwise affecting the full implementation of this Order, then Plaintiffs shall, upon the request of the City of Jersey City, or any other defendant, dismiss all of the civil actions in this matter WITH FINAL PREJUDICE.

35. The City has levied fines, penalties and charged interest thereon for Plaintiffs' alleged violations of various building codes and other regulations and requirements. All such impositions shall be vacated, dismissed and removed from Jersey City records and all appeals from those alleged violations shall be dismissed as moot at the same time as the dismissals called for in the foregoing paragraph are filed with the Court.

OTHER PROVISIONS

36. Counsel for Plaintiffs, Waters, McPherson, McNeill, P.C., is holding \$5,000 in the firm's attorney escrow account pursuant to a prior order of the Superior Court with respect to proceedings before the City Historic Preservation Commission. Such sum, and any interest thereon, shall be returned to Plaintiffs.

37. Plaintiffs agree that they shall pay the full costs of mediation of this matter despite the language of the mediation agreement of September 23, 2005 which provides that the costs should be borne equally by the parties. Should further mediation be required under the provisions of this Order, the City and the Plaintiffs shall, to the degree possible, engage the services of the same mediator on the same terms and conditions as are set forth in their present mediation agreement, including the obligations of each as to costs under that mediation agreement. Plaintiffs shall also pay the costs of the City's litigation Engineer, Creta Engineering, for work related to evaluating the structural soundness of 111 First Street and the advice to the Office of the Construction Code Official for same.

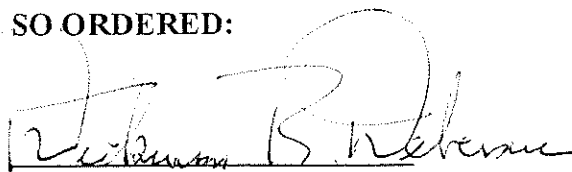
38. All requirements of this Order, together with all steps reasonably incident thereto shall be performed by the parties specifically charged with such performance and by any other party not specifically charged which holds the power and authority to perform those acts or any act necessary or incident thereto. Such obligations constitute the ORDER of the COURT.

39. All parties not obligated with the performance of an act as set forth in the preceding paragraph are hereby ENJOINED for hindering, interfering, delaying or otherwise frustrating or attempting to frustrate such acts to be performed in the discharge of this Order.

40. The City and Plaintiffs may agree to modifications of this Order to accomplish the Purposes of this Settlement without the consent of any individual named party hereto upon notice to such party and submission of such agreed upon modifications to the Court for its consideration.

41. The Court shall retain jurisdiction for the enforcement of the terms of this Order. All matters concerning the zoning of the properties, or other matters specifically governed by the provisions of the New Jersey Municipal Land Use Law shall be brought for enforcement in the Superior Court of New Jersey, Law Division. Any other action brought for enforcement by either party may be brought in either Court.

SO ORDERED:

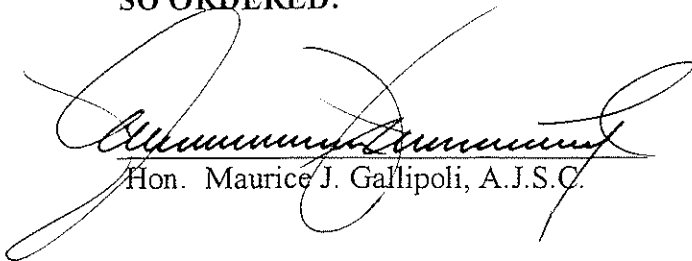
A handwritten signature in black ink, appearing to read "Dickinson R. Debevoise", written over a horizontal line.

Hon. Dickinson R. Debevoise, U.S.D.J.

July 21, 2006

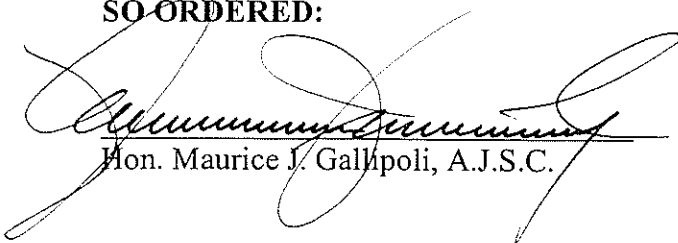
41. The Court shall retain jurisdiction for the enforcement of the terms of this Order. All matters concerning the zoning of the properties, or other matters specifically governed by the provisions of the New Jersey Municipal Land Use Law shall be brought for enforcement in the Superior Court of New Jersey, Law Division. Any other action brought for enforcement by either party may be brought in either Court.

SO ORDERED:

 7-13-06
Hon. Maurice J. Gallipoli, A.J.S.C.

By entering this order, the court is merely memorializing the settlement of these consolidated cases by and between the parties. However, as to third-parties not party to the settlement agreement, the entry of this order is not intended to indicate or to be understood to reflect that the court has pre-judged the validity of any past action(s) of the parties and/or any future action(s) of the parties necessary to effectuate the terms of this settlement agreement. Further, the above proviso notwithstanding, the settlement agreement is deemed as binding by and between the parties to same and thus is subject to enforcement by the court.

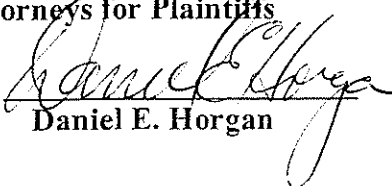
SO ORDERED:

 7-13-06
Hon. Maurice J. Gallipoli, A.J.S.C.

[state court signature page]

The Undersigned hereby Consent to
the form and entry of this Order:

WATERS, McPHERSON, McNEILL, P.C
Attorneys for Plaintiffs

By:  and
Daniel E. Horgan

By: 
Angela M. Gurrera

CORPORATION COUNSEL FOR THE CITY OF JERSEY CITY

Attorneys for Defendants,

City of Jersey City
L. Harvey Smith
Municipal Council for the City of Jersey City
David Donnelly
Robert Cotter
Mary Ann Bucci-Carter
Division of Cultural Affairs for the City of Jersey City
Jersey City Historic Preservation Commission
Daniel Wrieden
Steven Gucciardo
Raymond Meyer
Jersey City Office of the Construction Code Official
Jersey City Construction Board of Appeals
Jersey City Fire Department

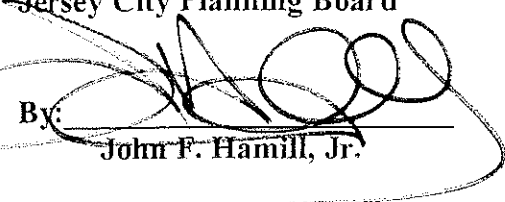
By:  and
William C. Matsikoudis

By: 
Martin C. X. Dolan

FLATSER/GREENBERG, P.C.
Attorneys for Defendant Peter Abeles

By: _____
Jeffrey A. Cohen, Esq.

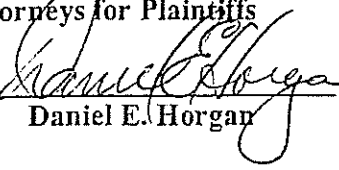
BOGART KEANE RYAN & HAMILL, L.L.C.
Attorneys for Defendant
Jersey City Planning Board

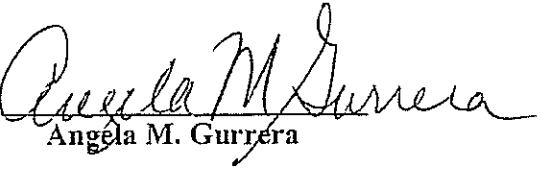
By: 
John F. Hamill, Jr.

[counsel signature page]

The Undersigned hereby Consent to
the form and entry of this Order:

WATERS, McPHERSON, McNEILL, P.C
Attorneys for Plaintiffs

By:  and
Daniel E. Horgan

By: 
Angela M. Gurrera

CORPORATION COUNSEL FOR THE CITY OF JERSEY CITY
Attorneys for Defendants,

City of Jersey City
L. Harvey Smith
Municipal Council for the City of Jersey City
David Donnelly
Robert Cotter
Mary Ann Bucci-Carter
Division of Cultural Affairs for the City of Jersey City
Jersey City Historic Preservation Commission
Daniel Wrieden
Steven Gucciardo
Raymond Meyer
Jersey City Office of the Construction Code Official
Jersey City Construction Board of Appeals
Jersey City Fire Department

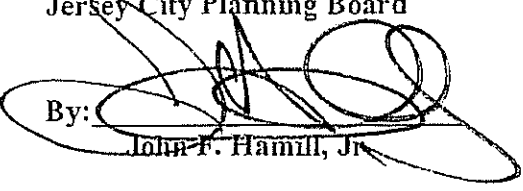
By: 
William C. Matsikondis

By: 
Martin C. X. Dolan

FLATSER/GREENBERG, P.C.
Attorneys for Defendant Peter Abeles

By: 
Jeffrey A. Cohen, Esq.

BOGART KEANE RYAN & HAMILL, L.L.C.
Attorneys for Defendant
Jersey City Planning Board

By: 
John F. Hamill, Jr.

[counsel signature page]