

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
COUNTY OF ROCKLAND and ROCKLAND COUNTY
SEWER DISTRICT NO 1,

Plaintiffs,

-against-

NIXON PEABODY, L.L.P.,

Defendant.
-----X

Index No. _____

SUMMONS

Date Index No. Purchased:

To the above named Defendant :

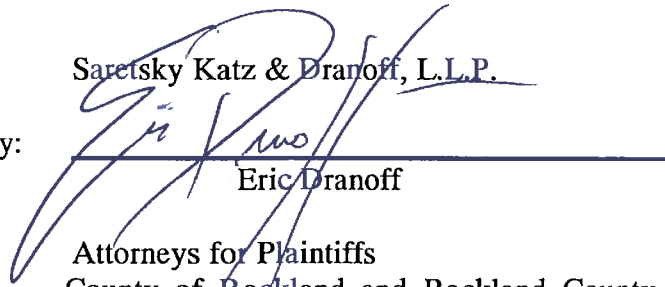
You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within twenty 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Rockland County which is the County in which Plaintiff County of Rockland is located at Allison-Parish County Office Building, New Hempstead Road, New City, New York and in which Plaintiff Rockland County Sewer District No. 1 is located at 4 NY-340, Orangeburg, NY.

Dated: New York, New York
September 12, 2017

Saretsky Katz & Dranoff, L.L.P.

By:



Eric Dranoff

Attorneys for Plaintiffs
County of Rockland and Rockland County Sewer
District No. 1

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New York, New York 10016
(212) 973-9797

To:
Nixon Peabody, L.L.P.
1300 Clinton Square
Rochester, New York 14604

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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COUNTY OF ROCKLAND and ROCKLAND COUNTY
SEWER DISTRICT NO 1,

Filed: _____

Index No. _____

Plaintiffs,

COMPLAINT

-against-

NIXON PEABODY, L.L.P.,

Defendant.

-----X

Plaintiffs COUNTY OF ROCKLAND and ROCKLAND COUNTY SEWER DISTRICT NO. 1, by their attorneys Saretsky Katz & Dranoff, L.L.P., as and for their Complaint against Defendant NIXON PEABODY, LLP alleges:

THE PARTIES

1. Plaintiff, COUNTY OF ROCKLAND, is a municipality with its place of business at Allison-Parris County Office Building, New Hempstead Road, New City, New York.

2. Plaintiff ROCKLAND COUNTY SEWER DISTRICT No. 1 is a county improvement district organized and existing pursuant to Article 5-A of the New York County Law.

3. Upon information and belief, Defendant is a Domestic Registered Limited Liability Partnership, doing business at 1300 Clinton Square, Rochester, New York 14604.

4. On January 13, 2004, and extended from time to time, Defendant entered into an Outside Counsel Agreement with the County of Rockland to provide legal services to it and the Rockland County Sewer District No.1, relating to the expansion of the Rockland County Sewer District No.1.

5. Part of the services Defendant specifically contracted to perform and that defendant

represented it would and could perform was evaluating appraisals, rebuttal reports, economic feasibility analyses, rezoning analyses and construction and cost estimates.

6. Defendant also contracted to provide greater “participation from partners on Condemnation Proceedings, especially with respect to valuation.”

7. Defendant represented Plaintiffs in *In Re: Rockland County Sewer District No.1 v. Split Rock Partnership*, (“Split Rock”) Rockland County Clerk Index Number 7604/04, an Article 5 proceeding under the New York Eminent Domain Procedure Law (EDPL) (the “Condemnation Proceeding”).

NATURE OF ACTION

8. This is an action for legal malpractice arising out of Defendant’s representation of Plaintiffs prior to and during the Condemnation Proceeding.

9. This is also an action for a declaration that Defendant has and had no right to compensation and must return all legal fees, costs and expenses paid by Plaintiffs because (a) Defendant failed to diligently prosecute the Condemnation Proceeding on Plaintiffs’ behalf and/or (b) Defendant otherwise improperly handled the Condemnation Proceeding and/or (c) Defendant committed malpractice prior to and during the Condemnation Proceeding and/or (d) Defendant was discharged for cause.

10. This is also an action for breach of contract arising out of Defendant’s failure to fulfill specific contractual obligations to Plaintiffs.

FACTS COMMON TO ALL CAUSES OF ACTION

The History of The Property in the Condemnation Proceeding and Prior Litigation Between Split Rock Partnership and the State of New York

11. In or about 1991 Split Rock was the owner of approximately 65 acres of unimproved

real property bordering Route 17 in Village of Hillburn, Town of Ramapo, Rockland County, New York. (the "Property")

12. On or about June 19, 1991, the State of New York appropriated .106 acre of the Property. (the "DOT Taking")

13. Split Rock, which had hoped to commercially develop the Property, brought a claim against the State to recover damages associated with the DOT Taking. (the "DOT Action")

14. Except for the .106 acre appropriated in the DOT Taking, the Property in the DOT Action was also the Property that was the subject of the subsequent Condemnation Proceeding.

15. Upon information and belief, at trial of the DOT Action, Split Rock presented expert testimony that the Property's highest and best use was as a commercial office building. The State presented testimony that the highest and best use of the Property was only recreational.

16. By Decision and Order (Patti, J.), entered December 18, 1998, the Court of Claims determined that Split Rock had established a reasonable probability that a zoning change for the Property would have been granted; that Split Rock's failure to previously pursue a zoning change, or the necessary permits, prior to the appropriation, was reasonable under all of the circumstances; that a change in zoning would have allowed Split Rock to develop the Property as an office complex; and that such development constituted the highest and best use for the Property both before and after that taking.

17. Based on the highest and best use of the Property being commercial development, the Court of Claims determined that the value of the Property as of 1991 was \$3,863,208.00. This valuation was upheld by the Appellate Division.

The Status of the Property Following the DOT Action

18. Upon information and belief, in May 2000, One to One Sports Radio Stations, Inc.

offered to purchase the Property from Split Rock for \$4,350,000.00. (the “One to One Sports Radio Stations, Inc. Offer”)

19. Upon information and belief, on May 22, 2001 Split Rock received from K-K Developers, Inc. a Letter of Intent to purchase the Property for \$6,200,000.00. (the “K-K Developers, Inc. Letter of Intent”)

20. Upon information and belief, in approximately 2003, Split Rock attracted interest in the Property from the Wilder Companies, a Boston based developer.

21. Upon information and belief, on or about March 25, 2003, Split Rock received from Wilder a letter of intent to purchase forty acres of the Property for \$150,000.00 per acre for a total of \$6,000,000.00. (the “Wilder Letter of Intent”)

22. Upon information and belief, on or about April 3, 2003 Split Rock received from Corporate Development Enterprises, L.L.C. a letter of intent to purchase the Property for \$145,000.00 per acre for a total of \$9,280,000.00. (the “Corporate Development Enterprises, L.L.C. Letter of Intent”)

23. Upon information and belief, one of Split Rock’s partners, Thomas Williams, who also served as its attorney, investigated Wilder in order to be satisfied that the developer was capable of completing development of the Property. Based on Williams’s research, Split Rock was assured of Wilder’s competency. Williams met with Wilder company representatives, and permitted them to inspect the Property.

24. Upon information and belief, in early 2004 Wilder approached the Village of Hillburn Planner, Robert Geneslaw, to inquire about the Village’s position on development of the Property. Soon thereafter, Williams also brought Wilder to meet with the Mayor of Hillburn, Brian Miele. During the meeting, development options were explored with the Mayor.

25. On or about March 9, 2004, upon the advice of Defendant and in reliance on such advice, Plaintiffs made a \$100,000.00 condemnation offer to Split Rock for acquisition of 37.651 of the Property's approximately 64 acres.

26. On March 22, 2004, upon the advice of Defendant and in reliance on such advice, Plaintiffs made a \$230,000.00 condemnation offer to Split Rock for acquisition of approximately 64 acres.

27. As reflected in an October 26, 2004 email from one of Defendant's associate attorneys, the associate attorney received documentation from Williams of a \$9,500,000.00 offer for the Property. (The "\$9,500,000.00 Offer") The associate attorney did not read through the offer completely but concluded the offer was irrelevant for valuation purposes.

28. Upon information and belief, Split Rock and Wilder entered into a \$10,000,000.00 contract on November 8, 2004 for construction of an office complex on the Property.

29. Upon information and belief, following the execution of the \$10,000,000.00 contract with Wilder, Williams approached one of Defendant's associate attorneys to discuss the intended location of a treatment plant proposed by the sewer authority on or near the property, and, more particularly, the issue of continued access to the property following the taking.

30. Upon information and belief, one of Defendant's associate attorneys asked for and was provided a copy of the \$10,000,000.00 contract with Wilder.

31. Upon information and belief, Williams was unable to discover whether or even how much of the Split Rock property was targeted for acquisition.

32. Upon information and belief, Williams' conversations about development of the property by Wilder continued thereafter with one of Defendant's associate attorneys or with the Mayor of Hillburn who committed to work with Split Rock to avoid a taking of the entire

property.

33. Upon information and belief, on or about November 18, 2004 Split Rock received from Development Options, Inc. a Letter of Intent to purchase the Property for \$125,000.00 per acre or \$8,000,000.00. (The “Development Options, Inc. Letter of Intent”)

34. On January 28, 2005, upon the advice of Defendant and in reliance on such advice, Plaintiffs made a \$244,800.00 condemnation offer to Split Rock for acquisition of approximately 64 acres.

35. On February 3, 2005 Split Rock rejected the January 28, 2005 \$244,800.00 condemnation offer as complete compensation for the taking.

36. The Property was taken in Eminent Domain by a Decision and Order (Dickerson, J.) dated February 4, 2005, and title to the Property vested in Plaintiff Rockland County Sewer District No.1 on February 15, 2005.

37. Upon information and belief, as a result of the taking of the Property, the Wilder contract was voided.

38. Upon information and belief, Split Rock timely filed a claim on or about April 9, 2005.

The Condemnation Proceeding

39. The trial of the Condemnation Proceeding took place on July 27, 28, 29, and 30, 2009; January 19, 20, 21, 22, 25, 26, 27, and 28, 2010; and on March 1 and 2, 2010.

40. Defendant did not assign a partner to handle the trial of the Condemnation proceeding.

41. The first thing in the transcript of the trial is the Court’s noting the prior DOT Action involving the Property and the Court of Claims’ findings regarding the Property’s highest and

best use.

42. By email dated May 17, 2005, four years before the trial even commenced, Defendant advised an appraiser that, as part of Plaintiffs' case, Plaintiffs "will need strong rebuttal" on the issue of highest and best use of the Property.

43. At trial of the Condemnation Proceeding, Split Rock produced a copy of the Record on Appeal from the DOT Action.

44. Split Rock advised the Court that the issue of highest and best use in the DOT Action was the same issue before the Court in the Condemnation Proceeding.

45. The Record on Appeal from the DOT Action was placed into evidence without any objection by Defendant.

46. Defendant advised the Court that "many many things have changed since 1991" that should make the Court come to its own conclusion as to highest and best use.

47. During the trial of the Condemnation Proceeding, as part of its proof regarding highest and best use of the Property, Split Rock presented, in essence, the very same witnesses that testified in the DOT Action.

48. In the prior DOT Action, the State presented an expert appraiser as well. The Court of Claims in the DOT Action, however, criticized the State's appraisal expert for arriving at his opinion on highest and best use, and on value, without inquiring of the municipal officials about the possibility of a zoning change. In the Condemnation Proceeding, Defendant ignored the Court of Claims criticism of the State's expert in the DOT Action and similarly failed to contact officials about a zoning change

49. Despite representing to the Court at the beginning of trial that "many many things have changed" since 1991 regarding highest and best use, Defendant failed to submit evidence

that “many many things” had changed since 1991 including, but not limited to, expert testimony regarding significant changes in value or in the marketplace, or to suggest that the Court of Claims’ decision in the DOT Action was in error in any way, much less as to valuation and highest and best use.

50. Defendant failed to provide a rebuttal on the issue of highest and best use despite Defendant advising an appraiser on May 17, 2005 that Plaintiffs “will need strong rebuttal” on the issue of highest and best use as part of Plaintiffs’ case.

51. Defendant failed to advise Plaintiffs of Defendant’s failure to submit evidence that “many many things” had changed since 1991 including, but not limited to, expert testimony, regarding significant changes in value or in the marketplace, or to suggest that the Court of Claims’ decision in the DOT Action was in error in any way, much less as to valuation and highest and best use.

52. Defendant failed to marshal evidence to show that “many many things” had changed since 1991 including, but not limited to, expert testimony, regarding significant changes in value or in the marketplace, or to suggest that the Court of Claims’ decision in the DOT Action was in error in any way, much less as to valuation and highest and best use.

53. Defendant failed to advise Plaintiffs of Defendant’s failure to marshal evidence to show that “many many things” had changed since 1991, including but not limited to expert testimony, regarding significant changes in value or in the marketplace, or to suggest that the Court of Claims’ decision in the DOT Action was in error in any way, much less as to valuation and highest and best use.

54. No evidence existed to demonstrate that “many many things” had changed since 1991 including significant changes in value, or in the marketplace, or that the Court of Claims’

decision in the DOT Action was in error in any way, much less as to valuation and highest and best use.

55. Defendant failed to advise Plaintiffs that no evidence existed to demonstrate that “many many things” had changed since 1991 including significant changes in value, or in the marketplace, or that the Court of Claims’ decision in the DOT Action was in error in any way, much less as to valuation and highest and best use.

56. Defendant failed to present evidence, including but not limited to expert testimony, to demonstrate any change in the situation in the seven years following the Court of Claims’ decision, or the fourteen years since the DOT Taking.

57. Defendant failed to advise Plaintiffs of Defendant’s failure to present evidence, including but not limited to expert testimony, to demonstrate any change in the situation in the seven years following the Court of Claims’ decision, or the fourteen years since the DOT Taking.

58. Defendant failed to marshal evidence including, but not limited to, expert testimony, to demonstrate any change in the situation in the seven years following the Court of Claims’ decision, or the fourteen years since the DOT Taking.

59. Defendant failed to advise Plaintiffs of Defendant’s failure to marshal evidence, including but not limited to expert testimony, to demonstrate any change in the situation in the seven years following the Court of Claims’ decision, or the fourteen years since the DOT Taking.

60. No evidence existed to demonstrate any change in the situation in the seven years following the Court of Claims’ decision, or the fourteen years since the DOT Taking.

61. Defendant failed to advise Plaintiffs that no evidence existed to demonstrate any

change in the situation in the seven years following the Court of Claims' decision, or the fourteen years since the DOT Taking.

62. Defendant failed to present evidence, including but not limited to expert testimony, questioning the Court of Claims' determination in the DOT Action, or Split Rock's proof in the Condemnation Proceeding that commercial development of the Property, by construction of an office complex, was physically possible and economically feasible, and thus the highest and best use of the Property.

63. Defendant failed to advise Plaintiffs of Defendant's failure to present evidence, including but not limited to expert testimony, questioning the Court of Claims' determination in the DOT Action, or Split Rock's proof in the Condemnation Proceeding that commercial development of the Property, by construction of an office complex, was physically possible and economically feasible, and thus the highest and best use of the Property.

64. Defendant failed to marshal evidence, including but not limited to expert testimony, questioning the Court of Claims' determination in the DOT Action, or Split Rock's proof in the Condemnation Proceeding that commercial development of the Property, by construction of an office complex, was physically possible and economically feasible, and thus the highest and best use of the Property.

65. Defendant failed to advise Plaintiffs of Defendant's failure to marshal evidence, including but not limited to expert testimony, questioning the Court of Claims' determination in the DOT Action, or Split Rock's proof in the Condemnation Proceeding that commercial development of the Property, by construction of an office complex, was physically possible and economically feasible, and thus the highest and best use of the Property.

66. No evidence existed to question the Court of Claims' determination in the DOT

Action, or Split Rock's proof in the Condemnation Proceeding that commercial development of the Property, by construction of an office complex, was physically possible and economically feasible, and thus the highest and best use of the Property.

67. Defendant failed to advise Plaintiffs that no evidence existed to question the Court of Claims' determination in the DOT Action, or Split Rock's proof in the Condemnation Proceeding that commercial development of the Property, by construction of an office complex, was physically possible and economically feasible, and thus the highest and best use of the Property.

68. Defendant failed to advise Plaintiffs of the potential impact of the DOT Action in the Condemnation Proceeding.

69. Defendants failed to present evidence, including but not limited to expert testimony, to shed any doubt on the \$3,863,208.00 1991 valuation as found in the DOT Action.

70. Defendant failed to advise Plaintiffs of Defendant's failure to present evidence, including but not limited to expert testimony, to shed any doubt on the \$3,863,208.00 1991 valuation as found in the DOT Action.

71. Defendants failed to marshal evidence, including but not limited to expert testimony, to shed any doubt on the \$3,863,208.00 1991 valuation as found in the DOT Action.

72. Defendant failed to advise Plaintiffs of Defendant's failure to marshal evidence, including but not limited to expert testimony, to shed any doubt on the \$3,863,208.00 1991 valuation as found in the DOT Action.

73. No evidence existed to shed any doubt on the \$3,863,208.00 1991 valuation as found in the DOT Action.

74. Defendant failed to advise Plaintiffs that no evidence existed to shed any doubt on the

\$3,863,208.00 1991 valuation as found in the DOT Action.

75. Defendant did not determine or perform calculations to determine what the 1991 \$3,863,208.00 valuation as found in the DOT Action would have been on February 15, 2005, taking into account yearly increases or decreases in property value, as the case may be.

76. In the Condemnation Proceeding, Split Rock also took the position that, while the Property had been zoned residential, and there had previously been some residential use of the Property, the Property was not suited to residential use, and a change of zoning to commercial, to permit commercial development, was more appropriate and would be approved. In particular, it was Spilt Rock's expert's opinion that a zoning change to allow development of a corporate headquarters office or conference center was likely.

77. Even though, at least four years before trial began, Defendant advised an appraiser that Plaintiffs "will need strong rebuttal" on the issue of highest and best use as part of Plaintiffs' case, Defendant failed to present a zoning expert during trial of the Condemnation Proceeding regarding the possible rezoning of the Property; a critical part of proof regarding highest and best use.

78. Even before trial began, Split Rock's counsel noted that Defendant had no zoning expert.

79. Defendant failed to marshal evidence including, but not limited to, expert testimony, to refute Spilt Rock's expert's opinion that a zone change to allow development of a corporate headquarters office or conference center was likely.

80. Defendant failed to advise Plaintiffs of Defendant's failure to marshal evidence, to refute Spilt Rock's position that a zoning change to allow development of a corporate headquarters office or conference center was likely.

81. No evidence existed to refute Spilt Rock's position that a zoning change to allow development of a corporate headquarters office or conference center was likely.

82. Defendant failed to advise Plaintiffs that no evidence existed to refute Spilt Rock's expert's opinion that a zoning change to allow development of a corporate headquarters office or conference center was likely.

83. To the contrary, at trial Defendant called William Beckman as an expert witness in the valuation of real estate.

84. Mr. Beckman testified that the Property's zoning could be changed and that the Village of Hillburn was amenable to a zoning change to allow commercial office development.

85. Mr. Beckman's testimony corroborated Split Rock's position regarding the likelihood of a zoning change and highest and best use.

86. Split Rock took the position that the \$10,000,000.00 November 8, 2004 contract between Split Rock and Wilder for construction of an office complex on the Property reflected the Property's value.

87. Defendant failed to present evidence to refute Split Rock's position that the \$10,000,000.00 November 8, 2004 contract between Split Rock and Wilder for construction of an office complex on the Property reflected the Property's value.

88. Defendant failed to present evidence, including but not limited to expert testimony, that the \$10,000,000.00 contract between Split Rock and Wilder was an abnormal transaction.

89. Defendant failed to advise Plaintiffs that Defendant failed to present evidence, including but not limited to expert testimony, that the \$10,000,000.00 contract between Split Rock and Wilder was an abnormal transaction.

90. Defendant failed to marshal evidence, including but not limited to expert testimony,

that the \$10,000,000 contract between Split Rock and Wilder was an abnormal transaction.

91. Defendant failed to advise Plaintiffs that Defendant failed to marshal evidence, including but not limited to expert testimony, that the \$10,000,000.00 contract between Split Rock and Wilder was an abnormal transaction.

92. No evidence existed to show that the \$10,000,000.00 contract between Split Rock and Wilder was an abnormal transaction.

93. Defendant failed to advise Plaintiffs that no evidence existed to show that the \$10,000,000.00 contract between Split Rock and Wilder was an abnormal transaction.

94. Defendant failed to present evidence, including but not limited to expert testimony that the \$10,000,00.00 contract between Split Rock and Wilder was not at arm's length.

95. Defendant failed to advise Plaintiffs that Defendant failed to present evidence, including but not limited to expert testimony that the \$10,000,000.00 contract between Split Rock and Wilder was not at arm's length

96. Defendant failed to marshal evidence, including but not limited to expert testimony that the \$10,000,000 contract between Split Rock and Wilder was not at arm's length.

97. Defendant failed to advise Plaintiffs that Defendant failed to marshal evidence, including but not limited to expert testimony that the \$10,000,000.00 contract between Split Rock and Wilder was not at arm's length.

98. No evidence existed to show the \$10,000,000.00 contract between Split Rock and Wilder was not at arm's length.

99. Defendant failed to advise Plaintiffs that no evidence existed to show the \$10,000,000.00 contract between Split Rock and Wilder was not at arm's length.

100. Defendant failed to present evidence, including but not limited to expert

testimony, to show the \$10,000,000 contract between Split Rock and Wilder reflected an abnormal value.

101. Defendant failed to advise Plaintiffs that Defendant failed to present evidence, including but not limited to expert testimony, to show the \$10,000,000.00 contract between Split Rock and Wilder reflected an abnormal value.

102. Defendant failed to marshal evidence, including but not limited to expert testimony, to show the \$10,000,000.00 contract between Split Rock and Wilder reflected an abnormal value.

103. Defendant failed to advise Plaintiffs that Defendant failed to marshal evidence, including but not limited to expert testimony, to show the \$10,000,000.00 contract between Split Rock and Wilder reflected an abnormal value.

104. No evidence existed to show that the \$10,000,000.00 contract between Split Rock and Wilder reflected an abnormal value.

105. Defendant failed to advise Plaintiffs that no evidence existed to show that the \$10,000,000 contract between Split Rock and Wilder reflected an abnormal value.

106. Defendant failed to present evidence, including but not limited to expert testimony that the \$10,000,000.00 contract between Split Rock and Wilder was entered into in bad faith for the purpose of inflating the value of the Property.

107. Defendant failed to advise Plaintiffs that Defendant failed to present evidence, including but not limited to expert testimony that the \$10,000,000.00 contract between Split Rock and Wilder was entered into in bad faith for the purpose of inflating the value of the Property.

108. Defendant failed to marshal evidence, including but not limited to expert testimony,

to show that the \$10,000,000.00 contract between Split Rock and Wilder was entered into in bad faith for the purpose of inflating the value of the Property.

109. Defendant failed to advise Plaintiffs that Defendant failed to marshal evidence, including but not limited to expert testimony, to show that the \$10,000,000.00 contract between Split Rock and Wilder was entered into in bad faith for the purpose of inflating the value of the Property.

110. No evidence existed to show that the \$10,000,000.00 contract between Split Rock and Wilder was entered into in bad faith for the purpose of inflating the value of the Property.

111. Defendant failed to advise Plaintiffs that no evidence existed to show that the \$10,000,000.00 contract between Split Rock and Wilder was entered into in bad faith for the purpose of inflating the value of the Property.

112. No evidence existed to show that Wilder was not a sophisticated and substantial national developer of commercial real estate.

113. Defendant knew that Wilder was a sophisticated and substantial national developer of commercial real estate.

114. Defendant failed to advise Plaintiffs that no evidence existed to show that Wilder was not a sophisticated and substantial national developer of commercial real estate.

115. Defendant did not marshal evidence or conduct any third party discovery of Wilder regarding the \$10,000,000 contract between Split Rock and Wilder.

116. Defendant did not marshal evidence or conduct any third party discovery of Wilder because Defendant did not want to uncover facts that may be “bad” for the Condemnation Proceeding.

117. Defendant did not consider the One to One Sports Radio Stations, Inc. Offer for

valuation purposes.

118. Defendant did not advise Plaintiffs that Defendant did not consider the One to One Sports Radio Stations, Inc. Offer for valuation purposes.

119. Defendant did not marshal evidence or conduct any discovery concerning the One to One Sports Radio Stations, Inc. Offer.

120. Defendant did not advise Plaintiffs that it did not marshal evidence or conduct discovery concerning the One to One Sports Radio Stations, Inc. Offer.

121. Defendant did not consider the K-K Developers, Inc. Letter of Intent for valuation purposes.

122. Defendant did not advise Plaintiffs that Defendant did not consider the K-K Developers, Inc. Letter of Intent for valuation purposes.

123. Defendant did not marshal evidence or conduct any discovery concerning the K-K Developers, Inc. Letter of Intent.

124. Defendant did not advise Plaintiffs that it did not marshal evidence or conduct discovery concerning K-K Developers, Inc. Letter of Intent.

125. Defendant did not consider the Wilder Letter of Intent for valuation purposes.

126. Defendant did not advise Plaintiffs that Defendant did not consider the Wilder Letter of Intent for valuation purposes.

127. Defendant did not marshal evidence or conduct any discovery regarding the Wilder Letter of Intent.

128. Defendant did not advise Plaintiffs that it did not marshal evidence or conduct discovery concerning the Wilder Letter of Intent.

129. Defendant did not consider the Corporate Development Enterprises, L.L.C. Letter

of Intent for valuation purposes.

130. Defendant did not advise Plaintiffs that Defendant did not consider the Corporate Development Enterprises, L.L.C. Letter of Intent Letter of Intent for valuation purposes.

131. Defendant did not marshal evidence or conduct any discovery regarding the Corporate Development Enterprises, L.L.C. Letter of Intent.

132. Defendant did not advise Plaintiffs that it did not marshal evidence or conduct discovery concerning the Corporate Development Enterprises, L.L.C. Letter of Intent.

133. Defendant did not consider the \$9,500,000.00 Offer for valuation purposes, choosing not to review the offer completely and going as far as to conclude the \$9,500,000.00 Offer was irrelevant for valuation purposes.

134. Defendant did not marshal evidence or conduct any discovery regarding the \$9,500,000.00 Offer.

135. Defendant did not consider the Development Options, Inc. Letter of Intent for valuation purposes.

136. Defendant did not advise Plaintiffs that Defendant did not consider the Development Options, Inc. Letter of Intent Letter of Intent for valuation purposes.

137. Defendant did not marshal evidence or conduct any discovery regarding the Development Options, Inc. Letter of Intent.

138. Defendant did not advise Plaintiffs that it did not marshal evidence or conduct discovery concerning the Development Options, Inc. Letter of Intent.

139. Split Rock's expert appraiser valued the Property at \$8,675,000.00 based on a sales comparison basis.

140. Split Rock's appraiser also valued the property at \$8,900,000.00 based upon the

Wilder contract.

141. Based upon the two methods of appraisal, Split Rock's appraiser concluded that the market value on February 15, 2005, the date of the taking, was \$8,850,000.00.

142. At trial, Defendant sought to have the Court recognize John Byron as an expert in the field of civil engineering, site planning, and related cost estimating.

143. During the Condemnation Proceeding, however, Defendant failed to comply with basic civil procedure mandated by CPLR 3101(d)(1)(i) for the disclosure of experts, which resulted in the trial court's precluding the witness from testifying as an expert witness.

144. Defendant then attempted to have Mr. Byron testify regarding the nature of the expense of a parking structure at a commercial building.

145. Split Rock objected to this attempt on the basis that Mr. Byron did not have any experience in the development of commercial or office structures.

146. The court determined that it had seen nothing to demonstrate that Mr. Byron was qualified to testify about the nature of the expense of a parking structure at a commercial building.

147. Mr. Byron testified that he has never been involved in the construction of a parking garage and is not personally familiar with the construction of parking garages.

148. The Appellate Division, Second Department affirmed the trial court's preclusion of Mr. Byron from testifying as an expert witness based on Defendant's failure to comply with the basic procedures mandated by CPLR 3101(d)(1)(i) for the disclosure of experts.

149. Prior to the preclusion of Mr. Byron or any time thereafter, Defendant failed to advise Plaintiffs of Defendant's neglect in failing to comply with the procedures mandated by CPLR 3101(d)(1)(i) for the disclosure of experts, which resulted in the trial court's precluding

the witness from testifying as an expert witness.

150. Defendant called a second witness, John Fellow, whom the trial court also precluded from testifying as an expert witness due to Defendant's failure to comply with the basic procedures mandated by CPLR 3101(d)(1)(i) for the disclosure of experts.

151. The Appellate Division, Second Department affirmed the trial court's preclusion of the second witness from testifying as an expert witness based on Defendant's failure to comply with the basic procedures mandated by CPLR 3101(d)(1)(i) for the disclosure of experts.

152. Prior to the preclusion of the second witness, or at any time thereafter, Defendant failed to advise Plaintiffs of Defendant's neglect in failing to comply with the procedures mandated by CPLR 3101(d)(1)(i) for the disclosure of experts, which resulted in the trial courts precluding the witness from testifying as an expert witness.

153. The trial court also held that it would apply an adverse inference against Plaintiffs because of the destruction of certain draft reports prepared by an appraiser and draft feasibility studies prepared by a civil engineering firm to which Split Rock would have been entitled and which had been provided to Defendant for comment and extensive changes.

154. The Appellate Division, Second Department affirmed the trial court's decision to apply an adverse inference against Plaintiffs because of the destruction of certain draft appraisal reports and draft feasibility studies.

155. Prior to the adverse inference finding, Defendant failed to advise Plaintiffs that the destruction of certain draft reports to which Split Rock would have been entitled and which had been provided to Defendant for comment and extensive changes could result in an adverse inference.

156. Defendants determined to advocate in the Condemnation Proceeding that the value

of the Property was \$320,250 on the date of taking in 2005.

157. Defendant prevailed upon Plaintiffs and advised Plaintiffs that Plaintiffs should permit Defendant to advocate on Plaintiffs' behalf in the Condemnation Proceeding that the value of the Property was \$320,250 on the date of taking in 2005.

158. In reliance upon Defendant's advice, Plaintiffs permitted Defendant to advocate in the Condemnation Proceeding that the value of the Property was \$320,250 on the date of taking in 2005.

159. Defendants selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite the \$3,863,208.00 valuation in the DOT Action.

160. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, without regard or consideration of the DOT Action.

161. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding despite Defendant's not determining or performing calculations to determine what the \$3,863,208.00 1991 valuation as found in the DOT Action would have been on February 15, 2005, taking into account yearly increases or decreases in property value, as the case may be.

162. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to submit evidence, including but not limited to expert testimony, regarding significant changes in value, or in the marketplace, or to suggest that the Court of Claims' decision in the DOT Action was in error in any way; much less as to valuation and highest and

best use.

163. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to provide a rebuttal, on the issue of highest and best use and despite Defendant advising an appraiser on May 17, 2005 that Plaintiffs "will need strong rebuttal" on the issue of highest and best use as part of Plaintiffs' case.

164. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to submit evidence, including but not limited to expert testimony, regarding significant changes in value, or in the marketplace, or to suggest that the Court of Claims' decision in the DOT Action was in error in any way, much less as to valuation and highest and best use.

165. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to marshal evidence, including but not limited to expert testimony, regarding significant changes in value, or in the marketplace, or to suggest that the Court of Claims' decision in the DOT Action was in error in any way, much less as to valuation and highest and best use.

166. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to marshal evidence, including but not limited to expert testimony, regarding significant changes in value, or in the marketplace, or to suggest that the Court of Claims' decision in the DOT Action was in error in any way, much

less as to valuation and highest and best use.

167. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite there being no evidence to demonstrate significant changes in value, or in the marketplace, or to suggest that the Court of Claims' decision in the DOT Action was in error in any way, much less as to valuation and highest and best use.

168. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite its failure to advise Plaintiffs that no evidence existed to demonstrate significant changes in value, or in the marketplace, or to suggest that the Court of Claims' decision in the DOT Action was in error in any way, much less as to valuation and highest and best use.

169. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite local rents having increased by 10% annually in the several years preceding Plaintiffs' taking.

170. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to present evidence, including but not limited to expert testimony, to demonstrate any change in the situation in the seven years following the Court of Claims' decision, or the fourteen years since the DOT Taking.

171. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to present evidence, including but not limited to expert testimony, to demonstrate any change in the situation in the seven years

following the Court of Claims' decision, or the fourteen years since the DOT Taking.

172. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to marshal evidence, including but not limited to expert testimony, to demonstrate any change in the situation in the seven years following the Court of Claims' decision, or the fourteen years since the DOT Taking.

173. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to marshal evidence, including but not limited to expert testimony, to demonstrate any change in the situation in the seven years following the Court of Claims' decision, or the fourteen years since the DOT Taking.

174. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite there being no evidence to demonstrate any change in the situation in the seven years following the Court of Claims decision, or the fourteen years since the DOT Taking.

175. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite its failure to advise Plaintiffs that no evidence existed to demonstrate any change in the situation in the seven years following the Court of Claims decision, or the fourteen years since the DOT Taking.

176. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to present evidence, including but not limited to expert testimony,

questioning the Court of Claims' determination in the DOT Action or Split Rock's proof in the Condemnation Proceeding that commercial development of the Property, by construction of an office complex, was physically possible and economically feasible, and thus the highest and best use of the Property.

177. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to present evidence, including but not limited to expert testimony, questioning the Court of Claims' determination in the DOT Action, or Split Rock's proof in the Condemnation Proceeding that commercial development of the Property, by construction of an office complex, was physically possible and economically feasible, and thus the highest and best use of the Property.

178. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to marshal evidence, including but not limited to expert testimony, questioning the Court of Claims' determination in the DOT Action or Split Rock's proof in the Condemnation Proceeding that commercial development of the Property, by construction of an office complex, was physically possible and economically feasible, and thus the highest and best use of the Property.

179. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to marshal evidence, including but not limited to expert testimony, questioning the Court of Claims' determination in the DOT Action, or Split Rock's proof in the Condemnation Proceeding that commercial development of

the Property, by construction of an office complex, was physically possible and economically feasible, and thus the highest and best use of the property.

180. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite there being no evidence to question the Court of Claims' determination in the DOT Action, or Split Rock's proof in the Condemnation Proceeding that commercial development of the Property, by construction of an office complex, was physically possible and economically feasible, and thus the highest and best use of the property.

181. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that no evidence existed to question the Court of Claims' determination in the DOT Action, or Split Rock's proof in the Condemnation Proceeding that commercial development of the Property, by construction of an office complex, was physically possible and economically feasible, and thus the highest and best use of the property.

182. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to present evidence, including but not limited to expert testimony, to shed any doubt whatsoever on the \$3,863,208.00 1991 valuation as found in the DOT Action.

183. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to present evidence, including but not limited to expert testimony, to shed any doubt on the \$3,863,208.00 1991 valuation as found in the DOT Action.

184. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to marshal evidence, including but not limited to expert testimony, to shed any doubt on the \$3,863,208.00 1991 valuation as found in the DOT Action.

185. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to marshal evidence, including but not limited to expert testimony, to shed any doubt on the \$3,863,208.00 1991 valuation as found in the DOT Action.

186. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite there being no evidence to shed any doubt on the \$3,863,208.00 1991 valuation as found in the DOT Action.

187. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that no evidence existed to shed any doubt on the \$3,863,208.00 1991 valuation as found in the DOT Action.

188. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to present a zoning expert during trial of the Condemnation Proceeding regarding the possible rezoning of the Property; a critical part of proof regarding highest and best use.

189. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs

to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to present a zoning expert during trial of the Condemnation Proceeding regarding the possible rezoning of the Property; a critical part of proof regarding highest and best use.

190. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to marshal evidence, including but not limited to expert testimony, to refute Spilt Rock's expert's opinion that a zone change to allow development of a corporate headquarters office or conference center was likely.

191. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to marshal evidence, including but not limited to expert testimony, to refute Spilt Rock's expert's opinion that a zone change to allow development of a corporate headquarters office or conference center was likely.

192. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's not presenting evidence including but not limited to expert testimony that it had inquired of any municipal officials about the possibility of a zoning change, except to the extent of the Defendants producing evidence that the Mayor of Hillburn was spoken to and the Mayor was in favor of a zoning change.

193. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to present evidence including but

not limited to expert testimony that it had inquired of any municipal officials about the possibility of a zoning change, except to the extent of the Defendants producing evidence that the Mayor of Hillburn was spoken to and the Mayor was in favor of a zoning change.

194. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant not presenting evidence, including but not limited to expert testimony, that Hillburn had in any way changed its interest.

195. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that Defendant did not present evidence, including but not limited to expert testimony, that Hillburn had in any way changed its interest.

196. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, with Defendant's full knowledge of, or failure to obtain knowledge of, the Court of Claims' criticism of the State's expert in the DOT Action regarding the State's failure to contact local officials about a zoning change.

197. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's full knowledge of, or failure to obtain knowledge of, the Court of Claims criticism of the State's expert in the DOT Action regarding the State's failure to contact local officials about a zoning change.

198. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite

Defendant not providing a rebuttal on the issue of highest and best use despite Defendant advising an appraiser on May 17, 2005 that Plaintiffs “will need strong rebuttal” on the issue of highest and best use as part of Plaintiffs’ case.

199. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite there being no evidence to refute Spilt Rock’s expert’s opinion that a zone change to allow development of a corporate headquarters office or conference center was likely.

200. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite its failure to advise Plaintiffs that no evidence existed to refute Spilt Rock’s expert’s opinion that a zone change to allow development of a corporate headquarters office or conference center was likely.

201. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant’s failure to marshal evidence, including but not limited to expert testimony, questioning the Court of Claims determination in the DOT Action.

202. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant’s failure to advise Plaintiffs of Defendant’s failure to marshal evidence, including but not limited to expert testimony, questioning the Court of Claims determination in the DOT Action.

203. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite

Defendant's failure to marshal evidence or properly conduct any discovery regarding the DOT Action.

204. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, without advising Plaintiffs of the potential impact of the DOT Action on the Condemnation Proceeding.

205. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, without evaluating the impact of the DOT Action on the Condemnation Proceeding.

206. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, without advising Plaintiffs of Defendant's failure to evaluate the impact of the DOT Action on the Condemnation Proceeding.

207. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite the One on One Sports Radio Stations, Inc.'s Offer.

208. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to consider the One to One Sports Radio Stations, Inc. Offer for valuation purposes

209. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that Defendants did not consider the One to One Sports Radio Stations, Inc. Offer for valuation purposes.

210. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to marshal evidence or conduct any discovery concerning the One to One Sports Radio Stations, Inc. Offer.

211. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that it did not marshal evidence or conduct discovery concerning the One to One Sports Radio Stations, Inc. Offer.

212. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite the K-K Developers, Inc. Letter of Intent.

213. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to consider the K-K Developers, Inc. Letter of Intent for valuation purposes.

214. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that Defendants did not consider the K-K Developers, Inc. Letter of Intent for valuation purposes.

215. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to marshal evidence or conduct any discovery concerning the K-K Developers, Inc. Letter of Intent.

216. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs

to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that it did not marshal evidence or conduct discovery concerning the K-K Developers, Inc. Letter of Intent.

217. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite the Wilder Letter of Intent.

218. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to consider the Wilder Letter of Intent for valuation purposes.

219. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that Defendants did not consider the Wilder Letter of Intent for valuation purposes.

220. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to marshal evidence or conduct any discovery concerning the Wilder Letter of Intent.

221. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that it did not marshal evidence or conduct discovery concerning the Wilder Letter of Intent.

222. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite the

Corporate Development Enterprises, L.L.C. Letter of Intent.

223. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to consider the Corporate Development Enterprises, L.L.C. Letter of Intent for valuation purposes.

224. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that Defendants did not consider the Corporate Development Enterprises, L.L.C. Letter of Intent for valuation purposes.

225. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to marshal evidence or conduct any discovery concerning the Corporate Development Enterprises, L.L.C. Letter of Intent.

226. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that it did not marshal evidence or conduct discovery concerning the Corporate Development Enterprises, L.L.C. Letter of Intent.

227. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite the \$9,500,000.00 Offer.

228. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to consider the \$9,500,000.00 Offer for valuation purposes.

229. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that Defendants did not consider the \$9,500,000.00 Offer for valuation purposes.

230. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to marshal evidence or conduct any discovery concerning the \$9,500,000.00 Offer.

231. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that it did not marshal evidence or conduct discovery concerning the \$9,500,000.00 Offer.

232. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite the Development Options, Inc. Letter of Intent.

233. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to consider the Development Options, Inc. Letter of Intent for valuation purposes.

234. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that Defendants did not consider the Development Options, Inc. Letter of Intent valuation purposes.

235. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to marshal evidence or conduct any discovery concerning the Development Options, Inc. Letter of Intent.

236. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that it did not marshal evidence or conduct discovery concerning the Development Options, Inc. Letter of Intent.

237. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Split Rock and Wilder having entered into a contract in November 2004, for \$10,000,000.00, for construction of an office complex on the Property by Wilder.

238. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to present evidence, including but not limited to expert testimony, that the \$10,000,000.00 contract between Split Rock and Wilder was an abnormal transaction.

239. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to present evidence, including but not limited to expert testimony, that the \$10,000,000.00 contract between Split Rock and Wilder was an abnormal transaction.

240. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite

Defendant's failure to marshal evidence, including but not limited to expert testimony, that the \$10,000,000.00 contract between Split Rock and Wilder was an abnormal transaction.

241. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to marshal evidence, including but not limited to expert testimony, that the \$10,000,000.00 contract between Split Rock and Wilder was an abnormal transaction.

242. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite there being no evidence to show that the \$10,000,000.00 contract between Split Rock and Wilder was an abnormal transaction.

243. Defendant selected and advocated a \$320,250 value in the Condemnation Proceeding, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value, despite the absence of evidence that the \$10,000,000.00 contract between Split Rock and Wilder was an abnormal transaction.

244. Defendant selected and advocated a \$320,250 value in the Condemnation Proceeding, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value, despite Defendant's failure to advise Plaintiffs that no evidence existed to show that the \$10,000,000.00 contract between Split Rock and Wilder was an abnormal transaction.

245. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to present evidence, including but not limited to expert testimony that the \$10,000,000.00 contract between Split Rock and Wilder was not at arm's length.

246. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to present evidence, including but not limited to expert testimony that the \$10,000,000.00 contract between Split Rock and Wilder was not at arm's length.

247. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to marshal evidence, including but not limited to expert testimony that the \$10,000,000.00 contract between Split Rock and Wilder was not at arm's length.

248. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to marshal evidence, including but not limited to expert testimony that the \$10,000,000.00 contract between Split Rock and Wilder was not at arm's length.

249. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite the absence of evidence that the \$10,000,000.00 contract between Split Rock and Wilder was not at arm's length.

250. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite there being no evidence to show the \$10,000,000.00 contract between Split Rock and Wilder was not at arm's length.

251. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs

to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that no evidence existed to show the \$10,000,000.00 contract between Split Rock and Wilder was not at arm's length.

252. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to present evidence, including but not limited to expert testimony, to show the \$10,000,000.00 contract between Split Rock and Wilder reflected an abnormal value.

253. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to present evidence, including but not limited to expert testimony, to show the \$10,000,000.00 contract between Split Rock and Wilder reflected an abnormal value.

254. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to marshal evidence, including but not limited to expert testimony, to show the \$10,000,000.00 contract between Split Rock and Wilder reflected an abnormal value.

255. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to marshal evidence, including but not limited to expert testimony, to show the \$10,000,000.00 contract between Split Rock and Wilder reflected an abnormal value.

256. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite there

being no evidence that the \$10,000,000 contract between Split Rock and Wilder reflected an abnormal value.

257. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that there was no evidence that the \$10,000,000.00 contract between Split Rock and Wilder reflected an abnormal value.

258. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to present evidence, including but not limited to expert testimony that the \$10,000,000.00 contract between Split Rock and Wilder was entered into in bad faith for the purpose of inflating the value of the Property.

259. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's failure to present evidence, including but not limited to expert testimony that the \$10,000,000.00 contract between Split Rock and Wilder was entered into in bad faith for the purpose of inflating the value of the Property.

260. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to marshal evidence, including but not limited to expert testimony, to show that the \$10,000,000.00 contract between Split Rock and Wilder was entered into in bad faith for the purpose of inflating the value of the Property.

261. Defendant selected and advocated a \$320,250 .00 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding,

despite there being no evidence that the \$10,000,000.00 contract between Split Rock and Wilder was entered into in bad faith for the purpose of inflating the value of the Property.

262. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs that there was no evidence that the \$10,000,000.00 contract between Split Rock and Wilder was entered into in bad faith for the purpose of inflating the value of the Property.

263. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite its not conducting third party discovery of Wilder because Defendant did not want to uncover facts that may be "bad" for the Condemnation Proceeding.

264. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite the absence of evidence that Wilder was not a substantial national developer of commercial real estate.

265. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite the failure of Defendant to advise Plaintiffs of the absence of evidence that Wilder was not a substantial national developer of commercial real estate.

266. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's repeated failure to comply with basic civil procedure set forth in CPLR 3101(d)(1)(i) that resulted in the trial courts precluding two witnesses from testifying at trial..

267. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's repeated failure to comply with basic civil procedure set forth in CPLR 3101(d)(1)(i); that resulted in the trial courts precluding two witnesses from testifying at trial..

268. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite its unsuccessful attempt to present Mr. Byron as an expert to testify on matters in which he was unqualified.

269. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of Defendant's unsuccessful attempt to present Mr. Byron as an expert to testify on matters in which he was unqualified.

270. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite the destruction of draft appraisal reports that had been in Defendant's possession and which Defendant reviewed, edited and modified which resulted in an adverse inference against Plaintiffs.

271. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of the destruction of draft appraisal reports that had been in Defendant's possession and which Defendant reviewed, edited and modified which resulted in an adverse inference against Plaintiffs.

272. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite the destruction of draft feasibility studies that had been in Defendant's possession and which Defendant reviewed, edited and modified which resulted in an adverse inference against Plaintiffs.

273. Defendant selected and advocated a \$320,250 value, and prevailed upon Plaintiffs to permit Defendant to advocate a \$320,250 value in the Condemnation Proceeding, despite Defendant's failure to advise Plaintiffs of the destruction of draft feasibility studies that had been in Defendant's possession and which Defendant reviewed, edited and modified which resulted in an adverse inference against Plaintiffs.

274. Defendant's selecting, advocating, advising Plaintiffs to advocate and prevailing upon Plaintiffs to advocate a value of \$320,250 in the Condemnation Proceeding was an unreasonable and improper course of action that is not open to reasonable doubt.

275. Defendant's advocating, advising Plaintiffs to advocate and prevailing upon Plaintiffs to make a \$100,000.00 condemnation offer on March 9, 2004 was an unreasonable and improper course of action that is not open to reasonable doubt.

276. Defendant's advocating, advising Plaintiffs to advocate and prevailing upon Plaintiffs to make a \$230,000.00 condemnation offer on March 22, 2004 was an unreasonable and improper course of action that is not open to reasonable doubt.

277. Defendant's advocating, advising Plaintiffs to advocate and prevailing upon Plaintiffs to make a \$244,800.00 condemnation offer on January 28, 2005 was an unreasonable and improper course of action that is not open to reasonable doubt.

278. By "DECISION/ORDER/JUDGMENT" dated November 13, 2012, the Court

awarded Split Rock \$8,100,000.00 less any previous payments made, with interest from February 15, 2005.

279. Given Defendant's wholesale failure to present any evidence to refute the findings of the Court of Claims in the DOT Action, the Court in the Condemnation Proceeding accorded great weight to the findings in the DOT action in reaching the determination in the Condemnation Proceeding.

280. Defendant's position that the value of the Property suffered a tenfold decrease since the judgment in the DOT Action was simply rejected as "unreliable" by the Court in the Condemnation Proceeding, particularly given no explanation by Defendant for this occurrence.

281. The Court in the Condemnation Proceeding determined that it would be "hard pressed" to accept the conclusion that the value of the Property on the date of the taking was \$320,250.00.

282. On December 10, 2012 the Court amended the November 13, 2012 "DECISION/ORDER/JUDGMENT" to correct a certain directive for payment of the judgment.

283. On February 4, 2013 judgment was entered in the sum of \$7,855,200.00 plus interest at a rate of six percent from February 15, 2005 until the date of payment, plus a bill of costs for \$14,874.00. (the "Judgement")

284. Defendant continued to represent Plaintiffs and unsuccessfully appealed the Judgment and the Appellate Division, Second Department affirmed the Judgment on August 20, 2014.

285. Defendant continued to represent Plaintiffs and unsuccessfully moved before the Appellate Division, Second Department to reargue and for leave to appeal to the Court of Appeals, which motion was denied on November 24, 2014.

286. Defendant continued to represent Plaintiffs and unsuccessfully moved for leave to appeal to the Court of Appeals, which denied leave to appeal on February 19, 2015.

287. As of February 2015, Defendant had billed Plaintiffs no less than \$1,376,882.60.

288. On or about March 11, 2015, Split Rock's counsel served an EDPL 701 demand letter for \$4,006,082.00 including additional allowances for attorney fees, expert fees, actual and necessary costs, disbursements and expenses. The additional allowance sought was for an amount above the Judgment.

289. On or about March 23, 2015, Split Rock's counsel executed a Satisfaction of Judgment setting forth total payments by Plaintiffs to Split Rock of \$12,884,809.57 were broken down as follows:

- a. \$244,800.00 advance payment;
- b. \$7,855,200.00 judgment of \$8,100,000.00 after deduction of the advance payment;
- c. \$4,769,935.57 interest;
- d. \$14,874.00 bill of costs.

290. In or about May, 2015 Defendant was terminated for cause.

291. On November 2, 2015, Split Rock and Plaintiffs entered into a settlement agreement ("Settlement Agreement") to resolve Split Rock's motion for additional allowances. The Settlement Agreement provided that Split Rock shall be paid \$3,375,000.00 for additional allowances above what was already paid in satisfaction of the judgment.

292. All told, the payments to Split Rock for satisfaction of the Judgment and for settlement of the additional allowances were \$16,259,809.57.

FIRST CAUSE OF ACTION

293. Plaintiffs repeat and reallege the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

294. By reason of the foregoing and as set forth more fully above, Defendant's advocating a value of \$320,250 for the Property was a failure to exercise the reasonable degree of care, skill, knowledge and diligence commonly possessed and exercised by those such as Defendant who hold themselves out as experts in the handling of Condemnation Proceedings.

295. By reason of the foregoing and as set forth more fully above, Defendant's advocating a value of \$320,250 for the Property was a failure to exercise the degree of care, skill, knowledge and diligence commonly possessed and exercised by members of the legal community.

296. By reason of the foregoing and as set forth more fully above, Defendant's advocating a value of \$320,250 for the Property in the Condemnation Proceeding was an unreasonable and improper course of action that is not open to reasonable doubt.

297. By reason of the foregoing and as set forth more fully above, Defendant's failure to properly exercise the required reasonable degree of care, skill, knowledge and diligence and Defendant's advocating a futile, unsupported, unsupportable, unreasonable and improper value of \$320,250 for the Property in the Condemnation Proceeding, proximately caused Plaintiffs actual ascertainable damages in an amount no less than \$8,866,442.17 because absent Defendant's failures as set forth above Plaintiffs could have and would have paid to Split Rock the uncontroverted amount sought by Split Rock in the Condemnation Proceeding and/or Plaintiffs could have and would have settled the Condemnation Proceeding for an amount less than that actually paid to Split Rock or sought by Split Rock in the Condemnation Proceeding.

SECOND CAUSE OF ACTION

(Declaratory Relief and Return of Fees Paid)

298. Plaintiffs repeat and reallege the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

299. Defendant has requested payment of certain fees and Plaintiffs paid fees to Defendant.

300. An actual controversy exists regarding Defendant's entitlement to such fees as well as past fees paid by Plaintiffs.

301. Independent of the damages alleged in the First Cause of Action, therefore, Plaintiffs have been separately damaged to the extent they have paid no less than \$1,376,882.60 in fees to Defendant or are claimed to owe fees to Defendant and to the extent Plaintiffs have paid fees to Plaintiffs' experts.

302. By reason of the foregoing, Defendant failed to diligently represent Plaintiffs.

303. By reason of Defendant's failure to diligently represent Plaintiffs, Defendant is not entitled to a fee.

304. By reason of Defendant's failure to diligently represent Plaintiffs, Plaintiffs are entitled to a declaration that Defendant is not entitled to a fee and must return all fees paid by Plaintiffs.

305. By reason of Defendant's failure to diligently represent Plaintiffs, Defendant must reimburse Plaintiffs for the fees paid to Plaintiffs' experts.

306. By reason of the foregoing Defendants have engaged in misconduct.

307. By reason of Defendant's misconduct, Defendant is not entitled to a fee.

308. By reason of Defendant's misconduct, Plaintiffs are entitled to a declaration that

Defendant is not entitled to a fee and must return all fees paid by Plaintiffs.

309. By reason of Defendant's misconduct, Defendant must reimburse Plaintiffs for the fees paid to Plaintiffs' experts.

310. By reason of the forgoing, Defendant improperly handled the Condemnation Proceeding.

311. By reason of Defendant's improperly handling the Condemnation Proceeding, Defendant is not entitled to a fee.

312. By reason of Defendant's improperly handling the Condemnation Proceeding, Plaintiffs are entitled to a declaration that Defendant is not entitled to a fee and must return all fees paid by Plaintiffs.

313. By reason of Defendant's improperly handling the Condemnation Proceeding, Defendant must reimburse Plaintiffs for the fees paid to Plaintiffs' experts.

314. By reason of the foregoing, Defendant committed malpractice.

315. By reason of Defendant's malpractice, Defendant is not entitled to a fee.

316. By reason of Defendant's malpractice, Plaintiffs are entitled to a declaration that Defendant is not entitled to a fee and must return all fees paid by Plaintiffs.

317. By reason of Defendant's malpractice, Defendant must reimburse Plaintiffs for the fees paid to Plaintiffs' experts.

318. By reason of the foregoing Defendant was discharged for cause.

319. By reason of Defendant's discharge for cause, Defendant is not entitled to a fee.

320. By reason of Defendant's discharge for cause, Plaintiffs are entitled to a declaration that Defendant is not entitled to a fee and must return all fees paid by Plaintiffs.

321. By reason of Defendant's discharge for cause, Defendant must reimburse Plaintiffs

for the fees paid to Plaintiffs' experts.

322. By reason of the foregoing, Plaintiffs are entitled to an amount to be determined by a trier of fact but no less than \$1,376,882.00 and a declaration that Defendant is not entitled to a fee and must return all fees paid by Plaintiffs and that Defendant must reimburse Plaintiffs for the fees paid to Plaintiffs' experts.

**THIRD CAUSE OF ACTION
(Breach of Specific Obligations Under Contract)**

323. Plaintiffs repeat and reallege the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

324. The agreement between Plaintiffs and Defendant specifically required Defendant to evaluate appraisals, rebuttal reports, economic feasibility analyses, rezoning analyses and construction and cost estimates.

325. By reason of the foregoing, Defendant breached Defendant's agreement to evaluate appraisals, rebuttal reports, economic feasibility analyses, rezoning analyses and construction and cost estimates.

326. The agreement between Plaintiffs and Defendant specifically required that Defendant provide greater "participation from partners on Condemnation Proceedings, especially with respect to valuation."

327. By reason of the foregoing, Defendant breached its agreement that Defendant provide greater "participation from partners on Condemnation Proceedings, especially with respect to valuation."

328. By Defendant's breach of contract, Plaintiffs have been directly damaged in an amount to be determined by a trier of fact but no less than \$1,376,882.00 to the extent they paid Defendant legal fees and to the extent Defendant claims additional fees are owed Plaintiffs are

entitled to a declaration that Defendant is not entitled to a fee and must return all fees paid by Plaintiffs.

329. By Defendant’s breach of contract, Plaintiffs have been directly damaged in an amount to be determined by a trier of fact to the extent they paid expert fees and costs.

330. In addition, by Defendant’s breach of contract Plaintiffs have been directly damaged in an amount to be determined by the trier of fact, but no less than \$7,489,560.17.

331. By reason of the foregoing Plaintiffs are entitled to a total amount to be determined by a trier of fact but no less than \$8,866,442.17 and a declaration that Defendant is not entitled to a fee.

PRAYER FOR RELIEF

332. **WHEREFORE**, Plaintiffs respectfully request that this Court award Plaintiffs the following relief:

- a. On the First Cause of Action, an amount to be determined by a trier of fact but no less than \$8,866,442.17;
- b. On the Second Cause of Action, an amount to be determined by a trier of fact but no less than \$1,376,882.00 and a declaration that Defendant is not entitled to a fee and must return all fees paid by Plaintiffs and that Defendant must reimburse Plaintiffs for the fees paid to Plaintiffs’ experts;
- c. On the Third Cause of Action, an amount to be determined by a trier of fact but no less than \$8,866,442.17 and a declaration that Defendant is not entitled to a fee;
- d. Such other relief as the Court determines is just and appropriate including costs, disbursements and interest.

Dated: New York, New York
September 12, 2017

SARETSKY KATZ & DRANOFF, L.L.P.
Attorneys for Plaintiffs

By:  _____

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