SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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GREENTREE REALTY, LLC,

Petitioner/Plaintiff,

- against -

THE VILLAGE OF CROTON-ON-HUDSON, THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF CROTON-ON-HUDSON, THE VILLAGE OF CROTON-ON-HUDSON ZONING BOARD OF APPEALS, and DANIEL O'CONNOR, in his official capacity, as the VILLAGE BUILDING INSPECTOR,

Defendants/Respondents.

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Index No. 05-11872

Assigned Judge:
Hon. Francis A. Nicolai

SUPPLEMENTAL SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the second amended verified petition and complaint in this action and to serve a copy of your answer on the plaintiff's attorney within 20 days after service of this summons, exclusive of the day of service, or, if service of this summons is made by any means other than by personal delivery to you within the state, within 30 days after such service is complete. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue designated is CPLR 504(2).

Dated: White Plains, New York
November 18, 2013

Yours, etc.

Wilson Elser Moskowitz Edelman & Dicker, LLP
Attorneys for Plaintiffs

By: _____
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SECOND AMENDED VERIFIED PETITION AND COMPLAINT

Petitioner/Plaintiff Greentree Realty, LLC, by its attorneys, Wilson Elser Moskowitz Edelman & Dicker, LLP, as and for its Second Amended Verified Complaint herein, respectfully alleges as follows:

Summary of Action

1. This is (a) an action for a judgment declaring, pursuant to CPLR 3001, (i) that the operation of a construction and demolition debris processing facility and transfer station (the "Facility") in the Village of Croton-on-Hudson (the "Village") on property owned by plaintiff/petitioner Greentree Realty, LLC ("Greentree") is a pre-existing, legal nonconforming use that is unaffected by the Village's adoption, in 2001, of a local law prohibiting such uses throughout the Village, and (ii) that section 230-18(E) of the Village Code, which purports to prohibit such uses within the Village, is void and of no effect because it is pre-empted by state law; (b) an action for money damages resulting from the Village's taking of the property in

derogation of Greentree's rights under Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 6 and 7 of the New York State Constitution; and (c) a proceeding pursuant to CPLR article 78 to vacate and set aside the determination of the respondent Building Inspector that the Facility is not a prior lawful non-conforming use of the subject property.

2. Greentree is entitled to the relief it requests because: (1) the subject property has been in continuous lawful use as a construction and demolition debris processing facility and transfer station since at least 1980; (2) prohibiting the continuation of a prior, lawful, non-conforming use without just compensation is a taking in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the New York State Constitution, as well as a deprivation of Greentree's substantive and procedural due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution; and (3) section 230-18(E) of the Village Code, which purports to prohibit such uses is inconsistent with article 27 of the New York State Environmental Conservation Law and the regulations adopted by the New York State Department of Environmental Conservation (DEC) pursuant thereto.

The Parties

3. Greentree is a limited liability company organized and existing under the laws of the State of New York, with its principal place of business at 1A Croton Point Avenue, Croton-on-Hudson, New York.

4. The Village is a duly organized municipality existing by and under the laws of the State of New York, with offices at 1 Van Wyck Street, Croton-on-Hudson, New York.

5. Respondent Village Board of Trustees of the Village of Croton-on-Hudson (the "Board") is a legislative body formed pursuant to New York State law, with offices at 1 Van Wyck Street, Croton-on-Hudson, New York.

6. Respondent Daniel O'Connor, as Building Inspector, with offices at 1 Van Wyck Street, Croton-on-Hudson, New York, is the official of the Village empowered to make a determination with regard to Greentree's claim of a legal right to use the Property for a construction and demolition debris processing facility and transfer station.

7. Respondent Village of Croton-on-Hudson Zoning Board of Appeals (the "ZBA") is a municipal body, with offices at 1 Van Wyck Street, Croton-on-Hudson, New York. Pursuant to Village Code Section 230-162, the ZBA is the administrative body to which an appeal of an unfavorable determination from the Building Inspector would be made.

Jurisdiction

8. The Court has subject matter jurisdiction, and may exercise personal jurisdiction over the Respondents in this matter.

9. Pursuant to CPLR Section 504(2), venue is proper in this Court as the Village is located in Westchester County.

Factual Background

10. Greentree is the owner of a ten acre parcel of real property located at 1A Croton Point Avenue, Croton-on-Hudson, New York, in the Light Industrial ("LI") District, which is known and designated on the Village Tax Map as Section 78.16, Block 2, Lots 1 and 2 (the "Property").

11. The Property is bounded by a Metro North commuter railroad parking lot on the south, a massive rail equipment maintenance facility to the southwest, a commercial warehouse

building currently storing tires to the north and the Croton-Harmon Rail Yard, a large industrial complex containing no fewer than nine sets of tracks and switches for both commuter and freight trains, to the west.

12. The Property is ideally situated for a construction and demolition debris processing facility and transfer station. It is located in the largest, most industrially developed section of the Village. New York State Route 9, a four lane divided highway, which is the main north/south artery through the Village and for the western portion of Westchester County, is immediately to the east of the Property. The Property appears to be the only such facility in Westchester County with a rail connection.

13. The use of the Property for a sophisticated construction and demolition debris processing facility and transfer station is critical to the local and regional economy and to the environment. Since Westchester County has no more active landfills, materials must be transported out of the County. Materials such as construction and demolition debris can be transported either by rail or by truck. Due to the distance of the landfills, rail cars are often the most economically feasible transportation alternative. They are also the most environmentally friendly means of transporting construction and demolition debris, since one rail car can carry as much debris as four trucks, reducing the carbon footprint of the waste handling operation substantially.

14. The Property has been utilized continuously for processing and transferring construction and demolition debris since the 1960's.

15. Until 2001, a construction and demolition debris processing facility and transfer station was a permitted use as of right on the Property.

16. Both the DEC and the Village have repeatedly recognized that the use of the Property for the Facility's operations constituted the lawful "processing" of construction and demolition debris.

17. Greentree has never waived its right to assert that its use of the Property as a construction and demolition debris processing facility and transfer station is permitted.

18. In or around 1984, Robert V. Liguori purchased the Property and used it as a wood processing, material storage and recycling facility.

19. In 1988, the Village issued a special permit allowing Liguori's company, Industrial Recycling Systems, Inc. ("IRS"), to use the Property for a wood processing and recycling transfer station.

20. DEC issued a Solid Waste Management Permit (the "DEC Permit") for these operations at the Property.

21. In 1997, Metro Enviro, LLC, with the encouragement of the Village, spent between approximately $1.0 and $1.5 Million cleaning up and remediating the Property, and spent approximately $2.0 Million on new site improvements. This investment was made in good faith with the expectation that, upon its rehabilitation, the Facility would be allowed to continue the use of the Property, but now as a wholly modernized, environmentally sound construction and demolition debris processing facility and transfer station.

22. The DEC Permit issued to Metro Enviro, LLC, in connection with the Facility, effective from November 6, 1997 to November 5, 2002, specifically authorized the operation of "a recyclables handling and construction and demolition debris processing facility." Pursuant to 6 N.Y.C.R.R. 360-1.2(a)(39), a "[c]onstruction and demolition debris processing facility means a

processing facility that receives and processes construction and demolition debris by any means."

23. The use of the Property for the Facility fits squarely within DEC's definition of "processing." The applicable regulation, 6 NYCRR 360-1.2(a)(120), defines a "processing facility" as "a combination of structures, machinery or devices, other than collection and transfer vehicles, utilized to reduce or alter the volume or the chemical or physical characteristics of solid waste through processes such as, but not limited to, separating, crushing, screening, baling or shredding before its delivery to any solid waste management facility."

24. In August 1997, Metro Enviro, LLC, requested from the Village a renewal and transfer of the pre-existing special permit held by IRS. Metro Enviro, LLC, made that application even though the Facility was an as-of-right use because the Village was treating the proposed new operation as a change of a nonconforming use – necessitating a special permit to ensure that the new nonconforming use of the Property was "of the same or a more restricted nature" as the then existing nonconforming use. See Village Code § 230-53(A)(2). Metro Enviro, LLC, expressly preserved its position that the Facility was an as-of-right use, agreeing in early 1998 to continue processing the application before the Board as a special permit without prejudice. This was part of Metro's attempt to cooperate fully with the Village throughout the administrative process.

25. At no time during the period of 1997 and into 1998, did the Village attempt to terminate the pre-existing use of the property as construction and demolition debris processing facility and transfer station or claim it was unlawful from a local land use standpoint.

26. After an exhaustive public hearing, the Board adopted a negative declaration pursuant to the New York State Environmental Quality Review Act ("SEQRA"), determining

that there were no adverse environmental impacts associated with the use of the Property for the Facility that had not been adequately identified, studied, and mitigated.

27. Accordingly, the Board granted a special permit sanctioning the use of the Property for the Facility. The special permit specifically recognized that the Property was being used for "a solid waste recyclables and processing Facility."

28. In March 2000, Metro Enviro ("Metro Enviro"), a wholly-owned subsidiary of Allied Waste Industries, Inc. ("Allied"), and an entity different than Metro Enviro, LLC, acquired the assets of Metro Enviro, LLC.[1]

29. Metro Enviro made important and costly improvements to the Facility, including installing fast-sealing doors on the truck entrance to and exit from the processing area, and repairing the highly-engineered, concrete reinforced tipping floor in the processing area. As a result, the Property now consists of a state-of-the-art transfer station with, among other things, paved driveways providing access to the processing area, a scale house with computerized scales, a camera that focuses on the trucks entering the facility, a radiation detection device, and a storm water drainage and management system.

30. Metro Enviro requested a transfer of the DEC Permit that had been granted to Metro Enviro, LLC, with respect to the Property.

31. Metro Enviro, as a lessee of the Property, operated the Facility as a DEC-approved construction and demolition debris processing facility and transfer station from March 2000 until September 1, 2005.

32. On March 23, 2001, Metro Enviro filed a timely written request with the Board asking that the special permit, which was purportedly due to expire on May 5, 2001, be renewed.

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[1] Metro Enviro was a plaintiff in this litigation until the Court granted the respondents' motion to dismiss as to Metro Enviro on the ground of collateral estoppel.

The Board was advised that the renewal application was deemed a Type II Action under SEQRA requiring no further environmental studies. The Board and its counsel agreed with that assessment and, to date, there has been no deviation from that position.

33. After filing the renewal application, Metro Enviro secured more than ten temporary extensions of the special permit, each effectively sanctioning the continuing use of the Property for the Facility. Metro Enviro – as the operator of the facility – appeared at numerous Board meetings to answer questions and provide information to the Board.

34. At no time did the Board suggest that the use of the Property as a construction and demolition debris processing facility and transfer station was not legally allowed.

35. Nevertheless, on or about June 18, 2001, the Board enacted an amendment to Section 230-18 of the Village Code concerning uses in the LI District (the "2001 Amendment"):

> E. Prohibited uses. Solid and liquid waste transfer and storage stations and landfills (including construction and demolition materials) are prohibited. For the purposes of this section, solid and liquid wastes are defined as follows: all putrescible and nonputrescible materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to liquids, garbage refuse, industrial, commercial and household waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator ash and residue and construction and demolition debris.

Village Code § 230-18(E).

36. As a result of the 2001 Amendment, for the first time in the Village, transfer stations and processing facilities such as Metro Enviro's became "expressly prohibited" throughout the entire Village, including the LI District.

37. At the time it adopted the 2001 Amendment, the Board was well aware that the Property was being used as a construction and demolition debris processing facility and transfer station and that the Facility was legally operating at that time pursuant to a special permit in the LI District. The Village thus effectively recognized the Property's constitutionally protected

vested rights to continue the operation of what at that time undeniably became a nonconforming construction and demolition debris processing facility and transfer station.

38. In fact, the Village Manager and the Village Attorney specifically advised Metro Enviro's counsel that the Facility would continue to be a pre-existing, legal nonconforming use; indeed, the Facility at that time had a valid special permit on extension from the Board. The continued use of the Property for the Facility constitutes implicit recognition that the Facility is a pre-existing, legal nonconforming use.

39. On January 27, 2003, the Board voted to deny Metro Enviro's application to renew the special permit. In support of its denial, the Board issued a Statement of Findings, which cited as the purported basis for its decision violations of the special permit, including mishandling of unauthorized waste, exceedances of the maximum permitted tonnage, failure to collect leachate on one occasion, receipt of two refrigerators, and failure of certain training, reporting and record-keeping requirements. The Village Board did not find that the Property's use for solid waste management was unlawful or unprotected.

40. Metro Enviro commenced a proceeding pursuant to CPLR article 78 seeking to vacate and annul the Board's denial of its application to renew the special permit. Greentree was not a party to that action, nor was it required to be a party to that action.

41. On February 4, 2003, the Supreme Court, Westchester County (Frank A. Nicolai, J.), granted an injunction allowing the Facility to continue to operate until the merits of the proceeding were determined.

42. The Supreme Court subsequently granted Metro Enviro's petition and remitted the matter "for the purpose of issuing a permit in accordance herewith, upon such reasonable conditions as it may deem appropriate."

43. On February 7, 2003, DEC renewed Metro Enviro's DEC permit, increasing the permit capacity of the Facility from 700 tons per day to 1,000 tons per day.

44. The Village appealed the Supreme Court's order to the Appellate Division, Second Department, which, by decision and order dated May 10, 2004, reversed the Supreme Court, and reinstated the Village's denial of the special permit. See *Metro Enviro Transfer, LLC v. Village. of Croton-on-Hudson*, 7 A.D.3d 625 (2d Dep't 2004). The Court of Appeals granted leave to appeal from the Appellate Division order and, on July 6, 2005, affirmed. See *Metro Enviro Transfer, LLC v. Village of Croton-on-Hudson*, 5 N.Y.3d 236 (2005).

45. Throughout Metro Enviro's litigation with regard to the special permit renewal, the Facility continued to be lawfully utilized for its pre-existing nonconforming use.

46. By resolution dated July 18, 2005, the Village ordered Metro Enviro to cease accepting waste as of July 23, 2005, and to commence the 90-day closure procedures set forth in Metro Enviro's O&M Manual.

47. By letter dated July 20, 2005, Greentree requested a determination from the Building Inspector that the Facility is a lawful, pre-existing nonconforming construction and demolition debris processing facility and transfer station.

48. On that same date, Greentree commenced this action requesting a judgment declaring that the operation of the Facility on the Property is a prior, lawful nonconforming use and that no special permit is required for such use. In light of the Village's order that Metro Enviro cease accepting waste on July 23, 2005, Greentree and Metro Enviro requested temporary and preliminary injunctive relief from this Court in order to maintain the status quo until such time as they were able to exercise their due process rights with the administrative process.

49. By decision and order dated August 26, 2005, this Court granted Greentree's motion for a preliminary injunction enjoining Respondents "from prohibiting or interfering with Greentree's ability to lease and or operate [the Property] for purposes of solid waste management."

50. By that same decision and order, this Court determined that Greentree was not required to exhaust its administrative remedies because it would be futile to do so.

51. On September 1, 2005, Metro Enviro ceased its operations on the Property and commenced the 90 day closure process.

52. On October 28, 2005, consistent with this Court's futility determination, the Building Inspector issued an unfavorable determination, stating that since Metro Enviro's special permit was "not renewed, the non-conforming use terminated."

53. In December 2005, the Village commenced an action against Greentree seeking an injunction against the operation of the Facility without a special permit.

54. By decision and order dated April 25, 2006, this Court granted the Village's motion for a preliminary injunction prohibiting the use of the property without first obtaining a special use permit. In making that decision, the Court held that "the non-renewal of Metro Enviro's nonconforming use special permit did not eviscerate the protected property rights at issue."

55. On July 5, 2006, Greentree and its then contract vendee, Northeast Interchange Railway, LLC, applied to the Village for re-issuance of the 1998 special permit for the Facility, expressly reserving in doing so Greentree's claim that no such permit was required.

56. By decision and order dated July 31, 2006, this Court granted Greentree's motion to toll the one-year discontinuance period prohibiting the re-establishment of pre-existing, non-

conforming uses, as set forth in Village Code § 230-53(A)(3), until a final determination had been made with respect to the application for a special permit.

57. By decision and order dated December 4, 2007, the Appellate Division, Second Department, modified this Court's order to provide that the one-year discontinuance period be tolled "for the period of time during which the injunction [obtained by the Village] is in effect."

58. The injunction obtained by the Village remains in effect.

As and for Greentree's First Cause of Action
(Pre-Existing, Legal Nonconforming Use)

59. Greentree repeats and reasserts the allegations contained in paragraphs 1 through 58 of this petition/complaint with the same force and effect as if fully set forth herein.

60. The 2001 zoning amendment prohibits the operation of a construction and demolition debris processing facility and transfer station anywhere in the Village.

61. With the exception of certain uses not at issue in this case, the Village Code expressly allows nonconforming uses to be "continued indefinitely," subject only to limitations that do not apply here. See Village Code § 230-53(A). The Village Code defines a nonconforming use as "A building or use lawfully existing at the effective date of this chapter or any amendment thereto which does not conform to the regulations prescribed for the district in which it is situated."

62. The use of the Property for a construction and demolition debris processing facility and transfer station is a nonconforming use that is permitted to continue because the Property was lawfully used as a construction and demolition debris processing facility and transfer station on the effective date of the 2001 zoning amendment.

63. Greentree is thus entitled to a declaration that the Property's use as a construction and demolition debris processing facility and transfer station is a pre-existing, legal nonconforming use and may continue indefinitely

As and for Greentree's Second Cause of Action
(Declaratory Judgment/Pre-Existing, Legal Nonconforming Use)

64. Greentree repeats and reasserts the allegations contained in paragraphs 1 through 63 of this petition/complaint with the same force and effect as if fully set forth herein.

65. The determination of the Building Inspector that the use of the property as a construction and demolition debris processing facility and transfer station is not a prior, lawful non-conforming use is arbitrary and capricious and incorrect as a matter of law.

66. This Court has already determined, in its August 26, 2005 decision and order, that Greentree need not first exhaust its administrative remedies with respect to the Building Inspector's determination because it would be futile for Greentree to attempt to seek relief through the administrative process.

67. Greentree is entitled to an order pursuant to CPLR article 78 vacating and annulling the determination of the Building Inspector that the use of the property as a construction and demolition debris transfer station and processing facility is not a prior, lawful non-conforming use entitled to continue indefinitely.

As and for Greentree's Third Cause of Action
(Declaratory Relief/Damages/Regulatory Taking)

68. Greentree repeats and reasserts the allegations contained in paragraphs 1 through 67 of this petition/complaint with the same force and effect as if fully set forth herein.

69. Greentree purchased the Property in 1997 with the clear and distinct investment-backed expectation that the Property would continue to be used as a construction and demolition debris processing facility and transfer station.

70. Greentree was keenly aware when it purchased the Property of the bundle of property rights and the attendant inherent value that it was acquiring.

71. The Fifth Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment, and Article I, Section 7 of the New York State Constitution, provide that "private property [shall not] be taken for public use without just compensation."

72. Prohibiting the use of the Property for any period of time in accordance with its pre-existing, legal nonconforming status without just compensation constitutes a violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the New York State Constitution.

73. The Village's actions permanently and unfairly deprive Greentree of its legitimate economically beneficial or productive use of the Property, thus the Village is liable for the permanent regulatory taking of Greentree's property interests.

74. Respondents are liable to compensate Greentree for any period of time in which the Village prevents or prohibits the use of the Property for its pre-existing, legal nonconforming use for the regulatory taking of the Property in an amount to be determined at trial, but no less than a combined amount of Twenty-Five Million Dollars ($25,000,000), plus pre-judgment interest.

As and for Greentree's Fourth Cause of Action
(Declaratory Relief/Damages/Denial of Substantive Due Process)

75. Greentree repeats and reasserts the allegations contained in paragraphs 1 through 74 of this petition/complaint with the same force and effect as if fully set forth herein.

76. Greentree has protectable property interests in the use of the Property for its pre-existing, legal nonconforming use.

77. Respondents' actions, including any action that prohibits or prevents the use of the Property for its pre-existing, legal nonconforming use, deprives Greentree of its property interests.

78. Respondents' actions, including any action that prohibits or prevents the use of the Property in accordance with its pre-existing, legal nonconforming use, are arbitrary and capricious, not reasonably related to a legitimate public purpose and for purposes extraneous to legitimate land use considerations.

79. Respondents' actions, including any action that prohibits or prevents the use of the Property for its pre-existing, legal nonconforming use, results in a deprivation of Greentree's substantive due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution.

80. Respondents knew or should have known that they were violating Greentree's substantive due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution.

81. Pursuant to 42 U.S.C. § 1983, Respondents are liable to Greentree for damages caused by the violation of its constitutional and civil rights, plus pre-judgment interest.

82. Pursuant to 42 U.S.C. § 1988, Respondents are liable to Greentree for its attorneys' fees.

83. Respondents are liable to Greentree for the deprivation of its substantive due process rights in an amount to be determined at trial, but no less than a combined amount of Twenty-Five Million Dollars ($25,000,000), plus pre-judgment interest.

As and for Greentree's Fifth Cause of Action
(Declaratory Relief/Damages/Denial of Procedural Due Process)

84. Greentree repeats and reasserts the allegations contained in paragraphs 1 through 83 of this petition/complaint with the same force and effect as if fully set forth herein.

85. Respondents' actions, including any action that prohibits or prevents the use of the Property for its pre-existing, legal nonconforming use, deprives Greentree of its property interests by, among other things, (i) preventing it from using the Property as permitted by law; (ii) depriving it of its vested interest in the pre-existing, legal nonconforming use; and (iii) preventing it from making reasonable economic use of its property interests.

86. Respondents are acting to eviscerate the pre-existing, legal nonconforming use of the Property without any due process, formal or informal notice or warning to Greentree.

87. Greentree has been denied an opportunity to be heard before Respondents deprive them of its property interests.

88. Respondents' actions result in a deprivation of Greentree's procedural due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution.

89. Respondents knew or should have known that they were violating Greentree's procedural due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution.

90. Under 42 U.S.C. § 1983, Respondents are liable to Greentree for damages caused by the violation of its constitutional and civil rights, plus pre-judgment interest.

91. Under 42 U.S.C. § 1988, Respondents are liable to Greentree for its attorneys' fees.

92. Respondents are liable to Greentree for the deprivation of its respective procedural due process rights in an amount to be determined at trial, but no less than a combined amount of Twenty-Five Million Dollars ($25,000,000), plus pre-judgment interest.

As and for Greentree's Sixth Cause of Action
(Preemption)

93. Greentree repeats and reasserts the allegations contained in paragraphs 1 through 92 of this petition/complaint with the same force and effect as if fully set forth herein.

94. Pursuant to Environmental Conservation Law article 27, the construction and operation of construction and demolition debris processing facilities and transfer stations are completely regulated by the New York State Department of Environmental Conservation (the "DEC").

95. The statute and the regulations adopted by DEC pursuant thereto permit the establishment of construction and demolition debris processing facilities and transfer stations in such locations as DEC determines in accordance with its regulations.

96. Village Code § 230-18(E) prohibits construction and demolition debris processing facilities and transfer stations within the Village.

97. Since the Village code prohibits what state law permits, it conflicts with State law and is preempted.

98. Greentree is entitled to a declaration that the local law prohibiting construction and demolition debris processing facilities and transfer stations within the Village is void and of no effect because it is preempted by the state law.

WHEREFORE, Greentree respectfully requests judgment against respondents jointly and severally, as follows:

i. Declaring that the use of the Property as a construction and demolition debris processing facility and transfer station is a pre-existing, legal nonconforming use, which may be continued indefinitely;

ii. Vacating and annulling the determination of the Building Inspector that the use of the Property as a construction and demolition debris processing facility and transfer station is not a prior, lawful non-conforming use;

iii. Awarding compensation to Greentree for the regulatory taking of its property interests in an amount to be determined at trial, but no less than Twenty-Five Million Dollars ($25,000,000), plus pre-judgment interest;

iv. Awarding compensation to Greentree for the violation of its substantive and procedural Due Process rights in an amount to be determined at trial, but no less than Twenty-Five Million Dollars ($25,000,000), plus pre-judgment interest;

v. Vacating and annulling Village Code § 230-18(E), and declaring it to be void and of no effect, because it is pre-empted by state law; and

vi. Granting such other and further relief as the Court may deem just and equitable.

Yours, etc.

Wilson Elser Moskowitz Edelman & Dicker, LLP
Attorneys for Petitioner/Plaintiff

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Dated: White Plains, New York
November 18, 2013