

IN THE CIRCUIT COURT FOR BALTIMORE CITY

COMMERCIAL RENTAL PROPERTY
OWNERS, *et al.*,

ST. PAUL PLAZA OFFICE TOWER, LLC
A Maryland Limited Liability Company
200 St. Paul Plaza
Baltimore, Maryland 21201

And

LEXINGTON CHARLES LIMITED
PARTNERSHIP
A Maryland Limited Partnership
201 N. Charles Street
Baltimore, Maryland 21201

And

301 CHARLES STREET, LLC
A Maryland Limited Liability Company
301 N. Charles Street
Baltimore, Maryland 21201

Case No. _____

And

PARK CHARLES APARTMENTS
ASSOCIATES, LLC
A Maryland Limited Liability Company
218 N. Charles Street
Baltimore, Maryland 21201

And

PARK CHARLES OFFICE
ASSOCIATES, LLC
A Maryland Limited Liability Company
218 N. Charles Street
Baltimore, Maryland 21201

And

501 ST. PAUL STREET, LLC
A Maryland Limited Liability Company
501 St. Paul Street
Baltimore, Maryland 21201

And

ST. PAUL & FRANKLIN, LLC
A Maryland Limited Liability Company
501 St. Paul Street
Baltimore, Maryland 21201

And

ROBOPARK, LLC
A Maryland Limited Liability Company
18 W. Saratoga Street
Baltimore, Maryland 21201

And

CHARLES PLAZA, LLC
A Maryland Limited Liability Company
222 N. Charles Street
Baltimore, Maryland 21201

And

39 W. LEXINGTON, LLC
A Maryland Limited Liability Company
39 W. Lexington Street
Baltimore, Maryland 21201

And

BALTIMORE CONDO 2-8, LLC
A Maryland Limited Liability Company
118 N. Howard Street
Baltimore, Maryland 21201

And

FAYETTE GARAGE, LLC
A Maryland Limited Liability Company
308 W. Fayette Street
Baltimore, Maryland 21201

And

CHARLES TOWERS, LLC
A Maryland Limited Liability Company
222 N. Charles Street
Baltimore, Maryland 21201

And

THE MARLBORO CLASSIC, LP
A Maryland Limited Partnership
410 W. Lombard Street
Baltimore, Maryland 21201

And

REDWOOD SQUARE APARTMENTS, LP
A Maryland Limited Partnership
410 W. Lombard Street
Baltimore, Maryland 21201

Plaintiffs,

vs.

DEPARTMENT OF GENERAL SERVICES
STATE OF MARYLAND
State Office Building
301 West Preston Street
Baltimore, Maryland 21201

Serve on:
The Hon. Douglas F. Gansler
Attorney General of Maryland
200 St. Paul Place
Baltimore, MD

And

DEPARTMENT OF TRANSPORTATION
STATE OF MARYLAND
7201 Corporate Center Drive
Hanover, Maryland 21076

Serve on:
The Hon. Douglas F. Gansler
Attorney General of Maryland
200 St. Paul Place
Baltimore, MD

And

STATE CENTER, LLC,
A Maryland Limited Liability Company
c/o PS Partners, LLC
3430 Second Street, Suite 310
Baltimore, MD 21225

Serve on:
Ms. Caroline G. Moore
Suite 310
3430 Second Street
Baltimore, MD 21225
Resident Agent

Defendants.

**COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Now come Plaintiffs, Commercial Rental Property Owners (“Commercial Property Owners”), by Alan M. Rifkin, Scott A. Livingston, M. Celeste Bruce, Michael D. Berman, and Rifkin, Livingston, Levitan & Silver, LLC, their attorneys, and for a complaint for declaratory and injunctive relief against Defendants, Maryland Department of General Services (“DGS”) with acknowledgement of other State agencies (collectively the “State Center Agencies”), the Maryland Department of Transportation (“MDOT”), and State Center, LLC (“Developer”), state as follows:

INTRODUCTION

1. As described by Defendant MDOT, State Center is an “area in mid-town Baltimore City generally bordering Preston Street that includes four commercial office buildings which house a large number of State Agencies and employees...comprised of approximately 25 acres of land...” *Report to the Maryland General Assembly Senate Budget & Taxation Committee and House Appropriations Committee, November 2006.*

2. The State Center Agencies, MDOT, and the Developer are engaged in a massive, \$1.5 billion real estate development project, one of the largest real estate projects in the City’s history, known as the State Center Project (the “Project”). The Project will span more than a decade and, upon completion, will add over 1.5 million square feet of new commercial office space, retail facilities, residential dwellings, parking garages and other commercial space, all built on State-owned property and, in large part, occupied and used by State agencies.

3. The Project, conceived in 2004 during the administration of Governor Robert L. Ehrlich,¹ leases, assigns, grants, conveys, or transfers valuable property and development rights in the State-owned property at State Center, to State Center, LLC, a consortium of private entities (the “Developer”), to demolish State buildings, construct buildings for the State, including commercial office space and parking garages, without competitive bidding.

4. To effectuate the Project, a Master Development Agreement (“MDA”) was entered into on June 15, 2009 between the State of Maryland, to the use of DGS, MDOT and the Developer. The MDA, in addition to granting the Developer valuable development rights to construct office buildings, parking garages and other improvements for use by State agencies, commits the State, again without competitive bidding, to long-term leasing arrangements and

¹ Annie Linskey, “O’Malley says State Center under way,” *The Baltimore Sun* (Jul. 27, 2010), <http://www.baltimoresun.com/news/maryland/bs-md-state-center-20100727,0,2154721.story>.

exclusive negotiations with the Developer as the Project's principal lessee at initial rents of up to approximately \$36.88 per square foot (with a 15% escalator every five years). The Project's initial "all in" lease rate is well above the "all in" market rate for similar, available commercial office space.²

5. Those valuable leases, in turn, create marketable commercial paper, capable of securing preferred construction financing rates and operating loans for the Developer.³ The Developer retains the remainder of the Project for its sole and beneficial use and additional profit. The Developer was assigned, granted, conveyed or transferred the beneficial use of the State-owned property for the Project pursuant to long-term ground leases with the State at the extremely favorable base rate of \$2,000 per acre,⁴ again without competitive bidding.

6. In 2005, contrary to the requirements of the State procurement law, the original Developer for the Project was initially selected and granted the aforementioned exclusive development, leasing and other valuable rights by a Request for Qualifications ("RFQ") rather than a Request for Proposals ("RFP"). An RFQ, in contrast to an RFP, mostly invites submission of the firm's qualifications (*e.g.*, descriptions of prior projects, financial capability,

² According to the Department of Legislative Services ("DLS") in its May 2009 "State Center Transit Oriented Development Briefing" (hereinafter "DLS May 2009 Briefing"): "At full phase-in...the State may be paying \$39 per square foot in fiscal 2019. By contract, DBED is currently paying \$24 per square foot at WTC located at the Inner Harbor. Assuming a 3% annual escalation in rent, by 2019 DBED would be paying \$31 per square foot." Similarly, lease rates in Baltimore City's Central Business District ("CBD") are also substantially less than the State's committed lease rate to Developer. See ¶21 and Table 1, *infra*.

³ The DLS May 2009 Briefing recognizes that "...private sector financing is unlikely to materialize absent a committed long-term anchor tenant," *i.e.*, State agencies. As stated by Assistant Secretary Gaines, "[b]y committing to a twenty-year term we would enable the developer to achieve the best affordable financing in the bond market possible, which ultimately is reflected in our rates and costs." *July 28, 2010 presentation by DGS to the BPW*.

⁴ MDA ¶2.3.1 provides for "(i) a base rental rate in the annual amount of \$2,000 per acre of each respective Phase or Phase Parcel (to be increased annually), (ii) an amount equal to the sums expended by the State on the Project prior to the Effective Date (unless previously reimbursed to State by Developer) and allocable Fair Market Value and (iii) a profit-sharing payment based on a split of certain proceeds obtained by Developer (or ground tenant under such Phase Ground Lease or Alternative Ground Lease), pursuant to mutually agreeable terms and conditions contained in each such Phase Ground Lease or Alternative Ground Lease. The method for computing the elements identified under clauses (i) – (iii) above will be negotiated by the parties and substantially consistent with Exhibit 2.3.1."

professional experience, etc.). An RFP requires competitive sealed proposals and other competitive criteria for evaluation. Absent compliance with the State's competitive procedures, among other things, the State cannot be assured that it received the most advantageous offer and the public cannot be assured that the awardees were objectively determined.

7. Since the original Developer was selected by the State, DGS has compounded its unlawful non-competitive processes by engaging in unauthorized negotiations to modify the transaction, allowing substantial ownership and other material changes outside of the State's procurement laws, rules and regulations, and by unlawfully modifying the terms and conditions of the initial MDA, including modifications to the construction and financing plan, all without issuance of an RFP.

8. Among other things, on July 28, 2010, DGS presented the First Amendment to the MDA ("First Amendment") to the Board of Public Works ("BPW") for approval. The First Amendment extensively amended, modified and altered the terms and conditions of the MDA in a manner that violated the State's procurement laws and rules.

9. On July 28, 2010, in its presentation to the BPW, a DGS representative, Assistant Secretary Michael Gaines, during an exchange with Governor Martin O'Malley, advised the BPW that: "*[T]he procurement laws do not come into play here.*" (emphasis added). DGS's representation was not correct. The Project, including the First Amendment, required compliance with the State's procurement laws and rules, which were disregarded.

10. After BPW approval on July 28, 2010, the First Amendment was executed by the State Center Agencies and the Developer on September 1, 2010. It recites that the State had: 1) privately negotiated Phase I Occupancy Lease terms with the Developer; 2) approved a substantial change in the Developer's ownership structure; 3) extended the initial term of the

Phase Ground Lease to the Developer from 50 to 75 years; 4) changed the Project's Approved Concept Plan; and 5) made other material modifications to the MDA. Among those other material modifications, the First Amendment permitted the Developer to shift responsibility to the State for the design, financing, construction, operation and maintenance of an underground garage for the Project, thus, relieving the Developer of a very expensive obligation of the Project and saddling the State with that expenditure. By virtue of the First Amendment, MDOT assumed that obligation and also agreed to contribute up to \$28 million taxpayer dollars towards the cost of the garage design and construction.⁵

11. Although seemingly complex, the Project, including the MDA and First Amendment, are creative schemes for the demolition, construction and leasing of State-used office space and parking garages. The MDA and First Amendment are a "procurement contract" as defined by the State Finance and Procurement Article ("SFP") §11-101(m) and (n). The MDA is an "agreement" entered into by DGS, a primary procurement unit of State government, for *inter alia*, "leasing real property as a lessee; or buying or obtaining supplies, services, construction, construction-related services, architectural services, engineering services...." As such, DGS was obligated to procure the Project requirements in accordance with SFP Title 13. It did not do so.

12. The State's procurement laws were enacted, and require use of RFPs for procurements like the Project and those envisioned by the First Amendment, to ensure fair processes and increase public confidence as to, among other things, the use of public funds for statutorily-defined procurements. The procurement laws were intended to protect taxpayers by ensuring the appropriate use of public funds, to prevent favoritism, the appearance of

⁵ By action taken by the BPW on December 15, 2010, Item 19, the BPW authorized MEDCO to issue \$33 million of taxpayer supported bonds for the garage.

impropriety, and government “give-aways” of those valuable business opportunities based on non-competitive criteria. The procurement laws were also established to determine objectively, by competitive bidding, the most advantageous offers to the State. SFP §13-105(a) and (e).

13. Far from following the mandatory procurement laws and processes designed to protect the public and its interests, as well as the Commercial Property Owners, and instill public confidence in the award of government contracts, the State ignored and violated those important objectives in awarding to the Developer a “no bid,” \$1.5 billion “give-away” without competition. The State has conferred enormous financial benefits and opportunities upon the Developer⁶ to the detriment of the Commercial Property Owners in the CBD, the people of Baltimore City and the State.

14. Whether the Developer’s initial proposal, or as materially revised and modified under the MDA and the First Amendment, constitutes the most advantageous offer to the State is unknown where, as here, the State did not comply with its competitive bidding laws. As DLS noted in February 2009, “*the total cost exposure to the State may never be known.*”⁷ DLS concluded: “*It is also not clear that the proposed benefits will materialize.*”⁸ The Project relies on questionable projections: “*All with almost no oversight or involvement by the legislature.*”⁹

15. Serious flaws in the State projections were highlighted in an October 27, 2010, letter from three prominent Baltimore business leaders with substantial commercial property expertise who wrote to DGS Assistant Secretary Gaines that: “In your attempt to distract readers from the reported private windfall of \$140 million – amidst non-competitive rates that would

⁶ DLS concluded in its May 2009 analysis that the “[f]inancial terms do not adequately compensate the State for its buildings and land, and terms for the developer are extremely generous in the current financial market.” *Id.*

⁷ DLS, “State Center – Transit-oriented Development Briefing,” (Feb. 2009) (hereinafter the “DLS February 2009 Briefing”) (emphasis added). DLS’ May 2009 Briefing similarly noted that the total cost to the State may never be known in part because 75 or 90 years from now “the State would hold a multiple use site entailing retail, housing, and office space which would pose significant challenges to the State.” DLS May 2009 Briefing.

⁸ DLS February 2009 Briefing.

⁹ *Id.* (emphasis added).

exceed downtown rates by \$14 per square foot (\$22 per square foot at full service downtown vs. \$36 per square foot at State Center) – you say the state would gain about \$170 million from 7 percent of the profits in the first phase. By our calculations, this suggests the project’s private developers – *the recipients of the remaining 93 percent share of the profits – would reap an astounding \$2.3 billion over 20 years. That’s \$115 million per year for 20 years.*” (“October 27th Letter”) Exhibit 1 (emphasis in original). All of this was done without adhering to State procurement laws.

16. On December 15, 2010, the BPW approved leases under which three State agencies, Department of Health and Mental Hygiene, Maryland Department of Planning, and the Maryland Transit Authority will rent office space from the Developer as tenants at the Project, without competitive bidding.

17. On December 15, 2010, the BPW also approved the issuance of \$33 million in MEDCO Bonds supported by taxpayer revenues to build a Phase I parking garage at State Center, which, according to Assistant Secretary Gaines is the “platform for the entire [State Center] Project,” allowing for the Developer to construct Phase I office space above the parking garage, all without competitive bidding. According to Comptroller Peter Franchot, the parking garage is an “absolute state project.” *Comptroller Peter Franchot at the Board of Public Works Meeting, December 15, 2010.*

18. Meanwhile, as demonstrated by Exhibit 2, attached hereto and incorporated herein, there are more than 2 million square feet of vacant space in downtown office buildings in the Central Business District of Baltimore City (“CBD”),¹⁰ much of it owned by the Commercial Property Owners, the value of which will be depressed by the government-subsidized

¹⁰ This does not include an additional 2 to 3 million vacant square feet in smaller structures in the CBD or in buildings located outside of the CBD.

development of the Project on State-owned land that was leased to the Developer at bargain-basement rates.

19. Although the cost of the redevelopment has been represented to be financed with private funds, it will actually be financed in substantial part at the expense of existing Commercial Property Owners and others, through, among other ways, the issuance of City property tax increment financed bonds and other State and City assisted tax incentives. For example, the Project calls for the establishment of a Tax Increment Financing (“TIF”) program of up to \$314,254,055.00,¹¹ allowing the Project’s self-described “partner,” Baltimore City, irrevocably to redirect future, increased property tax payments away from important City services and needs and into the debt service for the Developer’s construction financing.

20. The TIF is not viable. Among other things, DLS has noted that “[t]he projected property assessments for State Center appear unrealistically high and do not appear to provide a sufficient base for paying the annual debt service on the TIF without providing any additional property tax revenue in Baltimore City for the first 25 years.”¹² In that event, “there is the potential that the developer could pass on higher costs to the State in the form of additional rent payments in order to cover annual debt service on the TIF....”¹³

21. Significantly, it is the expressed intention of the State Center Agencies and the State Center Project to compete with the Commercial Property Owners and CBD. A February 29, 2008, “draft” of a “State Center Market Analysis,” prepared for the Developer by Randall

¹¹ While the State has publically attempted to suggest that the issuance of a TIF for the Project will not be significant, the prominent business leaders referred to in ¶15, above, stated in their October 27th Letter to Assistant Secretary Gaines: “We find it remarkable that – in addition to the veritable gift of 28 acres in state-owned land, state-sponsored leases and a \$28 million state-funded parking garage – your long-range plans call for unprecedented additional subsidies. On reviewing your outline of the \$1.6 billion project’s build-out, it strikes us as grossly deceitful that you would tell the citizens of Baltimore that the project only seeks \$10 to \$15 million in TIF financing. Unless we’ve misread, the approved budget in your Master Development Agreement calls for over \$314 million in financing from the City of Baltimore.” Exhibit 1.

¹² DLS May 2009 Briefing.

¹³ *Id.*

Gross (the “Gross Study”), an economic consultant, and posted on the State Center web site¹⁴ states: “State Center *will have to compete* not only with downtown buildings but also with suburban office parks for the larger corporate office tenants.... Clearly, relative rent affordability is a critical question. Based on these analyses, and on assumptions regarding amenities and incentives, *site capture* was calculated through 2012. Overall, the analysis determined that *State Center can capture 100,000 to 310,500 square feet of leasable office demand (not including State Government space) during the next five years or by 2012.*” Hundreds of thousands of feet of retail space are also anticipated to be “captured” from the Commercial Property Owners.

22. Presently, various State agencies lease almost 600,000 square feet of commercial office space in the CBD, including: Office of Attorney General; Maryland Transit Administration; Department of Business and Economic Development; Office of Public Defender; Maryland Retirement Agency; Department of Juvenile Services; Worker's Compensation Commission; Office of the Inspector General; Maryland Port Administration; Baltimore City Community College; Dept. of Information Technology; Department of Parole and Probation; Department of Disability; College Savings Plan; Maryland Health Insurance Program; and the Office of People's Counsel. According to Assistant Secretary Gaines, “[w]e have goals for moving agencies into State Center.” *July 28, 2010 transcript of DGS presentation to BPW.* The relocation of State agencies from the CBD to State Center will cause the Commercial Property Owners loss of revenues, diminution of asset values and other economic harms, deprive Baltimore City of property tax revenues at levels now paid by the Commercial Property Owners and further the flight and blight in the CBD.

¹⁴ <http://statecenter.org/resources> (last visited Oct. 14, 2010).

23. The Gross Study also highlights that the State intends to compete directly with the Commercial Property Owners for State agencies and commercial tenants, noting that “...marketing of office space *will target State contractors among others.*” (emphasis added). Thus, not only do the State Center Agencies and the Developer intend to “capture” and “divert” State agencies away from the CBD to the Project, but they intend to use the value of the vast governmental procurement and purchasing power to compete directly with the Commercial Property Owners for commercial tenants.

24. The Project dedicates governmental resources to subsidize an increase in the supply of commercial office and retail space when there is irrefutable evidence that an abundant surplus already exists in downtown Baltimore. The Project also undermines past public policy decisions to revitalize the CBD, including downtown Baltimore and the Inner Harbor.

25. Injecting over 1.5 million square feet of new State and City subsidized commercial office space in the Baltimore metropolitan area will add an enormous, commercially unsupportable supply of office space in an already oversaturated and under-leased marketplace as reflected in Table 2 below. The Project proposes far more commercial office space than is needed by the State for its agencies. It will directly and proximately cause myriad problems in the core downtown area, including long-term commercial vacancies, blight and business flight away from the center core of the City, all at a substantial loss of City property tax revenues. The CBD cannot remain viable under these circumstances.

26. Existing adverse commercial and market forces will be further exacerbated by the Project. Reputable commercial real estate research services have conservatively reported the vacancy rate in Baltimore to be 24.63% in the CBD and 24.51% in the City. With these vacancy

rates, rental rates have declined reducing the value of commercial property, as per Table 1 below:

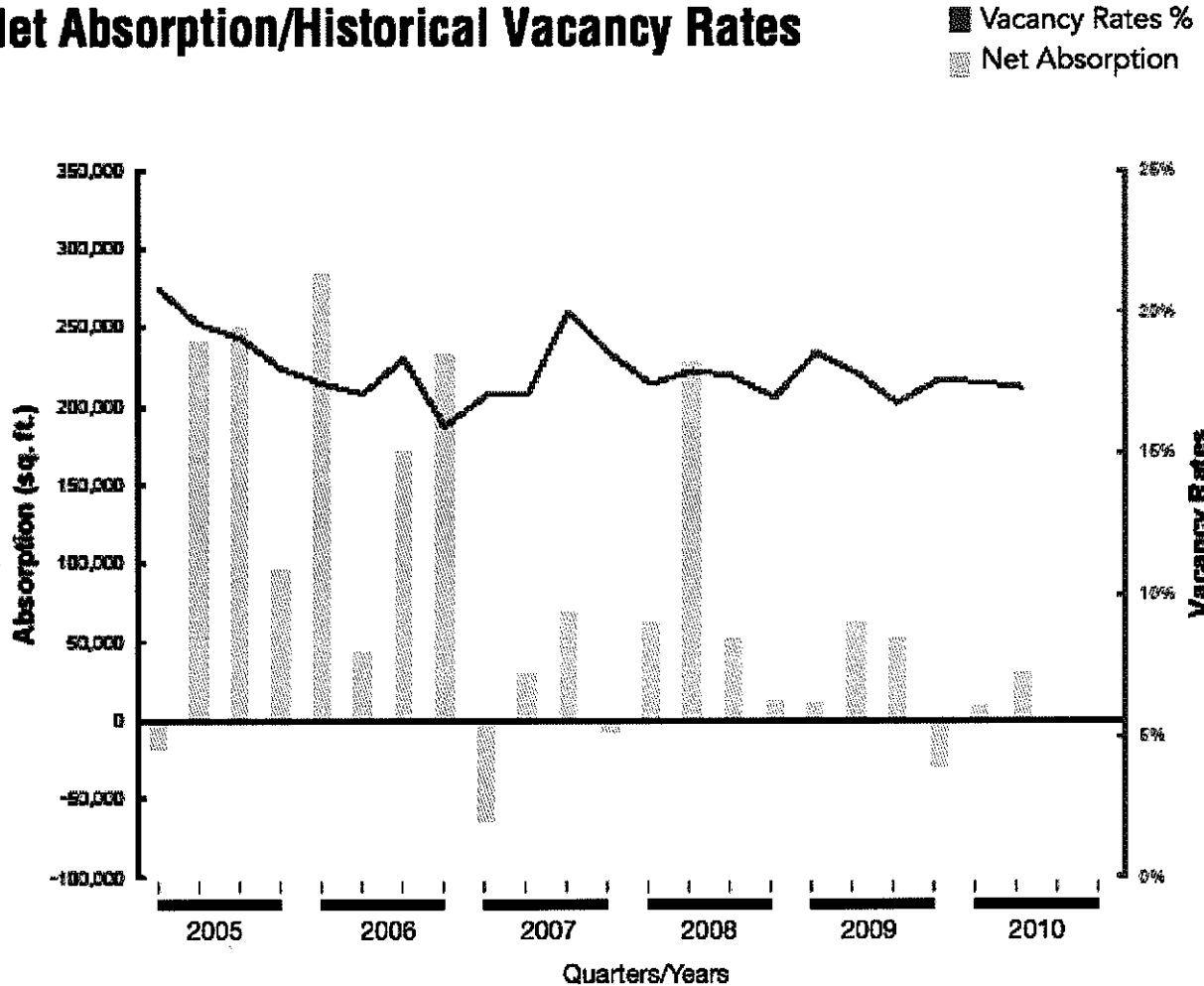
Table 1. Changing Commercial Space Rental Rates in Selected Years: Baltimore Market

Year	Rental Rate	Constant Rental Rate	Percent Change From 1998
1998	\$18.00/sf	\$18.00/sf	
2003	\$18.03/sf	\$16.03/sf	-10.9
2006	\$21.56/sf	\$17.57/sf	-2.3
2009	\$21.66/sf	\$16.32/sf	-9.3
2010	\$20.01/sf	\$14.83/sf	-17.6

27. As the chart below indicates, the absorption rate for commercial real estate in the Baltimore region for 2010 has been roughly zero, meaning there has been no reduction in the vacancy rate. The large increase in the supply of retail space through the Project will lead directly to higher vacancy rates in the CBD, directly cause further harm to the Commercial Property Owners and lower levels of property tax collection for the City of Baltimore.

Table 2

Net Absorption/Historical Vacancy Rates



Source: http://www.mackenziecommercial.com/marketreport/_media/downloads/2010/QTR2/office/BaltimoreCityReport.pdf; copyrighted, reproduced by permission.

28. The Project threatens to increase vacancy rates by injecting government incentives into a massive State-sponsored development project that would otherwise be dependent on free market factors. Those artificial incentives will markedly increase supply when

no increase is justified by market conditions. Increased supply of commercial office space will, in turn, depress rental rates.

29. DLS has made similar findings, noting that among other things, the “high commercial office vacancy rates and a high inventory of housing in Baltimore City raise questions about the viability of this undertaking.”¹⁵ According to DLS, “[t]he current economic climate raises concerns about the viability of the project given high inventory levels of vacant office space and housing in Baltimore City...[and m]arket conditions in 2014, when the project is scheduled to open....”¹⁶

30. Redirecting the concentration of commercial office space to areas outside the CBD will lead to pockets of blight and will threaten the economic viability of the existing commercial and retail properties, including those in the CBD. Often referred to as “leap frog” development strategies, the decentralization of commercial development has repeatedly led to the devaluation of the investments made by private sector entrepreneurs, urban blight, the flight of retail establishments, and other negative impacts.

31. As DLS noted, “[t]here is no compelling reason why the State agencies need to be grouped together at State Center. Baltimore City has a high commercial vacancy rate.”¹⁷ DLS concludes that “the current State Center proposal is not in the best interest of the State.”¹⁸

32. Where, as here, the State procures the construction of buildings, and leases them as a tenant, it must follow State procurement laws (SFP Title 13). Those laws were designed to increase public confidence in State procurements and to obtain the maximum benefit from the

¹⁵ DLS May 2009 Briefing.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

purchasing power of the State (SFP §11-201). Recessionary times and budget deficits do not excuse the State from complying with the procurement laws.

33. For these reasons and others, the Project will have a devastating financial impact on the CBD and its Commercial Property Owners, who are taxpayers and landowners in Baltimore City. The Commercial Property Owners employ, directly or indirectly, thousands of people and have invested heavily in their properties and the City. The Project allows the Developer to receive City and State subsidized benefits and opportunities unavailable to the Commercial Property Owners, all without compliance with State procurement laws. Meanwhile the Commercial Property Owners will uniquely bear the excessive costs, lose business opportunities, and suffer a diminution in the value of their assets and other catastrophic financial loss, all for a development initiative in which DLS has stated that the benefits may never materialize.¹⁹

THE PARTIES

34. Each of the Commercial Property Owners, taxpayer in the State of Maryland and the City of Baltimore. As a direct and proximate cause of the Project, the taxes of each of the Commercial Property Owners will increase and their rents, asset values and competitiveness with other commercial real property will decrease. Regardless of the success of the Project, City tax revenues will be diverted to TIFs and other tax incentives at the expense of the Commercial Property Owners. Each of the Commercial Property Owners is a landowner in the vicinity of the Project. The addition of 1.5 million square feet of government-subsidized commercial office space in an already oversaturated and under-leased market, with over 2 million square feet of unoccupied office space, will materially and substantially harm the Commercial Property

¹⁹ DLS February 2009 Briefing. For these and other reasons, DLS suggested “that the [budget] committees recommend against entering the MDA.” *Id.*

Owners, the City's tax base and the CBD. The addition of new, tax-supported retail and parking spaces in the Project will materially and substantially harm the Commercial Property Owners who own hotel, retail, and parking facilities downtown.

35. Plaintiff Lexington Charles Limited Partnership owns property located at 201 N. Charles Street, Baltimore, Maryland 21201, which is .92 miles from the Project, and which has 31,000 square feet of available commercial office space listed for rent. Plaintiff Lexington Charles Limited Partnership's property is suited for State office use and located in the CBD. Plaintiff Lexington Charles Limited Partnership will lease that property to the State at rates lower than the rates publicly disclosed for rental from the Developer.

36. Plaintiff St. Paul Plaza Office Tower, LLC owns property located at 200 St. Paul Plaza, Baltimore, Maryland 21201, which is .94 miles from the Project, and which has 1,000 square feet of available commercial office space listed for rent. Plaintiff St. Paul Plaza Office Tower, LLC's property is suited for State office use and located in the CBD. In fact, approximately 70% of Plaintiff St. Paul Plaza Office Tower's space is currently leased to State agencies, including the Office of the Attorney General, the Maryland State Board of Contract Appeals and the Maryland Insurance Administration. Plaintiff St. Paul Plaza Office Tower, LLC leases, and wishes to continue to lease that property to the State at rates lower than the rates publicly disclosed for rental from the Developer. Based on information and belief, some or all of these tenants will relocate to the Project.

37. Plaintiff Park Charles Apartments Associates, LLC owns property located at 218 N. Charles Street, Baltimore, Maryland 21201, which is .88 miles from the Project, and which has 4,604 square feet of available residential space listed for rent. Plaintiff Park Charles Apartments Associates, LLC's property is located in the CBD. Plaintiff Park Charles

Apartments Associates, LLC cannot compete with tax-subsidized, new residential rental space in the Project.

38. Plaintiff Park Charles Office Associates, LLC owns property located at 218 N. Charles Street, Baltimore, Maryland 21201, which is .88 miles from the Project, and which has 4,604 square feet of available commercial office space listed for rent. Plaintiff Park Charles Office Associates, LLC's property is suited for State office use and located in the CBD. Plaintiff Park Charles Office Associates, LLC will lease that property to the State at rates lower than the rates publicly disclosed for rental from the Developer.

39. Plaintiff 501 St. Paul Street, LLC owns property located at 501 St. Paul Street, Baltimore, Maryland 21201, which is .78 miles from the Project, and which has substantial available commercial office space listed for rent. Plaintiff 501 St. Paul Street, LLC's property is suited for State office use and located in the CBD. Plaintiff 501 St. Paul Street, LLC will lease that property to the State at rates lower than the rates publicly disclosed for rental from the Developer.

40. Plaintiff St. Paul & Franklin, LLC owns property located at 501 St. Paul Street, Baltimore, Maryland 21201, which is .78 miles from the Project, and which has substantial available commercial office space listed for rent. Plaintiff St. Paul & Franklin, LLC's property is suited for State office use and located in the CBD. Plaintiff St. Paul & Franklin, LLC will lease that property to the State at rates lower than the rates publicly disclosed for rental from the Developer.

41. Plaintiff RoboPark, LLC owns vacant property located at 18 W. Saratoga Street, Baltimore, Maryland 21201, which is .78 miles from the Project, and which is suitable for development. Plaintiff RoboPark, LLC's property is located in the CBD. Plaintiff RoboPark,

LLC cannot develop its property in an economically feasible manner when it has to compete with the taxpayer-subsidized underground parking garage to be constructed by MEDCO on behalf of MDOT and DGS using tax-exempt bonds.

42. Plaintiff Charles Plaza, LLC owns property located at 222 N. Charles Street, Baltimore, Maryland 21201, which is .85 miles from the Project, and which has 555 square feet of available commercial retail space listed for rent. Plaintiff Charles Plaza, LLC's property is suited for retail use and is located in the CBD. Plaintiff Charles Plaza, LLC cannot compete with the Project.

43. Plaintiff 301 Charles Street, LLC owns property located at 301 N. Charles Street, Baltimore, Maryland 21201, which is .85 miles from the Project, and which is currently being developed as 92,000 square feet of hotel space. Plaintiff 301 Charles Street, LLC's property is suited for hotel use and is located in the CBD. Plaintiff 301 Charles Street, LLC cannot compete with the Project.

44. Plaintiff 39 W. Lexington, LLC owns property located at 39 W. Lexington Street, Baltimore, Maryland 21201, which is .86 miles from the Project, and which has substantial available commercial office space listed for rent. Plaintiff 39 W. Lexington, LLC's property is suited for State office use and is located in the CBD. Plaintiff 39 W. Lexington, LLC will lease that property to the State at rates lower than the rates publicly disclosed for rental from the Developer.

45. Plaintiff Baltimore Condo 2-8, LLC owns residential condominium property located at 118 N. Howard Street, Baltimore, Maryland 21201, which is .85 miles from the Project. Plaintiff Baltimore Condo 2-8, LLC's property is suited for residential use and located

in the CBD. Plaintiff Baltimore Condo 2-8, LLC cannot compete with the tax-payer subsidized residential developments in the Project.

46. Plaintiff Fayette Garage, LLC owns garage property located at 308 W. Fayette Street, Baltimore, Maryland 21201, which is .83 miles from the Project. Plaintiff Fayette Garage, LLC property is located in the CBD. Plaintiff Fayette Garage, LLC cannot compete with the taxpayer-subsidized underground parking garage to be constructed by MEDCO on behalf of MDOT and DGS using tax-exempt bonds.

47. Plaintiff Charles Towers, LLC owns property located at 222 N. Charles Street, Baltimore, Maryland 21201, which is .85 miles from the Project, and which has substantial available commercial office space listed for rent. Plaintiff Charles Towers, LLC's property is suited for State office use and located in the CBD. Plaintiff Charles Towers, LLC will lease that property to the State at rates lower than the rates publicly disclosed for rental from the Developer.

48. Plaintiff The Marlboro Classic, LP owns property located at 410 W. Lombard Street, Baltimore, Maryland 21201, which is 1.02 miles from the Project, and which has residential space listed for rent. Plaintiff The Marlboro Classic, LP's property is located in the CBD. Plaintiff Marlboro Classic, LP cannot compete with the taxpayer-subsidized residential development in the Project.

49. Plaintiff Redwood Square Apartments, LP owns residential property located at 410 W. Lombard Street, Baltimore, Maryland 21201, which is 1.02 miles from the Project. Plaintiff Redwood Square Apartments, LP's property is located in the CBD. Plaintiff Redwood Square Apartments, LP cannot compete with the taxpayer-subsidized residential development in the Project.

50. DGS is the State agency that pursuant to the MDA will ground lease State-owned land to the Developer, and will, in turn, rent the State-owned land and new buildings back from the Developer for use of the State.

51. MDOT is a separate party to the MDA. Pursuant to the Paragraph R-6 of First Amendment (July 28, 2010), DGS will ground lease the land to MDOT (or its designee and approved by the BPW in the garage ground lease) and MDOT intended to cause the finance, design, and construction of a parking garage. There is an item on the Board of Public Works Agenda of December 15, 2010, which sought approval of a scheme whereby “MEDCO will on behalf of the State and the Project, finance, construct, operate, repair and maintain the Garage.”²⁰ The parking garage is a central part of the Project and that will increase the Project’s parking capacity to 5,900 spaces. Although the MDA originally called for the Developer to design, finance, construct, and operate the Project, under the First Amendment, MDOT committed up to \$28,361,000.00 to finance, construct and operate the garage through MEDCO and MEDCO-provided bonds. On December 15, 2010, that amount was increased by the BPW to \$33 million.

52. State Center, LLC (“Developer”), is a party to the MDA, as amended, although its ownership has changed substantially since it was “awarded” the Project under the non-competitive RFQ. The Developer is a Maryland limited liability company doing business in Maryland and Baltimore City.

Overview of the “RFQ” and MDA

53. In various ways, and at various times, DGS has attempted to circumvent the procurement laws using multiple strategies, each of which is incorporated into and part of the

²⁰ On information and belief, the Developer privately obtained the architecture/engineering services to design the garage, thus circumventing the laws governing procurement of the architecture/engineering services, pursuant to Md. Code Ann., State Fin. & Proc (“SFP”) §§13-301, 308 and 13-311

unlawful MDA and First Amendment. On September 21, 2005 DGS issued the Request for Qualifications for a Master Developer for the Transit-Oriented Development (“TOD”) Project at State Center. The “RFQ” was issued to select a development team that would have the exclusive right to construct the Project; lease back to the State commercial and other space at the Project; and retain additional commercial and retail opportunities for its profit.²¹ Through the MDA in 2009 and the First Amendment in 2010, DGS later conferred exclusive lease negotiating power on the Developer and committed to negotiate long-term leasing arrangements for State agency occupancy of the Developer’s buildings on State-owned land – all, without the issuance of an RFP and compliance with the State’s procurement laws. DGS also granted, assigned or provided the Developer with other valuable commercial development rights related to the Project – again, without the issuance of an RFP. This “creative” transaction was aimed at avoiding the procurement laws that are designed to protect the public and the Commercial Property Owners against this type of closed-source transaction.

54. The First Amendment stated that the “RFQ process is being used to select a Master Developer, instead of a more traditional Request for Proposals....” The “RFQ” also provided: “This RFQ is not conducted under the provisions of Maryland Procurement Law (COMAR Title 21).” (emphasis added).

55. In the “RFQ,” DGS stated that it was seeking a developer to “assemble resources and a team that can entitle, design, finance, *construct and market* mixed-use, mixed-income urban TOD [transit oriented development] that supports surrounding neighborhood needs and is acceptable to the various regulatory agencies.” (emphasis added).

²¹ Subsequently, DGS permitted a wholesale “swap-out” of two principals of the original development team and made other material changes to the MDA, again without compliance with the procurement laws. See ¶51 *supra*. Thus, the rationale for selection of a developers – their professional and financial qualifications – became inoperative.

56. The “RFQ” stated: “To support this partnership, the State has committed to retaining the entire State workforce at the redeveloped State Center.”

57. On March 21, 2006, then-Governor Ehrlich’s office announced that a development team led by the Developer “had been selected for the exclusive initial right to negotiate definitive agreements” with the State “to develop” the Property. From that point on, the Developer was ensured of a State-protected monopoly valued at \$1.5 billion for the Project with all of its commercial, residential, parking and retail elements.

58. The Developer selected to develop the project originally included an individual who was later indicted and a company, Struever Bros., Eccles & Rouse, Inc. (“SBER”) that in May 2009 moved out as an equity partner in the Project.²² SBER now participates in the Project only as a “consultant.”

59. On or about March 22, 2009, SBER’s development interests in the Project were assigned to PS Partners, LLC. The 2005 “RFQ,” through which the Developer was selected, required that the applicant meet a number of qualifications, including describing the Project team: “Given the unique nature of the Project and its utmost importance to the State and City, it is essential to fully understand the experience and capabilities of all key members of the Project Team.” The “RFQ” mandated disclosure of information about each key person on the team. The Developer’s application was, according to the “RFQ,” “reviewed by an Evaluation Committee composed of representatives from the State agencies, the City of Baltimore, surrounding neighborhoods, and other stakeholders.”

60. The shifting ownership of the development team raised a number of other concerns, among them how the State should or could proceed with the Project. For example, the

²² Daniel J. Sernovitz, “Struever Bros. Eccles & Rouse Stop Work on Baltimore Projects,” The Baltimore Business Journal (June 5, 2009), <http://baltimore.bizjournals.com/baltimore/stories/2009/06/08/story1.html>.

Treasurer noted: *“We understand that two of the three members of the originally-selected Limited Liability Company are no longer partners in the project. Since it appears there has been a material change in the development company, should the State re-select a development team? If the State allows replacement members to be added to the LLC, will the new members of the development team agree to the terms already negotiated with the State? Will the new members have the same vision and commitment to the proposed development plan?”* 2009 Report of State Treasurer, the Hon. Nancy Kopp, to Maryland General Assembly on Status of State Center (in response to Section 52 of 2009 H.B. 100) (emphasis added).

61. Similarly, DLS stated that “[t]here have been changes to the development team since the end of session, and it is undemonstrated that the reconstituted development team possesses the financial resources and experience to complete the project.”²³

62. Nevertheless, when SBER could no longer continue as part of the development team, its rights were assigned to PS Partners, LLC.

63. This assignment, which constituted a “material change in the development company” according to the Treasurer’s report, was approved by the “State Center Executive Committee,” a mix of private citizens, executive and legislative officials, and then by the BPW. DGS then entered into the MDA with the Developer, now including its “swapped out” and “substituted” members.

64. Pursuant to the MDA, as amended, State land will be leased to the Developer under “Phase Ground Leases.” The Developer is to construct and/or renovate buildings at the Project. Then, the Developer will lease the new and/or renovated commercial space back to the State for use as offices for various agencies, pursuant to “Occupancy Leases.”

²³ DLS May 2009 Briefing.

65. The MDA was amended by the First Amendment, through which MDOT relieved the Developer of the commercially and financially risky development of a parking garage and committed \$28.3 million to build the parking garage. The transaction is designed to avoid the procurement laws that would otherwise require open competition to purchase such construction and leasing services.

66. Prior to entering into the MDA, the State land at State Center was occupied by State agencies. At the end of the Project there will be new and/or renovated buildings on the State-owned land that will again be occupied by State agencies. The Developer benefits from the State's commitment to occupy space at the Project at above market rates, which creates marketable commercial paper allowing for preferred financing arrangements. As stated by Assistant Secretary Gaines, "[b]y committing to a twenty-year term we would enable the developer to achieve the best affordable financing in the bond market possible, which ultimately is reflected in our rates and costs." *July 28, 2010 presentation by DGS to the BPW*. The Developer is further benefitted by the anticipated TIF of up to \$314 million, which will divert property taxes to pay for the cost of development. In essence, the State has given the Developer a commercial windfall at the expense of the Commercial Property Owners.

67. Baltimore City, although not a party to the MDA or First Amendment, has cooperated with the State Center Agencies and "partnered" with them in the Project. The State Center web site states that "State Center is a collaborative private-public partnership between State Center LLC, the State of Maryland and the City of Baltimore."²⁴ MDOT has made similar statements.²⁵

²⁴ <http://statecenter.org/vision>.

²⁵ [http://www.mdot.maryland.gov/Planning/TOD/State_Center_TOD/Documents/jcrThe Redevelopment of State Center.pdf](http://www.mdot.maryland.gov/Planning/TOD/State_Center_TOD/Documents/jcrThe%20Redevelopment%20of%20State%20Center.pdf).

Development and Terms of the MDA

68. The purpose of the “RFQ” was to solicit and select a developer for the Project. In the “RFQ,” DGS and MDOT stated that they were committed to retaining the current 3,500 employee work force at State Center and leasing approximately 1,000,000 square feet of space for that work force, notwithstanding the competitive bidding requirement of the procurement laws under Title 4, Subtitle 3, Part III of SFP and SFP §13-105.

69. State Center was envisioned as a TOD which means, in part, “a mix of private or public parking facilities, commercial and residential structures, and uses, improvements, and facilities customarily appurtenant to such facilities,” pursuant to Md. Code Ann., Trans. Art. §7-101(m).

70. On November 30, 2005, State Center, LLC, submitted its “Developer Response.” The Development Team was headed by SBER and included Doracon Development, LLC (“Doracon”), among others.

71. On June 28, 2007, the Parties entered into an MOU between the State Center Agencies and State Center, LLC, as Developer for an exclusive negotiating privilege.

72. On October 12, 2007, the parties entered into the IDA that among other things, contemplated that the Developer would submit the PDP.

73. On June 15, 2009, the Developer and the State of Maryland, by and through DGS, entered into the MDA.

74. The MDA includes, among other things, recitals that describe the various agreements between the parties from the “RFQ,” MOU, LOI, IDA, and PDP.

75. The MDA provides at Recital 11:

Following execution of the IDA and prior to the Effective Date, the ownership structure of Developer was modified in order to bring greater financial strength to

the development team and to help achieve completion of the Project. On January 16, 2009, Doracon Development, LLC voluntarily withdrew from the developer and the Project and on March 22, 2009, Struever Bros. Eccles & Rouse, Inc. agreed to transfer its ownership interest in Developer to PS Partners, LLC. By letter dated May 12, 2009, the State Center Executive Committee approved the alteration of the ownership structure of Developer.

76. There is no indication that any of the selection procedures set forth in the “RFQ” were used to replace Doracon or SBER with the entity known as “PS Partners.” There was no open competitive procurement in connection with the transfer of partnership interests, which interests included all development rights, the right to rent 21.8 acres of State land pursuant to Ground Leases with the State and the State’s obligation to rent buildings back to DGS pursuant to Occupancy Leases with the State.

77. Under the MDA, the Developer has the right to rent land from the State Center Agencies. MDA ¶2.3 states: “**Phase Ground Leases.** Developer anticipates acquiring portions of the Property by Phase and implementing the Approved Concept Plan throughout the various Phases, pursuant to Phase Ground Leases. Each Phase Ground Lease will be generally consistent with the terms of the Phase Ground Lease attached hereto as Exhibit 2.3 and the Approved Concept Plan, except as to further details such as the description of the property, the uses permitted or required for that Phase *and the economic terms negotiated between the parties....*” (emphasis added).

78. The MDA specifies a partial and incomplete rental formula for the Phase Ground Lease. MDA ¶2.3.1 provides that: “The compensation payable to the State under a Phase Ground Lease or Alternative Ground Lease (as defined in Section 9) shall be comprised of: (i) a base rental rate in the annual amount of \$2,000 per acre of each respective Phase or Phase Parcel (to be increased annually),²⁶ (ii) an amount equal to the sums expended by the State on the

²⁶ The escalator percentage amount is an open term in the MDA.

Project prior to the Effective Date (unless previously reimbursed to State by Developer) and allocable Fair Market Value and (iii) a profit-sharing payment based on a split of certain proceeds obtained by Developer (or ground tenant under such Phase Ground Lease or Alternative Ground Lease), pursuant to mutually agreeable terms and conditions contained in each such Phase Ground Lease or Alternative Ground Lease. The method for computing the elements identified under clauses (i) – (iii) above will be negotiated by the parties and substantially consistent with Exhibit 2.3.1.”

79. Pursuant to the MDA, the rental formula will provide the Developer with land on financially favorable terms.

80. The “RFQ” and MDA commit DGS to rent from the Developer at least sufficient office space to maintain the current State workforce at the Project. The “RFQ” stated: “To support this partnership, the State has committed to retaining the entire State workforce at the redeveloped State Center.”

81. The “RFQ” and MDA commit DGS to sign “Occupancy Leases” with the Developer using an agreed-upon form lease.

82. If the MDA is a lease, it fails to comply with procurement laws mandating competitive sealed proposals under SFP §13-105.

83. If the MDA is a contract,²⁷ it fails to contain the mandatory “termination for convenience” clause, further demonstrating that the MDA is simply an attempt to circumvent the State’s mandatory procurement laws.

84. The MDA further states: “Details regarding the rentable square footage, any additional improvements to be provided by Developer, the economic terms

²⁷ In Recital 17, the MDA states: “Developer and DGS have each agreed to enter into this Agreement and each will be bound thereby.”

determined by the formula described in Section 6.2, the necessity for a modified gross²⁸ lease, office lease, or triple net lease,²⁹ and other requirements as may be identified by the Using Unit, *will be negotiated by the parties* prior to any BPW Submittal.” (emphasis added).

85. Pursuant to SFP §13-105, when the State leases space as a tenant, it is required to follow State procurement law.

86. Pursuant to SFP §13-103, when the State builds a building, it is required to follow State procurement law.

87. The State has committed to leasing space as a tenant and has or will contract for building construction services, without following State procurement law.

88. Pursuant to the MDA and First Amendment, the leases will not be procured in accordance with State procurement practices or the State procurement law because the State has created a situation in which there is only one offeror that is qualified to respond to the solicitation, *i.e.*, the Developer.

89. MDA ¶2.5 provides for BPW approval of the leases: “The parties anticipate that each Phase Ground Lease and applicable Occupancy Lease(s) for such Phase will be submitted jointly to the BPW for review and approval (provided that DGS, with the concurrence of the Developer, may elect to submit the Occupancy Lease for approval prior to the Phase Ground Lease). The parties agree that a Phase Ground Lease will be conditioned upon DGS agreeing to the terms of the Occupancy Lease(s) for the applicable Phase.”

²⁸ In a “pure” gross lease, the landlord pays all expenses and the tenant pays only rent. A “modified” gross lease shifts some expenses to the tenant through a reimbursement formula.

²⁹ Under a triple net lease, the tenant, *e.g.*, DGS, is essentially the owner because a triple-net tenant pays all expenses, including property taxes, repairs, and insurance.

90. The BPW approved three such leases on July 28, 2010. BPW Agenda Item 18-LT, submitted on December 15, 2010, for example, provided for a 10,000 square foot lease with an average rental of \$322,725, and stated: “Due to the Landlord’s anticipated use of bond financing, the leases may not be terminated for convenience or for default.

91. Once the leases are approved by the BPW, the MDA provides that construction will proceed. MDA ¶2.5.1.1 (“After the Effective Date, and in accordance with Section 4.1.1 and Section 5, Developer will cause the commencement of the architectural and engineering design work necessary to construct the Project and in particular the First Phase, according to the Approved Concept Plan.”). Instead of open competition for the construction contracts as would be required under the procurement laws (SFP §13-102), the Developer will choose the contractor.

92. The MDA’s financing plan, contained in ¶2.9, uses the enormous power of the tax code to confer substantial cost savings on the Developer: “The parties agree that a conceptual financing plan for the Project is presented on the Sources and Uses schedule attached hereto as **Exhibit 2.9** (the ‘**Sources and Uses Schedule**’). The parties acknowledge that financing for the Project, including the Infrastructure required to service the Project, will require Developer to secure one or more of such items as: Tax Credits, Property Tax Reductions, TIF Financing and/or Tax Exempt Financing, as described in the Sources and Uses Schedule and as will be identified more particularly in each Financing Plan.” The proposed TIF financing, to be provided by Baltimore City, which is a “partner,” but not a party, will be up to \$314,254,055.00, per MDA Exhibit 2.9.

93. Although purportedly a transaction in which DGS grants development rights and a ground lease to the Developer to develop the 21.8 acre parcel, in reality, DGS controls the allegedly “private” development process.

- For example, pursuant to MDA ¶5.1: “Developer acknowledges that although the Improvements will be Developer Improvements, the State as the underlying fee owner has an interest in seeing high quality, sound, and attractive Improvements constructed on the Property which necessitates Developer and DGS cooperation in architectural and engineering design for the Project and coordination of the integration of Improvements with existing State Improvements on the Property.”
- Under ¶16.1 of the Sample Occupancy Lease attached as Exhibit 2.4 to the MDA, DGS controls construction: “Promptly after the BPW approves the Lease, Lessor [the Developer] shall at its expense prepare and submit to Lessee [DGS] for review and approval complete construction drawings that include base building and tenant improvements as required by the RFP, and any excess tenant improvements requested by the Lessee [DGS]....”
- Under ¶25 of the Sample Occupancy Lease, the lessor [the Developer] is required to comply with SFP §11-208 and COMAR Title 21.
- Under ¶26.1 of the Sample Occupancy Lease, the lessor [the Developer] is required to comply with SFP §13-221, governing reporting of beneficial ownership.

94. Pursuant to the MDA, DGS controls the development process and, from a “substance over form” perspective, is in all material respects the owner of the buildings that are being constructed to State requirements on State-owned property.

95. The entire development process, including the Phase Ground Lease(s) and Occupancy Lease(s), as well as the design, financing, construction, maintenance, and operation, is part and parcel of a State procurement.

96. The construction portion of the DGS-controlled development process is not a private transaction between a private developer and private contractors. It is in fact and

substance, if not in form, a contract by DGS for the construction of buildings on State-owned land to State “specifications.”

97. The State’s control over the entire project is further demonstrated by MDA ¶5.9, entitled “Naming Rights.” That section states: “DGS and Developer will work together and in good faith to name the particular Improvements and the Project, and if desirable, market the naming rights for a building and/or the Project (the ‘**Naming Rights**’). Any revenues received for Naming Rights shall be credited to the State and Developer in equal shares and factored into any profit-sharing arrangement under the applicable Phase Ground Lease for those named Improvements. The terms and structure of such Naming Rights shall be mutually satisfactory to both DGS and Developer. DGS will have *absolute discretion* for naming or dealing with the Naming Rights for any Improvement where the State is to occupy 50% or more of the completed Improvement.” (emphasis added).

98. The Occupancy Leases are a binding commitment³⁰ by the State to lease property as a tenant without compliance with competitive procurement. SFP Title 4, Subtitle 3, Part III and §13-105. MDA ¶6.2 provides the “Economic Terms” of the Occupancy Leases: “The economic terms applicable to each Occupancy Lease shall be negotiated and shall be determined in part by the formula, calculations and determinations set forth in the Economic terms Sheet attached hereto as **Exhibit 6.2**,... The parties agree that further negotiations on material terms of each Occupancy Lease shall be required prior to any BPW Submittal.”

99. Alternatively, the MDA provisions that provide for Occupancy Leases are “agreements to agree” that are not enforceable under Maryland law.

³⁰ MDA ¶6 is titled “State Commitment to Leasing.”

100. The MDA recites in a conclusory manner that it is authorized by law. MDA ¶10.1.2 states that: “DGS, subject to BPW approval, has the power and authority to enter into this Agreement with Developer.” The MDA provides no support for this statement.

101. DGS does not have the power or authority to enter into the MDA, or to procure these construction services and lease-back arrangements without complying with State procurement law.

102. On July 28, 2010, the Board of Public Works approved the First Amendment at a BPW meeting.

103. On September 1, 2010, the parties agreed upon the First Amendment.

104. The First Amendment makes a number of key changes to the MDA without any competitive procurement. It is an assignment of rights in a \$1.5 billion project and includes a new \$28.3 million State undertaking to build and operate the MDOT garage.

105. The First Amendment recites that DGS and the Developer have negotiated the final Occupancy Lease terms through which DGS will rent buildings and land from the Developer. Thus, after the parties entered into the 2009 MDA, DGS entered into private, closed, non-competitive procurement discussions with the Developer and reached a private “deal,” subject only to BPW approval, to lease commercial space from the Developer.

106. Under the First Amendment, MDOT, not the Developer, will finance, design, construct, and operate the underground garage. Prior to the First Amendment, each of those tasks was to be performed by the Developer. No procurement has been issued in connection with the First Amendment or with MDOT’s agreement to construct the garage. The garage will directly and unfairly compete with the Commercial Property Owners including RoboPark, among others.

107. Under the MDA, the terms of the Phase Ground Lease were for 50 years initially, with the right to renew twice for 20 year terms. Under the First Amendment, the initial duration was increased to a 75-year initial term with a 15-year renewal. There was no competitive procurement for this material, favorable change to the Developer.

108. The First Amendment also approved a material change in the Developer's ownership structure, as described above, without any procurement and contrary to the "RFQ." Thus, new entities were authorized to participate in a \$1.5 billion project, without any competitive procurement process.

109. The First Amendment includes, among other things, the following provisions:

R-2. Following approval of the MDA, the parties commenced preparation and negotiation of the first phase of redevelopment of the Project ("**First Phase**"). The parties determined that the First Phase would be the redevelopment of Parcel G and Parcel I-2 as those parcels are identified on the PDP of the Approved Concept Plan. Developer also commenced the architectural and engineering design work necessary to construct the First Phase.

R-4. On December 10, 2009, Developer presented its Lease Proposal to DGS, MDOT, and the State Center Executive Committee which included the identification of Parcel G and Parcel I-2 as the portion of the Property to be included in the First Phase and the particular economic terms proposed for each Occupancy Lease as determined in part through Exhibit 6.2 of the MDA.

R-6. In furtherance of the development of the Initial Improvements on the First Phase by Developer, DGS intends to ground lease a portion of Parcel G to MDOT (or its designee to be identified and approved by the BPW in the garage ground lease) ("**Garage Ground Lease**") for an initial term on years equivalent to the term of the Component Lease for the first Component separated from the Phase Ground Lease for Parcel G. MDOT intends to cause the finance, design, and construction of a parking garage ("**MDOT Garage**") on the property that would be subject to the Garage Ground Lease and, subject to the terms herein, contribute up to Twenty-Eight Million Three Hundred Sixty-One Thousand and 00/100 Dollars (\$28,361,000.00) ("**MDOT Garage Funds**") towards the hard and soft costs of construction (other than costs of financing). The MDOT Garage is to be a subsurface vehicular parking structure containing no less than 928 parking spaces, or such greater amount as cost savings may allow, and of which no more than thirty-two percent (32%) shall be sized for compact cars.

JURISDICTION AND VENUE

110. This Court has subject-matter jurisdiction, and is empowered to grant declaratory and injunctive relief, pursuant to Md. Code Ann., Cts. & Jud. Proc. Art. §§1-501, 3-403, 3-409, 3-411 and 3-412, Md. Rules 15-501 through 15-503, and Md. Rule 15-505.

111. This Court has personal jurisdiction over these defendants pursuant to Md. Code Ann., Cts. & Jud. Proc. Art. §6-101, *et seq.*

112. Venue is proper in this Court under to Md. Code Ann., Cts. & Jud. Proc. Art. §6-201.

COUNT I DECLARATORY JUDGMENT **(Invalidity of First Amendment and Incorporated MDA)**

113. All of the foregoing facts and allegations are incorporated and restated herein.

114. The MDA, incorporated into the First Amendment, is a procurement by the State; however, the State Center Agencies did not follow the State's procurement laws, rules and regulations.

115. The essential character of the First Amendment and MDA is that the State is procuring the construction and lease-back of State office buildings and parking facilities on State land for the use of State agencies.

116. The First Amendment, including the MDA, is a contract for the acquisition of design, construction and other related services, and for the lease of commercial office space by the State as a tenant/lessee, each of which requires compliance with State procurement laws, rules and regulations. SFP Title 13.

117. The State Center Agencies selected the Developer and conferred exclusive negotiating rights without following the State's procurement laws, rules and regulations and then

permitted material changes in the ownership structure of the Developer, as well as the MDA, without compliance with the State's procurement laws, rules and regulations.

118. The State Center Agencies did not use mandatory methods of source selection, as required under the General Procurement Law, to select the Developer, and purchase the work required for the Project; namely, SFP §13-103, "competitive sealed bids;" SFP §13-104, "competitive sealed proposals;" SFP §13-105 "competitive sealed proposals – real property leases;" or SFP §13-301 "architectural and engineering services."

119. The State, acting through DGS, selected a vendor to furnish various goods and services, including construction, but did so in a manner *other than* as required by SFP Title 13.

120. The State Center Agencies have circumvented the General Procurement Law by awarding a contract or contracts (including, but not limited to, the First Amendment, incorporating the MDA, containing the Phase Ground Leases, and Occupancy Leases) to a private party, State Center LLC, which, in turn, provides goods and services, including construction and a lease-back, without public competition for the purchase of the items.

121. The General Assembly, perhaps in response to DLS' note that the \$1.5 Billion Project was proceeding without legislative oversight, enacted a statute providing that no funds may be expended until the Treasurer, Controller, and bond counsel determine the Project's impact on State debt limits. Sec. 52, H.B. 100, 2009 Leg., 426th Sess. (Md. 2009).

122. On May 15, 2009, The Hon. Nancy Kopp, Treasurer of Maryland, issued a Report to the Maryland General Assembly (the "Treasurer's Report") stating: "*As noted above, at this time there is not enough information to definitively determine whether the anticipated occupancy leases are capital or operating. However, based on internal discussions and consultations with experts, the Treasurer's assessment is that the prudent approach at this time is to assume that*

the State Center occupancy leases are, or will be, capital leases and that they will impact debt affordability.” Thus, the MDA’s Occupancy Leases will impact the State’s debt ceiling. In fact, DLS predicts that, “[c]ounting the annual rent for agencies leasing at State Center would add to the level of debt service as all rent would be counted as capital lease payments, thus exceeding the 8% [debt affordability or ‘debt ceiling’] limit in fiscal 2017.”³¹

123. The Treasurer’s Report assumes that the Occupancy Leases are long-term, capital leases that were procured without compliance with Title 13 of the State Finance and Procurement Article. This question was not definitively resolved in the 2010 Capital Debt Affordability Committee Report for FY 2010.

124. The State was required to follow the general procurement laws in its selection of the Developer, but it did not do so. It selected the Developer, starting in 2005 with issuance of the “RFQ,” using a process roughly analogous to, but not in compliance with, the procedure for procurement of architecture/engineering services under SFP §13-301, *et seq.*

125. Based on the plain language of Division II of the General Procurement Law, the MDA falls squarely within the definition of a “procurement contract” entered into by a unit:

- SFP §11-101(l) defines DGS and MDOT as “primary procurement units.”
- SFP §11-101(x) defines a “unit” as “an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement contract.”
- SFP §11-101(n) defines a “procurement contract” as “an agreement in any form entered into by a unit for procurement.”
- SFP 11-101(m) defines “procurement” as “the process of (i) leasing real or personal property as the lessee; or (ii) buying or otherwise obtaining supplies, services, construction, construction related services, architectural services, engineering services or services provided under an energy performance contract.”

³¹ DLS May 2009 Briefing. DLS’ estimate is conservative because it “does not include the additional debt service that the State would pay for another \$25 million in bonds to be issued for parking.” *Id.*

126. The First Amendment, with the MDA, conferred on a purportedly private party the State's duty to "buy or otherwise obtain services, construction, construction related services, architectural services" and to lease real property "as the lessee." The State should have purchased these goods and services, including construction, in compliance with SFP Title 13.

127. DGS' breach of its statutory duties undercuts any claim that the State is getting the maximum benefit from its purchasing power, because the Project excluded other commercial office building owners, including the Commercial Property Owners, from the bidding process, as would have been required if DGS had followed SFP §13-105 "Competitive Sealed Proposals – Real Property."

128. SFP §11-204 provides that a "unit may not enter into a procurement contract except as allowed under this Division II."

129. DGS did not comply with Division II, and thus, the State "may not enter into" the First Amendment to the MDA.

130. The State Center Agencies' actions contravened the clear and unambiguous terms, as well as the purposes and policies, of SFP §§11-101 and 11-201 (a) (1), (2), (3), (6), and (7), Div. II, General Procurement Law. Those purposes and policies include:

- Providing increased confidence in State procurement;
- Ensuring fair and equitable treatment for all persons who deal with the State procurement system;
- Providing safeguards for maintaining a State procurement system of quality and integrity;
- Providing increased economy in the State procurement system; and
- Getting the maximum benefit from the purchasing power of the State.

131. The General Procurement Law, Division II, applies to each expenditure by a unit under a procurement contract and each procurement by a unit on behalf of another unit, governmental agency, or other entity, pursuant to SFP §11-202.

132. Where the General Assembly intended that a transaction be exempted from the general procurement law, it has expressly done so. SFP §11-203.

133. Nowhere in SFP §11-203, however, did the General Assembly exempt the Project, or procurements like the Project, or any party of such procurements, from the application of Division II.

134. Under the MDA and First Amendment, the State Center Agencies entered, and will enter, into a number of agreements, or agreements to agree, including, the Phase Ground Lease(s) with DGS and assignment of Development Rights, and Occupancy Lease(s) with DGS. The Developer is obligated to construct the facility in accordance with the DGS Approved Concept Plan that was prepared at the State's request under the exclusivity provisions of the MOU. The State will be the principal, if not exclusive, tenant of the buildings and facilities. As each Phase is completed, the State will be back to where it started – occupying office space and utilizing facilities at State Center. At the end of the 75- or 90-year period, the Phase Ground Lease with DGS, the buildings and improvements will revert to the State. It is undisputable that the MDA, including the First Amendment, provides for State financed construction for State facilities to be used by State agencies. That is the very essence of a procurement.

135. Neither the BPW nor DGS is empowered to dispense with the statutory methods for source selection to purchase goods and services, including construction.

136. The MDA and First Amendment are not a transfer of State property; they are a procurement. By virtue of the transaction, the State obtains buildings for State offices on State-

owned land for State use, and parking and other related facilities for State use. Notwithstanding the creative financing structure, the buildings and facilities to be built will be used exclusively or primarily for State purposes and revert to the State in fee simple upon the expiration of the lease terms.

137. The Commercial Property Owners have been damaged by the wrongful acts described above, as taxpayers and as owners of nearby, competing commercial office, parking and residential space.

138. The special damages to the Commercial Property Owners are different from the injuries and damages suffered by the public at large.

WHEREFORE, the Commercial Property Owners request that this Honorable Court declare that the First Amendment, including the MDA, that was entered into in violation of State procurement laws and therefore declare the First Amendment, including the MDA, the grant of Development Rights to State Center, LLC, the Phase Ground Lease, the Occupancy Lease, and provisions for the design, construction, operation, and maintenance of the underground garage by MDOT and/or MEDCO are void and invalid, and for such other and further relief as the Court deems appropriate.

COUNT II DECLARATORY JUDGMENT
(Invalidity of Commitment to Enter Occupancy Lease)

139. All of the foregoing facts and allegations are incorporated and restated herein.

140. The Occupancy Lease(s) is/are agreements through which DGS will lease property for the State as a tenant to occupy commercial space at the Property. BPW approved certain such Occupancy Leases on July 28, 2010, and another on December 15, 2010. The latter Occupancy Lease cannot be terminated for convenience nor can it be terminated for default by the lessor.

141. As per SFP §13-105, when the State rents property as a tenant, it is obligated to comply with competitive procurement procedures and SFP §11-101(m) defines a “procurement” to include the process of leasing real property as a lessee.

142. In the “RFQ”, as well as in the MDA and elsewhere, the State has represented that it has made a commitment to rent office space for 3,500 State employees, occupying more than 500,000 square feet of space from the Developer, pursuant to the Occupancy Lease(s).

143. DLS reports that “[t]he State would become one of the primary tenants, renting in the range of 1.0 million or more square feet of office space under proposed short-term leases.”³²

144. The State did not follow procurement laws in committing to lease and in leasing commercial space from the Developer. It neither issued an RFP under SFP §13-105, nor did it receive and evaluate competitive proposals. None of the requisites or requirements of a procurement were followed.

145. DGS may not *lawfully* enter into a lease as a tenant, *other than* in compliance with the General Procurement Law pursuant to SFP §11-204(a) and it failed to act in compliance with those laws for the State Center Project.

146. SFP §11-101(n) defines a “procurement contract” to mean “an agreement in any form entered into by a procurement unit for procurement....”

147. SFP §11-101(m)(1)(i) states that “procurement” includes “leasing real or personal property as lessee....”

148. The State’s binding commitment to enter into the Occupancy Lease(s) falls within the definition of a procurement for the lease of real property.

³² DLS May 2009 Briefing.

149. SFP §13-105 provides the process that must be followed for awarding a contract to lease space. That process lawfully starts when the agency issues a “request for proposals for a lease of real property.”

150. SFP §11-101(q) provides that a “Request for proposals” means “any document used for soliciting proposals.”

151. If the State wishes to rent real property as a tenant, the State must request competitive sealed proposals. SFP §13-105, entitled “Competitive sealed proposals – Real Property Leases,” prescribes the method by which DGS, as a lessee, may enter a contract to lease office space from a private lessor.

152. SFP §13-105(a) requires certain statements in a “request for proposals for a lease of real property.”

153. DGS failed to issue a “request for proposals” to lease space, as a lessee, at any stage in the Project and, under the terms of the MDA it is impossible to do so now.

154. Neither the “RFQ” nor any other State document issued in connection with the Project complies with SFP §13-105.

155. SFP §13-105(b) requires a unit to publish an RFP in the same manner as an invitation for bids. (*e.g.*, SFP §13-103(c) requires the unit to publish notice, among other things, in the Contract Weekly Online, and eMaryland Marketplace, at least 20 days prior to submission of the proposal).

156. DGS did not publish an RFP in the prescribed manner in connection with the Project.

157. SFP §13-105(d) authorizes the procurement officer to conduct negotiations if more than three acceptable proposals are submitted.

158. While the First Amendment recites that DGS conducted negotiations in connection with the Phase I Occupancy Lease, because there was no competition, among other reasons, no negotiations were conducted in compliance with SFP §13-105(d).

159. SFP §13-105(h) provides that “the procurement officer shall award the procurement contract to the responsible offeror who submits the proposal or best and final offer determined to be the most advantageous to the State.”

160. Because there was no competition, there was no way for DGS to determine which proposal was “most advantageous to the State.” Despite a commitment to a \$1.5 billion Project, the State cannot determine or know whether it has obtained the most advantageous offer.

161. SFP §11-101(r) provides “responsible offeror” means “a person who (1) has the capability in all respects to perform fully the requirements for a procurement contract; and (2) possesses the integrity and reliability that will ensure good faith performance.”

162. DGS’ selection of the Developer, with SBER and Doracon, and without following the procurement process, had predictable results in that SBER was hardly a “responsible offeror” under SFP §11-101(r):

- SBER became insolvent and is now only a consultant to the development team.
- Doracon, was, on information and belief, owned and controlled by Mr. Ronald Lipscomb who was indicted for bribery during the performance of the contract and it has withdrawn from the Project.

163. DGS has made a binding commitment to lease more than 500,000 square feet of property for State employees. Certain such Occupancy Leases have been approved. DGS’ commitment, and BPW approval, is invalid because of the indisputable failure to follow procurement laws and the impossibility of conducting a valid procurement in the future for the leased space.

164. The Commercial Property Owners are ready, willing, and able to submit proposals to lease comparable office, retail and parking space to DGS on terms that are more favorable than the Occupancy Leases at State Center, and which will be beneficial to the CBD and the City as a whole. If DGS publicly solicits proposals, taxpayers will get the advantages of competition. Such a solicitation would be fair, conform with the law, and, unlike the MDA and First Amendment, will not result in degradation of the CBD, decay of existing properties, and unfair competition with a Developer selected by a process that is in violation of the State procurement laws and is based on financial assumptions and projections that have been questioned by DLS.

WHEREFORE, the Commercial Property Owners request a declaration that Occupancy Leases, as well as future negotiations for the Occupancy Lease(s) were and will be procurements that have failed and will fail to comply with SFP Title 13 in connection with the real property leases (or lease backs) for State Center Project, and for such other and further relief as the Court deems appropriate.

COUNT III DECLARATORY JUDGMENT
(Invalidity of Alleged Occupancy Leases as “Agreements to Agree”)

165. All of the foregoing facts and allegations are incorporated and restated herein.

166. Neither the First Amendment, including the MDA, nor any other document related to the Project, sets forth all of the material terms of the Occupancy Lease(s) for Phases II and thereafter.

167. Neither the First Amendment, including the MDA, nor any other document related to the Project, includes an enforceable commitment for Phases II and thereafter by which DGS rents land and buildings from the Developer pursuant to an Occupancy Lease.

168. While the First Amendment confirms that the State committed to the Phase I Occupancy Lease through private negotiations with Developer, MDA ¶6.1 describes the State's "commitment" to leasing future phases as an agreement "to pursue leasing...."

169. Wholly absent from the sample Occupancy Lease attached to the MDA and incorporated into the First Amendment are sufficiently specific terms needed to form a contractual agreement and a meeting of the minds, based on mutual assent to the material terms, *e.g.*, rental rate, term, payment of utilities, size of the building, or description of the location of the demised premises.

170. For example, MDA ¶6.2 states that "[t]he economic terms applicable to each Occupancy lease shall be negotiated and shall be determined in part by the formula, calculations and determinations set forth in the Economic Terms Sheet attached hereto as Exhibit 6.2.... The parties further agree that further negotiations on material terms of each Occupancy Lease shall be required prior to any BPW submittal."

171. The Economic Terms Sheet, MDA Exhibit 6.2, provides that "Developer will in part (and through negotiation with DGS) determine the proposed rent to be payable by the State under an Occupancy Lease pursuant to the following principles." Rent is to be comprised of Base Building Rent, TI Rent, and Pass-Through Rent. Base Building Rent "may escalate by an agreed upon increase over" the prior year. The "agreed upon increase," however, is not stated.

172. The Occupancy Lease(s) for Phases II and thereafter are unenforceable "agreement[s] to agree."

173. The Phase I commitment to lease privately entered into between the State and the Developer as recited in the First Amendment is also unenforceable. For example, when DGS determined to enter into a Phase I Occupancy Lease with the Developer, it was obligated to

neotiate additional material terms, because the sample Occupancy Lease contained in the MDA is not a contract. Recital R-3 in the First Amendment provides: “On or about September 3, 2009, Developer provided initial economic terms for the First Phase Occupancy Lease(s) and DGS, MDOT, and Developer negotiated in good faith to establish final occupancy lease terms that could be presented as Developer’s Lease Proposal in accordance with Section 2.5.1.2 of the MDA.” Recital R-4 states that the “particular economic terms proposed for each Occupancy Lease” were determined “in part through Exhibit 6.2 of the MDA.” Pursuant to Recital R-5, however, it was then necessary for DGS and MDOT to “commence negotiations with Developer to finalize all other aspects of the First Phase Ground Lease....”

174. The Sample Occupancy Lease attached to the MDA as Exhibit 2.4 is incomplete. It lacks a description of the demised premises, the rent to be charged and a designation of who is responsible to pay for electricity, heating fuel, cleaning services and supplies, air conditioning fuel, and sewer and water charges. The duration of any renewal option is not specified.

WHEREFORE, the Commercial Property Owners request that this Honorable Court enter a declaration: that the Occupancy Lease(s) described in the First Amendment to the MDA and in the MDA is an unenforceable “agreements to agree” and that there is no binding commitment by the State to enter into the Occupancy Lease(s); that under the General Procurement Law, before making a commitment to enter into any occupancy lease the State must follow all applicable procedures of SFP §13-105, including, but not limited to, issuance of an RFP; and for such other and further relief as the Court deems appropriate.

COUNT IV DECLARATORY JUDGMENT
(Agency Failure to Promulgate Mandatory Regulations)

175. All of the foregoing facts and allegations are incorporated and restated herein.

176. DGS has contended and asserted that the MDA was authorized by BPW's authority to dispose of State property for adequate consideration, under SFP §10-305(a).

177. As DLS noted in February 2009, "*the total cost exposure to the State may never be known.*"³³ DLS concluded: "*It is also not clear that the proposed benefits will materialize.*"³⁴ Thus, it is impossible to determine precisely what was disposed of or what consideration was or will be received for it.

178. SFP §10-305(a) is subject to §10-305(h), which provides: "The Department of Budget and Management ["DBM"] and Department of General Services, with the approval of the Board, shall adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article [the Administrative Procedure Act] to implement the provisions of this section."

179. Neither DBM nor DGS promulgated the required regulations, violating the legislative mandate.

180. Although required, there are no regulations that guide BPW's discretion in disposing of State property.

181. Here, BPW purported to approve the disposition of 21.8 acres of State property, occupied by two State buildings and other improvements. BPW conveyed all of the State's development rights, even though DLS noted in February 2009, "*the total cost exposure to the State may never be known,*"³⁵ and "*[i]t is also not clear that the proposed benefits will materialize.*"³⁶

182. Action by BPW in the absence of mandatory regulations is, as a matter of law and without regard to the factual adequacy *vel non* of the consideration, arbitrary and capricious.

³³ DLS February 2009 Briefing.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

Without the proper and mandated regulations that the State agencies were required to promulgate, BPW was left without mandatory guideposts.

WHEREFORE, the Commercial Property Owners request that this Honorable Court declare that the conveyance, past, present, and future of any and all State rights to the Developer pursuant to the First Amendment, including the MDA, the Phase Ground Lease and development rights, is null and void due to the failure of DGS and/or DBM to promulgate regulations mandated by statute for the purpose of guiding the BPW in the exercise of its discretion and for such other and further relief as the Court deems appropriate.

COUNT V-DECLARATORY JUDGMENT
(State Lacks Authority to Enter the
First Phase Occupancy Leases for Parcel G and Parcel I-2)

183. All of the foregoing facts and allegations are incorporated and restated herein.

184. The BPW approved certain occupancy leases.

185. This Court should declare that the State Center Agencies lacked legal authority to execute the First Phase Occupancy Leases for Parcel G or Parcel I-2.

186. Entering into the Occupancy Leases for Parcel G and Parcel I-2 would constitute an agreement, entered into by a unit for lease (as lessee) of real property, which is unlawful because it was not accomplished under the procedures established in SFP §13-105.

187. The State Center Agencies have failed to comply with the requirements of SFP §13-105, "Competitive Sealed Proposals – Real Property," in connection with the Occupancy Leases for Parcels G and I-2.

WHEREFORE, the Commercial Property Owners request that this Honorable Court declare that all approved Occupancy Leases in Phase I are void and all efforts to rent space for the State as a tenant on Parcel G and the improvements on Parcel I-2 may proceed only after

compliance with Division II, General Procurement Law, and for such other and further relief as the Court deems appropriate.

COUNT VI – DECLARATORY JUDGMENT
(State Center Is Not, and Cannot Be, a TOD)

188. Each of the foregoing allegations is incorporated and re-alleged herein.

189. The MDA recites that the Project is, or will be, a TOD.

190. TOD is a term defined by §7-101(m) of the Transportation Article of the Maryland Code. A TOD must be “planned to *maximize* the use of transit, walking, and bicycling by residents and employees” and “*designated* as a transit-oriented development by: (i) The Secretary, after considering a recommendation of the Smart Growth Subcabinet established under §9-1406 of the State Government Article; and (ii) The local government or multicounty agency with land use and planning responsibility for the relevant area.” (emphasis added).

191. As stated by MDOT, “the goal [of a TOD designation] is to *limit* the number of parking spaces and encourage shared parking between different land uses that need it at different times of day or at different times of the week.”³⁷

192. The Project fails to meet these criteria. It increases the amount of parking spaces; does not maximize the use of transit, walking, and bicycling; and, based on information and belief, has not been properly designated. For example, the total number of parking spaces will increase from approximately 1,300 to 5,900.

193. Designation as a TOD has important consequences. In the words of an MDOT publication, TOD designation authorizes “the Maryland Department of Transportation (MDOT) to use departmental resources, including land, funds, and personnel, to support ‘designated’ TOD project (the 2008 TOD Law).”

³⁷ <http://www.mdot-realestate.org/tod.asp> (emphasis added).

194. The MDOT publication further explains: “Designated projects could benefit from several potential tools, depending on the needs of the particular project at the particular stage of development. Among the benefits are prioritization for funds and resources, financing assistance, tax credits, prioritization for the location of State offices and support from the State Highway Administration on access needs.” The term “designation” means that “the State and local governments will commit staff, resources and political will toward achievement of the development.... MDOT may provide funding for predevelopment costs, including planning, environmental studies, appraisals, financial analysis, and legal support. MDOT land near the station for the development may also be made available. MDOT will also prioritize capital projects that support designated TODs.... MDOT will partner with the Maryland Economic Development Corporation (MEDCo), to support TOD projects. MEDCO works with MDOT to create advantageous ownership and financial structures for infrastructure projects, using non-recourse conduit financing. This provides opportunities for public financing....”

195. Additionally, as MDOT notes: “Designated TODs are given priority for the location of new State facilities in accordance with Executive Order 01.01.2009.12 signed by Governor O’Malley in September 2009. More specifically, when the State issues a request for proposals for office or laboratory space for State occupation, the scoring system used to rate and select proposals will include a weight in favor of: (1) any location within one-half mile of a transit station; and (2) even greater weight if the location is part of a designated TOD.”

196. Those, however, are not the only benefits that a TOD designation brings. MDOT notes that: “2009 State TOD legislation expanded local government authority to use TIF financing.”

197. Under §7-101(m) of the Transportation Article, a project must be “designated” as a TOD by the MDOT Secretary and the local government, after recommendation by the Smart Growth Subcabinet.

198. The MDA, is titled “Master Development Agreement for Transit Oriented Development State Center.” In ¶R-3, it recites that the State’s “vision” is that the project will be accomplished through the application of TOD principles, among others. It states: “The parties *anticipate* that the Project will be designated a TOD, as defined in TR §7-101, and will be entitled to the benefits of such designation under Applicable Law.” (emphasis added). Under ¶R-14, the Developer agrees to operate the Project as a “financially viable TOD....”

199. To the best of Plaintiffs’ knowledge, information and belief, the Project has not yet been designated as a TOD. A search of internet-available and other resources, including the State Center web site, has not disclosed any formal designation of the Project as a TOD. The First Amendment to the MDA does not recite that the Project has received TOD designation.

200. The Project is not currently a TOD and it does not meet the statutory prerequisites for a TOD designation.

201. As MDOT has stated, “the goal [of a TOD] is to limit the number of parking spaces....”³⁸ According to Trans. art. §7-101 (m), a TOD “[i]s planned to *maximize* the use of transit, walking, and bicycling by residents and employees....” (emphasis added). Thus, in order to be designated a TOD, a project must “limit” parking and “maximize” the use of non-automobile transportation, and the Secretary’s TOD-designation power under Trans. art. §7-101(m)(3) is not unlimited and unfettered. It is constrained by the statutory requirements, and

³⁸ <http://www.mdot-realestate.org/tod.asp>

the Secretary of MDOT may not make an arbitrary and capricious decision to designate the Project as a TOD.

202. The Project will not maximize the use of non-automobile transportation and does not limit the number of parking spaces.

203. The State Center Project does not meet the requirements for a TOD. It would be arbitrary and capricious to designate it as such.

WHEREFORE, the Commercial Property Owners request that this Honorable Court declare that the Project is not, and cannot be, designated as a transit oriented development, and for other and such further relief as the Court deems appropriate.

COUNT VII –INJUNCTIVE RELIEF

204. All of the foregoing facts and allegations are incorporated and restated herein.

205. The unlawful State actions unquestionably constitute special or unique injury to the Commercial Property Owners. The more than 2 million square feet of vacant space in downtown office buildings in the CBD, much of it owned by the Commercial Property Owners, as well as the parking and residential uses, is unique and it will be devalued and/or depressed by the government-subsidized development of the Project on State-owned land that was leased to the Developer at bargain-basement rates.

206. As set forth in the Gross Study, quoted above, the action of the State Center Agencies is designed, targeted, and intended to damage and injure the Commercial Property Owners by using State-subsidized development to “compete” with and “capture” commercial office space all without providing the Commercial Property Owners any opportunity to compete on a fair and level playing field.

207. The cost of the non-competitive construction and leasing will actually be financed on the backs of the Commercial Property Owners and others through State and City assisted tax incentives. For example, the Project calls for the establishment of a TIF program of up to \$314,254,055, allowing the Developer to redirect property tax payments away from important City services and needs and into the debt service for the Developer's construction financing.

208. Injecting more than 1.5 million square feet of new State and Citysubsidized commercial office space in Baltimore city will add an enormous supply of commercial space to a market experiencing a 23% vacancy rate with more than 2.8 million square feet available. The CBD cannot remain viable under these circumstances, causing myriad problems in the core downtown area, including long-term commercial vacancies, blight and business flight away from the center core of the City, each of which will proximately cause a further, accelerating downward spiral of the value of the Commercial Property Owners' investments.

209. The Project is intended to have, currently having, and will continue to have, an immediate, devastating financial impact on the CBD and Commercial Property Owners, who are taxpayers and nearby landowners in Baltimore City. The Commercial Property Owners employ, directly or indirectly, thousands of people and have invested heavily in their properties and the City. The Project allows the Developer to receive City and State subsidized benefits and opportunities, without compliance with State procurement laws, while the Commercial Property Owners will uniquely bear the excessive costs, lose market share and opportunity, suffer a diminution in the value of their assets and other catastrophic financial loss.

210. The Commercial Property Owners have made a clear showing that they will be irreparably harmed if injunctive relief is not granted.

211. The balance of equities tips in favor of the Commercial Property Owners. The harm to the Commercial Property Owners and the CBD will be catastrophic, immediate, and will impact negatively the CBD for decades. The CBD cannot remain viable under these circumstances. If an injunction is granted, Defendants' harm, to the extent that there would be any given that DLS has already determined that benefits from the Project may never materialize, would be speculative and uncertain. Moreover, the State would continue to own and can continue to use State Center for government offices as it has for decades.

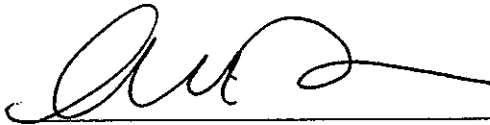
212. It is a public interest to ensure that the procurement laws are followed, including competitive bidding procedures. It is in the public interest to preserve and maintain the viability of the CBD. Baltimore City cannot thrive with a blighted and decaying CBD.

WHEREFORE, the Commercial Property Owners request that this Honorable Court enjoin all of Defendants³⁹ from proceeding under the First Amendment, including the MDA, Phase Ground Lease, and/or Occupancy Lease(s) without full compliance with the competitive procurement provisions of Title 13; enjoin Defendants from further proceeding under the First Amendment, including the MDA, Phase Ground Lease, and/or Occupancy Lease(s) until after DBM and/or DGS promulgate the proper regulations mandated by SFP §10-305(h); enjoin the Defendants from violating the General Procurement Law, Division II; enjoin Defendants from proceeding until there is full compliance with Sec. 52, H.B. 100, 2009 Leg., 426th Sess. (Md. 2009); and for such other and further relief as the Court deems appropriate.

³⁹ As noted on the BPW website: "At each meeting, the Board of Public Works considers three Agendas: the Secretary's Agenda, the Department of General Services Agenda, and the Department of Transportation Agenda." <http://www.bpw.state.md.us/meetings/>. By definition, if DGS and MDOT are enjoined, they could not place a Phase Ground Lease or Occupancy Lease on the BPW agenda in the future and therefore BPW could not take action to approve future phases of the Project. *See generally* COMAR §21.02.01.05.

Respectfully submitted,

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EXHIBIT 1

100 N. Charles Street
Suite 1730
Baltimore, MD 21201

October 27, 2010

Mr. Michael Gaines
Assistant Secretary
Department of General Services
300 W. Preston Street, Room 601
Baltimore, MD 21201

Dear Mr. Gaines,

We're astonished by your comments in *The Sun* this past weekend. In the story, "Plans for State Center Questioned," you've shared figures that reveal enormous profits will be made by unnamed private individuals at great public expense.

We also think your comments conspicuously omit the magnitude of project subsidies expected from various government agencies. In our view, these would pose an untold burden on Baltimore City taxpayers.

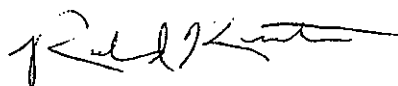
In your attempt to distract readers from the reported private windfall of \$140 million -- amidst non-competitive rates that would exceed downtown rates by \$14 per square foot (\$22 per square foot at full service downtown vs. \$36 per square foot at State Center) -- you say the state would gain about \$170 million from 7 percent of the profits in the first phase. By our calculations, this suggests the project's private developers -- *the recipients of the remaining 93 percent share of the profits* -- would reap an astounding \$2.3 billion over 20 years. That's \$115 million per year for 20 years.

We find it remarkable that -- in addition to the veritable gift of 28 acres in state-owned land, state-sponsored leases and a \$28 million state-funded parking garage -- your long-range plans call for unprecedented additional subsidies. On reviewing your outline of the \$1.6 billion project's build-out, it strikes us as grossly deceitful that you would tell the citizens of Baltimore that the project only seeks \$10 to \$15 million in TIF financing. Unless we've misread, *the approved budget in your Master Development Agreement calls for over \$314 million in financing from the City of Baltimore.*

Those of us who have raised fundamental questions about State Center have done so based on official documents and presentations made by yourself and others claiming to represent State Center, LLC. While we object that the project's intended recipients remain inexplicably shrouded amidst these proclamations, we'd also urge a full and consistent disclosure of the project's public costs and benefits.

If your figures are correct, why would the state choose this course? Why wouldn't the state seek competitive leases? Why wouldn't the state itself build and own these offices? But better yet, why not bring these state offices and 3,500 employees to the central business district -- where they can patronize shops, restaurants and transit and be a major force in revitalizing the heart of Baltimore.

Sincerely,


Ronald Kreitner


T. Courtenay Jenkins, III


Calman J. Zamoiski, Jr.

EXHIBIT 2

1. World Trade Center - 401 E. Pratt (86,000 sf.)
2. Legg/Mason Bldg. - 100 Light Street (382,000 sf.)
3. Blumstein Bldg. - 1 N. Charles Street (100,000 sf.)
4. PNC Bldg. - 111 W. Baltimore Street (172,000 sf.)
5. Old MD National Bldg. - 10 Light Street (126,000 sf.)
6. WR Grace Bldg. - 10 E. Baltimore Street (33,000 sf.)
7. 301 N. Charles Street (92,500 sf.)
8. Alex Brown Bldg. - 1 South Street (126,000 sf.)
9. 207/225 N. Calvert Street (320,000 sf.)
10. Old Federal Reserve Bldg. - 114 E. Lexington (72,000 sf.)
11. Federal Reserve Bldg. - 502 S. Sharp Street (103,281 sf.)
12. Future Building Site
13. 300 W. Fayette (120,000 sf.)
14. Redwood Tower - 217 E. Redwood Street (102,000 sf.)
15. Verizon Bldg. - 1 East Pratt Street (135,000 sf.)
16. 250 West Pratt Street (97,000 sf.)
17. 100 S. Charles Street (107,000 sf.)

*Available Square Footage - Approximately 2.2 million available square feet

