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THE LIGHTHOUSE INSTITUTE FOR EVANGELISM INC., d/b/a THE LIGHTHOUSE MISSION, and REVEREND KEVIN BROWN, Plaintiffs vs. CITY OF LONG BRANCH, BCIC FUNDING CORP., BREEN CAPITAL SERVICES, INC., ABRAMS GRATTA & FALVO, P.C., PETER S. FALVO, ESQ., EUGENE M. LaVERGNE, ESQ., AND John Does, A-Z Defendants	:	HON. WILLIAM H. WALLS, U.S.D.J. Case Number: 00-cv-3366 (WHW)

OPPOSITION OF THE CITY OF LONG BRANCH TO THE PLAINTIFFS' CROSS-MOTION IN LIMINE FOR PARTIAL SUMMARY JUDGMENT

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THE LIGHTHOUSE INSTITUTE FOR EVANGELISM INC., d/b/a THE LIGHTHOUSE MISSION, and REVEREND KEVIN BROWN, Plaintiffs vs. CITY OF LONG BRANCH, BCIC FUNDING CORP., BREEN CAPITAL SERVICES, INC., ABRAMS GRATTA & FALVO, P.C., PETER S. FALVO, ESQ., EUGENE M. LaVERGNE, ESQ., AND John Does, A-Z Defendants	HON. WILLIAM H. WALLS, U.S.D.J. Case Number: 00-cv-3366 (WHW) BRIEF OF CITY OF LONG BRANCH IN OPPOSITION TO PLAINTIFFS' CROSS MOTION IN LIMINE FOR SUMMARY JUDGMENT

I. POINT I: The City, not the Mission, is entitled to summary judgment in its favor.

The City will rely upon its Trial Brief and Motion for Summary Judgment which are incorporated as if fully set forth herein, to oppose all of the Mission's contentions in this Cross Motion for Partial Summary Judgment. Additionally, the City agrees with Point I only to the extent that no genuine issue of material fact exists that the City is entitled to summary judgment in its favor as to all claims.

II. POINT II: The Mission cannot prove a prima facie case as to RLUIPA, in that it has conceded that relocation of the church presents no substantial burden and cannot prove a violation of the "equal terms" provision.

A. The Mission's RLUIPA claims fail because by Reverend Brown's own admission, the Mission church could be located elsewhere in the City and no compelling reason exists for use of the 162 Broadway location.

Since the time that this Court first considered the Mission's case, Reverend Brown has repeatedly acknowledged that there is no compelling reason for the Mission to be located at 162 Broadway and that the Mission could effectively function at an alternate location. At the Resolution Hearing on the Mission's application to amend the Plan, Reverend Brown made these concessions, as follows:

> MR. DESTEFANO: And you have, one additional question, if you don't mind, given the fact that according to Mr. Turner 90 % of the city is amenable to houses of worship and that there are 33 currently existing, can you tell me why, what compelling evidence is there that that specific location is the only location that it is, you know, useful for your purposes?
>
> REVEREND BROWN: Good question. I do not make that it's the only location. The city has not approached me with an alternative.
>
> (Ex. S; N.T., Page. 51, line 16-Page. 52, line 1)(emphasis added).

When asked a second time if there is any compelling reason why the Mission must be in that particular location, Reverend Brown responded:

> MR. DESTEFANO: But, then the answer is there is no compelling reason why it has to be that particular location?
>
> REVEREND BROWN: Nothing is etched in stone. I want to see it admirably resolved. I want to exist in a location that's welcomed. I'm not looking to force myself into any situation. It's unfortunate we had to see it come this far.
>
> MR. BROWN: Reverend Brown, what you're asking, councilman is asking, is that you would not have a compelling objection to another location. You're stating…
>
> REVEREND BROWN: If somebody wanted to bring me someplace and show me and tell me how we go from where we are to where we could be, I would listen, most

> definitely, with an open mind. What the final decision would be would be based on members of my board of directors, and including counsel, and what the terms of that move would be. But, I'm willing to listen to any resolve.
>
> (Ex. S; Page 52, line 24 to Page 54, line 6)(emphasis added).

Reverend Brown gave similar testimony in his deposition, when he acknowledged that a relocation the location of the Mission a few blocks distant would not greatly affect his constituency. (Ex. E). While the Mission continues to argue that the 162 Broadway location is necessary to serve its constituency, the binding admissions of Reverend Brown show the contrary. Consequently the Mission has conceded that precluding use of 162 Broadway and establishing the Mission in an alternate location would not present a substantial burden on its religious exercise, thus cannot prove a prima facie case pursuant to §2000cc.

The record supports the concessions by Reverend Brown and demonstrates that alternative suitable venues for the Mission are available in 90% of the City. Carl Turner testified that churches are conditional uses in other zones, which are essentially identical to a permitted uses and simply requires the satisfaction of lot size, set backs and parking requirements (if any) for that zone. (Ex. S; Page 18, line 1 to Page 19, line 4).

In addition to Reverend Brown's concessions, the Mission also provides no independent evidence that that it could not continue its mission to feed the needy at an alternative location. In Episcopal Student Found. v. City of Ann Arbor, 341 F. Supp. 2d 691, 705 (D. Mich. 2004), the Michigan District Court observed that there was no indication that the plaintiff religious organization could not continue to feed the hungry at alternate locations, and thus fulfill its religious mission. This case is even more compelling in that Reverend Brown conceded that an alternate location would be suitable. See Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d

1214, 1228 (11th Cir. 2004)(Walking a few extra blocks to worship is not a "substantial burden" as the term is used in RLUIPA).

In Daytona Rescue Mission v. City of Daytona Beach, 885 F. Supp. 1554, 1560 (D. Fla. 1995) the Court held that there was no substantial burden on religious exercise where plaintiffs failed to show that code prevented the religious organization from running a homeless shelter and food program anywhere that city. Notably the Court also found that the City had a compelling interest in regulating homeless shelters and food banks and that the challenged code furthered that interest. Here both the City Zoning Code and Redevelopment Plan permits the Mission to operate in numerous other areas within the City limits.

Moreover, as a practical matter, the Mission's constituency, which it describes as "the poor and downtrodden in downtown," will no longer exist in the area as the redevelopment occurs, and would be located in other areas of the City. Also, while the Mission quotes Judge Gibson's concurrence to the effect that discrimination might not be mitigated by the existence of alternative locations, Reverend Brown's previously unavailable testimony has shown this to be untrue.

In the appeal, The Lighthouse Institute v. City of Long Branch, 100 Fed. Appx. 70 (3d. Cir. 2004), the Third Circuit defined the term "substantial burden on religious exercise" by citing Civil Liberties for Urban Believers (C.L.U.B.) v. City of Chicago, 342 F.3d 752, 761 (7th Cir. 2003):"…one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise effectively impracticable." Significantly, it is the religious exercise, not the use of the property per se that must be rendered impracticable. Plainly Reverend Brown has conceded that the Mission's exercise of religion would not been rendered impracticable at

another location. In fact, the zoning schemes do not even impose an incidental burden upon the Mission's religious exercise.

The Mission has shown no evidence of substantial burden, much less discrimination or religious animus. There are no such expert reports and no testimony from any witness other than Reverend Brown, whose testimony is pure anecdotal speculations. Both this and the Third Circuit Court accurately predicted that it was unlikely that through the submission of further evidence the Mission could establish that the Ordinance imposed a "substantial burden;" importantly, Reverend Brown's recent admissions were not even part of the record at that time. Indeed, on the eve of trial, the evidence consists almost solely of the Resolution Hearing Notes of Testimony and the ordinances themselves. (Ex. S)

The Mission also failed to present evidence concerning the nature of the "exercise" of its religion. Even its assertions are contradictory: sometimes the Mission argues that the church will serve hundreds of parishioners with "24/7" services and activities, and at other times, describes its mission as serving the "poor and downtrodden of downtown." Nothing of any evidentiary value suggests that the Mission could undertake the activities it envisions. The church is a retail store with an illegal apartment upstairs, where there is an internet website soliciting individuals for money to become ordained. It was originally a secular soup kitchen at 159 Broadway. The Mission's attorney Mr. Kasanoff acknowledged that the property at 162 Broadway had never been used as a church (Ex. S; Page 6, line 4 to Page 6, line 17). No formal church service has been advertised, there is no schedule for services, no mailing list, no church groups, no Sunday School, no list of members and no evidence of a congregation. The City did not inhibit the church, it simply does not exist in the form the Mission claims. Must not the Mission establish itself as capable of carrying out its proposed

religious exercise before these non-existent schemes can be burdened? This irrefutable depiction of the church also distinguishes it from virtually every case that it cites in support of its claims.

In lieu of evidence, the Mission simply cites case after case culled from the various circuits which allegedly supports its proposition that churches are substantially burdened when they cannot build where they please. The Mission cites to Westchester Day School v. Village of Mamaroneck, 386 F. 3d 183, 188 (2d. Cir. 2004); Cottonwood Christian Center , 218 F. Supp. 1203 (C.D. Cal. 2002)(distinguished already by this Court in that zoning authority failed to present evidence of other permissible locations for the church); Guru Nank Sikh Soc. Of Yuba v. City of Sutter, 326 F. Supp. 2d 1140 (E.D. Cal. 2003); Elsinore Christian Center v. City of Lake Elsinore, 291 F. Supp. 2d. 1083, 1091 (C.D. Cal. 2003); Greater Bible Way Temple of Jackson v. City of Jackson, 2005 WL 3036527 (Mich. App. 2005) which it maintains provide that denying use of a property for religious property is a per se substantial burden on that use. To the contrary, it is the exercise of religion, not the property, which must be substantially burdened.

The Mission incorrectly interprets RLUIPA to require a zoning scheme which allows houses of worship to exist in 100% of the City districts. This would render RLUIPA meaningless and this Court has already rejected such an argument on the basis that all zoning ordinances would then violate RLUIPA. In C.L.U.B., cited by the Third Circuit for its definition of "substantial burden," the Seventh Circuit vehemently rejected the "per se" substantial burden concept, as it " would render meaningless the word "substantial," because the slightest obstacle to religious exercise incidental to the regulation of land use--however minor the burden it were to impose--could then constitute a burden sufficient to trigger RLUIPA's requirement that the regulation advance a compelling governmental interest by the least restrictive means." C.L.U.B., 342 F.3d at 760-762.

The Mission is not substantially burdened by Zoning Ordinance 20-6.13 (which no longer exists) or the Redevelopment Plan, it cannot prove a prima facie case pursuant to RLUIPA, and its Cross-Motion for Partial Summary Judgment should be denied. Moreover the admissions made by Reverend Brown likewise prevent the Mission from proving its claims pursuant to the United States or New Jersey Constitution. (Ex. S)

B. The Mission cannot show that "individualized assessments" or interstate commerce substantially burdened its exercise of religion pursuant to §2000cc(b)(2)(A) or (C).

Sections 1 and 2 of the Mission's Cross-Motion concern jurisdiction under RLUIPA pursuant to §2000cc (a)(2). Under the "Scope of application" of this Act, subsection §2000cc(a)(2) provides the specific means for invoking jurisdiction under the Act.

a. The Mission cannot invoke RLUIPA jurisdiction pursuant to §2000(a)(2)(B), foreign and interstate commerce.

This is not a Commerce Clause case. The Mission's claim of jurisdiction pursuant to § 2000cc(a)(2)(B) is untenable in that there is no evidence of impairment of foreign or interstate commence on the Mission's solicitation of donations or other economic ventures, if any. There is likewise no evidence of an impact on interstate commerce by the Mission's proposed construction, even if it could possibly take place. Moreover, not only are the AT&T Pioneers located in New Jersey, as is the Mission, but there is no evidence of impairment upon interstate commerce involving their agreement to participate, and such participation was through donated labor only. Even if the Mission had jurisdiction under this subsection, there is no evidence of a substantial burden upon its religious exercise.

b. The City did not substantially burden the Mission's religious exercise in the implementation of a land use regulation involving "individualized assessments" pursuant to §2000cc(a)(2)(C)

The City also did not substantially burden the Mission's religious exercise in the implementation of a land use regulation or system of land use regulations involving "individualized assessments" of the proposed uses for the property involved. §2000cc(a)(2)(C) As with §2000cc(a)(2)(B), the Mission invokes §2000cc(a)(2)(C) for jurisdictional purposes. However, tied in with the Mission's jurisdictional argument is an assertion that RLUIPA requires a strict scrutiny analysis to be applied where the burdens are imposed pursuant to systems of individualized assessments. To clarify, RLUIPA does not mandate an automatic strict scrutiny analysis, exclusive of the substantial burden test, simply because a zoning authority individually assess properties in the context of issuing use variances. The issue of individualized exemptions--an indication that the law is not neutral and generally applicable is not to be confused with the concept of individualized assessments regarding jurisdiction under RLUIPA. See St. John's United Church of Christ v. City of Chicago, 2005 U.S. Dist. LEXIS 28072, 34-36 (D. Ill. 2005). The substantial burden" requirement remains in effect where a litigant invokes jurisdiction under RLUIPA pursuant to §2000cc(a)(2)(C). Konikov v. Orange County, 410 F.3d 1317, 1323 (11th Cir. 2005. The text of §2000cc(b)(2)(C) plainly shows that the substantial burden requirement is a part of a prima facie case, because the text of it is prefaced with the requirement that "the substantial burden is imposed.." Case law from a variety of circuits demonstrate that there is no automatic strict scrutiny analysis in either RLUIPA or "free exercise" land use decisions. In Grace United Methodist Church, 427 F.3d 775 (10th Cir. 2005), the Tenth Circuit refused to adopt a per se rule requiring that any land use regulation, which permits any secular exception, satisfy a strict scrutiny test:

> As the district court correctly observed, several "federal courts have held that land use regulations, i.e., zoning ordinances, are neutral and generally applicable notwithstanding that they may have individualized procedures for obtaining special use permits or variances." Grace United Methodist Church, 235 F. Supp. 2d at 1200 (citing cases).

> Indeed, in the land use context, the Sixth, Seventh, Eighth, and Eleventh Circuits have rejected a per se approach and instead apply a fact-specific inquiry to determine whether the regulation at issue was motivated by discriminatory animus, or whether the facts support an argument that the challenged rule is applied in a discriminatory fashion that disadvantages religious groups or organizations. See, e.g., Civil Liberties For Urban Believers v. City of Chicago, 342 F.3d 752, 764-5 (7th Cir. 2003) (ordinance requiring special use approval to operate churches in commercial and business areas and limiting church operation in manufacturing areas held general law of neutral applicability); Mount Elliott Cemetery Ass'n v. City of Troy, 171 F.3d 398, 405 (6th Cir. 1999) (city's denial of request to rezone certain property for use as Catholic cemetery not burden on free exercise because ordinances were neutral laws of general applicability); First Assembly of God of Naples v. Collier County, 20 F.3d 419, 423-24 (11th Cir. 1994) (city's ordinance prohibiting church-run homeless shelters in certain areas held neutral and of general applicability because motivated by secular concerns (health and safety considerations), applied to everyone, and did not completely prohibit operation of homeless shelters); Cornerstone Bible Church v. City of Hastings, 948 F.2d 464, 472 (8th Cir. 1991) (zoning ordinance excluding churches and other non-profits from city's central business district had no impact on religious belief and was general law applying to all land use in city)… According to these courts, although zoning laws require some individualized assessment for variances, they are motivated by secular purposes and impact equally all land owners in the city seeking variances.
>
> 427 F.3d 775 (emphasis added).

Significantly here, particularly as far as "free exercise," both this Court and the Third Circuit have determined that Zoning Ordinance 20-6.13 is a neutral law of general application and there is no evidence to show that either zoning regulation was designed or applied in a discriminatory fashion. There is no evidence of religious animus nor evidence that any local assessment procedure was carried out in a manner as to discriminate against the Mission. Indeed the Mission never completed a variance application for Zoning Ordinance 20-6.13. The Third Circuit also observed that the Mission was permitted to operate at its previous location of 159 Broadway, indicative of a non-hostility to religious organizations.

The Mission also argues that any efforts toward seizing property for eminent domain satisfy the substantial burden section of RLUIPA. This premise has been rejected in the federal

courts. See St. John's, supra ("this Court does not find the Cottonwood court's reasoning persuasive as it relates to such an attenuated relationship between eminent domain and zoning.").

C. Even were a strict scrutiny analysis to be applied, there is ample evidence in the record that the City had a compelling governmental interest in developing a dynamic commercial center and both zoning regulations are the least restrictive means of assuring this goal.

The Mission cites cases which purportedly provide that that economic interests, blight, aesthetics and revenue generation are not "compelling interests." Such cases are distinguishable on their facts. The City's Redevelopment Plan which was implemented pursuant to § 40A:12A-5 was implemented to serve a compelling governmental interest vastly distinguishable from zoning ordinances which affect only a few blocks, or, from other common situations such as where a residential neighborhood attempts to bar churches. Cities also have a compelling interest in regulating services that serve the unfortunate such as homeless shelters and food banks. Daytona Beach, supra.

The City determined that the subject area was in need of redevelopment for a number of criteria set forth in § 40A:12A-5. The City-wide quality of life is at issue: the Broadway Corridor has a 100 year history of deterioration and the area in need of redevelopment consisted of vacant land, closed up businesses, adult entertainment uses that could not survive, a scarce population and a high crime area. Carl Turner's testimony establishes that the Broadway Corridor was deemed to be an area in need of development in that it specifically met the state criteria for redevelopment: city ownership, obsolete unused buildings, incompatible uses and conditions of the property (Ex. S., Resolution Hearing, 4/27/04, Page 13, line 5 to Page 13, line 16); N.J.S.A. 40A:12A-5(a)(c)(d)(e). Mr. Talwar affirmed that the present zoning for the Broadway corridor has a compelling government interest, as Broadway is the main street and its revitalization has always been one of the most important objectives of the redevelopment zone

(Ex. S., Page 28, line 17 to Page 29, line 2). The object of the Plan is to revitalize the City and to build a vibrant active retail arts and entertainment food and beverage area with live/work space and affordable housing, to make it safe by reducing crime, and to bring people downtown (Ex. T). Mr. Turner's testimony and the Design Guidelines demonstrate that various sectors are designated in specific areas to create a symbiotic relationship between the types of uses in the entire Zone and the abutting fringe areas (Ex. S, Page 15, lines-16; Ex. D). Permitted uses include performance art venues, such as cinemas, theaters; educational institutions related to the arts (art studios, dance studios, culinary schools, fashion design schools, music instruction, theater workshops), restaurants (including those with live music and sidewalk cafes to encourage spillover) and the categories of specialty and regionally oriented retail, 24 hour street and night oriented uses and youth oriented retail (Ex. T). Non-permitted uses include adult entertainment, auto service and repair shops, banks, gaming galleries, service retail on ground floor, business services, utilities/telephone, professional services, residential, warehousing and storage businesses and any use not specifically permitted (Ex. T).

Mr. Turner testified that allowing a house of worship at the 162 Broadway would "destroy" development of the block because it is designated as a high volume, high-end recreation and entertainment district (Ex. S, Page 14, line 16 to Page 15, line 1-2). He further explained that a church would have a detrimental effect on the Zone because there is an local ordinance which prohibits any liquor license from being issued within a thousand feet of a religious organization (Ex. S, Page 13, line 5 to Page 13, line 16). N.J.S.A. 33:1-76, a state statue, similarly prohibits sales and licenses within 200 feet of a church.

While the Mission claims that it will permanently waive the application of this ordinance, there is no evidence that it can or will or that either ordinance could be permanently waived.

N.J.S.A. § 33:1-76 itself prevents any waiver in perpetuity, expressly limiting the period of waiver to the renewal of the liquor license. New businesses present another problem in that the Mission, once established, would become the controlling entity regarding liquor licenses for every new business within the Arts and Entertainment Zone, and it is unlikely that any business would open under this condition. An amendment to the Plan would multiply this problem by however many churches then choose to move to the area, some of which may not agree to a waiver at all.

The Mission cites to the readily distinguishable Jehovah's Witnesses Assembly Halls of New Jersey City, Inc. v. City of Jersey City, 597 F. Supp. 972 (D.N.J.) for the proposition that the City's interests are not compelling In Jehovah's Witnesses the issue was whether the City could preclude a non-secular use of a theater which was virtually identical to the permitted secular use, and which promoted the same goals in the City's commercial zone. The evidence showed that the Jehovah's Witnesses' use of the Stanley Theater would be virtually identical to a secular use because circuit assemblies of several thousand persons ,which included musical presentations, live drama, slide shows and movies, would be held on weekends throughout the year. The Court observed that persons in the surrounding New York metropolitan area where the practice of the religion was increasing, would be drawn to the facility and make use of public transportation and patronize local merchants, hotels and other facilities while they were there.

Here, as argued above, the Mission has not presented any evidence to show that its proposed functions are in any way compatible with a high volume, high-end entertainment and recreation center or that its "poor and downtrodden" constituency would patronize the theaters, restaurants, arts institutions, specialty retail shops or otherwise contribute to the revitalization goals of the Redevelopment Plan, in any number, or at all. This case is also distinguishable from

Midrash, supra, on this basis. While the Mission asserts that Mr. Talwar has somehow conceded that the Mission would fit is with the permitted uses of the district, the hypothetical questions asked of Mr. Talwar were pure fantasy.

The Jehovah Witnesses also demonstrated that there was no other place in Jersey City where they could have a building suitable for the proposed activities and that such activities were part of their religious practice. Their specific need was a facility which can accommodate groups of several thousand persons. The record also showed that buildings used for religious purposes are not allowed in any zone other than a residential zone and that the applicable residential ordinances would not permit a structure such as the Stanley Theater to be built and used in a residential zone. Finally, in Jehovah's Witnesses, the City argued that the plaintiffs' religious use of the Stanley Theater would prevent acquisition of the site for an office building, high-rise apartment or other commercial use and that the City will lose real estate taxes. Notably, that case did not involve an amendment to a Redevelopment Plan, which would be permit a flood of non-permitted uses into the zone, and disrupt the re-vitalization of the city as a whole, as here. The case is also distinguishable in that it only involved preliminary injunctive relief in the nature of the issuance permits for construction. The fact specific Jehovah's Witnesses also does not hold that a theater is equivalent to a church in the context of zoning challenges.

Here the City has also shown that its compelling interest is accomplished by the least restrictive means in that it is host to 33 religious institutions and churches which are accommodated within 90% of the City's borders, an area of 26 square miles. Reverend Brown acknowledges that another suitable site could be found. Again, the Redevelopment Plan is a cohesive whole and is planned to take advantage of the relationship of the various permitted and

fringe uses. The Mission has presented no evidence to show that worship at 162 Broadway is a part of its religious belief.

D. The City has not violated RLUIPA's Equal Terms provision.

The Mission cannot show that it was treated on less than "equal terms" with secular organizations in that it has provided no evidence to show that its is equivalent to any of the permitted uses in the Redevelopment Zone, such as a theater, as discussed above. It is provided no evidence to establish that any of its imagined uses will come to fruition

III. POINT III: The Mission cannot show that the Redevelopment Plan violates its rights to Equal Protection.

The Mission has provided no evidence to show that its is "similarly situated" to any of the permitted uses in the Redevelopment Zone, as discussed above. The Mission is not a theater and has provided no evidence to establish the same use, much less evidence to establish that any of its envisioned schemes will occur. The Mission cannot even establish its own "use" and fails to identify any forms of "similarly situated" secular assembly permitted in the zone. The City has shown that the Plan is rationally related to the legitimate governmental objective of creating a vibrant , multifaceted, safe and thriving business and social environment for the City as a whole and has made no admissions or concessions by way of its routine response to interrogatories. Moreover, the allegation that the Resolution Hearing was not impartial is nonsensical and finds no support in the record.

IV POINT IV AND REQUESTED RELIEF: The Mission's claims pursuant to superseded Zoning Ordinance 20-6.13 are mooted by both the passage of time and its own inaction.

No determination can ever be made as to whether the Mission's rights were violated by Zoning Ordinance 20-6.13 because the Mission never completed the basic process of applying

for a variance. The City may indeed have granted a variance and in fact the City has never denied a complete conforming application for a variance as to Ordinance 20-6.13. The constitutionality of Zoning Ordinance 20-6.13 also cannot be litigated in reference to the denial of an amendment to the Redevelopment Plan because they involve entirely different zoning schemes as well as the "amendment" vs. "variance" process. These claims are moot.

Injunctive relief is moot as to Zoning Ordinance 20:613. It is also legally unwarranted under the Plan claims, and would serve no end in that there is no church as envisioned. Notably, this Court has essentially dismissed the City's compensatory damages claim (Order of November 22, 2005).

V. CONCLUSION

For the foregoing reasons, and for those set forth in its Trial Brief and Motion For Summary Judgment, the Defendant, the City of Long Branch respectfully requests that this Court deny the Mission's Cross Motion in Limine for Partial Summary Judgment in its entirety.

RESPECTFULLY SUBMITTED,

MARSHALL, DENNEHEY, WARNER,
COLEMAN AND GOGGIN

BY: s/ Howard Mankoff
HOWARD MANKOFF, ESQUIRE

Date: December 1, 2005
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