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ATLANTIC COUNTY  
LAW DIVISION

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 **COPY**

CASINO REINVESTMENT DEVELOPMENT  
AUTHORITY, a public corporate body of the  
State of New Jersey,

Plaintiff,

vs.

CHARLES BIRNBAUM; LUCINDA  
BIRNBAUM; LOUISE TAYLOR DAVIS;  
GERALD GITTENS; THE ATLANTIC CITY  
MUNICIPAL UTILITIES AUTHORITY; THE  
ATLANTIC CITY SEWERAGE CO.; and THE  
CITY OF ATLANTIC CITY,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – ATLANTIC COUNTY

DOCKET NO. L589-14

CIVIL ACTION

**ANSWER AND AFFIRMATIVE  
DEFENSES OF DEFENDANTS  
CHARLES AND LUCINDA BIRNBAUM**

Defendants Charles Birnbaum and Lucinda Birnbaum (the “Birnbaums”) hereby answer the numbered paragraphs in the Verified Complaint filed by Plaintiff Casino Reinvestment Development Authority (“CRDA”). To the extent that an allegation is not expressly admitted below, the Birnbaums hereby deny that allegation.

1. Admitted.

2. Paragraph 2 consists of legal conclusions to which no response is required. To the extent a response is required, the Birnbaums admit that N.J. Stat. § 5:12-182 and N.J. Stat. § 20:3-1 *et seq.* provide some general authority for CRDA to acquire and condemn property or otherwise exercise the power of eminent domain, but deny that CRDA has statutory authority to acquire and condemn, or otherwise exercise the power of eminent domain against, their property at issue in this case, the Birnbaum family home (“Birnbaum Family Home”) at 311 Oriental Avenue in Atlantic City, New Jersey. The Birnbaums further deny that CRDA has satisfied the statutory requirements to acquire and condemn, or otherwise exercise the power of eminent domain against, the Birnbaum Family Home. The Birnbaums further deny that CRDA’s proposed exercise of eminent domain against the Birnbaum Family Home is permissible under the New Jersey and/or United States Constitutions and/or New Jersey precedent.
3. No CRDA Resolution is attached to the Complaint or otherwise verified, and the Birnbaums therefore deny this allegation. To the extent such resolutions exist, they speak for themselves. The Birnbaums deny all allegations with respect to Exhibit A, which speaks for itself, although the Birnbaums specifically note that their property is not located at “Lot 72 in Block 3 on the City of Atlantic City Tax Map” as described in Exhibit A.
4. The Birnbaums admit that Exhibit B was transmitted as described but otherwise deny all allegations with respect to Exhibit B, the contents of which speak for themselves.
5. The Birnbaums admit that CRDA offered \$238,500 for the Birnbaum Family Home. The Birnbaums deny that CRDA’s offer was for the full fair market value of the property. The Birnbaums deny that the conclusions of the Appraisal were or are accurate and deny

that the fair market value of the home is or was \$238,500. The Birnbaums admit that Exhibit C is a document that CRDA purports to be the Appraisal for the Birnbaum Family Home. The Birnbaums deny all other allegations in Paragraph 5 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

6. The Birnbaums admit that they are the owners of record of the Birnbaum Family Home at 311 Oriental Avenue in Atlantic City, New Jersey, which is the property affected by these proceedings.
7. The Birnbaums construe "Louis Taylor Davis" as Louise Taylor Davis and admit that she and Gerald Gittens are long-term tenants in the upstairs apartments of the Birnbaum Family Home. The Birnbaums admit that the Atlantic City Municipal Utilities Authority provides water service to the Birnbaum Family Home. The Birnbaums admit that the Atlantic City Sewerage Co. provides sewer service to the Birnbaum Family Home. The Birnbaums admit that they pay property taxes for the Birnbaum Family Home to the City of Atlantic City. The Birnbaums deny that they are behind on any payments of taxes or municipal charges for utility services relating to the Birnbaum Family Home. The Birnbaums deny all other allegations in Paragraph 7 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

#### FIRST AFFIRMATIVE DEFENSE

CRDA's exercise of the power of eminent domain to acquire and condemn the Birnbaum Family Home is not authorized by N.J. Stat. § 5:12-182 *et seq.*, N.J. Stat. § 20:3-1 *et seq.*, or any other applicable statutes.

## SECOND AFFIRMATIVE DEFENSE

CRDA's exercise of the power of eminent domain to acquire and condemn the Birnbaum Family Home does not satisfy the statutory requirements of N.J. Stat. § 5:12-182 *et seq.*, N.J. Stat. § 20:3-1 *et seq.*, and other applicable statutes.

## THIRD AFFIRMATIVE DEFENSE

CRDA's exercise of the power of eminent domain to acquire and condemn the Birnbaum Family Home is not permitted as a taking for a public use under Article I, Paragraph 20 or Article VIII, Section III, Paragraph 1 of the New Jersey Constitution, in part because there is no guarantee of future public use.

## FOURTH AFFIRMATIVE DEFENSE

CRDA's exercise of the power of eminent domain to acquire and condemn the Birnbaum Family Home is not necessary under applicable statutes, case law, and the New Jersey Constitution, in part because there have not been sufficient evidentiary findings to establish that the taking is necessary.

## FIFTH AFFIRMATIVE DEFENSE

CRDA's exercise of the power of eminent domain to acquire and condemn the Birnbaum Family Home is not permitted as a taking for a public use under the Fifth and Fourteenth Amendments to the United States Constitution.

## SIXTH AFFIRMATIVE DEFENSE

CRDA's exercise of the power of eminent domain to acquire and condemn the Birnbaum Family Home is not permitted under any applicable provision of the New Jersey Constitution.

#### SEVENTH AFFIRMATIVE DEFENSE

CRDA's exercise of the power of eminent domain to acquire and condemn the Birnbaum Family Home is not permitted because the United States Constitutional requirement of just compensation has not been offered or paid.

#### EIGHTH AFFIRMATIVE DEFENSE

CRDA's exercise of the power of eminent domain to acquire and condemn the Birnbaum Family Home is not permitted because the New Jersey Constitutional requirement of just compensation has not been offered or paid.

#### **REQUEST FOR RELIEF**

WHEREFORE, the Birnbaums respectfully request that this Court enter an Order granting defendants' discovery request and staying further proceedings until discovery on the right to take is complete, enter an Order converting this to a Plenary matter, find that CRDA is neither authorized nor permitted to exercise its power of eminent domain over the Birnbaum Family Home under New Jersey statutes, find that CRDA is not permitted to exercise its power of eminent domain over the Birnbaum Family Home under the New Jersey Constitution, find that CRDA is not permitted to exercise its power of eminent domain over the Birnbaum Family Home under the United States Constitution, deny CRDA's attempt to acquire and condemn the Birnbaum Family Home, dismiss the first and only count of Plaintiff's Verified Complaint with prejudice, deny the taking and the appointment of commissioners, declare null and void the Declaration of Taking, and award to the Birnbaums their attorneys' fees and costs, as well as any other relief that may be appropriate.

**CERTIFICATION REGARDING OTHER ACTIONS**

Pursuant to R. 4:5-1(b)(2), and upon information and belief, other condemnation proceedings were filed by the condemnor regarding properties in the same area at approximately the same time as this matter. Those cases include (but are not necessarily limited to) Docket Nos. ATL-L-868-14 and ATL-L-869-14. The Birnbaums acknowledge their responsibility to file an amended certification should these facts or circumstances change.

**DESIGNATION OF TRIAL COUNSEL**

In accordance with R. 4:25-4, notice is hereby given that Peter D. Dickson is designated as trial counsel in this matter, pending decision on motions to admit counsel as *pro hac vice*. If those motions are granted, notice is hereby given that Robert McNamara will be designated as trial counsel in this matter.

**JURY DEMAND**

The Birnbaums hereby demand a jury trial on all issues so triable.

Respectfully submitted,

POTTER AND DICKSON



Dated: April 30, 2014

By: \_\_\_\_\_

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