

stadium, and they require one by opening day 2009. Furthermore, if the Yankees are to remain in the Bronx, the new stadium must be located at the site currently under construction, which is the only viable location with sufficient space to meet the needs of a baseball franchise in today's world.

3. Moreover, as the City has separately affirmed, the New Yankee Stadium Project ("Project") will have enormous benefits for the City as a whole and for the local community. As Deputy Mayor Doctoroff explains in his own Declaration, the injunction plaintiffs seek jeopardizes critical investment in the South Bronx and threatens a Project that will create more and better recreational facilities for local residents, provide thousands of jobs, and save the City hundreds of millions of dollars in stadium maintenance costs that will be assumed by the Yankees.

The existing stadium has severe physical constraints.

4. Yankee Stadium was originally built at its present site in 1923, at East 157th Street, River Avenue, East 161st Street and Ruppert Place in the Bronx Borough of New York City. The seating configuration was expanded over the years, in 1928, 1937, and 1938. On August 8, 1972, the Yankees signed a 30-year lease with the City which called for Yankee Stadium to be modernized in time for the 1976 season. After the 1973 season, the Yankees moved to Shea Stadium for two seasons while Yankee Stadium was almost completely demolished and then rebuilt. The renovated stadium opened for the 1976 season and has been used in its present form for the past 30 years.

5. Since 1976, stadium operations have become severely constrained. Although the stadium's seating capacity is sufficient to house the larger crowds of today, Yankee Stadium is nonetheless exceedingly crowded because there is not enough space to support baseball and

stadium operations. The stadium sits on a site of just under 10 acres, substantially less than the more than 13 acres that a state-of-the-art facility requires. Within Yankee Stadium's constrained site, space for entries and pedestrian walkways is very limited, and many of the facility's service and staging functions must take place outside the stadium grounds, in public areas, where they compete for space with fans and local residents.

6. The footprint and overall building size of the stadium are also too small to supply comfortable seating and room for circulation, food stands, shops, restrooms, and other support areas. Presently, Yankee Stadium cannot comfortably handle attendance greater than 35,000; at that point, the hallways are exceedingly crowded, long lines form for the food, concessions, and bathrooms, further interfering with pedestrian flow, and the kitchens and other support facilities are inadequate to meet the demand. However, the history of attendance at Yankee Stadium shows that, from the first, and with few exceptions, the Yankees have attracted more patrons than the American League average. For the past decade, Yankees' home game attendance has trended upward. Average game attendance has exceeded 35,000 every year since 1998. This year, the Yankees' total attendance already exceeds 4.2 million fans, an average of more than 51,000 per game. Given the constraints and limitations of existing Yankee Stadium, each year that attendance has grown, the problems of accommodating that demand have become more frequent and more difficult.

7. Many back-of-the-house functional areas — standard in state-of-the-art facilities — simply do not exist. For the stadium to function properly and provide a comfortable experience for fans, players, and the press, a nearly 100 percent increase in public concourse and fan amenity areas is required. Space for the players is equally constrained. Adequate practice space and batting cages are lacking. One weight room is shared by both the Yankees and visiting

teams. The area for the press is inadequate as well; often, they overflow into seats intended for fans.

8. The existing stadium has 41 percent of its seats (23,607 seats) in the upper deck. Due to the large number of seats and constrained footprint, the existing upper deck is the steepest in major league baseball. The seats themselves are too small compared to seats in modern ballparks. Moreover, many of the seats are not oriented properly to face towards second base, making it uncomfortable for fans to watch a game.

9. The existing stadium also lacks facilities necessary to accommodate disabled customers as required by state and federal law. In December 1998 the New York Yankees were served with a complaint alleging claims under the Americans with Disabilities Act of 1990 (“ADA”), New York Executive Law, and the Human Rights Law of the Administrative Code of the City of New York (the “City”). Subsequently, the United States Department of Justice intervened in that action to enforce provisions of the ADA against the New York Yankees, the City, and the Department of Parks. The United States’ Complaint in Intervention alleged violations of the ADA in connection with Yankee Stadium accessibility; failure to make alterations to Yankee Stadium; failure to remove barriers; and failure to modify procedures at Yankee Stadium pertaining to seats, tickets, transfer seats, and lines of sight. It also generally alleged that Yankee Stadium was not ADA-compliant. A Stipulation and Order of Settlement was entered into in December 1999. Among other provisions, the stipulated settlement called for certain structural modifications to various portions of Yankee Stadium including exterior and interior routes, doors, bathrooms, fire alarms, telephones, water fountains, concession areas, ticket booths, signage, and press areas. Additionally, Yankee Stadium was to add wheelchair and companion seating locations each year. But given the limitations inherent in retrofitting an

80-year-old structure, all of the parties recognized that this was at best a patchwork attempt to make a non-ADA-compliant facility somewhat more comfortable for fans with disabilities.

10. Because the United States, the City, and the New York Yankees recognized that these issues could best be dealt with by building a new Yankee Stadium, the Stipulation and Order of Settlement contained provisions relieving the New York Yankees and the City of the obligation to continue retrofitting Yankee Stadium if, by certain specific dates, agreements were entered into providing (i) for the New York Yankees to lease or otherwise occupy a new Yankee Stadium by no later than the commencement of the 2009 regular season; or (ii) that a new Yankee Stadium be constructed for the New York Yankees use by no later than the commencement of the 2009 regular season.

11. On October 20, 2005, Randy Levine, President of the New York Yankees, wrote to the United States to request a moratorium on further Yankee Stadium retrofitting based upon the planned construction of the new Yankee Stadium in time for the start of the 2009 regular season. A copy of Mr. Levine's October 20, 2005 letter (without the voluminous exhibits) is attached hereto as Exhibit A.

12. On November 15, 2005, Michael J. Garcia, Esq., United States Attorney for the Southern District of New York, "recognize[d] that the Yankees and the City have taken significant steps toward an agreement on a new stadium. Given those significant steps, we believe that it may be appropriate to agree to a moratorium on the Yankees' and the City's obligations for this upcoming year . . ." Further, the United States was "willing to consider a moratorium on the obligations of Paragraph 27 of the Stipulation, with the issue to be revisited one year from now. . . . [Because] by next year the parties may be in a position to know whether the stadium proposal will go forward. We are therefore prepared to agree to a one-year

moratorium on the additional wheelchair and companion seating obligations required by the Stipulation.” A copy of that letter is provided as Exhibit B.

13. As part of the moratorium-negotiation process, the United States requested — and the Yankees are in the process of providing — “a declaration under penalty of perjury . . . [that] would detail the substantial efforts and resources the Yankees have expended in pursuing and investigating the development of the new Stadium. . . . so that we will have a complete record to review regarding the Yankees’ efforts and expenditure of resources to date.” A copy of my sworn declaration is attached as Exhibit C. The United States also asked for — and the Yankees also provided — “the designs, plans, architectural drawings, and other materials that reflect the configuration of the proposed new stadium, including information as to the number of locations of wheelchair seats, companion seats, and aisle transfer seats, and information as to the amenities of the ballpark, including, inter alia, those relating to restrooms, drinking fountains, ticket windows, elevators, and concession counters.”

14. On the strength of the materials provided, the United States agreed to a moratorium, which was approved and ordered by Judge Scheindlin. A copy of her Order is attached as Exhibit D.

The existing stadium does not have enough parking.

15. In addition to the insurmountable constraints of the existing stadium and its site, Yankee Stadium suffers from woefully insufficient parking to meet the demands of its fans. In 1923, most fans came to games at the then-new Yankee Stadium by public transportation. In the ensuing years, with the rise of the use of the automobile and the spread of the suburbs, driving to the game became more and more popular. The number of available parking spaces has increased steadily over the years, including garages built in conjunction with the 1973 renovation, but has

not kept pace with demand. The current off-street parking space inventory is 6,995 spaces. Of these, only approximately 3,500 are located within a 1/2-mile (a 10-minute walk) of the stadium. These 3,500 spaces are filled whenever game attendance reaches approximately 15,000. The remaining spaces are farther away and, clearly, much less convenient. All available spaces are filled when game attendance reaches approximately 30,000, a level that is lower than the average home attendance every year since 1997. Overflow parking has been accommodated, when possible, in the Bronx Terminal Market south of the stadium, and along public streets. But the Bronx Terminal Market parking will no longer be available after this season due to construction on that site. The accumulation of mostly illegal on-street parking impairs traffic flow. Parking conditions at the existing stadium today are clearly inadequate and contribute to the traffic congestion that accompanies most home games as fans circulate excessively on local streets in search of hard-to-find parking spaces.

The Existing Stadium: Costs, Expenses, and Revenues

16. Since the 1970s, the cost of fielding the type of team that our fans demand and deserve has increased enormously. The Yankees current payroll of approximately \$200 million dwarfs the payrolls back then. Stadium revenues have not kept pace, in large part because of the constraints imposed by the current stadium. State-of-the-art stadiums — like those housing many of our competitors — offer more luxury boxes and the additional restaurants, clubs, and other amenities that contribute to the entertainment experience for the fans. The existing Yankee Stadium lacks those amenities. A new Yankee Stadium is thus an economic necessity.

Summary of Goals and Objectives of the Project

17. The overall goal for the Project is therefore to construct a new stadium that will be fully ADA-compliant and will address the severe space constraints and parking problems that

the team now faces. Some of the more specific goals and objectives are to: (1) provide enough land area to accommodate a modern stadium and adequately support baseball and stadium operations; (2) accommodate game day staging of larger broadcast production vehicles on site rather than on public streets, as is the current practice; (3) create a stadium of appropriate size to offer comfortable seating for all fans and ample room for circulation, food kiosks, and all services supporting fans and the media; (4) create state-of-the-art facilities for the Yankees and visiting teams; (5) provide additional parking to alleviate congestion on neighboring streets and reliance on illegal on-street parking; and (6) create efficient and attractive pedestrian circulation space.

18. Moreover, while these goals and objectives might be accomplished in other cities, the historical legacy of the Yankees, particularly their historical home in the Bronx, is of great importance to the team, as well as the City. Therefore, additional goals and objectives of the Project are to: (1) keep the Yankees in the Bronx, preferably near their traditional home; (2) design a modern stadium with an exterior style that is reminiscent of the original Yankee Stadium; (3) recreate Monument Park in the new stadium; and (4) reuse the site of the existing stadium—for baseball and other public recreational uses and for other uses benefiting the neighborhood. Thus, the New Yankee Stadium has been designed to pay homage to its predecessor. For example, the new stadium will replicate the 1923 façade and frieze. Even the stadium sections will be numbered to conform with the 1923 section numbering. Moreover, the dimensions and orientation of the existing playing field will be faithfully replicated.

Various alternative means of providing a new Yankee Stadium have been considered but none is feasible.

19. Over the past several years, various options for improving or modernizing stadium operations to meet these goals have been considered, including renovation or

reconstruction of a stadium on the existing site, and building a new stadium in a different location. Four candidate locations for a new stadium were previously assessed: the Project site, Van Cortlandt Park, and Pelham Bay Park, all in the Bronx, and the Caemmerer Yard (West-Side rail yard) on Midtown Manhattan's West Side. The sites in Van Cortlandt and Pelham Bay Parks were eliminated as infeasible for several reasons: mass transit was not available; the highway access system could not support the traffic from the stadium; a stadium would require use of substantially more parkland in each location than the proposed project, and each would disturb 12 acres of high-quality wetlands. Moreover, the Van Cortlandt Park site has since become unavailable as it is the location of the Croton Filtration Plant currently under construction by the New York City Department of Environmental Protection. A stadium over Manhattan's West-Side rail yard (Caemmerer Yard) was considered because of its central location and the availability of mass transit, but, as confirmed by the Jets' inability to build a new stadium in Manhattan, was determined to be politically infeasible and was, in any event, eliminated from consideration when the Yankees decided to remain in the Bronx.

20. Renovation of the existing stadium was also considered, but was quickly determined not to be possible for a number of reasons. Most significantly, as discussed above, increasing the size of the stadium is absolutely critical to provide the necessary improvements, and this simply could not be done through the primarily cosmetic changes that would be accomplished through renovation.

21. In addition, reconstruction on the existing site was determined to be infeasible because of the physical limitations of the site and the consequent inability to provide a modern-day baseball facility. The reconstruction alternative would also require the use of portions of Macomb's Dam Park — which is now planned for use as a park and for parking — without the

opportunity to provide replacement facilities on the site of the existing stadium or elsewhere. These issues are discussed in further detail in the accompanying Santee Affidavit and the Affidavit of Debra C. Allee, AICP (“Allee Affidavit”).

22. One major reason that the on-site reconstruction alternative would be infeasible is the fact that construction of the new stadium is anticipated to take just under three years (not including the time it would take to demolish the existing stadium, a daunting task in its own right). During that time, the Yankees would need a stadium in which to play their 81 home games each season. The only other major league baseball stadium in New York City is Shea Stadium, home of the New York Mets, which the Yankees used during the last round of stadium renovations in the 1970’s. But sharing Shea Stadium with the Mets for several years would simply not be possible today.

23. In the 1970’s, in-stadium corporate signage was not a major source of the Yankees’ revenues. That is no longer true; the landscape has vastly changed in the intervening years. Now, such signage accounts for just under 20% of the team’s total revenue for the year. In other words, the Yankees’ fiscal survival depends on such sponsorships, as does the Mets’. As noted, these critical revenues are derived in large part from advertising within the stadium. But housing both teams in Shea Stadium would force one or both to give up a substantial portion of that revenue. The Yankees’ and Mets’ sponsorships are in virtually all cases different and mutually exclusive. The Shea Stadium signage could not practicably be changed from home stand to home stand to display Mets sponsors’ advertisements on one day and Yankees sponsors’ the next.

24. Each team also has many exclusive contracts with different major vendors, such as beverage distribution companies (at Yankee Stadium, Coca-Cola products are served, at Shea

Stadium, Pepsi products). Each company also contractually prohibits the other's products from being served through its equipment. Similarly, the Yankees enjoy a lucrative sponsorship relationship with Bank of America, which places its ATMs in the stadium and includes financing, signage, and suite licensing, while the Mets have similar sponsorships with other banks and whose ATMs are in place at Shea Stadium. In order to share Shea Stadium, the Yankees would have to forego that contract altogether.

25. Similarly, moving to Shea Stadium would require the Yankees to forego the substantial revenues generated by our historic partnership/affiliation with adidas, under which the adidas brand is featured at Yankee Stadium as prominently as it would be if it were a traditional naming rights relationship. The Yankees would not be able to provide any level of exposure for adidas at Shea Stadium. The loss of this revenue would be intolerable.

26. Finally, sharing Shea Stadium with the Mets would cut sharply into ticket sales, which account for approximately two-thirds of Yankees revenues. These revenues would decrease drastically if the team moved to Shea Stadium even temporarily, because Shea Stadium ticket and luxury box prices and license fees are not comparable Yankee Stadium rates.

27. Ticket sales would pose other untenable difficulties. At its most basic level, this manifests itself in the form of incompatible ticketing systems (the Yankees contract is with Ticketmaster, but Shea Stadium has its own ticketing system). In addition, the Yankees gain significant revenues from season ticket holders, of which there are currently about 33,684 (compared to about 3500 in the mid-1970's). These fans pay each season for the same seat in Yankee Stadium; but because Shea Stadium has a different layout there are no corresponding seats there.

