

**EXHIBIT E**  
to  
**PLAINTIFF'S MOTION TO STRIKE OR FOR LEAVE TO FILE SURREPLY**

**Letter of September 29, 2006**

**From G. Walters to J. Niehaus discussing FCE document production**



ATLANTA

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COLUMBUS

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WASHINGTON, D.C.

September 29, 2006

*Via Hand Delivery*

James B. Niehaus  
Frantz Ward  
2500 Key Tower  
127 Public Square  
Cleveland, OH 44114

RE: *216 Jamaica Avenue LLC v. S & R Realty Co.*

Dear Jim:

Please find enclosed S&R Playhouse's and FCE's documents in response to 216 Jamaica Avenue LLC's subpoena to Forest City and R. 34 requests propounded to S&R Playhouse, as well as supplements to S&R Playhouse's initial disclosures. For ease of production, I have bates-labeled all of these documents with the prefix "FCE." I have provided with this production all but two documents listed on our initial disclosures identified as missing from our production. As of this date, I have been unable to locate the Mortgage, Security Agreement and Assignment of Rents from S&R Playhouse Realty Company to Marine Midland Bank, dated November 25, 1997, and the Confidential Placement Memorandum. We continue to search for these documents and will produce them immediately if and when found.

As for documents identified as missing pages from S&R Playhouse's initial disclosures, I have provided full copies where they exist. As for any remaining documents, they have been produced as they currently exist in S&R Playhouse's and Forest City's known files. We are continuing to search for all documents relevant to this matter and will supplement as necessary our production as required under the Federal Rules of Civil Procedure.

I also want to be clear that there are many additional documents in the possession of Forest City that relate in some way to the property that is subject of this action. The total count of boxes of documents is between fifteen and twenty. Based upon our review of these documents and 216 Jamaica's narrow Requests and Subpoena, these documents are not responsive.

Please provide 216 Jamaica's documents responsive to our discovery requests.

Sincerely,

Gary L. Walters

Enclosures

cc: Stephen D. Williger (w/o encl.)

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