SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BARBARA WEINSTEIN, JUDITH CHAZEN WALSH, SUSAN TAYLORSON, MARK CRISPIN MILLER, ALAN HERMAN, ANNE HEARN, JEFF GOODWIN, JODY BERENBLATT, NYU FACULTY AGAINST THE SEXTON PLAN, GREENWICH VILLAGE SOCIETY FOR HISTORIC PRESERVATION, HISTORIC DISTRICTS COUNCIL, WASHINGTON SQUARE VILLAGE TENANTS' ASSOCIATION, EAST VILLAGE COMMUNITY COALITION, FRIENDS OF PETROSINO SQUARE, by and in the name of its President, GEORGETTE FLEISCHER, LAGUARDIA CORNER GARDENS, INC., LOWER MANHATTAN NEIGHBORS' ORGANIZATION, SOHO ALLIANCE, BOWERY ALLIANCE OF NEIGHBORS, by and in the name of its Treasurer, JEAN STANDISH, and NOHO NEIGHBORHOOD ASSOCIATION, by and in the name of its Co-Chair, JEANNE WILCKE,

Petitioners,

For a Judgment Pursuant to CPLR Article 78

- against -

ROSE HARVEY, as Acting Commissioner of the New York State Office of Parks, Recreation and Historic Preservation, THE NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, PAUL T. WILLIAMS, JR., as the President and the Chief Executive Officer of Dormitory Authority of the State of New York, DORMITORY AUTHORITY OF THE STATE OF NEW YORK, VERONICA M. WHITE, as Commissioner of the New York City Department of Parks and Recreation, THE NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION, JANETTE SADIK-KHAN, as Commissioner of the New York City Department of Transportation, THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION, MATHEW M. WAMBUA, as Commissioner of the New York City Department of Housing Preservation and Development, and THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, AMANDA BURDEN, as Director of the New York City Department of City Planning and Chair of the New York City Planning Commission, THE NEW YORK CITY PLANNING COMMISSION, THE NEW YORK CITY DEPARTMENT OF CITY PLANNING, CHRISTINE QUINN, as Speaker of the New York City Council, THE NEW YORK CITY COUNCIL, THE CITY OF NEW YORK,

Index No. 103844/12

IAS Part

Judge _____

VERIFIED PETITION

Respondents,

- and -

NEW YORK UNIVERSITY,

As a Necessary Third-Party.

Petitioners, by their undersigned attorneys, for their verified petition allege as follows:

NATURE OF THE PROCEEDING

1. This case challenges a project so massive in scale, disproportionate to the surrounding area, and out-of-sync with the neighborhood that it threatens to overwhelm one of New York City's crown jewels, historic Greenwich Village. The proponent of this project, New York University ("NYU"), after years of expanding incrementally without need of such a major rezoning, including into other neighborhoods of the City, now seeks to cram almost 2 million square feet of sweeping new development space onto two square blocks in the heart of the Village—much of it unrelated to any academic purpose—over the objections of neighborhood groups, preservationists, much of NYU's own faculty, and a unanimous local Community Board. City officials, shirking their responsibility to protect communities from such overreaching, have now largely rubber-stamped NYU's plan, and even facilitated it by, among other things, illegally turning over public park land for NYU's use, illegally permitting destruction of an historic preservation site, and illegally ignoring deed restrictions. In its rush to judgment, the City refused even to consider the adverse impacts on the most affected group here—NYU's own

faculty, 40 percent of whom are housed on the site. Moreover, the City failed to give adequate consideration to less intrusive alternatives and mitigation measures, and it effectively denied the public any meaningful participation in the review process. As a result, Petitioners, representing thousands of Greenwich Village residents and hundreds of NYU faculty members, now file this Article 78 Petition seeking declaratory and injunctive relief to stop this enormous project from going forward and to overturn the City's irrational, arbitrary, and capricious approvals of it.

2. The current NYU administration, led by its President John Sexton, has now obtained the City's permission for its plan ("the Sexton Plan") to rezone two historic Village "super blocks" (the "Superblocks") that were originally created from public land using federal funds under a federal urban renewal project. *See* Washington Square Southeast: Slum Clearance Plan Under Title I of the Housing Act of 1949, p. 31 (Aug. 1953) (a true and correct copy of which is attached hereto as Exhibit 1). The area is bounded by West 3rd Street on the north, Houston Street on the south, Mercer Street on the east, and LaGuardia Place on the west. (The block with the three towers will be known as the "South Superblock" and the block directly to its north with the two long buildings will be known as the "North Superblock").

3. These Superblocks are now largely residential, and include open space and park land—public amenities unquestionably in short supply in Greenwich Village. *See* Arbuckle Affidavit at ¶ 7 (a true and correct copy of which is attached hereto as Exhibit 2). The Sexton Plan will forever change them, and in the process, eliminate these public spaces. Instead, NYU will construct sweeping buildings there, constituting almost 2 million square feet, about half of which is slated for purposes other than academics, including a performing arts center, a gymnasium, housing, and retail establishments. Even by current estimates, this $6 billion plan will require at least 20 years to complete. In other words, the Sexton Plan will eliminate one of

the largest open-air spaces in Greenwich Village and shroud it in a construction zone for the next two decades.

4. The Superblocks are currently home to five apartment buildings, housing approximately 4500 residents. Many of these residents are low-income renters or NYU faculty members who cannot merely leave and find another place to live. These residents will literally be forced to live on a construction site for the next 20 years. And thousands more Village residents will live in close proximity to, and will also be adversely affected by, the construction.

5. NYU covets this new space on the Superblocks, but it effectively concedes by its own actions that it does not need this particular Greenwich Village space in order to expand its facilities. It is utilizing at least six other locations in New York City—on the Upper East Side, Gramercy, Midtown Center, Lower Manhattan, Roosevelt Island, and Downtown Brooklyn—to satisfy its space needs, without causing any of the severe adverse impacts this project will impose on its Village neighbors. Indeed, according to NYU's own marketing site, "NYU's 'campus' is New York City." New York University, Travel and Transportation (emphasis in original) (a true and correct copy of which is attached hereto as Exhibit 3).

6. Concentrating this massive development on these two Superblocks will have profound consequences for an already-congested Greenwich Village. And little is being done to try to mitigate the damage that will necessarily result, given the sheer magnitude of the project.

7. Despite this project's significant adverse environmental impacts on residents of Greenwich Village generally, and the particularly severe adverse impacts on those residing on the Superblocks, the New York City Planning Commission ("CPC") and New York City Council ("City Council") never required NYU to demonstrate its need for such concentrated development

space on the Superblocks. To make matters worse, the City Respondents violated a multitude of legal requirements intended to protect the public and public resources, including the following:

A. Alienation of Public Lands: The Public Trust Doctrine, a common-law protection for public park land, forbids NYU's plan unless the State Legislature formally alienates the affected park land by, among other steps, enacting legislation and creating substitute park land. Yet the City Respondents authorized NYU's plan without any such prior State authorization, in violation of this legal requirement. Moreover, historic preservation laws do not permit this destruction the historically-significant places world-renowned "Sasaki Garden," built in 1959 on the northern Superblock but now facing elimination as a result of NYU's approved plan. And deed restrictions also prevent NYU from pursuing its plan without the prior approval of the responsible City housing agency.

B. Environmental Review Deficiencies: Environmental laws preclude NYU from imposing the profoundly adverse impacts this development project will inflict on people, flora, and fauna, especially since NYU has alternatives that would be less intrusive and could mitigate the harm to this historic Village neighborhood, but the City Respondents permitted NYU to proceed anyway. And in the process City officials refused even to consider the project's impact on the most affected group here—NYU's own faculty, 40 percent of whom reside on the site—which renders the City's environmental review fatally flawed as a matter of law.

C. Denying the Public Meaningful Input: Open Meeting Laws, and the Uniform Law Use Review Procedure ("ULURP"), require that these sorts of significant, sweeping decisions be made transparently, in open, public meetings; yet the City Respondents made many of

their decisions privately, rather than based on a full, open assessment of the project, the stated need for it, the consequences to residents, and the applicable laws and regulations. Moreover, ULURP requires the CPC to give the public a meaningful opportunity to be heard before rendering its decision. Here, the CPC allotted only part of a single day for public comment, and failed to provide sufficient information to the public to meaningfully comment. The CPC gave NYU officials several hours of the allotted time to present their plan, leaving community members and their representatives only two minutes each, and then refused to schedule any further public hearings.

8. Despite these infirmities in the CPC's process and widespread opposition to this project, the City Council approved the Sexton Plan, with only modest modifications that were not studied or open to public comment. This was a preordained outcome. Before debating the merits or actually voting on the measure, the City Council issued a press release saying it would "vote to approve the New York University (NYU) 2031 expansion proposal." *See* New York City Council Press Release, dated July 25, 2012 (a true and correct copy of which is attached hereto as Exhibit 4).

9. To make matters even worse, on the day of the City Council's vote, Speaker Christine Quinn ejected every member of the public from the Chamber's galley after about 30 seconds of heckling from a few spectators. Then, the Speaker sought to allow NYU officials alone back into the Chamber to attend the vote but had to back down when members of the public observed them returning and protested.

10. The Speaker's action, in violation of the Open Meetings Law, underscores what Manhattan Borough President Scott Stringer told some of the Petitioners' representatives early on: this ULURP process was decided before it ever began.

11. Like most developers who propose more than they intend to build, anticipating concessions later to gain approval, NYU modified the Sexton Plan during the ULURP process—at the behest of the Manhattan Borough President, the CPC, and then the City Council—modestly reducing its total square footage, and significantly altering the staging and scope of construction at different intervals. But the City Respondents failed to require a new environmental impact assessment or hold further public hearings, as required by law, to determine whether these construction schedule changes might actually cause even worse impacts. Indeed, the public never had a chance to review, much less comment on, any of these construction-schedule changes.

12. Critically, these ad hoc modifications did not address the core concerns of critics of the Sexton Plan. And none of these modifications ultimately mitigated the harsh environmental consequences to this historic Village neighborhood. Instead, they modestly reduced the size of the development plan—by about 20 percent. For a gargantuan project such as this one, that is too little, too late.

13. For any and all of these reasons, this project must be stopped and City officials made to comply with all of their legal obligations before considering it further. This case is not about the merits of NYU's project or the worthiness of its goals. Rather, it is about compliance with state and local law in alienating public lands approving a major rezoning, lifting deed restrictions mandated by law, and allowing unmitigated environmental harm. Our environmental and land use laws are designed to protect communities from the very harms that a massive project such as this one will impose, and to ensure mitigation measures and pursuit of alternatives to avoid such harms. The ends cannot justify the means, yet that seems to have been

City officials' operating assumption here, preordaining the outcome and then cutting legal corners to get there.

14. Accordingly, Petitioners now implore this Court to put the brakes on this project before NYU proceeds with two decades of sweeping construction in the heart of historic Greenwich Village that will change this cherished neighborhood forever.

PARTIES AND STANDING

A. Petitioners

15. Petitioner Barbara Weinstein is a Professor of History at NYU and a member of the NYU Faculty Against the Sexton Plan ("NYU Faculty"). She lives in Washington Square Village, Tower 3, at the epicenter of the proposed construction. Ms. Weinstein is a distinguished, tenured faculty member of NYU, holding the distinction of "Silver Professor." *See* Affidavit of Barbara Weinstein (a true and correct copy of which is attached hereto as Exhibit 5 at ¶ 1). Ms. Weinstein was recruited to NYU in 2007 and her promised living arrangements were a material aspect of her choice to leave the University of Maryland and join NYU. *Id.* at ¶ 2. The construction, noise, elimination of green space, and removal of the local Morton Williams supermarket will severely affect the safety and enjoyment of the area, particularly for her adult son who suffers from autism. *Id.* at ¶ 5.

16. Petitioner Judith Chazen Walsh is a member of the Washington Square Village Tenants' Association. She lives in Washington Square Village, epicenter for the proposed construction. She will suffer from exposure to construction, noise, and pollutants, and will lose the enjoyment of the Sasaki Gardens and other public spaces that will be eliminated through the Sexton Plan. She was directly and distinctly harmed by the approval of the Sexton Plan. *See* Affidavit of Judith Chazen Walsh (a true and correct copy of which is attached hereto as Exhibit 6).

17. Petitioner Susan Taylorson is a member of LaGuardia Corner Gardens, Inc. She lives at 4 Washington Square Village, at the epicenter of the proposed construction. She will suffer from exposure to construction, noise, and pollutants, and will lose the enjoyment of the Sasaki Gardens and other public spaces that will be eliminated through the Sexton Plan. She was directly and distinctly harmed by the approval of the Sexton Plan. *See* Affidavit of Susan Taylorson (a true and correct copy of which is attached hereto as Exhibit 7).

18. Petitioner Mark Crispin Miller is a Professor of Media, Culture and Communication at NYU and he is a leader of NYU Faculty Against the Sexton Plan. He lives at 4 Washington Square Village, at the epicenter of the proposed construction. He will suffer from exposure to construction, noise, and pollutants, and will lose the enjoyment of the Sasaki Gardens and other public spaces that will be eliminated through the Sexton Plan. He was directly and distinctly harmed by the approval of the Sexton Plan.

19. Petitioner Alan Herman is a member of Lower Manhattan Neighbors' Organization ("LMNO(P)"). He lives at 1 Jersey Street, two blocks from the proposed construction. He will suffer from exposure to construction, noise, and pollutants, and will lose the enjoyment of the Sasaki Gardens and other public spaces that will be eliminated through the Sexton Plan. He was directly and distinctly harmed by the approval of the Sexton Plan. *See* Affidavit of Alan Herman (a true and correct copy of which is attached hereto as Exhibit 8).

20. Petitioner Anne Hearn is the President of the Washington Square Village Tenants' Association. She lives in Washington Square Village, epicenter for the proposed construction. She will suffer from exposure to construction, noise, and pollutants, and will lose the enjoyment of the Sasaki Gardens and other public spaces that will be eliminated through the Sexton Plan.

She was directly and distinctly harmed by the approval of the Sexton Plan. *See* Affidavit of Anne Hearn (a true and correct copy of which is attached hereto as Exhibit 9).

21. Petitioner Jeff Goodwin is a Sociology Professor at NYU and a member of the NYU Faculty. He lives at 100 Bleecker Street, directly adjacent to the proposed so-called "Zipper Building," the block-long tiered-towers that will replace the Coles Gymnasium. He will suffer from exposure to construction, noise, and pollutants, and will lose the enjoyment of the Sasaki Gardens and other public spaces that will be eliminated through the Sexton Plan. He was directly and distinctly harmed by the approval of the Sexton Plan. *See* Affidavit of Jeff Goodwin (a true and correct copy of which is attached hereto as Exhibit 10).

22. Petitioner Jody Berenblatt is a member of LMNO(P). She lives at 180 Thompson Street, one block from the proposed construction. She will suffer from exposure to construction, noise, and pollutants, and will lose the enjoyment of the Sasaki Gardens and other public spaces that will be eliminated through the Sexton Plan. She was directly and distinctly harmed by the approval of the Sexton Plan. *See* Affidavit of Jody Berenblatt (a true and correct copy of which is attached hereto as Exhibit 11).

23. Petitioner NYU Faculty is a Delaware 501(c)(3) not-for-profit organization committed to preserving the Greenwich Village neighborhood in the face of the Sexton Plan, preserving the integrity of NYU's academic mission, and upholding the welfare of the NYU faculty. Petitioners Barbara Weinstein, Jeff Goodwin and Mark Crispin Miller are members of NYU Faculty. This organization is made up of over 300 NYU faculty members who oppose the Sexton Plan. Its members are distinctly and directly affected by Respondents' failure to properly administer the requirements of ULURP, by the potential adverse environmental impacts of the Sexton Plan, by Respondents' failure to adhere to New York State historic preservation law, by

Respondent's unilateral act of alienating public parkland, by the Respondents' failure to adhere to the deed restrictions, and by Respondents' failure to comply with the requirements of the New York City Open Meetings Law.

24. Petitioner Greenwich Village Society for Historic Preservation ("GVSHP") is a 501(c)(3) not-for-profit organization committed to preserve the architectural heritage and cultural history of Greenwich Village, the East Village, SoHo and NoHo. The mission of GVSHP is to protect the sense of place and human scale that define the Village's unique community. GVSHP administers programs that include: Educational outreach in the form of public lectures, tours, exhibitions, and publications; a school program that teaches children about Greenwich Village history and architecture; preservation leadership on such issues as preservation of the South Village; preservation projects that promote an understanding of the Village's historic importance, such as the Greenwich Village Preservation Archive and Oral History Project; consultation services on a wide variety of preservation issues, with GVSHP serving the community as historian, educator, archivist, and technical consultant. Its members are distinctly and directly affected by Respondents' failure to properly administer the requirements of ULURP, by the potential adverse environmental impacts of the Sexton Plan, by Respondents' failure to adhere to New York State historic preservation law, by Respondent's unilateral act of alienating public parkland, by the Respondents' failure to adhere to the deed restrictions, and by Respondents' failure to comply with the requirements of the New York City Open Meetings Law.

25. Petitioner Historic Districts Council ("HDC") is a not-for-profit New York corporation committed to helping to protect historic neighborhoods and buildings throughout the five boroughs of New York City. HDC analyzes proposals affecting historic neighborhoods and takes action to ensure they are preserved and enhanced. HDC has been involved in the creation

of almost every one of the more than 100 officially designated historic districts in New York City, which includes close to 30,000 individual buildings. HDC has organized residents, conducted studies, gathered resources, testified before city agencies, and helped people to better understand preservation for over 40 years. Its members are distinctly and directly affected by Respondents' failure to properly administer the requirements of ULURP, by the potential adverse environmental impacts of the Sexton Plan, by Respondents' failure to adhere to New York State historic preservation law, by Respondent's unilateral act of alienating public parkland, by the Respondents' failure to adhere to the deed restrictions, and by Respondents' failure to comply with the requirements of the New York City Open Meetings Law.

26. Petitioner Washington Square Village Tenants' Association was created in order to provide a voice for tenants residing in the apartment complex. The Association is charged with responding to the needs of those living within the complex and the members have worked together to ensure that tenants feel safe and comfortable in their homes. The Association meets regularly with Management to discuss maintenance issues regarding the buildings and grounds, including the beautiful Sasaki Garden. As members have become increasingly concerned about the impacts of the Sexton Plan on their daily lives over the past year, the Association has worked almost exclusively on voicing its opposition to the proposed expansion. These concerns, though raised on numerous occasions to City officials, have routinely been ignored and dismissed. Some members of the Association may have to leave their homes indefinitely due to the nature and duration of the construction. The Respondents have failed to adequately consider alternatives and mitigations which would protect and preserve the gardens area. Its members are distinctly and directly affected by Respondents' failure to properly administer the requirements of ULURP, by the potential adverse environmental impacts of the Sexton Plan, by Respondents'

failure to adhere to New York State historic preservation law, by Respondent's unilateral act of alienating public parkland, by the Respondents' failure to adhere to the deed restrictions, and by Respondents' failure to comply with the requirements of the New York City Open Meetings Law.

27. Petitioner East Village Community Coalition ("EVCC") is a 501(c)(3) not-for-profit organization committed to recognizing, supporting, and sustaining the built and cultural character of the East Village. EVCC works to protect historic districts and individual landmarks, support local businesses, improve infrastructure and promote sustainable transportation, and control development through neighborhood rezoning efforts, among other campaigns. Its members are distinctly and directly affected by Respondents' failure to properly administer the requirements of ULURP, by the potential adverse environmental impacts of the Sexton Plan, by Respondents' failure to adhere to New York State historic preservation law, by Respondent's unilateral act of alienating public parkland, by the Respondents' failure to adhere to the deed restrictions, and by Respondents' failure to comply with the requirements of the New York City Open Meetings Law.

28. Petitioner Friends of Petrosino Square is an unincorporated association whose members reside in close proximity to the proposed construction site. Petitioner Georgette Fleischer is the President of Friends of Petrosino Square and authorized to act on its behalf. She lives at 19 Cleveland Place, just a few blocks from the proposed construction. She and the members of Friends of Petrosino Square were distinctly harmed by the approval of the Sexton Plan. *See* Affidavit of Georgette Fleischer (a true and correct copy of which is attached hereto as Exhibit 12). Petrosino Square will be severely impacted by the Sexton Plan. The Respondents failed to adequately consider alternatives and mitigations that would protect the integrity and

viability of the Square and the surrounding area. Its members are distinctly and directly affected by Respondents' failure to properly administer the requirements of ULURP, by the potential adverse environmental impacts of the Sexton Plan, by Respondents' failure to adhere to New York State historic preservation law, by Respondent's unilateral act of alienating public parkland, by the Respondents' failure to adhere to the deed restrictions, and by Respondents' failure to comply with the requirements of the New York City Open Meetings Law.

29. Petitioner LaGuardia Corner Gardens, Inc. is a 501(c)(3) not-for-profit organization comprised of volunteers who tend the award-winning LaGuardia Corner Garden, which is located in the heart of the Superblocks. Petitioner Susan Taylorson is a member of LaGuardia Corner Gardens, Inc. The garden is registered with the Department of Parks and Recreation under its Green Thumb program and is a designated Wildlife Habitat and Monarch Waystation. The Garden was founded in 1981 and has served as an oasis of calm in urban surroundings for over 30 years. The Sexton Plan, however, will completely destroy the garden through displacement and shadowing. The Respondents failed to adequately consider alternatives and mitigations that would protect the integrity and viability of the garden. Many of the members of this association, who have tended this garden for decades, will thereby be distinctly and irreparably harmed. Its members are distinctly and directly affected by Respondents' failure to properly administer the requirements of ULURP, by the potential adverse environmental impacts of the Sexton Plan, by Respondents' failure to adhere to New York State historic preservation law, by Respondent's unilateral act of alienating public parkland, by the Respondents' failure to adhere to the deed restrictions, and by Respondents' failure to comply with the requirements of the New York City Open Meetings Law.

30. Petitioner Lower Manhattan Neighbors' Organization ("LMNO(P)") is a 501(c)(3) not-for-profit organization whose primary mission is to preserve and improve public open space for the health and benefit of lower Manhattan children. Petitioner Alan Herman is a member of LMNO(P). In 1991, LMNO(P) introduced plans to create what is now the Mercer Street Playground. Its construction was a ten-year process, involving fundraising by the group's members, other charitable organizations, and NYU. The City itself says the community should be "justifiably proud in knowing that, together, they made their own backyard." *See* City of New York Parks & Recreation, Mercer Playground, available at http://www.nycgovparks.org/parks/M295/history (last visited Sept. 21, 2012) (a true and correct copy of which is attached hereto as Exhibit 77). LMNO(P) was able to raise the money to build the public, neighborhood playground by promising donors that it would exist into perpetuity. The Sexton Plan completely destroys Mercer Playground in fact and in purpose, turning a large portion of it into a paved pedestrian plaza that will function as an entrance to one of NYU's new buildings. In addition, the Sexton Plan eliminates the custom-designed and fabricated fencing, the playground's water feature, and the water fountain. The Sexton Plan will undo LMNO(P) members' many years spent in meetings and negotiations. Members of the association will be distinctly and irreparably harmed because the group's credibility will be brutally damaged by the wholesale undoing of its agreements with donors, NYU, and the city alike. Thousands of community hours of plantings, organizing public events, and clean-ups will have been wasted. Its members are distinctly and directly affected by Respondents' failure to properly administer the requirements of ULURP, by the potential adverse environmental impacts of the Sexton Plan, by Respondents' failure to adhere to New York State historic preservation law, by Respondent's unilateral act of alienating public parkland, by the Respondents' failure to adhere to the deed

restrictions, and by Respondents' failure to comply with the requirements of the New York City Open Meetings Law.

31. Petitioner SoHo Alliance is a New York registered not-for-profit corporation whose mission is to preserve the historic and cultural tradition of the SoHo district and to play an active role in decisions related to SoHo landmarking, zoning, transportation, and environmental issues. The president and vice-president of the SoHo Alliance, as well as approximately two dozen other group members, live directly across the street from the proposed Zipper Building, and many more members live within a one-block radius. The proposed destruction of the Sasaki Gardens will eliminate SoHo Alliance members' only nearby green space. The increased congestion from the added student population will decrease the quality of life for SoHo Alliance members, and could decrease property values. The Sexton Plan will distinctly and directly harm members of the SoHo Alliance by eliminating the sole nearby supermarket, Morton Williams. Its members are distinctly and directly affected by Respondents' failure to properly administer the requirements of ULURP, by the potential adverse environmental impacts of the Sexton Plan, by Respondents' failure to adhere to New York State historic preservation law, by Respondent's unilateral act of alienating public parkland, by the Respondents' failure to adhere to the deed restrictions, and by Respondents' failure to comply with the requirements of the New York City Open Meetings Law.

32. Petitioner Bowery Alliance of Neighbors is an unincorporated association whose members reside or work in the Bowery district. Jean Standish, as the Treasurer, is authorized to act on its behalf. Ms. Standish and the Bowery Alliance of Neighbors are dedicated to protecting the residents, small businesses, neighborhood, and historic character of the Bowery district. The western portion of the Bowery district lies a mere 0.2 miles from the Superblocks. Members of

the Bowery Alliance who live near the site will be distinctly and directly harmed by the large influx of new residents who will create congestion on the streets. Furthermore, the Bowery is currently an enclave of affordable housing and home to many low-income residents. Bowery Alliance members strive to protect the interests of all Bowery residents, and the influx of additional people to the area will drive up costs locally and undermine that mission by pricing out many Bowery residents. Its members are distinctly and directly affected by Respondents' failure to properly administer the requirements of ULURP, by the potential adverse environmental impacts of the Sexton Plan, by Respondents' failure to adhere to New York State historic preservation law, by Respondent's unilateral act of alienating public parkland, by the Respondents' failure to adhere to the deed restrictions, and by Respondents' failure to comply with the requirements of the New York City Open Meetings Law.

33. Petitioner NoHo Neighborhood Association is a not-for-profit unincorporated association that advocates on behalf of NoHo residents. NoHo includes and is directly adjacent to the NYU 2031 area. Petitioner Jeanne Wilcke is the Co-Chair of the NoHo Neighborhood Association. She lives on Bleecker Street. She and many of the Association's members live in the immediate vicinity of the proposed construction. The Association's mandate includes bettering the quality of life of neighborhood residents, zoning protections and compliance, and density issues. Jeanne Wilcke and the Association's members actively use the minimal open space that is available to them, including the Coles Sports Center, and the Mercer Playground, and the nearby dog run. Such spaces will be eliminated under the Sexton Plan, distinctly and irreparably harming members who rely on these facilities. Further, under the Sexton Plan, NoHo's firehouse and emergency resources will be under increased pressure and unable to marshal the assistance of other firehouses quickly, especially during construction when parts of

neighborhood streets will be blocked. Finally, the NoHo Neighborhood Association service area includes many residents who will directly suffer both quality of life and significant property value harms by living directly across Mercer Street and major construction sites. Its members are distinctly and directly affected by Respondents' failure to properly administer the requirements of ULURP, by the potential adverse environmental impacts of the Sexton Plan, by Respondents' failure to adhere to New York State historic preservation law, by Respondent's unilateral act of alienating public parkland, by the Respondents' failure to adhere to the deed restrictions, and by Respondents' failure to comply with the requirements of the New York City Open Meetings Law.

B. Respondents

34. Respondent Rose Harvey is the Commissioner of the New York State Office of Parks, Recreation, and Historic Preservation ("OPRHP"). Her office is located at 625 Broadway, Albany, New York, 12207. Harvey is named as a Respondent in her official capacity as the Commissioner of OPRHP.

35. Respondent OPRHP is a public agency of the State of New York established pursuant to Article 14 of the Parks, Recreation and Historic Preservation Law. OPRHP administers the State and National Registers of Historic Places. OPRHP entered into a Letter of Resolution, along with the Dormitory Authority of the State of New York ("DASNY") and NYU, that permits NYU to develop on the North Superblock despite the adverse impact on this historic site.

36. Respondent Paul T. Williams, Jr. is President and Chief Executive Officer ("CEO") of DASNY. His office is located at 515 Broadway, Albany, New York, 12207. Williams is named as a Respondent in his official capacity as President and CEO of DASNY.

37. Respondent DASNY is a public benefit corporation established pursuant to the Dormitory Authority Act. DASNY entered into a Letter of Resolution, along with the OPRHP and NYU that permits NYU to develop on the North Superblock, despite the significant adverse impact on this historic site.

38. Respondent Veronica M. White is the Commissioner of the New York City Department of Parks and Recreation ("DPR"). Her office is located at 830 Fifth Avenue, New York, NY, 10065. White is named as a Respondent in her official capacity as Commissioner of DPR.

39. Respondent DPR is a public agency of the City of New York established pursuant to Chapter 21 of the New York City Charter. DPR has joint-supervisory jurisdiction over two park parcels at issue in this matter.

40. Respondent Janette Sadik-Khan is the Commissioner of the New York City Department of Transportation ("DOT"). Her office is located at 55 Water Street, 9th Floor, New York, NY, 10041. Sadik-Khan is named as a Respondent in her official capacity as Commissioner of DOT.

41. Respondent DOT is a public agency of the City of New York established pursuant to Chapter 71 of the New York City Charter. DOT has joint-supervisory jurisdiction over four park parcels at issue in this matter.

42. Respondent Mathew M. Wambua is the Commissioner of the New York City Department of Housing Preservation and Development ("DHPD"). His office is located at 100 Gold Street, New York, NY, 10038. Wambua is named as a Respondent in his official capacity as Commissioner of DHPD.

43. Respondent DHPD is a public agency of the City of New York established pursuant to Chapter 61 of the New York City Charter. DHPD has jurisdiction over existing deed restrictions at issue in this matter.

44. Respondent Amanda Burden is the Director of the Department for City Planning ("DCP") and the Chairperson of the New York City Planning Commission ("CPC"). Her office is located at 22 Reade Street, New York, New York, 10007. Burden is named as a Respondent in her official capacity as the principal in charge of DCP and CPC.

45. Respondent CPC is a public commission of the City of New York established pursuant to Chapter 8 of the New York City Charter. Under the City Charter, CPC is responsible for overseeing the implementation of the laws that require reviews of land use actions taken by the city. Pursuant to SEQRA and CEQR, CPC acted as the lead agency for the environmental review of the Sexton Plan. Furthermore, CPC is one of the two governmental agencies that approved the zoning change.

46. Respondent DCP is a public agency of the City of New York established pursuant to Chapter 8 of the New York City Charter. DCP certified the ULURP application and determined that the draft environmental impact statement was adequate for review.

47. Respondent Christine Quinn is the Speaker for the New York City Council ("City Council"). Her office is located at 224 West 30th Street, Suite 1206, New York, NY, 10001. Quinn is named as a Respondent in her official capacity as the Speaker for the City Council.

48. Respondent City Council is the legislative body of the City of New York established pursuant to Chapter 2 of the New York City Charter. Under the City Charter, the City Council is responsible for issuing, and did in this case issue, final legislative approval of the rezoning and land use applications at issue in this matter.

49. Respondent City of New York ("City") is a domestic municipal corporation located within the State of New York.

50. Third Party Necessary Respondent New York University ("NYU") is a private educational corporation that was incorporated under Chapter 176 of the Laws of 1831 of the State of New York. The causes of action in this matter all arise from the official actions of public bodies and officers in connection with the Sexton Plan. As the "sponsor of the project and applicant in obtaining the necessary approvals and the effort and expense undertaken to obtain them," NYU is a necessary party under CPLR 1001(a).[1]

JURISDICTION AND VENUE

51. This court has jurisdiction pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR").

52. Venue is proper because Petitioners, Respondents and the affected property are located in New York County, New York. *See* N.Y. C.P.L.R. §§ 7804(b), 506(b). The central events took place within New York County, including the arbitrary and capricious determinations of the DCP, CPC, and City Council. The central violations of procedural process also took place in New York County.

FACTUAL BACKGROUND

A. Superblocks Created By Urban Renewal Plan

53. The City accepted money from the Federal Government under Title I of the Housing Act of 1949 to redevelop a blighted neighborhood in the heart of Greenwich Village. The redevelopment required the relocation of hundreds of residents and many businesses. *See* Exhibit 1.

[1] *27th Street Block Ass'n v. Dormitory Authority of State of New York*, 302 A.D.2d 155, 161 (1 Dep't 2002).

54. As a condition for participation in that program, NYC promised to "undertake positive programs to assist the development of well-planned, residential neighborhoods" by "clear[ing] the land and mak[ing] it available" for redevelopment. COMM. ON BANKING AND CURRENCY, SUMMARY OF PROVISIONS OF THE NATIONAL HOUSING ACT OF 1949 (Jul. 14, 1949) (a true and correct copy of which is attached hereto as Exhibit 13).

55. The Mayor's Commission on Slum Clearance designated three superblocks for redevelopment. The three superblocks are between West 4th Street on the north and Houston Street on the south and bounded what is now by La Guardia Place and Mercer Streets on the west and east, respectively. Exhibit 1 at 6.

56. The redevelopment project also set aside the parcels of land along the west side of Mercer Street between West Houston and Bleecker Streets and between West 3rd and West 4th Streets, along the west side of Mercer Street between Bleecker and West 3rd Streets, and along the east side of La Guardia Place between Bleecker and West 3rd Streets to be used for the construction of an entrance to a new Manhattan expressway. Final Environmental Impact Statement for NYU Core dated May 25, 2012 ("FEIS") at 1-7 (a true and correct copy of which is attached hereto as Exhibit 14); Albert Amateau, *University Has to Respect 'Green Line,' Neighbors Say*, THE VILLAGER, Oct. 21-27, 2010 (a true and correct copy of which is attached hereto as Exhibit 15). Though the expressway was never constructed, the DOT still maintains jurisdiction over the parcels, which are now being used as public parkland. *Id.*; *see* Diagram 2-1 below, reprinted from NYU 2031 Core ULURP Proposal, p. 20 (Jan. 9, 2012).

B. NYU Acquires Land On Superblocks

57. In 1954, as part of the urban renewal program, NYU acquired title to three acres of land on the block bounded by LaGuardia Place, Mercer Street, West 3rd Street, and West 4th Street (the "Education Block") for a mere $1.2 million. EMILY KIES FOLPE, IT HAPPENED ON WASHINGTON SQUARE, 301 (Johns Hopkins University Press) (2002).

58. Then, in 1963, NYU acquired an additional 14-acre parcel on the two blocks bounded by LaGuardia Place, Mercer Street, West 3rd Street and Houston Street (the "Superblocks") from the Washington Square Development Corporation—which had also acquired it through the renewal plan—for $25 million. Greenwich Village History, *Slum Clearance: NYU and Urban Renewal in Greenwich Village* (a true and correct copy of which is attached hereto as Exhibit 17). NYU intended to use this land for faculty and student housing. THOMAS J. FRUSCIANO & MARILYN H. PETTIT, NEW YORK UNIVERSITY AND THE CITY: AN ILLUSTRATED HISTORY, Rutgers University Press 212 (1997).

59. At the time, the Greenwich Village community strongly opposed this acquisition, citing that "the intent of Title I was to create a residential neighborhood, not university housing." *Id.* In response, the Board of Estimate conditioned NYU's purchase of the parcel on NYU's promise to construct at least 175 units of moderate-income housing. *Id.* NYU subsequently constructed three apartment towers on the south-most Superblock. One tower, 505 La Guardia, was designated as middle-income housing; the other two, the Silver Towers, were "reserved exclusively for the university." EMILY KIES FOLPE, IT HAPPENED ON WASHINGTON SQUARE, 301 (Johns Hopkins University Press) (2002).

60. As a prerequisite to acquiring title, NYU's deed was encumbered by deed restrictions approved by the Board of Estimate. Exhibit 14 at 2-16. Those restrictions are in

force until 2021.[2] The deed restrictions do not permit the massive rezoning and construction that is contemplated by the Sexton Plan. Rather, the deed restrictions promise that:

(a.) Only educational uses are permitted on the Education Block and on the Coles Gymnasium site;

(b.) No educational uses are permitted in other areas;

(c.) Two areas on La Guardia Place are to be used for retail purposes;

(d.) No retail uses are permitted in other areas; and

(e.) The remainder of the land is designated for residential uses. *Id.*

61. In addition, the deed restrictions contain specific density, coverage, height, setback, and parking restrictions and requirements. Exhibit 14 at 2-16-17.

62. The deed restrictions that encumber the Superblocks cannot be lifted without action by the DHPD. *Id.* at 2-17. As of the date of this filing, DHPD has not lifted the deed restrictions or acted on NYU's pending application.

C. NYU Spreads Its Campus Across The City

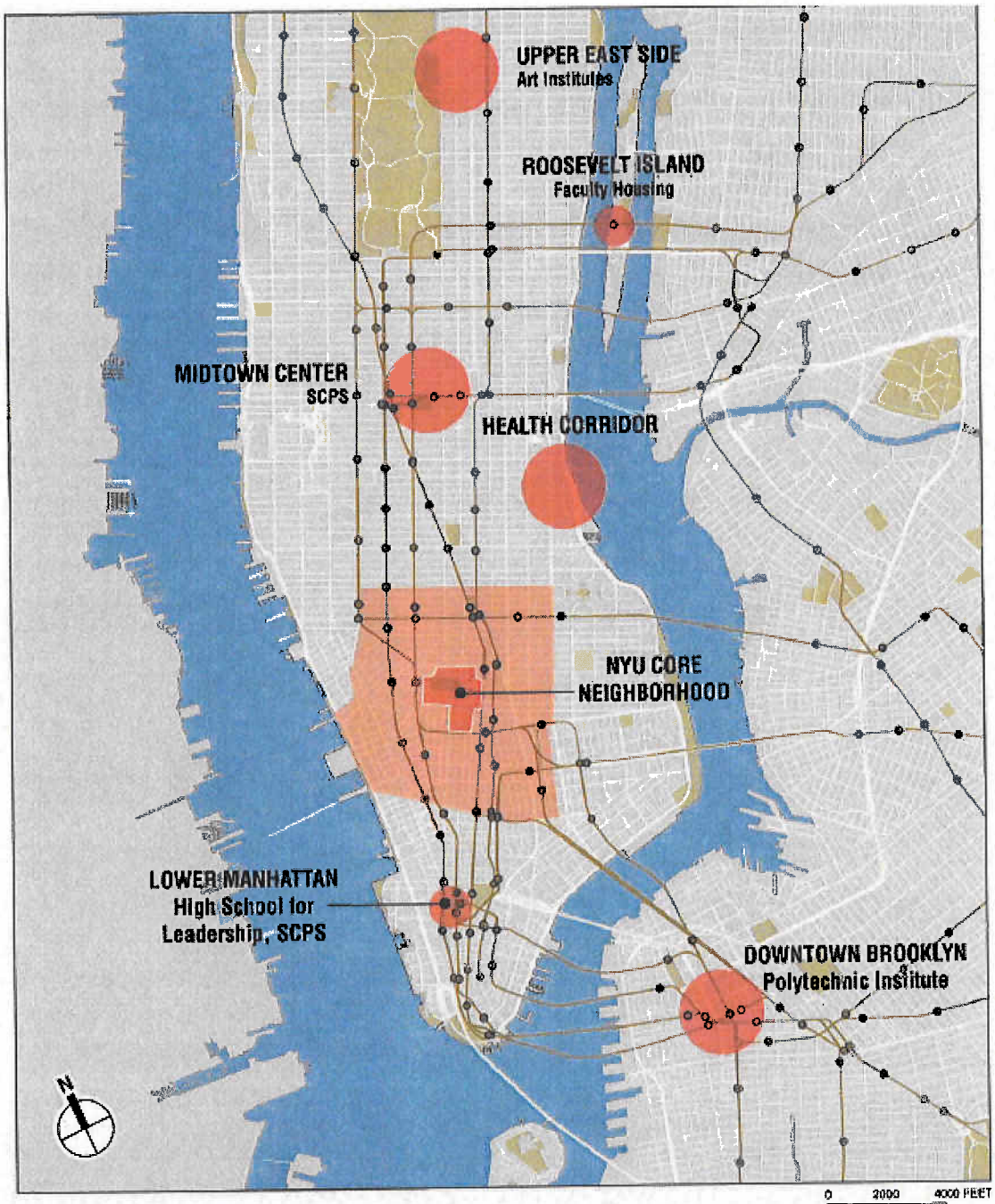
63. NYU does not have a typical college campus, constrained to a specific neighborhood. Indeed, many of NYU's students are commuters, and most do not live in the immediate Washington Square area. *See id.*, at 1-16; NYU, Off-Campus Housing FAQ (a true and correct copy of which is attached hereto as Exhibit 21). Accordingly, its marketing materials proudly proclaim: "NYU's 'campus' is New York City." Exhibit 3. NYU President John Sexton reinforced this concept: "Being 'in and of the City' is part of NYU's DNA; at no point has that been truer than today . . . . New York itself has always been part of the educational

[2] NYU has admitted both in writing and through its conduct in applying for the lifting of the deed restrictions that the restrictions will not expire until 2021. *See* Letter from Alicia D. Hurley to Brad Hoylman and the members of Community Board No. 2 (Dec. 5, 2008) (a true and correct copy of which is attached hereto as Exhibit 19); NYU Core ULURP Application, December 5, 2011, (a true and correct copy of which is attached hereto as Exhibit 20)

experience at NYU." Press Release, Office of the Mayor, April 23, 2012 (a true and correct copy of which is attached hereto as Exhibit 22).

64. Over the past 60 years, NYU has embraced the idea of the urban campus, spread throughout the City. Today, NYU has academic facilities stretching from 86th Street on the Upper East Side (Institute of Fine Arts), to the heart of Wall Street (School of Continuing Professional Studies), across the Hudson River in Downtown Brooklyn (new Engineering School), and many locations in between (e.g. the Midtown East Health Corridor). *See* Diagram 1-1 below, excerpted from the Alternatives Analysis. Thus, NYU students often travel around the City for school and social purposes. *See* NYU, Getting to NYU, (a true and correct copy of which is attached hereto as Exhibit 23).

Diagram 1-1



Health Corridor - NYU Langone medical and dental programs
Midtown - School of Continuing and Professional Studies (SCPS) - Midtown Center
Lower Manhattan - High School for Leadership /Merrill Hall, School of Continuing and Professional Studies (SCPS)
Downtown Brooklyn - Polytechnic Institute
Upper East Side - Institute for Fine Arts & Institute for Study of the Ancient World
Roosevelt Island - Faculty Housing

Alternatives Analysis

NYU Remote Locations
Figure 9

65. NYU has designed its academic program to make use of its three "portal campuses" and "study away sites" for the benefit of its faculty research and student learning. Sexton described the University as "a genuine network, integrated and interlocking . . . . Faculty, students, and staff at the various sites are available to each other; and they are able to migrate freely among the constituent parts." Global Network University Reflection, December 21, 2010 (a true and correct copy of which is attached hereto as Exhibit 24). Clearly, NYU's remote teaching and learning abilities are more help than hindrance to its reputation and success, a key component of what makes NYU the world-class university it is.

D. NYU Studies Further Expansion

66. In 2006, NYU announced that it was considering further expansion. At the time, NYU committed "to a public and transparent process for their strategic plan for growth." *See* Community Board 2 ("CB2") Resolution, August 2010 (a true and correct copy of which is attached hereto as Exhibit 25). NYU even helped establish a Task Force made up of Manhattan Borough President Scott Stringer, several elected officials, community stakeholders, and NYU to establish guidelines and goals for any further expansion. CB2 resolution in Support of Task Force Planning Principles, February 6, 2008 (a true and correct copy of which is attached hereto as Exhibit 26).

67. The NYU task force met a number of times. The primary consequence of those meetings was a set of Planning Principles that were executed by NYU. The Planning Principles affirmed that NYU would work with the community to, among other things: (1) Identify and actively pursue opportunities to decentralize facilities; (2) emphasize contextual development that would be sensitive to building heights, densities and materials; (3) prioritize reuse of existing buildings over new development; and (4) actively solicit, utilize, and implement input from the community. *See* CB2 Resolution, March 11, 2012, (a true and correct copy of which is

attached hereto as Exhibit 27). In March 2010, the Task Force presented NYU with a detailed set of recommendations, outlining the goal of pursuing locations for NYU's further expansion outside Greenwich Village. *Id.*

E. Ignoring Its Own Guidelines, NYU Announces Behemoth Sexton Plan

68. However, in 2010, NYU unveiled a massive expansion plan that completely disregarded community concerns and entirely ignored the Planning Principles NYU had previously endorsed. NYU also ignored the detailed recommendations of the Task Force. *See* Community Task Force on NYU Development, Findings and Recommendations, March 2010 (a true and correct copy of which is attached hereto as Exhibit 28). Notwithstanding repeated requests from the community to consider expansion in areas that are not as overcrowded as Greenwich Village, NYU proposed a plan that concentrates its growth in the heart of Greenwich Village and includes buildings that are utterly out of scale with the neighborhood's character.

69. Over the next year, NYU administrators attended various community meetings but continued to ignore the community input and insisted that its expansion within the Superblocks was necessary. *See* NYU Response to Taskforce Recommendations, July 2010 (a true and correct copy of which is attached hereto as Exhibit 29) (stating that "the University is committed to a disciplined prioritization of uses that are essential to be located in the Core."). NYU repeatedly pointed out—somewhat irrelevantly—that its plan also included large expansions outside of the Superblocks, as though that were a justification for overwhelming Greenwich Village. *See id.*

70. Notably, NYU did not disclose its expansion and construction plans to many of the highly sought-after faculty members that it recruited before the public announcement of the Sexton Plan. One of NYU's chief recruiting advantages over peer institutions is its prime location in the heart of historic Greenwich Village. Without the promise of a reasonably priced

apartment in Greenwich Village, many of the existing faculty would have chosen to work for other academic institutions.

71. Even in cases where NYU was specifically aware of the importance of housing conditions to certain potential faculty members, the University failed to disclose the essential fact that the Greenwich Village residences such faculty members were drawn to would soon be converted into a semi-permanent construction zone. According to one heavily recruited professor currently residing in NYU housing in Greenwich Village, given the special needs of her family which she communicated clearly to NYU and which include children with disabilities and a husband who works entirely at home, housing conditions were vital to her decision to join NYU's faculty. Exhibit 5 at ¶ 5. She and her husband believed there would be enough greenery and open space to make city noise and any agitation bearable, given their son's condition in particular. The Sexton Plan threatens to ruin the reasons that drew her to NYU. *Id.*

72. Following the plan certification by DCP on January 3, 2012, NYU presented a completed ULURP application for the Sexton Plan to Community Board 2 that CB2 described as "threaten[ing] to destroy the very essence of the local neighborhood." Exhibit 27. Despite NYU's promises to plan for contextual development and to decentralize facilities outside of Greenwich Village, NYU presented the largest ULURP application ever considered by CB2, including 1.3 million square feet of above-ground development with an estimated addition of 10-12,000 people daily to the area. *Id.* The massive development in an area that is already the most-densely populated district, and the subsequent complete disregard for community input, blatantly defied the promises NYU made in its 2008 Planning Principles.

F. <u>Community Board 2 Rejects Sexton Plan Unanimously</u>

73. After an exhaustive review of the ULURP application, CB2 unanimously rejected the proposal. *See Id.* CB2 concluded, among other things, that the blanket rezoning of the

Superblocks was inappropriate, the deed restrictions governing NYU property on the Superblocks should not be removed, and that NYU must adhere to the Planning Principles it agreed to in 2008. *Id.*

74. Specifically, CB2 concluded that the bulk and density of the proposed development would destroy the neighborhood character of historic Greenwich Village. *Id.* at 6. CB2 also stated that the construction required by the Sexton plan would "cause decades of disruption" in Greenwich Village and questioned whether the new NYU structures would even be necessary by the time they were completed. *Id.* at 7.

75. CB2 also concluded that the transfer to NYU of the public park parcels on the west side of Mercer Street between West 3rd and West 4th Streets, and between Bleecker and Houston Streets, violated the Public Trust Doctrine. CB2 objected to allowing easements to NYU over and below the public park parcels along LaGuardia Place and Mercer Street. *Id.* at 8-9. CB2 described the proposed new open spaces as "ill-conceived" and "unacceptable" and pointed out that the plan would displace existing public parks and playgrounds and replace them with "mostly inward facing space surrounded by huge buildings," thus essentially creating exclusionary campus quads. *Id.* at 11.

76. CB2 also expressed concern regarding the proposed reduction of affordable housing in Greenwich Village, the significant negative environmental and transportation-related impacts that the proposed development would have on the Greenwich Village area, and the lack of a concrete commitment to construct the public elementary and middle school that NYU had promised residents that it would build. *Id.* at 13-19.

G. The ULURP "Process" And Its Deficiencies

77. Despite the many and varied efforts of Petitioner community members to participate in ULURP, they were repeatedly ignored, minimized, and shut out of the process. At

every step, community opposition groups were met with empty promises, closed doors, or complete exclusion. Their requests for additional information and additional time were repeatedly rejected, if they were responded to at all.

78. ULURP was enacted to ensure transparency in public decision-making, but in this case NYU administrators met privately with politicians and agency decision-makers to work out backroom deals that completely excluded community interests, with all important decisions occurring behind closed doors. Contrary to law, Petitioner community members had no seat at the table, and were, in fact, even forcibly expelled on at least one occasion.[3]

79. ULURP was codified in 1976 to ensure that land-use decisions were transparent and public. *See* Department of City Planning, The Evolution of ULURP (a true and correct copy of which is attached hereto as Exhibit 30). ULURP was designed to establish a key role for community interests and provide explicit opportunities for them to contribute to and affect the outcome of land use decisions. Respondent DCP emphasizes the critical impact of community engagement and input on its own website: "Community-based planning is essential to the city's vitality. People who are close to neighborhood issues can clearly identify community needs and advocate passionately for local concerns." *See* DCP, Community Based Planning, Overview (a true and correct copy of which is attached hereto as Exhibit 31). The ULURP process is, at every step, intended to ensure that "community input on significant land use decisions regarding public land" is heard and taken into account. *District 4 Presidents' Council v. Franchise and Concession Review Comm. of City of NY,* 856 N.Y.S.2d 497 (table), slip op. at 3 (N.Y. Sup. Jan. 30, 2008).

[3] During the final City Council vote on July 25, 2012, City Council Speaker Christine Quinn actually ordered that the public be expelled from the City Council chambers before the vote was taken. *See* The Villager, Video: Calls of 'Shame on You' as NYU 2031 is Approved, July 25, 2012 (a true and correct copy of which is attached hereto as Exhibit 32).

80. Tragically—and in complete betrayal of the ULURP principles—the public has absolutely no demonstrable influence on the outcome of ULURP decisions. It is a regrettable reality that the ULURP process is often not a meaningful one. The decisions are made well in advance of any community input. By the time the ULURP application is certified as complete by the Department of City Planning—which is the trigger to *begin* the ULURP process—the approval by the City Planning Commission is already a fait accompli. *See, e.g.*, William Alden, A Call for Transparency in Development Approvals, New York Observer, June 25, 2010 (a true and correct copy of which is attached hereto as Exhibit 33).

81. Moreover, when a land use application implicates both ULURP and the City's environmental review regulations, it is even more difficult for ordinary community residents to engage with the process in any meaningful role. The environmental review is conducted entirely during the pre-ULURP period before any formal community board role begins. *See* 62 RCNY § 2-02(a)(5). The major participants are usually the applicants themselves and relevant city agencies—local community groups may be unable to comment at a time when their input could actually make a difference. Once ULURP does begin, it can be nearly impossible for community members who lack a specialized background to parse the highly technical and complex findings contained in the lengthy environmental impact statements which accompany large project applications.[4]

82. This pattern is particularly troubling because the need to ensure thorough, detailed consideration of the effects of a proposed project on the community and on the environment continues to be crucial as a project gets closer to final approval. In *Matter of Develop Don't Destroy (Brooklyn) Inc. v. Empire State Development Corp.*, the Appellate Division demanded

[4] It is the largest projects that produce the most complex and technical findings. Thus, the public is especially disadvantaged for the projects that have the largest impact on the community.

additional environmental analysis where the agency failed to study or consider the effects of construction that was taking longer than anticipated—an issue members of the community raised early in the process. 2012 NY Slip op. 02752 (1st Dep't Apr. 12, 2012).

83. Here, the ULURP process had been fatally flawed from the outset. The DCP certified NYU's ULURP application on January 3, 2012, less than a month after NYU originally filed the application for a zoning map amendment, a zoning text amendment, and a LSGD Special Permit. *See* Exhibit 20. This certification triggered the beginning of the ULURP process and its rigid time clock: no matter how complex the project, once the relevant community board receives the application, the process must end with approval or rejection by CPC within 150 days and, after that, by the City Council and Mayor within 55 days, or 70 days if the CPC chooses to review the proposed modifications. *See* 62 RCNY § 2-02.

84. Under ULURP, the application is then supposed to be reviewed and approved or disapproved by the relevant Community Board and Borough President. *See* 62 RCNY §§ 2-03 and 2-04. The application then returns to the CPC, which must hold a public hearing before voting for final approval. The determination is supposed to be based on the application and the draft environmental impact statement ("DEIS"). *See* 62 RCNY §2-06(g)(3). During the CPC decision period, which lasts up to 60 days, CPC must openly solicit and respond to public comments on the EIS. *Id.* If the CPC approves, the City Council must hold its own public hearing before voting to approve or disapprove. *See* 62 RCNY §2-06(g)(4). If the City Council proposes any modifications, the application returns to the CPC for a certification that the modifications do not require any additional environmental impact analysis. *See* 62 RCNY §2-06(g)(5). Once the application has been approved in full by both the CPC and the City Council, the mayor has five days to veto the action. *See* City Charter Section 197-d(e).

85. The DEIS was issued on December 30, 2011, just four days before the CPC certified NYU's land use application and triggered the start of the ULURP clock. The massive DEIS had 25 chapters, more than 600 pages, 6 appendices, and covered 18 separate topics. *See generally* NYU Core Draft Environmental Impact Statement, December 30, 2011 (a true and correct copy of which is attached hereto as Exhibit 34).

86. In its Chapter on Mitigation, the DEIS admitted that several adverse impacts of the project could not be fully mitigated:

(a.) Shadows: The significant adverse impacts of shadows on LaGuardia Corner Gardens. The DEIS admitted that mitigation measures proposed would "not serve to fully mitigate the significant adverse impact because the extent of project generated shadows during the growing season would substantially alter the types of plantings that would be viable."

(b.) Construction: Construction impacts that could not be mitigated include significant adverse noise impacts at residential locations such as Washington Square Village and the Silver Towers and at sensitive locations such as open spaces which are proximate to the residential locations.

(c.) Open Space: Temporary displacement of the LaGuardia Corner Gardens could not be mitigated, although the DEIS claimed it would be temporary. However, even after the construction was completed, the LaGuardia Corner Gardens would be shrouded in unmitigated shadows. The DEIS also admitted that that during construction, open spaces would be displaced to accommodate future project buildings and would temporarily exacerbate deficiencies in open space. The DEIS admitted that if feasible mitigation measures cannot be identified to fully mitigate the temporary impact, it would remain unmitigated. Exhibit 14 at 21-1 through 21-20.

87. After CB2 unanimously rejected the Plan, Manhattan Borough President Scott Stringer began privately, and through unilateral negotiations with NYU, working out a private compromise for the Sexton Plan. During his "deliberation" period, Stringer also took one meeting with NYU Faculty, at which he refused to provide any details about any proposed modifications to the Sexton Plan. At the meeting, Stringer rebuked NYU Faculty for their view that he should support the CB2 decision to disapprove the plan. Stringer told NYU Faculty:

"You don't what's going on. You are professors. You have your heads in the clouds. I have to deal with the real world . . . . It's a done deal."

88. Meanwhile, in the closed-door meetings, the Borough President and NYU forged a deal in which, NYU later announced, NYU agreed to certain modifications ("Stringer Modifications") to the Sexton Plan in exchange for Borough President Stringer's support. *See* Letter from John Sexton, President of NYU, to Scott Stringer, Manhattan Borough President, dated April 11 , 2012 (a true and correct copy of which is attached hereto as Exhibit 35).

89. Although the Borough President outlined some of the modifications in his April 11, 2012 Conditional Approval Letter and his subsequent April 30, 2012 letter to constituents, the descriptions were limited and inconsistent.[5] Scott Stringer Conditional Approval Letter on ULURP Application, April 12, 2012 (a true and correct copy of which is attached hereto as Exhibit 36); Stringer Letter to Neighbor, April 30, 2012 (a true and correct copy of which is attached hereto as Exhibit 37). With the CPC public hearing scheduled for April 25, on April 19, 2012, Petitioners NYU Faculty and GVSHP requested in writing that CPC postpone the public hearing to permit sufficient time for additional environmental analysis which would consider the newly modified plan. *See* Gibson Dunn Letter, April 19, 2012 (a true and correct copy of which is attached hereto as Exhibit 38). On April 20, CB2 and Community Action Alliance on NYU 2031 ("CAAN") made similar requests to CPC. *See* Community Board 2 Letter, Apr. 20, 2012 (a true and correct copy of which is attached hereto as Exhibit 39); CAAN Letter, Apr. 20, 2012 (a true and correct copy of which is attached hereto as Exhibit 40). With these submissions, thousands of community members came together to make a simple yet important request: for the

[5] For an analysis of the inconsistencies, *see* the May 7, 2012 Submission to the CPC (a true and correct copy of which is attached hereto as Exhibit 44) (exhibits omitted).

CPC's help in obtaining more time and sufficient information to simply understand and respond to the inconsistent and opaque Stringer Modifications.

90. On April 23, 2012, David Karnovsky, CPC General Counsel, responded that the April 25, 2012, hearing would proceed as scheduled. *See* Karnovsky Letter, Apr. 23, 2012 (a true and correct copy is attached hereto as Exhibit 41). On April 24, 2012, Petitioners responded to Mr. Karnovsky, requesting that the CPC at least postpone the public hearing for a short period of time "to make sure the public has adequate time and information to meaningfully comment" on the Stringer Modifications. Gibson Dunn Letter, Apr. 24, 2012 (a true and correct copy is attached hereto as Exhibit 42). The CPC did not respond to this request. No additional environmental analysis was conducted to assess the Stringer Modifications.

91. On April 25, 2012, the CPC went forward with the public hearing. The CPC public hearing lasted over 9 hours. Of that time, the CPC gave NYU approximately 3 hours to explain information that was already available in its submissions. Then, the CPC jammed hundreds of concerned citizens into a brief six hour window during which individual members of the community had to fit their often detailed and analytical objections to various environmental impacts into three minute time slots. *See* City Planning Commission April 25, 2012 Hearing Transcript at 13:7-8 (a true and correct copy of which is attached hereto as Exhibit 43). Upon information and belief, of the various concerns raised, the CPC failed to follow up with NYU as a result of the hearing and the hundreds of pages of community submissions.

92. Many community members testified that they were unable to meaningfully consider and comment on the Stringer Modifications because the details were not available to the public. *See* Exhibit 43 at 216: 12-16; 569-570. The Community also made hundreds of written submissions to the CPC, including dozens of expert reports that identified numerous flaws in the

EIS. *See* Exhibit 14 at 27-1. Again, the CPC failed to require NYU to respond to a single submission or expert report from the community.

93. The CPC's complete failure to fulfill its responsibilities was, at one point in the hearing, even more glaring. The Borough President had sent Brian Cook, his Director of Land Use, to testify before the CPC about the concessions he extracted in his private meetings with NYU. After Cook's testimony, the CPC asked whether NYU had refused any of the Borough President's requests, and, if so, to explain the rejected requests. Cook refused to answer the question. A mystified audience audibly called for an answer. Cook cited no authority for selectively refusing to answer a question, but merely alluded to concerns about confidentiality, underscoring the back-room nature of the deal. The CPC did nothing to compel an answer to this critical question. *See* Exhibit 43 at 186-188. Despite the obvious significance of this information to the CPC and the public, and despite several requests from Petitioners to follow up, CPC never pursued the issue with Stringer and the process remained shrouded in mystery. Petitioners specifically requested that CPC compel an answer to its own question, and, upon information and belief, the CPC refused to do so, or even to request that NYU itself answer that question.

94. In light of the CPC's complete failure to follow up on valid concerns raised by the Petitioners, Petitioners submitted a further request to CPC on May 7, asking the CPC to specifically require NYU to submit information concerning: (1) how NYU intended to finance the plan; (2) why NYU never considered alternative locations; (3) an estimate of the profit NYU expected to make from commercial uses of its buildings; and (4) a detailed plan for programmatic and nonacademic uses of the various buildings. Exhibit 44. The May 7 Submission requested that the CPC fulfill its obligation to conduct a thorough analysis,

investigate these questions, and provide the public with complete information. *Id.* CPC did not respond to, let alone address, the concerns raised by Petitioners.

95. A month later, on May 25, DCP released a final environmental impact statement ("FEIS"), which finally analyzed the Stringer Modifications almost three weeks after the last opportunity for public input—making a mockery of the ULURP process.[6] *See* Notice of Completion for a Final Environmental Impact Statement, Department of City Planning, May 25, 2012 (a true and correct copy of which is attached hereto as Exhibit 45). Petitioners requested an additional hearing to vet the modifications. Again, the CPC simply refused to respond to the request. Importantly, the analysis in the FEIS was performed after the public comment period had closed, meaning that the public never had the opportunity to review and respond to Respondent DCP's analysis, in direct contravention of law. Then, on June 6, 2012, CPC approved the Sexton Plan with some minor modifications that did not even include some of the few concessions that Stringer had received in return for his approval. *See* Matt Chaban, Scott Stringer Says City Planning Backpedaled, and Other NYU Zoning Redactions, New York Observer, June 7, 2012 (a true and correct copy of which is attached hereto as Exhibit 46).

96. NYU, seeing no further use in abiding by its agreement with Stringer, promptly abandoned the agreement on June 14. *See* "The 411 from the Feline", *The Villager*, June 14, 2012 (a true and correct copy of which is attached hereto as Exhibit 47). In a complete about-face, NYU suddenly announced that the Stringer Modifications were just a non-binding recommendation. *Id.* NYU disclaimed any deal with Borough President Stringer—in direct contradiction to the prior public statement of NYU President John Sexton. Exhibit 35. As with the Planning Principles, NYU quickly agreed when it served its purposes and just as quickly broke that trust whenever it was convenient.

[6] Public submissions on the EIS were not accepted after May 7.

97. With this announcement, it was undeniable that the plan that the CPC had approved, and which was on its way to the City Council for review, bore little relation to the true outlines of NYU's intended development. Instead of using a rational decision-making process, the CPC approved the Sexton Plan based on incomplete, and sometimes simply false, information. *See* City Planning Commission Report, June 6, 2012 (a true and correct copy of which is attached hereto as Exhibit 16).

H. The Environmental Impact Statement And Its Deficiencies

98. Among the many defects of the ULURP process, CPC relied on a hopelessly-flawed Environmental Impact Statement.

99. Between the CPC hearing on April 25, 2012, and May 7, 2012, nearly 900 organizations and individuals submitted written comments on the content, analysis, and assumptions contained in the DEIS. *See* Exhibit 14 at 27-1. The CB2, NYU Faculty, and GVSHP were among the organizations which submitted detailed objections to the DEIS and highlighted the loss of park areas, including the park parcels on Mercer Street, the LaGuardia Corner Gardens, the Time Landscape, and the Sasaki Garden—one of the first rooftop gardens in the United States. *See* Exhibit 27; Exhibit 44; and GVSHP Submission, April 25, 2012 (a true and correct copy of which is attached as Exhibit 48).

100. In its lengthy May 7, 2012 submission ("May 7 Submission"), Petitioners GVSHP and the NYU Faculty included exhaustive and wide-ranging comments on the environmental analysis conducted in the DEIS. Exhibit 44. As it highlighted, the environmental analysis conducted in the DEIS was grossly deficient in numerous areas and failed to meet the technical guidelines set out by the CEQR Technical Manual. Some of these areas included:

(a.) **Displacement of Necessary Services.** The DEIS did not assess the number of residents the health care facilities serve, whether the services of any are essential,

and whether adequate services from others can fill the need for the services provided.

(b.) **Commercial Displacement.** The DEIS failed to consider whether new uses in the commercial zone would impact values and rents.

(c.) **Residential Displacement.** The DEIS failed to consider what percentage of the population growth will be young, transient students, and whether their addition will substantially alter the demographics of the residential real estate market conditions.

(d.) **Adverse Impact on Specific Industry.** The DEIS failed to consider the adverse effects on the NYU faculty.

(e.) **Community Facilities and Services**. The DEIS failed to provide any meaningful assessment of the sizeable increase in NYU's "footprint" within the Superblocks, the necessarily large increase on users of those facilities, and the impact on emergency services, such as police, fire, ambulance and hospital services (including the impact of the 2010 closure of St. Vincent's Hospital).

(f.) **Open Space.** The Open Space analysis methodology contained serious flaws.

(g.) **Wildlife.** The DEIS glossed over the plan's adverse impact on the native wildlife, particularly the habitat of red-tailed hawks and other bird species which make their homes in the Greenwich Village neighborhood.

(h.) **Transportation.** Rather than a hard look at transportation impacts from the Sexton Plan, the DEIS ignored the true effects of the project. *See* Exhibit 27 at 16.

(i.) **Noise.** The DEIS failed to consider the possibility of increased traffic noise during atypical hours—a likely scenario where a student demographic works and socializes on a schedule different from that of a typical resident (evening dormitory noise is particularly problematic). The DEIS also did not consider that the addition of new student dormitories will exacerbate the problem of late-night noise from students.

(j.) **Public Health.** The DEIS ignored the fact that adding a large new population (10,000 to 12,000 per day according to the DEIS) and changing the physical configuration of the neighborhood has the potential to overburden medical infrastructure, local police precincts, and other emergency services.

(k.) **Neighborhood Character.** The DEIS widely missed the mark in concluding that "the Proposed Actions would not have a significant adverse impact on neighborhood character in the study area." DEIS at 19-2. The bulk, density, and height of the proposal are wholly inappropriate for a historic residential district.

(l.) **Construction.** The DEIS failed to adequately analyze the effects of at least 20 years of persistent construction on a dense residential district. The constant construction will greatly increase congestion, as heavy truck use is required to deliver construction materials and remove debris, and additional private motor vehicle trips will take place to transport construction workers, which will also increase congestion as these vehicles search for parking. The DEIS did not even attempt to take a hard look at the significant adverse effects on subway stations, and suggests that mitigation measures to reduce the impacts on transportation might be infeasible.

101. The May 7 Submission also attached several independently-commissioned expert reports which challenged, among other things:

(a.) NYU's assertions on the importance of campus proximity (*see* GVSHP Report, GVSHP Campus Comparison, June 1, 2010 (true and correct copy of which is attached hereto as Exhibit 49));

(b.) NYU's failure to justify its need for expansion within Greenwich Village, (*see* GVSHP Report, Too Big to Fit, Mar. 30, 2012 (a true and correct copy of which is attached hereto as Exhibit 50)); and

(c.) NYU's calculation that the proposed development would eventually increase publicly accessible open space. Indeed, the Hunter report, attached as an exhibit to the May 7 Submission, identified serious flaws in the DEIS' application of the methodology required by the CEQR Technical Manual to be used in open space calculations. *See* Hunter College Center for Community Planning and Development, Getting to NYU's Core: Greenwich Village Proposal Means Less Open Space, May 6, 2012 (a true and correct copy of which is attached hereto as Exhibit 51).

102. Finally, the May 7 Submission identified gaps in the information provided by NYU, and urged the CPC to require NYU to provide detailed data regarding any changes to construction phasing, a discussion of alternatives considered and rejected, and a full environmental analysis of the Stringer Modifications. Exhibit 44 at 10-11.

103. On May 25, 2012, DCP, on behalf of CPC as lead agency, issued a Notice of Completion for NYU's FEIS. Exhibit 45. While the FEIS included an additional chapter which listed and responded to the public comments received on the DEIS, the critical flaws in the

substantive analysis and the methodology employed remained unaddressed. *See* Exhibit 14 at 27.

104. Since the FEIS was approved, Petitioners have conducted an independent, expert assessment of the environmental analysis conducted in the FEIS, and have confirmed numerous flaws in its methodologies and conclusions. *See* Angotti Affidavit (a true and correct copy of which is attached hereto as Exhibit 52). These deficiencies identified include improper use of the CEQR Guidelines, failure to disclose significant negative impacts, the adoption of an unrealistic timeline for completion of construction, and failure to appropriately address mitigation possibilities. *Id.* at ¶ 7.

105. Although the Sexton Plan explicitly calls for the destruction of the Sasaki Garden as well as two parcels of public open space on Mercer Street and LaGuardia Place, and would indirectly destroy LaGuardia Corner Gardens and Time Landscape Garden, NYU has maintained in its public materials, including its FEIS, that its development plan would actually increase the amount of available publicly accessible open space. *Id.* at ¶ 10.

106. As Petitioners' expert has demonstrated, the FEIS conclusion is premised on faulty methodology, which fails to count existing, publicly accessible open space. The FEIS methodology excludes the entire Sasaki Garden and LaGuardia Corner Gardens, as well as the Coles Gymnasium, which are regularly used by the Greenwich Village community. *Id.* at ¶ 13. This sleight of hand allows the FEIS to use an artificially low acreage for existing open space and later show a net increase. *Id.* at ¶ 15. In fact, if all current existing open space is counted, the Sexton Plan will result in a net loss of 2.84 acres of open space. *Id.* at ¶ 10. This net loss represents a 2.6% reduction in the Open Space Ratio, which the FEIS failed to acknowledge amounts to a negative environmental impact. Id. at ¶ 16.

107. Not only does the FEIS undercount existing open space, but it also is over-inclusive when it comes to counting open spaces that would exist under the Sexton Plan. Mercer Street Playground would be destroyed by the Sexton Plan, and would essentially be replaced by a paved plaza and a much smaller playground. *Id.* at ¶ 26. The Coles Playground and Dog Run would be turned into a broad concrete path in the block interior, which would likely be used exclusively for circulation within the block. *Id.* at ¶¶ 24. Yet the FEIS counts both of these paved spaces as "open space" in its analysis. *Id.* at ¶ 25.

108. The FEIS also fails to fully disclose the serious adverse effects on natural resources, such as air quality and greenhouse gases, that would be caused by the reduction in open space. In addition to the destruction of the LaGuardia Corner Gardens and the very possible destruction of the Time Landscape Garden, NYU's construction plan would eliminate 301 mature trees from the Superblocks, and although the FEIS proposes some replacement planting, such replacement is entirely at NYU's discretion; it is within NYU's rights under the FEIS to remove all of the 301 trees without replacing any of them. *Id.* at ¶ 36. These trees contribute greatly to reduction of air pollution, carbon sequestration, and the reduction of greenhouse gases. *Id.* at ¶ 34.

109. Moreover, even if NYU were to replace some or even all of the mature trees it will destroy, the FEIS fails to acknowledge that newly planted, young trees have a higher mortality rate than mature trees and do not have the same capacity to absorb air pollutants such as mature trees do. *Id.* at ¶ 33. Additionally, the FEIS fails to acknowledge that, with sewer overflows being a serious problem, the relevant mature tree roots soak up rainwater, intercepting over 500,000 gallons of rainwater annually. The FEIS also does not disclose that it would take decades to regenerate the trees to the point that they contribute positively to air quality. Id. at ¶

36. In addition, history shows that NYU has a poor track record for caring for trees on their property and that even the trees that are projected to survive under the FEIS are likely to be substantially compromised. *Id.* at ¶ 33.

110. The FEIS also failed to adequately address opportunities to mitigate the harms posed by the plan. The mitigation efforts are irrational, such as proposing a plaque to mitigate the loss of the Sasaki Gardens. *Id.* at ¶ 48.

111. As approved by the CPC and City Council, NYU's FEIS adopts a two-phase construction timeline, with the most disruptive construction scheduled for completion by 2021. *Id.* at ¶ . The FEIS discloses a number of serious adverse environmental impacts which could not be mitigated during this construction—noise, shadows, traffic, and air quality—but assumes, based on its expected timeline, that these adverse effects would end in 2021, which seems unlikely given NYU's history of construction delays and lack of showing of capacity to complete the project. *Id.* at ¶ 42. In contravention to CEQR's requirement that an FEIS consider all reasonable worst case scenarios, NYU's FEIS does not consider the potential additional adverse effects should construction continue beyond this timeline. *Id.* at ¶ .

112. The failure of DCP, CPC, and the City Council to take a hard look at the FEIS resulted in a decision that was arbitrary and capricious.

I. City Council's Action

113. A month after the CPC's troubling approval of NYU's application, on June 29, 2012, the City Council's Zoning and Franchises subcommittee held a hearing to review the Sexton Plan, during which hundreds of Greenwich Village residents and NYU faculty voiced their objections. *See* City Council Zoning and Franchises subcommittee June 29, 2012 Hearing Transcript (a true and correct copy of which is attached hereto as Exhibit 53). Gibson Dunn forwarded the May 7 Submission—including the expert reports that pointed out the flaws in the

EIS—to every member of the Subcommittee, and urged a full factual investigation. *See* Gibson Dunn letter to City Council Zoning and Franchises subcommittee June 29, 2012 (a true and correct copy of which is attached hereto as Exhibit 54). No further public discussions were held. Upon information and belief, the Subcommittee made no request whatsoever that NYU provide any further information to address the serious concerns of, and impacts on, the community.

114. Due to increasing concerns that NYU would not be financially capable of financing this project, NYU Faculty sent an open letter to President Sexton on July 9, 2012 requesting that NYU provide a business plan to the City Council as well as to the public. NYU's relatively small endowment cannot support such an ambitious project, and a possible default raises the specter of permanent holes in the ground or half-constructed buildings. NYU Faculty requested that this information be provided as soon as possible, given that the City Council was slated to vote on the plan only a few weeks later and could not make a fully-informed decision without this basic information. *See* Open Letter to President John Sexton, July 9, 2012 (a true and correct copy of which is attached hereto as Exhibit 55). NYU provided no information in response to this appeal from its faculty members, instead simply reiterating its unsubstantiated statements that the proposals "emerge out of our honest, best assessment of the academic space needs of our faculty and our schools" and "strike a good balance." *See* NYU Faculty Calls Out Sexton's 2031 Plan in Open Letter, The Village Voice, July 10, 2012 (a true and correct copy of which is attached hereto as Exhibit 56).

115. Three days later, on July 12, 2012, Petitioners GVSHP and NYU Faculty sent a letter to every member of the Zoning and Franchises subcommittee, imploring the Subcommittee and City Council to require that NYU substantiate its claims[7] with real data. For the fourth time,

[7] These include: (1) Sexton's claim that 10,000 students attend classes on Fridays; (2) Sexton's claim that median student debt is only $7000 after graduation; (3) the claim that NYU has made optimal academic use of existing

Petitioners asked that NYU be required to produce a long-term plan for funding the Sexton Plan and financing the resulting debt. *See* Letter from GVSHP and NYU Faculty, July 12, 2012 (a true and correct copy of which is attached hereto as Exhibit 57).

116. Neither the CPC nor the City Council took up these basic inquiries, despite the fact that the Subcommittee members had posed many of these questions at the hearing and received evasive responses. *See, e.g.* Exhibit 53 at 73-78. Neither the CPC nor the City Council demanded a business plan or an evidentiary basis for NYU's unsubstantiated claim of "need" for more concentrated space within the Superblocks, which covered a hodge-podge of issues (described further, infra). An NYU Faculty July 13 letter to the NYU Board of Trustees was similarly stonewalled. *See* July 13, 2012 Letter (a true and correct copy of which is attached hereto as Exhibit 58).

117. Councilmember Margaret Chin, who represents the district that includes Greenwich Village, was heavily involved in the Subcommittee hearing and consideration process (despite not being a Subcommittee member). *See* Exhibit 53. As the Councilmember whose constituents were most affected by the Sexton Plan, she was looked to by her colleagues as a very influential vote. *See* "NYU Expansion Plan Nears Final Approval", Wall Street Journal, July 17, 2012 (a true and correct copy of which is attached hereto as Exhibit 59). During this time period, Councilmember Chin met in secret with NYU. *See* Chin Press Release Supporting Modified NYU 2031 Plan, July 17, 2012 (a true and correct copy of which is attached hereto as Exhibit 60). The existence of these negotiations was not disclosed in advance, and none of the Petitioners or the public was ever informed of their substance.

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space in the nearby existing buildings; and (4) the claim that there is a need for additional faculty housing when over 100 existing faculty apartments are kept vacant.

118. On July 17, 2012, NYU struck a "last minute deal" with Councilmember Margaret Chin, and the City Council Land Use Subcommittee voted to approve the Sexton Plan with further modifications. Laura Kusisto, NYU Trims Growth Plan to Win Clearance, Wall Street Journal, July 17, 2012 (a true and correct copy of which is attached hereto as Exhibit 61); NYU Expansion Plan Approved by City Council Committees Despite Intense Faculty Opposition, The Gothamist, July 17, 2012 (a true and correct copy of which is attached hereto as Exhibit 62). No additional environmental assessment was conducted to consider the further modifications.

119. On July 25, 2012 the full City Council approved the modified version of the Sexton Plan which was the product of closed-door negotiations between NYU and members of the City Council, including City Council Speaker Christine Quinn and Councilmember Chin. *See* Restrictive Declaration of Large Scale General Development for the NYU LSGD, July 24, 2012 (a true and correct copy of which is attached here Exhibit 89). The vote was clearly a foregone conclusion—notwithstanding the public's overwhelming disapproval—as evidenced by the fact that the City Council had the audacity to issue a press release that morning publicizing the approval *before the vote had taken place*. *See* Exhibit 4.

120. To make matters worse, whereas ULURP requires a public vote, Speaker Christine Quinn ordered that the public be forcibly expelled from the City Council chambers before the formal vote was taken. This disproportionately draconian action was taken based only on a few hecklers. *NYU Expansion Critics Tossed Out of City Council Chambers Before 'Yes' Vote*, DNAinfo.com, July 25, 2012 (a true and correct copy of which is attached hereto as Exhibit 63). After expelling the public, the Speaker then tried to allow NYU's own officials back into the Chambers to attend the vote. *See* "City Council O.K.'s N.Y.U. plan; Antis booted

out before vote", The Villager, July 26, 2012 (a true and correct copy of which is attached hereto as Exhibit 64).

121. As is readily apparent from this description, ULURP provides a host of opportunities for public input and involvement. However, in this case, the public was ignored, excluded, and rebuffed in an arbitrary and capricious manner at every turn. Rather than engage with the community, provide transparency, answer questions openly and honestly, require that NYU respond to valid concerns and issues, the Respondents failed in their obligations to the public.

J. City Respondents Knowingly Ignored the Key Fact that NYU Made No Substantial Showing of Need.

122. The Sexton Plan is premised on an oft-reported—but utterly unsubstantiated—"need" for additional space. NYU claimed to have conducted a careful and honest assessment of its academic space needs which informed the shape of the expansion plan, yet the method used to evaluate these "needs" still remains a mystery. *See* Exhibit 53 at 52.

123. Moreover, NYU utterly failed to provide sufficient information to explain, let alone justify, why it needed concentrated space in the Superblocks, such that a massive zoning change was justified and why deed restrictions in favor of the public should be lifted. Indeed, the varied and various uses originally proposed for the 2 million square feet of new space contemplated by Sexton Plan—a hotel, retail space, student housing, a public school, faculty housing, a performance theater, new athletic facilities, additional lounges—is proof in itself that NYU's many other campus sites, or adjoining sites, could house the facilities. *See* Exhibit 27.

124. One can imagine why NYU *would like to* concentrate these projects on the Superblocks, despite deed restrictions that clearly prevent it from doing so. But NYU never offered one shred of evidence that it *needed to* place these specific projects within the Core,

other than to say "in order to continue to thrive academically, it needs additional space." Exhibit 34, 1-14. And Respondents never forced NYU to back up its claimed need with actual evidence. Indeed, out of the other side of its mouth NYU touts the benefits of having university functions spread throughout the city and the country:

> "We have always been proud of our fluid relationship with the space of the City—free from confining walls, NYU has been able to reach more students offering entire degree programs through its branch in Westchester, where students can work towards degrees in business, medicine, social work, and IT. [The School of Continuing Professional Studies] offers real estate, business, and media courses at its center in Midtown and Global Affairs courses at the historic Woolworth Building downtown. The School of Social Work also awards degrees in combined programs at St. Thomas Aquinas and at Sarah Lawrence."

NYU, "Flexibility" (a true and correct copy of which is attached hereto at Exhibit 65).

125. Furthermore, NYU has reported other figures that undermine that claim of supposed need. The university states that they are now at a virtual stopping point in growth and project an average annual increase of only .5% for the next 25 years. *See* Exhibit 53 at 75. NYU does not even need for the majority of the space it is trying to consume: According to the original plan, during the first decade of construction, only 17.5% of the square feet to be developed in this project was slated for academic use. Exhibit 27 at 8. That NYU plans to use such a small portion of the space for academic purposes refutes their supposedly drastic need for more academic space.

126. Despite the lack of evidence offered to support NYU's "need," CPC Chair Amanda Burden made it clear that the CPC's approval of the Sexton Plan was premised expressly and almost exclusively on NYU's professed need for expansion. In her public statement, Chair Burden asserted that the CPC "heard strong support for NYU's need to grow and modernize its academic core in order to remain a globally competitive institution [and] an

economic anchor for New York City." Similarly, the Subcommittee for Zoning and Franchises explicitly justified its July 17, 2012 approval of the modified expansion plan by citing NYU's supposed need for greater academic space. Exhibit 60 (City Councilmember Margaret Chin stated that the plan as approved by this subcommittee would meet "NYU's immediate academic needs").

127. Unlike the CPC and the City Council who were all too ready to accept NYU's assertion of need, many community members are troubled by the fact that this "need" was not established on the record and is in direct conflict with the NYU Faculty's well-publicized concerns that expansion could place NYU's status as a globally competitive institution at risk. Exhibit 58. At the various public hearings, many concerned community and faculty members asked why NYU needed such a large and costly expansion. Exhibit 43 ("We really question this whole north super block being part of this plan in the first place. We resent having to give NYU this open line of credit for the future which they may or may not need." David Gruber, co-chair of the NYU Working Group for the Community Board, Exhibit 43 at 70:18-22; "Moreover, we're concerned about the enormous amount of new construction that is planned which would cause decades of disruption to local residents, many of whom are seniors." Brad Holyman, Chair of Community Board 2, *Id.* at 51:9-13; "NYU's been very vague about how they would pay for their plan. Their endowment is very low, famously low, and only covers about one-half the estimated cost of the plan." Peter Wisbicki, Grad Student, *Id.* at 389:3-6).

128. In addition, many members of NYU Faculty reported that NYU's claim of need was belied by its decision to keep many faculty apartments empty and its ability to locate some of the proposed facilities elsewhere. *See e.g.*, *id.* at 122:4; 140:6.

129. Throughout the ULURP process, NYU demonstrated an extreme reluctance to provide the public—or the government agencies responsible for evaluating and approving the ULURP application—with any specific data or information to support the supposed need for additional space. Only on May 7, 2012, after the time allotted for public comment had expired, did NYU finally create a "Working Group on Space Priorities," a committee tasked with evaluating space needs. *See* Sexton Memorandum to the Senate Executive Committee, May 7, 2012 (a true and correct copy of which is attached hereto as Exhibit 66). This last-minute creation of a task force to substantiate the most fundamental premise that NYU relied upon in its ULURP application reeks of post-hoc rationalization. And, as of the date of this pleading, the task force has yet to release any sort of public report of findings. *See* John Sexton, A Welcome at the Start of Academic Year 2012-2013, Sept. 12, 2012 (a true and correct copy of which is attached hereto as Exhibit 67). The fact that the Respondent city agencies did not take a hard look at NYU's claims of need—but cited that need as a basis for approving a massive zoning change and the lifting of deed restrictions, to which NYU specifically agreed in obtaining the property at below-market rates—is the height of arbitrary and capricious decision-making.

130. The few public statements on need which NYU has made have been thoroughly refuted:

- NYU's key central assumption, as stated in its FEIS without further analysis, is that, "the expansion needs of existing NYU schools and divisions that are already located at the Washington Square campus... cannot be as well served by facilities in remote locations." Exhibit 14 at 1-19. This claim is belied by comparative analyses of similar urban campuses which demonstrate that alternative campus arrangements are feasible and highly successful. Exhibit 8. NYU has failed to articulate why a majority of the expansion must be located in a two superblock radius. This is particularly perplexing when the FEIS, itself, indicated plans for NYU to use 715,000 square feet of repurposed existing space within a ¼ mile radius of the Superblocks. Moreover, Petitioners' expert also found that "NYU has a history of expansion outside Greenwich Village, with campus locations in at least 6 additional areas of New York City." Angotti Affidavit, Exhibit 52 at ¶ 44.

- NYU has also asserted that its survival depends on, "attracting a critical mass of faculty to live in the area," and that it must build to address a shortage of available faculty housing. Exhibit 14 at 1-21. Yet, the data demonstrate that NYU's claimed "need" is imaginary. Over the past forty years, NYU faculty housing has decreased by 14.2 percent, a decrease directly attributable to decisions made by NYU to engage in apartment combinations and "warehousing"—the practice of leaving certain apartments empty. According to one NYU faculty member, "any sense of crunch of faculty housing at NYU is erroneous. A recent count by faculty opposed to the plan has come up with 175 vacant apartments in Washington Square Village." Statement of Andrew Needham to CPC, May 3, 2012 (a true and correct copy of which is attached hereto as Exhibit 68).

- Both of these points suggest that NYU's space rationale is predicated on self-created hardship.

131. Indeed, NYU faculty members, well-positioned to evaluate the academic "need" of the university, are overwhelmingly opposed to the project. Thirty-four NYU academic departments and Programs, as well as the Gallatin School of Individualized Study, the Silver School of Social Work, and the Stern Business School, voted unanimous or near unanimous resolutions in opposition to the project. NYU Departmental Resolutions, NYUFASP, July 19, 2012 (a true and correct copy of which is attached hereto as Exhibit 69). This number includes the Chemistry Department, one of the main science departments that NYU claims are in "need" of this expansion plan. *See id.*

132. The faculty's opposition is based on the conclusion that, not only is a massive expansion plan unnecessary for the University's continued excellence, but it could actually jeopardize the University's long-term fiscal health and academic reputation. *See, e.g.*, Stern School of Business Resolution, June 26, 2012 (a true and correct copy of which is attached hereto as Exhibit 70). Twenty years of unfettered construction will harm the University's ability to recruit talented professors. Luring existing faculty from other institutions with promises of quality housing for their families, then forcing them to live in a twenty-year construction zone,

will not help. NYU touts its location as charming, historical Greenwich Village but the Sexton Plan undermines that very charming historical character. *See* Visitor Information (a true and correct copy of which is attached hereto as Exhibit 71) (Greenwich Village is "[o]ne of the city's most creative and energetic communities, the Village is a historic neighborhood that has attracted generations of writers, musicians, artists and intellectuals."). Making assurances to protect low- and moderate-income housing, and then making that housing uninhabitable through serious environmental impacts, is not a way to enhance the institution's reputation and attract capital.

133. Moreover, NYU lacks the large endowment typically associated with its peer schools and has not provided a long-term plan for funding and financing the multi-billion dollar project. When asked by the Subcommittee on Zoning and Franchise whether the University could afford the surely enormous cost of the Sexton Plan, NYU President John Sexton dodged the question by simply asserting that he is "supremely confident" in NYU's financial stability. *See,* Exhibit 53 at 62.

134. Notwithstanding Sexton's "confidence," the faculty understands that the plan would be financed by unsustainable levels of debt and increased tuition. NYU runs the risk of defaulting on its loans and being unable to complete the project, which could threaten the viability of the institution and its critical role as an employer in New York City.[8] Increased tuition would further burden a student body that already struggles with the one of the highest student-debt burdens in the United States. *Student Debt and the Class of 2012,* The Project on Student Debt, November 2011, (a true and correct copy of which is attached hereto as Exhibit 72). And NYU has already been named by Princeton Review as having the worst financial aid in the United States. *Students Slam NYU's Financial Aid Program and Leadership in Survey,*

[8] It would not be the first time an NYU development was underfinanced; the Bobst Library on the Education Superblock was stalled for three years for lack of financing, leaving a huge hole in the ground

DNAinfo.com, August 21, 2012 (a true and correct copy of which is attached hereto as Exhibit 73).

135. Together, these factors are likely to lead to larger class sizes comprised of students who can afford exorbitant tuition, which will necessitate lowering NYU's admissions standards.

136. When asked for specific data and information by the CPC and the Subcommittee on Zoning and Franchises, NYU has side-stepped the issue or merely offered inaccurate information. When City Council members posed concerns over rising tuition costs and heavy student debt burdens, President Sexton misleadingly explained that the median graduating NYU debt was $7,000. Exhibit 53 at 77. In fact, NYU students carry an average debt burden of $41,000 per student. Exhibit 72. In responding to the accusation that NYU already had a high student debt problem, President Sexton further underscored his absurd position by implausibly stating that many NYU students take pride in needing to work three jobs to pay for their education. *See* Exhibit 53 at 76.

137. NYU was also unable to provide detailed information regarding the number of students who currently attend class on Fridays, despite the obvious relevance of this question to an accurate assessment of need (because the unused classroom space could be used to alleviate space needs). *See id.* at 394. NYU has also ignored CPC requests for corroborating numbers on the vacant faculty apartments and the need for additional housing. *See id.* at 255.

138. Most troubling, however, is the fact that the Respondents repeatedly failed to follow up on any of these issues. The City Council members and the CPC did not even follow up on the issues that they themselves raised—such as the number of vacant faculty apartments—much less the numerous issues publicly identified by the community.

K. The Final Analysis: The Process Did Not Work

139. The massive, unmitigated environmental impact of the Sexton Plan was obviously not a major consideration of the politicians and agency decision-makers. Instead, they appeared more interested in grandstanding regarding their "successful" efforts to marginally reduce NYU's gargantuan project. Rather than truly address the concerns of the community, the decision-makers used the ULURP process to slice and dice small pieces off of the NYU proposal so that they could claim political victories to their constituents. But, in so doing, they brazenly ignored numerous legal requirements that are outlined below.

STATEMENT OF ILLEGAL ACTIONS

1. Illegal Action: Alienating Public Parkland

140. The CPC and City Council illegally alienated public parkland—both by transferring it to NYU and by granting NYU detrimental easements—without securing state legislative authorization in violation of the Public Trust Doctrine.

(a.) Legal requirements

141. The Public Trust Doctrine is the common law principle that certain resources, such as parkland, are held in trust by the government for public use, and the government must maintain these resources for such use. *See Ackerman v. Steisel,* 480 N.Y.S.2d 556, 558 (N.Y. App. Div. 1984) ("Dedicated park areas in New York are impressed with a public trust, and their use for other than park purposes, either for a period of years or permanently, requires the direct and specific approval of the State Legislature, plainly conferred."); 1981 N.Y. Op. Atty. Gen. (Inf.) 242 ("Park land is held in the public trust and may not be diverted to other uses."). Based on this principle, the Court of Appeals—for well over a century—has time and again upheld the concept that legislative approval is required before parkland can be alienated for private, non-park purposes. *See Friends of Van Cortlandt* v. *City of New York,* 95 N.Y.2d 623, 631-32

(2001); *Williams* v. *Gallatin,* 229 N.Y. 248, 254 (1920); *Brooklyn Park Comm'rs* v. *Armstrong,* 45 N.Y. 234, 243 (1871). Furthermore, courts have emphasized that the "minimal degree of alienation that is required to trigger" the applicability of the public trust doctrine is "well established." *Brooklyn Heights Assn., Inc. v. N.Y. State Office of Parks, Recreation and Historic Preservation*, Index No. 1120/11 (Sup. Ct. Kings Cty. Nov. 10, 2011).

142. Moreover, courts have found that the parkland does not even need to be expressly dedicated. *Vill. of Croton-on-Hudson v. Westchester County*, 331 N.Y.S.2d 883 (N.Y. App. Div. 1972); 1981 N.Y. Op. Atty. Gen. (Inf.) 242 ("Land can become dedicated for park purposes through its improvement and use as a park."). Parks may enjoy the protection of the public trust doctrine even where there is no "formal dedication of the land to [park] use" when "the long-continued use of the land for park purposes constitutes a dedication and acceptance by implication." *Vill. of Croton-on-Hudson*, 331 N.Y.S.2d at 884. Indicia that land has been impliedly dedicated as parkland include "sign[s] at the park entrance" naming the land a park, and government efforts to maintain and improve the land for park purposes. *Riverview Partners, L.P. v. City of Peekskill*, 273 A.D.2d 455, 455-56 (2d Dep't 2000).

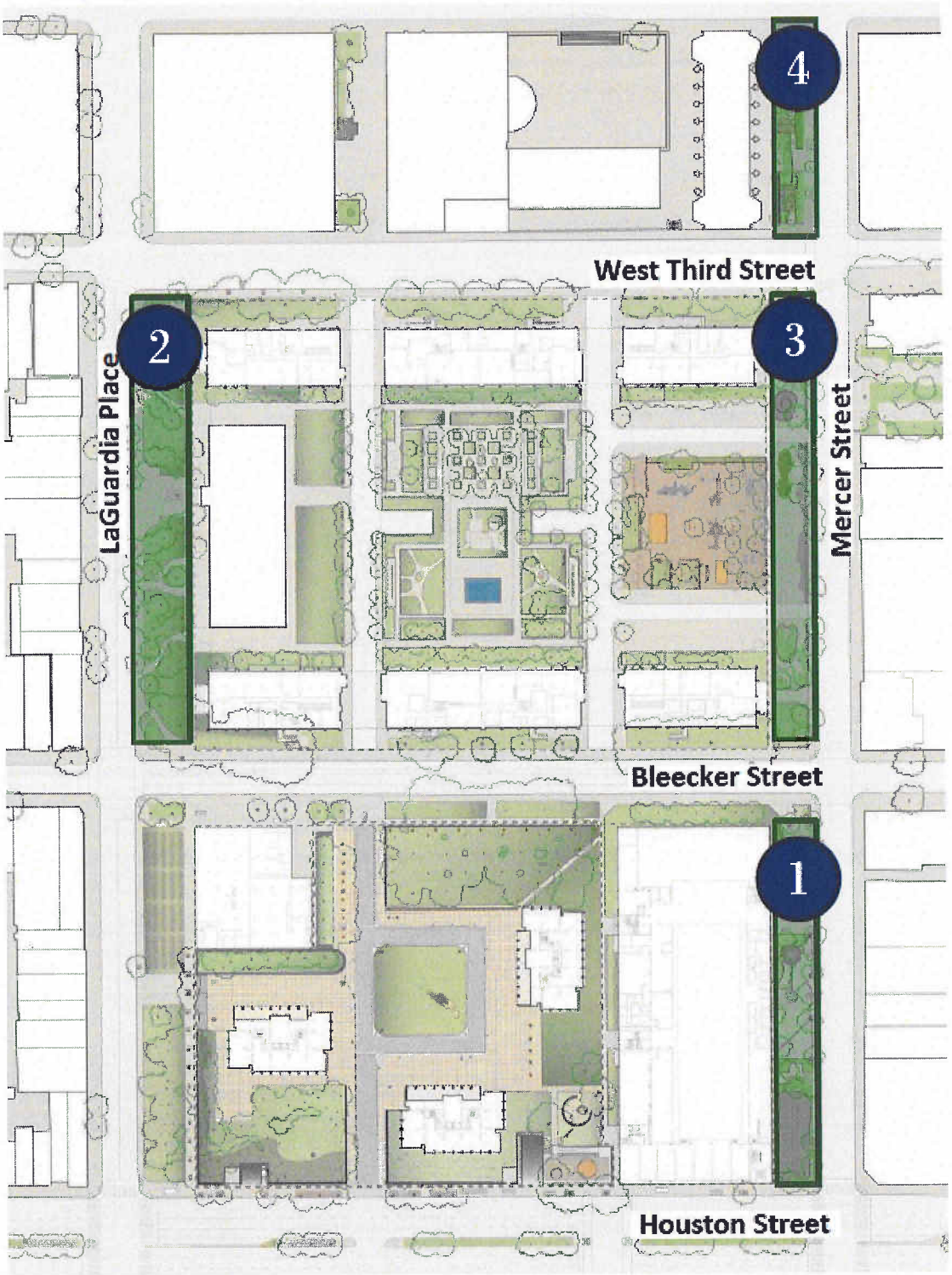
143. In 1913, the State Legislature codified the public trust doctrine in Section 20(2) of the General City Law, which declared that "the rights of a city in and to its water front, ferries, bridges, wharf property, land under water, public landings, wharves, docks, streets, avenues, parks, and all other public places, are hereby declared to be inalienable." N.Y. Gen. City Law § 20(2). Hence, under statute as well as under common law, alienation of municipal parkland is unlawful unless expressly authorized by the State Legislature.

(b.) Overview of Relevant facts

144. The Sexton Plan requires the City to transfer to NYU two parcels of City-owned land currently used as public parkland. These parcels of land are located along the west side of

Mercer Street between West Houston and Bleecker Streets (labeled 1 in Diagram 2-1, below) and between West 3rd Street and West 4th Streets (labeled 4 in Diagram 2-1, below), *see* Exhibit 14 at 1-7. *See* Diagram 2-1 below, reprinted from NYU 2031 Core ULURP Proposal, p. 20 (Jan. 9, 2012). The Department of Transportation maintains jurisdiction over the parcels. Exhibit 15.

Diagram 2-1


4
West Third Street
2
3
LaGuardia Place
Mercer Street
Bleecker Street
1
Houston Street

145. The public has long used these parcels for recreation, relaxation and community activities. Located on the West Houston-Bleecker Street parcel is the Mercer-Houston Dog Run, a popular dog park built in the 1980s that is maintained by a membership association and frequented by over 300 dog owners. Exhibit 27 at p. 10. Natalie Rinn, *Expansion Explainer: Why Dogs are Always at N.Y.U. 2031 Protests*, THE LOCAL EAST VILLAGE, in collaboration with THE NEW YORK TIMES, Mar. 29, 2012 (a true and correct copy of which is attached hereto as Exhibit 74); *No Bones About It, Mercer Run is Looking Magnificent*, THE VILLAGER, Aug. 5-11, 2009 (a true and correct copy of which is attached hereto as Exhibit 75). A photograph of the dog run is reprinted below. Affidavit of Kristen Aigeldinger (a true and correct copy of which is attached hereto as Exhibit 76).

Photograph 2-1

146. The West 3rd-West 4th Street parcel contains a park that NYU recently rebuilt to restore public land it had damaged during construction of its underground cogeneration plant. Exhibit 27 at p. 10. The park, pictured below, contains plants, flowers, shallow-rooting trees, and seating for the public. Exhibit 76; Terri Cude and Martin Tessler, *When Parks Aren't Parks: Stripping Away the Façade*, THE VILLAGER, Oct. 6-12, 2011 (a true and correct copy of which is attached hereto as Exhibit 88.

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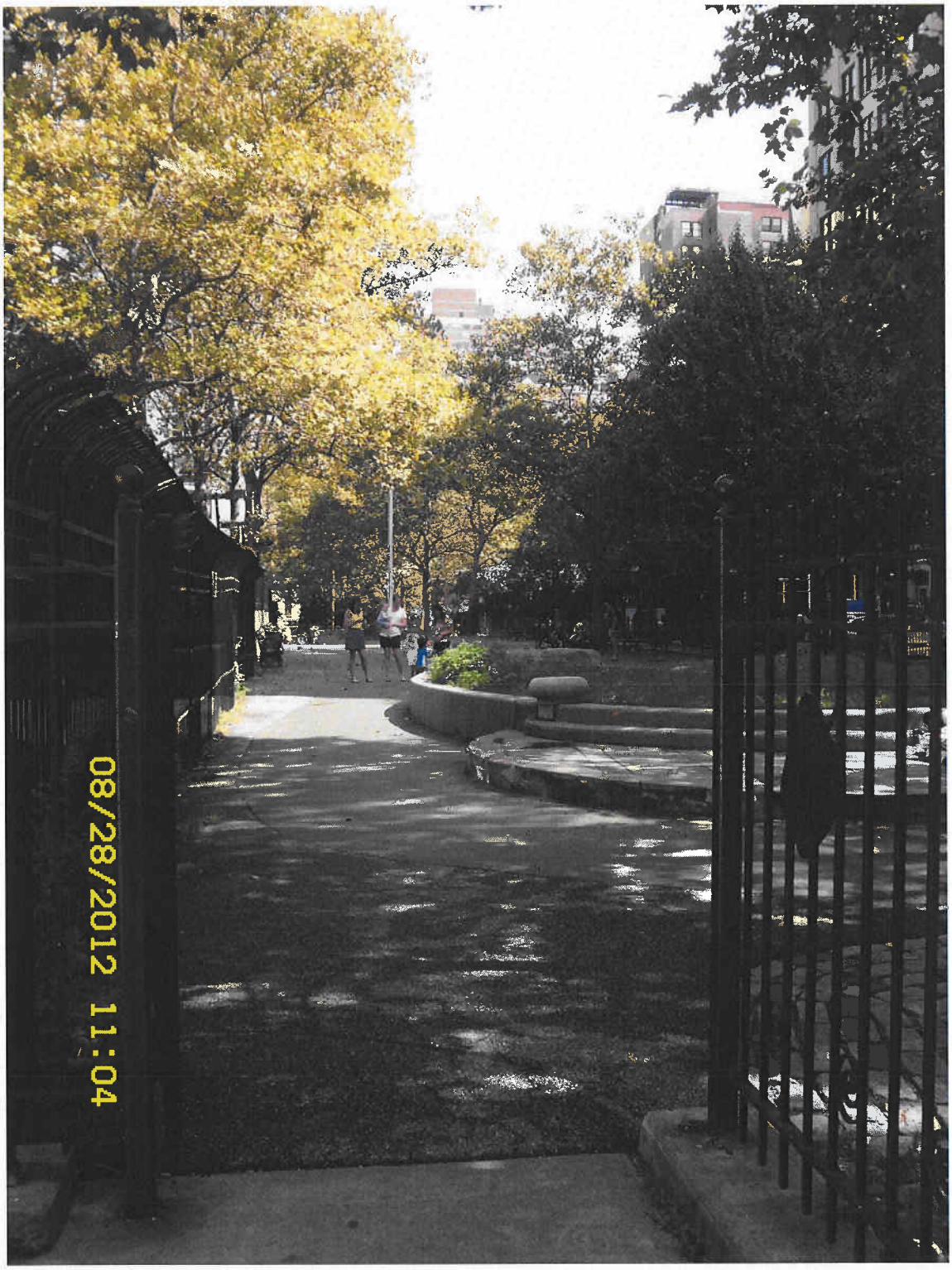
147. The Sexton Plan also requires that NYU receive extensive easement rights over the park parcels located along the west side of Mercer Street between Bleecker and West 3rd Streets (labeled 3 in Diagram 2-1, above) and along the east side of La Guardia Place between Bleecker and West 3rd Streets (labeled 2 in Diagram 2-1, above), Exhibit 14 at 1-7. These easements would allow NYU unfettered access to the surface of these parcels, including "among other things, construction, maintenance, and access to the block across the park strips." Exhibit 14 at 1-7.

148. These two parcels serve as free, open areas for public recreation. The Bleecker-West 3rd Street parcel contains Mercer Playground, which the Parks Department built in the 1990s and currently manages. Exhibit 27 at p. 10; City of New York Parks and Recreation, Mercer Playground (a true and correct copy of which is attached hereto as Exhibit 77). The playground features an enclosed, paved area where children ride bikes, roller skate, and play in water fountains during the summer heat. *Id.*

Photograph 2-3



149. On the La Guardia Place parcel is La Guardia Park, a space established in the 1990s that includes trees, plants, public benches and a statue depicting Fiorello LaGuardia. Exhibit 76.

Photograph 2-4

150. Furthermore, ground has already been broken for Adrienne's Garden, a future playground for toddlers within LaGuardia Park. Exhibit 74. This park, planned and funded through the support of the DPR, Friends of LaGuardia Place, CB2 2 and NYU, would be demolished pursuant to the Sexton Plan. *Id.*

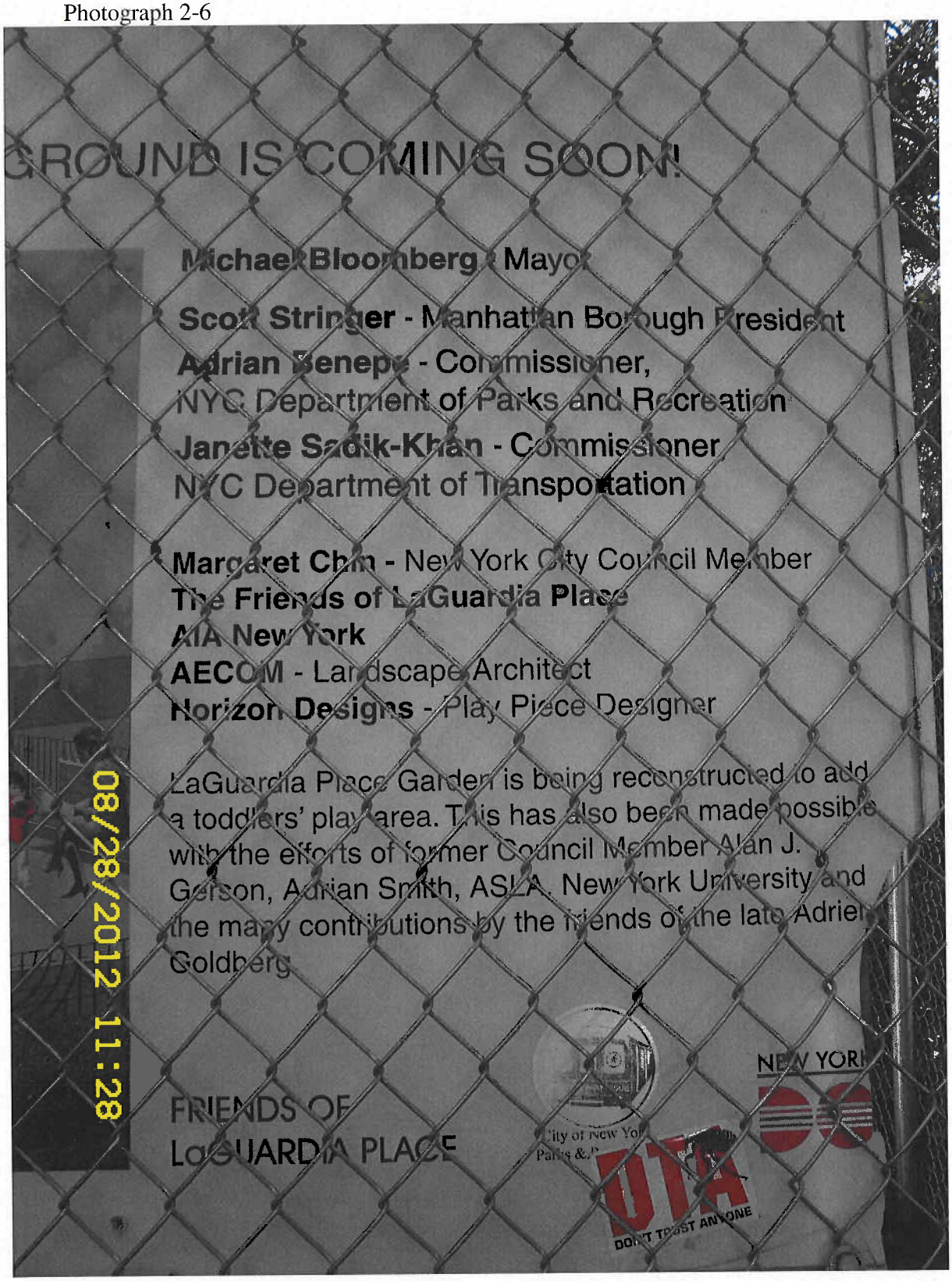
151. Each one of these parcels has been continuously and heavily used for public park purposes for many years. Moreover, the City has unequivocally held these parcels out to the public as parks. Signage on and surrounding the two of the park parcels bears the DPR name and logos; the signs themselves describe the parcels as "public spaces" and "parks." Exhibit 76.

152. For example, Mercer Playground is surrounded by numerous signs that bear the DPR symbol, name, logo and website. There are DPR signs announcing the name of the park, signs describing the park's history, signs asking park attendees not to smoke, and signs prohibiting skateboarding. *Id.* One Parks and Recreation sign describes Mercer Playground as "one of New York City's youngest parks." *Id.* Another DPR sign, reprinted below, states, "Welcome to your New York City Playground. The playground is a shared public space provided for your enjoyment and recreation. . . . [P]lease keep the park clean." *Id.* The bottom of the sign features the DPR symbol, logo, and website. *Id.*

Photograph 2-5

153. Similarly, a sign near the entrance of La Guardia Park, reprinted below, contains an announcement regarding Adrienne's Garden sponsored by, among others, Adrian Benepe, Commissioner of DPR. *Id.* At the bottom of the sign, next to the DOT logo, is the logo for DPR. *Id.*

Photograph 2-6



154. Moreover, the City's own published, informational materials specifically identify at least one park parcel as a park. The interactive NY City Map located on the City's website identifies Mercer Playground as a "Neighborhood Park." New York City, NYCityMap, available at http://gis.nyc.gov/doitt/nycitymap/. In addition, DPR devotes an entire page to Mercer Playground on its website under the category "Parks." City of New York Parks & Recreation, NYC Parks, Mercer Playground, (a true and correct copy of which is attached hereto as Exhibit 78). The page describes Mercer Playground as "one of New York's youngest parks, located in one of its oldest areas, Greenwich Village."

155. Similarly, DPR devotes a webpage to the Fiorello La Guardia Statue located in La Guardia Park. City of New York Parks and Recreation, Fiorello La Guardia Statue, (a true and correct copy of which is attached hereto as Exhibit 79).

156. For years, therefore, the public has used these parcels as public parkland with the explicit authorization of the City, thus evidencing an implied—if not explicit—dedication of these parcels as public parks.

157. The State Legislature has not authorized the alienation of any of this parkland. Without such authorization, the City may not alienate the parkland for NYU's private development purposes.

2. Illegal Action: Destroying Historic Sites

158. By accepting NYU's conclusory statements dismissing potential alternatives to the Greenwich Village location without independently investigating their feasibility and prudence, OPRHP, and DASNY failed to comply with N.Y. PRHPL § 14.09.

(a.) Legal requirements

159. N.Y. PRHPL § 14.09 requires that for any project that will cause an adverse impact to a property eligible for listing on the state or national register, the relevant agencies

must explore all feasible and prudent alternatives, and give due consideration to feasible and prudent plans which avoid or mitigate those adverse impacts. The statute also requires, to the fullest extent practicable, the mitigation or avoidance of adverse impacts to such property.

(b.) Overview of Relevant facts

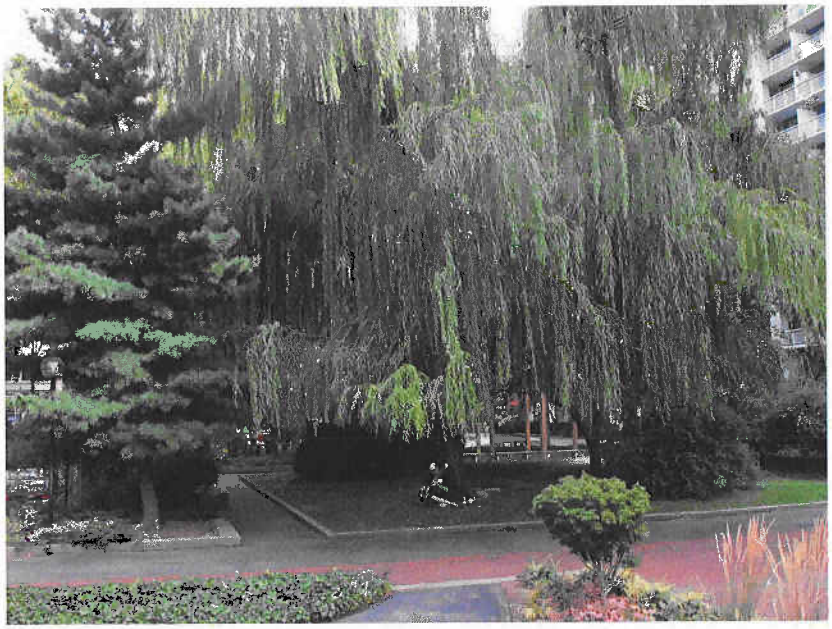
160. The Washington Square Village Site was determined to be eligible for listing on the State and National Registers of Historic Places by the New York State Office of Parks, Recreation and Historic Preservation. *See* Letter from Beth Cumming, Historic Site Restoration Coordinator, OPRHP, to Denise Langer, Associate General Counsel of NYU (Mar. 11, 2011) (further elaborating that the Superblock is "an impressive example of postwar urban renewal planning and design," with "notable" towers, "Corbusian influences," and referring to the Sasaki Garden: "one of the earlier parking structure roof gardens in the country.") (a true and correct copy of which is attached hereto as Exhibit 80). Indeed, Washington Square Village is considered amongst the best intact example of successful Modernist urban planning theory in Manhattan. *See* Exhibit 2 at ¶ 3; Affidavit of Francoise Bollack at ¶ 2 (a true and correct copy of which is attached hereto as Exhibit 18) ("Visionary projects of the post-World War II period, such as Washington Square Village, cannot be understood if their open space, an integral part of their design, is treated as available real estate to be harvested for development. It is meaningless to provide greenery somewhere else because the light and air that was an integral part of the social promise and the buildings' design will have been eliminated.").

161. The Letter of Resolution—entered into by OPRHP, DASNY, and NYU authorizing NYU to proceed with its expansion plan and stipulating that the requirements of Section 14.09 of N.Y. PRHPL had been fulfilled—acknowledged that NYU's expansion plan will cause a significant adverse impact on the architectural resources in the Washington Square Village Site. Exhibit 14 at 7-35, Appendix B at 1.

162. Astonishingly, the Letter of Resolution asserts that the destruction of Sasaki Garden—a beautiful and tranquil oasis of historical significance, as seen in Photographs 2-7 and 2-8—would be *mitigated* by the inclusion of a *plaque* providing a historical interpretation of the former garden. *Id.* at 4. Any historic preservation study that considers a plaque to provide reasonable mitigation to the destruction of a famous, prized, historic garden is incompetent.

Photograph 2-7

Photograph 2-8



163. Respondents failed to comply with N.Y. PRHPL § 14.09 by making cursory conclusions in their Letter of Resolution, which authorized the Sexton Plan, as to the prudency and feasibility of the alternatives presented in the Alternatives Analysis (updated April 10, 2012), a study analyzing alternatives to development on NYU's Superblocks as proposed by the Plan, and failing to give due consideration to any other prudent and feasible alternatives. *Id.* Appendix B at 29. While the Alternatives Analysis acknowledged that either re-tenanting and/or redeveloping existing NYU-owned properties in the Washington Square area or locating new development outside the Washington Square Area would avoid the adverse impact of development in the Superblocks, the Analysis summarily dismissed the idea of an alternative development location stating simply that "any expansion into [the remote campuses] to accommodate growth required for the Washington Square campus would not serve NYU's needs for its core campus and proximity and co-location of uses." *Id.* Appendix B at 81 (parenthetical references omitted). In fact, there are several viable and preferable alternative development sites that Respondents failed to consider. *See supra* ¶ 64. Petitioners' expert noted that NYU has a history of broad expansion outside Greenwich Village in finding that the Alternatives Study was inadequate. Exhibit 52 at ¶ 44.

164. Nowhere in the Letter of Resolution does the agency explore, let alone explain, the basis for its agreement with NYU's purported statements of need, including the alleged benefits of co-location, which is especially indefensible in light of the varied uses the Sexton Plan initially sought to include—a hotel, retail space, student housing, a public school, faculty housing, a performance theater, new athletic facilities, and additional lounges. *See* Exhibit 27. Many of these uses may seem desirable to some, but they are hardly necessary (i.e., a hotel, a public school, and additional lounges). Other uses could easily be located elsewhere on NYU's

other campus locations in New York. A landowner's desires cannot justify the destruction of historically significant resources, and OPRHP nowhere addressed the obvious fact that—if the plan eliminated parts that were unnecessary or could be located elsewhere—at least some of the historic resources could be saved from obliteration. In short, OPRHP completely abdicated its duties to give due consideration to feasible and prudent alternatives and potential mitigation measures.

165. NYU's own statements and actions contradict its assertions of need. President Sexton claims that following the acceptance of the Sexton Plan, NYU "now [has] a spatial endowment sufficient to meet the University's academic needs." But NYU has never articulated the relationship between this "spatial endowment" on the Superblocks and NYU's alleged "academic needs." NYU is just now "explor[ing]" what its "academic needs" are:

> Now we must work together to decide, within the envelope approved by the City Council, how best to proceed in meeting those academic space needs. None of the facilities in the proposals approved by the City is scheduled to be built imminently. So, in order to advance the discourse on these issues, this fall we will convene a presidential working group on space priorities…

Exhibit 67 at 3.

166. If NYU is just now figuring out the "allocation" of its "spatial endowment," then it was a blatant misrepresentation for the Alternatives Analysis to claim that "the planning and design process for the NYU Core project considered which University functions must be located at the Washington Square campus, [and] which functions could be located at other NYU sites in New York City." Exhibit 14 Appendix B at 80-81 (emphasis added). NYU has never offered any factual support regarding its alleged academic "needs for its core campus" because there is no such factual support. By President Sexton's own admission, NYU continues to "explore" its "needs." Yet OPRHP and DASNY uncritically accepted NYU's representation that its academic needs required expansion within the Superblocks.

167. Consequently, Respondents' decision to enter into a Letter of Resolution on the basis of the unsupported claim without exploring prudent and feasible alternatives to NYU's further expansion in the Superblocks was a governmental "determination . . . made in violation of lawful procedure . . . affected by an error of law [and] . . . arbitrary and capricious [and] an abuse of discretion" as envisioned by CPLR § 7803. The Letter of Resolution should, therefore, be annulled.

3. Illegal Action: Deed Restrictions

168. The City Council acted contrary to law by approving land use applications that require enforceable deed restrictions on the Superblocks to be unlawfully lifted, in contravention of the Urban Renewal Law, without the consent of the Washington Square Village and Greenwich Village residents, who are intended third-party beneficiaries of the Renewal Plan.

(c.) Legal requirements

169. New York common law holds that nonparties may enforce valid, existing deed restrictions if they are the intended third-party beneficiaries of the deed restrictions. *See Nature Conservancy v. Congel*, 253 A.D.2d 248, 251 (4th Dep't 1999) (holding that any "owner of neighboring land, for whose benefit a restrictive covenant is imposed by a grantor, may enforce the covenant as a third party beneficiary despite the absence of any privity of estate between the grantor and the neighbor"); *Zamiarski v. Kozial*, 18 A.D.2d 297, 299 (4th Dep't 1963) (holding that a "third-party beneficiary is entitled to enforce [a] restrictive covenant").

170. A grantor's intent to benefit third parties may be indicated not only in the language of the deed, but also in documents "referenced in" and "made part of" a deed, such as an urban development project summary. *See 328 Owners Corp. v. 330 West 86 Oaks Corp.*, 8 N.Y.3d 372, 378 (2007). The grantor's intent to benefit third parties may also be evident from

references in the deed "to the parties' required compliance" with programs such as urban development project restrictions. *Id.*

171. The purpose of urban renewal plans is to benefit the members of the public in underdeveloped areas. *Yonkers Community Development Agency v. Morris*, 37 N.Y.2d 478, 481 (1975) ("Urban renewal began as an effort to remove 'substandard and insanitary' conditions which threatened the health and welfare of the public. . . . [A]reas eligible for such renewal are not limited to 'slums' as that term was formerly applied . . . . [E]conomic underdevelopment and stagnation are also threats to the public sufficient to make their removal cognizable as a public purpose."); Exhibit 13 (noting that the purpose of the Housing Act of 1949 was the "clearance of areas . . . which will be redeveloped primarily for residential use" in order to "remove the impact of the slums on human lives.").

172. Any deed which the government grants pursuant to the terms of an urban renewal plan must "contain provisions requiring the purchaser" to, among other things, "conserve" the property "in accordance with the urban renewal plan." N.Y. Gen. Mun. Law § 507(3).

173. If an urban renewal plan contains a "forty year provision," (a limitation on the acceptable uses of the property which lasts for forty years after completion of construction of the project), the government "retains the authority *and obligation* to assure that the property, once improved, is protected for a 40-year period against misuse." *Jo & Wo Realty Corp. v. City of New York*, 140 Misc.2d 154, 159-60 (Sup. Ct., N.Y. Cnty. 1988) (emphasis added).

(d.) Overview of Relevant facts

174. The Superblocks are the result of the 1954 Washington Square Southeast Urban Renewal Plan (the "Renewal Plan"), a Title I "slum clearance" project devoted to replacing the area's neglected buildings with clean, productive developments. *See* Exhibit 1. The CPC deemed the area "substandard and insanitary and appropriate for redevelopment," City Planning

Commission, Resolution CP-10201, p. 1056 (Dec. 9, 1953) (a true and correct copy of which is attached hereto as Exhibit 81), and stated that "[a]n overall flexible plan is required as the first step towards attacking on a broad frontal base such major problems as traffic congestion, transportation, slum clearance . . . the proper location of industry, the reduction of population density, and provision for the now sadly lacking open spaces." City Planning Commission, Resolution CP-10203 p. 1056 (Dec. 9, 1953) (a true and correct copy of which is attached hereto as Exhibit 82).

175. From its inception, City officials envisioned the Renewal Plan as benefitting the Washington Square Southeast community. The Committee on Slum Clearance wrote that:

> The [Plan] will not prejudice the character of Greenwich Village and Washington Square nor will the historical concepts of these areas be infringed upon. The lands assigned to educational use will be redeveloped with attractive low buildings on Washington Square consistent with present architecture. If New York University is the purchaser, these buildings will be used to provide additional facilities for the student body, without providing for any material increase in the number of students, thus helping in reducing congestion.[9]

Exhibit 1 at 3.

176. Pursuant to the Renewal Plan, the City conveyed the Superblocks to two different recipients via two separate deeds. In 1954, the City entered into a Land Disposition Agreement with NYU and subsequently granted NYU a deed for the Education Block, the block bounded by La Guardia Place, Mercer Street, West 3rd Street and West 4th Street. *See* Agreement between the City of New York and New York University (Nov. 18, 1954) (a true and correct copy of

[9] Government officials thus envisioned the *reduction* of congestion by providing NYU additional buildings and facilities without increasing the number of students. Instead, NYU's student population has continued to increase. On its website, NYU proudly proclaims that "from a student body of 158 during NYU's very first semester, enrollment has grown to more than 40,000 students," New York University, About NYU, available at http://www.nyu.edu/about.html (a true and correct copy of which is attached hereto as Exhibit 85); U.S. News and World Report lists NYU's total enrollment for the 2011-2012 year at 43,797 students. New York University, U.S. NEWS AND WORLD REPORT, 2011-2012 academic year, available at http://colleges.usnews.rankingsandreviews.com/best-colleges/nyu-2785 (a true and correct copy of which is attached hereto as Exhibit 86).

which is attached hereto as Exhibit 83). Also in 1954, the City entered into a Land Disposition Agreement with the Washington Square Village Corporation ("WSV Corp.") and granted WSV Corp. a deed for the two Superblock properties. Agreement between the City of New York and Washington Square Village Corp. (Nov. 18, 1954) (a true and correct copy of which is attached hereto as Exhibit 84). In 1963, NYU bought the Superblocks, subject to the covenants contained in the Land Disposition Agreement between the City and WSV Corp. Exhibit 20 at 3.

177. Both the Land Disposition Agreements and the deeds tied the use of these properties very specifically to the uses, limitations and restrictions set forth in the Renewal Plan. Exhibit 84 at 35-36. For example, the 1954 Land Disposition Agreement between the City of New York and WSV Corp. requires that: (a) WSV Corp. "devote [the] land to the uses specified in the Redevelopment Plan of the Area," (b) the land "shall not be used for any use other than the uses specified therefore in the Redevelopment Plan" or "contrary to any limitations or requirements" of the Redevelopment Plan for a period of forty years after completion of construction, and (c) no change be made in the housing project as set forth in the Redevelopment Plan for a period of forty years after completion of construction, without consent of the City Planning Commission and the Board of Estimate. Exhibit 84 at 35-36. The deed between the City and NYU regarding the Education Block contains almost identical language. Deed, City of New York and New York University (Aug. 5, 1955) (a true and correct copy of which is attached hereto as Exhibit 87).

178. Upon information and belief, the City entered into an agreement with the federal government, in or about 1954, regarding the use of federal funds for the Washington Square Southeast Urban Renewal Plan. Respondents have failed to make this agreement publicly available during the ULURP process. Petitioners seek discovery of this and other documents and

reserve the right to amend the petition to include additional claims based on the contents of these documents.

179. The deed restrictions require: only educational uses on the Education Block and on the Coles Gymnasium site; no educational uses in other areas; the designation of two areas on La Guardia Place for retail purposes; no retail uses in other areas; and the designation of the remainder of the land for residential uses. Exhibit 14 at 2-16-17. In addition, the deed restrictions contain specific density, coverage, height, setback and parking restrictions and requirements. *Id.*

180. NYU concedes that the deed restrictions, as written, would allow for "residential use only on the [northern Superblock] (except for the LaGuardia Place retail building) and educational use only on the site of the existing Coles Gym." Exhibit 20 at 3. Yet the NYU proposal requires the City to eliminate these very restrictions, restrictions that were put in place not to benefit NYU, but to ensure "a good environment to be enjoyed by many families for years to come" and to prevent "prejudice [to] the character of Greenwich Village and Washington Square." Exhibit 82 at 1061-62; Exhibit 1 at 3.

181. NYU has also admitted, through conduct and writing, that the restrictions will not expire until 2021. *See* Letter from Alicia D. Hurley to Brad Hoylman and the members of Community Board No. 2 (Dec. 5, 2008) (a true and correct copy of which is attached hereto as Exhibit 19); Exhibit 20.

182. The residents of Greenwich Village are the clear intended beneficiaries of the Renewal Plan, as manifested by the City's incorporation of the Renewal Plan into both the deeds and the agreements governing the sale of the land. Moreover, the legislative history of the Renewal Plan demonstrates that the City's goal in implementing the Renewal Plan was to

transform the Greenwich Village area from a "substandard and insanitary" slum, Exhibit 81 at 1056, to an attractive, productive development that would provide "advantages to the immediate neighborhood," Exhibit 82 at 1061-62.

183. Accordingly, it would arbitrary and capricious for HPD to lift the deed restrictions, because it would frustrate the purpose of the Renewal Plan and cause unmitigated harm to the residents of Greenwich Village who are the intended third party beneficiaries of the deed restrictions.

184. It is likewise arbitrary and capricious for the City Council to approve a ULURP application that was dependent on an illegal action by HPD and a violation of the rights of Petitioners as third-party beneficiaries to the deed restrictions.

185. The elimination of deed restrictions put in place for the benefit of the residents of Greenwich Village—over these very residents' objections—constitutes misuse in violation of the Forty-Years Provision.

4. Illegal Action: Profound, Unmitigated Environmental Impact

186. The CPC and City Council failed to fulfill their obligations under SEQRA and CEQR and acted arbitrarily and capriciously by endorsing an environmental review process that did not properly analyze the significant adverse impacts and evaluate all the relevant alternatives.

(e.) Legal requirements

187. Under SEQRA, an agency must incorporate the consideration of environmental factors into its planning, review, and decision-making processes. 6 NYCRR § 617.1(c) (2008). In addition, the City of New York has promulgated its own environmental review process under CEQR, which serves as a supplement to the SEQRA rules, adding more nuanced procedural

requirements tailored to suit New York City. City Charter Section 192(e); 62 RCNY § 5-01 *et seq.*

188. An environmental review must assess all "reasonably related short-term and long-term impacts, cumulative impacts and other associated environmental impacts." 6 NYCRR § 617.9(b)(5)(iii)(a). CEQR expressly requires "full compliance" with its provisions as a prerequisite to undertaking any proposed action that "may have a significant effect on the environment." RCNY § 6-01.

189. Pursuant to SEQRA and CEQR, an agency must determine whether any action it plans to undertake, fund, or approve may have a significant adverse impact on the environment, and if so, must prepare an environmental impact statement analyzing such effects. 6 NYCRR §617.1(c). An EIS must "assemble relevant and material facts upon which an agency's decision is to be made. It must analyze the significant adverse impacts and evaluate all reasonable alternatives." 6 NYCRR § 617.9(b)(1).

190. A lead agency's decision on an action that has been the subject of an FEIS must: "consider the relevant environmental impacts," "weigh and balance relevant environmental impacts with social, economic, and other considerations," "provide a rationale for the agency's decisions," and "certify that...the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable." 6 NYCRR § 617.11(d)(1)-(5). An agency accepting an FEIS is required to take a "hard look" at the required areas of environmental concern "to the fullest extent possible."

191. New York courts have not hesitated to invalidate as arbitrary and capricious any agency action which fails to completely address *all* potential significant adverse environmental impacts and the mitigation measures proposed to ameliorate them. The Court of Appeals has

repeatedly held that if an agency decision was made in violation of SEQRA, that decision should be annulled. *See, e.g., Save the Pine Bush, Inc. v. City of Albany*, 70 N.Y.2d 193, 206-07, 518 N.Y.S.2d 943, 948-49 (1987); *Tri-County Taxpayers Ass'n v. Town Bd.*, 55 N.Y.2d 41, 45-57, 447 N.Y.S.2d 699, 701-02 (1982).

192. An agency cannot circumvent its obligations under SEQRA and CEQR by undertaking an inadequate review of the relevant issues through anything short of strict compliance with the review process. *See, e.g., Williamsburg Around the Bridge*, 223 A.D.2d 64, 644 N.Y.S.2d 252, 258 (1st Dep't 1996). "Where an agency fails or refuses to undertake necessary analyses, improperly defers or delays a full and complete consideration of relevant areas of environmental concern, or does not support its conclusions with rationally-based assumptions and studies, the SEQRA findings statement approving the FEIS must be vacated as arbitrary and irrational." *County of Orange v. Village of Kiryas Joel*, 44 A.D.3d 765, 768, 844 N.Y.S.2d 57, 61 (2d Dep't 2007).

(f.) Overview of Relevant Facts

193. Respondents failed to fully comply with the provisions of SEQRA and CEQR by approving an incomplete DEIS, failing to address its shortages, and declining to take a hard look at an FEIS, which was substantively deficient in numerous ways and prevented a true consideration of all the relevant environmental impacts of the Sexton Plan.

194. The DEIS issued by NYU neglected to consider critical environmental effects of the proposed construction, including socioeconomic displacement, access to community facilities and services, open space, wildlife, shadows, transportation, air quality, noise, public health, neighborhood character, and construction. As described in ¶¶ 100 to 101, Petitioners GVSHP and NYU Faculty, as well as other community members, identified these flaws and requested additional environmental analysis. Indeed, several experts, including one submitting an attached

affidavit, identified significant deficiencies in the DEIS that were summarily dismissed or ignored. Respondents failed to require NYU to address these issues or consider further mitigation measures.

195. In violation of SEQRA and CEQR, the FEIS does "not assemble relevant and material facts" or properly analyze the "significant adverse impacts and evaluate all reasonable alternatives." 6 NYCRR § 617.9(b)(1). Rather, its analysis of the effects of long-term construction is based on false assumptions which allow it to avoid fully exploring all mitigation measures. Its analysis of the adverse impacts on open space and air quality are also deficient and grossly underestimate the expected adverse effects of the Sexton Plan.

196. By refusing to investigate the claims or conduct any independent fact finding to substantiate NYU's analysis, even where its flaws were repeatedly pointed out to them, the DCP, CPC and City Council failed to take the required "hard look" and instead based their determinations upon erroneous factual conclusions.

197. Because the DEIS and FEIS are deficient, the DCP, CPC, and City Council were unable to incorporate the consideration of environmental factors into their planning, review, and decision-making processes. Thus, the DCP, CPC, and City Council failed to fulfill the "full compliance" requirement of SEQRA and CEQR and their approval of NYU's FEIS was a governmental, "determination... made in violation of lawful procedure... affected by an error of law [and]... arbitrary and capricious [and] an abuse of discretion" as envisioned by CPLR § 7803.

198. The specific deficiencies, apparent from the full record of evidence before Respondents, are set forth in paragraph 100 above. Moreover, the DCP, CPC, and City Council failed to assess the changing impacts of its various ad hoc modifications, which were not subject

to any public review of comment. These changes will necessarily impact the unmitigated, adverse environmental impacts in ways that were never explored or studied. These actions, separately and in concert, violate obligations under SEQRA and CEQR for the reasons stated above.

5. Illegal Action: Noncompliance With ULURP

199. Respondents' failure to comply with the requirements of ULURP was arbitrary and capricious.

(g.) Legal requirements

200. ULURP review is required for all City actions approving changes in the City Map, designations of zoning districts, or changes to the text of a zoning regulation. N.Y. City Charter § 197-c(a); 62 RCNY § 2-01. Under ULURP, the effected community board(s) must hold a public hearing on the ULURP application and submit written recommendations within 60 calendar days after receiving the "complete application." 62 RCNY § 2-03(a)(1). Following review by the community board, the relevant borough president may submit a written recommendation on the ULURP application. 62 RCNY § 2-04. Subsequently, the CPC must approve, approve with modifications, or disapprove the ULURP application within 60 days after the deadline for the borough president to have acted. 62 RCNY § 2-06(a). Before making any decision, the CPC is required to hold a public hearing where the public is to be given an opportunity to speak. 62 RCNY § 2-06(f). For land use applications involving changes in the zoning text or designations of zoning districts, the CPC's determination is subject to review and approval by the City Council. N.Y City Charter §197-d(b). The City Council must hold a public hearing before taking any final action on the decision. N.Y. City Charter § 197-d(c).

(h.) Overview of Relevant facts

201. NYU was required to submit a ULURP application because the planned construction under the Sexton Plan required a zoning map amendment, zoning text amendment, and a LSGD Special Permit. N.Y. City Charter § 197-c(a); 62 RCNY § 2-01. However, while NYU may have gone through the motions, the ULURP review conducted on NYU's land use application was arbitrary and capricious because, among other things, the responsible City agencies and bodies: predetermined the outcome; ignored and frustrated public input on multiple occasions; failed to follow up on obvious and crucial questions that they themselves raised; relied on a substantively and procedurally deficient environmental impact statement; and ultimately made decisions based mainly on closed-door deal-making between city officials in diametric opposition to the transparency required by ULURP.

202. Because certain city officials circumvented the community-driven process and conducted improper negotiations directly with the NYU administration, the contours of the Sexton Plan were a moving target, and neither the environmental studies nor the ULURP process as a whole properly reviewed the final Sexton Plan as ultimately approved. Thus, because the environmental studies and ULURP review were based on an intermediate non-final plan, the ULURP approval was arbitrary and capricious. Each of these process failures, together and severally, led to a governmental "determination... made in violation of lawful procedure [,] affected by an error of law [,] arbitrary and capricious [, and] an abuse of discretion" as envisioned by CPLR § 7803.

6. Illegal Action: Violation of Open Meetings Law

203. The City Council arbitrarily and capriciously acted in violation of the Open Meetings Law requirement when it pre-determined the approval of the Sexton Plan before the official vote was held.

(i.) Legal Requirements

204. As a public body, the City Council is required by the Open Meetings Law to make, "every official convening of a public body for the purpose of conducting public business" "open to the general public." Public Officers Law, Article 7, Sections 102 and 103. The Open Meetings Law was designed to assure that the "public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials." Public Officers Law, Article 7, Section 101.

(j.) Overview of Relevant facts

205. On the morning of July 25, 2012, the City Council issued a press release announcing that it would vote to approve the Sexton Plan expansion proposal, *before* the vote had taken place. *See* Exhibit 4. This press release shows that the decision was reached before the public vote held on the matter.

206. In addition, during the actual vote itself, City Council Speaker Quinn cleared out the public from the viewing balcony based on the momentary heckles of a few individuals. She effectively prevented the public from attending and observing the voting. *See* Exhibit 63.

207. The City Council's double failure to comply with the requirement that its meetings be "open to the general public" is in clear violation of the Section 103 of the Open Meetings Law and is therefore a "determination... made in violation of lawful procedure [,] affected by an error of law [,] arbitrary and capricious [, and] an abuse of discretion" as envisioned by CPLR § 7803.

FIRST CAUSE OF ACTION
(AGAINST DOT, SADIK-KHAN, DPR, WHITE, AND THE CITY)

N.Y. STATE COMMON LAW: VIOLATION OF THE PUBLIC TRUST DOCTRINE

208. Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 1 through 207 hereof.

209. In particular, Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 139 through 156 hereof.

210. Accordingly, this Court should enjoin the City of New York, the NYC DOT, and the NYC DPR from transferring, via land transfers or the grant of easement rights, these parkland parcels to NYU.

SECOND CAUSE OF ACTION
(AGAINST DASNY, WILLIAMS JR., OPRHP, HARVEY, CITY COUNCIL, QUINN, DCP, CPC, AND BURDEN)

N.Y. PRHPL § 14.09: FAILURE TO FULLY EXPLORE ALL FEASIBLE AND PRUDENT ALTERNATIVES AND GIVE DUE CONSIDERATION TO FEASIBLE AND PRUDENT PLANS WHICH AVOID OR MITIGATE ADVERSE IMPACTS

211. Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 1 through 210 hereof.

212. In particular, Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 157 through 166 hereof.

213. Accordingly, this Court should declare that the above-referenced Respondents violated N.Y. PRHPL § 14.09; declare that the Letter of Resolution among the New York State Office of Parks, Recreation and Historic Preservation, the Dormitory Authority of the State of New York, and New York University violated N.Y. PRHPL § 14.09; and annul the Letter of Resolution among the New York State Office of Parks, Recreation and Historic Preservation, the Dormitory Authority of the State of New York, and New York University. The New York State

Office of Parks, Recreation and Historic Preservation and the Dormitory Authority of the State of New York should also be enjoined to study all prudent and feasible alternative sites for the Core expansion.

THIRD CAUSE OF ACTION
(AGAINST THE CITY COUNCIL, DHPD, WAMBUA, AND THE CITY)

N.Y. STATE COMMON LAW: APPROVAL OF AN APPLICATION THAT REQUIRES THE UNLAWFUL LIFTING OF EXISTING DEED RESTRICTIONS

214. Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 1 through 213 hereof.

215. In particular, Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 167 through 185 hereof.

216. The decision by Respondents to approve the NYU application was a governmental, "determination... made in violation of lawful procedure [,] affected by an error of law [,] arbitrary and capricious [, and] an abuse of discretion" as envisioned by CPLR § 7803.

217. Under the terms of CPLR § 7803, it would be arbitrary and capricious, an abuse of discretion, and an error of law for HPD to lift the deed restrictions, because it would frustrate the purpose of the Urban Renewal Plan and cause unmitigated harm to the residents of Greenwich Village who are the intended third-party beneficiaries of the deed restrictions.

218. It is likewise arbitrary and capricious, an abuse of discretion, and an error of law for the City Council to approve a ULURP application that is dependent on an illegal action by HPD and a violation of the rights of Petitioners as third-party beneficiaries of the Urban Renewal Plan.

219. Accordingly, the City Council's approval of the NYU application should be annulled. This Court should also enjoin the DHPD from removing the existing deed restrictions on the Superblock properties.

FOURTH CAUSE OF ACTION
(AGAINST BURDEN, DCP, CPC, CITY COUNCIL, QUINN, AND THE CITY)

SEQRA AND CEQR: RESPONDENTS' APPROVAL OF NYU'S APPLICATION WAS BASED ON A DEFICIENT FEIS AND WAS ARBITRARY AND CAPRICIOUS

220. Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 1 through 220 hereof. In particular, Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 185 through 197 hereof.

221. The decision by Respondents to approve the NYU application on the basis of a deficient FEIS was a governmental "determination... made in violation of lawful procedure [,] affected by an error of law [,] arbitrary and capricious [, and] an abuse of discretion" as envisioned by CPLR § 7803.

222. Accordingly, this Court should declare that the CPC and the City Council violated SEQRA and CEQR, and render null and void the Agencies' approval of NYU's application, until the Agencies have fully complied with the requirements of SEQRA and CEQR.

FIFTH CAUSE OF ACTION
(AGAINST BURDEN, DCP, CPC, CITY COUNCIL, QUINN, AND THE CITY)

NYC CHARTER §197-c; RCNY CHAPTER 2 OF TITLE 62: RESPONDENTS' DETERMINATION WAS THE PRODUCT OF A FLAWED ULURP PROCESS

223. Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 1 through 222 hereof. In particular, Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 198 through 201 hereof.

224. The failure of Respondents to adhere to ULURP was a governmental "determination... made in violation of lawful procedure [,] affected by an error of law [,] arbitrary and capricious [, and] an abuse of discretion" as envisioned by CPLR § 7803.

225. Accordingly, the Court should annul the CPC and City Council resolutions authorizing the zoning map change, zoning text amendments, LSGD special permit, zoning change, and NYU City Map change.

SIXTH CAUSE OF ACTION
(AGAINST CITY COUNCIL, QUINN, AND THE CITY)

PUBLIC OFFICERS' LAW ARTICLE 7: FAILURE TO CONDUCT OFFICAL BUSINESS IN A PUBLIC MEETING

226. Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 1 through 225 hereof.

227. In particular, Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 202 through 206 hereof.

228. The City Council failed to comply with the requirement that its meetings be "open to the general public," in clear violation of Section 103 of the Open Meetings Law and was therefore a governmental "determination... made in violation of lawful procedure [,] affected by an error of law [,] arbitrary and capricious [, and] an abuse of discretion," as envisioned by CPLR § 7803.

229. Accordingly, the City Council's vote approving NYU's land use application should be declared null and void.

NO PRIOR APPLICATIONS

230. No prior application for this or any similar relief has been made in this Court.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court issue an order:

(1) Declaring that Respondents acted in a manner that was arbitrary, capricious, an abuse of discretion, and in violation of law;

(2) Declaring that the FEIS is inadequate under SEQRA and CEQR;

(3) Declaring that the City Council's reliance upon the FEIS was arbitrary and capricious;

(4) Declaring that Respondents alienated public parkland without direct and specific approval by the New York State Legislature and in violation of the Public Trust Doctrine;

(5) Annulling the City Council resolutions authorizing (a) a zoning map change, (b) zoning text amendments, (c) an LSGD special permit, (d) this zoning change, (e) the NYU City Map change, (f) elimination of the DHP deed restrictions on Blocks 524 and 533, and (g) the transfer of park parcels;

(6) Enjoining HPD and the City Council from eliminating the deed restrictions;

(7) Enjoining the City Planning Commission, as Lead Agency, to draft an EIS that adequately addresses the deficiencies identified in this Article 78 petition;

(8) Enjoining the Department of City Planning not to release the DEIS for public comment unless and until the deficiencies identified in this Article 78 petition are fully and adequately addressed;

(9) Declaring that the Letter of Resolution among the New York State Office of Parks, Recreation and Historic Preservation, the Dormitory Authority of the State of New York, and New York University violated PRHPL § 14.09;

(10) Annulling the Letter of Resolution among the New York State Office of Parks, Recreation and Historic Preservation, the Dormitory Authority of the State of New York, and New York University;

(11) Enjoining the New York State Office of Parks, Recreation and Historic Preservation and the Dormitory Authority of the State of New York to study all prudent and feasible alternative sites and mitigation measures for all or part of the proposed expansion;

(12) Enjoining the City of New York, the New York City Department of Transportation, and the New York City Department of Parks and Recreation from alienating parkland without State legislative authorization;

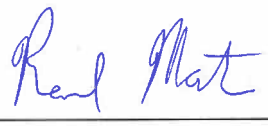
(13) Enjoining NYU from beginning construction in connection with the Sexton Plan, until that Plan has undergone a new and proper ULURP and environmental review process;

(14) Granting expedited discovery pursuant to CPLR 408; and

(15) Awarding Petitioners' attorneys' fees and costs as may be permitted by law; and such other and further relief as this Court deems just and proper.

Dated: September 24, 2012
New York, New York

Respectfully submitted,



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Attorneys for Petitioners

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARK CRISPIN MILLER, being duly sworn, states that he is the President of Petitioner-Plaintiff NYU FACULTY AGAINST THE SEXTON PLAN, and has read the foregoing Petition and Complaint and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters, he believes them to be true.

Mark Crispin Miller

Sworn to before me this
23rd th day of September 2012

Nilhan Gezgin
Notary Public

NILHAN GEZGIN
Notary Public, State of New York
No. 01GE6229706
Qualified in Queens County
Certificate Filed in New York County
Commission Expires October 18, 2014