

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

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Index No.: _____

COUNCILMEMBER CHRISTOPHER MARTE,
CARLOS L. TORRES, MARIA SALAS, SHEILA HARTE,
SOOK YIN YANG, FU MAN CHANG, YUET SIU LEE,
WENDY PEREZ, MARGARET MOY, BRENDA MALOY,
BARBARA KEMPE, AIDA RUIZ and DANETTE CHAVIS,

**VERIFIED COMPLAINT
FOR DECLARATORY
AND INJUNCTIVE
RELIEF**

Plaintiffs,

-against-

CITY OF NEW YORK, CHERRY STREET OWNER LLC,
TWO BRIDGES SENIOR APARTMENTS, L.P.,
TWO BRIDGES ASSOCIATES, L.P., and LE1 SUB LLC,

Defendants,

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Plaintiffs **COUNCILMEMBER CHRISTOPHER MARTE, MARIA SALAS,
SHEILA HART, FU MAN CHANG, YUET SIU LEE, WENDALINE PEREZ,
MARGARET MOY, BARBARA JETER, PEARL RUSSELL, BARBARA KEMPE and
AIDA RUIZ** (collectively “Plaintiffs”) for their Verified Complaint, by and through their
undersigned counsel, respectfully allege as follows:

A. INTRODUCTION

1. Plaintiffs bring this action to vindicate and enforce their environmental and constitutional rights.
2. Plaintiffs initiate this proceeding as a declaratory judgment action to enforce their environmental rights along with the rights of the public to have their health, welfare and safety protected in accordance with the newly amended New York State Constitution.

3. Plaintiffs live in Two Bridges, a neighborhood of Lower East Side with 35.8% of residents living below federal poverty level, 93.9% people of color, and a significant stock of public housing.

4. In low-income neighborhoods like Lower East Side, residents deal with many environmental hazards. Lower East Side historically had numerous automobile repair garages, gasoline storage units, and gas filling stations. The neighborhood consequently experienced multiple oil spills and soil and groundwater contaminants are higher than average.

5. Asthma also disproportionately impacts residents in the Lower East Side. After the September 11, 2001 attacks, respiratory diseases like asthma and lung cancer for residents in Lower East Side and Chinatown dramatically increased due to carcinogenic dust, gas, and fumes exposure. In recent years, the rates of visits to the emergency room in the Lower East Side due to asthma for children and adults have more than doubled that of other neighborhoods in lower Manhattan. High levels of poverty and substandard housing are also linked to more severe asthma rates. See Affidavit of Conor Allerton annexed hereto as Exhibit "A".

6. The COVID-19 pandemic that began in 2020 compounded the impact of residents' respiratory diseases as the COVID-19 death rate in the Lower East Side and Chinatown far exceeded that of any other neighborhood in lower Manhattan. The severe and disproportionate health impacts of the pandemic have demonstrated that, particularly in low-income neighborhoods of color, environmental protections are critical to safeguarding the health and well-being of all New Yorkers.

7. Article 1, Section 19 of the New York State Bill of Rights, which became the law in New York State in January 2022, enshrines basic environmental protections into the legal

fabric and framework of environmental protections afforded each citizen of the State of New York.

8. Article 1, Section 19 states “each person shall have a right to clean air and water, and a healthful environment.” (“The Constitutional Amendment.”)

9. The intent of the Constitutional Amendment is to afford every citizen of the State of New York the right to a healthy and safe environment so that they will not be compromised due to governmental inaction or negligence that may damage the air, land, or water.

B. PRELIMINARY FACTUAL STATEMENT

10. This proceeding arises out of the City Planning Commission’s approval of modifications to the 1972 Two Bridges Large Scale Residential Development (“LSRD”).

11. The development currently imminent and underway involves three skyscrapers in the historic Lower East Side Two Bridges community (“Two Bridges Project”).

12. The three sites involved in this case impinge upon the environmental and constitutional rights of Plaintiffs.

13. The sites are located at 247 Cherry Street, 265 South Street and 259 Clinton Street in the County, City and State of New York.

14. Each site is located in close proximity to or adjoining Plaintiffs’ homes, which are all public housing buildings with substandard conditions and existing structural problems.

15. As set forth herein, each site will have a deleterious impact upon the structural integrity, light, air and/or open space currently enjoyed by Plaintiffs in their homes. Deleterious environmental impacts as detailed in the Final Environmental Impact Statement (“FEIS”), particularly in light of a global health pandemic that later ensued and wreaked havoc on a neighborhood with residents suffering significant respiratory illnesses and disproportionate rates

of death from COVID, must be reevaluated in a Supplemental EIS in accordance with the Constitutional Amendment.

16. Plaintiffs' buildings exhibit damage to the doors and fire rated partitions at the common area walls and demising walls separating apartment units.

17. By virtue of imminent construction activity, vibration meters and crack monitors must be installed to prevent further damage to Plaintiffs' buildings, which are older than 50 years of age. Dangerous conditions caused by construction activity were not evaluated in the FEIS and must therefore be reviewed in a Supplemental EIS to ensure proper mitigation and prevention of damage to the health, safety and welfare of Plaintiffs in accordance with the Constitutional Amendment.

18. Imminent construction activity will cause the loss of windows in Plaintiffs' buildings. New York State Multiple Dwelling Law § 30 prohibits the loss of light or ventilation without prior New York City Department of Buildings approval. The FEIS failed to evaluate the loss of windows and the violation of the Multiple Dwelling Law that will result from the loss of mandated air and light, which will inevitably affect air quality and circulation. This potential loss must be mitigated and evaluated in accordance with the Constitutional Amendment. See Affidavit of John D. Nakrosis, Jr., Building Design Expert annexed hereto as Exhibit "C".

19. Imminent construction activity will generate the loss of light and open space at the Cherry Clinton Playground and Lillian D. Wald Playground according to the FEIS. The loss of open space must therefore be mitigated in accordance with the newly enacted requirements of the Constitutional Amendment.

20. Available parking will be diminished, and vehicular traffic increased causing adverse impacts to air quality that must be evaluated in accordance with the Constitutional Amendment.

21. The FEIS fails to evaluate impacts upon greenhouse gas and climate change as mandated by the Constitutional Amendment. The FEIS indicates that approximately 21,000-22,000 metric tons of carbon dioxide equivalent would be generated by the Two Bridges Project. This increase in carbon emissions must be evaluated in accordance with the dictates of the Constitutional Amendment.

22. The FEIS indicates that the Two Bridges Project would not result in significant adverse impacts associated with neighborhood character. This conclusion is rendered despite the fact that there would be diminishment of open space, infringement upon light and air, increased traffic, increased density, increase of pedestrian activity, increase in transit riders, and diminishment of air quality. Further, the FEIS did not account for how the wind tunnels of another 80 story tower on 225 Cherry Street, completed in 2019 after the FEIS was drafted, would impact the neighborhood along with the three new towers at the new sites. Impacts upon neighborhood character must therefore be evaluated in accordance with the Constitutional Amendment.

23. Construction activity would not only impact upon the structural stability of Plaintiffs' homes, it would impact upon traffic, parking, and noise. There is currently no emissions reduction program during construction activity. There is currently no requirement for an independent monitor to oversee construction activity. Construction activity must therefore be reevaluated in accordance with the Constitutional Amendment.

24. The FEIS also understandably did not anticipate and therefore could not account for the devastating impact that the COVID-19 pandemic would have on Lower East Side residents with heightened risks and rates of respiratory illnesses. Given the gravity of the pandemic's impact on residents' health and well-being and the anticipated construction, increased traffic, infringement upon light and air, increased density, diminished air quality—as well as the resulting increased harm on the health of Lower East Side residents—all of these environmental hazards must be reevaluated in accordance with the Constitutional Amendment.

25. The development entails over 2.5 million estimated gross square feet of space and the addition of over 2,700 dwelling units on a single City block that currently only has 1,357 authorized units.

26. The skyscrapers will comprise an 80-story tower, a set of twin towers of 69-stories each, and one 63-story tower on one block.

27. The City conducted an environmental review of the Two Bridges Project and published a FEIS on November 23, 2018 prior to the enactment of the Constitutional Amendment and prior to the pandemic. Due to the passage of time, the FEIS is now anachronistic and fails to comply with current factual circumstances, the prevailing law and constitutional requirements of the State of New York.

28. The Two Bridges Project was approved and reviewed through an environmental and land use process that preceded the passage of the Constitutional Amendment and the pandemic. For the most part the review process concealed the devastating environmental impacts upon Plaintiffs that impinged upon their constitutional rights.

29. The FEIS was also completed without the current context of the COVID-19 pandemic and the devastating health impact on the neighborhood. Lower East Side residents

already suffer from exponentially higher rates of respiratory diseases due in large part to the environmental hazards from the September 11, 2001 attacks. The COVID death rates in the Lower East Side and Chinatown were the highest of any other lower Manhattan neighborhood. Because the pandemic has compounded the effects of environmental hazards resulting in the highest rates of respiratory disease and deaths in lower Manhattan, a SEIS that is in accordance with the new constitutional amendment that ensures clean air and water in order to protect the healthful environment of New York's residents is especially critical. See Affidavit of Conor Allerton annexed hereto as Exhibit "A".

30. The environmental review process forecast that the build year would be 2021. Upon information and belief, the Two Bridges Project is scheduled to commence in Fall 2022.

31. Upon information and belief, despite the commencement of construction, the Defendants have not undertaken site visits to Plaintiffs' property, have not undertaken preconstruction surveys, have not installed crack monitors or vibration meters, and have not examined the potential for severe structural damage upon Plaintiffs' homes.

32. The environmental review process failed to safeguard the constitutional rights of Plaintiffs pertaining to neighborhood character, the loss of open space, devastation of climate change, construction impacts, residential displacement, loss of light and air and in particular, the loss of windows.

33. The environmental review process failed to analyze whether or not the loss of windows would cause an infringement upon the habitability of Plaintiffs' homes such that governmental subsidies or payments would be withdrawn, thus rendering Plaintiffs homeless.

C. PARTIES

34. Plaintiff Councilmember Christopher Marte represents New York City Councilmanic District 1 which includes Battery Park City, Civic Center, Chinatown, Financial District, Little Italy, the Lower East Side, NoHo, SoHo, South Street Seaport, South Village, TriBeCa & Washington Square. Plaintiff Councilmember Marte maintains his office and home in close proximity to the Two Bridges LSRD in the historic Lower East Side Two Bridges community. Councilmember Marte will be individually impacted from the environmental effects of the challenged development and as a public official, has advocated on behalf of the Plaintiffs in this proceeding.

35. Plaintiff Maria Salas is a resident of 265 Cherry Street, in the County, City and State of New York, and suffers from extreme asthma and respiratory illness since the aftermath of the September 11 attacks. She will be impacted by the failure of Defendants to properly safeguard Plaintiffs' homes from structural defects, including extreme noise, vibrations, cracking, the undermining of the foundation of 265 Cherry Street, and the diminishing air quality.

36. Plaintiff Sheila Hart is a resident of 275 Cherry Street, in the County, City and State of New York, and will be impacted by the failure of Defendants to properly safeguard Plaintiffs' homes from structural defects, including extreme noise, vibrations, cracking, the undermining of the foundation of 275 Cherry Street, and the diminishing air quality.

37. Plaintiff Fu Man Chang is a resident of 265 Cherry Street, in the County, City and State of New York and has experienced allergies and breathing problems since the aftermath of the September 11 attacks. He will be impacted by the failure of Defendants to properly safeguard Plaintiffs' homes from structural defects, including extreme noise, vibrations, cracking, the undermining of the foundation of 265 Cherry Street, and the diminishing air quality.

38. Plaintiff Yuet Siu Lee is a resident of 275 Cherry Street, in the County, City and State of New York, and will be impacted by the failure of Defendants to properly safeguard Plaintiffs' homes from structural defects, including extreme noise, vibrations, cracking, the undermining of the foundation of 275 Cherry Street, and the diminishing air quality.

39. Plaintiff Wendaline Perez is a resident of 275 Cherry Street, in the County, City and State of New York and suffers from respiratory issues due to ventilation problems and mold in her housing. She will be impacted by the failure of Defendants to properly safeguard Plaintiffs' homes from structural defects, including extreme noise, vibrations, cracking, the undermining of the foundation of 275 Cherry Street, and the diminishing air quality.

40. Plaintiff Margaret Moy is a resident of 275 Cherry Street, in the County, City and State of New York, and will be impacted by the failure of Defendants to properly safeguard Plaintiffs' homes from structural defects, including extreme noise, vibrations, cracking, the undermining of the foundation of 275 Cherry Street, and the diminishing air quality.

41. Plaintiff Barbara Jeter is a resident of 275 Cherry Street, in the County, City, and State of New York, and respiratory illnesses since the aftermath of the September 11 attacks. She will be impacted by the failure of Defendants to properly safeguard Plaintiffs' homes from structural defects, including extreme noise, vibrations, cracking, the undermining of the foundation of 275 Cherry Street, and the diminishing air quality.

42. Plaintiff Pearl Russell is a resident of 275 Cherry Street, in the County, City, and State of New York, and will be impacted by the failure of Defendants to properly safeguard Plaintiffs' homes from structural defects, including extreme noise, vibrations, cracking, the undermining of the foundation of 275 Cherry Street, and the diminishing air quality.

43. Plaintiff Barbara Kempe is resident of 82 Rutgers Street, in the County, City and State of New York, and will be impacted by the failure of Defendants to properly safeguard Plaintiffs' homes from structural defects, including extreme noise, vibrations, cracking, the undermining of the foundation of 82 Rutgers Street, and the diminishing air quality.

44. Plaintiff Aida Ruiz is resident of 82 Rutgers Street, in the County, City and State of New York, and will be impacted by the failure of Defendants to properly safeguard Plaintiffs' homes from structural defects, including extreme noise, vibrations, cracking, the undermining of the foundation of 82 Rutgers Street, and the diminishing air quality.

45. Defendant The City of New York is a municipal corporation organized and existing under the laws of New York and is a political subdivision of the State.

46. Upon information and belief, Defendants Cherry Street Owner, LLC, Two Bridges Senior Apartments, L.P., Two Bridges Associates, L.P. and LE1 SUB LLC are the developers of the Two Bridges Project.

D. FACTUAL BACKGROUND

47. The Two Bridges neighborhood, located in Manhattan's Lower East Side, extends from the Brooklyn Bridge, beyond the Manhattan Bridge to Montgomery Street. The community is located east of the Manhattan Bridge. The community was designated as an urban renewal area in 1961.

48. The Two Bridges community and its surrounding area are home to predominantly low and middle income working class New Yorkers.

49. Plaintiffs reside in apartments either owned and operated by the New York City Housing Authority ("NYCHA") or designated as Section 8 Housing administered by the United States Department of Housing and Urban Development. The diminishment of habitable space

caused by the Two Bridges Project may cause Plaintiffs to lose governmental subsidies and must therefore be evaluated in accordance with the Constitutional Amendment.

50. The community is world renowned as home to Chinese and Puerto Rican communities that have shaped Manhattan's Lower East Side for decades.

51. The history of the community in relation to the LSRD was intended to preserve and protect neighborhood character, particularly the tower in the park style developments alongside essential and specifically designated open space.

52. The tallest building prior to the Two Bridges Project was 27 stories with other residential buildings in the Two Bridges Community standing at 26, 21, 19, 10, and 3 stories respectively.

53. There are currently 1,357 dwelling units and a total of 1.6 million square feet included in the LSRD.

54. The Two Bridges Project massively increases the density of the community without adhering to constitutional safeguards.

55. The Two Bridges Project contains over 2.5 million gross square feet of space for 2,755 units distributed over 3 skyscrapers.

56. The Two Bridges Project includes 247 Cherry Street, an 80-story tower, 260 South Street, two towers of 69-stories and 62-stories, and 259 Clinton Street, 63-stories.

57. The Two Bridges Project will triple the number of units in the community, drape the current residents into shadows, introduce luxury high-rise development and displace the long-time working-class residents of the community.

58. In the LSRD, 50% of the population identify as Asian; 33% identify as Latino; and 10.7% identify as Black. 57% of the residents are foreign born, either immigrants or

naturalized citizens. 43.8% of households include at least one member over 65 years old and 19% of the population is under the age of 18. The households in this community have median annual incomes that range from \$18,387 an \$27,684. 40% of the households are rent burdened, spending more than 30% of their income on rent, and up to 14% are severely rent burdened dedicating up to 50% of their income on rent. *See* U.S. Census Bureau, American Community Survey 2015 annexed hereto as Exhibit “D”.

59. Upon information and belief, initial excavation, demolition and construction activity of the Two Bridges Project is either underway or imminent without complying with the Constitutional Amendment adopted by the State of New York in January 2022.

E. THE FEIS IS UNCONSTITUTIONAL

60. The FEIS fails to satisfy constitutional requirements as promulgated by the voters of the State of New York and the New York State Legislature upon the passage of the Environmental Rights Constitutional Amendment.

61. This Complaint sets forth the various areas of significant adverse environmental consequences that now must be reexamined in the context of the Constitutional Amendment. The State Environmental Quality Review Act (“SEQRA”) provides for a Supplemental EIS to ensure compliance with changes in the law that occur prior to the final completion of a project.

62. In violation of the New York State Constitution, and by virtue of the failure of the FEIS to examine the potential significant adverse environmental impacts upon neighborhood character and socioeconomic conditions, degrading of air quality, loss of open space, and displacement of the lower income and working class New Yorkers living in the Two Bridges community, especially without the context of the disproportionate health impacts of the COVID-19 pandemic, a Supplemental EIS that satisfies the New York State Constitution is required.

63. The FEIS failed to examine the influx of luxury housing and high-income market demands causing the potential displacement of tenants residing in subsidized and Rent Stabilized units.

64. The FEIS failed to mandate proper mitigation that will be necessitated by the severe construction impacts upon structural stability, excessive noise and vibrations, and undermining of the foundations of adjoining properties.

65. The FEIS failed to mandate proper mitigation and failed to review the loss of windows caused by the development project.

66. The FEIS also failed to assess and mandate reasonable mitigation for the impact of environmental hazards resulting in poorer air quality in a neighborhood that suffers the highest rates of asthma and respiratory illness, particularly after 9/11, and now the most severe COVID-19 death rates in lower Manhattan.

67. The FEIS failed to assess the change in the prospective build year to 2022, which would place the development project under the jurisdiction of the Constitutional Amendment.

F. THE CONSTITUTIONAL AMENDMENT

68. The public agencies of the City of New York proclaimed in prior Court proceedings that the decision-making process to implement the Two Bridges Project was in compliance with the State Environmental Quality Review Act (“SEQRA”). The prior Court decisions upholding SEQRA preceded the adoption of the Constitutional Amendment.

69. The implementation of the Two Bridges Project as set forth herein, was devoid of a constitutionally mandated review. The implementation further did not account for the health impacts of the COVID-19 pandemic heightening Lower East Side residents’ respiratory problems and the subsequent interaction with construction, increased density, and poorer air

quality. The permitting process required to implement the Two Bridges Project must be evaluated in accordance with the Constitutional Amendment.

70. The development of the State's Constitution's Bill of Rights is a product of responses by policy makers to the critical issues of the day. Perhaps the most pressing issue facing citizens of New York State and citizens of the world is the ravages of climate change. Environmental hazards often most severely affect communities with high levels of poverty and high concentrations of people of color. The Constitutional Amendment is a recognition that the severity of climate change, and the impact on public health, requires an enhanced governmental response.

71. The Two Bridges Project at issue in this case must therefore assure that the imminent construction, foundation work and project impacts must be adequately mitigated to protect the constitutional rights of the affected citizenry and the public at large.

72. Constitutional Amendments are implemented in New York State as a means to emphasize, redefine and expand upon existing rights. During the legislative debates to implement the Constitutional Amendment, Assemblymember Englebright stated:

This is a proposed Constitutional Amendment to enable something that everyone believes, in many cases is already a right, but has never previously been formalized. And that right is to a clean environment, clean air, clean water, and a healthful environment. It's in the largest sense, a proposed Constitutional Amendment that is an expression of optimism. **It is intended to assure our citizens that they will not be betrayed circumstantially by environmental degradation, and that the health and wellbeing of they and their families will not be compromised due to governmental inactions or negligence that may otherwise damage our air, land or water.** (emphasis added)

73. The specific provisions of the New York State Constitution reflect amendments adopted over the years by the New York State Legislature and ratified by public referendum to implement and accommodate governmental actions in relation to major policy concerns.

74. New York State has adopted constitutional rights in relation to major areas of policy concerns. For example, wrongful death recoveries set forth in Article 1, Section 16, labor rights set forth in Article 1, Section 17 and Workers' Compensation set forth in Article 1, Section 18.

75. The Constitutional Amendment set forth in Article 1, Section 19 enshrines, through legislative amendment and public ratification, the right to a healthful environment enhancing and clarifying existing statutory rights.

76. New York State voters amended the New York State Bill of Rights in January 2022, and have declared that it is a public purpose to assure that every citizen breathes clean air, consumes clean water, and enjoys the right to a healthful environment.

77. The Constitutional Amendment has raised environmental rights to the level of other rights enshrined in the New York State Constitution including trial by jury set forth in Article 1, Section 2, freedom of worship and religious liberty set forth in Article 1, Section 3, due process set forth in Article 1, Section 6, compensation for taking prior property set forth in Article 1, Section 7, and free speech set forth in Article 7, Section 8.

78. The New York State Legislature in adopting the Constitutional Amendment recognized that recent instances of displacement of residential community members, loss of open space, water contamination and ongoing concerns about air quality have necessitated the need for additional protections beyond those afforded by current state law. Allowing for consideration of the devastating impact of the COVID-19 pandemic on the health of Lower East Side residents

that occurred after the FEIS was completed and yet before the start of the project's construction is a prime example of the need for additional protections that the legislature sought to ensure with the Constitutional Amendment.

79. The Constitutional Amendment removes any doubt that the State holds responsibility for protecting the citizens of the State of New York from environmental harm. This duty is particularly the case where citizens who lack basic environmental protections from the ongoing activities of government seek those protections.

80. The Two Bridges Project will have a severe and deleterious impact upon the quality of life, safety and socioeconomic future of the Two Bridges community. This population is precisely the vulnerable community the New York State public and State representatives sought to protect through the extension of environmental constitutional rights to the citizens of New York. To allow the Two Bridges Project to go forward without constitutional review abrogates the constitutional rights of Plaintiffs.

G. SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT

81. The Constitutional Amendment has promulgated an environmentally significant and consequential legal mandate prior to the development and implementation of the Two Bridges Project.

82. The environmental review that led to the approval of the project preceded the passage of the Constitutional Amendment. However, the impact upon the citizens of New York, particularly residents of the Lower East Side will occur and is occurring under the aegis of the Constitutional Amendment.

83. In this proceeding, the government has failed to take a “hard look” at all the relevant impacts that the ongoing implantation of the project will have in light of the enhanced environmental protections afforded by the Constitutional Amendment.

84. Where the government is aware of a change in law or facts that have significantly changed the environmental circumstances surrounding the implementation of a project, the government must take “hard look” at the environmental consequences of such change in circumstances.

85. Governmental agencies remain active participants in the ongoing implementation of the project.

86. SEQRA was enacted in 1975 in order to strike a balance between social and economic goals and concerns about the environment.

87. SEQRA makes environmental protection a concern of every governmental agency and requires that in proposing action, an agency must give consideration to protection of the environment.

88. Under SEQRA, an environmental impact statement (EIS) must be prepared if an agency’s action “may have a significant effect on the environment.” The agency undertaking the proposed action and responsible for determining whether an EIS is required is known as the “lead agency”.

89. If, after taking a “hard look” at the action, the lead agency determines that an EIS is required, it must prepare a draft EIS followed by a period of public hearings and/or public comment.

90. Unless the lead agency withdraws the proposed action or concludes that it will not have a significant effect on the environment, the lead agency must prepare a FEIS followed by written findings that the requirements of SEQRA have been met.

91. The FEIS must contain a description of the proposed action, including its environmental impact and any unavoidable adverse environmental effects, alternatives to the proposed action, and mitigation measures proposed to minimize the environmental impact.

92. An agency may not approve an action unless it makes “an explicit finding that the requirements of [SEQRA] have been met and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided” by incorporating as conditions to the decision those mitigative measures which were identified as practicable.

93. Furthermore, when changes are proposed for a project or new information is discovered, the lead agency is required to take a “hard look” at the changes or new information and must prepare a SEIS if it concludes that adverse environmental impacts not addressed in the EIS would arise.

94. SEQRA regulations plainly require a lead agency to prepare a SEIS if environmentally significant modifications are made to a project or new legislation is implemented after the issuance of the FEIS but before the implementation and completion of the project.

95. The SEQRA regulation governing the need to prepare a SEIS has no time limitations and no indication as to when the obligations of the lead agency end. (See 6 NYCRR 617.9 [a] [7].). In addition, a separate regulation provides that a lead agency can be “re-

established” after SEQRA Findings specifically for the purpose of preparing a SEIS. (See 6 NYCRR 617.6 [b] [6] [i] [a].).

96. A lead agency’s responsibility under SEQRA to examine changes to a project or a changing regulatory environment does not end simply because the agency has issued its findings. Especially in a situation such as this where construction activity has yet to begin, or to be properly evaluated for structural impacts that will directly affect the health, safety and welfare of Plaintiffs.

97. A SEIS provides decision-makers, interested and involved agencies, and the public with information about impacts not previously studied. The SEIS is required when changes or new information are relevant for the project that may result in a significant adverse environmental effect not anticipated in the original EIS.

98. Newly discovered information arises when significant adverse effects that were not previously analyzed become relevant to the project.

99. A change in circumstances related to the project occurs when newly discovered information is important and relevant in evaluating the environmental impacts of a proposed or ongoing project.

100. In considering the need to prepare a SEIS, in the case of newly discovered information, the agency should weigh the importance and relevance of the information and the current state of information in the EIS viewed in the context of a radically changed regulatory environment. The passage of a Constitutional Amendment is a significant and major alteration of the statutory and regulatory environment of a developing project. Additionally, a global pandemic devastated the health and well-being of Lower East Side’s residents, worsened respiratory diseases, and changed the entire circumstance in which environmental hazards like

diminished air quality must be considered. Deleterious environmental impacts previously not recognized or considered must now be assessed in the context of the constitutional rights of the citizens of the State of New York.

101. The scope of the SEIS is targeted to specifically address those issues that meet the requirements of the newly discovered relevant information.

102. In this case, the assessment as to whether a SEIS is needed should also consider whether an aspect of the original EIS has grown stale due to a change in the statutory and regulatory environment of the project and the passage of time.

103. The Constitutional Amendment and the need for constitutional compliance by the government could not have been disclosed, evaluated or reviewed in the original EIS because its passage occurred after completion of the environmental review, but predates the project implementation. The COVID-19 pandemic and its calamitous impact also occurred after the completion of environmental review.

104. The critical issue in this case is whether or not a current assessment indicates that the project will occur in a previously unreviewed statutory, regulatory, and public health environment, causing undisclosed significant impacts.

105. The preparation of a SEIS is subject to the full procedures that govern the preparation of an EIS, including the scoping process and required public hearings. In addition, supplemental findings statements may be necessary. A technical memorandum should be prepared by the lead agency for its files and should bear the same CEQR number as that of the original EIS. The technical memorandum must examine whether changes in the project, newly discovered information, or changes in circumstances have the potential to result in any new, previously undisclosed impacts.

106. In the event the technical memorandum assessment indicates that the preparation of a SEIS is or may be warranted, the lead agency should prepare an EAS or, if appropriate, may proceed to the issuance of a Positive Declaration.

107. In failing to conduct a SEIS, in light of the passage of the Constitution Amendment, the City of New York has acted and continues to act in an arbitrary, capricious and unlawful manner.

AS AND FOR A FIRST CAUSE OF ACTION

108. Plaintiffs repeat and reallege paragraphs “1” through “109” as if fully set forth herein.

109. The failure of the City of New York to comply with the Constitutional Amendment is an arbitrary and capricious violation of the constitutional rights of Plaintiffs.

110. Some or all of the Plaintiffs are injured and damaged by such failure to comply with their constitutional rights in that they will be subject to adverse environmental impacts not heretofore identified or considered by the City of New York.

AS AND FOR A SECOND CAUSE OF ACTION

111. Plaintiffs repeat and reallege every allegation contained in paragraphs “1” through “112” as if fully set forth herein.

112. The failure of the City of New York to prepare a Supplemental Environmental Impact Statement is an arbitrary and capricious breach of the State Environmental Quality Review Act and the city regulations set forth in the City Environmental Quality Review.

113. By reason of the foregoing, some or all of the Plaintiffs are injured and damaged by such failure to comply with SEQRA and CEQR in that they will be subject to adverse environmental impacts not heretofore identified or examined by the City of New York.

AS AND FOR A THIRD CAUSE OF ACTION

114. Plaintiffs repeat and reallege every allegation contained in paragraphs “1” through “115” as if fully set forth herein.

115. The failure of the City of New York to take a “hard look” at the impact of the Constitutional Amendment on the implementation of the project is an arbitrary and capricious abuse of discretion.

116. Pursuant to the Constitutional Amendment, the City must identify all areas of environmental concern and take a “hard look” at the environmental issues identified and provide a reasoned elaboration as to its determination concerning whether or not the implementation of the project will implicate the constitutional rights of Plaintiffs.

WHEREFORE, Plaintiffs respectfully request this Court to grant judgment:

a. Declaring that Defendants have acted unlawfully in failing to adhere to the Constitutional Amendment;

b. Compelling compliance with the Constitutional Amendment by ordering proper mitigation of adverse environmental impacts including, but not limited to:

- i. proper structural monitoring;
- ii. proper displacement evaluation;
- iii. mitigation of loss of windows and open space;
- iv. proper safeguards on noise and emission of toxic construction dust during construction;
- v. proper monitoring, review and assessment in relation to construction;
- vi. proper monitoring of and mitigation of diminishing air quality; and

vii. compliance with community engagement as represented during the environmental review process.

c. Enjoining demolition, construction, foundation work or any other development activity until such time that Defendants have complied with their constitutional and lawful obligations;

d. Entering a judgment annulling all approvals, authorizations and permits for the project until such time as the Defendants comply with their constitutional and lawful obligations;

e. Granting Plaintiffs their legal fees, costs and expenses in this proceeding; and

f. Granting such other and further relief as the Court deems just and proper.

Dated: October 21, 2022
East Hampton, New York

Respectfully submitted:



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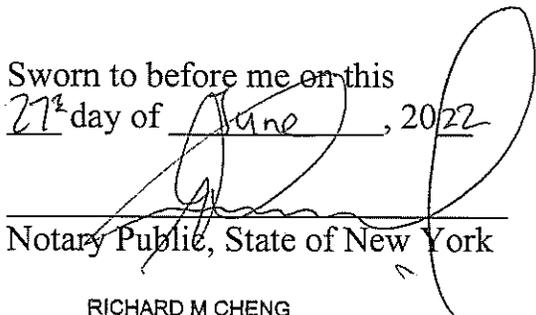
VERIFICATION

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

AIDA RUIZ, being duly sworn, deposes and says:

1. Deponent is one of the Plaintiffs in the above-captioned action.
2. Deponent has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true.


AIDA RUIZ

Sworn to before me on this
27th day of June, 2022


Notary Public, State of New York

RICHARD M CHENG
Notary Public, State of New York
Reg. No. 01CH6130110
Qualified in Kings County
Commission Expires July 05, 2025

VERIFICATION

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

BARBARA KEMPE, being duly sworn, deposes and says:

1. Deponent is one of the Plaintiffs in the above-captioned action.
2. Deponent has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true.



BARBARA KEMPE

Sworn to before me on this
15th day of July, 2022

Notary Public, State of New York

RICHARD M CHENG
Notary Public, State of New York
Reg. No. 01CH6130110
Qualified in Kings County
Commission Expires July 05, 2025

VERIFICATION

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

CHRISTOPHER MARTE, being duly sworn, deposes and says:

1. Deponent is one of the Plaintiffs in the above-captioned action.
2. Deponent has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true.

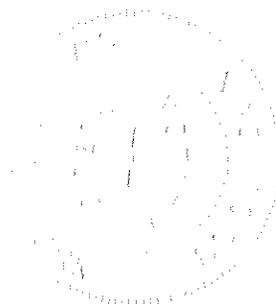


CHRISTOPHER MARTE

Sworn to before me on this
21 day of June, 2020



Notary Public, State of New York



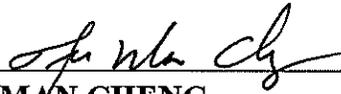
DU XIAOXIAO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DU6329494
Qualified in New York County
My Commission Expires August 24, 2023

VERIFICATION

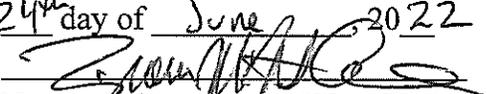
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

FU MAN CHENG, being duly sworn, deposes and says:

1. Deponent is one of the Plaintiffs in the above-captioned action.
2. Deponent has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true.



FU MAN CHENG

Sworn to before me on this
24th day of June, 2022


Notary Public, State of New York

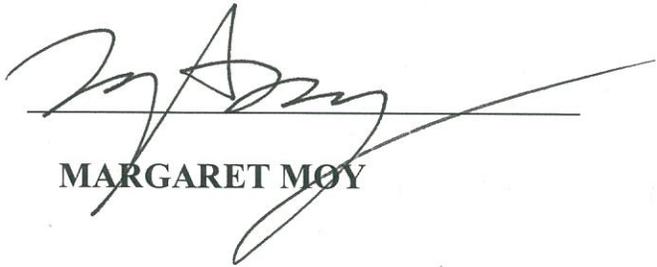
BROWN McINTOSH ANDERSON
Notary Public, State of New York
No. 02AN6115630
Qualified in New York County
Commission Expires September 13, 2024

VERIFICATION

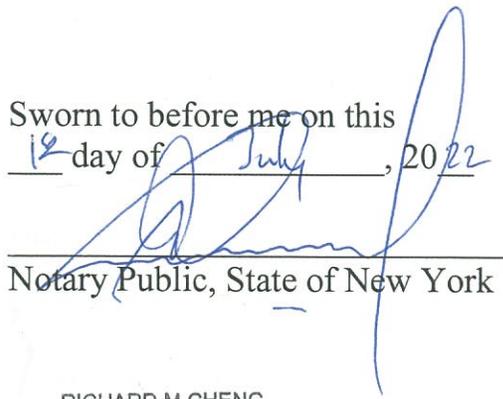
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARGARET MOY, being duly sworn, deposes and says:

1. Deponent is one of the Plaintiffs in the above-captioned action.
2. Deponent has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true.



MARGARET MOY

Sworn to before me on this
12 day of July, 2022


Notary Public, State of New York

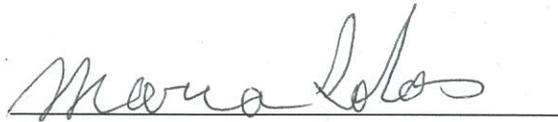
RICHARD M CHENG
Notary Public, State of New York
Reg. No. 01CH6130110
Qualified in Kings County
Commission Expires July 05, 2025

VERIFICATION

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

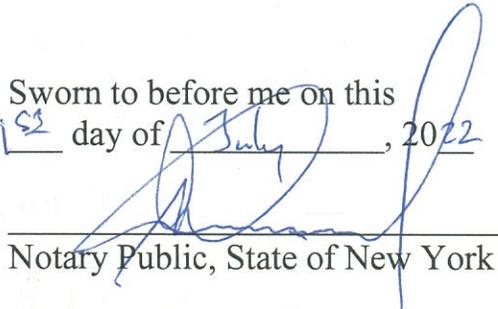
MARIA SALAS, being duly sworn, deposes and says:

1. Deponent is one of the Plaintiffs in the above-captioned action.
2. Deponent has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true.



MARIA SALAS

Sworn to before me on this
15th day of July, 2022



Notary Public, State of New York

RICHARD M CHENG
Notary Public, State of New York
Reg. No. 01CH6130110
Qualified in Kings County
Commission Expires July 05, 2025

VERIFICATION

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

SHEILA HART^{re}, being duly sworn, deposes and says:

1. Deponent is one of the Plaintiffs in the above-captioned action.
2. Deponent has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true.

Sheila Hart

SHEILA HART^{re}

Sworn to before me on this
1st day of July, 2022

Notary Public, State of New York

RICHARD M CHENG
Notary Public, State of New York
Reg. No. 01CH6130110
Qualified in Kings County
Commission Expires July 05, 2025



VERIFICATION

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

WENDALINE (RC)

~~WENDY PEREZ~~, being duly sworn, deposes and says:

1. Deponent is one of the Plaintiffs in the above-captioned action.
2. Deponent has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true.

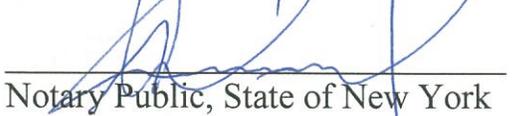


~~WENDY PEREZ~~

WENDALINE

(RC)

Sworn to before me on this
15 day of July, 2022



Notary Public, State of New York

RICHARD M CHENG
Notary Public, State of New York
Reg. No. 01CH6130110
Qualified in Kings County
Commission Expires July 05, 2025

VERIFICATION

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

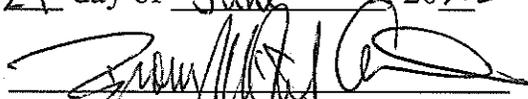
YUET SIU LEE, being duly sworn, deposes and says:

1. Deponent is one of the Plaintiffs in the above-captioned action.
2. Deponent has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true.

Yuet Siu Lee

YUET SIU LEE

Sworn to before me on this
24th day of June, 2022



Notary Public, State of New York

BROWN McINTOSH ANDERSON
Notary Public, State of New York
No. 02AN6115630
Qualified in New York County
Commission Expires September 13, 2024