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

----------x

In the Matter of the Application of

THE COALITION FOR FAIRNESS IN SOHO AND NOHO, INC., MARIA JUDITH FELICIANO, KAY POWELL, AMIT SOLOMON, IAN KERNER, LISA RUBISCH, SARA BERSHTEL, LYNN SCHNITZER, ARTHUR SCHNITZER, CATERINA ROIATTI and ROBERT TRABOSCIA,

Petitioners,

-against-

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF CITY PLANNING, NEW YORK CITY PLANNING COMMISSION, NEW YORK CITY COUNCIL and ERIC ADAMS, in his official capacity as Mayor of the City of New York,

Respondents.

----------x

Index No.:_____

VERIFIED PETITION

Petitioners, **THE COALITION FOR FAIRNESS IN SOHO AND NOHO, INC., MARIA JUDITH FELICIANO, KAY POWELL, AMIT SOLOMON, IAN KERNER, LISA RUBISCH, SARA BERSHTEL, LYNN SCHNITZER, ARTHUR SCHNITZER, CATERINA ROIATTI and ROBERT TRABOSCIA** (collectively "Petitioners" or "The Coalition"), in support of their Article 78 Verified Petition, by their attorney, Jack L. Lester, Esq., allege as follows:

I. INTRODUCTION

1. This Article 78 and declaratory judgment action challenges as unconstitutional and a violation of the New York State Environmental Quality Review Act ("SEQRA") and City Environmental Quality Review ("CEQR"), an amendment to the Zoning Map and a Zoning Text

Amendment to establish the Special Soho-Noho-Chinatown Mixed-Use District in Zoning Resolution ("ZR") and establishment of a Mandatory Inclusionary Housing ("MIH Area") passed by the New York City Council in December 2021 ("rezoning"). *See* City Council Resolution No.: 1889-2021, (the "City Resolution"). (Annexed hereto as Exhibit "A").

2. Petitioners contend that the City Resolution was arbitrary, capricious, an abuse of discretion in violation of the United States Constitution and New York State Constitution, and the environmental statutes, rules and regulations of the State and City of New York.

3. The New York City Council Resolution approved, with modifications, the decision of the New York City Planning Commission ("CPC"), on ULURP No. C 210422 ZMM, a Zoning Map Amendment (L.U. No. 918), passed on October 20, 2021 (CPC Decision annexed hereto as Exhibit "B").

4. The City Resolution targets the area bounded by Astor Place and Houston Street to the north, Lafayette Street and Baxter Street to the east, Canal Street to the south, Sixth Avenue, West Broadway and Broadway to the west ("the site").

5. The rezoning would encompass 56 blocks and span 146 acres in Lower Manhattan; 80 percent of the site is within New York City Landmark Preservation Commission's designated Historic Districts.

6. Remarkably, the City Resolution failed to take a "Hard Look", as mandated by longstanding case precedent, at the rezoning's impact upon the sustainability of the historic character of the site, socio-economic conditions, historic and cultural resources and the displacement and destabilization of the current residents of the unique Soho, Noho and Chinatown neighborhoods.

7. Located within the site, are 5 historic districts: the Soho Cast Iron Historic District, Soho Cast Iron Historic Extension, the Noho Historic District, the Noho Historic District Extension, and parts of the Sullivan-Thompson Historic District. These districts contain over 800 buildings and 15 individually designated New York City Landmarks and the SoHo Cast Iron US National Historic Landmark District.

8. The rezoning will have a profoundly deleterious impact upon the lives of over 8,000 residents that currently live, rent or own in Soho, Noho and Chinatown.

9. The rezoning was a substantial zoning and policy change that will impact the residential stability of the people of Soho, Noho and Chinatown. The rezoning proposes to transform a diverse economic and multiethnic community that was created by artists from its historic world- renowned origins into a denser, inharmonious and towering neighborhood.

10. The rezoning will disrupt and diminish the historic and iconic character of the community. The rezoning will create a neighborhood that will be wealthier, less diverse, more expensive, and would generate far fewer units of affordable housing than forecast by the City's unexamined and conclusory projections. The rezoning provides developers with incentives to demolish existing affordable housing

11. The rezoning would have a disproportionate impact on Asian Americans, particularly individuals residing in Chinatown and the neighboring communities consisting of lower-income residents whose housing stock will be replaced by costlier housing and buildings.

12. The rezoning of Soho, Noho and Chinatown radically alters New York City public policy that for 60 years endorsed and supported a stable residential community of loft units occupied by artists and non-artists. Rather than enhance the shortcomings of the previously existing zoning as envisioned by years of community engagement, the rezoning exacerbates

previous problems and adds insurmountable new burdens for current residents. The process leading to this flawed and rushed final project, passed in the waning days of the prior administration of former Mayor Bill DeBlasio, violates constitutional protections and environmental laws of the State of New York and the City of New York.

13. Fundamentally, the rezoning deprives Petitioners of the benefit of carefully formulated state and federal constitutional rights and violates crucial provisions of New York State and New York City framework of environmental statutes, rules and regulations.

14. The rezoning, under the fig leaf of land use, destroys contractual arrangements, increases liabilities for previously approved conduct, imposes new duties upon Petitioners for completed transactions. At its core the rezoning undermines reasonable investments that Petitioners relied upon, and upsets settled expectations resulting from six decades of governmental policy. The New York City Resolution does all this without a rational basis and without statutorily mandated review consistent with basic environmental analysis.

15. For the first time in 50 years, the rezoning would mandate previously condoned, but out-of-compliance residential units, either conform to the rezoning, or face punitive fees and prohibitive, and in many cases, impossible construction costs causing displacement, eliminate artist certification requirements going froward for new construction, and eliminate Joint Live-Work Quarters for Artists ("JLWQA") going forward.

16. The economic stability and survival of Petitioners were left unexamined in the environmental review process and cast aside and endangered in the final iteration of the rezoning.

17. For example, the City Resolution failed to take a "Hard Look" or to evaluate in any manner, the economic, social, residential destabilization, displacement and dislocation the

rezoning will cause. The City Resolution failed to take a "Hard Look" as to whether the rationale of creating affordable housing could be accomplished. Creation of affordable housing is the rationale underpinning the entire rezoning.

18. A careful examination of the City's claim of creating affordable housing reveals that this rationale was merely a pretext to facilitate the demolition of historic landmarks, and thereafter promote the proliferation of big-box chain stores, office buildings, and luxury housing.

19. The rezoning creates mandatory prohibitive conversion costs in order to legalize previously accepted, safe and functional residencies. Certified artists theoretically would remain as legal non-conforming uses, however the requirements set forth in various state and city regulations will cause entire buildings to convert from manufacturing use to residential use, out of necessity, the transformation of entire buildings will reduce or severely impair the viability of artist lofts. (*See* Affidavit of Ronnette Riley, Registered Architect annexed hereto as Exhibit "C".)

20. The Artist Certification Program has been dormant for decades and the vast majority of residents in the zoning district face the Hobbesian choice between possible bankruptcy or financial hardship and dislocation with a great financial loss. As set forth in detail herein, this impact upon current residents was abjectly ignored by the rezoning review process, despite many comments from residents during the public hearings.

21. As set forth in the attached Affidavit of Ronnette Riley, Registered Architect, in order to comply with the provisions of the rezoning, which mandates the conversion of previously condoned and ratified residential use in manufacturing buildings to newly required residential use, the costs involved would be prohibitive, in some cases impossible, and in all respects unconstitutionally confiscatory. The impacts of construction costs, architectural costs,

filing fees, alteration costs, and other structural, technical, and transformational requirements, renders the rezoning a virtual governmental taking of property without just compensation. These costs coupled with a mandatory $100 per square foot tax, renders the entire rezoning oppressive, burdensome and legally unsustainable.

II. PARTIES

22. Petitioner, THE COALITION FOR FAIRNESS IN SOHO AND NOHO, INC., is a grassroots, community-based organization representing cooperators, tenants, condominium owners, and residents impacted by the rezoning at issue in this proceeding.

23. Petitioner, Maria Judith Feliciano, is a resident of the State of New York, County of New York. Ms. Feliciano resides in Soho at 543 Broadway, as a shareholder in a cooperative building. Ms. Feliciano purchased her loft in 2003. Ms. Feliciano is an academic research specialist with an emphasis on Spain's medieval period arts.

24. Ms. Feliciano resides with her husband and their child. Ms. Feliciano's building would be unable to convert to a residential certificate of occupancy without a substantial and prohibitive investment of substantial sums. Even then, architectural and structural impediments may render a residential conversion impossible (*see* Affidavit of Ronnette Riley annexed hereto as Exhibit "C").

25. The building in which Ms. Feliciano resides is a warehouse structure built in 1902-1903 located within the historic district. The City of New York has refused to advise Ms. Feliciano in relation to protocols, procedures and methodologies for code compliance. Examples of prohibitive costs will include elevator code modernization, energy and fire code regulations, air and light specifications, ventilation related issues and proper means of egress. Upon information and belief, attempting to comply with the rezoning will render Ms. Feliciano's home

uninhabitable. Conforming building-wide residential use will also imperil 25% of the units within the building occupied by certified artists.

26. The costs as detailed in the Riley Affidavit as it pertains to Ms. Feliciano includes light and air, handicap accessibility, the redevelopment of existing building floor area, the replacement of structural systems, installation of new building entrances, lobbies, corridors, and elevators. In her individual apartment, interior renovations, including mechanical, electrical, plumbing, and fire protection infrastructure for new living spaces, kitchens, bedrooms, and bathrooms are required.

27. The Riley Affidavit estimates that the total cost of rezoning compliance, including consultant fees and displacement, is estimated to be over $2 million. This is a catastrophic imposition of an unfathomable financial burden that would force her permanent displacement from her home. The harm faced by Petitioner is irreparable and permanent.

28. Petitioner, Kay Powell, is a resident of the State of New York, County of New York. Ms. Powell resides in Soho at 66 Grand Street, as a shareholder in a cooperative building. Ms. Powell purchased her loft in 1998. Ms. Powell previously owned a unit 22 Wooster Street, which was purchased in 1974 where her husband Gene Epstein was a certified artist. Ms. Powell has been employed by the City University of New York for the past 25 years. Ms. Powell's husband, Eugene Epstein was a certified artist and who died April 2019. Ms. Powell resides with her son Harry Powell. Harry Powell is an artist in the process of submitting an application for certification. Ms. Powell has not been advised of the costs that she must endure to comply with the rezoning.

29. Petitioner, Amit Solomon, is a resident of the State of New York and, County of New York. Mr. Solomon resides in Soho at 684 Broadway, New York, New York.

30. Mr. Solomon has resided at 684 Broadway for 14 years. Mr. Solomon resides with his partner and three children. Two of his children attend local New York City Public High School. One child is special needs and would suffer greatly as a result of the displacement and dislocation resulting from the challenged rezoning.

31. Mr. Solomon is a shareholder in the residential Co-op corporation titled 684 Owners, Corp. Mr. Solomon purchased shares in the Co-op corporation in or about May 2007 from an estate previously occupied, upon information and belief, by a certified artist who was long deceased at the time of the transaction.

32. Mr. Solomon is not a certified artist. His partner is an award-winning writer in the genre of popular culture, but would not be able to certify as an artist under current DCLA criteria.

33. Approximately 15 years ago, Mr. Solomon invested nearly $1,000,000 to rehabilitate his home. Mr. Solomon undertook these investments was in all respects reliant upon longstanding City policy and assurances related to enforcement and administration of the zoning district's land use procedures and protocols.

34. In or about 2019, Mr. Solomon spent over $750,000.00 to purchase his ex-spouse's equity in the Cooperative and related professional expenses and taxes. Mr. Solomon undertook his additional investment in the Cooperative in further reliance of then longstanding City policy and land use rules, regulations, statutes, procedures, and protocols in 2019. Mr. Solomon received assurances from professional consultants and reasonably relied upon professional advice and the state of City statutes, rules, and regulations.

35. Mr. Solomon has been advised that the newly enacted $100 per square foot conversion fee of $310,000.00, which he must pay to the City just to stay in his home. This

upfront payment will be non-refundable and without any guarantee that the conversion will be successful.

36. Mr. Solomon has been advised by architectural consultants that in order to comply with the mandatory conversion from manufacturing to residential use, he will incur additional costs of several hundred thousand dollars to satisfy the renovation, rehabilitation, filing fees, and other costs and expenses necessary to comply with the rezoning residential Certificate of Occupancy.

37. Critically, despite City promises of a "seamless path" to conversion, neither the New York City Department of Buildings nor other relevant agencies have issued any guidelines or rules that set forth a path that Mr. Solomon and other petitioners must follow to convert their homes. This uncertain path has diminished the value of Mr. Solomon's home investment and rendered a potential sale or refinancing virtually impossible.

38. Previously, the stable land use environment in Soho facilitated refinancing, investments, and sales in the community in close proximity to Mr. Solomon. The City's arbitrary and capricious adoption of the challenged rezoning without proper procedures in place has undermined Mr. Solomon's reliance upon his reasonable lawful investments in his home.

39. Petitioners, Ian Kerner and Lisa Rubisch, are residents of the State of New York and, County of New York. Mr. Kerner and Ms. Rubisch reside in Soho at 5 Great Jones Street. Mr. Kerner is a prospective shareholder in a cooperative building. He signed a purchase agreement for a unit on October 22, 2021.

40. Mr. Kerner is a psychotherapist. He and his wife, Ms. Rubisch, reside with their 15-year-old son.

41. If Mr. Kerner had been aware of the onerous costs and penalties associated with the purchase, he would not have purchased shares in the cooperative building. The City Resolution poses two risks to Mr. Kerner. If he withdraws from the pending purchase of shares in the cooperative buildings, he risks the loss of his $500,000.00 deposit. Alternatively, if he continues with the purchase of shares in the cooperative, he faces significant penalties, unexpected conversion costs and fees. Thus, drastic change in City policy, without proper evaluation or mitigation, substantially significantly reduces the investment value of Mr. Kerner's pending purchase of shares in the cooperative.

42. Petitioner, Sara Bershtel, is a resident of the State of New York and~~,~~ County of New York. Ms. Bershtel resides in Soho at 70 Grand Street. Ms. Bershtel has resided there for 33 years. Ms. Bershtel has worked in the publishing industry for 26 years and is presently Metropolitan Books an Imprint of Henry Holt & Company. Ms. Bershtel's husband, Richard Brick was the first Film Commissioner for the City of New York, was a certified artist, who died in April 2014. Ms. Bershtel has not been advised of the likely costs she will incur to comply with the rezoning.~~,~~ However, based upon the Affidavit of Ronnette Riley Registered Architect, her likely costs will be prohibitive~~,~~ and financially devasting.

43. Petitioners Lynn Schnitzer and Arthur Schnitzer are residents of the State of New York, County of New York. They reside at 421 West Broadway, 4th Fl., an 8-unit building, as shareholders in cooperative building. They are retired. They have lived on the 4th Fl. of the building for over 20 years.

44. Petitioners Caterina Roiatti and Robert Traboscia are residents of the State of New York, County of New York. They reside with their 15-year old son at 421 West Broadway, 3rd Fl. as shareholders in cooperative building. They are Registered Architects. They have lived

on the 3rd Fl. of the building for 31 years. Petitioner Robert Traboscia is a certified artist. Mr. Traboscia is the only certified artist in the 8-unit cooperative building, residing in a compliant JLWQA unit.

45. By virtue of the mandatory conversion rules governing the entire building as a result of the rezoning, they face the loss of usable space, the loss of their JLWQA unit, prohibitive costs as set forth in the Riley Affidavit, and displacement.

46. Respondent City of New York is the governmental entity implementing zoning rules for the municipality.

47. Respondent, The Department of City Planning (DCP) is New York City's land use agency that carries out the administrative functions relating to land use on behalf of the New York City Planning Commission.

48. Respondent New York City Planning Commission ("CPC") is the agency responsible for land use determinations including zoning decisions. The Mayor appoints the Chair who is also the Director of City Planning. The Mayor also appoints six other members, each Borough President appoints one member, and the Public Advocate appoints one member. The Chair serves at the Mayor's pleasure while the other 12 commissioners each serve for staggered terms of 5 years. The CPC has an official determinative role in the Uniform Land Use Review Process ("ULURP") pursuant to § 197-c(a) of the City Charter.

49. Respondent New York City Council is the legislative body of the City of New York responsible for the passage of the Zoning Resolutions of the City of New York.

50. Respondent Eric Adams is the Mayor of the City of New York, Chief Administrative Officer of the City of New York responsible for the execution and administration

of the Zoning Rules of the City of New York. Upon information and belief, his principal place of business is located at City Hall, New York, NY 10007.

51. Respondent Office of the Mayor of the City of New York (the "Mayor's Office") is an "agency" within the meaning of Public Officers Law § 86(3).

III. FACTS

A. Historical Background

52. In 1961, the City of New York instituted a comprehensive plan for the entire City.

53. New York City's Zoning Resolution created various Zoning Districts. The Districts were divided into residential, commercial, manufacturing and special purpose districts. Each district was further divided into rules relating to size, density, height, bulk, and safety concerns.

54. The 1961 Zoning Resolution was designed to promote and protect public health, safety and the general welfare. Each district within the 1961 Zoning Resolution sets forth, a statement of legislative intent for the respective districts and group of districts.

55. From the period of the 1860's to the early 1900's, the textile industry was predominant in Soho and Noho.

56. In the 1950's the evolving needs of modern manufacturing, which included loading zones, the need for electric lighting, and improved access to transportation networks, displaced businesses away from the Soho and Noho areas.

57. In 1961, Soho and Noho was zoned for manufacturing, but artists saw an opportunity to live and work in vacated and underutilized manufacturing buildings. The zoning, however, prohibited residential use and the artists living in vacant manufacturing space were living illegally.

58. In 1960 and 1961, the City evicted approximately 100 artists in residence. In response to these evictions, Soho residents created the Artists Tenants' Association ("ATA"). The ATA sought to develop the Artists in Residence Program ("AIR"). This movement garnered the support of Eleanor Roosevelt, sculptor Isamu Noguchi, and abstract expressionist painter William de Kooning. The organizing effort of the artist community led to engagement with City officials.

59. The City negotiated various amnesty programs allowing artists to remain in occupancy so long as the manufacturing zoned buildings were equipped with two means of egress and no excessive fire hazards were in existence. Despite these precautions, there were a number of fire fatalities throughout the 1960s.

60. In the early 1960's, the City rezoned Soho and Noho into an M1-5 light industrial zone. This classification prohibited new residential development. Concurrently, the artists developed a coalition with politicians and housing advocates to pass legislation amending the New York State Multiple Dwelling Law to permit artist loft residences.

61. In 1970, the City passed comprehensive rezoning that enabled artists to live and work in certain loft buildings in Soho and Noho.

62. The 1970 rezoning plan passed the New York City Council on January 20, 1971, after public hearings were held at the City Planning Commission on December 9, 1970, and January 6, 1971.

63. The rezoning established two new districts. The districts were designated M1-5A and M1-5B, light manufacturing, and created a new use group, designated Use Group 17. Joint Living-Work Quarters for Artists ("JLWQA") created living-work quarters for artists. This

designation allowed an artist certified by the New York City Department of Cultural Affairs to live lawfully in certain designated areas.

64. All of the regulations pertaining to manufacturing uses in M1-5 districts would remain the same, and in addition, joint living-work quarters for artists would be permitted in buildings that met certain criteria.

65. Some of the criteria required that the building contain at least one artist in residence as of May 1, 1970. Another criteria required that the building not exceed 3,600 square feet of lot area, unless it was held in cooperative ownership by September 15, 1970.

66. Through the public hearing process, certain revisions were implemented by the City. The new M1-5A allowed JLWQA in any building consisting of 3,600 square feet or less, without regard to previous tenancy by an artist, and allowed occupancy in buildings greater than 3,600 square feet provided the building was held in cooperative ownership by artists on or before September 15, 1970. The new M1-5B District maintained the prior requirement of previous artist residency.

67. Essentially, the M1-5A and M1-5B Districts remained light manufacturing with JLWQA as a special residential use to be permitted only in conjunction with artist work quarters.

68. In June 1971, the New York State Legislature passed an amendment to the State Multiple Dwelling Law that set forth fire and safety regulations relating to lofts converted from manufacturing use. The amendment clearly defined the certification process for artists and assigned the responsibility of determining who qualified as an artist to the New York City Department of Cultural Affairs. In relation to the Multiple Dwelling Law ("MDL"), each building painstakingly invested in fire safety changes and other structural changes including

adding means of egress and sprinklers to ensure safety and in order to obtain a Certificate of Occupancy.

69. The New York State Legislature further codified health and safety standards for residential lofts in Article 7-C of the Multiple Dwelling Law ("MDL"), passed in the 1980s.

70. The MDL created Interim Multiple Dwellings ("IMD") to protect the health and safety of tenants and to confer Rent Stabilized status to protect against evictions. The MDL amendment enabled the creation of IMDs, which is a temporary legal status conferred upon commercial or manufacturing buildings occupied by three or more families with the ultimate expectation that such buildings be upgraded as permanent housing. The law also created the New York City Loft Board to regulate conversions from manufacturing to residential use. In 1987, Article 7-C was amended to allow IMDs for non-artists in Soho and Noho to seek loft coverage, and thus rent stabilization protections. The statement of legislative findings provided:

> §280. Legislative findings. The legislature hereby finds and declares that a serious public emergency exists in the housing of a considerable number of persons in cities having a population of over one million, which emergency has been created by the increasing number of conversions of commercial and manufacturing loft buildings to residential use without compliance with applicable building codes and laws and without compliance with local laws regarding minimum housing maintenance standards.

71. As Soho and Noho developed with residential use, the City recognized that artists' occupations and circumstances could change, and that many residents did not qualify for artist certification. Notably, the City granted personal amnesties for residents, other than certified artists, in Soho and Noho, to allow units previously restricted to certified artists to be legally occupied by the general public. The amnesties only attached to the individuals, not to the properties.

72. A 1983 occupancy survey cited by the FEIS in its executive summary at page S-3, showed that only approximately one third of households in Soho and Noho were occupied by certified artists. Familial succession of JLWQA by non-artists, sales and leasing of units to non-artists further accelerated non-artist occupancy. This survey led to the 1986 Zoning Amendments, which carefully sought to preserve neighborhood stability (*see* 1986 City Planning Commission report annexed hereto as Exhibit "D").

73. This objective set forth in the 1986 City Planning Commission report sought to preserve residential stability and neighborhood character. This precedent established through five decades in Soho/Noho was blatantly disregarded and unlawfully ignored by the current rezoning. As set forth in the Affidavit of Thomas Angotti, annexed hereto as Exhibit "E", the FEIS totally ignored this unprecedented change in City policy.

74. While hundreds of artists were certified through the 1970s and 1980s, that number dwindled to fewer than 10 per year in the latter half than the 2010s. Today, Soho and Noho are primarily residential enclaves of approximately 8,000 people. Additionally, Soho and Noho maintain commercial uses and professional offices employing over 52,000 people. The Covid-19 pandemic has severely impacted office occupancy, retail use and tourist traffic in the last 2 years.

75. The FEIS has calculated that the share of certified artists throughout the site is relatively small. The number of annual artist certifications granted has dwindled from several hundred in the 1970's to fewer than 5 since 2015.

76. In 1973, New York City began a process of historic and landmark designation throughout the rezoning site. In 1973, the Landmark Preservation Commission designated the Soho Cast Iron Historic District. Landmark designation was extended to various other sites in Noho and Soho in 1999, 2003, and 2008. In 1978 the SoHo Cast Iron District was declared a

National Historic Landmark. The purpose of landmark designation was to protect and preserve the low-rise contextual architectural and cultural character of the neighborhood, and to encourage the retention of buildings that were being converted into artists' lofts, respecting the light and air facilitated by low-rise buildings.

77. In December 22, 1986, the New York City Zoning Resolution was revised to permit certain non-artist residents to remain in occupancy, thus preserving neighborhood stability and preventing mass evictions (*see* §ZR 42-14(d)).

78. Included within the definition of artists, was a unit occupied by any household residing therein on September 15, 1986 whose members are unable to meet the artist certification qualifications of the Department of Cultural Affairs that registers with the Department of Cultural Affairs within 9 months of the effective date of the Resolution, or by any person who by virtue of a relationship to a person that is entitled to reside therein as an artist. *See* §42-01 of the ZR. This protection did not extend to the JLWQA unit, but was attached to the individual resident.

79. The City Planning Commission in its environmental review in 1986, carefully noted that lacking artist certification, many households were subject to eviction because Certificates of Occupancy could not be obtained. This salient truth was totally ignored in the challenged rezoning, thus rendering the current rezoning scheme unlawful (*see* City Planning Commission Report annexed hereto as Exhibit "D").

80. The enacted 1986 zoning amendment sought to prevent large scale displacement thereby preserving the character and stability of the Soho/Noho neighborhood. The City recognized in 1986 that preserving stability and preventing evictions was a critical component of the environmental review process.

81. The 1986 environmental study examined the impact of the residual effect upon a family member whose certified artist had died or moved out. The 1986 zoning iteration sought to preserve an artists' family's right to remain in their home. This provision is patently lacking from the 2021 rezoning. The 1986 Zoning Amendment, unlike the 2021 rezoning, had strong public support and was based upon a solid foundation of community engagement (*see* 1986 City Planning Commission Resolution annexed hereto as Exhibit "D").

82. By the 1990's, non-artists, retail and office tenants began replacing many of the artist galleries. Many buildings started to routinely house retail on the ground floor and residences on the upper floors.

83. By the early 2000s destination retail and expensive loft apartments had become commonplace in Soho. New York City's policy throughout the decades was a general policy of amnesty and non-enforcement of artists in residency qualifications. The rezoning, without analysis, review or study, suddenly and drastically reverses that policy (*see* ZR §§ 143-12 and 143-13).

84. The New York State Multiple Dwelling Law provided a precedent for legalization. The Loft Law essentially acknowledged that people were living in Soho lofts illegally, and instead of evicting them, sought to ensure safe occupancy by requiring owners to comply with fire safety and building code standards as set by the New York City Department of Buildings. The Loft Law also stabilized residential occupancies by conferring rent protections and protections against evictions for tenants in buildings being brought up to code. The law set various deadlines, which have been extended throughout the years.

85. The JWLQA certification process has been honored in the breach throughout the decades. The certification process can be lengthy, opaque and burdensome with strict definitions and rules (*see* RCNY Title 58, Chapter 1, §§1-02 and 1-04.)

86. A substantial portion of the Soho-Noho community, including Petitioners, reside in units, either formerly occupied by certified artists, or units occupied by individuals without obtaining certification because of amnesties, legal successions, or stipulations provided by owners or Co-op corporations.

87. The current zoning regulating M1-5A and M1-5B permit a maximum FAR[1] of 5.0 for commercial and manufacturing uses and 6.5 FAR for community facility uses. This translates into a maximum height of a building at the street wall of 6 stories of 85 feet, whichever is less. M1-5A and M1-5B allow a broad range of light manufacturing and commercial uses as-of-right. Residential use, which is not permitted as-of-right, consists of residential lofts legalized under the Loft Law, residential units that are pre-existing non-conforming uses, or units permitted by a special permit or a variance. JLWQA is a Use Group 17D manufacturing use that provides for live and workspace for artists certified by the New York City Department of Cultural Affairs.

B. The Rezoning Initiative

88. In or about 2015, the Manhattan Borough President and the local City Council Member requested that the New York Department of City Planning ("DCP") initiate a study to rezone the Soho, Noho and Chinatown areas.

89. The initiative would require a massive undertaking, which must have included navigating a complex web of regulatory and statutory State and municipal rules pertaining to

[1] Floor Area Ratio ("FAR") is defined as: The floor area ratio is the ratio of the building's built square footage to its zoned lot size. For example, if a building has a 10,000 square feet lot size and the building has only one floor completely covering the lot, then it has a floor area ratio of one. *See* § 12-10 of the ZR.

zoning, environmental rules, fire safety, artist certification, public policy related to enforcement, the Multiple Dwelling Law, Rent Regulation, demographic changes, diversity, landmark and historic rules and regulations, traffic, open space, congestion, and racial inclusion. Interagency coordination and the integration of State legislative initiatives was deemed vital before the implementation of new zoning rules.

90. A community planning process followed the local elected official's initiative. An 18-member advisory group with various community representatives was designated to begin the public engagement process. A number of working sessions and committee meetings followed. various recommendations were articulated by this group. However, unlike the 1986 precedent, virtually none of the recommendations were adopted by the City Planning Commission in the legislation's rushed final rendition.

91. In November 2019, the Department of City Planning published a document titled "Envision Soho/Noho" which attempted to summarize the above process. However, many participants in the process disagreed with the document which did not reflect their input. Minutes from 17 meetings undertaken through the process were never shared with participants.

92. The consensus of the advisory group was that more study, analysis and inter-agency consultation was required prior to the commencement of the formal Uniform Land Use Review Process leading to codification.

93. In short, the City was not ready to move forward with the massive complexity involved in rezoning a community regulated by an array of various City and State agencies and regulations. The Zoning Resolution governing the District includes a complex statutory scheme related to the definition of artist found in ZR § 12-10, with the more expansive provisions related to loft living set forth in ZR § 41-11, governing light manufacturing M1 districts, and ZR § 42-

14(d) governing special uses in M1-5A and M1-5B districts. Section 42-14(d) defines JLWQA and the class of buildings that permit JLWQA residencies.

94. The review process was hampered by the fact that we remain in the midst of the Covid-19 pandemic. Obviously, the pandemic limits community interactions and public dialogue. Nevertheless, former Mayor De Blasio announced on October 7, 2020, that the project would move forward virtually, through the Uniform Land Use Review Process ("ULURP"). This was done in order to ensure that the formal environmental and land use review would be completed prior to the end of former Mayor De Blasio's term in office. The truncated process effectively deprived community members of any democratic voice regarding the forthcoming City Council elections. The current City Council member of the District vehemently opposed the rezoning.

95. The project, as announced, was slated to replace all or portions of existing M1-5A and M1-5B districts with medium to high density commercial and/or mixed-use districts and create a new Special Soho-Noho Mixed-Use District.

96. The Soho-Noho rezoning is projected by City Planning to create 3,200 new dwelling units with predominantly and overwhelmingly luxury high-rise dwellings, big box retail and create incentives for prospective demolition of low-rise historic buildings containing units that were already affordable.

97. The advisory group presented 27 recommendations throughout the engagement process. The City failed to recognize, adhere to, or adopt a substantial portion of the recommendations. The public engagement process was exposed as a mere "fig leaf" to move forward with the City's predetermined objective to exploit the community with the introduction of high-rise luxury apartments, office buildings, and big box retail stores.

98. A primary objective of the advisory group was to maintain, enforce and strengthen protections for residents, including renters, rent regulated tenants, legalize the existing residents, and to support and promote artists and producers of art. The advisory group recommended that people be allowed to live in Soho and Noho without artist certification, pursuant to the existing City policy of amnesty. Local elected officials, alongside City representations, repeatedly assured community members that the amnesty policies in place would continue. This turned out to be a devastating lie.

99. The advisory group recommended the creation of affordable housing, live-work opportunities on underused land, and the importance of respecting and supporting neighborhood diversity and the existing historical character. Foremost, among the recommendations of the advisory group, was the need for light and air, proper shadow studies, the requirement of open space, and concerns relating to traffic, congestion, air quality, and the stability and affordability of Chinatown.

C. The Uniformed Land Use Review Process ("ULURP")

100. ULURP was enacted in the New York City Charter in 1975 for the purpose of ensuring community involvement in land use decisions.

101. ULURP was also intended to provide adequate opportunities for technical and professional review of land use decisions, including inter-agency communications and statutorily mandated environmental review.

102. Pursuant to §197-c(a) of the City Charter, Zoning Resolutions and zoning changes are governed by the provisions of ULURP.

103. ULURP is multistep/multiagency procedure. The steps mandated are as follows: 1) Department of City Planning ("DCP") review and certification. DCP is an agency of the City

Planning Commission; 2) Community Board review; 3) Borough President advisory recommendation; 4) City Planning Commission ("CPC") approval; and 5) City Council approval.

104. The actions of the CPC and the City Council are official. The role of the Community Board and the Borough President is merely advisory. The actions of the CPC and the City Council are subject to Mayoral veto, which in turn, is subject to a veto override by two thirds vote of the City Council. *See* City Charter §197-d(e).

105. On May 3, 2021, the City of New York formally commenced its public review process pursuant to the New York City Charter governing the Uniformed Land Use Review Process. All zoning initiatives must adhere to the ULURP process. ULURP is governed by Chapter 70 §§ 197-c and 197-d of the City Charter and in Chapter 62 §§ 201-207 of the City Rules.

106. Concurrently with the ULURP review, the rezoning must be reviewed pursuant to the State Environmental Quality Review Act ("SEQRA") and City Environmental Quality Review ("CEQR") due to significant adverse negative environmental impacts generated by the rezoning.

107. The hearings held throughout the ULURP process were done remotely due to the ongoing Covid-19 pandemic.

108. The first step in the ULURP process mandates that the Department of City Planning provide notice to the local Community Board to hold public hearings and submit its recommendations to the Manhattan Borough President and the New York City Planning Commission.

109. The Department of City Planning certified the rezoning project to go through the ULURP review on May 3, 2021.

D. Community Board Review

110. The role of the Community Board in the ULURP process is advisory. However, the 51-member Community Board appointed by the Borough President and local councilmember is designed in the ULURP process to represent the voice of the community.

111. The local Manhattan Community Board #2 identified many of the shortcomings of the new law. Included in its critique was the failure to protect existing residents, the failure to mitigate significant adverse environmental impacts on open space, shadows, historic and cultural resources, transportation, noise, air quality, displacement of small and local businesses, the imposition of conversion fees as a result of mandatory building-wide legalization, the economic hardships imposed upon the residential population in forced mandatory conversions, the destabilization of Chinatown, the loss of the artist community because of forced building-wide conversions, and the failure of the City to consult with the State regarding the Multiple Dwelling Law's interplay with residential stability.

112. Critically, the enormous increase in height and FAR codified by the new zoning, will encourage demolition of smaller buildings causing further displacement and dislocation to residents of Chinatown. The threat to the historical character of Soho/Noho is also undermined by the incentivization of the vertical expansion allowed under the new zoning.

113. The Community Board detailed the failure of the Mayor's office to adhere to any of the recommendations put forward in the multi-year community engagement process, which had resulted in the publication of "Envision Soho/Noho".

114. The City's rationale of affordable housing was exposed as a sham due to gaping loopholes in the law, which exempt all development under 25,000 square feet, mixed-use development is also exempt, allowing for high-rise development stacked on top of commercial use. All commercial development is exempt as well, including the large allowance for retail uses of up to 25,000 square feet, including on side streets and on upper levels, which will directly crowd-out residential uses on the same upper floors.

115. The displacement of non-certified artist and JWLQA uses will be prolific. This impact is due to change in City policy relating to enforcement, and compelling non-conforming buildings to legalize, forces people to endure crushing financial hardships, loss of financing and difficulty obtaining mortgages.

116. Additionally, if the development site consists of multiple zoning lots, each zoning lot is exempt from affordable housing up to 25,000 square feet. Thus, on a projected development site with 5 zoning lots, such as 174 Centre Street, which is a parking lot, 124,146 square feet available for residential development with 5 separate buildings can be developed with no affordable housing.

117. Based on the foregoing, the Community Board overwhelmingly rejected the rezoning by a vote of 36-1.

E. The Rezoning

118. On October 26, 2021, the New York City Planning Commission approved the Noho/Soho/Chinatown rezoning.

119. In or about December 15, 2021, Resolution No.:1889-2021 (Special Soho-Noho Mixed Use District "SNX") became law. In relevant part the rezoning is contained within, Article 14, Chapter 3, ZR§§ 143-00 through 143-31.

120. The rezoning covers an approximately 56 block area of Soho, Noho and Chinatown, eliminating the M1-5A and M1-5B zoning districts. The rezoning pairs manufacturing districts with residential districts. The pairing of manufacturing and residential creates M1-5/R7X, M1-5/R9X, and M1-6/R10 zoning districts. The designations combine high density residential with allowable light manufacturing.

121. The entire zoning district establishes the special Soho/Noho Mixed Use District ("SNX").

122. The rezoning, through a Zoning Map Amendment and a Zoning Text Amendment, introduces high-rise, high-density, luxury residential use, a wider range of non-residential uses, removes ground floor commercial use restrictions, creates a Mandatory Inclusionary Housing ("MIH") provision with widespread exemptions rendering the MIH program almost irrelevant, especially in the mixed-used context where the MIH is unprecedented.

123. A major criticism of the rezoning is the transformation of a low-rise historic district into a homogenous high-rise luxury zone. This also was overlooked in large detail through the environmental review process. The overall zoning change in all respects increases height, density, adds over two million square feet of development without proper evaluation of all of the concomitant and resulting negative environmental impacts.

124. The Zoning Map Amendment replaces all or portions of the existing M1-5A and M1-5B zoning districts. The Zoning Map Amendment creates the Soho/Noho Mixed-Use District ("SNX") district throughout the entire site.

125. The zoning change introduces residential uses as-of-right, increases height restrictions allowing for buildings which may extend to 275 feet in. Part of the district would allow a maximum FAR of 9.7 for residential uses. The inclusion of affordable housing would allow buildings of 275 feet in height.

126. Although the rezoning purports to allow existing JLWQA to remain, however this assertion set forth in the FEIS is misleading. The new zoning compels the conversion of non-artist residential use to conforming residential use. **Therefore, cooperative buildings that contain JLWQA units will be forced to dislocate for an extended period of time with the removal and transformation of their units.** The environmental review failed to account for cooperative buildings that maintain a mixture of certified artists and non-artists. The transformation to residential use mandated by the rezoning will force artist lofts to forfeit their unique manufacturing size and qualities, which enabled JLWQA residencies. *See* Affidavit of Ronnette Riley, Registered Architect, annexed hereto as Exhibit "C".

127. The rezoning mandates that every conversion from JLWQA to residential, requires a contribution to an artist fund, which equals $100 per square foot, which will increase over time based upon the Consumer Price Index and future legislation. The FEIS justified the artist fund as a provision supporting resources for the arts and the assistance of JLWQA only in Soho and Noho. The final legislation, however, removed this stipulation. The zoning contains no such restriction, and the fund can be utilized anywhere under 14th Street, an area 25x the size of

SoHo and NoHo), contrary to the analysis provided in the FEIS. This tax directed against one discrete neighborhood to pay for a public cause is found nowhere else in New York City.

128. This financial mandate or tax is in addition to the current fines which exist pursuant to the Administrative Code § 7-629. Current Mayor Eric Adams recently vetoed an amendment to the Administrative Code, Intro 2443, which sought to impose minimum fines of $15,000.00 for a first offense with escalating fines thereafter. While this legislation was vetoed, however current fines remain in place and the specter of additional fines remains a clear and present danger to residents of Soho, Noho and Chinatown. Mayor Adams, in his veto, suggested that fines will be forthcoming upon further analysis.

129. The SNX district also allows department stores with an area limitation of 25,000.00 square feet on floor areas as-of-right, including on upper floors, which will displace residential use.

130. The SNX allows increased height throughout the district. In part of the district, the maximum FAR for commercial and manufacturing uses, would be increased from 5.0 to 6.0, modify rear yard regulations thus decreasing open, create a special permit process to permit hotels and allow residential use in large buildings containing over 60,000 square feet of floor area.

131. Over 80% of the rezoning site is within LPC designated historic districts, which is facing an existential threat by virtue of developer incentive to demolish or transform low-rise structures, predominantly buildings with rent stabilized housing, into profit making luxury high-rise residential towers. This comprehensive rezoning throughout the historic district is unprecedented anywhere in the developed world. There is no existing historic district that has had to confront the threat of large scale and widespread demolitions.

F. Impact on Chinatown

132. The rezoning will have a substantial and unexamined impact upon the residents of Chinatown, part of which is also included in the rezoning district and intentionally mis-labeled as "SoHo East".

133. The FEIS failed to include any meaningful analysis of the potential displacement of the residents of Chinatown.

134. The affidavit of Thomas Angotti, Professor Emeritus of Urban Policy and Planning at Hunter College and the Graduate Center, City University of New York and former member of the New York City Planning Commission, demonstrates that the failure of the FEIS to disclose the potential displacement of residents in Chinatown, a portion of which is included in the rezoning area, follows a clear pattern of ethnic discrimination by the City. (*See* affidavit of Thomas Angotti annexed hereto as Exhibit "E.")

135. In recent decades, through its land use and zoning policies, the city has rejected repeated efforts by Chinatown residents, civic groups and community organizations to strategically plan for development and preservation of the historic neighborhood. In the rezoning process, Chinatown residents were completely excluded from the public engagement process.

136. The influx of high-rise luxury towers in the Soho and Noho rezoning will advance the displacement of people of color in Chinatown and the Lower East Side, both areas immediately bordering Soho and Noho that are already experiencing significant displacement of people of color.

137. The displacement of Asian Americans in Chinatown is undeniable. Yet, the consideration of this fact is absent from the FEIS. As set forth in the Angotti affidavit, the FEIS demonstrated no analysis of the likely displacement in Chinatown.

G. Deficiencies in the FEIS

Neighborhood Character/Socioeconomic Conditions

138. The FEIS failed to examine the City's rationale of providing affordable housing. No objective analysis, study or review was included in the environmental review process. The FEIS failed to acknowledge that there is no guarantee of affordable housing as part of the rezoning. The conclusions in the FEIS were based upon speculative reliance upon "market forces." Whether the rezoning will in fact achieve the City's stated goal of providing affordable housing was left unexamined. This is contrary to the basic and fundamental principles of ULURP.

139. Developers who are subject to MIH in expensive markets like Soho and Noho are most likely to choose tenants from income bands that skew towards higher-income households – up to 140% of Area Median Income. The FEIS failed to address the possibility and likelihood that the new affordable units will be unaffordable to most low-income households. The zoning requirements indicate that affordability requires income averaging 60% of Area Median Income. There is also an option that affordability is the equivalent of 80% of Area Median Income. The median income for all cities across the country is defined each year by U.S. Department of Housing and Urban Development (HUD). The 2021 AMI for the New York City region is $107,400 for a three-person family (100% AMI).

140. The FEIS claims that within the study area there is "no government-assisted housing or other types of income-restricted units." This is both misleading and reflects a failure to properly draw the boundaries of the study area in order to take a hard look at potential impacts. Lower Manhattan has a major concentration of public housing under the stewardship of

the NYC Housing Authority (NYCHA). SoHo NoHo also contains many affordable governmentally rent regulated housing that was ignored within the FEIS.

141. The two largest concentrations of public housing in Manhattan are in lower Manhattan and Harlem. Major NYCHA projects are immediately adjacent to the rezoning area. In addition, there are thousands of low-income units existing by virtue of the Cooper Square Mutual Housing Association, the Lower Manhattan Mutual Housing Association and other non-profit low-income cooperatives, including low-and-moderate income Mitchell-Lama coops. These affordable housing bulwarks are facing numerous threats, including new market-rate development that displaces existing affordable retail and service establishments, buyouts by speculators, illegal conversions and other predatory real estate practices.

142. Further, NYCHA has been moving rapidly towards public-private partnerships in existing and new developments that are likely to favor higher-income tenants. The FEIS fails to look at the potential effect of expanding market-rate development in Soho and Noho on the affordable housing on its periphery. It cannot be assumed that previous government support in these developments will continue when many existing affordable housing units are vulnerable to becoming less affordable or shifting entirely to market-rate housing. This trend has broad implications for racial balance and must be considered both as part of the existing conditions and possible future scenarios. Failure to do so demonstrates yet another failure to take the required "Hard Look" at displacement and racial equity.

Climate Change

143. Impacts upon flooding and coastal resiliency are conspicuously absent from the FEIS. This is a major area of environmental concern due to climate change.

144. Soho and Noho immediately abuts the portion of Lower Manhattan that is most vulnerable to sea-level rise caused by global warming. There is no disclosure or analysis of potential negative impacts on Soho and Noho. Canal Street, in particular, warranted special attention because it borders lower Manhattan, is a major east-west traffic corridor and is built over a former canal.

145. Undoubtedly,-the Soho and Noho rezoning would attract major new development there. It is clear that New York City's plans for protections against sea-level rise in lower Manhattan are many years away from being realized and face numerous obstacles. However, the environmental review failed to take the required "Hard Look" at the potential effect of delays, the growing threat of climate change, and recent examples of sudden catastrophic climate events in these areas.

146. The FEIS designates future identified development sites as subject to air quality designations that restrict heating and hot water systems to "natural gas" for heating and hot water. This runs counter to recent city and state policies that move energy supply away from gas and oil and towards renewable energy.

Petitioner-Displacement and Taking

147. The City's environmental review of the Soho and Noho rezoning failed to take a "Hard Look" at the potential negative environmental impacts upon each and every Petitioner.

148. The FEIS failed to evaluate the potential displacement of thousands of current residents.

149. The imposition of a $100 per square foot conversion fee will cost hundreds of thousands, if not, millions of dollars in additional taxes. This financial burden will undermine financing, upset mortgage applications, and devalue property.

150. The FEIS failed to analyze, assess, or review the impact of inter-agency coordination and enforcement upon residential stability and dislocation. Each and every Petitioner, by virtue of newly enacted financial burdens faces the loss of their homes and bankruptcy.

151. Each and every Petitioner faces retroactive penalties for previously condoned and approved conduct, and risks property loss and displacement.

152. The FEIS failed to analyze, study or review the virtual impossibility of converting manufacturing use to residential use, as set forth in the Affidavit of Ronnette Riley, Registered Architect.

153. The FEIS failed to evaluate, analyze, or study the impact of the rezoning upon long term residents or seniors.

154. The FEIS failed to evaluate, analyze, or study the impact of the rezoning upon settled reasonably relied upon investment commitments.

155. The FEIS failed to evaluate, analyze, or study the need for inter-agency coordinated protocols, procedures, rules, regulations or statutes enabling converting manufacturing use to residential use.

IV. LEGAL FRAMEWORK

A. SEQRA and CEQR

156. To assure that certain types of government action do not take place until a proposed action has undergone environmental review, the New York State legislature adopted SEQRA, Article 8 of the Environmental Conservation Law ("ECL"), §8-0100 *et. seq*. The State regulations implementing SEQRA are codified. (6 New York Code of Rules and Regulations ("NYSCRR") § 617).

157. The goal of these environmental laws is to guarantee that state and local agencies incorporate environmental considerations into certain planning and decision-making processes, and act in a manner "consistent with social, economic and other essential considerations [and] to the maximum extent practicable, minimize or avoid adverse environmental effects." (ECL § 8-109).

158. To initiate the environmental review process, SEQRA and CEQR require that, as early as possible, the lead agency must determine whether an "action may have a significant effect on the environment." (6 NYCRR §§ 617.1(c) and 617.11). If such a finding is established, the agency will issue a "Positive Declaration," and an EIS must be completed. (6 NYCRR § 617.3(a)).

159. SEQRA is applicable to "actions," which by definition include:

> projects or activities directly undertaken by any agency or projects or activities supported in whole or part through contracts, grants subsidies, loans or other forms of funding assistance from one or more agencies; or projects or activities involving the issuance to a person of a lease, permit, license, certificate or other entitlement for use or permission to act by one of more agencies; (ii) policy, regulations, and procedure making.

160. SEQRA further provides that actions subject to its mandate include:

> Projects or physical activities, such as construction or other activities that may effect the environment by changing the use, appearance or condition of any natural resource or structure, that
> ***
> (iii) require one or more new or modified approvals from an agency or agencies.

(6 NYCRR § 617.2(b)).

161. "Approval" means "a discretionary decision by an agency to issue a permit… or to otherwise authorize a proposed project or activity." (6 NYCRR §617.2(e)).

162. CEQR is an Executive Order intended to facilitate the implementation of SEQRA in the City of New York (62 RCNY Chapter 5). The Rules of Procedure for City Environmental Quality Review supplemented CEQR by, among other matters, establishing procedures or determining lead agency and establishing scoping requirements where Environmental Impact Statements are required. CEQR is only applicable to situations where an environmental review is otherwise required by law.

163. The heart of the State Environmental Quality Review Act and the City Environmental Quality Review is the Environmental Impact Statement ("EIS") process.

164. SEQRA mandates that the preparation of an EIS when a proposed development project "may have a significant effect on the environment." (ECL § 8-0109(2)).

165. It is well settled that because the operative word triggering the requirement of an EIS is "may", there is a "relatively low threshold for impact statements." *Matter of Farrington v. Incorporated Village*, 205 A.D.2d 623, 624, 613 N.Y.S.2d 257 (2d Dept. 1994); *see also Chinese Staff & Workers Assn. v. City of New York*, 68 N.Y.2d 359, 509 N.Y.S.2d 499 (1986); *see also Matter of Group for the S. Fork v. Wines*, 190 A.D.2d 794, 593 N.Y.S.2d 557 (2d Dept. 1993).

166. SEQRA and CEQR mandate that agencies make an initial determination as early as possible as to whether an EIS needs to be prepared for a proposed action. (ECL §8-0109(4)). To require an EIS for a proposed action, the lead agency must determine that the action may include the potential for at least one significant environmental "effect." (6 NYCRR §§ 617.7 and §617.11). The initial determination is set forth in a scoping document which sets forth the areas of significant environmental concern that must be reviewed prior to discretionary decision making.

167. In this proceeding, the rezoning failed to include any review whatsoever pertaining to dislocation, destabilization, economic hardship, impact upon neighborhood character and various traffic, open space and shadow considerations resulting from an unprecedented rezoning of a Historic District.

168. The question before the Court is whether the rezoning evaluated significant areas of environmental concern. Further issues include three essential questions: (1) Did the City Planning Commission and City Council take a "Hard Look" at all potential significant environmental impacts; (2) Did the City act reasonably in determining that no significant adverse environmental impacts would result pertaining to dislocation, destabilization and economic hardships; and (3) Did the City provide sufficient elaboration for the reasons for its determination. See *H.O.M.E.S. v. New York State Urban Development Corp.*, 69 A.D.2d 222, 418 N.Y.S.2d 827 (4th Dept. 1979).

169. The principal mechanism for ensuring that environmental factors are seriously considered in the decision-making process is the environmental impact statement (or EIS), which SEQRA requires government agencies to either prepare, or designate others to prepare, in order to take the requisite "Hard Look" at all statutorily mandated impacts.

170. SEQRA, codified in Article 8 of the Environmental Conservation Law, declares a broad public purpose to protect the environment and to that end, requires that all State and local agencies and governmental bodies conduct their affairs "with an awareness that they are stewards of the air, water, land and living resources". (ECL §§ 8-101 and 8-0103(8)). More specifically, no agency or governmental body may undertake, fund or approve an action until the agency or body has complied with the provisions of SEQRA. (6 NYCRR § 617.36(a)).

171. Under SEQRA, the principal mechanism for assuring that an agency or other governmental body considers environmental concerns is the environmental review, which an agency is required to prepare when an action that it proposed to undertake or approve "may have a significant impact" on the environment. The environmental review must identify the potential impacts and assess reasonable alternative courses of action. If the agency decides to proceed with the action, it must also identify mitigating *steps to minimize any adverse environmental impacts* and, in the end, must make a finding that is "consistent with social, economic, and other essential considerations, to the maximum extent practicable avoid adverse environmental effects, therefore negative effects revealed in an environmental impact statement process, will be minimized or avoided." (ECL §8-0109(1), (2) and (8)).

172. The City failed to assess the impact of the rezoning upon displacement of neighborhood residents, dislocation and destabilization impacting upon the site, which are areas falling squarely within the purview of the term environment in SEQRA and CEQR. The impact that the rezoning may have upon population patterns or existing community character is a significant and relevant concern completely ignored in the City Resolution. *See Chinese Staff & Workers Assn.* (Id.)

173. The City failed to consult with the New York City Department of Buildings in relation to light and air, accessibility, safety, health and code related issues in effectuating policies, procedures and protocols stemming from the rezoning's mandatory conversion provisions.

174. The City failed to integrate the provisions of the rezoning with prevailing MDL laws governing health and safety standards of loft units.

175. The deficiencies, failures and omissions in the environmental review process did not meet the requirements of SEQRA or CEQR. Thus, the City Resolution was arbitrary, capricious and an abuse of discretion.

B. Article 1 § 10 of the United States Constitution

176. The rezoning violated Article 1 § 10 of the United States Constitution, which provides:

> No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, **or law impairing the obligation of contracts, or grant any title of nobility.**

(emphasis added).

177. Petitioners' contractual benefits have been impaired. Specifically, due to the rezoning's interference with and retroactive impact upon Petitioners' ability to comply with the contractual obligations relating to their cooperative and condominium purchases and ongoing regulatory compliance. Petitioners and other individuals in the rezoning site invested substantial sums in purchases reliant upon City policy enforcement rules and regulations, which have been cast aside by the rezoning.

178. Petitioners and other individuals previously occupying lawful residential units by virtue of amnesties, governmental policy, familial succession or other inheritance, are now subject to fines, penalties, and prohibitive and impossible conversion costs.

179. Certified artists face the loss of beneficial use and enjoyment of their units due to the necessity of building-wide conversions to residential use. *See* Affidavit of Ronnette Riley, Registered Architect annexed hereto as Exhibit "C".

180. In sum, the rezoning rendered previously lawful uses and occupancies illegal and/or prohibitively confiscatory in contravention of the United States Constitution. *See Lucas v. South Carolina*, 505 U.S. 1003, 1020 (1992) (*quoting Gibson v. Unites States*, 166 U.S. 269, 275-276 (1897)).

C. Article 1 § 7(a) of the New York State Constitution

181. The confiscatory, burdensome, harsh, and unreasonable cost imposed upon Petitioners violates Petitioners' rights pursuant to Article 1 § 7 of the New York State Constitution, which provides: "*Private property shall not be taken for public use without just compensation*".

D. The Fifth and Fourteenth Amendments of the United States Constitution

182. The United States Supreme Court has recognized the applicability of the Fifth and Fourteenth Amendments to property regulation. *See Kaiser Aetna v. U.S*, 444 US 164 (1979); *see also Pennsylvania Coal Co. v. Mahon*, 260 U. S. 393 (1922); *see also Landgraf v. USI Film Products*, 511 U.S. 244 (1994).

183. While the United States Supreme Court has recognized that private property may be regulated, if regulation goes too far, it will be recognized as a "taking." *See Lucas, supra.*

184. Where a municipality seeks to impose a regulation or zoning rule that deprives ownership of all economically beneficial use, it constitutes a taking under the Fifth and Fourteenth Amendments to the Unites States Constitution. (*See Ruckelhaus v. Monsanto Co.*, 467 US 986 (1986)).

185. The rezoning excludes and/or eliminates the economically productive or beneficial uses of Petitioners' homes, including certified artists.

186. Compulsory and prohibitive costs of legalization deprive Petitioners of their homes without just compensation. Compounding the prohibitive conversion costs included the City Resolution's is the imposition of a $100 per-square foot penalty that will deliver residents into bankruptcy or financial hardship, property devaluation, displacement, and dislocation.

187. The rezoning's prohibition and interference with current allowable and permitted uses, notably certified artist use, interferes with reasonable investment-backed expectations, without a rational determination or examination in the record.

188. The devastating economic consequences of the rezoning upon Petitioners constitutes an unlawful taking. See *First Lutheran Church v. Los Angeles County*, 482 U.S. 304 (1987).

189. The just compensation clause of the state and federal constitutions is a matter of "fairness and justice" designed to bar government from forcing a small discrete population to bear public burdens, which in all fairness and justice, should be borne by the public at large. *See Armstrong v. United States*, 364 U.S. 40 (1960); *see also Landgraf, supra.*; *see also Raynor v. Chrysler*, 18 N.Y.3d 48 (2011).

190. Petitioners purchased, invested and developed property based upon long-established laws and rules and accepted practices that did not include the current confiscatory regulatory regime. *See Allen v. Cuomo*, 100 F.3d 253 (2nd Cir. 1996); *see also Matter of Regina Metro. Co. v. N.Y. State Div. of Hous.& Cmty. Renewal*, 35 N.Y.3d 332 (2020).

191. The rezoning implemented a statutory scheme without consideration, review, or study in relation to residents that relied upon reasonable investment-backed expectations.

192. The rezoning implemented a statutory framework without consideration, review, or study in relation to the mandatory legalization or conversion of manufacturing uses, which

will impair, destroy, and eliminate the rights of certified artists to remain in occupancy and/or maintain their livelihoods.

193. The rezoning was instituted without the creation of a new definition or category for non-artists residing lawfully and the rezoning fails to accommodate the maintenance of lawful JLWQA status for residents of the rezoned community.

V. CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION

194. Petitioners repeat and reallege every allegation set forth in paragraphs "1" through "194" as if fully set forth here.

195. By failing to identify significant areas of environmental concern, the City Resolution failed to take the requisite "Hard Look" at the socioeconomic, neighborhood character, historical and cultural resources, and physical environment of the rezoning site.

196. In failing to take a "Hard Look", the City violated SEQRA and CEQR. The City, in approving its adoption of the rezoning, acted unlawfully and in a manner that was arbitrary and capricious.

AS AND FOR A SECOND CAUSE OF ACTION

197. Petitioners repeat and reallege every allegation set forth in paragraphs "1" through "197" as if fully set forth here.

198. In failing to adhere to the provisions of Article 1 § 10 of the United States Constitution, the City retroactively impaired and interfered with the contractual rights of Petitioners.

AS AND FOR A THIRD CAUSE OF ACTION

199. Petitioners repeat and reallege every allegation set forth in paragraphs "1" through "199" as if fully set forth here.

200. In failing to adhere to Article 1 § 7(a) of the New York State Constitution, and the Fifth and Fourteenth Amendments of the Unites States Constitution, the City has confiscated private property without a rational basis and without just compensation, abrogating basic concepts of fairness and justice.

AS AND FOR A FOURTH CAUSE OF ACTION

201. Petitioners repeat and reallege every allegation set forth in paragraphs "1" through "201" as if fully set forth here.

202. The City's imposition of zoning rules that deprive Petitioners of economically beneficial use of their property, constitutes a taking under the Fifth and Fourteenth Amendments of the United States Constitution and violates the just compensation clause of the United States Constitution.

WHEREFORE, Petitioners seek judgment and an order pursuant to CPLR Article 78 and CPLR §§ 3001 and 6301 finding that:

a) The Soho/Noho/Chinatown Rezoning Resolution was arbitrary, capricious, and violative of the State and City environmental laws, rules, and regulations;

b) The Soho/Noho/Chinatown Rezoning Resolution violated the constitutions of the United States and the State of New York;

c) Soho/Noho/Chinatown Rezoning Resolution should be annulled and vacated;

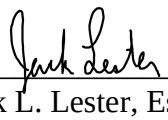
d) The City of New York should be enjoined from proceeding with enactment, enforcement, or implementation of the Soho/Noho/Chinatown Rezoning Resolution;

e) Petitioners are entitled to costs and disbursements in this proceeding, including reasonable attorney fees; and

f) Such other and further relief as this Court may deem just and proper.

Dated: East Hampton, New York
February 9, 2022

The Law Offices of Jack L. Lester, Esq.



Jack L. Lester, Esq.
Attorney for Petitioners
41 Squaw Road
East Hampton, NY 11937
631-604-2228
jllcomlaw@aol.com

VERIFICATION

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

AMIT SOLOMON, being duly sworn, deposes and says:

1. Deponent is one of the Petitioners in the above-captioned action.

2. Deponent has read the foregoing Verified Petition 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.

AMIT SOLOMON

Sworn to before me on this
07 day of Feb, 2022

Notary Public, State of New York

AMARILIS ALMONTE
Notary Public - State of New York
NO. 01AL6389689
Qualified in Queens County
My Commission Expires Apr 1, 2023