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

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In the Matter of the Application of

SAVE CONEY ISLAND, INC., BRUCE HANDY, RUTH MAGWOOD, JENNY McGOWAN, ANGIE PONTANI and AMOS WENGLER,

Petitioners,

For judgment pursuant to Article 78 and section 3001 of the Civil Practice Law and Rules,

-against-

THE CITY OF NEW YORK, NEW YORK CITY COUNCIL and NEW YORK CITY PLANNING COMMISSION,

Respondents,

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Index No. _____

Hon. _____
IAS Part ____
Index No. _____

VERIFIED PETITION

Petitioners, by their attorney, the Urban Environmental Law Center, allege as follows:

NATURE OF CASE

1. This is a proceeding for a judgment pursuant to CPLR Article 78 of the New York Civil Practice Law and Rules ("CPLR"), as well as an action for a declaratory judgment pursuant to CPLR § 3001 and for injunctive relief pursuant to CPLR § 6301,[1] against the City of New York, the New York City Council and the New York City Planning Commission ('collectively, the "City") arising out of the City's rezoning of approximately 47 acres of land (19 blocks) in the area of Brooklyn known as Coney Island. Petitioners allege that the rezoning (hereinafter referred to as the "Coney Island Rezoning") was effected in violation of

[1] This practice of combining Article 78 claims with plenary claims in a hybrid pleading is recognized by New York courts at all levels, including the Court of Appeals, and CPLR § 3017(b).

the State Environmental Quality Review Act [*Environmental Conservation Law*, Article 8]("SEQRA") and the applicable provisions of the General Cities Law and New York City Administrative Code governing the adoption of zoning ordinances and amendments thereto. [*General Municipal Law*, § 20; *New York City Administrative Code*, §§ 25-110, 25-111]

2. Petitioners seek judgment and an order pursuant to CPLR Article 78 and CPLR Sections 3001 and 6301 for, *inter alia*, the following relief:

A. Declaring illegal and annulling the Coney Island Rezoning due to the City's failure to comply with SEQRA and the applicable statutes governing rezoning in New York City;

B. Declaring that the Environmental Impact Statement ("EIS") for the Coney Island Rezoning did not comply with SEQRA;

C. Enjoining the City, including the City Department of Buildings, from implementing the Coney Island Rezoning, including the issuance of any building permits thereunder;

D. Awarding Petitioners their costs and disbursements in this proceeding; and

E. Granting such other and further relief as this Court deems just and proper.

PARTIES

PETITIONERS

3. Petitioner SAVE CONEY ISLAND, INC. is a volunteer grassroots community organization founded in 2008 to participate in the ongoing discussions regarding the future of Coney Island and to advocate for (a) the revitalization of the area as world class amusement

district in keeping with its illustrious history and its potential as one of the great attractions of New York and (b) the renewal and improvement the residential neighborhoods of Coney Island. To that end, Save Coney Island disseminates information about the redevelopment of Coney Island, facilitates discussion about the future and organizes events and rallies to give voice to public opinion about the that future. Its goals include fostering a unique and world-class amusement district, ensuring that Coney Island remains an affordable recreational destination for all New Yorkers, enhancing Coney Island's appeal to visitors from around the world, preserving the amusement district's colorful, human-scale, pedestrian-friendly streetscapes and open-air, seaside atmosphere and creating and preserving affordable housing in appropriate places within the greater neighborhood. Save Coney Island has a mailing list of more 3,000 supporters, and its volunteer members include longstanding residents of the Coney Island/Brighton Beach area, residents of every other borough of the City and from a handful of states, Coney Island performers, an artist who spends weekends painting Coney Island vistas, an urban planner who has dedicated years of study to the neighborhood, local small business owners, historians, Polar Bears, regular visitors to the amusement area, and many other individuals for whom Coney Island holds a special fascination. Since it was formed, Save Coney Island has participated actively in the public process focused on the Coney Island Rezoning, submitting oral and written comments when given the opportunity, delivering thousands of petition signatures to the New York City Council, meeting with many individual Council members and their staff, organizing an alliance of historians to protest the Rezoning plan, and holding more than a dozen rallies and political theater events to convey the views of the organization and its members.

4. Save Coney Island and its members are directly and adversely affected by the illegal actions herein complained of, in a manner different from the general public, in that (a) those who are residents of or live in close proximity to the rezoned area will be negatively impacted by the new high-density commercial and hotel development authorized by the Coney Island Rezoning and by the additional heavy traffic it generates, as well as the interruption of views and the potential for air and other kinds of pollution, (b) those who work in the rezoned area, including artists and performers in particular, will be negatively affected by the change in the kind of amusement district that the rezoning will result in, including the potential that the low cost environment that provides them with employment will be destroyed by the Coney Island Rezoning, (c) those who regularly participate in events special to Coney Island, including the Polar Bears and persons joining in the annual Mermaid Parade and Hot Dog Eating Contest, will be negatively impacted by the changed environment that the Coney Island Rezoning is intended to create, and (d) all those members who regularly use and visit the amusement area and Coney Island beach will be adversely affected by the increases in traffic and resulting air pollution and the threats to the viability of the existing amusement district that would follow from the Rezoning.

5. Save Coney Island has standing to sue in that one or more of its members has standing to sue, the interests it advances here are sufficiently germane to its purpose so as to make it an appropriate representative of those interests; and the participation of Save Coney Island's individual members is not required to assert this claim or afford complete relief. In addition, Save Coney Island, by its involvement in the review process for the Coney Island Rezoning and the extensive work it has done to organize the public voice and analyze the

impacts of the Rezoning, has shown itself and its members to be specially affected by the actions complained of in a manner significantly different from the general public.

6. Petitioner BRUCE HANDY resides at 501B Surf Avenue in Coney Island, approximately 500 feet (one block) away from the area rezoned under the Coney Island Rezoning and on one of the streets that will be most heavily impacted by the additional vehicle traffic generated by the changed land uses and activities authorized under the Rezoning. Mr. Handy, who is a member of Save Coney Island and Coney Island USA, has lived in Coney Island for six years. During this period, he has taken photos of Coney Island on many occasions and for the last two summers has been the member of a Photo Class that meets all day Saturday and focuses on taking pictures of Coney Island and its amusement district. Mr. Handy is directly and adversely affected by the illegal actions herein complained of, in a manner different from the general public, in that (a) he is or will be subjected to and adversely affected by the increased traffic and resulting noise and air pollution generated by the changed and increased development and activities authorized by the Coney Island Rezoning; (b) he will be forced to live with many years of negative construction impacts, including noise and congestion, resulting from the development authorized by the Rezoning, (c) his views of the amusement area and the Atlantic Ocean as he walks along the streets of Coney Island will be interrupted and otherwise negatively impacted by the new high rise towers permitted under the Rezoning, (d) the character of the Coney Island neighborhood in which he lives will be drastically altered by the changed development authorized by the Rezoning, and (e) he will otherwise be exposed to increased risks to his health and safety.

7. Petitioner RUTH MAGWOOD resides at 3626 Bayview Avenue in Coney Island and currently works at the Coney Island Cyclone Roller Coaster in administration and security. Ms. Magwood, who is a member of Save Coney Island, has lived in Coney Island for 37 years, worked at Astroland for 10 years and has helped out at the amusement parks for approximately 20 years. She is directly and adversely affected by the illegal actions herein complained of, in a manner different from the general public, in that (a) her work in the Coney Island amusement district has already been reduced due to the Rezoning and the land speculation that has accompanied it and her work at the Cyclone could be ended due to those factors, (b) her prospects for further work at Coney Island are sharply diminished by the Rezoning, which envisions a different kind of amusement district with a different character under the control of a single operator, (c) if the amusement district envisioned by the Rezoning does not prove to be viable, her prospects for further work will be reduced even more, and (d) she will be adversely impacted by increased traffic as she goes to and from her work each day, (e) she will be forced to live with many years of negative construction impacts, including noise and congestion, resulting from the development authorized by the Rezoning, (f) her views of the amusement area and the Atlantic Ocean as she walks along the streets of Coney Island will be interrupted and otherwise negatively impacted by the new high rise towers permitted under the Rezoning, (g) the character of the Coney Island neighborhood in which she works will be drastically altered by the changed development authorized by the Rezoning, and (h) she will otherwise be exposed to increased risks to her health and safety.

8. Petitioner JENNY McGOWAN lives in the Williamsburg section of Brooklyn and has worked frequently in the Coney Island amusement district. She is a performer and

educator, performing under the name of Miss Saturn. Over four of the past five years, she has been hired to perform on the Boardwalk at Coney Island, holding hula hoop contests for kids and bringing others to perform with her. This work has constituted one of the principal sources of her summer income, but with prospect of the Coney Island Rezoning, Astroland, for whom she worked, was closed; and as a result of the Rezoning, it is unlikely that she will be hired to do similar work at Coney Island in the foreseeable future. Ms. McGowan is directly and adversely affected by the actions herein complained of, in a manner different from the general public, in that (a) her work as a performer at Coney Island, which depended significantly on the character of the amusement district, has been reduced and quite possibly ended due to the Coney Island Rezoning and the land speculation that accompanied it; (b) her prospects for further work as Ms. Saturn or in any other capacity at Coney Island have been sharply diminished by the Rezoning, which envisions a different kind of amusement district with a different character under the control of a single operator, (c) if the amusement district envisioned by the Rezoning does not prove to be viable, her prospects for further work will be reduced even more, and (d) as a regular visitor to Coney Island, she will be adversely impacted by increased traffic and air pollution and subjected to increased safety risks.

9. Petitioner ANGIE PONTANI lives on East 2nd Street in Brooklyn and works during the summers in the amusement district of Coney Island. She is performer and has worked for more than 10 years at the Sideshow, Astroland and on the Boardwalk, often under the name of Miss Cyclone, but also in other capacities. However, with the prospect of the Rezoning and the closing of Astroland, business has already slowed significantly, although she continues to have work in the summer season. Mr. Pontani, who is a member of Save

Coney Island, is directly and adversely affected by the actions herein complained of, in a manner different from the general public, in that (a) her work as a performer at Coney Island, which depends significantly on the character of the amusement district, has been reduced due to the Coney Island Rezoning and the land speculation that resulted when the City started to consider it, (b) her prospects for further work at Coney Island are and will be further diminished by the Rezoning and the resulting redevelopment, which envision a different kind of amusement district with a different character under the control of a single operator, (c) if the amusement district envisioned by the Rezoning does not prove to viable, her prospects for further work as a performer at Coney Island will be reduced even more, and (d) as a regular visitor to Coney Island, she will be adversely impacted by increased traffic and air pollution and subjected to increased safety risks.

10. Petitioner AMOS WENGLER lives on Avenue X in Brooklyn. He is an artist and performer who has played his guitar regularly in and around the Coney Island amusement district, including for the Mermaid Parade, the annual New Year's Day Swim and various other events. He is also a member of the Polar Bear Club and swims at Coney Island on New Year's Day and some other occasions. Mr. Wengler, who is a member of Save Coney Island, is directly and adversely affected by the actions herein complained of, in a manner different from the general public, in that (a) his work as a performer at Coney Island, which depends significantly on the character of the amusement district, will be negatively affected by the Coney Island Rezoning, which envisions a different kind of amusement district and more gentrified surrounding neighborhoods (b) his participation as a Polar Bear in the New Year's Day Swim and at other times is likely to be limited by the new development, including the re-

envisioned amusement district which will likely restrict access, following from the Rezoning; and (c) as a regular visitor to Coney Island, he will be adversely impacted by increased traffic and air pollution and subjected to increased safety risks.

RESPONDENTS

11. Respondent CITY OF NEW YORK (the "City") is a municipal corporation organized under the New York General City Law and is ultimately responsible for all of its departments and agencies, including the City Planning Commission.

12. Respondent NEW YORK CITY COUNCIL is the legislative body of the City, with authority to review and act on certain land use matters following their consideration by the New York City Planning Commission, including, in this case, the Coney Island Rezoning.

13. Respondent NEW YORK CITY PLANNING COMMISSION is an agency of the City vested with the authority to review and act on various land use matters in the City, including, in this case, the Coney Island Rezoning.

FACTUAL BACKGROUND

14. Coney Island is one of the most recognizable and famous names in the world. For tens of millions of Americans and for millions beyond our shores, it immediately brings to mind a gaudy image of fun, honky-tonk to some degree, but filled with imagination and the wonders of both the real and the make believe: beachgoers, daredevils, freaks, flashing lights, barkers, the carnival, palaces of pleasure, gondolas on fake lagoons, fireworks, mermaids, and much more. Memorialized in books and films and on records – *Good bye My Coney Island Baby, Goodbye My Own True Love* – it is still today a living image, a living, if somewhat

bedraggled, place in our national consciousness.

15. It began simply enough – as a real island the Dutch named *Conyne Eylandt,* a rough translation of which was Rabbit Island, apparently because it provided habitat for many and diverse rabbits. With the coming of the English, it became Coney Island and remained a relatively wild place until the island was joined to the mainland and, late in the 19th Century, resort development took hold. With railroads and steamboats providing easy access and an extraordinary stretch of sandy beach, hotels sprang up, followed shortly by horse racing and then the famous amusement parks. An aerial image of Coney Island as it exists today is included in the accompanying Exhibit Binder as Exhibit A to the Petition.

16. At the beginning, in 1876, there was little more than a single hand-carved carousel, the work of a Dutch woodcarver. But by 1880, Coney Island was already the largest amusement area in the United States. In 1885, the gigantic *Coney Island Elephant* was put on display, and for the next 10 years, it was the first sight to greet immigrants arriving in New York Harbor, who would see it before they saw the Statue of Liberty.[2] An image of the Elephant, which was actually a hotel, is included in the Exhibit Binder as Exhibit B.

17. In 1897, *Steeplechase Park,* the first of Coney Island's great amusement areas, opened and with it the first Ferris wheel in the Eastern United States, which immediately became the Island's biggest attraction. Steeplechase Park's creator, George Tilyou, soon added other rides and attractions, including a mechanical horse race course and scale models of such world landmarks as the Eiffel Tower and the Big Ben Tower. Steeplechase burned in

[2] This description and others that follow of the great amusement parks are drawn largely (and often directly) from the descriptions given in Wikipedia, the on-line encyclopedia, and credit is accorded to that service.

1907 but was reopened the next year with a huge Pavilion of Fun that covered five acres and continued to operate until 1964. Images of Steeplechase Park are included in the Exhibit Binder as Exhibit C to the Petition.

18. The second of the great amusement areas – *Luna Park* – opened in 1903. Destined to give its name to other amusement parks around the world – it actually translate to "amusement park" in Dutch, German, Italian, Turkish and Hebrew – Coney Island's Luna Park was perhaps the most spectacular of all those constructed in the resort area. Characterized by turreted castles and a canal where you could take a gondola ride, transformed into a fairyland of lights by night, and filled with attractions for all classes, including the first roller coaster, Luna Park was arguably Coney Island's greatest attraction for many years. Images of Luna Park are included in the Exhibit Binder as Exhibit D.

19. *Dreamland,* the last constructed of the great amusement areas, opened in 1904. It was supposed to be higher class entertainment, with elegant architecture, pristine white towers and educational exhibits along with rides and walks. It was supposedly illuminated by one million electric light bulbs and its attractions included a railway that ran through a Swiss alpine landscape, a "Lilliputian Village" with 300 dwarf inhabitants, a demonstration of fire fighting in which 2,000 people participated, and many side shows. Nonetheless, Dreamland fared rather poorly in its competition with the other amusement giants, and after it burned to the ground in 1911 in a spectacular fire, it never reopened. Images of Dreamland are included in the Exhibit Binder as Exhibit E to the Petition.

20. Over the next 40 years, Coney Island remained the most important amusement

district in the country, ever changing but ever renewing itself with new rides, new attractions, new side shows. The *Wonder Wheel* was built in 1918 and opened in 1920 – almost 90 years ago. A Ferris wheel that has both stationary cars and rocking cars that slide along a track, it holds 144 riders, stands 150 feet high and weighs over 2,000 tons. At night the Wonder Wheel's steel frame is outlined and illuminated by neon tubes. It continues to operate today as part of Deno's Wonder Wheel Amusement Park. Images of the Wonder Wheel are included in the Exhibit Binder as Exhibit F to the Petition.

21. The *Cyclone Roller Coaster*, built and opened in 1927 – some 80 years ago – is one of the nation's oldest wooden coasters still in operation. A favorite of many roller coaster aficionados, the Cyclone includes an 85-foot, 60 degree drop and a number of sharp curves. Today it stands on property owned by the City and, protected as a living City landmark, continues to draw large numbers of riders. Images of the Cyclone are included in the Exhibit Binder as Exhibit G to the Petition.

22. Another continuing attraction – and another City landmark – is the 290 foot high *Parachute Jump*, which opened in 1939. Originally the "Life Savers Parachute Jump" at the 1939 New York World's Fair, George Tilyou purchased it at the close of the Fair and reinstalled it as a major attraction in Steeplechase Park. The first ride of its kind, patrons were hoisted 190 feet in the air before being allowed to drop using guy-wired parachutes. Although the ride has been closed since 1968, it remains a Coney Island Landmark and is sometimes referred to as Brooklyn's Eiffel Tower. Between 2002 and 2004, the Jump was completely dismantled, cleaned, painted and restored, but it remains inactive, awaiting, perhaps, a more glorious future. Images of the Parachute Jump are included in the Exhibit Binder as Exhibit H

to the Petition.

23. Over the years, many other rides came and went at Coney Island, including the Thunderbolt and Tornado roller coasters and the B&B Carousel, which is now owned by the City and temporarily in storage. One of the more infamous rides – "The Flopper" – was the subject of a famous torts law case, *Murphy v. Steeplechase Amusement Co.*, 250 N.Y. 479 (1929), where the plaintiff fell and fractured his kneecap. Murphy lost his case, decided by Justice Benjamin Cardozo, because he legally "assumed the risk" inherent in riding The Flopper, a moving belt run in a groove by an electric motor.

24. While the amusement attractions experienced a regular turnover as old tastes waned and new tastes emerged, one of the constants at Coney Island was its broad beaches and famous Boardwalk that attracted tens and even hundreds of thousands of New Yorkers on weekends and holidays. An image taken by the photographer known as Wegee in 1940 shows a crowd of bathers gathered on the beach extending unbroken to the horizon, and other photographs taken over the years make it clear that this was not an unusual situation. For all of its amusement rides and side shows, Coney Island was *the* place that City residents escaped to both for leisure and as a way of keeping cool on hot summer days. Images of the beach, including the Wegee photograph, and the Boardwalk are included in the Exhibit Binder as Exhibit I to the Petition.

25. After World War II, the popularity of Coney Island as a destination began to fall off sharply as a result of a number of factors. Air conditioning in homes reduced some of the impetus for New Yorkers to head for the beaches, and when they did, the automobile and

Robert Moses' parkways gave them access to less crowded and more appealing Long Island states parks, especially Jones Beach. Luna Park closed in 1946 after a series of fires and the street gang problems of the 1950s spilled into Coney Island, discouraging visitors from seeking out the amusement areas, although not the beach. The closing of the last of the major amusement parks – Steeplechase – in 1964 brought an end to the heyday of the area, which continued to decline and suffered a further eclipse in the 1970s as New York City fell into a sharp economic decline.

26. Still, Coney's heart never stopped beating. The beach remained popular – see Exhibit J in the Exhibit Binder – and while the amusement district saw more land falling vacant, Astroland and Deno's Wonder Wheel Amusement Park held on, along with Childs Restaurant, Nathan's Famous and a considerable number of separately-owned attractions ranging from bumper car concessions to haunted houses and the inevitable side shows. In addition, a modest baseball stadium – Keyspan Park – was built at the western end of the amusement area, where Steeplechase Park had once stood. Equally of note, a new kind of happening, centered uniquely on Coney Island, began to assume greater importance and draw a new kind of nationwide attention to the area. Typical of this trend are the annual Mermaid Parade and the Nathan's Hot Dog Eating Competition, both of which attract tens of thousands of visitors to the amusement area and receive national coverage in the media. Images of these events are included in the Exhibit Binder as Exhibit K to the Petition.

27. Despite such stirrings and other signs of revitalization, the Bloomberg administration, which had begun to take an interest in Coney Island as a possible venue in City's failed effort to bring the 2012 Olympics to New York, viewed the area ambivalently,

seeing it as blighted but also filled with potential. The idea of trying to build new housing in the area and also revitalize the amusement district was attractive enough that in 2003, the City initiated a community-based effort through a newly-established Coney Island Development Corporation ("CIDC"), which spent two years reaching out to local and regional stakeholders in an effort to develop a consensus program. In 2005, this effort resulted in the release of a Coney Island Strategic Plan that included a large amount of new housing and a restored entertainment district of approximately 19.5 acres (including three acres already owned by the City at the Cyclone and Steeplechase Plaza). This plan was rolled out by Mayor Bloom-berg with great fanfare and enjoyed wide support by the interested parties.

28. The City's renewed interest in revitalizing Coney Island led developers to buy up land on speculation, and shortly before the CIDC plan was issued, Thor Equities, headed by Joseph Sitt, began to purchase property within the boundaries of the traditional amusement district, eventually accumulating close 10 acres. Thor soon began to close down many of the remaining entertainment uses, including, in 2008, *Astroland*, the last sizable amusement park. Thor then came up with its own plan for the area – a Las Vegas type of development that included the proposed demolition of many of Coney Island's remaining icons. This, in turn, led to a war-of-words between Mr. Sitt and the Bloomberg administration over which plan would be pursued.

29. In November 2007, Mayor Bloomberg unveiled the City's Coney Island Comprehensive Rezoning Plan, putting forth a vision for the future of Coney Island that largely followed the proposals in the CIDC plan. Central to the Plan was the amendment of the then-current zoning covering 19 blocks. In addition, while the City already owned approximately

three acres (not including streets) acres at the center of the amusement district, the plan called for it to acquire an additional 16.5 acres. Together, these properties would create the 19.5 acres of publicly-owned parkland identified by the CIDC plan as necessary to support a new amusement area capable of restoring Coney Island's prominence as a premier destination. (A map showing the original area of the publicly-owned Amusement District – plus the area it was later reduced to -- is included in the Exhibit Binder as Exhibit L to the Petition.) At the same time, nine acres of existing parkland to the west of Keyspan Park, which were being used for vehicle parking, would be demapped and made available for residential development, including affordable housing.

30. In February 2008, the City, through the Deputy Mayor's Office for Economic Development, which acted as "lead agency," the New York City Economic Development Corporation and the City Planning Commission, initiated the environmental review process under SEQRA by issuing a draft scope of work identifying the parameters of the proposal and the environmental issues that would be addressed in a draft environmental impact statement ("EIS") that would be prepared in conjunction with the proposal. The contemplated actions included the rezoning, acquisition and mapping as parkland of the properties to be included in the amusement area, demapping as parkland of the nine acres adjacent to Keyspan Park, mapping and demapping of certain streets and several other actions. The proposed area of the publicly-owned amusement district followed the CIDC plan, constituting approximately 19.5 acres.

31. Sometime between February 2008 and April 2008, however, something happened. During this period, the Administration began to negotiate with Mr. Sitt, whose

speculative holdings would have to be acquired, whether through negotiation or by eminent domain, to create the contemplated entertainment district. According to an article in the April 17, 2008 issue of The New York Times, as a result of these negotiations and in order to placate Mr. Sitt and one other property owner, the City agreed to modify its proposal for the Rezoning; and a few days later, it ditched the plan that had come out of the CIDC two-year community planning process and revised its proposal to reduce the publicly-owned amusement district to 12.4 acres (the three acres the City already owned plus 9.4 acres it planned to map and acquire as parkland). The additional seven acres that had been part of the original proposal, mostly owned by Thor Equities, were to be left in private ownership, available for use for restaurants, indoor amusements and certain other commercial purposes, with greatly increased bulk parameters for the private owners. At the same time, the revised plan placed two high rise hotel sites on land owned by Thor Equities on the south side of Surf Avenue. (A total for four hotels was eventually included in the plan). A revised draft scope of work embodying these changes was issued for the EIS. The only explanation give for the reduction in the acreage for the publicly-owned amusement area and the increase in private uses was that it would "achieve a better balance between indoor and outdoor uses in Coney [Island] East." No mention was made of the resulting benefits to Thor Equities.

32. In January 2009, the Deputy Mayor's Office for Economic Development released the completed draft EIS for the Coney Island Rezoning, and following certification by the City Planning Commission, the public review process under the City's Uniform Land Use Review Process began when the proposal and the draft EIS were forwarded to the local community board – Brooklyn Community Board 13 for its consideration and comments.

33. In the meantime, the Municipal Art Society of New York ("MAS"), one of the City's leading civic and planning organizations, had taken a keen interest in the redevelopment of Coney Island and had drawn together many of the stakeholders, including Save Coney Island, to develop ideas for the future of the area and to respond to the City's plan. To this end, between October 2008 and January 2009, MAS undertook its own study, hosted a "Call for Ideas" on its website, sponsored a three-day "charrette" with a team of international experts, commissioned an economic analysis performed by the real estate firm RCLCo; and held a series of community meetings. The outcome, described more fully below, was that if Coney Island was to be reestablished as an exciting amusement district along the lines it had been in the past, a much larger area was required for outdoor amusements than the 12 acres the City was proposing.

34. In January and February 2009, the Coney Island Rezoning was under review by Community Board 13. This turned out to be a heavy-handed process from the point of view of Save Coney Island and many others. At the meeting of the Board's Land Use Committee, which first took up the Rezoning, the letter Save Coney Island had written the Board with recommended amendments was never distributed, and the local Council Member, who was a friend and ally of Mr. Sitt, started yelling at one member when he suggested the possibility of the Board rejecting the City's Rezoning proposal. Then, at the full Board meeting, the recommendations of the Land Use Committee were neither read nor discussed before the vote, and the public was not allowed to speak until after the vote. While Save Coney Island participated to the extent it was allowed in this process, including through the submission of written recommendations and comments, it was to little avail. For all that, the Community

Board still urged that any high rise hotels allowed under the rezoning be restricted to the north side of Surf Avenue, where they would not create a wall between Coney Island historic main street and the amusement district and Atlantic Ocean.

35. The application and draft EIS next went to the Brooklyn Borough President for his review and comments. These were generally supportive of the Rezoning, but included some recommendations to improve it, including a request that the area of the outdoor amusement district be enlarged and another that asked that a study be made of the feasibility of reopening the Parachute Jump for its historic use.

36. In March 2009, as part of it ongoing evaluation of the Coney Island Rezoning, MAS issued a report titled "Coney Island Historic Resources," identifying the many historic structures that existed in the area of the proposed Rezoning. A copy of that report in included in the Exhibit Binder as Exhibit M to the Petition.

37. On May 6, 2009, the City Planning Commission held its public hearing on the Coney Island Rezoning and related actions. Representatives of a large number of organizations appeared, including Save Coney Island, which supported the City's public acquisition of land for the amusement park but objected strongly to the reduced acreage proposed to be acquired and mapped for the outdoor amusement district. Along with others, Save Coney Island also raised a number of other objections, including opposition to the provisions of the Rezoning that allowed four high-rise hotel towers to be built on the south side of Surf Avenue and concerns about the impacts of the Rezoning on Coney Island's rich trove of historic buildings. These and other comments on the DEIS were also submitted in writing.

38. At the City Planning hearing, MAS submitted expansive testimony on the limitations of the Rezoning. After summarizing the efforts it had made to research the viability of the City's proposal and the extensive outreach that it had conducted, MAS presented its two fundamental findings: The area the City had identified and planned to map as parkland for the outdoor amusement district was far too small to support a revitalized Coney Island that would be a world-class attraction of the sort that area had been in the past; and that limitation was compounded by the provisions of the Rezoning that permitted hotel towers to be built on the south side of Surf Avenue, in what should be the low rise section of the amusement park. Not only did MAS identify these limitations but it submitted an economic analysis and report by RCLCo, the largest independent real estate advisory firm in North America, with special expertise in resort planning and development. The RCLCo Report concluded that 26 acres of land were needed for a new Coney Island amusement district with the potential to become the kind of attraction it had once been. At the same time, the Report indicated that because of its world-renown "brand name," Coney Island had immense drawing power on a regional, if not national basis; what was needed was the kind of amusement park capable of capitalizing on that brand. Copies of the MAS testimony and the RCLCo PowerPoint presentation summarizing its analysis and findings are included in the Exhibit Binder as Exhibits N and O, respectively.

39. On June 17, 2009, the City Planning Commission approved the Rezoning and related mapping, demapping and other actions in a series of resolutions and reports, none of which significantly modified the original proposal. At the same time, it approved the final EIS for these actions and made the statutory findings required under SEQRA. The Planning

Commission did not address or mention the MAS submission or the RCLCo Report in the resolutions, other than to state (or more correctly, understate):

> The representatives of the Municipal Art Society, Coney Island USA and Save Coney Island expressed strong support for the City's goals of mapping parkland and the City's efforts to acquire land within the amusement area to ensure its long-term preservation and enhancement.
>
> These speakers also expressed concerns about the size of the amusement area, the preservation of historic structures in the rezoning area and the location of hotels south of Surf Avenue.

40. Like the City Planning Commission's resolution, the final EIS did not address or mention the MAS submission or the RCLCo Report. The only section it included that bore on general subject matter of the inadequate size of the amusement district was contained in the assessment of the 15-Acre Mapped Amusement Park Alternative, where it was stated:

> The 15-Acre Mapped Amusement Parkland Alternative is less likely to achieve the goals and objectives established for the proposed Coney Island Rezoning. Most notably, with less land available in Coney East dedicated to private investment in the development of enclosed amusements, restaurants, and entertainment uses, it would be less likely that the district would grow to realize its full potential as a year-round destination. Further, because there would be less land available in Coney East for private development under this alternative, the footprints for private development would be smaller compared with the proposed actions. With smaller footprints, it is possible that redevelopment would be less economically viable compared with larger footprints under the proposed actions, and could possibly hinder the area's redevelopment into a year-round destination. Under this alternative, the amusement district is likely to be more seasonal than with the proposed actions because many of the uses that are so vital in making Coney Island a year-round destination would be precluded.

However, no support was offered for this statement, no study referenced that might have served as a basis for disputing the RCLCo Report, no expertise revealed to qualify the response. Rather, it is an argument, a speculation proposed by the person who wrote the final EIS. And in any case, it does not address the analysis and conclusions of the RCLCo

Report that nine acres of mapped parkland reserved for the amusement district are inadequate to support a viable amusement park and achieve that stated goal of the rezoning.

41. The final EIS was also deficient in a number of other respects, which are set out below in petitioners' First Cause of Action.

42. On July 12, 2009, The New York Times published an editorial urging the City Council to modify the Rezoning by adopting the recommendations of MAS regarding the size of the amusement district and the elimination of high-rise hotels on the south side of Surf Avenue. A copy of the editorial is included in the Exhibit Binder as Exhibit P.

43. On July 15, 2009, 15 noted historians published an Open Letter on the Coney Island Rezoning in which they wrote:

> The City's rezoning plan for Coney Island, however, dishonors its past and sacrifices its future. It would shrink the area reserved for amusement parkland to only 12 acres. It would insert soaring high-rises into the very heart of Coney Island's historic amusement district. It would invite developers to tear down many of Coney Island's remaining historic buildings, some dating back more than a century. This shrunken amusement district, hemmed in by high-rises, would leave little room for the innovation and creativity that have been Coney Island's hallmarks for more than a century.
>
> This plan must not be allowed to pass in its present form.

A copy of the full letter is included in the Exhibit Binder as Exhibit Q to the Petition.

44. Following the City Planning Commission's approval, the Rezoning was called up for review and action by the City Council. On July 20, 2009, the City Council's Subcommittee on Land Use and Zoning held a hearing on the Rezoning, at which Save Coney Island and others gave testimony in opposition, among other things, to the small size of the City-owned amusement district and the authorization to build hotels on the south side of Surf

Avenue. However, the Subcommittee voted in favor of the Rezoning and the Committee on Land Use soon followed suit. On July 29, 2009, the full Council approved the Coney Island Rezoning and the related mapping, demapping and other actions.

45. Petitioners now ask this Court to annul the Coney Island Rezoning and the approvals given by the City Planning Commission and the City Council because of the failure of the City to comply with the requirements of SEQRA and because the Rezoning was in violation of the zoning enabling laws pursuant to which those bodies purported to act and was in response to the demands of a private developer rather than for the purpose of promoting the general welfare of the City and its citizens, all as more specifically alleged below.

FIRST CAUSE OF ACTION / ARTICLE 78
(For a judgment pursuant to CPLR Article 78)

Violations of SEQRA

46. Petitioners repeat and reallege the allegations set forth in paragraphs 1 through 45 of this Petition as if fully set forth herein.

47. 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 §8-0101; ECL §8-0103[8]]. More specifically, no agency or other governmental body, including the City Planning Commission and the City Council, may undertake, fund or approve an action until the agency or body has complied with the provisions of SEQRA. 6 NYCRR § 617.3(a).

48. Under SEQRA, the principal mechanism for assuring that an agency or other

governmental body considers environmental concerns is the EIS, which an agency is required to prepare when an action that it proposes to undertake or approve "may have a significant impact" on the environment. The EIS 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 "consistent with social, economic, and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement process, will be minimized or avoided." [ECL §8-0109[l], [2] and [8])

49. In this case, the Deputy Mayor's Office of Economic Development prepared a comprehensive EIS, which the City Planning Commission approved and both the Planning Commission and the City Council had before them when they approved the Coney Island Rezoning and related actions. In giving those approvals, both the Planning Commission and the Council purported to rely on that EIS in carrying out the obligations that SEQRA imposed on them.

50. That reliance was misplaced and the approvals given by the City Planning Commission and the City Council were defective because the final EIS did not comply with SEQRA in failing to identify certain critical areas of environmental concern and failing to take a hard look at those areas which it did identify – the test for agency compliance with SEQRA, as set forth in the leading case of Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d 400, 417 (1986). As a consequence, the approvals given by those bodies were also invalid.

A. Non-Disclosure of the Impacts of a Failed Alienation of Parkland

51. One of the most significant failings of the final EIS was that its assessment of benefits and impacts was premised on the successful alienation of approximately nine acres of dedicated parkland to the west of Keyspan Park that under the Rezoning are to be used for residential development, including affordable housing. The final EIS lauds the benefits that this reuse of currently vacant land will provide, as, for example, at page 39 of the Executive Summary, where it is stated that:

> The proposed actions would change the character of the proposed rezoning area *for the better.* Aside from Coney Island's few remaining historic icons, a few active frontages on Surf Avenue and some residential and commercial buildings on Mermaid Avenue, much of the land throughout the proposed rezoning area is currently either vacant or underutilized. The proposed actions would safeguard and expand upon Coney Island's iconic amusements, *while building upon the prime beachfront location to create a vibrant mixed use community that includes new market-rate and affordable housing* as well as retail and neighborhood services.
>
> *Land uses introduced by the proposed actions would be consistent with existing land uses and would improve upon existing conditions and conditions in the future without the proposed actions. . . . The residential, commercial, and mixed-use development expected to occur in the other subdistricts would serve to revitalize areas that are largely vacant or underutilized.* (emphasis added)

And again at page 40 of the Executive Summary, which asserts that "the proposed actions would substantially change the urban design and visual character of proposed rezoning area, which in turn would have *a positive impact* on neighborhood character in the rezoning area. The proposed Special District would *improve the streetscape* and create a cohesive, coordinated design for the area." (emphasis added).

52. It is thus apparent that the benefits of the new housing, much of which is proposed to be built on the current parkland west of Keyspan Park, were a compelling factor

in the overall analysis of impacts and benefits in the final EIS and, therefore, in the decisions of the City Planning Commission and the City Council made in reliance on the final EIS. Yet the undeniable fact is that the use of that parkland for the new housing is far from assured. *To the contrary, that land can only be used for that purpose if the State Legislature approves the alienation of its use as parkland.* At the time the EIS was finalized and the City Planning Commission and City Council approved the Coney Island Rezoning, the State Legislature had not been acted, nor has it yet, nor has it apparently even been asked; and there is no assurance its approval will be forthcoming. Consequently, it was improper for the final EIS to take credit for the benefits of the new housing when there was no assurance it could be built. At the very least, the final EIS should have identified the environmental impacts that would follow if the alienation was not approved. In failing to do so, it violated SEQRA.[3]

B. Failure to Address the RCLCo Report and its Implications

53. As heretofore alleged, RCLCo Report, and the MAS submission that summarized its findings, raised the very real possibility that the mapped 12-acre amusement district at the heart of the Coney Island Rezoning was too small to create a viable amusement park of the sort envisioned by the Rezoning.[4] On the basis of serious study and economic analysis, the Report concluded that an outdoor area of 26 acres would be needed to establish such a facility and laid out the reasons why. This expert information provided evidence that

[3] At page S-35 of the Executive Summary, the final EIS stated that "each element of the proposed amendment of the City Map is necessary to meet the goals of the proposed actions." But the demapping of the parkland west of Keyspan Park can only be accomplished with State Legislative approval. Consequently, the entire action will apparently fail if that approval is not obtained. Yet there is no disclosure of this risk in the final EIS, nor, more importantly, is there any analysis of the adverse impacts that would follow with such a scenario.

[4] Lest the numbers prove too confusing, the 12-acre mapped amusement district includes 9.4 acres of new mapped parkland still be acquire by the City, plus three acres at the Cyclone and Steeplechase Plaza already in public ownership. The final EIS generally refers to only the 9.4 acres.

the central element of the Rezoning would not work, with major implications in terms of adverse impacts, which should have been, but were not, identified, much less evaluated, in the final EIS. Indeed, the Report was not even mentioned. This clearly violated SEQRA.

54. The final EIS did include a very limited discussion of an alternative scenario that would have included 15 acres of mapped parkland for the amusement district. But as heretofore alleged, that discussion was simply a series of unsupported generalizations and suppositions, none of which were backed up with any confirming study or other kind of evidence. Indeed, as far as anyone can tell, the only qualifications of the authors of the discussion appear to be that they were professional EIS writers, nothing more. In the circumstances here, where highly qualified experts have placed in question the viability of one of the central elements of the proposed actions, SEQRA does not permit the matter to be brushed off with a few sentences unsupported by any objective evidence.

C. Failure to Take a Hard Look at the Impact of the Surf Avenue Hotels

55. The fact that the Coney Island Rezoning permitted hotel towers of up to 27-stories on the south side of Surf Avenue was one of Save Coney Island's great concerns – one that MAS shared and summarized in its testimony:

> [The Rezoning should] ensure that Surf Avenue has a low-rise South Side by moving the hotels to the North Side of Surf Avenue. Coney Island is first and foremost a seaside resort, and it's critical to retain the sense of openness, views of the horizon and taller amusements. The vast majority of people arrive at the Stilwell Avenue Station, and Surf Avenue functions as their point of entry into the amusement district. Erecting high-rise buildings there would create a visual obstacle for those visitors. Furthermore, Surf frequently functions as a public space for the events like the Mermaid Parade and Nathan's Hot Dog eating contest, which we all agree are critical to Coney's success. Those events need an abundance of

light and air and a feeling of openness in order to thrive.

Further, high-rise buildings along the south side of Surf Avenue would have the effect of "privatizing" the amusement area behind them, which would feel more like the backyard of private buildings rather than public spaces.

To illustrate its concern, MAS developed renderings of how high-rise hotel towers would impinge on the openness of views towards the Ocean and create a barrier in both directions. A copy of one such rendering is included in the Exhibit Binder as Exhibit R.

56. Despite the concerns presented by Save Coney Island and MAS in their testimony on the proposed Rezoning and their comments on the draft EIS, the final EIS at best provided a confused and inconsistent analysis of these concerns – an analysis that largely ignored the negative impacts. Thus in the section on Visual Impacts, at page 8-21, the final EIS claimed that "[o]n the blocks north of the mapped amusement park, it is expected that the proposed actions would improve the streetscape of the Coney East subdistrict by replacing the mix of low rise . . . buildings, vacant buildings, parking lots and vacant with new buildings . . . containing hotels." Unmentioned is the reality that the hotels would block views towards the ocean. Similarly, at page 8-30, the EIS states that "views along the Surf Avenue corridor would change due to the added bulk and density of the new developments along the avenue, [but] although numerous tall buildings would line the avenue, this would not result in any significant adverse impacts." Again, the visual obstructions that the hotels would interpose are not identified. A few sentences further on, while the EIS acknowledges that view of the Wonder Wheel "might be obstructed," it then denies any adverse impact by asserting that "existing views of the Wonder Wheel along the avenue are already obstructed where there are

low rise buildings." This is equivalent to saying one billboard justifies several new ones. More importantly, the EIS contains no renderings or other visual aids to illustrate the consequence of allowing high rise hotels on the south side of Surf Avenue, no counter of any kind to the MAS presentation. In the end, the final EIS simply deals in generalities, asserting without any supporting evidence that the hotels will not block views. This is far from the "hard look" that SEQRA requires be taken in evaluating the impacts of any action.

57. The significance of the failure of the final EIS to account for the adverse impacts of the hotels on the south side of Surf Avenue, as well as the other adverse impacts described in the preceding and subsequent paragraphs of this Petition is underscored by the fact that in the resolutions presented to the City Planning Commission and City Council, which, when adopted, constituted the approvals given for the Rezoning, *the only adverse impacts identified* were those regarding traffic congestion, hazardous materials, excessive noise at two locations, the potential loss of Nathan's Famous and possible adverse visual impacts on the historic Shore Theater, and the potential overloading of day care facilities. The far more significant impacts resulting from the undersized amusement district, the obstacles created by the hotel towers and the potential alienation failure were not even mentioned in the approval documents that Planning Commission and Council adopted.

D. Failure to Adequately Consider Impacts on Open Space

58. The final EIS also failed to accurately describe the impacts of the Coney Island Rezoning on open space. To begin with, it did not acknowledge the negative impacts of demapping nine acres of existing designated parkland. To the contrary, because that acreage is currently being used primarily for parking to service Keyspan Park, the final EIS asserted,

at page S-34, that "the alienation would not result in any significant adverse impact on open space." However, this ignored the fact that the nine acres could at any time be converted to active and/or passive park space. They could, for example, as MAS suggested, be used to support a larger dedicated amusement district. They could be converted into other more traditional kinds of parkland, with playgrounds and playing fields and places to sit and enjoy views of the Atlantic Ocean. Once demapped, in contrast (although subject to the approval of the alienation by the State Legislature), they would lose their protected status and be available, as the Rezoning contemplated, for development. That was a significant change, with significant adverse implications. These should have been, but were not, identified or considered in the EIS.

59. The consideration of open space in the final EIS was also deficient because it failed to treat as an adverse impact the fact that the development permitted by the Rezoning would exacerbate a shortage of active open space that already exists in the Coney Island community but will be made significantly worse by the new development. The EIS described the shortfall at page S-35, but it did not identify it as a negative impact and, as a consequence, it was not brought to the attention of the City Planning Commission or the City Council. Moreover, the lack of adequate active open space identified in the Final EIS did not take into account the demands that would be placed on the spaces that exist by summer visitors to Coney Island, which the EIS acknowledged would number as many as 70,000 a day. This last limitation also applied to the evaluation of passive open space. It is clear that the open space resources in Coney Island would be significantly overtaxed if the contemplated development were to take place, but the resulting negative impacts were swept under the rug in violation of

SEQRA.

E. Failure to Adequately Consider Impacts on Historic Resources

60. The final EIS went to great lengths to give the impression that it took account of the impacts of the Rezoning on the many historic (although sometimes dilapidated) structures in the rezoned area. Thus the effects of the Rezoning on the major icons – the Wonder Wheel, the Cyclone, the Parachute Jump, Childs Restaurant – are addressed at considerable length. So, too, is Nathan's Famous, whose potential demolition is identified as one of the unavoidable adverse impacts of the plan. The Shore Theater is also given its due, with the EIS noting that the large new buildings contemplated by the Rezoning could have an adverse effect on that structure. Here again, however, there is no acknowledgment of the adverse impacts of the hotel towers that can now be developed on the south side of Surf Avenue, obstructing views to the Cyclone and Wonder Wheel. Moreover, impacts on many other historic structures identified by MAS in its inventory included as Exhibit M in the Exhibit Binder were not identified at all, because the New York City Landmarks Preservation Commission had not concluded that they were worthy. That, however, was not the proper measure. At the very least, the authors of the EIS should have asked the State Office of Historic Preservation to evaluate the importance of such structures as the Shore Hotel and the Bank of Coney Island. But this they refused to do.

F. Failure to Address Limitations on Sewage Treatment

61. One of the central goals of the Rezoning is to add new housing, and thus new residents, to Coney Island. It is anticipated that under the new zoning, as many as 2,400 new residential units will be developed, adding as many as 6,000 new residents, as well as 600

new hotel rooms. These, as well as the million new visitors the revitalized amusement district is expected to add annually, will significantly increase demands on the water and sewer systems, generating heavy additional loads of sanitary sewage. These will be directed to the City's existing Coney Island Water Pollution Control Plant, which, according to the final EIS, has adequate capacity to treat these wastes. However, that conclusion was based on normal flows, without taking account of the additional water that flows into the sewers when it rains. In these circumstances, the Pollution Control Plant does not have the capacity to treat the augmented flows which end up in Jamaica Bay or the Atlantic Ocean through combined sewer outfalls. As an article appearing on the front page of the November 23 edition of The New York Times spells out, the resulting contamination of coastal waters has reached serious proportions. Yet this situation and the fact that it would be exacerbated by the new development the Coney Island Rezoning is intended to promote were never mentioned in the EIS.

G. Failure to Address the Impacts of Development in the 100-Year Flood Plain

62. The entire area of the Coney Island Rezoning lies within the 100-Year Flood Plain for the Coney Island Area. This means that in the most severe storms, which, with global warming, are expected to increase in frequency, the entire area will be flooded as the Atlantic Ocean pushes up onto the land. That this is the case is acknowledged in the final EIS. However, there is no attempt to assess the resulting impacts, nor is there any discussion of how those impacts may be worsened by the new development. This is bound to follow as many parcels of land that now lie vacant and thus are capable of absorbing some part of the floods are covered over with impervious surfaces. The consequence will be to worsen the flooding, adding to the potential for damage. Moreover, the new development will mean that

more residents will be subject to the dangers that such flooding would impose and more structures will be subject to flood damage. However, these and other potential adverse impacts are not mentioned, much less evaluated, in the EIS, all in violation of SEQRA.

H. The Failure of Wishful Thinking

63. The final EIS also falls short for another reason. It is often no more than an exercise in wishful thinking – a speculation about what *may* happen in the future. This is most evident in the section of the EIS discussing infrastructure. There is, for example, a rather lengthy description of how the sewer system will need to be upgraded to accommodate the anticipated new development and a less detailed discussion about how the grades of the roads in the amusement district will be elevated and the benefits that will follow from these actions. What is missing is any assessment of the feasibility of these and other infrastructure improvements that are essential if development is to go forward as planned. Most of these infrastructure improvements will be very expensive to build, but the EIS does not identify where funding will be found to finance them. Instead, it simply *assumes* that they will be available when needed – an assumption that is highly doubtful in the current economic climate. Equally important, the EIS does not attempt to identify the impacts that will follow if development goes forward without some or all of the infrastructure improvements; nor does it analyze a scenario – all too likely – that due to lack of infrastructure or for other reasons, the build out for the development is significantly delayed, with consequent adverse impacts.

64. One of the purposes of SEQRA and the EIS process is to force the sponsors of projects – here, the City – to focus on the implications of their actions and to address them in a coordinated, forward-thinking way. What has happened here is almost the opposite of that.

In the end, the Coney Island Rezoning represents the triumph of wishful thinking over serious analysis. In this and other ways, it has run amok of SEQRA.

65. By reason of the deficiencies, failures and omissions identified above, the final EIS for the Coney Island Rezoning did not meet the requirements of SEQRA, and the approvals of the City Planning Commission and the City Council in reliance on that EIS were given in violation of SEQRA and thus were arbitrary, capricious and in violation of law.

66. Because neither the final EIS nor the City's approvals of the Coney Island Rezoning complied with SEQRA, those approvals were also illegal and must be set aside.

67. Petitioners have exhausted their administrative remedies and have no adequate remedy at law.

SECOND CAUSE OF ACTION / DECLARATORY JUDGMENT
(For a Declaratory Judgment pursuant to CPLR § 3001)

(Illegal Rezoning)

68. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 67 above as if set forth fully herein.

69. Under the General Cities Law of the State of New, Section 20, subsections 24 and 25, the State Legislature has empowered cities, including New York City, to adopt and amend zoning ordinances in order "to promote the public health, safety and welfare" of their citizens. In New York City, this delegation of authority has been assigned to the City Planning Commission under Sections 25-110 and 25-111 of New York City Administrative Code, which incorporates *verbatim* the language of the General Cities Law.

70. Both the General Cities Law and the New York City Administrative Code set out specific standards limiting the City Planning Commission's authority to zone. Among the most important of these is the requirement, repeated several times, that the zoning regulations "promote the public health safety and welfare" – as distinct from serving private interests – and that they be in accordance with "a well considered plan." The essential thrust of these standards is that any zoning or rezoning must be rational and rationally based and it must be in the public interest, rather than in response to or in furtherance of private interests.

71. As heretofore alleged, the final EIS did not identify or address, and the City Planning Commission and City Council did not otherwise take into account, the substantial and unrefuted evidence that the amusement district created by the Coney Island Rezoning was not of sufficient size to make the district viable. Nor did either body consider the potential of failed alienation, the inadequacy of sewage treatment capacity or the implications of authorizing substantial new development in the 100 year floodplain. As a result, the Rezoning lacked a rational basis since the predicates upon which it was based were not true, nor was it in accordance with a well-considered plan, all in violation of the applicable laws governing zoning and rezoning.

72. Of equal importance, the modifications of the Rezoning Plan made in April 2008, including the reduction in the size of the mapped amusement district, the increased bulk allowed on land owned by Thor Equities and the relocation of two hotels to properties owned by Thor Equities were not made as part of a well-considered plan or for the purpose of promoting the public health, safety and welfare, but were instead included in the Rezoning for

the private benefit of Thor Equities and to induce it to go along with the Rezoning. This exceeded the proper authority of the City Planning Commission and City Council and violated the statutes applicable to zoning and rezoning.

73. By reason of the foregoing, the approvals of the Coney Island Rezoning given by the City Planning Commission and the City Council were arbitrary, capricious and in violation of law and must be set aside.

74. By reason of the foregoing, the Coney Island Rezoning was and is illegal and should be set side.

CONCLUSION

WHEREFORE, Petitioners demand judgment:

A. Declaring illegal and annulling the Coney Island Rezoning due to the City's failure to comply with SEQRA and the applicable statutes governing rezoning in New York City;

B. Declaring that the Environmental Impact Statement ("EIS") for the Coney Island Rezoning did not comply with SEQRA;

C. Enjoining the City, including the City Department of Buildings, from implementing the Coney Island Rezoning, including the issuance of any building permits thereunder;

D. Awarding Petitioners their costs and disbursements in this proceeding; and

E. Granting such other and further relief as this Court deems just and proper.

Dated: November 24, 2009

URBAN ENVIRONMENTAL LAW CENTER
Attorneys for Petitioners

By: _____

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VERIFICATION

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

JUAN RIVERO, being duly sworn, deposes and says:

1. I am the President of SAVE CONEY ISLAND, INC., one of the Petitioners in this proceeding and am authorized to make this verification on behalf of all the Petitioners herein, who are united in interest.

2. I have read the foregoing Petition and, upon information and belief, I believe it to be true and accurate.

3. The basis of my information and belief is my personal knowledge, the record before the City Planning Commission and the City Council, communications with the other petitioners, statements and releases made on behalf of the parties, public documents and materials in my files, the files of the Save Coney Island and the files of our attorney.

Juan Rivero

Sworn to before me this
24th day of November, 2009

Notary Public

ALBERT K. BUTZEL
Notary Public, State of New York
No. 31-5557855 Qual. in New York Co.
Certificate Filed in New York County
Commission Expires ~~March 30, 19~~ 1/31/2011