



STATE OF NEW YORK     )  
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COUNTY OF NEW YORK    )

**GEOFFREY K. CLARK, PG, LSRP**, having been duly sworn, deposes and says:

1. I am a local environmental practice manager, office manager, and project manager for GHD Services, Inc. (“GHD”), an environmental and engineering consulting firm which has been retained by Elizabeth Street Garden, Inc. (ESG) to evaluate and assess the Environmental Assessment Statement (EAS) prepared for Pennrose LLC by Philip Habib & Associates, and dated November 9, 2018. I have also reviewed the Negative Declaration, which was prepared by Ms. Callista Nazaire of New York City Department of Housing Preservation and Development (NYC HPD) on November 9, 2018. The EAS and Negative Declaration were associated with the proposed conversion of the Elizabeth Street Garden (the Garden) to a primarily multi-unit residential building known as Haven Green (With-Action Condition). I have interviewed Mr. Joseph Reiver and have reviewed publically available information and photographs. The photographs presented in the Exhibits to this Affidavit are true and accurate copies of images from Google Street View downloaded in or about January 2019, except for the image of Forsyth Street Plaza, which was obtained at <https://www.boweryboogie.com/2018/03/first-look-behind-the-barrier-of-the-forsyth-street-plaza-photos/>, and from the Elizabeth Street Garden Facebook and Instagram pages. Information about contributing buildings and architectural resources in the vicinity of the Garden was obtained from the National Registration of Historic Places Registration Form, which was signed on September 16, 2009.

As discussed below, the Negative Declaration and EAS are factually incorrect in a number of technical areas. Further, the current land use is misrepresented. As such, the EAS and Negative Declaration do not meet the threshold of a “hard look” at

environmental impacts that would result from the With-Action Condition and the Negative Declaration should be vacated.

***Background***

2. Formed in 1928, GHD is among the world's leading professional services companies. Our more than 9,000 employees operate in the global markets of water, energy and resources, environment, property and buildings, and transportation. We provide engineering, architecture, environmental and construction services to private and public sector clients. The firm maintains 200 offices situated on five continents: North America, Asia, Australia, Europe, and South America. We have completed projects in approximately 135 countries, and our annual revenue exceeds \$1 billion. We complete projects in conformity with all state and local laws, as well as in compliance with the requirements of our corporate clients. Our health and safety, quality, and environmental corporate management systems are certified by Lloyds Register Quality Assurance against international standards.
  
3. I am a Professional Geologist licensed in the Commonwealth of Pennsylvania and a Licensed Site Remediation Professional licensed in the State of New Jersey. I earned my Bachelor's Degree in Geology at Franklin and Marshall College and my Master's Degree in Environmental Geology from Rutgers University. Throughout my 20-year career, my experience includes preparation and review of Environmental Impact Statements (EIS) under the New York State Environmental Quality Review (SEQR) and New York City Environmental Quality Review (CEQR), preparation and review of Phase I and Phase II Environmental Site Assessments (ESA), and the investigation and remediation of numerous properties contaminated with hazardous materials. Among the hazardous materials-contaminated sites I have investigated and remediated is the largest

Voluntary Cleanup Program Site in New York State, Howland Hook Maine Terminal-Port Ivory Facility.

4. Within the firm GHD Services Inc., I am routinely sought out for my technical expertise in the above-listed areas. I have participated in ASTM International and New Jersey Department of Environmental Protection committees charged with writing standards and guidance documents; and, I have provided comments to guidance documents and rules proposed for the New Jersey Administrative Code. My resume, which contains additional information on my professional background, is attached as Exhibit A hereto.

5. It is my belief that when the EAS was issued, the proposed destruction of the Garden and construction of the Haven Green facility was a Type I action under SEQR. The basis for this belief is that the Garden is situated in the Chinatown and Little Italy Historic District, which was listed in the National Register of Historic Places on February 12, 2010. At the time of the EAS, based on 6 CRR-NY 617.4, Type I actions under SEQR included the proposed action, based on the following analysis:

a. Type I actions include “any Unlisted action (unless the action is designed for the preservation of the facility or site), occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National Register of Historic Places...”

6. As the action is a Type I Action under SEQR, an alternatives analysis is required. New York Codes, Rules, and Regulations 6 CRR-NY 617.9 indicates that the alternatives analysis is “a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of a project sponsor,” Further, although not required, 6 CRR-NY 617.9 suggests that the range of alternatives include different development sites. The EAS does not document an alternatives analysis.

7. CEQR imposes upon New York City government agencies the obligation to review proposed projects to ascertain whether such projects may result in potential adverse impacts. Further, when an agency decides to carry out or approve an action which may have a significant effect on the environment, it is required to document that (1) consistent with social, economic and other essential considerations of state and city policy, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects to the maximum extent possible, including the effects disclosed in the relevant EAS and (2) consistent with social, economic and other essential considerations of state and city policy, all practicable means will be taken in carrying out or approving the action to minimize or avoid adverse environmental effects. GHD's review of the Negative Declaration and the EAS revealed that these documents did not identify all potential and likely adverse impacts. As such, the approval of the Negative Declaration and the EAS by the NYC HPD, the designated Lead Agency for the environmental assessment, cannot and does not adequately meet the objectives and requirements of CEQR.

8. GHD's review of the Negative Declaration and the EAS indicates that the EAS did not investigate or propose measures to mitigate the adverse impacts that likely would result from the Project, which involves demolishing the Garden and building a multi-unit residential and commercial building, otherwise known as Haven Green (With-Action Condition). Notable is that the EAS does not adequately evaluate zoning, neighborhood character, shadows, open space, and historic and cultural resources. GHD finds that adverse impacts will result from the With-Action Condition, and, as the EAS did not identify these impacts, nor did NYC HPD, the adverse impacts will occur without any mitigation efforts.

***Significant Adverse Impacts – Zoning***

9. Chapter 9 of Zoning Resolution X, which pertains to the Special Little Italy District and was most recently amended on March 22, 2016, governs aspects of building design and lot coverage. The proposed Haven Green development exceeds the thresholds that apply at the site:

- a. The maximum Floor Area Ratio (FAR) for a parcel that is not a corner property is 4.1. The EAS indicates a parcel size of 20,265 square feet. As such, the maximum floor space of a building is approximately 83,100 square feet. However, the EAS indicates a 92,761 square-foot-building. As such, the With-Action Condition is not in accordance with current zoning regulations. Moreover, the EAS does not acknowledge the need for a zoning variance, and as such does not constitute a “hard look.”
- b. The maximum lot coverage for one building in the Special Little Italy District is 60%. As the lot size is 20,265 square feet according to the EAS, at least approximately 8,100 square feet (i.e., 40%) of the property should be outside the building footprint. However, the EAS proposes approximately 6,700 square feet of area outside the building footprint. As such, the With-Action Condition is not in accordance with current zoning regulations. Moreover, the EAS does not acknowledge the need for a zoning variance, and as such does not constitute a “hard look.”
- c. Special Little Italy District zoning requirements include the following: “all buildings developed after February 3, 1977, shall have a rear yard with a depth of not less than 30 feet.” EAS Figure B-4 indicates that the Garden and Garden Space meet this requirement. However, the Garden and Garden Space are adjacent to only the southern portion of the proposed Haven Green

building. The northern portion of this building is shown immediately adjacent to the rear lot line, without any rear yard at all.

- d. The EAS indicates that the building is proposed to be 75 feet tall, not including the mechanical bulkhead, and 86 feet tall including the mechanical bulkhead. Special Little Italy District zoning requirements restrict “the maximum height of any building or other structure to 75 feet or seven stories above the curb line.” The EAS does not reference the curb line as the datum for the building. Further, the Special Little Italy District zoning regulations do not exempt mechanical bulkheads from the building’s total height. As such, the maximum height of the building and its appurtenant structures is 86 feet, which does not comply with the zoning requirements. Moreover, the EAS does not acknowledge the need for a zoning variance, and as such does not constitute a “hard look.”

10. The EAS is to be written in a concise and understandable manor. In a number of locations, including in the Project Description, Existing Zoning District on Page 2, and page A-1 of Attachment A, the site is identified as being within the Special Little Italy District for zoning purposes. However, the EAS does not compare the proposed building dimensions to the Special Little Italy District zoning limitations. On page 5 of the EAS Full Form, under zoning, the applicant claims limits appropriate for zoning classification C6-2, as opposed to the limits for the Special Little Italy District. The EAS appears to propose development that is not in accordance with current zoning requirements. Only individuals knowledgeable about City zoning policy would know otherwise. As such, the EAS is not written in an understandable manner.

### *Significant Adverse Impacts – Neighborhood Character*

11. The EAS repeatedly describes the site as “unimproved” and “City-owned.” While the lot is certainly owned by the City, it is only unimproved in the sense that there are no parking lots, residential or commercial buildings, or other “typical” improvements. The site is landscaped, is planted with trees and shrubs, and displays numerous pieces of art on pedestals. This is an attempt to minimize the importance of the Garden to residents and visitors to the City.

12. Perhaps the most substantive indication that the EAS is undervaluing the space is on page A-3 of Appendix A, where the document incorrectly describes the No-Action condition as “the approximately 20,265 sf Development Site would remain an unimproved, City-owned lot.” To describe the Garden as an unimproved, City-owned lot is at a minimum inadequate to understand the negative impacts of the With-Action Condition, and may be misleading. A description of the Garden and its importance to the community is below. Exhibit B includes photographs from selected events at the Garden.

a. The Elizabeth Street Garden plays a unique and critical role in the neighborhood character through its land use. The garden serves as a destination for travelers, a respite for residents in a sea of asphalt and pavement, and an outdoor museum of cultural significance: nestled among the Garden’s landscaping and plantings are sculptures and statuary of artistic importance. Among the notable pieces are marble columns and an iron gazebo designed by the Olmsted Brothers for Burrwood (the former home of Walter Jennings) and a stone-and-granite balustrade designed by French landscape architect Jacques-Henri-Auguste Gréber. Further, a zinc sculpture of the Roman mythological figure, Hebe, was manufactured by the A.B. & W.T. Westervelt company, which was one of a handful of important 19th century American manufacturers of zinc statuary and



outdoor benches/settees. The original sculpture, upon which the zinc statue was modelled, was by the Italian sculptor Antonio Canova. Antonio Canova was considered by many to be the greatest sculptor of the late 18th and early 19th centuries.

b. The Garden serves as a gathering place for community organizations and neighborhood residents. GHD analyzed the activities held at the Garden in 2015 and late August 2017 to early September 2018. The activities are listed in the table and are documented in the photographs presented in Exhibit B. At least 173 events were held at the Garden in 2015 and 200 were held in the approximately one year time frame between August 27, 2017 and September 6, 2018.

c. The community events held at the Garden were free to the public and organized by a variety of organizations in partnership with the Elizabeth Street Garden (ESG), which notably include the Chinatown YMCA, branches of the New York Public Library, New York City Police Department Fifth Precinct, the Lower East Side Ecology Center, Inspired Word NYC, and the Museum of Modern Art (MoMA). Many of the other free events were organized by local residents and local businesses interested in such hobbies as yoga, Tai Chi, live music, movie screenings, art shows, and community gardening. In 2018, the Garden hosted its 6th Annual Harvest Festival drawing over 2,000 people who enjoyed free food and activities donated by local businesses. The Garden also held educational events in collaboration with Public Schools 1 and 130 (PS1 and PS130). In 2018, ESG hosted workshops for over 550 public school students in the spring, fall and winter.

d. Additionally, numerous articles produced for New York City residents describe the Garden in its neighborhood setting. An example is the June 30, 2015

article entitled “A Visit to Elizabeth Street Garden” that appeared in Noted in NYC. The author notes that she had “walked by the Elizabeth Street Garden before and wondered what it was.” The author further indicated that she “had a lovely time chatting with people who stopped by to say hello. Some visitors lived in the neighborhood, while others were from out of town...” The author’s recollections illustrate a few critical points. First, the Garden is visible from street level in the neighborhood. Second, the author’s words confirm that the Garden is a significant visual element in the neighborhood.

The Noted in NYC article continues by stating that the Garden depends upon volunteer “curators” to remain open. Although not stated in the article, it seems reasonable to me that the majority of these volunteers would be local to the Garden. This strengthens my conclusion that the Garden is a critical part of the community and neighborhood character.

e. The Garden is a travel destination. The Garden draws visitors from other parts of New York City and New York State, as well as from other states and many countries throughout the world. Visitors to the Garden patronize local commercial establishments and restaurants. The Garden is known to travellers within the continental United States and beyond. A recent review of the Online Website TripAdvisor (link: [https://www.tripadvisor.com/ShowUserReviews-g60763-d271885-r394906757-Elizabeth\\_Street-New\\_York\\_City\\_New\\_York.html](https://www.tripadvisor.com/ShowUserReviews-g60763-d271885-r394906757-Elizabeth_Street-New_York_City_New_York.html)) indicates that the Garden is a favorite destination for not only New York City residents, but also travellers from, among other places, Seattle, Washington; Dallas and Fort Worth, Texas; Mexico City, Mexico; and, Lisbon, Portugal.

13. The EAS'S characterization of the Garden does not indicate a "hard look" at the negative impacts that would result from the With-Action Condition. More importantly, the EAS'S characterization of the Garden is not indicative of its importance to Neighborhood Character. As such, the Negative Declaration is not based on sufficient Neighborhood Character analysis, and the Negative Declaration should therefore be vacated.

14. Underscoring the importance of the Garden to Manhattan Community District 2, which is a portion of the City that is under served with respect to open space, is a January 27, 2014 document that records a portion of the resolutions during the January 23, 2014 meeting. The minutes record that the Board for Community District 2 "supports the permanent preservation of the Elizabeth Street Garden in its entirety as a public open, green space..."

15. Based on my experience with CEQR, it is my opinion that the proposed project will likely have significant adverse impacts on a number of technical areas and therefore a full Environmental Impact Statement (EIS) is warranted in at least the area of Neighborhood Character. The EIS would necessarily require an alternatives analysis; such an analysis would state whether any truly unimproved and/or City-owned properties exist that would simultaneously allow development of Haven Green and preservation of the Garden as an important community resource.

***Significant Adverse Impacts – Shadows***

16. Intent of the Shadow Analysis under CEQR is typically to identify resources that require sunlight to be effectively utilized and enjoyed. In this case, the resource is not yet constructed, but is instead the open space proposed for recreational use. Exhibit C includes the Tier 3 Shadow Analysis presented as part of the EAS. Exhibit C also

includes a table of the approximate percent of open space covered in shadow at different times of the day and different days of the year.

17. The EAS'S Tier 3 shadow analysis shows that the open space would be shaded through at least noon. Further, the shadow analysis presented in the EAS considers only the incremental shadows cast by the Haven Green building. While this meets the requirements of CEQR, it does not evaluate the effect of shadow on the open space proposed at the fringes of the site.

18. GHD's shadow analysis, presented in Exhibit D, indicates that a significant portion of the open space to be preserved following the Haven Green development would be shaded after noon. The difference between the shadow analysis conducted by GHD and that presented in the EAS is that GHD's analysis includes the effects of existing, adjacent buildings.

19. In contrast to the amount, duration, and frequency of shading that will be experienced in the portion of the site that will be open space following the construction of the Haven Green building, the Garden has much larger areas that remain sunny throughout the day. This is true simply because the Garden occupies a larger, continuous area and much of the Garden is not adjacent to a large structure.

20. The EAS concludes that "no sunlight-sensitive resources would receive project-generated shadows." As above, this is factually true and meets the minimal requirements for a shadow analysis under CEQR. However, the remaining open space will be significantly shaded, and to claim it as open space that is equivalent to the Garden is inaccurate.

### ***Significant Adverse Impacts – Open Space***

21. The EAS indicates that the Garden is within an under served area of Manhattan with respect to open space. The fact that other portions of Manhattan have also not

achieved the stated goal of 2.5 acres of open space per 1,000 residents is not a valid reason to decrease the amount of open space in the under served Community District 2, as is implied in the EAS.

22. The With-Action Condition will result in a significant quantity (double the CEQR threshold) reduction in open space within an already under served community, but the EAS Full Form (Item 4g, Pages 7-8) is either incorrect or is not fully explained in Attachment C to the EAS Full Form does not acknowledge that the open space would decrease by more than 1% under the With-Action Condition.

23. In contrast, Attachment C to the EAS acknowledges a 2.24% decrease in quantity of open space within the study area. I concur with the EAS'S assessment of the reduction in open space. The net decrease in open space acknowledged in the EAS is approximately 13,565 square feet. For this not to be 1% of the open space in the district, there would need to be 1,356,600 square feet (over 31 acres) of open space in the study area that is defined in the EAS. The EAS claims a total of 14.25 acres of open space, which equates to 620,730 square feet. As such, the reduction of 13,565 square feet actually constitutes more than a 2% reduction.

24. The contradiction between the EAS Full Form and Attachment C to the EAS undermines the Negative Declaration, and suggests that the EAS did not constitute a "hard look" at the negative impacts that would result from the With-Action Condition. The basis for the EAS Full Form at determination of less than 1% loss in open space is unclear, and it is unclear how the review by the Lead Agency did not identify this discrepancy. What is clear based on the error or lack of justification in the EAS, coupled with the lack of evaluation by the Lead Agency, does not constitute a hard look under CEQR. The Negative Declaration should be vacated.

25. As noted above, the CEQR Technical Manual sets a 1% threshold of significance for loss of open space in an under served community. Attachment C to the EAS indicates, and I have reviewed the data and concur, that the actual loss of open space will be more than twice this threshold of significance. Therefore, an EIS is required, for at least open space.

26. Attachment C to the EAS on page C-17 states that the “deficiency of open space resources within the study area would be ameliorated by several [qualitative] factors.” After assessing the qualitative factors, the EAS concludes that no further evaluation of open space is necessary based purely on the qualitative review. However, the qualitative analysis, which I disagree with for the reasons discussed below in items 27 to 35, does not supersede the findings of the quantitative analysis. An EIS should have been proposed.

27. The EAS identifies as one of the mitigating factors that “the proximity of Washington Square Park” would continue to serve the open space needs of residents within the study area. While Washington Square Park is adjacent to the study area and may be accessible to a number of residents within the study area, it is also accessible to residents outside the study area. As such, Washington Square Park may currently be utilized to capacity.

National Recreation and Park Association guidelines, which are cited in the CEQR Technical Manual, acknowledge that a greater distance from a resident requires a greater open space to population ratio so that the open space is not used beyond capacity. Within one-half mile, the guidelines state goals of 1.25 to 2.5 acres of open space per 1,000 residents. Within one to two miles, the guidelines state 5 to 8 acres per 1,000 residents. Were Washington Square Park included in the inventory of open space in the study area, the open space ratio per 1,000 residents would increase to 0.26 acres per 1,000 residents, which is well below the open space goal of 2.5 acres per 1,000 residents. As such, the

study area would still be drastically under served and Washington Square Park does not mitigate the lack of open space in the study area, as the EAS claims.

28. The EAS repeatedly implies that the remaining 6,700 square feet of open space would somehow be equivalent to the Garden. However, this is not the case. The 0.15-acre open space that is planned under the with-Action condition will be able to accommodate far fewer people than the Garden does currently, given that the proposed space will be 1/3 the size of the current garden. The open space will be “L-shaped” around the proposed Haven Green building, which will necessarily limit lines-of-sight and the effectiveness of any performance or community event. As such, rather than a large contiguous open space, the proposed open space would be discontinuous and narrow, in some places as narrow as 30 feet. This is in contrast to the design of the Garden, which is much better suited to public functions. While not every seat in the Garden may offer an ideal vantage point for a lecture or art display, it offers a far superior venue for community events than does the proposed open space.

29. The EAS’S qualitative assessment of open space does not adequately evaluate the function of various open spaces in the study area. The qualitative assessment looks at whether the open space is active or passive and makes a subjective determination of whether the open space is well maintained. However, a hard look at qualitative open space issues would evaluate the functions served by the Garden and identify those open spaces that do or could potentially serve the same purpose. Beyond uses common to open spaces in the study area, the Garden functions as a community gathering place. In other words, the loss of the Garden is more than the loss of 0.31 acres of open space – the EAS’S qualitative open space assessment does not acknowledge the loss of function.

30. The Qualitative Assessment provided in Attachment C to the EAS assesses the condition of each open space. However, the majority of the listed open spaces by no

means compensate for the proposed destruction of the Garden. Many of the open spaces listed in the EAS, while they may be well-landscaped, are essentially walkways between lanes of traffic or are landscaped areas in front of commercial spaces. Such open spaces cannot effectively host large community events or create the private, contemplative space the Garden offers.

31. CEQR defines two types of open space: active and passive. Section 7 of the CEQR Technical Manual defines passive open space by example as well as by exception; in other words, passive open space is most precisely defined as open space that is not active open space. CEQR defines active open space as “open space that is used for sports, exercise, or active play.” The CEQR Technical Manual acknowledges that a space can serve both functions. The Garden serves both functions. It is a passive open space when utilized by individuals for relaxation and escaping the noise and activity of the City or when the garden is opened for its dozens of annual community events. The Garden is an active open space when utilized by groups for yoga or other strength and conditioning activities. Both uses are vital for City residents, and therefore an open space that serves both functions at different times is more valuable than an equivalent area of open space that, by design, can serve only one or the other purpose.

32. The 6,700 square feet of open space will also be shaded for most of the year, and the shade is at least partly due to the proposed Haven Green building. Please see the shadow analysis, which is presented above.

33. The EAS argues that the adverse impact from loss of the Garden will be ameliorated by, among other factors, the presence of eight small community gardens and bicycle lanes. However, the EAS acknowledges that the community gardens are private and therefore are not accessible to most residents in the study area. Although certain bike lanes are defined as open space in the CEQR Technical Manual, the bicycle lanes have



severely limited use: for transportation and bike riding as recreation. Neither type of open space serves the same variety of functions as the Garden. In contrast to what is claimed in the EAS, neither feature is an ameliorating factor for the loss of the Garden.

34. The remaining open spaces do not serve the community needs in the same way as the Garden, and therefore are not replacements for the Garden. In many instances, the open spaces are paved ball courts or playgrounds and are not green space, as is the Garden. In other instances, the spaces are too small to be community gathering spaces, as is the Garden. Exhibit E includes an assessment of the remaining open spaces against the function of Garden. Photographs of the remaining open spaces are also provided in Exhibit E.

35. Based on my experience with CEQR, it is my opinion that the proposed project warrants a full Environmental Impact Statement (EIS), in at least the area of Open Space. The EIS would necessarily require an alternatives analysis; such an analysis would state whether any truly unimproved and/or City-owned properties exist that would simultaneously allow development of Haven Green and preservation of the Garden as an important community resource. Further, an EIS process includes opportunity for public participation and comment about the residents' perceptions of the use and adequacy of existing open spaces. The EIS would allow, in fact require, that this valuable information be gathered.

***Significant Adverse Impacts – Historical and Cultural Resources***

36. The EAS does not constitute a hard look at architectural resources within the Chinatown and Little Italy Historic District. The Chinatown and Little Italy Historic District is listed in the National Register of Historic Places in part due to containing 621 contributing buildings. Contributing buildings are the architectural resources that define the Historic District. A total of 14 such architectural resources are located within 90 feet

of the Garden. As such, a thorough inventory of architectural resources would have identified all 14 buildings. The EAS identified only three buildings, and the Negative Declaration one additional building, within 90 feet of the Garden. As the EAS failed to document the majority of the architectural resources within 90 feet of the Garden, it does not constitute a hard look at Historical and Cultural Resources.

37. Although not acknowledged in the EAS, there is potential for art in the building adjacent to the Garden, which houses the Elizabeth Street Gallery, to be impacted by construction activities. At a minimum, noise from construction activities under the With-Action Condition will diminish visitors' experience at the Gallery. A worse-case scenario includes the effect that vibration, which will be generated during proposed subsurface construction activities, will damage art that is exhibited in the Gallery. The EAS does not acknowledge the art or the Gallery.

38. Agency correspondence from the New York City Landmarks Preservation Commission (LPC) indicates that a Construction Protection Plan is warranted and should be reviewed by the LPC prior to construction. It does not appear that the Construction Protection Plan has been prepared or has been presented to the LPC for review and approval. It should be noted that, particularly given the presence of the art in the adjacent Gallery, it would be appropriate to make this Plan available for public and expert review. Further, the fact that the EAS acknowledges the need for a Construction Protection Plan implies that there is a finding of likely significant impacts to Historical and Cultural Resources. As such, an EIS is warranted for at least Historical and Cultural Resources.

39. On page D-13, Attachment D to the EAS indicates that "no construction-related impacts on historic resources would be anticipated as a result" of the With-Action Condition. The basis for this statement is that the construction would follow the Building Code and a Construction Protection Plan. It is unclear that the Construction Protection


Plan will be designed to protect all 14 contributing buildings situated within 90 feet of the Garden, given that the EAS does not identify ten of these architectural resources.

**Conclusion**

40. Based on the foregoing analysis, I am reasonably certain that the analysis/assessment contained in the EAS, upon which NYC HPD relied in reaching their determination of a negative declaration, is incomplete and inadequate in several respects. The Project would pose significant adverse environmental impacts. Further, as noted above, the EAS does not constitute a hard look at the likely negative impacts resulting from the With-Action Condition and thus violates CEQR. As a result, the determination should promptly be annulled, reversed and/or vacated and an EIS should be required.

  
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Geoffrey K. Clark

Sworn to before me this 5<sup>th</sup> day of March, 2019

  
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Notary Public

ANGELA DANIELLE LIPSMAN  
Notary Public, State of New York  
Registration #02LI6287740  
Qualified In New York County  
Commission Expires Aug. 19, 2021