

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

-----X  
TIMOTHY BROWN,

Index No.110334/10

Petitioner,

**AMDENDED  
VERIFIED  
PETITION**

-against-

THE NEW YORK CITY LANDMARKS  
PRESERVATION COMMISSION,  
MICHAEL BLOOMBERG, Mayor of the City of New York,  
THE NEW YORK CITY DEPARTMENT OF BUILDINGS,  
SOHO PROPERTIES INC., JANE DOE AND JOHN DOE,

Respondents.

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Petitioner, by his attorneys, the AMERICAN CENTER FOR LAW & JUSTICE  
and JACK L. LESTER, ESQ. for the Petition herein, allege as follows:

**PRELIMINARY STATEMENT**

1. This proceeding concerns the fate of 45-51 Park Place in Manhattan (“the Building”), an iconic structure that symbolizes American capitalism and perseverance in the face of terrorism.

2. The Building, which connects two structures, 45-47 Park Place and 49-51 Park Place, survived a direct hit on September 11, 2001 and is part of the area now known as Ground Zero, less than three blocks from the site of the former World Trade Center.

3. The Building faces imminent demolition, as the land use process of New York City threatens to do what terrorists failed to accomplish and destroy a building that has been under consideration for landmark status for over twenty (20) years.

4. During that time, upon information and belief, the preservation community as well as the local Manhattan Community Board #1 (the “CB”) have advocated and beseeched the New York City Landmarks Commission (the “LPC”) to consider designating 45-47 Park Place a New York City landmark in light of its architectural and historical significance.

5. The LPC calendared the matter for landmark consideration in 1989 but refused to hold another public hearing on 45-47 Park Place until July 13, 2010, when political pressures surrounding a proposed mosque, known as the Cordoba House, at the Building site prompted the LPC suddenly to hold a hearing in mid-Summer, close the record a scant one week thereafter and then unanimously vote to deprive the Building of landmark status—all inside of only a few weeks.

6. The LPC closed the record prior to receiving any notification from the local CB of its vote on the landmarks issue, thus depriving the CB of its statutorily mandated advisory role in such matters and defying administrative precedent, without weighing or reviewing the considerable record and documentation compiled over twenty (20) years, without providing other interested parties and members of the public with a reasonable opportunity for public comment and without giving due consideration to the Building’s most important feature: its connection to September 11, 2001.

7. As set forth below, the LPC acted in an arbitrary, capricious and unreasonable manner and allowed the intended use of the Building and political considerations, including pressures from New York City Mayor Michael Bloomberg, who appoints the LPC commissioners, to taint what should be a deliberative, unbiased

and apolitical process. This was accomplished in violation of procedural safeguards set forth in the New York City Charter and Administrative Code of the City of New York.

8. This is a proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”). Petitioner seeks a judgment annulling, vacating and setting aside the determination of Respondent, the LPC, as against the weight of the evidence, contrary to administrative procedure and precedent and violating the statutes, rules and regulations governing the landmarks process in the City of New York.

9. Petitioners also seek disclosure of relevant and material information pursuant to requests made to public agencies through the Freedom of Information Law. (See FOIL Requests annexed hereto as Exhibit “A”).

### **JURISDICTION AND VENUE**

10. This Court has jurisdiction pursuant to Article 78 of the CPLR to review a final action by the bodies or officers responsible for the land use classification of the Building and to compel compliance with FOIL requests.

11. Venue is proper in New York County pursuant to §506(b) because New York County is where the material events at issue took place and are taking place and where the LPC and several of the others respondents have their principal office.

### **PARTIES**

12. Petitioner, Timothy Brown, is an American hero whose courage and bravery on September 11, 2001 embodies the American ideal. As a member of the Fire Department of New York City, he was one of the first responders on September 11, 2001, rushing to the site of the World Trade Center and risking his life to save others. He survived the worst terrorist attacks in history and the collapse of the World Trade Center

around him but lost nearly 100 of his friends on that day. He has since worked to organize and advocate on behalf of survivors and family members of the deceased and has been a tireless spokesman for honoring the victims' memory.

13. Since plans to demolish the Building were announced, Petitioner has argued for its preservation given its location at Ground Zero and the historical importance of the Building, which suffered a direct hit when the landing gear from one of the hijacked planes that destroyed the World Trade Center crashed through the roof of the Building. Petitioner and/or his counsel have attended not less than four CB and LPC meetings to argue on behalf of landmarking the Building, and Petitioner is generally concerned about preserving effected areas of Lower Manhattan and protecting the memory of the September 11, 2001 events.

14. Respondent, the New York City Landmarks Preservation Commission, was established pursuant to Chapter 74, Section 3020 of the New York City Charter.

15. The LPC has the power to establish and regulate landmarks. The Landmarks Preservation Law, codified at Title 25, Chapter 3 of the New York City Administrative Code ("Code"), declares:

as a matter of public policy that the protection, enhancement, perpetuation and use of improvements and landscape features of special character or special historic or aesthetic interest or value is a public necessity and is required in the interest of health, prosperity, safety and welfare of the people. (emphasis added)

Code § 25-301 (b)

16. The Landmarks Law establishes a regulatory scheme which is designed, inter-alia, to

effect and accomplish the protection, enhancement and perpetuation of such improvements . . . and of districts which represent or reflect elements of the city's cultural, social,

economic, political and architectural history . . . safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such improvements . . . and districts . . . and promote the use of historic districts, landmarks, interior landmarks and scenic landmarks for the education, pleasure and welfare of the people of the city.

Code § 25-301 (b)

17. Upon receiving landmark designation, a building may not be altered or demolished without the LPC's approval pursuant to Code § 25-307 (a).

18. The LPC may only approve the alteration or demolition of a landmarked building after holding a public hearing pursuant to Code § 25-308.

19. Respondent, the Department of Buildings (the "DOB") is an agency of the City of New York responsible for enforcing provisions of the Building Code that will be at issue in this proceeding. The DOB must review all plans for the development of the Building. Permits must be issued for demolition of the current structure or excavation and foundation to support a new building. Development of a site cannot occur unless and until the DOB has approved the necessary permits. Furthermore, the DOB has responsibility for protecting the public's safety by ensuring that New York City buildings are not occupied without a valid certificate of occupancy or temporary certificate of occupancy. Upon information and belief, at least one of the Respondents has and continues to occupy the building without a valid certificate of occupancy or temporary certificate of occupancy, thus potentially risking the public's safety.

20. Respondent, Michael Bloomberg is the Mayor and Chief Executive Officer of the City of New York. Upon information and belief, the Mayor was in communication with the LPC advocating development of the Building and opposing landmark status. The Mayor possesses information relevant and material to this

proceeding. Petitioners have requested this information pursuant to FOIL and the Mayor and/or the Mayor's Office have refused to provide such information to date.

21. Respondents Soho Properties Inc. and Jane Doe and John Doe, upon information and belief, hold a beneficial interest in the Building or the planned project that would be located at the Building site, or are net lessees at 49-51 Park Place, and they are necessary parties under Article 78 of the CPLR.

### **FACTUAL BACKGROUND**

22. The Building located at 45-47 Park Place was first calendared by the LPC in 1989 due to the Building's unique architectural features.

23. As one member of the LPC observed during the LPC's public ruling on the Building's status, the Building "is part of Ground Zero." (C. Moore, Landmarks Preservation Commission Hearing Transcript, Commissioner Moore, p. 21, line 25). The area known as Ground Zero sustained significant destruction from the September 11, 2001 terrorist attacks. The Building also stands in close proximity to the Tribeca Historic District and within approximately two blocks or approximately six hundred (600) feet of the site of the former World Trade Center.

24. This Building is the only one of its kind linking the growth of American free enterprise to the present day and the aftermath of the September 11, 2001 events, and it stands as a testament to the American ideal of economic, social and political freedom in the face of murderous ideology.

25. The Building at 45-47 Park Place merited landmark status prior to September 11, 2001, but its historical and cultural significance is even more important

and the Building even more worthy of preservation after the September 11 terrorist attacks.

26. The Building at 45-47 Park Place combines three crucial elements deserving of landmark status.

(a) It has overwhelming historical significance bridging two periods of American history;

(b) It maintains unique architectural features worthy of landmark status; and

(c) It may yield discoveries related to the events and aftermath of September 11, 2001 that will be lost forever if not preserved.

27. The Building at 45-47 Park Place is rich with inflections of fine mid-19<sup>th</sup> century architecture. It is an intact five (5) story 152-year old Italianate Renaissance palazzo style warehouse, which retains its original colonnade cast by Daniel Badger and Company and with upper floors that appear much as they did originally.

28. The LPC has recognized the architectural uniqueness of very similar properties in Lower Manhattan. In awarding landmark status to 311 Broadway, the LPC indicated that 311 Broadway is one of the few remaining palazzo-style buildings in Lower Manhattan and therefore merits landmark status.

29. The Building's architecture recalls not only mid-19<sup>th</sup> century New York City, but also 16<sup>th</sup> century Rome and Florence. The CB has even noted that the Building's façade is worthy of preserving and that the historic façade should be incorporated into any future design, saying in a resolution that "Community Board No. 1 Manhattan urges that in light of the redevelopment budget for this site that the historic

façade be carefully deconstructed, stored and incorporated into any future design for the site . . .”. The Building’s symmetrical square projecting lintels and second floor balconets were adopted in the 1840’s and 1850’s in cities across Britain for Store-and-Loft buildings on London’s Farringdon Street North and New Coventry Street (both mid-1840’s). The Building at 45-47 Park Place maintains a continuous cornice flanked by two scrolled brackets surrounded by an antefix.

30. Notwithstanding that the Tribeca Historic District does not encompass the site, its stand alone nature highlights the need to maintain this structure reflecting a mercantile period in our history and an architectural uniqueness that is rapidly disappearing from our physical landscape. The Building’s uniqueness in the neighborhood justifies designation as a landmark according to administrative precedent established by the LPC throughout Lower Manhattan. In 1989, when the Building was calendared by the LPC for landmark consideration, the CB supported its designation as a landmark.

31. The same CB that recommended against landmarking the Building on July 27, 2010 voted 19-1 in a Committee on Landmarks, Art & Cultural Affairs resolution dated September 14, 1989, to recommend designating the Building a landmark, along with 28 other buildings. Hal Bromm of the CB expressed public support for landmarking it on behalf of the CB at the LPC’s September 19, 1989 public hearing. The Committee for the Washington Market Historic District of the Tribeca Community Association also supported designating the Building an individual landmark.

32. In addition to the Building’s architectural significance, it has a rich, virtually unparalleled, history that justifies landmark designation. The Building at 45-47



Park Place was constructed in the mid-19<sup>th</sup> Century for Paul Spofford and Thomas Tileston. They were pioneers in the shipping industry who inaugurated successful steam navigation into American mercantile and industrial development. They refused to navigate their ships under foreign flag to evade the Confederate blockage of Southern ports during the Civil War. They volunteered their vessels to the Union cause during the Civil War at great financial sacrifice in America's struggle for unity, freedom and racial equality.

33. The Building at 45-47 Park continued to be occupied into the late 19<sup>th</sup> Century by prestigious commercial enterprises, including occupancy by James P. Smith, a fancy foods importer, and by the American Press Association. From 1911 to 1925 it was the headquarters of Merck & Company. The Building had continuous usage, including by Drakenfield & Co., a developer of innovative manufacturing methods for the ceramics industry, and as a Burlington Coat Factory, until 2001, when, on September 11, landing gear from one of the hijacked planes crashed through the Building after exploding into the World Trade Center.

34. The Building at 45-47 Park Place was one of fewer than 20 buildings to suffer major damage, partial collapse or total collapse as a result of the September 11 attacks, according to a report by the Federal Emergency Management Agency ("FEMA"). (See relevant portions of the FEMA report attached hereto as Exhibit "B"). As such, the Building is one of just a handful of structures to sustain major damage on September 11, 2001 and remain standing, placing it in a unique category and distinguishing it from almost every other building within the vicinity of the September 11 carnage.

35. The Building remained dormant of commercial activity after September 11, and it now serves as a prayer center for people of the Muslim faith, potentially in violation of DOB regulations governing certificates of occupancy.

36. The Building at 45-47 Park Place stands as an iconic symbol to an uninterrupted linkage of the rise of American capitalism with our current quest to preserve our freedom and democracy. Therefore, and particularly in light of the damage it sustained—and survived—on September 11, it stands as part of the commemorative and educational experience of our shared political, cultural and historic heritage and should be preserved.

**ADMINISTRATIVE PRECEDENT – HISTORIC  
AND ARCHITECTURAL SIGNIFICANCE**

37. 45-47 Park Place's direct, unequivocal and dramatic connection to two eras in American history compels the granting of landmark status. Upon information and belief, there are over 25,000 properties that have been granted landmark status since 1965.

38. Upon information and belief, in the period between 2003 and 2008, the LPC awarded landmark status to approximately 1,972 buildings.

39. The LPC focused administratively during that time span in preserving buildings that recall New York City's 19<sup>th</sup> Century industrial heritage and architectural features that highlight the Italianate Renaissance palazzo-style.

40. A virtually identical replica to 45-47 Park Place is located at 23-25 Park Place. It too was calendared by the LPC in 1989 due to its unified facades, its elevations featuring Italianate details, its continuous stone cornice and its history as the base of operations of the *Daily News* during the 1920's. Unlike 45-47 Park Place, however, the

LPC *unanimously designated* 23-25 Park Place a landmark in 2007, despite the far greater historical, cultural and iconic significance of 45-47 Park Place.

41. The LPC, recognizing the obvious inconsistency in its treatment of 23-25 Park Place and 45-47 Park Place, paid lip service to proper protocol by noting in the official record that 23-25 Park Place has more architecturally significant features. In reality, these differences are immaterial, and, in fact, the unique historical importance of 45-47 Park Place, especially in light of September 11, provides a far more compelling justification for landmarking 45-47 Park Place. The disparate treatment of these two properties and towards their respective owners can be explained by the results-oriented, politically tainted deliberations of the LPC, which considered the proposed use of the Building site and the owners' plans to construct a 15-story mosque, plans that Respondent Mayor Michael Bloomberg adamantly and publicly supported.

42. Buildings located at 122 Chambers Street, 105-107 Chambers Street, 311 Broadway, 319 Broadway, 359 Broadway and 361 Broadway in Manhattan are all also individually landmarked buildings sharing the architectural style of the Building at issue in this proceeding.

43. Upon information and belief, approximately six percent (6%) of all landmarked structures in New York City have been landmarked solely due to historic significance.

44. Upon information and belief, the World Trade Center Site has been determined eligible for inclusion in the National Register of Historic Places.

45. Upon information and belief, the Metropolitan Transit Authority has agreed to preserve the buildings surrounding the World Trade Center Site in its development plans.

46. Upon information and belief, the New York State Registry of Historic Places is reviewing the building.

47. Upon information and belief, the Federal Government created the Heritage Emergency National Task Force to help libraries, museums, and archives by providing expert information and to salvage important historical artifacts in the wake of disasters. The agency is co-sponsored by FEMA and Heritage Preservation Inc. The Task Force is composed of more than 30 Federal Agencies and national service organizations. The Task Force has assessed the impact of September 11 on cultural and historic resources in Lower Manhattan.

48. Upon information and belief, the Task Force is still actively engaging in a complete inventory of historic artifacts buried or lost in the buildings surrounding the World Trade Center. To this day, a complete evaluation of human and material remains of that catastrophic event remains incomplete, and the rubble at the World Trade Center continues to yield discoveries.

49. Respondent, LPC's report and evaluation failed to account for or reflect any other governmental agency involvement, if any, or the investigation of artifacts and/or human remain to be discovered in the Building. Immediately following September 11, for example, it was assumed that Calder's 15-ton stabile Bent Propeller had been destroyed. However, pieces of the red steel sculpture have been recovered

recently. Similarly, boxes containing artifacts from the African Burial Ground have been unearthed beneath the debris surrounding the World Trade Center.

50. Media reports indicate that human remains were found as close as one block to the Building site, and, upon information and belief, a full comprehensive accounting of those remains has yet to be completed.

51. Highlighting the vulnerability of the rich history of buildings surrounding the World Trade Center, the World Monuments Fund added the entire area to a list of the World's most endangered sites. Upon information and belief, the LPC has failed to consult with any agency investigating the remains of September 11 in summarily rejecting landmark status for the Building.

52. Notwithstanding the fact that September 11 established 45-47 as an icon for surviving a direct hit from the landing gear of one of the attacking planes, the LPC utterly failed to account for this momentous historic event in a departure from administrative precedent. The LPC commissioners made only occasional passing references to the importance of 45-47 Park Place given the events of September 11, 2001, and why they justify landmark status, and the LPC completely failed to account for this significance in its official research report.

53. The commissioners demonstrated a remarkable degree of willful detachment in ignoring the relevance of those events, with one Commissioner even comparing the September 11 terrorist attacks and the damage that they caused to a highway guardrail. Commissioner Moore said, "I do think about the significance, though, of its connection to the events of September 11, 2001. However, I make it akin to a guardrail on a highway where fatalities occurred; the guardrail is not preserved . . .

Last I looked, we do not landmark the sky, but I wish we could.” (Landmarks Preservation Commission Hearing Transcript, Commissioner Moore, p. 22, line 13-25).

54. Commissioner Moore’s statement implied that the LPC would have liked to landmark the property, if only it could, and that the LPC was unable to account for the events of September 11 in considering whether to landmark the Building. The comparison of one of the most momentous events in our nation’s history—a deliberate ideological mass-murder and an attack on all Americans—to a highway pileup illustrates the degree to which the LPC failed to consider relevant factors in deciding not to landmark the Building and is evidence of an irrational abuse of discretion.

55. Another LPC commissioner said that “With regard to the building’s history . . . the most interesting occupant was probably the American Press Association from 1893 to 1910, but I do not find this single piece of the building’s history compelling evidence to warrant designation.” (Landmarks Preservation Commission Hearing Transcript, Commissioner Chapin, p. 16, lines 4-13). Again, such testimony reveals how the LPC failed to consider the full historical importance of the Building, not just with respect to September 11, but the entire history of the Building and its occupants, including Merck & Co., which stationed its headquarters at the Building at one time.

56. When the LPC did pay lip service to the Building’s historical importance and connection to September 11, it did so in a manner that, like Commissioner Moore’s statement above, was calculated to make a casual listener believe that the LPC wanted to landmark the Building but was simply unable to do so. For instance, Commissioner Byrns said,

The standards of quality for an individual landmark are much higher than those for buildings in a landmark district. They might including [sic] the

design by a noted architect or being associated significantly with a historic event, or it might be a building of such rarity such as a federal house, that even modest examples should be preserved . . . . While the case for 45 Park Place scores points in several categories, it does not make the final mark in my book . . . . Its main historical significance is its association with the events of 9-11. But the debris field around Ground Zero was widespread, and one cannot designate hundreds of buildings on that criterion alone.”

(Landmarks Preservation Commission Hearing Transcript, Commissioner S. Byrns, p. 26-27, lines 3-4).

Notwithstanding that Commissioner Byrns misstated the legal standard by constructing a new criterion for considering individual landmarks versus buildings in landmark districts—itsself evidence of abuse of discretion—the Commissioner also falsely implied that landmarking the Building would have been impractical because it would require landmarking hundreds of other buildings. But, as stated previously, 45-47 Park Place is not just any building or even any building that suffered damage on September 11; it is one of fewer than a dozen buildings to have suffered major damage on that day and still remain standing, and it is the only one in which landmark status has been considered.

57. The LPC engaged in other procedural irregularities that demonstrate an abuse of discretion and violation of administrative precedent. For instance, one LPC Commissioner noted that “both the community board and the City Council representative are opposed to designation.” (Landmarks Preservation Commission Hearing Transcript, Commissioner L. Ryan, p. 24, lines 21-23). However, the LPC closed the record on 45-47 Park Place prematurely and prior to the CB’s vote on whether to recommend for or against landmark status. Although Petitioner asserts that the LPC acted improperly in closing the record prior to the CB vote, it nonetheless did so, and, therefore, could not

have validly considered the CB's official position on the matter, especially since other interested parties who wished to submit testimony were precluded from doing so once the record was closed.

58. The LPC also inappropriately received correspondence directly from the legal counsel for the owners of the Building. Shelley Friedman wrote to mark Silberman and Kate Daly of the LPC after the LPC's public hearing on the Building that the hearing was "Billed in the index as clearing a major hurdle." (A copy of this email is attached hereto as Exhibit "C"). Upon information and belief, there may exist other correspondence between the owners of the Building and/or their representatives and the LPC that Respondent has yet to provide Petitioner and which provide evidence of undue influence and an abuse of discretion.

59. Finally, the LPC also clearly considered the Building's proposed use in deciding whether or not to designate it a landmark, which explains the LPC's disparate treatment of this Building with others. This is evidenced by Imam Feisal Abdul Rauf's letter to Chairman Robert Tierney on July 7, 2010, which appears in the LPC's record and which emphasized the religious use of the building, stressed the "overwhelming support of our neighbors on Community Board 1" and urged the LPC to "decide to forego designation of 45 Park Place so that we can continue to worship and grow on this site as both Americans and Muslims." While the LPC was prohibited from considering such use in its decision-making process—but clearly did—it was also required to genuinely account for the Building's historical importance in light of September 11<sup>th</sup>—it clearly did not.

### **FOIL REQUESTS**



60. On or about July 30, 2010, and thereafter, Petitioner sent letters to the LPC, the DOB, and the Office of the Mayor, among other local, state and federal agencies, to obtain inter-alia documents, memos, notes, correspondence, permits, applications and/or plans relating to the landmarking process, demolition, development, lease, sale and/or occupancy of the Building at issue in this proceeding, as well information about searches for human remains in or around the Building.

61. Significantly, documents will shed light on any political influence or pressure placed during the landmarks process.

62. Some of the public agencies and officials named in this proceeding have not complied with FOIL, in particular, documents regarding communication with the Mayor's Office, and by the Mayor's Office, despite their obligations pursuant to Article 6 of the Public Officers Law of the State of New York and despite Petitioner's unquestioned need for these documents.

63. Upon information and belief, the issuance of demolition permits are imminent and the failure of the governmental Respondents to disclose the documents requested in Petitioner's FOIL request will cause irreparable harm in that the subject matter of this proceeding will be destroyed prior to a full and fair adjudication of the merits of this proceeding.

64. Compliance with Petitioner's FOIL requests after the demolition of the Building will defeat and prejudice the very purpose of Petitioner's document requests.

65. Upon information and belief, the intended use of the Building has infected the land use review process and militated against an analytical and deliberative review of the Building's historical and architectural significance.

66. Upon information and belief, the staff of the LPC recommended that the Building be considered for landmark status in 1989, and members of the local Community Board and concerned citizens have and continue to seek having the Building listed on the State and National Registers of Historic Places.

67. Despite the foregoing, and contrary to administrative precedent, Respondent, the LPC, refused to consider the views of any relevant and/or involved public agency and closed the public record a scant one week after hastily announcing a public hearing and prior to a vote of the CB.

68. Respondent, the LPC, has failed in any meaningful manner to explain the differential treatment accorded this Building, as contrasted with buildings of very similar architectural features with less historical significance.

69. Respondent, the LPC, has failed to analyze and fully evaluate the Building's unique and direct connection to the events of September 11, 2001.

70. Petitioner is seeking a full and fair disclosure of all relevant and material information at this early stage in the development process, prior to the project reaching the point of "no return," which will render any proper request or judicial intervention moot.

#### **AS AND FOR A FIRST CAUSE OF ACTION**

71. Petitioner repeats and realleges paragraphs "1" through "70".

72. It is hornbook administrative law that "where an administrative agency does not follow its own precedents in deciding a case involving the same factors as other cases, the agency must set forth its reasons for the departure, or the reviewing court must reverse the agency decision as arbitrary and capricious as a matter of law." See Citadino

v. Bellacosa, 136 Misc. 2d 999 (Sup. Ct. N.Y. Co. 1987) (Dontizin, J.) citing Chas A. Field Delivery Svcs., 66 N.Y. 2d 516 (1985).

73. By denying landmark status to the Building, by deviating from historical procedures and precedents and by allowing political pressures to impact the result, the LPC engaged in an arbitrary and capricious abuse of discretion in contravention of administrative precedent.

#### **AS AND FOR A SECOND CAUSE OF ACTION**

74. Petitioner repeats and realleges paragraphs “1” through “73”.

75. Respondent, the LPC, is mandated by Code § 25-303 (b) to hold a public hearing in order to designate a landmark site.

76. Public hearings must afford the public a reasonable right to participate and be heard and for their testimony and documents to be considered and evaluated.

77. The record of such public hearing must be considered prior to a determination. The LPC received thousands of written submissions from all across the country, the vast overwhelming majority of which supported landmark designation due to the Building’s historical importance in light of September 11, 2001.

78. Respondent, LPC’s failure to review, or consider the public record including the closure of the record prior to a vote of the Community Board was violative of the New York City Charter Chapter 70 § 2800 (d) (2) and an arbitrary and capricious abuse of discretion and violative of Code § 25-313 (b), which mandates the public be accorded a reasonable opportunity to be heard.

#### **AS AND FOR A THIRD CAUSE OF ACTION**

79. Petitioner repeats and realleges paragraphs “1” through “78”.

80. Respondent, LPC's failure to evaluate or consider remains of September 11, 2001, or to consult with involved or participating Federal or State Agencies in declining to designate the site a landmark, was an arbitrary and capricious abuse of discretion and violative of law.

#### **AS AND FOR A FOURTH CAUSE OF ACTION**

81. Petitioners repeat and reallege paragraphs "1 through "80" as if fully set forth herein.

82. The failure of the governmental Respondents to disclose relevant and material documents requested in Petitioner's FOIL Request hinders, impedes, prejudices and frustrates the ability of Petitioners to safeguard the Building and prevent its demolition prior to a full and fair judicial determination.

83. In the absence of governmental compliance with Petitioner's FOIL Request, Petitioner cannot insure compliance with legal issues raised in this proceeding.

84. In the absence of governmental compliance with Petitioners' FOIL Request, Petitioners cannot pursue their administrative remedies as they relate to the approval of plans pertaining to the issuance of building, demolition, excavation and/or foundation permits.

85. The failure of governmental agencies to comply with Petitioner's FOIL Request is violative of Article 6 of the Public Officers Law of the State of New York and is an arbitrary and capricious abuse of discretion.

86. Relief under mandamus is appropriate where the right to such relief is clear, and the duty sought to be compelled is performance of an act required to be performed by law, and involving no discretion.

WHEREFORE, Petitioners seek an Order: (1) Compelling the governmental agency Respondents to comply with their statutory obligations and disclose the information requested in Exhibit “A” annexed hereto; (2) Enjoining and restraining the DOB from issuing any permits or approvals to commence demolition or excavation on the project until a final judicial decision has been issued in this matter; (3) Annulling the determination of LPC as arbitrary, capricious and violative of law; and (4) Granting Petitioner such other and further relief as this Court deems just and proper, including Court costs and legal fees.

Dated: New York, New York  
October 13, 2010

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Brett Joshpe, Esq.  
American Center for Law and Justice

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Jack L. Lester, Esq.