

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

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In the Matter of the Application of

NEIGHBORS UNITED BELOW CANAL, JAN LEE,  
DOWNTOWN COMMUNITY TELEVISION CENTER,  
EDWARD J. CUCCIA, BETTY LEE, and AMERICAN  
INDIAN COMMUNITY HOUSE,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice  
Law and Rules

- against -

MAYOR BILL DEBLASIO, THE CITY OF NEW YORK,  
NEW YORK CITY PLANNING COMMISSION,  
MARISA LAGO, NEW YORK CITY DEPARTMENT OF  
CITY PLANNING, NEW YORK CITY DEPARTMENT  
OF CORRECTION, CYNTHIA BRANN, NEW YORK  
CITY MAYOR'S OFFICE OF CRIMINAL JUSTICE,  
ELIZABETH GLAZER, NEW YORK CITY  
DEPARTMENT OF CITYWIDE ADMINISTRATIVE  
SERVICES, LISETTE CAMILO, and NEW YORK CITY  
COUNCIL,

Respondents.  
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**AFFIDAVIT OF DANA  
KAPLAN**

Index No. 100250/2020

(Kelley, J.)

**DANA KAPLAN**, being duly sworn, deposes and says:

1. I am the Deputy Director of the New York City Mayor's Office of Criminal Justice (MOCJ), where I have worked since July 2014. Before coming to MOCJ, I was Executive Director of the Juvenile Justice Project of Louisiana.

2. As Deputy Director of MOCJ's Close Rikers and Justice Initiatives, I am responsible for, among other things, coordinating the City's efforts to close the jails on Rikers Island and other outdated City jails. In particular, I have worked to coordinate the Uniform Land Use

Review Procedure (ULURP) application for four borough-based facilities, designed using humane, modern principles of criminal justice, to replace the City's existing jails.

3. Thus, I am fully familiar with the City's borough-based jail system (BBS) project. I submit this affidavit in opposition to the petition in the above-captioned action. This affidavit is based on personal knowledge, my examination of City records, and publicly released City documents.

#### **I. The New York City Jail System**

4. Currently, the majority of the people held in the City's jail system are pre-trial detainees held at Rikers Island, a 413-acre City-owned property located in the East River that is part of the Bronx, although it is accessed from Queens. It has the capacity for approximately 11,300 people in detention in eight active jail facilities. Ex. 92, Final Environmental Impact Statement (BBS FEIS) (Aug. 23, 2019) at 1–4.<sup>1</sup> Most facilities on Rikers Island were built more than forty years ago, and do not reflect modern standards, design, or philosophy.

5. The physical design of Riker's Island—characterized by outdated large dormitories, long linear hallways with little common space, a lack of both air conditioning and natural light, and insufficient space devoted to programming, visitation, or recreation—creates serious challenges to the safe and humane treatment of those in detention. In addition, Rikers Island's isolation limits accessibility to staff, and requires visitors to endure lengthy journeys through multiple checkpoints to see their detained loved ones. *See* Ex. 131, Presentation to the Justice Implementation Task Force (JITF) Culture Change Working Group (Mar. 15, 2018) at 14. This

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<sup>1</sup> Exhibits referenced herein are attached to the Affirmation of Nathan Taylor, dated June 1, 2020.

can further weaken the social support systems of people in detention at a time when they are already under strain.



Ex. 96, Mayor's Office of Criminal Justice, *Smaller, Safer, Fairer: a roadmap to closing Riker's Island (Smaller, Safer, Fairer)* (June 2017) at 1, Fig. 1.

6. Additionally, the remote location of Rikers Island results in inefficient transportation and an increase in costs to the City, as the City's Department of Correction (DOC) expends substantial time and resources transporting people in detention to court appearances and appointments. If defendants are late to court appearances, their appearance may be rescheduled for a later date, contributing to delayed resolutions and longer detention. Missed court

appearances can also disrupt court schedules, and missed treatment appointments can delay medical and other services for people in detention.

7. DOC currently operates four other detention facilities not located on Rikers Island. These facilities are the Manhattan, Brooklyn, and Queens Detention Complexes (the latter two of which are currently decommissioned), and the Vernon C. Bain Center barge, located in the East River near the Hunts Point neighborhood of the Bronx. These facilities can accommodate a combined total of about 2,500 people in detention; thus, they lack the capacity to accommodate the City's population in detention (expected to be approximately 3,300 in 2026) upon the closure of Riker's Island. The Brooklyn, Manhattan, and Queens Detention Complexes are located on sites that are proposed for redevelopment with modern detention facilities under the borough-based jails program.

8. As with Riker's Island, the existing borough-based facilities are inefficient in design. These facilities were constructed between 1950 and 1980 and have not been renovated since the early 1990s. Facility layouts are outdated and do not provide for the quality of life sought in more modern detention facilities, with regard to space needs, daylight, and social spaces. The buildings cannot be renovated to meet the needs of the contemporary facilities that are envisioned.

## **II. The *Smaller, Safer, Fairer* Plan**

9. In March 2017, the Independent Commission of New York City Criminal Justice and Incarceration Reform issued a report recommending far-reaching criminal justice reforms. Most broadly, the Independent Commission recommended the permanent closure of the jails on Rikers Island and their replacement with new borough-based facilities. This Independent Commission was convened by the then-Speaker of the City Council, Melissa Mark-Viverito, and chaired by

former New York Court of Appeals Chief Judge Jonathan Lippman, and is commonly referred to as the Lippman Commission.

10. In 2017, the City committed to a fundamental transformation of the City’s justice system, laying out that commitment in the *Smaller, Safer, Fairer* plan. Ex. 96, *Smaller, Safer, Fairer*. This plan was informed by the recommendations of the Independent Commission’s report.<sup>2</sup>

11. In the immediate term, the plan committed to improving existing jails through repairs, technology improvements, and new training. Ex. 96, *Smaller, Safer, Fairer*. at 30–37. It also committed to providing educational, vocational, and therapeutic programming, and dedicated re-entry planning to people in detention. *Id.* at 40–41.

12. The plan also committed to reducing the City’s population in detention by, among other things: reducing unnecessary arrests by de-escalating activity around low-level offenses; replacing bail pre-trial release or other alternatives; and resolving cases more quickly so that detainees are not held longer for case processing. *Id.* at 14–15. These reforms have given the City greater ability to reserve jail for those facing very serious charges or who pose a high risk of flight before trial. *Id.* at 15. Furthermore, since the BBS project began, the City has taken additional steps to safely decarcerate, including expanding supervised release,<sup>3</sup> replacing jail sentences under 30 days with programs reducing recidivism, and investing in programs to break

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<sup>2</sup> See, Independent Commission on New York City Criminal Justice and Incarceration Reform, *A More Just New York City* (Apr. 2017), available at <https://www.morejustnyc.org/reports>.

<sup>3</sup> See, Press Release, *City Expands Award-Winning, Nationally Recognized Supervised Release Program in Response to State Bail Reform*, Office of the Mayor, New York City (Nov. 8, 2019), <https://www1.nyc.gov/office-of-the-mayor/news/530-19/city-expands-award-winning-nationally-recognized-supervised-release-program-response-state>.

cycles of incarceration for women. See Ex. 107, Mayor’s Office of Criminal Justice, *Smaller, Safer, Fairer* Progress Scorecard (“SSF Progress Report”) at 8–9 (Dec. 2018).

13. State-enacted bail reform that took effect on Jan. 1, 2020 represents an additional fundamental shift. Under that legislation, with few exceptions, judges may not detain or set bail for most misdemeanor and non-violent felony charges, or for two violent felony charges. See Ex. 110, Sept./Oct. 2019 SSF Progress Report at 2. For *all* arrestees, judges must first presume unconditional release, and then may consider non-money release options only if necessary to ensure return to court. For those still eligible for bail, judges must consider the person’s ability to pay. *Id.*

14. In December of 2019, the month *before* bail reform took effect, and far ahead of projections, New York City jail population fell below 6,000 for the first time in decades, a decline of more than 70% from its 1991 peak. Ex. 117, Nov./Dec. 2019 SSF progress report at 1. After consideration of the underlying trends in crime, and both City and state policy initiatives to decarcerate, the City revised its projections to an average daily population of 3,300 people in detention by 2026. Ex. 110, Sept./Oct. 2019 SSF progress report at 3. These projections informed the final design of the BBS by enabling more ambitious decarceration policies—and thus smaller jails.<sup>4</sup> The City has also continued to roll out additional alternatives to detention,

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<sup>4</sup> Minor modifications to the state bail reform legislation were enacted on April 3, 2020. Budget Bill Part UU, NY S.B. 7506 (Apr. 3, 2020), available at <https://legislation.nysenate.gov/pdf/bills/2019/s7506b>. Some provisions of the bill could slightly increase the number of people in detention, such as additions to the list of bail-eligible offenses, *id.* §§ 2–4, while others could decrease detention, such as providing clarity to facilitate electronic monitoring as an alternative to detention, *id.* § 7(c). While the City continues to study the likely impacts of these changes, they are not expected to significantly change projections of population in detention. Moreover, the COVID-19 crisis has led to a more accelerated decarceration since mid-March 2020, with the City’s jail population below 4,000 as of May 29, 2020. See Daily Covid-19 Update at 2, NYC Board of Correction (May. 29, 2020), available at [https://www1.nyc.gov/site/boc/covid-](https://www1.nyc.gov/site/boc/covid-Continued...)Continued...

enhancing supervised release, and launching an electronic monitoring program that supply routes to further decrease the population in detention.

15. The centerpiece of the City’s plan to transform its justice system is the closure of the jails on Rikers Island, and the City’s other existing detention facilities, and their replacement within ten years with modern, humane, borough-based jails.

16. Under this plan, the City will establish a system of four new modern borough-based detention facilities with a combined capacity of 3,545 beds. One approximately 886-bed facility will be located in each of the boroughs of the Bronx, Brooklyn, Manhattan, and Queens. The jails will provide sufficient space for effective and tailored programming, and the opportunity for a more stable reentry into the community. The facilities will be designed to provide an environment to support the safety and well-being of both staff and those detained.

17. Upon release of the *Smaller, Safer, Fairer* report, the Mayor convened the Justice Implementation Task Force (JITF), bringing together key players to advise on reform efforts. The task force has produced a number of program and policy recommendations, as further discussed below, through its working groups on jail population reduction, culture change, and design.

#### ***A. Humane Design***

18. The creation of borough-based facilities offers New York City a once-in-many-generations opportunity—and responsibility—to design its jails to reflect values of respect for human dignity and commitment to fairness. The Design Working Group of the Mayor’s Justice

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19.page; see also *New York City jail population reduction in the time of COVID-19*, Mayor’s Office of Criminal Justice (Apr. 2020), <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/04/MOCJ-COVID-19-Jail-Reduction.pdf>.

Implementation Task Force convened design experts and neighborhood and community development leaders to drive thoughtful design of new facilities. The Design Working Group identified important principles to guide human-centered design for New York City jails that will: strengthen community and family; create engaging civic assets; ease and broaden access to resources; promote safety and security; produce dignified environments that reflect community living; foster safe and positive social interaction; and support physical health and mental well-being. *See* Ex. 113, Jan. 11, 2018 Presentation to the JITF Steering Committee at 17; Ex. 100, Dec. 2018 SSF progress report at 17.

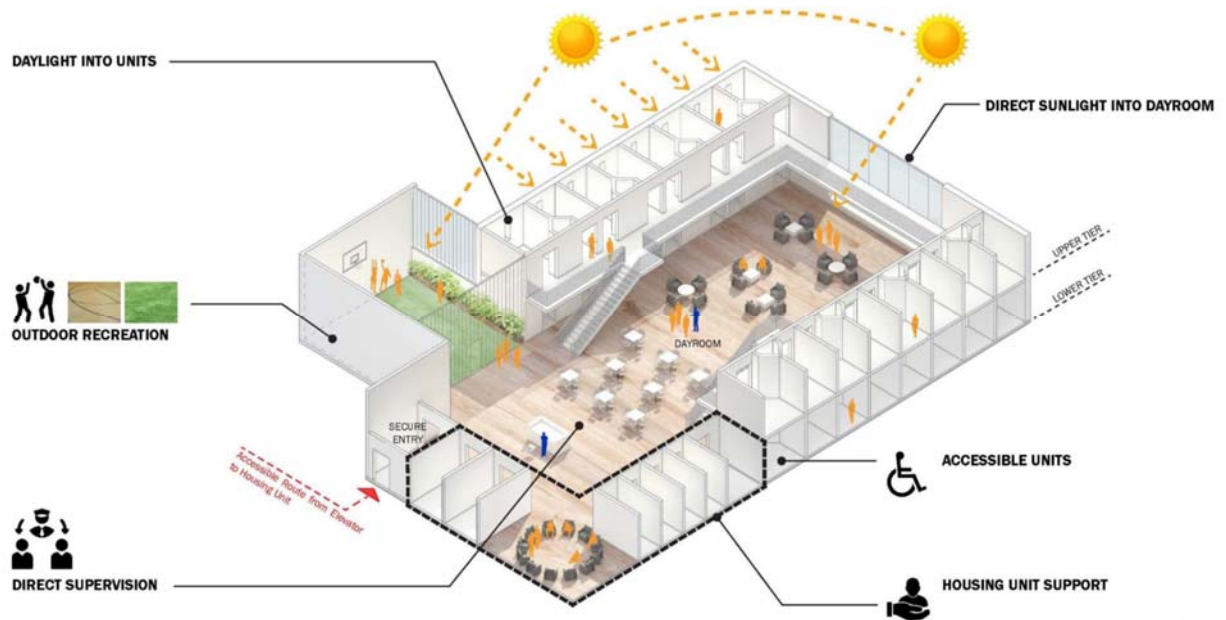
19. The City also engaged Perkins Eastman, an international architecture, design, and project management firm, to develop a master plan for the borough-based jail project—i.e., a comprehensive building space program and conceptual design for the new jails. The master plan was informed by the principles identified by the JITF Design Working Group, and by many meetings with City agencies, health service employees, correctional officers, service providers, family members, advocacy organizations, neighborhood stakeholders, and elected officials. *See* Ex. 34, Letter from Liz Glazer and Cynthia Brann to City Planning Commission Chair Marisa Lago (“CPC Follow-up Letter”) (Aug. 9, 2019).

20. The conceptual designs of the jails were developed to accommodate the diverse needs of different populations. Each housing unit is based on groups of 16 to 32 beds oriented around a common dayroom and a core of support services. *See* Ex. 30, Presentation to the City Planning Commission: Post-Hearing Follow-up (Aug. 12, 2019), at 14–21, 27–41.

21. Metal bars and finishes will be avoided, in favor of abundant natural light, softer furnishings, and fresh air. Housing units will have fewer people, with interior layouts allowing for better officer supervision, and robust programming and therapeutic spaces. *See* Ex. 32, July



26, 2019 CPC Follow-up Letter at 2. Each housing unit will have its own outdoor recreation space, large common area, and separate quiet room. Other support elements such as medical spaces, food staging, office and staff areas, multi-purpose rooms, and interview and attorney meeting spaces would be shared with other housing units, but mostly on the same floor. *Id.* Thus, much of the necessary programming would be able to come to detainees, reducing the need for transfers throughout the building. As a consequence of this decentralization of programming, the jails also require significantly more space than the existing facilities.



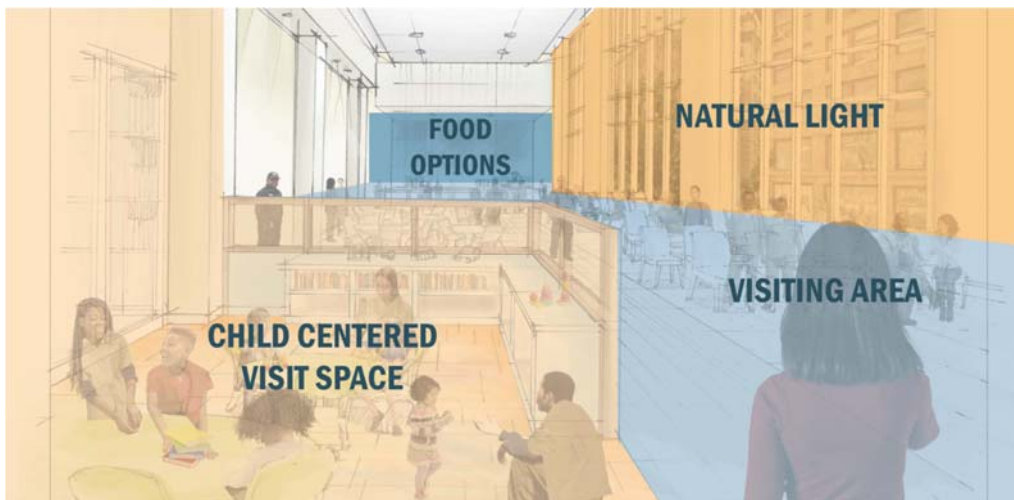
Ex. 151, Presentation to the Manhattan Neighborhood Advisory Committee (Oct. 30, 2018) at pg. 18 (Concept for a typical housing unit).

22. All housing units are based on the best practices “direct supervision” model, with the correction officer stationed inside the unit with the residents, not in an enclosed or remote control room. *Id.* This model redefines a correction officer’s job as a professional trained in communication and behavior management, and assigns officers to know detained people on their unit, with tools and incentives to manage situations immediately. *See* Ex. 130, Presentation to the JTF Design Working Group (Feb. 21, 2018) at 20.

23. The overarching goal is to utilize architecture and physical design to improve interactions between people in custody and with corrections officer, and to help prevent and de-escalate conflicts.

***B. Neighborhood and Community Integration***

24. A guiding urban design principle for the project is neighborhood integration. The borough-based jails will provide connections to courts, attorneys, and service providers; moreover, the borough-based jails project is intended to strengthen connections between people who are detained and their families and communities by housing them closer to their loved ones and other people, and making visitation more convenient. These improved community connections will ultimately increase the chances of detained persons to succeed upon leaving jail and decrease their likelihood of return.



Ex. 149, Presentation to the Manhattan Neighborhood Advisory Committee (Jan. 16, 2019) pg. 18 (Concept for Family Friendly Visiting Space).

25. More broadly, the new facilities will be designed to encourage positive community engagement and serve as civic assets in the neighborhoods. To promote community integration and the well-being of those in detention, the project will ensure that each borough facility has

ample support space for quality educational programming, recreation, therapeutic services,<sup>5</sup> publicly accessible community space, and staff parking. Jails will also include lobbies, visitation space, administrative space, and space for robust medical screening for new admissions, medical and behavior health exams, health/mental health care services, medical clinics, and infirmaries and communicable disease units. The community space is intended to provide useful community amenities, such as community facility programming or street-level retail space.

26. In addition, the proposed project will implement streetscape improvements at each site. The specific improvements at each site would vary, but in general will include sidewalk improvements, new benches, landscape features, improved street lighting, and signage and wayfinding features.

27. While final designs for the facilities will be completed by the City's design-build contractor based in part on the principles developed through the master planning process, each facility will be designed to integrate with the surrounding neighborhood while also achieving efficient and viable floorplans that optimize access to program space, outdoor space, and natural light. Most importantly, the facilities will be designed to promote safe and humane operations.

### **III. Proposed Jail Facilities**

28. The City selected sites for the new jails based on four criteria, each supporting a different facet of the overarching goals of a smaller, safer, fairer new jail system:

- **City-owned land.** Acquiring land dramatically increases the risk of complications that could extend the time to close Rikers Island, potentially for years. The City

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<sup>5</sup> Patients in custody whose clinical conditions are not so acute as to require inpatient admission, but would benefit from close and frequent access to medical care, will be housed on therapeutic detention units within NYC Health + Hospitals facilities, and not within the borough-based jails. Ex. 94, BBSJ Technical Memorandum (Tech Memo) (Oct. 11, 2019) at 2.

sought land already in its portfolio that would allow for swift development and could accommodate a new facility.

- **Sufficient Size.** The City sought lots large enough to fit an equitable distribution of the City’s projected jail population across four boroughs, with space to provide a humane, safe, and supportive environment.
- **Access to Transit.** The City focused on sites with convenient access to public transit, to facilitate visits by loved ones, lawyers, and service providers.
- **Proximity to courts:** The City sought sites in close proximity to courthouses to reduce delays in cases and the time people stay in jail. Sites adjacent to courthouses, such that transporting detainees to court by vehicle could be avoided entirely, were preferred.

Ex. 8(A), Application for Site Selection, Appendix: Fair Share Analysis (Mar. 28, 2019) at 14; *see also* Ex. 1, Citywide Statement of Needs FY 2020–2021 at 30.

29. As further discussed herein, in three of the four boroughs—including Manhattan—the City was able to identify sites that met all four of the site selection criteria.<sup>6</sup> The City announced preliminary sites in February 2018, but continued to study alternative sites.<sup>7</sup> Ultimately, no sites were found that better met the site selection criteria, and the City finalized the preliminary sites as announced.

30. The Manhattan facility will be located on the current site of the Manhattan Detention Complex, 124 and 125 White Street (Block 198, Lot 1; Block 167, Lot 1), which occupies the full block generally bounded by Centre Street, Hogan Place, Walker Street, and Baxter Street, and bisected by White Street. Ex. 93, BBJIS FEIS at 4.1–2. The existing jail consists of a 14-story, 173-foot-tall North Tower and a 21-story, 229-foot-tall South Tower, with 898 beds for

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<sup>6</sup> In the Bronx, no viable site was available that met all four criteria, and so the City selected a site that is not adjacent to a courthouse, but met the remaining criteria. *See*, Ex. 32, July 26, 2019 CPC Follow-up Letter 5–8; Ex. 163, Presentation to Bronx Community Board 1 (May 2019).

<sup>7</sup> *See* Press Release, *Mayor de Blasio and City Council Reach Agreement to Replace Rikers Island Jails with Community-Based Facilities* (Feb. 14, 2018), <https://www1.nyc.gov/office-of-the-mayor/news/094-18/mayor-de-blasio-city-council-reach-agreement-replace-rikers-island-jails-with>.

people in detention. *Id.* at 4.6–3–4. The towers are connected by a bridge above and a tunnel below White Street. *Id.* The South Tower is also connected by two bridges and at the cellar level to the Manhattan Criminal Court at 100 Centre Street. *Id.*

31. The new jail, also to be located at 124-125 White Street, will house slightly fewer people than the existing jail, with 886 beds. It will also be taller than the existing jail, of up to 295 feet tall. The new detention facility will be a single structure, and will span over White Street commencing at the third-floor level. *Id.* at 4.5–18. Two new one-story pedestrian bridges to the Criminal Court building would be constructed at approximately the third story and at a higher floor. *Id.*

32. The site lies two blocks north of the Manhattan Civic Center area—featuring the courthouses in Foley Square, City Hall, and One Police Plaza. The area is home to numerous high-rise, large-footprint federal, New York State and New York City public institutional facilities. Ex. 41, City Planning Commission Report C 190333 PSY (Lead CPC Report) (Sept. 3, 2019), at 14. The Chinatown neighborhood adjoins the site to the east and north, with the Tribeca neighborhood to the west. *Id.* at 14.

33. The current jail site also includes a block-long section of White Street, which includes approximately fifty-six parking spaces for authorized vehicles. *Id.* at 15. Under the project, on-site parking will be available in an underground garage, and the portion of White Street on the site would be closed to vehicles and narrowed to a thirty-five-foot wide, and fifty-five-foot-tall pedestrian arcade, with the proposed new detention facility spanning overhead. *Id.* at 70. In addition to preserving this pedestrian passage between Tribeca and Chinatown, the project would activate the space by replacing the existing parking and sallyports with space for retail and community facilities (approximately 20,000 square feet), street furnishings, and 24/7 access and

lighting. Ex. 92(F), BBS FEIS at 4.6–15. The space will be modeled after other successful pedestrian walkways in the City, with proportions selected to create an inviting pedestrian environment. *See* Ex. 31, August 26, 2019 CPC Follow-up Presentation at 36–39; Ex. 41, CPC Lead Report at 70. The new community facility and retail space will line both sides of the new White Street arcade to better activate the pedestrian arcade and front Baxter Street to better integrate the project into the existing commercial corridor. Ex. 31, August 26, 2019 CPC Follow-up Presentation at 26–27.

34. The City incorporated extensive feedback from community organizations and local elected officials into its plan for the new Manhattan borough jail. *See, e.g., See, e.g.,* Ex. 160, Manhattan Neighborhood Advisory Committee Guidelines and Recommendations. The City consulted with the local Community Board, Chinatown civic organizations, tenant association leaders, small business owners, local social service organizations, and other relevant stakeholders. *See, e.g.,* Ex. 8, Application for Site Selection, Appendix F: Stakeholder Outreach (Mar. 28, 2019). In addition, the City convened a Neighborhood Advisory Committee, which met over a period of five months to discuss specific areas of concern. Exs. 150–161, Records of the Manhattan Neighborhood Advisory Committee. Through this engagement, the community identified priority areas, which generally included: reducing the height and massing of the jail; allowing community input for ground floor community space uses; maintaining 24/7 pedestrian access to White Street; mitigating demolition and construction noise, dust, vibrations, and traffic; and providing economic support to local businesses affected by demolition and construction at the site. Ex. 160, Manhattan Neighborhood Advisory Committee Guidelines and Recommendations.

35. Over the course of project review, the proposed Manhattan jail was reduced from 1.4 million square feet to 816,900 square feet, and from 1,510 beds to 886. *Compare* Ex. 85, BBJs Draft Scope of Work to Prepare a Draft Environmental Impact Statement (Draft Scope of Work) at 7, *to* Ex. 94, Technical Memorandum (“Tech Memo”), at 3–4. This reduction in size resulted in a corresponding height reduction from an initially proposed 450-foot-tall building to a jail of up to 295 feet. *Compare* Ex. 85, Draft Scope of Work, at 8 *to* Ex. 94, Tech Memo at 3–4. Furthermore, the maximum zoning envelope has been modified to require a 20-foot setback on the western portion of the building, and a 40-foot setback on the eastern portion, increasing distance from the Chung Pak senior residential facility. Ex. 94, Tech Memo, at 3.

36. Before deciding to construct the new jail at 124-125 White Street, the City considered a site two blocks south, at 80 Centre Street, which is currently the Louis J. Lefkowitz State Office Building, housing the Manhattan District Attorney, courtrooms and court office, and City agencies. Both 124-125 White Street and 80 Centre Street are adjacent to the courthouse, accessible to transit, and of sufficient size for a new, humane jail.

37. When the City first announced preliminary sites in February 2018, the 124-125 White Street site was announced as the planned Manhattan site. *See supra* note 8. Later, the City changed the site of the jail to 80 Centre Street, and thus the environmental review scoping process, discussed below, focused on the 80 Centre Street site. Public feedback during the scoping process revealed strong community opposition to the 80 Centre Street proposal. Ultimately, the City determined that the complexity and cost of moving the existing occupants of 80 Centre Street, and the disruption to court operations, made the site not viable. *See* Ex. 87(A), BBJs Final Scope of Work Appendix at A-8. In the Final Scope of Work and Draft Environmental Impact Statement for the Borough-Based Jails project, the City reverted to its

originally announced plan to site the Manhattan facility at 124-125 White Street. *Id.* at 1. As discussed below, the City fully considered and responded to all comments to the Environmental Impact Statement relating to both potential Manhattan sites.

38. The borough-based jails plan includes three additional facilities, one in each of Brooklyn, Queens, and the Bronx, each of an equal capacity to the Manhattan facility. The Brooklyn and Queens facilities will also be adjacent to each borough's courthouse; the Bronx facility will be located about two miles away. Similar to the Manhattan facility, the plans for the jails and other accompanying neighborhood initiatives were informed by community feedback, both from Community Boards, civic organizations, and elected officials, and through Neighborhood Advisory Councils. Most importantly, each facility will reflect the humane design principles developed to dramatically improve outcomes for people in detention, and will each be designed to be well-integrated into the surrounding communities.

#### **IV. ULURP Process**

39. On March 14, 2019, the Department of Correction the Mayor's Office of Criminal Justice and, for certain applications, the Department of Housing Preservation and Development, and the Department of Citywide Administrative Services jointly filed the land use applications necessary to facilitate the borough-based jails project under the City's Uniform Land Use Review Procedure (ULURP) process, as set forth in Sections 197-c, 197-d, and 201 of the New York City Charter.<sup>8</sup> The land use actions were also subject to environmental review, which is explained in the accompanying Affidavit of Linh Do ("Do Aff.").

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<sup>8</sup> Although each proposed action is treated as a separate application and given a separate application number, they moved through the public review process together. A copy of the certified applications is annexed as Exhibits 3-10. Two of these applications apply to all four new jails: C 190333 PSY represents the site selection action for all four jails, and N 190334 ZRY  
Continued...



40. Prior to filing the applications, the City held the required initial scoping meeting, and three additional scoping meetings, a total of one in each borough, taking comment on what issues are relevant to both the environmental review and ULURP.

**A. Department of City Planning Certification**

41. Pursuant to Charter § 197-c, the Department of City Planning (DCP) reviewed the applications to determine whether they were complete. Certification of the applications as complete signifies, among other things, that “[t]he information supplied on the application form and accompanying documents is fully sufficient to address all issues of jurisdiction and substance which are required to be addressed for the category of action as defined by the Charter, statutes, Zoning Resolution, Administrative Code or other law or regulation.” 62 R.C.N.Y. § 2-02(a)(5)(iii).

42. On March 25, 2019, the City Planning Commission (CPC or the Commission) held a review session where it determined that the applications were complete. *See* CPC Review Session (Mar. 25, 2020), *available at* <https://www.youtube.com/watch?v=u4ld5EBtwTw>. On March 14, 2019, DCP issued “Notice[s] of Certification Pursuant to the Uniform Land Use Review Procedure” stating that the relevant applications were certified as complete. *See* Exs. 11–15. Under ULURP, DCP’s certification of the applications triggered the process and time periods for subsequent review of the applications by the Community Board, Borough President, the City Planning Commission, and the City Council.

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establishes a new zoning Special Permit modifying ground floor uses, bulk, floor area ratio, parking and loading for the borough-based jail system. Other applications applied only to the individual sites. For Manhattan, C 190340 ZSM granted a borough-based jail Special Permit for the new Manhattan jail facility, C 190341 PQM acquired a leasehold interest of 6,300 square feet of retail space in the existing MDC North previously held by its tenants, and C 190252 MMM demapped White Street and re-established it with upper and lower limiting planes, with a narrowed and realigned right-of-way.

**B. Community Board and Borough President Review**

43. Under ULURP, the Community Board and Borough President may issue non-binding recommendations to the City Planning Commission.

44. After an April 8, 2019 presentation and hearing, Manhattan Community Board 1 referred the application to its Land Use, Zoning, and Economic Development Committee. *See* Ex. 41, Lead CPC Report, at 189. That Committee held a hearing on May 13, 2019, and recommended that the Commission disapprove the application unless various conditions were met, including a reduction in size and density. *Id.* at 191. On May 29, 2019, the full Community Board 1 voted 35 to 0, with one abstention, to adopt the Committee's recommendations.

45. In addition, Manhattan Community Board 3 passed a resolution also making recommendations to the City Planning Commission. Manhattan Community Board 3 does not have an official role in the ULURP process for this project, as the proposed jail is not located in its community district. Nevertheless, the proposed jail's proximity to Manhattan Community Board 3's Chinatown neighborhood prompted Community Board 1 to incorporate into its recommendation Community Board 3's concerns about the proposed jail's height and bulk, capacity, and impact on seniors and local businesses. *Id.* at 192.

46. The Manhattan Borough President next considered the applications. The Borough President held a public hearing on June 11, 2019, and on July 5, 2019 recommended approval of the applications, subject to conditions. She conditioned her recommendation of approval on, among other things, a reduction in size for the Manhattan jail, concessions for incumbent retailers and residents of adjacent senior housing, reconfigured parking, and an increase in on-site and off-site community facility space. Ex. 26, Recommendation of Manhattan Borough President at 22–23. Furthermore, the Manhattan Borough President conditioned her recommendation on the formation of a community advisory group, communication with the

community in its primary languages, monthly engagement with Community Boards 1 and 3, and various due diligence measures. *Id.* at 24. The Borough President also conditioned her support on various reforms in the Department of Correction (such as training in mental health, substance abuse, disabilities, and gender identity), and on funding for social service programs intended to prevent incarceration. *Id.* at 24–25. Finally, she conditioned her support on a binding commitment to guarantee full closure of Riker’s Island. *Id.*

***C. City Planning Commission Modification and Approval***

47. On June 19, 2019, the City Planning Commission formally scheduled a public hearing for the land use applications for July 10, 2019. Notice of this public hearing was published in the City Record. Ex. 91 Notice of Public Hearing (June 19, 2019).

48. On July 10, 2019, the Commission held a public hearing on the applications. The transcript of this hearing is annexed as Exhibit 28 and the hearing is summarized in the Lead City Planning Commission Report, Exhibit 41, at 45–51.<sup>9</sup> A total of 90 speakers testified at the hearing, 55 of whom testified in favor of the project, and 35 of whom testified against the project. Each member of the public was provided up to three minutes to make remarks, not including time for answering questions posed by the Commission. Ex. 28, Public Hearing Transcript at 69. Speakers in favor included MOCJ; the Manhattan Borough President; the Lippman Commission; the Justice Implementation Task Force; the #CLOSErikers campaign; Center for Employment Opportunities; New York Lawyers for the Public Interest; Women’s Community Justice Association; and other public interest groups and individuals, including those

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<sup>9</sup> While all of the applications were approved on the same day, and the Commission issued reports approving each one, it fully laid out its reasoning in only one of these reports, the “lead report,” and appended its full reasoning only to the “lead report” for C 190333 PSY, the City-wide site selection. Ex. 41.

previously incarcerated at Riker's Island. *Id.* at 46. Speakers in opposition included representatives of Manhattan Community Board 1, No New Jails, numerous civic organizations representing the immediate surroundings of the proposed jails—including the Petitioner Neighbors United Below Canal—and other individuals. Overall, the public hearing lasted seven and a half hours, from approximately 10:15 a.m. until 5:45 p.m. *Id.* at pt. 1, pg. 1 to pt. 2, pg. 129.

49. The public hearing covered numerous topics concerning the borough-based jails project, including its purpose and need, its siting process, the height and bulk of the proposed jails, the Borough Presidents' and Community Boards' recommendations, changes to the project from its initial proposal, broader criminal justice reform issues, and the project's draft environmental impact statement. During the hearing, members of Commission questioned representatives of MOCJ, as well as others offering testimony.

50. In the weeks following the public hearing, MOCJ submitted numerous memoranda to the Commission responding to the information requests made at the public hearing, and to further requests for information by the Commission at follow-up hearings further discussed below. Copies of these memoranda are annexed as Exhibits 32–39. The memoranda included additional information regarding: criminal justice reform policies, jail design, reasons for a combined site selection ULURP application, various urban design questions including the configuration of retail and community facility space, the community engagement and stakeholder review process, principles for facility design, the City's plans for community engagement during the design phase of the project, and other issues.

51. The Commission held three follow-up review sessions on the borough-based jail project. The first of these sessions, on July 29, 2019, discussed policy and operational issues

concerning the jail program, and featured DCP's recommendations concerning setbacks and other urban design issues at all four sites to protect neighboring uses, as well as other issues concerning how to better integrate the jails into their communities. *See* CPC Review Session and Special Presentation (July 29, 2019), *available at* <https://youtu.be/owUzHg92cB0?t=5534>. The Commission also discussed the design of the pedestrian arcade on White Street. *Id.* at 1:51:03. The Commission discussed raising the ceiling of the arcade from an originally-planned 29 feet to 55 feet, to bring its dimensions in line with successful pedestrian arcades elsewhere in the City. *Id.*

52. At the second review session, on August 12, 2019, the Commission discussed, among other things, community engagement and facility design. The Commission also discussed updated square footage and heights of the facilities and the design-build process. *See* CPC Review Session and Special Presentation (Aug. 12, 2019), *available at* <https://youtu.be/elRRVdoM7Ko?t=12852>. The Commission also considered retail studies of the Chinatown area. On the southern side of the White Street pedestrian arcade, retail depth is limited to 20 feet due to space constraints (retail depth on northern side is at least 36 feet). The Commission discussed that existing successful businesses in Chinatown already operate with a diversity of dimensions including some with depths of approximately 20 feet, and that retail is necessary on both sides of White Street due to the community's expressed priorities.

53. Finally, on August 26, 2019, the Commission held a third follow-up review session, where the Commission discussed, among other things, the Commission's changes to the proposal, and community and Commission engagement in the design phase of the project, post-ULURP. *See* CPC Review Session and Special Presentation (Aug. 26, 2019), *available at* <https://youtu.be/rfCDCZmcqQM?t=8887>.

54. On September 3, 2019, the Commission held a public hearing to vote on the land use applications. CPC Special Public Meeting (Sept. 3, 2019), *available at* <https://youtu.be/jFbZufYB220>. Prior to the vote, Chair Lago explained that “this is among the most consequential applications to come before the City Planning Commission in years, and it's an application that has been years in the making. . . . It's the first time that the Commission has had to consider how to meld the design-build process with ULURP's time clock. But the application is even more consequential because it is a crucial step in closing Rikers Island which is important for reasons extending well beyond land use.” *Id.* at 3m.

55. The Commission voted to approve the ULURP applications, as modified, by a vote of 9–3. A copy of the reports are annexed as Exhibits 41–54. The lead report elaborates the Commission's reasons for approving the applications, and its modifications. It also summarizes the needs identified by the City and the information received during the public review process. Based on this information, the Commission concurred in the City's assessment “the borough-based jail system initiative is a significant step forward for the future of criminal justice reform in New York City.” *See* Ex. 41, Lead CPC Report, at 51.

56. The Commission also agreed with the City's criteria for site selection, and noted that the sites would “constitute a comprehensive and equitable approach to NYC's long-term criminal justice needs.” *Id.* at 53. The Commission also agreed with the City's determination to proceed with a single site selection action for all four jails, noting that “simultaneous consideration of the system of four jails is both appropriate and necessary to meet the goal of closing the jails on Rikers Island.” *Id.* at 52.

57. The Commission expressed approval of the selection of the proposed Manhattan site, noting that that site is City-owned, directly adjacent to the New York County Criminal Court,

and already connected to the courthouse via skybridge. *Id.* at 55. The Commission also noted that the site is well-served via public transit, as nine subway lines and four subway stations were accessible within a quarter-mile radius, as well as 11 different MTA public bus routes and a NJ transit bus route within about a quarter-mile radius. *Id.*

58. The Commission stated its belief that both design and community integration of the jails should be considered as part of the ULURP applications, as well as during the design-build phase. *Id.* at 60. To that end, the Commission adopted the design principles that had been developed by the Design Working Group of the Mayor's Justice Implementation Task Force, and used them to evaluate the applications. *Id.* at 60–61. The Commission explained that it was modifying the applications in light of these principles, to: require ground floor recesses (often found in government buildings), alter minimum depth for active frontage requirements to enhance pedestrian experience, and establish minimum setbacks along key street frontages including Centre and Baxter Streets in Manhattan. *Id.* at 61, 64, 68, 72, 74.

#### ***D. City Council Modification and Approval***

59. After the Commission filed its decisions on the applications with the City Council on September 3, 2019, the applications were referred to the Committee on Land Use's Subcommittee on Landmarks, Public Siting and Maritime Uses. Following public notice, on September 5, 2019, the Subcommittee held a public hearing on the applications, as approved with modifications by the City Planning Commission. The transcript from this hearing is annexed as Exhibit 55. Speakers from all viewpoints testified at the hearing, which lasted approximately ten hours. At the hearing, 74 spoke in favor of the proposal and 71 spoke in opposition to the proposal.

60. Following the public hearing, representatives from the Subcommittee engaged in discussions with members of the community, as well as with MOCJ. Members of the

Subcommittee, as well as the Council at large, advocated for additional modifications to address community concerns, especially those related to height and bulk. The Council also considered the City's revised jail population projections, which established the feasibility of meeting the City's jail needs with smaller facilities. The Council proposed modifying the project to further reduce height and bulk. Ex. 94, Tech Memo, at 6. The Department of Correction, the lead agency for environmental review, evaluated whether the Council's proposed height reductions would result in any new or different significant adverse environmental impacts than those already disclosed in the project's final environmental impact statement, and concluded that they would not. *Id.* at 28.

61. On the morning of October 16, the Subcommittee reconvened to vote on the applications. The transcript from this hearing is annexed as Exhibit 63. Chair Adams explained "the Council has aggressively advocated for design changes, and as a result of the Council's modifications, the heights and densities of the four buildings are being reduced significantly. So, these new buildings will better integrate into their communities." *Id.* at 7: 8–13. The Subcommittee recommended that the Land Use Committee approve the project as modified, by a vote of four to one, with no abstentions. *See* Ex. 65, Joint Report of the Land Use Committee and the Subcommittee on Landmarks, Public Siting and Maritime Uses, at 6–7. That afternoon, the Committee on Land Use convened to consider the Subcommittee's recommendations, and adopted them. *Id.*

62. On October 17, 2019, the City Council passed thirteen separate resolutions approving the applications, with the modifications proposed by the Land Use Committee. *See* Exs. 70–82. The final vote was thirty-six in the affirmative, and thirteen in the negative for all but four of the applications, and thirty-six in the affirmative and fourteen in the negative for those four. *See* Ex. 68, Minutes of the Council Stated Meeting, Oct. 17, 2019, at 3380–81.



63. On October, 18, the Mayor sent to the Speaker, and to each of the Council members representing one of the new jails, a letter explaining the City's commitments to supplement the new jail facilities with additional investments in the surrounding communities, many of them brought to the City's attention by the Neighborhood Advisory Committees. Ex. 69, Points of Agreement. Pursuant to the Charter, any objection by the Mayor to the applications must be made within five days of the filing of the Council's Resolutions. The Mayor made no such objections.

### **RESPONSE TO PETITIONERS' CLAIMS**

64. I have reviewed the Petition, Petitioners' Memorandum of Law, and accompanying affidavits. Petitioners raise various claims against the project, focusing on its ULURP and environmental review. None of these claims has merit.

65. I understand the City's affidavit of Linh Do and affirmation of Susan Amron address the ULURP and environmental review claims, respectively. Accordingly, I address the Petitioners' broader challenge to the project's post-ULURP process. Petitioners' challenge to the post-ULURP review process of the project necessarily fails. Namely, the City's involvement of stakeholders in design, including post-ULURP, was additional to that required by statute.

#### ***A. Formal design review remains forthcoming.***

66. As explained in the affidavit of Linh Do and affirmation of Susan Amron, neither SEQRA nor ULURP necessarily entails design review, and the formal requirements for ULURP and SEQRA were fulfilled at the conclusion of those processes. However, the borough-based jails project remains subject to the forthcoming formal design review of the Public Design Commission (PDC), which largely concerns aesthetics, and can include issues of neighborhood integration and sustainability. Ex. 36, Aug. 23, 2019 CPC Follow-up letter, at 3. That review will include three stages of design review: conceptual, preliminary, and final. The City will have

design-specific reviews with each affected Community Board throughout the design process and will provide the PDC resolutions from each Community Board. Additionally, the PDC will hold public hearings for testimony on design-related concerns.

***B. The City has continuously sought to maximize transparency and public input throughout the planning process, and plans to continue to do so during the design phase.***

67. In addition to the forthcoming PDC review, the City has proposed to hold additional public meetings focused on design, in continuance of the City’s robust public process as the project continues into the design-build phase. The City’s goal remains to build borough-based jails in a manner that achieves the project purpose, in partnership with the affected communities. To that end, The City has spent years working to ensure that the jails are modern, humane, and no larger than necessary, while integrating each into its community. Those efforts will continue.

68. The City’s continuing efforts to involve communities, elected officials, and the City Planning Commission are not part of the statutory ULURP or environmental review processes, or the forthcoming PDC process, but reflect the City’s commitment to ensuring that the project is successful in meeting its goals. Petitioners’ allegations that these commitments represent an “ultra vires” post-ULURP process imply that any City efforts to provide greater than the bare minimum required level of public participation are improper. That is not the case.

69. Since June 2017, City has followed three parallel tracks to inform facility design, both to ensure modern, humane jail facilities, and also to maximize community input into project design. Each of these three tracks was additional to the City’s work to meet the public consultation requirements of SEQRA and ULURP. And each of these avenues for community, expert, and justice-involved stakeholder feedback has informed the City’s planning process.

70. First, the Design Working Group of the Justice Implementation Task Force included academics, criminal justice professionals, advocates, and others, who, over a course of months,

formed broad-based recommendations for design principles. *See, e.g.*, Ex. 132, Mar. 21, 2018 Presentation to the JITF Design Working Group. The City Planning Commission later drew on these principles in making modifications to the borough-based jails project.

71. Separately, the City and its master plan contractor conducted thirteen focus groups with jail staff, service providers, previously incarcerated individuals, families of incarcerated individuals, defense attorneys and advocates, educators, and healthcare professionals. As an example of the impact of these focus groups, the experiences and feedback from previously incarcerated women and service providers caused the City to change its plans from distributed women's units in all facilities to a single city-wide specialized women's facility in Queens. Ex. 92(I), BBS FEIS, Response to Comments 10–7.

72. Finally, the City also established Neighborhood Advisory Councils to provide the master planning team with a better understanding of each community's concerns, keep community leaders informed on the master planning process, and develop recommendations regarding the facilities and surrounding community needs. These conversations revealed a consistent and sustained desire in each community to reduce the size and bulk of the jails—a desire that has driven significant City efforts throughout the process. The Councils have been reconvened following ULURP approval, and are again being consulted on issues relating to the design-build process.

73. Each of these avenues for community, expert, and justice-involved stakeholder feedback has informed the development of the master plan, a conceptual design and space program for the jails including conceptual floor plan layouts, building system layouts, vertical transportation systems, and floorplans for various programming. *See generally* Ex. 33, Aug. 9, 2019 CPC Follow-up letter.

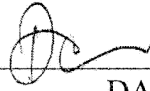
74. In addition to these three longstanding avenues for community input, the City separately convened a Design Advisory Group for the purposes of soliciting feedback from the Borough Presidents, DCP, and the City Planning Commission on the design specifications for the projects. Ex. 36, Aug. 23 CPC Follow-up letter at 1. This group will review draft design guidelines as they relate to the public realm, streetscape, building materials, and other relevant aspects of the projects. The City will give serious consideration to the Design Advisory Group's advisory recommendations and incorporate them into the Request for Proposals for design-build contractors as appropriate. The work of this group will ultimately inform the final designs of the jails which will then, as discussed above, require approval by the Public Design Commission. *Id.*

75. The City is also committed to continuing to meet regularly with community-based organizations to discuss the plans to close the jails on Rikers Island. Ex. 36, Aug. 23 Follow-up letter at 3. To date, the City has met with dozens of organizations to ensure that the program continues to reflect the best thinking of experts on both community needs and criminal justice reform. Furthermore, the City will appoint Community Construction Liaisons for each borough to help communities and local elected officials address issues arising from construction, and provide information about each project.

76. Finally, the City has also committed to continuing to brief the City Planning Commission on the project as it moves into the design phase. However, the formal, statutory role that the Commission played in approving the project has concluded, and the City's commitments are no longer related to ULURP approval, but reflect opportunities for the Commission to provide feedback and comments on design documents solely in an advisory capacity. This voluntary process is not a substitute for ULURP consideration of a final design, because no such consideration is required in statute or in practice.

V. **Conclusion**

77. For all these reasons, and all of the reasons described in the record, the review and approval of the actions in support of the borough-based jails project were appropriate and met all applicable requirements.



\_\_\_\_\_  
DANA KAPLAN

Sworn to before me this  
1<sup>st</sup> day of June, 2020.

  
\_\_\_\_\_  
NOTARY PUBLIC

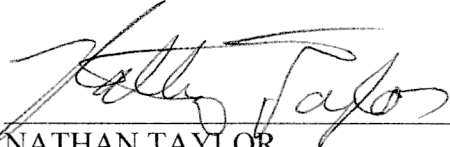
Nathan M. P. Taylor  
Notary Public No. 02TA6382150  
State of New York  
Qualified in Kings County  
Commission Exp. 10/22/2022

Present in Albemarle County  
State of Virginia  
Witnessing Electronically  
Pursuant to  
Executive Order ("EO") 202.7  
As extended by EO 202.35

## STATEMENT OF NOTARY PUBLIC

In accordance with the Governor's Executive Orders No. 202.7, issued on March 19, 2020, as extended by No. 202.35, issued on May 29, 2020, I hereby affirm:

1. My name is Nathan Taylor, and I am a Notary Public in the State of New York (Registration No. 02TA6382150, Kings County, expires 10/22/2022).
2. On June 1, 2020, I notarized the Affidavit of DANA KAPLAN in accordance with the procedures set forth in Governor's Executive Order No. 202.7.
3. I performed the notarization using audio-visual technology.
4. Ms. Kaplan presented to me a valid photo ID during the video conference.
5. The video conference allowed for direct interaction between me and Ms. Kaplan.
6. Ms. Kaplan affirmatively represented that she is physically situated in the State of New York.



NATHAN TAYLOR