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VIA NYSCEF

The Honorable Debra A. James
Justice of the Supreme Court of New York
New York County
60 Centre Street
New York, NY 10007

Re: *Elizabeth Street Garden, Inc., et al. v. The City of New York, et al.*,
Index No. 152341/2019

Dear Justice James:

We write as counsel for the petitioners in *Elizabeth Street Garden, Inc., et al. v. The City of New York et al.* ("ESG"), to request a status conference with the Court at Your Honor's convenience to discuss the City's attempt to conduct an end-run around the judicial process and to do what it has not been able to accomplish through litigation.

As Your Honor is aware, this fully-briefed and submitted Article 78 petition concerns the attempt by the City to destroy Elizabeth Street Garden (the "Garden") by handing this vital green space over to real estate developers. For over two years, the parties have been engaged in litigation concerning proposed destruction of the Garden, which Petitioners contend is illegal because it violates zoning laws and environmental protection statutes.

Petitioner Elizabeth Street Inc. ("ES") is the leaseholder of, and Petitioner Elizabeth Street Garden, Inc. ("ESG") occupies, the premises in question pursuant to a lease with the City dating back to 1991. Ex. A. ES and ESG have maintained the same arrangement, in all relevant respects, respectively, for thirty years and four and a half years. Now, at the eleventh hour, with litigation pending concerning the use of the Garden, the City has sent a notice of termination purporting to terminate the lease as of October 31, 2021. Ex. B, B-1, and B-2 (cover email from City's counsel, notice of termination, and stipulation).

The City's attempt to terminate the lease "[p]ursuant to the [parties'] stipulation," Ex. B, is invalid for at least two reasons.

First, on three different occasions (April 15, July 12, and September 19, 2019), the parties entered into stipulations that, among other things, in effect, preserved the status quo for the pendency of the litigation. In relevant part, each stipulation provides,

IT IS FURTHER STIPULATED AND AGREED that through *the fourteenth day after the filing of a final decision* issued by the New York State Supreme Court,

New York County, in this proceeding, each of the Parties will provide all other Parties, via electronic mail, by and through counsel for the Parties, with at least 30 days' notice before (i) ***terminating or modifying the lease*** by the City of New York to Elizabeth Street, Inc. for the property at Block 493, Lot p/o 41, a/k/a Lot 30; (ii) taking any action that changes the ownership of title to said property; (iii) taking any action that alters the physical condition of Elizabeth Street Garden, except as may be necessary in an emergency requiring immediate action to protect the public health and safety and unrelated to the proposed project, in which case each of the other Parties shall be notified as soon as practicable; or (iv) taking any action that limits the public accessibility of Elizabeth Street Garden, except as may be necessary in an emergency requiring immediate action to protect the public health and safety and unrelated to the proposed project, in which case each of the other Parties shall be notified as soon as practicable; . . .

Ex. B-2 (Doc. 67), at 2 (emphasis added).

By the terms of each stipulation (the first two of which were so-ordered by the Court), there can be no “terminat[ion] or modif[ication] of the lease” until “the fourteenth day after the filing of a final decision” in this action. Because there has been no “filing of a final decision” in this action, the City’s attempted termination is premature. Notably, reversion of the Garden back to the city undoubtedly would also “alter[] the physical condition of” and “limit[] the public accessibility of” the Garden, both of which are also precluded by the stipulations.¹

Second, the purported termination is an effort to circumvent the legal process. If the lease is terminated, of course, use and possession of the Garden will revert to the City, which has said repeatedly in public, including in Court papers, that it intends to destroy the Garden in its current form. The very question in the Article 78 proceeding pending before Your Honor is whether the City legally can do so. The City is attempting to achieve through lease termination what it has not yet achieved through litigation.²

Elizabeth Street Garden is a cherished and unique community green space in a city that is sorely in need of it. The City should not be permitted to develop it, absent a Court decision, at the eleventh hour, through a purported termination of the governing lease.

¹ A question remains as to the timing of the notice of termination by invoking the stipulation: why now? Could it be connected, in some manner, to the recent death of Petitioner, and Garden creator, Allan Reiver?

² To be clear, the question of who has possession of the Garden (via the lease) is separate from the question of whether the City’s proposed development is illegal, and Petitioners fully intend to challenge both through appropriate legal processes when and if necessary and appropriate.

Petitioners therefore request a status conference with Your Honor to discuss these urgent issues.

Respectfully submitted,

/s/ Norman Siegel

Norman Siegel
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/s/ Elliott Meisel

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Attorneys for Petitioners

CC: All counsel of record (*by NYSCEF*)