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August 19, 2003

Hon. Daniel L. Doctoroff  
Deputy Mayor for Economic  
Development and Rebuilding  
City Hall  
New York, New York 10007

Re: 2 Columbus Circle  
Block 1030, Lot 1

Dear Deputy Mayor Doctoroff:

I am writing on behalf of Landmark West! to bring to your attention legal impediments to the proposed sale by the City of New York (through the Department of Citywide Administrative Services and through the New York City Economic Development Corporation) of 2 Columbus Circle to the Museum of Arts and Design, formerly known as the American Craft Museum.

As you may be aware, Landmark West! is an award-winning non-profit grassroots community organization. Since 1985, Landmark West! has worked to protect the historic architecture of the Upper West Side (between Central Park West and Riverside Drive, 59th to 110th Streets) and to improve the community for all of its residents.

**The Acquisition of 2 Columbus Circle  
By The City of New York**

As you know, 2 Columbus Circle originally was designed by Edward Durell Stone to house Huntington Hartford's Gallery of Modern Art, which opened in 1964. Between 1969 and 1975, Fairleigh Dickinson University operated 2 Columbus Circle as the New York Cultural Center.

2 Columbus Circle then was purchased by Gulf & Western Industries, Inc., which occupied the building at 1 Central Park West, later converted to the Trump International Hotel and Tower, and title was taken in the name of Gulf & Western Foundation.

In 1980, Gulf & Western Foundation donated 2 Columbus Circle to the City of New York. It was an express condition of the deed to the City that (for at least 30 years)

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2 Columbus Circle "be used solely by the City as its principal public facility for visitors' services and cultural affairs and for no other purpose. . . ."

In connection with the donation, a resolution was presented to the then Board of Estimate and adopted, on February 21, 1980, which approved the "Mayor's acceptance, on behalf of the City, of a gift of [2 Columbus Circle] substantially in accordance with [the following terms and conditions, among others]:

(1) the Building shall be used "solely by the City as its principal public facility for visitors' services and cultural affairs", pursuant to which it shall contain a visitors' information center, certain other public areas and the City's cultural affairs agency; . . .

In or around 1996, in connection with an agreement between the City and Viacom, Inc. (the successor to Gulf & Western), Viacom Foundation (the successor to Gulf & Western Foundation) conveyed to the New York City Economic Development Corporation certain reverter rights retained at the time of the donation of 2 Columbus Circle to the City.

However, nothing in that agreement or the 1996 conveyance changed the terms under which the Board of Estimate authorized the Mayor to accept the donation of 2 Columbus Circle on behalf of the City.

### **The Inalienability of 2 Columbus Circle Without Legislative Authorization**

Our common law long has recognized that a municipality, which takes title to property for a public use, thereafter holds the property in trust for the benefit of the public and may not convey it without authorization by the state legislature. *See, e.g., The Brooklyn Park Commissioners v. Armstrong*, 45 N.Y. 234 (1871); *Williams v. Gallatin*, 229 N.Y. 248 (1920).

That common law rule has not changed. *Friends of Van Cortlandt Park v. City of New York*, 95 N.Y.2d 623, 727 N.Y.S.2d 2 (2001).

While the rule is most often applied to public parks, it is not so limited. *See, e.g., Matter of Lake George Steamboat Co. v. Blair*, 30 N.Y.2d 48, 330 N.Y.S.2d 336 (1972); *Gladsky v. City of Glen Cove*, 164 A.D.2d 567, 563 N.Y.S.2d 842 (2d Dep't 1991);

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John Kennedy & Co. v. New York World's Fair 1939 Inc., 260 A.D. 306, 22 N.Y.S.2d (2d Dep't 1940); State v. Swan, 136 A.D. 400, 120 N.Y.S. 962 (2d Dep't 1910); Cotrone v. City of New York, 38 Misc.2d 580, 237 N.Y.S.2d 487 (Sup. Ct. Kings Co. 1962); American Dock Co. v. City of New York, 174 Misc. 813, 21 N.Y.S.2d 943 (Sup. Ct. N.Y. Co. 1940).

Similarly, Section 383 of the New York City Charter provides:

The rights of the city in and to its water front . . . and all other public places are hereby declared to be inalienable. . . .

Based upon this long line of authority, it is submitted that the proposed sale of 2 Columbus Circle -- as the construction of the water treatment plant in Van Cortlandt Park -- may not be accomplished without legislative authorization.

Very truly yours,



David Rosenberg

DR/pab

cc: Andrew M. Alper, President  
NYC Economic Development Corporation  
Hon. Gail A. Brewer  
Member, City Council  
Hon. Amanda M. Burden, Chair  
City Planning Commission  
Michael A. Cardozo, Esq.  
Corporation Counsel  
Hon. C. Virginia Fields  
Manhattan Borough President  
Hon. Patricia E. Harris  
Deputy Mayor for Administration  
Hon. Robert B. Tierney, Chair  
Landmarks Preservation Commission  
Kate Wood, Executive Director  
Landmark West!