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December 2, 2004

**VIA OVERNIGHT DELIVERY:**

Hon. Catherine O'Hagan Wolfe  
Clerk of the Court  
Appellate Division, First Department  
27 Madison Avenue  
New York, New York 10010

Re: Landmark West, et al v. Amanda M. Burden, et al  
New York County Index No. 119036/03

Dear Ms. Wolfe:

This firm represents proposed *Amici Curiae* Preservation League of New York State and National Trust for Historic Preservation in the above-captioned matter.

We are in receipt of a November 30, 2004, letter from Stooch, Stroock and Lavan, LLP (Charles G. Moerdler, of counsel) and a telephone message from a member of your staff indicating that our clients' Motion for Leave to Appear as *Amici Curiae*, served on November 19, 2004, is untimely and therefore will not be accepted. I have discovered upon review of my files that my assistant filed the papers with the Court by overnight mail but served the parties by regular mail. Had all of the parties been served by overnight delivery, the motion would have been timely pursuant to CPLR 2103(b)(6). The use of regular mail service caused the motion to be untimely by 48 hours.

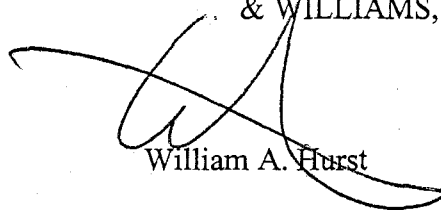
In light of the foregoing, I respectfully request that you amend the return date to December 10, 2004. Such an amendment would cure the de minimis error on our part and provide respondents with more than adequate time within which to respond to the Motion, should they so desire.

Hon. Catherine O'Hagan Wolfe  
December 2, 2004  
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Thank you in advance for your continued attention to this matter.

Respectfully submitted,

MCNAMEE, LOCHNER, TITUS  
& WILLIAMS, P.C.



William A. Hurst

WAH/klh

cc: ***Via Overnight Delivery:***

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## Interests of Amici Curiae

The National Trust for Historic Preservation was chartered by Congress in 1949 as a private nonprofit organization to "facilitate public participation" in historic preservation, and to further the historic preservation policies of the United States. *See* 16 U.S.C. § 468. The National Trust has almost 250,000 members nationwide, including more than 18,000 members in the State of New York. With the support of these members, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government.

The National Trust has a long record of involvement in historic preservation litigation in New York,<sup>1</sup> dating back three decades. Most recently, the Trust has expressed serious concerns about the need for designation and protection of the Two Columbus Circle building, in light of the proposal to strip its historic façade. The Trust has included Two Columbus Circle in its 2004 List of America's 11 Most Endangered Historic Places, thus demonstrating its concern with the designation and protection of this historically significant structure.

The Preservation League of New York State ("League") is a not-for-profit corporation dedicated to the preservation and restoration of New York's historic resources. Incorporated in

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<sup>1</sup> For example, the National Trust, often in conjunction with the Preservation League of New York State, has participated in the following cases in New York state courts as *amicus curiae*: *Aurora Coalition v. Village of Aurora*, 292 A.D.2d 848, 738 N.Y.S.2d 637 ( 4<sup>th</sup> Dep't ), *app. denied*, 98 N.Y.2d 608, 746 N.Y.S.2d 692 (2002); *Save Our Main Street Buildings, Inc. v. Greene County Legislature*, 293 A.D.2d 907, 740 N.Y.S.2d 715 ( 3d Dep't ), *app. denied*, 98 N.Y.2d 609, 747 N.Y.S.2d 409 (2002); *Teachers Ins. & Annuity Ass'n v. City of New York*, 82 N.Y.2d 35, 603 N.Y.S.2d 399 (1993); *383 Madison Assoc's v. City of New York*, 193 A.D.2d 518, 598 N.Y.S.2d 180 (1<sup>st</sup> Dep't), *review denied*, 82 N.Y.2d 664, 610 N.Y.S.2d 151, *app. dismissed*, 82 N.Y.2d 748, 602 N.Y.S.2d 806 (1993), *cert. denied*, 511 U.S. 1081, 114 S.Ct. 1829 (1994); *Shubert Organization, Inc. v. Landmarks Preservation Comm'n*, 166 A.D.2d 115, 570 N.Y.S.2d 504, *app. dismissed*, 78 N.Y.2d 1006, 575 N.Y.S.2d 456, *review denied*, 78 N.Y.2d 751, 570 N.Y.S.2d 504 (1991), *cert. denied*, 504 U.S. 946, 112 S.Ct. 2289 (1992); *Lutheran Church v. City of New York*, 35 N.Y.2d 121, 359 N.Y.S.2d 7 (1974).

1974, the League's purpose is to communicate preservation ideals to a broader community and to help shape federal, state, and local land use policies to encourage the protection, sensitive use, and/or creative reuse of historic properties and historic districts. The League is New York's only statewide preservation organization, counting over 1,000 members from across the State.

The League has included Two Columbus Circle in its 2004 list of "Seven to Save," thus demonstrating its concern with the designation and protection of this historically significant structure. (ROA 454)<sup>2</sup>

The *amici curiae* desire to assist this Court in understanding the broader policy and legal issues presented by the Respondents' opposition; particularly regarding Two Columbus Circle's clear eligibility for the National Register of Historic Places, which is at issue before this Court.

#### **INTRODUCTION AND SUMMARY**

The Petitioner-Appellants in this case seek to require the City of New York to prepare an Environmental Impact Statement (EIS) prior to selling the building at Two Columbus Circle (formerly the Huntington Hartford Museum) to the Museum of Arts and Design. The Museum of Arts and Design intends to strip the exterior of the building and replace the original architecture with a completely different façade that in no way echoes the remarkable and architecturally unique façade that currently exists. *Amici* agree with Petitioner-Appellants that an EIS should be required prior to the sale, pursuant to the City's Uniform Land Use Review Procedure (ULURP), City Environmental Quality Review (CEQR) rules, 62 R.C.N.Y. § 5-01 *et seq.*, and the State Environmental Quality Review Act (SEQRA), Article 8 of the New York Environmental Conservation Law, because the sale will result in the destruction of the building's historic and architectural character, and thus will have a significant adverse impact on a historic

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<sup>2</sup> Parenthetical references are to the Record on Appeal.

property (an environmental resource). Instead of preparing an EIS, however, the City issued a “negative declaration,” concluding that the proposed sale of the building would not have a significant adverse impact on the environment, based on the erroneous and, as demonstrated below, uninformed assumption that Two Columbus Circle is not historically significant.

Although the lower court upheld the City’s action, *Landmark West! v. Burden*, 3 Misc. 3d 1102(A), 2004 WL 913217, 2004 N.Y. Slip Op. 50331(U) (Sup. Ct., N.Y. Cty. Apr. 15, 2004), *amici curiae* urge this Court to reverse and remand the case, and to direct the City to prepare an EIS. The City was required to take a “hard look” at the relevant areas of environmental concern – here the historic significance of Two Columbus Circle – and the City failed to do so when it approved the action in the face of ambiguity regarding the building’s eligibility for listing on the State and National Registers of Historic Places. As a result, the City’s decision not to prepare an EIS was arbitrary and unlawful.

## ARGUMENT

### POINT I

#### **THE CITY DID NOT PROPERLY EVALUATE TWO COLUMBUS CIRCLE’S ELIGIBILITY FOR THE STATE AND NATIONAL REGISTERS OF HISTORIC PLACES**

##### **A. Eligibility for Listing on the State and National Register of Historic Places is Not a Subjective Judgment.**

The lower court erroneously assumed that “eligibility [for the National Register of Historic Places] is really a term of art and not an objectively provable fact; it is a matter of judgment.” *Landmark West! v. Burden*, 2004 WL 913217, at 6. Nothing could be further from the truth.

Eligibility for the National Register of Historic Places is governed by a set of very

specific regulatory criteria, 36 C.F.R. § 60.4,<sup>3</sup> administered by the Keeper of the National Register – the official with delegated authority from the Director of the National Park Service to determine the eligibility of properties for the National Register. *Id.* § 60.3(f). Those criteria have remained constant for decades,<sup>4</sup> and have been subject to extensive administrative interpretation, including detailed guidance bulletins issued by the National Park Service.<sup>5</sup> Therefore, the criteria for determining eligibility for listing on the National Register and guidance on how to apply those criteria were at all times accessible to the City, which was in as good a position as SHPO to apply the criteria (or request a determination of the Keeper) before issuing the negative declaration.

**B. The City Had Recourse to an Administrative Procedure for Resolving Any Doubts as to the National Register Eligibility of Two Columbus Circle.**

If the City had any doubt as to whether the architectural importance of Two Columbus Circle qualified the building as eligible for the National Register, the City had access to an efficient administrative process for resolving the issue. The National Park Service regulations permit “[a]ny person *or local government* . . . [to] appeal to the Keeper the failure or refusal of a nominating authority to nominate a property.” 36 C.F.R. § 60.12(a) (emphasis added). In fact, the administrative process will not be deemed exhausted without such an appeal to the Keeper, whose decision is “the final administrative action on such appeals.” *Id.* § 60.12(e). Several courts have concluded that the National Park Services' regulations impose an affirmative duty on

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<sup>3</sup> The eligibility criteria for the New York State Register of Historic Places are virtually identical. *See* 9 N.Y.C.R.R. § 427.3.

<sup>4</sup> *See* 46 Fed. Reg. 56,183 (Nov. 16, 1981).

<sup>5</sup> *See, e.g.*, National Park Service, “How to Evaluate and Nominate Potential National Register Properties That Have Achieved Significance Within the Last 50 Years”; National Park Service, “How to Apply the National Register Criteria for Evaluation,” at 41-43. *See generally* [www.cr.nps.gov/nr/publications/bulletins.htm](http://www.cr.nps.gov/nr/publications/bulletins.htm).

the part of reviewing agencies to seek the Keeper's determination when, as here, there is uncertainty regarding National Register eligibility. *See, e.g., Colorado River Indian Tribes v. Marsh*, 605 F. Supp. 1425, 1437-38 (C.D. Cal. 1985); *Hough v. Marsh*, 557 F. Supp. 74, 88 (D. Mass. 1982). In the instant matter, the record demonstrates that the City never applied the National Register eligibility criteria and never sought the Keeper's input. Instead, it concluded that the inaction of the State Historic Preservation Officer (SHPO) constituted a default finding of ineligibility – a conclusion that neither the law nor the administrative record supports.

Thus, it was not necessary for the court to “substitut[e] its own judgment” for that of the City, as the lower court feared, 3 Misc. 3d 1102(A), 2004 WL 913217, at 6. The City had recourse to an administrative procedure that would have resolved dispositively the eligibility of Two Columbus Circle for listing on the National Register, 36 C.F.R. § 60.12, which it failed to pursue.

**C. Eligibility for Listing on the National Register of Historic Places is Not Limited to Properties that Have Already Been Formally Determined Eligible.**

The City contends that, in order to be eligible for listing on either the State or National Registers, an official determination of eligibility must be made by the SHPO. City Brief at 6-7. However, the City's contention (and the lower court's determination) ignores the fact that a SHPO determination is only one of many methods to determine eligibility.<sup>6</sup> The unavailability of one method does not preclude use of other methods to determine eligibility. But regardless of the method used, the Keeper of the National Register retains the ultimate authority to determine National Register eligibility. *See Moody Hill Farms Ltd. Partnership v. Dept. of Interior*, 205 F.3d 554 (2d Cir. 1999), *cert. denied*, 528 U.S. 874 (1999).

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<sup>6</sup> The CEQR Technical Manual § 110 makes clear that properties not formally determined eligible for an official register can still be eligible if they meet the requirements of the register. *See Landmark West! V. Burden*, 2004 WL 913217 at 5-6.

In any event, federal regulations and court decisions confirm explicitly what is implicit in the CEQR Technical Manual – that historic properties eligible for the National Register include all properties that meet the criteria for eligibility, regardless of whether a formal determination of eligibility has been made. In this case, the absence of a formal determination, and the refusal of the SHPO to provide one, does not negate the inherent historical and architectural significance of Two Columbus Circle.

The federal courts have held that “eligible property is not restricted to property that has been *determined* eligible for inclusion in the National Register.” *Boyd v. Roland*, 789 F.2d 347, 349 (5th Cir. 1986) (emphasis in original). *See also United States v. Land, 62.50 Acres More or Less, Situated in Jefferson Parish, State of La.*, 953 F.2d 886, 893 n.7 (5th Cir. 1992); *National Mining Ass’n v. Slater*, 167 F. Supp. 2d 265, 219 (D.D.C. 2001), *rev’d on other grounds sub nom. National Mining Ass’n v. Fowler*, 324 F.3d 752 (D.C. Cir. 2003); *Lee v. Thornburgh*, 707 F. Supp. 600, 606 n.15 (D.D.C. 1989), *rev’d on other grounds*, 877 F.2d 1053 (D.C. Cir. 1989); *Colorado River Indian Tribes v. Marsh*, 605 F. Supp. 1425 (C.D. Cal. 1985); *Hough v. Marsh*, 557 F. Supp. 74 (D. Mass. 1982).<sup>7</sup>

In the *Colorado River* case, the Army Corps of Engineers had excluded from its review of riverbank construction any “speculative” impact on archaeological resources. *Colorado River Indian Tribes*, 605 F. Supp. at 1436. The court, however, in granting a preliminary injunction against the construction, held that the eligibility of properties for the National Register “turns upon the inherent historical and cultural significance of the property and not [the] opinion of its worth by” the reviewing agency. *Id.* at 1437. The Army Corps was held to have an affirmative

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<sup>7</sup> *See also Morris County Trust for Historic Preservation v. Pierce*, 714 F.2d 271 (3d Cir. 1983), and *WATCH v. Harris*, 603 F.2d 310 (2d Cir. 1979), *cert. denied*, 444 U.S. 995 (1979), implicitly reaching this conclusion.

duty to determine which resources were eligible before causing irreparable harm to those resources. *Id.* at 1437-38. The same duty should apply to the City, which proceeded to approve the sale of Two Columbus Circle on a similarly inadequate administrative record.

In *Hough v. Marsh*, the Army Corps had issued a permit for filling in wetlands for a residential development in view of an historic lighthouse. *Hough*, 557 F. Supp. at 76. The Corps engaged in a perfunctory review to determine whether the lighthouse had been formally determined eligible for the National Register, an action it deemed sufficient for its responsibilities under the NHPA. *Id.* at 87-88. The court disagreed, holding “The absence of any official determination of eligibility here did not render the statute inapplicable.” *Id.* at 88. The court remanded the matter to the Corps to determine whether the lighthouse *met* the National Register criteria.

A plain reading of the New York state and local statutes at issue in the instant proceeding reveals similar language. The New York City Environmental Quality Review (CEQR) rules include as a “significant effect on the environment” those actions which lead to “the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources (including the demolition or alteration of a structure *which is eligible for inclusion* in an official inventory of such resources).” 43 R.C.N.Y. § 6-06 (emphasis added). Official inventories, under the guidance of the CEQR Technical Manual, include the National and State Registers of Historic Places. *Landmark West! v. Burden*, 3 Misc. 3d 1102(A), 2004 WL 913217 (N.Y. Sup. Ct. April 15, 2004) (citing CEQR Technical Manual § 110).

**D. The State Historic Preservation Officer's Views on Whether Two Columbus Circle is National Register-Eligible are Not Binding on the Keeper of the National Register.**

The City suggests that the "State Preservation Office declined to place the Building . . . on the State and National Registers" in 2000 and 2003. City Brief at 7. It is important to note, however, that the SHPO did not deem the building ineligible for the Register; rather, she merely expressed a "prefer[ence]" to defer making a formal eligibility determination at the time.

*Landmark West!*, 2004 WL 913217 at \*\*2. (ROA 106)

In any event, even if the SHPO's decision to defer a formal eligibility determination could be construed as an implied finding against eligibility, her views are not binding on the Keeper of the National Register. Nor is the failure of the New York City Landmarks Preservation Commission to act on the nomination of Two Columbus Circle dispositive or even persuasive when considering the building's National Register eligibility. *See Moody Hill Farms Ltd. Partnership v. Dept. of Interior*, 205 F.3d 554 (2d Cir. 1999), *cert. denied*, 528 U.S. 874 (1999).

The Keeper of the National Register has final and independent authority to determine whether historic properties are eligible for the National Register of Historic Places. *Id.* at 556, 558. This authority has been upheld even where determinations by state and local officials reach contrary conclusions. *See, e.g., Stop H-3 Ass'n v. Coleman*, 533 F.2d 434 (9th Cir. 1976).

In the *Stop H-3* case, the State of Hawaii wanted to build a federally funded highway through a historic valley, which had been determined by the Keeper of the National Register to be eligible for listing based on its "local historic and cultural value." In an attempt to counteract the effect of this determination, which restricted the state's ability to use federal funds for highway construction through the historic valley, the Hawaii Historic Places Review Board issued a determination that the valley was of only "marginal" significance. The Ninth Circuit,

however, held that the state's views could not override those of the Secretary of the Interior, acting through the Keeper: "[T]he Interior Secretary's determination that [a property] is eligible for inclusion on the National Register . . . is not vitiated, and cannot be vitiated, by the State Review Board's finding that [the property] has only 'marginal' significance." *Id.* at 441.

For reasons that are unclear on the instant record, SHPO did not decide the issue of eligibility -- it merely deferred its determination in that regard -- thus establishing the possibility that the building was in fact State and/or National Register eligible. The *Moody Hill Farms* case, *supra*, involved an analogous set of facts. The New York State Review Board for Historic Preservation had considered re-nominating a historic district to the State Register of Historic Places, after a procedural defect annulled an earlier State Register listing. The Board voted six-to-two in favor of re-nomination, but the motion required seven votes to pass. Accordingly, the Board tabled the motion, with insufficient votes either to re-nominate the historic district or to find it ineligible. The court concluded that the state's inaction could not be held to constrain the discretion of the Keeper of the National Register.

**E. Two Columbus Circle is Eligible for the National Register Based on its Exceptional Architectural Importance.**

Eligibility for the National Register of Historic Places is traditionally reserved for buildings that are at least 50 years of age. 36 C.F.R. § 60.4. However, properties of less than 50 years may still be considered eligible if they have "exceptional importance." *Id.* § 60.4(g). In this case, *amici* believe that Two Columbus Circle is clearly eligible for the National Register, although it was completed 40 years ago, because of its exceptional architectural importance.

The lower court's decision actually acknowledged Two Columbus Circle's exceptional architectural and cultural significance:

Commissioned by A&P Supermarket heir Huntington Hartford in 1955, Two Columbus Circle was originally envisioned to be a monumental structure, a major cultural institution and an anti-modernist gallery. Edward Durrell Stone, considered to be one of America's most important and admired architects of the post-World War II era, designed the building in 1964.

The building's form is based on Stone's design of the U.S. Embassy in New Delhi, India. The nine-story building is a poured concrete structure sheathed in white, gray-veined Vermont marble. An open concrete Venetian-inspired arcade with lollipop-like columns inlaid with circular panels of red granite supports the building's base . . .

Because it sits on an irregularly shaped lot, no two dimensions of the building's structure are the same. The building's north façade is a concave wall that conforms with the curve of Columbus Circle.

*Landmark West!*, *supra* at \*2. This statement by the lower court establishes that Two Columbus Circle was designed by "one of America's most important and admired architects" (ROA 311-12), as "a major cultural institution." Indeed, Edward Durell Stone used remarkable building materials in the context of a unique design that defines Columbus Circle – one of New York City's most visible intersections. (ROA 162)

In reaching its determination of ineligibility, the City ignored the regulations at 36 C.F.R. § 60.4 (c), which establish that eligible properties include those "that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possesses high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction." The City also ignored that fact that, age notwithstanding, "a property achieving significance within the past 50 years [is National Register eligible] if it is of exceptional importance." *Id.* § 60.4 (g). Clearly, Two Columbus Circle should have been deemed eligible pursuant to these standards for, among other reasons, the unique architectural qualities identified by the lower court.

## POINT II

### **THE CITY FAILED TO TAKE A “HARD LOOK” AT POTENTIAL IMPACTS ON TWO COLUMBUS CIRCLE AS A HISTORIC PROPERTY**

An Environmental Impact Statement (EIS) must be prepared for any proposed governmental action that “may have a significant effect on the environment.” N.Y. Evtl. Conserv. Law (E.C.L.) § 8-0109; 43 R.C.N.Y. § 6-12(a). The law is settled that the threshold for requiring an EIS is “relatively low.” *H.O.M.E.S. v. New York State Urban Dev. Corp.*, 69 A.D.2d 222, 232, 418 N.Y.S.2d 827, 831 (4<sup>th</sup> Dept. 1979). As the use of the word “may” indicates, SEQRA requires that a positive declaration issue, and an EIS be prepared, whenever an action poses the potential for a significant environmental effect. *See* ECL 8-0109(2). Moreover, under the SEQRA regulations a Type I action “carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS.” *See* 6 N.Y.C.R.R. § 617.4(a).

In this case, it is clear that the sale of Two Columbus Circle and the plan to strip its façade may have a significant effect on historic resources; thus, an EIS should be required. Criteria for determining whether a “significant adverse impact” may occur include:

the impairment of the character or quality of *important historical*, archeological, *architectural*, or *aesthetic* resources (*including* the demolition or alteration of a structure which is *eligible* for inclusion in an official inventory of such resources) or of existing community or neighborhood character.

62 R.C.N.Y. § 6-06[a][v] (emphasis added) (quoted in *Landmark West! v. Burden*, 2004 WL 913217 at 7 n.4); *see also* 6 N.Y.C.R.R. § 617.7(c)(1)(v). Applying this definition, Two Columbus Circle certainly qualifies as an important historical, architectural, and aesthetic resource. The CEQR Technical Manual for New York City, cited by the lower court, defines

“historic resources” to include “architectural resources,” such as “historically important buildings, structures, objects, sites, and districts,” including specifically the following:

Properties listed on or formally determined eligible for inclusion on the State and/or National Register of Historic Places, or contained within a district listed on or formally determined eligible for the State and/or National Register of Historic Places;

Properties recommended by the New York State Board for listing on the State and/or National Registers of Historic Places;

\* \* \*

*Properties not identified by one of the programs listed above, but that meet their eligibility requirements.*

CEQR Technical Manual § 110 (emphasis added) (quoted in *Landmark West! v. Burden*, 2004 WL 913217, at 5-6). Even though Two Columbus Circle has not been formally determined eligible for the National Register of Historic Places, and has not yet been recommended for listing by the New York State Board, the lower court erred in finding that the lack of formal listing ends the inquiry. Indeed, the Technical Manual expressly contemplates the possibility that, as here, an unlisted property may still meet the eligibility requirements and thus be considered historically significant. Here, had the City applied the eligibility criteria, or applied to the Keeper to apply the criteria, *amici curiae* contend that Two Columbus Circle would meet the requirements for National Register eligibility for the reasons outlined in the lower court's decision. Accordingly, since the City's sale of Two Columbus Circle will result in the “impairment of the character or quality” of the building, the sale would thus be considered to have a “significant adverse impact.”

“The passage of time or changing perceptions may justify reevaluation of properties that were previously determined ineligible for the Register or for designation as City Landmarks or

Historic Districts.” CEQR Technical Manual at 3F-11.<sup>8</sup> (ROA 245-46) Here, the record reflects a *deferral* by the SHPO of the eligibility determination and not a determination of ineligibility. Thus, the City was required to consider further the property's historic significance to demonstrate that it has taken the requisite "hard look" under CEQR and SEQRA. *H.O.M.E.S. v. NYS Urban Development Corporation, supra* at 231, 418 N.Y.S.2d 827, 832 (reversing SEQRA determination where, as here, "Like the proverbial ostrich, respondents have incredibly put out of sight and mind a clear environmental problem.")

Incredibly, the lower court acknowledged "Had . . . OPRHP been in the process of formally determining the building's eligibility. . . , this court might have second thoughts as to whether [the City] took a hard look." However, the City need not await OPRHP's determination – it had other tools available to it to discharge its "hard look" obligation by applying, or seeking for the Keeper to apply, the National Register eligibility criteria. Absent such a determination, the City had no way of knowing whether Two Columbus Circle qualified as a "*Propert[y] not identified by one of the programs listed above, but that meet their eligibility requirements,*" and therefore proceeded to approve the action on an incomplete administrative record. That uninformed determination, if allowed to stand, will result in the loss of one of New York City's most unique architectural assets.

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<sup>8</sup> The regulations implementing Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, include a strikingly similar provision. *See* 36 C.F.R. § 800.4(c)(1).

**CONCLUSION**

For all of the foregoing reasons, *amici curiae* respectfully urge this Court to enter an Order reversing the lower court's decision and remanding the matter to the City of New York with an order to prepare an Environmental Impact Statement.

DATED: November 19, 2004

Respectfully submitted,

**MCNAMEE, LOCHNER, TITUS  
& WILLIAMS, P.C.**

By: \_\_\_\_\_

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*Attorneys for Preservation League of NYS and  
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