

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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In the Matter of the Application of:

INCORPORATED VILLAGE OF GARDEN CITY,

Petitioner-Plaintiff,

-against-

NASSAU COUNTY PLANNING COMMISSION,
NASSAU COUNTY PLANNING DIVISION,
NASSAU COUNTY REAL ESTATE PLANNING
AND DEVELOPMENT DEPARTMENT, NASSAU
COUNTY LEGISLATURE, NASSAU COUNTY
OPEN SPACE AND PARKS ADVISORY
COMMITTEE, NASSAU COUNTY,
and LVS NY HOLDCO 2, LLC,

Respondents-Defendants.
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Index No.:

**VERIFIED PETITION
AND COMPLAINT**

Petitioner-Plaintiff INCORPORATED VILLAGE OF GARDEN CITY (“Petitioner-Plaintiff” or the “Village”), by its attorneys, CULLEN AND DYKMAN LLP, as and for its Verified Petition and Complaint pursuant to Article 78 of the New York Civil Practice Law and Rules and CPLR Sec. 3001 against Respondents-Defendants NASSAU COUNTY PLANNING COMMISSION, NASSAU COUNTY PLANNING DIVISION, NASSAU COUNTY REAL ESTATE PLANNING AND DEVELOPMENT DEPARTMENT, NASSAU COUNTY LEGISLATURE, NASSAU COUNTY OPEN SPACE AND PARKS ADVISORY COMMITTEE, NASSAU COUNTY, and LVS NY HOLDCO 2, LLC (the Respondents-Defendants”), alleges as follows:

PARTIES

1. The Petitioner-Plaintiff INCORPORATED VILLAGE OF GARDEN CITY is a New York municipal corporation with its principal place of business located at 351 Stewart Ave,

Garden City, New York 11530 (the “Village”).

2. Respondent-Defendant NASSAU COUNTY PLANNING COMMISSION is a nine-member commission with its principal office located at 100 County Seat Drive, Mineola, NY 11501 (the “Planning Commission”).

3. Respondent-Defendant NASSAU COUNTY PLANNING DIVISION is a municipal agency responsible for overseeing the growth and development of Nassau County, New York, with its principal office located at 100 County Seat Drive, Mineola, NY 11501 (the “Planning Division”).

4. Respondent-Defendant NASSAU COUNTY REAL ESTATE PLANNING AND DEVELOPMENT DEPARTMENT is a municipal agency responsible for reviewing and studying the effects of land use in Nassau County, New York, with its a principal office located at 1194 Prospect Avenue, Westbury, NY 11590 (the “Development Department”).

5. Respondent-Defendant NASSAU COUNTY LEGISLATURE is a governmental agency with its principal office located at the Theodore Roosevelt Executive and Legislative Building, 1550 Franklin Avenue, Mineola, NY 11501 (the “Legislature”).

6. Respondent-Defendant NASSAU COUNTY OPEN SPACE AND PARKS ADVISORY COMMITTEE is a committee of the Nassau County Department of Public Works with its principal office located at 1194 Prospect Avenue, Westbury, NY 11590 (“OSPAC”).

7. Respondent-Defendant NASSAU COUNTY is a New York municipal corporation with its principal place of business located at 252-262 Old Country Road, Mineola, NY 11501 (“Nassau County” or the “County”).

8. Respondent-Defendant LVS NY Holdco 2, LLC is a foreign limited liability company formed under the laws of the State of Nevada, with its principal office at 5420 S. Durango

Dr., Las Vegas, NV 89113, authorized to do business in New York with a service address of 80 State Street, Albany, New York 12207 (“Sands”). Sands is, upon information and belief, an affiliate or indirect subsidiary of Las Vegas Sands Corp., which owns and operates casinos in Macau and Singapore and is the third-largest casino company in terms of revenue.

JURISDICTION AND VENUE

9. Venue is proper in Nassau County pursuant to CPLR 506(b) and 7804(b) because the material events giving rise to the official action challenged occurred in Nassau County.

10. Venue also is proper in Nassau County pursuant to CPLR 504.

11. This hybrid proceeding challenges the legality of a use and occupancy permit and a 42-year lease of the Nassau Veterans Memorial Coliseum (the “Coliseum” or “Premises”) granted by Nassau County to the Sands.

FACTUAL BACKGROUND

12. The Village is a residential community of approximately 23,000 people that prides itself on its tree-lined streets, public parks, and peaceful character. To foster community engagement and advance the well-being of its residents, the Village has recently undertaken a recreation master planning exercise to build on the success of existing recreational and community-based services and sports programs, including those in the Village’s neighborhood parks. In addition, the Village has commissioned studies to evaluate the expansion and protection of pedestrian and bicycle traffic through the Village.

13. However, despite the bucolic nature of the Village, it is located between the Long Island Expressway and the Southern State Parkway. With the proliferation of mapping and driving applications, drivers are increasingly rerouted off of these highways when congestion is high and

diverted through Village streets. This strains the Village's already compromised roadways.¹

14. Therefore, improving street safety, decreasing speeding, and reducing traffic accidents are significant priorities for the Village. As a reflection of this community-wide focus, the Village completed five substantial studies of Village-owned streets in the last five years alone. Three analyzed current conditions and potential improvements in discrete areas: Stewart Avenue, Cathedral Avenue, and the numbered streets. One evaluated Village speed limits. And one was a comprehensive, Village-wide survey and satellite study that resulted in the Village's 2023 Traffic Calming Master Plan. *See* Borroni Aff. at ¶¶ 6-10.

15. The studies confirm the concerns of residents and municipal officials regarding speeding, vehicle crashes, and pedestrian safety. For example, the crash study completed as part of the 2023 Stewart Avenue Road Diet Traffic Study found that from 2019 to 2023, traffic volumes have nearly doubled on portions of Stewart Avenue. *See* Borroni Aff. at ¶ 12. From January 1, 2020 through December 31, 2022 in the span of Stewart Avenue between Franklin Avenue and Clinton Road, 32% of the crashes resulted in at least one injury, well above the statewide average for crash severity of 25.10% for such a roadway. *Id.* Finally, the levels of service (i.e., speed, travel time, safety, and maneuverability) at many intersections along Stewart Avenue are at D, E, and F—with F being the worst on a scale from A to F. *Id.* The assessments of Cathedral Avenue and the numbered streets were only marginally better, with crash rates often still well above the statewide average. *Id.* These figures are no surprise, given that the 2023 Speed Limit Evaluation commissioned by the Village found that 87% of motorists on Village roads drive at or above the posted speed limit of 30 mph. *Id.*

¹ *See* Affidavit of John Borroni, P.E., sworn to on December 5, 2024 ("Borroni Aff."), incorporated herein by reference, at ¶ 3.

16. The October 2024 Traffic Impact Study² (the “TIS”) attached as Appendix 3.5-1 to the Draft Environmental Impact Statement³ (the “DEIS”), prepared for the Casino Project (defined below), reinforced the Village’s studies. The TIS examined the crash history for seven intersections in the Village for the period March 1, 2017 to February 28, 2020. TIS at 31-34. These seven intersections collectively experienced 356 crashes with 115 injuries and one fatality. The TIS also compared these pre-COVID conditions with the post-COVID conditions in 2022-2023 at select intersections. TIS at 44-45. The TIS found that due to changed lifestyle and commuting habits, the number of crashes and injuries have *increased* from the pre- to post-COVID time periods. TIS at p. 46.

17. These conditions discourage walkability and community engagement and strain the Village’s emergency services. While the Village is devoting substantial time and funds to improving its public realm and streets and maintaining its safe, peaceful community character, it cannot properly plan and allocate municipal resources without adequate notice of and participation in regional decision-making.

18. As relevant here, the Premises are located only 0.7 miles from the Village border. The Village will experience more traffic on its roadways and higher demand on its public services due to increased activity at the Premises. Borroni Aff. ¶¶ 25-26. Not only will the Village receive more overflow traffic from congested highways, it will also experience increased traffic from rideshare services like Uber and Lyft. Id. at ¶ 27. The Garden City Long Island Railroad (“LIRR”) station is a roughly 10-minute drive from the Leased Area, making it a convenient stop from which

² VHB Engineering, Surveying, Landscape Architecture, and Geology, P.C., *Sands New York Integrated Resort: Traffic Impact Study* (Oct. 2024), <https://www.nassaucountyny.gov/DocumentCenter/View/46754/Traffic-Impact-Study>.

³ VHB Engineering, Surveying, Landscape Architecture, and Geology, P.C., *Sands New York Integrated Resort: Draft Environmental Impact Statement* (Oct. 2024), <https://www.nassaucountyny.gov/DocumentCenter/View/46753/Sands-DEIS-Text?bidId=>.

to call a car and drive through the center of the Village. Id. Indeed, the DEIS (Section 2.2.2.2) lists the Garden City LIRR as one of the stations nearest to the Project Site. Id.

19. Increased traffic on Village roads and intersections that already have low levels of service and high accident rates will only further increase wear and tear on Village roads, reduce vehicle maneuverability and pedestrian safety, and increase the likelihood of crashes and injuries, thereby increasing the already high demand for emergency services in the Village. Id. at ¶ 28. Garden City—as a Village government and as a community of residents—has invested substantial time and funds in prioritizing street safety and planning for the future of its roadways. Id. at ¶ 29. However, regional projects like the 42 Year Lease (defined below) and the Casino Project (defined below) will exacerbate existing traffic on Village streets resulting in increased accidents, personal injury and maintenance obligations for the Village. Id. at ¶ 30. All of the foregoing will result in an increased demand on Village personnel and resources.

20. Within 0.7 miles of the Village is the 72-acre site on which the Coliseum is located. The Coliseum was opened in 1972 and was the home of the New York Islanders of the National Hockey League from 1972-2015 and again from 2018-2021. The Coliseum was also home to the Nets basketball team from 1972 through 1977. The Coliseum also hosted many concerts and live events over the years.

The Initial 99 Year Lease

21. On or about January 12, 2023, Las Vegas Sands Corp. issued a press release on its website which provides as follows in relevant part:

“Uniondale, NY (January 12, 2023) – With the recent release of the New York State Gaming Commission’s Request for Application for three downstate New York gaming licenses, Las Vegas Sands (NYSE: LVS), the world’s most valuable integrated resort company, today announced its intention to pursue the development of a multi-billion-dollar flagship hospitality, entertainment and

casino project on Long Island, New York.⁴

22. In pursuit of this plan to open a casino at the subject site (the “Casino Project”), Sands sought to receive an assignment of two leases which, taken together, covers the Coliseum and the 72-acre site surrounding it (the “Premises”).

23. Shortly after this January 12, 2023, press release, Sands began negotiations with Nassau County to enter into a long-term lease for the Premises.

24. On May 22, 2023, the County Legislature voted to approve an ordinance authorizing the 99-year lease between the County and Sands (the “Annulled Lease”)⁵.

25. In furtherance of the Casino Project, the Annulled Lease was executed by the County Executive of Nassau County on May 26, 2023.

26. The Annulled Lease was challenged in a lawsuit brought by Hofstra University under Nassau County Index No. 606293-2023 (the “Hofstra Action”). Hofstra alleged that the Annulled Lease was authorized in violation of Nassau County Administrative Code, Open Meetings Law, and the State Environmental Quality Review Act (“SEQRA”).

27. In a Decision and Order of Hon. Sarika Kapoor, A.J.S.C dated November 9, 2023 and entered on November 13, 2023, this Court annulled the Annulled Lease, finding that the resolution of the Planning Commission, the Legislature’s SEQRA negative declaration, and the vote of the Legislature approving the Annulled Lease violated the Open Meetings Law and/or SEQRA.

28. Thereafter Nassau County appealed. In a Decision and Order dated October 23, 2024, the Appellate Division, Second Department found that Sands needed to be named as a party

⁴ Sands, *Las Vegas Sands to Pursue Multi-Billion-Dollar Downstate New York License at Nassau Veterans Memorial Coliseum Site on Long Island*, <https://www.sands.com/news/press/las-vegas-sands-to-pursue-multi-billion-dollar-downstate-new-york-license-at-nassau-veterans-memorial-coliseum-site-on-long-island/> (last visited Dec. 5, 2024).

⁵ A copy of the negative declaration issued in connection with the Annulled Lease is annexed hereto as **Exhibit I**.

and remanded the matter to the Nassau County Supreme Court for additional proceedings. The Hofstra Action is proceeding in this Court before Hon. Sarika Kapoor, A.J.S.C.

The 42 Year Lease

29. After this Court nullified the Annulled Lease, in order to continue to implement the Casino Project, Nassau County and Sands shifted gears.

30. In or around March 2024, the Legislature authorized a use and occupancy permit (the “Permit”), allowing Sands to continue to operate the Premises for a nominal fee of \$1.00.⁶

31. The Permit does not appear publicly online but based upon news reports, the Permit allowed Sands to operate the Coliseum consistent with how it had been historically operated.⁷

32. Following the grant of the Permit and while the litigation between Hofstra University and Nassau County continued in the Appellate Division, Nassau County and Sands sought to enter into a new lease for the Premises which was approved by the Legislature on August 5, 2024 (the “42 Year Lease”). The SEQRA review of the 42 Year Lease was limited to an Environmental Assessment Form (“EAF”) and Negative Declaration that did not consider the Casino Project or even what was approved under the 42 Year Lease. But while the Annulled Lease and attendant proceedings were forthright about Sands seeking to operate a casino on the Premises, the 42 Year Lease was not.

33. The 42 Year Lease is for an initial term of 27 years, followed by three 5-year renewal options exercisable by Sands for a total of up to 42 years. *See* 42 Year Lease, a copy of which is annexed hereto as **Exhibit A**.

⁶ The July 29, 2024 Staff Summary states that Sands has been operating the Premises pursuant to the Permit since shortly after the Annulled Lease was struck down by the Nassau County Supreme Court. *See* copy of Staff Summary dated July 18, 2024, annexed hereto as **Exhibit H**.

⁷ *See, e.g., Nassau County advances Las Vegas bid to operate Coliseum*, *NEWSDAY* (Jul. 19, 2024), <https://www.newsday.com/long-island/nassau/nassau-coliseum-sands-casino-wqvoe5vv>.

34. In a superficial attempt to distance the 42 Year Lease from the Casino Project, the 42 Year Lease does not acknowledge that the Sands is seeking to operate a casino on the Premises. Id.

35. On June 18, 2024, an OSPAC meeting was held where the proposed 42 Year Lease was introduced.

36. On June 20, 2024, the Planning Commission held a public hearing on the proposed 42 Year Lease.

37. On July 10, 2024, OSPAC adopted resolution OSPAC 2-2024 which states in relevant part, “OSPAC finds that the [proposed 42 Year Lease] has no impact on County open space or parks or any areas of cultural, archeological, habitat, or historic significance or of an otherwise environmentally sensitive nature and hereby recommends that the [Planning Commission] recommend the [proposed 42 Year Lease be authorized] without condition.” See resolution OSPAC 2-2024, a copy of which is annexed hereto as **Exhibit B**, at p. 2.

38. On July 18, 2024 the Planning Commission adopted resolution OSPAC 2-2024 and recommended that the Legislature determine the following about the proposed 42 Year Lease: (1) that it will be classified as an unlisted action and will not have a significant adverse impact on the environment; (2) that it should complete its review under SEQRA as an unlisted action by issuing a negative declaration; and (3), should approve without condition. See Planning Commission Recommendation, a copy of which is annexed hereto as **Exhibit C**, at p. 2.

39. On July 22, 2024, OSPAC 2-2024 was presented to the Rules Committee and forwarded to the Legislature.

40. On August 5, 2024, the County Legislature purported to issue a SEQRA Negative Declaration and voted to authorize the County Executive to execute the 42 Year Lease. A copy of

the purported Negative Declaration and transcript of the Nassau County Legislature Full Legislature Meeting on August 5, 2024 is annexed hereto as **Exhibit D**.

The 42 Year Lease Is Integral to the Casino Project

41. It is beyond dispute that Sands continues to actively pursue the Casino Project and actively obtain a license to operate a casino on the Premises. In fact, at the same meeting that the Legislature authorized the 42 Year Lease pursuant to Ordinance 173-24, the Legislature adopted Ordinance 172-24, whereby it announced that it was considering a long-term lease to Sands (the “Casino Lease”) for the development of the Casino Project and issued a SEQRA Positive Declaration.

42. However, the 42 Year Lease establishes the requisite site control required for Sands to continue to pursue the Casino Project and, as such, is one of the numerous municipal approvals required.

43. In fact, the SEQRA EAF Part 1 for the Casino Project sets forth the various municipal approvals associated with the project. *See* Attachment, Part I EAF, Lease for Sands New York Integrated Resort, a copy of which is annexed hereto as **Exhibit E**, Attachment at p. 5. This schedule specifically lists the “Nassau County Executive and Legislature” lease approval⁸ as among the municipal agency approvals required for the Casino Project. *Id.*

44. The site control facilitated by the 42 Year Lease is also required for Sands to seek the requisite Town of Hempstead zoning and land use approvals.

45. In a letter dated December 29, 2023, shortly after the Supreme Court of Nassau County annulled the Annulled Lease, an attorney for Sands wrote to the Town Attorney for the

⁸ Presumably, the referenced lease approval relates to the Casino Lease. However, the Nassau County Legislature’s approval of the 42 Year Lease serves the same purpose in providing Sands with control of the Premises and the necessary leasehold interest required to apply for the zoning and land use approvals for the Casino Project. Thus, leasehold interest provided by the 42 Year Lease was one step in the overall development of the Casino Project.

Town of Hempstead attempting to persuade the municipality that Sands held a sufficient leasehold interest in the Premises pursuant to a prior lease assignment, to allow it “to proceed with its application to change the underlying zoning district of the Premises and seek approval of the Conceptual Master Plan made by Verified Petition, dated August 1, 2023, to the Town of Hempstead.” See December 29, 2023 Letter, a copy of which is annexed hereto as **Exhibit F**.

46. Holding sufficient leasehold interests in the Premises to apply for the Town of Hempstead zoning and land use approval is critical to the Casino Project because those municipal approvals are prerequisites to Sands’ application to the New York State Gaming Facility Location Board (the “Gaming Board”).

47. The Gaming Board’s Request for Applications to Develop and Operate a Gaming Facility in New York State dated January 3, 2023 (the “RFA”) requires full completion of all zoning requirements before the Gaming Board may evaluate an application.

48. The RFA states that prior to official review by the Gaming Board, each potential license applicant must prove compliance with all State and local zoning requirements, as set forth in PML Section 1321-k. PML § 1321-k provides that “all gaming facilities licensed pursuant to this title shall comply with all relevant city, county, town, or village land use or zoning ordinances, rules, or regulations if applicable.”

49. Among the public statements made by and on behalf of Sands are the following:

- As of the date of this filing, Sands New York’s website states, under its “Our Vision” page, that “[its] gaming space will offer the only full-service casino on Long Island.”⁹

⁹ *Our Vision: Property Features*, SANDS NEW YORK, <https://sandsnewyork.com/property-features> (last visited Dec. 4, 2024).

- Sands' Chief Executive Officer Robert Goldstein stated that "We remain interested in the process [of obtaining a casino license.]"¹⁰

50. Thus, the true purpose of the 42 Year Lease is revealed.¹¹ Sands views the 42 Year Lease as providing the necessary property interests to allow it to make the zoning and land use permit applications to the Town of Hempstead, which permits are required for a complete application to the Gaming Board.

51. In fact, at the August 5, 2024 session of the Legislature, the matter was referred to as "the casino bill" and although there was distinction between the 42 Year Lease and the Casino Lease, these matters were discussed in tandem. *See Exhibit D* at p. 11.

52. The annulment of the Annulled Lease did not cause the County and Sands to abandon the Casino Project. They merely broke it into three separate parts with separate environmental reviews: the Occupancy and Use Permit, the 42 Year Lease, and the Casino Lease. Accordingly, the 42 Year Lease is ruse – it is not intended to actually provide Sands with rights to continue to operate the Coliseum but is instead a necessary component of Sand's long-term Casino Project. As such, prior to its approval by the Legislature, SEQRA requires that the 42 Year Lease be subject to a proper environmental review that includes all the activities reasonably contemplated under the 42 Year Lease as well as the Casino Project it will facilitate.

53. However, neither the Negative Declaration nor the EAF explain the level of activity and nature of the uses permitted or required by the Permit, nor do they indicate whether Sands would continue to operate under the Permit in the absence of the 42 Year Lease.

¹⁰ Dave Grendzynski, *Sands CEO Voices Online Gambling Concerns for Long Island Casino Plan*, ACTION NETWORK (Oct. 24, 2024), <https://www.actionnetwork.com/news/sands-ceo-voices-online-gambling-concerns-long-island-casino-plan>.

¹¹ On June 17, 2024, Sands submitted a second EAF which pertained to the 42 Year Lease. *See* Part I EAF, Lease for Use, Occupancy, Operation and Maintenance of Existing Nassau Veterans Memorial Coliseum Property, a copy of which is annexed hereto as **Exhibit G**.

54. SEQRA requires that entire set of steps that comprise the Casino Project must be considered together.

55. By separately reviewing the 42 Year Lease from the Casino Lease, the Legislature engaged in impermissible segmentation, a clear violation of SEQRA.

The Terms of the 42 Year Lease Reveal that it is a Fallacy

56. Moreover, the terms of the 42 Year Lease itself make clear that the purported purpose for the 42 Year Lease is not the intended purpose.

57. Under the terms of the 42 Year Lease, Sands has the option of “going dark” after two years of operating the Coliseum. **Exhibit A** at § 10.6(b). Thus, for all the talk from Nassau County and its agencies that the purpose of the 42 Year Lease is to ensure that the Coliseum continues to be operated “reasonably consistent with past practices,” that obligation only exists for the first two years. After those first two years, the 42 Year Lease is silent as to what the Coliseum and Premises will be used for. *Id.*

58. This two-year commitment from Sands to continue to operate the Premises reasonably consistent with past practices dovetails nicely with the timetable for Sands to pursue obtaining a gaming license to operate a downstate casino.

59. If Sands is unsuccessful in obtaining a downstate gaming license by the end of those two years, given the terms of the 42 Year Lease, Sands would still have control of the Premises for up to forty more years to do as much or as little as it decides with the Premises. *Id.*

60. In approving the 42 Year Lease, Nassau County and the other non-Sands respondents have not only violated the law as set forth below, but have violated the trust put in them by ceding control of 72-acres in the Nassau Hub to Sands under false pretenses.

61. Respondents’ wrongful actions go beyond approving and entering into a largely

illusory lease under false pretenses.

62. The 42 Year Lease gives Sands the right and ability to control the Premises for up to 42 years while only committing to using it for a specific purpose for the first two years. *Id.* Stated differently, Nassau County ceded control to 72-acres in the heart of Nassau County, the Hub, to Sands and Sands has not committed to use the Premises for any specific use beyond the first two years of the lease.

63. By issuing a negative declaration under SEQRA as it did, the Legislature failed to take a “hard look” at the potentially significant adverse environmental impacts that could result from the 42 Year Lease as required by SEQRA.

64. In order to conduct a proper SEQRA review, it is necessary to know or make reasonable assumptions regarding how the property will be used in the absence of the proposed action, as well as how it will be used if the proposed action is approved, including the intensity of such use, and for what period of time such use will continue.

65. Specifically, and as set forth below, the Legislature failed to adequately assess the potential environmental consequences of the 42 Year Lease by failing to fully consider the manner and intensity of use during the initial two years and the remaining 40 years of the 42 Year Lease term.

66. Moreover, as detailed further below, in their haste to approve the 42 Year Lease, Respondents failed to comply with the Nassau County Administrative Code Section 11-8.0.

67. Specifically, in making its recommendation to the Legislature, the Planning Commission failed to fully assess the terms and conditions of the 42 Year Lease and, as a result, improperly found the 42 Year Lease to be consistent with the criteria set forth in the Nassau County Master Plan and (ii) the “goals and requirements set forth in the documents referenced in Title

47(4)(a) of the Miscellaneous Laws of Nassau County.”

68. As a result, the 42 Year Lease is inconsistent with the Nassau County Master Plan and the goals and requirements set forth in the documents referenced in Title 47(4)(a) of the Miscellaneous Laws of Nassau County.

AS AND FOR A FIRST CAUSE OF ACTION
(Article 78 – Impermissible SEQRA Segmentation)

69. Petitioner-Plaintiff repeats and re-alleges each and every foregoing allegation with the same force and effect as if set forth at length herein.

70. The purpose of SEQR is “to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of State, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment ...” 6 NYCRR 617.1(c).

71. Pursuant to Nassau County Charter Section 1611, “[a]ll environmental review conducted by the Planning Commission or any other department or agency of the County shall comply” with SEQRA and the regulations promulgated pursuant thereto.

72. SEQRA regulations provide that “[a]ctions commonly consist of a set of activities or steps. The entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it.” 6 NYCRR 617.3(g).

73. “Considering only a part or segment of an action is contrary to the intent of SEQR.” 6 NYCRR 617.3(g)(1).

74. Here, the 42-Year Lease is one step in a set of activities and approvals that are required to be obtained by Sands in furtherance of the Casino Project.

75. The Legislature failed to comply with SEQRA by considering the 42 Year Lease

and considering the potential environmental impacts of same separate and apart from the Casino Lease because they are part of the same plan for the Premises, the Casino Project.

76. By impermissibly segmenting its review of the 42 Year Lease separate from the Casino Lease, the Legislature improperly determined that the 42 Year Lease would not result in potentially significant adverse environmental impacts and issued a Negative Declaration.

77. As a result of the foregoing, the Legislature's issuance of a Negative Declaration was in violation of SEQRA, the Legislature's issuance of a Negative Declaration should be declared null and void, and all further proceedings which followed as a result of that Negative Declaration, including the approval of the 42 Year Lease by the Legislature, and Nassau County entering into the 42 Year Lease with Sands, should also be declared null and void and the 42 Year Lease should be annulled.

AS AND FOR A SECOND CAUSE OF ACTION
(Article 78 – Failure to Take a “Hard Look” Under SEQRA)

78. The Petitioner-Plaintiff repeats and re-alleges each and every foregoing allegation with the same force and effect as if set forth at length herein.

79. SEQRA requires that agencies, including the Legislature, take a “hard look” at the potential environmental consequences of its action prior to taking such actions. This means that it must identify the relevant areas of environmental concern, thoroughly analyze them for significant adverse impact, and supported its determination with reasoned elaboration.

80. The Legislature failed to take the requisite “hard look” at the potential environmental impacts of the 42 Year Lease, and the Negative Declaration is arbitrary, capricious, contrary to law, and unsupported by substantial evidence for several reasons.

81. First, the EAF and Negative Declaration improperly relied on the unfounded assumption that the level of use and activity at the site in the absence of the 42 Year Lease will be

the “same” in the future as in the “current” and “historic” activity at the site. This assumption is deeply flawed and is not supported by the record.

82. Second, the Legislature failed to define the “no action” baseline against which the 42 Year Lease’s impacts purportedly were measured, rendering the analyses in the EAF meaningless and the conclusions in the Negative Declaration invalid.

83. Third, the Legislature also failed to define or analyze the full scope of activities permitted under the 42 Year Lease in the “with action” condition, which could range from a return to peak activity at the Coliseum and/or Premises – a level of activity not experienced in decades – to the complete elimination of activity at the site starting in year three of the 42 Year Lease term. Instead, it erroneously concluded that the 42 Year Lease would have no significant adverse impacts. To the contrary, a return to peak past practice could result in several significant adverse environmental impacts, including with respect to solid waste generation, water use, sanitary discharge, traffic, air quality, noise, and energy usage. On the other hand, a Coliseum that “goes dark” in year three of the 42 Year Lease term could result in significant adverse environmental impacts with respect to aesthetic resources and community character and would be inconsistent with Nassau County’s Comprehensive Master Plan. These potential significant adverse environmental impacts render the Negative Declaration arbitrary and capricious.

84. Fourth, the Legislature neglected to consider additional actions permitted by the 42 Year Lease, including a potential change in the purposes for which the site is used starting in year three if the site does not “go dark,” the potential for Sands to enter into up to five Severance Leases, and the construction work that Sands could undertake at the declining Coliseum, where there is asbestos and potentially also lead-based paint and other hazardous substances at the site.

85. Finally, the Legislature failed to analyze the significant cumulative impacts of the

42 Year Lease, ignoring the fact that that Lease is part of Sand’s well-publicized “long-range plan” to develop the Coliseum into the “Sands Integrated Resort,” as well as at least fifteen other planned developments in the area that should have been considered – the Casino Project.

86. In sum, the Legislature did not take a “hard look” at the potential environmental impacts of the 42 Year Lease, in violation of SEQRA. The 42 Year Lease has the potential to result in several significant adverse environmental impacts, which invalidates the Negative Declaration pursuant to 6 NYCRR 617.7.

87. As a result of the foregoing, the Legislature’s issuance of a Negative Declaration was arbitrary and capricious, the Legislature issuance of a Negative Declaration should be declared null and void, and all further proceedings which followed as a result of that negative declaration, including the approval of the 42 Year Lease by the Legislature, and Nassau County entering into the 42 Year Lease with Sands, should also be declared null and void and the 42 Year Lease should be annulled.

AS AND FOR A THIRD CAUSE OF ACTION
(Article 78 - Violation of Nassau County Administrative Code)

88. Petitioner-Plaintiff repeats and re-alleges each and every foregoing allegation with the same force and effect as if set forth at length herein.

89. Section 11-8.0 of the Nassau County Administrative Code provides that the Legislature shall not lease County-owned property until the Planning Commission has issued its recommendation, which shall include, consideration as to whether such lease would be consistent with (i) the criteria set forth in the Nassau County Master Plan and (ii) the “goals and requirements set forth in the documents referenced in Title 47(4)(a) of the Miscellaneous Laws of Nassau County.”

90. The following criteria, among others, are set forth in the Nassau County Master

Plan:

- a. “That the County '[s]trengthen the economy...by encouraging economic development activities which will provide jobs, increase the tax base, ensure a stable land use pattern, and diversify the County's employment sectors” (1998 Plan¹², p. VI-4);
 - b. “That the County '[s]upport initiatives which are targeted at strengthening and improving the County's downtowns and Centers.” (1998 Plan, p. VI-15);
 - c. “That the County '[s]upport and enhance the cultural facilities, services, programs and events in the County to improve the quality of life and encourage tourism.” (1998 Plan, p. VII-4);
 - d. “That the County 'should additionally promote its wide range of cultural, historic, and retail destinations to maximize the economic strength of its tourism industry.” (2003 Plan¹³, p. 45).
91. The Coliseum has been and continues to be an important cultural and recreation resource.
92. In fact, Part 1 of the EAF prepared for the SEQRA review of the 42 Year Lease provides that the Coliseum is listed as a “cultural facility” in the Nassau County Open Space Plan. **See Exhibit G.**
93. Section 10.6(b) of the 42 Year Lease provides that “[f]rom and after the first (1st) day of the third (3rd) Lease Year of the Lease Term, Tenant shall have the right at any time, and from time to time to cease the ongoing operation of the Coliseum and ‘go dark.’” **Exhibit A** at § 10.6(b).
94. If exercised, the “go-dark” right set forth in the 42 Year Lease, could result in the

¹² See also Nassau County Planning Commission, *Nassau County Comprehensive Plan (Dec. 1998)*, at II-10 (the “1998 Plan”), available at <https://www.askarcnassau.com/DocumentCenter/View/2775/1998ComprehensiveMasterPlanCompletereduced?bidId=> (last visited Dec. 3, 2024).

¹³ 2003 Update of the Nassau County Comprehensive Plan, Jan. 12, 2004 (the “2003 Plan”), available at <https://www.askarcnassau.com/DocumentCenter/View/2777/MASTERPLANREVISIONDRAFTMay192004?bidId=> (last visited Dec. 3, 2024).

Coliseum remaining dormant for approximately 25 years of the remaining initial term of the 42 Year Lease, and up to 40 years if Sands' renewal options were exercised. Id.

95. If Sands was to exercise the "go-dark" right set forth in the 42 Year Lease, this would be inconsistent with the above-referenced Nassau County Master Plan criteria. To wit, allowing the facility to "go-dark" would: (i) stifle economic activity in the area, (ii) hinder development of the County's Hub, (iii) detract from the cultural events, services, programs that would otherwise take place at the Coliseum, and (iv) eliminate cultural, historic, and retail destination that would otherwise help maximize the economic strength of the County's tourism industry.

96. By failing to adequately consider the Nassau County Master Plan and the criteria set forth therein when assessing the 42 Year Lease, the Planning Commission violated Nassau Administrative Code Section 11-8.0

97. Had the Planning Commission fully assessed the 42 Year Lease as required by Nassau County Administrative Code Section 11-8.0, and, in particular the "go dark" provision, the Planning Commission would have concluded that the 42 Year Lease was inconsistent with the goals and objectives of the Nassau County Master Plan.

98. Had the Planning Commission properly assessed the terms and conditions of the 42 Year Lease and weighed them against the criteria in the Nassau County Master Plan, the 42 Year Lease would have been found to be inconsistent with the Nassau County Master Plan.

99. Additionally, one of the goals and requirements set forth in the documents referenced in Title 47(4)(a) of the Miscellaneous Laws of Nassau County is "whether the project will preserve, protect, restore and enhance environmentally sensitive areas or new or existing recreational lands, including open space, parks, cultural resources, historic and archeological

properties ...”

100. If exercised, the “go-dark” provision of the 42 Year Lease would be inconsistent with the preservation of the recreational lands, open space and cultural resources.

101. As such, had the Planning Commission properly assessed the terms and conditions of the 42 Year Lease and applied same to the criteria set forth in Title 47(4)(a) of the Miscellaneous Laws of Nassau County as required by Nassau County Administrative Code Section 11-8.0, it would have concluded that the 42 Year Lease was inconsistent with those standards and criteria.

102. The Planning Commission acted arbitrarily, capriciously and in violation of Nassau County Administrative Code Section 11-8.0 by finding that the 42 Year Lease was consistent with the Nassau County Master Plan and the criteria set forth in Title 47(4)(a) of the Miscellaneous Laws of Nassau County in its recommendation to the Legislature.

103. By adopting the recommendations of the Planning Commission in reliance upon the Planning Commission’s arbitrary, capricious and illegal determination, the Legislature also acted arbitrarily, capriciously and in violation of Nassau County Administrative Code Section 11-8.0.

104. As a result of the foregoing, the Legislature’s approval of the 42 Year Lease and Nassau County entering into the 42 Year Lease with Sands, should be declared null and void and the 42 Year Lease should be annulled.

AS AND FOR A FOURTH CAUSE OF ACTION
(Violation of the New York State Constitution)

105. Petitioner-Plaintiff repeats and re-alleges each and every foregoing allegation with the same force and effect as if set forth at length herein.

106. Article VIII, Section 1 of the New York State Constitution prohibits a gift of County Property in aid of a private entity.

107. In the present case, in or around March 2024 the Legislature authorized the Permit with Sands, allowing Sands to control the valuable 72-acre property for 1 year for, upon information and belief, the nominal consideration of \$1.00 (One Dollar).

108. The purpose of Nassau County granting the Permit to Sands was to provide Sands with access and control over the Premises so as to bolster Sands' chances to obtain a downstate casino license and operate a casino on the Premises in furtherance of the Casino Project.

109. The value of the Permit far exceeded the \$1.00 charged by Nassau County.

110. The Permit served no public purpose and its benefit inured solely to Sands and its pursuit of a downstate gaming license in furtherance of the Casino Project.

111. For the reasons forth above, the Permit violated Article VIII, Section 1's prohibition of gifts to private entities and the Permit should be declared void and annulled.

FIFTH CAUSE OF ACTION
(Declaratory Judgment – Declaring 42 Year Lease
Void and of No Further Force or Effect)

112. Petitioner-Plaintiff repeats and re-alleges each and every foregoing allegation with the same force and effect as if set forth at length herein.

113. Pursuant to CPLR Sec. 3001, Petitioner-Plaintiff is entitled to a declaration declaring the 42 Year Lease null, void and of no further force or effect.

WHEREFORE, Petitioner-Plaintiff Incorporated Village of Garden City respectfully requests that this Court issue a judgment:

1. On the First Cause of Action: (A) declaring the Legislature's issuance of a Negative Declaration is in violation of SEQRA, arbitrary and capricious and/or an abuse of discretion, was made in violation of lawful procedure and/or was affected by an error of law; and (B) all further proceedings which followed as a result of that Negative Declaration, including the approval of the

42 Year Lease by the Legislature, and Nassau County entering into the 42 Year Lease with Sands, should also be declared null and void and the 42 Year Lease should be annulled;

2. On the Second Cause of Action: (A) declaring the Legislature's issuance of a Negative Declaration is in violation of SEQRA, arbitrary and capricious and/or an abuse of discretion, was made in violation of lawful procedure and/or was affected by an error of law; and (B) all further proceedings which followed as a result of that Negative Declaration, including the approval of the 42 Year Lease by the Legislature, and Nassau County entering into the 42 Year Lease with Sands, should also be declared null and void and the 42 Year Lease should be annulled;

3. On the Third Cause of Action: (A) declaring that the Planning Commission acted arbitrarily, capriciously and/or an abuse of discretion, and was made in violation of Nassau County Administrative Code Section 11-8.0 by finding that the 42 Year Lease was consistent with the Nassau County Master Plan and the criteria set forth in Title 47(4)(a) of the Miscellaneous Laws of Nassau County in its recommendation to the Legislature; and (B) the approval of the 42 Year Lease by the Legislature, and Nassau County entering into the 42 Year Lease with Sands, should also be declared null and void and the 42 Year Lease should be annulled;

4. On the Fourth Cause of Action, declaring the Legislature's authorization of the Permit to be in violation of Article VIII, Section 1 of the New York State Constitution's prohibition of gifts to private entities, and is null and void;

5. On the Fifth Cause of Action, declaring the 42 Year Lease null and void;

6. Awarding the Petitioner-Plaintiff its costs and disbursements in this hybrid proceeding and action; and

7. Granting such other and further relief as the Court deems just and proper.

Dated: December 5, 2024
Uniondale, New York

CULLEN AND DYKMAN LLP

By: /s/ Gerard Fishberg

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*Attorneys for Petitioner-Plaintiff
Incorporated Village of Garden City*

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

MARY CARTER FLANAGAN, being duly sworn, deposes and states:

That she is the Mayor of the INCORPORATED VILLAGE OF GARDEN CITY, the Petitioner-Plaintiff named in the foregoing Verified Petition and Complaint; that she has read said Verified Petition and Complaint and that the contents thereof are true to her knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters she believes the same to be true.

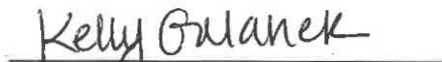
That the reason this verification is made by deponent, and not by said Petitioner-Plaintiff, is because the said Petitioner-Plaintiff is a municipal corporation.

That the grounds of deponent's belief as to all matters in said Verified Petition and Complaint not stated upon her knowledge, are investigations which she has caused to be made concerning the subject matter of this proceeding, and information acquired by her in the course of her duties as Mayor, and from the records and papers of Petitioner-Plaintiff.


MARY CARTER FLANAGAN

MAYOR OF THE INCORPORATED
VILLAGE OF GARDEN CITY

Sworn to me before this
5 day of December 2024


Notary Public

KELLY GALANEK
Notary Public, State of New York
NO. 01GA0021787
Qualified in Nassau County
Commission Expires 03/05/2028