

STATE OF NEW YORK
SUPREME COURTMONROE COUNTY

BRIGHTON GRASSROOTS, LLC,

vs.

Petitioner/
Plaintiff,

TOWN OF BRIGHTON PLANNING BOARD,
TOWN OF BRIGHTON TOWN BOARD,
TOWN OF BRIGHTON,
M&F, LLC; DANIELE SPC, LLC;
MUCCA MUCCA LLC; MARDANTH
ENTERPRISES, INC.; DANIELE
MANAGEMENT, LLC; COLLECTIVELY
DOING BUSINESS AS DANIELE FAMILY
COMPANIES; ROCHESTER GAS AND
ELECTRIC CORPORATION; NMS ALLENS
CREEK, INC.; THE FIRST BAPTIST CHURCH
OF ROCHESTER; ATLANTIC HOTEL GROUP,
INC.; 2717 MONROE AVENUE, LLC; MAMASAN'S
MONROE, LLC; PLUM GARDEN 66, INC.;
2799 MONROE AVENUE, LLC; QING KAI SUN;
2815 MONROE RETAIL LLC;
2835 MONROE HOLDINGS LLC; 2875 MONROE
CLOVER, LLC; MONROE OFFICE SUITES, LCC;
CLOVERPARK LIMITED PARTNERSHIP; NEW YORK STATE
DEPARTMENT OF TRANSPORTATION;
JOHN DOES 1- 20; AND ABC CORPORATIONS 1-20,

Index No. E2018007330

Respondents/
Defendants.

VERIFIED PETITION AND COMPLAINT

Petitioner/plaintiff ("Petitioner"), by its attorneys, The Zoghlin
Group PLLC, complains of Respondents/Defendants ("Respondents") as
follows:

I. INTRODUCTION

1. This is a combined Declaratory Judgment and Article 78 proceeding to challenge the Town of Brighton Planning Board's (the "Planning Board") decision to adopt the Findings Statement (the "Findings Statement") pursuant to the New York State Environmental Quality Review Act ("SEQRA") for the Whole Foods Plaza project (the "Action" or "Proposed Development") without complying with, among other things, SEQRA, New York Town Law section 90, and New York State Open Meetings Law.

2. The Planning Board adopted the Findings Statement without understanding key aspects of the Proposed Development, including:

- a) Whether the Whole Foods store would include Amazon lockers,
- b) Whether the Whole, Foods store would include "click-and-collect" curbside shopping,
- c) Whether the Whole, Foods store would include Amazon Prime Now App curbside pickup, and
- d) Whether the Whole Foods Store would include a restaurant and/or pub.

3. The Planning Board's decision to approve the Findings Statement also implicitly approved the Town and Developer's¹ plan to abandon a Recreation Easement and let the Developer incorporate that property into its private 450-car parking lot for the Proposed

¹ "Developer" refers to the Daniele Family Companies and related entities who submitted applications for municipal approvals for the Proposed Development.

Development, without following the requisite legal requirements (the “Recreation Easement Abandonment”).

4. The Planning Board’s implicit approval of the Recreation Easement Abandonment improperly conveyed public parkland without prior state legislative approval.

5. The Recreation Easement Abandonment was also an implicit approval by the Planning Board of the Town’s conveyance of a real estate interest without affording the public the right to a permissive referendum pursuant to NY Town Law § 90 et seq.

6. During the August 15, 2018 Planning Board meeting, Chairman William Price admitted that the Planning Board conducted private work sessions regarding the Proposed Development in violation of the Open Meetings Law.

7. Petitioner seeks an order pursuant to CPLR Article 78 and 3001 et seq.:

- a) annulling and vacating the Findings Statement;
- b) annulling and vacating the August 15, 2018 Resolution adopting the Findings Statement (the “SEQRA Resolution”);
- c) of mandamus directing the Town Planning Board to make its approval subject to the Developer obtaining state legislative approval for the Recreation Easement Abandonment as required by New York’s Public Trust Doctrine;
- d) of mandamus directing the Town Planning Board to make its approval subject to the public’s right to a permissive referendum pursuant to NY Town Law 90;
- e) annulling and vacating all related actions;

- f) temporarily and permanently enjoining Respondents from taking any action regarding approvals for the Proposed Development without first complying with the provisions of SEQRA, and New York Environmental Conservation Law (“ECL”), section 8-0101 et seq.;
- g) temporarily and permanently enjoining the Respondents from conducting any activities/site work with respect to the Proposed Development during the pendency of this action;
- h) determining that the Planning Board’s conduct with respect to the Action violated New York’s Open Meetings Law; and
- i) awarding petitioner its attorneys’ fees, costs and disbursements, together with such other and further relief as this court deems just and proper.

II. THE PARTIES

8. Brighton Grassroots, LLC (“Brighton Grassroots”) is a domestic limited liability company organized and existing under the laws of the state of New York and is authorized to do business in New York. It is comprised of Town of Brighton residents who share the values and objectives of the organization, and has broad community support as evidenced by, among other things, the approximately 500 residents who came to the Town Board’s February 28, 2018 public hearing to object to the Town Board approving this Project under Incentive Zoning instead of applying the standard protections of the zoning code.

9. Brighton Grassroots was formed to, among other things, advance by any legal means community betterment of the Town of Brighton. It advocates for open, honest and transparent local government and adherence to local zoning, land use and other laws. It engages in education, litigation, and advocacy related thereto.

10. Brighton Grassroots believes it was unlawful for the Planning Board to adopt a SEQRA Findings Statement for the Proposed Development because the Planning Board did not satisfy its independent obligations under SEQRA, New York Town Law, and the Open Meetings Law.

11. Brighton Grassroots believes it was unlawful for the Planning Board to conduct private workshop sessions to discuss the Proposed Development without complying with the Open Meetings Law.

12. Since its inception, Brighton Grassroots has informed the public about issues related to approvals for the Proposed Development, informed the public about municipal conduct that lacked transparency and violated the Open Meetings Law, attended Town Board and Planning Board meetings to advance the interests of its members, published articles and comments related to the Proposed Development, and attended community events to engage the public in issues germane to its purpose.

13. Brighton Grassroots is prosecuting a combined Article 78/ declaratory judgment action to challenge the Town Board's municipal decisions to adopt a SEQRA Findings Statement and approve the developer's incentive zoning application violation of Incentive Zoning Laws in related litigation entitled *Brighton Grassroots et al v. Town of Brighton et al*, Index No. E2018002961 (Monroe County Supreme Court) (*"BGR I"*).

14. Brighton Grassroots constituents come from the entire Brighton community (and, increasingly, parts of Pittsford). Many of Brighton Grassroots' members reside in the immediate area that would be directly and adversely affected by the facts and circumstances pleaded herein, and many of its members also regularly use the segment of the recreational trail commonly referred to as the Auburn Trail that runs between Allens Creek Road and Clover Street in the Town of Brighton, and therefore have an interest different from the public at large. Several of Brighton Grassroots' members reside within 500 feet or less of the Proposed Development.

15. The interests sought to be protected by Brighton Grassroots are germane to its purposes.

16. Howard R. Jacobson ("Jacobson"), Lisa Whittemore ("L. Whittemore"), Norman Whittemore ("N. Whittemore"), Margery Hwang ("Hwang"), Roberta Kerry Sharick ("Sharick"), David Grant ("Grant"), Anthony Kinslow ("Kinslow"), Dr. Peter Mulbery ("Mulbery") and Lindsay Duell ("Duell") are members of petitioner Brighton Grassroots.

17. Hwang, Kerry, Grant, Kinslow, Mulbery, L. Whittemore, N. Whittemore and Duell all reside in close proximity to the intersection of Clover Street and Allens Creek Road, and frequently use that intersection to go to and from their homes and work.

18. Jacobson resides at 10 Sandringham, Town of Brighton. Jacobson resides approximately 1.2 miles north and east of the Proposed

Development. Jacobson bicycles the Auburn Trail in the vicinity of the Proposed Development a couple of times every month, weather permitting. The Proposed Development, including relocating the Auburn Trail, will damage Jacobson's use and enjoyment of the Auburn Trail. Jacobson is the Managing Member of Brighton Grassroots.

19. L. Whittemore resides at 2262 Clover Street, Town of Brighton. The Whittemore residence is directly across Clover Street from the Project Site Location. L. Whittemore will suffer adverse visual impacts from the Proposed Development, including development of vacant property into a commercial parking lot. The Proposed Development will result in increased noise and traffic at and around L. Whittemore's home and will degrade the character of her neighborhood and her quality of life. L. Whittemore is a Member of Brighton Grassroots.

20. N. Whittemore resides at 2262 Clover Street, Town of Brighton. The Whittemore residence is directly across Clover Street from the Project Site Location. N. Whittemore will suffer adverse visual impacts from the from the Proposed Development, including development of vacant property into a commercial parking lot. The Proposed Development will result in increased noise and traffic at and around N. Whittemore's home and will degrade the character of his neighborhood and his quality of life. N. Whittemore is a Member of Brighton Grassroots.

21. Hwang resides at 2230 Clover Street, Town of Brighton. The Hwang residence is directly across the street from the Project Site Location. Hwang will suffer adverse visual impacts from the Proposed Development, including the development of vacant property into a commercial parking lot. The Proposed Development will result in increased noise and traffic at and around Hwang's home and will degrade the character of her neighborhood and her quality of life. Hwang is a Member of Brighton Grassroots.

22. Sharick resides at 10 Schoolhouse Lane, Town of Brighton. The Sharick residence is across Allens Creek Road from the Recreational Trail/Project Site Location. Sharick will suffer adverse visual impacts from the Proposed Development, including the development of vacant property into a commercial parking lot. The Proposed Development will result in increased noise and traffic at and around Sharick's home and will degrade the character of her neighborhood and her quality of life. Sharick is a Member of Brighton Grassroots.

23. Grant resides at 10 Schoolhouse Lane, Town of Brighton. The Grant residence is across Allens Creek Road from the Recreational Trail/Project Site Location. Grant will suffer adverse visual impacts from the Proposed Development, including the development of adjacent vacant property into a commercial parking lot. The Proposed Development will result in increased noise and traffic at and around Grant's home and will degrade the character of his neighborhood and his quality of life. Grant

and his wife Roberta walk on the Auburn Trail in the vicinity of the Proposed Development daily. The Proposed Development, including relocating the Auburn Trail, will damage Grant's use and enjoyment of the Auburn Trail. Grant is a Member of Brighton Grassroots.

24. Kinslow resides at 265 Allens Creek Road. The Kinslow residence is approximately 950 feet from the Project Site Location. Kinslow will suffer adverse visual impacts from the Proposed Development, including the development of vacant property into a commercial parking lot. The Proposed Development will result in increased noise and traffic at and around Kinslow's home and will degrade the character of his neighborhood and his quality of life. Kinslow is a Member of Brighton Grassroots.

25. Mulbery resides at 295 Allens Creek Road. The Mulbery residence is approximately 1,000 feet from the Project Site Location. The Proposed Development will result in increased noise and traffic at and around Mulbery's home and will degrade the character of his neighborhood and his quality of life. Mulbery is a Member of Brighton Grassroots.

26. Duell resides at 59 Shoreham Drive, Town of Brighton. The Duell residence is across Clover Street from the Project Site Location. Duell will suffer adverse visual impacts from the Proposed Development, including the development of vacant property into a commercial parking lot. The Proposed Development will result in increased noise and traffic

at and around Duell's home and will degrade the character of her neighborhood and her quality of life. Duell jogs the Auburn Trail in the vicinity of the Proposed Development 2-3 times per week unless there is snow on the ground. In addition, during the summer months Duell takes her three young children on family walks on the Auburn Trail in the vicinity of the Proposed Development weekly. The Proposed Development, including relocating the Auburn Trail, will damage Duell's use and enjoyment of the Auburn Trail. Duell is a Member of Brighton Grassroots.

27. Respondent Town of Brighton Planning Board (the "Planning Board") is the Planning Board of the Town of Brighton, New York and maintains an office at 2300 Elmwood Avenue, Rochester, New York 14618.

28. Respondent Town of Brighton is a municipal corporation organized and existing under New York Town Law, with offices at 2300 Elmwood Avenue, Town of Brighton, Monroe County, New York.

29. Respondent Town Board of the Town of Brighton, New York (the "Town" and/or the "Town Board") is the governing board of the Town of Brighton, New York and maintains an office at 2300 Elmwood Avenue, Rochester, New York 14618.

30. Upon information and belief, Respondent-Defendant M&F, LLC ("M&F") is a foreign limited liability company organized and existing under the laws of the State of Nevada, authorized to do business in the

state of New York with a principal place of business at 2851 Monroe Avenue, Rochester, New York.

31. Upon information and belief, Respondent-Defendant Daniele SPC, LLC ("Daniele SPC") is a domestic limited liability company organized and existing under the laws of the State of New York with a principal place of business at 2851 Monroe Avenue, Rochester, New York.

32. Upon information and belief, Respondent-Defendant Mucca LLC ("Mucca Mucca") is a domestic limited liability company organized and existing under the laws of the State of New York with a principal place of business at 2851 Monroe Avenue, Rochester, New York.

33. Upon information and belief, Respondent/Defendant Mardanth Enterprises, Inc. ("Mardanth") is a domestic business corporation organized and existing under the laws of the State of New York with a principal place of business at 2851 Monroe Avenue, Rochester, New York.

34. Upon information and belief, Respondent Daniele Management LLC ("Daniele Management") is a domestic limited liability company organized and existing under the laws of the State of New York with a principal place of business at 2851 Monroe Avenue, Rochester, New York.

35. Upon information and belief, Respondents-Defendants M&F, Daniele SPC, Mucca, Daniele Management, and Mardanth collectively do

business as The Daniele Family Companies (the “Developer” or “Applicant”) and are all under common ownership and control and, individually and/or collectively are the owners/developers (collectively, the “Developer”) of the Proposed Development.

36. Upon information and belief, Respondent-defendant Rochester Gas and Electric Corporation (“RG&E”) is a domestic corporation organized and existing under the laws of the State of New York, with a principal place of business at 89 East Avenue, Rochester, New York. RG&E is named herein solely as a potentially necessary party to these proceedings because the Developer has proposed improvements to RG&E’s property in connection with the Proposed Development.

37. Upon information and belief, respondent-defendant NMS Allens Creek, Inc. (“NMS”) is a domestic corporation organized and existing under the laws of the State of New York, with a principal place of business at 10 Pine Acres Drive, Rochester, New York. Upon information and belief, NMS owns certain real property commonly known as 95 Allens Creek Road, Town of Brighton and has a property interest in the Recreational Easement at issue herein. NMS is named herein solely as a potentially necessary party to these proceedings.

38. Upon information and belief, First Baptist Church of Rochester (the “Church”) is a religious corporation with offices at 175 Allens Creek Road. The Church owns certain real property at 175 Allens Creek Road, Town of Brighton and has expressed an interest in

conveying or leasing a portion of that land to the Daniele Family Corporations in connection with the Proposed Development. The Church is named herein solely as a potentially necessary party to these proceedings.

39. Upon information and belief, Atlantic Hotel Group, Inc., (“Atlantic”) is a domestic corporation organized and existing under the laws of the State of New York, with a principal place of business at 2729 Monroe Avenue, Rochester, New York. Upon information and belief, Atlantic owns certain real property commonly known as 2729 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location. Atlantic is named herein solely as a potentially necessary party to these proceedings.

40. Upon information and belief, 2717 Monroe Avenue, LLC (“2717 Monroe”) is a domestic limited liability company corporation organized and existing under the laws of the State of New York, with a Department of State (“DOS”) process address at 16 East Main Street, Suite 300, Rochester, New York 14614. Upon information and belief, 2717 Monroe owns certain real property commonly known as 2717 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location. 2717 Monroe is named herein solely as a potentially necessary party to these proceedings.

41. Upon information and belief, Mamasan’s Monroe, LLC (“Mamasan’s”) is a domestic limited liability company corporation

organized and existing under the laws of the State of New York, with a principal place of business at 2800 Monroe Avenue, Rochester, New York. Upon information and belief, Mamasan's owns certain real properties commonly known as 2735 Monroe Avenue and 2787 Monroe Avenue, Town of Brighton, which are part of the Off-Site Project Location. Mamasan's is also the applicant for zoning approvals with respect to 2735 and /or 2787 Monroe Avenue. Mamasan's is named herein solely as a potentially necessary party to these proceedings.

42. Upon information and belief, Qing Kai Sun ("Sun") is an individual residing at 18 Rollins Crossing, Pittsford, New York 14534. Upon information and belief, Sun owns certain real property commonly known as 2775 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location. Sun is named herein solely as a potentially necessary party to these proceedings.

43. Upon information and belief, Plum Garden 66, Inc. ("Plum Garden") is a domestic corporation organized and existing under the laws of the State of New York, with a DOS address at 2775 Monroe Avenue, Rochester, New York. Upon information and belief, Plum Garden has an ownership interest in 2775 Monroe Avenue, which is part of the Off-Site Project Location. Plum Garden is named herein solely as a potentially necessary party to these proceedings.

44. Upon information and belief, 2799 Monroe Avenue, LLC ("2799 Monroe") is a domestic limited liability company corporation

organized and existing under the laws of the State of New York, with a DOS address of 2851 Monroe Avenue, Rochester, New York 14618.

Upon information and belief, 2799 Monroe owns certain real property commonly known as 2799 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location. 2799 Monroe is named herein solely as a potentially necessary party to these proceedings.

45. Upon information and belief, 2815 Monroe Retail Office LLC ("2815 Monroe Retail") is a domestic limited liability company, owner of real property located at 2815 Monroe Avenue, and has a DOS address at 2851 Monroe Avenue, Rochester, New York 14618. 2815 Monroe Retail is named herein solely as a potentially necessary party to these proceedings.

46. Upon information and belief, 2835 Monroe Holdings LLC ("2835 Monroe") is a domestic limited liability company corporation organized and existing under the laws of the State of New York, with a DOS address at 2835 Monroe Avenue, Rochester, New York 14618. Upon information and belief, 2835 Monroe owns certain real property commonly known as 2835 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location. 2835 Monroe is named herein solely as a potentially necessary party to these proceedings.

47. Upon information and belief, 2875 Monroe Clover, LLC ("2875 Monroe") is a domestic limited liability company corporation organized and existing under the laws of the State of New York, with a

DOS address at 2851 Monroe Avenue, Rochester, New York. Upon information and belief, 2875 Monroe owns certain real property commonly known as 2875 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location. 2875 Monroe is named herein solely as a potentially necessary party to these proceedings.

48. Upon information and belief, Monroe Office Suites, LLC (“Monroe Office”) is a domestic limited liability company corporation organized and existing under the laws of the State of New York, with a DOS address at 2740 Monroe Avenue, Rochester, New York. Upon information and belief, Monroe Office Suites owns certain real property commonly known as 2851 Monroe Avenue, Town of Brighton, which is part of the Off-Site Project Location. Monroe Office is named herein solely as a potentially necessary party to these proceedings.

49. Upon information and belief, Cloverpark Limited Partnership (“Cloverpark”) is a foreign limited partnership organized and existing under the laws of the State of Idaho, with a DOS address at 2425 Clover Street, Rochester, New York 14618. Upon information and belief, Cloverpark owns certain real property commonly known as 2425 Clover Street, Town of Brighton, which is part of the Off-Site Project Location. Cloverpark is named herein solely as a potentially necessary party to these proceedings.

50. Upon information and belief, New York State Department of Transportation (“NYS DOT”) is a department of New York State and has

an interest in property that is part of the Off-Site Project Location. NYS DOT is named herein solely as a potentially necessary party to these proceedings because the Developer has proposed to acquire NYS DOT's property in connection with the Proposed Development.

51. John Does are other persons or entities that may be necessary parties to this action that have not yet presently been identified.

52. ABC Corps. are other persons or entities that may be necessary parties to this action that have not yet presently been identified.

III. THE SITE/PROJECT LOCATIONS

53. The Proposed Development involves the construction of 83,700 SF of retail uses, including a 50,000± square foot grocery store, and 33,700± square feet of retail space, including a Starbucks with a drive thru, all on a 10.1- acre parcel of land on Monroe Avenue near the intersection with Clover Street.

54. The 10.1- acre Site Project Location crosses two zoning districts. 7.04 acres is within the BF-2 (commercial) zoning district and 3.06 acres encroaches into the adjacent RLA (low density residential) zoning district abutting Clover Street and the residential homes nearby. The subject zoning districts (and especially the residential zoning district) do not permit the uses and/or sizes contemplated by the Project.

55. The Proposed Development has been described as having an “On-Site Project Location” and an “Off-Site Project Location.”

(a) The On-Site Project Location

56. The “On-Site Project Location” consists of the above-referenced 10.1 acres on the north side of Monroe Avenue approximately 600’ west of Clover Street and 1600’ east of NYS Route 590, and upon which the 83,700 square foot Development would be located.

57. The On-Site Project Location includes a metes and bounds recreational easement granted to the Town of Brighton and the public for the purpose of “pedestrian use by [the Town] its licensees, and the public and to thereafter construct, reconstruct, extend, operate, inspect, maintain, repair and replace a pedestrian pathway which the [Town] shall require for public use across said land” (the “Recreation Easement”).

58. The Recreation Easement is established by:

- A. Easement from Monroe Real Estate Limited Liability Company to the Town of Brighton dated February 26, 1997 and recorded in the Monroe County Clerk’s Office at on March 14, 1997 at liber 8847 of Deeds, page 175 (“Exhibit A”);
- B. Easement from Executive Square Office Park, LLC to the Town of Brighton dated October 17, 2001 and recorded in the Monroe County Clerk’s Office at on October 24, 2001 at liber 9531 of Deeds, page 433 (Exhibit “B”);
- C. Easement from Clover Lanes Inc. to the Town of Brighton dated October 28, 2001 and recorded in the Monroe County Clerk’s Office at on October 24, 2001 at liber 9531 of Deeds, page 441 (Exhibit “C”); and
- D. Easement from Mamasan’s Monroe, LLC to the Town of Brighton

dated October 1, 2003 and recorded in the Monroe County Clerk's Office at on October 21, 2003 at liber 9865 of Deeds, page 28 (Exhibit "D").

59. The Recreation Easement is approximately 1/3- mile long and ten feet wide and is part of the longer 9.1- mile Auburn Trail linear park that runs from Victor to Farmington.

60. The Developer proposes to convert the Recreation Easement to a paved parking area of the Proposed Development and construct a new trail to replace it (the "Recreation Easement Abandonment"). The Planning Board's SEQRA Findings Statement implicitly approves the Recreation Easement Abandonment.

(b) The Off-Site Project Location

61. The "Off-Site Project Location" consists of all of the properties south of Monroe Avenue from Route 590 to Clover Street, directly across from the Site Project location.

62. The Off-Site Project Location would be used for off-site traffic improvements that are intended to help mitigate the very significant adverse traffic impacts that the Proposed Development would generate.

63. The off-site traffic improvements are set forth in an "Access Management Plan" (the "AMP") that is intended to channel traffic from the properties located south of Monroe Avenue to the new traffic signal at the eastern exit from the Proposed Development.

IV. THE APPLICATION PROCESS

64. On February 18, 2015, the Developer submitted a request to the Town Board for Incentive Zoning approval for the Proposed Development, seeking to avoid the standard zoning process that would have required the Developer to obtain dozens of permits/approvals.

65. On January 24, 2018 the applicant submitted, and the Town Board accepted, the Final Environmental Impact Statement ("FEIS") for the Proposed Development.²

66. The Developer submitted an amended Letter of Intent on March 21, 2018, in which it agreed to reduce the project size by 6300 SF.

67. On March 28, 2018, the Town Board passed Resolutions approving the Incentive Zoning application and SEQRA Findings Statement.³

68. Brighton Grassroots commenced *BGR I* to challenge the Town Board Resolutions approving the Incentive Zoning application and SEQRA Findings Statement.

69. The Developer then submitted the following applications to the Planning Board in furtherance of the Proposed Development:

- A. Preliminary and Final Site plan approval to for site plan approval to construct five buildings totaling 83,700 SF in a retail plaza on the north side of Monroe Avenue, including a 50,000 SF Whole

² The FEIS can be accessed at <https://www.townofbrighton.org/DocumentCenter/View/8472/WHOLE-FOODS-Plaza-FEIS-01242018-Accepted>.

³ The Town Board resolution adopting the DEQRA Findings Statement can be accessed at https://www.townofbrighton.org/DocumentCenter/View/8599/WF-Plaza-Findings-Statement3_28_2018_Adopted-by-TB. The Town Board resolution approving the Incentive Zoning application can be accessed at <https://www.townofbrighton.org/DocumentCenter/View/8600/WholeFoods-Plaza-IZ-Application-Approved-March-28-2018>.

Foods store and a 2000 SF drive-thru coffee shop on the Project Site Location (the "Site Plan Application").

- B. Site plan modification to construct shared parking and access, known as the Access Management Plan, on and across the Off-Site Project Location (the "AMP Approval");
- C. Demolition review and approval to raze a vacant 10,800 SF restaurant and a vacant 44,600 SF bowling alley on the Project Site Location (the "Mamasan's and Clover Lanes Demo Review");
- D. Demolition review and approval to raze the vacant Mario's Restaurant on the Project Site Location (the "Mario's Demo Application");
- E. Preliminary and Final subdivision / resubdivision approval to combine and reconfigure several lots into two properties on the Project Site Location (the "Subdivision Approval");
- F. Preliminary and Final subdivision / resubdivision approval to create two lots from one on property located at 175 Allens Creek Road (the "Allens Creek Resubdivision") combine and reconfigure several lots into two properties on the Project Site Location;

The Site Plan Application, AMP Approval, Mamasan's and Clover Lanes Demo Application, Subdivision Approval, and Allens Creek Resubdivision are referred to collectively as the "Planning Board Applications."

70. On August 15, 2018 the Planning Board issued SEQRA Findings Statement with respect to the Planning Board Applications and approved demolition permits for buildings in the On Site Project Location. The Planning Board's resolution adopting the Findings Statement is attached hereto and incorporated herein as "Exhibit E."

71. This litigation ensues.

V. PROCEDURAL PREREQUISITES

72. Petitioner exhausted its administrative remedies.

73. Petitioner has no adequate remedy at law.

74. No previous application has been made for the relief sought herein.

VI. JURISDICTION AND VENUE

75. This Court has jurisdiction over this special proceeding/ action pursuant to CPLR Articles 78 and 30.

76. Venue is proper in Monroe County pursuant to CPLR sections 503, 504, 506(b), 507, and 7804(b).

FIRST CAUSE OF ACTION THE PLANNING BOARD VIOLATED THE OPEN MEETINGS LAW

77. Petitioner repeats and realleges paragraphs 1 – 76 as if set forth herein at length.

78. At the August 15, 2018 Planning Board meeting, the Planning Board Chair publicly announced that the Planning Board met in between public meetings to conduct working sessions in which the Board spent “many hours” reviewing and discussing pending applications, including the Planning Board Applications (the “Working Sessions”).

79. A quorum of Planning Board members attended the Working Sessions.

80. The Working Sessions were not publicly noticed open meetings.

81. The Working Sessions violated the Open Meetings Law.

82. Consequently, the Planning Board’s resolution adopting the

Findings Statement must be set aside and petitioner is entitled to reasonable attorneys' fees and other litigation costs pursuant to Public Officers Law section 89(c)(4).

**SECOND CAUSE OF ACTION
MANDAMUS TO CONDITION PLANNING BOARD APPROVALS ON
STATE LEGISLATIVE APPROVAL**

83. Petitioner repeats and realleges paragraphs 1 – 82 as if set forth herein at length.

84. Park areas in New York are impressed with a public trust.

85. The Town of Brighton holds the Recreation Easement in trust for the people of New York State.

86. As trustee, the Town has a fiduciary obligation to preserve and protect the trust corpus (Recreation Easement).

87. The Recreation Easement Abandonment would result in the conversion of public parkland to a private parking lot.

88. By adopting a Findings Statement that authorizes the Recreation Easement Abandonment, the Planning Board is breaching its fiduciary obligation to the people of New York State to protect and preserve it.

89. Therefore, petitioner is entitled to an order of mandamus directing the Planning Board to make any approval subject to the Town and/or Developer obtaining state legislative approval for the proposed abandonment and/or relocation of the Recreation Easement as required by New York's Public Trust Doctrine.

**THIRD CAUSE OF ACTION
MANDAMUS TO CONDITION PLANNING BOARD APPROVALS ON A
PERMISSIVE REFERENDUM**

90. Petitioner repeats and realleges paragraphs 1 – 89 as if set forth herein at length.

91. The Recreation Easement Abandonment is subject to the public's right to petition for a permissive referendum.

92. Therefore, petitioner is entitled to an order of mandamus directing the Planning Board to make any approval subject to the public's right to a permissive referendum pursuant to NY Town Law 90.

**FOURTH CAUSE OF ACTION
THE PLANNING BOARD, AS AN INVOLVED AGENCY,
FAILED TO REQUIRE A SEIS**

93. Petitioner repeats and realleges paragraphs 1 – 92 as if set forth herein at length.

94. While the Project was under review, Amazon purchased Whole Foods.

95. After Amazon purchased Whole Foods, Amazon adopted a number of operational changes that were intended to and did in fact have the effect of driving more traffic to its Whole Foods stores.

96. The operational changes to Whole Foods include Amazon lockers, "click-and-collect" shopping, pubs, and restaurants located at Whole Foods stores (the "Operational Changes").

**Amazon Lockers, "Click-and-Collect" Shopping, and
Amazon Prime Now App Curbside Pick-Up**

97. Amazon provides a self-service location to pick up and return

merchandise ordered from Amazon.com.⁴

98. After acquiring Whole Foods in mid-2017, Amazon began to add self-service pick-up lockers (known as “Amazon Lockers”) to its Whole Foods locations.⁵

99. The policy of locating Amazon Lockers at Whole Foods stores resulted in 11% increases of short “micro” visits to Whole Foods Stores with Amazon lockers.⁶

100. The new Whole Foods store in Buffalo has an Amazon Locker.⁷

101. Amazon and Whole Foods are further driving additional traffic to Whole Foods stores with “click-and-collect” shopping features that let customers order groceries online and pick them up at the store.⁸

102. Amazon recently began a curbside pickup service that allows Amazon Prime members curbside service at Whole Foods stores so that they can order groceries on the Amazon Prime Now App and pick them up at Whole Foods without getting out of the car.⁹

⁴ https://www.amazon.com/gp/help/customer/display.html/ref=help_search_1-2/ref=s9_acss_bw_cg_USLand_3a1_w?ie=UTF8&nodeId=201910660&qid=1485886171&sr=1-2&pf_rd_m=ATVPDKIKX0DER&pf_rd_s=merchandised-search-1&pf_rd_r=N3YQV1KRBX385FJ432AF&pf_rd_t=101&pf_rd_p=c56e6fc2-4d64-4582-b2a4-4d147c48297e&pf_rd_i=6442600011

⁵ <https://www.supermarketnews.com/online-retail/amazon-lockers-drive-short-trips-whole-foods>

⁶ <https://www.reuters.com/article/us-amazon-com-wholefoods/short-visits-rise-at-whole-foods-stores-with-amazon-lockers-idUSKBN1H20NE>

⁷ <https://www.amazon.com/gp/css/account/address/view.html>

⁸ <https://www.wholefoodsmarket.com/values-matter/order-online-pick-store-0>
<https://www.forbes.com/sites/bryanpearson/2018/07/09/amazon-shrank-the-shopping-trip-can-you-3-ways-to-get-more-out-of-micro-trips/#165801372ea5>

⁹ <https://www.usatoday.com/story/tech/talkingtech/2018/08/08/amazon-starts-new->

103. The new Whole Foods store in Buffalo has click-and-collect shopping.¹⁰

104. Neither the Town Board nor the Planning Board considered traffic impacts associated with the Amazon policy of adding Amazon Lockers, click-and-collect shopping, or Amazon Prime Now App curbside pickup to its Whole Foods stores.

105. The Amazon policy of adding Amazon Lockers, click-and-collect shopping, or Amazon prime Now App curbside pickup to its Whole Foods stores is a project change that requires preparation of a supplemental environmental impact statement ("SEIS").

106. The Amazon policy of adding Amazon Lockers, click-and-collect shopping, or Amazon prime Now App curbside pickup to its Whole Foods stores is newly discovered information that requires preparation of an SEIS.

107. The Amazon policy of adding Amazon Lockers, click-and-collect shopping, or Amazon prime Now App curbside pickup to its Whole Foods stores is a change in circumstances related to the project that requires preparation of an SEIS.

Whole Foods Pubs and Restaurants

108. After acquiring Whole Foods in mid-2017, Amazon began to add pubs and restaurants to its Whole Foods locations.¹¹

curbside-pickup-service-whole-foods/926488002/

¹⁰ <https://www.wholefoodsmarket.com/shop/BUF>

¹¹ <https://www.wholefoodsmarket.com/service/porch-pub>

109. Amazon places its pubs and restaurants in front of its Whole Foods stores. Id.

110. The Whole Foods pubs and/or restaurants serve coffee, beer, and wine and food. Id.

111. The new Whole Foods Store in Buffalo has a pub and restaurant.¹²

112. Neither the Town Board nor the Planning Board considered traffic impacts associated with the Amazon policy of adding pubs and/or restaurants to its Whole Foods stores.

113. The Amazon policy of adding pubs and restaurants to its Whole Foods stores is a project change that requires preparation of an SEIS.

114. The Amazon policy of adding pubs and restaurants to its Whole Foods stores is newly discovered information that requires preparation of an SEIS.

115. The Amazon policy of adding pubs and restaurants to its Whole Foods stores is a change in circumstances related to the project that requires preparation of an SEIS.

Planning Board Acknowledged Whole Foods Operational Changes

116. At the August 15, 2018 public hearing, the Planning Board received public comments that the Operational Changes stores would worsen traffic impacts associated with the Proposed Development.

¹² <https://www.wholefoodsmarket.com/service/buffalo-bar-1818>

117. In response to the public comments, the Planning Board tabled consideration of the Planning Board Applications and requested the Developer to provide it with the following information from Whole Foods:

- a) the daily number and size of trucks, the vendors who would be delivering, and the hours of delivery;
- b) an updated interior building and merchandizing lay out; and
- c) confirmation that there would be no restaurant, pub or Amazon Lockers on site.

118. The Planning Board violated the procedural requirements of SEQRA because it adopted the Findings Statement without fully understanding how the Operational Changes would affect traffic impacts associated with the Proposed Development.

119. The Planning Board violated the procedural requirements of SEQRA because it did not require preparation of an SEIS or impose conditions in the SEQRA Findings Statement prohibiting the Operational Changes.

120. Since the Planning Board failed to comply with SEQRA, the resolution approving its Findings Statement must be set aside.

**FIFTH CAUSE OF ACTION
THE PLANNING BOARD, AS AN INVOLVED AGENCY,
FAILED TO TAKE A HARD LOOK AT TRAFFIC IMPACTS**

121. Petitioners repeat and reallege paragraphs 1 – 120 as if set forth herein at length.

122. Whenever a proposed agency “action” “may include the

potential for at least one significant environmental impact,” the environmental impact of the action must be carefully studied through the preparation of an Environmental Impact Statement (an “EIS”) 6 NYCRR 617.7(a)(1).

123. An EIS provides a means for agencies, project sponsor and the public to systematically consider significant environmental impacts, alternatives and mitigation. An EIS facilitates the weighing of social, economic and environmental issues early in the planning and decision-making process. 6 NYCRR 617.1(d).

124. When an action may have a significant effect, the agency must minimize adverse environmental impacts to the greatest extent practicable. ECL 8-0103; 6 NYCRR 617.1(c).

125. Compliance with SEQRA is mandatory. “No agency involved in any action shall carry out, fund or approve the action until it has complied with the provisions of SEQRA.” 6 NYCRR 617.3(a).

126. Each involved agency must make its own SEQRA Findings. 6 NYCRR 617.11(c).

127. The Findings Statement failed to address all potential significant adverse traffic environmental impacts associated with the Proposed Development.

128. During the SEQRA process before the Town Board, the Planning Board commented that it would continue to address multimodal traffic modes and project improvements during the course of

site plan review. FEIS dated January 2018, p. 92.¹³

129. During the SEQRA process before the Town Board, The Developer responded that it would work with the Planning Board during site plan review to continue to examine multimodal transportation. FEIS dated January 2018, p. 92. See Footnote 13.

130. The Planning Board failed to address multimodal traffic modes and project improvements during the course of reviewing the Planning Board Applications.

131. During the SEQRA process, the Planning Board also asked the applicant to provide a design alternative that illustrates a truck only entrance/exit. FEIS, p. 94. See Footnote 13.

132. The Planning Board failed to a design alternative that illustrates a truck only entrance/exit during the course of reviewing the Planning Board Applications.

133. Petitioner brought these deficiencies to the Planning Board's attention by letter dated June 18, 2018, a copy of which is attached hereto as "Exhibit F."

134. The Traffic Studies submitted in connection with the Proposed Development to date are inadequate for the reasons set forth in the letter from McFarland Johnson dated June 14, 2018, a copy of which is attached as "Exhibit G."

¹³ The FEIS can be accessed at <https://www.townofbrighton.org/DocumentCenter/View/8472/WHOLE-FOODS-Plaza-FEIS-01242018-Accepted>.

135. The existing Traffic Studies do not consider:

- A. Truck traffic at grocery stores vary by retailer and is dependent on specific regional and store operations and not the size of the store or number of customers.
- B. Product variation is not directly related to the number of truck trips.
- C. Tractor trailer delivery only comprises 10-20% of overall truck deliveries to grocery stores.
- D. Based on research performed by McFarland Johnson, a 50,000 SF grocery store will typically generate 10-25 daily truck trips, of which 2-5 would likely be a tractor trailer.
- E. Additional truck trips would be generated by the remaining 33,700 SF of retail space in the Proposed Development.

Id.

136. Moreover, the Planning Board adopted its SEQRA Findings Statement based on the Developer's misrepresentation that the proposed Whole Foods store would have no more than two truck deliveries per day.

137. In order to fully assess the quantity and impact of the proposed truck traffic, more investigation is needed because those calculations must be site specific and tenant specific. This would require additional details on the proposed shipping and receiving operations for the proposed Whole Foods Store as well as the other tenants within the plaza. Anticipated trash collection operations for all development tenants would also be needed. Truck traffic data from other Whole Foods Stores with similar size and delivery operations should be used to assess the truck traffic for the Proposed Development.

138. The Planning Board did not require an additional Traffic

Study to address these deficiencies.

139. The Findings Statement must be set aside because the Planning Board, as involved agency:

- A. failed to thoroughly identify all potentially significant traffic impacts, as required by 6 NYCRR 617.7(b)(2);
- B. failed to thoroughly analyze significant adverse traffic impacts that would result from the Proposed Development, as required by 6 NYCRR 617.7(b)(3); and
- C. failed to set forth the reasoned elaboration for the basis of its decisions regarding traffic impacts, as required by 6 NYCRR 617.7(b)(4).

140. Since the Planning Board failed to comply with SEQRA, the resolution approving its Findings Statement must be set aside.

**SIXTH CAUSE OF ACTION
THE PLANNING BOARD, AS AN INVOLVED AGENCY,
FAILED TO MITIGATE POTENTIALLY SIGNIFICANT ADVERSE
TRAFFIC IMPACTS TO THE MAXIMUM EXTENT PRACTICABLE**

141. Petitioner repeats and realleges paragraphs 1 through 140 as if set forth herein at length.

142. The Planning Board's determination that the adverse impacts associated with the Proposed Development would be mitigated to the maximum extent practicable was arbitrary, capricious, and abuse of discretion and unsupported by substantial evidence on the record.

143. By reason of the foregoing, the Planning Board's Findings Statement must be set aside.

**SEVENTH OF ACTION
THE PLANNING BOARD, AS AN INVOLVED AGENCY,
FAILED TO CONSIDER CUMULATIVE IMPACTS**

144. Petitioner repeats and realleges paragraphs 1 through 143 as if set forth herein at length.

145. The Town Planning Board and Zoning Board of Appeals (“ZBA”) considered applications to relocate the Mamasan’s restaurant from the Site Project Location to the Off-Site Project Location (former Pizza Hut) while the Incentive Zoning Application for the Proposed Development was under consideration by the Town Board.

146. The Mamasan’s application for the Off-Site Location includes a drive-through pick-up window.

147. On February 7, 2018 the Town of Brighton ZBA granted Mamasan’s Monroe LLC’s application for an area variance from lot coverage requirements.

148. The Town Planning Board and Zoning Board of Appeals (“ZBA”) considered applications to demolish the former Friendly’s restaurant and construct a City Mattress store at 2717 Monroe Avenue (on the Off-Site Project Location) while the Incentive Zoning Application for the Proposed Development was under consideration by the Town Board.

149. Upon information and belief, the owner of 2717 Monroe Avenue received approvals for the City Mattress Development in late 2016 and/or early 2017.

150. The Planning Board failed to consider the cumulative impacts of the Proposed Development together with the redevelopment of the Off-Site Project Location.

151. The Planning Board failed to consider the cumulative impacts of the proposed Development together with the redevelopment of the “Off-Site Project Location” properties, including but not limited to the relocation of Mamasan’s restaurant from the Project Site Location to 2735 Monroe Avenue and the demolition of the Friendly’s restaurant and development of a City Mattress store at 2717 Monroe Avenue.

152. By reason of the foregoing, the Planning Board’s Findings Statement must be set aside.

**EIGHTH CAUSE OF ACTION
THE PLANNING BOARD, AS AN INVOLVED AGENCY,
IMPROPERLY SEGMENTED REVIEW OF THE PROJECT SITE
LOCATION FROM THE OFF-SITE PROJECT LOCATION**

153. Petitioner repeats and realleges paragraphs 1 through 152 as if set forth herein at length.

154. The Planning Board improperly segmented environmental review of the proposed Development’s Site Project Location from the redevelopment of the “Off-Site project Location” properties, including but not limited to the relocation of Mamasan’s restaurant from the Project Site Location to 2735 Monroe Avenue and the demolition of the Friendly’s restaurant and development of a City Mattress store at 2717 Monroe Avenue.

155. The Planning Board, as an involved agency, failed to consider

traffic impacts associated with the redevelopment of the Off-Site Project Location (including, for instance, the relocation of the Mamasan's restaurant with a drive-through pick-up window), and therefore improperly segmented its review.

156. By reason of the foregoing, the Planning Board's Findings Statement must be set aside.

**NINTH CAUSE OF ACTION
THE PLANNING BOARD, AS AN INVOLVED AGENCY,
FAILED TO TAKE A HARD LOOK AT ALTERNATIVES**

157. Petitioner repeats and realleges paragraphs 1 – 156 as if set forth herein at length.

158. SEQRA requires each Environmental Impact Statement to include a discussion of alternatives to the proposed action. ECL §8-0109(4) (EIS shall discuss "reasonable alternatives to the action"); ECL 8-0109(2)(d) (EIS must include "alternatives to the proposed action"); ECL 8-109(2) (among the purposes of an EIS is to "suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake such action").

159. The description and evaluation of the alternatives "should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed" and must include a "no action" option. 6 NYCRR § 617.9(b)(5)(v). Alternatives should also evaluate the reduction in scale and magnitude of an action.

160. Alternatives Analysis has been referred to as the "heart of

SEQRA.” *Shawangunk Mountain Environmental Association v. Planning Board of Gardiner*, 157 A.D.2d 273 (3d Dept. 1990). *See also, Akpan v. Koch*, 75 N.Y.2d 561 (1990).

161. The Final Scope for the Proposed Development required the Applicant to analyze:

- Development of site under the density/other limits “permitted as of right” under the existing zoning designations;
- Alternative land uses allowed under existing zoning including residential, retail and other non-residential uses;
- An investigation of design and layout alternatives, including a reduction in size of either the proposed high traffic generators (grocery store/Starbucks drive thru) and/or plaza square footage; elimination of some or all of the proposed drive through facilities; and alternative paving surfaces to provide green space at the project site consistent with the requirements of the Town Code;
- Potential allowable future uses of the buildings for other than those intended and disclosed, with a commensurate discussion of the potential greater or lesser impacts associated by such alternative relative to the proposed alternative;
- No action alternative.

162. The Planning Board, as an involved agency, failed to properly consider the “development as of right” alternative to the Planning Board Applications.

163. The Planning Board, as an involved agency, failed to comply with SEQRA’s substantive and procedural requirements because it did not require the Applicant to properly evaluate the “build as of right” alternative and a reduced scale alternative.

164. By reason of the forgoing, the Planning Board resolution

adopting the Findings Statement must be set aside.

**TENTH CAUSE OF ACTION
THE PLANNING BOARD FALSELY CERTIFIED THAT
SEQRA REQUIREMENT HAD BEEN MET**

165. Petitioner repeats and realleges paragraphs 1 through 164 as if set forth herein at length.

166. A SEQRA Findings Statement must certify that SEQRA's requirements have been met.

167. The Planning Board's Findings Statement falsely certified that SEQRA's requirements had been met.

168. By reason of the foregoing, the Planning Board's Findings Statement must be set aside.

**ELEVENTH CAUSE OF ACTION
THE PLANNING BOARD'S DECISION TO ADOPT THE FINDINGS
STATEMENT WAS ARBITRARY, CAPRICIOUS AND AN ABUSE OF
DISCRETION**

169. Petitioner repeats and realleges paragraphs 1 through 168 as if set forth herein at length.

170. The Planning Board adopted the Findings Statement before it had information concerning:

- a) the daily number and size of trucks, the vendors who would be delivering, and the hours of delivery for the proposed Whole Foods store;
- b) an updated interior building and merchandizing lay out for the proposed Whole Food store; and
- c) confirmation that there would be no restaurant, pub or Amazon Lockers at the Whole Foods Plaza.

171. The Planning Board's determination that the adverse

impacts associated with the Proposed Development would be mitigated to the maximum extent practicable is not supported by substantial evidence on the record.

172. The Planning Board's determination that the Applicant considered alternatives to the Proposed Action is not supported by substantial evidence on the record.

173. By reason of the foregoing, the Planning Board's decision to adopt the SEQRA Findings Statement was arbitrary, capricious and an abuse of discretion.

**TWELFTH CAUSE OF ACTION
THE PLANNING BOARD'S DECISION TO ADOPT THE SEQRA
FINDINGS STATEMENT WAS NOT SUPPORTED BY
SUBSTANTIAL EVIDENCE ON THE RECORD**

174. Petitioner repeats and realleges paragraphs 1 through 173 as if set forth herein at length.

175. By reason of the foregoing, the Planning Board's decision to adopt the SEQRA Findings Statement was not supported by substantial evidence on the record.

**THIRTEENTH CAUSE OF ACTION
OTHER ARBITRARY AND CAPRICIOUS ACTIONS**

176. Petitioner repeats and realleges paragraphs 1 – 175 as if set forth herein at length.

177. Upon information and belief, as may be determined on the filing of the Record of Proceeding, other actions taken by the Planning Board in connection with the Applications may be in violation of other

laws, regulations and procedures, and/or arbitrary and/or capricious, and/or other approvals may be needed.

178. Therefore, the Resolutions approving the Applications and adopting the Findings Statement were illegal, arbitrary and capricious,

WHEREFORE, petitioner respectfully requests that this court enter an order pursuant to CPLR Article 78 and 3001 et seq.:

- a) annulling and vacating the Planning Board Findings Statement;
- b) annulling and vacating the August 15, 2018 Resolution adopting the Findings Statement (the “SEQRA Resolution”);
- c) of mandamus directing the Town Planning Board to make any approval subject to the Developer obtaining state legislative approval in compliance with New York’s Public Trust Doctrine;
- d) of mandamus directing the Town Planning Board to make any approval subject to the public’s right to a permissive referendum pursuant to NY Town Law 90;
- e) annulling and vacating all related actions;
- f) temporarily and permanently enjoining Respondents from taking any action regarding approvals for the Proposed Development without first complying with the provisions of SEQRA, and New York Environmental Conservation Law (“ECL”), section 8-0101 et seq.;
- g) determining that the Planning Board’s conduct with respect to the Action violated New York’s Open Meetings Law; and
- h) awarding petitioner its attorneys’ fees, costs and disbursements, together with such other and further relief as this court deems just and proper.

Dated: September 13, 2018
Rochester, New York


The Zoghlin Group PLLC
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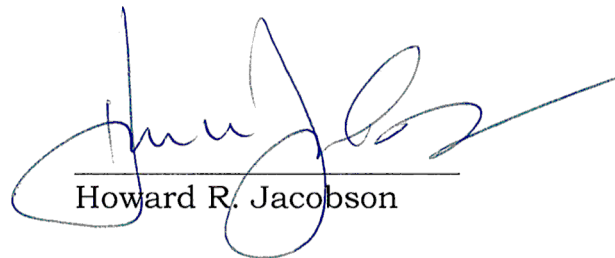
Exhibits

- a. Easement from Monroe Real Estate Limited Liability Company to the Town of Brighton dated February 26, 1997 and recorded in the Monroe County Clerk's Office at on March 14, 1997 at liber 8847 of Deeds, page 175.
- b. Easement from Executive Square Office Park, LLC to the Town of Brighton dated October 17, 2001 and recorded in the Monroe County Clerk's Office at on October 24, 2001 at liber 9531 of Deeds, page 433.
- c. Easement from Clover Lanes Inc. to the Town of Brighton dated October 28, 2001 and recorded in the Monroe County Clerk's Office at on October 24, 2001 at liber 9531 of Deeds, page 441.
- d. Easement from Mamasan's Monroe, LLC to the Town of Brighton dated October 1, 2003 and recorded in the Monroe County Clerk's Office at on October 21, 2003 at liber 9865 of Deeds, page 28.
- e. The Planning Board's Resolution adopting its SEQRA Findings Statement.
- f. Letter from BGR attorney to Planning Board dated June 18, 2018.
- g. Letter from McFarland Johnson June 14, 2018

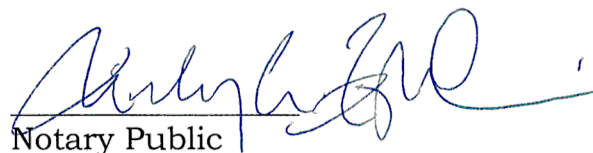
STATE OF NEW YORK)
COUNTY OF MONROE } SS.:

Howard R. Jacobson, being duly sworn, deposes and says that deponent is Managing Member of Brighton Grassroots LLC and an individual petitioner in the within matter. Deponent has read the within Verified Petition and Complaint and knows the contents thereof; that the same is true to deponent's knowledge except as to matters stated to be alleged on information and belief and that as to such matters deponent believes them to be true.

The grounds for deponent's belief as to such matters are personal inquiry and examination conducted in the course of deponent's investigation into the facts and circumstances of this matter.


Howard R. Jacobson

Sworn before me this 13
Day of September, 2018.


Notary Public

MINDY L. ZOGHLIN
NOTARY PUBLIC, State of New York
Registration #02ZO4986874
Qualified in Monroe County
Commission Expires September 18, 2021
19