SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

GLEN OAKS VILLAGE OWNERS, INC., ROBERT FRIEDRICH, 9-11 MAIDEN, LLC, BAY TERRACE COOPERATIVE SECTION I, INC., and WARREN SCHREIBER, Plaintiffs, v. CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF BUILDINGS, and ERIC A. ULRICH, in his official capacity as Commissioner of the New York City Department of Buildings, Defendants.	Index No. _____/2022 **COMPLAINT**

Plaintiffs Glen Oaks Village Owners, Inc., Robert Friedrich, 9-11 Maiden, LLC, Bay Terrace Cooperative Section I, Inc., and Warren Schreiber (collectively, "Plaintiffs"), by and through their attorneys, allege as follows:

NATURE OF THE ACTION

1. This action challenges New York City's Local Law No. 97 of 2019, as amended ("Local Law 97" or the "Law"), an ill-conceived and unconstitutional municipal law that nominally addresses climate change but, instead, retroactively and haphazardly imposes enormous and unavoidable annual "penalties" on tens of thousands of the City's building owners, landlords, and shareholders, even when they have acted as model environmentally conscious citizens. And it goes well beyond, and is preempted by, the comprehensive regulatory scheme that state law imposes in this regard. While Plaintiffs are supportive of clean energy, this Law will irrationally ensnare in its net, among others, those who lease to small businesses whose raw energy usage is unavoidably large (even if efficient) as a result of the nature of their activities—such as grocery stores and laundromats—driving these critical mom-and-pop enterprises out of the City. It will

similarly ensnare individual condominium and cooperative owners and shareholders of limited means throughout the City, as well as the owners of small rental buildings, who will have to pay massive "penalties," simply because their buildings have a high density of full-time residential usage and are more reliant on natural gas than commercial buildings—or force these property owners to shoulder millions of dollars of expenses to entirely redo their buildings' electrical systems and structures.

2. This cannot be what the City Council intended, but it will be the inescapable result of this Law in reality. Not only that, but this Law's draconian penalties will also gobble up environmentally conscious buildings and businesses that have already spent many millions of dollars to fully comply with the City's environmental regulations in effect at the time their buildings were built or upgraded; that, in many cases, have gone above and beyond what the City and State have required up to this point in time; and that should be lauded for their environmental leadership but, instead, will be punished with crippling fines and tagged as law-violators and energy scoundrels.

3. Specifically, Local Law 97 purports to combat climate change by setting strict caps on emissions and "penalizing" owners, landlords, and shareholders every year for non-compliance. But in reality, these "penalties"—which either are grossly excessive fines rendered in violation of due process, or else are improperly City-imposed taxes that lack the requisite delegation of taxing authority from New York State (the "State")—will do absolutely nothing to reduce greenhouse gas emissions. This Law, moreover, is preempted by a comprehensive state law framework for regulating and reducing greenhouse gas emissions. And it is unconstitutionally vague in multiple key respects, creating uncertainty among owners, landlords, and shareholders.

4. The limited exemptions enumerated in Local Law 97—exempting, for example, certain low-rise buildings (whether attached, detached, or semi-detached), City-owned buildings, properties on New York City Housing Authority-owned land, and buildings with more than 35% rent-regulated units—further highlight the Law's irrationality. As a result of the coverage rules and exemptions, condominiums and cooperatives are now effectively the only owner-occupied residential properties covered by the Law.

5. Local Law 97 is unconstitutional, and cannot stand, for five independent reasons.

6. *First*, Local Law 97 is preempted by New York state law. The State enacted the Climate Leadership and Community Protection Act ("CLCPA") in 2019 with the intent that it would serve as a "comprehensive regulatory program to reduce greenhouse gas emissions" across New York State. The CLCPA sets ambitious targets for the reduction of greenhouse gas emissions statewide and lays out a clear and all-encompassing plan by which New York State will implement these goals over the next several decades. It therefore preempts the field and leaves no room for localities to legislate in this area.

7. *Second*, Local Law 97 violates due process through the excessive "penalties" it imposes. It subjects thousands of building owners, landlords, and shareholders—who, despite their best efforts, will be unable to bring their buildings into compliance within this Law's impracticably short timeframe—to oppressive self-styled "civil penalties" imposed at the discretion of tribunals that lack even rudimentary guidelines for how to evaluate or weigh enumerated mitigating and aggravating factors. This "civil penalty," calculated at $268 per ***unit*** of excess emissions, will be imposed ***annually***, costing owners, landlords, and shareholders throughout the City upwards of hundreds of millions of dollars each year—simply because they did not (and could not) anticipate this change in the law when their buildings were constructed

years ago. And even more egregiously, the metrics that this Law requires be used to determine penalties do not measure or consider a building's efficiency, but, instead, are based on raw energy usage alone.

8. The result is that Local Law 97 penalizes more efficient buildings that have densely populated tenant spaces and longer hours of operation—increasing their raw energy totals—or that house smaller businesses vital to City residents—such as grocery stores, laundromats, bakeries, and restaurants—that, by their very nature, necessarily use a significant amount of raw energy. But it does not penalize less efficient buildings that meet the emissions caps only because they operate for just a limited number of hours each day, are partially vacant, or are sparsely populated by a small number of residents occupying oversized units. That is, by treating all buildings the same, rather than accounting for factors such as tenant density, nature of business activity, and hours of operation, this Law encourages urban energy sprawl.

9. The City Council surely did not intend to encourage such sprawl or to impose on certain owners massive fines just because of the nature of their businesses or their tenants' occupancy, with no practical way to come under the emissions caps other than to close or move out of the City. While Plaintiffs support clean energy, the "penalties" are grossly disproportionate to the conduct they are purportedly designed to remediate, have devastating consequences for small businesses throughout the City, and serve no actual purpose, aside from generating additional revenue for the City.

10. *Third*, Local Law 97 is unconstitutionally retroactive in violation of owners, landlords, and shareholders' due process rights. Although styled as a forward-looking law, the Law in fact punishes building owners, landlords, and shareholders for their prior decision-making in compliance with existing law—that is, for designing, constructing, and renovating their

buildings based on the environmental requirements that were in place at earlier points in time, and for "failing" to predict what new and different requirements the City might enact in the future. Building owners, landlords, and shareholders must now incur substantial costs to ***retrofit*** their buildings in an attempt to comply with Local Law 97. That is, Local Law 97 does not penalize owners, landlords, and shareholders for any prospective conduct, but rather demands that they take affirmative steps to unwind ***prior*** lawful decision-making—even when those prior decisions involved expending tremendous amounts of money to improve the energy efficiency of their buildings to meet or exceed then-applicable regulations and targets.

11. For example, many residential buildings that incurred significant expense transitioning to cleaner fuels, such as natural gas, over the past several years in compliance with City mandates must now incur further expense upgrading to electric energy or be penalized. Local Law 97 will cover approximately 50,000 buildings, accounting for approximately 60% of the City's building area. It is estimated that the cost of retrofitting these commercial and residential buildings to bring them into compliance with Local Law 97 would range from $16.6 billion to $24.3 billion citywide by 2029—and that does not even account for the additional "soft costs" associated with undertaking these sorts of capital improvement projects. For instance, engineering studies alone can cost hundreds of thousands of dollars, and it is difficult to finance them with third-party loans. These costs will be borne not just by large corporations, but also by individual shareholders and owners of co-ops and condominiums throughout the City, as well as by landlords of small rental buildings.

12. For many buildings—including some of the greenest buildings in New York City—the Law's requirements will simply be impossible to meet and thus will necessarily result in building owners, landlords, and shareholders being forced to pay massive ***annual*** penalties—all

because of an irrational and counterproductive regulatory regime that they had no reason to anticipate at the time of construction. The Law's requirements will also disproportionately affect residential buildings, which are more reliant on natural gas than commercial buildings. The City has committed to transition from powering electricity with natural gas powerplants to powering 70% of electricity with renewable energy by 2030. Such a shift will automatically decarbonize the largely commercial buildings that rely on electricity, which will be largely powered by renewable energy, rather than the natural gas on which residential buildings primarily rely. Residential buildings that are unable to incur the expense of yet another energy upgrade will continue to be penalized for their prior lawful decision-making.

13. *Fourth*, Local Law 97 is impermissibly vague and ambiguous in violation of due process. Among other things, key provisions of Local Law 97—including the provisions addressing how emissions limits are calculated, how penalties are determined and imposed, and whether adjustments will be made available—do not specify the additional emissions limits to which building owners, landlords, and shareholders will be subject in the future, whether and how any aggravating or mitigating factors will be applied, the eligibility of particular owners, landlords, and shareholders to apply for adjustments, the requirements for any adjustment applications, or the likelihood that an adjustment application will be granted.

14. The open-ended nature of these and other key provisions renders it impossible for owners, landlords, and shareholders to reasonably understand what conduct is being prohibited, and threatens them with arbitrary enforcement by regulators who are given free rein to determine how, ***if at all***, to fill the statutory gaps. Indeed, although the emissions caps become stricter over time, the specific requirements for later compliance periods have not yet been set and are deferred for future agency rulemaking. As a result, owners, landlords, and shareholders are forced to adopt

an incremental approach to their compliance efforts, working toward the initial emissions limits now without any certainty as to whether those efforts will suffice to put the building on a path to future compliance.

15. *Fifth*, Local Law 97 operates as an unauthorized and improper tax. The funds collected are not reasonably necessary to the accomplishment of the Law's regulatory purpose, as the government can reduce emissions without taxing owners, landlords, and shareholders who do not—or cannot—comply with strict annual limits. This is especially so, given that the City is not required to put the resulting revenue toward ***any*** environmental goal. Indeed, this Law does not specify how the funds will be spent at all. It simply provides a mechanism for the City to fill its coffers—in other words, for the imposition of a new carbon tax on building owners, landlords, and shareholders. Furthermore, the funds collected are untethered to any benefit building owners, landlords, or shareholders receive from the government. Because New York State has not authorized New York City to tax greenhouse gas emissions, Local Law 97 illegally seeks to impose an unauthorized tax, in violation of the Municipal Home Rule requirements, and is therefore unconstitutional.

16. Adding insult to injury, Local Law 97's limited administrative rollout has already been an unmitigated disaster. Although the Law ostensibly permits the New York City Department of Buildings ("DOB") to offer "adjustments" to the new emissions caps under three distinct sets of circumstances, the DOB has thus far only accepted adjustment applications that fall under one of those three statutory provisions. Specifically, select owners, landlords, and shareholders who satisfy various enumerated statutory criteria and applied for an adjustment by June 30, 2021, may be eligible for an adjustment, based on "special circumstances," during the Law's initial enforcement period. But the DOB did not begin accepting applications until April 12, 2021—and

did not promulgate ***any*** guidance relating to this adjustment or the application process until April 9, 2021—a mere 10 weeks before the June 30 deadline. And this belated guidance—issued outside proper rulemaking channels and in violation of the City's Administrative Procedure Act—does not even guarantee owners, landlords, and shareholders a preliminary determination on their adjustment applications until immediately before the initial compliance period begins—or, in some cases, ***after*** it has already ended—with final decisions to follow even later. Owners, landlords, and shareholders confronted with "special circumstances" were thus forced to hastily assemble and submit applications in the hope of (eventually) securing an adjustment that, given the size of the "penalties" at stake, is unlikely to offer any meaningful recourse anyway.

17. In addition to being unfair and unconstitutional, Local Law 97 is also short-sighted and dangerous. After a transition period, all New York City commercial and residential buildings affected by Local Law 97 will be expected to rely entirely on electric energy. But absolute dependence on electric energy risks a complete, citywide shutdown in the event that power is lost. Indeed, if lawmakers previously thought such doomsday scenarios unlikely, the events that unfolded in February 2021 across the state of Texas, leaving millions of people without heat or running water, prove that the consequences of an electrical shutdown would be catastrophic. And the Texas power outage pales in comparison to what would happen if an electricity-dependent New York City were to lose power. Local Law 97 does not contemplate or even acknowledge these very real risks.

18. For all of these reasons, this Court should issue a declaratory judgment declaring Local Law 97 preempted by New York State law and unconstitutional, and enter a permanent injunction preventing Defendants from implementing or enforcing it.

THE PARTIES

19. Plaintiff Glen Oaks Village Owners, Inc. ("Glen Oaks") is a cooperative corporation organized under the laws of the State of New York. Glen Oaks consists of 2,904 garden-style apartments in 134 buildings, housing approximately 10,000 residents, situated on two non-contiguous parcels totaling 110 acres. Glen Oaks is located in Queens, New York.

20. Plaintiff Robert Friedrich is a shareholder and resident of Glen Oaks. Mr. Friedrich serves as President and Chief Financial Officer of Glen Oaks and has served on the cooperative's Board of Directors since 1991. Mr. Friedrich owns multiple apartments in Glen Oaks, one of which is rent-regulated. He resides in one of the non-regulated units and rents the remaining units to tenants.

21. Plaintiff 9-11 Maiden, LLC ("Maiden") is a limited liability corporation organized under the laws of the State of New York. Maiden owns a mixed-use residential and commercial rental building located at 9-11 Maiden Lane in New York, New York. The building consists of 66 free-market residential rental apartments and houses commercial tenants on the lower floors.

22. Plaintiff Bay Terrace Cooperative Section I, Inc. ("Bay Terrace") is a cooperative corporation organized under the laws of the State of New York. Bay Terrace consists of 14 garden-style apartment buildings situated on two tax lots totaling over 40 acres of land. Each building houses 10 to 15 units. Bay Terrace is located in Queens, New York.

23. Plaintiff Warren Schreiber is a shareholder and resident of Bay Terrace. Mr. Schreiber serves as President of Bay Terrace and has served on the cooperative's Board of Directors since 1996. Mr. Schreiber is the owner and resident of a single unit in Bay Terrace.

24. Defendant City of New York (the "City") is a municipal corporation organized and existing under the laws of, and located within, the State of New York.

25. Defendant New York City Department of Buildings is a mayoral agency of New York City responsible for implementing and enforcing Local Law 97.

26. Defendant Eric A. Ulrich is the Commissioner of the DOB. He oversees the DOB and is named as a Defendant in his official capacity.

JURISDICTION AND VENUE

27. This Court has jurisdiction over this action pursuant to CPLR 3001.

28. Venue is proper pursuant to CPLR 504.

FACTUAL ALLEGATIONS

I. New York City's Legal Landscape Prior To The Enactment Of Local Law 97

29. For more than a decade prior to the passage of Local Law 97, the City has had laws in place focused on improving energy efficiency and reducing carbon emissions from buildings.

30. On December 5, 2007, the City Council passed Local Law 55 of 2007, which amended title 24 of the City's Administrative Code by adding chapter 8—the New York City Climate Protection Act—to reduce greenhouse gas emissions.

31. Less than six months later, on May 31, 2008, the City Council passed Local Law 22 of 2008, which repealed and replaced Local Law 55 with a revised City Climate Protection Act (the "2008 Climate Protection Act"), again codifying it in a new chapter 8 of title 24 of the City's Administrative Code.

32. The 2008 Climate Protection Act established targets for the reduction of greenhouse gas emissions citywide. It called for a 30% reduction in citywide greenhouse gas emissions by calendar year 2030, relative to 2005 emissions levels.

33. The statute expressly provided—in new Administrative Code § 24-803—that these emissions reduction targets were to be achieved via pre-existing City initiatives such as PlaNYC

"and any additional policies, programs and actions to reduce greenhouse gas emissions that contribute to global warming."

34. PlaNYC was a multifaceted strategic plan for the City that sought to address climate change on multiple fronts, such as by planting more trees, investing in the City's stormwater capture and wastewater treatment, retrofitting and modifying City government buildings with energy-saving technologies, and revamping the City's solid waste disposal system.

35. The 2008 Climate Protection Act did not establish any compulsory programs, enforcement mechanisms, or penalties to achieve its emissions reduction targets.

36. To help meet the goals of PlaNYC and the requirements of the 2008 Climate Protection Act , the City passed a package of legislation called the Greener, Greater Buildings Plan ("GGBP") on December 28, 2009. The GGBP included the enactment of Local Laws 84, 85, 87, and 88 of 2009.

37. Local Law 84 added a new section 28-309 to the City's Administrative Code, requiring building owners to submit, for public disclosure, annual benchmarking data regarding their buildings' energy and water usage. According to the Mayor's Office of Sustainability, Local Law 84 was intended to "bring transparency for energy and water usage and inform building owners and tenants on how to make their buildings more efficient."[1]

38. Local Law 85 amended title 28 of the Administrative Code to add a new chapter 10. Whereas the State's preexisting Energy Construction Code imposed energy efficiency requirements only on renovation projects that led to the replacement of at least 50% of a building's system or subsystem, Local Law 85 tightened those requirements so that the most current energy code would apply to any renovation or alteration project.

[1] https://www1.nyc.gov/html/gbee/html/plan/ll84_about.shtml.

39. Local Law 87 added a new section 28-308 to the Administrative Code, requiring building owners to secure an "energy audit" and undergo "retro-commissioning" every ten years. The energy audit requirement compelled building owners to engage an outside energy auditor to identify various measures that, if implemented, would reduce the building's energy usage and operational cost—though it did not require owners to implement the recommendations—while the retro-commissioning provisions required owners to inspect the building's existing equipment and systems and to correct any problems identified during that inspection (*e.g.*, repairing leaks, adjusting load points, and ensuring proper temperature settings).

40. Local Law 88, as modified by Local Laws 132 and 134 of 2016, added new sections 28-310 and 28-311 to the Administrative Code, requiring owners to bring their buildings' lighting systems into compliance with current Energy Conservation Code standards and to install electrical sub-meters, in both instances by 2025. The lighting requirement applied to common areas of residential buildings and all areas of non-residential buildings, while the sub-metering requirement applied only to non-residential buildings.

41. By 2014, the City had reduced its greenhouse gas emissions by 19% since 2005 and was almost two-thirds of the way towards achieving the targeted 30% reduction in emissions by 2030.

42. On December 14, 2014, the City Council passed Local Law 66 of 2014, which again amended the citywide greenhouse gas emissions reduction targets to add an 80% reduction in citywide emissions by 2050, relative to 2005. The City has referred to the targeted 80% reduction in citywide emissions by 2050 as the "80 x 50" commitment.

43. Like the 2008 Climate Protection Act, Local Law 66 did not include an enforcement mechanism or penalty system to achieve its emissions reduction targets.

44. Instead, since 2008, the Climate Protection Act has required the City to establish voluntary programs to "encourage private entities operating within the city of New York to commit to reducing their own greenhouse gas emissions." N.Y.C. Admin. Code § 24-803(d).

45. On August 6, 2009, by Executive Order No. 24, the State established its own greenhouse gas emissions reduction targets. Like the City laws, the State's initiative was aspirational in nature and did not contemplate any regulatory limitations on private entities in pursuit of the stated emissions reduction targets.

46. On January 26, 2017, the City expanded one of its voluntary incentive programs, known as the "Carbon Challenge," to commercial owners and tenants.[2] Originally created in 2007, the Carbon Challenge is a "voluntary leadership initiative and public-private partnership between the Mayor's Office of Climate & Environmental Justice and leaders in the private, institutional, and non-profit sectors who have committed to reduce their greenhouse gas emissions by 30% or more over ten years."[3] The City relied on the action and leadership of its private and institutional sector leaders, such as participants in the Carbon Challenge, "[t]o make progress toward" the citywide emissions reduction targets.[4]

47. These programs have been enormously successful. By 2018, over one hundred participants, including "the City's largest colleges and universities, hospitals, commercial owners

[2] N.Y.C. Office of the Mayor, *Mayor de Blasio Announces Major Expansion of NYC Carbon Challenge as 22 Commercial Owners and Tenants Commit to Dramatically Reduce Greenhouse Gas Emissions in Next 10 Years* (Jan. 26, 2017), https://www1.nyc.gov/office-of-the-mayor/news/044-17/mayor-de-blasio-major-expansion-nyc-carbon-challenge-22-commercial-owners-and.

[3] N.Y.C. Mayor's Office of Climate & Environmental Justice, *NYC Carbon Challenge*, NYC.gov, https://www1.nyc.gov/site/sustainability/our-programs/carbon-challenge.page (last visited April 26, 2022).

[4] N.Y.C. Mayor's Office of Sustainability, *NYC Carbon Challenge Progress Report April 2018* 3 (2018).

and tenants, residential property management firms, and hotels," had accepted the Carbon Challenge.[5]

48. As of 2018, Carbon Challenge participants had "cut their annual [greenhouse gas] emissions by 580,000 metric tons of carbon dioxide equivalent (tCO_2e)—the equivalent of removing 125,000 cars from the roads—and [were] collectively saving an estimated $190 million annually in lower energy costs."[6]

49. In their efforts to meet their pledged targets, these participants "spent an estimated $1.3 billion on energy efficiency and capital upgrades to their buildings, creating an estimated 1,600 local construction-related jobs and improving local air quality by reducing air particulate matter . . . by 58 metric tons."[7]

50. The NYC Carbon Challenge Progress Report, which evaluated the Carbon Challenge program a little over ten years after its inception, concluded that the "success of the NYC Carbon Challenge demonstrate[d] that motivating voluntary action on the part of private and institutional sector leaders can lead to substantial progress on policy goals" and that "the efforts of the Challenge participants [had] a measurable impact on citywide emissions."[8]

51. On December 19, 2017, the City Council passed Local Law 33 of 2018, which amended section 28-309 to the City's Administrative Code—the benchmarking law created by Local Law 84 of 2009. Specifically Local Law 33 added a new section 28-309.12, requiring building owners to post an energy efficiency "grade" at each public entrance beginning in 2020.

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[5] *Id.*

[6] *Id.* at 4.

[7] *Id.*

[8] *Id.* at 45.

Consistent with the City's history of incentivizing voluntary environmental improvement efforts, Local Law 33 did not subject buildings to fines or penalties for low grades.

II. The City Enacts Local Law 97, Which Will Impose Significant "Penalties" On Owners, Landlords, and Shareholders Who Were In Full Compliance With All Prior Laws And Regulations.

52. Local Law 97—part of the City's Climate Mobilization Act—became law on May 19, 2019.

53. Subsequent amendments to the Law were enacted via Local Law 147 of 2019, Local Law 95 of 2020, Local Law 116 of 2020, and Local Law 117 of 2020. References herein to "Local Law 97" (or the "Law") include both the initial law and the subsequent amendments thereto.

54. Local Law 97 was not enacted pursuant to a State enabling statute.

55. The Law adds a new section to the City Charter and amends the City Administrative Code in several ways.

56. Among other things, section 1 of Local Law 97 amends chapter 26 of the City Charter by adding a new section 651, which creates an Office of Building Energy and Emissions Performance. This office will be responsible for, *inter alia*, overseeing the implementation of building energy and emissions performance laws; establishing energy use assessment protocols; monitoring energy use and emissions; reviewing emissions limits, goals, and timeframes; auditing emissions assessments; inspecting covered buildings; recommending penalties for non-compliance with emissions limits; reviewing applications for adjustments and alternative methods of compliance with emissions limits; and ensuring the participation and cooperation of other agencies.

57. Section 3 of Local Law 97 amends section 24-803(a)(1) of the City Administrative Code regarding the reduction of emissions citywide. Specifically, it replaces the 30% emissions

reduction target for 2030—which the City and its partners have been voluntarily and successfully working to achieve since the 2008 Climate Protection Act introduced it more than a decade ago—with a new ***40%*** target that must be met by the same 2030 deadline.

58. Sections 2 and 4 of Local Law 97 amend the emissions reduction requirements as they relate to City government operations.

59. Section 5 of Local Law 97 amends title 28 of the Administrative Code to add a new article 320, titled "Building Energy and Emissions Limits" ("Article 320").

60. In a complete departure from the prior regime under which owners, landlords, and shareholders had been operating successfully for years, this new Article 320 imposes mandatory emissions limits on nearly 60% of the total building area of New York City.

61. Article 320 contains half-baked provisions for calculating emissions limits, reporting emissions, and assessing "penalties" for non-compliance—provisions that utterly fail to promote the stated goals of Local Law 97.

62. ***Covered Building.*** The strictures of Article 320 apply broadly, with just limited exceptions, to all new and existing privately owned buildings in New York City (including, but not limited to, residential and commercial buildings) that exceed 25,000 square feet.

63. Specifically, the new Article 320 applies to any new or existing "Covered Building," defined to include "(i) a building that exceeds 25,000 gross square feet (2322.5 m^2) or (ii) two or more buildings on the same tax lot that together exceed 50,000 gross square feet (4645 m^2), or (iii) two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 50,000 gross square feet (4645 m^2)." N.Y.C. Admin. Code § 28-320.1.

64. Although this "Covered Building" definition includes an express provision governing multi-building condominiums, the Law is silent as to the treatment of ***cooperatives***—such as Plaintiffs Glen Oaks and Bay Terrace—that consist of two or more buildings governed by the same board of managers and that together exceed 50,000 gross square feet. Although the City has published "FAQs" suggesting that Local Law 97 treats condominiums and cooperative buildings equally,[9] the law on its face does ***not*** appear to cover cooperatives unless they fall under one of the other two prongs of the definition. Compounding this ambiguity, Local Law 97 is also silent as to what happens when a single, multi-building cooperative (like Plaintiff Glen Oaks) occupies multiple tax lots, some of which fall within prong (ii) of the "Covered Building" definition while others do not.

65. Local Law 97 exempts several types of buildings from coverage, including (i) industrial buildings used to generate steam or electricity, (ii) certain low-rise attached, detached, or semi-detached buildings, (iii) City-owned buildings, (iv) properties on New York City Housing Authority-owned land, (v) buildings in which more than 35% of the units are rent-regulated,[10] (vi) houses of worship, (vii) properties owned by housing development fund companies, and (viii) buildings that participate in a project-based federal housing program.

66. Some, but not all, of these "exempt" properties are instead regulated pursuant to section 6 of Local Law 97, which amends title 28 of the Administrative Code to add a new article 321. Buildings regulated under article 321 are allowed to implement a list of "[p]rescriptive energy

[9] https://www1.nyc.gov/assets/buildings/pdf/Updates_Sustainability_Building_Laws_faqs.pdf.

[10] The amendments contained in Local Law 116 of 2020 amended Local Law 97's definition of "Rent Regulated Accommodation" to provide that "[t]he term 'rent regulated accommodation' means a building in which more than 35% of dwelling units are required by law or by an agreement with a governmental entity to be regulated in accordance with the emergency tenant protection act of 1974, the rent stabilization law of 1969, or the local emergency housing rent control act of 1962." N.Y.C. Admin. Code § 28-320.3.

conservation measures"—such as repairing heating system leaks and installing insulation—in lieu of complying with Article 320's emissions limits. N.Y.C. Admin. Code § 28-321.2.2.

67. The large carve-outs from the "Covered Building" definition in Article 320 mean that the burdens associated with the City's new emissions reduction requirements will be borne disproportionately by just a subset of private building owners, landlords, and shareholders.

68. Although there is no exemption for buildings in which 35% or fewer of the units are rent-regulated, those buildings "may delay compliance with annual building emissions limits until January 1, 2026" if they contain at least one rent-regulated unit. N.Y.C. Admin. Code § 28-320.3.10.1.

69. ***Advisory Board.*** Local Law 97 requires that the Office of Building Energy and Emissions Performance convene an advisory board to provide the DOB and Mayor's Office of Long Term Planning and Sustainability with advice and recommendations relating to emissions reductions. Among other things, these still-to-be-developed recommendations will address such key issues as how owners should report their emissions data for assessment purposes; "the metric of measure, adjustments to the metric, the approach to comparing the output to a benchmark, [and] alternative compliance paths"; how to address tenant-controlled (as opposed to owner-controlled) energy usage; and how to deal with buildings converting to a new "occupancy group" that would affect the applicable emissions limits. N.Y.C. Admin. Code § 28-320.2. The Advisory Board is tasked with establishing these recommendations no later than January 1, 2023.[11]

70. ***Requirements.*** The greenhouse gas emissions caps imposed by Local Law 97 take effect in 2024 and become increasingly stringent over time. These caps are generally calculated as the product of the building's gross floor area and the applicable "building emissions intensity

[11] https://www1.nyc.gov/site/sustainablebuildings/about/advisory-board.page.

limit," the latter of which is determined based on the building's occupancy type (but without accounting for differences in the specific type of use from one building to the next). N.Y.C. Admin. Code § 28-320.3.

71. Although Local Law 97 dictates some of these emissions caps, it leaves others to be set through rulemaking.

72. For instance, although the Law prescribes the method for calculating annual building emissions limits from 2024-2029 and purports to do so for 2030-2034 as well, it makes clear that, for 2030-2034, the DOB "may establish ***different*** limits, ***including a different metric or method of calculation***, set forth in the rules of the department, where the department determines that different limits are feasible and in the public interest." N.Y.C. Admin. Code § 28-320.3.2 (emphasis added).

73. Aside from setting a floor for ***average*** emissions intensity across ***all*** Covered Buildings, the limits for calendar years 2035-2039, 2040-2049, and 2050 and beyond are left entirely to DOB discretion. N.Y.C. Admin. Code §§ 28-320.3.4, .5.

74. The DOB is tasked with establishing these limits by rule no later than January 1, 2023. Thus, Local Law 97 has effectively tasked the DOB with predicting the future, through 2050, by January 1, 2023. Prior to the promulgation of those rules, building owners, landlords, and shareholders have no guidance with respect to their long-term obligations, even though they would need to commence retrofitting efforts now in order to at least try to meet the requirements for 2024. Even when the DOB gets around to filling these statutory gaps, the rules are likely to be just as vague and arbitrary as the standards imposed to date—assuming the rules are actually promulgated at all (or on time).

75. Moreover, because Local Law 97 employs rigid emissions caps that apply across fixed five-year intervals, the Law fails to account for the impact of external factors, such as weather, that can influence raw emissions totals from one year to the next. For example, if 2026 has a colder winter and/or hotter summer than 2025, then buildings will need to use more energy in 2026 just to maintain the same level of basic building operations, including indoor air temperature.

76. A building's annual emissions are calculated based on the type(s) of energy the building consumes. Each energy source (*e.g.*, electricity, natural gas, steam) is assigned a "greenhouse gas coefficient," which is then multiplied by the number of one-thousand British thermal units (kBtu) of energy used in order to calculate the total emissions generated by that energy use.

77. As with the emissions limits themselves, Local Law 97 dictates some of the greenhouse gas coefficients and leaves others to be set through rulemaking—while simply failing to account for other years at all.

78. Specifically, the Law sets out the greenhouse gas coefficients for some (but not all) types of energy for calendar years 2024-2029. N.Y.C. Admin. Code § 28-320.3.1.1. For calendar years 2030-2034, it leaves the determination to the DOB, in consultation with the Advisory Board, again requiring that the rules be promulgated by January 1, 2023. N.Y.C. Admin. Code § 28-320.3.2.1. There is ***no*** mention of coefficients for 2035 and beyond.

79. As the foregoing illustrates, Local Law 97 regulates buildings based on the total amount of energy used. However, that metric does not measure a building's ***efficiency*** and instead penalizes the most energy-efficient and densely occupied buildings. By way of example, an older, sparsely populated building with poor insulation and inefficient heating systems—but that only

operates during regular business hours—uses less raw energy than a densely populated residential or commercial building that utilizes state-of-the-art heat pumps and LED lighting but is occupied around the clock, even though the latter is far more energy-efficient. Thus, Local Law 97's use of this metric for measuring emissions is disconnected from its energy conservation goals. A metric that measures emissions per ***hour*** and per ***occupant*** would more effectively capture the least efficient buildings and lead to real improvements in energy efficiency citywide.

80. This key defect in the legislation caused the CEO of Urban Green Council—a prominent environmental advocacy group that made a number of policy recommendations, some of which were incorporated into Local Law 97—to observe as follows during a press interview: "We have many LEED-platinum buildings in New York City that will never, ever comply with the law. They use energy super-efficiently, but if they have 15,000 people working in the building, you can't get around the fact that the building as a whole just uses a lot of energy. So there is a disincentive for density that we need to find a way to fix. Density should be your friend for sustainability. Under Local Law 97, it's not. It's easy to understand and it's easy to calculate, but it's a pretty blunt instrument that's blind to what's going on inside the building."

81. Owners may be able to take deductions from their emissions totals under certain circumstances (*e.g.*, by purchasing renewable energy credits).

82. In addition, the DOB "may" establish rules allowing owners to seek additional time to comply with the new emissions limits that will apply if the owner changes the use or occupancy of the building. N.Y.C. Admin. Code § 28-320.3.10.

83. On October 5, 2021, the DOB issued Buildings Bulletin 2021-019, which clarifies how electricity used for charging electric vehicles will be treated for purposes of calculating a Covered Building's total emissions.

84. ***"Penalties."*** Local Law 97 requires owners to file compliance reports on an annual basis beginning in 2025, with substantial annual fines to be imposed on any excess emissions. (This requirement is deferred to 2027 for owners of buildings in which one or more—but no more than 35%—of the units are rent-regulated, consistent with the deferred compliance period for such buildings.) Additional penalties will be imposed for the failure to file an annual compliance report and/or for knowingly making a false statement in a submission.

85. Specifically, if a building exceeds its annual emissions limit, it will be liable for a "civil penalty of not more than an amount equal to the difference between the building emissions limit for such year and the reported building emissions for such year, multiplied by $268." N.Y.C. Admin. Code § 28-320.6.

86. Local Law 97 permits the DOB or any agency "designated by the department" to initiate administrative proceedings to impose a penalty before the Office of Administrative Trials and Hearings ("OATH"), a City adjudicative body. N.Y.C. Admin. Code § 28-320.6.4. It also permits the City's Corporation Counsel to bring suit to recover the penalties "in any court of competent jurisdiction." *Id.*

87. Notably, the amount of process afforded in OATH hearings can vary according to the regulation it is enforcing, and specific rules for Local Law 97 have not been promulgated.

88. When assessing a penalty, OATH or the court must give "due regard" to the following six "aggravating or mitigating factors" enumerated in section 28-320.6.1:

a. the owner's good-faith compliance efforts;

b. the owner's history of compliance;

c. the owner's compliance with the conditions of any adjustments granted under section 28-320.7 (discussed below);

d. unexpected and unforeseeable events or conditions outside the owner's control;

e. the owner's access to financial resources, including the financial hardship of a building owned by the owner; and

f. whether requiring payment would impact the operations of facilities critical to human life or safety.

89. Local Law 97 offers no guidance as to how these factors should (or will) be measured or weighed. Indeed, the concept of "good-faith compliance" became a point of contention at an April 2022 legislative hearing on Local Law 97's implementation.

90. Owners, landlords, and shareholders subject to Local Law 97 are thus faced with a daunting task: retrofitting buildings—old and new alike—within a matter of years in an attempt to comply with new emissions limits, some of which have not even been set yet.

91. According to one study, the cost of retrofitting commercial and residential buildings to bring them into compliance is estimated to range from $16.6 billion to $24.3 billion citywide by 2029.

92. Despite expending significant amounts of time and money to bring these buildings into compliance, many of these attempts are doomed fail ***despite*** the owners, landlords, and shareholders' best efforts, given the short timeframe for compliance and the uncertainty around future requirements. This is true even for owners who have built and maintained their buildings in full compliance with the City's existing environmental laws and energy code.

93. Moreover, should an owner opt to change the use or occupancy of a building at a later date, that owner may be ***immediately*** subjected to the stricter limits attached to that new use

or occupancy class, unless the DOB ***elects*** to promulgate rules extending the time period for compliance under such circumstances.

94. Adding further insult to injury, these enormous penalties paid by building owners, landlords, and shareholders will not be put toward producing renewable energy or reducing emissions in the City. They will instead go to the City's general fund.

95. As the Urban Green Council CEO put it, a "building that is super energy-efficient, but still can't comply with Local Law 97 because it has 15,000 people working there" has "very few choices on the table right now" and thus is "kind of left with paying a fine"—but "[a] fine is a failure, a waste," and thus "[i]t's a lose-lose situation."

96. The Commissioner of the City's Department of Environmental Protection echoed this sentiment at a legislative hearing just last month, observing that any fines imposed under Local Law 97 would represent an "abject failure."

97. ***Adjustments.*** Local Law 97 includes various mechanisms by which owners ***may*** be able to seek individual "adjustments" to the annual building emissions caps, but these adjustments are subject to statutory conditions that limit their availability. Because many of these criteria are vague, ambiguous, and open-ended, the DOB has substantial discretion over whether to grant such adjustments. Indeed, the DOB even has statutory discretion to decide whether to make the adjustments available ***at all***.

98. Local Law 97 provides, in new Administrative Code section 28-320.7, that the DOB may—but does not have to—authorize adjustments if an owner is in compliance with the requirements of the Law "to the maximum extent practicable" and meets one of two sets of additional statutory criteria.

99. *First*, the DOB is permitted to authorize adjustments if an owner meets each of the following three criteria:

a. Capital improvements would be necessary to meet the emissions limits, but it is not "reasonably possible" for the owner to make those improvements, either because of legal constraints (*e.g.*, landmark laws) or physical constraints on the property;

b. The owner "made a good faith effort" to come into compliance by purchasing greenhouse gas offsets, but a sufficient quantity of such offsets are not available "at a reasonable cost"; and

c. The owner "availed itself of all available city, state, federal, private and utility incentive programs related to energy reduction or renewable energy for which it reasonably could participate."

100. Among other things, this provision does not explain what it means to be "reasonably possible" to make improvements, what constitutes a "good faith effort" or a "reasonable cost," or what it means to be able "reasonably" to participate.

101. *Second*, the DOB is permitted (but again not required) to authorize adjustments if an owner meets each of the following four criteria:

a. The cost of financing capital improvements necessary to bring the building into compliance is so high as to prevent the owner from earning a "reasonable financial return on the use of the building," or the building is subject to financial hardship—meaning that, for the two prior years, the building was (1) included on the City Department of Finance's tax lien sale list due to arrears of property taxes or water or wastewater charges, or due

to outstanding balances under the Department of Housing Preservation and Development's emergency repair program; or (2) was exempt from real property tax exemptions and had negative revenue less expenses;

b. The owner is not eligible for any City or local financing for energy reduction or sustainability;

c. The owner "made a good faith effort" to come into compliance by purchasing greenhouse gas offsets, but a sufficient quantity of such offsets are not available "at a reasonable cost"; and

d. The owner "availed itself of all available city, state, federal, private and utility incentive programs related to energy reduction or renewable energy for which it reasonably could participate."

102. Among other things, this provision does not explain what constitutes a "reasonable financial return," a "good faith effort" or a "reasonable cost," or what it means to be able "reasonably" to participate.

103. The DOB is not currently accepting adjustment applications under section 28-320.7.

104. Separately, in section 28-320.8 of the new Article 320, Local Law 97 permits the DOB to grant adjustments for the initial compliance period (2024-2029), if a building's 2018 emissions exceeded the new limit by more than 40%.

105. If granted, the building's adjusted emissions limit for 2024-2029 gets set at 70% of the building's 2018 emissions level.

106. In practice, however, this adjustment is not actually available unless the building's 2018 emissions exceeded the new limit by more than approximately 42.86%. That is because, for

buildings with emissions levels below that threshold, the adjustment would actually result in a ***lower*** emissions limit, and thus a ***higher*** penalty. Take, for instance, a building with a 2024-2029 emissions limit of 100 tCO_2e. If the building's 2018 emissions level exceeded that cap by 41%—that is, if its raw emissions total for 2018 was 141 tCO_2e—then its "adjusted" cap under section 28-320.8 would be 70% of 141 tCO_2e, or just 98.7 tCO_2e—which is 1.3 tCO_2e ***lower*** than the default cap of 100 tCO_2e for the 2024-2029 compliance period.

107. In any event, the DOB is only permitted to grant this adjustment if an owner meets each of the following three criteria:

a. The excess emissions must be "attributable to special circumstances related to the use of the building, including but not limited to 24 hour operations, operations critical to human health and safety, high density occupancy, energy intensive communications technologies or operations, and energy-intensive industrial processes";

b. The energy performance of the Covered Building must be equivalent to that of a building that is in compliance with the New York City Energy Conservation Code in effect on January 1, 2015 ("NYCECC"); and

c. The owner must submit a plan to the DOB setting forth a schedule of alterations, or changes in operations and management, that will ensure compliance with the 2030-2034 emissions limits.

108. Moreover, the owner is disqualified from taking the adjustment if it amended (or amends) the building's certificate of occupancy after December 31, 2018.

109. The DOB "may" (but again does not have to) extend this "special circumstances" adjustment through calendar year 2035, but only if the owner submits a plan to reduce emissions to 50% of 2018 levels by 2035. N.Y.C. Admin. Code § 28-320.8.1.1.

110. In order to be granted the "special circumstances" adjustment, owners were required to submit an application to the DOB "in the form and manner determined by the department." N.Y.C. Admin. Code § 28-320.8.2.

111. However, despite a statutory deadline of June 30, 2021, for these adjustment applications, the DOB did not issue any guidance (aside from a rule setting the amount of the application fee) until April 9, 2021—three days before it began accepting applications, two years after Local Law 97 was enacted, and only ten weeks prior to the application deadline.

112. This highly prejudicial delay was par for the course, as the City has also missed other key deadlines in its implementation of Local Law 97 and related environmental measures.

113. Moreover, the "special circumstances" adjustment guidance that the DOB eventually got around to promulgating—a so-called Adjustment Application Filing Guide (the "Guidance")—was issued in violation of the City's Administrative Procedure Act. Specifically, although the DOB undertook a formal rulemaking process in respect to a separate adjustment for not-for-profit hospitals and healthcare facilities, no such rulemaking process has been undertaken for the high energy use adjustment relevant here (again with the exception of the application fee).

114. Despite not being promulgated through official rulemaking channels, the Guidance purports to elaborate on—and in some instances ***modifies***—the statutory criteria that an applicant must satisfy to qualify for an adjustment under section 28-320.8. To give but one example, the Guidance indicates that "[t]he energy consumption attributable to the special circumstance should be unique or unusual as compared to buildings with similar occupancy." Guidance at 5. This

means, for instance, that 24-hour operations—specifically identified as a "special circumstance" in the statute—now only qualify "for occupancies/buildings that would otherwise not normally operate 24 hours daily." *Id.*

115. The Guidance further provides that the DOB may issue objections in response to adjustment applications. Applicants "are encouraged" to respond to any such objections "in a timely manner," but by no later than October 31, 2023, so that the objections can be resolved by December 31, 2023. Guidance at 31. Applications that are not resolved by December 31, 2023, may be denied.

116. However, the 2024 emissions limits take effect ***the next day*** following this December 31, 2023, target date for resolution. Thus, an owner whose application is denied at that point will be left with no meaningful option but to incur the "civil penalty" at least for 2024.

117. Similarly, the Guidance provides that NYCECC equivalency, a statutory prerequisite for the adjustment per section 28-320.8(2), "will be tracked as an open objection with the application until receiving acceptable documentation." Guidance at 31. Such documentation can be submitted to the DOB until February 15, 2025, to be resolved by ***April 1, 2025***. If NYCECC equivalency is not resolved by that time, the application may be denied. But the initial 2024-2029 compliance period will already be ***underway*** by April 1, 2025, and any penalties for 2024 will already have been incurred absent the adjustment.

118. Even worse, because of all the open issues still under consideration by the Advisory Board pursuant to section 28-320.2, the Guidance provides that the DOB will merely issue "estimated" adjustments in response to section 28-320.8 applications, and expressly provides that these estimated emissions limits "may be subject to change." Guidance at 31-32. The DOB only commits to providing "final" adjustments by ***May 1, 2025***—the very same day on which owners,

landlords, and shareholders are required to submit their compliance reports for the 2024 calendar year.

119. That is, owners, landlords, and shareholders who submitted adjustment applications under the belatedly issued and procedurally improper guidance may incur onerous and excessive "penalties" before they even have a chance to find out what their actual emissions limit is.

III. New York State Steps In To Enact A Comprehensive Emissions-Reduction Law

120. New York State has itself taken an active role in combatting climate change. As noted, the State established its own greenhouse gas emissions reduction targets in August 2009, by Executive Order No. 24. Then, in July 18, 2019, the State enacted the CLCPA, putting into effect what the State Legislature described in its legislative findings as "a ***comprehensive*** regulatory program to reduce greenhouse gas emissions" across New York State, and what has been described in the press as "one of the most ambitious climate targets by a legislature anywhere in the world."

121. The CLCPA's enactment came as no surprise. Indeed, the State had already been active in the field for ***years*** prior to the CLCPA's ultimate enactment. A similar climate bill had in fact already passed the Assembly in both 2016 and 2018, and then-Governor Cuomo proposed similar legislation in his January 2019 annual budget. The Legislature then reformulated the Governor's proposal and passed the bill as the CLCPA. The predecessor bills had been so far along that the first official "action" on the final bill that became the CLCPA occurred in June 2019—just one month before the CLCPA was formally signed into law—and it moved through the State Legislature exceptionally quickly at least in part because there had already been significant public debate—including at regional hearings—around the predecessor bills. Thus, at the time of Local Law 97's enactment, the City Council surely already knew that the State was

about to occupy the field with a "comprehensive" statewide emissions law, and yet it forged ahead anyway.

122. ***Relevant Provisions.*** The CLCPA sets ambitious targets for reducing New York State's greenhouse gas emissions. Specifically, section 2 of the CLCPA adds a new article 75 to the State's Environmental Conservation Law, limiting total statewide emissions to 60% of their 1990 levels by 2030 and 15% of 1990 levels by 2050. N.Y. Env't Conserv. Law § 75-0107(1).

123. In addition, the law sets a goal of "net zero" emissions in "all sectors of the economy" by 2050. N.Y. Env't Conserv. Law §§ 75-0103(11), 75-0109(4); *see also* CLCPA § 1(4).

124. Section 4 of the CLCPA adds a new section 66-p to the State's Public Service Law, requiring that 70% of the State's electrical energy come from renewable energy sources by 2030 and that the State achieve an electrical system that runs entirely on renewable energy by 2040. N.Y. Pub. Service Law § 66-p(2).

125. To help achieve these goals, the CLCPA compels the State to work toward achieving six gigawatts of distributed solar energy capacity installed by 2025, nine gigawatts of offshore wind capacity installed by 2035, and three gigawatts of statewide energy storage capacity by 2030. N.Y. Env't Conserv. Law § 75-0103(13)(e); N.Y. Pub. Service Law § 66-p(5).

126. The CLCPA also lays out a clear and detailed plan by which New York State will implement these goals over the next several decades. The CLCPA includes at least fourteen independent deadlines by which regulators must complete the steps necessary to achieve the CLCPA's targets, in addition to the deadlines for the targets themselves. N.Y. Env't Conserv. Law §§ 75-0103(11), (12)(c), 75-0105(1), (4), 75-0107(1), 75-0109(1), 75-0111(1), 75-0113(1), 75-0115(2)(a), (3); N.Y. Pub. Service Law §§ 66-p(2), (3), (5); CLCPA § 6(1).

127. The CLCPA also establishes a Climate Action Council, which is charged with developing a "scoping plan" with recommendations for achieving the targeted emissions reductions. N.Y. Env't Conserv. Law § 75-0103.

128. Among other things, the scoping plan must include "[p]erformance-based standards for sources of greenhouse gas emissions, including but not limited to sources in the transportation, ***building***, industrial, commercial, and agricultural sectors." N.Y. Env't Conserv. Law § 75-0103(13)(a) (emphasis added).

129. The scoping plan must also include "[m]easures to achieve reductions in energy use ***in existing residential or commercial buildings***, including the beneficial electrification of water and space heating in buildings, establishing appliance efficiency standards, strengthening building energy codes, requiring annual building energy benchmarking, disclosing energy efficiency in home sales, and expanding the ability of state facilities to utilize performance contracting." N.Y. Env't Conserv. Law § 75-0103(13)(g) (emphasis added).

130. As it prepares and updates its plan, the Climate Action Council must also convene a number of advisory panels, one of which must deal with "land-use and local government." N.Y. Env't Conserv. Law § 75-0103(7).

131. Pursuant to the CLCPA, the New York State Department of Environmental Conservation (the "DEC") is required to issue annual reports on statewide greenhouse gas emissions "from all greenhouse gas emission sources in the state." This report must provide a "comprehensive evaluation" of, among other topics, "the use of fossil fuels by sector," "emissions from non-fossil fuel sources," and "emissions associated with manufacturing . . . and other processes that produce non-combustion emissions," along with an estimate of emissions from imported energy sources. The DEC must also consider establishing a "mandatory registry and

reporting system from individual sources to obtain data on greenhouse gas emissions exceeding a particular threshold." N.Y. Env't Conserv. Law § 75-0105.

132. The CLCPA also creates a Climate Justice Working Group, comprised of representatives from several government agencies and "environmental justice communities" across the State, including at least three representatives from New York City, to identify "disadvantaged communities." N.Y. Env't Conserv. Law § 75-0111. The CLCPA includes provisions designed to ensure that any emissions regulations will not "disproportionately burden" such disadvantaged communities, and that regulatory measures that will maximize net emissions reductions in disadvantaged communities are prioritized. N.Y. Env't Conserv. Law §§ 75-0109(3)(c)-(d), 75-0115.

133. The CLCPA further requires the DEC to hold public hearings and consult with the Climate Action Council and a variety of stakeholders, and then to "promulgate rules and regulations to ensure compliance with the statewide emissions reduction limits." N.Y. Env't Conserv. Law § 75-0109(1).

134. Among other requirements, these implementing regulations must ensure that aggregate greenhouse gas emissions comply with the statutory limits; include enforceable emissions limits, performance standards, or other metrics "to control emissions"; reflect the findings of the scoping plan; and include measures to reduce emissions from specified sources. N.Y. Env't Conserv. Law §§ 75-0109(2)-(3). The CLCPA allows the DEC to enact an "alternative compliance mechanism" to address sources of emissions that cannot feasibly comply with the limits. N.Y. Env't Conserv. Law § 75-0109(4).

135. The DEC must also regularly report on its progress and address the "local benefits and impacts of any reductions in co-pollutants related to reductions in statewide and local greenhouse gas emissions." N.Y. Env't Conserv. Law § 75-0119(2)(g).

136. On December 30, 2020, the DEC enacted rules codifying the CLCPA's emissions limits and set 409.78 million metric tons of carbon dioxide equivalent as the official estimate for the baseline 1990 level of statewide greenhouse gas emissions. *See* 6 NYCRR §§ 496.1–496.5.

137. The CLCPA also tasks the Public Service Commission, which oversees New York State's public utilities, with establishing programs to achieve the State's green electrical energy, renewable energy generation, and storage goals. N.Y. Pub. Service Law §§ 66-p(2), (5).

138. Finally, the CLCPA instructs the DEC to "establish a social cost of carbon" "expressed in terms of dollars per ton of carbon dioxide equivalent," which will represent "a monetary estimate of the value of not emitting [one] ton of greenhouse gas emissions." N.Y. Env't Conserv. Law § 75-0113. The DEC issued guidance in December 2020 recommending that State agencies use a 2020 central value of $125 per ton of carbon dioxide, $2,782 per ton of methane, and $44,727 per ton of nitrous oxide.[12] The DEC then revised the guidance in 2021, such that it now recommends a 2020 central value of $121 per ton of carbon dioxide, $2,700 per ton of methane, and $42,000 per ton of nitrous oxide.[13]

139. ***Legislative Intent.*** When it passed the CLCPA, the State Legislature conceived of the law as a comprehensive approach to tackling climate change and regulating energy usage across New York State. That understanding is reflected in section 1 of the CLCPA itself: Its legislative findings state that the CLCPA "will build upon [New York State's] past developments

[12] N.Y. State Dep't of Env't Conservation, *DEC Announces Finalization of 'Value of Carbon' Guidance to Help Measure Impacts of Greenhouse Gas Emissions* (Dec. 30, 2020), https://www.dec.ny.gov/press/122070.html.

[13] N.Y. State Dep't of Env't Conservation, *Establishing a Value of Carbon: Guidelines for Use by State Agencies* 4 (2020), https://www.dec.ny.gov/docs/administration_pdf/vocguidrev.pdf.

[in combatting climate change] by creating a ***comprehensive*** regulatory program to reduce greenhouse gas emissions."

140. Legislative leaders recognized the far-reaching and exhaustive nature of the CLCPA in celebrating its passage.

141. For instance, Assembly Speaker Carl Heastie praised the Legislature for enacting "comprehensive legislation to address and mitigate climate change," and noted that "New York State is leading the way in developing green energy alternatives and sustainable policies."[14]

142. The bill's lead sponsor in the Assembly, Assemblyman Steve Englebright, celebrated the fact that the CLCPA "involves such a comprehensive and proactive approach" to addressing climate change by "requiring lower emissions and encouraging the development of new technologies and job opportunities," and he praised the law as "the latest evidence" of New York State's role as "an environmental leader."[15]

143. Upon signing the CLCPA, then-Governor Andrew Cuomo described it as "the most ambitious and comprehensive climate and clean energy legislation in the country" and "the most aggressive climate law in the United States of America."[16]

144. Many other State legislators and executive branch officials echoed the former Governor's view, referring to the law as "the gold standard for state-led action on climate" that "sets the course" for how New York State will achieve its renewable energy goals.[17]

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[14] *Governor Cuomo Executes the Nation's Largest Offshore Wind Agreement and Signs Historic Climate Leadership and Community Protection Act*, Governor of N.Y. State (July 18, 2019), https://www.nyserda.ny.gov/About/Newsroom/2019-Announcements/2019-07-18-Governor-Cuomo-Executes-the-nations-largest-osw-agreements.

[15] *Id.*

[16] *Id.*

[17] *Id.*

145. ***Range of Coverage.*** Consistent with its "comprehensive" scope in addressing greenhouse gas emissions, the CLCPA does not grant municipal governments the authority to impose additional, more demanding energy usage requirements. Instead, as discussed, the legislative findings tout the law as "creating a ***comprehensive*** regulatory program to reduce greenhouse gas emissions," and the law itself is replete with express references to the regulation of "statewide" emissions.

146. By way of contrast, in discussing the impacts that climate change will have on workers, the CLCPA's legislative findings in section 1 of the law note, "The complexity of the ongoing energy transition, the uneven distribution of economic opportunity, and the disproportionate cumulative economic and environmental burdens on communities mean that there is a strong state interest in setting a floor statewide ***for labor standards***, but allowing and encouraging individual agencies and local governments to raise standards."

147. The CLCPA includes no comparable findings as to the State's approach to tackling greenhouse gas emissions. Instead, section 8 of the CLCPA expressly authorizes certain other ***State*** agencies (in addition to DEC) to "promulgate greenhouse gas emissions regulations" in order to achieve the "statewide" emissions limits established by the CLCPA, while section 7 affirmatively compels certain agency action, again exclusively at the State level.

148. It is thus clear that the Legislature chose not to authorize municipalities to implement and/or enforce their own greenhouse emissions-related laws, and instead granted that authority only to "state agencies." Section 10, the CLCPA's non-preemption provision, makes this crystal clear: "Nothing in this act shall limit the existing authority of a ***state entity*** to adopt and implement greenhouse gas emissions reduction measures."

149. The CLCPA's silence as to local regulation and enforcement was plainly deliberate. This is confirmed by section 11, which addresses local law—confirming that the Legislature did not simply overlook the issue—but does so only in the separate context of clarifying that the CLCPA does not create an exemption to ***other*** generally applicable health and environmental safety requirements. In stark contrast to the non-preemption provision in section 10, there is no reference in section 11 to "emissions reduction measures," let alone any mention of "authority" with respect thereto.

150. The CLCPA's comprehensive "statewide" approach in this area is understandable because, as a number of regulators and scholars in New York and other parts of the country have recognized, there is value in having uniform rules on greenhouse gas emissions standards.

IV. Local Law 97 Will Cause Significant Harms If It Is Allowed To Take Effect

151. If Local Law 97 is allowed to take effect, its draconian and unconstitutional provisions will cause significant harm to owners, landlords, and shareholders throughout the City, as Plaintiffs' situations illustrate.

A. Plaintiff Glen Oaks

152. As discussed, Plaintiff Glen Oaks is a garden co-op located in Queens. Glen Oaks is comprised of 134 buildings that sit on two noncontiguous parcels comprised of 23 tax lots. The community spans approximately 125 acres of land, with approximately 10,000 residents living in 2,904 units. It is the largest garden cooperative in New York City.

153. Glen Oaks is a middle- and working-class community. Many of the residents work for the City of New York as police officers, firefighters, nurses and hospital staff, or sanitation department workers.

154. The buildings on at least 16 of Glen Oaks' 23 tax lots exceed 50,000 square feet, making those buildings "Covered Buildings" within the meaning of Local Law 97's new

Article 320. As discussed, because of the Law's silence as to the treatment of multi-building cooperatives, it is unclear how the Law will account for the fact that some of Glen Oaks' other tax lots do not satisfy the minimum square footage requirement. On the face of the statute, those remaining buildings would seem not to be "covered"—meaning that portions of the co-op would be subject to Local Law 97 while other portions would not.

155. Moreover, given the statute's silence as to the treatment of multi-building cooperatives, it is unclear whether the "covered" tax lots would be treated individually or in the aggregate for purposes of calculating Glen Oaks' compliance with—and penalties under—Local Law 97. On the face of the statute, it appears those lots would be regulated ***individually***, meaning that a subset of the "covered" tax lots might incur penalties even if the co-op as a whole manages to bring its emissions within the prescribed limits.

156. Glen Oaks was built between 1946 and 1948. The complex was converted from a rental community to a cooperative in 1981. The co-op's buildings themselves are densely populated, with an average apartment size of just 600 square feet. And yet, as discussed, Local Law 97 threatens to ***penalize*** rather than reward Glen Oaks for that efficient use of its building space, which is paired with ample surrounding green space within the garden co-op.

157. Approximately ten percent of Glen Oaks' units are rent-stabilized. Those rent-regulated units account for significantly less than 35% of the total number of units on any given tax lot, such that they do not exempt Glen Oaks from Article 320's "Covered Building" definition. But because the rent-regulated units are spread across all of the tax lots, it appears that Glen Oaks is subject to the provision permitting it to "delay compliance with annual building emissions limits until January 1, 2026." N.Y.C. Admin. Code §28-320.3.10.1.

158. Glen Oaks permits individual shareholders to own multiple units and rent out their apartments. Residents therefore include shareholders living in their own units, tenants renting at market rates, and rent-stabilized tenants. Glen Oaks itself owns some units in the complex, and some of those units are rent-stabilized. Fair market tenants pay between $1,400 and $2,000 per month in rent and between $550 and $900 per month in maintenance fees, depending on the size of the unit. Rent-stabilized tenants pay their regulated rent to the shareholder owner, and the shareholder owner, whether an individual or Glen Oaks, pays the rent-stabilized unit's maintenance fees.

159. Glen Oaks has actively worked to make its complex more environmentally friendly. The community is in the final phases of approvals for a project that would involve the installation of car ports with solar panels. Glen Oaks believes that this is one of the largest solar projects in New York City. However, given how Local Law 97 operates, that work is not expected to mitigate Glen Oaks' financial penalties under the Law ***at all***.

160. Absent retrofitting, Glen Oaks expects to face fines of $132,100 per year for the 2024-2029 compliance period (though, as discussed, it may be permitted to defer compliance until 2026 due to the presence of rent-regulated units). For the 2030-2034 compliance period, those fines would increase to a staggering $1,096,200 per year, with even tighter caps (resulting in even larger fines) to follow thereafter.

161. Glen Oaks' only means of paying these fines is by assessing residents. At present, Glen Oaks increases its maintenance fees every other year, with typical increases ranging from one to three percent. But to pay the fines expected to result from Local Law 97, Glen Oaks estimates that it would need to raise its maintenance fees by approximately ***five*** percent in 2030.

This five-percent increase would be in addition to any increases required to account for inflation, taxation, and property upgrades.

162. At the same time, though, any attempt to retrofit the buildings would itself be exceedingly expensive and ***still*** would not bring Glen Oaks into compliance with Local Law 97's emissions limits. For instance, after spending $64,000 on a study of its heating equipment, Glen Oaks concluded that it would cost approximately $24 million just to replace its 47 boilers with new, high-efficiency boilers. And even if Glen Oaks undertook this massive expense, the boiler project would only be expected to reduce Glen Oaks' annual fines for the 2030-2034 compliance period by $278,000, leaving Glen Oaks to pay $818,200 in annual penalties.

163. The middle- and working-class residents of Glen Oaks simply cannot afford Local Law 97's draconian fines, let alone the cost of retrofits that would only serve to reduce (but not eliminate) those fines. Indeed, Glen Oaks estimates that the cost of upgrading its heating equipment, for example, would cost each household over $9,000. A ten-year loan to finance that project would require a monthly maintenance increase of ***twenty-six percent*** for ten years. And yet, because the boiler project would only reduce (but not eliminate) the annual fines imposed by Local Law 97, maintenance costs would ***still*** need to increase by four percent just to cover the fines that remain. As a result, Glen Oaks expects that Local Law 97 will force shareholders to sell their units, pushing these essential workers even farther away from the communities they serve. Adding insult to injury, the massive annual penalties will negatively impact the marketability of the units as they are put up for sale.

B. Plaintiff Friedrich

164. As discussed, Plaintiff Friedrich is a shareholder, resident, and longtime board member of Glen Oaks. He currently serves as President and Chief Financial Officer of the cooperative.

165. Mr. Friedrich owns multiple apartments in Glen Oaks. He resides in one of those units and rents the others to tenants. All but one of the units are rented at market rates, and the other is rent-stabilized.

166. Because of the penalties that will be imposed on Glen Oaks by Local Law 97, Mr. Friedrich faces the prospect of a five-percent increase in his maintenance fees for all of his units. This five-percent increase would be in addition to any increases required to account for inflation, taxation, and property upgrades.

167. Mr. Friedrich also faces the prospect of assessments to help cover the cost of any environmental retrofits undertaken by Glen Oaks to mitigate its penalties under Local Law 97. However, because those retrofits still would not bring Glen Oaks into compliance with its emissions limits, Mr. Friedrich would then also have to absorb an additional assessment to help the cooperative cover the resultant annual penalties.

168. Given the socio-economic composition of the Glen Oaks community, Mr. Friedrich cannot pass on the cost of such significant maintenance increases or assessments to his tenants.

169. These added costs will erode the already insubstantial profit margin Mr. Friedrich makes on his rental units and may ultimately force him to sell one or more of his units. If Mr. Friedrich were to sell his units, their marketability would be negatively impacted by Local Law 97's emissions penalties.

C. Plaintiff Maiden

170. As discussed, Plaintiff Maiden is the owner of a mixed-use residential and commercial building in Manhattan. Two commercial tenants—a ground-floor café and a multi-level restaurant—occupy portions of the basement level and first floor of the building. The entire second floor consists of commercial lofts that, while currently mostly vacant, have historically been rented to businesses such as gyms, offices, pet daycare centers, and design studios. Floors

3-16 consist of 66 residential rental apartments, with a laundry room on site and a commercial cell tower on the roof. Maiden has owned the building since 1994.

171. Maiden's building exceeds 25,000 square feet and, because it does not include any rent-regulated apartments, constitutes a "Covered Building" within the meaning of Local Law 97's new Article 320.

172. Although the residential apartments are not rent-regulated, the building is laid out in a manner that enables Maiden to provide relatively affordable housing within the expensive Lower Manhattan rental market. Specifically, sixty percent of the residential units are two-bedroom apartments that approximate 550 square feet apiece and rent for between $3,500 and $4,000 per month; twenty percent are 700-square-foot apartments (with either two or three bedrooms) with rents in the low $4,000 range; and twenty percent are 950-square-foot three-bedrooms that rent for less than $5,000. In all instances, Maiden covers the costs of the tenants' heat and hot water. Because these units are smaller than the apartments one would find in a nearby "luxury" apartment building, Maiden is able to set the rent at levels that are significantly below what one would typically have to pay for a two- or three-bedroom apartment in Manhattan's Financial District.

173. The relatively modest size of the apartments also allows the building to accommodate a larger number of households per square foot—but this high tenant density necessarily leads to greater raw energy consumption when measured on a building-wide basis (as Local Law 97 requires). For instance, if Maiden were to convert the building into "luxury" rentals, it would convert the small two-bedrooms into studios that accommodate fewer tenants within the same square footage. While the reduced occupancy would be expected to decrease the building's gross emissions level, the emissions level ***per tenant*** would increase, and the displaced tenants

would simply relocate and continue to consume additional energy elsewhere. This is precisely the type of urban energy sprawl that Local Law 97 incentivizes by failing to account for building density.

174. Despite having undertaken projects that would be expected to reduce energy consumption, such as installing LED lighting in the vast majority of the apartments and spending roughly $600,000 to replace all windows in the building within the last eight years, Maiden nevertheless expects to incur penalties under Local Law 97. Current estimates suggest those penalties will be roughly $77,000 per year beginning in 2025 (for 2024 emissions) and will exceed $115,000 per year beginning in 2031 (for 2030 emissions). But much of the building's energy usage is outside Maiden's control as a landlord, given the energy needs of the building's residential and commercial tenants.

175. Apart from the tenants' day-to-day energy consumption, the laundry room provides an essential service for the building's residents. Like the many other New York City residential property owners who offer on-site laundry facilities—not to mention owners whose properties house full-on commercial laundromats—the tenants' use of the laundry room necessarily drives up the total raw energy usage of the premises. If Maiden were to close the laundry room, that energy consumption would simply be shifted elsewhere—such as to an off-site dry cleaner or laundromat—and yet nothing in Local Law 97 accounts for the presence of this on-site laundry facility within the building.

176. The presence of food service businesses in the building's commercial space compounds the dilemma facing Maiden, given the unavoidable energy usage associated with running such a business, such as the energy required to power cooking and cleaning equipment, maintain adequate refrigeration levels, and so forth. This energy consumption is again outside

Maiden's control as a landlord. Moreover, because the multi-level restaurant is open past midnight seven days a week, there is a baseline level of energy consumption required just to maintain basic operations (*e.g.*, lighting, heating/cooling) during those extended business hours.

177. Maiden is exploring additional projects that it hopes will reduce emissions, such as completing the transition to LED lighting and installing a new heat-control system. However, even if those projects could be completed in time (and despite the costs Maiden will be forced to incur to complete them), the improvements still may not bring the building's emissions level within the caps set by Local Law 97, given the nature of the tenancies, the density of the residential space, and the numerous factors driving energy consumption that are outside Maiden's control. Should Maiden be forced to pass on some or all of these penalties to its residential tenants, that would only serve to further reduce the availability of reasonably priced housing options in the supercharged Lower Manhattan rental market, while doing nothing to advance the goals of the Law.

D. Plaintiff Bay Terrace

178. As discussed, Plaintiff Bay Terrace is a garden co-op located in Queens. Bay Terrace consists of 14 garden-style apartment buildings situated on two tax lots totaling over 40 acres. Each of the 14 buildings contains 10-15 individual apartments.

179. Bay Terrace is a largely middle-income community, and its residents include many senior citizens, fixed-income households, and young families. The co-op is home to over 10,000 residents.

180. One of the two tax lots houses buildings totaling 120,175 square feet, and the other tax lot houses buildings totaling 80,740 square feet. Because the aggregate building square footage on each tax lot exceeds 50,000 square feet, the entire co-op falls within Article 320's "Covered Building" definition. However, given the statute's silence as to the treatment of multi-building cooperatives, it is unclear whether the two tax lots would be treated individually or in the aggregate

for purposes of calculating compliance with—and penalties under—Local Law 97. On the face of the statute, it appears they would be regulated ***individually***, meaning that one of the two tax lots might incur penalties even if the co-op as a whole manages to bring its emissions within the prescribed limits.

181. The first shareholders of Bay Terrace took occupancy in the early 1950s. Subletting is not permitted, and thus each resident has a vested ownership interest in the property. Apartments at Bay Terrace typically sell for $250,000 to $500,000, and monthly maintenance fees range from $550 to $750.

182. Assuming a typical 3.5% annual increase in energy consumption and that the two tax lots are treated separately, Bay Terrace expects to face approximately $39,000 in penalties for one of its tax lots and approximately $11,750 for the other beginning in 2025 (for 2024 emissions). These fines would increase to approximately $206,300 and $120,000, respectively, by 2035 (for 2034 emissions). Even larger fines (resulting from even tighter emissions caps) would follow thereafter.

183. Faced with the prospect of draconian fines under Local Law 97, Bay Terrace has considered environmental retrofits to lower the emissions impact of its buildings. For instance, Bay Terrace has considered replacing the six boiler rooms that service the complex's 14 residential buildings with individual, energy-efficient heat pumps per unit. Each of those heat pumps would cost approximately $10,000, and Bay Terrace would have to spend $2 million dollars, exclusive of finance charges, to complete the conversion.

184. Even if Bay Terrace could raise the requisite funds to finance the heat pump retrofit, it is not a permanent solution. While Bay Terrace believes that the heat pumps might bring the

co-op into compliance with Local Law 97's 2024-2029 emissions caps, the retrofit would not bring it into compliance with the caps for later compliance periods.

185. Bay Terrace expects that the cost of the heat pump project alone will result in a 25-30% monthly maintenance increase, which will cause some shareholders to struggle just to put food on the table while forcing others to sell their units altogether. Additional retrofits, not to mention penalties, would be even more costly. In short, Bay Terrace will cease to be an affordable housing community for middle-income New Yorkers.

E. Plaintiff Schreiber

186. As discussed, Plaintiff Schreiber is a shareholder and resident of Bay Terrace, and he serves as President of the cooperative.

187. Like the other Bay Terrace shareholders, Mr. Schreiber owns and lives in a single unit in the complex.

188. Like the other Bay Terrace shareholders, Mr. Schreiber—a retiree living on a fixed income—will be subjected to onerous increases in monthly maintenance fees and/or assessments to pay for costly retrofits to bring Bay Terrace into compliance with Local Law 97's 2024-2029 emissions caps, and penalties when those retrofits no longer satisfy the Law's increasingly stringent caps that take effect thereafter.

LOCAL LAW 97 IS INVALID IN ITS ENTIRETY

189. Local Law 97 lacks a severability clause. This indicates that the City Council viewed the Law as a single, integrated regulatory scheme and did not intend for the Law to be enforced with specific invalid provisions excised.

190. This is confirmed by the overall structure of Local Law 97. For instance, the unconstitutional "penalties" lie at the core the regulatory scheme, purportedly serving as the Law's primary compliance mechanism with respect to its new greenhouse gas emissions limits, while

key provisions of the Law describe—in an impermissibly vague and ambiguous manner—how the penalties are determined and imposed, and how owners, landlords, and shareholders might be able to go about securing adjustments to avoid those penalties.

191. In addition, because the State has fully occupied the field, Local Law 97 is preempted in its entirety.

192. It would therefore be impracticable, and inconsistent with the City Council's intent as reflected in the text and structure of Local Law 97, to attempt to identify and excise just a subset of the Law's provisions while leaving the remainder of Local Law 97 intact.

FIRST CLAIM FOR RELIEF
Preemption by CLCPA (N.Y. Const. art. IX, § 2(c)(ii); N.Y. Mun. Home Rule Law § 10(1)(ii))
(Against All Defendants)

193. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein.

194. Article IX, Section 2(c)(ii) of the New York State Constitution provides in relevant part: "[E]very local government shall have power to adopt and amend local laws not inconsistent with the provisions of . . . any general law . . . except to the extent that the legislature shall restrict the adoption of such a local law . . . ."

195. Section 10(1)(ii) of the New York Municipal Home Rule Law similarly provides in relevant part: "[E]very local government . . . shall have power to adopt and amend local laws . . . not inconsistent with any general law . . . except to the extent that the legislature shall restrict the adoption of such a local law . . . ."

196. Accordingly, under the doctrine of field preemption, a local government may not exercise its police power if the State Legislature has restricted that exercise by preempting the area of regulation.

197. The Legislature's intent can be implied from a legislative declaration of State policy, or from the fact that the Legislature enacted a comprehensive and detailed regulatory scheme in the relevant area.

198. The Legislature's implied intent to preempt a field may also be ascertained from the nature of the subject matter being regulated and from the purpose and scope of the State's legislative scheme, including the need for statewide uniformity in the relevant area.

199. By enacting the CLCPA, the Legislature expressed its intent to preempt the field with respect to regulating greenhouse gas emissions. The CLCPA establishes a comprehensive, detailed, and far-reaching regulatory scheme for addressing an issue that can best be resolved with a uniform, statewide solution; empowers state-level administrative bodies to lay out legally enforceable rules governing emissions to achieve the State's goals; accounts for the needs of localities across the State; and includes an express non-preemption provision specific to "greenhouse gas emissions reduction measures" adopted by "***state*** agencies."

200. Local Law 97 purports to regulate in this fully occupied field. It sets limits for reducing emissions that differ from those now imposed by the CLCPA, creating two different sets of limits—keyed off separate emissions benchmarks—with which regulated entities must comply. It also imposes emissions-reduction obligations (backed by significant "civil penalties") that add to the regulatory burden created by the CLCPA and its forthcoming implementing regulations.

201. Since the New York State Legislature intended to—and did—occupy the field by passing the CLCPA, Local Law 97 is preempted by the CLCPA.

202. Local Law 97 is therefore unconstitutional, invalid, and unenforceable, and the Court should so declare and order. The Court should also enjoin Defendants from enforcing Local Law 97.

SECOND CLAIM FOR RELIEF
Due Process – Excessive Fines (U.S. Const. amend. XIV; N.Y. Const. art. I, § 6)
(Against All Defendants)

203. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein.

204. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." The New York State Constitution (art. I, § 6) similarly directs: "No person shall be deprived of life, liberty or property without due process of law."

205. Building owners, landlords, and shareholders, including Plaintiffs, have a legitimate property interest, grounded in state law, in the buildings they own.

206. A statute imposes an excessive penalty in violation of the Due Process Clause when that penalty is wholly disproportioned to the offense and obviously unreasonable.

207. The penalties for noncompliance with Local Law 97, as codified at the newly created section 28-320.6 of the Administrative Code, are utterly unreasonable and violate the Due Process Clause. Indeed, the potential for penalties under Local Law 97 is so excessive that it would be grossly disproportionate to the purported offense and would shock one's sense of fairness.

208. Local Law 97 seeks to impose a penalty of $268 per metric ton of emissions beyond the limit set for that year. On a citywide basis, this will result in upwards of hundreds of millions of dollars' worth of penalties each year, imposed on the owners, landlords, and shareholders of the thousands of buildings that are not projected to meet the arbitrary caps (including Plaintiffs). By way of illustration, Plaintiff Glen Oaks ***alone*** expects to face annual penalties ranging from $800,000 (even if costly retrofits are completed in time) to $1.1 million (if they are not) during the 2030-2034 compliance period. Annual penalties of this magnitude, assessed based on metrics that

mistake raw emissions totals for energy efficiency, are patently unreasonable and bear no conceivable nexus to the gravity of the purported offense.

209. As discussed, a low-efficiency building with limited hours of operation could end up reporting lower emissions per square foot than a high-efficiency, high-density building that operates around the clock. Under Local Law 97, it is the high-efficiency, high-density building that risks incurring penalties due to its higher emissions levels. Such a result is both unfair and grossly disproportionate to any offending conduct.

210. The annual recurrence of the penalty compounds its excessive nature, given that the capital improvements and retrofitting required to reduce emissions take time and cannot simply be implemented overnight.

211. As discussed, Local Law 97 does not even include a statutory mechanism to delay enforcement as to owners who change the use and/or occupancy of their buildings. This means that, if the new use triggers more restrictive emissions limits, the owner will have ***no time*** to comply with those new limits. Instead, the owner's only options will be to delay the change—thereby forgoing a desired use of its property—or incur the fines. That is, a building that was in ***full compliance*** with Local Law 97 will be taxed simply for the change in use, even if the building's emissions levels remain ***exactly the same*** as they were before.

212. Similarly, the DOB is not required to make adjustments available even to owners for whom compliance is literally rendered ***impossible*** by virtue of physical or legal constraints on the property—not to mention shifts in the weather from one year to the next, which will necessarily influence a building's raw emissions totals by impacting the amount of energy needed to maintain basic building operations. The imposition of penalties under such circumstances is patently

unreasonable, as by definition it penalizes a purported offense that is entirely beyond the owner's control.

213. The absence of a connection between the penalty and the purported offense is made all the more apparent by the fact that the penalties go to a City's general coffer, and are not earmarked for any environmental purpose.

214. Acting under color of state law, Defendants have and will cause building owners, landlords, and shareholders (including Plaintiffs) to be deprived of their property without due process, in violation of their due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution.

215. Local Law 97 is therefore unconstitutional, invalid, and unenforceable, and the Court should so declare and order.

216. In the absence of declaratory and injunctive relief, owners, landlords, and shareholders (including Plaintiffs) will be irreparably harmed and subjected to this deprivation of rights guaranteed to them by the United States Constitution and the New York State Constitution.

THIRD CLAIM FOR RELIEF
Due Process – Retroactivity (U.S. Const. amend. XIV; N.Y. Const. art. I, § 6)
(Against All Defendants)

217. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein.

218. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." The New York State Constitution (art. I, § 6) similarly directs: "No person shall be deprived of life, liberty or property without due process of law."

219. Building owners, landlords, and shareholders, including Plaintiffs, have a legitimate property interest, grounded in state law, in the buildings they own.

220. Retroactive application of newly enacted legislation violates the Due Process Clause when there is no rational legislative purpose specifically justifying the retroactive treatment.

221. This determination, which is a question of degree, turns on the length of the retroactivity period, whether there was forewarning of the change in law as relevant to reliance interests, and the public purpose for the retroactive application.

222. The retroactive application of Local Law 97 infringes on the property rights of building owners, landlords, and shareholders, like Plaintiffs, in an arbitrary manner. The Law penalizes building owners, landlords, and shareholders—including, for example, owners of preexisting buildings, buildings currently under development, buildings already retrofitted to reduce greenhouse gas emissions, buildings currently undergoing renovations to reduce greenhouse gas emissions, and buildings currently under construction with features designed to reduce greenhouse gas emissions—who already acted and/or have been acting in full compliance with and in reliance on the emissions standards, voluntary programs like the Carbon Challenge, and all other applicable environmental laws and regulations that were in effect prior to the enactment of Local Law 97.

223. Plaintiffs and other building owners, landlords, and shareholders reasonably relied on this preexisting regulatory regime and incurred significant capital construction costs in complying therewith—and in otherwise taking steps to reduce their buildings' carbon footprints, including in response to the City's aspirational emissions reduction targets.

224. There is no limit to the length of the retroactivity period for Local Law 97. Instead, it applies to all "Covered Buildings," regardless of how long ago they were built or retrofitted. The Law captures preexisting buildings already retrofitted to reduce their greenhouse gas

emissions levels and buildings designed and built with energy efficiency in mind, including emissions reduction activity taken in reliance on voluntary initiatives.

225. There is no rational public purpose justifying retroactive application of Local Law 97. To impose emissions-related "penalties" on the owners, landlords, and shareholders of properties retrofitted or built in compliance with preexisting law and in reliance on applicable government initiatives is nothing short of arbitrary. This arbitrariness is exacerbated by the various other infirmities discussed above, including the Law's myopic focus on emissions rather than efficiency and use, the complete disconnect between the "penalties" and the goals the Law purports to advance, and the extreme state of uncertainty created by the underdeveloped rules and inadequate timeframes around potential adjustment applications.

226. Indeed, Local Law 97 would punish even the most ambitious efforts by building owners, landlords, and shareholders to reduce their environmental footprints. For instance, Plaintiff Glen Oaks could spend approximately $24 million to replace all of the boilers in its complex and still not bring its buildings into compliance with Local Law 97's emissions limits. Even after this significant expenditure, Glen Oaks would still expect to face annual penalties of $818,200 under the Law's 2030 emissions limits. Similarly, Plaintiff Maiden has already spent roughly $600,000 to replace all windows in the building within the last eight years, but still expects to incur penalties of roughly $115,000 under the Law's 2030 emissions limits.

227. Acting under color of state law, Defendants have caused or will cause building owners, landlords, and shareholders (including Plaintiffs) to be deprived of their property without due process, in violation of their due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution.

228. Local Law 97 is therefore unconstitutional, invalid, and unenforceable, and the Court should so declare and order.

229. In the absence of declaratory and injunctive relief, owners, landlords, and shareholders (including Plaintiffs) will be irreparably harmed and subjected to this deprivation of rights guaranteed to them by the United States Constitution and the New York State Constitution.

FOURTH CLAIM FOR RELIEF
Due Process – Vagueness (U.S. Const. amend. XIV; N.Y. Const. art. I, § 6)
(Against All Defendants)

230. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein.

231. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." The New York State Constitution (art. I, § 6) similarly directs: "No person shall be deprived of life, liberty or property without due process of law."

232. Building owners, landlords, and shareholders, including Plaintiffs, have a legitimate property interest, grounded in state law, in the buildings they own.

233. A statute is unconstitutionally vague if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits, or if it authorizes or encourages arbitrary and discriminatory enforcement.

234. Local Law 97, including, but not limited to, Administrative Code sections 28.320.3, 28-320.6, 28-320.7, and 28-320.8 created thereby, is impermissibly vague and ambiguous. These provisions—which purport to lay out how emissions limits are calculated, how penalties are determined and imposed, and how adjustments are granted—do not provide building owners, landlords, or shareholders of ordinary intelligence a reasonable opportunity to understand what emissions limits they will be subject to in the future, the amount of the penalty they will face,

whether and how any aggravating or mitigating factors will be applied, whether they are (or will be) eligible to apply for adjustments, or their likelihood of being granted an adjustment.

235. Indeed, owners, landlords, and shareholders who applied for a "special circumstances" adjustment under Section 28-320.8 may not even receive a final decision on the application until ***after*** the 2024 emissions reporting period has expired, meaning that they will be exposed to potential penalties without even knowing what their emissions limit is.

236. Owners, landlords, and shareholders who hope to change the use or occupancy of their building are offered no guidance at all.

237. Rather than providing explicit standards, Local Law 97 employs inherently subjective criteria—including, but not limited to, phrases such as "reasonably possible" and "good faith efforts." Thus, the Law's application cannot be reasonably determined based on an objective reading of the statute, opening the door for arbitrary and inconsistent enforcement.

238. Moreover, as discussed, the statute is silent as to the treatment of multi-building cooperatives spread across multiple tax lots, and yet the City appears to believe that condominiums and co-ops will be treated equally under the law—creating massive uncertainty for cooperatives (like Plaintiffs Glen Oaks and Bay Terrance) in which some, but not all, of the tax lots exceed 50,000 gross square feet.

239. Because Local Law 97 is vague and ambiguous, it is entirely possible that the DOB will impose penalties on owners, landlords, and shareholders who should qualify for exemptions or adjustments under reasonable interpretations of the Law, will impose inconsistent and arbitrary penalties, and will grant and deny adjustments in an inconsistent manner without giving owners, landlords, and shareholders reasonable notice or time to comply, thereby penalizing even those owners, landlords, and shareholders who do their very best to comply with the Law's requirements.

240. Moreover, because the specific requirements for later compliance periods have not yet been set, owners, landlords, and shareholders who are working toward the initial limits now have no way of knowing whether those efforts will suffice to put their buildings on a path to future compliance. This lack of certainty, which interferes with owners, landlords, and shareholders' ability to engage in long-term planning, is especially egregious given that the remedial action required here—such as retrofits and major capital improvements—is both costly and incapable of simply being repeated or modified on a whim.

241. Due process does not permit the City or the DOB to impose extraordinarily high penalties based on such vague and ambiguous provisions that allow for arbitrary and inconsistent enforcement and application.

242. Acting under color of state law, Defendants have caused and will cause building owners, landlords, and shareholders (including Plaintiffs) to be deprived of their property without due process, in violation of their due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution.

243. Local Law 97 is therefore unconstitutional, invalid, and unenforceable, and the Court should so declare and order.

244. In the absence of declaratory and injunctive relief, owners, landlords, and shareholders (including Plaintiffs) will be irreparably harmed and subjected to this deprivation of rights guaranteed to them by the United States Constitution and the New York State Constitution.

FIFTH CLAIM FOR RELIEF
Improper Taxation – N.Y. Const. art. IX, § 2(c)(ii)(8); N.Y. Mun. Home Rule Law § 10(1)(ii)(a)(8)
(Against All Defendants)

245. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein.

246. Article IX, Section 2(c)(ii)(8) of the New York State Constitution provides in relevant part: "[E]very local government shall have power to adopt and amend local laws not inconsistent with the provisions of . . . any general law relating to the following subjects[:] . . . [t]he levy, collection and administration of local taxes authorized by the legislature . . . ."

247. Section 10(1)(ii)(a)(8) of the New York Municipal Home Rule Law similarly provides in relevant part: "[E]very local government . . . shall have power to adopt and amend local laws . . . not inconsistent with any general law, relating to the following subjects[:] . . . [t]he levy and administration of local taxes authorized by the legislature . . . ."

248. Local governments therefore have no inherent taxing authority. Rather, the New York State Constitution reserves all taxing powers to the State, which may expressly delegate that power to localities via an enabling statute. Thus, only the State Legislature may authorize a tax, and a local government may not implement and impose taxes unless authorized to do so by the State Legislature.

249. New York State has not authorized the City or other local governments to tax greenhouse gas emissions. Any City law that imposes a tax on emissions lacks legislative authorization.

250. Local Law 97's "penalties" for building owners, landlords, and shareholders whose greenhouse gas emissions exceed the Law's limits are, in fact, unauthorized taxes on emissions. A tax is a charge that a government exacts from a citizen to defray the general costs of government, unrelated to any particular benefit received by that citizen. Funds collected are found to be taxes when they are not reasonably necessary to the accomplishment of the purported regulatory purposes, or when the regulated entities are not primarily or proportionally benefitted by their expenditure. To determine whether a revenue-generating measure is a tax, courts must examine

the purpose and use of the funds collected, along with the government benefits received by the regulated entities.

251. Here, the funds collected under Local Law 97 are not connected to any benefit building owners, landlords, and shareholders receive from the government. A tax on the production of greenhouse gas emissions bears no relation to any benefit that regulated entities receive from the City or the DOB—particularly given that this tax will be imposed on ***existing*** buildings that were already in compliance with pre-existing laws, such that owners, landlords, and shareholders will effectively be forced to pay additional monies to the government simply for electing to maintain the *status quo*.

252. Moreover, collecting those funds is not reasonably necessary to the accomplishment of Local Law 97's regulatory purposes, as the government can reduce emissions without taxing owners, landlords, and shareholders who do not—or ***cannot***—comply with its strict annual limits.

253. Indeed, Local Law 97 does not require the City to put any of these funds toward reducing emissions or any other environmental effort that would further the Law's purported purpose.

254. That no provision in Local Law 97 provides for how the funds will be spent after they are recovered confirms that they are collected to raise revenue rather than to promote a governmental regulatory policy.

255. In addition, the owners, landlords, and shareholders who face these taxes are not primarily or proportionally benefitted by the expenditure of those taxes.

256. All Local Law 97 provides is for the collection of money to fill the City's coffers—in other words, for the taxation of emissions-producing entities.

257. For owners, landlords, and shareholders who desire to change the use or occupancy of their buildings—and thus incur a "penalty" despite ***no change*** in their compliance efforts or emissions levels—the "penalties" effectively amount to a use or occupancy tax.

258. Local Law 97 is therefore unconstitutional, invalid, and unenforceable to the extent it places a tax on buildings' greenhouse gas emissions, and the Court should so declare and order. The Court should also enjoin Defendants from enforcing Local Law 97's tax provision, the newly created section 28-320.6 of the Administrative Code.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment against Defendants as follows:

1. A declaration that Local Law 97 is preempted by the CLCPA and therefore invalid in its entirety;

2. A declaration that Local Law 97 is facially unconstitutional in its entirety under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution;

3. In the alternative to the relief sought in the preceding paragraph, a declaration that each of the challenged portions and provisions of Local Law 97 is facially unconstitutional under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution;

4. A declaration that Local Law 97 imposes an improper tax in violation of Article IX, Section 2(c)(ii)(8) of the New York State Constitution and Sections 10(1)(i) and 10(8) of the Municipal Home Rule Law;

5. A permanent injunction enjoining Defendants from implementing or enforcing Local Law 97, or, in the alternative, from implementing or enforcing each of its challenged portions and provisions; and

6. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
May 18, 2022

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