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June 25, 2019

VIA HAND DELIVERY

Hon. L. Michael Mackey
Supreme Court, Albany County
16 Eagle Street
Albany, New York 12207

**Re: The Landmarks Society of Greater Utica et al. v. Planning Bd.
of the City of Utica et al.
Index No. 02797-19**

Dear Judge Mackey:

On behalf of the Petitioners-Plaintiffs ("Petitioners") in the above-referenced proceeding/action, we respectfully request the opportunity to submit a sur-reply to address the new matter contained in the reply papers of the Respondents-Defendants ("Respondents") (submitted on June 20, 2019) (collectively, the "Reply Papers"). In their Reply Papers, the Respondents assert numerous arguments that address the merits of Petitioners' underlying claims but have nothing to do with the ripeness arguments that Respondents advance in their motion papers seeking dismissal. Also, these issues were not addressed in their original moving papers. We, therefore, seek leave to address these new issues.

These matters include: (1) the scope of Mohawk Valley Health System's (and the Planning Board's) responsibilities to meaningfully consider alternative locations for this public benefit Project, which indisputably will require the use of eminent domain to proceed at the approved Downtown Site location; (2) the scope of the Planning Board's authorization in its SEQRA Findings to City Staff to take necessary actions to carry out the adopting resolution; and (3) the final nature of the Planning Board's approval as to the location of the Project on the Downtown Site, which approval is final and binding as to all involved agencies, regardless of the lack of a site plan review application presently before the Planning Board or other approvals that may be needed for the Project.

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We very much appreciate your Honor's consideration and respectfully request leave to submit the attached sur-reply.

Very truly yours,

Thomas S. West

TSW/cmm

Enclosure

cc: Charles E. Diamond, Chief Clerk (via e-mail)
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