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TESTIMONY OF THE GREENWICH VILLAGE SOCIETY
FOR HISTORIC PRESERVATION
REGARDING BSA CASE #238-06-A
110-124 East 12th Street Air Rights Transfer
April 17, 2007

Thank you Commissioners for the opportunity to testify before you today. My name is Andrew Berman and I am the Executive Director of the Greenwich Village Society for Historic Preservation. GVSHP is the largest membership organization in Greenwich Village, NoHo, and the East Village, and promotes sound preservation and planning policies in our neighborhoods.

I strongly urge you to overturn the Department of Buildings' authorization of the air rights transfer in this case. Quite simply, it is a fiction for DOB to claim that they have "transferred" development rights from the Post Office to the dorm site. As a federal agency, the Post Office has unlimited development ability for its properties, which cannot be restricted by the City. Thus when the city authorizes a "transfer" of development rights from the Post Office in a case like this, it is simply giving a private developer – in this case Hudson Companies and NYU – the ability to build larger than the zoning allows, while offering no commensurate decrease in development ability for the neighboring site, the Post Office. Instead we get one "super-sized" structure, the NYU dorm, which exceeds zoning allowances by 55%, with no publicly enforceable limitation of development ability on the Post Office site. In fact, the Post Office could turn around a year from now and decide to build a 50-story tower on their site, and there's nothing the City could do to stop them, even though they will have supposedly "transferred" all their development rights away from this site.

DOB's response to this so far has been to say that the easement holder – Hudson Companies and eventually NYU – will have the ability to go to court and enforce the easement to prevent such development. But there are absolutely no guarantees that they will go to court to do so, much less that they will be successful. In essence, therefore, this transaction is transferring enforcement of public protections from a public agency – the Department of Buildings – to a private property owner. And we have no reason to believe that this private property owner will act in the public interest. This is simply unacceptable. I do not want to entrust Hudson Companies or NYU to uphold the public good, and neither should you.

While air rights transfers are generally allowable under New York City zoning to adjacent properties, that entire notion is based upon the premise that in order for the City to allow the increased development rights on one lot, they have the power to remove an equal amount of development rights from another adjacent lot. The City simply does not have the ability to enforce this equation when one of the

owners is the Post Office, a federal agency made immune from local zoning by the Supremacy clause of the Constitution. Using its police power, the City can prevent illegal construction from taking place when it is being done by a private property owner, but has no such power if the perpetrator is a federal agency like the Post Office.

It should be noted that while we feel strongly about the principle involved here, the particular players give us even greater cause for concern. As you can see from the documents I am submitting, the Post Office in undertaking these air rights transfers did not execute the appropriate Section 106 historic preservation reviews, nor did they conduct any National Environmental Policy Act review as required. The abysmal record of NYU, the eventual owner of this development and supposed enforcer of this agreement, is too long to enumerate here and speaks for itself. Why exactly are we to believe that these two entities, with such appalling track records on similar issues, will do the right thing in this case?

Please do not allow this fictitious, unenforceable air rights “transfer” to stand. To do so would undermine the integrity of the zoning text, encourage overdevelopment of our neighborhoods, and take enforcement of public protections out of the hands of city agencies and put them in the hands of private interests. This is simply wrong, and I urge you to overturn it today.