

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

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In the Matter of the Application of	:
THE VESTRY OF ST. BARTHOLOMEW’S	:
CHURCH IN THE CITY OF NEW YORK	:
For Approval to transfer property pursuant to	:
Sections 510 and 511-a of the Not-for-Profit	:
Corporation Law and Section 12 of the	:
Religious Corporations Law.	:
-----X	:

Index No. \_\_\_\_\_

**VERIFIED PETITION FOR THE AUTHORIZATION  
OF TRANSFER OF RELIGIOUS CORPORATION’S PROPERTY**

Petitioner The Vestry of St. Bartholomew’s Church in the City of New York (“St. Bart’s” or “Petitioner”), by its Rector, the Right Reverend Dean E. Wolfe, for its Verified Petition herein (the “Petition”), respectfully alleges:

1. St. Bart’s is a New York Religious Corporation duly incorporated and existing under Article 3 of the Religious Corporations Law (“RCL”), with its parish office at 325 Park Avenue, New York, New York 10022. St. Bart’s was incorporated in New York County on January 19, 1835. A true and correct copy of the St. Bart’s Certificate of Incorporation is annexed hereto as Exhibit 1. *See* Not-for-Profit Corporation Law (“N-PCL”) § 511(a)(1).

2. St. Bart’s is a warm and vibrant parish of the Protestant Episcopal Diocese of New York (the “Diocese”) located in the heart of midtown Manhattan at 325 Park Avenue (Block 1305, Lot, 1), New York, New York 10022 (the “St. Bart’s Land”). On the St. Bart’s Land are buildings that, since 1967, have been collectively designated as a New York City landmark (the “Landmark Buildings”) (together, with the St. Bart’s Land, the “Property”). Attached hereto as Exhibit 2 is an accurate copy of the deed to the St. Bart’s Land.

3. The Landmark Buildings contain less floor area, as defined in the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as heretofore amended (the “Zoning Resolution”), than is now permitted to be built upon and used on the St. Bart’s Land. Accordingly, valuable development rights equal to the difference between the basic maximum floor area permitted to be built upon and used on the St. Bart’s Land and the existing floor area in the Landmark Buildings (the “Excess Development Rights”) are owned by St. Bart’s and are available for transfer. *See* N-PCL § 511(a)(4).

4. To further its mission and to continue to serve the City of New York and the larger world for generations to come, St. Bart’s has determined that it is in its best interest to sell certain of its Excess Development Rights to a qualified market purchaser. St. Bart’s therefore brings this Petition for an order authorizing it to consummate a transaction with JPMorgan Chase Bank, N.A. (“JPMorgan”) (i) selling certain of its Excess Development Rights outright (the “Base Development Rights”); and (ii) granting, for a fee, an option to JPMorgan to purchase certain additional Excess Development Rights (the “Additional Development Rights”) under certain agreed-upon terms and conditions (the “Option”). Subject to the approval of this Court as well as to approvals from the Landmarks Preservation Commission (the “LPC”) and from the Chairperson of the City Planning Commission (the “CPC”), St. Bart’s anticipates closing on the sale of the Base Development Rights by the end of 2019. St. Bart’s expects to complete any sale of the Additional Development Rights by the end of 2020, although that time frame is more difficult to predict in light of the Option and could be extended.

5. By this Petition, St. Bart’s demonstrates that the proposed transaction (i) to sell outright the Base Development Rights; and (ii) to grant, for a fee, the Option to JPMorgan to purchase the Additional Development Rights pursuant to a Purchase and Sale Agreement between

St. Bart's and JPMorgan dated March 13, 2018 (the "PSA"), is fair and reasonable to St. Bart's and promotes its religious purposes. *See* RCL § 12(1); N-PCL § 511(d). Attached hereto as Exhibit 3 is a true and correct copy of the PSA.<sup>1</sup>

**A. St. Bartholomew's Church in the City of New York**

6. St. Bart's mission is to comfort, challenge and inspire a community of people in search of meaning and hope in their lives. St. Bart's passionately serves the City of New York and the larger world, welcoming people of every denomination, through daily cultural and community offerings, beautiful music, and powerful inspirational worship services.

7. Since 1918, St. Bart's has operated, among other things, an Episcopal church on the Property, for worship and activities in furtherance of the faith and practices of the Protestant Episcopal Church in the United States of America. The activities of St. Bart's have always conformed to this purpose as a religious corporation. *See* N-PCL § 511(a)(3).

8. The names and addresses of the current Vestry of St. Bart's (the "Vestry"), its governing board, are (N-PCL § 511(a)(2)):

- Rt. Rev. Dean E. Wolfe (Rector), 400 E. 51<sup>st</sup> Street, #4E, New York, NY 10022
- Catherine Belford Budd, 245 E. 72<sup>nd</sup> Street, #7G, New York, NY 10021
- Kathleen Breiten, 124 W. 60<sup>th</sup> Street, #36E, New York, NY 10023
- Archer Christian Burke, 3600 Fieldston Road, #1L, Bronx, NY 10463
- Hunter T. Carter, 425 Fifth Avenue, #19A, New York, NY 10016
- Tim Collins, 150 W. 55<sup>th</sup> Street, #7C, New York, NY 10019
- Peter B. de Menocal, 455 Central Park West, #6A, New York, NY 10025

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<sup>1</sup> Pursuant to the terms of the PSA, St. Bart's will retain at least 20,000 square feet of development rights, even if the Option is exercised in full.

- John Gilliland (Warden), 130 W. 15<sup>th</sup> Street, #7A, New York, NY 10011
- Morihiko Goto, 525 E. 72<sup>nd</sup> Street, #7A, New York, NY 10021
- Robert Gutheil, 10 W. 15<sup>th</sup> Street, #1110, New York, NY 10011
- Mary Krueger, 6 W. 77<sup>th</sup> Street, #9A, New York, NY 10024
- Susannah Wade Lewis, 1 Great Hill Road, Darien, CT 06820
- Heather Mitchell, 1185 Park Avenue, #9D, New York, NY 10128
- Liza Page Nelson (Warden), 215 E. 68<sup>th</sup> Street, #23H, New York, NY 10065
- Alexander Robertson, 136 E. 64<sup>th</sup> Street, #10E, New York, NY 10065
- Keith Rook, 845 United Nations Plaza, #25G, New York, NY 10017
- Barbara Case Senchak, 55 Central Park West, #15F, New York, NY 10023
- Chantal N. Stevens, 50 E. 129<sup>th</sup> Street, #6C, New York, NY 10035

**B. JPMorgan Chase Bank**

9. JPMorgan Chase Bank, N.A. is a financial services firm with an office at 270 Park Avenue, (Block 1283, Lot 21), New York, New York 10016. JPMorgan owns the land and buildings at that address (the “JPM Property”).

**C. The Proposed Development Rights Transaction**

10. As discussed above, St. Bart’s owns approximately 575,000 square feet of valuable Excess Development Rights that it cannot practically utilize on the Property, but that nevertheless are available for transfer to a “qualifying site,” as defined in the Zoning Resolution.

11. Any transfer of the Excess Development Rights must be made in accordance with the requirements of the Zoning Resolution, including that the Rights be sold to a “qualifying site.” See Zoning Resolution, Article VIII, Section 81-642. Another such requirement, applicable to transfers of unused development rights by St. Bart’s and other landmark sites within the East

Midtown Subdistrict of the Special Midtown Zoning District, is payment to the East Midtown Public Realm Improvement Fund (the “PRIF”) of an amount equal to \$61.49 per square foot or 20% of the purchase price, whichever is greater. Approvals from the LPC and the Chairperson of the CPC are also required to complete the transaction.

12. The JPM Property is a “qualifying site,” as defined in the Zoning Resolution. *See* Zoning Resolution, Article VIII, Section 81-613. JPMorgan may therefore purchase and receive Excess Development Rights from St. Bart’s for use on JPMorgan’s property. Following a recent rezoning of the East Midtown Subdistrict of the Special Midtown Zoning District designed to encourage redevelopment of the properties therein, JPMorgan is in the process of redeveloping the JPM Property. Consistent with that redevelopment, JPMorgan wishes to acquire the Base Development Rights and may wish to acquire the Additional Development Rights; provided, that JPMorgan may utilize the Base Development Rights at the JPM Property or at another “qualifying site,” as defined in the Zoning Resolution, and that JPMorgan must utilize any Additional Development Rights that it elects to acquire at the JPM Property only.

13. St. Bart’s seeks to sell certain of its Excess Development Rights to JPMorgan. On March 13, 2018, St. Bart’s and JPMorgan agreed on the terms and conditions for the sale of the Base and Additional Development Rights, as memorialized in the PSA (the “Development Rights Transfer”). *See* Ex. 3, PSA.

14. St. Bart’s therefore brings this Petition for an order authorizing the Development Rights Transfer as contemplated in the PSA.

**D. The Conditions of the Proposed Transaction**

15. The material terms and conditions of the Development Rights Transfer, as set forth in the PSA, include:

(a) St. Bart's will transfer the Base Development Rights, constituting 50,000 square feet of Excess Development Rights, to JPMorgan outright for the purchase price of \$15.625 million (the "Base Development Rights Purchase Price");

(b) St. Bart's also will grant to JPMorgan the Option to acquire the Additional Development Rights, up to a total of approximately 505,000 square feet, for a price of \$312.50 per square foot (the "Additional Development Rights Payment"). JPMorgan may exercise the Option by notifying St. Bart's of the quantity of additional Excess Development Rights it wishes to purchase on or before February 28, 2019;<sup>2</sup>

(c) In consideration for the Option to purchase the Additional Development Rights, JPMorgan will pay St. Bart's \$3 million (the "Option Payment"), which will be credited against the Additional Development Rights Payment if JPMorgan purchases 300,000 square feet or more of the Additional Development Rights.

16. As the Zoning Resolution requires a payment to the Public Realm Improvement Fund upon completion of any transaction, JPMorgan will pay 20% of the Base Development Rights Purchase Price, equal to \$3.125 million, to the PRIF in connection with the purchase of the Base Development Rights (the "Base PRIF Payment"). Upon final determination of the quantity and purchase price of the Additional Development Rights, JPMorgan will make an additional PRIF payment of 20% of the purchase price of the Additional Development Rights (the "Additional PRIF Payment"). *See* N-PCL § 511(a)(5).

17. St. Bart's will apply the proceeds generated by the Development Rights Transfer towards (1) restoration, repairs and maintenance of the Landmark Buildings in accordance with the conditions of the LPC approval required to effect the Development Rights Transfer; (2)

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<sup>2</sup> As noted above, St. Bart's will retain at least 20,000 square feet of Development Rights, even if the Option is exercised in full.

reserving the portion of such proceeds as may be required by the LPC, as a fund to be held in a segregated account for future inspections, restorations, repairs and maintenance of the Landmark Buildings, as provided in the restrictive declaration to be recorded against the Property as a condition of the LPC approval; and (3) contributing to the Diocese 10% of the net proceeds as a tithe, to be used by the Diocese for the benefit of other church buildings in the Diocese, as required by the resolution adopted at the 239th Diocesan Convention of the Episcopal Diocese of New York held in 2015 (the "Diocesan Resolution"). An accurate copy of the Diocesan Resolution is attached hereto as Exhibit 4.

18. St. Bart's also may be required to devote a portion of the proceeds generated from the Development Rights Transfer towards paying the closing costs of the transaction. Pursuant to the PSA, JPMorgan has agreed to reimburse St. Bart's for up to \$2 million of specified costs in connection with the negotiation and closing of the transaction, with St. Bart's to pay any such remaining costs. *See* Ex. 3, PSA § 2(d)(vi). Also under the PSA, St. Bart's may be required under certain circumstances to contribute proceeds to the PRIF, and in such circumstances the proceeds of the Development Rights Transfer would be used to fund those contributions. *Id.* § 14(b).

19. In connection with the Development Rights Transfer, St. Bart's retained Sharon Locatell and Adam Wald of Appraisers & Planners, Inc. to conduct an appraisal of the Excess Development Rights at issue. Based on a sales comparison approach, Ms. Locatell and Mr. Wald calculated the market value, as of April 23, 2018, of the Base Development Rights to be \$350 per square foot (resulting in net proceeds to the seller of \$280 per square foot, after contributing 20%, or \$70 per square foot, to PRIF), for a total value of \$17.5 million (50,000 square feet at \$350 per square foot = \$17,500,000), under the assumption that the *seller* would be responsible for paying the PRIF contribution. The total proceeds to St. Bart's for the Base Development Rights transfer

exceed this appraised amount, since St. Bart's will receive \$15.625 million (\$312.50 per square foot) for the sale of the 50,000 square feet of Base Development Rights, and the required payment of \$3.125 million (\$62.50 per square foot) to be made to PRIF will be made by JPMorgan.<sup>3</sup> Further, the PSA permits St. Bart's to draw against the \$2 million disbursement funds deposit for certain third-party expenses and closing costs, which is additional value in the transaction received by St. Bart's. In total, JPMorgan's contribution to St. Bart's will be \$20.750 million (\$15.625 million + \$3.125 million + \$2 million). Attached hereto as Exhibit 5 are true and correct copies of the appraisals conducted by Appraisers & Planners, Inc. *See* N-PCL § 511(a)(4).

20. St. Bart's' most recent financial statement and audited financial report is annexed hereto as Exhibit 6. The report includes a description of St. Bart's' debts and liabilities and how they are secured. St. Bart's' current assets as shown on the annual Statement of Financial Position are \$31,517,235 as of Year End 2016. *See* N-PCL § 511(a)(4).

**E. The Development Rights Transfer Has Been Properly Authorized Under the St. Bart's By-Laws and Diocesan Policies**

21. The Development Rights Transfer has been authorized by the Vestry at a duly called and held meeting in accordance with the By-Laws of St. Bart's (the "By-Laws"). Attached hereto as Exhibit 7 is an accurate copy of the By-Laws. At the March 13, 2018 meeting of the Vestry, at which a quorum was present, all members in attendance voted for approval of the Transfer.<sup>4</sup> An accurate copy of the Vestry's Resolution, certified by Warden Liza Page Nelson, is attached hereto as Exhibit 8. Additionally, each member of the Vestry, including those not in attendance at the meeting, supplied his or her Written Consent approving the Transfer, thereby

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<sup>3</sup> If St. Bart's is required to contribute proceeds to the PRIF, it is expected to be in the amount of \$12.50 per square foot.

<sup>4</sup> Under the By-Laws, a quorum is present when the Rector and at least a majority of the whole number of Church Wardens and Members of the Vestry, taken as a whole, are present. *See* Ex. 7, St. Bart's' By-Laws, at 6.



making the approval unanimous. Attached hereto as Exhibit 9 are true and correct copies of the Unanimous Written Consents executed by each member of the Vestry authorizing the transactions contemplated in the PSA.

22. The Development Rights Transfer also has been authorized by the Bishop and Standing Committee of the Diocese in accordance with Diocesan policies and the RCL. At a duly called meeting held on June 7, 2018, the Standing Committee voted to approve the Transfer. On June 14, 2018, the Right Reverend Andrew M. L. Dietsche, Bishop of New York, also approved the Transfer. Attached hereto as Exhibits 10 and 11 are the signed Consents of the Standing Committee and Rt. Rev. Dietsche. *See* RCL § 12(2).

23. St. Bart's has no members within the meaning of the Not-for-Profit Corporation Law. *See* N-PCL § 511(a)(8).

**F. Other Representations and Warranties Under the N-PCL and RCL**

24. By this Petition, St. Bart's demonstrates that the proposed Development Rights Transfer is fair and reasonable and promotes the religious, charitable and educational purposes of St. Bart's. *See* N-PCL §§ 511-a(c), 511(a)(6), 511(d). As set forth above, St. Bart's will, among other things, receive significant financial compensation for the transfer of Excess Development Rights that it cannot practically otherwise utilize itself. The net proceeds received by St. Bart's from the Development Rights Transfer will allow it to carry out much-needed repairs and restoration of the Property, relieving it of the financial burden of the costs of such repairs and maintenance. Through its tithe to the Diocesan fund, St. Bart's will also use a portion of the proceeds to provide financial support for other Episcopal churches in the Diocese for repairs and restoration of their buildings. *See* Ex. 4, Diocesan Resolution (any parish selling or leasing its air rights must "share a tithe [(10%)] of the proceeds of the sale or lease of air rights with the Diocese for the benefit of other church buildings in the Diocese.").

25. St. Bart's is not insolvent at the time of the filing of this Petition and will not become insolvent as a result of the proposed Development Rights Transfer. *See* N-PCL § 511-a(b).

26. The dissolution of St. Bart's is not contemplated by this Petition. *See* N-PCL § 511(a)(5).

27. The proposed Development Rights Transfer is being conducted at arm's length. St. Bart's employed and utilized sophisticated advisors, including skilled attorneys and appraisers, in connection with entering into the agreements contemplated by the Transfer. None of the Trustees, Officers, employees or members of St. Bart's will receive a direct or indirect benefit as a result of the proposed Transfer.

28. In addition to the approval of this Court, the remaining material conditions for the Development Rights Transfer include approvals from the LPC and the Chairperson of the CPC.

29. No persons or entities have raised, or have a reasonable basis to raise, objections to the proposed Development Rights Transfer contemplated in this Petition. *See* N-PCL § 511-a(b).

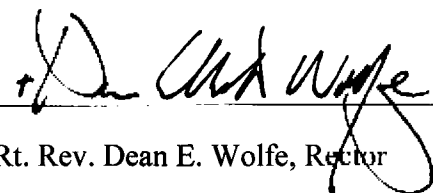
30. No prior application for this or any similar relief has been made to this or any Court.

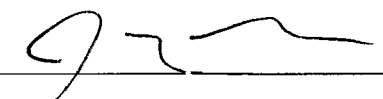
WHEREFORE, Petitioner respectfully requests that this Court approve the Development Rights Transfer as set forth herein and for such other and further relief as may be just and proper.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed on this 27th day of June, 2018.

THE VESTRY OF ST. BARTHOLOMEW'S CHURCH IN THE CITY OF NEW YORK

GIBSON, DUNN & CRUTCHER LLP

By:   
Rt. Rev. Dean E. Wolfe, Rector

By:   
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**SCHEDULE OF EXHIBITS**

<b>No.</b>	<b>Document Description</b>
<b>1</b>	St. Bart's Certificate of Incorporation
<b>2</b>	Deed to the St. Bart's Land
<b>3</b>	Purchase and Sale Agreement, Dated March 13, 2018
<b>4</b>	Diocesan Resolution of 2015
<b>5</b>	Appraisals by Appraisers and Planners Inc.
<b>6</b>	St. Bart's 2016 Financial Statement
<b>7</b>	St. Bart's By-Laws
<b>8</b>	St. Bart's Vestry Resolution of March 13, 2018
<b>9</b>	St. Bart's Vestry Unanimous Written Consents of March 13, 2018
<b>10</b>	Standing Committee Consent
<b>11</b>	Rt. Rev. Andrew Dietsche Consent