

EXHIBIT E

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

PRESENT: HON. NANCY M. BANNON
Justice

PART 42

**THE COMMITTEE TO SAVE COOPER UNION, INC.,
by the President and Alumnus ADRIAN JANOVIC,
MICHAEL ESSI, TOBY CUMBERBATCH, ISABELLA
PEZZULO and CLAIRE KLEINMAN**

INDEX NO. 155185/2014

- v -

MOTION DATE 9/21/15

**BOARD OF TRUSTEES OF THE COOPER UNION FOR
THE ADVANCEMENT OF SCIENCE AND ART, et al.**

MOTION SEQ. NO. 004

The following papers were read on this motion for, inter alia, *cy pres* relief.

Notice of Motion/ Order to Show Cause — Affirmation — Affidavit(s) —

Exhibits — Memorandum of Law-----

No(s). 1

Answering Affirmation(s) — Affidavit(s) — Exhibits -----

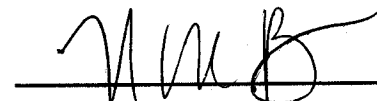
No(s). _____

Replying Affirmation — Affidavit(s) — Exhibits -----

No(s). _____

The motion seeking to grant the relief sought in the cross-petition, including modification of the Charter and Deed of Trust and approval of the Consent Decree is decided in accordance with the attached memorandum decision.

Dated: December 15, 2015


_____, JSC
HON. NANCY M. BANNON

1. Check one:

☒ **CASE DISPOSED**

☐ **NON-FINAL DISPOSITION**

2. Check as appropriate: MOTION IS:

☒ **GRANTED**

☐ **DENIED**

☐ **GRANTED IN PART**

☐ **OTHER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42**

-----X

**THE COMMITTEE TO SAVE COOPER UNION, INC., by the
President and Alumnus, ADRIAN JOVANOVIĆ, MICHAEL
ESSL, TOBY CUMBERBATCH, ISABELLA PEZZULO, and
CLAIRE KLEINMAN,**

Petitioners,

Index No. 155185/2014

-against-

**BOARD OF TRUSTEES OF THE COOPER UNION FOR THE
ADVANCEMENT OF SCIENCE AND ART, ROBERT
BERNHARD, JEFFREY GURAL, RICHARD S. LINCER,
THOMAS DRISCOLL, RAYMOND G. GALCI, JOSEPH B.
DOBRONYI, JR., RACHEL L. WARREN, JEREMY
WERTHEIMER, EDGAR MOKUVOS, JEFFREY HERSCH,
HERIC HIRSCHHORN, MALCOM KING, KEVIN SAVIN,
JOHNNY C. TAYLOR, JR., and THE COOPER UNION FOR
THE ADVANCEMENT OF SCIENCE AND ART,**

Respondents.

-----X

**PEOPLE OF THE STATE OF NEW YORK, by ERIC
SCHNEIDERMAN, Attorney General of the State of New York,**

Intervenors/Cross-Petitioners,

-against-

**BOARD OF TRUSTEES OF THE COOPER UNION FOR THE
ADVANCEMENT OF SCIENCE AND ART, ROBERT
BERNHARD, JEFFREY GURAL, RICHARD S. LINCER,
THOMAS DRISCOLL, RAYMOND G. GALCI, JOSEPH B.
DOBRONYI, JR., RACHEL L. WARREN, JEREMY
WERTHEIMER, EDGAR MOKUVOS, JEFFREY HERSCH,
HERIC HIRSCHHORN, MALCOM KING, KEVIN SAVIN,
JOHNNY C. TAYLOR, JR., THE COOPER UNION FOR
THE ADVANCEMENT OF SCIENCE AND ART, THE
COMMITTEE TO SAVE COOPER UNION, INC., by the
President and Alumnus, ADRIAN JOVANOVIĆ, MICHAEL
ESSL, TOBY CUMBERBATCH, ISABELLA PEZZULO, and
CLAIRE KLEINMAN,**

Cross-Respondents.

-----X

NANCY M. BANNON, J.:

I. Introduction

The petitioners, a voluntary association, alumni, a prospective student and an individual who declined admission to The Cooper Union For the Advancement of Science and Art ("The Cooper Union"), commenced a special proceeding pursuant to CPLR article 77 to challenge the determination of the respondent Board of Trustees of The Cooper Union (the "Board") to institute a policy of charging tuition to undergraduates attending the school, one of the nation's premier art, architecture, and engineering undergraduate institutions, beginning in the fall of 2014. For over 150 years, students attending The Cooper Union, located in the East Village neighborhood of Manhattan, benefitted from a tradition of free tuition, which ended as a result of the Board's determination.

In June 2014, the petitioners moved by order to show cause for several forms of injunctive relief, *i.e.* (1) enjoining the Board from charging tuition and removing certain trustees who voted to institute the tuition policy, (2) appointing a Special Master to conduct an accounting, and (3) directing that the respondents, pursuant to the Charter, create a society called "the Associates of the Cooper Union for the Advancement of Science and Art" in accordance with the Charter. The respondents, comprised of the Board, the former President of The Cooper Union, and individual Board members, opposed the motion and moved to dismiss the petition for, *inter alia*, failure to state a cause of action. Respondent Jeremy Wertheimer, a trustee, separately cross-moved to dismiss the petition insofar as asserted against him.

The controversy presented centers upon the interpretation of the 1859 Charter and Deed of Trust, which established The Cooper Union, and the intent embodied therein of Peter Cooper, the industrialist and philanthropist who created the Trust and founded the school. The petitioners argued, *inter alia*, that these documents prohibit the respondents from charging tuition as proposed, the respondents interpreted Peter Cooper's words otherwise and, in light of the sometimes ambiguous language used in the documents, each position was supportable. Peter Cooper, is, alas, no longer available to explain what he intended in 1859 or advise on how to best proceed today under the circumstances now presented. The court was asked to fashion an appropriate course for the future. Apropos here, it has been observed that "while the future's there for anyone to change, still you know it seems, it would be easier sometimes to change the past." Jackson Browne, *Fountain of Sorrow*, on *Late For The Sky* (© 1974 Swallow Turn Music ASCAP). No need to change the past, however, as the parties have now, in conjunction with the Attorney General of the State of New York, commendably fashioned a proper solution on their

own and reached a settlement, embodied in a Consent Decree, of which the court now approves, upon the exercise of its *cy pres* powers. The parties' agreement arose as follows.

The Attorney General, in August of 2014, commenced an investigation concerning the finances and management of The Cooper Union. During the course of its investigation, the Attorney General's Office also facilitated a resolution to the parties' dispute. The resolution, embodied in a Consent Decree entered into by the original petitioners and respondents, as well as the Attorney General and The Cooper Union, aims to (1) modernize the Charter and Deed of Trust of The Cooper Union, (2) increase representation of students, faculty, staff, and alumni on the Board, (3) implement transparency and monitoring in The Cooper Union's management and finances, (4) reform The Cooper Union's internal governance, and (5) require a review of the feasibility of returning to a tuition-free policy.

Although not initially a party to this proceeding, the Attorney General, on September 4, 2015, appeared pursuant to EPTL § 8-1.1(f) and moved by order to show cause to intervene as cross-petitioner and to grant the relief sought in the cross-petition, including modification of the Charter and Deed of Trust and approval of the Consent Decree. By an order dated September 14, 2015, this court, *inter alia*, granted the branch of the Attorney General's application seeking to intervene as a cross-petitioner and permitted The Cooper Union to intervene as a respondent upon the parties' consent. This court reserved decision on the remaining branch of the motion. For the reasons set forth below, this court grants the *cy pres* relief sought in the cross-petition and approves the Consent Decree, as amended and submitted to the court on September 21, 2015, attached.

II. Background

A. The Foundation of The Cooper Union: The 1859 Charter and Deed of Trust

Peter Cooper, an inventor, industrialist, philanthropist, and one-time presidential candidate, was one of New York's greatest champions of social and economic justice. He was the son of a laborer and achieved his own great success with only a limited amount of formal education. As he stated in his 1873 Commencement Address, Cooper intended to provide access to the type of education he was unable to receive and "contribute to the elevation and the happiness of the industrial classes to which I belonged" by creating a school devoted to science and art. By all accounts, his ideal that education should be as "free as air and water" became a motto of the school. To that end, he founded The Cooper Union in 1859 to provide a

free night school to educate working people in practical sciences, a free art school for women, and a free reading room for the public. He further aimed to establish a degree-granting polytechnic school and a society of "Associates" to support the mission of The Cooper Union.

On April 13, 1859, the New York State legislature passed an amended act (chapter 279 of the laws of 1859), entitled the "Charter of The Cooper Union," to "enable Peter Cooper to found a Scientific Institution in the City of New York" and permit the conveyance to the school by Cooper and his wife Sarah "that certain block of land situate in the said city and bounded northerly by Astor Place, easterly by the Third Avenue, southerly by Seventh Street, and westerly by the Fourth Avenue, with the edifice thereon erected." That building, known as the Foundation Building, was constructed the year before at Cooper's own expense in anticipation of The Cooper Union's creation and included two commercial floors rented to businesses at the time. The Foundation Building was conveyed by a Deed of Trust dated May 25, 1859 and became The Cooper Union's main building, which it continues to occupy today.

The Charter and Deed of Trust provide that the Foundation Building, together with all rents, income and profits, "shall be forever devoted to the instruction and improvement of the inhabitants of the United States in practical science and art." Specifically, the Charter and Deed of Trust set forth five "objects and purposes" of the institution:

"1. To regular courses of instruction, at night, free to all who shall attend the same ... on the application of science to the useful occupations of life, on social and political science, meaning thereby not merely the science of political economy, but the science and philosophy of a just and equitable form of government, based upon the great fundamental law that nations and men should do unto each other as they would be done by, and on such other branches of knowledge as in the opinion of the Board of Trustees will tend to improve and elevate the working classes in the city of New York.

"2. To the support and maintenance of a free reading-room, of galleries of art, and of scientific collections, designed, in the opinion of the Board of Trustees to improve and instruct those classes of inhabitants of the City of New York whose occupations are such as to be calculated, in the opinion of said Board of Trustees, to deprive them of proper recreation and instruction.

"3. To provide and maintain a school for the instruction of respectable females in the arts of design, and in the discretion of the Board of Trustees, to afford to respectable females instruction in such other art or trade as will tend to furnish them suitable employment.

"4. As soon as in the opinion of the Board of Trustees, the funds which shall from time to time be at their disposal, will warrant such an expenditure, such funds shall be appropriated to the establishment and maintenance of a thorough polytechnic school ... and which school shall, as far as possible, and as soon as possible, be made equal to the best technological schools now established or hereafter to be established ...

"5. To provide rooms, in the judgment of the Board of Trustees, suitable for the offices of a society to be organized ... and to be called, 'The associates of the Cooper Union for the advancement of Science and Art,' and to furnish such society for its general meetings on one evening of each week, the great hall of the building, if the council of such society shall require it so often."

In order to carry out these objectives, the Deed of Trust, in paragraphs Second and Third, established the Board of Trustees, then consisting of Peter Cooper, his son Edward Cooper, his son-in-law Abram S. Hewitt, Daniel F. Tiemann, Wilson G. Hunt and John E. Parsons, and gave them life terms.

The Deed of Trust set forth the obligations of and restrictions placed upon the Board, as well as procedures to be taken in the event of a vacancy on the Board or the full or partial destruction of the Foundation Building. Insofar as relevant here, the Deed of Trust, in paragraph Eleventh, states that the Board "is expressly forbidden ever to mortgage [the property], or any part thereof." Paragraph Twelfth goes on to forbid the Board of Trustees from incurring any debt higher than \$5,000 and provides that, in the event that debt is incurred above \$5,000, the "corporation [The Cooper Union] shall not be liable but the trustees shall be personally liable" if they voted in favor of the debt. Paragraph Thirteenth requires that all Board minutes be obtained and freely disseminated.

The Charter, in Section 10, requires the Board to render an annual accounting, under oath, including all receipts and expenditures, and provides, in Section 11, that the property held in trust by the corporation and used for the expressed purposes "shall not, not any part thereof, be subject to taxation while the same shall be appropriated to the uses, intents, and purposes hereby and in the said deed provided for." According to Section 12, the Supreme Court "shall possess and exercise supervisory power over the Corporation hereby created, and may at any time, on reasonable notice of application thereof to the Board of Trustees, compel from the Trustees, collectively or individually, a full account of the execution of their trust ..."

The Deed of Trust further provides that the Board may establish a society called "The Associates of the Cooper Union, for the advancement of Science and Art," to advise and oversee the Board. Specifically, the Deed of Trust empowers a majority of the council of Associates to petition the court for removal of a Board member for cause. The Charter sets forth that the society of the Associates is to be comprised of alumni of The Cooper Union, members of the Board, and others elected by the Associates. Their mission would be to encourage science, art, manufacturing, and commerce; create and reward inventions and improvements that tend to improve employment of the poor, increase trade, and the overall well-being of the country; and to pursue other academic endeavors in the fine arts and sciences.

The Charter provides that The Cooper Union, possessing all powers and privileges of a corporation, is authorized and empowered to receive the Foundation Building and any future endowments and appropriate them to the uses, intents, and purposes contemplated in the Charter and Deed of Trust, subject to the conditions and restrictions contained therein.

In a letter to the newly created Board dated April 29, 1859, Peter Cooper further explained his ideals and objectives, stating in part that "[m]y design is to establish this institution, in the hope that unnumbered youth will here receive the inspiration of truth in all its native power and beauty, and to find in it a source of perpetual pleasure to spread its transforming influence throughout the world." He further wrote, "I desire ... to awaken in the minds of the rising generation an undying thirst for knowledge and virtue, in order that they may be able, by wise and honorable measures, to preserve the liberties we enjoy." He concluded by imploring the Trustees to "[p]lease accept my heartfelt assurance of sincere desire that under your care thousands of the youth of our country may throng its halls to learn those lesson of wisdom so much needed to guide the inexperience of youth amidst the dangers to which they are at times exposed."

B. The Growth of The Cooper Union

Peter Cooper personally oversaw The Cooper Union for the first 24 years of its existence as its first President and Founding Trustee. During this time, The Cooper Union grew as a school and civic institution, hosting notable speakers including Abraham Lincoln, Frederick Douglass, and Susan B. Anthony.

After his death in 1883, Peter Cooper was succeeded by Edward Cooper and Abram Hewitt, who oversaw the institution for the next 20 years, actively managing the school and funding any deficits. In 1902, the children of Peter Cooper, Edward Cooper and Sarah Amelia Hewitt, along with Abram Hewitt, conveyed to the school the land upon which the Chrysler Building now sits. The 1902 deed conveying the property states that the gift was "for the purpose of constituting an endowment" for the "uses, intents and purposes" of The Cooper Union. The Chrysler Building property remains The Cooper Union's largest asset. Also in 1902, Andrew Carnegie gave The Cooper Union a cash gift of \$600,000, which was sufficient to fund the creation of the polytechnic school contemplated in the 1859 Charter and Deed of Trust. From 1902 to the late 1960's, the income from the Chrysler Building and the Carnegie endowment funded the creation and expansion of the undergraduate Art, Architecture, and Engineering programs for which The Cooper Union is now known.

In 1902 and again in 1931, the City of New York attempted to assess The Cooper Union's property for taxation. Both times a tax certiorari proceeding was commenced, and the Court of Appeals ruled that the property was free from taxation pursuant to the 1859 Charter. See People ex rel. Cooper Union v Wells, 180 NY 537 (1906); People ex rel. Cooper Union v Sexton, 247 AD 371 (1st Dept. 1936) aff'd 273 NY 462 (1936).

As it evolved from a night school for working people into one of the country's premier Art, Architecture, and Engineering undergraduate institutions, The Cooper Union sustained its unique tradition of tuition-free enrollment from its founding days until 2014 when the decision was made to begin charging tuition for its undergraduate programs.

C. The Attorney General's Investigation

After the Board's determination to begin charging tuition, the Attorney General commenced an investigation into the management and financial standing of The Cooper Union in August 2014. This investigation revealed decades of financial instability, characterized by periods of deficit spending in the millions and tens of millions of dollars, which the Attorney General concludes presently leaves the institution vulnerable.

In the late 1960's and early 1970's, the school's financial standing began to decline and The Cooper Union began to incur more persistent deficits. It sold its Green Camp property, which had served as a retreat and recreation space for the community. In 1970, the night school closed. In 1971, the Deed of Trust was amended by an order of the Supreme Court,

pursuant to a *cy pres* application, to allow The Cooper Union to “buy, sell, mortgage, let and otherwise use and dispose of its property, or borrow, as the trustees shall deem advisable” against its property other than the Foundation Building.

The 1980’s and most of the 1990’s saw general fiscal stability, but this began to fluctuate and decline in the late 1990’s and in the 2000’s. In 1998, The Cooper Union negotiated a new 99-year lease of the Chrysler Building, which set forth that rents would be reset in 2018 based on a new valuation of the property. However, the rents established between 1998 and 2018 were insufficient to generate a stream of income to eliminate the need for deficit spending. In 1999, The Cooper Union ran an operating deficit exceeding \$10 million, which consumed almost all of the returns from its liquid investment pool. In 2000, the deficit reduced to \$5 million, but rose to over \$11 million in 2001.

Upon assuming the Presidency of The Cooper Union in 2001, then-President George Campbell developed a Master Plan for fundraising and development of the school’s real estate holdings. The aim of the Master Plan was to raise \$120 million for the construction of a new academic building at 41 Cooper Square, a property leased from the city on a long-term basis. In turn, the existing Engineering School building at 51 Astor Place, a property owned by The Cooper Union, would be demolished and the lot leased to a commercial developer for profit. The Master Plan projected that revenues realized from the lease of its property at 51 Astor Place would allow the school to eliminate deficit spending in the near and intermediate term, which would lead to growth in its liquid investment pool and long-term financial stability.

The fundraising campaign, however, raised less than expected. By late 2005, the building fund had generated less than \$40 million in donations, which was less than half of what was considered necessary to begin construction on the new building. As a result, the Board sought to obtain a \$175 million loan to be secured by a mortgage on the Chrysler Building property (the “Loan Plan”).

In 2006, The Cooper Union filed a petition and application for *cy pres* relief to permit it to use the Chrysler Building property as security for the financing and, pursuant to EPTL 8-1.1(c) to allow it to use the proceeds of the financing, which would be in excess of the historic dollar value of the property, for construction and related costs of the new academic building, for renovations to the Foundation Building, to divest endowment funds invested in the ground lease in the Chrysler Building, to defease a New York State bond interest in the building, and for general working capital. The Cooper Union represented that it needed to upgrade outdated academic facilities to address concerns about its continuing accreditation and that “it currently

faces a grave fiscal crisis.” The petition provided the court with an overview of the components of the Master Plan and explained that the Loan Plan included the administration’s commitment of reducing operating expenditures by 10% by 2011. The Cooper Union would also renegotiate the lease for the Chrysler Building which, at the time of the petition, generated lease payments of \$7 million and tax equivalency payments of approximately \$12 to \$14 million annually. The school expected the lease payments to increase to \$32.5 million in 2018, \$41 million in 2028, and \$55 million in 2038. At that time, The Cooper Union estimated the total value of the Chrysler Building to the school as approximately \$700 million, representing approximately \$416 million as the value of the ground lease and approximately \$280 million as the value of the tax equivalency payments. On the Attorney General’s affidavit of no objection, this court (Payne, J.), by an order dated September 27, 2006, granted the relief sought, without further comment.

Meanwhile, the school’s spending continued to increase. Although The Cooper Union nearly broke even in 2002, it subsequently ran deficits of approximately \$8 million to \$12 million each year from 2003 through 2006. Instead of reducing expenses as called for in the Loan Plan, the school’s expenses grew at an annual average of nearly 10% from 2006 to 2011 and annual deficits averaged approximately \$13.6 million, peaking at an annual operating deficit of over \$20 million in 2010.

The Attorney General’s investigation reveals that, once The Cooper Union obtained the loan, the school’s financial standing began to swiftly decline due to the failure of four key assumptions of the Loan Plan that went unrealized. First, the 10% annual expense reduction by 2011 did not come to fruition and expenses instead grew an average of nearly 10% between 2006 and 2011. Next, in 2007, the school lost half of its approximately \$6 million in expected annual tax benefits for its 26 Astor Place and 51 Astor Place properties, which the Loan Plan relied upon, when it settled a tax certiorari petition commenced by the City of New York. Further, the extra \$35 million borrowed to invest, plus expected annual returns on the investment pool of at least 7% were relied upon in the Loan Plan in order to pay the loan’s interest rate of nearly 6%. However, when the stock market collapsed in late 2008, the liquid portion of the school’s endowment suffered significant losses and saw below-target returns through 2011. In addition, by 2011, only \$25 million of the \$40 million budgeted for the building fund had been raised. The Attorney General attributes the failure of the Loan Plan and the present fiscal crisis to the administration’s and the Board’s weaknesses in oversight and management practices, as well as improper risk assessment in developing the plan.

After President Campbell’s retirement in June 2011, Jamshed Bharucha assumed the Presidency in July 2011. On October 31, 2011, President Bharucha announced that the

school's most recent annual deficit was \$16 million and the liquid portion of the school's endowment was significantly depleted, which posed a serious risk to The Cooper Union's viability. At that time, President Bharucha raised the possibility of charging tuition to solve the fiscal crisis in an interview with the New York Times.

In April 2013, President Bharucha and the Board announced their determination to begin charging tuition with the incoming class in September 2013. Under the plan to charge tuition, undergraduate students would be charged \$19,500, half of what the Board estimated as the actual tuition of \$39,000. Students would be charged on a sliding scale, with some students paying \$19,500, others attending for free, and others paying some amount in between.

Following protests by the students, a "Working Group," comprised of students, alumni, administrators, and trustees, was formed to explore alternatives to charging tuition. In the meantime, tuition would not be charged to students entering in the fall of 2013. The Working Group was given seven weeks in October and November to devise an alternative to charging tuition to solve the school's financial crisis. In December 2013, they presented a plan that would achieve a combined \$8 to 10 million in savings and additional revenue and avoid the need to charge tuition. Another group produced an alternative report, disputing the findings of the Working Group and questioning the viability of their plan. In January 2014, the Board announced that, "Regrettably, tuition remains the only realistic source of new revenue in the near future." The instant proceeding ensued.

D. The CPLR Article 77 Petition and Motion for Injunctive Relief

In their CPLR article 77 petition, filed on May 27, 2014, the petitioners sought (1) an order appointing a Special Master to conduct an accounting "to investigate decisions giving rise to the current economic instability of The Cooper Union;" (2) an order directing the Board to create the society of the Associates, to include the graduates of the school and the members of the Board, and directing the Associates to elect the Council of the Associates consisting of at least 24 members of the Society; (3) a preliminary and permanent injunction preventing the Board from charging tuition; (4) a judgment declaring that certain trustees have breached their fiduciary duties to The Cooper Union and removing them from office; (5) a judgment declaring that the Deed of Trust and Charter require an accounting, require the creation of the Associates and Council of Associates, and prohibit the charging of tuition; and (6) attorneys fees.

By Order To Show Cause dated July 24, 2014, the petitioners moved (seq. 001) for several forms of the injunctive relief demanded in the petition. Specifically, they sought (1) to enjoin the Board from charging tuition and an order removing the trustees who voted to charge tuition or voted against the alternative options, (2) the appointment of a Special Master to conduct an accounting, and (3) an order directing the Board to create the society of the Associates and Council of the Associates consistent with the terms of the Charter. The respondents opposed any such relief and moved to dismiss the petition on the grounds of lack of standing, arguing that only the Attorney General may bring a *cy pres* proceeding, and failure to state a cause of action, arguing that the founding documents of The Cooper Union do not entirely prohibit the charging of tuition. Respondent Jeremy Wertheimer separately cross-moved to dismiss the petition insofar as asserted against him on the grounds of lack of personal jurisdiction, lack of standing, immunity from suit, and failure to state a cause of action.

E. The Consent Decree and Instant Cy Pres Application

After the submission of these motions and months of negotiation, the Attorney General facilitated a resolution to the issues raised in the petition with the aim of instituting reforms to assist The Cooper Union in recovering its losses, implementing improved management and oversight practices, and exploring alternatives to charging tuition. To this end, the petitioners and respondents, as well as the Attorney General and The Cooper Union entered into a Consent Decree which calls for (1) the expansion of the Board to include student trustees, additional alumni trustees, and faculty and staff representatives; (2) the appointment of an independent financial monitor; (3) transparent disclosure of Board materials, budget documents, and investment results; (4) the reformation of the school's governance practices; (5) an inclusive search committee to identify the next president of The Cooper Union; and (6) the development of a special-purpose committee of the Board which will produce a strategic plan to return the school to its traditional tuition-free policy. In addition, the petitioners agreed that the petition be dismissed with prejudice, without costs to any party. Further, by entering into the Consent Decree and agreeing to the dismissal of the petition, the petitioners and respondents, in effect, withdrew the motion for injunctive relief and cross-motions to dismiss the petition under motion sequence 001.

On September 4, 2015, the Attorney General moved by order to show cause (seq. 004) to intervene as cross-petitioner, which branch of the motion was granted by an order dated September 14, 2015, and to grant the relief sought in the cross-petition, including modification of the Charter and Deed of Trust and approval of the Consent Decree.

In its cross-petition, the Attorney General acknowledges that the parties dispute whether The Cooper Union, by charging tuition, is in compliance with the Charter and Deed of Trust. However, the Attorney General argues that even if the court were to interpret the Charter and Deed of Trust to require literal compliance with the “objects and purposes,” it would be impractical for The Cooper Union to do so. Specifically, due to The Cooper Union’s present financial circumstances, the Attorney General contends that the Art, Architecture, and Engineering schools may only return to a tuition-free model, if at all, after careful development of a plan in the context of supervised reformation of The Cooper Union’s finances and governance. In addition, due to lack of resources, the school is unable to re-establish and maintain a free night school “in the application of science to the useful occupations of life” and “social and political science” or a free reading room without jeopardizing, if not terminating, its degree-granting programs in Art, Architecture, and Engineering. Further, the Attorney General contends that permitting a Council of the Associates to sue to remove individual trustees for cause would subject the school to substantial uncertainty and unreasonable exposure to litigation and its associated expenses. In addition, the language granting trustees the discretion to disclose all matters, including those discussed at meetings of the Board, does not comport with modern concepts of legal privilege.

Accordingly, in order to achieve the Trust’s purposes, the petitioners, respondents, the Attorney General, and The Cooper Union now stipulate, by the Consent Decree, to the entry of a judgment granting *cy pres* relief, interpreting and modifying the Charter and Deed of Trust as follows:

1. Interpreting paragraphs Fourth (1) and (2), which provide for a free night school and reading room, as discretionary goals, except that at least twelve evening lectures or other presentations per year on social or political science, free to the public, would be required.
2. Construing paragraphs Fourth (3) and (4), which provide for the art and “polytechnic” schools, as requiring the Cooper Union to make ongoing, good faith efforts to determine the feasibility of returning to a tuition-free model that maintains its strong reputation for academic quality within its Art, Architecture, and Engineering programs at their historical levels of enrollment at any time tuition is being charged for those schools; to expeditiously develop a plan to return to a free-tuition model if it is determined to be practical to do so; and to maintain a free-tuition model as long as it remains practical to do so.
3. As long as The Cooper Union is in compliance with the terms of the Consent Decree, which is intended to provide specific mechanisms for institutional reform and

oversight to maximize the possibility of returning to a free-tuition model, it is presumed to be in compliance with the above requirements.

4. Interpreting the provisions pertaining to the Associates, paragraphs Third, Fourth (5), and Fifth, not as requiring The Cooper Union to revive and implement the Associates as an active organization or to do so according to any particular formula, but to deem all current students, full-time faculty, and alumni as constituting the Associates, but not as members of the corporation. The elected alumni, full-time faculty, and students elected to serve as members of or representatives to the Board will constitute the Council of the Associates and the Board may approve any further organizational or expansion plan of the Associates that is presented to it by a majority of the Council.

5. Reaffirming paragraph Thirteenth, requiring all trustees to be free to disclose information, subject to prohibitions against disclosure of proprietary, confidential, and/or privileged material.

The Cooper Union and the Board submitted a response to the Attorney General's motion, wherein they seek the same relief.

III. Discussion

A. The Court's *Cy Pres* Power

The court's *cy pres* power is found in the Estates, Powers and Trusts Law (EPTL) § 8-1.1[c], which provides:

"whenever it appears to [the] court that circumstances have so changed since the execution of an instrument making a disposition for religious, charitable, educational or benevolent purposes as to render impracticable or impossible a literal compliance with the terms of such disposition, the court may, on application of the trustee or of the person having custody of the property subject to the disposition and on such notice as the court may direct, make an order or decree directing that such disposition be administered and applied in such manner as in the judgment of the court will most effectively accomplish its general purposes, free from any specific restriction, limitation or direction contained therein..."

Subsection (f) of EPTL § 8-1.1 confers standing upon the Attorney General, requiring the Attorney General to represent the interest of the beneficiaries of a charitable trust, with the "duty to enforce the rights of such beneficiaries by appropriate proceedings in the courts." Indeed, "[n]ormally, standing to challenge actions by the trustees of a charitable trust or

corporation is limited to the Attorney General.” Alco Gravure, Inc. v Knapp Foundation, 64 NY2d 458, 466 (1985). As noted above, the respondents in this action, which include the Board of Trustees and individual members of the Board, join in the Attorney General’s motion to modify the Charter and Deed of Trust through the court’s *cy pres* power and support the relief set forth in the Consent Decree. See EPTL § 8-1.1(f); Matter of Bd. of Trustees of Huntington Free Library and Reading Room, 5 AD3d 15 (1st Dept. 2004); Matter of Post, 2 AD3d 1091 (3rd Dept. 2003).

“Charitable trusts are encouraged and favored by the law.” Matter of Estate of Wilson, 59 NY2d 461, 471 (1983). Accordingly, in the event that the specific purpose or direction of a charitable trust can no longer be achieved, it will not necessarily fail and may be reformed through the court’s *cy pres* power. Id. Indeed, courts are reluctant to terminate a charitable gift and “the law, in any case, requires that such dispositions be saved when there exists a means by which a grantor’s general intendment, if there is one, might yet be realized.” Bd. of Trustees of Museum of Am. Indian, Heye Found. v Bd. of Trustees of the Huntington Free Library and Reading Room, 197 AD2d 64, 74 (1st Dept. 1994), *lv denied* 86 NY2d 702 (1995).

In order to invoke its *cy pres* power, the court must first determine that the trust settlor’s “specific charitable purpose is no longer capable of being performed by the trust” (Matter of Estate of Wilson, *supra* at 472) and that the settlor “had a general charitable intent.” Matter of Post, *supra* at 1093, *quoting* Matter of Syracuse Univ. (Heffron), 3 NY2d 665, 670-671 (1958). The court must then determine “that circumstances have so changed since execution of an instrument making a disposition for religious, charitable, educational or benevolent purposes as to render impracticable or impossible a literal compliance with the terms of such disposition.” EPTL § 8-1.1(c); see Bd. of Trustees of Museum of Am. Indian, Heye Found. v Bd. of Trustees of the Huntington Free Library and Reading Room, *supra*.

“When a court determines that changed circumstances have rendered the administration of a charitable trust according to its literal terms either ‘impracticable or impossible,’ the court may exercise its *cy pres* power to reform the trust in a manner that ‘will most effectively accomplish its general purposes.’” Matter of Estate of Wilson, *supra* at 472 *quoting* EPTL § 8-1.1(c); see Bd. of Trustees of Museum of Am. Indian, Heye Found. v Bd. of Trustees of the Huntington Free Library and Reading Room, *supra*. In invoking its *cy pres* power, the court must evaluate the intent of the settlor and “give effect insofar as practicable to the full design of the [trust settlor] as manifested by [the trust].” Matter of Scott, 8 NY2d 419, 427 (1960); see Matter of Estate of Wilson, *supra*. The court is tasked with devising “the most efficacious and dispositionally faithful alternative plan to advance the charitable objectives of

the [trust].” Matter of Bd. of Trustees of Huntington Free Library and Reading Room, supra at 17. This is because “it is the very essence of *cy pres* that any deviation from the original dispositional plan be pursuant to an alternate plan of disposition sufficiently detailed to provide the necessary assurance that the original dispositional design will be, to the extent practicable, effectively carried forward.” Bd. of Trustees of Museum of Am. Indian, Heye Found. v Bd. of Trustees of the Huntington Free Library and Reading Room, supra at 84. This “application of the *cy pres* doctrine involves a great measure of judicial discretion.” Matter of Bd. of Trustees of Huntington Free Library and Reading Room, supra at 17; see Sherman v Richmond Hose Co. No. 2, 230 NY 462 (1921)

(1) Cooper’s General Charitable Intent and Specific Charitable Purposes

The trust settled by Peter Cooper, for education in the fine arts and sciences, was undeniably created for a charitable purpose as defined by the Estates, Powers and Trusts Law. See EPTL § 8-1.1. Indeed, it is well settled that “[t]here can be no question that ... trusts, established for the promotion of education, are for a charitable purpose within the meaning of the law.” Matter of Estate of Wilson, supra at 471.

The court finds that Cooper had a general charitable intent of establishing The Cooper Union to provide equal access to education regardless of financial means, gender, or religious beliefs. Indeed, The Deed of Trust evinces this general charitable intention, as it provides for free courses of study for both men and women and expressly states that a student’s religious tenets or opinions may not be considered in the admissions process and that no professor or teacher would be permitted to discriminate against any student on account of their religious beliefs. In addition, in his April 1859 letter to the Board, Cooper wrote, “My earnest desire is to make this building and institution contribute in every way possible to unite all in one common effort to improve each and every human being.” In order to carry out his general charitable purpose, Cooper, in the Deed of Trust, donated the Foundation Building and established the Board to manage the school’s endowments and general operations.

The Deed of Trust also sets forth Cooper’s specific intentions for the institution, embodied in the five “objects and purposes” set forth in the Deed, *i.e.* the provision of free night courses “on the application of science to the useful occupations of life, on social and political science,” the “support and maintenance of a free reading room, of galleries of art, and of scientific collections,” a school of arts and design, a polytechnic school “equal to the best technological schools,” and the provision of meeting rooms for the society of the Associates for their general weekly meetings. From its inception until 2014, The Cooper Union’s tradition of

free tuition represented the fulfillment of Cooper's specific charitable intentions. Indeed, over the course of its history, The Cooper Union's provision of free night courses evolved into a free polytechnic school and a renowned, tuition-free Art, Architecture, and Engineering undergraduate institution.

(2) Cooper's Specific Charitable Purposes are No Longer Capable of Being Performed

In 2014, the determination was made that, in order ensure the viability of the school and to continue the perpetuation of Cooper's general charitable intentions, the school must begin charging tuition for its undergraduate programs. In response to this determination, as detailed above, the Attorney General undertook an extensive investigation into the finances and management of The Cooper Union beginning in August 2014. The investigation revealed flawed oversight and management practices and a deep financial crisis caused by a failure to curb expenses, a loss of tax benefits, the collapse of the stock market and correlating loss of a significant portion of the school's liquid investment pool, and below-target fundraising. Indeed, in the context of the 2006 *cy pres* application, The Cooper Union admitted that, at that time, "it currently faces a grave fiscal crisis." The Attorney General's investigation reveals that this financial crisis only worsened. The confluence of these events could not have been foreseen by Cooper at the time he founded The Cooper Union and settled the trust.

In any event, as a result, it has become impracticable for The Cooper Union to comply with the literal terms of the five "objects and purposes" of the Deed of Trust. Indeed, many of the specific "objects and purposes" set forth in the Deed of Trust have not been complied with in a literal sense in decades, if ever. Specifically, the night school ceased operation in 1970 and the free reading room was long-ago converted into the school's library. In addition, neither the society of Associates nor its Council was ever formed. The Attorney General's investigation confirms that The Cooper Union does not have the resources at this time to re-establish and maintain such a free night school or a separate free reading room without significantly impairing, or even terminating its current degree-granting programs in Art, Architecture, and Engineering. Furthermore, the financial crisis faced by the school prevents the schools of Art, Architecture, and Engineering from immediately returning to a tuition-free model that maintains the school's strong reputation for academic quality while maintaining these programs at their historical levels of enrollment.

Courts have found similar financial considerations to have rendered specific charitable intentions of trust grantors incapable of being performed. For example, in Matter of Bd. of Trustees of Huntington Free Library and Reading Room, *supra*, the court found that the specific

charitable purpose of a 1930 indenture endowing the petitioner library with a collection of books acquired from the Museum of the American Indian was no longer capable of being performed based on the library's concession that it was no longer financially able to meet its responsibilities as custodian for the collection. Similarly, in Matter of Post, *supra*, the court found that the threat of the imposition of a considerable tax penalty upon the trust principal rendered literal compliance with the terms of the trust impracticable.

Here, Cooper's charitable intentions would be frustrated if The Cooper Union were not permitted to revise the Deed of Trust to address the economic upheaval it has undergone. Indeed, the Attorney General's submissions, in which all parties join, establish that unless The Cooper Union is able to modify the Deed of Trust in order to strengthen its governance and charge tuition in the short-term while carefully examining options of returning to a tuition-free model, the ability of the school to attract a robust and diverse student body, to fulfill its educational purposes, and to stabilize its finances would be significantly jeopardized. It is without question that Cooper would not have wanted the educational mission of the school to be frustrated due to its current financial situation.

In regard to the finances, it appears, as argued by the original petitioners, that some Trustees and/or others may have lost sight of Peter Cooper's ideals, including that of free education, and failed to heed his entreaty that he was delivering to their care "the youth of our country" to "awaken" their "undying thirst for knowledge and virtue" in order that they may "preserve the liberties we enjoy" and that such lapses contributed to the current financial woes of the school. However, all parties, and this court, are in agreement that any such lapses should not be permitted to undermine Peter Cooper's original vision for the school and its students.

B. Application of the Cy Pres Power

As the conditions for the application of the court's *cy pres* power have been met, the court, in exercising that power, must ensure that the proposed reformation of Peter Cooper's trust is accomplished "in manner that 'will most effectively accomplish its general purposes.'" Matter of Estate of Wilson, *supra* at 472 *quoting* EPTL § 8-1.1[c] and that the proposed plan is "sufficiently detailed to provide the necessary assurance that the original dispositional design will be, to the extent practicable, effectively carried forward." Bd. of Trustees of Museum of Am. Indian, Heye Found. v Bd. of Trustees of the Huntington Free Library and Reading Room, *supra* at 84. The Consent Decree submitted by the parties satisfies that standard.

In order to ensure the financial stability of the school and more robust governance and oversight in the future, the parties have agreed to (1) modernize the Charter and Deed of Trust of The Cooper Union, (2) increase representation of students, faculty, staff, and alumni on the Board, (3) implement transparency and monitoring in The Cooper Union's management and finances, (4) reform The Cooper Union's internal governance, and (5) require a review of the feasibility of returning to a tuition-free policy.

In particular, as set forth above, the parties have agreed to modify the Charter and Deed of Trust by (1) interpreting the paragraphs providing for a free night school and reading room as discretionary goals, with the exception of requiring the provision of at least twelve evening lectures or other presentations per year, free to the public, on social or political science; (2) construing the paragraphs providing for the art and "polytechnic" schools as requiring the Cooper Union to make ongoing, good faith efforts to determine the feasibility of returning to a tuition-free model that maintains its strong reputation for academic quality within its Art, Architecture, and Engineering programs at their historical levels of enrollment at any time tuition is being charged for those schools; to expeditiously develop a plan to return to a free-tuition model if it is determined to be practical to do so; and to maintain a free-tuition model as long as it remains practical to do so; (3) holding The Cooper Union to be in compliance with these requirements as long as it is in compliance with the terms of the Consent Decree, which is intended to provide specific mechanisms for institutional reform and oversight to maximize the possibility of returning to a free-tuition model; (4) interpreting the provisions pertaining to the Associates not as requiring The Cooper Union to revive and implement the Associates as an active organization or to do so according to any particular formula, but to deem all current students, full-time faculty, and alumni as constituting the Associates, but not as members of the corporation and the elected alumni, full-time faculty, and students elected to serve as members of or representatives to the Board will constitute the Council of the Associates and the Board may approve any further organizational or expansion plan of the Associates that is presented to it by a majority of the Council; and (5) reaffirming the provision that all trustees be free to disclose information, subject to prohibitions against disclosure of proprietary, confidential, and/or privileged material.

The provision of free evening lectures available to the public on topics in social and political science carry forward Cooper's intention of providing educational opportunities for working people. As he stated in his April 1859 letter to the Board, in establishing The Cooper Union, Cooper sought to engender intellectual curiosity and inspiration for generations of students, both men and women, with and without financial means, and without regard to their religious beliefs. The Deed of Trust evinces Cooper's recognition that working people would be

unable to attend courses of instruction during the working day, as he provided for free evening courses in social and political science as well as a free reading room to provide educational opportunities for working people while accommodating their employment schedules. Although the free night school and reading room have not operated as set forth in the Deed of Trust for decades and The Cooper Union does not now have the resources to re-establish them as specifically stated in the Deed of Trust without significantly impairing, or even terminating its current degree-granting programs, the proposed provision of at least twelve social and political science lectures per year, which are free, open to the public, and held in the evening, ensures access to education for working people while working within The Cooper Union's current financial restraints. Given its present fiscal situation, the provision of these lectures most closely approximates Cooper's vision of providing free evening educational opportunities for all.

Creating a committee to examine the feasibility of returning to a tuition-free model and requiring the school to expeditiously return to such a model as soon as it becomes practical to do so will ensure the school's unique tradition of tuition-free education remains a priority. As detailed above, the present financial crisis faced by the school prevents it from immediately returning to a tuition-free model. If The Cooper Union is unable to charge tuition in the short-term, the school's viability would be significantly jeopardized. Indeed, it would not have the means to attract the uniquely talented and diverse student body it has historically had and would not be able to stabilize its finances, thereby threatening the fulfillment of The Cooper Union's primary educational purpose in the long-term.

Similar financial hardships have resulted in the application of the *cy pres* doctrine in order to effect the general charitable intent of the trust grantor. For example, in Matter of Bd. of Trustees of Huntington Free Library and Reading Room, *supra*, the Appellate Division, First Department applied its *cy pres* power in approving the transfer of the collection of books the petitioner library acquired from the Museum of the American Indian in 1930 to an alternative institution due to the library's financial constraints in exchange for certain conditions which were intended to continue the purpose of the 1930 transfer and \$2.5 million, which it found was necessary to ensure the continued viability of the library and the perpetuation and advancement of the dual purpose of the 1930 transfer, *i.e.* "to ensure the Library's standing as a charitable and educational institution and to be a lasting memorial to its founder Collis Huntington." Matter of Bd. of Trustees of Huntington Free Library and Reading Room, *supra* at 17-18. In Matter of Post, *supra*, the court exercised its *cy pres* power to expand the eligible scholarship pool governed by the trust in order to avoid significant tax consequences to the trust principal.

Here, The Cooper Union represented in 2006 that it then faced “a grave fiscal crisis,” which the Attorney General’s investigation reveals has since worsened. At this time, the school lacks the resources to comply with the literal terms of the five “objects and purposes” of the Deed of Trust, including the continuation of its tradition of free tuition. In order to ensure the continued viability of the school and the perpetuation of Cooper’s general charitable purpose of providing equal access to education, the proposed modification is necessary. Taking into account its current financial position, permitting The Cooper Union to charge tuition in the short-term while carefully examining options of returning to a tuition-free model gives effect to Cooper’s general intention of making education as accessible as possible to all members of society and his specific intention of providing free courses of study. In addition, because the Consent Decree calls for enhanced oversight and governance, including the appointment of an independent financial monitor, compliance with the Consent Decree will ensure the maintenance of the goals of improved governance and the return to tuition-free enrollment.

By deeming all students, faculty, and alumni as Associates and those elected members of the Associates to the Board to comprise the Council, not only will such societies come into existence for the first time as intended by Cooper, but they will ensure greater participation and oversight by students, faculty, and alumni in the governance of the school. The Associates were envisioned as a society to be created for the purpose of advising and overseeing the Board. Indeed, the Deed of Trust sets forth that a majority of the council of Associates were empowered to petition the court for removal of a Board member for cause. However, the societies never came to fruition. The proposed modification serves to constitute the organizations and integrate them into the governance structure of the school. Cooper’s vision of the societies’ purposes of engaging students, faculty, and alumni in the operation of the school and promoting academic endeavors in the fine arts and sciences is, thus, realized through the proposed modification.

Reaffirming the intention of free disclosure of Board materials, subject to modern prohibitions against disclosure of proprietary, confidential, and/or privileged material, ensures the transparency envisioned by Cooper within today’s legal framework. In addition, the Consent Decree provides that the Board’s meeting minutes and annual financial statements detailing the performance of the school’s investment portfolio are to be made accessible on The Cooper Union’s website. Such modifications are consistent with the Deed of Trust’s requirement that all Board minutes be obtained and freely disseminated and the Charter’s requirement that the Board render an annual accounting, under oath, including all receipts and expenditures.

In addition to the modifications to the Deed of Trust, the Consent Decree contains further reforms to ensure better governance and financial planning going forward. It (1) expands the Board to include student trustees, additional alumni trustees, and faculty and staff representatives; (2) provides for the appointment of an independent financial monitor; (3) ensures the transparent disclosure of Board materials, budget documents, and investment results; (4) requires the development of reforms to the school's governance; (5) provides for an inclusive search committee to identify the next full-term president; and (6) establishes a special-purpose committee of the Board dedicated to the development of a strategic plan to return The Cooper Union to its traditional tuition-free policy.

Accordingly, the court finds that the proposed modifications to the Deed of Trust give effect to Cooper's general charitable intentions while addressing the financial hardships the school presently faces. The resolution proposed by the parties assures that the dispositional design of Peter Cooper is carried forward. See e.g. Matter of Bd. of Trustees of Huntington Free Library and Reading Room, supra; Matter of Post, supra. For these reasons, the court modifies the Deed of Trust as proposed by the parties and approves the Consent Decree.

IV. Conclusion

The court finds that Peter Cooper's "specific charitable purpose is no longer capable of being performed by the trust" (Matter of Estate of Wilson, supra at 472), in that "circumstances have so changed since execution of the trust ...as to render impracticable or impossible a literal compliance with the terms" of his charitable disposition. See EPTL § 8-1.1(c); Bd. of Trustees of Museum of Am. Indian, Heye Found. v Bd. of Trustees of the Huntington Free Library and Reading Room, supra. Thus, this court "may exercise its *cy pres* power to reform the trust in a matter that 'will most effectively accomplish its general purposes.'" Matter of Estate of Wilson, supra at 472 *quoting* EPTL § 8-1.1[c]. The court finds that the resolution agreed to by the parties, embodied in the Consent Decree and the relief sought in the Attorney General's cross-petition, will most effectively accomplish the general purposes of Peter Cooper's trust in the context of the present financial position of The Cooper Union. Indeed, the resolution is necessary for the perpetuation and advancement of the objectives and purposes of the 1859 Charter and Deed of Trust, the pursuit of Peter Cooper's ideal that education ought to be as "free as air and water" and the continued viability of The Cooper Union.

For these reasons, the cross-petition is granted in its entirety and the Consent Decree is signed simultaneously herewith. The motion for injunctive relief and cross-motions to dismiss the petition filed under motion sequence 001 are deemed withdrawn.

Accordingly, it is

ORDERED that the motion of the Attorney General of the State of New York filed under sequence 004 is granted, and the Consent Decree is approved, and it is further

ORDERED that the Deed of Trust, made by Peter and Sarah Cooper, is hereby modified and reformed as follows:

1. Paragraphs Fourth (1) and (2) shall be interpreted as discretionary goals, except that there shall be a requirement that The Cooper Union the Advancement of Science and Art shall provide at least twelve evening lectures or other presentations per year on social or political science that are free to the public,

2. Paragraphs Fourth (3) and (4) shall be interpreted as imposing the following ongoing requirements on The Cooper Union the Advancement of Science and Art:

a. At any time tuition is being charged for the Schools of Art, Architecture, or Engineering, The Cooper Union the Advancement of Science and Art is required to make ongoing, good faith efforts to determine whether it is practical to return to a tuition-free model that maintains its strong reputation for academic quality within its Art, Architecture, and Engineering programs at their historical levels of enrollment.

b. If it is practical to return to such a free tuition model, The Cooper Union the Advancement of Science and Art must expeditiously develop a plan to do so.

c. If The Cooper Union the Advancement of Science and Art returns to such a tuition-free model, it must maintain that model as long as it remains practical.

3. During the pendency of the annexed Consent Decree, The Cooper Union the Advancement of Science and Art should be presumed to be in compliance with the above requirements if it is in compliance with the terms of the Consent Decree, which is

intended to provide specific mechanisms for institutional reform and oversight to maximize the possibility of returning to a free-tuition model.

4. Paragraphs Third, Fourth (5), and Fifth as regards the Associates shall be interpreted as not requiring The Cooper Union the Advancement of Science and Art to revive and implement the Associates as an active organization or to do so according to any particular formula. Instead, all current students, all current full-time faculty, and all alumni are collectively deemed to constitute the Associates of The Cooper Union the Advancement of Science and Art, but they shall not be members of the corporation. The elected alumni, full-time faculty, and students who serve as members of or representatives to the Board of Trustees of The Cooper Union shall constitute the Council of the Associates. The Board of Trustees of The Cooper Union may approve any further organizational or expansion plan of the Associates that is presented to it by a majority of the Council of the Associates.

5. Paragraph Thirteenth, requiring all Trustees be free to disclose information, is reaffirmed, subject to prohibitions against disclosure of proprietary, confidential, and/or privileged material.,

and it is further

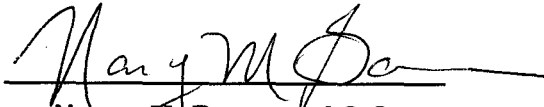
ORDERED that, upon the petitioners' stipulation contained in the Consent Decree dated September 21, 2015, the petition is dismissed and the motion and cross-motions filed under sequence 001 are deemed withdrawn, with prejudice and without costs, and it is further

ORDERED that the any further application in regard to the Consent Decree or this order shall be brought before this court, and it is further,

ORDERED the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the court.

Dated: December 15, 2015


Nancy M. Bannon, J.S.C.

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

**THE COMMITTEE TO SAVE COOPER UNION, INC.,
et al.,**

Petitioners,

Index No. 155185/2014

- against -

**THE BOARD OF TRUSTEES OF THE
COOPER UNION, *et al.*,**

**AMENDED
CONSENT DECREE**

Respondents.

**PEOPLE OF THE STATE OF NEW YORK, by
ERIC SCHNEIDERMAN, Attorney General of the
State of New York,**

Intervenor/Cross-Petitioners,

- against -

**THE BOARD OF TRUSTEES OF THE
COOPER UNION FOR THE ADVANCEMENT
OF SCIENCE AND ART, *et al.*,
THE COMMITTEE TO SAVE COOPER UNION, INC.,
et al., and THE COOPER UNION FOR THE
ADVANCEMENT OF SCIENCE AND ART,**

Intervenor/Cross-Respondents.

WHEREAS, petitioners The Committee to Save Cooper Union, Inc., *et al.*, ("Petitioners"), initiated this action (the "Action") by way of Order to Show Cause and Verified Petition dated May 27, 2014 ("Petition"), naming The Board of Trustees of The Cooper Union for the Advancement of Science and Art, and each of the then-Trustees of The Cooper Union for the Advancement of Science and Art (the "Respondents") as respondents;

WHEREAS, in their Petition, the Petitioners alleged that Respondents violated Cooper Union's Deed of Trust and Charter by voting to impose tuition on incoming students at

Cooper Union and by failing to establish the Associates of The Cooper Union for the Advancement of Science and Art ("the Associates"), and sought injunctions restraining the imposition of tuition and compelling an accounting, a declaratory judgment that the Trust Deed and Charter prohibit the imposition of tuition, and the removal of certain trustees for breach of fiduciary duty, among other relief;

WHEREAS, on July 18, 2014, Respondents submitted an opposition to Petitioners' Order to Show Cause and a Cross-Motion to Dismiss, in which they asserted that the Petitioners lacked standing, and otherwise disputed the factual and legal basis of the Petition;

WHEREAS, upon the consent of the parties, contemporaneously with the filing of this Consent Decree with the Court, The People of the State of New York, by Eric Schneiderman, Attorney General of the State of New York ("the Attorney General") filed a motion seeking to intervene as cross-petitioners in the action, along with a proposed Verified Cross-Petition;

WHEREAS, with the consent of the parties, The Cooper Union for the Advancement of Science and Art ("Cooper Union") filed a motion seeking to intervene as cross-respondents in the Action;

WHEREAS, Respondents Francois DeMenil, Daniel Okrent, Bruce Pasternack, Charles Cohen, Lee Skolnick, Catherine Hill, John Leeper, Monica Vachher, and Jamshed Bharucha are no longer members of the Board, not parties to this Consent Decree, and all claims against them have been dismissed with prejudice;

WHEREAS, although Respondents deny the allegations in the Petition and Cross-Petition, all of the parties to this Action, including the Attorney General, have agreed on a joint resolution that will settle the litigation and further the goals set forth below;

WHEREAS, it is impossible to determine at this time whether Cooper Union can return to a full tuition scholarship model within the foreseeable future that maintains Cooper Union's strong reputation for academic quality within its Art, Architecture and Engineering programs at their historical levels of enrollment;

WHEREAS, all parties agree to work together to try to expeditiously return Cooper Union to a sustainable, full tuition scholarship model within the foreseeable future that maintains Cooper Union's strong reputation for academic quality within its Art, Architecture and Engineering programs at their historical levels of enrollment;

WHEREAS, all parties agree that Cooper Union should expeditiously attempt to balance its budget;

WHEREAS, all parties hereto now enter into this Consent Decree in order to: (i) settle the claims asserted in the Action; (ii) provide an appropriate mechanism to determine whether a return to a full tuition scholarship model is practical; (iii) broaden participation in Cooper Union's governance; and (iv) strengthen the ability of Cooper Union's Trustees and Officers to fulfill their fiduciary duties;

NOW THEREFORE, the undersigned Petitioners, Respondents, the Attorney General and Cooper Union, (each a "Party" and collectively, the "Parties" hereto) hereby stipulate and agree to the following terms and conditions, to be entered by the Court as a Consent Decree, to resolve all claims raised in this Action:

I. **CONSENT TO INTERVENTION AND THE ENTRY OF JUDGMENT ON THE ATTORNEY GENERAL'S CROSS-PETITION**

A. Notwithstanding any continuing dispute and/or reservations of rights as to the legal and/or factual basis underlying the Attorney General's Cross-Petition, the Parties agree to stipulate to the entry of a judgment granting *cy pres* relief interpreting and modifying the

effective terms of the Deed of Trust and Charter of Cooper Union as set forth in Paragraphs 220 through 224 of the Attorney-General's Cross-Petition. Although Cooper Union and the Board of Trustees of The Cooper Union for the Advancement of Science and Art are stipulating to the relief requested in the Attorney General's Cross- Petition, they are not joining in, accepting, agreeing or adopting in any way the factual findings or conclusions set for in the Attorney General's Cross Petition

B. The Parties further agree that Cooper Union for the Advancement of Science and Art shall be permitted to intervene in this matter and shall be bound by the terms of this Consent Decree.

II. TERMINATION OF LITIGATION

A. Petitioners hereby agree that the Petition be dismissed with prejudice, without costs to any party, and further agree that the Petitioners are barred from asserting any claims which are, or could have been, contained in the Petition.

B. The Parties agree that during the term of the Consent Decree, Respondents' compliance with this Consent Decree shall presumptively establish their compliance with the purposes and intents of the Deed of Trust and the Charter.

C. The Parties agree that Respondents' agreement to the terms of this Consent Decree, the underlying *cy pres* order, and/or any related statements, shall not be construed as admissions by Respondents that Cooper Union failed to satisfy the purposes and intents of the Deed of Trust or the Charter or admissions of guilt or wrongdoing by Respondents, Cooper Union, or any other individual or entity. In addition, Cooper Union's and the Board of Trustees of The Cooper Union for the Advancement of Science and Art's agreement to the terms of the

Consent Decree shall not constitute, either expressly or implicitly, acceptance or agreement or adoption in any way of the factual findings or conclusions set forth in the Attorney General's Cross-Petition.

D. The Parties agree further that they are consenting to the *cy pres* and this Consent Decree voluntarily in order to clarify ambiguities and resolve disputes related to the Deed of Trust and Charter.

E. The Parties agree that Respondents and Cooper Union reserve all rights concerning past compliance with the purposes and intents of the Deed of Trust and the Charter.

III. GOOD FAITH REVIEW OF FULL TUITION SCHOLARSHIP POLICY

A. Respondents agree that, as part of this Consent Decree, Cooper Union shall attempt to develop plans to return Cooper Union to a sustainable, full tuition scholarship model that maintains Cooper Union's strong reputation for academic quality within its Art, Architecture and Engineering programs at their historical levels of enrollment.

B. Cooper Union's establishment of the Free Education Committee provided for in Section VII of this Consent Decree and its good-faith work with that committee and with the Financial Monitor, and its good-faith consideration of progress reports and strategic plan(s) submitted by that Committee during the term of this Consent Decree, shall presumptively satisfy its obligations provided for in Section III(A).

C. The Parties agree that given the currently-available information and analysis regarding this subject matter, it is impossible to predict whether, and if so, when, Cooper Union could return to a full tuition-scholarship model. The Parties agree that the determination of

whether and/or when such a return to a full tuition-scholarship model can be accomplished can only be reliably made after Cooper Union has an opportunity to evaluate a strategic plan developed by the Free Education Committee in connection with the processes established in this Consent Decree.

IV. MODIFICATIONS TO THE BY-LAWS - BOARD OF TRUSTEES

A. At the earliest of the next quarterly Board of Trustees meeting following the entry of this Consent Decree or at the next quarterly Board of Trustees meeting following the election(s) of Alumni Trustees, Faculty Representatives or a Staff Representative, or sixty (60) days, Respondents shall amend the by-laws of Cooper Union or otherwise pass resolutions, effecting the following modifications to the composition of its Board of Trustees:

1. Specifying that no Trustee who was a member of the Board of Trustee on October 6, 2006 shall be reappointed to the Board, and all Trustees who served on the Board as of October 6, 2006, shall have their terms expire as of December 7, 2016, and that no person shall be named Trustee Emeritus while this Consent Decree is in effect;

2. Specifying that at all times one (1) of the Alumni Trustees shall serve as either the Chair or Vice Chair of the Board of Trustees and have the responsibilities of Chair and/or Vice Chair of the Board of Trustees;

3. Selecting from the three (3) nominees for Student Representative submitted to the Board of Trustees in the Spring 2015, one (1) nominee who, together with the current Student Representative on the Board of Trustees, shall be confirmed immediately as the inaugural class of Student Trustees, in a manner consistent with, and in anticipation of, the procedures for future selections of Student Trustees set forth in Section V(A)(1), below;

4. Confirming the nominations of Alumni Trustees in accordance with an agreement reached between the Cooper Union Alumni Association ("CUAA") and Cooper Union whose principal terms are set forth in the CUAA protocol attached as Exhibit A; and

5. Designating four (4) full-time faculty members elected by the full-time faculty (one from Engineering, one from Art, one from Architecture, and one from Humanities), one (1) part-time faculty member elected by the part-time faculty, and one (1) staff member elected by the staff, as Faculty Representatives and Staff Representative, in a manner consistent with, and in anticipation of, the procedures for future selections of Faculty Representatives and a Staff Representative as set forth in Section V(A)(3), below.

V. **PROCEDURES FOR FUTURE ELECTIONS OF MEMBERS AND DESIGNATIONS OF REPRESENTATIVES TO THE BOARD OF TRUSTEES**

A. At the earliest of the next quarterly Board of Trustees meeting or sixty (60) days, following the entry of this Consent Decree, Respondents agree to amend the by-laws of Cooper Union or pass resolutions, modifying the present procedures for election of members and designation of trustees in a manner consistent with the following requirements:

1. The Board of Trustees shall at all times include two (2) Student Trustees, who shall be current students at Cooper Union, shall each serve two-year terms that are staggered, shall have voting power afforded to other Trustees on the Board (excluding voting on matters where there is a conflict of interest), shall be considered as members of the Board in determining whether a quorum is present, and shall be entitled to attend executive sessions of the Board in the same manner as other Trustees (excluding meetings, or portions thereof, related to academic governance matters, employment and personnel matters, or any other matter where there may be a conflict of interest). Notwithstanding anything stated herein, one Student Trustee

from the inaugural class, as determined by the Board, shall be appointed to a one (1) year term, while the second Student Trustee from the inaugural class, as determined by the Board, shall be appointed to a two (2) year term. Upon expiration of the terms of the Student Trustees from the inaugural class, each year thereafter, the Board of Trustees shall select for confirmation to the Board one (1) new Student Trustee from among the three (3) nominees forwarded to it by the Joint Student Council. The position of Student Representative shall be abolished upon the confirmation of the two Student Trustees pursuant Section IV(A)(3), above;

2. At all times, the Board of Trustees shall have alumni representation pursuant to an agreement entered into by the CUAA and Cooper Union and approved by the Attorney General for the State of New York, as provided for in Exhibit A. For purposes of this Consent Decree, the term "Alumni Trustee(s)" shall mean alumni elected pursuant to the agreement entered into by the CUAA and Cooper Union.

3. Four (4) full-time faculty members elected by the full-time faculty (one from Engineering, one from Art, one from Architecture and one from Humanities), one (1) part-time faculty member elected by the part-time faculty, and one (1) staff member elected by the staff shall serve as Faculty and Staff Representatives for no more than one four-year term. Each of the six (6) Faculty and Staff Representatives to be immediately designated upon election pursuant to this Section, shall be randomly assigned to terms parallel to one (1) of the existing four (4) classes of Trustees. The Faculty Representatives and Staff Representative who are randomly assigned to classes entitling them to less than a full four-year term shall be eligible for re-election for one (1) additional consecutive four-year term. The Faculty Representatives and Staff Representative shall be observers and advisers only, without voting power on the Board, shall not be considered as members of the Board in determining whether a quorum is present,

and shall not be entitled to attend executive sessions of the Board. The Faculty Representatives and Staff Representative shall be entitled to observe all other sessions of the full Board, and of any committees (excluding meetings, or portions thereof, where there is a conflict of interest), be entitled to receive any information or documents not designated as privileged, private, or confidential during an executive session, and may provide advice or information when solicited by the Board.

4. The Board shall make good faith efforts to recruit candidates who are experts, by training or profession, in the areas of higher-education, accounting, finance, law, non-profit governance, communications, management, or management-labor relations, or who have substantial fundraising-development experience or potential.

VI. **DESIGNATION, RIGHTS AND RESPONSIBILITIES OF FINANCIAL MONITOR**

A. Subsequent to the entry of this Consent Decree, the Attorney General shall expeditiously commence a Request for Proposal (RFP) process for the selection of a Financial Monitor. Proposals deemed by the Attorney General to be qualifying proposals shall be forwarded, on a confidential basis, to Cooper Union and Petitioners, which shall then expeditiously provide to the Attorney General a written ranking of the candidates by preference. After receiving the written rankings of the candidates, the Attorney General shall, in his sole discretion, make the final selection of the Financial Monitor on or before December 1, 2015.

B. The Financial Monitor shall be responsible for evaluating and reporting on the financial management of Cooper Union, including compliance with the Consent Decree. The Financial Monitor shall attend all full board meetings, including executive sessions, and all meetings of the Finance and Business Affairs Committee meetings and the Free Education

Committee. The Financial Monitor may attend any other committee meetings in his or her discretion. The Financial Monitor shall be entitled to receive on demand any information and/or documents possessed by Cooper Union, subject to the execution of the confidentiality agreement annexed as Exhibit B.

C. The Financial Monitor shall be entitled to disclose any non-privileged information or documents to the Attorney General and/or the Court.

D. The Financial Monitor shall serve until the expiration of this Consent Decree, except that a Monitor shall be removable for cause upon application of Respondents or the Attorney General to the Court.

E. If the Financial Monitor is unable for any reason to continue his or her service, the Attorney General and the Cooper Union Board of Trustees shall work in good faith to agree upon a replacement Monitor, who shall be appointed within thirty (30) days of the vacancy. If no agreement can be reached, the Attorney General or the Cooper Union Board of Trustees may apply to the Court for the appointment of a replacement monitor.

F. The Financial Monitor shall, with respect to all substantive proposals relating to finances of Cooper Union to be voted on by the Board or any of the committees it is required to attend, state its recommendations as to those proposals and the rationales thereof, or, if it cannot provide recommendations, the reasons for that inability, at the time of the vote in question. The Financial Monitor's statements in this regard shall be reflected in the applicable meeting minutes.

G. The Financial Monitor shall prepare a report annually, beginning on February 15,

2016, that shall be provided to the Board and the Attorney General summarizing the then-current financial condition, and specifically reporting on measures proposed by the Board and its Committees that relate to compliance with the Consent Decree. The Financial Monitor's annual reports shall specifically state the Financial Monitor's opinion as to whether the board's actions were made in good faith and in the best interests of Cooper Union. The Financial Monitor's annual reports shall also specifically identify all individual non-budgeted expenditures that, during the preceding twelve-month period, exceed \$100,000 and any non-budgeted individual contractual obligations entered into during the preceding twelve-month period requiring payment in excess of \$125,000.

H. The Financial Monitor's Annual Reports shall include a separate section providing analysis and opinion regarding matters discussed in the progress reports, and the feasibility of the strategic plan, presented by the Free Education Committee pursuant to Section VII(A)(2), below, including its opinion as to the practicality of Cooper Union returning to a full tuition scholarship model that maintains Cooper Union's strong reputation for academic quality within its Art, Architecture and Engineering programs at their historical levels of enrollment..

I. All of the annual reports prepared by the Financial Monitor shall be promptly posted on Cooper Union's website. Any confidential information, including information related to personnel matters and litigation, shall be redacted from such reports.

VII. ESTABLISHMENT OF THE FREE EDUCATION AND GOVERNANCE COMMITTEES

Respondents agree that at the earliest of the next quarterly board meeting or sixty days following the entry of this Consent Decree, they will amend the by-laws of Cooper Union or pass resolutions, to achieve the following:

A. Free Education Committee

1. Establishing the Free-Education Committee of the Board of Trustees, specifying that said committee's focus and responsibility shall be an examination of whether Cooper Union can return to a sustainable, full tuition scholarship model that maintains Cooper Union's strong reputation for academic quality within its Art, Architecture and Engineering programs at their historical levels of enrollment, and further specifying that two-thirds of this committee's membership shall be composed of a combination of Alumni Trustees and Student Trustees, and that an Alumni Trustee shall chair the Committee. The Free Education Committee shall also allow a Faculty Representative and Staff Representative to observe Committee meetings. Trustees assigned to the Free Education Committee have the same rights to receive information as any other trustees.

2. Requiring the Free Education Committee to develop and propose a strategic plan aimed at returning Cooper Union to a sustainable, full tuition scholarship model that maintains Cooper Union's strong reputation for academic quality within its Art, Architecture and Engineering programs at their historical levels of enrollment. The Free Education Committee shall present progress reports detailing its activities and interim recommendations on January 15, 2016 and January 15, 2017. The Board shall present any progress report received from the Committee at the next regularly scheduled Board Meeting following receipt of such progress report or within ninety (90) days, whichever is sooner, and, within thirty (30) days of such meeting, the Board shall issue a written response and comments to that report. The Board's responses shall be posted on Cooper Union's website within seven (7) days of being issued, subject to any confidentiality or privilege obligations imposed by law. The Free Education Committee shall present its strategic plan on January 15, 2018. The progress reports and the

strategic plan shall be provided to both the Financial Monitor and the Board on the relevant dates, and shall be posted on Cooper Union's website (excepting any confidential or privileged material) within seven (7) days of the relevant dates.

3. The full Board of Trustees shall consider in good faith, and vote on the strategic plan proffered by the Free Education Committee at its regularly scheduled meeting in March 2018. If the strategic plan is adopted, Cooper Union shall be required to implement it as soon as practicable.

4. The Free-Education Committee's progress reports and strategic plan, together with the Financial Monitor's analyses and opinions, and the meeting minutes from any vote of the full Board on the strategic plan, shall be provided to the Attorney General as they become available to the Board.

B. Governance Committee

1. Forming a Governance Committee, which shall assume the duties of the present Committee on Trustees as well as those additional duties set forth in Section VII(B)(2);

2. Specifying that the responsibilities of the Governance Committee shall be as currently stated in Cooper Union's by-laws as to the Committee on Trustees, and include the additional responsibilities of ensuring that the Board (a) observes best practices of non-profit governance, (b) has a robust conflict of interest policy; (c) is provided with annual training on non-profit governance and the duties and responsibilities of trustees, (d) develops a governance structure for the schools within Cooper Union and (e) understands the fiduciary duties and responsibilities of trustees;

3. Specifying that the membership in the Governance Committee shall include two (2) Alumni Trustees and one (1) Student Trustee;

VIII. REQUIRED DISCLOSURES AND ACTIONS

A. The Board of Trustees shall cause the following information to be made promptly and readily accessible on Cooper Union's website:

1. All board meeting minutes, which shall be expeditiously approved, except that notes of privileged, confidential, or private matters that are the subject of executive sessions shall not be subject to disclosure;

2. Consistent with any confidentiality obligations owed to investment advisors, annual statements that outline fiscal year dollar-value and percentage-change performance of the non-real-estate investments in Cooper Union's endowment, listed by each specifically-identifiable investment vehicle, along with disclosures of all fees paid directly by Cooper Union during the quarter and fiscal year to any investment advisers or fund managers, and the identity of the chief adviser or fund manager responsible for handling each investment.

B. The Board of Trustees shall cause the information now provided on its website to be revised or deleted in response to notice from the Attorney General, prior to the entry of this Consent Decree, identifying items that are alleged to be inaccurate and need to be clarified or revised pursuant to this Section VIII.

C. The Board of Trustees shall establish a Presidential Search Committee to identify a qualified candidate to become the next non-interim president of Cooper Union. This Search Committee shall include at least one (1) Alumni Trustee and (1) Student Trustee, unless the

Committee has more than seven (7) voting members, in which case the Committee shall include at least two (2) Alumni Trustees and one (1) Student Trustee. Regardless of the number of voting members of the Search Committee, it shall also include at least one full-time Faculty Representative as an observer/adviser. At least one (1) of the Alumni Trustees on the Search Committee shall also be a member of the Free Education Committee.

IX. REMEDIES OF THE ATTORNEY GENERAL

A. If the Attorney General determines that Respondents and/or Cooper Union are not in compliance with this Consent Decree, the Attorney General may file a motion by Order to Show Cause under the instant index number with the Court seeking remedies to compel compliance or otherwise enforce this Consent Decree. Respondents and/or Cooper Union shall be entitled to file responsive papers in a form and at a time to be determined by the Court. Any Party may request an evidentiary hearing and/or oral argument in connection with such a motion, but whether or when a hearing and/or argument shall be conducted shall be within the discretion of the Court. The Attorney General, Respondents, and Cooper Union shall be the only parties permitted to appear as part of this motion practice. Following this motion practice, the Court shall issue a ruling stating whether Respondents and Cooper Union are in compliance with this Consent Decree, any other findings, and shall order any relief it deems just and proper.

X. OTHER TERMS AND CONDITIONS

A. **Continuing Jurisdiction.** The Court shall maintain continuing jurisdiction over this matter for the purposes of fulfilling the Parties' agreement or of otherwise enabling the Attorney General to apply to the Court for any further order that may be needed to carry out or enforce compliance with the commitments made by the Parties to this Consent Decree. This Consent Decree and the Court's continuing jurisdiction to enforce it shall not be deemed to

provide any right or remedy, or any interest in any term hereof, to any other person not a signatory to this Consent Decree.

B. Choice of Law. This Consent Decree shall be administered, construed, and enforced according to the laws of the State of New York.

C. Entire Agreement. This Consent Decree shall constitute the entire agreement among the Parties hereto with respect to the subject matter of this Consent Decree and supersedes and replaces all prior negotiations, proposed agreements, consent orders, and agreements, whether written or unwritten, concerning such subject matter.

D. Binding Effect of Consent Decree. The provisions, terms and conditions of this Consent Decree shall, when entered by the Court, be binding by and between the Parties hereto, their successors and assigns, subject to the modification provisions contained in Section I(A), above and Section X(G), below. Except for suits brought by the Attorney General to enforce this Consent Decree, no Party may assert any claim or bring any suit or proceeding against relating to the matters addressed by this Consent Decree or matters alleged the Petition.

E. Compliance with Applicable Laws. Except as expressly set forth herein, this Consent Decree does not grant petitioners or respondents any rights or privileges under law nor does it exempt them from any obligation or limitation imposed by law.

F. Effective Date. The effective date of this Consent Decree is the date it is entered by the Court.

G. Modifications of Consent Decree. Respondent Board of Trustees of Cooper Union and the Attorney General, by written agreement, may modify the terms of this Consent

Decree with approval of the Court.

H. **Execution in Counterpart/Facsimile and Electronic Signatures.** This Consent Decree may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile transmission or electronic mail transmission in PDF format shall be deemed to be an original signature hereto

I. **Notice.** All notices under this Consent Decree shall be sent to the following:

To Petitioners:

Richard D. Emery, Esq.
O. Andrew F. Wilson, Esq.
Zoe Salzman, Esq.
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue, 10th Floor

To Respondents and Cooper Union:

President's Office
Cooper Union for the Advancement of Science and Art
The Foundation Building
7 East 7th Street
New York, New York 10003 10003

With copies to

Barbara Mather, Esq.
Angelo A. Stio III, Esq.
Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, Pennsylvania 19103

Elkan Abramowitz, Esq.
Richard Weinberg, Esq.
Morvillo Abramowitz Grand Iason & Anello PC
565 Fifth Avenue
New York, NY 10017

To Respondent Jeremy Wertheimer:

Darya Kapulina
Pearl Cohen Zedek Lutzer Baratz LLP
1500 Broadway, 12th Floor
New York, NY 10036

To Attorney General:

Alvin Bragg
Executive Deputy Attorney General for Social Justice
New York State Office of the Attorney General
120 Broadway
New York City, NY 10271-0332
With copies to

James Sheehan
Bureau Chief, Charities Bureau
New York State Office of the Attorney General
120 Broadway
New York City, NY 10271-0332

J. **Termination.** The obligations of the Parties to perform under the Consent Decree will terminate on December 31, 2024, unless terminated earlier, or extended, upon joint application of Respondents and the Attorney General with approval of the Court.

Notwithstanding the foregoing, the Parties acknowledge and agree that they will fulfill any obligation that may be outstanding as of such expiration or termination.

CONSENTED TO:**Petitioners:**

The Committee to Save Cooper Union, Inc.

By: Abraham Yonemura, President Date: 9/17/15

Individual Petitioners

Abraham Yonemura Date: 9/17/15 Date: _____

_____ Date: _____ Date: _____

_____ Date: _____

To Respondent Jeremy Wertheimer:

Darya Kapulina
Pearl Cohen Zedek Latzer Baratz LLP
1500 Broadway, 12th Floor
New York, NY 10036

To Attorney General:

Alvin Bragg
Executive Deputy Attorney General for Social Justice
New York State Office of the Attorney General
120 Broadway
New York City, NY 10271-0332
With copies to

James Sheehan
Bureau Chief, Charities Bureau
New York State Office of the Attorney General
120 Broadway
New York City, NY 10271-0332

J. **Termination.** The obligations of the Parties to perform under the Consent Decree will terminate on December 31, 2024, unless terminated earlier, or extended, upon joint application of Respondents and the Attorney General with approval of the Court.

Notwithstanding the foregoing, the Parties acknowledge and agree that they will fulfill any obligation that may be outstanding as of such expiration or termination.

CONSENTED TO:**Petitioners:**

The Committee to Save Cooper Union, Inc.

By: _____, President Date: _____

Individual Petitioners

Isabella Pizzuto Date: 9/17/15 _____ Date: _____

_____ Date: _____ Date: _____

_____ Date: _____

To Respondent Jeremy Wertheimer:

Darya Kapulina
 Pearl Cohen Zedek Latzer Baratz LLP
 1500 Broadway, 12th Floor
 New York, NY 10036

To Attorney General:

Alvin Bragg
 Executive Deputy Attorney General for Social Justice
 New York State Office of the Attorney General
 120 Broadway
 New York City, NY 10271-0332
 With copies to

James Sheehan
 Bureau Chief, Charities Bureau
 New York State Office of the Attorney General
 120 Broadway
 New York City, NY 10271-0332

J. **Termination.** The obligations of the Parties to perform under the Consent Decree will terminate on December 31, 2024, unless terminated earlier, or extended, upon joint application of Respondents and the Attorney General with approval of the Court. Notwithstanding the foregoing, the Parties acknowledge and agree that they will fulfill any obligation that may be outstanding as of such expiration or termination.

CONSENTED TO:**Petitioners:**

The Committee to Save Cooper Union, Inc.

By: _____, President Date: _____

Individual Petitioners

_____ Date: _____ Date: _____

_____ Date: _____ Date: _____

T.I. C. [Signature] Date: 9/17/15
 T.I. CUMBERBATCH

To Respondent Jeremy Wertheimer:

Darya Kapulina
 Pearl Cohen Zedek Latzer Baratz LLP
 1500 Broadway, 12th Floor
 New York, NY 10036

To Attorney General:

Alvin Bragg
 Executive Deputy Attorney General for Social Justice
 New York State Office of the Attorney General
 120 Broadway
 New York City, NY 10271-0332
 With copies to

James Sheehan
 Bureau Chief, Charities Bureau
 New York State Office of the Attorney General
 120 Broadway
 New York City, NY 10271-0332

1. **Termination.** The obligations of the Parties to perform under the Consent Decree will terminate on December 31, 2024, unless terminated earlier, or extended, upon joint application of Respondents and the Attorney General with approval of the Court.


Notwithstanding the foregoing, the Parties acknowledge and agree that they will fulfill any obligation that may be outstanding as of such expiration or termination.

CONSENTED TO:**Petitioners:**

The Committee to Save Cooper Union, Inc.

By: _____, President Date: _____

Individual Petitioners

 Date: 07-17-2015 Date: _____

_____ Date: _____ Date: _____

_____ Date: _____

To Respondent Jeremy Wertheimer:

Darya Kapulina
 Pearl Cohen Zedek Latzer Baratz LLP
 1500 Broadway, 12th Floor
 New York, NY 10036

To Attorney General:

Alvin Bragg
 Executive Deputy Attorney General for Social Justice
 New York State Office of the Attorney General
 120 Broadway
 New York City, NY 10271-0332
 With copies to

James Sheehan
 Bureau Chief, Charities Bureau
 New York State Office of the Attorney General
 120 Broadway
 New York City, NY 10271-0332


J. **Termination.** The obligations of the Parties to perform under the Consent Decree will terminate on December 31, 2024, unless terminated earlier, or extended, upon joint application of Respondents and the Attorney General with approval of the Court. Notwithstanding the foregoing, the Parties acknowledge and agree that they will fulfill any obligation that may be outstanding as of such expiration or termination.

CONSENTED TO:**Petitioners:**

The Committee to Save Cooper Union, Inc.

By: _____, President Date: _____

Individual Petitioners

 Mike Essl Date: 9/17/2015 _____ Date: _____
 _____ Date: _____ _____ Date: _____
 _____ Date: _____

Respondents:**The Board of Trustees of Cooper Union**By: [Signature], Chairman of the Board Date: 9/18/15

(On behalf of Intervenor-Respondent The Cooper Union for the Advancement of Science and Art and Respondents Board of Trustees of The Cooper Union for the Advancement of Science and Art, Robert Bernhard, Jeffrey Gural, Richard S. Lincer, Thomas Driscoll, Raymond G. Falci, Joseph B. Dohronyi, Jr., Rachel L. Warren, Edgar Mokuvas, Jeffrey Hirsch, Eric Hirschman, Malcolm King, Kevin Slavin, Johnny C. Taylor, Jr., and Jeremy Wertheimer)

The Cooper Union for the Advancement of Science and Art:

By: _____, Acting President Date: _____

New York State Office of the Attorney General:By: _____ Date: _____
John Oleske
Assistant Attorney General**IT IS ORDERED**Dated: 12/15/15[Signature]
Hon. Nancy Bannon, J.S.C.

Respondents:**The Board of Trustees of Cooper Union**

By: _____ Chairman of the Board Date: _____

(On behalf of Intervenor-Respondent The Cooper Union for the Advancement of Science and Art and Respondents Board of Trustees of The Cooper Union for the Advancement of Science and Art, Robert Bernhard, Jeffrey Gural, Richard S. Lincer, Thomas Driscoll, Raymond G. Falci, Joseph B. Dobronyi, Jr., Rachel L. Warren, Edgar Mokuvos, Jeffrey Hersch, Eric Hirschhorn, Malcolm King, Kevin Slavin, Johnny C. Taylor, Jr., and Jeremy Wertheimer)

The Cooper Union for the Advancement of Science and Art:By: William E. Oleske Acting PresidentDate: 9/21/2015**New York State Office of the Attorney General:**By: _____ Date: _____
John Oleske
Assistant Attorney General**IT IS ORDERED**

Dated: _____

Hon. Nancy Bannon, J.S.C.

Respondents:**The Board of Trustees of Cooper Union**

By: _____, Chairman of the Board Date: _____

(On behalf of Intervenor-Respondent The Cooper Union for the Advancement of Science and Art and Respondents Board of Trustees of The Cooper Union for the Advancement of Science and Art, Robert Bernhard, Jeffrey Gural, Richard S. Lincer, Thomas Driscoll, Raymond G. Falci, Joseph B. Dobronyi, Jr., Rachel L. Warren, Edgar Mokuvos, Jeffrey Hersch, Eric Hirschhorn, Malcolm King, Kevin Slavin, Johnny C. Taylor, Jr., and Jeremy Wertheimer)

The Cooper Union for the Advancement of Science and Art:

By: _____, Acting President Date: _____

New York State Office of the Attorney General:By:  _____
John Oleske
Assistant Attorney General

Date: 9/21/15

IT IS ORDERED

Dated: _____

Hon. Nancy Bannon, J.S.C.