

187

|  |                                |
|--|--------------------------------|
| _____                                      | X                              |
|  | : <b>PETITION FOR</b>          |
|  | : <b>CY PRES RELIEF</b>        |
| In the Matter of the Application of        | : <b>PURSUANT TO</b>           |
|  | : <b>§8-1.1(c) OF NEW YORK</b> |
| THE COOPER UNION                           | : <b>ESTATES, POWERS AND</b>   |
| FOR THE ADVANCEMENT OF SCIENCE             | : <b><u>TRUSTS LAW</u></b>     |
| AND ART                                    | :                              |
| <i>Petition for cy pres Relief</i>         | : Index No.                    |
| <i>Pursuant to § 8-1.1(c) of N.Y. EPTL</i> | :                              |
| _____                                      | X                              |

The Cooper Union for the Advancement of Science and Art, by its counsel Paul, Weiss, Rifkind, Wharton & Garrison LLP, respectfully alleges as follows:

**Nature of the Action**

1. This is an application for cy pres relief pursuant to the provisions of Section 8-1.1(c) of the New York Estates, Powers and Trusts Law (the "EPTL") to permit The Cooper Union for the Advancement of Science and Art ("The Cooper Union") to mortgage the Chrysler Building, which is owned by its endowment, as security for a \$175 million loan and to use the proceeds of that loan in excess of the historic dollar value of the gift of the property for The Cooper Union's general charitable purposes.

2. The Board of Trustees of The Cooper Union, in response to the immediate need to modernize outdated facilities and financial pressures, both of which may challenge its accreditation, has approved a financial plan to address these current problems and to build a sustainable future for The Cooper Union.

3. The Chrysler Building is The Cooper Union's most valuable real estate asset and necessarily a key part of the plan to preserve The Cooper Union's future.

A new ground lease is being negotiated that will greatly increase revenue from the building to The Cooper Union beginning in 2018. The proposed financing and the use of the proceeds thereof for The Cooper Union's charitable purposes, for which The Cooper Union seeks this Court's approval, allows the institution to continue its mission and address its current challenges by realizing today some of the benefits of these future increases in income.

#### **The Parties**

4. The Cooper Union is a not-for-profit corporation, incorporated by an 1859 act of the New York legislature, located at Cooper Square, New York, New York 10003-7120. It is an all honors college and one of America's most selective institutions of higher education, perennially ranked among the nation's top three specialized colleges. The Cooper Union consists of three degree-granting schools: The Irwin S. Chanin School of Architecture, The Albert Nerken School of Engineering and The School of Art.

5. In accordance with EPTL § 8-1.1(f), the Attorney General of the State of New York is an interested party to this proceeding.

#### **Jurisdiction and Venue**

6. This Court has jurisdiction over this matter and venue is proper in this County pursuant to EPTL § 8-1.1(c) as The Cooper Union has its offices and carries out its charitable mission principally in this County and the applicable gift instrument is not a will.

#### **Background Facts**

##### **The Founding of The Cooper Union**

7. The Cooper Union was founded by the industrialist, inventor and philanthropist Peter Cooper in 1859 pursuant to an amended act of the New York State legislature "to enable Peter Cooper to found a Scientific Institution in the City of New York" (the "1859 Act").

8. Peter Cooper was born in New York City on February 12, 1791 to a family of modest means and had only a limited amount of formal education. He rose to become one of the most successful industrialists in the City and wanted to give talented young people access to the type of education he had never been able to receive by creating a school devoted to science and art.

9. The Cooper Union's charter (the "Charter"), the first version of which appears in the 1859 Act, contains a list of five primary purposes for which it was incorporated by the legislature. One of the primary purposes expressly contained in the Charter is the creation of a premiere technological school:

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; the requirements to admission to which shall be left to the discretion of the said Board of Trustees, and shall be specifically determined by them from time to time; 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.  
(Emphasis added.)

10. Peter Cooper donated the school's first building, the Foundation Building, located on the south side of Astor Place and still the heart of the campus today. He viewed The Cooper Union as his legacy for future generations, stating in a speech a few months after its opening:

This building has scarcely been absent from my thoughts a single day, for nearly thirty years. I have laboured for it by night and by day with an intensity of desire that can never be explained. It is now my fervent hope that the youth of my native city and country will constantly throng these halls, with eager efforts to gain that kind of useful knowledge which is needed to make them wise, good, and useful to themselves and to their country.

## The Cooper Family and The Chrysler Building Land

11. In 1902, the fee parcel upon which the Chrysler Building now sits was conveyed to The Cooper Union by Edward Cooper and Abram S. Hewitt, as Trustees, and by Peter Cooper's children, Edward Cooper and Sarah Amelia Hewitt, individually, "for the purpose of constituting an endowment" for the school "for its uses, intents and purposes."

12. Edward Cooper and Sarah Amelia Hewitt were the children of Peter Cooper, and Abram S. Hewitt was Sarah Amelia Hewitt's husband. Edward Cooper and Abram S. Hewitt were also members of the first Board of Trustees of The Cooper Union and each served as President of the Board. Each of these individuals was devoted to the legacy of Peter Cooper and The Cooper Union.

13. In fact, the minutes of the meeting of the Board of Trustees of February 4, 1902 reflect that the children of Peter Cooper "have agreed to convey absolutely in fee to the Cooper Union" the property, now known as the Chrysler Building. The minutes further reflect that the value of the property in 1902 was \$600,000.

14. In 1971, The Cooper Union was granted the authority to mortgage any of its property, other than the Foundation Building given to it by Peter Cooper in 1859, pursuant to a New York Supreme Court Order entered on August 6, 1971 granting The Cooper Union's cy pres application requesting such relief. Prior to 1971, The Cooper Union's Charter had not provided for the authority to mortgage its property.

15. The Cooper Union estimates that the current fair market value of the Chrysler Building is in excess of \$415 million and its value to The Cooper Union based on projected cash flow (taking into account tax equivalency payments to The Cooper Union), as described below, is approximately \$700 million. This exponential rise in value could not have been foreseen by the children of Peter Cooper at the time they

made their gift in 1902 and, given their devotion to the institution that represents their father's legacy, it is indisputable that they would desire the benefits of this incredible increase in value to be available for the needs of The Cooper Union, were they living today.

### The Cooper Union Today and the Plan for Tomorrow

16. Today, The Cooper Union is widely recognized for its outstanding academic programs in architecture, art and engineering. Students are admitted to The Cooper Union on the basis of merit alone: the college does not provide any form of consideration for legacy, patronage, or athletic ability. Faculty, students and alumni continue to win a disproportionate share of the nation's most prestigious fellowships, academic and creative awards.

17. Despite its many academic strengths, The Cooper Union currently faces the possibility that it will become unable to carry out its statutory mission in the not-too-distant future.

18. The Cooper Union needs to upgrade outdated facilities in order to address concerns about its continuing accreditation and for it to continue to attract and maintain the best and brightest faculty and student body. At the same time, it currently faces a grave fiscal crisis.

### The Current Fiscal Crisis and Antiquated Facilities

19. The Cooper Union has experienced significant financial challenges and operating deficits, which recently have become acute.

20. Unlike most other schools, however, The Cooper Union does not receive any revenues in the form of tuition. All students admitted to The Cooper Union's degree programs receive a full-tuition scholarship, which allows talented students of all economic backgrounds to attend, in accordance with Peter Cooper's vision.

21. At the same time, it is clear that modernization of facilities is essential to maintain The Cooper Union's standing as one of the nation's premiere undergraduate colleges, to follow the mandate of the charter to be equal to the best technological schools and address concerns about its accreditation.

22. The Cooper Union has not erected an academic building in half a century. The current building used by the Engineering School was constructed in the 1950s, has inadequate ventilation, lacks modern technological capabilities and several of its advanced science laboratories are obsolete. New laboratories are required to accommodate the evolution of curricula necessitated by advances in science, engineering and technology. Modern technological infrastructure is required in order to maintain high speed computers, simulation capabilities, networking, multimedia communications, web-based interactions and advanced audiovisual capabilities essential to the study of art, architecture and engineering today.

23. In fact, one of the school's primary accreditation bodies, the Middle States Commission on Higher Education, has repeatedly expressed its dissatisfaction with the current state of the finances and facilities of The Cooper Union. Another accreditation body for the School of Architecture, the National Architectural Accrediting Board, determined in 2004 that the school's facilities did not meet its standards.

24. In order for The Cooper Union to address these issues, ensure its continued accreditation, maintain its academic standing, and recruit and retain the best students and faculty, it is essential to renew and modernize the school's facilities.

#### The Cooper Union's Plan for the Future

25. After careful deliberation, The Board of Trustees has committed to a plan designed to address the current challenges and secure the financial and academic future of The Cooper Union.

26. To address the needs of the institution for modern facilities, the Board of Trustees is resolved to proceed with the construction of a new academic building as well as with the renovation of its Foundation Building, which is the building constructed by Peter Cooper and given to the institution when it was established. This project is estimated to cost \$130 to \$155 million.

27. The new academic building, which will be located on the east side of Third Avenue, between 6th and 7th Streets, will house the School of Engineering and also provide institutional space for the Humanities and Social Sciences, the School of Architecture and the School of Art. The design not only incorporates state of the art technological infrastructure necessary for the specialized programs of Engineering, Architecture and Art that are The Cooper Union's focus, it also is designed to address the institution's need for energy efficiency and for future flexibility, containing reconfigurable spaces that will be able to evolve with the institution's changing needs over time.

28. To address the needs of the institution for a sustainable financial future, the Board of Trustees and the President have developed and begun to implement a financial plan (the "Master Plan") to complete the construction project, eliminate over time the operating deficits and produce a more reliable and stable revenue stream.

29. The Master Plan is composed of several interconnected initiatives: a commitment by the administration to reduce operating expenditures by 10% by 2011; a \$250 million capital campaign, which has already raised \$129 million; the expansion of the effort to increase annual giving; the completion of the construction project; the adoption of investment strategies designed to invest prudently liquid assets to maximize returns while preserving principal; and, the development of underutilized real estate assets and revenue growth from existing real estate assets.

## Maximizing The Cooper Union's Real Estate Assets

30. Real estate assets represent the largest class of assets held by The Cooper Union and therefore are an essential part of any fiscal strategy for its future.

31. The Cooper Union has identified three smaller properties not necessary to the institution that will be sold. The institution expects to receive approximately \$10 million from those sales during the current fiscal year.

32. The 1859 Act provided that property acquired by The Cooper Union is exempt from taxation, provided that any revenues therefrom are used for the institution's charter purposes. (The 1859 Act was later amended by the legislature so that only properties acquired by The Cooper Union prior to July 1, 1969 are so exempt.) On properties specifically exempt as provided in the statute, such as the Chrysler Building, The Cooper Union collects from its lessees payments equal to the tax that would otherwise be payable, called tax equivalency payments.

33. The property located at 26 Astor Place is an exempt property under the statute that just a few years ago was a parking lot. In order to maximize the return on that site, The Cooper Union has entered into a 99-year lease under which the institution is to receive semi-annual tax equivalency payments from the lessee. Due to a dispute with the City of New York over whether the property qualifies for tax exemption under a 1969 amendment to the 1859 Act, The Cooper Union currently is not receiving this revenue stream. While the institution hopes to resolve this matter so that it may rely on this source of revenue, it is possible that litigation may need to be commenced and that therefore it may take some time to resolve.

34. In addition, the completion of the new building on Third Avenue will allow the site of the current engineering building to become available for development. This also will allow The Cooper Union to enter into another long-term



lease arrangement in connection with development on that property, which should provide a stable source of revenue.

#### The Role of the Chrysler Building in the Master Plan

35. The Chrysler Building is by far The Cooper Union's greatest asset and therefore is necessarily an important part of the institution's financial future.

36. The first step taken by The Cooper Union in relation to the Chrysler Building in accordance with the Master Plan has been to negotiate a more favorable ground lease with the building's current tenant. The Cooper Union currently receives approximately \$7 million annually under the ground lease, which it receives in addition to the tax equivalency payments described above. The new ground lease, which we anticipate will be finalized and signed this fiscal year, will increase the lease payments to \$32.5 million in 2018, \$41 million in 2028 and \$55 million in 2031, thereby providing The Cooper Union with a reliable increased revenue stream.

37. While the increase in the lease payments is good news for the institution and is expected to maintain the institution in the future, it does not assist in addressing fully today's financial challenges. Therefore, as part of the Master Plan, the Board of Trustees also has determined that it would use its interest in the Chrysler Building as security to obtain up to \$175 million in financing, which will allow the institution to continue with its mission by realizing the benefits of some of this anticipated future income stream immediately. A portion of this financing will be used to meet future operating deficits until 2018, the year in which the increases in the ground lease payments take effect and \$600,000 will be placed in an endowment fund account to ensure the preservation of the historic dollar value of the gift from Peter Cooper's children. In order to prevent The Cooper Union from carrying an additional annual financial burden between now and 2018, it is anticipated that the terms of the financing

will be structured so that the institution will not have to make principal payments prior to that year.

38. The Cooper Union seeks this Court's permission to move forward with this component of the Master Plan because it believes that the plan as a whole is prudent, reasonable, in the long-term best interest of the institution and should eliminate operating deficits by 2013. The Cooper Union believes that implementation of the Master Plan is necessary in order to secure its financial future.

39. As stated above, The Cooper Union estimates that the current fair market value of the Chrysler Building is in excess of \$415 million. This figure does not take into account the tax equivalency payments received by The Cooper Union, which, upon information and belief, add at least another \$280 million of value to The Cooper Union. Even after the financing is complete, The Cooper Union's remaining interest in the Chrysler Building therefore will remain vastly in excess of its historic dollar value.

40. The Board of Trustees of The Cooper Union is aware that, it could sell the Chrysler Building and thereby realize and appropriate the appreciation of the property in excess of its historic dollar value (approximately \$415 million of appreciation). To do so, however, would be imprudent because The Cooper Union would not be able to realize the significant value of the tax equivalency payments in any sale because they are unique to the institution and not transferable. Furthermore, the Chrysler Building property is a gift from the children of Peter Cooper, one of the first significant donations to the institution, and an important historical piece for the disciplines of art, architecture and engineering that are the heart of The Cooper Union.

41. Therefore, The Board of Trustees does not believe that an outright sale of the Chrysler Building is the best long-term solution to its current fiscal difficulties and has chosen instead to mortgage the property while maintaining substantial equity

value and to use the financing proceeds for its charitable purposes, a course of action that requires the approval of this Court, which The Cooper Union respectfully seeks.

42. The deed by which the children of Peter Cooper conveyed the property to The Cooper Union states that the property is conveyed to the school “for the purpose of constituting an endowment” for the school “for its uses, intents and purposes[.]” This broad language clearly evidences the intent on the part of the donors, consistent with their dedication to the school’s mission and their father’s legacy during their lifetimes, to provide the school with maximum flexibility in relation to this gift.

43. Furthermore, the August 6, 1971 Order of the New York Supreme Court expanded The Cooper Union’s authority over its property—which was limited pursuant to its original Charter—and expressly provided that The Cooper Union may “buy, sell, exchange, mortgage, let and otherwise use and dispose of its property, or borrow, as the trustees shall deem advisable[.]” The Foundation Building, deeded to The Cooper Union by Peter Cooper at the founding of the institution in 1859, was the only building owned by The Cooper Union exempted from the mortgage power granted to the Board of Trustees in 1971.

44. As stated above, The Cooper Union is gravely concerned that its mission will be compromised if it is unable to implement its Master Plan, which includes using the Chrysler Building as security for financing and using the financing proceeds for its charitable purposes, and therefore seeks this Court’s permission in order to move forward. The restriction under New York law that does not allow The Cooper Union to use an asset that has increased to roughly 1,000 times its historic dollar value as security for financing that is desperately needed to secure the future of the institution is, in this situation, impracticable or impossible and will frustrate the intent of the donors, the children of Peter Cooper, to provide for The Cooper Union to be a first-class institution in all respects.

CLAIM FOR RELIEF

45. The Cooper Union repeats and realleges paragraphs 1 through 44 above as if fully set forth herein.

46. Section 8-1.1(c) of the New York Estates, Powers and Trusts Law states that “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 . . . 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[.]”

47. Accordingly, The Cooper Union should be granted permission to use the Chrysler Building as security for loan of up to \$175 million and The Cooper Union should be granted cy pres relief releasing it from the restrictions imposed by law due to the endowment language contained in the 1902 deed, which restrictions are impracticable or impossible, to such an extent as to allow the proceeds from the financing (above the property’s historic dollar value) to be used for the construction of a new academic building, renovations to its 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 Chrysler Building in accordance with the lender’s requirements for the financing, for working capital and for its general charitable purposes.

*No previous applications have been made to this or any other court for the*  
WHEREFORE, the Petitioner respectfully prays that this Court: *Relief Sought*  
*herein*

(a) Permit the Petitioner to use the Chrysler Building as security for up to \$175 million of financing;

(b) Allow the Petitioner to use the proceeds of such financing, in excess of the historic dollar value of the property of \$600,000, for the construction and related costs

of a new academic building, for renovations to its Foundation Building, to invest endowment funds invested in the ground lease in the Chrysler Building, to defease a New York State bond interest in the Chrysler Building, for general working capital and/or for its other charitable purposes;

(c) Direct the Petitioner to place \$600,000 from the proceeds of the financing, representing the historic dollar value of the property, in an endowment fund account; and,

(d) Grant such other and further relief as it deems proper.

Dated: New York, New York  
September 6, 2006

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

By: Alan Halperin  
Alan S. Halperin  
Maria T. Vullo

1285 Avenue of the Americas  
New York, New York 10019-6064  
(212) 373-3000


Attorneys for Petitioner The Cooper Union for the  
Advancement of Science and Art

VERIFICATION

State of New York )  
: ss.:  
County of New York )

GEORGE CAMPBELL, JR., being duly sworn, deposes and says:

I am the President of The Cooper Union for the Advancement of Science and Art, the Petitioner in this proceeding. I have read the foregoing Petition and know its contents to be true to my knowledge except as to the matters alleged on information and belief and as to those matters I believe them to be true.

  
George Campbell, Jr.

Sworn to before me  
this 6 day of September, 2006

  
Notary Public

SUSAN M. MCGLOVE  
Notary Public, State of New York  
No. 31-4854903  
Qualified in New York County  
Commission Expires March 24, 2008

9/7  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
:  
In the Matter of the Application of :  
:  
THE COOPER UNION :  
FOR THE ADVANCEMENT OF SCIENCE :  
AND ART :  
-----X

Index No. **112519/06**  
  
AFFIDAVIT OF  
NO OBJECTION  
ON BEHALF OF THE  
ATTORNEY GENERAL

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

Carl L. Distefano, being duly sworn, deposes and says:

1. I am an Assistant Attorney General in the Charities Bureau of Eliot Spitzer, the Attorney General of the State of New York. The Attorney General represents the ultimate beneficiaries of gifts for charitable purposes pursuant to Article 8 of the Estates, Powers and Trusts Law, and is a necessary party to this proceeding, as provided in EPTL § 8-1.1(f).

2. I submit this affidavit in response to the verified petition (the "Petition") of The Cooper Union for the Advancement of Science and Art, a not-for-profit institution of higher education located at Cooper Square, New York, New York ("Petitioner"), for *cy pres* relief pursuant to EPTL § 8-1.1(c) with respect to its real property located at 405 Lexington Avenue, New York, New York (the "Property"), which Petitioner is required to hold as an endowment (see ¶ 4 below). Petitioner seeks an order permitting it to use the Property as security for financing in the amount of \$175,000,000, and to use the proceeds of such financing (less \$600,000, the historic dollar value of the Property, which is to be segregated and held as an endowment) in furtherance of Petitioner's not-for-profit corporate purposes, as described in

PWRW & G LLP

SEP 6 - 2006  
[Signature]  
[Stamp]

detail in the Order to Show Cause, the Petition and supporting affidavits, and the proposed Order.

3. Petitioner was founded in 1859 by the industrialist Peter Cooper pursuant to an act of the State Legislature, L.1859 c.279, as amended. Petition ¶ 7; Affidavit of Dr. George Campbell, Jr., sworn to September 6, 2006, in support of Petition (“Campbell Aff.”) ¶ 2, Ex. A. By a deed of trust dated April 29, 1859 (the “Deed of Trust”), Peter Cooper and his wife conveyed to Petitioner the building known as the Foundation Building, and the land on which it stands, on Cooper Square. Petition ¶ 11; Campbell Aff. ¶ 4, Ex. B. The Deed of Trust was amended by an order of this Court (Francis J. Bloustein, J.), entered August 6, 1971, pursuant to a *cy pres* application by Petitioner. Petition ¶¶ 14, 43; Campbell Aff. ¶ 5, Ex. D. Article Eleventh of the Deed of Trust as so amended permits Petitioner to “buy, sell, exchange, mortgage, let and otherwise use and dispose of its property,” except the property conveyed to Petitioner by Peter Cooper. Campbell Aff., Exs. B, D.

4. The Property that is the subject of the Petition was given to Petitioner by the children of Peter Cooper and their trustees by an indenture dated March 3, 1902 (the “1902 Indenture”), which conveyed the Property to Petitioner “for the purpose of constituting an endowment . . . for its uses, intents and purposes.” Petition ¶¶ 11-15; Campbell Aff. ¶ 9, Ex. E. Given that the Property was not conveyed to Petitioner by Peter Cooper, but rather by his children, it appears that Petitioner has the authority to mortgage the Property under the terms of the Deed of Trust as amended by this Court’s *cy pres* order of August 6, 1971. The proceeds of such mortgage, however, would constitute part of the endowment created by the 1902 Indenture, and thus would not be wholly expendable by Petitioner on a current basis, N-PCL § 102(a)(13), absent *cy pres*



relief pursuant to EPTL § 8-1.1(c). Petitioner believes, and the Attorney General agrees, that it is prudent for Petitioner to seek court approval both for the mortgage of the Property and for Petitioner's proposed use of the mortgage proceeds. See Petitioner's Memorandum of Law in Support of Petition for Cy Pres Relief at 6 n.2.

5. The Attorney General's Charities Bureau has carefully reviewed the Petition and all supporting papers, and the proposed Order, which were submitted to the Charities Bureau in draft form for review before being served on the Attorney General and filed with the Court. In addition, the Charities Bureau has reviewed other documents and information furnished by Petitioner, and has had extensive discussions with Petitioner's counsel with regard to the matters set forth in the Petition. Based on such review, the Attorney General is satisfied that the requirements of EPTL § 8-1.1(c) and the doctrine of *cy pres* are fulfilled. In particular, the Attorney General is satisfied that (a) the gift of the Property to Petitioner was charitable in nature; (b) the donors of the Property had a general, rather than a specific, charitable intent; and (c) circumstances have so changed since the time of the gift as to render impracticable or impossible a literal compliance with the 1902 Indenture insofar as it requires Petitioner to hold the Property, and the proceeds of any mortgage of the Property, as an endowment. *See, e.g., Matter of Othmer (Long Island College Hospital)*, 12 Misc. 3d 919, 815 N.Y.S.2d 444 (Sur. Ct. Kings County 2006); *Matter of Polytechnic University*, 12 Misc. 3d 414, 812 N.Y.S.2d 304 (Sur. Ct. Kings County 2006).

6. More specifically, with respect to the impracticability of literal compliance with the endowment condition in the 1902 Indenture, the Charities Bureau is satisfied that, absent the *cy*

*pres* relief requested here, Petitioner will suffer hardship, and its ability to carry out its not-for-profit corporate purposes will be impeded, in that, among other things, it is likely that

(a) Petitioner's ability to maintain its accreditation will be seriously compromised; and

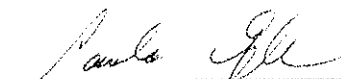
(b) Petitioner will be unable to replace its obsolescent Engineering Building and to renovate its historic Foundation Building, improvements that are essential to enable Petitioner to comply with the mandate in its charter that requires "the establishment and *maintenance* of a thorough polytechnic school . . . 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.*"

Campbell Aff., Ex. A (emphasis added).

7. Accordingly, the Attorney General has no objection to entry of the proposed Order submitted by Petitioner.

  
\_\_\_\_\_  
Carl L. Distefano

Sworn to before me this  
7<sup>th</sup> day of September, 2006

  
\_\_\_\_\_  
Assistant Attorney General  
(Pursuant to Executive Law § 73)

INDEX NO.  
SUPREME COURT, STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of the Application of

THE COOPER UNION  
FOR THE ADVANCEMENT  
OF SCIENCE AND ART

AFFIDAVIT OF  
NO OBJECTION  
ON BEHALF OF THE  
ATTORNEY GENERAL

**ELIOT SPITZER**  
Attorney General of the State of New York  
CHARITIES BUREAU  
120 Broadway  
New York, New York 10271  
Telephone 212-416-6349

At the IAS Part 4 of the  
Supreme Court of the State of  
New York, held in and for  
the County of New York, at  
the Courthouse thereof, 80  
Centre Street, on the 8<sup>th</sup> day  
of September, 2006

PRESENT: **KIBBIE F. PAYNE**

J.S.C.

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

\_\_\_\_\_ X

In the Matter of the Application of

THE COOPER UNION  
FOR THE ADVANCEMENT OF SCIENCE AND ART  
*petition for cy pres Relief  
pursuant to §8-1.1(c) of  
N.Y. E.P.T.L.*

ORDER TO SHOW CAUSE

Index No. 112519/06

\_\_\_\_\_ X

Upon the annexed Petition for Cy Pres Relief Pursuant to § 8-1.1(c) of  
New York Estates, Powers and Trusts Law (the "Petition"); the Affidavit of Dr. George  
Campbell, Jr., sworn to on September 6, 2006, and the exhibits annexed thereto; the  
Affidavit of Robert E. Hawks, sworn to on September 6, 2006 and the exhibits annexed  
thereto; the Affidavit of Maria T. Vullo, sworn to on September 5, 2006; and the  
accompanying Memorandum of Law, and sufficient cause appearing therefore, it is  
hereby

ORDERED that a hearing will be held before IAS Part 4, Room  
136, \_\_\_\_\_ of this Court to be held at 80 Centre Street, New York, New York, on

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heard, so that the Court may determine whether:

1. To allow the Petitioner, The Cooper Union for the Advancement of Science and Art, to use the property conveyed by deed dated March 3, 1902 as security for up to \$175 million of financing;

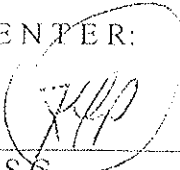
2. Pursuant to § 8-1.1(c) of New York Estates, Powers and Trusts Law, to grant the Petitioner cy pres relief to such an extent as to allow the Petitioner to use the proceeds of such financing, in excess of the historic dollar value of the property of \$600,000, for the construction and related costs of a new academic building, for renovations to its Foundation Building, to divest funds invested in the ground lease in the Chrysler Building, to defease the Dormitory Authority of the State of New York's interest in the Chrysler Building in accordance with the lender's requirements for the financing, for general working capital and/or for its other charitable purposes;

3. To direct the Petitioner to place \$600,000 from the proceeds of the financing, representing the historic dollar value of the property, in an endowment fund account; and,

4. To grant such other and further relief as the Court deems just and proper.

ORDERED, that service of a copy of this Order and the papers upon which it is based, by personal service upon the Charities Bureau of the Office of the New York State Attorney General, on or before the 12<sup>th</sup> day of September 2006, shall be deemed good and sufficient service.

8 Sept 06

ENTER:  
  
\_\_\_\_\_  
J.S.C.

9/12  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

\_\_\_\_\_ X  
:  
In the Matter of the Application of :  
:

THE COOPER UNION :  
FOR THE ADVANCEMENT OF SCIENCE AND ART :  
PETITION FOR CY PRES RELIEF PURSUANT TO :  
§ 8-1.1(c) of N.Y. E.P.T.L. :  
:  
\_\_\_\_\_ X

AFFIDAVIT OF SERVICE

Index No. 112519/06

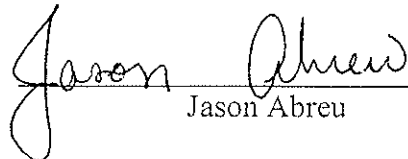
STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

Jason Abreu, being duly sworn, deposes and says:

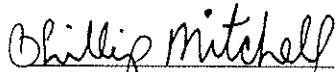
1. I am not a party to this action, am over 18 years of age and am employed by Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019.
2. On September 11, 2006, I personally served true copies of the ORDER TO SHOW CAUSE; PETITION FOR CY PRES RELIEF PURSUANT TO SECTION 8-1.1 (c) OF NEW YORK ESTATES, POWERS AND TRUSTS LAW; MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR CY PRES RELIEF PURSUANT TO SECTION 8-1.1 (c) OF NEW YORK ESTATES, POWERS AND TRUSTS LAW; AFFIDAVITS OF MARIA T. VULLO, DR. GEORGE CAMPBELL AND ROBERT E. HAWKS IN SUPPORT OF PETITION FOR CY PRES RELIEF; and PROPOSED ORDER on the following:

Charities Bureau of the  
New York State Attorney General  
120 Broadway  
New York, New York 10271

3. I made such service by personally delivering true copies of the aforementioned documents to the office at the above stated address.

  
Jason Abreu

Sworn to before me this  
12 day of September, 2006

  
Notary Public

**PHILLIP MITCHELL**  
Notary Public, State of New York  
No. D1885121778  
Qualified in Bronx County  
Commission Expires January 24, 2009

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

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In the Matter of the Application of

THE COOPER UNION  
FOR THE ADVANCEMENT OF  
SCIENCE AND ART  
PETITION FOR CY PRES RELIEF  
PURSUANT TO  
§ 8-1.1(c) OF N.Y. E.P.T.L.

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**AFFIDAVIT OF SERVICE**

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Paul, Weiss, Rifkind, Wharton & Garrison LLP

**Attorneys for Petitioner**

ATTORNEYS AT LAW

1 285 AVENUE OF THE AMERICAS • NEW YORK, NY 10019-6064

(212) 373-3000

All Communications should be referred to

Maria T. Vullo, Esq.



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

PRESENT: KIBBIE F. PAYNE  
*Justice*

PART 4

In the Matter of the Application of  
THE COOPER UNION  
FOR THE ADVANCEMENT OF SCIENCE AND ART,

Petitioner.

INDEX NO. 112519/06  
MOTION DATE 8/13/06  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

**FILED**

OCT 03 2006

Cross-Motion:  Yes  No

On March 3, 1902, Edward Copper and Abram S. Hewitt, as trustees, and Edward Copper and Sarah Amelia Hewitt, individually, conveyed the premises known as 405 Lexington Avenue, New York, New York, now the Chrysler building, to petitioner, a not-for-profit institution of higher education. The conveyance was intended to be "an endowment to [petitioner] for its uses, intents and purposes. . . ." Petitioner now moves, by order to show cause, for an order permitting it to deviate from a literal compliance with the terms of the disposition (see Estates, Powers and Trusts Law § 8-1.1 [c] [1]; see also N-PCL § 102 [a] [13]). Specifically, petitioner seeks to mortgage the property, place \$600,000 of the mortgage proceeds in an endowment fund, representing the property's historic value, and use the remaining proceeds to modernize its facilities and address threats to the institution's accreditation. The Attorney General of the State of New York, Charities Bureau, which represents the beneficiaries of the endowment (see EPTL § 8-1.1 [f]), submits an Affidavit of No Objection. The Charities Bureau provides therein that it is "satisfied that [petitioner's application meets] the requirements of EPTL § 8-1.1 (c) and the doctrine of *cy pres*." The Office expressly has no objection to the entry of petitioner's proposed order, granting it use of the subject property as security for financing in the amount of \$175,000,000, and directing it to place \$600,000 from the proceeds of such financing in the endowment fund. Accordingly, the court will grant this petition as indicated in the memorandum attached.

Dated: September 27, 2006

*KFP*  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE PWTM & GLEP

OCT 20 2006

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

At the IAS Part 4 of the  
Supreme Court of the State of  
New York, held in and for  
the County of New York, at  
the Courthouse thereof, 30  
Centre Street, on the \_\_\_ day  
of September, 2006

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

\_\_\_\_\_ X  
:  
In the Matter of the Application of :  
:  
THE COOPER UNION :  
FOR THE ADVANCEMENT OF SCIENCE AND ART :  
:  
\_\_\_\_\_ X

**ORDER**  
Index No. 112519/06

The Cooper Union for the Advancement of Science and Art, having  
petitioned this Court for an Order for Cy Pres Relief pursuant to New York Estates,  
Powers and Trusts Law § 8-1.1(c),

**FILED**  
OCT 03 2006  
NEW YORK  
COUNTY CLERK'S OFFICE

AND, an Order to Show Cause having been issued by this Court on  
September 4, 2006,

AND, the Attorney General of the State of New York having been duly  
served with all the papers submitted herein,

AND, the Attorney General of State of New York having duly considered  
the application and having submitted an affidavit confirming that it does not oppose the  
relief requested,

AND, the Petition having come before this Court, and the Court having  
considered the papers submitted therewith,

PAUL J. GILF  
OCT 20 2006  
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AND, a hearing having been held on this matter on \_\_\_\_\_,

2006, it is

ORDERED, pursuant to New York Estates, Powers and Trusts Law § 8-

1.1, that:

1. The Petition is hereby granted in its entirety;
2. The Petitioner is permitted to use the property conveyed by deed dated March 3, 1902 as security for up to \$175 million of financing;
3. Pursuant to § 8-1.1(c) of the New York Estates, Powers and Trusts Law, the restrictions imposed by law on the property due to its status as endowment property are released to such an extent as to allow the Petitioner to use the proceeds of such financing in excess of the historic dollar value of the property of \$600,000 for the construction and related costs of a new academic building, for renovations to its Foundation Building, to divest funds invested in the ground lease in the Chrysler Building, to defease the Dormitory Authority of the State of New York's interest in the Chrysler Building in accordance with the lender's requirements for the financing, for general working capital, and/or for its other charitable purposes; and,
4. The Petitioner is directed to place \$600,000 from the proceeds of the financing, representing the historic dollar value of the property, in an endowment fund account.

September 27, 2006

ENTERED

J.S.C.

**FILED**

OCT 03 2006

NEW YORK  
COUNTY CLERK'S OFFICE