

## LOAN AGREEMENT

**AGREEMENT** made this 28<sup>th</sup> day of September, 2012, by and between the New York City Department of Citywide Administrative Services with its principal place of business located at One Centre Street, New York, New York 10007 ("DCAS"), and the Green-Wood Historic Fund Incorporated, a nonprofit organization with its principal place of business, care of Green-Wood Cemetery, 500 25<sup>th</sup> Street, Brooklyn, New York 11232 ("GREEN-WOOD").

**WHEREAS**, GREEN-WOOD operates the Green-Wood Cemetery (the "Cemetery"), a National Historic Landmark that was founded in 1838 and is one of the largest outdoor collections of 19th- and 20th-century statuary and mausoleums, including the monument to James Wall Finn (1916) by Frederick MacMonnies. The Cemetery is regularly open to the public and hosts tours and events to educate the public on its collections; and

**WHEREAS**, GREEN-WOOD's mission is to maintain the Cemetery's monuments and buildings of historical, cultural and architectural significance; advance public knowledge and appreciation of this significance; and preserve the natural habitat and parklands of one of the first green spaces in New York City (the "City"); and

**WHEREAS**, several members of the MacMonnies family are interred at the Cemetery, and Frederick MacMonnies was to have been interred there, although plans changed after his death and he was interred elsewhere; and

**WHEREAS**, the City commissioned Frederick MacMonnies to create the sculpture *Civic Virtue* ("the ARTWORK"), which was completed in 1922, installed in front of City Hall, and relocated in 1941 to Queens Borough Hall, at the southeast corner of Queens Boulevard and 80<sup>th</sup> Avenue, Kew Gardens, where it resides today; and

**WHEREAS**, GREEN-WOOD has offered to accept the ARTWORK on long-term loan, and is willing to fund the relocation, including a portion of the current conservation, as well as any future conservation and regular maintenance of the ARTWORK while it is located at the Cemetery; and

**WHEREAS**, the Art Commission of the City of New York, d/b/a the Public Design Commission (the "COMMISSION") serves as the curator of the City's art collection and reviews and approves the relocation and conservation of works of art belonging to the City; and

**WHEREAS**, with the cooperation and assistance of the COMMISSION, DCAS wishes to loan the ARTWORK indefinitely to GREEN-WOOD, provided that the ARTWORK is exhibited in a publicly accessible location to be agreed upon in writing by DCAS and GREEN-WOOD and approved by the COMMISSION;

**NOW, THEREFORE**, in consideration of the promises and conditions recited herein, the parties agree as follows:

## **SECTION I: TERM**

This Agreement shall commence on the date set forth above and continue indefinitely, until terminated as provided in Section III hereof.

## **SECTION II: RESPONSIBILITIES**

(a) GREEN-WOOD agrees to take the ARTWORK on long-term loan and exhibit the ARTWORK in a publicly accessible location, to be agreed upon in writing by DCAS and GREEN-WOOD and approved by the COMMISSION.

(b) GREEN-WOOD, at its sole expense, shall retain a fine art transportation company to transport the ARTWORK from Queens Borough Hall to the Cemetery, working in cooperation with the armature fabricator described in subsection II(c) below, and providing all necessary rigging, crane and transportation services at a cost currently estimated at \$165,000.

(c) DCAS shall retain a steel fabrication specialist to design and fabricate a custom armature to support and lift the ARTWORK for relocation, in an amount not to exceed \$50,000.

(d) DCAS shall retain a fine art conservator specializing in marble (the "Consultant") to provide all materials and labor necessary to conserve the statue, using the most conservative methods in accordance with the American Institute for the Conservation of Historic and Artistic Works ("AIC") Code of Ethics and Standards of Practice, including all stabilization, cleaning and repair, at a cost not to exceed \$49,500.

(e) GREEN-WOOD will separately retain the Consultant to supervise all relocation work and provide a final sacrificial protective coating on the statue, using the most conservative methods in accordance with the (AIC) Code of Ethics and Standards of Practice, at a cost currently estimated at \$27,500.

(f) DCAS shall obtain all required approvals from the COMMISSION for the removal, relocation, including the new base and landscape setting, and conservation of the ARTWORK.

(g) GREEN-WOOD shall provide for the ARTWORK the same ongoing care and protection as it does for large-scale marble sculptures of its own at its sole cost and expense. Evidence of damage at the time of receipt or while in GREEN-WOOD's custody will be reported immediately to DCAS and the COMMISSION.

(h) While the ARTWORK is located at the Cemetery, any proposal for its relocation or conservation, other than regular maintenance, must be submitted to DCAS for review and approval by the COMMISSION before any work begins.

(i) Any reproduction of the ARTWORK must be approved by DCAS in writing in advance and on a case-by-case basis, provided that such approval shall not be required for the use by GREEN-WOOD of images or representations of the ARTWORK for educational, marketing and promotional purposes, exclusive of merchandising.

## **SECTION III: TERMINATION**

(a) DCAS shall have the right to terminate this Agreement on six months' notice; provided, however, that it is the parties' intent that the ARTWORK shall remain at the Cemetery for so long as the ARTWORK shall be maintained in an appropriate, publicly accessible site, as

approved by the COMMISSION. In the event that DCAS terminates the Agreement, the City shall pay all costs and expenses incurred in the return of the ARTWORK to the City.

(b) If at any time GREEN-WOOD reasonably determines that the sculpture may not be kept on public display for reasons of safety, condition of the sculpture or costs of conservation or for other reasons consistent with GREEN-WOOD'S mission, GREEN-WOOD may end the agreement on six months' notice and pay all costs and expenses incurred in the return of the ARTWORK to a location within the City as directed by DCAS and approved by the COMMISSION.

#### **SECTION IV: NO AGENCY, PARTNERSHIP OR JOINT VENTURE**

(a) GREEN-WOOD shall not be an agent, servant, or employee of DCAS or the City by virtue of this Agreement or by virtue of any approval, permit, license, grant, right, or other authorization given by DCAS or the City or any of their respective officers, agents, or employees.

(b) Nothing in this Agreement or in the course of performance of this Agreement shall be construed to constitute a partnership or joint venture between DCAS and GREEN-WOOD. GREEN-WOOD shall have no right to obligate or bind DCAS in any manner whatsoever and nothing contained herein or in the course of performance shall give or is intended to give any right of any kind to any third party.

#### **SECTION V: ASSIGNMENT**

GREEN-WOOD shall not assign, transfer, convey, or otherwise dispose of this Agreement or of its rights, obligations, duties, in whole or in part, under this Agreement, unless the prior written consent of DCAS shall be obtained. Any unauthorized attempt by GREEN-WOOD to assign its rights or duties under this Agreement shall result in immediate termination pursuant to Section III, and GREEN-WOOD shall be liable for all costs and expenses incurred in the return of the ARTWORK to a location within the City as directed by DCAS and approved by the COMMISSION.

#### **SECTION VI: REPRESENTATIONS AND WARRANTIES**

Each party represents and warrants to the other that it has the full right and authority to enter into and perform this Agreement and is not party to any agreement or understanding in conflict with this Agreement.

#### **SECTION VII: INDEMNIFICATION**

GREEN-WOOD shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with this

Agreement or any operations of GREEN-WOOD, and its contractors or subcontractors or both, in connection therewith to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of applicable law. Insofar as the facts or law relating to any claim would preclude the City from being completely indemnified by GREEN-WOOD, the City shall be partially indemnified by GREEN-WOOD to the fullest extent permitted by law.

The City shall defend, indemnify and hold GREEN-WOOD, its officers, trustees and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which GREEN-WOOD, its officers, trustees and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with this Agreement or any operations of the CITY, and its contractors or subcontractors or both, in connection therewith to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of applicable law. Insofar as the facts or law relating to any claim would preclude GREEN-WOOD from being completely indemnified by the City, GREEN-WOOD shall be partially indemnified by the City to the fullest extent permitted by law.

## **SECTION VIII: GOVERNING LAW**

This Agreement shall be construed in accordance with the substantive laws of the State of New York. By execution of this Agreement, the parties consent to submit to the jurisdiction of the courts of the State of New York, New York County, and the federal courts located within the City.

## **SECTION IX: LIMITATION OF LIABILITY**

Except as set forth herein, neither party to this Agreement is liable to the other for losses incurred as a result of termination in accordance with this Agreement.

## **SECTION X: MODIFICATION AND MERGER**

This Agreement has been executed in two copies, each of which is deemed an original. It contains the entire understanding between the parties with respect to the subject matter of the Agreement, and replaces and supersedes all prior agreements and undertakings between the parties. This Agreement may be amended or modified only by a writing executed by all parties.

## **SECTION XI: SEVERABILITY**

If any provision of this Agreement is found to be invalid or unenforceable, the remainder of the Agreement shall remain in effect.

## **SECTION XII: NOTICES**

All notices and all other documentation required to be given under the terms of this Agreement, or which either party may desire to give to the other, shall be in writing and shall be sent by mail or telefacsimile to the following addresses:

Department of Citywide Administrative Services  
One Centre Street  
New York, NY 10007  
Attn: General Counsel  
Tel: 212-386-0253  
Fax: 212-669-8558

Green-Wood Historic Fund Incorporated  
Green-Wood Cemetery  
500 25<sup>th</sup> Street  
Brooklyn, New York 11232  
Attn: Richard Moylan, President  
Tel: 718-788-7850  
Fax: 718-788-7782

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year first written above.

Edna Wells Handy 9/26/12  
Edna Wells Handy Date  
Commissioner  
Department of Citywide Administrative Services

Richard Moylan 9/28/12  
Richard Moylan Date  
President  
Green-Wood Historic Fund Incorporated

## ACKNOWLEDGMENT BY DCAS

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

On the 26 72 day of September in the year 2012 before me,  
the undersigned, a Notary Public in and for said State, personally appeared Cinda Welles Hanley  
\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to  
be the individual(s) whose name(s) is (are) subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/thcir capacity(ies), and that by  
his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which  
the individual(s) acted, executed the instrument.

LAURIE K. KAYE  
Notary Public, State of New York  
No. 31-4721831  
Qualified in New York County  
Commission Expires Oct 31, 2010

Laurie K. Kaye  
Notary Public

14

## ACKNOWLEDGMENT BY GREEN-WOOD CEMETERY

STATE OF New York )

) ss.:

COUNTY OF Kings )

On the 28th day of September, in the year 2012 before me,  
the undersigned, a Notary Public in and for said State, personally appeared  
Richard J. Moylan, personally known to me  
or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is  
(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the  
same in his/her/thcir capacity(ies), and that by his/her/their signature(s) on the instrument, the  
individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Jane Cuccurullo  
Notary Public  
JANE CUCCURULLO  
Notary Public, State of New York  
No. 24-6698435  
Qualified in Kings County  
Commission Expires Jan. 31, 2015



November 13, 2012

CERTIFICATE 24601

RESOLVED That the Design Commission, having considered a proposal for the long-term loan of *Civic Virtue* (1922) by Frederick MacMonnies, Queens Borough Hall, southeast corner of Queens Boulevard and 80<sup>th</sup> Avenue, Queens, to Green-Wood Cemetery, Meadow Avenue and Garland Avenue, Brooklyn, submitted by the Department of Citywide Administrative Services, represented by exhibits 822-AQ, AR & AS of record in this matter, hereby gives to the same unanimous preliminary approval with the understanding that (1) the architect will continue to study the new base; (2) a proposal for the conservation of the sculpture will be submitted as soon as a conservator is selected (treatment will be undertaken after the sculpture is installed); and (3) landscape designs for the Queens Borough Hall site will be submitted for review in the next six months. Commissioner Pearsall recused himself.

The Commission notes that Green-Wood Cemetery is a National Historic Landmark with one of the largest outdoor collections of 19<sup>th</sup>- and 20<sup>th</sup>-century statuary and mausoleums, including the monument to James Wall Finn (1916) by Frederick MacMonnies. It is regularly open to the public and hosts tours and events to educate the public on its collections. In addition, several members of the MacMonnies family are interred at Green-Wood, and Frederick MacMonnies was to have been interred there, although plans changed after his death and he was interred elsewhere.

The Commission thanks Green-Wood Cemetery for its generous support of the relocation of *Civic Virtue*, its stabilization and conservation, and its ongoing care while at Green-Wood.

Preliminary approval is conditioned upon commencement of work before November 13, 2014 and submission of this project for final review and approval.

A true copy of resolution adopted by  
the Design Commission at its meeting  
on November 13, 2012.

—Jackie Snyder  
Executive Director

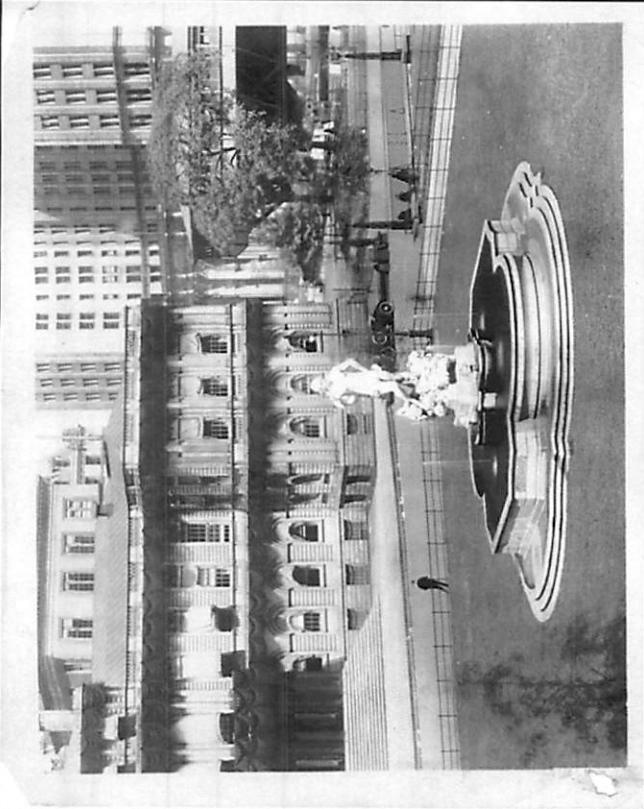
Long-term Loan of Civic Virtue (1922) by Frederick MacMonnies  
to Green-Wood Cemetery



## History of *Civic Virtue*

*Civic Virtue* was completed in 1922 and installed in front of City Hall, along with a fountain basin designed by Thomas Hastings (right).

In 1941, the sculpture and fountain was relocated to Queens Borough Hall, at the southeast corner of Queens Boulevard and 80th Avenue, Kew Gardens, where it resides today (below).

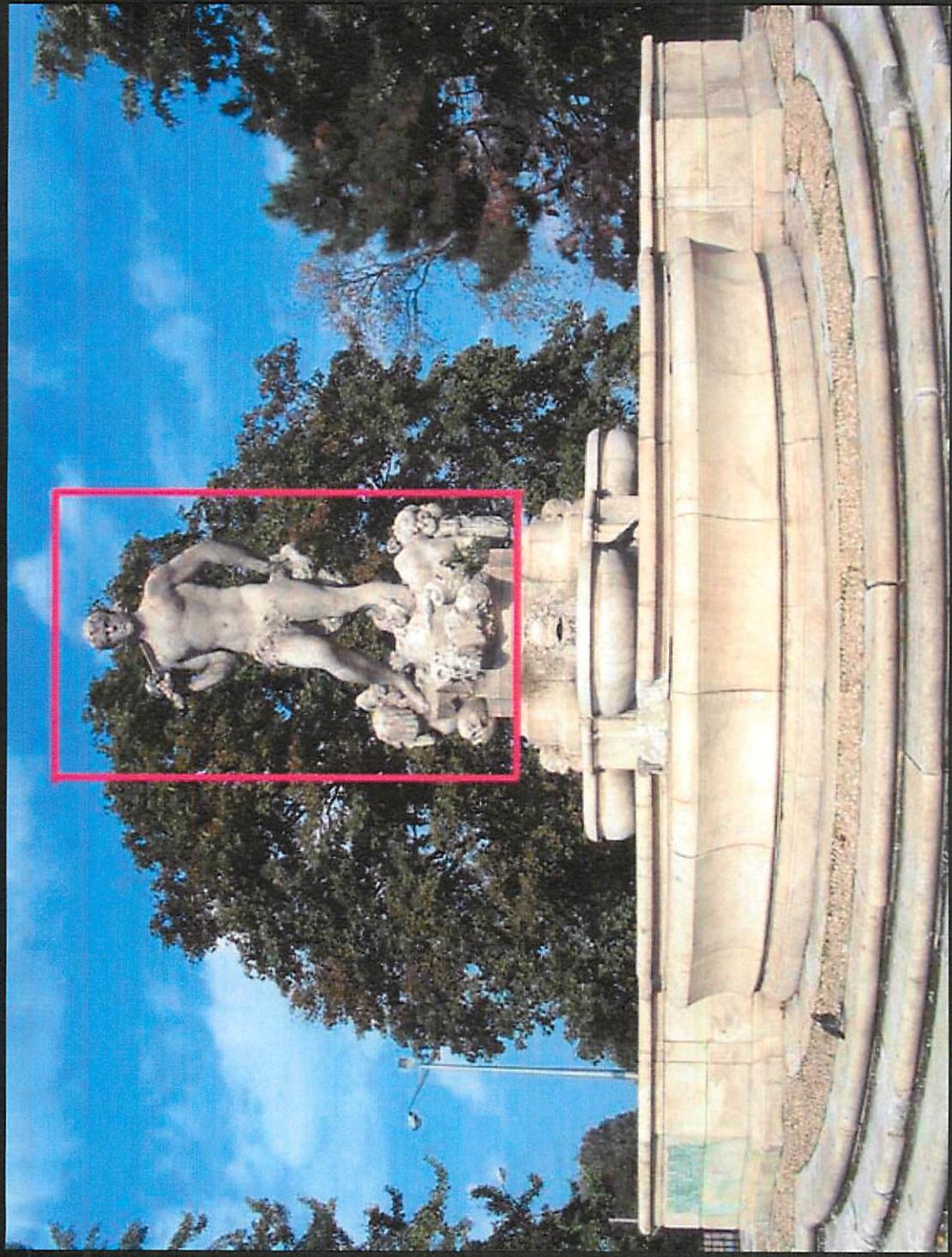


## Current Conditions

Civic Virtue is currently in poor condition, with loss of stone, biological growth and fractures that can be seen in the photos below, taken during a cleaning in 2011.



The statue by Frederick MacMinnies to be relocated is outlined in pink. The remaining elements are part of the fountain, which was designed by Thomas Hastings.



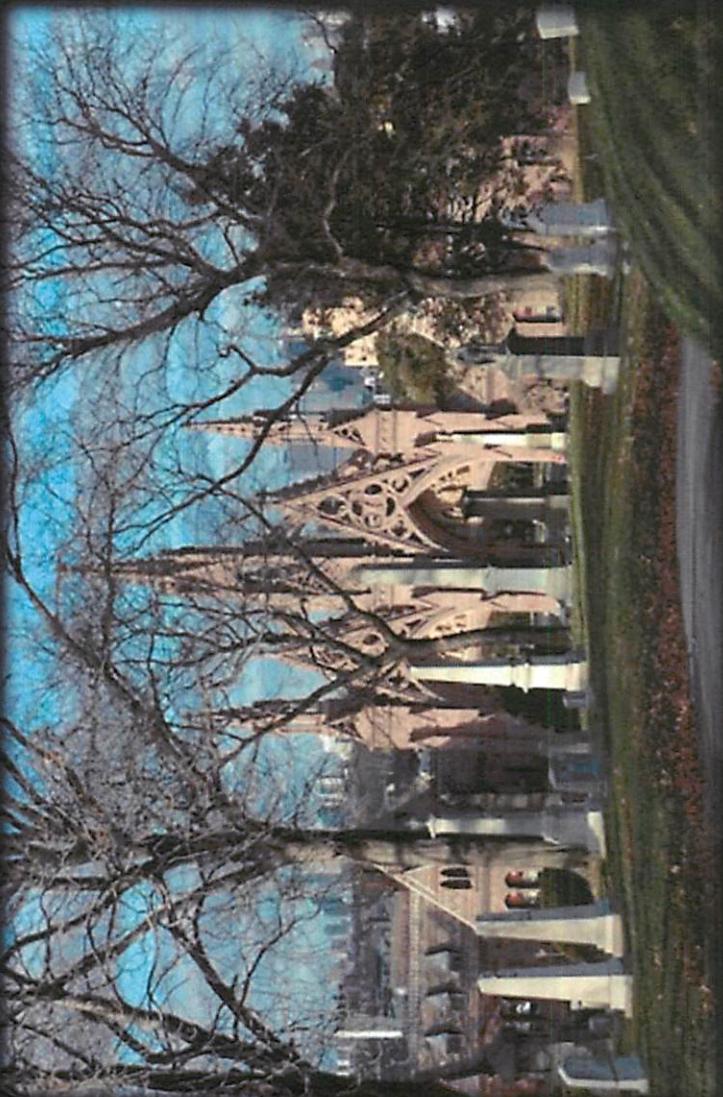
## Why Green-Wood Cemetery?

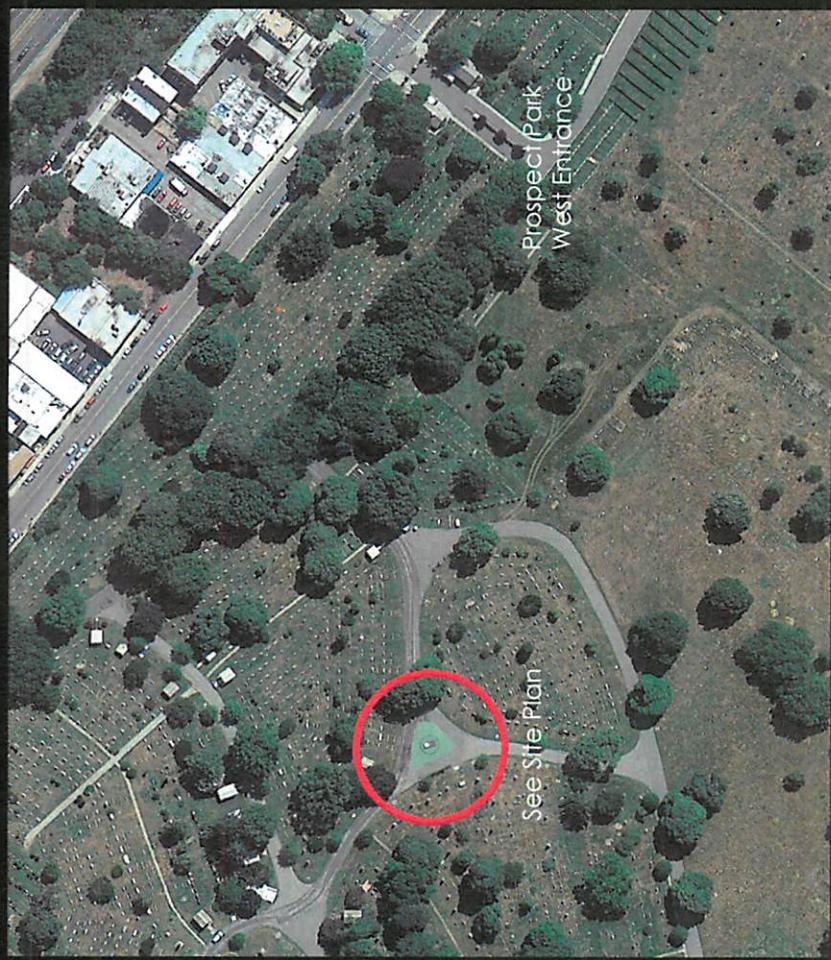
Green-Wood Cemetery is a National Historic Landmark, and one of the largest outdoor collections of 19th- and 20th-century statuary and mausoleums, including the monument to James Wall Finn (1916) by Frederick MacMonnies.

The Cemetery is regularly open to the public and hosts tours and events to educate the public on its collections.

Green-Wood's mission is to maintain the cemetery's monuments and buildings of historical, cultural and architectural significance; advance public knowledge and appreciation of this significance; and preserve the natural habitat and parklands of one of the first green spaces in New York City.

Several members of the MacMonnies family are interred at the cemetery, and Frederick MacMonnies was to have been interred there, although plans changed after his death and he was interred elsewhere.





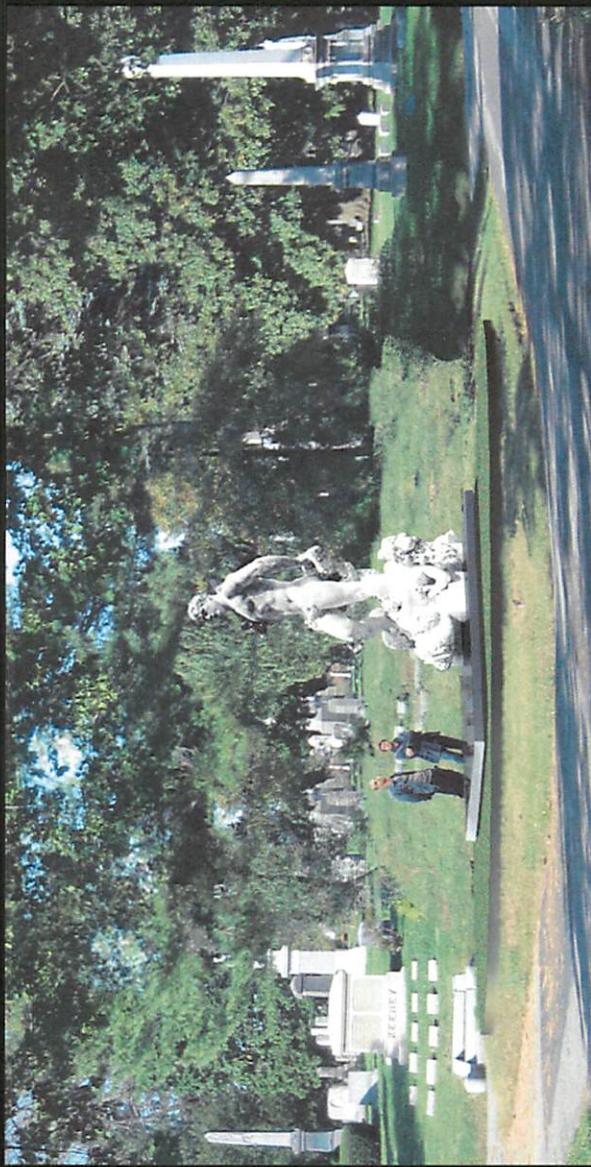
Location Plan Detail

BASE FOR CIVIC VIRTUE

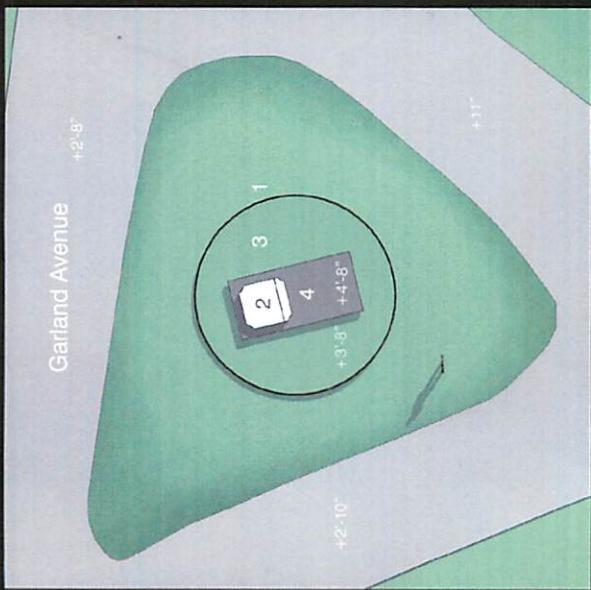


Location Plan

DAVID GRIDER ARCHITECT



Vignette



Site Plan

1. Corten Steel Border 24ft. dia.
2. Original Base of Civic Virtue
3. Raised Lawn
4. Polished Granite Slab with Reveal Base

DAVID GRIDER ARCHITECT

BASE FOR CIVIC VIRTUE

## Conceptual Proposal for landscaping at Queens Borough Hall

