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

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PETER WILLIAMS ENTERPRISES, INC.,
535 CARLTON AVE. REALTY CORP.,
PACIFIC CARLTON DEVELOPMENT CORP.,
DANIEL GOLDSTEIN, THE GELIN GROUP, LLC,
CHADDERTON'S BAR AND GRILL INC., d/b/a
FREDDY'S BAR AND BACKROOM,

Petitioners,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

-against-

NEW YORK STATE URBAN DEVELOPMENT
CORPORATION,

Respondent.

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Index No.

VERIFIED PETITION

Petitioners, Peter Williams Enterprises, Inc., 535 Carlton Ave. Realty Corp., Pacific Carlton Development Corp., Daniel Goldstein, The Gelin Group, LLC, and Chadderton's Bar and Grill, Inc., d/b/a Freddy's Bar and Backroom, by their attorneys, Emery Celli Brinckerhoff & Abady LLP, for their Verified Petition allege the following:

PRELIMINARY STATEMENT

1. This hybrid Article 78 and declaratory judgment action seeks to: (a) compel Respondent to consider the "public use to be served" by the proposed Atlantic Yards Land Use Improvement and Civic Project as of 2010 (rather than 2006) and issue a new, supplemental, or amended "determination and findings" as required by N.Y. Em. Dom. Proc. Law ("EDPL"); and (b) issue a judgment declaring that the Determination and Findings issued by Respondent on or about December 2006, pursuant to EDPL § 204 (attached as Ex. A), can no

longer serve as the predicate for the condemnation of Petitioners' homes and businesses because Respondent itself materially vitiated those stale findings when it approved a new Modified General Project Plan on September 17, 2009 (attached as Ex. B).

PARTIES

2. Petitioner Peter Williams Enterprises, Inc. ("Williams") is a New York corporation that owns the house located at 38 6th Avenue and an easement preventing building outside of the current zoning envelope of the abutting property, 24 6th Avenue. Williams is a "condemnee" as that term is defined by EDPL § 103(C).

3. Petitioner 535 Carleton Ave. Realty Corp. ("535 Carleton") is a New York corporation. 535 Carleton owns properties located at 547 Carlton Avenue (Block 1129, Lot 4) and at 533-543 Carlton Avenue (Block 1129, Lots 5 and Lot 6). 535 Carleton is a "condemnee" as that term is defined by EDPL § 103(C).

4. Petitioner Pacific Carlton Development Corp. ("Pacific") is a New York corporation. Pacific owns property located at 740-766 Pacific St. (Block 1129, Lot 13). Pacific is a "condemnee" as that term is defined by EDPL § 103(C).

5. Petitioner Daniel Goldstein owns a condominium apartment located at 636 Pacific Street. Mr. Goldstein has owned and lived in the apartment since 2003 when the building opened to residents. Mr. Goldstein is a "condemnee" as that term is defined by EDPL § 103(C).

6. Petitioner The Gelin Group LLC ("Gelin"), is a New York limited liability company that owns a one family residence located at 491 Dean Street. John Gelin and his wife reside in the house. Gelin is a "condemnee" as that term is defined by EDPL § 103(C).

7. Petitioner Chadderton's Bar and Grill Inc. d/b/a Freddy's Bar and Backroom ("Freddy's"), is a New York corporation owns a seven-year commercial lease for the property located at 483-4855 Dean Street. The President of Freddy's is Frank Yost. Mr. Yost has owned the business for twelve years. Freddy's (which dates back to the pre-prohibition era) was selected as one of Esquire Magazines Best Bars in America. Freddy's is a "condemnee" as that term is defined by EDPL § 103(C).

8. Respondent New York State Urban Development Corporation ("UDC") is a corporate governmental agency of the State, constituting a political subdivision and public benefit corporation. UDC is wholly controlled by the Governor. It consists of nine directors. The Superintendent of Banks serves as a director as does the Chairman of the New York State Science and Technology Foundation. The remaining seven directors are appointed by the Governor, as is the Chairman. It has its principal place of business at 633 Third Ave., New York, New York. UDC is a "condemnor" as that term is defined by EDPL § 103(D).

VENUE

9. Venue is proper in New York County, because defendants are located in New York County.

STATUTORY SCHEME

10. EDPL § 201 provides, in pertinent part, that, "prior to acquisition, the condemnor, in order to inform the public and to review the public use to be served by a proposed public project and the impact on the environment and residents of the locality where such project will be constructed, shall conduct a public hearing."

11. EDPL § 203 provides, in pertinent part, that, at "the public hearing the condemnor shall outline the purpose, proposed location or alternate locations of the public project an any other information it considers pertinent, including maps and property descriptions of the property to be acquired and adjacent parcels."

12. EDPL § 204 provides, in pertinent part, that, the "condemnor, within ninety days of the public hearings held pursuant to this article, shall make its determination and findings concerning the proposed public project . . . [and] shall specify . . . the public use, benefit or purpose to be served by the proposed public project."

13. EDPL § 205 provides, in pertinent part, that, after "publishing its determination and findings and only in the event that further study of field conditions warrant, the condemnor shall have the right to make amendments or alterations in its proposed public project to accommodate such field conditions. Such amendments or alterations shall not require further public hearings nor invalidate any acquisition for the proposed public project."

14. EDPL § 401(C) provides, in pertinent part, that: "In the event property is to be acquired for a public project in stages, the condemnor after conducting a required public hearing for the entire project need not conduct additional hearings for subsequent stages, provided that proceedings under this article with respect to the property necessary for the first stage were commenced within such three year period and provided further, that all proceedings under this article with respect to property for the project are commenced within ten years from the dates hereinabove set forth in paragraphs one, two and three of subdivision (A).

15. EDPL § 207 provides, in pertinent part, that, any person "aggrieved by the condemnor's determination and findings made pursuant to section two hundred four of this

article, may seek judicial review thereof by the appellate division of the supreme court, in the judicial department embracing the county wherein the proposed facility is located."

16. EDPL § 208 provides that: "Except as expressly set forth in section two hundred seven, and except for review by the court of appeals of an order or judgment of the appellate division of the supreme court as provided for therein, no court of this state shall have jurisdiction to hear and determine any matter, case or controversy concerning any matter which was or could have been determined in a proceeding under this article."

17. EDPL § 703 provides that the "civil practice law and rules shall apply to practice and procedure in proceedings under this law except where other procedures is specifically provides by this law or rules governing or adopted by the appropriate court."

FACTS

Procedural Background

18. On or about December 8, 2006, Respondent UDC issued its "Determination and Findings by the New York State Urban Development Corporation d/b/a Empire State Development Corporation Pursuant to EDPL Section 204 with Respect to the Atlantic Yards Land Use Improvement and Civic Project" ("2004 D&F") (attached as Ex. A).

19. The 2006 D&F was premised upon the "Atlantic Yards Land Use Improvement and Civic Project Modified General Project Plan" dated and approved the same day, December 8, 2006 (the "2006 MGPP") (attached as Ex. C).

20. The 2006 D&F averred that the "principal public use, benefit and purpose of the Project" was "to eliminate the blighted conditions on the Project Site and the blighting influence of the below-grade rail yard." Ex. A at 4.

21. The 2006 D&F alleged that the Project, as reflected in the 2006 MGPP, would also provide other "public uses, benefits and purposes," including, *inter alia*, 2,250 units of affordable housing and a "a state-of-the-art rail storage, cleaning and inspection facility for the LIRR that would enable it to better accommodate simultaneously its new fleet of multiple-unit series electric propulsion cars operated by LIRR which are compliant with the American [sic] with Disabilities Act." *Id.* at 5.

22. The 2006 D&F claimed that the Project would provide certain economic benefits, including, among other thing, "net tax revenues in excess of the public contribution to the Project." *Id.* at 6.

23. The 2006 D&F did not provide for the condemnation of Petitioners' properties in stages. All properties were to be acquired at the same time.

24. All, or nearly all, of the "findings" of public use, benefit or purpose contained in the 2006 D&F were based upon the facts presented in the 2006 MGPP. Indeed, they were adopted together by the UDC.

25. On January 5, 2007, Petitioners timely challenged the 2006 D&F pursuant to EDPL § 207 in an amended complaint filed in federal district court. *See Goldstein v. Pataki*, 2007 WL 575830 (Jan. 5, 2007 E.D.N.Y.).

26. On June 6, 2007, the district court dismissed Petitioner's EDPL § 207 claim "without prejudice to its being re-filed in state court," *Goldstein v. Pataki*, 488 F.Supp.2d 254, 291 (E.D.N.Y. 2007).

27. On February 1, 2008, the Court of Appeals for the Second Circuit affirmed "the judgment of the district court dismissing . . . the state claim without prejudice." *Goldstein v. Pataki*, 516 F.3d 50, 56 (2d Cir. 2008).

28. On June 23, 2008, the Supreme Court of the United States denied certiorari. *Goldstein v. Pataki,* 128 S. Ct. 2964 (June 23, 2008) ("Justice Alito would grant the petition for a writ of certiorari").

29. On August 1, 2008, Petitioners re-filed their EDPL § 207 claim in the Appellate Division, Second Department.

30. In opposing Petitioners' EDPL § 207 claim before the Appellate Division, Respondent UDC argued that the court should ignore the factual allegations in the Petition concerning events that occurred *after* the 2006 D&F because none "of these materials formed any part of the administrative record before the [UDC] when it rendered its [2006 D&F], and they should not be considered by the Court." Brief of Respondent, *Goldstein v. N.Y. State Urban Dev. Corp.*, at 3, n.1 (Dec. 19, 2008).

31. On May 12, 2009, the Appellate Division, Second Department, denied the Petition. *Goldstein v. N.Y. State Urban Dev. Corp.*, 59 A.D.3d 312 (2d Dep't 2009).

32. In June 2009, after it believed that all litigation hurdles to the Project had been cleared, Respondent revealed for the first time its long-standing intention to materially modify the 2006 MGPP (Ex. B), the plan on which the 2006 D&F was premised.

33. Among other things, Respondent released a proposed Modified General Project Plan ("2009 MGPP") (attached as Ex. B) and a 63 page "Technical Memorandum" (attached as Ex. D), detailing some, but not all, of the material changes sought and obtained by

the Project developer, Bruce Ratner, and various entities, he owns or controls (hereafter "Ratner"), and contained in the proposed 2009 MGPP.

34. Among many other things, the Technical Memorandum explained that the acquisition of the properties would now take place in two rounds, instead of one, as initially contemplated:

> A modification to the GPP is proposed to allow for the acquisition of property in two phases, rather than one phase . . . . The first round of acquisition would occur towards the end of 2009 and would encompass the arena block including the streetbeds to be closed, Block 1129, Pacific Street between Vanderbilt and Carlton Avenues, Lots 42 and 47 on Block 1121, and, if necessary for the construction and operation of the LIRR rail yard, easements or other property interests in Lot 35 on Block 1120 and possibly a small number of additional lots included in the project site. The second round would occur towards the end of 2011 and would encompass the remainder of the project site.

Ex. D at 3-4.

35. Thereafter, Petitioners appealed to the Court of Appeals. In their briefs, Petitioners argued extensively that materially significant events that transpired after the 2006 D&F, particularly Respondent's adoption of the 2009 Modified General Project Plan on September 17, 2009, and information known to Respondent prior to its adoption, fatally undermined the public use finding contained in the old and stale 2006 D&F. *See* Brief for Petitioners-Appellants, 2009 WL 3810843 at 21-33 (Jul. 31, 2009); Reply Brief for Petitioners-Appellants, 2009 WL 3810849 at 77-79 (Sep. 25, 2009).

36. Respondent, for its part, argued strenuously – devoting six full pages of its brief to the topic – that the Court of Appeals should not consider anything that transpired after December 8, 2006, the date Respondent UDC adopted its 2006 D&F, including the adoption of

the 2009 MGPP which superceded the 2006 MGPP, upon which the 2006 D&F was premised. *See* Brief for Respondent-Respondent, 2009 WL 3810844, at 36-41 (Sep. 8, 2009).

37. On November 24, 2009, the Court of Appeals affirmed the denial of Petitioners' EDPL § 207 claim. *Goldstein v. N.Y. State Urban Dev. Corp.*, No. 178, 2009 WL 4030939 (Nov. 24, 2009).

38. Critically, for purposes of this action, the Court made it clear that it had rejected Petitioners' plea to consider the many respects in which the public use findings had been materially undermined during the nearly three years that had passed since Respondent issued its 2006 D&F. It explained that it was reviewing only "the record upon which the [UDC] determination was based and by which we are bound." *Id.* at 2.

39. Having been rebuffed in their attempt to have Court of Appeals consider the material changes to the facts undergirding the 2006 D&F as part of their pending EDPL § 207 challenge, Petitioners are now left with no choice but to commence this action to compel Respondent UDC to do that which it should have done when it adopted the 2009 MGPP on September 17, 2009 – issue new, supplemental or amended EDPL § 204 findings based on the circumstances that exist today, or at least as they exited in September 2009, when Respondent UDC adopted the 2009 MGPP.

Changes from December 2006 to September 2009 and Beyond

1. Amended Modified General Project Plan

On September 17, 2009, four members of the UDC's, obscure, unelected, eight-member Board met, and three of them (with one recusal/abstention) voted to adopt the 2009

MGPP. *See* UDC Webcast of September 17, 2009 Meeting, *available at* http://www.empire.state.ny.us/webcasts/default.asp.

40. Among other things, the three board members were aware of the following at the time they adopted the 2009 MGPP:

> **(1)** a memorandum, dated September 17, 2009, from Dennis Mullen, the then-designated, but not confirmed, Chairman of the UDC Board, requesting that the Board adopt the 2009 MGPP, and provide authorization to (a) "Amend Funding Agreements," (b) "Enter into Leases," (c) "Convey Real Property," (d) "Enter into other Project Documents," and (e) "Take Related Actions," including without limitation the approval of the amendment of UDC's funding agreement with Ratner so as to accelerate the State's last cash payment to of $25 million (for a total of $100 million) to the Ratner for purposes (such as soft costs and demolition) previously disallowed in earlier funding agreements signed in 2007; *see* Mullen Memo (attached as Ex. E);
>
> **(2)** the September 10, 2009, Report of the New York City Independent Budget Office entitled "The Proposed Arena at Atlantic Yards: An Analysis of City Fiscal Gains and Losses," (attached as Ex. F) which concluded that,
>
> > (a) the Project will *cost* the City a minimum of $39.5 million (a figure that balloons to $220 million when opportunity costs are considered),
> >
> > (b) the State will gain $25 million in new tax revenues (only $9 million when opportunity costs are considered),
> >
> > (c) the MTA will gain $6 million (but will lose $16 million when opportunity costs are considered), and
> >
> > (d) Ratner, the private developer, will receive $726 million in government subsidies and benefits for the arena alone;
>
> **(3)** that the deal between Ranter and the MTA had been materially altered (i) to provide for an the initial cash payment of only $20 million (instead of $100 million), (ii) to restructure and extend the full acquisition of the balance of the MTA property beyond 2030,

(iii) to allow Ratner to abandon the planned further acquisition at any time, in its sole discretion, with virtually no penalty, (iv) to extend the payments for the acquisition of the MTA air rights on Blocks 1120 and 1121 to the year 2030, and (v) to reduce the size of the replacement yard from nine tracks with a 76 car capacity to seven tracks with a 56 car capacity, *see, e.g.,* MTA Staff Summary, attached hereto as Ex. G;

(4) that the City had or would agree to amend its funding agreement with Ratner to accelerate its scheduled payment to Ratner of $15 million (for a total of $205 million plus unquantifiable past and future payments for "extraordinary infrastructure costs");

(5) that the Technical Memorandum issued by the UDC in June 2009 anticipated that the Project (under the residential plan) would total 7,961,000 square feet, yet the Project had since been reduced to include only 5,145,000 square feet, a reduction of approximately 35%; and

(6) that although the 2009 MGPP anticipates the *possibility* that as many as 2,250 affordable housing units will be built over the next 30 years, the development agreement between UDC and Ratner provided that every unit of affordable housing would be *contingent* upon "governmental authorities making available to [Ratner] affordable housing subsidies," *see* Ex. D to Mullen Memo (attached hereto as Ex. E).

2. Vanderbilt Rail Yards and the MTA Deal

41. As explained above, at the time of the UDC Board meeting on September 17, 2009, members of the voting troika of UDC Board members knew that the MTA Deal had been radically restructured.

42. Indeed, the alleged benefit to the public engendered by the 2005 deal between the MTA and Ratner, which had always been dubious, had been utterly gutted by the new deal in 2009.

43. Under the terms of the new deal, Ratner is only required to pay $20 Million for the rights to the MTA's property on Block 1119 required for the construction of Phase I.

44. Ratner is not required to make any additional payments to the MTA until June 2012 at which time it must make an additional payment of $2 Million.

45. Thereafter, Ratner must make further payments of $2 Million on June 1, 2013, 2014 and 2015.

46. Commencing on June 1, 2016 the annual payments to the MTA increase to $11 Million per year and continue for 15 years until 2030.

47. The MTA agreed to a redesigned and reduced scope of the replacement yard for the LIRR and required that construction of the replacement yard commence by June 30, 2012 and be completed by September 1, 2016. The MTA valued the planned improvements at $147 Million but only required a letter of credit from Ratner for $86 Million to secure Rather's obligation to complete the replacement yard.

48. The new agreement with the MTA provides that it will convey the parcel necessary for the construction of the arena upon the payment of the initial $20 Million. The conveyance of the MTA air rights for parcels on Blocks 1120 and 1121 will only occur upon the payment of the subsequent amounts associated with each parcel.

49. If Rather fails to construct the yard, it loses the rights to the air space on Blocks 1120 and 1121 and MTA can draw on the letter of credit.

50. The result of the new MTA agreement has two direct impacts on the timing of the completion of Phase II and the potential that it will be completed at all.

51. The structure of the deal assures that the final payment for the air rights over the Yards will not be made until June 2030. Until that payment is made, the rights to that parcel will not be conveyed to Rather, thus precluding Rather from beginning construction of the last towers to even begin.

52. The deal is also structured so that Rather can decide to abandon the project at virtually any time and mitigate its potential financial loss and limit its up front investment.

53. Rather can decide as early as June 1, 2012 to abandon Phase II and avoid the first additional payment of $2 Million.

54. Rather could decide to keep its option on the air rights parcel and simply pay $2 Million per year to maintain that option and still abandon Phase II by June 1, 2016 before the annual payments significantly increase to $11 Million.

55. If Rather decides to abandon Phase II at any of those points, it can also walk away from the obligation to complete the permanent replacement rail yard and simply forfeit the $86 Million letter of credit that is far less than the estimated cost of $147 Million to complete the project.

56. If Rather decides not to build Phase II—failing to cover the rail yard with a platform—then the blight that supposedly dominates the project area, particularly the below grade yards on Blocks 1120 and 1121, will continue without any plan for their redevelopment.

57. Even if Ratner proceeds with the Project consistent with the time frame in the MTA agreement, construction for the completion of Phase II will not commence until after 2030.

58. According to the 2006 D&F, the "primary" public benefit to be realized by the Project is the elimination of blight that allegedly exists and will likely continue due to the presence of Vanderbilt Yards.

59. The new agreement between Rather and the MTA reduces, if not eliminates, the likelihood that Vanderbilt Yards will be redeveloped in a timely manner, if at all. Thus, instead of eliminating the alleged blight, the Project will make the alleged blighting conditions and influence of Vanderbilt Yards a permanent feature.

60. Both the 2006 MGPP and the 2006 D&F, contemplated that the Project would be completed in 2016 and that it would alleviate the existing blight and blighting influence of Vanderbilt Yards with the completion of Phase II including the construction of the platform over the Vanderbilt Yards and construction of all of the high-rise towers.

61. The vast majority of the purported benefits of the Project are derived in Phase II including the majority of the housing and the majority of the affordable housing, all of the privately owned, publicly accessible open space, the majority of the community facilities and the majority of the economic benefits associated with construction jobs, tax revenue and permanent employment.

62. As part of its 2006 Blight Study, which supported the approval of the 2006 MGPP and the 2006 D&F, the UDC determined that underutilized lots, including lots used for surface parking lots, were evidence of blight and had a blighting influence on surrounding properties hindering their sound redevelopment.

63. Even if Rather were to eventually complete the project, the agreement with the MTA permits the commencement of the final portions of Phase II to be postponed until 2030.

3. Affordable Housing

64. Like the 2006 D&F, the 2009 MGPP states that the Project will generate at least 2,250 units of affordable housing and that not more than 50% of the Phase II units will be completed without the completion of 50% of the Phase II affordable housing units.

65. The Mullen Memo recommending adoption of the 2009 MGPP, however, made it clear for the first time that the affordable housing is wholly contingent on the availability of government subsidies. Because such subsidies cannot be guaranteed, and because, in any event, utilizing finite government subsidies does absolutely nothing to increase the overall number of available affordable housing units in the City of New York, the claim of affordable housing was utterly eviscerated by Mullen Memo.

66. Specifically, an attachment to the Mullen Memo provides that:

> no less than Two Thousand Two Hundred Fifty (2,250) affordable housing units, subject to governmental authorities making available to [Rather] or its applicable successor or assign, after good faith review by the applicable administering agency, affordable housing subsidies consistent with then applicable program rules and standards then generally available to developers of affordable housing units.

FIRST CLAIM
(Article 78)

67. Petitioners repeat and reallege the allegations contained in preceding paragraphs as if fully set forth herein.

68. The public use, purpose and benefits claimed by the 2006 D&F have been materially undermined since the determination and findings were made by Respondent UDC in 2006.

69. The public use, purpose and benefits claimed by the 2006 D&F were premised upon the 2006 MGPP, which was approved in tandem with the 2006 D&F by Respondent UDC.

70. The 2006 MGPP was replaced and superceded by the 2009 MGPP on September 17, 2009.

71. Notwithstanding the fact that 2006 MGPP has been replaced and superceded by the 2009 MGPP, Respondent UDC has not replaced, superceded, amended or modified the 2006 D&F.

72. Respondent UDC has an independent legal obligation to issue a new or amended determination and findings pursuant to EDPL § 204, whenever the initial findings have been materially undermined to the point that the findings of public use, purpose or benefits are in substantial doubt.

73. Respondent's findings of public use, purpose or benefit were materially and substantially undermined by no later than September 17, 2009, at which time it should have issued new or amended findings pursuant to EDPL § 204, but failed to do so.

74. Petitioners attempted to raise the material alterations to the bases for the 2006 D&F, including the effect of the new 2009 MGPP, in their EDPL § 207 challenge to the 2006 D&F, but were rebuffed, at Respondent UDC's urging, by the Court of Appeals.

75. Because the underpinning of the 2006 D&F has been vitiated by, *inter alia*, Respondent's own decision to amend and supercede the 2006 MGPP with the 2009 MGPP, the 2006 D&F has been vitiated and can no longer serve as the basis for the condemnation of Petitioners properties.

76. Petitioners are entitled to a judgment granting this Petition and compelling Respondent UDC to issue new a determination and findings pursuant to EDPL § 204, to replace the legally deficient 2006 D&F.

SECOND CLAIM
(Declaratory Judgment)

77. Petitioners repeat and reallege the allegations contained in the preceding paragraphs as if fully set forth herein.

78. The public use, purpose and benefits claimed by the 2006 D&F have been materially undermined since the determination and findings were made by Respondent UDC in 2006.

79. The public use, purpose and benefits claimed by the 2006 D&F were premised upon the 2006 MGPP, which was approved in tandem with the 2006 D&F by Respondent UDC.

80. The 2006 MGPP was replaced and superceded by the 2009 MGPP on September 17, 2009.

81. Notwithstanding the fact that 2006 MGPP has been replaced and superceded by the 2009 MGPP, Respondent UDC has not replaced, superceded, amended or modified the 2006 D&F.

82. Respondent UDC has an independent legal obligation to issue a new or amended determination and findings pursuant to EDPL § 204, whenever the initial findings have been materially undermined to the point that the findings of public use, purpose or benefits are in substantial doubt.

83. Respondent's findings of public use, purpose or benefit were materially and substantially undermined by no later than September 17, 2009, at which time it should have issued new or amended findings pursuant to EDPL § 204, but failed to do so.

84. Petitioners attempted to raise the material alterations to the bases for the 2006 D&F, including the effect of the new 2009 MGPP, in their EDPL § 207 challenge to the 2006 D&F, but were rebuffed, at Respondent UDC's urging, by the Court of Appeals.

85. Because the underpinning of the 2006 D&F has been vitiated by, *inter alia*, Respondent's own decision to amend and supercede the 2006 MGPP with the 2009 MGPP, the 2006 D&F has been vitiated and can no longer serve as the basis for the condemnation of Petitioners properties.

86. Petitioners are entitled to a judgment, pursuant to CPLR 3001, declaring that the legal viability of the 2006 D&F have been vitiated by subsequent events and thus may no longer serve as the predicate for the condemnation of Petitioners' properties.

WHEREFORE, Petitioners respectfully request that a judgment be entered against respondents as follows:

1. Compelling Respondent to consider the "public use to be served" by the proposed Atlantic Yards Land Use Improvement and Civic Project as of 2010 (rather than December 2006) and, based on conditions as they exist now, issue a new, supplemental, or amended "determination and findings" as required by EDPL § 204(B); and

2. Declaring that the Determination and Findings issued by Respondent on or about December 2006, pursuant to EDPL § 204, can no longer serve as the predicate for the

condemnation of Petitioners' homes and businesses because Respondent itself materially vitiated those findings when it approved a new Modified General Project Plan on September 17, 2009.

3. Granting such other and further relief as this Court may find just and proper.

Dated: January 19, 2010
New York, New York

EMERY CELLI BRINCKERHOFF
& ABADY LLP

By: _____
Matthew D. Brinckerhoff

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Attorneys for Petitioners

To: New York State Urban
Development Corporation
633 Third Avenue
New York, NY 10017

V E R I F I C A T I O N

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

Matthew D. Brinckerhoff, an attorney duly licensed to practice law in the Courts of the State of New York, being duly sworn deposes and says:

1. I am a member of the law firm of Emery Celli Brinckerhoff & Abady LLP, attorneys for Petitioners in the foregoing action. I have read the contents of the foregoing Petition and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

2. This verification is made by me, pursuant to CPLR 3020, because Petitioners reside in a county other than the one in which my firm maintains an office. Moreover, the sources of my information and belief are from materials provided to me by Petitioners and other individuals, as well as memoranda, documents, reports and other related records in my firm's files.

_____
Matthew D. Brinckerhoff

Sworn to before me this

19th day of January, 2010

_____
Notary Public

AFFIDAVIT OF SERVICE

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

I, Matthew Brinckerhoff, being sworn say: I am over 18 years of age. On January 19, 2010, I served the within Notice of Petition, Petition, Request for Judicial Intervention and Memorandum of Law in Support of Petition for Judgment Pursuant to Article 78 in the case *Goldstein, et al. v. N.Y. State Urban Dev. Corp.,* Supreme Court, New York County, by personal delivery on:

New York State Urban
Development Corporation
633 Third Avenue
New York, NY 10017

_____
Matthew Brinckerhoff

As sworn to before me this
19th day of January, 2010

_____
Notary Public