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

STAHL YORK AVENUE CO., LLC,

Plaintiff-Petitioner,

vs.

THE CITY OF NEW YORK; THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION; MEENAKSHI SRINIVASAN, in her capacity as Chair of the New York City Landmarks Preservation Commission,

Defendants-Respondents.

Index No. ____________

Date Purchased: September 22, 2014

NOTICE OF PETITION

PLEASE TAKE NOTICE, that upon the annexed Verified Petition and Complaint of Stahl York Avenue Co., LLC, verified on the 22nd day of September, 2014, and the separately bound Affirmation of Alexandra A.E. Shapiro, an application will be made to this Court by the undersigned attorneys for Petitioner, at the Courthouse located at 60 Center Street, New York, New York, in the Motion Submission Part Courtroom, Room 130 on October 24, 2014, at 9:30 a.m., or as soon thereafter as counsel may be heard for an order and judgment pursuant to CPLR Article 78 and 42 U.S.C. § 1983, granting the relief demanded in the Verified Petition and Complaint as follows:

(a) Awarding just compensation for the unconstitutional taking of 429 East 64th Street and 430 East 65th Street, New York, New York;

(b) Annulling, vacating, and setting aside the New York City Landmarks Preservation Commission's denial of Stahl's request for a certificate of appropriateness authorizing demolition of the Buildings on ground of insufficient return, pursuant to N.Y.C. Administrative Code § 25-309;

(c) Awarding attorneys' fees and costs incurred in prosecuting this action; and

(d) Granting any other and further relief the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 7804(c), answering and supporting affidavits, if any, shall be served at least five (5) days before the return date set forth herein.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 7804(b) and 506(b), Plaintiff-Petitioner designates New York County as the place of trial. The basis of the venue is that the material and substantial events giving rise to the causes of action herein occurred within New York County.

Dated: New York, New York
September 22, 2014

Respectfully submitted,

SHAPIRO, ARATO & ISSERLES LLP

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

STAHL YORK AVENUE CO., LLC, Plaintiff-Petitioner, vs. THE CITY OF NEW YORK; THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION; MEENAKSHI SRINIVASAN, in her capacity as Chair of the New York City Landmarks Preservation Commission, Defendants-Respondents.	Index No. __________ Date Purchased: September 22, 2014 **VERIFIED PETITION AND COMPLAINT**

Plaintiff-petitioner Stahl York Avenue Co., LLC ("Stahl"), by its attorneys Shapiro, Arato & Isserles LLP, respectfully alleges as follows:

PRELIMINARY STATEMENT

1. For almost 30 years, Stahl, a real estate development corporation, reasonably believed that it was free to redevelop two century-old, architecturally insignificant tenement buildings that it purchased in 1977 (the "Buildings"). Stahl's expectation that it could, at its election, demolish the Buildings and replace them with more modern structures was reinforced in 1990. At that time, the City of New York expressly decided *not* to landmark the Buildings and to preserve Stahl's right to redevelop them, and its decision was affirmed in court.

2. Stahl therefore began to take steps to replace the archaic six-story walk-up Buildings with a modern, mixed-income condominium tower. As is, the apartments in the Buildings are simply unfit for modern living: they are tiny, cramped, and out-of-date; and because of their archaic design, many of them cannot accommodate basic needs such as queen-

sized beds or normal bathroom fixtures. But as soon as Stahl revealed its redevelopment plans in 2006, the New York City Landmarks Preservation Commission ("LPC") abruptly changed course in the face of improper political pressure, and landmarked the Buildings 16 years after the City had decided not to do so. Absent the designation, the properties, if redeveloped pursuant to Stahl's plan, are worth up to $200 million, and would provide the City with much needed housing, jobs, tax revenues, and economic development. But the landmark designation has gutted the value of the properties, leaving Stahl with two antiquated Buildings and a negative economic return. At a time of an unprecedented housing shortage in New York City, the LPC's actions have blocked Stahl from pursuing exactly the kind of residential housing development this City needs.

3. Stahl sought relief from this extreme interference with its reasonable expectations through a statutory "hardship" procedure that requires the LPC to authorize alteration or reconstruction of a landmarked property when the owner cannot earn a reasonable return. Yet the LPC, undeterred in its insistence on preventing any development of the Buildings, denied Stahl's hardship application, based on a demonstrably flawed and indefensible analysis. The LPC manipulated its economic "analysis" and cherry-picked facts to reach its predetermined conclusion: that Stahl should be barred from developing the Buildings.

4. The LPC's decisions together amount to an unconstitutional taking, and its refusal to grant the hardship application was arbitrary and capricious. The law therefore requires the City either to pay Stahl just compensation for this taking of private property, or permit Stahl to demolish the Buildings and redevelop the property free from the heavy hand of the LPC's misplaced regulatory authority.

5. The Buildings are part of a complex of low-rise tenement housing units that Stahl owns, and which the LPC attempted to designate as a landmark in 1990. At the time, the Board of Estimate ("BOE"), which had final authority for the City on landmark designations, determined that the two Buildings should *not* be landmarked, expressly recognizing the need for additional housing units in the area and the need to preserve Stahl's development rights. In connection with that decision, Stahl acquiesced in the BOE's decision to designate as landmarks the other buildings in the same complex as the Buildings. Community groups challenged the BOE's determination not to landmark the Buildings, but the New York Supreme Court upheld it, and the groups did not appeal.

6. Taking the City at its word, Stahl operated the Buildings for 16 years reasonably expecting that it could redevelop the properties in the future. But once Stahl began to bring its development plans to fruition, politically influential local residents who did not want their views obscured and did not want more people to live in their neighborhood and allied interest groups who were hostile to all development brought substantial political pressure to bear on the LPC to block Stahl's plans. The LPC succumbed to this pressure, even though it lacks authority to consider the types of issues the influential residents were concerned about. It therefore designated the Buildings as a landmark, thus stripping away the valuable development rights that the BOE had deliberately left in place.

7. At that point, Stahl's only avenue for judicial relief was an administrative petition under Article 78 of the CPLR, which it pursued. The courts, however, believed that deference to the LPC's "expertise" was nonetheless required, and upheld the designation.

8. The 2006 designation has prevented Stahl from earning a reasonable return on the Buildings. The Buildings have lost money every year since the designation. And given the

substandard design and features of the Buildings and the apartments, as well as their rent-regulated status, there are no prudent steps Stahl could take to earn a reasonable return on the properties.

9. Because of the crushing economic impact of the designation and the need to obtain a final ruling before seeking a judicial remedy for the deprivation of its constitutional rights, Stahl sought redress by filing a "hardship" application pursuant to the New York City Landmarks Law. That law says that an owner of a landmarked property who is unable to earn a reasonable return on the property—defined as 6% of its assessed value—must be granted affirmative relief from the economic burden of the designation.

10. Stahl's intent, if its application were granted, was to promptly replace the outdated Buildings with a modern mixed-income condominium tower, which would have provided much-needed additional housing for City residents and substantial economic development for the neighborhood. Stahl pledged to relocate tenants remaining in the Buildings to other apartments in the larger complex of buildings that were landmarked in 1990, to spend millions renovating those other buildings too, and to dedicate a number of new units for affordable housing.

11. Stahl presented overwhelming evidence in the hardship application process that it could not earn anything remotely approximating the statutory 6% reasonable rate of return, and demonstrated that, at the very most, it could earn a mere 1.19% return after performing substantial and costly renovations. This demonstrated the severe economic deprivation that the hardship application process was designed to avoid.

12. . Nonetheless, the LPC again succumbed to political pressure to block any redevelopment, and engaged in a pre-judged, unreasonable, irrational, and result-oriented

economic analysis tailored to deprive Stahl of its express rights under the Landmarks Law to demolish a designated building that cannot provide a reasonable rate of return. The administrative record is replete with statements by Commissioners and testimony from politically active residents and members of allied interest groups indicating that the LPC did not engage in an objective or fair review of Stahl's claim. As one commissioner put it, the LPC viewed its "job here" as "protect[ing] historic buildings and not to sort of be taken in . . . by a property owner whose goal is to tear a building down."

13. The LPC attempted to explain away the demonstrable hardship, by using erroneous interpretations of the Landmarks Law and a transparently flawed and jerry-rigged economic analysis to conclude that Stahl was somehow capable of earning a reasonable rate of return on these cramped and archaic tenement-style apartments—even after spending millions of dollars on required renovations. But it could only reach this conclusion by repeatedly disregarding the statute, the record, and its own directly applicable precedent, in order to manufacture an incoherent economic hardship analysis that unfairly omitted a substantial part of the renovation costs Stahl would incur. The resulting analysis had nothing to do with the economic reality Stahl faces.

14. Stahl brings this hybrid action and proceeding to redress the severe economic deprivation caused by the landmark designation of the Buildings and the denial of its hardship application. Stahl seeks just compensation in the form of money damages for the regulatory taking of the Buildings. Alternatively, Stahl seeks an order and judgment annulling the LPC's denial of its hardship application pursuant to CPLR 7803(3) on the grounds that it is arbitrary and capricious, affected by an error of law, and an abuse of discretion.

PARTIES

15. Plaintiff-Petitioner Stahl is a limited liability corporation organized and existing under the laws of the State of New York and engaged in the business of real estate development, including the provision of apartment housing to New York City residents at affordable rates. Stahl currently owns the Buildings.

16. Defendant-Respondent the City of New York is a municipal corporation organized and existing under the laws of the State of New York.

17. Defendant-Respondent LPC is a municipal preservation agency in the New York City government organized pursuant to Chapter 74 of the Charter of the City of New York. The LPC has powers and duties with respect to the establishment and regulation of landmarks set forth in the Landmarks Law, N.Y.C. Admin. Code. § 25-301, *et seq.*

18. Defendant-Respondent Meenakshi Srinivasan serves as both Chair and Commissioner of the LPC.

JURISDICTION AND VENUE

19. Stahl designates New York County as the place of trial. Jurisdiction and venue are proper because the material and substantial events giving rise to the causes of action herein occurred within New York County. *See* CPLR 301, 506, 7804.

FACTS

A. The Buildings

20. The Buildings are two architecturally insignificant six-story walk-up tenement-style apartment buildings located at 429 East 64th Street and 430 65th Street in Manhattan.

21. The Buildings sit on the city block ("block 1459") bordered by East 64th Street, East 65th Street, First Avenue, and York Avenue. The rest of that block is occupied by 13 other

buildings ("Other Buildings") that Stahl also owns. Collectively, all the buildings on block 1459 are referred to as the First Avenue Estate ("FAE").

22. Stahl acquired the FAE in 1977, along with an unrelated building at 1221 York Avenue, for the aggregate price of $5,725,000, because of its future development potential.

23. The Buildings contain a total of 190 poorly designed, warren-like apartments. The Buildings were designed in the early 1900s as tenement housing, and the apartments are therefore of substandard quality by modern standards. They lack all modern amenities, appliances, and fixtures, and are extremely small, with an average of approximately 370 leasable square feet per apartment. *E.g.*, Ex. 1 at 17-19; Ex. 2 at iii.[1] The layouts of the units are also in many ways unfit for modern tenants. For example, many apartments contain bedrooms that are too small to even hold a queen-sized bed. Ex. 3, Wolpert Letter at 6. Others have abnormally-shaped bathrooms that cannot accommodate normal fixtures. Ex. 1 at 18-19.

24. The Buildings themselves are similarly outdated. Though they comply with all applicable legal requirements, in comparison with modern structures, they have obsolete electrical, mechanical, and ventilation systems, and neither is handicap accessible. *See* Ex. 2 at 13-15; Ex.4 at 25-26. These problems have only been exacerbated by the age and decay of the Buildings.

25. Unsurprisingly, the inferior condition and design of the apartments severely hamstrings their marketability. Because of their size and the lack of elevators, they appeal only to a limited demographic. These deficiencies also limit the rent Stahl can charge.

[1] All exhibit numbers refer to the Affirmation of Alexandra A.E. Shapiro accompanying this Verified Petition and Complaint.

26. Moreover, a large number of the apartments are currently vacant,[2] and due to their age, cannot legally be rented in their existing condition. At a minimum, these apartments need renovations to electrical systems and plumbing fixtures, appliance repair and replacement, and lead paint abatement just to make them habitable. Ex. 5, Introduction at 1-2; Ex. 6 at 5-6.

27. As compared to the rest of the FAE complex, the apartments in the Buildings are the least attractive. They are smaller, have inferior layouts, and are less safe because they can only be entered by an interior courtyard invisible from the street. Ex. 7, Response Nos. 15-16; Ex. 3, Wolpert Letter at 1-3, 6-7; Ex. 8 at 15-16. Moreover, the Buildings are the easternmost buildings of the FAE, and thus are the farthest from the amenities of First Avenue and from subway lines, which are all on Lexington Avenue or further west. Ex. 3, Wolpert Letter at 6-7.

28. In sum, the Buildings are sub-par apartment buildings, with a very limited appeal to a limited demographic, and capable of generating only meager rental income.

B. The BOE Decides Not To Designate The Buildings As Landmarks

29. The FAE was constructed by the City and Suburban Home Company ("CSHC"), a now-defunct philanthropic corporation, which existed from 1896 to 1961 and was dedicated to solving "the housing problems of the nation's working poor." Ex. 9 at 1, 8, 16. CSHC financed and developed numerous "model tenement projects" throughout the country, and was particularly known for its "light-court" tenement style buildings, in which courtyards, apartments, and common areas were designed to maximize light and air. *Id.* at 1-2. The FAE is an example of this style.

30. The Other Buildings of the FAE were completed in 1906 and are the oldest surviving example of CSHC's model tenement projects. Ex. 10 at 5-6. They were designed by a

[2] At the time of this Verified Petition and Complaint, 126 apartments are vacant.

renowned architect, James Ware, and were built on a single plot of land purchased by CSHC in 1896. *Id.*

31. At this time, CSHC did not own the land on which the Buildings sit, and it did not design or construct the Other Buildings with an intention of extending the FAE to cover the entire block. *Id.* at 6-7. The CSHC purchased the land on which the Buildings sit from a different seller in 1913—18 years after it purchased the plot of land for the Other Buildings and seven years after it completed the Other Buildings. *Id.* at 5-6. The Buildings were not completed until 1915. *Id.* at 5. Moreover, the Buildings were designed not by Ware, but by a different and undistinguished architect employed by CSHC, Philip Ohm. *Id.* at 9-10.

32. Ohm also designed a complex of "light-court" tenement buildings called the York Avenue Estates ("YAE"), bounded by York Avenue, the Franklin Delano Roosevelt Drive, East 78th Street, and East 79th Street. Unlike the FAE, the YAE was designed from the beginning as a full-block complex. *Id.* at 6-9, 17.

33. On April 24, 1990, the LPC voted to designate both the FAE and the YAE as landmarks, including within the designation, not just the Ware-designed Other Buildings, but also the Ohm-designed Buildings. In its formal designation report (the "1990 Report"), the LPC paid little heed to the Buildings in particular, focusing almost exclusively on the Other Buildings. Ex. 9 at 11-16. It raised only two plausible rationales for including the Buildings within the designation. First, it observed that "the similarities in size, scale, use of materials, and decorative detailing between the various buildings on the block creates a strong sense of visual homogeneity." *Id.* at 25. Second, it concluded that the designation would cover "one of the only two full city block developments of light-court model tenements in the country." *Id.*

34. At the time of the designation, the BOE had statutory authority to review, overturn, or modify all landmark designations by the LPC. After considering the factual record, the BOE modified the designation, deciding that the Buildings should not be landmarked. In doing so, the BOE explicitly recognized the need to ensure adequate real estate development and to preserve Stahl's rights to develop the Buildings, observing that approving the designation in its entirety "would have precluded new as-of-right construction" on a "very large site[] . . . in this high tax-producing area" and that "it was important to allow for such development in the future." Ex. 11 ¶ 9.

35. Stahl never challenged the designation of the Other Buildings in court largely because its ability to develop the Buildings was left intact, as was the option to transfer unused development rights from the Other Buildings to the un-landmarked Buildings. Similarly, the City elected not to appeal the BOE's decision not to landmark the Buildings. However, various community groups challenged the modification in an Article 78 proceeding. On July 17, 1991, the New York Supreme Court dismissed the petition, concluding that "the compromise by the BOE was itself inherently reasonable," balancing the need to preserve Stahl's development rights while still protecting the bulk of the buildings of the FAE, which were "significant not for their architectural merits, but the historical significance of housing created for the working poor." Ex. 12 at 12. These community groups did not appeal the Supreme Court's decision.

C. Stahl Begins To Take Steps To Develop The Buildings

36. The BOE's decision, the Supreme Court's affirmance of that decision, and the City's acquiescence in the decision, all reinforced Stahl's reasonable expectation that it retained its right to develop the Buildings.

37. In 2004, the estimated potential value of the properties if redeveloped vastly exceeded the value of the existing Buildings, and Stahl began to take steps that would enable it to carry out a redevelopment plan involving demolition of the Buildings and construction of a modern condominium tower. Stahl devoted numerous hours of internal staff time to the project, and retained an architectural firm to design a redevelopment plan and a law firm for related legal advice.

38. To implement any redevelopment plan, Stahl would eventually need the Buildings to be vacant. However, its ability to vacate many apartments was subject to restrictions imposed by the rent control and rent stabilization laws. In addition, in many cases it would not be feasible to re-lease vacant apartments, as they required substantial and costly renovations just to bring them to a habitable level. Accordingly, in order to maximize the possibility of redeveloping the Buildings at the appropriate time and avoid needlessly incurring the expense of repairs to Buildings it planned to replace, Stahl kept apartments unleased as they became vacant, beginning at least as early as 2000. Ex. 7, Response Nos. 1-2.

39. In preparation for development, Stahl also did not undertake unnecessary capital improvements in the vacant apartments or the Buildings themselves. However, Stahl ensured that the Buildings were maintained in accordance with the law. *Id.*, Response Nos. 25, 28.

D. The LPC Designates The Buildings

40. Immediately after Stahl advised the Community Board representing the Upper East Side of its further plans to redevelop the Buildings, the LPC notified Stahl that it had calendared a public hearing to revisit the issue of landmarking the Buildings, even though the 16-year-old decision not to designate them as landmarks was long-settled and had been affirmed by the courts.

41. At that time, unencumbered by the landmark designation, the properties could have been sold for nearly $100 million, even when discounting for the limited market for redevelopment projects of this size, and the risks inherent in real estate development generally. If Stahl were to redevelop the properties itself—as it planned to—they were worth almost twice that amount.

42. The public hearing on the landmarking of the Buildings was held on November 14, 2006. Stahl appeared and presented a comprehensive and exhaustive memorandum in support of its position, explaining the historical, legal, and architectural support for preserving the BOE's decision.

43. In determining whether to designate a property as a landmark, the LPC may only consider the "special character" or the "special historical or aesthetic interest or value" of the property. N.Y.C. Admin. Code § 25-302(n). It is not permitted to consider zoning matters, such as "the height and bulk of buildings," "the area of yards, courts and other open spaces," and the "density of population." N.Y.C. Admin. Code § 25-304.

44. But the transcripts of the hearing make clear that the proceedings were improperly focused on the ordinary zoning concerns of politically influential local residents who sought to block any and all development to preserve their special interests. The transcripts are replete with testimony by residents who objected to the aesthetics of the proposed redevelopment, speculated that there would be decreased access to air and light in their own apartments, and complained about the prospect of having more people live in the neighborhood. Ex. 13 at 53, 64, 84-86. These residents demanded that the LPC landmark the Buildings for reasons such as ensuring that "members of the surrounding community . . . are able to prosper in the resplendent gift of

shadow-free, sun-filled, horde-less living;" preserving access to street parking and the absence of pedestrian and car traffic; and preventing residents' rent from increasing. *Id.* at 84-86, 95.

45. The LPC even acknowledged that it was relying on factors that were outside the scope of its authority. One Commissioner observed that "I don't know whether this is even one of our criteria, but it does concern me that if these buildings are lost they will be replaced by something that eliminates the light and air to the buildings that remain that are still designated." Ex. 14 at 12.

46. Unsurprisingly, then, the LPC improperly capitulated to local political interests, and voted to overturn the BOE's "reasonable" compromise and modify the designation of the Other Buildings of the FAE to include the Buildings.

47. The LPC's decision was based predominantly on the same facts as its 1990 designation of the Other Buildings. Its formal designation report ("2006 Report") largely parroted the agency's reasoning from 1990, which the BOE and the Supreme Court found inadequate to justify the landmarking of the Buildings. Indeed, the 2006 Report incorporated verbatim the LPC's 1990 Report, and provided only a few pages of new discussion. Ex. 15 at 1-5.

48. The sole new reason the LPC mentioned for designating the Buildings was that their inclusion would "enhance[] our understanding of the work of [CSHC] since the complex encompassed the earliest and latest examples of the light-court model tenements that characterized [CSHC's] urban development projects." *Id.* at 4. The 2006 Report did not explain why this observation—which obviously could have been made in 1990—was entirely absent from the 1990 Report. It also did not clarify why it was necessary to landmark additional

examples of the light-court tenement style, which was already adequately illustrated by the Other Buildings and the full-block YAE that was designed by the same architect as the Buildings.

49. The City Council voted to approve the LPC's decision on February 1, 2007, on essentially the same grounds. The Council raised no new facts, and, like the LPC, focused predominantly on zoning considerations rather than the "special" characteristics (or lack thereof) of the Buildings. *E.g.*, Ex. 16 at 26-27, 33-34.

50. On May 31, 2007, Stahl filed an Article 78 petition challenging the landmark designation of the Buildings.[3] On September 24, 2008, the New York Supreme Court denied Stahl's petition.

51. On June 24, 2010, the New York Supreme Court, Appellate Division affirmed the dismissal.

52. On November 18, 2010, the New York Court of Appeals denied Stahl's motion for leave to appeal, exhausting Stahl's Article 78 challenge to the landmark designation.

E. Stahl Seeks Redress Through The Hardship Application Process

53. Because of the LPC's about-face in designating the Buildings as landmarks 16 years after the BOE's decision not to landmark them, Stahl was faced with an onerous predicament. For years, Stahl had taken steps to prepare the Buildings for redevelopment, most notably by keeping apartments vacant as they came due, and by foregoing new capital improvements to the Buildings. But the landmark designation barred Stahl from engaging in any redevelopment of the Buildings without LPC approval. *See* N.Y.C. Admin. Code § 25-305(a)(1). In each year since the designation, Stahl had been losing money on the Buildings.

[3] Stahl did not raise a constitutional claim at this time, because it would have been premature to do so until after Stahl applied for, and obtained a ruling on, a certificate of appropriateness, which Stahl pursued after the Article 78 proceeding concluded. *See Dougherty v. Town of North Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 88-89 (2d Cir. 2002) (takings claims can only be brought once landowner has received a "final decision" from the regulatory agency); *Comm. to Save the Beacon Theater v. City of New York*, 146 A.D.2d 397, 403 (1st Dep't 1989) (same).

And in order to rent the vacant units, it would first have to spend millions on renovations. Yet, as explained below, there was no realistic prospect of recouping the moneys necessary for such renovations, much less seeing a reasonable rate of return.

54. Because the designation had deprived Stahl of essentially all economically viable use of the properties, Stahl sought redress through the Landmarks Law. On October 7, 2010, it requested a certificate of appropriateness authorizing demolition of the Buildings on ground of insufficient return, pursuant to N.Y.C. Administrative Code § 25-309, an avenue for relief from the economic impact of a designation provided to landowners.

55. A landowner affected by a designation may request a certificate of appropriateness authorizing demolition, alterations, or reconstruction of the property on the ground that the "improvement parcel . . . is not capable of earning a reasonable return" under "reasonably efficient and prudent management." N.Y.C. Admin. Code §§ 25-302(c), 25-309. If the landowner establishes that the properties cannot generate a reasonable return, the LPC is required to grant the landowner affirmative relief. § 25-309.

56. Reasonable return is defined as "[a] net annual return of six per centum of the valuation of an improvement parcel." § 25-302(v)(1).

57. "Net annual return" is defined as the amount by which income exceeds operating expenses, excluding mortgage interest and amortization but allowing for depreciation, in a given test year. § 25-302(v)(3)(a). The test year "shall be (1) the most recent full calendar year, or (2) the owner's most recent fiscal year, or (3) any twelve consecutive months ending not more than ninety days prior to the filing" of the hardship application. § 25-302(v)(3)(b). Because Stahl's application was filed in October 2010, the statutorily prescribed test year was 2009.

58. The denominator of the reasonable return equation is the assessed value of the improvement parcel. § 25-302(v)(2). Assessed value, as defined by the New York City Department of Finance ("DOF"), is calculated as a percentage of the market value of the property. That percentage depends on the tax class of the property in question. For multi-unit residential properties like the Buildings, assessed value is defined as just 45% of market value. Accordingly, the statutory reasonable return of 6% of assessed value in actuality reflects a mere 2.7% return on the market value of a property.

59. "Improvement parcel" is defined, in relevant part, as "[t]he unit of real property which (1) includes a physical betterment constituting an improvement and the land embracing the site thereof, and (2) is treated as a single entity for the purpose of levying real estate taxes" § 25-302(j). The Buildings and the land on which they sit are the improvement parcel for the purposes of Stahl's application, because they comprise a single tax lot (Lot 22) while the Other Buildings comprise three distinct tax lots (Lots 1, 10, and 30).

60. At all times, Stahl's intent if the hardship application were granted was to demolish the Buildings and to construct modern mixed-income condominium towers.

61. Stahl pledged that it would dedicate a large number of units in these new buildings to affordable housing. Ex. 4 at 13.

62. Stahl also promised the LPC that it would use proceeds from this redevelopment to perform extensive renovations on the Other Buildings of the FAE. Tenants remaining in the Buildings would also be relocated to comparable or better renovated apartments within the FAE, at no increase in rent. *Id.*; Ex. 7, Response No. 36.

F. Stahl Endures A Time-Consuming And Demonstrably Biased Application Process

63. The LPC held three public hearings regarding Stahl's hardship application, on January 24, 2012, June 11, 2013, and October 29, 2013. The transcripts of these hearings show that the proceedings were dominated by interest groups hostile to the prospect of any development, who accused Stahl of wrongdoing for not simply acquiescing to the 2006 designation. Indeed, several speakers criticized Stahl for the *BOE's* decision not to landmark the Buildings in 1990. For example, various speakers testified:

- "This is simply the latest phase in a failed strategy to overturn the Landmark Commission's 2006 designation by defacing the buildings, purposely withholding apartments from the rental market and *now even asking leave to demolish them*." Ex. 4 at 129 (emphasis added).

- "[T]his application . . . is[] a desperate last ditch attempt[t] by the owners to avoid doing what they were told to do by this commission over six years ago." *Id.* at 78.

- Stahl's application should be rejected because there was "documented evidence" of Stahl's "opposition to preservation," "including getting the original landmark designation overturned by the [BOE]" and "filing lawsuits that [Stahl] lost at every level of the court system, including at the Court of Appeals." *Id.* at 98.

- "In this case, the applicant has waged an expensive, decades long war against landmark designation." *Id.* at 151.

64. The LPC also repeatedly made comments suggesting that they had prejudged Stahl's application, and simply would not permit redevelopment or even entertain the possibility that an actual hardship existed. At one hearing, a Commissioner announced that the LPC's "job here is to protect historic buildings and not to sort of be taken in by certain kinds of arguments by a landlord whose job – by a property owner whose goal is to tear a building down." Ex. 17 at 30. Another Commissioner described the LPC as "advocates" for preservation. Ex. 18 at 74. And yet another did not believe there could be a "true hardship" simply because the Buildings were located in the Upper East Side. *Id.* at 71-72.

65. Moreover, the Commissioners openly relied on, as fact, the opinions of friends and acquaintances who lacked any knowledge of the facts or of Stahl's presentations. *Id.* at 30, 47, 74; Ex. 8 at 89. One Commissioner expressed her belief that the poor condition of the vacant apartments—which she conceded was documented in photographs—could be "ameliorate[d]" because current tenants in occupied apartments have filled them "with art, ingenious built-ins, furnishings, personality and pride of place." Ex. 18 at 42. Another relied on the opinions of a friend in the fashion industry as evidence that the Buildings would be marketable to prospective tenants. Ex. 8 at 89.

66. In connection with its hardship application, Stahl had retained two experts, a real estate valuation company and a construction cost consulting firm to evaluate several renovation scenarios involving varying levels of renovations to vacant apartments (*e.g.*, renovations simply to bring the apartments up to code, renovations to make the apartments competitive on the rental market) in order to assess whether there was anything Stahl could do to earn a reasonable return on the Buildings. Stahl also submitted substantial supporting evidence and new renovation scenarios in response to dozens of questions from the LPC. This evidence and the experts' findings established conclusively that Stahl could not earn the statutorily-prescribed reasonable return of 6% of assessed value under any circumstances.

67. But to no one's surprise, the LPC disregarded that evidence and once again caved to political pressure from the local interest groups, voting on May 20, 2014 to deny Stahl's hardship application. The LPC issued a written decision on May 29, 2014.

G. The 2006 Designation of the Buildings Destroyed Their Economic Value and Interfered With Stahl's Investment-Based Expectations

68. The LPC's 2006 landmark designation has had a severe economic impact on the value of the Buildings. It has prevented Stahl from earning anything approximating a reasonable

rate of return, and has interfered with Stahl's investment-backed expectations. In light of the denial of Stahl's hardship application, the designation plainly constitutes a regulatory taking under *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), and its progeny.

1. The Relevant Parcel

69. Since 1990, Stahl has operated the Buildings as a discrete redevelopment site, with a single rental and management plan for them.

70. It has done so based in large part on the BOE's conclusion that the Buildings should not be included in the 1990 landmark designation of the Other Buildings, a conclusion that was subsequently upheld by the New York Supreme Court.

71. As explained, the Buildings sit on a single tax lot, Lot 22. Accordingly, Stahl files Real Property Income and Expenses statements, and other such tax documents, consolidating the two Buildings. Ex. 7, Exhibit A.

72. Stahl's operation of the Buildings as a single parcel also reflects the history of the Buildings, which were conceived of, designed, and constructed as a single plot, long after the rest of the FAE complex.

2. The Designation Left The Subject Buildings With Virtually Zero Economic Value

73. The LPC's designation of the Buildings substantially interferes with the economic use of the Buildings and has destroyed virtually all economic value in the properties.

74. In each year since the designation, Stahl has lost money on the Buildings because of their high vacancy rate, low rent, and high operating expenses. *Id.*

75. Moreover, there is no economically viable way for Stahl to reasonably remedy this economic impact. Even if Stahl sought to renovate the Buildings in order to improve their

poor condition, they would remain incapable of generating a reasonable return. The vacant apartments are not up to code, and Stahl would need to spend millions on renovations just to make them legally habitable. If Stahl sought to make them competitive on the market, it would have to spend tens of millions on renovations.

76. At the same time, Stahl still would not be able to earn much from even renovated apartments. Because many of these apartments are rent regulated, the rent Stahl could charge would be severely limited. Ex. 19, Wolpert Letter at 2-3. And absent an unfeasibly costly gut renovation, the apartments would remain unattractive to potential tenants. Coupled with the high rates of vacancy and rent collection loss and the inability to generate any viable non-rental income, the limited return that Stahl could obtain from renovating the apartments would be insufficient to recoup the renovation costs. Thus, there are no prudent steps Stahl could take to ensure the Buildings generate a reasonable return.

77. New York law authorizes municipalities to permit a landowner of a property that, due to (among other things) a landmark designation, has development rights under the zoning laws that it is restricted from using to transfer those rights to another parcel. *See* N.Y. Gen. City Law § 20-f. These transferable development rights ("TDRs") are legally irrelevant to whether the City has taken Stahl's property in violation of its constitutional rights.[4] But in any event, TDRs are heavily restricted by the City; they may only be transferred to a lot contiguous to or across the street from the Buildings, and the receiving lot may only use a limited amount of TDRs. *See* N.Y.C. Zoning Resolution §§ 74-79, 74-792(b)(4). Because of these restrictions, there is no likely buyer for TDRs from the Buildings, and accordingly, the value of any such TDRs is insignificant and speculative.

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[4] At most, any value of the TDRs would be relevant to the determination of the amount of just compensation owed to Stahl. *See Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, 749-50 (1997) (Scalia, J., concurring).

78. Thus, the designation has wiped away virtually all of the economic value of the Buildings, and left Stahl with buildings from which it cannot obtain a reasonable return.

3. The Designation Interfered With Stahl's Investment-Backed Expectations

79. Stahl acquired the Buildings in 1977. At the time of acquisition, like all other properties along York Avenue, they were zoned for high-density residential development, and were unencumbered by any landmark designation. Thus, Stahl fully expected to be able to redevelop the properties.

80. This understanding was cemented by the BOE's decision to carve the Buildings out of the designation of the FAE in order to preserve Stahl's ability to pursue as-of-right development. This right was further confirmed by the New York Supreme Court's affirmance of the BOE's decision, and the City's acquiescence to it.

81. Beginning in 2000, Stahl let vacated apartments remain unrented as part of its plan to redevelop the properties.

82. From 2004 to 2006, Stahl spent substantial time and money designing and implementing its redevelopment plan, and retained architectural and law firms to assist in the process.

83. The designation of the Buildings has interfered with Stahl's reasonable expectations by prohibiting it from pursuing any redevelopment of the properties.

H. The LPC Arbitrarily and Capriciously Denied Stahl's Hardship Application

84. Despite the substantial evidence supporting Stahl's inability to earn a reasonable return, the LPC denied Stahl's application. Its analysis was rife with egregious errors of law and fact. It reached its demonstrably false and unreasonable conclusion that Stahl is capable of earning more than a 6% rate of return only by repeatedly misapplying the standards of the

Landmarks Law, disregarding its own directly applicable precedent, and refusing to consider the full costs that Stahl would incur to renovate the Buildings.

1. The Relevant "Improvement Parcel"

85. The LPC's first and fundamental error was concluding that the relevant "improvement parcel" for purposes of the reasonable rate of return calculation was the entire FAE, and not the Buildings. Ex. 20 at 10-12.

86. The hardship test requires determining if a property owner can earn a reasonable return on the "improvement parcel." § 25-309(1)(a). The Landmarks Law defines "improvement parcel" as "[t]he unit of real property which (1) includes a physical betterment constituting an improvement and the land embracing the site thereof, and (2) is treated as *a single entity for the purpose of levying real estate taxes* . . . ." § 25-302(j) (emphasis added).

87. The Buildings occupy a single tax lot—Lot 22—and the Other Buildings of the FAE occupy three separate tax lots. Ex. 20 at 10-11; Ex. 3, Selver Letter at 7. Thus, the Buildings are treated as a single, distinct entity for the purpose of levying real estate taxes.

88. The LPC, however, said that the Buildings were "stylistically" and "physically[] related" to the Other Buildings "in terms of height, massing and general layout," and that the buildings of the FAE shared certain expenses, including maintenance personnel, a leasing office, and laundry facilities. Ex. 20 at 11. In addition, the LPC stated that it "believe[d]" that Stahl "has managed all of the buildings on block 1459 in light of its desire to demolish the Subject Buildings," and speculated that the high vacancy rates in the Other Buildings were created by Stahl in order to support its hardship application. *Id.* The LPC identified no facts supporting this belief.

89. The LPC apparently recognized that its conclusion could not be reconciled with the statutory language because it proceeded to calculate Stahl's rate of return, in excruciating detail, on the assumption that the Buildings were the relevant improvement parcel. *Id.* at 12. However, that calculation itself was fatally flawed, as demonstrated below.

2. <u>The LPC's Unreasonable Rejection of the Cost Approach to Calculating Rate of Return</u>

90. The Landmarks Law defines reasonable return as 6% of the property's assessed value. § 25-302(v)(1)-(2). Moreover, depreciation and real estate taxes, included in the reasonable return equation as operating expenses, are both calculated as percentages of assessed value. § 25-302(v)(3)(a); *e.g.,* N.Y.C. Charter § 1506. Thus, deciding Stahl's application required determining what the assessed value of the properties would be after the renovations envisioned by each of the various scenarios.

91. In determining assessed value for the denominator of the reasonable return calculation, real estate taxes, and depreciation, Stahl's experts used the "cost approach," in which the pre-renovation assessed value of the properties would be increased by a fraction of the projected costs of physical alterations. *E.g.*, Ex. 7, Response No. 6. The cost approach is the only method for calculating the rate of return that properly factors in the significant renovation costs required to continue operating the Buildings under a landmark designation. At the most basic level, these costs must be recouped before Stahl could obtain any economic value from the properties.

92. The LPC, however, refused to use the cost approach and instead applied the so-called "income approach," which values a property based only on the projected income it generates. Ex. 20 at 26-27. In other words, the income approach will value a hypothetically renovated building by capitalizing the projected income that building could generate, but will not

factor into the value how much it costs to renovate that building in order to generate that projected income. Through its use of the income approach, the LPC was able to manipulate the reasonable return analysis by using an artificially low assessed value to generate an unrealistically high rate of return and manufacture the conclusion that the LPC had apparently reached before the process began: that Stahl should not be permitted to demolish the Buildings.

93. The LPC's stated rationale for using the income approach was that the DOF always uses the income approach to value rental properties. *Id.* at 26. This assertion relied on a letter from Timothy Sheares, an Assistant Commissioner in the DOF. Ex. 21.

94. The LPC's claim is simply not true, and is inconsistent with the DOF's actual practices. The DOF routinely adjusts the assessed value of properties because of physical improvements. Ex. 22; Ex. 23, Korngold Letter at 1-3. For the 2014/15 tax year alone, the DOF has adjusted the assessed value of over 5,000 buildings in the City in light of physical improvements. Ex. 23, Korngold Letter at 2.

95. It has even done so with respect to these very buildings. For the 2008/09 and 2009/10 tax years, the DOF sent Stahl Notices of Property Value, which explicitly stated that, as a result of physical alterations to the Buildings, their estimated market value—and therefore their assessed value—would be increased based on "Cost information that [Stahl] submitted to the Buildings Department with a permit or application." *Id.* at 1-2, Exhibits A-B.

96. Moreover, the DOF also considers the costs of physical alterations when applicants seek reductions or abatements from taxes. A property owner seeking a reduction of a tax assessment must file information about all "major alterations" to the property (such as renovations), including a full accounting of hard and soft costs.[5] Ex. 24 at 1-2. Similarly, the

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[5] Hard costs refer to tangible construction costs, such as materials, labor, and other construction costs; soft costs are non-tangible construction costs, such as architectural and engineering fees, insurance, and financing costs.

City's J-51 tax abatement program offers exemptions and abatements from property taxes where the assessed valuation of a property increases based on certain qualifying physical alterations or improvements to the property. N.Y.C. Admin. Code § 11-243. If the DOF did not adjust assessed value to reflect physical alterations, the J-51 program would be unnecessary.

97. The LPC's rejection of the cost approach was also at odds with its own precedent in a decision granting the hardship application of KISKA Developers, Inc., a case the LPC explicitly stated it was relying on. Ex. 18 at 7. In KISKA, like here, the LPC considered multiple renovation scenarios, including some in which the properties were renovated for future sale and some in which they were renovated for subsequent rental. Each time the LPC projected the assessed value of the renovated properties, it added renovation costs to the initial pre-renovation assessed value. Ex. 25 at 22, 29-32, 35-36, 39-40, 43-46. For example, in discussing its calculation of depreciation—which is statutorily defined in relevant part as "two per centum of the assessed value of the improvement," § 25-302(v)(3)(a)—it specifically noted that "[f]or the purposes of this application, the Commission assumes that the renovation costs will increase the assessed value of the building by a comparable amount." Ex. 25 at 22. Similarly, the LPC uniformly added a percentage of renovation costs to the initial assessed value to calculate real estate taxes. *Id.* at 29-32, 43-46.

98. The LPC attempted to distinguish away KISKA's use of the cost approach, but it misread KISKA. In KISKA, because the owner had recently purchased the properties in question, the LPC substituted the sales price of the properties for assessed value as the denominator of the reasonable return calculation. Ex. 20 at 27 n.45. For scenarios contemplating renovation of the properties for eventual sale, the LPC added renovation costs to the sales price to calculate the denominator of the equation, noting that "for calculating the

potential value of the buildings as condominiums or individual townhouses, the costs of renovation should be treated as a one-time expense to be recouped upon the sale of the property." *Id.* (internal quotation marks omitted). But for scenarios contemplating renovation of the properties to rent them, the LPC did not add renovation costs to the sales price to determine the denominator. *Id.* Thus, the LPC claimed that KISKA did not endorse the use of the cost approach for rental properties.

99. But of course in KISKA, the LPC did not consider assessed value in determining the denominator of the rate of return equation because it used the sales price of the properties as the denominator. Nevertheless, in every scenario, including rental scenarios, the LPC had to calculate assessed value in order to determine real estate taxes and depreciation, which are included in the numerator of the reasonable return equation. Each and every time it did so, it adjusted the assessed value by adding a percentage of renovation costs to the pre-renovation assessed value. Ex. 25 at 22, 29-32, 35-36, 39-40, 43-46. In other words, it uniformly used the cost approach to determine assessed value.

100. Moreover, the LPC is only permitted to use the sales price of the property where there has been a recent bona fide sale at arm's length, § 25-302(v)(2)(b), and thus the use of the sales price in KISKA reflected the full market value of the properties at issue. By definition, the sales price is substantially higher than assessed value, which as previously noted, represents only 45% of a property's full market value, and therefore provides a significantly more accurate baseline for determining actual hardship. Here, of course, there was no such recent sales price to use as Stahl had acquired the Buildings in 1977.

101. Finally, the LPC's approach to determining assessed value in this case was internally inconsistent and fundamentally incoherent, and demonstrates that it was manipulating

its analysis to achieve a predetermined result—namely rejection of the application. In calculating the denominator of the reasonable return equation and real estate taxes (which is based on a percentage of assessed value), the LPC refused to apply the cost approach, instead holding that assessed value must be calculated using the income approach. Ex. 20 at 25-27. However, in determining depreciation, defined by the Landmarks Law as 2% of assessed value, § 25-302(v)(3)(a), the LPC adjusted the assessed value to include renovation costs, *i.e.*, using the cost approach. Ex. 20 at 23-24. Thus, the LPC said that assessed value meant one thing for determining the denominator of the reasonable return equation and real estate taxes, and an entirely different thing for determining depreciation.

3. The LPC's Punitive and Irrational "Self-Imposed" Hardship Determination

102. The LPC further erred by discounting a significant amount of the actual renovation costs required on the fallacious ground that those costs were a "self-imposed hardship."

103. At the time of the 2006 designation of the Buildings, there were 53 vacant apartments. By the end of the 2009 test year, an additional 44 apartments had become vacant, increasing the total to 97.

104. The LPC said that it could ignore renovation costs related to the 44 vacant apartments that became vacant after the designation, while including their projected rental income. Its stated rationale was that Stahl had intentionally kept these apartments vacant—thus supposedly creating a "self-imposed hardship." *Id.* at 12; Ex. 18 at 7-8, 11-12.

105. Stahl initially began leaving apartments vacant no later than 2000 in reliance on the BOE's recognition that Stahl was free to redevelop the Buildings. It continued to do so while its Article 78 challenge to the designation was pending. Ex. 7, Response No. 2. Its appeal was

only exhausted on November 18, 2010, more than a month after the hardship application was filed.

106. In order to legally re-lease these apartments as they came vacant, Stahl would have been required to renovate them. *Id.* But the whole point of Stahl's legal challenge was to vindicate its right to demolish the Buildings and redevelop the properties. Thus, in order to avoid the LPC's punitive self-imposed hardship, Stahl would have had to spend millions on renovations, just to turn around and demolish the apartments if the legal challenge was successful, or earn a paltry return at best if the challenge was unsuccessful.

4. The LPC Erroneously Excluded Construction Loan Costs

107. The LPC, which considered some renovation costs in determining assessed value for depreciation, arbitrarily reduced the soft costs of renovations by nearly 30% by refusing to consider interest payments on construction loans that Stahl would require to pay for renovations.

108. Stahl calculated soft costs—or non-tangible construction costs—to include the interest expense accompanying construction loans Stahl would have to obtain in order to finance the millions of dollars of renovation costs. Ex. 23, Wolpert Letter. The applicable soft cost factor was calculated to be approximately 32% of hard costs.[6] Ex. 23, Wolpert Letter; Ex. 20 at 24-25. Interest expenses amounted for approximately 30% of the total soft cost amount. Ex. 23, Wolpert Letter; Ex. 20 at 25.

109. The LPC refused to include interest expense on the construction loan because the Landmarks Law carves out "mortgage interest and amortization" from the calculation of the operating expenses of an improvement parcel. Ex. 20 at 25; § 25-302(v)(3)(a).

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[6] The 32% soft-cost factor reflected the soft costs in connection with a total gut renovation scenario, and more modest renovation scenarios (including those that would result in a higher return than the gut renovation scenario) would have higher corresponding soft-cost factors. *Id.* However, the LPC assumed that Stahl's analysis applied to all scenarios. Ex. 20 at 24-25 & n.38.

110. The Landmarks Law includes no such carve-out for construction loan interest, and the LPC's decision was a clear legal error.

111. The LPC also cited its KISKA decision, claiming it did not include construction loan interest there. Ex. 20 at 25. KISKA, however, did not purport to address the issue of whether construction loan interest should be included in the costs of renovations. Thus, it provides no support for the LPC's erroneous interpretation of the Landmarks Law.

112. The interest expense on a construction loan would necessarily be incurred as a direct cost of renovations. By excluding it from the hardship analysis, the LPC again arbitrarily and without any justifiable basis simply ignored the costs Stahl would incur in renovating vacant apartments, while at the same time calculating return based on the income Stahl would obtain from those renovated apartments.

5. <u>The LPC's Alternative Cost Approach "Comparison" Was Equally Flawed</u>

113. Presumably knowing its assumptions would not stand up to scrutiny, however, the LPC attempted to safeguard its decision by including, "for purposes of comparison only," a calculation of reasonable return which purportedly (1) considered the Buildings as the relevant improvement parcel, (2) applied the cost approach, and (3) considered the renovation costs of all 97 vacant apartments. *Id.* at 27, App'x B.2. The LPC claimed that even under this approach, Stahl could earn a return of over 6%. *Id.* at App'x B, B.2.

114. However, the LPC's "comparison" did not actually do what the LPC said it did.

115. Though it used the cost approach to determine assessed value in the denominator of the equation, it used the income approach to determine assessed value for the purpose of calculating real estate taxes in the numerator. *Id.* This resulted in an obviously absurd and

internally inconsistent calculation where "assessed valuation" had one meaning in the numerator and another meaning in the denominator.

116. Moreover, the LPC's depreciation calculation considered only renovation costs for 53 apartments, not costs for all 97 vacant apartments. *Id.* at App'x B.1. In other words, while the LPC included the full renovation costs when determining assessed value in the denominator of the equation, it irrationally used a partial renovation amount when determining assessed value for depreciation in the numerator. This too rendered its calculation incoherent and arbitrary.

117. Further, the LPC's comparison calculation unreasonably failed to include costs related to construction loan interest.

118. Had the LPC not made these errors, it would necessarily have concluded that Stahl could not earn a reasonable return and was entitled to relief on the grounds of hardship.

119. Although the LPC included a perfunctory reference to the value of development rights on the Buildings that would be unusable because of the designation, it did not purport to include these amounts in any of its reasonable rate of return calculations. As explained above, *see* ¶ 77, the value of any TDRs from the landmark designation of the Buildings is insignificant and speculative because the zoning laws limit the transfer of any TDRs from the Buildings to parcels or landowners who would lack an economic interest in them. Ex. 7, Response No. 38.

<u>FIRST CAUSE OF ACTION</u>
(Unconstitutional Taking)

120. Stahl incorporates by reference the allegations as set forth in ¶¶ 1-119 above as if fully set forth herein.

121. As a result of the landmark designation and the subsequent denial of Stahl's hardship application, the Buildings have substantially diminished in value, and Stahl is unable to earn a reasonable return on the properties.

122. For the entire time between the acquisition of the Buildings and the 2006 landmark designation, Stahl operated with the understanding that it had the right to develop the properties. The designation interfered with these investment-backed expectations.

123. The LPC and the City, acting under the color of State law, have taken the Buildings without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution, 42 U.S.C. § 1983, and Article I § 7 of the New York State Constitution.

124. The denial of Stahl's request for a certificate of appropriateness was a final decision of the LPC, and Stahl has exhausted all other avenues to seek compensation.

SECOND CAUSE OF ACTION
(Request for Relief under Article 78 of the CPLR)

125. Stahl incorporates by reference the allegations as set forth in ¶¶ 1-124 above as if fully set forth herein.

126. LPC actions under the Landmarks Law are considered to be administrative acts, as opposed to quasi-judicial acts. *See Lutheran Church in America v. City of New York*, 35 N.Y.2d 121, 128 n.2 (1974). Accordingly, such acts are reviewable under CPLR 7803(3), pursuant to which the agency's action must be struck down if it "was affected by an error of law or was arbitrary and capricious or an abuse of discretion." *See also N.Y. State Ass'n of Counties v. Axelrod*, 78 N.Y.2d 158, 166 (1991) (administrative act can be upheld only if it has a "rational basis, and is not unreasonable, arbitrary or capricious").

127. The arbitrary and capricious standard "relates to whether a particular action should have been taken or is justified . . . and whether the administrative action is without foundation in fact." *Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231 (1974) (internal quotation marks omitted). In other words, an agency action is arbitrary when it is without "sound basis in reason or regard to the facts." *Murphy v. N.Y. State Div. of Housing & Cmty. Renewal*, 21 N.Y.3d 649, 652 (2013) (internal quotation marks omitted).

128. Moreover, it is black-letter law that an agency's determination is arbitrary and capricious where the agency deviates from its own precedent in similar circumstances without adequate grounds to distinguish its precedent. *See In re Charles A. Field Delivery Serv., Inc.*, 66 N.Y.2d 516, 518 (1985) ("[A]bsent an explanation by the agency, an administrative agency decision, which on essentially the same facts as underlaid a prior agency determination, reaches a conclusion contrary to the prior determination is arbitrary and capricious.").

129. Similarly, an agency's determination will be invalid under CPLR 7803(3) if it is "affected by an error of law," such as the misapplication of a legal standard. *See AT&T Co. v. N.Y. State Tax Comm'n*, 61 N.Y.2d 393, 400 (1984) ("If the agency's determination . . . constitutes a clearly erroneous interpretation of the law or the facts, it will be annulled . . . ."); *see also McCambridge v. McGuire*, 62 N.Y.2d 563, 568 (1984) (setting aside decision and remanding where agency "applied an erroneous legal standard"); *Krauskopf v. Perales*, 146 Misc.2d 619, 623-24 (Sup. Ct. N.Y. Cnty. 1990) (agency determination invalid where it failed to apply correct legal standard).

130. A reviewing court is limited to consideration of the reasons given by the agency at the time it takes its action. *Scherbyn v. Wayne-Finger Lakes Bd. of Coop. Educ. Servs.*, 77 N.Y.2d 753, 758 (1991); *Street Vendor Project v. City of New York*, 10 Misc.3d 978, 986 (Sup.

Ct. N.Y. Cnty. 2005). A court is "powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis." *Montauk Improvement, Inc. v. Proccacino*, 41 N.Y.2d 913, 913 (1977) (internal quotation marks omitted).

131. The LPC's denial of Stahl's hardship waiver is invalid as arbitrary and capricious and affected by an error of law because it:

a. Applied the wrong legal standard to determine the relevant improvement parcel;

b. Irrationally calculated the assessed value of the post-renovation Buildings using the income approach;

c. Unreasonably excluded the costs of legally required renovations of some vacant apartments as an unfair punishment of Stahl for exercising its legal right as a property owner;

d. Arbitrarily excluded construction loan interest from Stahl's renovation costs based on a flawed interpretation of the Landmarks Law;

e. Mixed and matched its calculations and applications of legal standards to justify its conclusion that Stahl should not be permitted to engage in any redevelopment of the Buildings; and

f. Made numerous other errors of law and fact and reached conclusions contradicted by the record before it.

A. Concluding That The Entire FAE Was The "Improvement Parcel" Is Incorrect As A Matter Of Law

132. The LPC's conclusion that the relevant improvement parcel for the hardship analysis was the entire FAE, as opposed to just the Buildings, was an error of law.

133. The Landmarks Law defines the relevant improvement parcel as the unit of property that includes the "physical betterment constituting an improvement" and that is "treated as a single entity for the purpose of levying real estate taxes." § 25-302(j). The LPC acknowledged that standard, but did not attempt to apply it, and instead rested its determination that the entire FAE was the relevant improvement parcel on two irrelevant criteria. First, the LPC reasoned that the Buildings were "stylistically" and "physically[] related" to the Other Buildings, and that the buildings of the FAE shared some expenses. Ex. 20 at 11. Second, the LPC claimed that it "believe[d]" that Stahl had "maintained excessive vacancies" in order to support its hardship application. *Id.*

134. Neither of these criteria has anything to do with the statutory standard. The stylistic and physical relationship between two units of property is not mentioned anywhere in the definition of "improvement parcel." Nor does the statutory definition address the manner in which an owner operates two distinct units of property. The LPC's failure to apply the governing legal standard renders its determination invalid. *See Trump-Equitable Fifth Ave. Co. v. Gliedman*, 57 N.Y.2d 588, 594-95 (1982) (regulation's addition of preconditions for obtaining statutory exemption that were not found in the statute rendered regulation invalid); *Flatiron Cmty. Ass'n v. N.Y. State Liquor Auth.*, 6 Misc.3d 267, 273-74 (Sup. Ct. N.Y. Cnty. 2004) (determination was arbitrary and capricious where agency failed to discuss or apply statutory standard); *Leon v. Wing*, 3 Misc.3d 578, 585 (Sup. Ct. N.Y. Cnty. 2003) (determination was invalid where ALJ made error of law); *Krauskopf*, 146 Misc.2d at 623-24 (determination vacated where agency applied criteria for determining nonresidence that was inconsistent with statutory standard); *cf. N.Y.C Campaign Fin. Bd. v. Ortiz*, 38 A.D.3d 75, 84 (1st Dep't 2006) ("[W]here

there is a conflict between a statute and an administrative rule or regulation promulgated pursuant to that statute, the wording and the meaning of the statute prevails.").

135. Under the statutory standard, the relevant improvement parcel for the hardship analysis is the Buildings, and not the entire FAE. As the LPC itself acknowledged, the Buildings sit on their own tax lot (Lot 22), while the Other Buildings occupy three separate tax lots (Lots 1, 10, and 30). Ex. 20 at 10-11. Indeed, the letter by DOF Assistant Commissioner Sheares—relied on by the LPC for its adoption of the income approach—lists an assessed value for Lot 22 alone, not as part of the entire FAE. Ex. 21, Sheares Letter at 1. Accordingly, the Buildings are "treated as a single entity for the purposes of levying real estate taxes."

136. Moreover, the Landmarks Law's definition of "landmark site," covers an improvement parcel and "any abutting improvement parcel . . . constituting part of the premises on which the landmark is situated." § 25-302(o). The hardship analysis is limited to the return on the "improvement parcel," not the "landmark site," § 25-302(v)(1), thus distinguishing between a single parcel and a multi-building landmark site. *See Tonis v. Bd. of Regents of Univ. of State of N.Y.*, 295 N.Y. 286, 293 (1946) ("It is one of the accepted canons of construction that statute must be read so that each word will have a meaning . . . .").

137. In any event, the LPC's "belie[f]" that Stahl was operating the Other Buildings to support its hardship application, even if relevant, could not sustain its determination that the FAE was the relevant improvement parcel. The LPC's belief has no support in the record, and the LPC did not even attempt to identify a fact supporting it. An agency is not permitted to ground its determination on a mere assumption that lacks any factual basis in the record. *See Cornell Univ. v. Beer*, 16 A.D.3d 890, 894-95 (3d Dep't 2005) (landmark preservation board could not presume that proposed alteration would be unacceptable to the public where there were no facts

in the record supporting that presumption); *Hagan v. Franco*, 272 A.D.2d 143, 144 (1st Dep't 2000) (administrative finding was invalid where record contained no facts supporting the conclusion); *D.F. v. Carrion*, 986 N.Y.S.2d 769, 776 (Sup. Ct. N.Y. Cnty. 2014) ("It is arbitrary and capricious for an agency to render a decision unsupported by the record before it.").

138. The Landmarks Law sets forth an unambiguous standard for determining the relevant improvement parcel. The LPC's disregard for that standard renders its decision invalid.

B. The Use Of The Income Approach To Value Properties Requiring Substantial Renovation Is Arbitrary And Capricious

139. The LPC refused to use the cost approach to determine the assessed value of the Buildings under the various renovation scenarios it evaluated, and instead adopted the income approach. As explained above, the cost approach adjusts the assessed value of a property to reflect the cost of physical improvements made to the property. The income approach, in contrast, values a property solely by the income it generates, and does not adjusts the value of the property on the basis of renovation costs. The LPC's refusal to use the cost approach was legally erroneous for two reasons.

140. First, its primary rationale for using the income approach—the letter by DOF Assistant Commissioner Sheares suggesting that the DOF always calculates the assessed value of rental properties using the income approach—is simply not true. *See supra* ¶¶ 93-96. An agency determination must have a "foundation in fact." *Pell*, 34 N.Y.2d at 231. If the factual basis for the determination is refuted by the evidence, the agency's decision must be struck down. *See GH Ville Inc. v. N.Y.C Envt'l Control Bd.*, 194 Misc.2d 503, 507 (Sup. Ct. N.Y. Cnty. 2002) (agency determination could not rest on presumption that was rebutted by evidence); *see also Wolk v. Reisen*, 67 A.D.2d 819, 819-20 (4th Dep't 1979) (landmark preservation board's conclusion that landmarked property could be converted to income-producing use was arbitrary

where "unsupported in the record" and where "petitioner clearly demonstrated that the cost of renovating the structure for an acceptable proposed use would result in an annual operating financial loss").

141. Though the DOF undoubtedly does use the income approach to determine assessed value, Stahl presented substantial evidence that the DOF routinely adjusts assessed value under the cost approach where there has been a physical alteration to a property. Ex. 23, Korngold Letter at 1-3. Indeed, it has done so with respect to these very buildings in the test year. *Id.* Moreover, the cost approach forms the backbone of the City's J-51 tax abatement program, N.Y.C. Admin. Code § 11-243, and the DOF itself requests cost information from applicants seeking reductions in assessed value. Ex. 24 at 1-2. Thus, the factual basis for the LPC's decision is contradicted by the record, and the LPC's decision therefore cannot stand.

142. Second, the LPC's use of the income approach also invalidates its denial of Stahl's hardship application because the LPC disregarded its own directly applicable precedent in KISKA. In KISKA, the LPC uniformly used the cost approach to adjust assessed value to reflect renovation costs. Ex. 25 at 22, 29-32, 35-36, 39-40, 43-46.

143. The LPC purported to distinguish KISKA's use of the cost approach by pointing out that for scenarios contemplating the rental of the properties, the sales price of the properties was not adjusted to reflect renovation costs. But an agency cannot, as the LPC is attempting to do here, explain away its failure to follow its own precedent in similar circumstances by simply identifying some irrelevant distinguishing factor. Rather, the agency's grounds must be adequate to support the differential treatment, and must bear some rational relation to the considerations underlying the regulation. *See Buffalo Civic Auto Ramps, Inc. v. Serio*, 21 A.D.3d 722, 725 (1st Dep't 2005) (agency could not treat one category of cashiers differently from other cashiers

under workers' compensation law based on their exposure to risk where there was "no appreciable distinction" in the amount of risk to which they were exposed); *Klein v. Levin*, 305 A.D.2d 316, 320 (1st Dep't 2003) (explanation for failing to adhere to precedent was inadequate where the distinctions were minor and argued in favor of following prior decision); *see also Huff v. N.Y. State Dep't of Corrections*, 52 A.D.3d 1003, 1004 (3d Dep't 2008) (agency's explanation for refusing to follow prior decisions must be "rational").

144. Here, the LPC's stated grounds are insufficient. Whether or not the sales price of the properties was adjusted to include renovation costs in KISKA, in all scenarios, including rental scenarios, the LPC consistently calculated assessed value by including a percentage of renovation costs. Ex. 25 at 22, 29-32, 35-36, 39-40, 43-46. There is no rational basis for distinguishing KISKA's treatment of *assessed value* on the basis of its treatment of *sales price*. Moreover, KISKA's substitution of sales price for assessed value in the denominator is substantially more favorable to landowners because sales price, under the requirements of the Landmarks Law, reflects fair market value, and thus by definition, vastly exceeds assessed value. That KISKA did not always adjust sales price to make the analysis even more favorable to the landowner does not support the LPC's conclusion here that it could refuse to factor in the full costs of renovations in assessing Stahl's hardship.

145. Indeed, the refusal to use the cost approach when considering the assessed value of a renovated property is inherently unreasonable, and entirely irrational. Using the income approach to value a hypothetically renovated building requires valuing a theoretical income stream that can only arise when substantial renovations to the properties have occurred. But the income approach ignores the full cost of those renovations. What prudent businessperson would invest in renovations if he or she will not earn a sufficient return to recoup the renovation costs?

146. The Sheares letter itself makes plain that the LPC's use of the income approach here leads to absurd results. The Sheares letter projects a market value of approximately $8.99 million for the Buildings and a corresponding assessed value of $4.05 million, based on the assumption that the Buildings could generate annual gross income of $2,477,929, a figure provided to Sheares by the LPC. Ex. 21, Sheares Letter at 1. This gross income figure was taken from a submission by one of Stahl's experts, and reflected the income the Buildings could generate after a total gut renovation. Ex. 26 at 15. But Stahl's experts projected that the gut renovation would cost $16.7 million in hard costs alone, *id.* at 8, and presumably much more than that once soft costs were included.[7] Thus, the use of the income approach would mean that Stahl would have to spend well over $17 million in renovation costs for the properties to have a fair market value of approximately $8.99 million and an assessed value of approximately $4.05 million. Even assuming that Stahl could earn 6% of that assessed value (which it could not), that return is nowhere near the amount necessary to recoup the requisite $17 million investment Stahl would have to make.

147. The purpose of the hardship waiver process is to protect landowners from overly burdensome landmark designations. The LPC's analysis bears no rational relationship to this statutory purpose, and is therefore invalid. *See Kelly v. Kaladjian*, 155 Misc.2d 652, 655, 657 (Sup. Ct. N.Y. Cnty. 1992) (regulation which unfairly limited access of emergency relief for tenants facing evictions for rent arrears was invalid because it failed to "bear some rational relationship to the goals sought to be achieved"); *see also 207 Realty Assocs., LLC v. N.Y. State Div. of Housing & Cmty. Renewal*, 22 Misc.3d 509, 515-16 (Sup. Ct. N.Y. Cnty. 2008) (agency

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[7] Assuming the soft-cost factor of 32% discussed *supra* ¶ 108, the cost of the gut renovation would be as high as $22 million.

interpretation of statute erroneous where it failed to further statutory scheme and would produce "inequitable result[s]").

148. The LPC's refusal to use the cost approach to determine real estate taxes, which are calculated as a percentage of assessed value, was irrational for the reasons discussed above. But its refusal to do so was even more galling in light of KISKA's unequivocal use of the cost approach to determine real estate taxes. Ex. 25 at 29-32, 43-46. The LPC even acknowledged it was not following KISKA, but simply claimed that "a reasonably prudent and efficient owner would seek to have as low a real estate tax as possible." Ex. 18 at 21; Ex. 20 at 25-26. This is frivolous. In KISKA, the reasonable and prudent owners of the properties in question obviously would have wanted to pay as little in real estate taxes as possible as well, yet the LPC did not hesitate to use the cost approach there. The LPC cannot distinguish away its on-point precedent on such a weak ground. *See Klein*, 305 A.D.2d at 320 (agency must provide "adequate explanation" for refusing to follow precedent); *see also Field Delivery Serv.*, 66 N.Y.2d at 520 (absent explanation showing that agency "has changed its prior interpretation of the law for valid reasons . . . failure to conform to agency precedent will . . . require reversal on the law as arbitrary").

149. Ultimately, the LPC's internally inconsistent and incoherent methodology to determining assessed value independently renders its decision arbitrary and capricious. The LPC used the income approach to determined assessed value to calculate real estate taxes and the denominator of the reasonable return equation, Ex. 20 at 25, 27, but used the cost approach to determine assessed value to calculate depreciation. *Id.* at 25. The LPC did not even attempt to justify this absurd result, where assessed value meant different things in the same equation. By any definition, then, the LPC's hardship analysis was irrational. *See KSLM-Columbus*

Apartments, Inc. v. N.Y. State Div. of Housing & Cmty. Renewal, 5 N.Y.3d 303, 315 (2005) (agency's denial of rent adjustments was arbitrary and capricious where based on reasoning that was "inherently contradictory").

C. The Exclusion Of Renovation Costs For 44 Vacant Apartment Was Irrational

150. The LPC irrationally penalized Stahl by excluding the costs of renovating the 44 apartments that became vacant after the 2006 designation.

151. Stahl began leaving apartments vacant as part of a plan to redevelop the Buildings and in reliance on the BOE's decision not to designate the Buildings. The reason Stahl did not try to re-lease the 44 vacant apartments was that it believed (and still believes) that it has the legal right to redevelop the property; that the potential additional returns it might earn after renovation were minimal and would not justify the costs; and that, during the time frame in question its Article 78 challenge to the 2006 designation was still pending.

152. Stahl could not legally have re-leased the 44 vacant apartments as they came vacant, as each of these apartments required renovations to bring them up to code. Had it undertaken these renovations while its challenge was pending, it essentially would have been required to spend millions on renovations simply to turn around and demolish those apartments if its challenge was successful.

153. Thus, the effect of the LPC's refusal to consider those renovation costs was to punish Stahl for exercising its legal rights. Such an egregious and unfair result cannot stand. *See KSLM-Columbus Apartments, Inc. v. N.Y. State Div. of Housing & Cmty. Renewal*, 6 A.D.3d 28, 39 (1st Dep't 2004) (agency's interpretation of statute invalid where it created an "egregious result" by unfairly discounting an "economic disadvantage"), *aff'd*, 5 N.Y.3d 303 (2005).

154. Moreover, including the projected rents for those 44 apartments while excluding the costs required to renovate them is irrational. The purpose of the hardship analysis is to ensure that a landowner affected by a landmark designation can still obtain a reasonable return on the property. A rate of return calculation that is premised on income that can be achieved only after incurring renovation costs, but that ignores a substantial portion of those costs, makes no sense and divorces the LPC's hardship analysis from economic reality. A "reasonably efficient and prudent" landowner will only invest in renovations if it can earn enough to recoup that investment. The LPC's failure to fully consider whether Stahl could recoup its investment, rendered its hardship analysis inconsistent with the purposes of the hardship statute, and thus invalid as arbitrary and capricious. *See 207 Realty Assoc.*, 22 Misc.3d at 516 (agency interpretation of statute was arbitrary and capricious where it "would lead to an inequitable result"); *see also Kaladjian*, 155 Misc.2d at 655 (agency action "must bear some rational relationship to the goals sought to be achieved").

D. The LPC Erred As A Matter of Law By Excluding Loan Interest

155. The LPC's refusal to consider construction loan interest in its allocation for the soft costs of renovation also violated the law.

156. The LPC claimed it could exclude construction loan interest because the Landmarks Law excludes mortgage interest as an operating expenses of an improvement parcel. Ex. 20 at 25. But the statute only carves out "mortgage interest and amortization" from the calculation of operating expenses. § 25-302(v)(3)(a) ("Net annual return shall be the amount by which the earned income yielded by the improvement parcel during a test year exceeds the operating expenses of such parcel during such year, excluding mortgage interest and amortization . . . ."). The Landmarks Law includes no such carve-out for construction loan

interest incurred as a renovation cost. Moreover, mortgage interest is accounted for as an operating expense, while construction loan interest, in contrast, is accounted for as a capitalized expense under generally accepted accounting principles (GAAP).

157. The LPC's erroneous reading of the Landmarks Law is not entitled to any deference. "[W]here, as here, the question is one of pure statutory interpretation dependent only on accurate apprehension of legislative intent, there is little basis to rely on any special competence or expertise of the administrative agency and its interpretive regulations are therefore to be accorded much less weight." *KSLM-Columbus Apartments*, 5 N.Y.3d at 312 (internal quotation marks omitted); *see also Raritan Dev. Corp. v. Silva*, 91 N.Y.2d 98, 103 (1997) ("[A] determination by the agency that runs counter to the clear wording of a statutory provision is given little weight." (internal quotation marks omitted)).

158. Where the words of a statute are clear, an agency may not amend or alter the terms of that statute. *See American Transit Ins. Co. v. Sartor*, 3 N.Y.3d 71, 76 (2004) ("A court cannot amend a statute by adding words that are not there."); *Ortiz*, 38 A.D.3d at 81-82 ("[N]either the Board nor this Court may expand or add to the clear and unambiguous language of section 3-710, which must be read and given effect as it was written by the City Council, not as the Board or the courts think it should or would have been written . . . ."). For example, in *Ortiz*, an agency sought to hold individual candidates and campaign committee treasurers responsible under the New York City Campaign Finance Act for repaying public funds not properly used for qualified campaign expenditures. 38 A.D.3d at 81-82. Though a separate provision of the Act held such individuals liable for "violation[s]" or "infraction[s]" of the Act, the provision governing repayments applied, by its terms, only to campaign committees. *Id.* The court rejected the agency's attempt to extend liability for repayments to individuals, holding that

the court could not "by implication supply . . . a provision that, we might reasonably suppose, the City Council intended to omit," and noting that "[w]hen the City Council . . . wanted to impose personal liability on participating candidates and treasurers . . . it clearly did so. When it wanted to limit responsibility for repayment . . . to the participating committee and not its treasurer or the participating candidate, it did so just as clearly." *Id.* at 83 (citation omitted).

159. Similarly, there is no support in the Landmarks Law for the LPC's erroneous extension of a narrow carve-out for "mortgage interest and amortization" to cover construction loan interest. The statute does not mention construction loan interest, and, as in *Ortiz*, if the City Council had intended to extend that carve-out to cover additional costs, it could have done so. The LPC simply may not amend the Landmarks Law by adding terms that are not there. The LPC's error of law, thus renders its determination invalid.

E. The LPC Reached Numerous Other Erroneous And Irrational Conclusions

160. In addition to the errors detailed above, throughout its analysis, the LPC reached conclusions unsupported by the record. For example, the LPC erroneously understated the projected operating costs for the Buildings after renovations. The LPC's estimate was based largely on the operating expenses of the Other Buildings, which it purportedly calculated by averaging the aggregate expenses of the entire FAE on a per square foot basis. Ex. 20 at 21. However, the LPC's calculation in fact reflected an average cost per apartment amount. Because the apartments in the Buildings were significantly smaller than the apartments in the Other Buildings, this mathematical error materially understated the annual operating expenses of the Buildings by approximately $400,000. Moreover, the operating expenses for the Other Buildings were not even comparable, because the vacancy rate in the Other Buildings was 20%,

while the LPC projected the vacancy rate in the post-renovation Buildings to be 5%. *Id.* at 18-19.

161. The LPC similarly understated the expected vacancy rate and collection loss that the Buildings would face post-renovations. It did so by ignoring the particular characteristics of the Buildings and the vacancy rates in the Other Buildings; instead, the LPC irrationally relied on the significantly lower general vacancy rates in the Upper East Side and the City as a whole. *Id.* at 17-18. The LPC's errors in its vacancy rate calculations, like many of its other errors, reflected a manipulative effort to treat the same data inconsistently to arrive at its pre-determined result. For example, the LPC disregarded the vacancy rates in the Other Buildings—which had exceeded 20% in recent years—as irrelevant to the vacancy rates in the Buildings post-renovations, even though the LPC relied on other data from the Other Buildings whenever it supported the agency's prejudged conclusion that Stahl's application should be rejected.

F. The Cumulative Effect Of The LPC's Errors Led It To Unreasonably Conclude That Stahl Did Not Satisfy The Hardship Test

162. Had the LPC correctly calculated Stahl's return on the Buildings, it would have determined that Stahl could not earn a reasonable return of 6%.

163. The LPC's alternative "comparison," which purported to correctly use the Buildings as the improvement parcel and the cost approach considering the renovation costs of all 97 vacant apartments, *see supra* ¶ 113, does not save its arbitrary and capricious decision because it perpetuates the same errors made by the LPC in its actual decision. A legally and factually rational application of the hardship test would have established that Stahl is unable to earn a reasonable return on the Buildings.

PRIOR APPLICATION

164. No prior application has been made for the relief requested herein.

JURY DEMAND

165. Stahl demands a trial by jury on all issues so triable.

RELIEF REQUESTED

WHEREFORE, Plaintiff-Petitioner requests that this Court enter an Order:

(a) Awarding just compensation in the amount of the fair market value of the Buildings on November 21, 2006 absent the unconstitutional taking, plus interest on that amount from that date until the date of payment, which Stahl believes to be approximately $200 million;

(b) Annulling, vacating, and setting aside the LPC's denial of Stahl's hardship application, on the basis that it is unlawfully arbitrary and capricious and affected by an error of law, and remanding for further proceedings;

(c) Awarding attorneys' fees and costs incurred in prosecuting this action; and

(d) Granting any other and further relief the Court deems just and proper.

Dated: New York, New York
September 22, 2014

Respectfully submitted,

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VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) SS

Richard Czaja, being duly sworn, deposes and says:

I am currently President of Stahl York Avenue Co., LLC, the Petitioner in this action and proceeding, and I am authorized to represent the Petitioner. I have read the foregoing Verified Petition and know the contents thereof to be true to my own knowledge.

Richard Czaja

Richard Czaja

Sworn to before me this 19th
day of September, 2014

Jacqueline Larsen

JACQUELINE LARSEN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01LA6136990
Qualified in New York County
My Commission Expires Novemeber 14, 20~~13~~ 17