

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

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DEVELOP DON'T DESTROY (BROOKLYN), INC., et al.,	:	Index No. 114631/09
	:	
Petitioners,	:	IAS Part 57
	:	Justice Friedman
For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules,	:	
	:	VERIFIED
- against -	:	ANSWER OF
	:	RESPONDENT
EMPIRE STATE DEVELOPMENT CORPORATION and FOREST CITY RATNER COMPANIES, LLC,	:	FOREST CITY RATNER COMPANIES, LLC
	:	
Respondents.	:	

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Respondent Forest City Ratner Companies, LLC ("FCRC"), by its attorneys, for its verified answer to the petition, respectfully shows and alleges as follows:

1. FCRC admits that this proceeding seeks the relief described in paragraph 1 of the petition but denies that petitioners are entitled to any such relief.
2. FCRC denies the allegations contained in paragraph 2 of the petition, except that it admits that respondent New York State Urban Development Corporation, d/b/a Empire State Development Corporation

(“ESDC”), adopted a General Project Plan (the “GPP”) for the Atlantic Yards Land Use Improvement and Civic Project (the “Project”) on December 8, 2006, that ESDC’s determination has been the subject of extensive litigation and has been consistently sustained by the courts; that ESDC’s determination to use eminent domain in furtherance of the Project has been sustained by the federal courts (*see Goldstein v. Pataki*, 516 F.3d 50 (2d Cir.), *cert. denied*, 128 S.Ct. 2964 (2008)) and the state courts (*see Anderson v. N.Y.S. Urban Development Corp.*, 45 A.D.3d 583 (2d Dep’t 2007), *lv. to app. denied*, 10 N.Y.3d 710 (2008), and *Goldstein v. N.Y.S. Urban Development Corp.*, 64 A.D.3d 168 (1st Dep’t 2009), *appeal heard on October 14, 2009*), and that petitioners’ prior challenges to ESDC’s determination as allegedly violative of the Urban Development Corporation Act (the “UDC Act”) and the State Environmental Quality Review Act (“SEQRA”) also have been rejected by the courts (*see Development Don’t Destroy (Brooklyn), Inc. v. Urban Development Corp.*, 59 A.D.3d 312 (1st Dep’t 2009), *lv. to app. denied*, ___ A.D.3d ___ (1st Dep’t June 20, 2009), *motion for leave to appeal pending* (Motion No. 2009-903)).

3. FCRC denies the allegations contained in paragraph 3 of the petition, except that it admits the changes to the Project that are described in the MGPP are minor.

4. FCRC denies the allegations contained in paragraph 4 of the petition.

5. FCRC denies the allegations contained in paragraph 5 of the petition, except that it admits that at the time that ESDC adopted the GPP in 2006 it was contemplated that FCRC would make a single cash payment of \$100 million to the Metropolitan Transportation Authority (the "MTA"), in addition to other consideration, for the right to develop above the MTA's Vanderbilt Yard Rail facility, admits that on June 24, 2009, the Board of Directors of the MTA and two of its affiliates (the "MTA Board") approved revised business terms pursuant to which FCRC affiliates would acquire the rights to develop over the Vanderbilt Yard for \$100 million plus interest and other consideration, with payment to be made in stages, with the first stage to be acquired for an initial cash payment of \$20 million and other consideration, and admit that ESDC approved modifications to the GPP on September 17, 2009.

6. FCRC denies the allegations contained in paragraph 6 of the petition.

7. FCRC denies the allegations contained in paragraph 7 of the petition, except that it admits that under the UDC Act a "land use

improvement project” is a project that is intended to eliminate or alleviate substandard or insanitary conditions.

8. FCRC denies the allegations contained in paragraph 8 of the petition.

9. FCRC denies the allegations contained in paragraph 9 of the petition.

10. FCRC denies the allegations contained in paragraph 10 of the petition.

11. FCRC denies the allegations contained in paragraph 11 of the petition.

12. FCRC denies the allegations contained in paragraph 12 of the petition, except that it admits that the Project has consistently been divided into two phases for purposes of conducting the necessary environmental reviews, that the Project will cover 22 acres of land in and around Vanderbilt Yard, that the Vanderbilt Yard is a working rail yard owned by the MTA, that the Vanderbilt Yard occupies approximately nine acres and is situated in proximity to the intersection of Flatbush and Atlantic Avenues in Brooklyn, which are busy thoroughfares, and that the Project is a mixed-use redevelopment plan that is receiving some public subsidies.

13. FCRC admits the allegations contained in paragraph 13 of the petition, except that it denies that the only purpose of the Barclay Center arena is for the New Jersey Nets basketball franchise, and it avers that the Project will include 16 other buildings of various heights, that at least 2,250 of the residential units planned for the Project will be “affordable” housing units that rent at below-market rates, and that the Project also will include other significant public amenities.

14. FCRC denies the allegations contained in paragraph 14 of the petition, except that it admits that the site of the Project is in walking distance from some low-rise brownstone neighborhoods that experienced increases in real estate values during the 15 years preceding the current economic downturn, that the Project also is walking distance from high-density areas (including what until recently was Brooklyn’s tallest building), and that there has been a small amount of conversion of commercial buildings to residential condominium buildings in and near the Project footprint.

15. FCRC denies the allegations contained in paragraph 15 of the petition, except that it admits that the Project will contain, among other things, the elements set forth in paragraph 15 (except that the hotel is only a possible use), and that those elements will benefit the public.

16. FCRC denies the allegations contained in paragraph 16 of the petition.

17. FCRC admits the allegations contained in paragraph 17 of the petition.

18. FCRC admits the allegations contained in paragraph 18 of the petition, except that it denies that the additional residential units and the publicly accessible open space are being deferred and that, prior to the 2009 modifications, the up to 4,000 additional residential units and eight acres of publicly accessible open space ever were anticipated to be built as part of Phase I of the Project.

19. FCRC admits the allegations contained in paragraph 19 of the petition.

20. FCRC denies the allegations contained in paragraph 20 of the petition, except that it admits that it entered into two Memoranda of Understanding (the "MOU") with ESDC in February 2005, which did not obligate ESDC to take any particular action regarding final approval of the Project, and it respectfully refers the Court to the MOUs for a complete and accurate statement of their contents.

21. FCRC denies the allegations contained in paragraph 21 of the petition, except that it admits that ESDC declared itself the “lead agency” under SEQRA and issued a draft scoping document in September 2005.

22. FCRC denies the allegations contained in paragraph 22 of the petition, except that it admits that, in accordance with applicable legal requirements, ESDC published a proposed General Project Plan and a Draft Environmental Impact Statement for the Project in July 2006, held a public hearing on the Project, and received extensive public comments on the Project until September 29, 2006, when the public comment period was closed, which comments were reviewed and considered by ESDC.

23. FCRC admits the allegations contained in paragraph 23 of the petition.

24. FCRC denies the allegations contained in paragraph 24 of the petition.

25. FCRC denies the allegations contained in paragraph 25 of the petition, except that it admits that despite substantial progress in building the Project, progress has been delayed by the pendency of multiple litigations (including the prior litigations brought by the petitioners in this proceeding), and the current economic downturn has exacerbated the difficulties experienced by ESDC and FCRC in implementing the Project.

26. FCRC denies the allegations contained in paragraph 26 of the petition, except that it admits that the MTA and FCRC have not finalized a purchase agreement for the sale by the MTA to FCRC affiliates of the right to develop over the Vanderbilt Yard.

27. FCRC denies the allegations contained in paragraph 27 of the petition, except that it admits that FCRC and the MTA entered into a license agreement pursuant to which FCRC became obligated to perform, and has performed, substantial work on the MTA's property, including construction of a temporary rail yard that will allow the dismantling of the existing rail yard.

28. FCRC denies the allegations contained in paragraph 28 of the petition, except that it admits that on June 24, 2009, the MTA Board approved revised business terms that had been negotiated by the MTA and FCRC, and it respectfully refers the Court to the MTA Board's resolution and the documents that were submitted to the MTA Board for a complete statement of those business terms.

29. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the petition.

30. FCRC denies the allegations contained in paragraph 30 of the petition, except that it admits that on June 23, 2009, the ESDC's Board of Directors (the "ESDC Board") approved modifications to the GPP and scheduled a public hearing on those modifications, and FCRC respectfully refers the Court to the record of the proceedings before the ESDC Board for a complete and accurate statement of its contents.

31. FCRC denies the allegations contained in paragraph 31 of the petition, except that it admits that one of the documents that was presented to the ESDC Board was a "Technical Memorandum" prepared by the ESDC's staff and outside consultants, and that this document thoroughly considered the question of whether the proposed modifications to the GPP reasonably could be expected to result in adverse environmental impacts that were new or that otherwise were different from those that had been addressed in the Final Environmental Impact Statement (the "FEIS") for the Project.

32. FCRC admits the allegations contained in paragraph 32 of the petition.

33. FCRC denies the allegations contained in paragraph 33 of the petition, except that it admits that ESDC received some comments that were critical of the modifications to the GPP and some that were supportive, and

that some of the critical comments demanded that ESDC prepare a Supplemental Environmental Impact Statement (“SEIS”), and FCRC respectfully refers the Court to those comments for a complete and accurate statement of their contents.

34. FCRC denies the allegations contained in paragraph 34 of the petition, except that it admits that opponents of the Project submitted what they characterized as an expert real estate market analysis and that this purported analysis purported to show that the Project could not be completed by 2019 and would be likely to require an additional twenty years for completion.

35. FCRC admits the allegations contained in paragraph 35 of the petition, except that it lacks knowledge or information sufficient to form a belief as to the truth of the allegation as to when the ESDC Board received the responses to the public comments and when ESDC’s staff informed the ESDC Board of the KPMG report.

36. FCRC lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraph 36 of the petition, except that it admits that the ESDC Board’s September 17, 2009 meeting began at or about 10:30 a.m.

37. FCRC admits the allegations contained in paragraph 37 of the petition.

38. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the petition, except that it admits, upon information and belief, that petitioner Develop Don't Destroy (Brooklyn), Inc. ("DDDB") is a not-for-profit corporation, and it denies that DDDB's mission is anything other than to oppose the Project.

39. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the petition.

40. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the petition, except that it denies that there are flaws in the environmental review of the Project, and it asserts that petitioners are barred and collaterally estopped by prior judicial determinations from contending that there are flaws in the Project's environmental review.

41. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the petition.

42. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the petition, except that it denies that the Project is expected to have significant adverse impacts on traffic conditions other than those that were addressed in the FEIS, which has been judicially determined to be legally sufficient and compliant with SEQRA.

43. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the petition, except that it admits that the original Bear's Garden is located on Flatbush Avenue at Pacific Street in Brooklyn, and it denies that this garden is within the footprint of the Project and is clean and safe.

44. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the petition.

45. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the petition.

46. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the petition, except that it denies that supporters of the Project were invited to

attend the June 16, 2005 meeting, denies that the FEIS is in any way inadequate, asserts that petitioners are collaterally estopped from claiming that the FEIS is in any way inadequate, and denies that ESDC was obligated to prepare an SEIS or that there has been a failure to fully consider the environmental impacts that reasonably could be anticipated from the modifications to the Project.

47. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the petition.

48. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the petition.

49. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the petition, except that it denies that the Project constitutes an instance of a lack of democracy in development.

50. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the petition.

51. FCRC denies the allegations contained in paragraph 51 of the petition and respectfully refers the Court to the FEIS and the Technical Memorandum for a complete and accurate statement of their contents, except that FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding the purported concerns of petitioner East Pacific Block Association, Inc., and asserts that petitioners are barred from asserting complaints about the FEIS.

52. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the petition, except that it denies that the Fort Greene neighborhood borders the Project site.

53. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the petition, except that it admits that Fort Greene Park is a New York City park, that a portion of the park is located within one-half mile of the Project site, and that the park is an important resource for nearby communities.

54. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the petition, except that it denies that storm water and waste water from the Project site will flow into the Gowanus Canal.

55. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the petition, except that it respectfully refers the Court to the FEIS and to the comments on the modifications to the GPP that were proposed in 2009 for complete and accurate statements of their contents.

56. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the petition, except that it denies that the Project will have any significant adverse impacts that were not addressed in the FEIS.

57. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the petition.

58. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the petition, except that it denies that Clinton Hill borders the Project's footprint.

59. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the petition.

60. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the

petition, except that it denies that the Project will have significant adverse environmental impacts that have not been identified in the FEIS and denies that FCRC has created blight conditions within the Project footprint or that the Project will have any blighting influence on adjacent communities.

61. FCRC admits the allegations contained in paragraph 61 of the petition.

62. FCRC admits the allegations contained in paragraph 62 of the petition, including the allegation that Atlantic Yards Development Co., LLC and Brooklyn Arena, LLC are affiliates of FCRC, but FCRC denies that its principal place of business is at “1 Metrotech Center North” and that it has sole responsibility for the planning and implementation for the Project, and FCRC does not understand and is unable to respond to the allegation that “FCRC includes its affiliated companies, Atlantic Yards Development Co., LLC and Brooklyn Arena, LLC.”

63. FCRC admits the allegations contained in paragraph 63 of the petition.

64. FCRC admits the allegations contained in paragraph 64 of the petition, except asserts that the petition was denied and dismissed by Justice Joan A. Madden of this Court, and that Justice Madden’s decision was affirmed by the Appellate Division.

65. FCRC denies the allegations contained in paragraph 65 of the petition and respectfully refers the Court to the motion for leave to appeal for a complete and accurate statement of its contents.

66. Responding to paragraph 66 of the petition, FCRC denies the implication that there ever could be circumstances in which the validity of ESDC's 2006 blight determination could be subject to review in this proceeding.

67. FCRC denies the allegations contained in paragraph 67 of the petition.

68. Paragraph 68 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond, except that FCRC admits that ESDC was created pursuant to the UDC Act.

69. Paragraph 69 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond, except that FCRC admits that, with the consent of the City of New York, ESDC has determined to exercise its power to override the applicable provisions of New York City's Zoning Resolution in furtherance of the Project, and that the Project does not comply with several provisions of the Zoning Resolution.

70. Paragraph 70 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

71. FCRC denies the allegations contained in paragraph 71 of the petition, except that it admits that the entire Project is a “land use improvement project” under the UDC Act and that the arena portion of the Project is also a “civic project” under the UDC Act.

72. Paragraph 72 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

73. Paragraph 73 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

74. Paragraph 74 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

75. Paragraph 75 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

76. Paragraph 76 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

77. Paragraph 77 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

78. Paragraph 78 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

79. Paragraph 79 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

80. Paragraph 80 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

81. Paragraph 81 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

82. Paragraph 82 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

83. Paragraph 83 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

84. FCRC admits the allegations contained in paragraph 84 of the petition, except that it denies that the elimination of blight is the principal purpose of the Project.

85. FCRC denies the allegations contained in paragraph 85 of the petition and respectfully refers the Court to the GPP that was adopted by ESDC in 2006 for a complete and accurate statement of its contents.

86. FCRC denies the allegations contained in paragraph 86 of the petition.

87. FCRC denies the allegations contained in paragraph 87 of the petition, except that it admits that, at the time of the adoption of the GPP in

2006, it was contemplated that FCRC affiliates would acquire and pay for all rights to develop on and over the Vanderbilt Yard in a single transaction.

88. FCRC denies the allegations contained in paragraph 88 of the petition and respectfully refers the Court to the 2006 blight study for a complete and accurate statement of its contents.

89. FCRC denies the allegations contained in paragraph 89 of the petition.

90. FCRC denies the allegations contained in paragraph 90 of the petition and respectfully refers the Court to the business terms that have been agreed to by the MTA and FCRC for a complete and accurate statement of their contents.

91. FCRC denies the allegations contained in paragraph 91 of the petition, except that it admits that, under the revised business terms that have been agreed to by FCRC and the MTA, the initial consideration required to be paid by FCRC or its affiliates for the right to develop on the MTA property on the city block that is identified as Block 1119 on the Tax Map includes the payment of \$20 million in cash to the MTA, and that the acquisition of those rights are necessary for the construction of the first phase of the Project.

92. FCRC denies the allegations contained in paragraph 92 of the petition and respectfully refers the Court to the business terms that have been agreed to by the MTA and FCRC for a complete and accurate statement of their contents.

93. FCRC denies the allegations contained in paragraph 93 of the petition and respectfully refers the Court to the business terms that have been agreed to by the MTA and FCRC for a complete and accurate statement of their contents.

94. FCRC denies the allegations contained in paragraph 94 of the petition and respectfully refers the Court to the business terms that have been agreed to by the MTA and FCRC for a complete and accurate statement of their contents.

95. FCRC denies the allegations contained in paragraph 95 of the petition and respectfully refers the Court to the business terms that have been agreed to by the MTA and FCRC for a complete and accurate statement of their contents.

96. FCRC denies the allegations contained in paragraph 96 of the petition and respectfully refers the Court to the business terms that have been agreed to by FCRC and the MTA for a complete and accurate statement of their contents.

97. FCRC denies the allegations contained in paragraph 97 of the petition, except that it admits that, as a penalty for FCRC's failure to fulfill its obligations, the MTA has the right to draw down against the letter of credit and retain the development rights attributable to the Vanderbilt Yard.

98. FCRC denies the allegations contained in paragraph 98 of the petition.

99. FCRC denies the allegations contained in paragraph 99 of the petition.

100. FCRC denies the allegations contained in paragraph 100 of the petition.

101. FCRC denies the allegations contained in paragraph 101 of the petition and respectfully refers the Court to the business terms that have been agreed to by the MTA and FCRC for a complete and accurate statement of their contents.

102. FCRC denies the allegations contained in paragraph 102 of the petition and respectfully refers the Court to the business terms that have been agreed to by the MTA and FCRC for a complete and accurate statement of their contents.

103. FCRC denies the allegations contained in paragraph 103 of the petition.

104. FCRC denies the allegations contained in paragraph 104 of the petition.

105. FCRC denies the allegations contained in paragraph 105 of the petition.

106. FCRC denies the allegations contained in paragraph 106 of the petition.

107. FCRC denies the allegations contained in paragraph 107 of the petition.

108. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 108 of the petition, and it respectfully refers the Court to the KPMG report for a complete and accurate statement of its contents.

109. FCRC denies the allegations contained in paragraph 109 of the petition and refers the Court to the KPMG report for a complete and accurate statement of its contents.

110. FCRC admits the allegations contained in paragraph 110 of the petition but respectfully refers the Court to the KPMG report for a complete and accurate statement of its contents.

111. FCRC denies the allegations contained in paragraph 111 of the petition.

112. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 112 of the petition, except that it admits that the materials annexed to the petition as Exhibit E were presented to the ESDC Board at or prior to its September 17, 2009 meeting.

113. FCRC admits the allegations contained in paragraph 113 of the petition but respectfully refers the Court to the "Project Leases Abstract" for a complete and accurate statement of its contents.

114. FCRC denies the allegations contained in paragraph 114 of the petition.

115. FCRC denies the allegations contained in paragraph 115 of the petition and respectfully refers the Court to the "Project Leases Abstract" and the modified GPP for complete and accurate statements of their respective contents.

116. FCRC denies the allegations contained in paragraph 116 of the petition and respectfully refers the Court to the "Project Leases Abstract" for a complete and accurate statement of its contents.

117. FCRC admits the allegations contained in paragraph 117 of the petition but respectfully refers the Court to the lease abstract for a complete statement of its contents.

118. FCRC denies the allegations contained in paragraph 118 of the petition.

119. FCRC denies the allegations contained in paragraph 119 of the petition, except that it admits that ESDC was aware of the revised business terms that had been agreed to by the MTA and FCRC.

120. FCRC denies the allegations contained in paragraph 120 of the petition and respectfully refers the Court to the public comments on the proposed modifications to the GPP for a complete and accurate statement of their contents.

121. FCRC denies the allegations contained in paragraph 121 of the petition.

122. FCRC denies the allegations contained in paragraph 122 of the petition.

123. FCRC denies the allegations contained in paragraph 123 of the petition.

124. FCRC denies the allegations contained in paragraph 124 of the petition.

125. FCRC denies the allegations contained in paragraph 125 of the petition.

126. FCRC denies the allegations contained in paragraph 126 of the petition.

127. Responding to paragraph 127 of the petition, FCRC repeats and realleges as fully as if here set forth at length its responses to the allegations that are incorporated by reference in paragraph 127.

128. FCRC admits the allegations contained in paragraph 128 of the petition but respectfully refers the Court to the modified GPP for a complete and accurate statement of its contents.

129. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 129 of the petition, except that it admits that the document entitled "Project Leases Abstract" was submitted to the ESDC Board at or prior to its September 17, 2009 meeting.

130. FCRC denies the allegations contained in paragraph 130 of the petition, except that it admits that the document entitled "Project Leases Abstract" summarizes some of FCRC's obligations and respectfully refers the Court to the "Project Leases Abstract" for a complete and accurate statement of its contents.

131. FCRC admits the allegations contained in paragraph 131 of the petition but respectfully refers the Court to the "Project Leases Abstract" for a complete and accurate statement of its contents.

132. FCRC denies the allegations contained in paragraph 132 of the petition.

133. FCRC denies the allegations contained in paragraph 133 of the petition.

134. Responding to paragraph 134 of the petition, FCRC repeats and realleges as fully as if here set forth at length its responses to the allegations that are incorporated by reference in paragraph 134.

135. FCRC denies the allegations contained in paragraph 135 of the petition, except that it admits that ESDC's staff and consultants prepared a Technical Memorandum that concluded that the modifications to the Project could not reasonably be expected to result in adverse environmental impacts that were new or otherwise different from those that had been addressed in the FEIS and therefore did not require the preparation of an SEIS, and respectfully refers the Court to the Technical Memorandum for a complete and accurate statement of its contents.

136. FCRC denies the allegations contained in paragraph 136 of the petition, except that it admits that in its September 17, 2009 resolution the

ESDC Board, acting as lead agency under SEQRA, adopted and agreed with the conclusions reached in the Technical Memorandum and determined that an SEIS was unnecessary, and respectfully refers the Court to the ESDC Board's September 17, 2009 resolution and the Technical Memorandum for complete and accurate statements of their contents.

137. FCRC denies the allegations contained in paragraph 137 of the petition and respectfully refers the Court to the Technical Memorandum for a complete and accurate statement of its contents.

138. FCRC denies the allegations contained in paragraph 138 of the petition except that it admits that the Technical Memorandum, in addition to considering the anticipated schedule for construction of the Project, also considered the potential consequences of an additional unanticipated delay, and respectfully refer the Court to the Technical Memorandum for a complete and accurate statement of its contents.

139. FCRC denies the allegations contained in paragraph 139 of the petition and respectfully refers the Court to the Technical Memorandum for a complete and accurate statement of its contents.

140. FCRC denies the allegations contained in paragraph 140 of the petition and respectfully refers the Court to the Technical Memorandum for a complete and accurate statement of its contents.

141. FCRC denies the allegations contained in paragraph 141 of the petition and respectfully refers the Court to the Technical Memorandum and ESDC's responses to comments for complete and accurate statements of their contents.

142. FCRC denies the allegations contained in paragraph 142 of the petition.

143. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 143 of the petition.

144. FCRC denies the allegations contained in paragraph 144 of the petition, except it admits that ESDC relied upon the KMPG report.

145. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 145 of the petition.

146. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 146 of the petition.

147. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 147 of the

petition, except that FCRC denies that it is unreasonable to anticipate that the entire Project can be completed by 2019.

148. FCRC denies the allegations contained in paragraph 148 of the petition.

149. FCRC denies the allegations contained in paragraph 149 of the petition.

150. FCRC denies the allegations contained in paragraph 150 of the petition.

151. FCRC denies the allegations contained in paragraph 151 of the petition.

152. FCRC denies the allegations contained in paragraph 152 of the petition.

153. FCRC denies the allegations contained in paragraph 153 of the petition, and furthermore denies the implication of those allegations that the Project is expected to require twenty years to complete.

154. FCRC denies the allegations contained in paragraph 154 of the petition.

155. FCRC denies the allegations contained in paragraph 155 of the petition.

156. FCRC denies the allegations contained in paragraph 156 of the petition.

157. FCRC denies the allegations contained in paragraph 157 of the petition.

158. Paragraph 158 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

159. FCRC denies the allegations contained in paragraph 159 of the petition.

160. FCRC denies the allegations contained in paragraph 160 of the petition.

161. FCRC denies each and every allegation of the petition not otherwise responded to in this answer.

Objections in Point of Law

162. To the extent that the petition in this proceeding objects to ESDC's adoption of the GPP on December 8, 2006 (including but not limited to the adequacy of the FEIS, ESDC's findings under SEQRA and ESDC's determination that the Project constitutes a "land use improvement project" under the UDC Act) or raises issues that could have been raised in prior litigations challenging Project approvals, petitioners' claims are barred

by principles of issue preclusion, including *res judicata* and collateral estoppel.

163. To the extent that the petition in this proceeding objects to ESDC's adoption of the GPP on December 8, 2006 (including but not limited to the adequacy of the FEIS, ESDC's findings under SEQRA, and ESDC's determination that the Project constitutes a "land use improvement project" under the UDC Act), petitioners' claims are barred by the four-month statute of limitation set forth in CPLR 217.

164. Each of the first and second ostensible causes of action asserted in the petition in this proceeding fail to state a cause of action.

165. With respect to the third cause of action asserted in the petition, ESDC identified the relevant areas of environmental concern, took a "hard look" at them, and made a reasoned elaboration of its conclusion that the modifications to the GPP were not reasonably anticipated to cause significant adverse environmental impacts beyond those that had been examined in the FEIS, and that therefore no supplemental EIS was required.

Affirmative Statement of the Case

A. The Project

166. The Atlantic Yards Land Use Improvement and Civic Project (the "Project") is an ambitious public-private undertaking to transform a largely derelict 22-acre swath of underutilized land near central Brooklyn

into a vibrant, revitalized community. The 22-acre Project site is bounded by Flatbush and Fourth Avenues to the west, Vanderbilt Avenue to the east, Atlantic Avenue to the north, and Dean and Pacific Streets to the south. The site includes Blocks 927, 1118, 1119, 1120, 1121 and 1127, a portion of Block 1128, and Block 1129. Maps that show the Project site in its present configuration and the Project as it is intended to appear once completed are exhibits to ESDC's answer in this proceeding.

167. The Project site includes, on blocks 1119, 1120 and 1121, the Vanderbilt Yard, which is owned by the MTA and is used by its affiliate, the Long Island Railroad (the "LIRR"), to store and clean cars for its commuter rail service. The Vanderbilt Yard occupies approximately 8.5 acres of the 22-acre Project site. For the most part, the Vanderbilt Yard is an open trench below the grade of the surrounding streets.

168. The Project is intended, among other things, to eliminate blight from the 22-acre Project site, bring a multipurpose arena to Brooklyn, remediate environmental contamination, create between 5,325 and 6,430 units of new housing, including 2,250 units of affordable (*i.e.*, below-market-rate) housing, as well as Class A commercial office space, neighborhood retail and community facility space (including a health care center and, at the City's option, a public school), eight acres of publicly

accessible open space, and possibly a hotel. The Project will reconfigure, upgrade and partially relocate the Vanderbilt Yard to meet current railroad standards and address the current and future needs of the LIRR. The Project also will include a new subway station entrance and other enhancements to the MTA's New York City Transit ("NYCT") Atlantic Avenue/Pacific Street subway station complex.

169. The Project also will be a powerful engine of economic growth. ESDC estimates that construction of the Project will generate 16,427 new direct job years and 25,133 total job years (including direct, indirect and induced job years), resulting in \$1.414 billion in total personal income (including direct, indirect and induced). Construction employment, which will be all union labor, is estimated to generate \$57.6 million in City tax revenues and \$94.1 million in State tax revenues on a net present value basis. Operations at the arena and other components of the Project will create 3,998 new jobs annually in New York City and 4,277 jobs annually in New York State (including New York City). It also is predicted that the Project will generate \$657.6 million in City tax revenues and \$794.7 million in State tax revenues.

170. The arena, to be known as Barclays Center, will be the home of the New Jersey Nets N.B.A. basketball team and will bring a top-tier

professional sports franchise to Brooklyn for the first time since the Brooklyn Dodgers baseball team left more than 50 years ago. In addition to serving as the home of the Nets, the arena will host amateur athletic events, circuses, graduations and other civic, community-sponsored and entertainment events. The arena is being designed by Ellerbe Becket, a well-respected international architecture firm that has been designing sports and entertainment arenas (as well as other types of buildings) for over 40 years (*see* www.ellerbebeck.com) and SHoP Architects, a highly-regarded and innovative New York-based design firm (*see* www.shoparc.com).

171. An important aspect of the Project is its sponsors' entry into an extensive Community Benefits Agreement (Exhibit A hereto) with a broad coalition of Brooklyn community groups and community action organizations.¹ This Agreement is historic, because it is the first such agreement ever entered into by the developer of a major New York City project, and may set a standard for future projects in the City and around the country.

¹ These Brooklyn community organizations are Brooklyn Endeavor Experience, led by Delia Hunley-Adossa; Brooklyn United for Innovative Local Development, led by James Caldwell; Brooklyn Voices for Children, led by Joe Coello; the Association for Community Reform Now, led by Bertha Lewis; Downtown Brooklyn Neighborhood Alliance, led by Rev. Dr. Herbert Daughtry; Faith in Action, led by Rev. Lydia Sloley; New York State Association of Minority Contractors, led by Elenora Bernard; and Public Housing Communities, led by Charlene Nimmons.

172. By the Community Benefits Agreement, the Project's sponsors have bound themselves to carefully articulated commitments to the local communities, which are intended to address in a very serious manner the problems of unemployment and underemployment, lack of affordable housing and other serious issues that have plagued communities within Brooklyn. As one example, not only does the Agreement commit the Project's sponsors to assuring that a percentage of the construction contracts for the Project will be awarded to minority- or women-owned businesses, but it also obligates the sponsors to establish, in consultation with the other parties to the Agreement, programs to hire residents of the surrounding communities who are members of minorities, women or people of low or moderate-income, and to train them for permanent employment (§ IV(A)). The Community Benefits Agreement also requires that priority for employment opportunities be given to residents of public housing and low- and moderate-income residents of the neighboring communities (§ IV(A)(3)), and also commits the Project's sponsors to offer "all residential tenants currently renting and legally occupying a legal residential dwelling unit as their primary residence within the Project site," and who are in good standing under their leases and had resided in their current residence for at least one year as of the date of the Agreement (June 27, 2005), with

“reasonably comparable living space in a new unit within the Project, at their then current rent,” plus interim housing at no greater cost than their current rent, plus the payment of brokerage commissions and reasonable relocation costs (§ VI(D)(1)). These commitments are only a handful of those contained in the Agreement, but all of the Agreement’s commitments have teeth in the form of substantial legally enforceable penalties for a failure by FCRC to fulfill its obligations.

173. In addition to the community groups that are parties to the Community Benefits Agreement, there is widespread public support for the Project as demonstrated at the public meetings on the Project, as well as opposition. The Project’s many supporters have included Governor Paterson and his predecessors, Mayor Bloomberg, City Comptroller Thompson, Senator Schumer, Brooklyn Borough President Marty Markowitz and numerous members of the State Legislature and City Council.

B. FCRC and the MTA

174. Early in its work on the Project, FCRC began discussions with the MTA regarding potential development over the 8.5 acre below-grade Vanderbilt Yard. The Project includes the dismantling of the existing yard, which will be the site of the Barclays Center arena and other buildings, and the construction of a new yard on blocks 1120 and 1121, the construction of

a platform over the new yard and the construction of new buildings and open space on this platform.

175. On February 24, 2005, the MTA and FCRC executed a non-binding letter agreement pursuant to which the MTA agreed to cooperate with FCRC in developing its plans for the Project. This letter agreement did not obligate the MTA to sell its properties to FCRC, but instead provided that “[n]othing in this letter shall obligate MTA to sell or lease MTA properties to FCRC, EDC or ESDC or preclude MTA from determining, in its sole discretion, to use a competitive process, including, without limitation, competitive bidding, for determining the fair market value of MTA Properties and/or to assist the MTA Board in determining to whom to sell or lease MTA Properties.” The letter agreement also set forth several obligations on the part of FCRC should the MTA decide to sell or lease the properties to FCRC, including technical requirements for future design and operations, and planning, construction, operating, maintenance and capital costs to be borne by FCRC.

176. On May 24, 2005, the MTA issued a request for proposals (“RFP”) for the purchase of the property and development rights attributable to the Vanderbilt Yard. The RFP contained detailed requirements as well as

criteria for selection of the winning proposal. The RFP required all bids to be submitted on or before July 6, 2005.

177. In connection with the RFP, the MTA obtained an independent appraisal of the Vanderbilt Yard. The appraisal valued the yard at \$214.5 million, or at \$271.3 million without deducting the costs of track relocation and platform construction.

178. FCRC and one other developer, Extell Development Company ("Extell"), submitted formal bids. Extell's proposal was for \$150 million in cash.

179. FCRC initially offered cash in the amount of \$50 million for the development rights plus substantial additional consideration. Specifically, FCRC also offered to (1) build a new Vanderbilt Yard facility for the MTA, (2) conduct environmental remediation and clean-up of the MTA's property, (3) compensate MTA for increased operating costs, (4) construct additional mass transit improvements relating to the nearby subway station, and (5) generate millions of dollars of sales tax revenue to the MTA by the Project.

180. On July 27, 2005, the MTA's Board of Directors approved a 45-day period of exclusivity to negotiate the business terms of an agreement with FCRC. On September 14, 2005, the MTA's Board of Directors approved the rejection of Extell's bid and authorized the MTA's staff to

negotiate final agreements with FCRC and to take such other actions as necessary to comply with legal requirements. On the same day, the MTA and FCRC also announced that FCRC would increase its cash payment to \$100 million. The total value of FCRC's increased bid was approximately \$379,400,000.

C. The Public Approval Process

181. In February 2005, ESDC, the City of New York and its Economic Development Corporation and FCRC entered into two non-binding memoranda of understanding which outlined the proposed Project, its financing and anticipated public review, among other things, and served to ensure that FCRC would reimburse the agencies for planning and review costs. These MOU's did not obligate ESDC to approve the Project.

182. On September 16, 2005, pursuant to the State Environmental Quality Review Act ("SEQRA") (Environmental Conservation Law § 8-0101, *et seq.*), and its implementing regulations (6 NYCRR Part 617), ESDC issued a notice of intent to serve as lead agency for environmental review of the Project and a draft Scope of Work for an environmental impact statement.² On March 31, 2006, ESDC issued a final Scope of Work, which

² A draft scope of work is the document by which the lead agency identifies the potentially adverse impacts related to the proposed action which are to be addressed in the environmental impact statement, outlines the analyses to be undertaken in preparing the DEIS, and eliminates consideration of those impacts that are irrelevant or nonsignificant (6 NYCRR § 617.8(a)).

incorporated consideration of the public comments received on the draft (§ 617.8(f)). ESDC then prepared a comprehensive draft environmental impact statement (“DEIS”) in accordance with the final Scope of Work (§ 617.9(2)). On July 18, 2006, the Board of Directors of ESDC accepted the DEIS as complete and issued a Notice of Completion (§ 617.9(3)).

183. At the same time, ESDC’s directors approved a draft General Project Plan (the “GPP”) for the Project pursuant to the Urban Development Corporation Act (the “UDC Act”). The draft GPP indicated that the Project would be a “civic project” and a “land use improvement project” within the meaning of the UDC Act. Attached to the draft GPP as an exhibit was a study prepared for ESDC, entitled “Atlantic Yards Arena and Redevelopment Project Blight Study” (the “Blight Study”). The Blight Study comprehensively surveyed all of the properties in the Project site and concluded that the Project site suffered from unsanitary and substandard conditions. The DEIS and draft GPP, including the Blight Study, were made available to the public for comment.

184. On August 23, 2006, ESDC held a lengthy public hearing to consider the DEIS, the draft GPP and the proposed condemnation of property on the Project site pursuant to the Eminent Domain Procedure Law (“EDPL”). ESDC held two community forums on September 12 and

September 18, 2006, and also accepted written comments until September 29, 2006.

185. On November 27, 2006, ESDC accepted the final environmental impact statement ("FEIS"), which is approximately 7,500 pages in length. Portions of the FEIS are being submitted by ESDC with its answer in this proceeding. The FEIS exhaustively analyzes the potential significant adverse environmental impacts resulting from the Project.

186. On December 8, 2006, ESDC adopted the modified GPP pursuant to the UDC Act, and adopted findings, pursuant to SEQRA, that the requirements of SEQRA had been met, and that the Project avoids or minimizes adverse environmental effects to the maximum extent practicable. ESDC also adopted findings pursuant to the EDPL that the public purposes of the Project include the elimination of blighted conditions on the Project site, the provision of affordable housing, open space and community facilities, the provision of a new arena for the Nets basketball team and for community events, the creation of a new state-of-the-art rail storage facility for the LIRR and other mass transit improvements, and the environmental remediation of the site. In furtherance of these numerous public purposes, ESDC determined that it would exercise its power of eminent domain to acquire properties within the Project site.

187. On December 13, 2006, the MTA's Board of Directors approved and adopted SEQRA findings regarding the Project, and authorized its staff to conclude binding agreements with FCRC.

188. On December 20, 2006, the Public Authorities Control Board (whose three voting members are selected by, respectively, the Governor, the Temporary President of the Senate and the Speaker of the Assembly) approved the State's financial contribution to the Project.

D. The Litigations Challenging the Project

189. The Project's opponents, including petitioner DDDB, commenced *six* separate lawsuits challenging the above described actions and determinations by ESDC, the MTA and the other public agencies. While the appellate process in two of those litigations has not yet been completed, to date the Project's opponents have failed completely in their court challenges to the Project.

190. Among other things, the courts have determined that ESDC's use of eminent domain to condemn property for the Project is in furtherance of valid public purposes and therefore is proper under the Public Use clauses of the Federal and State Constitutions. *Goldstein v. Pataki*, 516 F.3d 50 (2d Cir.), *cert. denied*, 128 S. Ct. 2964 (2008), *aff'g* 488 F. Supp. 2d 254

(E.D.N.Y. 2007); Goldstein v. N.Y.S. Urban Development Corp., 64 A.D.3d 168 (2d Dep't 2009), appeal heard on Oct. 14, 2009.

191. In addition, the courts also have determined that ESDC and the MTA have fulfilled their obligations under SEQRA to examine the Project's environmental impacts, and that the Project qualifies as both a "land use improvement project" and a "civic project" under the UDC Act. Develop Don't Destroy Brooklyn v. Empire State Development Corp., 31 A.D.3d 144 (1st Dep't 2006), lv. to app. denied, 8 N.Y.3d 802 (2007); Anderson v. N.Y.S. Urban Development Corp., 45 A.D.3d 583 (2d Dep't 2007), lv. to app. denied, 10 N.Y.3d 710 (2008); Anderson v. N.Y.S. Urban Development Corp., 44 A.D.3d 437 (1st Dep't 2007); Develop Don't Destroy (Brooklyn), Inc. v. Urban Development Corp., 59 A.D.3d 312 (1st Dep't 2009), lv. to app. denied, ___ A.D.3d ___ (1st Dep't June 30, 2009), motion for leave to appeal pending (Motion No. 2009-903).

E. The Modified MTA Business Terms

192. FCRC has consistently and repeatedly demonstrated its commitment to the Project since its inception. Today, five years later, FCRC's commitment and determination are undiminished. Toward that end of building the Project, FCRC has continuously tried to reduce the need to use eminent domain for the Project by seeking to acquire as much of the

property on the Project site as it can through private voluntary agreements with owners or tenants, and thus far has invested \$277 million in acquiring properties from willing sellers and carrying those properties.

193. In addition, despite the delays resulting from the pendency of multiple litigations, commencing in early 2007, FCRC has performed extensive work – at a cost in excess of \$83 million – on those properties within the Project site that it has been able to acquire, or gain access to, through agreements with the property owners and/or tenants. This work includes the demolition of all but two vacant buildings that FCRC owns on the Project site (plus one City-owned building), the removal and relocation of publicly and privately owned utility infrastructure within the Project site (*i.e.*, sewer, water, telephone, gas, electricity and cable lines), and the construction and near completion of a new rail yard (at a cost to FCRC to date of approximately \$58 million), which is an essential step for constructing the new arena that will be the Project's first building.

194. However, the numerous litigations against the Project have delayed the Project, because ESDC has not proceeded to obtain ownership and possession of the properties that are being condemned during the pendency of these litigations. This delay, coupled with the severe economic downturn that began in 2008, hampered FCRC's ability to build the Project

in strict conformity with the timing of the financial obligations set forth in the 2006 approvals. Therefore, FCRC had discussions with ESDC and the MTA to make modifications to the Project that would preserve the Project without changing its fundamental scope or eliminating any of its components.

195. On June 24, 2009, the Boards of Directors of the MTA, LIRR and NYCT (the "MTA Board") authorized the MTA to agree to modified business terms with FCRC. The modified terms change the design of the replacement yard that FCRC is constructing for the LIRR, so that the yard will have a 56-car capacity and seven storage tracks plus a drill track (which allows trains to switch tracks), all built to the specifications of the LIRR. In this connection, the LIRR determined that it does not require a new rail yard of the size and capacity of the facility that FCRC originally proposed to construct. On June 22, 2009, the MTA approved General Design Criteria for the new rail yard.

196. The modified terms also amend the timing of FCRC's \$100 million payment to the MTA. The new FCRC-MTA terms provide for purchase of the arena block parcel first for \$20 million payable in full at closing. (Petition Ex. B, Attachment at p. 1.) An additional air rights parcel, which consists of six separate development parcels over the rail yard, may

be conveyed any time after substantial completion of the “Upgraded Yard,” upon full payment of the price of each development parcel (*id.* at p. 2). The total air rights parcel purchase price is \$80 million as of January 1, 2010, with interest of 6.5% per year (*id.*). The revised terms also set forth a timetable for installment payments of the \$80 million: \$8 million payable in \$2 million installments due June 1, 2012, 2013, 2014 and 2015, with the remainder to be paid in 15 equal annual installments of \$11,033,357 each, commencing on June 1, 2016. This timetable is not a schedule for implementation for the Project, but rather ensures a revenue stream to MTA from installment payments that is not dependent upon the timing of FCRC’s actual purchase of any particular development parcel.

197. The purchase price assigned to each development parcel is based on the total air rights parcel purchase price of \$80 million and the proportion of the square footage that may be built on each development parcel. As FCRC purchases one or more development parcels, it will receive a proportional credit against the total purchase price for all of the development parcels. Stated another way, if development parcels are purchased prior to June 1, 2012, FCRC will to pay the specific development parcel purchase price assigned to each parcel, and the installment payments will be proportionally reduced. Once FCRC has purchased all of the

development parcels, it no longer will be obligated to make further installment payments to the MTA. Because the entire Project is scheduled to be completed by 2019, FCRC expects and intends to acquire all of the development parcels over the rail yard before then.

198. The modified business terms also provide that FCRC will be obligated to provide the MTA with a letter of credit in the amount of \$86 million, which the MTA will be able to draw against in its entirety if FCRC fails to complete the replacement rail yard or abandons the Project (Petition Ex. B, Attachment at p. 1). FCRC and the MTA also will be entering into other agreements to effectuate the transaction, and these agreements will contain further provisions that penalize FCRC if it fails to meet development milestones with respect to the Project. In addition, FCRC and ESDC will be entering into further agreements to effectuate the Project.

199. As now modified, FCRC's proposal includes: (1) \$100 million in cash payments spread over time, with interest; (2) construction of the replacement yard, valued at approximately \$150 million; (3) environmental remediation of the MTA's property; (4) payments to the MTA for increases in net operating costs; (5) the construction of other mass transit improvements, including a new subway entrance expected to cost FCRC in excess of \$50 million; and (6) payments to the MTA from sales tax revenues

to be generated by the Project. These terms exceed the value of the terms approved by the MTA Board in 2005 and 2006, and exceed the appraised value of the Vanderbilt Yard development rights.

F. The Modified General Project Plan

200. As discussed above, the delays resulting from litigation, coupled with the 2008 economic downturn, led FCRC to begin discussions with ESDC and the MTA regarding minor modifications to the Project, primarily relating to timing.

201. On June 23, 2009, ESDC approved a Modified General Project Plan (the "MGPP") to allow for the acquisition of property for the Project by eminent domain in two phases rather than in one single acquisition, and to change the schedule for completion of the buildings to reflect the delays caused by litigation. A copy of the MGPP is being submitted by ESDC with its answer in this proceeding. Under the MGPP, Phase I of the Project, originally anticipated to be completed by 2010, now is anticipated to be completed by 2014. Phase II, originally anticipated to be completed by 2016, now is anticipated to be completed by 2019. Thus, the modified schedule reflects a shift in construction of the Project's two phases of about three years from what was originally contemplated.

202. Phase I of the Project is expected to include construction of the arena and five other buildings. The other buildings are expected to contain a mix of approximately 1,005 to 2,110 rental and condominium units, of which 30% will be affordable, except that if fewer than 1,005 units are built, at least 300 units must be affordable. The buildings also will include Class A commercial office space, ground-floor retail space and community facility space, and may include a 180-room hotel. In addition, the new LIRR rail yard will be constructed during Phase I as well as the new subway station entrance. There would be approximately 2,346 parking spaces on the Project site at the end of Phase I, including permanent parking on the arena block and interim surface parking on Block 1129. (See MGPP, at pp. 10, 14-15 [AR 4693, 4697-98].)³

203. During Phase II, the remaining eleven buildings will be constructed as well as eight acres of publicly accessible open space and an intergenerational community center. In addition, at the option of the Department of Education, a public school will be constructed in the base of one of the Phase II buildings. The balance of the affordable housing units will be built in Phase II. Not more than 50% of the total residential units in

³ Citations in this answer to "AR" refer to the Administrative Record that is being submitted to the Court by ESDC with its answer.

Phase II will be completed without completion of 50% of the Phase II affordable units. (MGPP, at pp. 16-19 [AR 4699-702].)

204. These modifications were analyzed by ESDC in a June 2009 Technical Memorandum prepared in conjunction with its environmental consultants to determine whether a supplemental EIS should be prepared. A copy of the Technical Memorandum is being submitted by ESDC with its answer in this proceeding. The Technical Memorandum also considered changes in the design of some buildings and the elimination of certain Project elements on the arena block and, to a lesser extent, Block 1129, that have occurred as design development has progressed. As observed in the Technical Memorandum, none of the changes associated with design development involve a change in the proposed uses of the Project buildings, and all buildings still are required to conform to the Design Guidelines established in 2006 by the GPP (Tech. Mem., at p. 4 [AR 4749]).

205. The Technical Memorandum described the prior FEIS, the Project status, the proposed changes and modifications to the Project as set forth in the MGPP, and changes in the background conditions and methodologies since completion of the FEIS. It then analyzed whether these changes reasonably could be expected to result in any significant adverse environmental impacts not addressed in the FEIS in each of the analysis

categories: land use, zoning and public policy; socioeconomic conditions; community facilities; open space; shadows; historic resources; urban design and visual resources; hazardous materials; infrastructure; traffic and parking; transit and pedestrians; air quality; noise; neighborhood character; construction impacts; and public health. These analyses showed that the changes would not result in any significant environmental impacts not previously addressed in the FEIS (Tech Mem., at p. 55 [AR 4808]).

206. The Technical Memorandum also considered a scenario in which the arena, transit access improvements, the new LIRR rail yard, a new Carlton Avenue bridge and the arena and one more building would be constructed, but the full build-out of the remainder of the Project would be delayed beyond 2019 as a result of prolonged adverse economic conditions (*id.* at pp. 55-63 [AR 4808-16]). The Technical Memorandum concluded that this delayed build-out also would not result in significant adverse environmental impacts that had not already been addressed in the FEIS (*id.* at p. 63 [AR 4816]).

207. ESDC conducted a public hearing on the proposed modifications to the GPP on July 29 and 30, 2009, accepted written comments on them thereafter, and conducted two public information sessions on the modifications.

208. On September 17, 2009, ESDC's Board of Directors affirmed the adoption of the MGPP. At the same time, based on the Technical Memorandum's analysis of the potential impacts of the modifications and background conditions, ESDC's Board of Directors concluded that the modifications to the Project would not result in significant adverse environmental impacts beyond those addressed in the FEIS.

209. This conclusion is supported by an expert's report of KPMG LLP, which was commissioned by ESDC counsel. KPMG's report concluded that the absorption rates of the real estate market supported the view that 2019 is a realistic completion date for the Project.

210. On the basis of the foregoing, ESDC reasonably and properly determined that no supplemental EIS was necessary in connection with the modifications to the GPP.

G. Petitioners' Latest Challenges

211. Petitioners commenced this latest Article 78 proceeding on October 16, 2009. The petition seeks to annul ESDC's September 17, 2009 approval of the MGPP. The petition alleges that the MGPP violates the UDC Act by causing and perpetuating blight rather than eliminating it, that the terms of a development agreement that is being negotiated by ESDC and

FCRC regarding affordable housing is inconsistent with the MGPP, and that the MGPP necessitated preparation of a supplemental EIS.

212. One week prior to the commencement of this proceeding, DDDDB and other petitioners commenced an Article 78 proceeding entitled Montgomery, et al. v. Metropolitan Transportation Authority, et al., Index No. 114304/09, in this Court. In that proceeding, the petitioners assert that the MTA's approval of modified business terms for its sale of the Vanderbilt Yard property and development rights to FCRC was unlawful and should be set aside. The respondents in that case – *i.e.*, the MTA and FCRC – have submitted their answers and other papers showing that the claim in that case is without merit.

213. In bringing this case and the Montgomery proceeding, the Project's opponents are simply making a last-ditch effort to use contrived claims to throttle the Project at a crucial juncture, in the hope that the pendency of litigation will kill the Project by preventing or delaying ESDC's and FCRC's efforts to proceed with the closing of critical tax-exempt financing for the Barclays Center arena and with construction of the arena.

214. In this connection, petitioners and their attorneys have made no secret of their intention to seek injunctive relief against one or more aspects of the Project, and of their intention to use the multiplicity of litigation to try

to scare investors away. For example, an article entitled “Foes of Bruce Ratner and Atlantic Yards hope to run out the clock before ground is broken,” published by *The Daily News* on October 21, 2009, reports on this lawsuit and the *Montgomery* proceeding and the two cases challenging the 2006 Project approvals that remain pending in the appellate courts (*Goldstein v. N.Y.S. Urban Development Corp.*, 64 A.D.3d 168 (2d Dep’t 2009), and *Develop Don’t Destroy (Brooklyn), Inc. v. Urban Development Corp.*, 59 A.D.3d 312 (1st Dep’t 2009)). In pertinent part, the article states:

The two suits, one filed last week and the other on Monday, come as Ratner tries to sell \$650 million in bonds and start construction on a new arena for the NBA’s Nets by Dec. 31 or lose crucial tax-exempt financing.

Jeff Baker, a lawyer for the 20 neighborhood groups that filed the suit, said they’d ask for an injunction to stop Ratner from breaking ground.

The article goes on to attribute the following quotation to “Daniel Goldstein,” who is described as the “spokesman for lead plaintiff Develop Don’t Destroy Brooklyn” (and who is, individually, the lead plaintiff in both *Goldstein v. N.Y.S. Urban Development Corp.*, *supra*, and *Goldstein v. Pataki*, 516 F.3d 50 (2d Cir.), *cert. denied*, 128 S.Ct. 2964 (2008)):

“I think bond buyers or potential investors should understand that there are four outstanding lawsuits against the project,” he added. “It’s a risky investment for that reason alone.”

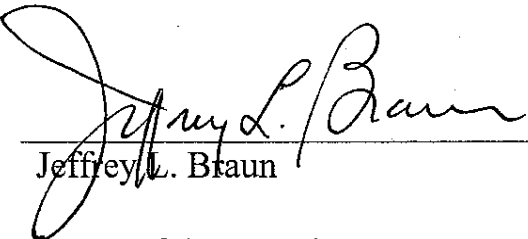
A print-out of the *Daily News* article is annexed hereto as Exhibit B.

215. As demonstrated by the foregoing and by ESDC's submission, ESDC has acted properly and lawfully in all respects, and the petition in this case is entirely without merit and should be denied.

WHEREFORE, FCRC demands judgment denying the petition, dismissing the proceeding, awarding petitioners nothing and awarding FCRC such other and further relief as is just and proper, including its costs and disbursements.

Dated: November 12, 2009
New York, NY

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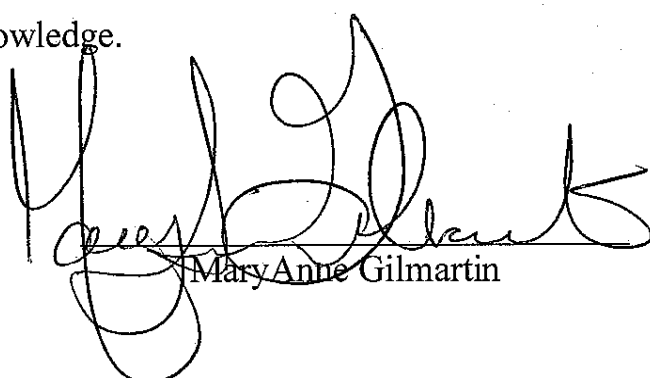
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VERIFICATION

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

MARYANNE GILMARTIN, being sworn, states that she is Executive Vice President of Forest City Ratner Companies, LLC, a respondent in this proceeding; that she has read the foregoing answer to the petition in this proceeding and knows its contents; that the same is true to her own knowledge, except as to those matters therein asserted upon information and belief; that as to those matters, she believes it to be true; and that the basis of her belief is familiarity with relevant documents and conversations with persons possessing first-hand knowledge.


Mary Anne Gilmartin

Sworn to before me on this
11th day of November, 2009.



Notary Public

ANITA ROSE
NOTARY PUBLIC, State of New York
No. 03RO4755325
Qualified in Dutchess County
Commission Expires April 30, 2010

Index No. 114631/09
IAS Part 57
Justice Friedman

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

In the Matter of

DEVELOP DON'T DESTROY (BROOKLYN), INC., et al.,
Petitioners,

For a Judgment Pursuant to Article 78 and Rule 3001 of the
New York Civil Practice Law and Rules,

- against -

EMPIRE STATE DEVELOPMENT CORPORATION and
FOREST CITY RATNER COMPANIES, LLC,

Respondents.

**VERIFIED ANSWER OF RESPONDENT
FOREST CITY RATNER COMPANIES, LLC**

KRAMER LEVIN NAFTALIS & FRANKEL LLP
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1177 Avenue of the Americas, New York, New York 10036
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All communications should be referred to:
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