

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

----- X	:	
DEVELOP DON'T DESTROY	:	Index No. 104597/07
(BROOKLYN), INC. ET AL.,	:	
	:	Justice Joan A. Madden
Petitioners-Plaintiffs,	:	
	:	<b>VERIFIED ANSWER OF</b>
For a Judgment pursuant to Article 78 of the	:	<b>RESPONDENT-DEFENDANT</b>
CPLR and Declaratory Judgment	:	<b>METROPOLITAN</b>
	:	<b>TRANSPORTATION</b>
- against -	:	<b>AUTHORITY</b>
	:	
URBAN DEVELOPMENT CORPORATION	:	
d/b/a EMPIRE STATE DEVELOPMENT	:	
CORPORATION, ET AL.,	:	
	:	
Respondents-Defendants.	:	
----- X	:	

Respondent-Defendant Metropolitan Transportation Authority (“MTA,” or “Respondent”), by its undersigned attorneys, for its answer to the Verified Petition and Complaint (the “Petition”), alleges as follows:

1. Neither admits nor denies the allegations contained in paragraph 1 of the Petition, as they consist of conclusory statements, argument, or conclusions of law to which no response is necessary, except that, to the extent that a response is necessary, denies such allegations.
  
2. Denies each and every allegation contained in paragraph 2 of the Petition, except denies having knowledge or information sufficient to form a belief as to the truth of the allegations that Petitioners-Plaintiffs (“Petitioners”) represent a broad range of individuals and organizations with myriad views on the proper scope of development in the area or whether they are all in agreement that the proposed project allegedly violates any laws.

3. Neither admits nor denies the allegations contained in paragraph 3 of the Petition, as they consist of conclusory statements, argument, or conclusions of law to which no response is necessary, except that, to the extent that a response is necessary, denies such allegations.

4. Denies each and every allegation contained in paragraph 4 of the Petition, except admits that the project is known as the Atlantic Yards Arena and Redevelopment Project (the "Project") and covers approximately 22 acres of land including the Vanderbilt Rail Yard owned by the MTA, and respectfully refers the Court to the Final Environmental Impact Statement ("FEIS") for a complete and accurate description of the Project. *See* MTA's Certified Administrative Record ("Record"), Exhibit 15 at ch. 1.

5. Denies each and every allegation contained in paragraph 5 of the Petition and respectfully refers the Court to the FEIS for a complete and accurate description of the Project. *See* Record, Exhibit 15 at ch. 1.

6. Denies each and every allegation contained in paragraph 6 of the Petition and respectfully refers the Court to the FEIS for a complete and accurate description of the neighborhood surrounding the Project. *See* Record, Exhibit 15.

7. Denies each and every allegation contained in paragraph 7 of the Petition.

8. Denies each and every allegation contained in paragraph 8 of the Petition, except admits that the Empire State Development Corporation ("ESDC") served as the lead agency for the Project under the State Environmental Quality Review Act ("SEQRA") and that the ESDC is an agency organized under the Urban Development Corporation Act ("UDC Act"), and respectfully refers the Court to the UDC Act for a complete and accurate statement of ESDC's powers.

9. Denies each and every allegation contained in paragraph 9 of the Petition.

10. Denies each and every allegation contained in paragraph 10 of the Petition.

11. Denies each and every allegation contained in paragraph 11 of the Petition.

12. Denies each and every allegation contained in paragraph 12 of the Petition.

13. Denies each and every allegation contained in paragraph 13 of the Petition.

14. Denies each and every allegation contained in paragraph 14 of the Petition.

15. Denies each and every allegation contained in the second sentence of paragraph 15 of the Petition and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of that paragraph.

16. Denies each and every allegation contained in paragraph 16 of the Petition.

17. Denies each and every allegation contained in paragraph 17 of the Petition.

18. Denies each and every allegation contained in paragraph 18 of the Petition.

19. Denies each and every allegation contained in paragraph 19 of the Petition.

20. Neither admits nor denies the allegations contained in paragraph 20 of the Petition, as they consist of conclusory statements, argument, or conclusions of law to which no response is necessary, except that, to the extent that a response is necessary, denies such allegations.

21. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Petition.

22. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Petition.

23. Denies each and every allegation contained in paragraph 23 of the Petition, except denies having knowledge or information sufficient to form a belief as to the truth of the

allegations contained in the first sentence of that paragraph or the allegations of what the Council of Brooklyn Neighborhoods, Inc. experts believed, as contained in the second sentence of that paragraph.

24. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Petition.

25. Denies each and every allegation contained in paragraph 25 of the Petition, except denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of that paragraph.

26. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Petition.

27. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Petition.

28. Denies each and every allegation contained in paragraph 28 of the Petition, except denies having knowledge or information sufficient to form a belief as to the concerns of the Boerum Hill Association, Inc. members.

29. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Petition.

30. Denies each and every allegation contained in paragraph 30 of the Petition, except denies having knowledge or information sufficient to form a belief as to the concerns of the Brooklyn Bears Community Gardens, Inc. members.

31. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Petition.

32. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Petition.

33. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Petition.

34. Denies each and every allegation contained in paragraph 34 of the Petition, except denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first three sentences of that paragraph or to form a belief as to what Petitioner Central Brooklyn Independent Democrats and its members believe.

35. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Petition.

36. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Petition.

37. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Petition.

38. Denies each and every allegation contained in paragraph 38 of the Petition, except denies having knowledge or information sufficient to form a belief regarding the concerns of East Pacific Block Association, Inc.

39. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Petition.

40. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Petition, except admits that Fort Greene Park is an approximately 30-acre park bounded by Myrtle and DeKalb Avenues on the north and south, and by Washington Park on the east and Brooklyn Hospital on the west.

41. Denies each and every allegation contained in paragraph 41 of the Petition, except denies having knowledge or information sufficient to form a belief regarding the concerns of Petitioner Fort Greene Park Conservancy, Inc.

42. Denies each and every allegation contained in the last sentence of paragraph 42 of the Petition, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first three sentences of that paragraph.

43. Denies each and every allegation contained in the last sentence of paragraph 43 of the Petition, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first four sentences of that paragraph.

44. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the Petition.

45. Denies each and every allegation contained in the last sentence of paragraph 45 of the Petition, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first five sentences of that paragraph.

46. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the Petition.

47. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Petition.

48. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Petition.

49. Neither admits nor denies the allegations contained in the first three sentences of paragraph 49 of the Petition as they consist of conclusory statements, argument, or conclusions of law to which no response is necessary, except that, to the extent that a response is

necessary, denies such allegations, denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the fourth sentence of paragraph 49, and denies the allegations contained in the last sentence of that paragraph.

50. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Petition.

51. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Petition.

52. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the Petition.

53. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the Petition.

54. Upon information and belief, admits the allegations contained in paragraph 54 of the Petition, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect.

55. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the Petition.

56. Denies each and every allegation contained in the second sentence of paragraph 56 of the Petition, except admits that MTA is the owner of Vanderbilt Yard, admits the allegations contained in the first sentence of that paragraph, and respectfully refers the Court to MTA's enabling legislation in Public Authorities Law §§1260 *et seq.* for a complete and accurate understanding of its content and effect.

57. Upon information and belief, admits the allegations contained in paragraph 57 of the Petition, and respectfully refers the Court to Public Authorities Law §§ 50 and 51 for a

complete and accurate understanding of the content and effect of those statutory provisions regarding the Public Authorities Control Board (“PACB”).

58. Neither admits nor denies the allegations contained in paragraph 58 of the Petition, as they consist of conclusory statements, argument, or conclusions of law to which no response is necessary, except that, to the extent that a response is necessary, denies such allegations, except admits, on information and belief, that ESDC maintains its principal offices in New York County.

59. States that the allegations contained in paragraph 59 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusions of law, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

60. Denies each and every allegation contained in paragraph 60 of the Petition.

61. States that the allegations contained in paragraph 61 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusions of law, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

62. Denies each and every allegation contained in paragraph 62 of the Petition.

63. States that the allegations contained in paragraph 63 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusions of law, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

64. Denies each and every allegation contained in paragraph 64 of the Petition and respectfully refers the Court to the Atlantic Yards Land Use Improvement and Civic Project

Modified General Project Plan (the "GPP") contained in ESDC's Administrative Record for a complete and accurate description of the Project.

65. Denies each and every allegation contained in paragraph 65 of the Petition.

66. Denies each and every allegation contained in paragraph 66 of the Petition.

67. Denies each and every allegation contained in paragraph 67 of the Petition.

68. States that the allegations contained in paragraph 68 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusions of law, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

69. States that the allegations contained in paragraph 69 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusions of law, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

70. States that the allegations contained in paragraph 70 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusions of law, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

71. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 of the Petition.

72. Denies each and every allegation contained in paragraph 72 of the Petition.

73. Denies each and every allegation contained in paragraph 73 of the Petition.

74. Denies each and every allegation contained in paragraph 74 of the Petition.

75. Denies each and every allegation contained in paragraph 75 of the Petition.

76. States that the allegations contained in paragraph 76 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusions of law, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

77. States that the allegations contained in paragraph 77 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusions of law, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

78. Denies each and every allegation contained in paragraph 78 of the Petition.

79. States that the allegations contained in paragraph 79 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusions of law, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

80. Denies each and every allegation contained in paragraph 80 of the Petition.

81. States that the allegations contained in paragraph 81 of the Petition require no response, as they attempt to characterize SEQRA or constitute conclusions of law, and respectfully refers the Court to Article 8 of the Environmental Conservation Law (“ECL”) for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

82. States that the allegations contained in paragraph 82 of the Petition require no response, as they attempt to characterize SEQRA or constitute conclusions of law, and respectfully refers the Court to Article 8 of the ECL for a complete and accurate understanding

of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

83. States that the allegations contained in paragraph 83 of the Petition require no response, as they attempt to characterize SEQRA or constitute conclusions of law, and respectfully refers the Court to Article 8 of the ECL and the SEQRA regulations at 6 NYCRR Part 617 for a complete and accurate understanding of their content and effect, except that, to the extent that a response is necessary, denies such allegations.

84. Neither admits nor denies the allegations contained in paragraph 84 of the Petition, as they consist of conclusory statements, argument, or conclusions of law to which no response is necessary, except that, to the extent that a response is necessary, denies such allegations.

85. States that the allegations contained in paragraph 85 of the Petition require no response, as they attempt to characterize SEQRA or constitute conclusions of law, and respectfully refers the Court to Article 8 of the ECL for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

86. States that the allegations contained in paragraph 86 of the Petition require no response, as they attempt to characterize SEQRA or constitute conclusions of law, and respectfully refers the Court to the SEQRA regulations at 6 NYCRR Part 617 for a complete and accurate understanding of their content and effect, except that, to the extent that a response is necessary, denies such allegations.

87. States that the allegations contained in paragraph 87 of the Petition require no response, as they attempt to characterize SEQRA or constitute conclusions of law, and

respectfully refers the Court to the SEQRA regulations at 6 NYCRR Part 617 for a complete and accurate understanding of their content and effect, except that, to the extent that a response is necessary, denies such allegations.

88. States that the allegations contained in paragraph 88 of the Petition require no response, as they attempt to characterize SEQRA or constitute conclusions of law, and respectfully refers the Court to the SEQRA regulations at 6 NYCRR Part 617 for a complete and accurate understanding of their content and effect, except that, to the extent that a response is necessary, denies such allegations.

89. States that the allegations contained in paragraph 89 of the Petition require no response, as they attempt to characterize SEQRA or constitute conclusions of law, and respectfully refers the Court to the SEQRA regulations at 6 NYCRR Part 617 for a complete and accurate understanding of their content and effect, except that, to the extent that a response is necessary, denies such allegations.

90. States that the allegations contained in paragraph 90 of the Petition require no response, as they attempt to characterize SEQRA or constitute conclusions of law, and respectfully refers the Court to the SEQRA regulations at 6 NYCRR Part 617 for a complete and accurate understanding of their content and effect, except that, to the extent that a response is necessary, denies such allegations.

91. States that the allegations contained in paragraph 91 of the Petition require no response, as they attempt to characterize SEQRA or constitute conclusions of law, and respectfully refers the Court to the SEQRA regulations at 6 NYCRR Part 617 for a complete and accurate understanding of their content and effect, except that, to the extent that a response is necessary, denies such allegations.

92. States that the allegations contained in paragraph 92 of the Petition require no response, as they attempt to characterize SEQRA or constitute conclusions of law, and respectfully refers the Court to the SEQRA regulations at 6 NYCRR Part 617 for a complete and accurate understanding of their content and effect, except that, to the extent that a response is necessary, denies such allegations.

93. States that the allegations contained in paragraph 93 of the Petition require no response, as they attempt to characterize SEQRA or constitute conclusions of law, and respectfully refers the Court to the SEQRA regulations at 6 NYCRR Part 617 for a complete and accurate understanding of their content and effect, except that, to the extent that a response is necessary, denies such allegations.

94. States that the allegations contained in paragraph 94 of the Petition require no response, as they attempt to characterize SEQRA or constitute conclusions of law, and respectfully refers the Court to the SEQRA regulations at 6 NYCRR Part 617 for a complete and accurate understanding of their content and effect, except that, to the extent that a response is necessary, denies such allegations.

95. Admits the allegations contained in the first sentence of paragraph 95 of the Petition, and denies each and every allegation contained in the second sentence of that paragraph.

96. Denies each and every allegation contained in paragraph 96 of the Petition.

97. Denies each and every allegation contained in paragraph 97 of the Petition.

98. Denies each and every allegation contained in paragraph 98 of the Petition.

99. States that the allegations contained in paragraph 99 of the Petition require no response, as they attempt to characterize section 51 of the Public Authorities Law (“PAL”) or constitute conclusions of law, and respectfully refers the Court to section 51 of the PAL for a

complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

100. Denies each and every allegation contained in paragraph 100 of the Petition.

101. States that the allegations contained in paragraph 101 of the Petition require no response, as they attempt to characterize SEQRA or constitute conclusions of law, and respectfully refers the Court to the SEQRA regulations at 6 NYCRR Part 617 for a complete and accurate understanding of their content and effect, except that, to the extent that a response is necessary, denies such allegations.

102. Denies each and every allegation contained in paragraph 102 of the Petition.

103. Admits the allegations contained in paragraph 103 of the Petition.

104. Denies each and every allegation contained in paragraph 104 of the Petition.

105. Admits the allegations contained in paragraph 105 of the Petition, and affirmatively states that the MTA adopted a written findings statement in accordance with SEQRA. *See* Record, Exhibits 23-25.

106. Denies each and every allegation contained in paragraph 106 of the Petition.

107. Denies each and every allegation contained in paragraph 107 of the Petition.

108. Denies each and every allegation contained in paragraph 108 of the Petition.

109. Denies each and every allegation contained in paragraph 109 of the Petition.

110. Denies each and every allegation contained in paragraph 110 of the Petition.

111. Admits the allegations contained in paragraph 111 of the Petition, and respectfully refers the Court to Chapter 1 of the FEIS (Record, Exhibit 15) for a complete and accurate description of the Project.

112. Admits the allegations contained in paragraph 112 of the Petition.

113. Admits the allegations contained in paragraph 113 of the Petition, except denies that the small triangular lot at the eastern tip of Block 927 (the 0.12-acre Bear's Garden) is part of the Project site.

114. Admits the allegations contained in paragraph 114 of the Petition.

115. Admits the allegations contained in paragraph 115 of the Petition.

116. Denies each and every allegation contained in the last sentence of paragraph 116 of the Petition, denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of that paragraph, and admits the allegations contained in the first sentence of that paragraph.

117. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 117 of the Petition.

118. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 118 of the Petition.

119. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 119 of the Petition.

120. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 120 of the Petition.

121. Denies each and every allegation contained in paragraph 121 of the Petition.

122. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 122 of the Petition.

123. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 123 of the Petition.

124. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 124 of the Petition.

125. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 125 of the Petition.

126. Denies each and every allegation contained in paragraph 126 of the Petition, and respectfully refers the Court to the FEIS (Record, Exhibit 15) for a complete and accurate understanding of the neighborhood within and surrounding the Project site.

127. Denies each and every allegation contained in paragraph 127 of the Petition, and respectfully refers the Court to the FEIS (Record, Exhibit 15) for a complete and accurate understanding of the neighborhood within and surrounding the Project site.

128. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 128 of the Petition.

129. Denies each and every allegation contained in paragraph 129 of the Petition.

130. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 130 of the Petition.

131. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 131 of the Petition.

132. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 132 of the Petition.

133. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 133 of the Petition.

134. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 134 of the Petition.

135. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 135 of the Petition.

136. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 136 of the Petition.

137. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 137 of the Petition.

138. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 138 of the Petition.

139. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 139 of the Petition.

140. Denies each and every allegation contained in paragraph 140 of the Petition, except admits that Forest City Ratner Companies (“FCRC”), ESDC and the City of New York (the “City”) entered into a Memorandum of Understanding (“MOU”) on February 18, 2005, and respectfully refers the Court to the MOU (Record, Exhibit 1) for a complete and accurate understanding of its content and effect.

141. Denies each and every allegation contained in paragraph 141 of the Petition, except admits that that the MOU provided that ESDC would adopt a General Project Plan, and respectfully refers the Court to the MOU (Record, Exhibit 1) for a complete and accurate understanding of its content and effect.

142. Neither admits nor denies the allegations contained in paragraph 142 of the Petition, as they consist of conclusory statements, argument, or conclusions of law to which no response is necessary, except that, to the extent that a response is necessary, denies such allegations.

143. Denies each and every allegation contained in paragraph 143 of the Petition, and respectfully refers the Court to the MOU (Record, Exhibit 1) for a complete and accurate understanding of its content and effect.

144. Denies each and every allegation contained in paragraph 144 of the Petition, and respectfully refers the Court to the MOU (Record, Exhibit 1) for a complete and accurate understanding of its content and effect.

145. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 145 of the Petition.

146. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 146 of the Petition.

147. Denies each and every allegation contained in the first two sentences of paragraph 147 of the Petition, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the last sentence of that paragraph.

148. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 148 of the Petition.

149. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 149 of the Petition.

150. Denies each and every allegation contained in paragraph 150 of the Petition.

151. Admits the allegations contained in paragraph 151 of the Petition.

152. Denies each and every allegation contained in paragraph 152 of the Petition, except admits that MTA and FCRC executed a letter agreement on February 24, 2005, and respectfully refers the Court to the February 24, 2005 letter agreement (Record, Exhibit 2) for a complete and accurate understanding of its content and effect.

153. Denies each and every allegation contained in paragraph 153 of the Petition.

154. Denies each and every allegation contained in paragraph 154 of the Petition, except affirmatively states that MTA allowed FCRC access to Vanderbilt Yard for purposes of survey and design work.

155. Denies each and every allegation contained in paragraph 155 of the Petition, and respectfully refers the Court to the request for proposals (“RFP”) released by MTA on May 24, 2005 (Record, Exhibit 3) for a complete and accurate understanding of its content and effect.

156. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 156 of the Petition, except admits that FCRC approached MTA concerning its proposal to purchase the Vanderbilt Yard in or about 2003.

157. Denies each and every allegation contained in paragraph 157 of the Petition, except admits that MTA’s May 24, 2005 RFP did require some technical and engineering information, and respectfully refers the Court to the RFP (Record, Exhibit 3) for a complete and accurate understanding of its content and effect.

158. Denies each and every allegation contained in paragraph 158 of the Petition.

159. Denies each and every allegation contained in paragraph 159 of the Petition, except affirmatively states that MTA advertised the RFP on May 18, 2005 in two newspapers and sent the RFP to several developers.

160. Denies each and every allegation contained in paragraph 160 of the Petition, except admits that the quoted language appears in the RFP.

161. Admits the allegations contained in paragraph 161 of the Petition, and affirmatively states that the FCRC proposal included other benefits besides the \$50 million cash payment.

162. Denies each and every allegation contained in paragraph 162 of the Petition, except admits that the RFP required that proposals contain a 20-year profit and loss statement.

163. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 163 of the Petition, except admits that Extell Development Company submitted a proposal.

164. Admits the allegations contained in paragraph 164 of the Petition.

165. Denies each and every allegation contained in paragraph 165 of the Petition, but admits that the MTA did not meet with any of the proposers after the commencement of the RFP Process.

166. Denies each and every allegation contained in paragraph 166 of the Petition, except admits that on July 27, 2005 the MTA voted, “for the next 45 days, to negotiate the terms and conditions of any agreements to sell or lease air space and related real property interests relating to the site ... in connection with the FCR Proposal only ....”

167. Denies each and every allegation contained in paragraph 167 of the Petition.

168. Denies each and every allegation contained in paragraph 168 of the Petition, and respectfully refers the Court to the July 17, 2006 letter by Daniel L. Doctoroff to ESDC contained in the appendices to the FEIS (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

169. Denies each and every allegation contained in paragraph 169 of the Petition, and respectfully refers the Court to the September 14, 2005 MTA Board Resolution (Record, Exhibit 9) for a complete and accurate understanding of its content and effect.

170. Denies each and every allegation contained in paragraph 170 of the Petition.

171. Denies each and every allegation contained in paragraph 171 of the Petition.

172. Denies each and every allegation contained in paragraph 172 of the Petition.
173. Denies each and every allegation contained in paragraph 173 of the Petition, except admits that on or about September 16, 2005, ESDC published a notice announcing that it would prepare an EIS and had also released a Draft Scope for public review.
174. Denies each and every allegation contained in paragraph 174 of the Petition.
175. Denies each and every allegation contained in paragraph 175 of the Petition.
176. Denies each and every allegation contained in paragraph 176 of the Petition, and respectfully refers the Court to the Notice of Public Scoping and the Draft Scope (Record, Exhibits 11 and 12) for a complete and accurate understanding of their content and effect.
177. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 177 of the Petition.
178. Denies each and every allegation contained in paragraph 178 of the Petition.
179. Denies each and every allegation contained in paragraph 179 of the Petition, and respectfully refers the Court to the Draft Scope (Record, Exhibit 12) for a complete and accurate understanding of its content and effect.
180. Denies each and every allegation contained in paragraph 180 of the Petition.
181. Denies each and every allegation contained in paragraph 181 of the Petition, except admits that the public had 42 days to review and comment on the Draft Scope.
182. Denies each and every allegation contained in paragraph 182 of the Petition, except admits that several of the Petitioners and other members of the public filed comments on the Draft Scope, and respectfully refers the Court to the Administrative Record of ESDC for a complete and accurate understanding of the content and effect of the public comment letters.

183. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 183 of the Petition.

184. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 184 of the Petition.

185. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 185 of the Petition, and respectfully refers the Court to the Administrative Record of ESDC for a complete and accurate understanding of the content and effect of the public comment letters filed on the Draft Scope.

186. Denies each and every allegation contained in paragraph 186 of the Petition, except admits that ESDC issued a Final Scope on March 31, 2006.

187. Neither admits nor denies the allegations contained in paragraph 187 of the Petition, as they consist of conclusory statements, argument, or conclusions of law, to which no response is necessary, except that, to the extent that a response is necessary, denies such allegations, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect.

188. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 188 of the Petition.

189. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 189 of the Petition.

190. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 190 of the Petition.

191. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 191 of the Petition.

192. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 192 of the Petition.

193. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 193 of the Petition.

194. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 194 of the Petition.

195. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 195 of the Petition.

196. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 196 of the Petition.

197. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 197 of the Petition.

198. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 198 of the Petition.

199. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 199 of the Petition.

200. Admits the allegations contained in paragraph 200 of the Petition.

201. Denies each and every allegation contained in paragraph 201 of the Petition, except admits that ESDC released a public notice announcing the scheduling of a public hearing for August 23, 2006 and the submission of written comments through September 22, 2006, and respectfully refers the Court to ESDC's Administrative Record for a complete and accurate understanding of the public notice's content and effect.

202. Denies each and every allegation contained in paragraph 202 of the Petition, and respectfully refers the Court to ESDC's Administrative Record for a complete and accurate understanding of the public notice's content and effect.

203. Denies each and every allegation contained in paragraph 203 of the Petition, and respectfully refers the Court to ESDC's Administrative Record for a complete and accurate understanding of the public notice's content and effect.

204. Denies each and every allegation contained in paragraph 204 of the Petition.

205. Admits the allegations contained in the first sentence of paragraph 205 of the Petition, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of that paragraph.

206. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 206 of the Petition.

207. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 207 of the Petition.

208. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 208 of the Petition.

209. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 209 of the Petition.

210. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 210 of the Petition.

211. Denies each and every allegation contained in paragraph 211 of the Petition, and respectfully refers the Court to the public hearing transcript contained in the ESDC

Administrative Record for a complete and accurate understanding of the comments made at the public hearing.

212. Denies each and every allegation contained in paragraph 212 of the Petition, and respectfully refers the Court to the public hearing transcript contained in the ESDC Administrative Record for a complete and accurate understanding of the comments made at the public hearing.

213. Denies each and every allegation contained in paragraph 213 of the Petition, and respectfully refers the Court to the public hearing transcript contained in the ESDC Administrative Record for a complete and accurate understanding of its content and effect.

214. Denies each and every allegation contained in paragraph 214 of the Petition, and respectfully refers the Court to the public hearing transcript contained in the ESDC Administrative Record for a complete and accurate understanding of its content and effect.

215. Denies each and every allegation contained in paragraph 215 of the Petition, and respectfully refers the Court to the public hearing transcript contained in the ESDC Administrative Record for a complete and accurate understanding of its content and effect.

216. Denies each and every allegation contained in paragraph 216 of the Petition, and respectfully refers the Court to the public hearing transcript contained in the ESDC Administrative Record for a complete and accurate understanding of its content and effect.

217. Admits the allegations contained in paragraph 217 of the Petition.

218. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 218 of the Petition, and respectfully refers the Court to the ESDC Administrative Record for a complete and accurate understanding of the comment letters ESDC received and their content and effect.

219. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 219 of the Petition, and respectfully refers the Court to ESDC's response to comments contained in Chapter 24 of the FEIS (Record, Exhibit 15) for a correct and accurate understanding of its content and effect.

220. Admits the allegations contained in paragraph 220 of the Petition.

221. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 221 of the Petition, and respectfully refers the Court to the public notices and transcript of the public hearing contained in the ESDC Administrative Record for a complete and accurate description of their content and effect.

222. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 222 of the Petition.

223. Denies each and every allegation contained in paragraph 223 of the Petition, and respectfully refers the Court to ESDC's Administrative Record for a complete and accurate understanding of the public comment period provided by ESDC.

224. Denies each and every allegation contained in paragraph 224 of the Petition.

225. Admits the allegations contained in paragraph 225 of the Petition, and respectfully refers the Court to the ESDC Board of Director's November 15, 2006 Resolution contained in the ESDC Administrative Record for a complete and accurate understanding of its content and effect.

226. Admits the allegations contained in paragraph 226 of the Petition, and respectfully refers the Court to ESDC's November 20, 2006 announcement contained in ESDC's Administrative Record for a complete and accurate understanding of its content and effect.

227. Admits the allegations contained in paragraph 227 of the Petition, and respectfully refers the Court to the ESDC Board of Director's November 27, 2006 Resolution contained in ESDC's Administrative Record for a complete and accurate understanding of its content and effect.

228. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 228 of the Petition.

229. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 229 of the Petition.

230. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 230 of the Petition, and respectfully refers the Court to the comment letters received by ESDC on the FEIS contained in ESDC's Administrative Record for a complete and accurate understanding of their content and effect.

231. Denies each and every allegation contained in paragraph 231 of the Petition, and respectfully refers the Court to the AKRF memorandum contained in ESDC's Administrative Record for a complete and accurate understanding of its content and effect.

232. Denies each and every allegation contained in paragraph 232 of the Petition, and respectfully refers the Court to the AKRF memorandum contained in ESDC's Administrative Record for a complete and accurate understanding of its content and effect.

233. Denies each and every allegation contained in paragraph 233 of the Petition.

234. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 234 of the Petition.

235. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 235 of the Petition, and respectfully refers the

Court to the ESDC Administrative Record for a complete and accurate understanding of the December 8, 2006 ESDC Board meeting.

236. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 236 of the Petition, and respectfully refers the Court to the ESDC Administrative Record for a complete and accurate understanding of the December 8, 2006 ESDC Board meeting.

237. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 237 of the Petition, and respectfully refers the Court to the ESDC Administrative Record for a complete and accurate understanding of the December 8, 2006 ESDC Board meeting.

238. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 238 of the Petition, except denies that the open space calculations contained in the FEIS were overstated, and respectfully refers the Court to the ESDC Administrative Record for a complete and accurate understanding of the December 8, 2006 ESDC Board meeting.

239. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 239 of the Petition.

240. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 240 of the Petition.

241. Denies each and every allegation contained in the second sentence of paragraph 241 of the Petition, and admits the allegations contained in the first sentence of that paragraph, and respectfully refers the Court to the December 11, 2006 Minutes of the Meeting of the MTA

Capital Construction, Planning & Real Estate Committee (the "Committee") for a complete and accurate description of that document (Record, Exhibit 20).

242. Denies each and every allegation contained in paragraph 242 of the Petition, except admits that the members of the Committee were given, *inter alia*, a summary of MTA's proposed environmental findings statement, and respectfully refers the Court to the documents provided to the Committee (Record, Exhibits 16, 17 and 19) for a complete and accurate understanding of their content and effect.

243. Denies each and every allegation contained in paragraph 243 of the Petition, and respectfully refers the Court to the Summary of Environmental Findings (Record, Exhibit 21) for a complete and accurate understanding of its contents and effect.

244. Denies each and every allegation contained in paragraph 244 of the Petition.

245. Denies each and every allegation contained in paragraph 245 of the Petition, and respectfully refers the Court to the December 11, 2006 Minutes of the Meeting of the Committee (Record, Exhibit 20) for a complete and accurate understanding of its content and effect.

246. Denies each and every allegation contained in paragraph 246 of the Petition.

247. Admits the allegations contained in paragraph 247 of the Petition.

248. Denies each and every allegation contained in paragraph 248 of the Petition, and respectfully refers the Court to the MTA Board's December 13, 2006 Resolution (Record, Exhibit 24) for a complete and accurate understanding of its content and effect.

249. Denies each and every allegation contained in paragraph 249 of the Petition.

250. Denies each and every allegation contained in paragraph 250 of the Petition, and respectfully refers the Court to ESDC's Administrative Record for a complete and accurate description of the approval by the PACB.

251. Denies each and every allegation contained in paragraph 251 of the Petition, and respectfully refers the Court to ESDC's Administrative Record for a complete and accurate description of the approval by the PACB.

252. Denies each and every allegation contained in paragraph 252 of the Petition.

253. Denies each and every allegation contained in paragraph 253 of the Petition.

254. Denies each and every allegation contained in paragraph 254 of the Petition.

255. States that the allegations contained in paragraph 255 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusory statements or conclusions of law, and respectfully refers the Court to the UDC Act and the General Project Plan contained in ESDC's Administrative Record for a complete and accurate understanding of their content and effect, except that, to the extent that a response is necessary, denies such allegations.

256. Denies each and every allegation contained in paragraph 256 of the Petition.

257. Denies each and every allegation contained in paragraph 257 of the Petition, and respectfully refers the Court to the FEIS (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

258. Denies each and every allegation contained in paragraph 258 of the Petition.

259. Denies each and every allegation contained in paragraph 259 of the Petition.

260. Denies each and every allegation contained in paragraph 260 of the Petition.

261. Denies each and every allegation contained in paragraph 261 of the Petition.

262. Denies each and every allegation contained in paragraph 262 of the Petition.

263. Denies each and every allegation contained in paragraph 263 of the Petition.

264. Denies each and every allegation contained in paragraph 264 of the Petition.

265. Denies each and every allegation contained in paragraph 265 of the Petition.

266. Denies each and every allegation contained in paragraph 266 of the Petition.

267. Denies each and every allegation contained in paragraph 267 of the Petition.

268. Denies each and every allegation contained in paragraph 268 of the Petition.

269. Denies each and every allegation contained in paragraph 269 of the Petition.

270. Denies each and every allegation contained in paragraph 270 of the Petition.

271. Denies each and every allegation contained in paragraph 271 of the Petition.

272. Denies each and every allegation contained in paragraph 272 of the Petition.

273. Denies each and every allegation contained in paragraph 273 of the Petition, and respectfully refers the Court to the response to comments contained in Chapter 24 of the FEIS (Record, Exhibit 15) for a complete and accurate statement of its content and effect.

274. Denies each and every allegation contained in paragraph 274 of the Petition.

275. Denies each and every allegation contained in paragraph 275 of the Petition.

276. Denies each and every allegation contained in paragraph 276 of the Petition.

277. Denies each and every allegation contained in paragraph 277 of the Petition.

278. Denies each and every allegation contained in paragraph 278 of the Petition, and respectfully refers the Court to the FEIS (Record, Exhibit 15) for a complete and accurate statement of its content and effect.

279. Admits the allegations contained in paragraph 279 of the Petition.

280. Admits the allegation contained in paragraph 280 of the Petition.

281. Denies each and every allegation contained in paragraph 281 of the Petition.

282. Denies each and every allegation contained in paragraph 282 of the Petition, and respectfully refers the Court to the comment letters on the DEIS contained in the ESDC Administrative Record for a complete and accurate statement of their content and effect.

283. Denies each and every allegation contained in paragraph 283 of the Petition.

284. Denies each and every allegation contained in paragraph 284 of the Petition.

285. Denies each and every allegation contained in paragraph 285 of the Petition.

286. Denies each and every allegation contained in paragraph 286 of the Petition.

287. Denies each and every allegation contained in paragraph 287 of the Petition.

288. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 288 of the Petition.

289. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 289 of the Petition.

290. Denies each and every allegation contained in paragraph 290 of the Petition.

291. Denies each and every allegation contained in paragraph 291 of the Petition.

292. Denies each and every allegation contained in paragraph 292 of the Petition.

293. Denies each and every allegation contained in paragraph 293 of the Petition.

294. Denies each and every allegation contained in paragraph 294 of the Petition, and respectfully refers the Court to the FEIS (Record, Exhibit 15) for a complete and accurate statement of its content and effect.

295. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 295 of the Petition.

296. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 296 of the Petition.

297. Denies each and every allegation contained in paragraph 297 of the Petition.

298. Denies each and every allegation contained in paragraph 298 of the Petition.

299. Denies each and every allegation contained in paragraph 299 of the Petition, and affirmatively states that a mathematical error regarding the ratio of open space per 1,000 residents on the Project site was contained in the response to comments chapter of the FEIS and not in Chapter 6, Open Space and Recreational Facilities, and such mathematical error had no effect on the open space analyses contained in the FEIS, and respectfully refers the Court to the FEIS (Record, Exhibit 15) and the December 8, 2006 memorandum from AKRF, Inc. to ESDC (the "AKRF December 8 Memorandum") contained in ESDC's Administrative Record for a complete and accurate understanding of their content and effect.

300. Admits the allegations contained in paragraph 300 of the Petition.

301. Denies each and every allegation contained in paragraph 301 of the Petition, and respectively refers the Court to the AKRF December 8 Memorandum contained in ESDC's Administrative Record for a complete and accurate understanding of its content and effect.

302. Denies each and every allegation contained in paragraph 302 of the Petition.

303. Denies each and every allegation contained in paragraph 303 of the Petition.

304. Denies each and every allegation contained in paragraph 304 of the Petition.

305. Denies each and every allegation contained in paragraph 305 of the Petition.

306. Denies each and every allegation contained in paragraph 306 of the Petition.

307. Denies each and every allegation contained in paragraph 307 of the Petition, and respectively refers the Court to Chapter 6 on Open Space and Recreation Facilities in the FEIS (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

308. Denies each and every allegation contained in paragraph 308 of the Petition.

309. Denies each and every allegation contained in paragraph 309 of the Petition.

310. Denies each and every allegation contained in paragraph 310 of the Petition.

311. Denies each and every allegation contained in paragraph 311 of the Petition.

312. Denies each and every allegation contained in paragraph 312 of the Petition.

313. Denies each and every allegation contained in paragraph 313 of the Petition, and respectively refers the Court to the FEIS (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

314. Denies each and every allegation contained in paragraph 314 of the Petition.

315. Denies each and every allegation contained in paragraph 315 of the Petition, and respectively refers the Court to the FEIS (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

316. Denies each and every allegation contained in paragraph 316 of the Petition.

317. Denies each and every allegation contained in paragraph 317 of the Petition, and respectively refers the Court to the FEIS (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

318. Denies each and every allegation contained in paragraph 318 of the Petition.

319. Denies each and every allegation contained in paragraph 319 of the Petition.

320. Denies each and every allegation contained in paragraph 320 of the Petition.

321. Denies each and every allegation contained in paragraph 321 of the Petition.

322. Denies each and every allegation contained in paragraph 322 of the Petition, and respectively refers the Court to Chapter 13 on Transit and Pedestrians in the FEIS (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

323. Denies each and every allegation contained in paragraph 323 of the Petition.

324. Denies each and every allegation contained in paragraph 324 of the Petition, and respectively refers the Court to the FEIS (Record, Exhibit 15) and ESDC's Findings Statement contained in ESDC's Administrative Record for a complete and accurate understanding of their content and effect.

325. Denies each and every allegation contained in paragraph 325 of the Petition.

326. Denies each and every allegation contained in paragraph 326 of the Petition, and respectively refers the Court to the letter by the New York City Fire Department contained in ESDC's Administrative Record for a complete and accurate understanding of its content and effect.

327. Denies each and every allegation contained in paragraph 327 of the Petition.

328. Denies each and every allegation contained in paragraph 328 of the Petition.

329. Denies each and every allegation contained in paragraph 329 of the Petition.

330. Denies each and every allegation contained in paragraph 330 of the Petition.

331. Denies each and every allegation contained in paragraph 331 of the Petition.

332. Denies each and every allegation contained in paragraph 332 of the Petition, and respectfully refers the Court to the FEIS (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

333. Denies each and every allegation contained in paragraph 333 of the Petition, and respectfully refers the Court to the FEIS (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

334. Denies each and every allegation contained in paragraph 334 of the Petition.

335. Denies each and every allegation contained in paragraph 335 of the Petition, and respectfully refers the Court to the FEIS (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

336. Denies each and every allegation contained in paragraph 336 of the Petition, and respectfully refers the Court to the FEIS (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

337. Denies each and every allegation contained in paragraph 337 of the Petition.

338. Denies each and every allegation contained in paragraph 338 of the Petition.

339. Denies each and every allegation contained in paragraph 339 of the Petition.

340. Denies each and every allegation contained in paragraph 340 of the Petition, and respectfully refers the Court to Chapter 18 of the FEIS on Public Health (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

341. Denies each and every allegation contained in paragraph 341 of the Petition, and respectfully refers the Court to Chapter 15 of the FEIS on Noise (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

342. Denies each and every allegation contained in paragraph 342 of the Petition, and respectfully refers the Court to the FEIS on Noise (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

343. Denies each and every allegation contained in paragraph 343 of the Petition, and respectfully refers the Court to the FEIS on Noise (Record, Exhibit 15) for a complete and accurate understanding of its content and effect.

344. Neither admits nor denies the allegations contained in paragraph 344 of the Petition, as they consist of conclusory statements, argument, or conclusions of law to which no

response is necessary, except that, to the extent that a response is necessary, denies such allegations.

345. Denies each and every allegation contained in paragraph 345 of the Petition, and respectfully refers the Court to the comment letters on the Draft Scope contained in ESDC's Administrative Record for a complete and accurate understanding of their content and effect.

346. Denies each and every allegation contained in paragraph 346 of the Petition.

347. Denies each and every allegation contained in paragraph 347 of the Petition, and respectfully refers the Court to the comment letters on the DEIS contained in ESDC's Administrative Record for a complete and accurate understanding of their content and effect.

348. Denies each and every allegation contained in paragraph 348 of the Petition.

349. Denies each and every allegation contained in paragraph 349 of the Petition.

350. Denies each and every allegation contained in paragraph 350 of the Petition.

351. Denies each and every allegation contained in paragraph 351 of the Petition.

352. Denies each and every allegation contained in paragraph 352 of the Petition.

353. Denies each and every allegation contained in paragraph 353 of the Petition, and respectfully refers the Court to Chapter 20 of the FEIS on Alternatives (Record, Exhibit 15) and to ESDC's SEQRA Findings Statement contained in ESDC's Administrative Record for a complete and accurate statement of the analyses and conclusions reached regarding the "no action" alternative.

354. Denies each and every allegation contained in paragraph 354 of the Petition.

355. Denies each and every allegation contained in paragraph 355 of the Petition.

356. Denies each and every allegation contained in paragraph 356 of the Petition.

357. Denies each and every allegation contained in paragraph 357 of the Petition.

358. Denies each and every allegation contained in paragraph 358 of the Petition.

359. Denies each and every allegation contained in paragraph 359 of the Petition.

360. In response to the allegations set forth in paragraph 360 of the Petition, repeats and realleges the responses contained in paragraphs 1 through 359 of this answer with the full force and effect as if set forth fully herein.

361. Denies each and every allegation contained in paragraph 361 of the Petition.

362. Denies each and every allegation contained in paragraph 362 of the Petition.

363. Denies each and every allegation contained in paragraph 363 of the Petition.

364. Denies each and every allegation contained in paragraph 364 of the Petition, and affirmatively states that the PACB was not required to make SEQRA findings.

365. Denies each and every allegation contained in paragraph 365 of the Petition.

366. In response to the allegations set forth in paragraph 366 of the Petition, repeats and realleges the responses contained in paragraphs 1 through 365 of this answer with the full force and effect as if set forth fully herein.

367. States that the allegations contained in paragraph 367 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusions of law, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

368. States that the allegations contained in paragraph 368 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusions of law, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

369. Denies each and every allegation contained in paragraph 369 of the Petition.

370. Denies each and every allegation contained in paragraph 370 of the Petition.

371. Denies each and every allegation contained in paragraph 371 of the Petition.

372. Denies each and every allegation contained in paragraph 372 of the Petition.

373. Denies each and every allegation contained in paragraph 373 of the Petition.

374. Denies each and every allegation contained in paragraph 374 of the Petition.

375. Denies each and every allegation contained in paragraph 375 of the Petition.

376. States that the allegations contained in paragraph 376 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusions of law, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

377. States that the allegations contained in paragraph 377 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusions of law, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

378. Denies each and every allegation contained in paragraph 378 of the Petition.

379. Denies each and every allegation contained in paragraph 379 of the Petition.

380. Denies each and every allegation contained in paragraph 380 of the Petition.

381. In response to the allegations set forth in paragraph 381 of the Petition, repeats and realleges the responses contained in paragraphs 1 through 380 of this answer with the full force and effect as if set forth fully herein.

382. Denies each and every allegation contained in paragraph 382 of the Petition.

383. Denies each and every allegation contained in paragraph 383 of the Petition.

384. Denies each and every allegation contained in paragraph 384 of the Petition.

385. Denies each and every allegation contained in paragraph 385 of the Petition.

386. Neither admits nor denies the allegations contained in paragraph 386 of the Petition, as they consist of conclusory statements, argument, or conclusions of law to which no response is necessary, except that, to the extent that a response is necessary, denies such allegations.

387. In response to the allegations set forth in paragraph 387 of the Petition, repeats and realleges the responses contained in paragraphs 1 through 386 of this answer with the full force and effect as if set forth fully herein.

388. States that the allegations contained in paragraph 388 of the Petition require no response, as they attempt to characterize the UDC Act or constitute conclusions of law, and respectfully refers the Court to the UDC Act for a complete and accurate understanding of its content and effect, except that, to the extent that a response is necessary, denies such allegations.

389. Denies each and every allegation contained in paragraph 389 of the Petition.

390. Denies each and every allegation contained in paragraph 390 of the Petition.

391. Denies each and every allegation contained in paragraph 391 of the Petition.

392. Denies each and every allegation contained in paragraph 392 of the Petition.

393. Denies each and every allegation contained in paragraph 393 of the Petition.

394. In response to the allegations set forth in paragraph 394 of the Petition, repeats and realleges the responses contained in paragraphs 1 through 393 of this answer with the full force and effect as if set forth fully herein.

395. Denies each and every allegation contained in paragraph 395 of the Petition.

396. Denies each and every allegation contained in paragraph 396 of the Petition.

397. Denies each and every allegation contained in paragraph 397 of the Petition.

398. In response to the allegations set forth in paragraph 398 of the Petition, repeats and realleges the responses contained in paragraphs 1 through 397 of this answer with the full force and effect as if set forth fully herein.

399. Denies each and every allegation contained in paragraph 399 of the Petition.

400. Denies each and every allegation contained in paragraph 400 of the Petition, and affirmatively states that no Supplemental EIS is required for the Project.

401. Denies each and every allegation contained in paragraph 401 of the Petition.

402. Denies each and every allegation contained in paragraph 402 of the Petition.

403. Denies each and every allegation contained in paragraph 403 of the Petition.

404. In response to the allegations set forth in paragraph 404 of the Petition, repeats and realleges the responses contained in paragraphs 1 through 403 of this answer with the full force and effect as if set forth fully herein.

405. Denies each and every allegation contained in paragraph 405 of the Petition.

406. Denies each and every allegation contained in paragraph 406 of the Petition.

407. Denies each and every allegation contained in paragraph 407 of the Petition.

408. Denies each and every allegation contained in paragraph 408 of the Petition.

409. In response to the allegations set forth in paragraph 409 of the Petition, repeats and realleges the responses contained in paragraphs 1 through 408 of this answer with the full force and effect as if set forth fully herein.

410. Denies each and every allegation contained in paragraph 410 of the Petition.

411. Denies each and every allegation contained in paragraph 411 of the Petition.

412. Denies each and every allegation contained in paragraph 412 of the Petition.

413. Denies each and every allegation contained in paragraph 413 of the Petition.

414. In response to the allegations set forth in paragraph 414 of the Petition, repeats and realleges the responses contained in paragraphs 1 through 413 of this answer with the full force and effect as if set forth fully herein.

415. Denies each and every allegation contained in paragraph 415 of the Petition.

416. Denies each and every allegation contained in paragraph 416 of the Petition.

417. In response to the allegations set forth in paragraph 417 of the Petition, repeats and realleges the responses contained in paragraphs 1 through 416 of this answer with the full force and effect as if set forth fully herein.

418. Denies each and every allegation contained in paragraph 418 of the Petition.

419. Denies each and every allegation contained in paragraph 419 of the Petition.

420. Denies each and every allegation contained in paragraph 420 of the Petition.

421. Denies each and every allegation contained in paragraph 421 of the Petition.

422. Neither admits nor denies the allegations contained in paragraph 422 of the Petition, as they consist of conclusory statements, argument, or conclusions of law to which no response is necessary, except that, to the extent that a response is necessary, denies such allegations.

423. In response to the allegations set forth in paragraph 423 of the Petition, repeats and realleges the responses contained in paragraphs 1 through 422 of this answer with the full force and effect as if set forth fully herein.

424. Denies each and every allegation contained in paragraph 424 of the Petition.

425. Admits the allegations contained in paragraph 425 of the Petition, and affirmatively states that the MTA prepared, adopted and issued its SEQRA findings statement. *See Record, Exhibits 23-25.*

426. Denies each and every allegation contained in paragraph 426 of the Petition.
427. Denies each and every allegation contained in paragraph 427 of the Petition.
428. Denies each and every allegation contained in paragraph 428 of the Petition.
429. Denies each and every allegation contained in paragraph 429 of the Petition.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

430. The Petition fails to state a cause of action against Respondent MTA.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

431. Petitioners lack standing to assert their claims.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

432. Petitioners' claims are barred by the applicable statute(s) of limitations.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

433. The Respondents' actions were undertaken in full compliance with the procedural and substantive requirements of SEQRA, and all other applicable statutes and regulations.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

434. The Respondents' determinations were made on the basis of substantial evidence and were not arbitrary, capricious, an abuse of discretion, or affected by an error of law.

**AS AND FOR RESPONDENT MTA'S AFFIRMATIVE STATEMENT OF PERTINENT AND MATERIAL FACTS**

**Introduction**

435. The Project will redevelop an approximately 22-acre area in Brooklyn, roughly bounded by Flatbush and 4th Avenues to the west, Vanderbilt Avenue to the east, Atlantic Avenue to the north, and Dean and Pacific Streets to the south, an area including the MTA Long

Island Rail Road (“LIRR”) Vanderbilt Rail Yard and an MTA New York City Transit (“NYCT”) yard for retired buses.

436. The Project will include significant benefits for the MTA and the transit riding public, including a new and improved Vanderbilt Rail Yard and a new entrance and other significant enhancements to the Atlantic Avenue/Pacific Street subway station complex, one of the busiest in the City. The Project also aims to provide a sports arena, affordable and market-rate housing, office space, open space, local retail and community services, and possibly a hotel. A large portion of the Project will be built on a deck above the reconfigured and relocated Vanderbilt Yard.

437. The Project will reconfigure, upgrade and partially relocate the Vanderbilt Yard to meet current construction standards and address the current and future needs of the LIRR. The upgraded yard will expand storage and inspection capacity, create new employee facilities, provide a new signal system and improve yard functionality, including equipment servicing.

438. Currently, tracks in the yard are built of conventional rail with wooden ties and switch timbers, and there is no direct connection between the Yard and the LIRR Atlantic Terminal. Trains entering the Yard from the LIRR Atlantic Terminal currently must travel east, past the Yard, switch, and reverse direction to enter the Yard. Tracks are spaced close together, allowing only narrow passageways between trains for inspections and limiting toilet servicing to the two outer tracks, requiring trains to be moved in and out of position until each train has had its turn on an outer track. In addition, most yard switches must be operated manually. The Yard also lacks a “drill” track (to permit switching trains from one track to another within the Yard) and only one track can accommodate the LIRR’s new 10-car trains.

439. The upgraded and relocated Yard will be built below street grade on the eastern end of the existing rail Yard footprint to allow for both the continuation of LIRR yard operations and the operation of the arena. The upgraded Yard will include a “drill track” on the northernmost portion of Block 1119, which will be used for switching trains; a new “West Portal,” which will provide a direct route from the LIRR Atlantic Terminal to the upgraded Yard and a second means of train egress from Atlantic Terminal, adding safety, security and flexibility in the event of an emergency on the main line; an additional extended track able to accommodate 10-car trains; expanded spacing between tracks to facilitate inspections and toilet servicing; and a new, modern, indoor substation. Above the upgraded Yard, the Project Sponsors would build a platform, which would serve both as a protective roof for the LIRR operations and as a base for the new development to be built above.

440. In order to provide for the continuation of LIRR Atlantic Branch operations during construction of the arena, a temporary yard will first be built prior to the completion of the upgraded Yard. Work on this temporary yard is now underway.

441. The Project also includes a major new entrance and other enhancements to the Atlantic Avenue/Pacific Street subway station complex at the southeast corner of Atlantic and Flatbush Avenues. Currently, pedestrians approaching the Atlantic Avenue/Pacific Street subway station from the south must cross the large and busy Atlantic Avenue to enter the subway station. As indicated in the FEIS, the intersection of Atlantic and Flatbush Avenues has the greatest number of pedestrian injuries in the FEIS study area. Record, Exhibit 15, FEIS, Chapter 12 at 12-15.

442. The new entrance to the Atlantic Avenue/Pacific Street subway station complex will enhance subway access and pedestrian safety by making it unnecessary for pedestrians

approaching the subway station from the south to cross Atlantic Avenue. Instead, they will be able to use the new subway entrance on the Project site, which will include new escalators, stairways and passageways leading to the subway, as well as an elevator affording access to disabled transit users. New stairways and ramps to the subway platforms will be constructed, existing but unused passages and shafts in the station will be rehabilitated, and new emergency exits will be provided.

443. All rail and subway infrastructure improvements are to be included in the first phase of the Project.

444. In addition to the considerable transit improvements, the Project also includes the sale of air rights above the MTA property and certain fee interests in Block 1120 for \$100 million.

445. A full description of the balance of the Project, including the arena, residential and commercial buildings, and open space, is set forth in the FEIS and in the Verified Answer of Respondent ESDC.

#### **MTA's Selection of Forest City Ratner Companies to Redevelop the Vanderbilt Yard**

446. On February 18, 2005, ESDC, the City, the New York City Economic Development Corporation ("EDC"), and FCRC executed a memorandum of agreement concerning the Project. Record, Exhibit 1. The memorandum of agreement contemplated an arena and mixed-use development, partially constructed on certain properties owned by the MTA, including the Vanderbilt Yard, and discussed proposed Project financing, tax exemptions, design guidelines, property acquisition and disposition, anticipated reviews and approvals by public agencies, and other subjects related to the Project.

447. Around the same time, the MTA was engaged in discussions with FCRC concerning the use of portions of the Vanderbilt Yard and air rights above it for the proposed Project.

448. On February 24, 2005, MTA and FCRC executed a non-binding letter agreement. Record, Exhibit 2. Although the MTA agreed to cooperate with FCRC, MTA made clear that it was under no obligation to go forward with the Project. The letter agreement stated on the first page 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.”

449. The letter agreement also set forth various conditions for any future agreements, including technical requirements for future design and operations, as well as planning, construction and operating costs. Because the Vanderbilt Yard is an active rail yard, it was of paramount importance to the MTA and LIRR that rail operations not be adversely affected during the Project’s planning, construction, or operation. The letter agreement specified requirements for a temporary yard to maintain railroad operations prior to completion of the Project, as well as the requirements for an enhanced permanent yard, which would be further set forth in a future design definition report to be approved by the LIRR. The permanent Yard would improve current operations, and include enhanced capacity to store more, longer trains; a switching track to enhance yard functionality; and a fully interlocked configuration of switches and signals. Record, Exhibit 2.

450. On May 24, 2005, as contemplated by the February 24, 2005 letter agreement, the MTA issued an RFP for the sale or lease of property interests in the Vanderbilt Yard. Record, Exhibit 3. In addition to publishing newspaper advertisements for the RFP on May 18, 2005, the MTA also sent the RFP to several developers that it thought had the resources to develop the Vanderbilt Yard.

451. The goal of the RFP was to dispose of land or air rights to “maximize the economic benefit to the MTA for improvement of the public transportation facilities and functions of the MTA and minimize the economic and environmental risk to MTA,” considering the “economic development, planning, and civic needs and desires of the City and the State; [c]onsideration of the interests of the surrounding community; [t]he selection of a developer... with the experience, reputation, and creditworthiness appropriate for the successful development of a project of this magnitude and importance[; and c]onsistency with the Long Island Rail Road’s need to continually operate critical transportation services within the Vanderbilt Yard and related support facilities.” Record, Exhibit 3 at 3.

452. The RFP emphasized that the Vanderbilt Yard was essential at its current location for LIRR service on its Atlantic Branch, and set forth MTA’s requirements for disposition of the site, which included, *inter alia*, that any development over the active rail yard would be no less than 22 feet above the rails. Record, Exhibit 3 at 5. The RFP stated that the MTA would consider various dispositions and yard configurations, including proposals that contemplated a disposition of only a portion of the site, proposals that consolidated the Yard to the eastern end of the site, proposals including land not under MTA ownership, and proposals rebuilding the Yard in its current location. Record, Exhibit 3 at 6-7.

453. The RFP included selection criteria that the MTA would use to evaluate the proposals. The selection criteria included such considerations as the quantity and certainty of financial return to the MTA; financial viability; the overall economic development benefit; the developer's experience, financial qualifications, and previous record of performance with public agencies; the timeframe for commencement and completion; the overall quality of the proposal; the developer's commitment to ensure MTA/LIRR operating requirements with minimal impact to railroad operations; and other considerations. Record, Exhibit 3 at 18-19.

454. The RFP emphasized that MTA retained the right to reject all proposals and to dispose of the property outside of the RFP process. Record, Exhibit 3 at 21.

455. The RFP required that all responses be received by the MTA by July 6, 2005. Record, Exhibit 3 at 13.

456. In response to the RFP, MTA received two proposals, one from FCRC, and the other from Extell Development Company ("Extell").

457. MTA staff conducted extensive reviews of each proposal and requested clarifications from both Extell and FCRC. MTA staff conducted at least three briefings for MTA Board members on the proposals. Record, Exhibit 5.<sup>1</sup>

458. On July 27, 2005, the MTA Board met and discussed the FCRC and Extell proposals. Following discussion, the Board adopted a resolution authorizing the MTA Chairman and Executive Director and their designees to negotiate with FCRC for a period of 45 days and to present the Board with the terms of the results of any successful negotiations. The resolution emphasized that if the MTA was not able to negotiate an acceptable agreement with FCRC, then

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<sup>1</sup> The FCRC and Extell proposals are large documents. Non-confidential portions of these documents have already been released to the public and will be made available for review if so requested by the Court.

the Chairman and Executive Director were authorized to terminate negotiations with FCRC. Record, Exhibit 7 at 6.

459. On September 14, 2005, the MTA Board held a Special Board Meeting, at which the MTA Chairman reported that, as a result of continued negotiations with FCRC, FCRC increased the cash portion of its bid from \$50 million to \$100 million. The Chairman also discussed the proposed infrastructure improvements and other items included in the FCRC proposal. Following discussion, the Board adopted a resolution authorizing continued negotiations with FCRC and stating that no further action should be taken with respect to the Extell proposal. Record, Exhibit 9.

460. On September 15, 2005, MTA, LIRR, and FCRC agreed to a non-binding term sheet for the proposed sale of property interests in the Vanderbilt Yard to FCRC. The term sheet made clear that MTA was not bound in any way to the FCRC proposal, stating that “[t]he parties acknowledge and agree that this term sheet does not bind either party to purchase or sell the [Vanderbilt Yard] Property or the Additional Property, and that the parties will not be bound until definitive documents are executed and delivered and until all required approvals have been completed.” Record, Exhibit 10 at 3. The term sheet also stated that “the Closing of the purchase and sale shall be subject to the completion of all public approvals for the FCRC Atlantic Yards Project, of which the development of the VD Yard as set forth in the FCRC Proposal forms a part, including approval of an ESDC General Project Plan, Public Authorities Control Board approval, approval under the Eminent Domain Procedure Law, City and State funding approvals, and a final environmental impact statement.” Record, Exhibit 10 at 3.

## **The SEQRA Approval Process**

461. As explicitly set forth in the term sheet, the RFP, the letter agreement with FCRC, and the various MTA Board resolutions concerning the Project, MTA, as an “involved agency,” was well aware of its responsibilities under SEQRA, particularly of the need for the completion of a final environmental impact statement before committing to go forward with the Project.

462. Although ESDC was the “lead agency” under SEQRA, the MTA took an active and involved role in the SEQRA process.

463. MTA staff, including members of LIRR and NYCT, as well as MTA’s own legal staff and special outside environmental counsel, participated extensively in the SEQRA environmental review process. MTA assisted in preparing the draft and final scoping documents and the DEIS and FEIS, and reviewed numerous drafts of those documents. MTA attended the DEIS hearing, as well as at least one of the public forums. MTA worked closely with ESDC and its consultants and counsel not only to ensure that the MTA was familiar with the Project’s overall environmental impacts, but also to lend its experience and expertise to the environmental review, particularly concerning subways, commuter rail, buses, pedestrians, traffic, and other areas of transportation analysis. See, e.g., Record, Exhibit 22.

464. On November 29, 2006, Katherine Lapp, MTA’s Executive Director, sent a memorandum to all Board members enclosing a set of CD-ROMs containing the entire FEIS. Also enclosed was a printed copy of the FEIS Executive Summary, which is a 45-page document describing the Project, its anticipated environmental impacts, and proposed mitigation measures. The memorandum also stated that printed copies of the entire FEIS were available for review at the MTA offices at 347 Madison Avenue. Record, Exhibit 16.

465. On December 7, 2006, Ms. Lapp forwarded three additional documents for the Board's review: (1) a "staff summary" discussing the proposed MTA SEQRA findings statement and proposed resolution authorizing the MTA to enter into agreements to proceed with the Project; (2) a document entitled "Summary of MTA Environmental Findings for Atlantic Yards Arena and Redevelopment Project" ("Summary of Findings"); and (3) a draft Board resolution concerning the MTA SEQRA findings statement. Ms. Lapp also indicated in her cover memorandum that she expected that the full MTA SEQRA findings statement would be sent to Board members the following day. Record, Exhibit 17.

466. The seven-page Summary of Findings was prepared for the Board by MTA staff to provide a roadmap for the lengthy MTA SEQRA findings statement that the Board would be receiving. The Summary described the Project (with particular emphasis on the LIRR rail yard and subway station improvements), summarized the SEQRA review process, set forth all significant environmental impacts identified in the FEIS that could not be mitigated, summarized transportation-related impacts and mitigation measures, weighed and balanced the benefits and impacts of the Project with those of the alternatives, and set forth the statutory findings required by SEQRA. Record, Exhibit 21.

467. On December 8, 2006, Ms. Lapp forwarded to the MTA Board the full 91-page proposed "Findings Under the State Environmental Quality Review Act by the Metropolitan Transportation Authority, Long Island Rail Road, and New York City Transit In Connection With the Atlantic Yards Arena and Redevelopment Project" ("MTA Findings Statement"). Record, Exhibit 23.

468. The MTA Findings Statement described in detail the Project, its purpose and need, its procedural history, the methodology for the DEIS and FEIS, the required discretionary

actions by public agencies, the Project's benefits, the impacts disclosed in the FEIS, the proposed mitigation measures, unmitigated significant impacts, and alternatives to the Project. Record, Exhibit 23.

469. As required by SEQRA, the MTA SEQRA Findings Statement also weighed and balanced the Project's impacts and benefits, compared the Project with the alternatives studied in the FEIS, and included the following Board findings:

Having considered the DEIS and the FEIS, including the comments on the DEIS and responses thereto, and comments received on the FEIS, and the preceding written facts and conclusions, MTA, LIRR, and NYCT find and certify that:

(1) the requirements of Article 8 of the New York Environmental Conservation Law and its implementing regulations, 6 N.Y.C.R.R. Part 617, have been met; and

(2) consistent with social, economic and other essential considerations from among the reasonable alternatives available, the Project is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that the FEIS and this Findings Statement have identified as practicable.

470. On December 11, 2006, the MTA Board's Capital Construction, Planning & Real Estate Committee met and, *inter alia*, approved moving the proposed MTA Findings Statement to the full MTA Board. Record, Exhibit 20.

471. The full MTA Board met on December 13, 2006 and unanimously approved and adopted the MTA Findings Statement, which made the findings required by SEQRA. The Board also authorized the Chairman and Executive Director and their respective designees to proceed with the MTA's portion of the Project, thus completing the MTA's SEQRA process. Record, Exhibits 21- 25.

472. On February 14, 2007, MTA and LIRR entered into a temporary license agreement with an FCRC affiliate granting that affiliate a temporary, non-exclusive license to enter upon the Vanderbilt Yard for the purpose of constructing the temporary rail yard. MTA continues to negotiate the terms of the remaining transactions with FCRC, but has not yet entered into any binding agreements with FCRC or any other entity to dispose of any property interest on or above the Project site.

WHEREFORE, Respondent MTA respectfully requests that this Court render judgment:

- (a) dismissing the Petition in its entirety;
- (b) granting Respondent MTA its costs and disbursements in this proceeding; and
- (c) granting Respondent MTA such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
April 25, 2007

CARTER LEDYARD & MILBURN LLP

By: 

Stephen L. Kass

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Attorneys for Respondent  
Metropolitan Transportation Authority

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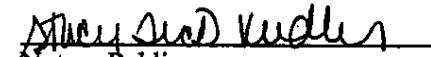
**VERIFICATION**

Roberta Bender, being duly sworn, deposes and says that she is the Deputy General Counsel of the Metropolitan Transportation Authority, that she has read the foregoing Answer and knows the contents to be true, except as to those matters therein stated to be alleged on information and belief, and as to those matters, she believes them to be true, and that the source of her knowledge and the basis of her belief are the books and records of the Metropolitan Transportation Authority, and conversations with employees, consultants and outside counsel of the Metropolitan Transportation Authority.



Roberta Bender

Sworn to before me this  
24th day of April, 2007

  
Notary Public

STACY TICK KUDLER  
Notary Public State of New York  
No. 02KU6029667  
Qualified in New York County  
Commission Expires August 23, 20 09